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

CASE NUMBER: 16143/2021

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED NO

In the matter between:

EDELWEISS MALHERBE

Applicant

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Respondent

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 11h30 on the 22nd of August 2022.

DIPPENAAR J

[1] This application concerns the interpretation of various of the provisions of chapter 6 of the Local Government: Municipal Property Rates Act¹ (“the Act”), pertaining to valuation rolls and the exercise by the respondent of its power in terms of s 229 of the Constitution to impose rates on property in its jurisdiction². The Act is legislation promulgated under s 229(2)(b) of the Constitution to regulate the exercise of that power³.

[2] The background facts are uncontentious and are by and large common cause. The Applicant is the registered owner of three properties⁴ which were revalued in terms of the 2018 general valuation roll, published by the respondent⁵ in terms of the Act. Prior to the implementation of then new roll, the municipal values of the properties were R1 240 000, R1 490 000 and R1 470 000 respectively. In the new roll the values were R5 750 000, R2 334 000 and R7 422 000 respectively.⁶, constituting increases of respectively 363.71%, 56.7% and 404.9%. The applicant did not object to the valuation placed on one of the properties⁷ and this application pertains to the remaining two.

[3] Objections in terms of s 50(1)(c) of the Act against the valuations of the properties were lodged by the applicant’s grandson, Mr Malherbe, on her behalf, who was then in the employ of her attorney of record, Manley Inc. on 6 April 2018. Four written demands were made from the respondent by Manley Inc. to provide notices in terms of s 53(1) of the Act during the period 8 October 2019 to 3 February 2020.

[4] On 28 February 2019, the municipal valuer issued notices in terms of s 53(1) which were addressed to Mr Malherbe. In those notifications, the municipal valuer after

¹ 6 of 2004

² *Koster v Kgoliong River Local Municipality* 2019 JDR 1365 (NWM) at paras [15]-[16] and the authorities cited therein

³ MEC for Local Government and Traditional Affairs, *Kwa Zulu Natal v Botha NO and Others* 2015 (2) SA 405 (SCA) para [6]

⁴ Portion 3 of Erf 44, portion 4 of Erf 44 and the remaining extent of Erf 44 Magaliessig Extension 4 Township.

⁵ On 22 March 2018, notices were hand delivered to the applicant in Pietermaritzburg in terms of s49(1)(a)(i) of the Act informing her of the publication of the new roll and that it would lie open for inspection and objection from 20 February 2018 to 6 April 2018. The new roll was implemented from 1 July 2018.

⁶ Constituting increases of respectively 363.71%, 56.7% and 404.9%.

⁷ Portion 4 of Erf 44

considering the objections made a decision and reduced the values of the two properties to R4 000 000 and R5 100 000 respectively.⁸ Those amounts constituted adjustments in excess of 10% of the original property values. The applicant and Mr Malherbe denied receipt of those notices. The applicant further disputed that the notifications to Mr Malherbe were compliant with s 53(1) of the Act.

[5] The present application was served on the respondent on 7 August 2020. Pursuant thereto, on 20 August 2020 the municipality's attorney wrote to Manley Inc. contending that the s 53(1) notices had been delivered. Copies of the notices of 28 February 2019 sent to Mr Malherbe, were included in the correspondence. That letter was received by Manley Inc. who responded thereto on 24 August 2020. The stance adopted by the respondent was that the application was moot, given that the s 53(1) notices had been sent and that if the application was withdrawn, no costs order would be sought. The applicant persisted in the application.

[6] The primary dispute between the parties is whether or not the respondent complied with s 53(1) of the Act by sending notifications of the outcome of the applicant's objections to the person who submitted the objections on her behalf, but not to the applicant herself.

[7] The second dispute is an issue belatedly raised by the applicant in her supplementary heads of argument, which invokes reliance on s 52 of the Act, whereas no reliance was placed on that section in the affidavits filed on the applicant's behalf. It raises the issue whether in circumstances where s 52 of the Act is applicable and the municipal valuer's decision in response to an objection is required to be submitted to the valuation appeal board for compulsory review, a notice in terms of s 53(1) could have been competently given by the respondent before the compulsory review had been finalised.

⁸ The adjusted values determined by the municipal valuer constituted increases of 222.58% and 246.94% respectively.

[8] The applicant argued that if either of the issues were answered in the negative, the respondent would not yet have complied with its obligations in terms of s 53(1) of the Act and the periods within which the applicant is entitled to request reasons and to appeal would not yet have begun to run. The applicant argued that was the case and the application should succeed and the relief sought in her proposed draft order should be granted.

[9] The respondent's case was that there was compliance with the notification requirements of s 53(1) or at least substantial compliance when the notifications were delivered to Mr Malherbe on 28 February 2019, alternatively when the notices were sent to the applicant's attorney of record on 20 August 2020.

[10] It was argued that as a result, the applicant was out of time to request reasons or lodge an appeal under s 54 but had other adequate remedies at her disposal, being to launch review proceedings pursuant to the notifications to the applicant of the outcomes of the compulsory review under s 52 of the Act.

[11] The respondent objected to the additional relief sought by the applicant in her proposed draft order. In her notice of motion, the applicant sought mandatory relief against the respondent directing it: (i) to comply with s 53 of the Act by notifying the applicant in writing of the outcome of her objections lodged by her against the valuations of portion 3 and the remaining extent of Erf 44 Magaliessig Extension 4, for the purposes of the Respondent's General valuation roll, 2018; and (ii) ordering the respondent to comply with s 53 of the Act within 45 days. Costs were sought on the scale as between attorney and client.

[12] The applicant's proposed draft order introduced an order: *"Confirming that upon the issue of the notices the applicant would be entitled to apply to the respondent's municipal manager within 30 days of the issue of such notices for written reasons for the valuations in terms of s53(2) of the Act and/ or to lodge an appeal against the valuations in terms of s54(2)(b) of the Act"*.

[13] I agree with the respondent that absent a formal amendment to the applicant's notice of motion, this relief should not be entertained.

[14] After the application papers were filed, the applicant during January 2022 obtained leave to deliver a supplementary affidavit placing subsequent two events on record.

[15] The first, that on 15 November 2021 the applicant's attorney of record had received notifications from the respondent dated 20 September 2021 that the compulsory review in terms of s 52 of the Act had been finalised by the valuation appeal board and that no adjustment was made by t to the increased valuations placed on the properties by the municipal valuer. Those decisions were transmitted to the applicant by way of postal service and email, notably to the same address as the s 53(1) notices had been sent to, being [...] M [...] street B [...] Pretoria 0181 and via email to ernie@manleylaw.co.za. In each of the notices it was stated:

"If you feel aggrieved by the above decision, you are well within your rights to take the matter on review to the High Court of South Africa at your own cost".

[16] The second, that the applicant had recently obtained and accepted conditional offers for the properties at prices that were substantially below the valuations placed on them by the municipal valuer.

[17] As a general principle, a litigant's case must ordinarily be pleaded in the founding papers and not for the first time in argument⁹. An exception to this rule is that a point that has not been raised in the affidavits may only be argued or determined by a court if it is legal in nature, foreshadowed in the pleaded case and does not cause prejudice to the other party¹⁰. Albeit that the applicant raised its new interpretation argument, which is legal in nature late, the respondent was afforded the opportunity to deal with the

⁹ Wilkinson & Another v Crawford NO and Others [2021] ZACC 8 at para [31]

¹⁰ My Vote Counts NPC v Speaker of the National Assembly 2016 (1) SA 132 (CC) para 177; Wilkinson supra, para [32]

argument and to deliver supplementary heads of argument and an affidavit in response to the applicant's supplementary affidavit. It was not argued by the respondent that it was prejudiced. Accordingly, the application will be considered on all the arguments raised.

[18] The application must be viewed in light of various well established principles. First, in motion proceedings, the affidavits constitute both the pleadings and the evidence¹¹. Second, as the applicant seeks final relief, the so-called *Plascon Evans* rule¹² applies. It is well established that motion proceedings, unless concerned with interim relief, are about the resolution of legal issues based on common cause facts. Third, where there is a genuine dispute of fact, the respondent's version must be accepted. A dispute will not be genuine if it is so far-fetched or so clearly untenable that it can be safely rejected on the papers.¹³

[19] It first needs to be established whether the respondent has complied with s 53(1) of the Act.

[20] In her founding papers, the applicant's case was that she did not receive the notifications in terms of s 53(1) of the Act and absent any internal remedy, an application was necessary as a result of the respondent's failure to act in terms of s 53(1). The applicant was only notified of the decision and communication under s 53(1) after the launching of the application. In her original heads of argument, it was argued the application was not moot but now centered around whether the respondent complied with s53(1). She conceded that it could be inferred that a decision was taken, after the correspondence from the respondent's attorneys on 20 August 2020.

[21] The applicant's central contention was that the respondent failed to discharge its onus to prove that it lawfully or properly transmitted or delivered the said s 53(1) notices

¹¹ Hart v Pinetown Drive-In Cinema (Pty) Ltd 1972 (1) SA 464 (D)

¹² Plascon Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) 634F; National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA)

¹³ Wightman t/a J W Construction v Headfour (Pty) Ltd and Another 2008 (3) SA 371(SCA) para [12]-[13]

as it alleges to have done, even if it was sufficient to furnish only the applicant's representative, Mr Malherbe, with the said notices.

[22] The applicant argued that personal service of the s53(1) decisions was required on both the applicant and Mr Malherbe as being the *“standard of compliance that is required by the Act and/or that was envisaged by the respondent”*. The respondent on the other hand contended that there was compliance or at least substantial compliance with the notification requirement under s 53(1).

[23] The respondent's version is the following. The municipal valuer addressed the two s 53(1) notices signed and dated 28 February 2019 to the applicant's appointed representative, Mr Malherbe, as reflected in the applicant's objection form. The notices were addressed to Mr Malherbe at [...] M [...] Street, B [...] Pretoria. The decisions were sent to Evaluations Enhanced Property Appraisals (Pty) Ltd (“Evaluations”) for capturing and processing. The notices were then captured by Evaluations and thereafter sent to a subcontractor, CAB Holdings (Pty) Ltd (“CAB”). CAB, after receipt attended to the printing and transmission of the notices by using its bulk mailing at the SA Post Office, forming part of batch no 10032. A printout was provided of SAPO's electronic sales order confirmation, stamped 6 March 2019 reflecting that “OBJ BATCH 29-32 was transmitted by SAPO on 6 March 2019. The respondent thus on 6 March 2019 by way of regular postal services transmitted the notices to Mr Malherbe's postal address. Copies of the envelopes in which the notices were transmitted were attached to the answering affidavit. The notices were also transmitted by CAB to the designated email address on the objection form, being ernie@manleylaw.co.za. According to the respondent it was impossible to provide proof of delivery due to the email being sent on a bulk mailing system. The status of applicant's objection was marked as completed on respondent's online portal and the decisions were published on the respondent's valuation platform to which the applicant admits access.

[24] I have already referred to the common cause facts. According to the applicant, Mr Malherbe left the employ of Manley Inc. at the end of 2018. He currently practices as counsel. Manley Inc. remains the applicant's attorney of record. The applicant is an

elderly pensioner who resides in a retirement village in Kwa-Zulu Natal. She does not reside at any of the properties.

[25] In terms of the objections lodged by the applicant under s 50 of the Act, Mr Malherbe is stated as the “authorised representative of the objector”. The objection form was signed by Mr Malherbe on 6 April 2018, who declared that the information and particulars supplied on the document are correct. The postal and email addresses to which the respondent addressed the s 53(1) notifications are stated as being Mr Malherbe’s details. As proof of Mr Malherbe’s authorisation, a broadly worded general power of attorney was attached to the objections¹⁴, in terms of which the applicant appointed Mr Malherbe, inter alia:

“to be my Attorney and Agent for managing and transacting my business and affairs in the REPUBLIC OF SOUTH AFRICA AND EVERY TERRITORY OR COUNTRY ANYWHERE IN THE WORLD,

with full power and authority for me and in my name and for my account and benefit to ask, demand, sue for, recover and receive all debts or sums of money, goods, effects and things whatsoever which now are or hereafter may become due, owing and payable or belong to me,

AND to adjust, settle, compromise and submit to arbitration all accounts, debts, claims, demands, disputes and matters which may subsist or arise between me and any person, persons, company(ies), corporation(s) or body(ies) whatsoever and for the purpose or arbitration to make the necessary appointments and sign and execute the necessary acts and instruments in that behalf, ...

AND to commence and prosecute and to defend, compound and abandon all actions, suits, claims, demands and proceedings in regard to me or my property or in relation to my affairs in or before any Court or other body of persons in the Republic of South Africa and in any territory or country anywhere in the world”.

¹⁴ And the answering affidavit

[26] The wording of the power of attorney is clear and requires no interpretation¹⁵. It does not limit the appointment of Mr Malherbe to the submission of the objections as argued by the applicant. In terms of the general power of attorney Mr Malherbe was authorised not only to act as the applicant's attorney and agent but to act in her name and for her benefit and to prosecute all proceedings in relation to her affairs. In that capacity Mr Malherbe was also authorised to receive notifications, such as the s53(1) notices on her behalf and in her name.

[27] No evidence was provided that such power of attorney was ever revoked or the respondent notified that any contact details of Mr Malherbe were ever changed, nor was that the applicant's case. The bald allegation is simply made that Mr Malherbe was only authorised to submit the objections and was not the applicant's attorney or agent at the time the s53 notifications were sent.

[28] Moreover, Manley Inc was at all material times since the lodging of the applicant's objections, her duly appointed attorneys. Mr Manley is the deponent to the applicant's affidavits. Manley Inc at the latest received the notifications via the 20 August 2020 letter from the respondent's attorney.

[29] In these circumstances, the applicant's bald contention that neither the power of attorney nor the objection forms nor the legislation authorised the applicant to direct the s 53(1) notices to Mr Malherbe alone, does not bear scrutiny.

[30] Despite the applicant's criticism that there were no confirmatory affidavits by the individuals involved in the transmission of the notices and that the respondent's version constituted hearsay evidence and thus that it did not discharge its onus, the respondent's version cannot be rejected as false or untenable. The applicant moreover did not put up any countervailing evidence, merely a bald denial that the notices were received and the broad averment that on 28 February 2019 when the notices were sent

¹⁵ De Villiers v Elsplek Boerdery (Pty) Ltd 2017 JDR 0465 (SCA)

to Mr Malherbe, he was not the applicant's authorised representative and no longer in employ of Manley Inc.

[31] In the applicant's supplementary affidavit, her attorney of record relied on the outcomes of the appeal boards review in terms of s 52 of the Act, dated 20 September 2021 sent by the respondent. Those notices were transmitted to the applicant via postal services to her representative's address being [...] M [...] street B [...] Pretoria 0181 and via email to ernie@manleylaw.co.za. These are the selfsame addresses and methods used to transmit the s53(1) notices. The applicant did not take issue with the delivery method of the s 52 outcomes notices. To this extent the applicant's version is inconsistent and I agree with the respondent that the applicant cannot approbate and reprobate in her affidavits.

[32] S 53(1) does not prescribe how notification must be effected. The relevant portion thereof provides:

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

[33] S 49(1)(c) of the Act provides for the service of the notice that the roll is open for public inspection as envisaged in s 49(1)(a) on every property owner “*by ordinary mail, or, if appropriate, in accordance with section 115 of the Municipal Systems Act*”. That notice commences the procedures pertaining to valuation rolls. This is the only provision in Chapter 6 of the Act which specifies how notification is to be effected. Delivery of the notice via ordinary mail is thus expressly authorised and the section does not prescribe that service in terms of the Municipal Systems Act is peremptory.

[34] The relevant portions of s115 of the Local Government Municipal Systems Act¹⁶, which regulates service of documents and process, provide:

“(1) Any notice or other document that is served on a person in terms of this Act or by a municipality in terms of any other legislation is regarded as being served-

(a) when it has been delivered to that person personally;

(b) when it has been left at that person’s place of residence or business in the Republic with a person apparently over the age of sixteen years;

(c) when it has been posted by registered or certified mail to that person’s last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;

(d) if that person’s address in the republic is unknown, when it has been served on that person’s agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c); or

(e) if that person’s address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.

(2) When any notice or other document must be authorised or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is prescribed in the notice or other document as the owner, occupier or holder of the property right in question, and it is not necessary to name that person.”

¹⁶ 32 of 2000

[35] Considering the information provided to the respondent and the power of attorney which accompanied the objection, I am persuaded that the respondent was entitled to serve the s 53(1) notices on Mr Malherbe.

[36] I am further persuaded that there was indeed compliance with the notification requirements stated in s 53(1) of the Act. The specific service requirements contained in the Municipal Systems Act are not referred to in s 53.

[37] Even if I am wrong on this issue, I am satisfied that there was substantial compliance with the requirements of s 53(1), by the latest on 20 August 2020, when the applicant's attorney received the copies of the said notices from the respondent's attorney of record.

[38] In considering substantial compliance, the ordinary language of the section should be applied, viewed in the light of their purpose¹⁷. The wording of s 3(1) only requires notification in writing; it does not prescribe in what manner the written notification must be given. It also does not prescribe that notification must be given to the applicant personally in circumstances where she had appointed a duly authorised representative.

[39] A narrowly textual and legalistic approach must be avoided. The question is whether the steps taken by the respondent are effective when measured against the object of the legislature, which is ascertained from the language, scope and purpose of the enactment as a whole and the statutory requirement in particular. A failure by a municipality to comply with the relevant statutory provisions does not necessarily lead to the actions under scrutiny being rendered invalid¹⁸.

[40] Considering the purpose of notification under s 53 I am persuaded that the steps taken by the respondent were indeed effective in bringing the outcomes of the municipal valuer's decisions to the notice of the applicant's duly authorised representatives, at the

¹⁷ African Christian Democratic Party v Electoral Commission and Others 2006 (3) SA 305 (CC) para [25]

¹⁸ Liebenberg NO and Others v Bergriver Municipality 2013 (5) SA 246(CC) paras [[25]-[26]

very latest when the notices were provided to the applicant's attorney on 20 August 2020.

[41] I conclude that the respondent did comply with its obligations under s53(1) of the Act and this issue must be determined in favour of the respondent.

[42] The applicant argued that even if the issue is to be determined in favour of the respondent, the notifications were invalid because they were given before finalisation of the compulsory review required in terms of s52 of the Act.

[43] This leads to a consideration of the second issue raised by the applicant, which involves an interpretation of the various sections and a determination of the relationship between s 52, s 53 and s 54 of the Act. In summary, the applicant's argument was that s 53 must be read subject to s 52.

[44] The relevant provisions of the Act, which all fall under chapter 6, which regulate valuation rolls provide:

“50 Inspection of, and objections to, valuation rolls

(1) Any person may, within the period stated in the notice referred to in section 49(1) (a)—

(a) inspect the roll during office hours;

(b) on payment of a reasonable fee, request the municipality during office hours to make extracts from the roll; and

(c) lodge an objection with the municipal manager against any matter reflected in, or omitted from, the roll.

(2) An objection in terms of subsection (1)(c) must be in relation to a specific individual property and not against the valuation roll as such.

(3) A municipal manager must assist an objector to lodge an objection if that objector is unable to read or write.

(4) A municipal council may also lodge an objection with the municipal manager concerned against any matter reflected in, or omitted from, the roll. The municipal manager must inform the council of any matter reflected in, or omitted from, the roll that affects the interests of the municipality.

(5) A municipal manager must, within 14 days after the end of the period stated in the notice referred to in section 49 (1)(a), submit all objections to the municipal valuer, who must promptly decide and dispose of the objections in terms of section 51.

(6) The lodging of an objection does not defer liability for payment of rates beyond the date determined for payment.

51 Processing of objections

A municipal valuer must promptly-

(a) consider objections in accordance with a procedure that may be prescribed;

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

(c) adjust or add to the valuation roll in accordance with any decisions taken.

52 Compulsory review of decisions of municipal valuer

(1) If a municipal valuer adjusts the valuation of a property in terms of section 51(c) by more than 10 per cent upwards or downwards -

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

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

(2) An appeal board must –

(a) review any such decision; and

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

(3) If the appeal board amends or revokes the decision, the chairperson of the appeal board and the valuer of the municipality must ensure that the valuation roll is adjusted in accordance with the decisions taken by the appeal board.

53 Notification of outcome of objections and furnishing of reasons

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

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

(b) any adjustments made to the valuation roll in respect of the property concerned; and

(c) *whether section 52 applies to the decision.*

(2) Within 30 days after such notification, such objector or owner may, in writing, apply to the municipal manager for the reasons for the decision. A prescribed fee must accompany the application.

(3) The municipal valuer must, within 30 days after receipt of such application by the municipal manager, provide the reasons for the decision to the applicant, in writing.

54 Right of appeal

(1) An appeal to an appeal board against a decision of a municipal valuer in terms of section 51 may be lodged in the prescribed manner with the municipal manager concerned by-

(a) a person who has lodged an objection in terms of section 50 (1)(c) and who is not satisfied with the decision of the municipal valuer;

(b) an owner of a property who is affected by such a decision, if the objector was not the owner; or

(c) the council of the municipality concerned, if the municipality's interests are affected.

(2) An appeal by-

(a) an objector must be lodged within 30 days after the date on which the written notice referred to in section 53(1) was sent to the objector or, if the objector has requested reasons in terms of section 53(2), within 21 days after the day on which the reasons were sent to the objector;

(b) *an owner of such property must be lodged within 30 days after the date on which the written notice referred to in section 53(1) was sent to the owner or, if the owner has requested reasons in terms of section 53(2), within 21 days after the day on which the reasons were sent to the owner; or*

(c) *a municipal council must be lodged within 30 days after the date on which the decision was taken.*

(3) (a) *A municipal manager must forward any appeal lodged in terms of subsection (1) to the chairperson of the appeal board in question within 14 days after the end of the applicable period referred to in subsection (2).*

(b) *The chairperson of an appeal board must, for purposes of considering any appeals, convene a meeting of the appeal board within 60 days after an appeal has been forwarded to the chairperson in terms of paragraph (a).*

(c) *When an appeal is forwarded to the chairperson of an appeal board in terms of paragraph (a), a copy of the appeal must also be submitted to the municipal valuer concerned.*

(4) *An appeal lodged in terms of this section does not defer a person's liability for payment of rates beyond the date determined for payment.*

[45] The principles relevant to interpretation are well established. In *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹⁹, Wallis JA in a unanimous judgment of the Supreme Court of Appeal stated the principles pertaining to interpretation thus:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having

¹⁹ 2012 (4) SA 593 (SCA) paras [18]-[19] at 603E-605B

regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document".

[46] The nub of the applicant's argument was that as the compulsory review process required by s 52 was now concluded pursuant to the September 2021 notifications, the lawful issue of notices under s 53 is now competent and that the earlier s 53(1) notices were premature. The argument starts with a distinction to be drawn between (a) circumstances where the municipal valuer's decision in response to an objection in terms of s 51(b) is not to adjust the valuation upwards or downwards by more than 10%, where the compulsory review by the valuation appeal board required by s 52 is not applicable and (b) circumstances where the adjustment is more than 10%, in which case the s 52 review is applicable.

[47] It was argued that if there is no automatic review, the municipal valuer must proceed to notify the objector in terms of s 53(1). However, if the decision is subject to

automatic review under s 52, the objections process would not have been completed until the decision of the valuation appeal board in respect of the compulsory review was made known. In those circumstances, the municipal valuer would only be in a position to notify the objector of the outcome of the objection after receipt of the findings of the valuation appeal board. Only when an objector whose objection has been subject to review was notified of the decision of the municipal valuer as well as of any adjustment thereof on review, would the objector be in a position to request the reasons given by the municipal valuer for his decision and, upon receipt of such reasons, to finally decide whether or not to appeal against the valuations placed on his/her property.

[48] It was further argued that there was no remedy open to the objector in terms of the decision reached in the compulsory review procedure. Neither was it necessary because the compulsory review process is not dispositive of the objection process, it is simply one step in the objection process and only when that entire process has been completed does the dissatisfied objector become entitled to request reasons and to lodge an appeal.

[49] In my view, the applicant's interpretation is strained and does not pass muster. The applicant could not provide any authority in support of the interpretation contended for. I agree with the respondent that the applicant seeks to conflate the different sections of the Act and that the interpretation contended for does not take into consideration the wording of the relevant provisions or their context and does not lead to a sensible result.

[50] Considering the wording of the relevant sections, there are two distinct remedies and procedures that may be followed in terms of the Act that run concurrently. In respect of the first, once notification of outcome of an objection in terms of s 53 of the Act has been given, the applicant has a right of appeal to the appeal board in terms of s 54. Such right exists irrespective of whether the municipal valuer adjusted the valuation upwards or downwards by more or less than 10% and requires notification to be given irrespective whether s 52 applies or not. The only obligation created in s 53(1)(c) is that the notification must state whether s 52 applies to the decision.

[51] The second distinct remedy arises only where s 52 applies and the adjustment of the property is more than 10% upwards or downwards. In such instance, there is a compulsory internal review of the decision of the municipal valuer, in terms of which the appeal board reviews such decision and either confirms, amends or revokes the decision. Once the property owner is notified of the decision of the appeal board, such decision may then be taken on review to the High Court.

[52] There is nothing in the wording or context of s 53 to suggest that it must be read as being subject to s 52 or that s 52 must be read into s 53, as the applicant suggests. Had this been the intention of the Legislature it would reasonably have been expressly stated that s 53 should be read subject to s 52. There is also nothing which links the appeal under s 54 to the automatic internal review under s 52.

[53] A notice under s 53 is to be given irrespective of whether or not s 52 applies. Under s 53(1) the municipal valuer must notify the objector of his decision pertaining to the objection. Considering the wording of that section, the notification under s 53(1) precedes any outcome of the compulsory review process under s 52.

[54] S 53 moreover does not provide for the issuing of more than one notice or the reissuing of such notices. The relief sought by the applicant is for the *“issuing of fresh notices in terms of s 53(1) of the Act”*. Neither the wording of s 53 nor the structure of the relevant provisions, make provision for this.

[55] S 54 affords an objector the right of appeal to the appeal board against the decision of the municipal valuer in respect of an objection. In its terms, it does not refer to s 52 at all. It further does not draw any distinction whether the adjustment is made more or less than 10%.

[56] I am fortified in the conclusion that there are separate and distinct processes, given that under s 55 of the Act an adjustment or addition to the valuation roll may be made in the following circumstances: First, after the lodging of a successful objection within the time limit specified in s 49; Second, upon the compulsory review of the

decisions of the municipal valuer where he has, as a consequence of the lodging of a valid objection, adjusted the valuation of a property by more than 10% upwards or downwards; and third, upon a successful appeal to an appeal board against a decision of the municipal valuer subsequent to the lodging of a valid objection²⁰.

[57] In s 57 of the Act, the functions of the appeal board are stated to be:

“(a) to hear and decide appeals against the decisions of a municipal valuer concerning objections to matters reflected in, or omitted from, the valuation roll of a municipality in the area for which it was established in terms of s56; and

(b) to review decisions of a municipal valuer submitted to it in terms of s52.”

[58] The section thus draws an express distinction between its appeal functions and its review functions and refers separately to the appeal process (as envisaged by s 54) and the automatic review process under s 52.

[59] The applicant was expressly notified of her right to appeal under s 54 in the s 53(1) notifications relied on by the respondent. The applicant was further expressly informed of her right of review of the decision of the valuation appeals board pursuant to the s 52 review in the notification letters of the outcome of that review dated 20 September 2021.

[60] The respondent’s reliance on s 80 of the Act in support of an argument that the applicant may apply to the MEC for condonation of the late filing of her appeal, is however misconceived. Pursuant to the authorities relied upon by the respondent in argument²¹, the provision was amended with effect from 1 July 2015. Such relief is now only open to municipalities pursuant to an amendment effected in terms of Local

²⁰ Botha para [24]

²¹ MEC for Local Government and Traditional Affairs, Kwa Zulu Natal v Botha NO and Others 2015 (2) SA 405 (SCA)

Government: Municipal Property Rates Amendment Act²², which amended subsection (1) of s 80 to provide:

“The MEC for local government in a province may, on good cause, shown, and on such conditions as the MEC may impose, condone any non-compliance by a municipality with a provision of this Act requiring any act to be done within a specified period or permitting any act to be done only within a specified period”

[61] Thus condonation of non-compliance with time periods is not available to property owners or objectors who have failed to comply with the time periods stipulated by the Act. This does not however mean that the applicant did and does not have alternative remedies at her disposal. No reasons were advanced why she did not pursue such remedies, despite her attention being specifically drawn to the existence of those remedies in the respondent’s notifications under s 53(1) and s 52.

[62] The relief currently sought is not competent under the Act, given that s 53(1) notifications have already been issued and s 53(1) does not provide for the issuing of multiple notices thereunder. The relief sought by the applicant effectively seeks the issuing of fresh notices to assist her in overcoming the obstacles imposed by the passage of the relevant prescribed time periods and her failure to timeously exercise the remedies afforded to her in terms of the Act. The strained interpretation contended for by the applicant was aimed at achieving the same result. For the reasons advanced, I am not persuaded that the applicant made out a proper case for relief.

[63] I conclude that the application must fail.

[64] The normal principle is that costs follow the result. I have already referred to the correspondence from the respondent’s attorney of 20 August 2020. In that correspondence, copies of the notifications of the outcome of objections in terms of s 53(1) of the Act were attached and the applicant was advised that the application was academic. The applicant was afforded the opportunity to withdraw the application with

²² 29 of 2014 promulgated under Proclamation 77 in GG 38259 of 28 November 2014

no order as to costs. The applicant however persisted in the application, even after the outcomes of the compulsory review under s 52 of the Act in September 2021 became available and did not launch any application to review the decision by the valuation appeal board.

[65] On this basis, the respondent sought an adverse costs order on the scale as between attorney and client as a mark of displeasure for the regrettable and avoidable waste of state resources in opposing the application. I am not however persuaded that such a costs order is warranted, given that the applicant was acting on legal advice and no evidence was presented that she was mala fide in any way.

[66] I grant the following order:

The application is dismissed with costs.

EF DIPPENAAR
JUDGE OF THE HIGH COURT JOHANNESBURG

APPEARANCES

DATE OF HEARING : 19 May 2022

DATE OF JUDGMENT : 22 August 2022

APPLICANT'S COUNSEL : Adv. GF Porteous
: Adv. EG Malherbe

APPLICANT'S ATTORNEYS : Manley Inc.: Mr Manley

RESPONDENT'S COUNSEL : Adv. L. Franck

RESPONDENT'S ATTORNEYS : Moodie & Robertson: Mr Mokoena