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

Case Number: **37752/2021**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE	SIGNATURE

In the matter between:

BLUE MOONLIGHT PROPERTIES 39 (PTY) LTD Applicant

and

**THE VALUATION APPEALS BOARD FOR THE
CITY OF JOHANNESBURG 2013 GENERAL
VALUATION ROLL**

First Respondent

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Second Respondent

JUDGMENT

SENYATSI, J

Introduction

[1] This application serves before me for the review and setting aside the first respondent's valuation of the applicant's property valued at R 30,7 million for the period of 1 July 2013 to 30 July 2014. The order is sought because during that period, the applicant's property attracted a higher rates and taxes based on the higher valuation. The applicant also seeks the substitution of the first respondent's decision to value the applicant's property at R 30,7 million for the period 01 June 2013 to 30 June 2014 for the purposes of the 2013 General Valuation Roll ("2013 GVR") and substitute it with an order that the property be valued at R 6,9 million for the purposes of the 2013 GVR specifically for the period of 01 July 2013 to 30 June 2014. The applicant furthermore seeks an order that any/all inflated or otherwise incorrect rates billed to its municipal's account based on the incorrect property valuation be reversed. Alternatively, so continues the applicant, it seeks an order that the matter be referred back to the first respondent for reconsideration and that the first respondent be ordered to give the applicant notice up to date of hearing at which the matter will be reconsidered and at such hearing an opportunity to make written/verbal representations, such hearing to be held within 30 days of the handing down of the order. The applicant furthermore seeks an order that the supply offer municipal services to the applicants property are not to be terminated pending the crediting of the applicants account to be reflected as aforesaid. The application is brought in terms of PAJA. The application is opposed only by the second respondent.

Background

[2] The applicant owns the following properties in Johannesburg, which are jointly referred to as "the property":

- a. Portion 2[...] of the farm T[...] 9[...] IR;
- b. Remaining extent of the portion 2[...] of the farm T[...] 9[...] IR; and
- c. Portion 29[...] of the farm T[...] 9[...] IR;

There is one building over all the three erven.

[3] The property was initially valued at R 30,7 million for the period 01 July 2013 to 30 June 2014. Thereafter, the value was adjusted to R 8,8 million for the period 01 July 2014 to 30 June 2017. On 06 June 2017 an automatic review of the property was held and the value was reduced to R 6,9 million for the period 01 July 2014 to 30 June 2017.

[4] The first respondent is the Valuation Appeals Board ("VAB"), established to deal with the appeals and reviews from the second defendant's 2013 GVR created in terms of chapter 7 of the Local Government: Municipal Property Rates Act,¹ ("the MPRA"). The first respondent is empowered to review decisions of a municipal valuer submitted to the first respondent. The VAB has a lifecycle of four years in terms of the legislation to deal with all appeals/reviews pertaining to the valuation of the properties within the jurisdiction of the second respondent. The appeals/reviews may be brought by the rate payers or the second respondent in respect of the disputed valuations by the Municipal Valuer who is an independent person charged with valuation of the properties for the purpose of the determination of rates and taxes of those properties. The rate payers and the second respondent have an interest in the valuation.

[5] The property appeared in the published 2013 GVR, but the valuation and categorisation of the property was missing. The published notice was received by the applicant on 8 August 2013. The property then appeared on the Supplementary Roll 1 to the 2013 GVR and was valued at R 30,7 million. The applicant instructed its attorneys of record to lodge an objection in terms of section 78 of the MPRA. On or about 11 March 2014 the objection was delivered to the second respondent and on 1 July 2014, the Supplementary Roll 2 to the 2013 GVR commenced. The outcome of the applicant's objection was received on 28 October 2016 and the valuation was decreased to R 8,8 million. The objection outcome was determined as being 1 July 2014. On 28 November 2014 the MPRA was amended in relation to section 78 and section 78(4) which read as follows:

"78. (1) A municipality must, whenever necessary, cause a supplementary valuation to be made in respect of any rateable property-

¹ 6 of 2004.

- (a) incorrectly omitted from the valuation roll;
- (b) included in a municipality after the last general valuation;
- (c) subdivided or consolidated after the last general valuation;
- (d) of which the market value has substantially increased or decreased for any
- (e) substantially incorrectly valued during the last general valuation; or
- (f) that must be revalued for any other exceptional reason.

(2) For the purposes of subsection (1), the provisions of Part 2 of Chapter 4 and, Chapters 5, 6 and 7, read with the necessary changes as the context may require, are applicable, except that-

- (a) a municipal valuer who prepared the valuation roll may be designated for the preparation and completion of the supplementary valuation roll; and
- (b) the supplementary valuation roll takes effect on the first day of the month following the completion of the public inspection period required for the supplementary valuation roll in terms of section 49 (as read with this section), and remains valid for the duration of the municipality's current valuation roll.

(3) Supplementary valuations must reflect the market value of properties determined in accordance with-

- (a) market conditions that applied as at the date of valuation determined for
- (b) any other applicable provisions of this Act. purposes of the municipality's last general valuation; and

(4) Rates on a property based on the valuation of that property in a supplementary valuation roll become payable with effect from –

- (a) the effective date of the supplementary roll, in the case of a property referred to in subsection (1) (a), (e) or (f);
- (b) the date on which the property was included in the municipality, in the case of a property referred to in subsection (1) (b);
- (c) the date on which the subdivision or consolidation of the property was registered in the Deeds Office, in the case of a property referred to in subsection (1) (c); or
- (d) the date on which the event referred to in subsection (1) (d) has occurred.”

[6] The applicant tried to engage the second respondent to resolve the matter but to no avail. It even tried to have the rates charged in terms of the incorrect valuation to be written off but all attempts came to naught after the VAB decided not to get involved as the query related to the lapsed 2013 GVR whose VAB had ceased to exist.

Contentions:

Applicant

[7] The applicant contends that the decision to value the property was so unreasonable that no reasonable person could have taken it and that for that reason, the decision must be reviewed and set aside.

[8] In its amended notice of motion, the applicant seeks a substitution of the decision of the VAB. I must state at this stage that I have not been referred to any decision that the VAB took in respect of the valuation of the property.

Second Respondent

[9] The second respondent filed a Rule 6(5)(d)(iii) notice and raised the following points of law: -

- a. Whether the charges are in fact a debt as defined in terms of section 11(d) of the Prescription Act²;
- b. Whether the obligation of the municipal valuer to value a property is a “debt” in terms of the Prescription Act;
- c. Whether reliance on section 11(a)(iii) instead of section 11(d) of the MPRA can be sustained;
- d. Whether the Court has competence to grant relief sought in prayer 2, which is the substitution of the first respondent’s decision to value the applicant’s property at R 30,7 million for the period of 1 July 2013 to 30 June 2014 for the purposes of the 2013 GVR with an order that the property be

² 68 of 1969

valued at R 6,9 million for the purposes of the 2013 GVR specifically for the period of 1 July 2013 to 30 June 2014, so as to effect any changes to the second respondent's 2013 GVR which lapsed on 30 June 2018 in terms of section 32 of the MPRA;

e. Whether the relief in prayer 2 is not incompetent in the circumstances of:-

(i) the admission in paragraph 44 of the founding affidavit that applying the impact of the amendment of section 78 on 1 July 2015 to the facts of this case then, it becomes apparent that in terms of the law as it stood before 1 July 2015, the applicant was not entitled to a retrospective application of the lower property valuation for the period 1 July 2013 to 30 June 2014, whereas, had the revaluation on supplementary roll happened in precisely the same manner, but a year later, on a supplementary roll that commenced after 1 July 2015, the applicant would have been entitled to a retrospective application of the reduced valuation to the property 1 July 2013 to 30 June 2014;

(ii) the period between 1 July 2013 and 30 June 2014 which is not covered by the section 78(4) (a) of the MPRA , as inserted by the section 26(g) of the MPRA Amendment Act³;

(iii) the commencement date of section 78(4) (aA) of the MPRA;

(iv) the absence of a constitutional challenge to the 1 July 2015 commencement date of section 78(4) (a) of the MPRA;

(v) the absence of any statutory or common law basis for the claim.

f. whether, considering the legal questions raised by the second respondent in relation to the relief in prayers 1 to 3, the applicant has made a valid case for the correction of the municipal accounts in prayer 5, which relates to an order that the supply of municipal services to the applicants property are not terminated pending the crediting of the applicants account to be effected as aforesaid.

[10] The legal points raised by the second respondent are the issues that will be determined

³ 29 of 2014

Legal Principles and Reasons

Rule 6(5)(d)(iii)

[11] Rule 6(5)(d) (iii) of the Uniform Rules states as follows: -

“(d) Any person opposing the grant of an order sought in the notice of motion shall—

(iii) if such person intends to raise any question of law only, such person shall deliver notice of intention to do so, within the time stated in the preceding subparagraph, setting forth such question.”

[12] The purpose of the rule is to deal with any question of law has been raised, but preferably, the respondent should generally, file his answering affidavit on the merits at the same time as he takes a preliminary objection on the point of law.⁴ If the respondent relies exclusively on the notice in terms of this subrule, as is the case in the instant case, the allegations in the founding affidavit must be taken as established facts by the Court.⁵ As already stated at the beginning of the case, the averments made in the founding affidavit are therefore established facts.

[13] Notwithstanding that the second respondent has not filed an answering affidavit, it is still a requirement that the application must be formulated with precision and must be consistent with the allegations of fact⁶. The order which is prayed for must be established by satisfactory evidence on the papers.⁷

[14] There is therefore by law, no impediment to the second respondent raising the point of law without providing an answering affidavit on the merits of the application.

⁴ *Randfontein Extension Ltd v South Randfontein Mines Ltd* 1936 WLD 1 at 4-5; *Du Toit v Fourie* 1965(4) SA 122(O) at 128G-129C; *Ebrahim v Georgoulas* 1992(2) SA 151 (B) at 154D

⁵ *Boxer Superstores Mthatha and Another v Mbenya* 2007(5) SA 450(SCA) at 452F -G; *Absa Bank Ltd v Prochaska t/a Bianca Cara Interiors* 2009 (2) SA 512(D) at 514I-J

⁶ *Dharrumpal Transport (Pty) Ltd v Dharumpal* 1956 (1) SA 700 (AD).

⁷ *In re: City of Cape Town v Mgoqi and Another* [2006] 9 BLLPR 873 (C); SA 355 (C) at para 12; *Port Nolloth Municipality v Xhalisa and Others; Luwala and Others v Porth Nolloth Municipality* 1991(3) SA 98 (C) at 112D-E.

The Legislative Framework

[15] The MPRA makes provision for the creation of the valuation roll of all the rateable properties within its jurisdiction.⁸ The objective of the creation of the general valuation roll is to determine the value of each property for the purpose of levying the rates. The determination of the general valuation roll must be 12 months before the beginning of the financial year within which the valuation roll is implemented.⁹ The valuation of the property must reflect the market value thereof taking into account the market conditions prevailing.¹⁰

[16] The valuation of the property is carried out by a municipal valuer who may either be an official of the municipality designated as such by the municipality or an independent person also designated as such.¹¹

[17] The period of validity of the valuation roll is the start of financial year following the completion of the valuation roll and remains valid for that financial year and the period may be extended by the MEC for local government.¹²

[18] Once the valuation is completed, the municipal valuer must submit a certified valuation roll to the municipal manager and the latter must publish the valuation roll within 21 days of the completion of the valuation roll in a prescribed manner in the Government Gazette.¹³ In the notice, the municipal manager must call upon the persons to lodge objections pertaining to any matter related to the valuation of the property and the publication must be for a consecutive period of 2 weeks.¹⁴ The notice must state that the valuation roll is open for objections for a period of 30 days.¹⁵

⁸ Section 30 of the MPRA

⁹ Section 31(1)

¹⁰ Section 31(2)

¹¹ Section 33

¹² Section 32(1) and (2)

¹³ Section 49

¹⁴ Section 49(1) (a) (iii)

¹⁵Section 49(1) (a) (i)

[19] Any person wishing to object to the roll does so in the prescribed manner within the period of the publication of the general valuation roll.¹⁶

[20] If the value of the property is adjusted by more than 10 percent upwards or downwards, the municipal valuer must give written reasons for the adjustment¹⁷. The municipal manager is obliged to refer the decision of the municipal valuer to the relevant VAB.¹⁸The VAB must review the decision of the municipal valuer by either confirming, amending or revoking it.¹⁹

[21] Any person who is dissatisfied with the decision of the municipal valuer has the right to appeal the decision in accordance with section 54 of the MPRA in a prescribed manner. The appeal must be lodged within 30 days after the outcome of the review or the decision of the municipal valuer.²⁰

[22] The municipality is required at least once a year, to update its supplementary valuation roll in respect of rateable property: –

- a. incorrectly omitted from the valuation roll;
- b. included in a municipality after the last general valuation;
- c. subdivided or consolidated after the last general valuation;
- d. of which the market value has substantially increased or decreased for any reason after the last general valuation;
- e. substantially incorrectly valued during the last general valuation; or
- f. that must be revalued for any other exceptional reason.²¹

[23] Section 79 of the MPRA states that the municipality must cause its supplementary valuation roll to be amended to reflect any changes to the particulars

¹⁶ Section 50

¹⁷ Section 52(1)(a)

¹⁸ Section 52(2)

¹⁹ Section 52(2)(a) and (b)

²⁰ Section 54(2)

²¹ Section 78(1)

on the roll except that changes to the roll in circumstances where section 78 applies may only be effected through a supplementary roll in accordance with that section.

[24] I now deal with the contentions raised on the points of law.

Whether the charges are in fact a debt as defined in terms of section 11(d) of the Prescription Act No 68 of 1969 (“the Prescription Act”) and whether the obligation of the municipal valuer to value a property is a “debt” in terms of the Prescription Act.

[25] Section 11(d) Prescription Act which deals with the prescription periods states as follows: -

“The periods of prescription of debts shall be the following—

(d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.”

[26] The second respondent argued that the prayers related to a debt which, it contended has prescribed. This is so given that the credit or reversal sought to be given relate to the charges imposed on the properties of the applicants based on the incorrect valuation of its property at R30.7 million and thus the charges for the period in contention are much high instead of being based on the supplementary valuation of R 6,9 million.

[27] As far as I am concerned, the charges relate to rates which are by their very nature, taxes imposed on the properties. They only prescribe after 30 years as opposed to any other charges imposed by the first respondent which prescribe after 5 years.

[28] I was referred to *Chantelle Jordaan & Another v Tshwane Metropolitan Municipality*,²² by Mr Viviers where the Constitutional Court had to consider the constitutionality of section 118(3) of Local Government: Municipal Systems Act, where the Court confirmed that the rates on the property prescribe after 30 years. I

²² 2017(6) SA 287 CC.

therefore find that the rates which are charged are not the debts envisaged in the Prescription Act that prescribe in five years.

[29] More importantly, the obligation of the municipal valuer to value the property is intended to ensure that the rate which is a tax charged based on the value of the property can be imposed by the second respondent. This is an independent function performed by a statutory authorized and qualified person. The charges so imposed therefore constitute tax and not any other debt for Prescription Act purposes.

[30] In any event, the cases referred to by the second respondent do not find application in the instant case. In *Yarona Healthcare Network v Medshield*,²³ the Court concerned itself with the averment that payment by Medshield was made in the mistaken belief that a debt was owing and due (*conditio indebiti*) whereas that is not the position in the instant case. In fact, in the instant case no payments were made based on the incorrect valuation of the lapsed supplementary roll 2 to the 2013 GVR. The prescription defense raised by Yarona Healthcare Network was dismissed on the basis that in the absence of evidence that the authority to litigate was delegated, the requisite actual or constructive knowledge of the facts giving rise to the claim would have to be that of the board of trustees.

Whether reliance on section 11(a)(iii) instead of section 11(d) of the Prescription Act can be sustained;

[31] Section 11(a) (iii) of the Prescription Act provides as follows:-

“The periods of prescription of debts shall be the following:

- a. thirty years in respect of-
- (iii) any debt in respect of any taxation imposed or levied by or under any law;”

[32] Section 11(a) and(d) of the Prescription states that:-

“The periods of prescription of debts shall be the following:

- a. thirty years in respect of-

²³ [2017] 4 All SA 705(SCA); 2018(1) SA 513(SCA) paras 61-62

- (iii) any debt in respect of any taxation imposed or levied by or under any law;
- (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances)
- d. save where an Act of Parliament provides otherwise, three years in respect of any other debt.”

[33] The applicant contends that the rates charged and based on the value of the property are tax that prescribes after thirty years. In my view, this is correct to the extent that the claimant of such payment is the State. However, prescription in the ordinary course under the circumstances of this case is not applicable and the argument on prescription is therefore irrelevant because although the second respondent raises that as an issue, it cannot be correct to suggest that the correction of a rate based on the incorrect valuation of the property changes its form once the applicant chooses to litigate for its correction.

Whether reliance on section 11(a)(iii) instead of section 11(d) of the Prescription Act (“the Act”) can be sustained;

[34] Section 11(a) (iii) of the MPRA states that: -

- “1. The periods of prescription of debts shall be the following: (a) thirty years in respect of-
- (iii) any debt in respect of any taxation imposed or levied by or under any law;”

[35] For the reasons already stated above, I do not understand the relevance of the contention made by the second respondent because as stated above, all that the applicant seeks is the correction of the rates billed based on the incorrect valuation. Consequently, there is no basis for arguing, as the second respondent does, that the claim is premised on a prescribed debt.

Whether the Court has competence to grant relief for substitution of a decision which has never been considered and therefore taken the VAB which has ceased to exist.

[36] The applicant contends that the valuation of the property for the disputed period is so unreasonable that no reasonable municipal valuer and the VAB could have taken it and that for that reason, the Court should intervene irrespective of whether the VAB has never considered the appeal.

[37] To be able to consider the contention by the applicant, it is important to have regard to what the legislative framework on the process to be followed to address the objection. As already mentioned, any person with an objection pertaining to the valuation of a property is permitted to do so and lodge the objection with the municipal manager.²⁴ The latter must submit the objection to the municipal valuer who must consider the objection, decide the objection on facts; adjust or add to the valuation roll in accordance with any decision taken.²⁵ The objector has the right to appeal the decision of the municipal valuer and the VAB must consider the appeal within 60 days.²⁶

[38] It is trite that to be impugned, the pre-requisite is that there must have been a decision.²⁷ A “decision” is defined in PAJA as:-

“Any decision of administrative nature made, proposed to be made, are required to be made, is the case may be, under an empowering provision, including a decision relating to-

- (a) making, suspending, revoting or refusing to make an order, award or determination;
- (b) giving, suspending, revoting or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or 50 other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement; ~ retaining, or refusing to deliver up, an article; or

²⁴ Section 50(1)(c)

²⁵ Section 51

²⁶ Section 54(2) (b)

²⁷ *Bhugwann v JSE LTD* 2010(3) 335(GSJ) PARA 10

(g) doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly.”²⁸

A decision must also entail some form of choice or evaluation.²⁹

[39] In the instant case, it is common cause that the applicant did not object to the evaluation of the property to the sum of R 30.7 million. It also common cause that the municipal manager did not object to the omission of the property on the 2013 GVR and that the property appeared on the supplementary roll 1 of the 2013 which placed the value at over R 30.7 million.

[40] Can it, under the circumstances, be argued that the municipal valuer there was a decision made by the municipal valuer or the VAB pertaining to the incorrect evaluation. In my view, this is not the case because nowhere in the papers does the applicant aver that it challenged the incorrect evaluation through the normal process prescribed by the MPRA

[41] In *TMT Services & Supplies (Pty) Ltd t/a Traffic Management Technologies v MEC: Department of Transport, Province of Kwa-Zulu-Natal and Other*³⁰, the Court held as follows pertaining to review in terms of PAJA:-

“Finally, the purpose of the PAJA must be taken into account. It is primarily to give effect to the fundamental rights, contained in s 33 of the Constitution, to lawful, reasonable, and procedurally fair administrative action and to reasons for adverse administrative action. A broad, inclusive and unqualified jurisdiction regime promotes this purpose and the fundamental right of access to court,³¹ while the approach contended for by the respondents restricts it. If one considers the origin of the ordinary residence or domicile, and location of the adverse effect, grounds for jurisdiction, namely *Estate Agents Board v Lek*,³² they were expressly intended to give effect, through s 19 of the

²⁸ 3 of 2000

²⁹ *Nedbank Ltd v Mendelow and Another* NNO 2013 (6) SA 130 (SCA) para 25

³⁰ 2022 (4) SA 583(SCA) para 27

³¹ Constitution s 34

³² *Estate Agents Board v Lek* 1979 (3) SA 1048 (A) at 1067C-E.

Supreme Court Act ironically, to effective access to court. Trollip JA stated that as the 'inhibitory effect' of the board's decision 'hit respondent in Cape Town where he is resident and has his business' and because he was ordinarily resident within the area of jurisdiction of the Western Cape court, it had jurisdiction: it was, after all, the court 'immediately at hand and easily accessible to him and to which he would naturally turn for aid in seeking to have the diminution in his legal capacity or personality remedied'.³³ The PAJA has codified the jurisdictional grounds recognized by *Lek* without qualification."

[42] Based on the authority quoted above, it is evident that the present application must satisfy the jurisdictional pre-condition of a "decision" or "failure to decide". Furthermore, the municipal valuer did not perform any function in relation to the period 1 July 2013 to 30 June 2014 and no case has been made by the applicant that he did. There was no "decision" or failure by the VAB to make a decision and accordingly, it is impermissible in law to require this Court to order that the VAB should reconsider a decision which was never made. More importantly in my view, it is a legal impermissibility to order that the VAB whose term has ceased to exist be reconstituted to consider the incorrect evaluation when in fact no objection was ever lodged before the municipal valuer through the municipal manager as prescribed by the MPRA.

[43] In *MEC Local Government and Traditional Affairs, KwaZulu-Natal v Botha NO and Others*,³⁴ the Court stated as follows on whether under similar circumstance a relief could be considered by Court:-

"[25] Section 55(1) of the MPRA provides that any such adjustment or addition takes effect on the effective date of a valuation roll. In terms of s1 of the MPRA the effective date in relation to a valuation roll, means the date on which the valuation roll takes effect, ie from the start of the financial year upon which the valuation roll first takes effect. As mentioned earlier, the liquidators were not able to seek any relief under s 55 of the MPRA, as no objection had

³³ Estate Agents Board v Lek 1979 (3) SA 1048 (A) at 1067C-E.

³⁴ [2015] 1 All SA 649(SCA); 2015(2) SA 405 (SCA) para 24

been lodged by URP against the 2008 valuation roll within the time period specified.”

[26] Section 78 of the MPRA provides for the making of supplementary valuations, inter alia, where it appears that a property had been substantially incorrectly valued during the last general valuation. However, in terms of s 78(4)(a) the rates based on the valuation of a property in a supplementary valuation roll, only become payable with effect from the effective date of the supplementary roll. As I have also mentioned previously, no steps have to date been taken to cause a supplementary valuation to be made in respect of the property.

[27] It follows from the above that there is no remedy available to the liquidators under the MPRA which would entitle them to lodge an objection to the 2008 valuation at this stage. In particular, they have no remedy under s 80 of the MPRA. It is accordingly not necessary to decide whether or not the condonation and extension of time provisions of s 80 of the MPRA, extend to applications made by affected parties other than municipalities. However, as this has been the topic of much debate, I will deal with it succinctly and without elaboration.”

[44] It is therefore trite that to challenge a decision based on PAJA, all internal remedies should be exhausted. That did not happen in the instant case and consequently, the relief sought is impermissible. Furthermore, the valuation of the property is not the function of the second respondent and the rating and valuation functions are prescribed by the legislation.

[45] The municipal valuer did not receive and consider an objection from the applicant as required by section 34(e) or 50(1), read with section 51 of the MPRA. Equally, there is no pending appeal before the 2013 VAB and in any event, the 2013 VAB has ceased to exist.

Absence of Constitutional challenge to section 78(4) (aA) of the MPRA which does not cover the period between 1 July 2013 and 30 June 2014

[46] Section 78 of the MPRA was amended by the introduction of subsection (aA) and it now states:-

“(4) Rates on a property based on the valuation of that property in a supplementary valuation become payable with effect from—

(a) the first day of the month following the posting of the notice contemplated in subsection (5), in the case of a property referred to in subsection (1)(a) or (f)

(aA) the first day of the month following the posting of the notice contemplated in subsection (5) in the case of property referred to in subsection (1)(a), (e), (f) or (h): Provided that in the case of a decrease in value in respect of a property referred to in subsection (1)(e), the rates become payable on the date the property was incorrectly valued or the clerical or typing error was made.”

[47] The above amendment came into force after the period which is the subject of this litigation. It is trite that our statutes have no retrospective effect. There is no challenge on the constitutionality of the amendment of section 78(4) (aA). Consequently, the relief sought by the applicant is impermissible. It follows, in my view, therefore that no case has been made for the correction of the rates as averred by the applicant.

Order

[48] The following order is made: -

- a. The application is dismissed with costs.

ML SENYATSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 10 May 2024.

Appearances:

For the applicants: Adv AM Viviers
Instructed by Schindlers Attorneys

For the respondent: Adv S Ogunronbi
Instructed by Mohammed Randera and Associates

Date of Hearing: 25 October 2023

Date of Judgment: 10 May 2024