



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: 5959/21P

In the matter between:

LOCOM INVESTMENTS (PTY) LTD

FIRST APPLICANT

CATWALK INVESTMETNS 295 (PTY) LTD

SECOND APPLICANT

SA MATHER (LADYSMITH) (PTY) LTD

THIRD APPLICANT

DEFACTO INVESTMETNS 95 (PTY) LTD

FOURTH APPLICANT

DWELLIOR INVESTMENTS (PTY) LTD

FIFTH APPLICANT

532 PIETERMARITZ STREET (PTY) LTD

SIXTH APPLICANT

OCEAN SUNSET TRADING CC

SEVENTH APPLICANT

VINTAGE EXPRESS INVESTMENTS CC

EIGHTH APPLICANT

MAHOMED RAFFI CASSIM AMOD

NINTH APPLICANT

YUNUS GOGA

TENTH APPLICANT

CORPCLO 34 CC

ELEVENTH APPLICANT

**THE TRUSTEES FOR THE TIME BEING OF
THE AHMED GOGA FAMILY TRUST**

TWELFTH APPLICANT

**THE TRUSTEES FOR THE TIME BEING OF
THE M R C AMOD FAMILY TRUST**

THIRTEENTH APPLICANT

And

THE MSUNDUZI MUNICIPALITY

FIRST RESPONDENT

**THE MSUNDUZI MUNICIPALITY
VALUATION APPEAL BOARD**

SECOND RESPONDENT

ORDER

1. If required, the late delivery of the Applicants' review application is hereby condoned and an extension of the 180-day period in terms of s 9(1) of the Promotion of Administrative Justice Act 3 of 2000 is hereby granted.
2. The decisions by the First and/or Second Respondents to adjust the property values in respect of the properties listed in Annexure A hereto is hereby reviewed and set aside, alternatively declared to be unconstitutional and set aside.
3. The Second Respondent is directed to undertake the municipal valuation appeal process in respect of each of the properties listed in Annexure A hereto *de novo* and to do so within 60 days of the date of this order and in accordance with the terms of this judgment.
4. The First Respondent is ordered to pay the costs of this application, including the costs of two counsel where so employed.

JUDGEMENT

Mngadi J

[1] The applicants seek an order reviewing and setting aside the respondents' decisions evaluating their properties for purposes of the levying of municipal rates. The respondents oppose the application.

[2] The first applicant is Locom Investments (Pty) Ltd a private company incorporated and registered in terms of the company laws of South Africa, conducting trade as a property holding company. The second applicant is Catwalk Investments 295 (Pty) Ltd, a private company incorporated and registered in terms of the company laws of South Africa conducting business as a property holding company under the name and style of Catwalk Investments. The third applicant is S A Mather Ladysmith (Pty) Ltd a private company incorporated and registered in terms of the company laws of South Africa, conducting trade as a property holding company. The fourth applicant is Defacto Investments 95 (Pty) Ltd a private company incorporated and registered in terms of the company laws of South Africa conducting trade as a property holding company under the name and style of Defacto Investments. The fifth applicant is Dwellior Investments (Pty) Ltd a private company incorporated and registered in terms of the company laws of South Africa conducting trade as a property holding company under the name and style of Dwellior Investments. The sixth applicant is 532 Pietermaritz Street (Pty) Ltd a private company incorporated and registered in terms of the company laws of South Africa, conducting trade as a property holding company under the name and style of 532 Pietermaritz Street. The seventh applicant is Ocean Sunset Trading CC a lawfully incorporated and registered close corporation conducting trade as a property holding company under the name and style of Ocean Sunset Trading. The eighth applicant is Vintage Express Investments CC a lawfully incorporated and registered close corporation. The ninth applicant is Mahomed Raffi Cassim an adult businessperson. The tenth applicant is Yunus Goga an adult businessperson. The

eleventh applicant is Corpco 34 CC a lawfully incorporated and registered close corporation. The twelfth applicant is the trustees for the time being of The Ahmed Goga Family Trust a lawfully constituted and registered trust. The thirteenth applicant is The trustees for the time being of The M R C Amod Family Trust a lawfully constituted and registered trust.

[3] The first respondent is The Msunduzi Municipality a municipality duly established in terms of the Local Government Municipal Structures Act 117 of 1998 read with Section 2 of the Local Government Municipal Systems Act 32 of 2000. The second respondent is the Msunduzi Municipality Valuation Appeals Board (appeals board) an appeals board established in terms of the law for the Msunduzi Municipality.

[4] The applicants are owners of properties within the municipal area of the first respondent. The impugned decisions were taken pursuant to the second respondent's powers under s229 of the Constitution of the Republic of South Africa, 1996, read with the Local Government: Municipal Rates Act 6 of 2004('the Rates Act') . It is common cause that the decisions constitute administrative action as contemplated in s1 of the Promotion of Administrative Justice Act 3 of 2000('PAJA').

[5] Municipalities' are vested with original institutional powers to levy rates on property, which power is regulated by the Local Government Municipal Property Rates Act 6 of 2004 (the Act). Various sections of the Act are referred to herein. Section 11(1) provides that a rate levied by a municipality on property must be an amount in the Rand on the market value of the property. It defines market value as the value of the property determined in accordance with s 46. Section 46 provides: '46 (1) subject to any other applicable provisions of this Act, the market value of the property is the amount the property would have realised if sold on the date of valuation in the open market by a willing seller to a willing buyer.'

[6] Section 30 provides that a municipality intending to levy a rate in a property must cause a general valuation to be made of all properties and all properties valuated be included in the valuations roll. The general valuation must reflect the market value of properties determined in accordance with market conditions, which applied as at the date of valuation. Section 45 provides that the property must be valued in accordance with generally recognised valuations

practices, methods, and standards, physical inspections of property to be valued is optional and comparative, analytical and other systems as techniques may be used, including aerial photography and computer - assisted mass appraisal systems or techniques, (taking into account changes in technology and valuations systems and techniques). In s 45(3) it is provided that if the available market-related data of any category of rateable property is not sufficient, such property may be valued in accordance with any mass valuation system or techniques approved by the municipality concerned. The valuation roll remains valid for not more than four financial years in respect of a metropolitan municipality or not more than five financial years in respect of a local municipality which periods may be increased to six and seven years respectively by the MEC for local government in the province. The municipality levies rates annually subject to annual increases subject to limits set by the national Minister responsible for local government.

[7] The Act provides that after the valuations roll has been prepared, it is published. It provides that persons having interest therein may inspect the valuations roll and lodge objections. The municipal valuer considers and decides on objections. He may adjust or add to the valuation roll. A decision resulting in changing the valuations of the property by more than ten (10) percent must be referred for review by the valuations appeal board, which can either confirm, amend or revoke the decision of the municipal valuer. The objector on request may be furnished with reasons for the decision. The municipal valuer in the case of the applicants requested in order to consider the objections to be furnished with the following; namely; Annexure A -Tenant and Rent Information; Annexure B-Schedule of Expenses, Annexure C - Statement of Income and Expenditure for the previous financial year and Annexure D- Building Sizes. The municipal valuer in the case of the applicants generally stated that the market value was adjusted but information insufficient to adjust the value to the market value claimed. Section 54 of the Act provides that a person effected by the decision taken on objection by the municipal valuer has a right to appeal the decision to the appeal board. The appeal board as its function is to hear and decide appeals against the decision of the municipal valuer concerning objections. In the case of the applicants, the second respondent stated in most cases that it found insufficient information to deviate from the municipal valuations or deviate more that it deviated in the cases wherein it deviated. The applicants with their appeals they supplied detailed information of the local conditions and condition of the property as factors affecting rental income and market value of the property, and a schedule of income and expenses for the previous financial year and financial statements..

[8] Section 34 of the Act grants to the municipal valuer the primary function to value properties in the municipality for purposes of preparation of the valuation roll, and to consider and decide on objections to the valuation roll and to attend the meetings of the valuation appeal board when it hears appeals or reviews of the decisions of the municipal valuer. The municipal valuer to enable it to carry out its duties is granted by the Act (ss41 & 42) a right to enter and inspect any property in the municipality and to require to be furnished with information relevant for purposes of valuation of the property. Section 56 of the Act regulates the establishment of the valuation appeal board. The MEC for the local government must by notice in the Provincial Gazette establish as many valuation appeal boards in the province as may be necessary but not fewer than one in each metropolitan municipality. The MEC for local government appoints members of the valuation appeal board. The valuation appeal board consists of a chairperson and no fewer than two members. The chairperson must be a person with legal qualifications and sufficient experience in the administration of justice. The other members are to be persons with sufficient knowledge of or experience in the valuations of property of which at least one must be a professional registered valuer or a professional associated valuer. Section 67 provides that an appeal board may determine its internal procedures to dispose of appeals and reviews subject to any procedures that may be prescribed. Section 75 set out the powers of the valuation appeal board as follows: '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;

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

(i) to give evidence; or

(ii) to produce a document in that person's custody;

(c) administer an oath or solemn affirmation to that person;

(d) question that person, or have that person questioned ; or

retain a document produced in terms of paragraph (a) (ii) or (b) (ii) for a reasonable period.

(2) A person appearing before an appeal board, whether summoned or not, may at his or her own expense be assisted by a legal representative.

(3) (a) A person summoned to appear before an appeal board is entitled to witness fees paid to state witnesses in criminal proceedings in court.

- (b) Fees referred to in paragraph (a) must be paid by the relevant municipality.
- (4) The law regarding privilege applicable to a witness summoned to give evidence in a criminal case in a court applies to the questioning of a person in terms of subsection (1).'

[9] The applicants rely on the founding affidavit and a supplementary affidavit deposed to by Mahomed Raffi Cassim Amod (Amod). Amod states that he is the director and member of the applicant companies and close corporations. He says that he is authorised by the applicants to institute these proceedings on behalf of the applicants, to represent them herein and to depose to the founding affidavit, and that the facts contained therein are both true and correct and except where otherwise the context indicates are within his personal knowledge.

[10] The applicants contend that the amounts referred in the first respondent's 2019-valuation roll, as market values of their properties are not true market values of their properties in that they are overstated which results in exorbitant rates levied on their properties. They filed objections, which resulted in no changes or minor changes, and lodged appeals to the valuations appeal board (appeals board) which met with a similar result.

[11] Amod refers to the schedule, which sets out in respect of each property; the registered owner, the physical address, the previous municipal market value, the municipal market value in the 2019 municipal valuation roll, the market value after objection and the market value determined on appeal.

Reg. Owner	Address	Previous Value	2019 valuation Roll	Value after objection.	Value after appeal
Locom Investments	104 Masukwana str.	R2 200 000	R4 750 00	R4 400 000	R4 300 000

Catwalk Investments	81 Masukwana str.	R1 650 000	R3 750 000	R3 380 000	R3 380 000
SA Mather(Ladysmith)	136-138 Masukwana str.	R2 303 000	R5 350 000	R5 350 000	R5 350 000
Defacto Investments	130 Masukwana str.	R1 100 000	R1 850 000	R1 420 000	R1 420 000
Dewellior Investments	494 Hoosen str.	R3 500 000	R9 200 000	R8 500 000	R6 000 000
532 Pietermaritz Street	530 Pietermaritz	R1 900 000	R3 200 000	R2 900 000	R2 900 000
Ocean Sunset Trading	18 Wigford rd	R3 400 000	R13 000 000	R8 800 000	R8 800 000
Vintage Express Investments	665 Greytown rd				
	Section 1 of SS Village Mall, 66g Greytown rd	R150 000	R580 000	R340 000	R340 000
	Section 2 of SS Village	R210 000	R630 000	R390 000	R390 000

	Section 4 of SS Village	R180 000	R570 000	R330 000	R330 000
	Section 5 of SS Village	R170 000	R560 000	R320 000	R320 000
	Section 6 of SS Village	R180 000	R560 000	R330 000	R330 000
	Section 7 of SS Village	R170 000	R320 000	R320 000	R320 000
	Section 8 of SS Village	R170 000	R550 000	R320 000	R320 000
	Section 11 of SS Village	R170 000	R560 000	R320 000	R320 000
	Section 12 of SS Village	R170 000	R550 000	R320 000	R320 000
Mahomed Raffi	35 Shelly Crescent	R1 800 000	R4 200 000	R4 200 000	R3 800 000

Yunus Goga	482 Haffejee	Hoosen	R1 600 000	R3 000 000	R2 700 000	R2 700 000
Corpco 34 CC and Ahmed Agoga Family Trust	479 Hafejee	Hoosen	R2 800 000	R6 750 000	R6 100 000	R4 500 000

[12] The applicants contend that the claimed marked values as finally determined by the second respondent are not supported by objective facts but were arrived at in an arbitrary fashion, the appeal board having refused to hear or to consider their representations. It results in unlawful unjustified rates levies imposed on them for their properties.

[13] The applicants allege that their representatives during the hearings of appeals were poorly treated by the members of the second respondent, were not afforded a reasonable opportunity to make representations, the members of the second respondent showed a hostile and condescending attitude towards them. It resulted in the applicants being unable to fairly present their contentions.

[14] The third and seventh applicants state that in respect of the appeals relating to the properties at 136-138 Masukwana Street and 18 Wigford Road, the members of the second respondent refused to hold appeal hearings, they advised that no appeal hearings could be heard because they had run out of time. The applicants as evidence of poor treatment their representatives received during the appeal hearing they refer to extracts of the transcript recording the offending utterances. They claim it shows bias and a hostile attitude by some members of the second respondent. (The transcript of the record of the appeal hearings is defective in that it refers to all the speakers as 'unknown person', which results in one being unable to know who said what.)

[15] The applicants contend that the second respondent rejected during the appeal hearings relevant documents in the form of audited financial statements, estate agents' valuations, comparative sales in the locality, information on the condition of each property, the prevailing conditions in the area in which the property is located. The said information is relevant to determine a market value of a specific property. The applicants further contend that market values of the properties prior to 2019 were not considered, and the discrepancy between those values and the 2019 market values is unexplained. They refer to the 18 Wigford Road property of the seventh applicant, prior to 2019 valuation its municipal market value was R3 400 000. In 2019 it was raised to R13 000 000. After objection it was reduced to R8 800 000.00 and the second respondent did not hear the appeal relating to it claiming that it had ran out of time, which meant the value of R8 800 000 remained. The size of the property is 18 592m², it is a shell warehouse made of second hand steel with no concrete slabbed floor, has no plumbing and it has a poor electricity supply and a portion of the property is occupied by squatters. A comparable bigger property at 25 Buntine Place has a marked value at R6 850 000 although it is bigger at 22 526m² and has a frontage road and has no squatters. The applicants, further, refer to the 478 and 482 Hoosen Haffejee Street properties which were finally valued at R2 700 000 and R 4 500 00 respectively, whereas comparable properties at 400 and 410 Hoosen Haffejee Street were valued at R1 750 000 and R 1 400 000 respectively.

[16] The applicants contend that a valuer could not and would not be able to properly value the properties, which were the subject of the appeals without physical inspections of the properties. However, the municipal valuer and second respondent rejected their invitation to conduct physical inspections of the properties.

[17] The applicants contend that initially the second respondent furnished reasons for its decision in respect of certain properties, but in the records of the decisions additional reasons relating to all the properties, which are subject of the application, are given. It shows, contend the applicants, that the additional reasons are a product of an afterthought.

[18] The applicants claim that the entire process was accompanied by an illegality and irrationality. It falls to be set aside and to start *de novo* before an independent impartial

valuation appeal board consisting of different members, and the first and second respondents be held liable for costs on attorney and client scale.

[19] The respondents filed an answering affidavit deposed to by Rashid Patel (Patel), the chairperson of the second respondent. They raised two points *in limine*. Firstly, that since the applicants as part of the relief seek substitution of the members of the second respondent, the failure to cite or join the Member of the Executive Committee (MEC) for local government responsible to the appointment of members of a valuation appeal board rendered the application defective. Secondly, the review application has been brought out of time, in that it was launched more than 180 calendar days from the date of the appeal decisions.

[20] Patel stated that the fundamental problem with the appeals lodged by the applicants is that they lacked both supporting expert evidence, for instance, a valuation report prepared by a professional valuer or management accounts as distinct from financial accounts and raw information ; namely; lease agreements, rental invoices, rental receipts, bank statements. The said information would have enabled the members of the second respondent themselves to reassess the valuation.

[21] Patel states that the appeal board listened to the applicants' lengthy submissions based on appeal documents with profit and loss statements containing crude and unsubstantiated workings unsupported by any verifiable information. The explanations, he says, given for the estimates were generic and repeated in what amounted to copy and paste exercise.

[22] Patel states that in respect of the appeals that could not be heard because of time constraints, the applicants were afforded the opportunity to make written submissions, which complies with the requirements of *audi altercam partem*. Patel states that the appeal proceedings were not rushed, but the appeal board had to deal with 350 appeals and 1000 reviews. Some of the proceedings pertained to commercial properties with complex valuation, but despite that the applicant were still given a reasonable, fair and transparent opportunity to present their case. The proceedings to save time were spirited and inquisitorial. In addition, the applicants' representatives were offered an opportunity to have their matter reconvened on other days.

[23] Patel states that the appeal board adjusted values based on the reasonable exercise of their discretions, like a court faced with unreliable evidence, the board was obliged to effectively apply contingencies in reconsidering the applicant's properties values.

[24] Patel states that for commercial and industrial property, there are several generally recognised methods for determining the value including Income Method and Discounted Cash Flow Analysis, a method recommended by the International Valuations Standards Council based on the principle of nett operating income divided by capitalisation rate. It means the present value is the sums of future benefits which the owner may expect to derive from that property. Nett operating income is arrived at by deducting from potential gross income vacancy and bad debts and operating expenses. The capitalisation rate, often referred to as 'the cap rate' is the rate of return used to value an investment property and positively correlated with both the prevailing interest rate and the risk attached to investing in the property. Factors relevant to risk interest to investing in property include qualitative factors applicable to broader locality as well as the condition of the property.

[25] Patel states that in line with the market valuation report prepared by the municipal valuer (attached to the record) estimates of the typical rental per square metre and expenses ratio are available for the various locations within the area of the municipality. These estimates vary by the condition of the property and reflect the amount of rental, which the property would most probably command in a lease agreement. He states that the marked valuation report provides the main guideline for valuing the property. He states that the original valuations by the municipal valuer would have entailed assessing the conditions of the properties and determined a value in conjunction with applicable parameters set out in the market valuation report, the valuation date was 30 June 2019. The condition of the area is taken into account with some commercial properties graded average or poor quality. However, a building of particularly poor quality not typical of the surrounding area will not be taken into account as the valuation is based on the earnings potential of the location. He states that it would be contrary to the interest of the municipality and the public interest generally to incentivise property owners to leave properties in an unusually degraded state in the hope that this will secure lower rates valuation.

[26] Patel concedes that the appellants can demonstrate that their property should have a lower evaluation by providing relevant and reliable evidence (documentary evidence such as lease agreement, invoices, receipts, bank statement or a form of a valuation report prepared by a sworn valuer).

[27] Patel states that the appeal proceedings were conducted in a friendly but spirited inquisitional manner. He denied that any board member displayed hostility to any persons. They endeavoured to maintain a calm and collected composure on dealing with applicants.

[28] Patel states that Amod's contention in relation to the nine sections of the ninth applicant being sold for R400 000 and therefore should be valued at R150 000.00 to R210 000.00 per section was based on hearsay evidence and on vague ground. The price, Patel contends, has no relevance in determining the market value but shows that Amod family speculates on property. He says that there was no reliable relevant information on which the appeal board could rely for a different market value.

[29] Patel reiterates that audited financial statements unsupported by a sworn statement by the chartered accountant setting out his experience and qualifications are hearsay and constitutes an inadmissible opinions. He says audited financial statements must necessarily be based as primary accounting data, namely: invoices, receipts, bank statements, books of primary entry etc.

[30] Patel states fit posed a fundamental problem to use audit financial statements, which apply to multiple properties, as it can be difficult to isolate the information to any specific particular property. He says what might be considered a legitimate accounting expenses in the context of a company or corporations (e.g. corporate office overheads, including excessive salaries or perks for members or directors, depreciation, tax charges) would not be expenses that are relevant to determining the market valuation of a property. He concludes that the relevance of financial statements was minimal, they may potentially have been a true reflection of the corporation's financial position, there was no indication that they were a true reflection of the profitability and thus value of the individual properties owned by the corporation. He

states that the appeal board had no obligation to make assumptions in favour of the applicants, it was their responsibility to place sufficient, reliable and relevant evidence before the board to justify the valuation for which they contended. Mr Variana, an appeal board member, challenged the paucity of evidence put up by the applicants and he made it clear to them that they needed to furnish better evidence. The appeal board was and is entitled to be sceptical about applicants' assertions in the absence of adequate supporting evidence claiming that the properties were leased to small-time unreliable tenants. He says that there is no reasons for foreign or low-income tenants not to conclude written lease agreements, in any case he says, at least there had to be invoices, receipts and bank deposits made of rentals paid by tenants. He states that the applicants' failure to put up adequate supporting evidence, as evident from the annexures to the founding affidavit and the record, gives rise to the drawing of an adverse inference against the truth of the assertions they made in the hearing.

[31] Patel states that the appeal board is not obliged to visit the properties. The use of satellite images is standard practise in valuation as stated in section 45(2) of the Act. Further, he says, it was the responsibility of the applicants to furnish all the evidence required to support their appeal including expert evidence. He says that if they wished to tender specific detailed evidence regarding the condition of a property, this should have been done by tendering a detailed valuation report by a registered professional valuer. The market report, the appeal board relied on, was prepared by an expert Mr Moosa. In the absence of adequate supporting evidence furnished by the applicant, the appeal board was entitled to rely on the mass valuations approach put forward by Mr Moosa an expert and to put considerable weight on Mr Moosa's expert opinions.

[32] Patel states that the applicants failed to lay sustainable foundation for any argument in respect of the eight applicants' properties. He says that the appeal board entertained argument for a while; ultimately, it became clear that it was an exercise in futility. Patel says that the applicants although required to do so failed to submit the square metereage of their properties, failed to furnish adequate supporting evidence and failed to properly fill out the appeal forms.

[33] Patel admits that a sale agreement to prove purchase price of the property at 130 Masukwana Street was produced, but the appeal board attached no weight to it because the seller and buyer appeared to be connected. Patel confirms that the appeal board was not prepared to put any reliance to a claim that some of the properties were zoned incorrectly. He states that the balance sheets lacked reliability in the absence of expert testimony or sworn statements by accountants or auditors responsible for preparing them.

[34] Patel states that use of comparative sales information was done, but such use is not an exact science, particularly as the valutors for purpose of the roll pertains to a particular date. He states that the appeal board became frustrated with the applicants' apparent refusal to provide detailed evidence required by the appeal board, but he rejects the claim that any member of the appeal board conducted himself in an erratic and unpredictable manner. He states that no preference was given to any family members of the members of the appeal board.

[35] Patel emphasised that the appeal board did not consider evidence of any estate agent to be evidence of an expert. He says that estate agents valuation carries no weight whatsoever unless it is an estate agent registered as professional valuer, since any estate agent lacks the necessary formal qualifications and lacks the required independence. He says that to the extent that an estate agent valuation is based on and contains supporting evidence, which casts doubts on the values determined by the municipal valuer that evidence will be taken into account.

[36] Patel states that each appeal is considered on its merits, which in turn depends on the quality of the evidence that is tendered. In the absence of reliable evidence concerning the specific income and expenses of a particular property, the property may be valued in accordance with a mass valuation approach as it appears in s 45(3) of the Act. Patel says that the appeal board, which includes two professional valuers, that is to say experts, exercised its judgment in determining the appropriate rental and expenses-to-income ratio, with reference to the information contained in the market report, and taking into account the views expressed by Mr Moosa whereas the applicants tendered no expert evidence.

[37] Patel explains that 3% vacancy compiles one months' vacancy every three years, 8.3 % assumes that the property is vacant for one month of each year, which is unusual. The market report estimates vacancy at 3 - 5% for most properties, meaning that even if 8.3 % is used it would result in slight downward adjustment. Rental income is not capitalised at 12% across the board, as assumed by the applicants, but it varies by location and the condition of the property. He repeats that there was no obligation on the appeal board to inspect the properties and in the absence of relevant, reliable documentary evidence, there was nothing to justify conducting an inspection of any of the applicants' properties. The viewing of aerial photography is expressly sanctioned as being sensible for valuation purposes in terms of s 45(2) of the Act.

[38] Patel commenting on comparative properties values lower than the 18 Wigford Road property, states that these were valuation decisions reached at different hearings based on evidence presented in those hearings. He says that the applicants did not present comparative property values supported by sworn valuation concerning the valuation of their properties. He says that the applicants seek to rely on similar fact evidence where relevance of such evidence is not shown. He says that the appeal board determines an appeal based on the strength of the evidence placed before it. Patel states that for commercial property the appeal board considers hard evidence concerning the profitability of the premises more than qualitative factors.

[39] Patel says that he is uncertain why the audited financial statements submitted by the applicants do not form part of the record, but it is not correct that they were completely disregarded by the appeal board. The appeal board concluded that the financial statements lacked sufficient probative value in themselves. He says that it is correct that the appeal board did not consider a valuation report by a person who is not a registered professional valuer to have sufficient probative value to justify considering it, and Global Properties whose valuations were furnished by the applicants, is not a registered professional valuer and those valuations the appeal board rejected.

[40] Patel repeats what audited financial statements of a property owning company are not the best evidence of the income and expenditure of specific properties because overhead expenses are not specifically attributed to the property reduce the profitability of the company.

Secondly, audited financial statements may and in the applicants' case in fact did aggregate information pertaining to several properties.

[41] Patel responds that the appeal board's reasons were prepared at the time of the decision, and that the applicants have not specified which reasons were missing. Patel says that reasons for a decision need not be detailed. He says that the appeal board in saying, 'having already noted that the municipal valuer had already reduced the valuation of the property, accepted the valuer's evidence over that of the applicant', is a good enough reason.

[42] It is significant, in my view, that the property owner as affected person is not involved in the initial valuation of the property nor is he invited to make an input to that valuation. He gets involved on inspection of the valuation roll, which shows the determined market value of his property. He, if not satisfied, may then lodge an objection. The Act gives him no rights to be furnished with any information other than the information in the valuation roll to enable him to make an informed objection. The objection is referred to the municipal valuer who had determined the market value in the valuation roll. The municipal valuer without any engagement with the objector considers the objection and decide the objections on facts and adjust or add to the valuation, subject to the limitation of not more than 10%, if more than 10% it is subject to review by the appeal board. The municipal valuer advises the objector of the decision. The objector may apply for the reasons for the decision. The objector, if not satisfied with the decision of the municipal valuer, appeals to the appeals board. In *Bator Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC) at para [48] the court observed: 'In treating the decisions of administrative agencies with appropriate respect, a Court is recognising the proper role of the Executive within the Constitution. In doing so, a Court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A Court should thus give weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a Court should give weight to these considerations will depend upon the character of the decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with specific expertise in that area must be shown respect by the Courts'.

[43] The Act does not specify what need to accompany the lodging of an appeal but stipulates that the appeal board as its function is to hear and decide appeals against the decision of the municipal valuer concerning objections to matter reflected in or omitted from the valuation roll. The Act (s67) provides that an appeal board may determine its internal procedures to dispose of appeals. Patel has not stated that any procedures for the hearing of appeals were determined in accordance with s 67. The minimum that would be required is to have the determined internal procedures determined by the appeal board, reduced into writing, and communicated on time not only to the objectors but to the community of the municipality. It is irregular on *ad hoc* basis to determine internal procedures of the appeal board in hearing the appeals.

[44] The form for lodging the appeal with the appeal board requires to be accompanied by five annexures: 1. Annexure A- It is tenant and rent Information; name of a tenant and rent, size, rental excluding VAT, escalation of rental, other contributions, term of lease, and start date.

2. Annexure B- Schedule of expenses including Municipal, Administration, Insurance, Security etc. 3. Annexure C – statement of income and expenditure for previous financial year.

4. Annexure D – Building size; building no. size m², description of use, and condition.

5. Annexure E is other features of the building. In a letter advising the interested person of the appeal hearing, it is stated that to assist with the appeal he must bring along any photographs of the property, valuations from anyone else, experts to assist him in his appeal etc. It is clear that what the appeal board demanded from the applicants during the appeal hearings, in particular, a sworn valuation by a professional valuator, was not what the applicants were told would be required. Patel's averments show that the documents that were required to accompany the form lodging an appeal were not given any weight on appeal. If no weight would be given to the required documents, why were these documents required to determine an appeal? The applicants correctly feel aggrieved and accuse the appeal board of shifting the goal posts. These were the documents to form the essence for the determination of the appeals. The failure by the appeal board to properly consider and give due weight to requested documents resulted in the total failure to consider the appeal. Secondly, the appeal board during the hearings of the appeal to require for the first time affidavit with audited financial; a

sworn professional valuation report, raw information data in the form of invoices, receipts, bank statements etc. was effectively denying the applicants a hearing.

[45] The applicants lodged appeals in relation to determined market values of specific properties. Patel repeatedly states that the market values disputed were determined by the municipal valuer through a mass valuation method. In my view, sight must not be lost of the fact that rates are levied on each property based on its market value. If the objector insists that the location and condition of the property is not properly reflected in the market value determined in mass valuation, it is not an answer for the appeal board to say it is not obliged to carry out physical inspection of the property or to source an individual valuation report of the property if it deems not necessary to carry out physical inspection of the property. Factors that determine a market value of a property are generally its location, the improvements, the age of the property, and the market conditions at the time. Any information relating to these factors is relevant to determine the market value of the property.

[46] Patel repeatedly states that the information supplied by the applicants was not that of the experts and the appeal board rejected it. He says that the appeal board assumed that the market value determined by the municipal valuer an expert was correct. In my view, Patel misses the point. The municipal valuer had not prepared a valuation report relating to each specific property in respect of which the appeals were lodged. It remained, particularly, important to consider properly information relevant for determining the market value of each specific property. If the appeal board members were not prepared to consider the information supplied by the applicants nothing stopped the appeal board from obtaining valuation reports from an expert professional valuer on each property of the applicants.

[47] Patel places an onus on the applicants to prove to the appeal board the valuations they contended for. There is no provision in the Act placing an onus on the objector or a person appealing. There is no provision in the Act, which entitles the appeal board to assume that the market value determined by the municipal valuer is the correct market value. The appeal board, therefore, has to approach the matters with an open mind and with an understanding that its primary function to the best of its ability, is to determine the market value of the property. There is no onus on the party appealing to show that the decision appealed is wrong.

The appeal board is an appeal administrator dealing with appeals administratively. It cannot assume the role of an appeal court. The matters before it are called appeals because they are referred to it. It deals with those matters, taking into account previous developments up to that stage, by revisiting the issues afresh with an open mind. The Act in saying the appeal board 'hears and determines appeals' merely emphasizes that it hears only matters referred to it by those not happy with the decisions of the municipal valuer on objections submitted to him. The owners of the properties that lodged the appeals are assisting the appeal board to determine the correct market values of the properties. In *Athol Developments v Valuation Appeal Board* 2014 (5) SA 485 (GJ) at para 13 & 14 Vally J said:

'It bears noting that the first respondent is given wide powers to deal with the appeal or review before it. This is apparent from the provisions of the MPRA, which allows for the first respondent to summon any person to appear before it to give evidence or to produce a document that is available to that person, to accept evidence on oath and to question any person or allow for that person to be questioned. The purpose for such wide powers is to allow for the appeal to consider the matter de novo.'

[48] Patel states that due to lack of reliable information, the appeal board resorted to contingencies to determine market values of the properties. It is not clear on what grounds contingencies were used. Contingencies are normally used to factor in uncertain future events. The role of contingencies in determining a market value of a property on a fixed date that has passed is unknown. The applicants appeared not to have been told in advance that contingencies would be used and the applicable ranges of those contingencies. Contingencies cannot be resorted to cover for a failure to do what the appeal board was required to do. The market values of properties arrived at through arbitrary use of contingencies are not true market values of properties.

[49] In the Schedule shown above, there are substantial differences or discrepancies of valuations in the four stages. The first respondent did the valuations. There is no logical explanation given for the discrepancies. These unexplained discrepancies cause the owners of the properties to lose trust and credibility in the valuation process. Patel states that due to lack of reliable evidence from the applicants, the appeal board adjusted values based on the reasonable exercise of their discretion and effectively applied contingencies in the

reasonableness of the applicant's properties values. In my view, it is not clear what is meant by reasonable exercise of their discretion and the application of contingencies. This, in my view, indicated a degree of speculation or arbitrariness instead of objectively determine a market value of a property.

[50] In my view, the appeal board is required to see the appeal process as part of the process to determine a market value of the property. It is a critical part in that it is part where the owners of the properties can take part. The participation of the owners of the properties must be appreciated and be valued. They are assisting the municipality in the process to determine market values of their properties for the municipality to properly levy rates it needs. It is the function of the appeal board to determine the market value of each property, which determines rates to be levied on the property. There is no onus on the property owner to prove a market value of his property; the onus is on the municipality to show that a true market value of property for the correct determination of rates to be levied had been determined. The respondents contend that the applicants failed to present reliable evidence to determine market values of the properties. If there was no reliable information before it, then how did the second respondent determine the market values of the properties in the absence of evidence? The second respondent approached the matter on the basis that the onus was on the applicants to prove wrong the municipal valuation, which approach is not found on any provision in the Act. The appeal board adopted an approach not stipulated in the Act, and it did not disclose in advance to the interested persons.

[51] The owners who lodged appeals with the appeal board are entitled to a fair equal treatment. The Act does not envisage the appeal board on *ad hoc* basis setting different appeal procedures for the same appellants. The appeal board having determined oral appeal hearings it could not for its convenience deny some appeals of oral hearings. The owners of 18 Wigford road and 136 to 138 Masukwana Street lodged appeals as prescribed and were invited to the appeal hearings but their appeals due to time constraints were not heard instead they were invited to make written submissions followed by a decision refusing their appeals. If the appeal board decided on appeals with oral hearings, it was irregular to deny oral hearing to the owners of the said properties. A valuation appeal board set up to hear appeals could not be heard saying it justifiable did not hear the appeals because it ran out of time to hear the

appeals. Patel belatedly claimed that the applicants in respect of these three appeals the appeal board offered them an opportunity to hear the appeals on rescheduled dates. Mr Christison correctly ignored this averment. It offered no details of when was the offer made and in what manner. It also contradicts the respondents' argument that a fair appeal hearing did not necessarily include an oral hearing and that these applicants were told to make written submissions or representations.

[52] The respondents contend that the application should be dismissed in that it was lodged out of time and there is no application for condonation. The applicants in the replying affidavit stated that, if it is found that the application is out of time, they apply for condonation.

[53] The main ground of the application is that when determining the value of the properties, no consideration was given to the condition of each individual property, income generating potential of each property and the location of each individual property. In my view, the appeal board has not answered or dealt with the concerns at all.

[54] The respondents point out that the review application is directed to the appeal decision taken in October 2020. The review application was lodged on 10 August 2021. Section 7 of Promotion of Administrative Justice Act, 2000 (PAJA) provides that the review applications be brought within a reasonable time and not more than 180 calendar days after the decision. In *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd* [2013] 4 All SA 639 (SCA) at para {26} the court held that a court cannot determine the merits of a review application unless condonation has been granted in the event of non-compliance with s7(1) of PAJA. The court held:

'At common law application of the undue delay rule required a two stage enquiry. First, whether there was unreasonable delay and, second, if so, whether the delay should in all the circumstances be condoned. (See e.g. *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 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 pre-determined by the legislature; it is unreasonable per se. It follows that the court is only empowered to

entertain 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. That of course does not mean that, after the 180-day period, an enquiry into the reasonableness of the applicant's conduct becomes entirely irrelevant. Whether or not the delay was unreasonable and, if so, the extent of that unreasonableness is still a factor to be taken into account whether an extension should be granted or not. See *Camps Bay Ratepayers' and Residents' Association v Harrison* [2010] 2 All SA 519 (SCA) para [54]; 2011 (4) SA 42 (CC).

[55] The applicants contend that the review application was brought within 180 days from the second respondent's failure to furnish reasons for a decision; it is required by the provisions of PAJA to provide. They contend that the second respondent's failure to furnish the reasons for its decision caused the delay.

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

'(1) Any proceedings for judicial review in terms of sections 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.'

[57] The provision stipulates that the 180-day period start to run from the date the applicant receive reasons for the decision. See *Aurecon v Cape Town City* 2016 (2) SA 199 (SCA) para [16] Section 5 of PAJA provides that an affected person who has not been given reasons may within 90 days after the date of becoming aware of the decision request the administrator for reasons for the decision. The administrator must, within 90 days from date of receiving the request, give the requested reasons. The provision in s 7(1) (b) did not envisage that the administrator can refuse or fail to give reasons. In such a case, it is clear that the 180-day period will start to run from the date of receipt of the refusal to give reasons or from the date of the expiry of the 90 day for the giving of reasons. The applicants requested reasons for the decisions on 12 November 2020. The second respondent had until 12 February 2021 to give reasons. When it failed to do so, the applicants had to lodge the review application within six months from 12

February 2021 and did so on 10 August 2021, the last day of the 180-day period. In my view, since the applicants were entitled to the reasons for a decision, the review application was brought within a reasonable time after waiting for the reasons for the decision they had timeously requested. Therefore, there is no need to apply for condonation.

[58] The respondents contend that the applicants fall under s 7(1) (a) of the Act because the applicants are seeking review of a decision which was subject to internal remedies. They contend that the decisions of the appeal board were a culmination of exhaustive internal remedies. Therefore, they contend, the applicants were not entitled to the reasons for decisions taken on appeal. They argue that during the appeal procedure the applicants engaged with the issues and the reasons for the original decision appealed and would be equipped to challenge any appeal outcome on review. In my view, the answer lies on what decision the applicants are seeking to review. Is it a decision taken prior to the appeal decisions or is it the appeal decisions. The applicants did not cite any other decision maker other than the second respondent. In the amended notice of motion, the applicants seek an order in the following terms:

1. *The valuation, objection and appeal processes in respect of the properties referred to in paragraph 4 below are declared to have been unconstitutional and unlawful.*
2. *The second respondent's failure to afford an appeal hearing before it in respect of the appeals relating to the properties located at 18 Wigford road and 136 to 138 Masukwana Street is declared to have been unconstitutional and unlawful.*
3. *The decision by the first and/or second respondents to adjust the property values in respect of the properties in question is hereby reviewed and set aside, alternatively, declared to be unconstitutional and set aside.*
4. *The first respondent is directed to undertake the municipal valuation process in respect of each of the properties in question de novo and to do so within 60 days of the date of this order, alternatively, such further time period as the court deems appropriate.*
5. *Alternatively to para 4 above:*
 - 5.1 *The second respondent is directed to undertake the appeal process in respect of each of the above properties de novo and to do so within 60 days of the date of this order, alternatively, such further time period as this court deems appropriate, and;*

5.2 *It is directed that the valuation appeal board for purposes of the appeals provided for in paragraph 5.1 above shall not be constituted of the same individuals that constituted the valuation appeal board for the purposes of the decisions set aside pursuant to the orders above, and the first respondent is directed to constitute the valuation appeal board subject to the terms of this order*

6. *Pending the final determination of the processes in paragraph 4 alternatively paragraph 5 above, the applicants are authorised to continue to make payment of the rates amounts in respect of the above properties on the basis of the valuations of those properties prior to the new valuations.(i.e. prior to the valuations which form the subject of the objection and appeal processes and the present proceedings)*

7. *The first respondent and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the costs of this application on the attorney and client scale.*

8. *Further and/or alternative relief.*

The applicants in their papers and in the heads of argument only challenged the manner the second respondent dealt with their appeals and the manner the members of the second respondent conducted themselves during the appeal hearings. The first respondent is cited as the Municipality interested in the valuation process within which process the impugned decisions took place. In my view, the focus of the relief is the appeal decisions of the second respondent. The respondents themselves in their heads of argument state that: 'the main thrust of the review is against the Valuation Appeal Board, the Second Respondent.' It is common cause that those decisions were not subject to any internal remedies. Further, the affected person were advised of the decisions without any reasons for the decisions given. It follows, therefore, that the applicants' review application is regulated by the provisions of s 7(1) (b) of PAJA. It is of no consequence that the respondents are of the view that the applicants did not need reasons for the appeal decisions. The provision grants the right to be furnished with reasons for the decision, on request, to the person materially affected by the decision. It has been held that the reasons must explain why the decision was taken. The requirement to furnish reasons is part of the fundamentals of good administration and an important mechanism for making administrators accountable. Significantly, at an early stage, it enables the affected person to take an informed decision on the way forward. See *Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd* 2003 (6) SA 407 (SCA) A at para[40]; *Koyabe v Minister for*

Home Affairs 2010 (4) SA 327 (CC) at para[62]. It makes no difference that with hindsight it might appear that the applicants did not need the reasons for the decision.

[59] In the event condonation is required, I have to consider whether I would grant condonation. In *Steenkamp and Others v Edcon Limited* 2019 (7) BCLR 826 (CC) at para [36] the court held: 'It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give full explanation for the non-compliance with the rules or courts directions. Of great significance, the explanation must be reasonable enough to excuse the default'. The respondents state that it can for purposes of condonation application be accepted that the appeal decisions were taken on 31 October 2020. The 180-day period lapsed on 29 April 2021. The applicants lodged the review application three and half months out of time. The respondents point out that the applicants purported to apply for condonation in a replying affidavit without a notice of motion and belatedly together with the heads of argument delivered a notice of motion seeking relief to condone the late lodging of the review application. The respondents contend that this amounts to correcting a fatal defect in the application in a replying affidavit, which is not allowed.

[60] The applicants in the replying affidavit stated that the respondents despite their timeous request for the reasons for their appeal decisions did not furnish them with the reasons. They then lodged the review application within 180 days after the expiry of the period within which they had to be furnished with reasons. It may be pointed out that the respondents do not contend that the applicants were not entitled to be furnished with reasons, but they contend that the applicants did not need reasons. Mr Christison for the respondents during the hearing could not explain why the respondents did not respond to the request for the reasons. The respondents also admit that they did receive a request for reasons on time and they did not respond to it. It follows that the respondents in failing to respond to a request for reasons caused the applicants to wait for receipt of the reasons resulting in the delay in lodging the review application.

[61] The respondents challenge the manner the applicants applied for condonation. They contend that it is irregular to apply for condonation in a replying affidavit with no notice of

motion. They contend that the irregularity is substantial. It deprived them of the opportunity to respond to the grounds for the condonation. It is correct that the applicants have applied for condonation in an odd manner. The practice is to include in the founding affidavit averments relating to condonation and as part of the relief include a prayer seeking condonation. The applicants applied for condonation because the respondents in the answering affidavit averred that the review application was out of time. The applicant in the replying affidavit is required to address averments made in the answering affidavit. The grounds for condonation were very brief and the application for condonation was conditional on a finding that the review application was out of time. The respondents could have applied for leave to file a supplementary affidavit to deal with the averments in the replying affidavit relating to condonation. The manner the applicants applied for condonation although not in accordance with the practice caused no prejudice to the respondents. It would have been an unnecessary step to launch a separate condonation application repeating averments in the papers. The applicant sought a short relief relating to condonation. The relief although contained in a notice of motion served with heads of argument is a mere formality; form need not be put over substance. In my view, the manner the applicants applied for condonation is explained and it is excusable.

[62] The applicants lodged the review application three and half months from the expiry of the 180 days from the date of the appeal decisions. The court in exercising a discretion whether to grant condonation is guided by what is in the interest of justice. The court considers the extent of the delay, the reasons for the delay, prejudice caused by the delay, , nature, extent and implications of the impugned decision as well as the prospects of success in the intended review application. See *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC). The above-mentioned factors are apparent from what appears above in this judgment.

[63] It is important for both the applicants and the respondents to know whether the second respondent's approach and the manner it dealt with the appeals is in accordance with the law. The applicants are liable for rates levied on their properties based on market values determined by the second respondent for a period of five years. The unreasonable delay after a period beyond the 180 day is a relatively short period. The respondents have not shown any prejudice

because of the delay. The applicants, the party seeking condonation, has shown prospects of success in the review application. In my view, the applicants have shown that it will be in the interest of justice to hear the review application and condonation for the late lodging of the review application, if required, falls to be granted.

[64] The applicants state that in the event the court grants a relief setting aside the decision of the second respondent and ordering that the municipal valuation process be convened *de novo*, it should be commenced *de novo* before different members of a valuation appeal Board. The respondents contend that such a relief shall usurp the powers of the MEC. The Act (s56) provides that on MEC for Local Government must, by notice in the *Provincial Gazette*, establish as many valuation appeal boards in the province as may be necessary. Section 57 provides that the Board deals with matters in the valuation roll of a municipality in the area for which it was established. It follows that a relief impacting on the composition of a valuation appeal board is a affects the powers of the MEC for local government. In the result, the relief envisaged cannot be granted when the MEC for local government has not been joined in the proceedings. However, in my view, it is part of the relief that can be discounted without affecting the essence of the relief. Mr Dickson did not persist in seeking this relief. In fact, it may be prudent for the first respondent to request the MEC to consider appointing alternate members of the second respondent. But the essence of the matter is not that the current members of the second respondent are unable or disqualified to conduct appeals relating to the applicants' mentioned properties.

[65] The applicants allege impropriety on the part of the members of the appeal board in various respect. The respondents have denied any impropriety on their part. In my view, it is not necessary for purposes of deciding the crux of the relief the applicants are seeking to go into details of the alleged impropriety. I am of the view, as found in this judgment, no material impropriety on the part of the members of the second respondent has been established.

[66] The applicants seeks a relief directing the first respondent to undertake the valuation process of the properties listed in the schedule *de novo*. In my view, it is the decisions of the second respondent that are impugned. The second respondent correctly approaching the matter, in my view, is able to carry out its task properly. An order directing reconstitution of the

second respondent to reconvene the appeal process in respect of the mentioned appeals of the applicants' properties shall suffice. Mr Dickson in his final oral argument argued for a relief limited to the second respondent reconvening and commencing with the valuation appeal hearings of the applicants' mentioned properties anew.

[67] Lawrence Baxter *Administrative Law* (Juta 1984) at 446 says the following:

'Administrative action based on formal or procedural defects is now always invalid. Technicality in the law is not an end in itself. Legal validity is concerned not with technical but also with substantial correctness. Substance should not always be sacrificed to form; in special circumstances greater good might be achieved by overlooking technical defects.' In *All Pay Consolidated Investment Holdings (Pty) Ltd and others vs Chief Executive Officer, South African Social Security Agency and others* 2013 (4) SA 557 (JCA) ([2013] ZASCA 29) para 21 held:

'There will be few cases of any moment in which flaws in the process of public procurement cannot be found, particularly, where it is scrutinised intensely with objective of doing so. But, a fair process does not demand perfection, and not every flaw is fatal.'

[68] The principle in the above-mentioned authority although mentioned in the context of public procurement applies equally in reviewing a decision of the valuation appeal board. If the flaw substantially influenced the decisions in question, it is material and it vitiates the decision.

[69] Section 6 of PAJA provides:

'6 Judicial review of administrative action- (1) Any person may institute proceedings in a court or tribunal for the judicial review of an administrative action.

(2) A court or tribunal has the power to judicially review an administrative action if -

- (a) The administrator who took it -
 - (i) was not authorised to do so by the empowering provisions;
 - (ii) acted under a delegation of power which was not authorised by the empowering provision; or
 - (iii) was biased or reasonably suspected of bias;
- (b) If mandatory and material procedures or conditions prescribed by an empowering provision was not complied with;
- (c) The action was procedurally unfair;
- (d) The action was materially influenced by an error of Law;

- (e) The action was taken-
 - (i) for a reason not authorised by the empowering provision;
 - (ii) for an ulterior purpose or motive;
 - (iii) because irrelevant consideration were taken who account or relevant considerations was not considered.
 - (iv) because of the unauthorised or unwarranted dictates of another person or body;
 - (v) In bad faith;
 - (vi) arbitrary or capriciously;
- (f) the action concerned consists of a failure to take a decision;
- (h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken , is so unreasonable that no reasonable person could have so exercised the power or performed the function;
 - or
 - (i) the action is otherwise unconstitutional or unlawful.

[70] The second respondent due to its flawed approach failed to receive and/or give proper consideration to the evidence of material presented by the applicants. It failed to timeously in advance advise the applicants of the documents and evidence it deemed necessary for the proper consideration of appeals. It failed when it transpired during the appeal hearings that it required certain evidence and documents to afford the applicants an opportunity to provide that evidence and documents. It failed to appreciate its primary role or functions, which is to determine the market value based on all available relevant material. It determined the appeals placing an onus on the applicants, which was improper; it determined the market values of properties, which were the subject of the appeals, in an arbitrary fashion; it failed to conduct appeal hearings in respect of three properties because of its failure to provide time for the hearings of those appeals. It conducted appeal hearings in a rushed unsettling manner. If an administrator misconstrues its functions, it does something not authorised by the empowering provision, it commits an error of law and it bases its decision on an ill-conceived irrelevant consideration. A decision taken not having followed the required process is not a decision. The second respondent took the municipal valuations as the given. It thus failed to carry out its core function to determine the market value of the properties of the applicants in a fair and transparent manner without prejudging the issue.

[71] The applicants make much store in the manner the members of the second respondent allegedly conducted the proceedings and conducted themselves. The applicants based on these averments claim relief in broad terms and claim costs of the application on a punitive scale. I have not in the judgment, except averments relating to the forensic conduct of the second respondent, traversed these averments and counter averments. The applicants are mainly juristic persons and professional persons in the appeal hearings represented them. It is not shown that the representatives of the applicants were intimidated and it resulted in them being unable to make representations. However, there is substance to the claim that the appeal hearings were rushed and in the process members of the second respondent displayed impatience with the representatives of the applicants. The second respondent scheduled the appeal hearings taking into account the volume of appeals to be dealt with. It cannot blame the applicants for its failure to spread the appeal hearings properly. It failed to reschedule appeal hearings for the three properties. There is a factual dispute regarding the manner the appeal hearings were conducted and the conduct of the members of the second respondent during the appeal hearings. The transcript of the record of the appeal hearings is defective. Nevertheless, in my view, it is not necessary to resolve the factual dispute. Likewise, in my view, it is not necessary to deal with the alleged bias based on these averments except forensic bias in the sense its flawed approach to the issue. I am also of the view that the applicants have not established a case to award costs on a punitive scale. Mr Dickson for the applicants, correctly in my view, did not persist with a prayer for costs in a punitive scale.

[72] In the result, the application is granted and the following order is made.

1. If required, the late delivery of the Applicants' review application is hereby condoned and an extension of the 180-day period in terms of s 9(1) of the Promotion of Administrative Justice Act 3 of 2000 is hereby granted.
2. The decisions by the First and/or Second Respondents to adjust the property values in respect of the properties listed in Annexure A hereto is hereby reviewed and set aside, alternatively declared to be unconstitutional and set aside.

3. The Second Respondent is directed to undertake the municipal valuation appeal process in respect of each of the properties listed in Annexure A hereto *de novo* and to do so within 60 days of the date of this order and according to the terms of this judgment.

4. The First Respondent is ordered to pay the costs of this application, including the costs of two counsel where so employed.

Mngadi J

ANNEXURE A

Reg. Owner	Address	Previous Value	2019 valuation Roll	Value after objection.	Value after appeal
Locom Investments	104 Masukwana str.	R2 200 000	R4 750 00	R4 400 000	R4 300 000
Catwalk Investments	81 Masukwana str.	R1 650 000	R3 750 000	R3 380 000	R3 380 000

SA Mather(Ladysmith)	136-138 Masukwana str.	R2 303 000	R5 350 000	R5 350 000	R5 350 000
Defacto Investments	130 Masukwana str.	R1 100 000	R1 850 000	R1 420 000	R1 420 000
Dewellior Investments	494 Hoosen str.	R3 500 000	R9 200 000	R8 500 000	R6 000 000
532 Pietermaritz Street	530 Pietermaritz	R1 900 000	R3 200 000	R2 900 000	R2 900 000
Ocean Sunset Trading	18 Wigford rd	R3 400 000	R13 000 000	R8 800 000	R8 800 000
Vintage Express Investments	665 Greytown rd				
	Section 1 of SS Village Mall, 66g Greytown rd	R150 000	R580 000	R340 000	R340 000
	Section 2 of SS Village	R210 000	R630 000	R390 000	R390 000
	Section 4 of SS Village	R180 000	R570 000	R330 000	R330 000

	Section 5 of SS Village	R170 000	R560 000	R320 000	R320 000
	Section 6 of SS Village	R180 000	R560 000	R330 000	R330 000
	Section 7 of SS Village	R170 000	R320 000	R320 000	R320 000
	Section 8 of SS Village	R170 000	R550 000	R320 000	R320 000
	Section 11 of SS Village	R170 000	R560 000	R320 000	R320 000
	Section 12 of SS Village	R170 000	R550 000	R320 000	R320 000
Mahomed Raffi	35 Shelly Crescent	R1 800 000	R4 200 000	R4 200 000	R3 800 000
Yunus Goga	482 Hoosen Haffejee	R1 600 000	R3 000 000	R2 700 000	R2 700 000

Corpco 34 CC and Ahmed Agoga Family Trust	479 Hafejee	Hoosen	R2 800 000	R6 750 000	R6 100 000	R4 500 000
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APPEARANCES

Case Number : 5959/21P

Applicants represented by : Dickson SC

Instructed by : M Bhyat Attorneys.
: PIETERMARITZBURG

Respondents represented by : A.L. Christison

Instructed by : Mathew Francis Inc.

MONTROSE

Date of Hearing : 10 March 2023

Date of Judgment : 15 March 2023