IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 54/2007

In the case between:

ZAFIRAH INVESTMENTS CC First Applicant
WESLEY HAVEN (PTY) LTD Second Applicant
MARGARET LYNETTE NORVAL Third Applicant
METHODIST CHURCH OF SA Fourth Applicant
DIE OEWER BEHEERLIGGAAM Fifth Applicant
ANTHONY CHARLES WHITE NORVAL Sixth Applicant
BENJAMIN ERROL WHITE DELL Seventh Applicant
ERF 327 MURRAY STREET, KROONSTAD (PTY) LTD Eighth Applicant
REON ESIAS BADENHORST N.O.
(In his capacity as authorized representative of the trustees of the Renhof Badenhorst Family Trust IT1765/200) Ninth Applicant
MUNICIPAL EMPLOYEES PENSION FUND Tenth Applicant
ALLEM BROS. (PTY) LTD Eleventh Applicant
PREMIER FOODS LIMITED Twelfth Applicant

and

MOQHAKA MUNICIPALITY Respondent

JUDGMENT: VAN DER MERWE, J

HEARD ON: 23 AUGUST 2007

DELIVERED ON: 6 SEPTEMBER 2007

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[1] The applicants are the owners of several properties ("the

properties") situated within the area of jurisdiction of the respondent, a duly constituted local municipality.

[2] Pursuant to a resolution taken by the council of the respondent on 31 May 2005, the respondent on 7 June 2005 published and therefore imposed *inter alia* property rates, sewerage charges and refuse removal charges for the 2005/2006 financial year. In respect of property rates this publication contained twelve different classes of property to which nine different rates apply. As it is in principle permitted to do [see **RATES ACTION GROUP v CITY OF CAPE TOWN** 2006 (1) SA 496 (SCA)], the respondent in effect also levied rates on property as charges for sewerage services and refuse removal. For the sake of convenience however I will where applicable refer to these rates as tariffs, as the parties did. The validity of these rates and tariffs in respect of the properties was attacked in this application on a wide variety of factual and legal grounds. In my judgment however it is only necessary to consider the grounds mentioned below.

[3] Section 229(1)(a) of the Constitution empowers a municipality to impose rates on property and surcharges on fees for services provided by or on behalf of the municipality. In terms of section 160(2) of the Constitution, the function of the imposition of rates and other taxes, levies and duties may not be delegated by a municipal council.

[4] The Constitutional function of a municipality to impose rates on property is a very important one. It requires responsible and careful attention and clear expression. Common sense and the public interest dictate that if at all possible, meaning and effect should be given to a resolution of a municipality imposing rates. On the other hand in my judgment, if it is not possible to give any meaningful interpretation to a resolution by a municipal council in the exercise of this function, that in itself would render the resolution and the imposition of the rates invalid. It is also clear that the publication or imposition of rates that were not approved by a municipal council, is unlawful.

[5] The relevant portion of the resolution of the respondent's council of 31 May 2006 reads as follows:

> g(v) that the tariffs for property, water electricity and other municipal services be approved (Appendix "A" to the Budget document).
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> vi) that the tariffs for property rates as recommended under scenario 1(b) on page 20 be approved as one common tariff based on the combined value of each properties (sic) to achieve the approved average 5% increase which will earn the total rates income as depicted in scenario no 2 page 18; and
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> vii) that the above (f) (sic) be done with a provision that a rating factor be worked out against combined value of properties to achieve the intended value income as depicted scenario 2 on page 18, taking into consideration the provisions of the Municipal Property Rates Act No. 6 of 2004."

[6] From para (v) of the resolution it appears that the council

approved the rates and tariffs set out in the document referred to as appendix “A” to the budget document. This document however contains more than one property rate per class of property, specifically in respect of domestic property, smallholdings and farms. Scenario 1(b) on page 20 of the said appendix “A” referred to in paragraph (vi) of the resolution refers, apparently by way of illustration, to a number of specific domestic stands only. This scenario 1(b) does contain however a rate of 0,14708 cent in the rand on the value of land and of 0,012814 cent in the rand on the value of improvements. If one has to accept the (f) in para (vii) of the resolution as a reference to para (vi) of the resolution, it would appear that the council intended that the separate rates for land and improvements in scenario 1(b) be mathematically calculated to constitute a single rate on property. The important point here however is that in terms of the wording of the resolution the rates under scenario 1(b), that is in respect of domestic property only, were “… approved as one common tariff based on the combined value of each properties (sic) …”. In terms of the wording of

the resolution therefore, one common property rate is to be applied to all classes of property. In contrast hereto it seems very unlikely that this could have been intended by the council, as said appendix “A” contains separate rates for 8 different classes of property in respect of each of the scenarios contained therein, including scenario 2 on page 18 referred to in the resolution. The difficulty in the first place is therefore that even on the most liberal interpretation of the resolution, it is in my judgment not possible to give any meaningful content thereto nor was counsel for the respondent able to do so. This difficulty is exacerbated by the fact that on either possible interpretation, the rates and tariffs cannot stand. If the resolution means that one property rate in respect of all classes of property was approved, the separate rates for other classes of property published on 7 June 2005 were not approved by the council and are therefore invalid. On the other hand, if the council did not apply the rates in respect of domestic property to other classes of property, then obviously the rates published for the other classes of property, were also not approved by

council and are for that reason invalid. Furthermore, on the information before me, the respondent's council did not approve any tariffs for sewerage or refuse removal nor by any stretch of imagination did it approve nine different rates for twelve different classes of property.

[7] I accordingly find that the property rates, sewerage tariffs and refuse removal tariffs imposed by the respondent for the 2005/2006 financial year, are invalid in respect of the properties. In a counter-application the respondent ask that in the event of this finding, I should rule that the respondent's rates and applicable tariffs for the 2004/2005 financial year must be applied for the 2005/2006 financial year but on the valuations of the properties applicable during the 2005/2006 financial year. To my mind this must follow on my aforesaid finding. Counsel for the applicants was unable to indicate otherwise. The parties are *ad idem* that in the event of these findings, the order set out below, must follow, save for costs.

[8] Costs must follow the result, with the following exception.

This matter was postponed by Ebrahim J on 21 June 2007 and again by Hattingh J on 23 August 2007. On both occasions costs were reserved. On both occasions the application was ripe for hearing and the parties were in no way to blame for the postponement. I believe that in these unfortunate circumstances it would be unfair to saddle the respondent with the wasted costs of 21 June 2007 and 23 August 2007 and that each party should bear its own costs thereof.

[9] The following order is issued:

1. It is declared that the municipal rates levied on the properties of the applicants referred to in paragraphs 1(i) up to and including paragraphs 1 - (xi) of the founding affidavit of Anthony Charles White Norval ("the properties") in respect of the 2005/2006 financial year, are unlawful.

2. It is declared that the sewerage tariffs and refuse removal tariffs determined in respect of the properties

for the 2005/2006 financial year, are unlawful.

3. In respect of the 2005/2006 financial year the applicants are ordered to pay rates and sewerage and refuse removal tariffs in respect of the properties in accordance with the applicable rates and tariffs during the 2004/2005 financial year as same appear from the statements of accounts rendered to the applicants by the respondent during the 2004/2005 financial period, provided that such payments shall be calculated on the valuations of the properties that were applicable during the 2005/2006 financial year.

4. The respondent is ordered to pay to the applicants such amounts, if any, as have been paid to the respondent by the applicants in excess of the amounts determined in terms of paragraph 3 above.

5. The respondent is ordered to pay the costs of the application, save for the wasted costs of 21 June 2007

and 23 August 2007, in respect of which no order of costs is made.

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C.H.G. VAN DER MERWE, J

On behalf of the applicants:	Adv. B. Knoetze SC Instructed by: Naudes BLOEMFONTEIN
On behalf of respondent:	Adv. J. P. Daffue Instructed by: Bokwa Attorneys BLOEMFONTEIN

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