



REPUBLIC OF SOUTH AFRICA

# ***THE SUPREME COURT OF APPEAL OF SOUTH AFRICA***

Case number: 25/2006  
Reportable

In the matter between:

**THE CHAIRPERSONS' ASSOCIATION                      APPELLANT**

and

**MINISTER OF ARTS & CULTURE                      FIRST RESPONDENT  
THE CHAIRMAN OF THE SOUTH  
AFRICAN GEOGRAPHICAL  
NAMES COUNCIL                      SECOND RESPONDENT  
THE MUNICIPALITY OF  
MAKHADO                      THIRD RESPONDENT**

CORAM:                      HOWIE P, FARLAM, BRAND, JAFTA et  
   CACHALIA JJA

HEARD:                      19 FEBRUARY 2007

DELIVERED:                      29 MARCH 2007

SUMMARY:                      Administrative Law – PAJA s 6(2)(e)(iii) – name change of  
Louis Trichardt to Makhado reviewed and set aside.

**Neutral citation: This judgment may be referred to as *The Chairpersons' Association  
v Minister of Arts and Culture* [2007] SCA 44 (RSA).**

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## ***JUDGMENT***

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**FARLAM JA**

### **INTRODUCTION**

[1] This is an appeal from a decision of Legodi J sitting in the Pretoria High Court in which he dismissed the appellant's application for an order reviewing and setting aside (1) the decision of the first respondent, the Minister of Arts and Culture, in terms of s 10(1) of the South African Geographical Names Council Act 118 of 1998 approving the change of the name of the town Louis Trichardt to Makhado, and (2) the first respondent's decision in terms of s 10(5) of Act 118 of 1998 to reject the appellant's objection to his approval of the said name change.

[2] The judgment on appeal has been reported: see *Chairpersons' Association v Minister of Arts and Culture and Others* 2006 (2) SA 32 (T). The appellant is the Chairpersons' Association, a voluntary association, which according to its Constitution was set up 'to promote good corporate governance in a transparent manner and to promote good relationships amongst all cultural, racial, religious and business groups in the greater Makhado Municipal Area'. The first respondent is the Minister for Arts and Culture. The second respondent is the chairman of the South African Geographical Names Council a body established by s 2 of Act 118 of 1998, as amended. (In what follows I shall refer to Act 118 of 1998 as 'the Act' and to the South African Geographical Names Council as 'the Names Council'.) The third respondent is the Municipality of Makhado, against which no relief was claimed and which was joined as a respondent after the review proceedings were instituted.

### **RELEVANT STATUTORY PROVISIONS**

[3] According to its long title the purposes of the Act are '(t)o establish a permanent advisory body known as the South African Geographical Names Council to advise the Minister responsible for arts and culture on the transformation and standardisation of geographical names in South Africa for official purposes; to determine its objects, functions and methods of work; and to provide for matters connected therewith'.

[4] Section 1 is the definitions section. It contains the following definition of 'standardisation':

'In this Act, unless the context indicates otherwise –

. . .

"standardisation" means –

- (a) determination of –
  - (i) the name to be applied to each geographical feature; and
  - (ii) the written form of that name; and
- (b) the regulation by an appropriate authority of a geographical name, its written form and its application . . .'

[5] Section 2(1) provides for the establishment of the Names Council. Subsection (2) sets out the objects of the Names Council, as follows:

'(2) The objects of the Council are-

- (a) to facilitate the establishment of Provincial Geographical Names Committees;
- (b) to ensure the standardisation of geographical names;
- (c) to facilitate the transformation process for geographical names;
- (d) to promote the use of standardised South African geographical names at international level;
- (e) to ensure the implementation of standardised geographical names in South Africa; and
- (f) to promote awareness of the economic and social benefits of the standardisation of geographical names.'

[6] Section 9, which sets out the powers and duties of the Names Council, reads as follows:

'(1) The Council must-

- (a) set guidelines for the operation of Provincial Geographical Names Committees;
- (b) set standards and guidelines for local and provincial authorities in their respective areas of jurisdiction;
- (c) receive proposed geographical names submitted by State departments, statutory bodies, provincial governments, municipalities and other bodies or individuals;
- (d) recommend geographical names falling within the national competence to the Minister for approval;
- (e) advise the Minister on-
  - (i) the standardisation of proposed new geographical names;
  - (ii) existing geographical names not yet standardised;
  - (iii) the changing, removing or replacing of geographical names; and
  - (iv) geographical names and their orthography;

- (f) in consultation with provincial governments, identify existing geographical names in need of revision, and co-ordinate requests for advice on geographical names and standardisation;
- (g) communicate decisions and relevant information on geographical names approved in terms of section 10 (1) effectively to the various State departments, the public, and all other users of geographical names at national and international level by means of gazetteers, lists, maps and other published and electronic media;
- (h) liaise with-
  - (i) national and international organisations concerned with geographical names; and
  - (ii) cultural, historical and linguistic organizations;
- (i) in consultation with the Minister and the Provincial Geographical Names Committees, formulate policies, principles and procedures, taking cognisance of the United Nations resolutions and international practice with reference to the standardisation of geographical names;
- (j) perform any other duty imposed on it by this Act or any other law; and
- (k) not later than one month before the commencement of each financial year, submit a business plan containing such information as may be prescribed to the Minister for his or her approval.
- (2) The Council may-
  - (a) exercise any power conferred on it by this Act or any other law; and
  - (b) generally, do everything which is necessary to perform its duties referred to in subsection (1).'

[7] It is common cause between the parties that a change of name in respect of Louis Trichardt is, as it is described in s 9 (1)(d), a matter within the national competence.

[8] Section 10, which deals with the approval and revision of geographical names, reads as follows:

- '(1) The Minister may approve or reject a geographical name recommended by the Council in terms of section 9 (1) (d).
- (2) A geographical name approved or rejected by the Minister in terms of subsection (1) must be published in the *Gazette*.
- (3) Any person or body dissatisfied with a geographical name approved by the Minister may, within one month from the date of publication of the geographical name in the *Gazette*, lodge a complaint in writing to the Minister.
- (4) The Minister may refer the complaint to the Council for advice whether or not to reject or amend a geographical name so approved.
- (5) The Minister must inform the complainant of the decision on the complaint and the

reasons for the decision.’

[9] As this is an attack on the validity of an administrative decision it is also necessary to refer to s 6 of the Promotion of Administrative Justice Act 3 of 2000 (to which I shall refer in what follows by using its acronym ‘PAJA’).

Section 6, as far as is material, reads as follows:

- ‘(2) A court or tribunal has the power to judicially review an administrative action if-
- ... .
- ... .
- (e) the action was taken –
- ... .
- (iii) because irrelevant considerations were taken into account or relevant considerations were not considered . . .’

### **GUIDELINES, POLICIES, PRINCIPLES AND PROCEDURES**

[10] It was common cause between the parties that the guidelines set in terms of s 9 (1)(a) and the ‘policies, principles and procedures’ formulated in terms of s 9 (1)(i) of the Act are to be found in a document available on the Names Council’s website a printout of which is annexed to the founding affidavit.

[11] This document contains the following paragraphs, which are relevant in these proceedings:

#### **Provincial Geographical Names Committees (PGNCs)**

Provincial Geographical Names Committees are established in terms of Section 2(2) (a) of the South African Geographical Names Council Act (Act No. 118 of 1998). They are established by the Provincial department responsible for Arts and Culture after consultation with the SAGNC.

#### **Functions of a Provincial Geographical Names Committee**

- A PGNC is responsible for advising local authorities and working with them in ensuring that they apply the principles of the SAGNC to the names under their jurisdiction.
- A PGNC makes recommendations to the SAGNC on the names of geographical features that fall within its provincial boundaries. It should do preparatory work for the submission of names to the SAGNC and is responsible for seeing that local communities and other stakeholders are adequately consulted.’

#### **‘Policies for standardisation**

Standardisation is based on:

- the current orthographic (spelling) rules of the languages from which the names are derived;
- the wishes of the local population, provided they are not in conflict with the principles of the SAGNC;
- the historical use of the name;
- redress, where a name is changed on the basis of historical consideration;
- United Nations resolutions on the standardisation of geographical names;
- any other relevant factors which the SAGNC may identify.

### **Human rights and the South African Constitution**

Determining a name for a place requires balancing historical and linguistic considerations, communicative convenience, the spirit of a community and the spirit of the nation.'

### **'Can existing names be changed?**

Geographical names are part of the historical, cultural and linguistic heritage of the nation, which it is more desirable to preserve than destroy.

One of the objects of the SAGNC is "to facilitate the transformation process for geographical names".

Application may be made for an existing geographical name to be changed if the applicant believes that it does not meet the Policies and Principles of the SAGNC. The application must be made on the same form that is used for new names, and should be accompanied by a detailed motivation and, where possible, supporting documents.'

### **'Who may apply for approval of a name?**

All government departments, provincial government, local authorities, the SA Post Office, property developers and any other body or person may apply.

### **How standardising is done**

The SAGNC receives all applications for the approval of geographical names under its jurisdiction and ensures that proper consultation has taken place and that the name meets the Council's requirements in all respects.

The SAGNC takes the final decision on the form or forms of names and recommends them to the Minister.

Once a name has been approved by the Minister, that name has been standardised. It is then published in the Government Gazette.'

## **FACTS**

[12] On Friday, 25 January 2002, the mayor of the third respondent was summoned to the office of the Provincial Member of the Executive Committee for Local Government and Housing of the Limpopo Province and told that the names of a number of towns in Limpopo Province, including that of Louis Trichardt, had to be changed because, as it was put, these names 'reminded us of the history of oppressive colonial practices.'

[13] The following Wednesday, 30 January 2002, at a meeting of the council of the third respondent (which I shall call in what follows 'the council') the mayor announced that the name of the town had to change before the end of February 2002, and a sub-committee was appointed by the mayor to investigate the renaming of the town.

[14] The next day, Thursday, 31 January 2002, the secretary to the mayor, Mr NP Magwala, issued an instruction to all ward councillors to convene people's forums in their wards on Saturday, 2 February 2002, or Sunday, 3 February 2002, and stated that written submissions had to reach the secretary's office before 16 February 2002. The ward councillors were requested in this communication to invite all stakeholders to attend a public hearing on Thursday, 7 February 2002, at 2 pm at the Louis Trichardt showground hall.

[15] The following day, Friday, 1 February 2002, Mr Magwala issued a notice in the following terms:

### **'CHANGING OF THE NAME OF THE TOWN**

This serves to inform you that the name of the town is about to be changed before the end of February. You are therefore requested to submit written representations to the **Office of the Mayor, Civic Centre in the Reception Hall, Ground Floor** on or before the **6<sup>th</sup> February 2002**. You may either fax your proposal to **015 516 4392**. The said proposed list of the name(s) must be signed by the writer(s).'

[16] On Wednesday, 6 February 2002, [not Thursday, 7 February 2002, the date mentioned in the communication to the ward councillors from the secretary to the mayor] a public meeting took place at the Louis Trichardt showground hall. It was attended by approximately 110 people. 55 new names were suggested for the town. The municipal manager requested the traditional leaders to direct the process. The dates for regional public hearings were announced as follows:

12 February 2002 – Vuwani;  
 13 February 2002 – Hlanganani;  
 14 February 2002 – Nzhelele;  
 17 February 2002 – Zoutpansberg.

[17] The Vuwani meeting took place on 12 February 2002 and was attended by 51 people. The Hlanganani meeting was held at Rivoni on 13 February 2002, and was attended by 59 people. The meeting at Nzhelele was held on 14 February 2002, and was attended by 91 people. There is no information in the papers as to whether the Zoutpansberg meeting took place.

[18] In some wards of the Makhado municipality meetings were held about the name change but they were poorly attended. In other wards no meetings were held. Included among these wards was ward 1. According to the councillor for the ward this was due to the short notice given. Ward 1, which comprises about 50% of the total jurisdictional area of the municipality, includes the town of Louis Trichardt west of the national road, all the businesses in that part of the town, the Buys Community and a number of rural communities.

[19] On 21 February 2002 the report prepared by the committee appointed to investigate the renaming of the town was presented to the municipality's executive committee. Its recommendation was that the town's name be changed from Louis Trichardt to Makhado. On the same day the council resolved at a special meeting to change the name in accordance with the sub-committee's recommendation.

[20] On 26 February 2002 a meeting took place between representatives of



the Soutpansberg Chamber of Commerce and the municipality's executive council at which the chamber of commerce was requested to raise its objections to the name change in writing and the mayor stated that the name change would be put on hold until a formal meeting had been held with the chamber in order that its views could be heard after which the matter would be reconsidered.

[21] On 27 or 28 February 2002, Mr Magwala sent a letter to the editor of the Zoutpansberger, a newspaper circulating in Louis Trichardt, which contained the following:

'The Executive Committee of the Sakekame in Louis Trichardt has approached the Executive Committee of the Municipality on Tuesday the 26 February 2002 whereby it raised its concerns in relation to the change of the name of the town. The Executive Committee of Sakekame has been requested to bring in their concerns in writing after which a meeting will follow. It is the policy of this Municipality to listen to the concerns of all its citizens of structures within this Municipality.

The Municipality has already sent a report to the MEC for Local Government and Housing Mr MJ Maswanganyi who will then ensure the necessary procedures are implemented to have the new name gazetted. In conclusion I must indicate that the new name of the town is MAKHADO.

I hope that the above will clarify all the misunderstandings concerning this matter.'

[22] On 27 February 2002 the chamber of commerce wrote to Mr Magwala, referring to the letter he had written to the editor of the Zoutpansberger and pointed out that what he had said in the letter was in conflict with what had been said by the mayor the previous day at the meeting between representatives of the chamber of commerce and the executive council.

[23] On 27 February 2002 the chamber also wrote to the mayor and the members of the executive committee asking for a meeting to be convened as soon as possible so that the name change could be discussed with the chamber.

[24] On 11 March 2002 the chamber wrote to the secretary of the Names Council recording its objections to the change of name.

[25] On 26 March 2002 the chairman and vice-chairman had a meeting with the Minister of Provincial and Local Government, Mr FS Mufamadi, who then wrote a letter to the mayor in which he stated that he urged both the chamber and the council, which he was informed were to have a meeting on the following day, to resolve the matter by dialogue and to find a settlement that would promote unity within Louis Trichardt and the Makhado municipal area.

On 27 March 2002 the meeting between the Executive Committee and the Chamber of Commerce, to which Mr Mufamadi had referred, took place. At this meeting the chairman of the chamber stated that the mayor had agreed that the name change process would be halted but that it had not been. The mayor stated that his office was ready to clarify to the chamber 'the process of the name change'. Later on in the meeting he said: 'We consult politicians, not Chambers'. He also said that Mr Mufamadi would be told that the ward councillor for ward one, Councillor Helm, had not done her job and that the council would not revoke its decision.

[26] On 2 April 2002 the chamber reported what had happened at the meeting of 27 March 2002 to Mr Mufamadi and requested him to intervene.

[27] Although for some reason which was not explained the relevant correspondence is not before the court, it appears that at some stage prior to 21 May 2002 the council's proposed name change was considered by the Names Council which referred it back to the council because there was already a Makhado township. The Names Council suggested that to avoid duplication the council should either submit a second choice or rename the existing Makhado and then allocate the name to Louis Trichardt.

[28] On 25 June 2002 the council resolved that Makhado Township be renamed Dzanani Township and that its resolution of 21 February 2002 'be adhered to and that the application in this regard be confirmed with [the Names Council].'

[29] On 26 June 2002 the third respondent's acting municipal manager applied to the Names Council for the names of Louis Trichardt and Makhado

Township to be changed to Makhado Town and Dzanani Township respectively. Subsequently on 28 February 2003 a further application was made, this time by the third respondent's municipal manager, for the name of Louis Trichardt to be changed to Makhado. It does not appear from the record what, if anything, had happened to the application of 26 June 2002, and why a further application was made on 28 February 2003.

[30] On 14 March 2003 the Names Council held a meeting at which the applications, *inter alia*, for the change of the name of Louis Trichardt to Makhado Township and Makhado Township to Dzanani Township were considered. The minutes of the meeting, which were subsequently signed by the chairperson on 28 May 2003, do not contain a resolution stating that the Names Council recommended the proposed name changes and for approval by the first respondent. What the minutes contain on this point is the following:

'Prof LF Mathenjwa [the chairperson] then presented the applications for and against the change of names from Mpumalanga. He asked for Council's resolution on this issue.

Dr Beukes said that a geographical name should be approved by the Minister after receiving recommendations from the SAGNC, and whoever had an objection had an opportunity to forward it to the Minister after the approved name had been published electronically and in the *Government Gazette*.

The Council agreed with Dr Beukes and decided that the Unit should bring to the Minister's attention that there were objections to the name changes from Limpopo and Mpumalanga. For example, the application for the change of name *Jeppe's Reef* to *Embhojeni* should be recommended but sent to the Minister with a note saying that there was an objection to it.'

[31] On 9 May 2003 the Director-General of the Department of Arts and Culture wrote a memorandum to the first respondent, which, as far as is material, is in the following terms:

**'GEOGRAPHICAL NAMES RECOMMENDED BY THE SOUTH AFRICAN GEOGRAPHICAL NAMES COUNCIL (SAGNC) MEETING OF 14 MARCH 2003 FOR THE APPROVAL BY THE MINISTER**

**INTRODUCTION**

1. The SAGNC held a business meeting on 14 March 2003. At this meeting twenty-two names were recommended for your approval.

## DISCUSSION

2. The table of the recommended names is attached as Annexure A.
3. Out of the twenty-two recommended names, nineteen have a political significance and are of public interest (Annexure B).
4. The SAGNC would like to bring to your attention the correspondence you received from different stakeholders with regard to the change of name from Louis Trichardt to Makhado (Annexure C).
5. The SAGNC would also like to give you assurance that despite all objections and concerns regarding the name change, a proper consultation process was followed.'
- ...

## RECOMMENDATION

6. It is recommended that you approve the names as recommended by the SAGNC.'

[32] Among the list of new names which according to the Director-General had been recommended for approval were Dzanani and Makhado: these two names were also included in the list of names with a political significance.

[33] On 15 May 2003 the first respondent approved the recommendations contained in paragraph 6 of the Director-General's memorandum.

[34] Two government notices dealing with the change of name of, *inter alia*, Louis Trichardt were published in the Government Gazette: viz Government Notice 712 of 6 June 2003 in which it was stated, *inter alia*, that the first respondent approved the place name Makhado in respect of the former Louis Trichardt 'on the advice of the Names Council', and Government Notice 864 of 20 June 2003 in which it was stated that the approval was given on 15 May, again 'on the advice' of the Names Council. (It is clear that the first Government Notice was incorrect and that it was replaced by the Government Notice of 20 June 2003, which correctly reflected the decision made by the first respondent.)

[35] On 30 June 2003 the appellant's attorney objected in terms of s 10 (3) of Act 118 of 1998 to the change of the name of the town of Louis Trichardt to

Makhado. In an undated letter received by the appellant on 13 November 2003 the first respondent rejected the appellant's objection. The reasons he gave in support of this decision were the following:

'A process of and sufficient consultation was followed before this matter was finalized; publication in the Government Gazette was done in accordance with the Act; and the approved name is not in conflict with the principles and policies of the South African Geographical Names Council.'

### **APPELLANT'S CONTENTIONS**

[36] The appellant's attack on the validity of the name change was based on three main contentions: viz (1) that the Names Council had not made a recommendation to the first respondent in terms of s 9 (1)(d) of the Act for the change of the name of Louis Trichardt to Makhado; (2) that the application for the name change had not been preceded, as it should have been, by proper consultation with all interested parties; and (3) that the first respondent in considering the objection under s 10 (3) did not properly apply his mind to the objections and if he had done so he would have realised that a proper consultation process had not been followed. The appellant also sought an order declaring s 10(3) and 10(4) of the Act to be unconstitutional.

[37] In support of the contention that there had to be proper consultation before there was a name change the appellant relied on the paragraphs in the guidelines in which the functions of the Provincial Geographical Names Committees are set out and in which it is explained how standardising is done.

[38] The attack on the constitutionality of s 10 (3) and 10 (4) of the Act was based on the contention that it is 'inappropriate and not transparent that the same administrator reviews his own decision'.

### **CONTENTIONS ADVANCED BY COUNSEL FOR FIRST AND SECOND RESPONDENTS**

[39] Counsel for the first and second respondents submitted that on a proper interpretation of the Act different considerations apply to the transformation of geographical names from those which apply to their standardisation. This case, they contended, was concerned with the concept of transformation, which

relates to the rejection of names of towns by the community and the acceptance of a new name acceptable to the community with reference to its history and cultural values.

[40] They contended further that it was no accident that s 9(1)(c) of the Act empowers a municipality to submit a proposal for a name change to the Names Council. They submitted that this may obviously be done to achieve transformation and that '(t)his provision of the Act coincides with the capacity of a municipality to represent its community as a consequence of democratic principles.' They argued further that the scheme of the Act does not provide for consultation in the case of a name change which would achieve transformation as opposed to standardisation. Dealing with the guidelines set by the Names Council, they contended that they only applied to cases where place names were being standardised and not where they were being transformed.

[41] It was also argued on behalf of the first and second respondents that the evidence was, as they put it, 'overwhelming' that the Names Council duly and properly considered the proposal and recommended the change of name to the first respondent.

[42] Another contention advanced by counsel for the first and second respondents, supporting in this regard the approach adopted by the court *a quo*, was that the appellant's attack on the first respondent's decision to approve the name change recommended by the Names Council was materially defective because it had not sought to take on review the council's decision to propose the name change. That decision, it was submitted, is valid and of full force and effect. The Names Council was not entitled to question the validity of the council's decision to apply for a change of name. What the Names Council was enjoined to do, they submitted was 'to consider the merits of the application and to recommend or not that the change of name be brought about by the Minister.

## **DISCUSSION**

[43] I do not think there is any merit in the submission that it was 'no accident'

that s 9(1)(c) of the Act empowers a municipality to submit a proposal for a name change and that that provision indicated that a municipal council being, as it were, a representative of the municipal community could propose a name change of a transformatory nature which the Names Council had to consider on its merits, without paying any regard to the question as to whether there had been an adequate process of consultation within the community. The first point to notice in this regard is that s 9(1)(d) not only provides for name changes to be proposed by municipalities but also by, amongst others, 'other bodies and individuals'. Secondly the guidelines clearly apply both to standardising (in the narrow sense) and transformatory name changes. That this is so appears clearly from the reference in the paragraph headed 'Policies of Standardisation' to 'redress', where a name is changed on the basis of historical consideration. It also appears from the statement in the paragraph headed 'Human Rights and the South African Constitution' that determining the name for a place requires 'balancing historical and linguistic considerations, . . . , the spirit of a community and the spirit of the nation' and the inclusion of a reference to the 'transformation process' in the paragraph headed 'Can existing names be changed?' Thirdly, it is difficult to understand why the council would have required consultation, for example, on a question such as whether the correct spelling of 'Messina' should be "Musina", but not have required consultation with those affected by the change of name of a place such as Louis Trichardt, the chief town in an area inhabited by persons belonging to various ethnic and linguistic groups.

[44] I also reject the contention that the appellant's application was defective because the appellant had not sought to review the council's decision to propose the name change. The proposal as such changed nothing: it did not adversely affect the rights of any person and had no direct, external legal effect and was accordingly not covered by the definition of 'administrative action' in s 1 of PAJA. It was of no greater significance than any individual's proposal.

[45] In my opinion the statement in the guidelines that the Names Council 'ensures that proper consultation has taken place' is akin to a promise made by a public authority to follow a certain procedure, about which the Privy Council

said the following in *Attorney-General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 622 (PC) at 638E-F:

'When a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and implement its promise, so long as implementation does not interfere with its statutory duty. The principle is also justified by the further consideration that, when the promise was made, the authority must have considered that it would be assisted in discharging its duty fairly by any representations from interested parties and as a general rule that is correct.'

[46] The guideline is that before a proposal for a name change, even one of a transformatory nature, is considered, adequate consultation with local communities and other stakeholders must take place. In all the circumstances I think it clear that this guideline should have been implemented in the case of the Louis Trichardt name change. It is clear from the summary of the facts set out above that such consultation did not take place. Apart from the short notice given of meetings to be held by ward councillors, the holding of the meeting advertised for 7 February 2002 on 6 February 2002, the refusal to hold back the process during the discussions with the chamber of commerce and the statement by the mayor that 'we consult politicians, not Chambers', there was the assertion by the mayor that the councillor for ward one had not done her job: which amounted to an admission that her ward (which it will be recalled comprises about 50% of the total jurisdictional area of the municipality, including the town of Louis Trichardt west of the national road, all the businesses in that part of the town, the Buys Community and a number of rural communities) was not consulted. Whether it was the councillor's fault or not is neither here nor there; the failure to consult is not disputed.

[47] It follows from what I have said that the statement in the Director-General's memorandum, which was before the first respondent when he approved the name change, to the effect that a proper consultation process had been followed was incorrect and was indeed a material misstatement of fact, which clearly influenced the first respondent in coming to the decision he did (as appears from the reasons he later gave when he rejected the appellant's objection to the name change).

[48] Under the law as it was before PAJA it was held by this court in *Pepcor*



*Retirement Fund v Financial Services Board* 2003 (6) SA 38 (SCA) at paras 47 and 48 that a material mistake of fact was a ground for judicial review, provided the fundamental distinction between appeal and review was not blurred or eliminated. Cloete JA said (at para 47) that the doctrine of legality requires that the power conferred on a functionary to make decisions in the public interest should be exercised properly, ie on the basis of the true facts. In the *Pepcor* case it was held that the distinction referred to was not blurred or eliminated because the Registrar of Pension Funds, whose decision was being reviewed and to whom material misstatements of fact had been made, was entitled to act on the assumption that the correct facts had been placed before him. In this case the first respondent was entitled to assume that the fact conveyed to him by the Director-General, viz that there had been proper consultation, was correct. In my opinion the legal position as set out in the *Pepcor* case based as it is on the principle of legality still applies under PAJA, s 6(2)(e)(iii) of which provides that administrative action taken because 'irrelevant considerations were taken into account or relevant considerations were not considered' can be set aside on review. Where a decision is based on a material misstatement of fact it is clear that that subparagraph applies.

[49] It follows from what I have said that even if one accepts that the Names Council did recommend the name change to the first respondent (which I am prepared to assume for the purposes of this judgment) the first respondent's decision to approve the name change clearly cannot stand. This conclusion renders it unnecessary to decide whether the appellant's contention that the first respondent lacked the power to approve the name change because the Names Council had failed to make a recommendation in this regard is correct.

[50] In view of the fact that I have come to the conclusion that the appellant's attack on the first respondent's decision under s 10(1) must succeed it is unnecessary to deal with the attack on his decision to reject the appellant's complaint lodged in terms of s 10(3). This is because the first respondent's powers under s 10 (4) read with (5) are simply to reject or amend a name previously approved and not to validate an invalid decision made by him. It is also unnecessary to consider whether the appellant's contentions regarding the

constitutionality of s 10(3) and 10(4) of the Act are well-founded.

### **ORDER**

[51] The following order is made:

1. The appeal is allowed with costs.
  
2. The order of the court *a quo* is set aside and replaced by the following:
  - '1. The decision of the first respondent in terms of section 10(1) of the South African Geographical Names Council Act 118 of 1998, and published in Government Notice 864 of 20 June 2003, to approve the change of the geographical name of the town Louis Trichardt to Makhado is reviewed and set aside.
  
  2. The first and second respondents are ordered to pay the costs of the applicant jointly and severally.'

.....  
 IG FARLAM  
 JUDGE OF APPEAL

### **CONCURRING**

HOWIE P  
 BRAND JA  
 JAFTAJA  
 CACHALIA JA