

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

Case No: 2060/2013

In the matter between
PAUL ANTHONY KALIL N.O.

1st APPLICANT

WILHELMINA CECELIA KALIL

2nd APPLICANT

STEPHANUS ABRAHAM CLOETE BEZUIDENHOUT

3rd APPLICANT

BROLL PROPERTY GROUP (PTY) LTD

4th APPLICANT

versus

MANGAUNG METROPOLITAN MUNICIPALITY

1st RESPONDENT

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT, FREE STATE PROVINCE

2nd RESPONDENT

MAYOR OF THE CITY OF MANGAUNG METROPOLITAN
MUNICIPALITY

3rd RESPONDENT

THE MUNICIPAL MANAGER OF THE CITY OF
MANGAUNG METROPOLITAN MUNICIPALITY

4th RESPONDENT

CORAM:

NAIDOO, J

JUDGMENT:

NAIDOO, J

DELIVERED ON:

20 MARCH 2014

JUDGMENT

- [1] This is an application for leave to appeal against the whole of the judgment of my brother J.J. Mhlambi AJ delivered on 29 May 2013, with reasons therefor being furnished on 30 May 2013. Due to Mhlambi AJ's unavailability, the matter was placed before me for hearing in December 2013. It appears from the file that the heads of argument for the applicants was filed on 25 September 2013, while that for the respondents was filed on 13 December 2013. A date for hearing,

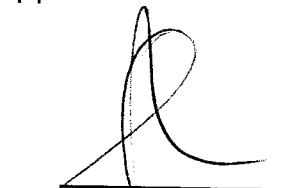
suitable to all parties, could not be agreed on and the parties subsequently agreed that the matter should be decided in Chambers. Due to some break in communication, the decision of the parties that the matter be heard in Chambers was communicated to me late in February 2014. Advocate JY Claasen represented the Applicants and Advocate M Moerane, with Mr L Manye represented the 1st and 3rd Respondents. The 2nd Respondent filed a notice to abide by the court's decision. The matter was initially opposed by all respondents, but the 4th respondent does not appear to have pursued the matter.

- [2] Having brought the application to court on an urgent basis, one of the prayers for relief sought by the applicants was an order prohibiting the respondents from adopting a resolution approving the municipal tax for the budget year 2013/2014 at their council meeting to be held on Thursday 30 May 2013. The application having been dismissed, the first respondent did indeed adopt a resolution on 30 May 2013 approving the municipal tax for the budget year 2013/2014. An appeal in respect of this prayer for relief will therefore serve no practical purpose.
- [3] The other relief sought by the applicants was for an order:
 - 3.1 Declaring that the first respondent failed to comply with prescribed statutory requirements and procedures in arriving at the proposed decision to impose a rate of 3.80 on the value of businesses, industrial and commercial properties;
 - 3.2 Declaring that in the future the first respondent is obliged to comply with section 19(1)(b) of the Local Government: Municipal Property Rates Act 6 of 2004 and the regulations promulgated pursuant to section 19(2) of the Rates Act and section 21(1)(a) and (c) of the Local Government: Municipal Systems Act 32 of 2000.

- [4] The order sought in the latter mentioned prayers would involve the interpretation of the relevant sections and regulations of the Local Government: Municipal Property Rates Act 6 of 2004 as well as the relevant regulations relating to the Local Government: Municipal Systems Act 32 of 2000. These are matters which would be of interest to other municipalities as well as the general South African public, and are therefore in the National interest.
- [5] It is true that in keeping with the concept of separation of powers, one arm of government should not interfere with the functions of another. The duty of the courts, however, is to patrol the boundaries of the Constitution to ensure that there are no breaches of such boundaries, which would impact on the constitutionally entrenched rights of the citizenry of the country. In the present matter, another court may well interpret differently the provisions of the statutes I have mentioned, and come to a different conclusion to the one reached in this matter. In the circumstances, my view is that the applicants should be allowed to appeal the decision in respect of the relief mentioned in paragraph 3 above.

[6] **ORDER**

1. The applicants are granted leave to appeal to the Supreme Court of Appeal.
2. The costs of this application are to be costs in the appeal.



S. NAIDOO, J

Counsel for Applicants:

Adv JY Claasen SC

Instructed by:

Matsepes

26-28 Aliwal Street

Bloemfontein

Counsel for Respondents:

Adv M Moerane SC

Instructed by:

Moroka Attorneys

Suite 19 Reitz Park

74-80 Pres Reitz Street

Westdene

Bloemfontein