IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION: BLOEMFONTEIN

Case Number: 5303/2010

In the matter between:

YA RONA INVESTMENTS (PTY) LTD	Applicant
And	
MANGAUNG METROPOLITAN MUNICIPALITY	First Respondent
THE SPEAKER OF THE MANGAUNG METROPOLITAN MANUCIPALITY	Second Respondent

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CORAM: LEKALE, J *et* MOENG, AJ

JUDGMENT: MOENG, AJ

HEARD ON: 27 & 28 JANUARY 2015

DELIVERED ON: 19 MARCH 2015

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[1] The applicant seeks an order reviewing and setting aside the decision of the first respondent's council taken on 3 July 2013 in terms of which council determined the selling price of a piece of land at R 54 million. This decision was prompted by the following court order dated 13 June 2013 and obtained by agreement between the parties:

1. **"This matter is referred back to the respondent's council to pass a resolution to alienate the property described as Erf 321 of Sub-Division 238 of the farm Bloemfontein, no 654 (the "property") to the applicant in accordance with the council resolution of 25 February 1999 and on the court order under case number 5074/2006 of 29 March 2007;**
2. **The respondent's council determine the selling price for the property;**
3. **The respondent's council produce a contract to give effect to orders in 1 and 2 above;**
4. **The orders in 1, 2 and 3 above are given effect to by the respondent within 30 days of this order."**

[2] Applicant seeks an order remitting the matter back to council for proper reconsideration in terms of the information on which the property was valued by the first respondent's council in 1999 at R 7 000, 00 per hectare plus VAT, and that the selling price of the property be made on that basis. Applicant's main contention is that the council resolution is a reviewable administrative action that is unlawful, unreasonable and irrational, and which, as such, was taken arbitrarily without any relevant information having been disclosed to council members who were required to vote on the resolution.

[3] A short outline of the facts is essential to comprehend the issue at hand. The background to the dispute in *casu* dates back to 1998, when the applicant made an application to acquire the property in question which is 90 1547 hectares in extent, from the Bloemfontein Transitional Local Council ("the TLC"), the predecessor in title to the

first respondent. At a council meeting held on 25 February 1999, the TLC resolved to alienate the property to the applicant to be developed as a light industrial area as well as a housing component. The selling price, which was below market value, was fixed at R 7 000, 00 per hectare plus VAT, therefore roughly R 631 082.90 before VAT. The below market price was determined on the basis that the applicant was an emerging developer, that the land concerned was prairie land with no infrastructure and that the soil condition in the area was poor. The sale was, however, made subject to the condition that the selling price would be revised if the land was not taken up within 12 months of its allocation.

[4] Applicant failed to take up the land within the stipulated 12 month period and nothing was also done by the TLC to cancel the allocation. It was only on 14 November 2006, 7 and a half years later, that applicant approached the first respondent to provide it with the revised price in accordance with the resolution. The first respondent was at this stage in the process of alienating the property to a third party. The applicant sought confirmation from the respondent that the intended sale to the third party would not proceed and, when such undertaking was not forthcoming, it successfully interdicted the impending sale.

[5] The parties thereafter reached a settlement which was made an order of court on 29 March 2007. It was agreed that the first respondent would finalise the alienation of the property in accordance with the

1999 resolution. First respondent appointed valuators to determine the market value of the property and eventually revised the price to roughly R 43 million. The parties entered into a sale agreement on 8 February 2008 in terms of which the property was sold to the applicant. The applicant provided the respondent with guarantees and paid an amount of R 286 403, 00 in respect of the purchase price and transfer fees. Applicant however contends that it entered into this agreement due to the strict condition that the 1999 resolution would be rescinded should it not accept the valuation within 14 days. The transaction could not be registered due to applicant’s alleged failure to pay the full purchase price and first respondent resultantly cancelled the sale agreement. The collapse of the agreement, so applicant contends, was due to the fact that the valuation was fundamentally flawed and it is challenging the cancellation of the contract in the action pending between the parties.

[6] Despite the purported cancellation of the agreement, the parties reached yet another settlement that culminated in the court order dated13 June 2013. First respondent resultantly obtained a valuation report which valued the property at R 54 million. A council meeting was convened on 3 July 2013 and the council, by majority vote, approved the sale of the property for an amount of R 54 million.

[7] Applicant feels aggrieved by this decision and submits that it has no independent knowledge of the considerations that were taken into account in arriving at the amount. Save for the minutes of the council meeting dated 3 July 2013, applicant contends that respondent failed

to provide it with any information about its adherence to the 1999 resolution in formulating the revised price. It further argues that insufficient information was placed before the council members to perform their duties properly as the 1999 resolution, and the court order dated 29 March 2007, were not provided to them. Applicant further contends that the instruction given to the valuator to evaluate the property at market value was contrary to the court order dated 13 June 2013. The valuator, so applicant argues, also made fundamental errors, in that he wrongly concluded that the land is serviced, that feasibility studies as to road management and bulk services have been conducted, that the soil conditions are stable and that the land has improvements.

[8] Three points in *limine* were raised by the respondents. They contend that the decision taken by the respondent is not an administrative action, that the same dispute is pending in another action and that the application is out of time. The third point was however abandoned during the deliberations. The applicant in turn argued at the commencement of the proceedings that the opposing affidavit is out of time and that the respondents failed to apply for condonation.

[9] It appears from the court order dated 30 October 2014 that the parties agreed that the respondent would file its answering affidavit by no later than 14 November 2014 whereas the applicant was to file its reply no later than 28 November 2014. The parties also agreed that the instant application be postponed to 27 and 28 January 2015. Mr Ncongwane, counsel for respondents, argued that the parties

agreed that the matter would proceed on the agreed dates of hearing and the late filing was effectively condoned. A literal reading of the court order does not reflect that respondents had to apply for condonation. The order stipulates a date for the filing of the answering affidavit as a matter of course and for the present application to proceed over two days. It would have been absurd for the parties to agree on specific dates for the filing of the affidavits and a date of hearing if the applicant was of the view that condonation should first be sought. A date for the filing of the replying affidavit in my view also signified applicant's preparedness to reply to the allegations contained in the answering affidavit despite the lateness thereof. We are therefore of the view that the application should proceed and applicant's objection in this regard should be dismissed.

[10] Mr Ncongwane argued that the respondents were directed by an order of court to pass a resolution to alienate the property to the applicant and to determine the selling price, and in so doing, they were not performing an administrative action that is susceptible to review proceedings under the Promotion of Administrative Justice Act 3 of 2000(PAJA). He submitted that had the respondents not complied with the court order, they would have been in contempt of court. Respondents, so he argued, complied with the order hence the applicant did not initiate contempt of court proceedings.

[11] Applicant reasoned in its heads of argument that its application is not brought in terms of PAJA but that the nature of the decision taken and which is sought to be reviewed is by definition an administrative

action. It submits that the principle of legality accordingly finds application. Mr Ngutshane, counsel for applicant submitted that to alienate immovable property at a particular value is a public power exercised in terms of section 77 of the Free State Local Government Ordinance 8 of 1962 and as such, council performed an administrative action. He contended that the application falls within the ambit of PAJA and more specifically the definition of an administrative action as contained in the Act.

[12] This necessitates a determination of whether the provisions of PAJA are applicable, and more importantly whether respondents' conduct falls within the ambit of the definition of an administrative action. The relevant provisions of section 1 of PAJA, defines "administrative action" as: 'any decision taken, or any failure to take a decision, by-

(a) an organ of state, when-

(i) exercising a power in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation; or

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, but does not include-

(aa) …

(bb) …

(cc) the executive powers or functions of a municipal council;

(dd) the legislative functions of Parliament, a provincial legislature or a municipal council;

(ee) …'

[13] For the conduct of the Council to be subject to review in terms of PAJA, it has to comprise all the elements listed under section 1, failing which the conduct complained of cannot be subject to review in terms of PAJA. Section 1*(cc)* and *(dd)* excludes from the definition of administrative action decisions or failure to take decisions by municipal councils in the performance or exercise of their executive and legislative powers or functions. These exclusions are a codification of the Constitutional Court's jurisprudence before the advent of PAJA on what amounts to administrative action. (See **Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others** 1999 (1) SA 374 (CC) and **President of the Republic of South Africa and Others v South African Rugby Football Union and Others** 2000 (1) SA 1 (CC). From the above definition in terms of PAJA, administrative action in the context of municipal councils is therefore a decision or failure to take a decision by a municipality, as an organ of state, when exercising public powers or performing public functions in terms of the Constitution and legislation, excluding executive or legislative functions, which adversely affects the rights of others and has external legal effect.

[14] The question is therefore whether the council's determination of a selling price is a decision of an administrative nature as envisaged by PAJA. Should this question be answered in the negative, case law has demonstrated that the principle of legality will then act as a safety net to give the Court some degree of control over the respondents' conduct, although not administrative in nature. This is so since no

exercise of public power is beyond the sphere of the principle of legality and the rule of law. (See **Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others** (Treatment Action Campaign and Another as *Amici Curiae*) 2006 (2) SA 311 (CC) at para 97)

[15] As correctly submitted by counsel for applicant, what matters is not so much the functionary as the function. The question is whether the task itself is administrative in nature or not. It may well be that some acts of a legislature or the executive may constitute 'administrative action' within the contemplation of PAJA. The focus of the enquiry as to whether conduct is 'administrative action' is not on the arm of government to which the relevant actor belongs, but on the nature of the power that is exercised. See **President of the Republic of South Africa and Others v SARFU and Others** *supra.*

[16] The legislative and executive authority of a municipality is, in terms of section 151(2) of the Constitution, vested in its Municipal Council. Legislative powers are concerned with the making of or the power to make laws which is the prerogative of elected, deliberative bodies such as parliament and municipal councils. I am satisfied that by its nature, council's decision to determine the price of the property is not action taken to make legislation and it can therefore not qualify under the exclusionary provisions of section 1 *(dd)* of PAJA.

[17] In addition to section 151(2) of the Constitution, section 11(3) of the Municipal Systems Act 32 of 2000, for our current purposes, provides

that a municipality exercises its legislative or executive authority by promoting and undertaking development; implementing applicable national and provincial legislation and its by-laws; and doing anything else within its legislative and executive competence.

[18] Section 77 of the Free State Local Government Ordinance 8 of 1962 provides that a council may sell, let or in any other manner alienate immovable property vested in it or rights in respect of such property. Section 11(3) of the Municipal Systems Act, in turn defines the implementation of applicable provincial legislation, as an executive exercise of the authority of a municipality. The sale or alienation of immovable property can therefore be classified under a municipality's executive exercise of authority insofar as in doing so it acts in terms of section 77 of the Free State Local Government Ordinance 8 of 1962.

[19] In **Diggers Development (Pty) Ltd v City of Matlosana** 2010 JDR 0214 (GNP) Murphy J held at para 39 that:

> 'When a council passes a resolution, by a majority of the members present, adopting or ratifying conduct of the municipal manager, it does not act legislatively. The action is akin to a board of directors ratifying the actions of its CEO. In such circumstances the council acts executively. In this case the municipal manager was authorised by means of a standing resolution to execute any sale which the Council was legally authorised to conclude. His role was to act in concert with the Council acting executively. In the result, the sale of land between the second and first respondents would seem to be either an exercise of the executive powers

or the performance of an executive function of the Council and hence would be excluded from review under PAJA'. (My emphasis)

[20] In **<u>Steele v South Peninsula Municipal Council</u>** 2001 (3) SA 640 (C) the court did not consider the resolution of the council to remove speed bumps to be categorised as administrative action as council passed a resolution pursuant to its statutory obligation to see to traffic control and road safety within its area of jurisdiction. The court stated at 644 C – E that the council resolution was carried by a majority and it was not a decision taken by a functionary who could be expected to furnish reasons. It was a decision taken by a politically elected deliberative assembly whose individual members could not be asked to give reasons for the manner in which they had voted.

[21] In **<u>Mazibuko and Others v City of Johannesburg and Others</u>** 2010 (4) SA 1 (CC), O' Regan J held that the decision in issue was authorised by a resolution of the City Council after receiving full proposals. A municipal council is a deliberative body which exercises both legislative and executive functions. Where a decision is taken by a municipal council in pursuance of its legislative and executive functions, that decision will not ordinarily be administrative in character. This principle, she concluded, is recognised in paras *(cc)* and *(dd)* of the definition of 'administrative action' contained in section 1 of PAJA, which expressly excludes the executive or legislative powers or functions of a municipal council.

[22] Reverting to the issue at hand, it is common cause between the parties that prior to council's determination of the selling price of the land, its Head of Corporate Services, WH Boshoff, sought a valuation of the property. Upon receipt of the valuation report, a recommendation, by the executive head of the respondent, the City Manager Ms S Mazibuko, to accept the valuation was placed before council together with a report compiled by Mr Boshoff. The record reflects that the council deliberated on the report with some members of the opposition party having made objections to the lack of certain information which was not placed before council. A resolution was however taken to sell the land to the applicant at R 54 million with a majority vote.

[23] The deliberations *in casu* took place in the assembly and in public where the members articulated their own views on the subject of the proposed resolution. Each member was entitled to his or her own reasons for having voted for or against the resolution and was entitled to do so. It was for the members, and not the Court, to decide what was relevant in the circumstances depending on the interpretation they accorded to the court order in question. It is of importance to note that members of the opposition party raised their objections with regard to the issues at hand, these were deliberated upon and the matter was put to a vote. This decision was taken by council in pursuance of its executive functions and can thus not be classified as administrative.

[24] The respondent, in spite of being a public body having derived its powers to alienate the property from statute, to the contrary, derived its power to revise or determine the price after expiry of the 12 month period, from the 1999 resolution. The decision taken by first respondent, although that of a public body, was taken in a private law sphere wherein the seller made the *merx* available to the purchaser in return for the payment of a specified price.

[25] Counsel for respondents argued, in my view persuasively so, that if one considers that the implementation of a law by a functionary is one of the characteristics of an administrative action, the respondents *in casu* were directed by an order of court to pass a resolution to alienate the property to the applicant and to determine the selling price, and in so doing, they were not performing an administrative action that is susceptible to review under PAJA. If applicant was of the view that the respondent failed to adhere to the court order, contempt of court and not review proceedings would have been proper.

[26] After having considered the factors above, we conclude that the determination or revision of the selling price of the piece of land in question was not an administrative action.

[27] For the reasons that will appear hereunder, I do not deem it necessary to deal with the issue of *lis alibi pendens* that was raised by the respondents.

[28] Respondents' decision is however not exempt from judicial review in spite of it not being classified as administrative action. The fundamental principle, ordinarily referred to as the principle of legality, is that the exercise of all public power is only legitimate when lawful (see **Fedsure Life Assurance Ltd** *supra* at para 56). The principle of legality not only requires that the decision must satisfy all legal requirements but it also means that the decision should not be arbitrary. Such a decision should be rationally related to the purpose for which the power was given. The question whether a decision is rationally related to the purpose for which the power was given, calls for an objective enquiry. See **Pharmaceutical Manufacturers of South Africa: In re ex parte President of the RSA** 2000 (2) SA 674 (CC) at para 85 and 86.

[29] Applicant contends in the main that insufficient information was placed before the council members to perform their duties properly as the 1999 resolution, and the court order dated 29 March 2007, were not provided to councillors before they could vote. The significance of the 1999 resolution to applicant can be gleaned from the first and second prayers of its notice of motion wherein it seeks an order compelling respondents to reconsider the selling price of the land on the basis of the same information on which the property was valued at R 7000 per hectare and therefore below market value.

[30] The relevant part of the 1999 resolution provided as follows:

> ‘(a) that subdivision 321 of 238 of the farm Bloemfontein 654, 90,1547 ha in extent be alienated to **Messrs Ya Rona Development** to be developed as proposed;
>
> (g) that the selling price of the land be determined at R7 000, 00 per hectare plus VAT and that if the land is not taken up within twelve months from the date of allocation, the selling price be revised’

[31] The court order dated13 June 2013 directed council to pass a resolution to alienate the property to the applicant in accordance with this resolution and in accordance with the court order under case number 5074/2006 of 29 March 2007. The latter order was in essence a duplication of the 1999 resolution.

[32] Applicant argues that the valuation of the property in terms of the current market value is in conflict with the 1999 resolution as well as the latest court order. It further contends that the court order directed the first respondent to alienate the property and determine the selling price on the basis of the same information as in 1999. Respondents conversely correctly argue that the 1999 resolution conferred upon the first respondent the right to revise the price should the land not be taken up within 12 months of its allocation. In determining such revised price, it was incumbent to offer the land to applicant at market value as prescribed by the provisions of section 14 of the Municipal Finance Management Act 56 of 2003 (“MFMA”). This legislation came into operation on 1 July 2004 and provides as follows:

> **‘14. Disposal of capital assets.**—(1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise

permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.

(2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public—

(*a*) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and

(*b*) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.

(4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2) (*a*) and (*b*) in respect of movable capital assets below a value determined by the council.

(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.

(6) This section does not apply to the transfer of a capital asset to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework

[33] The MFMA admittedly came into operation after the 1999 resolution. It is however of importance to note that the land was not taken up within 12 months of its allocation to the applicant and the revised price was only requested after the coming into operation of the MFMA. The transaction in question was therefore not completed prior to the coming into operation of the Act. The presumption against the retrospective application of statutes is trite and statutes should be considered as affecting future matters only. Vested rights as at the time the statute came into operation can therefore not be taken away. A valid agreement of sale is only concluded when an agreement has been reached on the *merx* and the price. This was not the case in *casu* as the price of the land still had to be determined. Inasmuch as the property was allocated to the applicant prior to the coming into operation of the Act, the price had not yet been considered. A distinction, as reflected in the court order, was therefore made between the allocation of the land and the determination of its price. I will deal with this aspect further later herein.

[34] Returning to applicant's main contention, the question whether it was incumbent upon the respondents to make the 1999 resolution available to the councilors will largely depend on the interpretation that one will accord to the court order dated 13 June 2013. The order is twofold. It first compels the respondent to pass a resolution to alienate the property in terms of the 1999 resolution to the applicant and it secondly requires of the respondent to determine the selling price of the land. The first leg of the order is clearly peremptory and

did not give the respondent the option of applying the provisions of section 14(2) (a) of the MFMA, in determining whether the asset is not needed to provide the minimum level of basic municipal services.

[35] It appears from the record of the council meeting held on 3 July 2013 that the issue relating to the alienation of the land was a non-issue and that the only aspect that council was to consider related to the selling price of the land. This is confirmed by the comments of Councillor MD Sekakanyo where he commented as follows: 'when you look at the Court Order, the Council <u>must determine the price of the property</u>. He comments later as follows: '…as we implement the court order, we are actually not opening the process of starting afresh…' Councillor W Horn also commented that '… these two previous court orders give us the guidelines as to what can be done <u>in determining the purchase price</u>. (My underlining)

[36] Applicant also placed great reliance on the response in terms of Rule 53 by the City Manager to questions which were raised during the deliberations relating to the lack of information on the 1999 resolution. Members of the opposition were therefore evidently of the view that the history of the matter and more importantly the 1999 resolution, had to be considered in determining the selling price. The majority party was of the contrary view that the market value of the property had to be the decisive factor.

[37] It remains to be determined whether the 1999 resolution was a relevant consideration in determining the selling price of the land and whether the respondent 'applied its mind to the matter' by having

ignored same. In applying its mind to the matter, the council was essentially expected to consider all ‘relevant information’ in determining the selling price as ordered.

[38] The court order should be properly understood as referring to the 1999 resolution in its entirety inclusive of the proviso that the applicant had 12 months to take up the land and in case such allocation was not taken up, the respondent had the right to revise the price. This order, contrary to the contention by applicant, makes no mention of the ‘determination of the price in accordance with the 1999 resolution’. All that the order provides for is the allocation of the land in accordance with the 1999 resolution and the determination of the price. The fact that the land was to be allocated to the applicant therefore ensured that the applicant, and no one else, was to be given the first option to purchase. First respondent has in fact, since 2007, always been prepared to offer or allocate the land, contrary to the MFMA, to the applicant. This allocation was according to the respondents subject to a market related price. Logic dictates that in case the price was not suitable to the applicant, there would resultantly be no enforceable agreement between the parties.

[39] In disposing capital assets, section 14(2) (b) of the MFMA enjoined the respondents to consider the fair market value of the asset. As indicated earlier in this judgment, the contract of sale between the parties was dependent upon the determination or revision of the selling price. The only obligation that the court order created was for the first respondent to offer the property to the applicant in terms of

the 1999 resolution. This obligation could however not be extended so as to oblige the first respondent to determine the price on the same facts that were at its disposal in 1999 or as turning the clock back to the date when the property was first allocated to the applicant in 1999. The preceding is apparent *ex facie* the order that the first respondent determine the selling price. Council had a free hand in determining the price because it was entitled to revise the same in line with the proviso to the offer made in 1999 and the relevant court order does not prescribe how the price is to be determined. The favourable give away price and all the considerations that motivated it went out of the window when the proviso kicked in leaving the first respondent to look to, *inter alia,* market forces for guidance.

[40] As pointed out above and contrary to applicant's interpretation, the court order did not specify how the respondents were to go about determining the price. The councillors who objected to the determination of the price during the council meeting appear to have languished under the same misguided interpretation of the court order. The determination of such a price fell squarely within the first respondent's discretion. It was therefore not incumbent on respondent to consider the same factors as in 1999, because it had made the allocation subject to the condition that the land be taken up within 12 months and if not, the price could be revised. Section 14(2)(b) of the MFMA could therefore not simply be ignored in revising or determining such a price. The first respondent, in my view, therefore acted within the ambit of the law and it cannot be said that its conduct was arbitrary or unreasonable and therefore unlawful.

[41] I am under these circumstances unpersuaded that the absence of the 1999 resolution and the court order dated 29 March 2007, at the relevant council sitting, rendered the first respondent's decision unlawful and ,therefore, reviewable. First respondent was obligated by the MFMA to sell the land at a fair market value and for this purpose, it deemed it adequate to obtain a valuation report. Applicant's contention that the instruction given to the valuator to appraise the property at market value, contrary to the court order dated 13 June 2013 can, on the same reasons as advanced above, also not be sustained.

[42] The attack on the alleged flaws in the valuation report is in my view misplaced. Applicant sought a review, according to its notice of motion, for reconsideration of the selling price in terms of the factors that were at first respondent's disposal in 1999. In valuing the land, the Valuator took a variety of current factors into account. These were amongst others that the land was vacant with no services, the potential thereof and comparable sales in the vicinity. All relevant information, the lapse of time and locality of sales were duly considered. The report further concluded that agents and other valuers were of the opinion that the current unit price of such property ranges between R50 to R200 per square meter in the open market. The property was valued at the lower end of the square meter pricing at R60 per square meter thus at R54 million.

[43] Applicant further felt aggrieved by first respondent's initial failure to provide it with the record of the council meeting and also had misgivings about the record that was ultimately provided. The record that was provided to applicant allegedly ran into hundreds of pages and no trace of the impugned resolution could be found. This conduct by respondents should be frowned upon. It is however not in dispute that applicant managed to retrieve the relevant minutes of the council meeting wherein the price determination was made. This complaint therefore becomes stale and need not be dealt with any further.

[44] I will therefore propose that the following order be made:

1. The application is dismissed with costs.

L.B.J. MOENG, AJ

I concur, and it is so ordered.

L.J LEKALE, J

On behalf of the applicant:	Adv. VP NGUTSHANE Instructed by: SR MABUZA Inc. MIDRAND
On behalf of the respondents:	Adv. AT NCONGWANE SC Instructed by: MOROKA ATTORNEYS BLOEMFONTEIN