THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable
Case no: 245/2023

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**FIRST APPELLANT**
THE MUNICIPAL VALUER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**SECOND APPELLANT**
THE MUNICIPAL MANAGER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**THIRD APPELLANT**

and

COPPERLEAF COUNTRY ESTATE (PTY) LTD	**FIRST RESPONDENT**
THE CHAIRPERSON OF THE APPEAL BOARD ESTABLISHED FOR THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**SECOND RESPONDENT**

Neutral citation: *City of Tshwane Metropolitan Municipality and Others v Copperleaf Country Estate (Pty) Ltd and Another* (245/2023) [2024] ZASCA 69 (3 May 2024)

Coram: GORVEN, HUGHES and MOLEFE JJA and KEIGHTLEY and MBHELE AJJA

Heard: 14 March 2024

Delivered: 3 May 2024

Summary: Local government – Local Government: Municipal Property Rates Act 6 of 2004 – municipal property rates – Deeds Registries Act 47 of 1937 – properties held by township developer by certificate of registered title – such property not excluded

from definition of ‘business/commercial’ property in rates policy – municipality committed reviewable error in re-categorising such property as ‘vacant land’ for rates purposes of supplementary valuation roll – roll reviewed and set aside – subsequent valuation roll relying on categorisation of same properties in earlier invalid roll also invalid to the extent of such reliance.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Mokose J, sitting as court of first instance):

1 The appellants' appeal is dismissed with costs, including the costs pursuant to the employment of two counsel.

2 The first respondent's cross-appeal against the orders granted by Mokose J on 13 October 2020 and 22 November 2022 succeeds with costs, including the costs pursuant to the employment of two counsel.

3 The order of Mokose J granted on 13 October 2020 is replaced by the following order:

'1 The evidence of Allen Stanley West contained in paragraph 38.20 of Annexure "N" to the founding affidavit in the application under case number 61228/2017 (the review application) and in paragraph 15.2 of Annexure "C" to the answering affidavit in the application under case number 48037/2017 (the enforcement application) is struck out.

2 The 2010-2011 supplementary valuation roll and the 2013-2017 general valuation roll are reviewed and set aside to the extent that they categorise those erven in Peach Tree Extension 2 (previously a portion of the Farm Knopjeslaagte 385) registered in the name of the applicant in the enforcement application (Copperleaf) at the time (the relevant properties) as "vacant land".

3 The concomitant re-categorisation by the third respondent in the enforcement application of the relevant properties as "vacant land" is reviewed and set aside.

4 The decision to categorise the relevant properties as "vacant land" is substituted with a decision to categorise the relevant properties as "business/commercial".

5 The first respondent in the enforcement application (Tshwane) is directed to adjust the 2010-2011 supplementary valuation roll and the 2013-2017 general valuation roll to indicate that the relevant properties are categorised as "business/commercial" within 30 days of service of this order.

6 Within 45 days of the service of this order on him, the fourth respondent in the enforcement application (the municipal manager) is ordered to calculate the

amount actually paid by Copperleaf in respect of rates on the relevant properties from 19 December 2008 to the earlier of the date on which a specific property was registered in the name of a purchaser thereof or 30 June 2013; and the amount which would have been paid by Copperleaf if the relevant properties had been categorised as “business/commercial” from 19 December 2008 to the earlier date on which a specific property was registered in the name of a purchaser or 30 June 2013.

7 Within 45 days of the service of this order on him, the municipal manager is ordered to repay to Copperleaf the difference between the amounts actually paid by Copperleaf to Tshwane from 19 December 2008 and the amount which would have been paid by Copperleaf if the relevant properties had been categorised as “business/commercial” from 19 December 2008 to the earlier of the date on which a specific property was registered in the name of a purchaser or 30 June 2013, plus interest on such amounts from the date(s) on which Copperleaf paid such amounts to Tshwane to date of final payment calculated at the prime rate levied by the bank at which the primary account of Tshwane is kept, plus 1%, as at the date of the calculation.

8 Within 45 days of the service of this order on him, the municipal manager is ordered to calculate the amount actually paid by Copperleaf in respect of rates on the relevant properties from 1 July 2013 to the earlier of the date on which specific property was registered in the name of a purchaser thereof or 30 June 2017, and the amounts which would have been paid by Copperleaf if the properties had been categorised as “business/commercial” from 1 July 2013 to the earlier of the date on which a specific property was registered in the name of a purchaser thereof or 30 June 2017.

9 Within 45 days of service of this order on him, the municipal manager is ordered to repay to Copperleaf the difference between the amounts actually paid by Copperleaf to Tshwane from 1 July 2013 and the amounts which would have been paid by Copperleaf if the properties had been categorised as “business/commercial” from 1 July 2013 to the earlier of the date on which a specific property was registered in the name of a purchaser thereof or 30 June 2017, plus interest on such amounts from the date(s) on which Copperleaf paid such amounts to Tshwane to date of final payment calculated at the prime rate

levied by the bank at which the primary account of Tshwane is kept, plus 1%, as at the date of the calculation.

10 Tshwane is ordered to make payment to Copperleaf within twenty days of service of this order on it of the sum of R87 862.63 plus interest on such amount at the rate of 10.5% per annum from 3 April 2017 to date of final payment.

11 The review application is dismissed with costs, including the costs pursuant to the employment of two counsel.

12 Tshwane is ordered to pay the costs of the counter-application in the review application including the costs pursuant to the employment of two counsel.

13 Tshwane is ordered to pay the costs of the enforcement application, including the costs pursuant to the employment of two counsel.'

4 The order granted by Mokose J on 22 November 2022 is replaced by the following order:

'The City of Tshwane Metropolitan Municipality is ordered to pay the costs of the variation application, including the costs pursuant to the employment of two counsel.'

JUDGMENT

Keightley AJA (Gorven, Hughes and Molefe JJA and Mbhele AJA concurring):

[1] The high court proceedings against which this appeal is directed involved three interrelated applications. The litigation included review and counter-review applications by the first appellant, the City of Tshwane Metropolitan Municipality (the City), and the first respondent, Copperleaf Country Estates (Pty) Ltd (Copperleaf), respectively. Despite the procedural and chronological complexity of the litigation, the core dispute revolves around the City's rates policies. More specifically, the question is whether, under the City's relevant rates policies, a township developer's election to substitute its original title deed with a certificate of registered title (CRT) under s 43 of the Deeds Registries Act 47 of 1937 (the Deeds Act),[1] has the effect that the affected

[1] Section 43 of the Deeds Act provides, in relevant part, provides thus:
'Certificate of registered title of portion of a piece of land
(1) If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the surveyor-general concerned, the registrar may on written application by the owner of the land

properties are excluded from the defined category ‘business/commercial’ and become ‘vacant land’ for rates purposes.

[2] The question has material implications for each party because the rates charges for the affected properties, if categorised as vacant land under the relevant rates policies, are more than double the rates charges for those properties if they are categorised as business/commercial. The City’s adamant view was, and remains, that its rates policies permit a re-categorisation of property owned by a township developer from business/commercial to vacant land as soon as the developer substitutes its original title deed for a CRT. Copperleaf, as a township developer which made the election to substitute its title deed for a CRT, disputed that the City had acted lawfully in adopting and applying its policies in this manner. The Gauteng Division of the High Court, Pretoria (the high court) agreed with Copperleaf. It reviewed and set aside the valuation rolls insofar as they categorised the affected properties as vacant land and granted further concomitant relief.

[3] The City appeals the judgment and order of the high court with its leave. The high court also granted Copperleaf leave to cross-appeal an order varying the original order granted by the high court (the cross-appeal).

[4] I begin by setting out the background facts relevant to the appeal and a summary of the litigation leading up to it. As regards the latter, by appeal stage, the disputed issues had become focused, making it unnecessary to traverse the minutiae of each application.

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accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of registered title in respect of such portion, as nearly as practicable in the prescribed form.
(2) In registering the certificate, the registrar shall endorse on the title deed that it has been superseded by the certificate in respect of the land described in the certificate, and on the certificate that the land described therein is mortgaged by the bond and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and is subject to such bond.
(3) . . .
(4) . . .
(5) *(a)* Save in the case of a transfer of a whole erf, no owner of a township or settlement in whose title deed the individual erven are not separately described, shall deal separately in any way with an individual erf in such a township or settlement or any portion thereof or share therein until he has obtained a certificate of registered title of such erf in the prescribed form.’

[5] As to the facts, Copperleaf is the registered owner of two portions of the immovable property known as Farm Knopjeslaagte 385. It holds what is referred to as Peach Tree Extension 1 (Peach Tree 1) under a deed of transfer endorsed to reflect that the land has been laid out as a township. In 2005, the land was subdivided into erven according to a general plan, which was registered together with a township register. The second portion of land owned by Copperleaf, Peach Tree Extension 2 (Peach Tree 2), was similarly subdivided into erven under a general plan and associated township register in 2007. Copperleaf originally held Peach Tree 2 under a deed of partition. It is this property which is the subject matter of the dispute. For reasons that will become clear shortly, Peach Tree 1 is of interest in this appeal only for comparative purposes.

[6] Copperleaf is the township developer in respect of both Peach Tree 1 and 2. As owner and developer, it sold and transferred individual erven to purchasers from time to time. Prior to transfer to and construction on each erf by individual purchasers, the land in Peach Tree 1 and 2 was vacant. However, in line with the City's policy at the time, despite being physically vacant, prior to transfer from Copperleaf to an individual purchaser, the land was categorised on the valuation roll for rating purposes as business/commercial. The land in Peach Tree 1 continued, and continues, to be rated as business/commercial on this basis. However, Peach Tree 2 was treated differently after it applied to the Registrar of Deeds for the issuance of a CRT in place of its original deed of partition in respect of the erven that had not yet been transferred to individual purchasers. The CRT was issued on 19 December 2008. Henceforth, the City categorised and rated these erven as vacant land, subject to the applicable higher rates charge.

[7] It was common cause in the high court, and remains so on appeal, that the only reason for re-categorising the Peach Tree 2 erven held by Copperleaf from business/commercial to vacant land, was the issuing of the CRT. Erven held by Copperleaf in Peach Tree 1 continued to be categorised as business/commercial and charged at the lower rate because no CRT was ever issued in their respect.

[8] The City's rates policies are of obvious significance to the dispute, not least because it is these policies that define the categories business/commercial and vacant

land respectively. Between 2008 and 2017, which is the relevant period, the City adopted and applied variations of its rates policies. The first relevant policy was that which came into effect from 1 July 2008 (the 2008 rates policy). Under this policy, the category 'business/commercial' was defined as meaning:

'. . . a property used for the activity of buying, selling or trade in commodities or services on a property that includes any office or other accommodation on the same erf, the use of which is incidental to such business, with the exclusion of the business of agriculture, farming or inter alia, any other business consisting of the cultivation of soils, the gathering in of crops or the rearing of livestock or consisting of the propagation and harvesting of fish or other aquatic organisms and shall include commercial property as the case may be.'

'[V]acant land' meant:

'. . . land where no immovable improvements have been erected, other than agricultural land.'

[9] According to the City, under the 2008 rates policy, properties held by a township developer (even though they were physically vacant) were regarded and treated for rates purposes as part of a business entity and they were categorised as business/commercial. The definition of business/commercial was amended on 1 July 2011 (the 2011 rates policy) with the addition to the previous definition of the italicised portion below:

'. . . a property used for the activity of buying, selling or trade in commodities or services on a property that includes any office or other accommodation on the same erf, the use of which is incidental to such business, with the exclusion of the business of agriculture, farming or inter alia, any other business consisting of the cultivation of soils, the gathering in or crops or the rearing of livestock or consisting of the propagation and harvesting of fish or other aquatic organisms *and shall include (properties of a township developer registered in a township title) commercial property as the case may be*.' (Emphasis added.)

[10] In the affidavits filed by the City, it explains the reasons for the express inclusion in the 2011 rates policy of the reference to 'properties of a township developer registered in a township title'. It was aimed at addressing the confusion created by the City's practice of categorising properties of a township developer as business/commercial without formal reference to this in the definition. The amendment gave formal expression to what had been the prior practice in favour of township developers, this being to categorise vacant land held by a township developer as business/commercial for rates purposes. The amendment also served the purpose of

making it clear to developers what the full extent of their financial burden would be once a township was proclaimed. A subsequent amendment to the rates policy on 1 July 2013 (the 2013 rates policy) effected one change to the 2011 rates policy definition: the term 'registered in *a* township title' in the 2011 definition became 'registered in *the* township title' (Emphasis added).

[11] It is significant to note that none of the relevant rates policies defines what is meant by the words 'township title'. This is a key feature of the appeal and I deal with it more fully later.

[12] What is also of significance to the appeal are the valuation rolls prepared, adopted, and promulgated by the City during the relevant period. The Local Government: Municipal Property Rates Act 6 of 2004 (the Rates Act) requires municipalities to prepare periodic valuation rolls for all the rateable properties within their areas of jurisdiction. The City published several general valuation rolls (GVRs) and supplementary valuation rolls (SVRs) pertaining to the Peach Tree 2 properties. The first of these was the 2008-2013 GVR. Peach Tree 2 was reflected in this GVR under the category business/commercial in line with the 2008 rates policy.

[13] In July 2012, a SVR for the period 2010-2011 was published by the City (the 2010-2011 SVR). Its purpose was to supplement, and effect amendments to, the 2008-2013 GVR. The 2010-2011 SVR included all the erven in Peach Tree 2 still held by Copperfield and reflected that they were now categorised as vacant land. Each of the erven was separately valued. For reasons that will become clear later, Copperfield did not lodge any objection to the 2010-2011 SVR and it was promulgated with effect from 1 September 2012. It applied retrospectively from 1 January 2009, and remained effective until 30 June 2013. This SVR is an important component of the appeal.

[14] To complicate matters, two further valuation rolls are relevant to the dispute. The first was a Final SVR for the period 2008-2013 (the 2015 FSVR) which was published by the City on 12 August 2015. The second was a GVR for the period 2013-2017 (the 2013-2017 GVR). In terms of the latter, Copperleaf's Peach Tree 2 properties remained categorised as vacant land and were rated accordingly. The

2013-2017 GVR became the subject of a review challenge in the closing stages of the litigation.

[15] It was the 2015 FSVR that ignited the dispute that ultimately led to the high court litigation. Copperleaf lodged an objection to this roll in terms of s 50(1)*(c)* of the Rates Act. This section permits objections to valuation rolls against 'any matter reflected in, or omitted from, the roll'. It is not necessary to expand on the nature of the objection, save to record that inherent in Copperleaf's complaint was that its Peach Tree 2 properties should not have been re-categorised as vacant land. The municipal valuer dismissed the objection on what was essentially a point of jurisdiction. Subsequently, Copperleaf appealed to the Valuations Appeal Board (the VAB) under s 54(1)*(a)* of the Rates Act. Its appeal was successful. On 12 August 2016 the VAB released its decision, finding that the Peach Tree 2 properties should have been rated as business/commercial for the period that they were categorised as vacant land up to 30 June 2013. The City was directed to take steps to make the necessary adjustments to the valuation roll in accordance with s 69 of the Rates Act.[2]

[16] By July 2017, when the City had not complied with the VAB's decision, Copperleaf instituted the first high court application. This application was directed at securing the enforcement of the VAB's decision through a high court order (the enforcement application). The City opposed the enforcement application and instituted a concurrent application for a review of the VAB's decision (the City's review).

[17] The City's review centred on what it asserted was the VAB's finding that the Peach Tree 2 properties should be categorised as business/commercial. The City contended that the finding was unlawful for various reasons. One of these was that

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[2] This section, titled 'Decisions affecting valuation rolls' provides that:
'(1) The chairperson of an appeal board and the valuer of the municipality must ensure that the valuation roll is adjusted or added to in accordance with the decisions taken by an appeal board.
(2) If an adjustment in the valuation of a property affects the amount due for rates payable on that property, section 55(2) must be applied.
(3) Where an addition has been made to the valuation roll as envisaged in subsection (1), section 55(3) must be applied.'
Section 55(2), in turn, requires the City to calculate the amount actually paid on the property and the amount payable in terms of an adjustment to the roll and, if the property owner has made an overpayment, to repay them with interest at the prescribed rate.

the original objection by Copperleaf was ill-founded, as the amendment of the Peach Tree 2 properties from business/commercial to vacant land had been given effect to in the 2010-2011 SVR. The City averred that the 2010-2011 SVR had been duly promulgated in August 2012 in accordance with the procedure legislated in s 49(1) of the Rates Act.[3] The requisite notice had been published in the Government Gazette inviting owners to inspect the valuation roll and to lodge objections. Copperleaf did not lodge an objection, and the 2010-2011 SVR took effect from 1 September 2012. The point made by the City on this aspect of its review was that Copperleaf's objection to the 2015 FSVR was misdirected. Copperleaf ought to have objected to the 2010-2011 SVR when it had the opportunity to do so. It could not lodge a valid objection to the 2015 FSVR. The VAB had committed a material error of law in entertaining the appeal against the dismissal of the complaint when, in fact, it had no jurisdiction to do so.

[18] Significantly, the City also challenged the VAB's finding that the Peach Tree 2 properties should have been categorised business/commercial. The City asserted that the 2011 rates policy contemplated that only properties registered under a township title fell properly within the definition of business/commercial. Properties registered in terms of a CRT were not properties registered under a township title in terms of the policy and thus, fell outside the definition of business/commercial. Instead, they fell within the definition of vacant land. The VAB's decision in finding differently was for this reason reviewable as it was based on a material error of law. To underline its point, in the alternative to a review and setting aside of the VAB's decision, the City sought an order declaring that:

'. . . properties held in terms of a certificate of [registered] title are not the same as properties held in terms of a township title, in terms of the provisions of the Deeds Registry Act. . .

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[3] The procedure to be followed once a municipal valuer has certified a valuation roll is detailed in s 49(1): '(1) The valuer of a municipality must submit the certified valuation roll to the municipal manager, and the municipal manager must, within 21 days of receipt of the roll-

(a) publish in the prescribed form in the *Provincial Gazette*, and once a week for two consecutive weeks advertise in the media, a notice-

(i) stating that the roll is open for public inspection for a period stated in the notice, which may not be less than 30 days from the date of publication of the last notice; and

(ii) inviting every person who wishes to lodge an objection in respect of any matter in, or omitted from, the roll to do so in the prescribed manner within the stated period;

(b) disseminate the substance of the notice referred to in paragraph *(a)* to the local community in terms of Chapter 4 of the Municipal Systems Act; and

(c) 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 referred to in paragraph *(a)* together with an extract of the valuation roll pertaining to that owner's property.'

and

. . . properties held under a certificate of registered title do not qualify as properties held in terms of a township title for purposes of the definition of business/commercial, as per the (City's) rates policy for the period 1 July 2011 to 31 June 2013.'

[19] The City's review was instituted approximately 12 months after the VAB decision was taken. Section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) provides for a 180-day period within which to institute review proceedings. Part of the relief sought by the City was for an extension of this period under s 9 of PAJA. It contended that it would be in the interests of justice to condone its delay in instituting the review.

[20] Copperleaf opposed the City's review and, at the same time, filed a counter-application seeking, among other relief, the review and setting aside of the municipal valuer's decision to categorise the Peach Tree 2 properties as vacant land (Copperleaf's review). After the City had provided a record of the proceedings under review in terms of Uniform rule 53(1)*(b)*, Copperleaf expanded the relief originally prayed for in an amended notice of motion filed together with its supplementary founding affidavit.

[21] Copperleaf's expanded relief included two additional review grounds. The first was a challenge to the 2010-2011 SVR to the extent that it categorised Copperleaf's Peach Tree 2 properties as vacant land (the SVR challenge). The second was a challenge to the 2013-2017 GVR, also limited to the extent that it categorised Copperleaf's Peach Tree 2 properties as vacant land (the GVR challenge).

[22] The SVR challenge was, in part, based on an alleged material procedural irregularity. Copperleaf's case was that the City had failed to comply with the peremptory requirements of s 49(1)*(c)* of the Rates Act which prescribed service on Copperleaf of a copy of the Government Gazette notice, as well as the relevant extract from the certified valuation roll relating to its Peach Tree 2 properties. Copperleaf contended that it had never received the requisite notice and extract, nor was there any evidence in the record provided by the City that the latter had complied with its service obligations in this regard. Importantly, Copperleaf repeatedly averred in the

affidavits filed in support of its counter-application that it had no knowledge of the existence of the 2010-2011 SVR until the City had referred to it in the City's review founding papers.

[23] In addition to the procedural attack on the 2010-2011 SVR, Copperleaf contended that the City had erred in interpreting the definition of business/commercial to exclude the Peach Tree 2 properties solely on the basis that the properties were held under a CRT. The 2010-2011 SVR, which reflected the categorisation of the properties as vacant land, was thus vitiated by a material error of law.

[24] Copperleaf's GVR challenge flowed axiomatically from the SVR challenge. Copperleaf's case in this regard was that all the evidence pointed to the 2013-2017 GVR (in which Copperleaf's Peach Tree 2 properties continued to be categorised as vacant land) having been premised squarely on the initial re-categorisation effected in the unlawful and invalid 2010-2011 SVR. This being the case, the 2013-2017 GVR ought consequently also to be set aside as it relied for its legal validity on the earlier SVR categorisation.

[25] Included in Copperleaf's notice of motion were prayers for orders directing the City to adjust the 2010-2011 SVR and 2013-2017 GVR accordingly to reflect the Peach Tree 2 properties as business/commercial. In addition, and consequent on those adjustments, the court was requested to direct the City to calculate the amounts Copperleaf had paid to the City for rates based on the vacant land categorisation, as well as the amounts it ought to have paid had the Peach Tree 2 properties been correctly rated as business/commercial, and to effect a repayment to Copperleaf of the difference (the adjustment and repayment prayers).

[26] Copperleaf included a prayer for an extension of the 180-day period under s 9 of PAJA, but only to the extent that this was necessary. Copperleaf's primary contention was that its review was instituted timeously. This was disputed by the City. I should add that Copperleaf, in turn, asserted that the City's application for relief under s 9 should be refused.

[27] The high court agreed with Copperleaf that its review application had been instituted timeously and that an extension of time under s 9 of PAJA was unnecessary. It granted the review relief sought by Copperleaf and set aside both the 2010-2011 SVR and the 2013-2017 GVR. The court further directed the City to make the necessary adjustments to categorise the Peach Tree 2 properties as business/commercial. It also granted the repayment relief sought by Copperleaf. The court found it unnecessary to consider the City's review against the VAB decision as that review had been rendered moot by Copperleaf's success in its review application.

[28] Despite the variety of issues raised in the review applications, on appeal, the parties were agreed that the core question for determination by this Court is the substantive validity of the City's categorisation of the Peach Tree 2 properties as vacant land based solely on Copperleaf's conversion of its form of title to a CRT (the core issue). This approach is undoubtedly correct. The question underpins both reviews, with the parties' respective stances representing opposite sides of the same coin. Either the City is correct in its contention that its categorisation of the Peach Tree 2 properties as vacant land is consistent with its rates policies and thus valid, or the high court correctly accepted Copperleaf's contention that the rates policies dictate a business/commercial categorisation of the properties, and that the City's categorisation was thus invalid and unlawful.

[29] For this reason, there is little point in entertaining the City's argument that the high court erred in finding that Copperleaf had instituted its review timeously, or its axiomatic contention that Copperleaf unreasonably delayed in instituting its review. Even if, in principle, this is arguable, the core issue remains to be considered. This is because it forms the crux of the City's own review challenge to the merits of the VAB's decision, and the thrust of its case on appeal. No practical point would be served by exploring the question of whether Copperleaf ought to have been non-suited in its review application because of unreasonable delay.

[30] In any event, and assuming that some point might be served by considering the delay issue, I am not persuaded that there is any merit in the City's appeal in this regard. Section 7(1) of PAJA provides that:

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

(a) . . . 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 reasons.'

[31] The delay issue applies to the review of the 2010-2011 SVR. As I noted earlier, Copperleaf repeatedly averred, in its answering affidavit to the City's review and in its founding affidavits in its own review, that it was not served with the requisite notice in terms of s 49(1)*(c)* of the Rates Act. It consistently stated that it only acquired knowledge of the 2010-2011 SVR when the City referred to it in its review application. That factual averment was never challenged. Instead, the City relied on the provision that Copperleaf 'might reasonably have been expected to have become aware' of the 2010-2011 SVR. In that regard, in all of Copperleaf's extensive communications with the City over the relevant period over its rates invoices there had been no reference to the 2010-2011 SVR by the City, nor was there any reference to that SVR's existence when Copperleaf pursued its objection to the 2013 GVR, and its appeal to the VAB.

[32] The simple point is that the City did not inform Copperleaf of the existence of the 2010-2011 SVR as it was obliged to do by s 49(1)*(c).* It is of no assistance for the City to assert that, because its invoices to Copperleaf expressly identified the Peach Tree 2 properties as vacant land, Copperleaf ought reasonably to have been aware that the City had adopted a SVR to give effect to this altered categorisation. In *City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others* (*Lombardy*),[4] this Court rejected the same argument raised by the City, noting that:

'For, while it is correct that some of the affected owners would have become aware that something had changed when they began receiving drastically inflated invoices from the beginning of July 2012, there was nothing in those invoices that would have informed them of the underlying reasons for the change. The City provided no other form of notification to the ratepayers other than the invoices. The invoices themselves provided no explanation. They

[4] *City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others* [2018] ZASCA 77; [2018] All SA 605 (SCA) (*Lombardy*) para 18.

simply reflected the properties as having been re-categorised as vacant and reflected the rate payable as the City's rate for vacant land. . . .'

[33] The facts of this appeal are on all-fours with those in *Lombardy*. As in *Lombardy*, there is no evidence, either attached to the City's affidavits or in the record provided under Uniform rule 53, that service on Copperleaf was effected in accordance with s 49(1*)(c)*, or that the adoption and promulgation of the 2010-2011 SVR was communicated to Copperleaf. In the absence of such evidence, it must be accepted that Copperleaf could not reasonably have been expected to have become aware of the existence of the 2010-2011 SVR until the City served its affidavits in its review application on 1 September 2017. To find otherwise, as this Court observed in *Lombardy*, would be to permit the City 'to make a virtue of its silence on matters on which it owes a duty to account.'[5] It follows that the high court was correct in finding that Copperleaf's review was instituted timeously.

[34] On the core issue, as I understand the City's case, it runs along the following lines. When the Registrar of Deeds issued the CRT, this had a material effect on the legal status of the Peach Tree 2 properties. The CRT converted the properties into individual erven. This had two consequences: first, the properties became rateable individually; second, these individual erven were 'transferred', as the City put it, out of the township register envisaged in s 46 of the Deeds Act.[6] The ultimate result was that the properties were no longer 'registered in a township title' and, accordingly, they no

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[5] Ibid para 11; see also *Kalil NO and Others v Mangaung Metropolitan Municipality and Others* [2014] ZASCA 90; 2014 (5) SA 123 (SCA) para 30.

[6] Section 46 is under Chapter IV of the Deeds Act, headed 'Townships and Settlements'. It provides, in relevant part:

'Requirements in the case of subdivision of land into lots or erven

(1) If land has been sub-divided into lots or erven shown on a general plan, the owner of the land sub-divided shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registrable transactions affecting the respective lots or erven shown on the plan shall be registered.

(2) For the purposes of registration of such a general plan the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee's consent to the endorsement of such bond to the effect that it attaches to the land described in the plan.

(3) If the land sub-divided as shown on the general plan forms the whole of any registered piece of land held by the title deed, the registrar shall make upon the title deed and the registry duplicate thereof an endorsement indicating that the land has been laid out as a township or settlement, as the case may be, in accordance with the plan, and that the lots or erven shown on the plan are to be registered in the relative register.'

longer fell within the definition of business/commercial under the City's rates policies. The properties became individually rateable as vacant land.

[35] I have two fundamental difficulties with the City's contentions. In the first place, whether the properties became individually rateable is irrelevant to the core issue in dispute. The question is under which category of rates the properties should be charged: the business/commercial rate or the vacant land rate? That question remains to be answered regardless of whether the properties are to be rated individually or not. For this reason, the City's reliance on this Court's judgment in *City of Tshwane Metropolitan Municipality v Uniqon Wonings (Pty) Ltd* (*Uniqon*)[7] is misplaced. That case dealt with the method of valuation of the remaining extent of a township after some erven had been transferred to individual purchasers. The question was whether, for rates clearance purposes, the township owner should be required to pay the rates due in respect of the entire township or only in respect of the particular erf that was to be transferred. The question was not what category of rates should be applied.

[36] The second difficulty with the City's argument is that it fails to engage in an interpretive exercise of the definition of business/commercial in the rates policies. The key portion of that definition for purposes of the core issue is the phrase 'registered in a township title'. As I noted earlier, the term 'township title' is not defined in the rates policies or in the Deeds Act. It has no obvious, plain meaning and requires interpretation.

[37] It is trite that the interpretative exercise is guided by the triad of language, context, and purpose, understood in relation to each other, with the aim of reaching a sensible, salient understanding of the words under scrutiny.[8]

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[7] *City of Tshwane Metropolitan Municipality v Uniqon Wonings (Pty) Ltd* [2015] ZASCA 162; 2016 (2) SA 247 (SCA) (*Uniqon*).

[8] *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) para 25; *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

[38] The Deeds Act is contextually relevant to the interpretation of the phrase 'registered in a township title'. Section 46 prescribes the registration process required for land subdivided and laid out as a township. However, there is no magic in s 46, nor is it determinative of the meaning of 'registered in a township title'. The section serves the pragmatic purpose of providing for a uniform system for recording and regulating title to, and transfer of,[9] land that has been laid out and proclaimed as a township. It does not tell us what is, or is not, a registered township title.

[39] Section 46 requires that the formal registration process for land forming part of a proclaimed township must involve the opening of a register at the Deeds Office.[10] This is commonly referred to as the township register, although the Deeds Act does not use this term specifically. Significantly, the township register does not supersede the registration of, and hence title to, the land on which the township has been proclaimed.[11] It plays a formal role in the land registration process and does not itself determine the legal nature of the title to the land in question.

[40] What is more, the Deeds Act recognises that the formal registration of transfer and ownership of land may take several different forms, depending on the underlying circumstances. These include deeds of grant, deeds of transfer, certificates of title, certificates of uniform title, certificates of consolidated title, title deeds and deeds of partition transfer. The nomenclature adopted and applied under the relevant provisions of the Deeds Act is a formal descriptor, rather than a substantive determinant, of the nature of the ownership in question. The fact that an owner holds title in the form of a CRT simply means that they have engaged in the formal processes provided for in ss 34 to 39, or s 43, or s 43A, as the case may be, to substitute their original form of title with a CRT. The issuing of a CRT does not change the legal substance of their ownership. They still hold 'title' to the land in question, and that title is registered in the Deeds Office. Consequently, and contrary to the City's submissions, the issuing of a CRT is not determinative of what is meant by 'registered in a township title' in the definition of business/commercial in the rates policies. What this illustrates is that the City's approach to the issue is fundamentally misdirected.

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[9] When read with s 47 of the Deeds Act.
[10] Section 46(3).
[11] *Uniqon* para 9.

[41] The more appropriate pointer for determining what is meant by 'registered in a township title' is the purpose of the rates policy. It is this that gives proper context to the definition. The City explained in the affidavits filed in support of its review that historically its rates policies, which gave township developers the benefit of the lesser, business/commercial, rating on their property, were intended to encourage development within the municipality. For this reason, undeveloped township land not yet transferred to individual purchasers, was regarded as part of the developers' 'stock' and was rated more favourably. Once it was transferred to individual purchasers, it was rated as vacant land with a view to encouraging owners to develop their individual erven.

[42] The 2011 rates policy was not aimed at effecting any change to the City's stated intention. On the contrary, as I noted earlier, the City expressly indicated that the inclusion in the 2011 rates policy of the reference to 'properties of a township developer registered in a township title' was to clarify, and so to cement, its previously existing policy. It gave formal expression to its prior rates practice. It must therefore be accepted that the phrase 'included in the 2011 rates policy' is to have the same meaning and effect as that of the practice historically adopted by the City. The purpose of the definition is to give township developers the benefit of the lower rates scale until they dispose of individual erven to third party owners. Until then, the properties registered to the township developer form part of its 'stock' and are rated accordingly.

[43] The obvious question to ask is how this stated purpose can possibly be served by construing 'registered in a township title' in the definition to exclude properties registered under a CRT? The properties are still owned by the township developer, albeit under a title with a different nomenclature than before, with a view to selling them to third party purchasers for development. They remain, for all practical and legal purposes, part of the township developer's 'stock'. There is simply no rational reason for excluding them from the definition of business/commercial for rates purposes. This would defeat the fundamental stated purpose of the City's policy. It follows that the interpretation favoured by the City, which excludes properties owned by a township developer under a CRT from the definition of business/commercial,

must be rejected as insensible and undermining of the express purpose of the provision.[12]

[44] There is thus no merit in the appeal against the high court's decision on the SVR challenge. This has material consequences for the appeal against the high court's decision in respect of the GVR challenge. Copperleaf founded its review of the 2012-2017 GVR on the accepted principle that if a second act (the 2013-2017 GVR) depends for its validity on a prior act (the 2010-2011 SVR), the invalidity of the prior act has the effect that the second act is also invalid.[13] Applying this principle in *Lombardy*, this Court found that:

'It would have been a relatively simple matter for the City to have filed a further affidavit stating that the new rolls were not based on the re-categorisation in the 2012 roll and what further steps had been taken to cure the failure to comply with the MPRA in 2012. … The inference is … inescapable that the City, despite being given every opportunity to do so, never sought to adduce further evidence as to how it cured the defects in the 2012 roll, simply because there was no such evidence to adduce.'[14]

[45] In this case, the City has repeated the failings it displayed in *Lombardy*. While asserting that the decision to categorise the Peach Tree 2 properties again as vacant land in the 2013-2017 GVR was 'hermetically sealed' from the decision reflected in the 2010-2011 SVR, it produced no evidence to support the existence of an independent decision to this effect. The end result is inescapable: the 2013-2017 GVR was inextricably linked to, and premised on, the invalid 2010-2011 SVR and is for this reason also invalid. There is no merit in this aspect of the City's appeal.

[46] The City argued in its written heads of argument that the relief granted by the high court, in substituting the decision to categorise the Peach Tree 2 properties as vacant land with their categorisation as business/commercial, was not justified and that the issue ought properly to have been remitted back to the City for consideration. At the hearing of the appeal, however, counsel for the City conceded that if its appeal in respect of the core issue was unsuccessful, this aspect of the appeal would fall

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[12] *Endumeni* para 18.
[13] *Seale v Van Rooyen NO* [2008] ZASCA 28*;* [2008] 3 All SA 245 (SCA); 2008 (4) SA 43 (SCA) para 13.
[14] *Lombardy* paras 26-27.

away. This concession was correctly made. Once the City's interpretation of its rates policies is rejected, the only possible valid decision is that the properties must be categorised as business/commercial. No purpose would be served by remitting the matter back to the City for decision.

[47] The final aspect to consider is the cross-appeal in respect of the high court's variation order. After judgment was handed down by the high court, Copperleaf brought a formal application to vary the order granted under Uniform rule 42(1)*(b).* It pointed out certain patent errors and omissions. The high court granted the variation order. Unfortunately, that order did not cure all the defects originally identified, nor did it cure the lack of clarity that beset it. Copperleaf's cross-appeal against the varied order is well founded. The order it asks this Court to make clarifies the high court's order and gives practical effect to the intention of that court as manifest in its judgment and confirmed on appeal. It is in the interests of justice to order the variations sought, including a variation of the unmotivated costs order against Copperleaf in the variation application. There was no reason to make that order against Copperleaf. It was substantially successful in that application and ought not to have been mulcted in costs. It is thus appropriate that that order be set aside and substituted with an order that the City pay those costs.

[48] In the final result, the appeal must fail and the cross-appeal succeed.

[49] The following order issues:

1 The appellants' appeal is dismissed with costs, including the costs pursuant to the employment of two counsel.

2 The first respondent's cross-appeal against the orders granted by Mokose J on 13 October 2020 and 22 November 2022 succeeds with costs including the costs pursuant to the employment of two counsel.

3 The order of Mokose J granted on 13 October 2020 is replaced by the following order:

'1 The evidence of Allen Stanley West contained in paragraph 38.20 of Annexure "N" to the founding affidavit in the application under case number 61228/2017 (the review application) and in paragraph 15.2 of Annexure "C" to the answering affidavit

in the application under case number 48037/2017 (the enforcement application) is struck out.

2 The 2010-2011 supplementary valuation roll and the 2013-2017 general valuation roll are reviewed and set aside to the extent that they categorise those erven in Peach Tree Extension 2 (previously a portion of the Farm Knopjeslaagte 385) registered in the name of the applicant in the enforcement application (Copperleaf) at the time (the relevant properties) as “vacant land”.

3 The concomitant re-categorisation by the third respondent in the enforcement application of the relevant properties as “vacant land” is reviewed and set aside.

4 The decision to categorise the relevant properties as “vacant land” is substituted with a decision to categorise the relevant properties as “business/commercial”.

5 The first respondent in the enforcement application (Tshwane) is directed to adjust the 2010-2011 supplementary valuation roll and the 2013-2017 general valuation roll to indicate that the relevant properties are categorised as “business/commercial” within 30 days of service of this order.

6 Within 45 days of the service of this order on him, the fourth respondent in the enforcement application (the municipal manager) is ordered to calculate the amount actually paid by Copperleaf in respect of rates on the relevant properties from 19 December 2008 to the earlier of the date on which a specific property was registered in the name of a purchaser thereof or 30 June 2013, and the amount which would have been paid by Copperleaf if the relevant properties had been categorised as “business/commercial” from 19 December 2008 to the earlier date on which a specific property was registered in the name of a purchaser or 30 June 2013.

7 Within 45 days of the service of this order on him, the municipal manager is ordered to repay to Copperleaf the difference between the amounts actually paid by Copperleaf to Tshwane from 19 December 2008 and the amount which would have been paid by Copperleaf if the relevant properties had been categorised as “business/commercial” from 19 December 2008 to the earlier of the date on which a specific property was registered in the name of a purchaser or 30 June 2013, plus interest on such amounts from the date(s) on which Copperleaf paid such amounts to Tshwane to date of final payment calculated at the prime rate levied by the bank at which the primary account of Tshwane is kept, plus 1%, as at the date of the calculation.

8 Within 45 days of the service of this order on him, the municipal manager is ordered to calculate the amount actually paid by Copperleaf in respect of rates on the relevant properties from 1 July 2013 to the earlier of the date on which specific property was registered in the name of a purchaser thereof or 30 June 2017; and the amounts which would have been paid by Copperleaf if the properties had been categorised as “business/commercial” from 1 July 2013 to the earlier of the date on which a specific property was registered in the name of a purchaser thereof or 30 June 2017.

9 Within 45 days of service of this order on him, the municipal manager is ordered to repay to Copperleaf the difference between the amounts actually paid by Copperleaf to Tshwane from 1 July 2013 and the amounts which would have been paid by Copperleaf if the properties had been categorised as “business/commercial” from 1 July 2013 to the earlier of the date on which a specific property was registered in the name of a purchaser thereof or 30 June 2017, plus interest on such amounts from the date(s) on which Copperleaf paid such amounts to Tshwane to date of final payment calculated at the prime rate levied by the bank at which the primary account of Tshwane is kept, plus 1%, as at the date of the calculation.

10 Tshwane is ordered to make payment to Copperleaf within twenty days of service of this order on it of the sum of R87 862.63 plus interest on such amount at the rate of 10.5% per annum from 3 April 2017 to date of final payment.

11 The review application is dismissed with costs, including the costs pursuant to the employment of two counsel.

12 Tshwane is ordered to pay the costs of the counter-application in the review application including the costs pursuant to the employment of two counsel.

13 Tshwane is ordered to pay the costs of the enforcement application, including the costs pursuant to the employment of two counsel.’

4 The order granted by Mokose J on 22 November 2022 is replaced by the following order:

‘The City of Tshwane Metropolitan Municipality is ordered to pay the costs of the variation application, including the costs pursuant to the employment of two counsel.’

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R M KEIGHTLEY
ACTING JUDGE OF APPEAL

Appearances

For the appellants:	T Strydom SC with L Kotze
Instructed by:	MB Mabunda Incorporated, Johannesburg
	Matsepe Attorneys, Bloemfontein
For the first respondent:	H F Oosthuizen SC with D J Smit
Instructed by:	Veneziano Attorneys, Pretoria
	Symington de Kock Attorneys, Bloemfontein.