

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 34752/2019

1. REPORTABLE: Yes
2. OF INTEREST TO OTHER JUDGES: Yes
3. REVISED: No

DATE: 28 February 2023
SIGNATURE OF JUDGE:

In the matter between:

SUPALUCK INVESTMENTS (PTY) Ltd.

Applicant

and

**THE VALUATIONS APPEALS BOARD:
CITY OF JOHANNESBURG**

1st Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

2nd Respondent

**Summary: Administrative Law - Promotion of Administrative Justice Act 3 of 2000
Review – Municipal Valuations –application for review of an administrative decision– 180-day
time limit envisaged in s 7(1) of PAJA – condonation application for failure to prosecute review
application on time in terms s 9(2) considered.**

ORDER

The application is dismissed with costs, including the costs of two counsel.

JUDGMENT

FLATELA J

Introduction

[1] The applicant, Supaluck Investments (PTY) Ltd “Supaluck” seeks to have a decision made by the second respondent, the Valuation Appeal Board for the City of Johannesburg (VAB), on 26th November 2015, to increase the property value of the remainder portion of 1 of erf 208 of Sandhurst “the property” from R13 500 000 (thirteen million, five hundred thousand) to R26 000 000 (twenty-six million rands) reviewed, declared invalid, and set aside.

[2] The applicant further seeks an order that the second respondent must immediately desist from recovering the increased rates erroneously levied on the property based on its decision.

[3] Alternatively, an order reviewing and setting aside the decision and remitting the matter to the first respondent for an appeal or compulsory review against the decision of the Municipal Valuer, communicated to the applicant on 12 September 2014 for reconsideration.

[4] Furthermore, the applicant seeks “to the extent that it is necessary”, an order in terms of section 9(2) of PAJA granting the applicant a condonation for its delay in instituting these proceedings.

The Parties

[5] The applicant is Supaluck Investments (PTY) Ltd “Supaluck”, a company registered with the company laws of the Republic of South Africa, with principal registered address being Illovo Edge, 3rd Floor, Building 3, 5, Harris Road, Illovo, Gauteng. Supaluck is the registered owner of the remainder portion of 1 of erf 208 of Sandhurst with address being 159 Empire Place, Sandhurst (the property). This property occupies the centre stage in this proceedings.

[6] The first respondent is the Valuation Appeal Board “the VAB” for the City of Johannesburg. It is a valuation appeal board in terms of section 56(1) of the Local Government: Municipal Property Rates Act 6 of 2004 “the Rates Act”.

[7] The second respondent is the City of Johannesburg Metropolitan Municipality “the CoJ”. It is a municipality in terms of section 2 of the Local Government: Municipal Systems Act 32 of 2000. The second respondent opposes this application.

Factual Background

[8] Section 229 of the Constitution empowers a municipality to impose property rates in their area of jurisdiction. The rates policy adopted must be enacted in terms of national legislation. In satisfying this constitutional provision, the Legislature enacted the Local Government: Municipal Property Rates Act 6 of 2004 “the Rates Act”. In terms of section 3 of the Rates Act, a rates policy, once adopted, takes effect on the effective date of the first valuation roll prepared by the Municipality in terms of the Rates Act.

[9] The facts are by and large common cause and are uncontentious. It is common cause between the parties that the applicant was given the VAB’s decision and its reasons on 13th of July 2016 and that the application to review that decision

was only served on the second respondent on 19th October 2019. This is a whole three years and two months since the applicant became aware of the reasons of the VAB's decision.

Condonation

[10] The applicant concedes that an application for judicial review must be instituted without unreasonable delay and within 180-days after the applicant became aware of the decision and reasons of the decision. That 180-days period could only have commenced on 13th July 2016 when the applicant received the VAB's decision and reasons of the decision.

[11] The applicant contends that that it would be in the interests of justice to grant the application because the CoJ and the VAB will not suffer prejudice if the application were to be permitted. On the contrary, the adjudication of the application may disclose irregular and inefficient administrative action within the City, and thus help the City (and specifically the VAB) to discharge its duties in a lawful way.

[12] The applicant submits that this application concerns the fundamental right to fair administrative action. It is important for the rule of law that it be adjudicated. It is also in the public interest. The applicant has provided a comprehensive explanation for the delay; and it has prospects of success.

[13] The CoJ opposes this application. It submits that for the application in terms of s9(2) extension to be granted, the applicant must provide a full motivation as to why it would be in the interests of justice to condone the late prosecution of the review post the 180-days period. In this motivation, it must furnish a full and reasonable explanation for the unreasonable delay, that covers the full duration thereof; and relevant factors which include the nature of the relief sought; the extent and cause of the delay; its effects on the administration of justice and on other

litigants; the importance of the issue to be raised in the proceedings; and the prospects of success.

[14] The CoJ submits that it is a well-known principle of law that once an administrator decision has been discharged, the administrator becomes *functus officio* and cannot review their own decision. It is further submitted that the applicant was legally represented, its attorneys knew, or ought to have known that once the VAB took the impugned decision in terms of s52(2)¹ of the Rates Act, it could not review its own decision. Therefore, its justification that it had continued engagement with the second respondent does not suffice as a good explanation for not launching the review application on time.

[15] The CoJ submits that the property rates it collects serve as revenue for the municipality, which in turn is used for service delivery. Therefore, if the applicant's s9(2) application is granted, and say the VAB's decision were to be overturned, more than three years after it was taken, this would have detrimental budgetary effects on the City. In that event, the applicant could demand refund of the rates already collected; or claim some credit against the CoJ.

[16] The order sought by the applicant in terms of prayer 2 of its Notice of Motion, that is for the CoJ to cease and desist from levying rates on the supposedly erroneous valuation is not capable of being granted, the CoJ argues. The general valuation of which the impugned decision is founded on, that is the 2013 – 2017 valuation roll is closed and no longer in existence. The CoJ is no longer levying rates in terms of the impugned decision. The currently existing valuation roll, of which property rate levies are based on, is the one of 2018 – 2022 valuation roll. It is thus contended on behalf of CoJ that the issue the applicant raises is moot and therefore has no prospects of success.

¹ Compulsory review of decisions of municipal valuer

52(1). If a municipal valuer adjusts the value of the property in terms of section 51(c) by more than 10 percent upwards or downwards –

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

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

(2). An appeal board must –

(a) review any such decision; and

(b) either confirm, amend, or revoke the decision.

Issue

[17] The first question is to determine, whether in the circumstances of this case, and on the facts and strength of the explanation placed by the applicant the delay in prosecuting this review application is unreasonable; and if found to be so; the second leg of the enquiry, whether the delay should be overlooked and be condoned

[18] If the answers are in the negative, it would be the end of this application, it will be unnecessary to deal with the merits.

Principles foundational to review applications in terms of PAJA

[19] Section 7(1) of PAJA provides as follows:

(1) Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

[20] To cater for the litigants who for one reason or the other missed the 180-day period as contemplated in sec 7(1), Section 9(1) provides for the extension of this period by agreement between the parties and where there is no agreement by application to court. Section 9(2) provides that such an application may be granted 'where the interests of justice so require'.

[21] In *Camps Bay Ratepayers' and Residents' Association v Harrison*² Maya JA stated that ' *And the question whether the interests of justice require the grant of such extension depends on the facts and circumstances of each case: the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof and relevant factors include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the importance of the issue to be raised in the intended proceedings and the prospects of success.*³ (Footnote omitted.)

[22] Petse DP expands on this principle in *Commissioner, South African Revenue Service v Sasol Chevron Holdings Limited*⁴ that '*this entails that the explanation proffered must not be bereft of particularity and candour and that a full explanation must be proffered not only for the nature and extent of the delay, but also for the entire period covered by the delay. And the explanation proffered for the delay must also be reasonable. It is as well to bear in mind that in considering whether the court should come to the aid of the applicant, the substantive merits of the review application will also be a critical factor in determining whether the interests of justice dictate that the delay should be condoned.*⁵ (footnotes omitted).

[23] Considering the principles foundational to the delay rule under sec 7(1) of PAJA (as in this case) and its common law predecessor, Brand JA expressed himself as follows in *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others*⁶

' At common law application of the undue delay rule required a two stage enquiry. First, whether there was an unreasonable delay and, second, if so, whether the delay should in all the circumstances be condoned (see eg *Associated Institutions Pension Fund and others v Van Zyl and others* 2005 (2) SA 302 (SCA) para 47). Up to a point, I think, s 7(1) of PAJA requires the same two stage approach. The

² *Camps Bay Ratepayers' and Residents' Association v Harrison* [2010] ZASCA 3; [2010] 2 All SA 519 (SCA)

³ *Camps Bay Ratepayers'*, para 54

⁴ *Commissioner, South African Revenue Service v Sasol Chevron Holdings Limited* (Case no 1044/2020) [2022] ZASCA 56

⁵ *ibid*, para 22.

⁶ *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others* [2013] ZASCA 148; 2013 (4) All SA 639 (SCA) (OUTA),

difference lies, as I see it, in the legislature's determination of a delay exceeding 180 days as *per se* unreasonable. Before the effluxion of 180 days, the first enquiry in applying s 7(1) is still whether the delay (if any) was unreasonable. But after the 180-day period the issue of unreasonableness is predetermined by the legislature; it is unreasonable *per se*. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters.⁷

Applicant's submissions/ explanation

[24] The applicant seeks condonation for the delay in prosecuting this application. The reasons advanced by the applicant for its failure to launch the review application on time are stated in its papers as follows:

24.1 The applicant purchased the property on 19th November 2007 for R15 000 000 (fifteen million rands). The house that was on the property at the time of purchase was demolished and a new one built on the land. The new house received occupation certificate on 30th April 2010 with an extent of 977 square metres. The demolition and construction of the new house was completed prior to 2 February 2012.

24.2 On 27th November 2009 the property was valued at R8 958 000 (eight million, nine hundred and fifty-eight thousand rands). In 2013 the municipal property value ascribed to the property was R10 600 000 (ten million, six hundred thousand rands). This valuation must be categorized as the **"the 2013 original valuation"**. The 2013 valuation roll was released for inspection and public comment on 20th February 2013. It remained open till 3 May 2013.

24.3 On 12th April 2013, an unknown individual described as only Dr Maclaren objected to the 2013 original valuation on the basis that the property was undervalued, and he sought for it to be increased to R15 500 000 (fifteen million, five hundred thousand).

⁷ *ibid* para 26.

- 24.4 The Municipal Valuer adjusted the value of the property to R13 500 000 (thirteen million, five hundred thousand rands), an increase of approximately 27.36%.
- 24.5 Despite a requirement to be consulted by the Municipal Valuer on the objection as per section 51(b)⁸ of the Rates Act, Supaluck was not consulted and therefore, did not get an opportunity to make representations to the Municipal Valuer on the objection. The applicant did not appeal this to adjustment because they were “fine “with it.
- 24.6 On 12th September 2014, the Municipal Valuer, acting in accordance with section 53(1)(a)⁹ of the Rates Act, notified the applicant of the outcome of the objection.
- 24.7 The Municipal Valuer adjusted the property value by more than 10%, which triggered the compulsory review of his decision in terms of section 52(1)¹⁰ of the Act. The outcome of the review is that the VAB further increased the value of the property to R26 000 000 (twenty-six millions rands). That is a further increase of 92.6% on the already adjusted valuation of the Municipal Valuer. Accordingly, from the original valuation of R10 600 000, the value of Supaluck’s property was increased to R26 000 000, a percentage increase of nearly 145.28%.

⁸ Processing of objections

51. A municipal valuer must promptly –

(b) decide objections on the facts, including the submissions of the objector, and, if the objector is not the owner, the submissions of the owner;

⁹ Notification of outcome of objections and furnishing of reasons

53(1). A municipal valuer must, in writing, notify every person who has lodged an objection, and also the owner of the property concerned if the objector is not the owner, of –

(a) the valuer’s decision in terms of section 51 regarding that objection;

¹⁰ Compulsory review of decisions of municipal valuer

52(1). If a municipal valuer adjusts the value of the property in terms of section 51(c) by more than 10 percent upwards or downwards –

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

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

- 24.8 Despite the substantial increase which had a material and adverse effect on Supaluck, and despite the availability of information that would have militated against such a drastic increase, the applicant was not given an opportunity to make representations to the VAB. This is so even though the VAB is empowered by section 75¹¹ of the Rates Act to call for representations and/or submissions on issues like these.
- 24.9 The compulsory review does not deprive a party (including the objector or the owner of the property) to lodge an appeal against the Municipal Valuer's decision to an objection.
- 24.10 The applicant instructed its erstwhile employee, Mr Bert Pienaar "Pienaar" to enquire about the objection and the appeal. On 20 October 2015, Mr Bester informed Pienaar that a third party lodged an objection to the 2013 original valuation and subsequently also appealed against the Municipal Valuer's decision.
- 24.11 Dr Maclaren lodged an appeal against the Municipal's Valuer's decision on or about 7th of November 2014.
- 24.12 On 12th October 2015, the applicant received a notice to inspect the property from a Mr Shaun Bester "Bester" of the CoJ's Evaluation Enhanced Property Appraisals. Supaluck did not permit the physical inspection of the property. The reasons proffered for refusing the City's request to inspect were due to criminal activities around the area and concerns about the procedural regularity of the objection.

¹¹ Powers of appeal boards

75. (1) An appeal board may –

(a) by notice, summon a person to appear before it –

(i) to give evidence; or

(ii) to produce a document available to that person and specified in the summons;

(c) call a person present at a meeting of an appeal board, whether summoned or not –

(i) to give evidence;

(ii) or produce a document in that person's custody.

- 24.13 On 20th November 2015 the applicant received its rates account for the property. It recorded the market value of the property at R13 500 000 and the date of valuation as 1 July 2013. The total amount that was due in terms of this account was R7, 529.00 (seven thousand, five hundred and twenty-nine rands).
- 24.14 On 26th November 2015, the applicant received an email from a Ms Adele de Beer "**de Beer**", the Administration Manager: Valuation Services, informing that the objector, Dr Maclaren, withdrew his appeal against the Municipal Valuer's decision and therefore the Appeal Board hearing was cancelled, and no attendance was required.
- 24.15 The applicant did not receive notice of the appeal, nor of any appeal board hearing before receipt of this letter.
- 24.16 On 22 December 2015, the applicant received its property rates account and the value had been drastically increased to R26 000 000 (twenty-six million rands). The applicant did not receive any correspondence or whatsoever from the City or the VAB to explain this drastic increase. Accordingly, Mr Pienaar sent an email to two of the City's representatives, Mr Kevin Govender "**Govender**" and Mr Andries Swart "**Swart**" (Operational Manager: Property Unit) on 25th January 2016 informing them of this and requesting an urgent explanation.
- 24.17 Mr Pienaar followed up again 29th January 2016. On 1st February 2016, Mr Swart responded to request the property description. On the same day, the applicant's utilities manager, Ms Michelle van der Merwe "**van der Merwe**" responded to Mr Swart with the required information.
- 24.18 On 4th February 2016 Ms van der Merwe followed up again with Mr Swart seeking an explanation for the drastic increase. Having achieved nothing with liaising with the City representatives directly, the applicant's attorneys of record, Vining Cramer Inc, wrote to Ms de Beer explaining

the position, and *inter alia*, requesting reasons for the drastic increase of the valuation of the property. Follow up emails were sent on 18th and 23rd March and on 5 May 2016 requesting the valuation report of the property, but to no avail.

24.19 At the same time the City escalated the rates owed by Supaluck to the credit management department. And in June 2016, Supaluck received an email from a Mr Benny Mogale “**Mogale**” requesting payment of rates totalling R237, 121.28 (two hundred and thirty-seven, one hundred and twenty-one rands, twenty-eight cents).

24.20 On 28 June 2016, applicant’s attorneys sent an email to Kgomotso Mohulatsi of RM Attorneys who appeared to be acting on behalf of the City. Again, the property’s valuation report was sought.

24.21 On 13th July 2016 the VAB sent the applicant the reasons of its decision to increase the property value to R26 000 000. In essence the reasons states that the valuation of the property served before it as a compulsory review in terms of section 52 of the Act. The property was described by the Municipal Valuer as the gross building area was recorded as 892 square metres. The Municipal Valuer used 5 (five) properties as comparators to determine the property value. Descriptive detail of these properties was provided in the reasons. The VAB requested additional information on sales and information on two other properties was added as comparators.

24.22 The VAB explained:

‘To arrive at a market related value of the subject property, all of the sales provided have been considered. The Board also took cognisance of the prize paid for the property in 2007. The size of the land as well as the size of the dwelling and outbuildings were also considered. The date of the sales as well as the location of the sales and the subject property were noted. Taking all the above into account, the Valuation Appeal

Board is of the opinion that a fair and market related value of remainder of portion 1 of erf 208, Sandhurst be entered at R26 000 000, and residential category with an extent of 2948sqm effective from July 2013.'

- 24.23 In an attempt to gauge the rationality and reasonableness of the increased valuation, the applicant employed Seeff Sandton to do a market related valuation of the property. Seeff Sandton produced its valuation report on 13th December 2016. Notably, it valued the property at R17 500 000 (seventeen million, five hundred thousand rands).
- 24.24 On 1 February 2017, Supaluck attorneys wrote to a City representative, Mr Zane Abrahams “**Abrahams**” explaining Supaluck’s position and sequence of events. Mr Abrahams was informed of the Seeff Sandton’s valuation, and requested in light thereof, to have the VAB reconsider Supaluck’s property valuation so that both parties avoid costly and lengthy legal proceedings.
- 24.25 On 8th February 2017, Mr Abrahams responded and said that the outcome of the re-evaluation would be available by 10th February 2017. On 21 February and 30 May 2017, follow up emails were sent to no avail. On 31st May, Mr Abrahams asked for the name of the suburb. This was provided on the same day. Again, nothing was forthcoming and follow up emails were sent on 6 and 27 June 2017.
- 24.26 Eventually on 6 July 2017 feedback was received. In short, the applicant submits that the feedback was dismissive; Supaluck was told that due process had been followed and that it may approach the High Court if it feels aggrieved.
- 24.27 In an attempt to avoid costly legal proceedings, the applicant continued to engage the City through its attorneys of record to try and amicably resolve the situation. It also continued to pay its rates to the City, albeit on the disputed valuation.
- 24.28 On 16th February 2018, the applicant received a notice to inspect the valuation roll for the years 1 July 2018 – 30 June 2022. Despite the passing of time and increase in property prices, the property was now valued at R19, 049, 000 (nineteen million, forty-nine thousand), a decrease by almost 30% from the VAB’s valuation. As a matter of logic

and rationality, seeing that property prices in Sandton are forever on the rise, one would have expected a subsequent valuation of a property to exceed the valuation of that same property done years before the subsequent valuation.

24.29 On 12th November 2018, the applicant's attorneys sent another letter to the CoJ, addressed to a Ms Nkosi, setting out what occurred. In the letter it referred to the new valuation of the property, and requested that all the rates account dating back to 2015 be reconsidered and rectified.

24.30 On the same day a Mr Moesha Shongwe from KR Inc responded stating that the applicant must approach the evaluations department and follow up with them until the matter is resolved. In addition, Supaluck must take the documents from Seeff Sandton as proof of their own valuation.

[25] In March 2019 Supaluck's attorneys presented themselves at the evaluations department of the second respondent. They were advised that they must lodge a "section 78 query" by submitting a query form together with a letter of evaluation and comparable sales from an estate agent.

[26] Initially it was decided by the applicant to follow this route and resolve the matter amicably with the CoJ; but during or about April 2019, the applicant was advised by its attorneys to rather seek relief at the High Court seeing that the matter could not be resolved with the City as far back as 2015.

[27] It was submitted on behalf of the applicant that these facts show that the applicant has not been a recalcitrant debtor but has been extensively engaging with the City on an ongoing basis in attempt to resolve the matter amicably. They have also kept up with their rates notwithstanding the disputed valuation.

Grounds of Review

Procedural unfairness / irregularity

[28] The applicant contends that the VAB decided on a matter that materially and adversely affected Supaluck's rights. The decision was made without giving

Supaluck an opportunity to make representations before it. This is despite the VAB being empowered by section 75 of the Rates Act to call for the applicant's representations, of which, in the circumstances, it should have done so. This is specifically because the applicant was not given a prior opportunity to be heard because the appeal hearing was cancelled (and in fact, until its cancellation, Supaluck was not notified of the appeal hearing). This violates the trite common law *audi alteram partem* principle which is codified in section 3 of the Promotion of Administrative Justice Act 3 of 2000 "**PAJA**".

[29] In addition to being procedurally unfair, it is also procedurally irrational. The purpose of a compulsory review is to ensure that the Municipal Valuer's decision is fair and reflects the market value of the property. On the facts presented, the VAB's decision is irrational because it did not give Supaluck an opportunity to be heard.

[30] The decision should accordingly be set aside in terms of the relevant provisions of PAJA and/or the constitutional principle of legality.

Consideration of irrelevant factors / failure to consider relevant factors

[31] The VAB's mandate is to consider whether the Municipal Valuer market value assigned to the property is fair. This must be done in accordance with section 46 of the Act which specifically stipulates that the market value of the property is the value the property would have realized in the open market at the date of valuation if sold to a willing buyer by a willing seller.

[32] The VAB only considered the compulsory review in 2015. And yet the VAB saw it appropriate to have regard to the purchase price of the property paid by Supaluck in 2007. This is not and could not be a relevant consideration in determining the market value of the property as required, as naturally, there are various factors that influence the purchase price of one property over another. If the 2007 purchase price of the property was a relevant consideration, then at the very least, Supaluck should have been given an opportunity to explain what influenced that price. But in this case, it was not.

[33] In addition to being procedurally unfair and/or irrational, this resulted in VAB not having regard to a materially relevant consideration: Seeff Sandton's market related valuation. Had this valuation served before the VAB, it would not have come to this drastically inflated value of the property.

[34] The decision should accordingly be set aside in terms of the relevant provisions of PAJA and/or the constitutional principle of legality.

[35] The irrationality and unreasonableness of the VAB's decision is evidenced by its own most recent valuation of the property which increased the property value by almost 30% to R19 049 000. Because of the passing of time, rise in property values, inflation, this decrease supports the conclusion that the VAB's previous decision was not rational nor reasonable.

[36] The decision should accordingly be set aside in terms of the relevant provisions of PAJA and/or the constitutional principle of legality.

Is there an unreasonable delay?

[37] The applicant proffers, for his explanation in prosecuting this review application at such a late stage that he tried to engage with the City in an amicable manner so as to resolve the matter without resorting to costly legal proceedings

[38] The explanation that it continued to engage the City with interests to resolve the matter amicably does not suffice. On the 1 February 2017 an email sent by the applicant's attorneys of record to Mr Zane Abrahams firmly state that the applicant does not agree with the VAB's valuation of the property for several reasons, and that it was their instructions to take the matter up for review to the High Court. But no review was brought even after the applicant was advised by the CoJ to do so on 6th July 2017.

[39] If one looks past the long timeline gaps of the applicant steps and engagements with the CoJ since receiving the VAB reasons on 13th July 2016, what becomes clear is that after the applicant was informed by Mr Abrahams on 6th July 2017 to approach the High Court for review of the VAB decision, it resigned itself

with the decision, and in my view, accepted it. This is because on its own version it continued to pay rates, albeit it says, on the disputed valuation.

[40] On 16th February 2018 the applicant was served with notice for inspection of the new valuation roll. In this roll the value of the property decreased significantly from the last 2013 value. This triggered the applicant to act once more and query the matter but even here, the applicant does not explain why having received the notice on 16th February 2018, and having noted what was in its view, a clear evidence of the irrationality and unreasonableness of the VAB's 2015 decision, it only resolved to take the matter up with the City only eight months later, on 12th November 2018.

[41] The applicant says its attorneys were invited to lodge a "section 78 query" by submitting a query form together a letter of evaluation and comparable sales from an estate agent in March 2019. Initially it resolved to do this, but on or about April, its attorneys advised it to change tact and review the matter instead. And yet, no less than five months had to pass before it eventually served the application on the respondent on 19th October 2019.

[42] The many gaps in the timeline, since 13th July 2016, are not at all explained by the applicant, save to say that it had continuous engagements with the City in hope that it could resolve the matter non-litigiously. Petse DP clearly says in *Commissioner, South African Revenue Service v Sasol Chevron Holdings Limited (supra, para 22)* that '*the explanation proffered must not be bereft of particularity and candour and that a full explanation must be proffered not only for the nature and extent of the delay, but also for the entire period covered by the delay. And the explanation proffered for the delay must also be reasonable.*' The same cannot be said about the applicant's explanation. Its neither candid, nor satisfactory and reasonable.

[43] This brings me to the second leg of the enquiry, whether the delay should be overlooked and be condoned?

Is it in the interests of justice to condone the delay

[44] The applicant submitted this court may still grant condonation even if the delay is unreasonable if it's in the interest of justice to do so

[45] In *Gqwetha v Transkei Development Corporation Ltd and Others*¹² the court held that despite unreasonable delay , the court must still decide whether its discretion should be exercised to overlook the delay and entertain the application. Mpati DP referred with approval the principles formulated in *Associated Institutions Pension Fund and Others v Van Zyl and Others*¹³

[46] Brand JA in *Associated Institutions Pension Fund and Others v Van Zyl and Others (supra)* said that:

It is a longstanding rule that courts have the power, as part of their inherent jurisdiction to regulate their own proceedings, to refuse a review application if the aggrieved party had been guilty of unreasonable delay in initiating the proceedings. The effect is that, in a sense, delay would 'validate' the invalid administrative action ... The *raison d'etre* of the rule is said to be twofold. First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Second, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions.¹⁴

The scope and content of the rule has been the subject of investigation in two decisions of this court. They are the *Wolgroeiens* case and *Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie en 'n Ander* 1986 (2) SA 57 (A). As appears from these two cases and the numerous decisions in which they have been followed, application of the rule requires consideration of two questions: (a) Was there an unreasonable delay? (b) If so, should the delay in all the circumstances be condoned? (See *Wolgroeiens* 39C-D.)¹⁵

¹² 2006 (2) SA 603 SCA

¹³ *Associated Institutions Pension Fund and Others v Van Zyl and Others* [2004] ZASCA 78; [2004] 4 All SA 133 (SCA)

¹⁴ *ibid* par 46.

¹⁵ *Ibid*, para 47.

The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case. The investigation into the reasonableness of the delay has nothing to do with the court's discretion. It is an investigation into the facts of the matter in order to determine whether, in all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned ¹⁶ (footnotes omitted).

[47] Whether it is in the interests of justice to condone a delay depends entirely on the facts and circumstances of each case.¹⁷ The relevant factors in that enquiry generally include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the reasonableness of the explanation for the delay which must cover the whole period of the delay,¹⁸ the importance of the issue to be raised and the prospects of success.¹⁹

The nature of the relief sought

[48] The applicant seeks to have the decision taken by the first respondent on the 15th of December 2015 reviewed, declared invalid, and set aside; and further for the second respondent to immediately cease and desist from collecting rates levied on the property based on the impugned decision. This Court is incapable of granting this order. The 2013 – 2017 valuation is no longer in existence, and the CoJ is no longer collecting rates from the applicant based on the impugned decision. A supplementary valuation took place on 15th June 2021. The applicant was served notice of the results of the supplementary valuation on 25th June 2021. In terms of that supplementary valuation, the value assigned to his property is now R26 150 000

¹⁶ *Associated Pensions Fund*, para 48.

¹⁷ *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* [2007] ZACC 24; 2008 (2) SA 472 (CC) para 20.

¹⁸ *Ethekwini Municipality v Ingonyama Trust* [2013] ZACC; 2014 (3) SA 240 (CC) para 28

¹⁹ *Van Wyk v Unitas Hospital* paras 20, 22; *Camps Bay Rate Payers' and Residents Association v Harrison* [2010] ZASCA 3; [2010] (2) All SA 519 (SCA) para 54.

with effect as of 1 July 2021. The rates levied on the property are now in terms of this supplementary valuation. However, this valuation is not under review, which then makes the order sought by the applicant incapable of being granted as its issue is now moot. This should be enough to dispose of the matter, but for completeness. I shall fully exhaust it.

Prejudice to the respondent

[49] In *Gqwetha v Transkei Development Corporation Ltd and Others*²⁰ Nugent JA said the following regarding the delay rule:

'Underlying that latter aspect of the rationale is the inherent potential for prejudice, both to the efficient functioning of the public body, and to those who rely upon its decisions, if the validity of its decisions remains uncertain. It is for that reason in particular that proof of actual prejudice to the respondent is not a precondition for refusing to entertain review proceedings by reason of undue delay, although the extent to which prejudice has been shown is a relevant consideration that might even be decisive where the delay has been relatively slight'²¹

[50] The CoJ submits that the property rates it collects serve as revenue for the municipality, which in turn is used for service delivery. Therefore, if the applicant's s9(2) application is granted, and say the VAB's decision were to be overturned, more than three years after it was taken, this would have detrimental budgetary effects on the CoJ. In that event, the applicant could demand refund of the rates already collected; or claim some credit against the CoJ. I agree. On 12th November 2018, in an email to Ms Nkosi, the applicants did in fact demand that all the rates account dating back to 2015 be reconsidered and rectified in light of the new valuation roll which decreased its property value. Although the CoJ has proven this general valuation roll to be incorrect, to even entertain the applicant's application could open up floodgates for the CoJ as it would express to other litigants that they can adopt a supine attitude in reviewing the CoJ's administrative decisions that affect them, and

²⁰ *Gqwetha v Transkei Development Corporation Ltd and Others* [2006] 3 All SA 245; 2006 (2) SA 603 (SCA)

²¹ *Ibid*, para 23.

then at a time of their own choosing, approach Court for a review of the same decision. The prejudicial effect and budgetary implications of this to the CoJ in defending those actions; let alone of the review outcomes if it were to lose, cannot be understated.

The importance of the issue to be raised

[51] The applicant submits that it would be in the interests of justice to grant the application because the CoJ and the VAB will not suffer prejudice if the application were to be permitted. On the contrary, the adjudication of the application may disclose irregular and inefficient administrative action within the CoJ, and thus help the CoJ (and specifically the VAB) to discharge its duties in a lawful way. The premise of this argument is based on the erroneous R19 049 000 valuation of the applicant's property on the 2018 – 2022 general valuation roll. Although the CoJ has explained this and caused a new supplementary roll to take effect as of 1 July 2021, the applicant did not withdraw their application, let alone review the latter roll.

[52] The CoJ submits that not only is this an irrelevant speculation which invites the Court to go on a fishing expedition, the applicant fails to rationally connect how this revelation would relate to the impugned decision. This is true. But more than that, *'it will inevitably lead to the result that however supine and unreasonable the applicants might have been in their failure to investigate the validity of an administrative decision affecting their rights and however long it might have taken before they were independently alerted to some flaw in the decision, the delay caused by their ignorance should be disregarded. Acceptance of the proposition will undermine the two considerations underlying the recognition of undue delay as a substantive defence. There will be no finality in administrative decisions and those affected by the review will have to suffer whatever prejudice comes their way through the applicant's supine attitude'*²²

Prospects of success

²² *Associated Institutions Pension Fund and Others v Van Zyl and Others* [2004] ZASCA 78; [2004] 4 All SA 133 (SCA), para 50.

[53] The applicant submits that it did not appeal the Municipal Valuer's decision on the objection, communicated to it on 12th September 2014 because it was satisfied with it. However, this does not take away from the fact that the Municipal Valuer had to consult and consider its submissions when deciding on the objection as required by section 51(b).²³ This robbed it of the opportunity to have its submissions before the VAB when it considered the automatic review. And the VAB, despite being empowered by section 75²⁴ of the Act, also failed to call for its representations, when it should have noticed that the applicant's representations were not solicited by the Municipal Valuer in his consideration of the objection by Dr Maclaren.

[54] The Municipality Valuer on the other hand submits that nothing prevented the applicant from appealing his decision in terms of the appeals procedure provided. Having not done so, he waived his right of appeal and consequently allowed for a situation for the VAB to decide on the automatic review in the absence of its submissions.

[55] To this the applicant replies that this argument should be rejected out of hand because the Rates Act clearly envisages that the applicant's submissions would have already been on the record serving before the VAB when it was considering the automatic review had the Municipal Valuer consulted it. And the VAB too is not without fault. It should have reasonably seen this omission by the Municipal Valuer and therefore called for the applicant's submissions in the same manner that it had called for additional sales information on other properties. This is the crux of the applicant's *audi alteram partem* argument.

²³ Processing of objections

51. A municipal valuer must promptly –

(b) decide objections on the facts, including the submissions of the objector, and, if the objector is not the owner, the submissions of the owner;

²⁴ Powers of appeal boards

75. (1) An appeal board may –

(a) by notice, summon a person to appear before it –

(i) to give evidence; or

(ii) to produce a document available to that person and specified in the summons;

(d) call a person present at a meeting of an appeal board, whether summoned or not –

(iii) to give evidence;

(iv) or produce a document in that person's custody.

[56] The Municipal Valuer concedes that he did not consult the applicant when deciding on the objection. But be that as it may, I cannot find in favour of the applicant's argument as in the same 12th September 2014 notice, it was informed that the VAB could amend, confirm, or revoke the decision. I hold that a prudent property owner, satisfied with a valuation which it was clearly informed that it could change in this manner, would have not left it to chance. Even if it were to be accepted that the applicant did not know that they could make submissions before VAB to defend the Municipal's Valuer decision (as the Act does not confer an express, nor confer an implied right in respect of this outside of pursuing the appeal's procedure), at the very least, it should have enquired.

[57] Even if its lax attitude were to be overlooked for a moment, the applicant received official communication on 12 October 2015 from Mr Bester of the CoJ's Evaluation Enhanced Property Appraisals. In correspondence with Mr Bester, the applicant was informed about Dr Maclaren's objection and the purpose of the request. And yet he refused to allow the CoJ officials to physically inspect the property in order to evaluate it, citing criminal activities in the area and concerns with the procedural irregularities of how the objection was handled. This cannot be accepted as a reasonable explanation. I stress, the point I make here is less about the applicant's refusal to the property's inspection, but rather his wilful negligence of failing to foresee a risk of his property value being altered by the VAB. Twice he did not see this, nor act on it to protect his interests. The Municipal's Valuer notification clearly informed him that the property value was subject to ratification of the VAB which could either amend, confirm or revoke it. And yet in the controversy of what was Dr Maclaren's objection, duly informed of by Mr Bester on 12th October 2015, which should have altered him to the stakes, he still took no steps to protect the assigned property value.

[58] Before I exhaust this point, it also should be noted that the applicant has not advanced what the value of what his submissions would have been to the VAB. By this, I do not in any way condone the Municipal's Valuer omission to not solicit the applicant's submissions before he decided on the objection. However, I do point out, there is not a shred of evidence that the property value would have been anything else other than what the VAB assigned it to be. I appreciate that the applicant's

submission in respect of this, the Seeff Sandton valuation. Unfortunately for the applicant, Seeff Sandton is not competent to pronounce on the property value, not because of lack of expertise, but rather lack of appropriate credentials and authority in terms of sections 33, 34 and 39 of the Act. Furthermore, a closer look at the Seeff Sandton's "valuation" report shows a vastly different procedure employed by Seeff Sandton from that followed by the Municipal Valuer and the VAB when they determined the property value. In the submitted Seeff Sandton "valuation" report, it is seen that Seeff Sandton used only three property comparators that it itself has sold in the area, and from thereon proceeded to conclude that "a fair **asking** price" would be R17 500 000. Therefore, this provides no value and I doubt that it would have made any difference even if it served before the VAB because of the distinguishability of the processes followed by it and that of the Municipal Valuer and the VAB.

[59] Therefore, the applicant's application has no merit and it must fail.

Costs

[60] The second respondent claims costs against the applicant. It submits that the application is frivolous, launched without sufficient grounds, and unreasonably delayed. It further submits that the CoJ had to use ratepayers' monies to oppose it that could have been better used elsewhere. Therefore, it seeks for the application to be dismissed with costs, inclusive of the costs of employment of two counsel. I find no reason why the costs including the costs of two counsel should not be granted against the applicant.

ORDER

[61] In the result the following order is made:

The application is dismissed with costs, including the costs of two counsel.

**L FLATELA
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION**

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to Caselines. The date and time for the hand down is deemed to be 10h00 on 28 February 2023

Date of Hearing: 24 November 2022

Date of Judgment: 28 February 2023

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