IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**NO**
Of interest to other Judges:	**NO**
Circulate to Magistrates:	**NO**

Case No: A12/2020

In the matter between:

CENTRAL UNIVERSITY OF TECHNOLOGY, FREE STATE	Applicant
and	
MANGAUNG METROPOLITAN MUNICIPALITY	1st Respondent
THE MUNICIPAL MANAGER: MANGAUNG METROPOLITAN MUNICIPALITY	2nd Respondent
THE MUNICIPAL VALUER: MANGAUNG METROPOLITAN MUNICIPALITY	3rd Respondent

HEARD ON:	22 MAY 2023
JUDGMENT BY:	MHLAMBI, J
CORAM:	MHLAMBI, J *et* OPPERMAN, J
DELIVERED ON:	24 AUGUST 2023

[1] The applicant sought declaratory relief and the review of the first and third respondents' decisions relating to the valuation and levying of rates of the

applicant's immovable properties for the 2017/2018, 2018/2019, and 2019/2020 financial years. The immovable property is situated in the first respondent's municipal area. The applicant contended that these decisions were subject to the doctrine of legality as they failed to comply with the statutory requirements envisaged in the Local Government: Municipal Property Rates Act,[1] ("the MPRA"), and were irrational.

[2] The respondents opposed the application on various grounds based on the Promotion of Administrative Justice Act, ("PAJA")[2] and the MPRA.

[3] In its amended notice of motion, the applicant seeks relief in four parts as follows:

"Part 1

1. *The declaration as unlawful, the second respondent's failure to serve a copy of the notice contemplated in section 49(1)(a) of the MPRA together with an extract of the valuation roll for the financial years 1 July 2017 until 30 June 2021 in terms of section 49(1)(c) of the MPRA.*
2. *Orders to review and set aside; alternatively, to declare unlawful and set aside the decisions set out hereunder:*
   - 2.1 *The first respondent's decision to levy rates in respect of the applicant's properties in terms of the market value of the properties and in terms of the categories of the properties, recorded in the valuation roll; and*
   - 2.2 *The first respondent's decision to determine the cent amount in the rand payable as rates (published in the Provincial Gazette in terms of section 14(2) of the MPRA and in accordance with copies of the relevant notices annexed as annexures **"FA14"**, **"FA15"** and **"FA16"** to the founding affidavit) in respect of the applicant's properties with reference to the market value of the properties and the category of the properties as reflected in the valuation roll.*

Part 2

Orders to review and set aside: alternatively, to declare unlawful and set aside the decisions set out hereunder:

1.1 *The first respondent's decision to categorise the applicant's properties reflected in the first respondent's valuation roll for the financial years 1 July 2017 until 30 June 2021*

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[1] No. 6 of 2004.
[2] No 3 of 2000.

as "public benefit organisation" in terms of the first respondent's 2017/2018 property rates policy;

1.2 *The first respondent's decision to determine in its 2017/2018 property rates policy that a business rate will apply to the levying of rates in respect of the applicant's properties;*

1.3 *The first respondent's failure to determine separate and different rates, in accordance with the provisions of section 3(3)(a), 8(1),14 and 19(1)(c) of the MPRA, in terms of its 2017/2018, 2018/2019 and 2019/2020 property rates policies;*

1.4 *The determination by the first respondent of item 10.1(b) of its 2017/2018 property rates policy and item 11.1(b) of its 2018/2019 and 2019/2020 property rates policies as a criterium to be applied by the first respondent to levy different rates for different categories of rateable properties.*

2. *The 2017/2018, 2018/2019 and 2019/2020 property rates policies be referred to the first respondent who is directed to consider and apply the provisions of sections 3(3)(a), 3(3)(b)(i) and (ii), 14(2)(b)(ii) and 19(1)(c) of the MPRA and considering such policies.*

3. *An order that the first respondent makes or causes to be made a supplementary valuation and categorisation of the applicant's properties as reflected in the valuation roll in terms of section 78 of the MPRA.*

Part 3

1.1 *The third respondent's decision to categorise the applicant's properties (specifically erf 26454) reflected in the valuation roll as "business" in accordance with the provisions of section 34 and 48(2)(b) of MPRA;*

1.2 *The third respondent's decision to determine the market value of erf 26454 in the amount of R 340 million rands; and*

1.3 *The first respondent's decision to levy rates on the applicant's properties in terms of their market value and their categorisation recorded in the valuation roll.*

2. *First respondent be ordered to make a supplementary valuation and categorisation of the applicant's properties as reflected in the valuation roll in terms of section 78 of the MPRA.*

3. *The time period for the institution of reviewing proceedings of part 3 of the notice of motion be extended in terms of PAJA.*

Part 4

Conditionally, upon the court holding that the applicant could have resorted to internal remedies; the applicant, in the interests of justice, is exempted from the obligation to exhaust any internal remedy.

[4] The applicant is a University duly established as a Higher Education Institution in terms of the Higher Education Act, 101 of 1997 with an address at the main

Campus, 20 President Brand Street, Bloemfontein.[3] It performs a public function and provides higher education to a section of the public. As an organ of state,[4] its properties are owned by the state.

[5] The first respondent is a metropolitan municipality duly established in terms of the provisions of section 12 of the Local Government: Municipal Structures Act, 117 of 1998 with its address at the Bram Fisher Building, 15 De Villiers Street, Bloemfontein. It exercises its executive and legislative authority by, amongst others, developing and adopting policies, preparing, approving and implementing its budgets[5] and must follow the procedure prescribed by the applicable national or provincial legislation when it levies, recovers or increases property rates.

[6] The second respondent is the first respondent's municipal manager appointed in terms of section 54A of the Local Government: Municipal Systems Act, 32 of 2000 ("the Systems Act"). The third respondent is the first respondent's municipal valuer duly appointed in terms of the provisions of section 33 of the MPRA.

[7] The dispute between the applicant and the first respondent has its genesis in the 2017 valuation roll which determined the categorisation and market value of the applicant's properties; in particular, the first respondent's decision to levy a business property rate on the applicant's properties, especially erf 26454 since 1 July 2017. On 10 June 2019, the applicant, through its attorneys, declared a dispute in terms of section 102(2) of the Systems Act, to the rates and taxes payable by the applicant on its immovable property. The applicant disputed the amount payable on the basis that:

> *"4. We dispute that this amount is due and payable by the CUT and place this amount in dispute on the following basis:*
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> *4.1 The property rates are seemingly due and payable in relation to Erf 26454, although this erf does not appear to have been registered or even created yet;*

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[3] Paragraph 5 of the Founding Affidavit.
[4] Section 239 of the Constitution of Republic of South Africa.
[5] Section 11(3) of the Systems Act.

4.2 It is our instruction that this property is known as Erf 26454 but that this Erf still needs to be created by consolidation of other erven.

4.3 The municipality's insistence to charge property rates on a property that does not exist at this stage is illegal for want of compliance with the requirements of the Municipal Property Rates Act, 6 of 2004 (hereafter the "Rates Act");

4.4 The rates account received from the municipality indicates that rates are charged against the properties of the CUT at a rate of R 0.037700, which rate is termed the "Business and Commercial";

4.5 The Free State High Court declared the charging of a business rate against the properties of the Free State University as illegal and set that decision of the Mangaung Metropolitan Municipality aside on 27 May 2019;"[6]

[8] The applicant contended that the levying of such a rate against an institution of higher education was illegal and irrational and based this contention on the court order of 27 May 2019.[7] The court order declared portions of the first respondent's 2017/2018 property rates policy unlawful and set them aside.[8] The applicant contended that the illegalities in that policy were retained in the subsequent rates policies of the municipality and had an illegal and irrational effect on the rates payable by the applicant. The applicant held the view that the court order was relevant to the determination of the present dispute as the two universities were similarly situated rate payers, rendering the same service and the first respondent acknowledged that it was not entitled to charge a business rate for the properties of the University of the Free State. It was contended that the first respondent would, in similar fashion, be precluded from charging a business rate for the applicant's properties.[9]

[9] The court order of 27 May 2019 was issued by agreement between the first respondent and the University of the Free State after the latter challenged the legality of the 2017/2018 property rates policy of the first respondent. For completeness' sake, the said court order provides as follows:

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[6] Annexure "FA2" on page 85 and 86 of the Indexed Papers.
[7] Paras 25 and 26 of the FA.
[8] Para 33 of the FA.
[9] Para 28 of the FA.

"It is ordered that:

1. *The First Respondent's failure to determine separate assessment rates for each of the different property categories determined in the Rates Policy 2017/2018 in accordance with the provisions of sections 3(3)(a), 14(2)(b)(ii) and (iii) and 19(1)(c) of the Local Government: Municipal Property Rates Act, 6 of 2000 is declared unlawful and set aside.*
2. *The First Respondent's decision to levy a business tariff on Applicant's properties as provided for in paragraph 11.7 of the Rates Policy 2017/2018 is declared unlawful and set aside.*
3. *The determination by the First Respondent of item 10.1(b) of its 2017/2018 Property Rates Policy as a criterium to be applied by the First Respondent to levy different rates for different categories of rateable properties is declared unlawful and set aside.*
4. *The Rates Policy 2017/2018 is referred back to the First Respondent and the First Respondent is directed to consider the criterium to be applied when levying different rates of different categories of rateable property.*
5. *The First Respondent is directed to determine separate assessment rates for each of the different property categories determined in the Rates Policy 2018/2019, 14(2)(b)(ii) and 19(1)(c) of the Local Government: Municipal Properties Act, 6 of 2000.*
6. *The parties to bear their own costs."*

[10] The disputes between the parties remained unresolved. [10] The court granted an order staying proceedings between the parties pending the institution of a review application by the applicant which should be instituted within 30 days of that order.[11]

[11] According to the applicant, the grounds of review consisted of the second respondent's failure to give the requisite notice in compliance with section 49(1)(c) of the MPRA as a result of which the required jurisdictional facts for the valuation and categorisation of the applicant's properties reflected in the 2017 valuation roll were absent. Furthermore, the first respondent failed to comply with sections 3(3)(a), 3(3)(b)(i) and 19(1)(c) of the MPRA as well as the third respondent's valuation and categorisation of the applicant's properties did not comply with the requirements of legality.[12]

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[10] Para 36 of the FA.
[11] Para 37 of the FA.
[12] Para 38 of the FA.

[12] The respondent's case is that the applicant became aware of increased levies as a result of the 2017 valuation report in July or August 2017 when the applicant's Mrs Van Niekerk, at the beginning of August 2017, liaised with the first respondent's finance department, seeking clarification about the increased rates levied[13] as a result of the 2017 valuation roll. Correspondence was exchanged and on 21 August 2017, a certain Ms Trudy Khanye, an employee of the first respondent, indicated that the valuation of the applicant's Erf 26454 had increased from R 11 130 000.00 in the previous valuation roll for the period 01 July 2013-30 June 2017, as a result of the current valuation roll for the period 01 July 2017-30 June 2021.[14]

[13] Following this complaint, the respondents allege that the applicant and the respondents engaged in a supplementary valuation process to revalue the applicant's rateable properties in terms of the provisions of section 77(a) read with section 78(1)(f) of the MPRA.[15] Over and above the supplementary revaluation, the applicant could, as further relief, lodge an objection *"in accordance with section 50 of the MPRA, if unsatisfied with the outcome of the revaluation, and a further appeal in terms of section 54 of the MPRA, directed against the outcome of the objection, in accordance with section 50."*[16]

[14] In light of the above, the respondents raised a preliminary point that the applicant's delay in bringing the review application was unreasonable and beyond the 180 days envisaged in section 7(1) of PAJA as this application was issued on 21 January 2020. A period of 2 years and 4 months had lapsed since 1 August 2017 when the applicant became aware of the new rates. The applicant had, therefore, not made out a case for the extension of the time frame in terms of sections 9(1) and 9(2) of PAJA.[17]

[15] The revaluation process, according to the respondents, came to a standstill due to the applicant's non-preparedness to participate and to furnish the necessary

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[13] Para 2.2 of the AA.
[14] Para 2.2 of the AA; annexure "FA 13.1" on page 120 of the Index.
[15] Para 2.6.1 of the AA.
[16] Para 2.6.1 of the AA.
[17] Paras 2.3-2.5 of the AA.

information for the finalisation of the revaluation.[18] The first respondent's municipal valuer, Thinus Nel, was tasked with the revaluation of the applicant's rateable properties in 2018. His request for further information over the period 2 March 2018 and 7 January 2020 was hardly or partly furnished by the applicant.[19] To confirm the 2017 valuation roll, Nel needed a detailed asset register of all buildings on the site (Erf 26454) and the extent to which and what they were used for. Unless the requested information was furnished, the valuation of R 340 million for erf 26454 would stand.[20] Nel valued the applicant's properties for the 2017-2021 valuation roll. Rainier Spamer later took over from Nel as the valuer.[21]

[16] Spamer grew impatient with the applicant's non-participation and failure to furnish the information which would shed light on the correct extent of each building and the uses of the applicant's entire campus for the review of the valuation on the correct erf numbers.[22] The applicant, it was contended, failed to give a real explanation for the delay in the review application and was not in a hurry to finalise it.[23] Besides, the applicant was busy with the internal revaluation of its properties and, it was contended, this internal remedy had to be exhausted before the legal processes were proceeded with.

[17] It behoves at this juncture to have a sneak peek at the legal framework within which the events played themselves. The MPRA provides that the aim of the Act is to regulate the power of a municipality to impose rates on property; to exclude certain properties from rating in the national interest; to make provision for municipalities to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies; to make provision for fair and equitable valuation methods of properties and an objections and appeals process.

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[18] Para 2.8 of the AA.
[19] Para 2.8 of the AA.
[20] Para 2.8.3 of the AA.
[21] Para 2.8.6 of the AA.
[22] Para 2.8.8 of the AA.
[23] Para 2.13 of the AA.

[18] A municipality may levy a rate on property in its area [24] but must exercise this power subject to section 229 and any other applicable provisions of the Constitution; the provisions of this Act and the rates policy it must adopt in terms of section 3.[25] It must adopt a policy consistent with the provisions of the MPRA on the levying of rates on rateable property in its area. The rates policy must treat persons liable for rates equitably[26] and determine the criteria to be applied by it if it levies different rates for different categories of properties determined in terms of section 8.[27]

[19] Sections 8(1) and (2) of the MPRA read as follows:

"*8 Differential rates*

(1) Subject to section 19, a municipality may, in terms of the criteria set out in its rates policy, levy different rates for different categories of rateable property, determined in subsections (2) and (3), which must be determined according to the-

a) use of the property;

(b) permitted use of the property; or

(c) a combination of (a) and (b).

(2) A municipality must determine the following categories of rateable property in terms of subsection (1): Provided such property category exists within the municipal jurisdiction:

(a) Residential properties;

(b) industrial properties;

(c) business and commercial properties;

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[24] Section 2(1) of the MPRA.
[25] Section 2(3)(a), (b) and (c) of the MPRA.
[26] Section 3(3)(a) of the MPRA.
[27] Section 3(3)(b)(i) of the MPRA.

(d) agricultural properties;

(e) mining properties;

(f) properties owned by an organ of state and used for public service purposes;

(g) public service infrastructure properties;

(h) properties owned by public benefit organisations and used for specified public benefit activities;

(i) properties used for multiple purposes, subject to section 9; or

(j) any other category of property as may be determined by the Minister, with the concurrence of the Minister of Finance, by notice in the Gazette."

[20] A municipal council's resolution to levy rates in the municipality must differentiate between categories of properties and reflect the cent amount in the rand rate for each category of property.[28] A municipality may not levy rates which unreasonably discriminate between categories of non-residential properties.[29] All rateable properties in the municipality must be valued during a general valuation[30] by a municipal valuer who shall then prepare a valuation roll, sign and certify it for submission to the municipal manager within a prescribed period.[31]

[21] Property must be valued in accordance with generally recognised valuation practices, methods and standards, and the provisions of the MPRA. Physical inspection of the property to be valued is optional and comparative, analytical and other systems or techniques may be used, including aerial photography and computer assisted mass appraisal systems or techniques, taking into account changes in technology and valuation systems and techniques.[32] The

[28] Section 14(2)(b)(i) and (ii) of the MPRA.
[29] Section 19(1)(c) of the MPRA.
[30] Section 30(2) of the MPRA.
[31] Section 34 of the MPRA.
[32] Section 45 of the MPRA.

general basis of valuation is the market value of a property which 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.[33]

[22] I deem it prudent to start first with the evaluation of the preliminary points raised by the respondents. The first preliminary point is based on PAJA in that the applicant failed to comply with the 180-day period within which to bring a review application. Section 1 of PAJA defines an administrative action as any decision taken by an organ of state when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, but does not include the executive powers and legislative functions of a municipal council.[34]

[23] It is a fundamental principle of the rule of law that the exercise of public power is only legitimate where lawful. The rule of law expresses this principle of legality. A local government may only act within the powers lawfully conferred upon it.[35] The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. In this sense, the Constitution entrenches the principle of legality and provides the foundation for the control of public power.[36]

[24] The decisions the appellants seek to impugn are not administrative in nature and can therefore not be assailed on the grounds of non-compliance with PAJA. Consequently, in seeking relief, the applicant relied solely upon the legality principle. The matter thus turns on whether the municipality's 2017 valuation

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[33] Section 46 of the MPRA.
[34] Section 1(b)(cc) and (cc) of PAJA.
[35] Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1999(1) SA 374 (CC) para 56.
[36] Affordable Medicines Trust and Other v Minister of Health and Others 2006 (3) SA 247 CC para 40.

roll was lawfully adopted.[37] That being said, it follows that the provisions of PAJA are not applicable to this legality review and, consequently, this finding disposes of some of the allegations and/or defences raised by the respondents. In particular, the insistence of the respondents that the applicant should have exhausted internal remedies before the court could review the administrative action.[38]

[25] The respondents stated that the engagement in a supplementary valuation by the parties was in terms of sections 77(a) and 78(1)(f) of the MPRA. Section 77(a) provides that a municipality must regularly, but at least once a year, update its valuation roll by causing a supplementary valuation roll to be prepared, if section 78 applies. Section 78(1) provides as follows:

"***78 Supplementary valuations***

(1) A municipality must, whenever necessary, cause a supplementary valuation to be made in respect of any rateable property-

(a) incorrectly omitted from the valuation roll;

(b) included in a municipality after the last general valuation;

(c) subdivided or consolidated after the last general valuation;

(d) of which the market value has substantially increased or decreased for any reason after the last general valuation;

(e) substantially incorrectly valued during the last general valuation;

(f) that must be revalued for any other exceptional reason;

(g) of which the category has changed; or

(h) the value of which was incorrectly recorded in the valuation roll as a result of a clerical or typing error."

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[37] Kalil No and Others v Mangaung Metropolitan Municipality and Others 2014 (5) SA 123 (SCA).
[38] Respondents' heads of argument: paras 1.3.10-1.3.15.

[26] The respondents' interpretation and application of the sections mentioned above seem forced and give credence to the applicant's assertion that the jurisdictional facts required for the undertaking of a supplementary valuation must exist before a municipality is entitled to do a supplementary valuation in terms of section 78 of the MPRA.[39]

[27] It was also raised as a preliminary point that the applicant could make use of the machinery in sections 50 and 54 of the MPRA for the necessary relief. However, section 50 refers to a person or owner of a property who inspected the roll within the period stated in the notice referred to in section 49(1)(a) and lodged an objection with the municipal manager against any matter reflected in or omitted from the roll. This process does not, as stated by the respondents, refer to an outcome of a revaluation.

[28] I am satisfied that the defences raised under the heading "*In Limine*" are without merit and should therefore be dismissed. I turn now to the claims contained in the notice of motion.

Part 1: Ad prayer 1

[29] The respondents contended that the section 149(1)(c) notices dated 7 March 2017 were posted at the main post office in Bloemfontein on 4 April 2017 by ordinary mail in accordance with the MPRA. The applicant requested copies of the notices that were allegedly served on the applicant as well as copies of the valuations prepared by the third respondent in respect of each immovable property of the applicant.[40] The respondent's attorneys then made available a copy of the notice which was attached to their letter dated 15 January 2020.[41] The respondents contended that the applicant's denial of having received the notice, was based on the evidence of Corinne Van Niekerk that neither described the messengers who fetched the mail from the post office, if at all

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[39] Para 25: Applicant's replying affidavit.
[40] Annexure "FA9" on page 109 of the Index.
[41] Annexure "FA11.1" on page 114 of the Index.

fetched, nor that the notices were noticed in the provincial gazette, the circulating media and the first respondent's website.

[30] The applicant on the other hand, contended that the notice should, as a matter of fact, be delivered by means of ordinary mail to the owner at his or her postal address. Mere despatch of the notice is not enough because the risk on no-delivery by ordinary mail was too great as stated in *Sebola and another v Standard Bank of South Africa Ltd.*[42]

[31] The applicant stated in its affidavit that in the letter from the respondent's attorneys dated 15 January 2020,[43] it was alleged that the required notice in terms of section 49(1) of the MPRA was properly served upon the applicant.[44] The bare allegation was made therein that the required notice was served per ordinary mail[45] and the copy of the relevant notice that was furnished ("FA11.2") depicted no proof of the alleged service. It was contended that there was no indication that such a letter was posted to the applicant.

[32] It was therefore apparent to the applicant, on the municipality's own version, that the second respondent failed to comply with the requirements of section 49(1)(c) of the MPRA in that the second respondent failed to annex a copy of the notice published in terms of section 49(1)(a) in the provincial gazette to ("FA11.2").[46] The second respondent also failed to annex a copy of an extract of the 2017 valuation roll pertaining to the applicant's properties to "FA11.2"[47] and neither "FA11.1" nor 'FA11.2" referred to a copy of the relevant notice published in terms of section 49(1)(a) in the provincial gazette or an extract of the 2017 valuation roll pertaining to the applicant's properties.[48]

[33] The letter dated 9 January 2020, marked "FA9", addressed to the respondents' attorneys stipulated in paragraph 8 as follows:

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[42] 2012 (5) SA 142 (CC) paras 75 and 87.
[43] Marked annexure "FA 11.1" on page 114 of the index.
[44] Para 63.1 of the FA.
[45] Para 63.2 of the FA.
[46] Para 68.1 of the FA.
[47] Para 68.2 of the FA
[48] Para 68.3 of the FA.

"(8) Accordingly, we request as a matter of urgency copies of the following:

a) The notices that were served on the CUT, invited to object to the proposed valuations of its immovable properties during the phase prior to the roll coming to operation on 01 July 2017; and

b) The valuations prepared by the municipal valour for each of the immovable properties of the CUT."[49]

The respondents' response in paragraph 3 of their letter marked "FA11.1"[50] reads as follows:

"Kindly find attached a copy of the notice properly served on your client per ordinary mail in accordance with section 49(1) of the Municipal Property Rates Act, 6 of 2004. No formal and complaint reaction emanated from your client in respect of this notice."

The applicant stated that no further annexures were attached to the said letter save the copy of the notice.

[34] The applicant stated that Ms Van Niekerk never received a copy of the relevant prescribed notice nor a copy of the prescribed extract of the 2017 valuation roll pertaining to the applicant's properties as contemplated in section 49(1)(c) from any of the respondents.[51] The applicant was therefore prejudiced by the non-compliance with the provisions of section 49(1)(c) of the MPRA because the applicant was deprived of its rights in terms of section 50 of the MPRA to object to the valuation and or the categorisation of its properties in terms of the 2017 valuation roll, especially in circumstances where the market value of Erf 26454 increased materially and Erf 26454, together with the applicant's other properties were categorised as business as a result of which the applicant's properties were equated with properties used for business purposes by commercial entities. The applicant was a higher education institution that used its properties to fulfil its function to provide higher education to a section of the public.[52]

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[49] Page 110 of the Index.
[50] On Page 114 of the Index.
[51] Para 70 of the FA.
[52] Para 72 of the FA.

[35] The applicant contended that, in as much as a notice in terms of section 49(1)(a) of the MPRA might have been published in the provincial gazette, such notice did not come to the knowledge of the applicant, and correctly pointed out that section 49(1) of the MPRA is a jurisdictional requirement for a valid valuation and categorisation of the applicant's properties. The procedures set out in the MPRA for the compilation of a valuation roll are a jurisdictional pre-requisite for the exercise of the first respondent's power to collect rates.[53]

[36] Section 49(1)(c) of the MPRA provides that the municipal manager must serve, by ordinary mail or, if appropriate, in accordance with section 115 of the Municipal Systems Act, on every owner of property listed in the valuation roll, a copy of the notice stating that the roll is open for public inspection together with an extract of the valuation roll pertaining to that owner's property. The phrase *'serve notice upon'*, taken by themselves, signifies no more than that the notice reaches the person concerned and effectually conveys to him the information sought to be brought.[54] The evidence of Ms Corinne van Niekerk is satisfactory and her evidence was not rebutted. The respondents accepted that the applicant became aware of the increased rates levied as a result of the 2017 valuation roll in July/August 2017 when Ms Van Niekerk liaised with the first respondent's finance department at the beginning of 2017 to enquire into the increased rates.[55]

[37] I come to the conclusion that with the given evidence, the second respondent failed to comply with the provisions of section 49 of the MPRA, thus rendering the valuation process unlawful.

Ad Prayer 2 and 3

[38] The failure to comply with section 49(1)(c) of MPRA renders the 2017 valuation roll unenforceable against the applicant. The levying of the rates, calculated in reference to the valuation and categories of the applicant's properties portrayed in that valuation roll, is unlawful and not legitimate. Consequently, the first

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[53] City of Tshwane Municipality v Lombardy Development (Pty) Ltd [2018] 3 All SA 605 (SCA).
[54] Ondedaalsrus Municipality v Odendaalsrus Gold, General Investment and Extension Ltd 1959 (1) SA 374 (A).
[55] Paras 76,77.1 and 77.2 of the FA and paras 2.2 and 40.4 of the AA.

respondent is enjoined by the provisions of section 78 to cause a supplementary valuation to be made in respect of the applicant's rateable property.

Part 2: Ad Prayer 1.1

[39] The respondents pointed out that the applicant's properties reflected in its valuation roll for 01 July 2017 to 30 June 2021 were not categorised as "Public benefit organization" in terms of the 17/18 public rates policy. Applicant's 36 properties were depicted and described in MMM2(a)[56] as 22 Erven business, 6 Erven residential, 5 Erven public service infrastructure, 1 Erf public service purpose, 1 Erf is agricultural farms and agricultural and 1 Erf as vacant land residential. Not a single Erf was categorised "public benefit organisation". In its reply,[57] the applicant stated that the 2017/2018 rates policy reflected the properties of the applicant under the heading "Public Benefit Organisations" and it was understood that the first respondent regarded the applicant and the University of the Free State as public benefit organisations. It is indeed so that in paragraph 11.5 of the valuation roll, the heading is described as "Public Benefit Organisation (PBO's), [58] and in paragraph 11.7, it is stated that the University of the Free State as well as the Central University of Technology will be levied on a business tariff.

Ad Prayer 1.2

[40] The respondents stated that the business rate applicable to the applicant's 22 properties was categorised in accordance with the three criteria in section 8(1) which authorised the discretionary determination of categories of rateable property contained in section 8(2) and permissible in accordance with section 19(1). These 22 properties were categorised as business and Erf 26454 was one of them.[59] The properties could as well have been categorised as "state-

[56] Respondent's extract of the valuation roll on page 413 of the Index.
[57] Para 91 of the Applicant's Replying Affidavit.
[58] On page 446 of the Index.
[59] Paras 5.1.4, 6.7 and 10.2 of the AA.

owned facilities" or "state-owned properties" with no effect upwards or downwards on the payable rates.[60]

[41] The applicant accepted in its replying affidavit[61] that only 22 of its rateable properties were categorised as business which included Erf 26454. The applicant pointed out, correctly so, that the respondents' candid acknowledgement that the properties of the applicant could also be categorised as "state-owned facilities" is an admission of irrational and/ or illegal categorisation of the applicant's 22 properties as "business" properties. Business properties are not state-owned properties and to treat the owner of state-owned properties, such as the applicant, similar to business property owners is inequitable and thus in breach of section 3(3)(a) and 19(1)(c) of the MPRA. These sections provide that a rates policy must treat persons liable for rates equitably and that a municipality may not levy the rates which unreasonably discriminate between categories of non-residential properties.

Ad Paragraph 1.3, 1.4 and 2

[42] It is common cause that the first respondent determined only five categories of assessment which recorded the cent amount in the rand and eighteen categories of rateable properties in its 2017/2018 property rates policy. Eight categories of assessment rates and nineteen categories of rateable categories for the 2018/2019 property rates policy. Nineteen categories of rateable property were determined and different categories of assessment rates for the 2019/2020 property rates policy.[62] However, the respondents denied that its property rates policies failed to comply with the applicable statutory provisions.[63]

[43] The respondents' resistance appears to be ensconced in their understanding of the provisions of section 8 of the MPRA[64] and which, as the applicant correctly pointed out, were outdated and did not reflect the correct legal

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[60] Para 6.8 of the AA.
[61] Para 52 of the AA.
[62] Paras 99.1-99.7 of the FA and paras 43.7.1-43.7.6 of the AA.
[63] Para 44.9.5 of the AA.
[64] Paras 6.3.2, 6.3.3 and 6.7 of the AA.

position.[65] The decisions to determine as criteria 10.1(b) and 11.1(b) of the 2017/2018 and 2018/2019, 2019/2020 property rates policies was, according to the respondents, in accordance with and based on section 152(1) of the Constitution and its requirements.[66]

[44] The applicant's response was that the application of the same rate for state-owned facilities and business properties in circumstances where the owners of such properties are not similarly situated, led to the unreasonable discrimination between these categories of non-residential properties and treated the owners of state-owned properties, who render the public service, inequitable if compared with business owners.[67] The alleged criteria determined by the first respondent in paragraph 10.1 of its 2017/2018 rates policy were repeated in its ensuing rates policies for the 2018/2019 and 2019/2020 financial years and these provisions are but goals and not criteria.[68] I agree. Paragraphs 10.1(b) and 11.1(b) appear to be a rehash of section 3(3)(i) of the MPRA which reads: "*allow the municipality to promote local, social and economic development.*"

[45] In the circumstances, it is proper to refer the property rates policies to the first respondent for consideration.

[46] I have already dealt with the supplementary valuation in paragraph 25 above.

Ad Part 3: Prayers 1,2 and 3

[47] Section 48(2)[69] provides that the valuation roll must reflect the following particulars in respect of each property as at the date of valuation to the extent that such information is reasonably determinable:

(a) The registered or other description of the property;

(b) the category determined in terms of section 8 in which the property falls;

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[65] Paras 11.3 and 11.4 of the MPRA.
[66] Para 8.2 of the AA.
[67] Para 94 of the RA.
[68] Para 77 of the RA.
[69] Of the MPRA.

(c) the physical address of the property;

(d) the extent of the property;

(e) the market value of the property, if the property was valued;

(f) the name of the owner; and

(g) any other prescribed particulars.

[48] In its answering affidavit, the respondents allege that the third respondent's valuer, Nel, determined the value of the applicant's properties and categorised them in accordance with provisions of sections 45(1), (2) and (3) read with section 46 of the MPRA.[70] Erf 26454 was valued as the "*parent property*" with erven 1896/RE, 1897/RE, 1898, 1899,1945, 2923 and 2923/1 value as "*child properties*" with nominal values of R 10.00 for all seven.[71] The value of R 340 million rand was not the market value of Erf 26454 only but represented the total market value of the said Erf together with the other seven.[72] At the date of the valuation of the applicant's properties, the third respondent (Nel) was in possession of the information that he acquired before the valuation and which included the information referred to in section 45(2)(b)[73] which constituted recognised valuation practices, methods and standards. He confirmed that the DRC method that he used was a recognised valuation method used for municipal valuations.[74]

[49] The third respondent made use of, amongst others, aerial photography to identify and measured rooftop digitisation and the extent of improvements. Street view and other comparative, analytical, and mass valuations techniques were utilised to determine the value of the properties. This statutory authorised information was deemed correct as at the date of valuation.[75] The said Nel had sufficient information and details required by section 45 of the MPRA for a

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[70] Para 11.2 of the AA.
[71] Para 11.5 of the AA.
[72] Para 11.6 of the AA.
[73] Of the MPRA.
[74] Para 33.1.5.1 of the AA.
[75] Para 33.1.12.1 of the AA.

proper valuation of erf 26454 together with the other 7 erven which were all valued together for purposes of the DRC method to determine the market value of R 340 million rand recorded in the valuation roll. He applied his mind to the matter.[76]

[50] The applicant denied that the allegations contained in the opposing affidavit constituted proof that Nel applied the DRC method of valuation correctly and in a proper manner to arrive at the estimated market value of the applicant's immovable properties at the date of the valuation.[77] It contended that the third respondent had insufficient facts and information to comply with the general valuation practices, methods and standards regarding the correct and proper application of the DRC method to make a proper and reliable estimate of the likely construction costs and the manner in which such construction costs had to be depreciated in terms of the DRC to arrive at the market value of the applicant's immovable properties on the valuation date.[78] The applicants relied on the expert opinions of Professor Verster and Mr Margolius, a professional valuer.

[51] Professor Verster opined that the application of the information which was available to the third respondent and used by him would have not enabled the third respondent to consider:[79]

1. The differences in design, shape, total floor area, vertical positions of the floors, overall height, storey height, extra costs of providing usable floor areas and the effect of an extra or more expensive specification.

2. The influence of the specification upon construction costs specifically regarding the nature and standards on the inside finishes of the buildings.

3. The effect of floor-to-ceiling heights on construction costs.

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[76] Para 60.2 of the AA.
[77] Para 44 of the RA.
[78] Para 45 of the RA.
[79] Para 28 of his affidavit on page 528 of the Index.

4. The influence of design and internal sub-divisions upon construction costs.

5. The costs of plumbing, mechanical and electrical installations.

[52] The fact that the third respondent was, on his version, unable to have access to the inside of the relevant buildings and thus unable to consider the issues stated above, materially affected any reliable and proper assessment of the construction costs to replace the existing buildings situated upon the applicant's immovable properties as at the valuation date.

[53] Mr Margolius opined that the third respondent did not value the subject properties of the applicant in accordance with generally recognised valuation practices, methods, and standards as contemplated in section 45 of the MPRA and the valuation of the subject properties did not represent the market value of such properties at the valuation date.[80]

[54] The valuation was completed before 17 February 2017 as the valuation roll was published in the Provincial Gazette on that date. The lack of information thereafter by the third respondent indicates that the third respondent did not have a required information in order to draft a proper valuation roll as at that date.

[55] The applicant correctly pointed out that the third respondent did not have the relevant required information to apply the DRC method properly when he still requested addition data as at 9 May 2018 to consider his valuation of the properties for the 2017 valuation roll. The correspondence between the parties during the period 2017-2019, attests to that.

Part 4

[56] As indicated in the above paragraphs, it was not necessary for the applicant to resort to internal remedies.

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[80] Para 25 of his affidavit on page 544 of the Index.

[57] Consequently, the following orders are made:

Order:

1. The second respondent's failure to serve a copy of the notice in terms of section 49(1)(a) of the MPRA together with an extract of the valuation roll for the financial years 01 July 2017 until 30 June 2021 upon the applicant is declared unlawful and or illegal.
2. The following decisions by the first respondent are declared unlawful and set aside:
   2.1 The first respondent's decision to levy rates on the applicant's properties in terms of their market value according to their categories recorded in the valuation roll; and
   2.2 The first respondent's decision to determine the cent in the rand as rates (published in the provincial gazette in terms of section 14(2) of the MPRA and in accordance with the copies of the relevant notices annexed as "FA14", "FA15" and "FA16" to FA) of the applicant's properties with reference to their market value and category as reflected in the valuation roll.
3. The first respondent is directed to make or cause to be made a supplementary valuation and categorisation of the applicant's properties reflected in the valuation roll in terms of section 78 of the MPRA.
4. The first respondent's decisions set out hereunder are declared unlawful and a set aside;
   1.1 The categorisation of the applicant's properties in the first respondent's municipal area and reflected in its valuation roll for the financial years 1 July 2017 until 30 June 2021 as "Public benefit organization" in the first respondent's 2017/2018 property rates policy.
   1.2 The determination that a business rate will apply to the levying of rates of the applicant's properties in the first respondent's 2017/2018 property rates policy.
   1.3 The failure to determine separate and different rates in its 2017/2018, 2018/2019 and 2019/2020 property rates policies in terms of sections 3(3)(a), 8(1), 14 and 19(1)(c) of the MPRA.

1.4 The determination of item 10.1(b) of its 2017/2018 property rates policy as a *criterium* to be applied to levy different rates for the different categories of rateable properties and

1.5 The determination of item 11.1(b) of its 2018/2019 and 2019/2020 property rates policies as a *criterium* to be applied to levy different rates for different categories of rateable properties.

5. The 2017/2018, 2018/2019 and 2019/2020 property rates policies are referred to the first respondent who must consider and apply the provisions of sections 3(3)(a), 3(3)(b)(i) and (ii), 14(2)(b)(2) and 19(1)(c) of the MPRA when considering such policies.

6. The decisions set out hereunder are declared unlawful and set aside:

6.1 The third respondent's decision to categorise the applicant's properties (specifically Erf 26454) situated in the first respondent's municipal area and reflected in the first respondent's valuation roll for the financial years 1 July 2017 until 30 June 2021 as "business" in accordance with the provisions of sections 34 and 48(2)(b) of MPRA.

6.2 The third respondent's decision to determine the market value of the applicant's property situated in the first respondent's municipal area and specifically the market value of Erf 26454 at the values recorded in the valuation roll (R 340 000 000.00 in respect of Erf 26454).

6.3 The first respondent's decision to levy rates on the applicant's properties in terms of their market value and their categorisation recorded in the valuation roll.

7. The first and third respondents to pay the costs jointly and severally, the one paying the other to be absolved. Such costs to include the employment of two counsel until the completion of the drafting of the heads of argument.

[redacted]

MHLAMBI, J

I concur,

[redacted]

OPPERMAN, J

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