



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	<u>14 February 2024</u>
DATE	SIGNATURE

CASE NUMBER: 5219/2022

In the matter between: -

AGRI PIET RETIEF

Applicant

and

MKHONDO LOCAL MUNICIPALITY

First Respondent

MUNICIPAL MANAGER

Second Respondent

JUDGMENT

GREYLING-COETZER AJ

Introduction

[1] The applicant is Agri Piet Retief, a farmers' association within the eMkhondo,

previously Piet Retief District. For its *locus standi* the applicant relies on Section 38 of the Constitution of the Republic of South Africa 1996 (“the Constitution”), alleging that its members have a vested right and interest in the matter as the registered owners of immovable property within the area of jurisdiction of the respondents.

[2] The first respondent is the Mkhondo Local Municipality, which municipality was established as a Category B municipality in terms of the Local Government: Municipal Structures Act 117 of 1998. Its area of jurisdiction includes the towns of eMkhondo. The second respondent is the municipal manager appointed in terms of Section 82 of the Local Government: Municipal Structures Act 117 of 1998 (Collectively referred to as the “Municipality”).

[3] In the Notice of Motion, the applicant seeks the following relief:

“... declaratory order in the following terms:

That the 1st and 2nd respondents-

1. *Refrain from collecting property rates in respect of municipal financial years for which the property rates were not published in the Mpumalanga Provincial Gazette as stipulated in Section 14(2) of the Local Government: Municipal Properties Act, Act 6 of 2004;*
2. *Issue the clearance figures in respect of the amounts due in respect of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties in connection with the property or properties concerning for the two-year period, prior to the date of application for the clearance certificate required to issue the clearance certificate required in terms of Section 118 of the Local Government: Municipal Systems Act 32 of 2000;*
3. *Issue the clearance certificates required in terms of Section 118 of the Local Government: Municipal Systems Act 32 of 2000 once no amounts are due in respect of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties in connection with the property or properties concerned for*

the two years period, prior to the date of application for the clearance certificate;

4. *Follow the procedures prescribed in terms of the Local Government: Municipal Property Rates Act 6 of 2004 for the levying of the property rates including the correct application of the ratio between the property rates for the residential properties and agricultural properties which must be 1:0.25 after calculation of all applicable rebates and discounts.*

...” (Own emphasis)

[4] In paragraph 9 of the founding affidavit, the applicant avers that the purpose of the application is to obtain declaratory relief against the Municipality and echoes that set out in the Notice of Motion.

[5] Contrary to that set out in the Notice of Motion and contrary to the heading of paragraph 27 of the founding affidavit, the applicant in paragraph 27 alleges in line with the requirements of for interdictory relief: -

“27.1 The members of the applicant, as registered owners, and sellers of immoveable properties within the area of the first respondent have prima facie vested rights and interest to be protected in this matter.

27.2 If this application is not granted, there will be irreparable harm to many members of the applicant in respect of the excessive clearance figures they have to pay enriching the first respondent.

27.3 Where the first and second respondent failed to comply with the relevant provisions of the Local Government: Municipal Property Rates Act 6 of 2004 and the Local Government: Municipal Systems Act 32 of 2000 despite demand and communications as well as the court order against them in the honorable court on 14 March 2022, there is no other remedy then approaching the court, available to obtain declaratory order referred to in paragraph 10 above”. (own emphasis)

[6] The four central contentions by the applicant are the following:

- (a) The Municipality failed to promulgate the property rates levied by the first respondent for the financial years 2009-10 until 2018/19, meaning the period 1 July 2009 to 30 June 2019. The consequence of the failure being that the property rates did not come into operation.
- (b) The Municipality failed to apply rebates and discounts for the period 1 July 2009 to 30 June 2018;
- (c) The Municipality incorrectly applied the 1:0,25 *ratio* between residential and agricultural properties; and
- (d) The Municipality maintained a defective system for the calculation of clearance figures.

[7] The Municipality oppose the application on inter alia the following grounds:

- (a) The applicant's relief is not of a declaratory nature, but amounts to a final interdict and no proper case has been made out for a final interdict;
- (b) The first prayer is incompetent, as it seeks the court to restrain the performance of a constitutional obligation without a proper case being made out, there being no factual basis or material averments made in support of the relief;
- (c) Prayers 2 and 3, it is unsupported by the statutory requirements, for the issuance of rates clearance certificates. At best, the factual basis set out speaks to an incorrect calculations complaint;
- (d) In respect of prayer 4, no basis is pleaded for the relief sought, nor is the applicant seeking a declarator in respect of the interpretation of the *ratio*, neither did it make out a case for the invalidity of any act or omission of the Municipality, or any alleged non-compliance with the specific procedure.

Formulation of prayers and affidavit

- [8] Considering the manner in which the relief in the notice of motion was framed and the formulation of the founding affidavit, it is apposite to restate the fundamental principles applicable to applications and to repeat the manner in which prayers should be approached in motion proceedings.
- [9] Uniform Rule 6(1) requires every application to be brought on a notice of motion supported by an affidavit. The affidavit should contain the facts upon which the applicant relies for the relief sought. The position is not different whether interdictory relief or declaratory relief is sought.
- [10] The prayers in a notice of motion identify the relief which the applicant seeks. It is therefore vital that the prayers be correctly framed and stated with precision. When framing the prayers in a notice of motion, regard must be had to what the relief is that the applicant is entitled to and the proposed orders covering all the practical aspects necessary to render the relief effective. The importance further lies therein that court order which will imitate from the prayers in the notice of motion, if granted, ought to be effective.
- [11] An affidavit in support of an application should adequately lay a factual basis for the relief sought in the notice of motion. The facts must be set out clearly and in a chronological sequence, without argumentative matter. Where this is not done, it may lead to a situation where a court is faced with facts which do not provide a clear context, nor guide the court in respect of common cause issues and disputed facts, impeding on the court's ability to evaluate the application before it.¹
- [12] The statement of facts must at least contain the following information: the applicant's right to apply; the facts indicating that the court has jurisdiction; the cause of action on which the applicant relies; and the evidence in support of the application. In ***Swissborough Diamond Mines (Pty) Ltd and Others v Government of Republic of South Africa and Others*** 1999 (2) SA 279 (T)

¹ ***Reynolds NO v Mecklenburg (Pty) Ltd*** 1996 (1) SA 75 (W) at 78

the requirements for founding papers were summarized as follow:

“It is trite law that in motion proceedings the affidavit serves not only to place evidence before the court but also to define the issue between the parties. In so doing the issues between the parties are identified. This is not only for the benefit of the court but also, and primarily for the parties. The parties must know the case that must be met and in respect of which they must adduce evidence in the affidavit ... an applicant must accordingly raise the issue upon which it would seek to rely in the founding affidavit. It must do so by defining the relevant issues and by setting out the evidence upon which it relies to discharge the onus of proof resting on it in respect thereof.”

- [13] It flows that affidavits must, as a general rule, contain admissible evidence, and the deponent ought to have personal knowledge of that which he or she is testifying about in motion proceedings.

Statutory provisions

- [14] It is convenient to set out the statutory provisions germane to the applicant's case from the outset.

- [15] Section 14 of the Local Government: Rates Act 6 of 2004 (“Rates Act”) provide:

“(1) A rate is levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members.

(2) (a) A resolution levying rates in a municipality must be annually promulgated, within 60 days of the date of the resolution, by publishing the resolution in the Provincial Gazette”²

- [16] Section 1 of the Rates Act defines *ratio* as:-

² Prior to 1 July 2015 section 14(2) provided that “A resolution levying rates in a municipality must be promulgate by publishing the resolution in the Provincial Gazette.”

“, in relation to section 19, means the relationship between the cent amount in the Rand applicable to residential properties and different categories of non-residential properties: Provided that the two relevant cent amounts in the Rand are inclusive of any relief measures that amount to rebates of a general application to all properties within a property category;” (own underline)

[17] Regulation 2 and 3 of the Amended Municipal Property Rates Regulations on the Rate Ratios Between Residential and Non-Residential Properties, published under GN R195 in GG 33016 of 12 March 2010³ provides:

“2 Rates ratios to be applied

The rate on the categories of non-residential property listed in the first column of the table below may not exceed the ratio to the rate on residential properties listed in the second column of the table below, where-

(a) the first number in the second column of the table represents the ratio to the rate on residential properties;

(b) the second number in the second column of the table represents the maximum ratio to the rate on residential property that may be imposed on the non-residential properties listed in the first column of the table:

Categories	Ratio in relation to residential property
<i>Residential property</i>	<i>1:1</i>
<i><u>Agricultural property</u></i>	<i><u>1:0.25</u></i>
<i>-</i>	<i>-</i>
<i>Public service infrastructure</i>	<i>1:0.25</i>
<i>Public benefit organisation property</i>	<i>1:0.25</i>

3 Commencement

³ The applicant relies on regulation 2 of the regulation on the rate ratio between the residential and non-residential categories of property published under GN R363 in GG 32061 dated 27 March 2009. The substance is for the present purpose identical

The provisions of regulation 2, as far as they apply to:

(a) Agricultural and public service infrastructure property are deemed to have taken effect from 1 July 2009..." (own underline)

- [18] The relevant portion of Section 118 of the Local Government: Municipal Systems Act 32 of 2000 ("Systems Act") provides:

"(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate-

(a) issued by the municipality or municipalities in which that property is situated; and

(b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

(1A) A prescribed certificate issued by a municipality in terms of subsection (1) is valid for a period of 60 days from the date it has been issued." (own underline)

Applicant's case

- [19] At the commencement of the hearing, counsel for the applicant made it clear that the applicant does not dispute the Municipality's power to levy rates, the applicant does not seek relief in terms of Section 172 of the Constitution, the applicant's case is not based on the publication of the resolution contrary to the Rates Act but that the resolution was in fact not published. The applicant confirmed that they do not seek to impugn any budgets adopted by the Municipality.

- [20] Through a letter directed to the MEC of Local Government (Mpumalanga) during 2018, the applicant seeks to demonstrate and allege that the property rates levied by the Municipality were not promulgated in the provincial gazette as required in terms of Section 14(2) of the Rates Act, and for the municipal financial years 2009/10 to 2018/19, meaning for the period of 10 years between 1 July 2009 to 30 June 2019.

- [21] It was argued on behalf of the applicant that if the property rates levied by resolution for a particular municipal financial year are not promulgated in the provincial gazette as required in terms of Section 14(2) of the Rates Act, it has the implication that such property rates did not come into operation, like it would be the case if the Municipality adopted bylaws by resolution which will come into operation and force only when promulgated in the provincial gazette.
- [22] The applicant placed reliance on the matter of ***South African Property Owners Association v The Council of the City of Johannesburg*** (648/2011) [2012] ZASCA 157 (8 November 2012), more particularly paragraph [5] of said judgment, in that rates levied by municipalities are unlawful if not published in the provincial gazette as prescribed.
- [23] The applicant further alleges that for the period 8 years between 1 July 2009 to 30 June 2018 rebates and discounts were not applied.
- [24] It is alleged that the Municipality further incorrectly interpreted, calculated and applied the *ratio* of 1:0.25. According to the applicant the Municipality ought to have calculated the *ratio* after the calculation of the applicable rebates and discounts. The consequence being that the *ratio* of the actual property rates paid in respect of residential properties and the actual property rates paid in respect of agricultural properties exceeded the *ratio* of 1:0.25.
- [25] Relying on a circular dated 16 February 2021, the applicant sought to demonstrate that the *ratio* in relation to Section 19 of the Rates Act means the relationship between the Cent amount in the Rand applicable to residential properties and the different categories of non-residential properties: provided that the two relevant Cent amounts in the Rand are inclusive of any relief measures that amount to rebates of a general application to all properties within a property category.
- [26] The applicant alleges that several of its members, including Mrs. MJM

Boshoff, KP & E Paul and HC Marais have fallen foul of the Municipalities non-compliance with Section 118 of the Systems Act.

- [27] In respect of Mrs. MJM Boshoff, it is alleged that a court order was obtained under case number 4135/2021, ordering the Municipality to correct the figures, which court order was not complied with.
- [28] In respect of KP & E Paul, it is alleged that five applications for a clearance certificate, dated 2 August 2022, reflect wrong clearance figures. Further that the Municipality was, on 22 August 2022, requested to correct the clearance figures, and was provided with the necessary calculations in respect thereof. Notwithstanding the correct clearance figures being made available for the purpose of correction, no response was received.
- [29] In respect of HC Marais, it is alleged that the applications for the clearance figures, with clearance figures are for the 2020/2021 financial year as provided by the Municipality, do not accord with the relevant part of the property valuation roll which contains the valuations of the properties. It is alleged that from the said roll it can be observed that the property values of the properties and the current property rates for 2020/2021 on these properties are at the levied property rate of 0.0002914 Cents in the Rand of the property value for the agricultural properties, as published under Local Authority Notice 41 of 2020 on 3 July 2020.
- [30] Per the applicant, the clearance figures ought to be as follows:

SMALL HOLDING	PROPERTY VALUE	RATES 2020/2021	CLEARANCE FIGURES	DIFFERENCE TOO MUCH
9	R300 000	R874.20	R4 238.64	R3 364.44
11	R380 000	R1 107.32	R4 797.81	R3 690.49
12	R440 000	R1 282.16	R5 149.64	R3 867.48

47	R33 000	R96.16	R313.31	R217.15
53	R1 320 000	R3 846.48	R121 148.41	R117 301.93
54	R26 000	R75.76	R231.61	R155.85
59	R1 890 000	R5 507.46	R22 542.10	R17 034.64
61	R1 800 000	R5 245.20	R19 529.23	R14 284.03

[31] It is alleged by the applicant that the matters of the respective members are examples of non-compliance by the Municipality with the Rates Act and the Systems Act, and that there exist other cases of their members who will benefit from the declaratory order sought.

The Municipality' case

[32] The Municipality contend that the relief sought is final interdictory relief, opposed to declaratory orders. Its contended that in respect of Prayer 1 the applicant seeks the Municipality to be interdicted from collecting property rates of the 10-year period relied on. In doing so, the relief is directed at interdicting the Municipality from exercising a constitutional power to raise revenue in terms of Section 96 of the Systems Act and that the Municipality is duty-bound to impose and collect revenue due to it.

[33] As a result of the applicant assuming that it is declaratory relief which it seeks, oppose to a final interdictory relief, the applicant has failed to establish the requirements for final relief.

[34] It is the case for the Municipality that a valid rate resolution involves three steps, being (1) a political decision of the council of the municipality to adopt a resolution; (2) the promulgation of the resolution and (3) public notification of the resolution. The Municipality contend that the aforesaid steps were complied with.

- [35] It is contended by the Municipality that they accept that where a rates resolution is not validly adopted, there may be no obligation in respect of rates which are set to be payable, but that same is not to be said in respect of the imposts.
- [36] The Municipality further contend that the invalidation of a rates resolution affects the validity of the entire budget for the year in question, and that Sections 16 and 17 of the Municipal Finance Management Act 56 of 2003 ("MFMA") on the adoption of the budget must then be read together with Sections 3 and 14 of the Rates Act to determine whether the resolution of rates is invalid.
- [37] In the present matter the applicant has not impugned the rates policy and/or the rates bylaw of the budget of any financial year. This omission, according to the Municipality, is fatal to the relief sought.
- [38] The Municipality stated that the resolutions relating to the budgets and the budget adoption processes have not been attached in order to avoid prolixity, and more so as the applicant's challenge is not in respect of the budgets of the Municipality.
- [39] The Municipality contend that the resolutions in respect of levying of rates, as required in terms of Section 14(2)(b) of the Rates Act, in draft form, accompanied the budget, as required by Section 17(3)(a)(i) of the MFMA, when the annua budget was tabled in terms of Section 16(2) of the MFMA. On this basis it is denied that the property rates levied were not promulgated for the years 2009/10 until 2018/19.
- [40] Equally it is denied that if the property rates levied by the resolution for a particular municipal financial year is not promulgated, as required in terms of Section 14(2) of the Rates Act, it has the implication that such property rates did not come into operation. According to the Municipality, the relief in prayer 1 is precluded by Section 27(4) of the MFMA, which reads that non-

compliance by municipalities with the provision of this chapter relating to the budget process or a provision in any legislation relating to the approval of a budget-related policy, does not affect the validity of an annual or adjusted budget.

- [41] The Municipality contend that it's the budgets for the relevant years were enacted in compliance with the required procedure and substantive requirements imposed by law. In the alternative, these budgets complied substantially with the relevant statutory requirements.
- [42] It was argued on behalf of the Municipality that Section 14(2) of the Rates Act was amended with effect from 1 July 2015, and it is unclear on which of the versions of the Rates Act the applicant relies.
- [43] Dealing with the issue of the clearance figures, the Municipality contend that prayers 2 and 2 are based on invalid and unsound legal foundation, and therefore incompetent. The prayers include at least four sources of municipal revenue, such as municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties. Further that any finding of a defect in the rates resolutions does not affect the exercise of the power of the Municipality to withhold the prescribed certificates in respect of amounts that become due in connection with that property for municipal service fees, surcharges on fees and other municipal taxes, levies and duties. Property rates as levied in terms of a municipal budget remain valid and imposable until such a budget is set aside.
- [44] The Municipality contend that the relief sought in terms of prayer 3 cannot be predicated on the success in respect of prayers 1 and 2, as the factual allegations on the invalidity of the rates resolution only relate to a period 1 July 2009 to 30 June 2019, and in consequence will defeat the purpose of prayer 3, which holds that "*such a clearance should be issued once no amounts are due*".

- [45] The Municipality argue that the founding affidavit is devoid of any allegation as to why the applicant should not pay the amounts due in the past two years before the issuing of the rates clearance certificate, nor is there a challenge to the validity of the rates resolutions in respect of the two years preceding the launch of the application. Therefore, Section 118(1) of the Systems Act has no relevance to the pleaded case of the applicant, which relates to the period 1 July 2009 to 30 June 2019.
- [46] It is contended on behalf of the Municipality that absent a declaratory order on the correctness of the allegation in respect of the interpretation of the *ratio*, the relief in prayer 4 is merely academic.
- [47] In response to the applicant's contention that in the event that these amounts are paid, it would result in excessive amounts being paid to the Municipality its alleges that the applicant is bound to follow the Municipality's credit control policy promulgated in terms of Section 9(6) of the Rates Act, and where there is an allegation of excessive amounts.
- [48] In response to the allegation of irreparable harm, the Municipality allege that no factual basis has been advanced to justify same.

Relief per the notice of motion

- [49] The relief sought by the applicant is worded so as to oblige this court to speculation what relief the applicant truly seeks and what the applicant seeks to achieve thereby. Moreover, there is a palpable disconnect between the respective prayers. Each prayer appears to be founded on a separate causa. A determination of one in favor of the applicant will not influence the other, save for prayer 2 and 3.
- [50] The language used by the applicant is descriptive of prohibiting and mandatory conduct. The orders are framed by employing verbs such as

“refrain”, “issue” and “follow”. In other words, prayer 1 seeks this court to order the Municipality not to collect property rates in certain circumstances. Prayer 2 and 3 seeks this court to order the Municipality to issue clearance figures and thereafter once all the amounts are no longer due to issue the clearance certificate as contemplated in Section 118 of the Systems Act. Prayer 4 seeks this court order the Municipality to generally follow procedures prescribed in the Rates Act and System Act, and in doing so apply the correct interpretation of how the *ratio* of 1:0.25 should be applied.

[51] If the relief was truly declaratory in nature the formulation of the prayers, particularly prayer 1 would have been such to describe the declaration sought. I agree with the Municipality that the relief as frames is interdictory oppose to declaratory.

[52] That said, I proceed to consider what the applicant relies on in its founding affidavit on both formulations i.e., as interdictory relief and as declaratory relief.

Interdictory relief

[53] Interdicts are orders granted to prohibit conduct by a respondent, or ordering a respondent to perform particular acts. The relief is concerned with the avoidance of the infringement in the future of a right of the applicant, and is not relief granted in respect of past infringements of a right.⁴

[54] It is trite that the requirements for a final interdict are that (1) the applicant must demonstrate a clear right; (2) there must be an injury actually committed or reasonably apprehended; and (3) there must not be similar protection available to the applicant by any other remedy.⁵

⁴ **Minister of Health v Drums and Pailes Reconditioning CC t/a Village Drums and Pailes** 1997 (3) SA 867 (N) at 876-877

⁵ **Setlogelo v Setlogelo** 1914 AD 221

[55] In ***United Democratic Movement & Another v Lebashe Investment Group (Pty) Ltd & Others*** Madondo AJ, in a unanimous decision stated the following at paragraphs 47 and 48 entitled justification for the granting of interdictory relief:

“[47] An interdict is an order made by a court prohibiting or compelling the doing of a particular act for the purpose of protecting a legally enforceable right, which is threatened by continuing or anticipated harm. ...

[48] In granting an interdict, the court must exercise its discretion judicially upon a consideration of all the facts and circumstances. An interdict is “not a remedy for the past invasion of rights: it is concerned with the present and future”. The past invasion should be addressed by an action for damages. An interdict is appropriate only when future injury is feared.” (footnotes omitted)

[56] In ***Economic Freedom Fighters v Gordan and Others***⁶ the Constitutional Court stated:

“[37] This court in OUTA established that when granting an interim interdict against a State entity – and: in effect, restraining the use of public power – courts should adroitly “consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the State functionary and/or organ of State against which the interim order is sought”.⁷

...

“[48] We were cautioned by this Court in OUTA that, where Legislative or Executive power will be transgressed and thwarted by an interim interdict, an interim interdict should only be granted in the clearest of cases and after careful consideration of the possible harm to the separation of powers principle. Essentially, a court must carefully scrutinise whether granting an interdict will disrupt Executive or Legislative functions, thus implicating the separation and distribution of power as envisaged by law. In that instance, an

⁶ 2020 (6) SA 325 (CC)

⁷ ***National Treasury v Opposition to Urban Tolling Alliance*** 2012 (6) SA 223 (CC) par 46

interim interdict would only be granted in exceptional cases in which a strong case for that relief has been made out.” (footnotes omitted)

- [57] Above equally if not more so find application when the court is asked to grant a final interdict.

Clear right

- [58] The applicant contends that it is a farmers' association within the municipal district of the Municipality. It further alleges that its members are registered owners and sellers of immovable property within the municipal area of the Municipality, and have a *prima facie* vested right and interest to be protected.⁸
- [59] The applicant also relies on Section 38 of the Constitution of the Republic of South Africa, an alleged that its members would have vested rights and interests as registered owners of immovable properties within the area of the Municipality. The applicant does not allege that a right has been infringement or threatened. The latter is more relevant in the consideration of whether the applicant has locus standi. Considering that Section 38 of the Constitution of the Republic of South Africa, has radically extended the common-law rule of standing and even absent a direct allegation of a right been infringement or threatened, I will accept that the applicant has the required locus standi.
- [60] That said the applicants mere standing in the matter cannot blindly be accepted to be demonstrative of the fact that it or its members enjoys a clear right.
- [61] Whether an applicant has a right is a matter of substantive law. Whether that right is clear is a matter of evidence. In order therefore to establish a clear right the applicant has to prove on a balance of probability facts, which in terms

⁸ Founding affidavit par 27

of substantive law, establish the right relied upon.⁹

- [62] The deponent to the founding affidavit is the secretary of the applicant. She confirms that the content of the founding affidavit is to the best of her knowledge true and correct, but she does not aver that the facts set out in the founding affidavit fall within her personal knowledge. Other than the resolution relied upon, authorizing the institution of the application, the applicant has not placed its constitution before court demonstrating the basis of its membership or the purpose for which it was formed or objects its formation seek to achieve ,nor any evidence in respect of its members' memberships and their ownership of immoveable property within the municipal area of the Municipality. The applicant can be excused for not placing personal details of its members before court but was at the very least required to take the court in its confidence and disclose its constitution, the amount of members it has.
- [63] The applicant has not demonstrated that the deponent has personal knowledge of the facts relies on in the founding affidavit, nor that it has a clear right.
- [64] That said, it can conceivably be accepted that an owner of immovable property situated within the Municipality has a right not to be charged property rates where such rates have not been legislated by promulgation, that Mrs. MJM Boshoff, KP & E Paul and HC Maree has a right to correct clearance figures to be issued to them and that the ratio of 1:0.25 be correctly applied. Whether that right is clear will depend on the evidence.
- [65] Concerning prayer 1 :- Other than an allegation that the rates resolutions for the period 2009 to 2019 has not been promulgated, the applicant has not placed any evidence before court demonstrating same. The Municipality denies that the resolutions has not been promulgated. The Municipality further avers that even if the property rates have not been promulgated, the resolution

⁹ **Diepsloot Residents & Landowners Association v Administrator, Tvl 1993 (3) SA 49 (T)** 61.

determining the rates were part of the adopted budgets and the validity of the budgets has not been challenged. Therefore, the property rates were published even if the resolution was not promulgated.

- [66] Concerning prayers 2 and 3, the applicant alleges that the clearance figures issued are wrong. The applicant attached what it contends to be the correct calculation. The Municipality denies these conclusions. The Municipality further contends that clearance figures includes at least four sources of municipal revenue and is not only property rates and that the valuation roll can be used as the single source of rates for calculating the clearance figures. It further contends that at best it may be an indication of incorrect calculations, but the applicant has not factually demonstrated that the incorrect amounts translate to the relief sought. It was submitted in argument on behalf of the applicant that as the properties concerned are agricultural the only applicable consideration for clearance figures are the property rates, this was however not born out by that which served before this court.
- [67] Concerning prayer 4, the applicant alleges that the Municipality failed to apply the correct interpretation and or calculation of the ratio 1:0.25, but does not lay the required factual basis for the conclusion. The Municipality denies that it incorrectly interprets the ratio. The Municipality further contends that absent a declaratory order over the correctness of the interpretation preferred by the applicant the relief is academic..
- [68] It was submitted on behalf of the applicant that the municipality failed to provide proof that it promulgated the resolutions and failed to provide proof that it complied with section 118 of the Systems Act. This contention ignores the fact that the onus to prove is on the applicant and by applying, as this court is required to do, the Plascon-Evans principle the version of the Municipality is to be accepted.
- [69] The applicant has failed to demonstrate that it or its members have a clear right.

Injury actually committed or reasonably apprehended

[70] The relief per prayer 1 and 4, seeks to interdict past conduct for the period of 10 years between 2009 and 2019. There is no allegation that the applicant or its members that such conduct is current or has a reasonable apprehension in respect of the immediate future.

[71] The applicant alleges that if the application is not granted, there will be irreparable harm to many members of the applicant in respect of excessive clearance figures that they have to pay, enriching the Municipality.¹⁰ This allegation has not been borne out by the facts of this matter and denied by the Municipality. For as far as the Municipality may have incorrectly calculated clearance figures, such harm cannot be regarded to be irreparable.

Alternative relief

[72] The applicant alleges that considering the demands and communication, as well as the court order dated 14 March 2022, there is no other remedy than to seek a declaratory order.¹¹

[73] The applicant has various alternative remedies to its disposal. In respect of its contention pertaining to the non-promulgation of the levy resolution, same can be challenged by a legality review on an appropriate factual basis. Furthermore, in respect of incorrect clearance figures, the amounts can be paid and recovered from the Municipality through an enrichment claim. In respect of the incorrect *ratio*, the same applies. Alternatively, the applicant can follow the Municipality's credit control policy promulgated in terms of Section 96 of the Rates Act.

[74] Moreover, and for as far as the applicant has taken an administrative decision in applying the *ratio* incorrectly same can be challenged on a proper factual

¹⁰ FA par 27.2

¹¹ FA par 27.3

basis by a review application.

- [75] For the reasons set out above, the applicant has failed make out a case for interdictory relief.

The declaratory relief

- [76] Section 21(1)(c) of the Superior Courts Act 10 of 2013 provides that a Division of the High Court has the power:

"...in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination."

- [77] The wording of section 21(1)(c) is identical to that of its predecessor, section 19(1)(a)(iii) of the Supreme Court Act 59 of 1959. In **Durban City Council v Association of Building Societies**¹² it was said at 32:

"The question whether or not an order should be made under this section has to be examined in two stages. First the Court must be satisfied that the applicant is a person interested in an "existing, future or contingent right or obligation" and then, if satisfied on that point, the Court must decide whether the case is a proper one for the exercise of the discretion conferred on it."

- [78] In **Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd**¹³ Jafta JA said of s 19(1)(a)(iii) of the Supreme Court Act 59 of 1959 (the predecessor to s 21(1)a) that:

'[16] Although the existence of a dispute between the parties is not a prerequisite for the exercise of the power conferred upon the High Court by the subsection, at least there must be interested parties on whom the declaratory order would be binding. The applicant in a case such as the present must satisfy the court that he/she is a

¹² 1942 AD 27

¹³ 2005 (6) SA 205 (SCA)

person interested in an “existing, future or contingent right or obligation” and nothing more is required (*Shoba v Officer Commanding, Temporary Police Camp, Wagendrif Dam* 1995 (4) SA 1 (A) at 14F). In *Durban City Council v Association of Building Societies* 1942 AD 27 Watermeyer JA with reference to a section worded in identical terms said at 32:

“The question whether or not an order should be made under this section has to be examined in two stages. First the court must be satisfied that the applicant is a person interested in an ‘existing, future or contingent right or obligation’, and then, if satisfied on that point, the Court must decide whether the case is a proper one for the exercise of the discretion conferred on it.”’

[79] The two-stage approach was further explained as follows in ***Cordiant supra***¹⁴

“During the first leg of the enquiry the Court must be satisfied that the applicant has an interest in an ‘existing, future or contingent right or obligation’. At this stage the focus is only upon establishing that the necessary conditions precedent for the exercise of the Court’s discretion exist. If the Court is satisfied that the existence of such conditions has been proved, it has to exercise the discretion by deciding either to refuse or grant the order sought. The consideration of whether or not to grant the order constitutes the second leg of the enquiry.”

[80] In ***Cordiant supra***, this Court at paragraph 17 said that:

“ It seems to me that once the applicant has satisfied the court that he/she is interested in an “existing, future or contingent right or obligation”, the court is obliged by the subsection to exercise its discretion. This does not, however, mean that the court is bound to grant a declarator but that it must consider and decide whether it should refuse or grant the order, following an examination of all relevant factors. In my view, the statement in the above dictum, to the effect that once satisfied that the applicant is an interested person, “the Court must decide whether the case is a proper one for the exercise of the discretion” should be read in its proper context. Watermeyer JA could not have meant that in spite of the applicant establishing, to the satisfaction of the court, the prerequisite factors for the exercise of the discretion the court could still be required to determine whether it was competent to exercise it. What the learned Judge meant is further clarified by the opening words in the dictum

¹⁴ par 18

which indicate clearly that the enquiry was directed at determining whether to grant a declaratory order or not, something which would constitute the exercise of a discretion as envisaged in the subsection (cf Reinecke v Incorporated General Insurances Ltd 1974 (2) SA 84 (A) at 93A-E).’ “

- [81] A court is entitled to make a declaratory order even where other remedies are available but not sought, although the availability of other remedies could be taken into account when exercising its discretion in deciding whether or not to make the declaration.
- [82] The granting of a discretionary order is thus discretionary power and cannot be granted where the issue has become abstract, hypothetical and academic.¹⁵
- [83] Aside the fact that the deponent as not averred that she has personal knowledge of the fact set out in the founding affidavit. For the reasons set out in paragraph 62 supra, the applicant has not demonstrated that it has an interest in an existing, future or contingent right or obligation justifying the granting of the declaratory orders as sought.
- [84] Regarding its members and for as far as they might be (which was not proved) to be immovable property owners within the applicable municipal area, I accept that generally immovable property owners have interests in an existing, future or contingent right or obligation.
- [85] Concerning the second leg of the enquiry, I am not persuaded to exercise my discretion in granting the declaratory relief as sought, for the reasons set out in paragraphs 65 to 68 and 72 to 74 supra.
- [86] Moreover, the factual basis relied on by the applicant are historic. The property rates have been levied, the latest as far back as 2019. The application for

¹⁵ ***Pheko and Others v Ekurhuleni Metropolitan Municipality*** 2012(2) SA 598(CC) at 609 [32]; ***JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others*** 1997 (3) SA 514 (CC) at par [15] and ***Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd*** 2005 (6) 205 (SCA)

clearance figures relied on by the applicant are respectively August 2022 and July 2021. There is no factual basis as to what has happened since then. If the clearance figures have not been paid it would inevitably require a fresh application for clearance figures.

[87] Thus, the issues are abstract, no longer have physical or concrete existence and are academic.

[88] In the circumstances the applicant has not made out a case for the declaratory relief sought. The application has unfortunately been ill-conceived.

[89] In order to accede to the applicant's request, any order granted by this court, would necessitate the court to redraft the prayers and thereby enter the fray. As held in ***National Commissioner of Police and Another v Gun Owners South Africa 2020 (6) SA 69 (SCA)***, where the court made suggestions on the rewording of the notice of motion in terms of which the court then made an order in favour of the applicant:

“ ... there is a real risk that judicial intervention of the kind in question may render the court susceptible to an accusation of bias. It is a fundamental tenet of the administration of justice, now subsumed under the Constitution, that all those who appear before our courts are treated fairly and that judges act — and are seen to act — fairly and impartially throughout the proceedings. In *President of the RSA v SARFU* the Constitutional Court explained it this way:

'A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before the courts and other tribunals. This applies, of course, to both criminal and civil cases as well as to quasi-judicial and administrative proceedings. Nothing is more likely to impair confidence in such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes.'

[26] *The second reason is that, in our adversarial system of litigation, a court is required to determine a dispute as set out in the affidavits (or oral evidence) of the parties to the litigation. It is a core principle of this system that the judge*

remain neutral and aloof from the fray. This court has, on more than one occasion, emphasised that the adjudication of a case is confined to the issues before a court:

'(I)t is for the parties, either in the pleadings or affidavits (which serve the function of both pleadings and evidence), to set out and define the nature of their dispute, and it is for the court to adjudicate upon those issues. That is so even where the dispute involves an issue pertaining to the basic human rights guaranteed by our Constitution, for it is impermissible for a party to rely on a constitutional complaint that was not pleaded. There are cases where the parties may expand those issues by the way in which they conduct the proceedings. There may also be instances where the court may mero motu raise a question of law that emerges fully from the evidence and is necessary for the decision of the case. That is subject to the proviso that no prejudice will be caused to any party by its being decided. Beyond that it is for the parties to identify the dispute and for the court to determine that dispute and that dispute alone.'
(own emphasis)

[90] It is also important to be alive to the fact that the Municipality was called to court to answer a specific case pleaded in a specific manner and supported by the evidence the applicant elected to place before court or elected to exclude. To decide the matter on different basis or by reading in word for the purpose of clarifying that sought in the notice of motion would lead to an injustice perpetrated on the Municipality.

[91] Had the applicant formulated its prayers differently and placed before the court an adequate factual basis it would have been open to this court consider and potentially to deal at the very least with the consequence of a Municipality failing to promulgate a resolution levying rates on the basis of **Liebenberg NO and Others v Bergrivier Municipality**¹⁶ where Khampepe J dissenting from the majority held as follows:

"[147] The Constitution empowers municipalities to exercise original legislative powers, including the power of taxation. As explained in Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others:

'Under the interim Constitution (and the 1996 Constitution) a local government is no longer a public body exercising delegated powers. Its council is a deliberative legislative assembly with legislative and executive powers recognised in the Constitution itself.

...The constitutional status of a local government is thus materially different to what it was when Parliament was supreme, when not only the powers but the very existence of local government depended entirely on superior legislatures. The institution of elected local government could then have been terminated at any time and its functions entrusted to administrators appointed by the central or provincial governments. That is no longer the position. Local governments have a place in the constitutional order, have to be established by the competent authority, and are entitled to certain powers, including the power to make by-laws and impose rates.

...It seems plain that when a legislature, whether national, provincial or local, exercises the power to raise taxes or rates . . . it is exercising a power that under our Constitution is a power peculiar to elected legislative bodies. It is a power that is exercised by democratically elected representatives after due deliberation.'

[148] The power of a municipality to impose rates is an exercise of an original legislative power. Legislative acts depend for their legal efficacy on due promulgation. This is an incident of the rule of law that has long been part of South African jurisprudence, as illustrated by the review of a few relevant cases in which I shall now engage.

[149] In Ismail Amod v Pietersburg Municipality¹⁰⁰ the Transvaal Supreme Court was faced with an appellant who had been found guilty of contravening certain provisions of a municipal by-law. The appellant challenged his conviction on the basis that the relevant by-law, although it had gone through a public-notification process and had been assented to by the Lieutenant-Governor, was not effective law as it had not been duly promulgated by publication in the Gazette. Innes CJ noted that the by-laws under consideration were intended to regulate an important aspect of public life, but was constrained to uphold the appeal. He thus held that, after there had been a proper public-notification process and the Lieutenant-Governor had approved the relevant by-laws:-

"[the] due publication or promulgation [of the by-laws] is necessary before they can have the force of law. Even if the statute had contained no such provision, the common law would have required some publication of such by-laws. By the Roman-Dutch law, as indeed by any civilised system of jurisprudence, a law before it can take effect requires to be promulgated. The expression of the will

of the legislative authority does not acquire the force of law unless and until it has been promulgated in due form for the information of those whom it is to affect. . . . In my opinion there has been no due promulgation of these by-laws, and on that ground the appeal must be allowed. I regret to have to come to this conclusion, because the appellant has contravened a very useful provision for the protection of the public health. But proper steps were not taken to legalise that provision, and the Court has therefore no option in the matter. This decision may have wide results, for apparently the same procedure has been followed in a great many other cases. But that is a thing which the Court cannot remedy.”

[150] Some years later the position in Amod was restated by Innes CJ – by then Chief Justice of a territorially unified South Africa – in R v Gluck, namely that “[a] law must be promulgated before it can come into operation. That is a principle well established in our practice and no authority is needed to support it. But it is the enacting instrument, the decree of the law-giver which needs to be promulgated.”

[151] In Byers v Chinn and Another the Appellate Division had to determine whether certain resolutions and regulations adopted by a Village Management Board under a particular statute needed to be promulgated in order to be effective. The following principles were enunciated by the Court. First, any law, regulation or by-law intended to have the force of law must generally be promulgated, and this promulgation should occur by way of publication in the Government Gazette. Second, it is usually “not enough that an individual may have knowledge in some other way of the alleged law, regulations or order . . . there must be promulgation”. Third, there are two exceptions to the promulgation requirement: (i) where the statute provides for an alternative to publication in the Government Gazette and (ii) where the instrument concerned is “not a ‘law’ within the meaning of the rule requiring promulgation of a law.” The Court held that promulgation via publication in the Gazette was not required in the circumstances of that case because the relevant statute contemplated no publication process of the Village Management Board’s decisions, because the decisions would only affect a very small number of people and because the decisions would be taken “upon the spot” in the presence of those affected. In other words, the decisions could be seen as instruments falling outside the category of laws requiring promulgation.

[152] In R v Busa en Andere the Appellate Division considered the distinction between formal promulgation requirements and procedural notice-and-comment or public-participation obligations. The Court found that while requirements regarding formal promulgation (such as publication in the Gazette) are peremptory such that non-

compliance will lead to the law in question never acquiring legal force, a requirement to ensure that the public is informed about its legal obligations may be directory and non-compliance therewith may not affect the legal efficacy of the statute under consideration.

[153] From the above, the position at common law is clear: statutory laws – whether they be Acts of Parliament or municipal by-laws – must be duly promulgated in order to have legal force, and this promulgation occurs by way of publication in the relevant Gazette. Of course, Parliament may allow for alternative forms of promulgation, and may impose additional publicity requirements. Courts and organs of state should, however, be wary of any approach to enacting legislation that detracts from the general principle of gazetting statutes as a prerequisite for the legal force thereof.

[154] The Interpretation Act preserves the common-law position and gives it statutory force. Section 13(1) thus provides that a law has legal effect on “the day when the law was first published in the Gazette as a law.” Ordinarily, therefore, all that is required for a law to come into operation is publication in the appropriate Gazette.

[155] The position has not changed since the advent of the Constitution. Section 162(1) of the Constitution, for example, provides that a “municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.” This promulgation requirement is in addition to and separate from the obligations regarding a public-comment procedure set out in section 160(4) of the Constitution. The Constitution thus enshrines both the promulgation requirement and the importance of due publication with regard to the legal efficacy of legislative acts. The common-law and statutory position set out above is, in my view, wholly consistent with section 162(1) of the Constitution.

[156] In National Police Service Union and Others v Minister of Safety and Security and Others the Supreme Court of Appeal had to determine whether a certain scheme for the rationalisation of various police forces (in terms of the interim Constitution) had to be promulgated by publication in the Government Gazette in order to have legal force. Smalberger JA confirmed the continued applicability under our constitutional dispensation of the common-law and statutory position set out above:

“It is a requirement of both the common law and statute that subordinate legislation, even if it has been validly enacted, is not of binding force and effect

in law until it has been promulgated. The requirement is subject to qualification”.

[157] The qualifications referred to are those expressed in Byers. In NPSU the Supreme Court of Appeal ultimately determined that promulgation was not required in the circumstances of the case because the determination of the scheme was administrative rather than legislative in nature.

[158] What the above discussion establishes is that in South Africa, as a matter of common law and statutory law, and further in terms of the Constitution, legislative enactments must be duly promulgated by publication in the relevant Gazette in order to have the force of law. Parliament may impose additional requirements for promulgation, and, in exceptional circumstances, an alternative form of promulgation may be used. Accordingly, close attention must be paid to the applicable statutory regime in order to determine the effects of non-compliance with obligations regarding the publication of a law. While there may be less stringent requirements for the effectiveness of administrative acts, the prescribed validity requirements for legislative enactments must be strictly observed.

Did the Municipality lawfully impose the rates during the years 2006/2007 to 2008/2009?

[159] The Municipality claims that it imposed the rates lawfully for the years 2006/2007 to 2008/2009 because it published notices of the relevant rates in local newspapers and therefore substantially complied with the requirements of section 14(2) of the Rates Act. Put differently, the Municipality contends that an organ of state need only substantially comply with its statutory obligations regarding the promulgation of taxes in order for the imposition of those taxes to be lawful. While I accept that the doctrine of substantial compliance as described by my sister Mhlantla AJ has its place in determining the general effects of non-compliance with statutory obligations, in the circumstances of this case I cannot agree with the Municipality's defence, in the light of both the applicable statutory scheme and the relevant general principles. I shall deal with the statutory scheme first, and thereafter consider the general principles.

[160] Section 14 of the Rates Act clearly imposes, in peremptory terms, three distinct requirements for the proper promulgation of rates. Subsection (1) functions to ensure that rating decisions are democratically made by elected representatives. This gives effect to section 160(2)(c) of the Constitution.¹²³ Subsection (2) is aimed at ensuring

that the constitutive act of legality – promulgation by means of publication in the Provincial Gazette – is undertaken, in order to give effect to the rates resolution as a source of law for the relevant period. This reflects the general principle of our law that legislative enactments must be duly promulgated by publication in the Gazette in order to have the force of law. Finally, subsection (3) sets out a municipality’s obligations with regard to informing the public of its rates obligations for the forthcoming year. This, of course, ensures that members of the public are not expected to comply with laws of which they might not ordinarily have knowledge.

[161] In accordance with the jurisprudence set out above, strict compliance with formal promulgation prescripts is required and “substantial compliance” can offer the Municipality no defence. There is, furthermore, no indication in the Rates Act that section 14(2) is merely directory in nature – the requirement it contains is stated in unambiguous and mandatory terms. Publication in a local newspaper was therefore insufficient to discharge the Municipality’s obligation to promulgate the rates resolutions by publication in the Provincial Gazette.

[162] Moreover, section 14 clearly imposes discrete and peremptory obligations. Discharge of one such obligation cannot, on its own, constitute discharge of another. Whilst publication in a local newspaper may suffice to satisfy the requirements of section 14(3)(b), it certainly cannot discharge the obligation set out in section 14(2). Similarly, just as notifying the public of rates for the forthcoming year could not satisfy the obligation set out in section 14(1) of the Rates Act,¹²⁵ neither could it satisfy the obligation set out in section 14(2). Holding otherwise would contravene the very clear prescripts of the Rates Act.

[163] In addition, even if one were to adopt a “substantial compliance” approach in relation to the section 14(2) obligation, the Municipality’s conduct would still be found wanting. The object of that provision is not to inform the public for participation purposes, but to ensure that the rates for a particular year are formally constituted as legislative enactments. Accordingly, publication in a local newspaper would not achieve the purpose of section 14(2) because such a newspaper is not the official and authoritative record of the conduct of the State.

[164] I now turn to consider the general principles that inform my rejection of the Municipality’s defence. Where the State purports to extract taxes from its citizens – conduct which goes to the very heart of the social contract between a government and its people – that extraction must be done in a lawful manner. Where a local authority

purports to impose rates, that imposition must be done in accordance with the constraints that Parliament has imposed. If we are to give cognisance to the fact that the Constitution now empowers municipalities to exercise original legislative powers, we must also accept that municipal authorities may no longer adopt an informal approach to the exercise of their powers. Similarly, it cannot be the case that municipalities are empowered to extract taxes pursuant to “laws” that they devise, when citizens are unable to find those laws anywhere in the statute books. That is wholly inconsistent with a State founded on the principle of legality. The High Court captured the point well:

“It seems to me that the provisions of s 14(2) of the [Rates Act] were enacted acknowledging the enhanced executive and legislative status of municipal councils under the new constitutional order. Whereas a less formal approach might have historically characterised the approach to publication of municipal bylaws under the old order, its continuation finds no justification under the current constitutional framework.” (Footnotes omitted.)

[165] Indeed, with the principle of legality lying at the heart of our modern constitutional dispensation, I fail to see how we could or should adopt a less exacting standard for the legality of legislative acts than the standard observed in the Transvaal in 1904 and in the Union in 1922.

[166] In the light of the above it is my view that, because the resolutions in terms of which the Municipality purported to levy rates for the years 2006/2007, 2007/2008 and 2008/2009 were not duly promulgated by publication in the Provincial Gazette as required by section 14(2) of the Rates Act, those rates were unlawfully imposed and the Municipality has no entitlement thereto. I would accordingly uphold the legality challenges against the imposts for those years.” (footnotes omitted)

[92] Furthermore, consider the interpretation concern regarding the *ratio* on the strength of the Local Government: Municipal Property Rates Act 6 of 2004, Circular No 7 (Issued on 15 December 2014) which states that:

“.. the ratio is based on the effective rate (i.e. the base rate less relief measures that amount to rebates of a general application) applicable to the two property categories in question, to ensure that the ‘ratio’ is a fair reflection of how the two property categories in question are in truth being subjected to differential rating. The definition makes it clear that the following relationship is applicable

in the ratio:

$$\text{ratio} = \frac{(\text{cR (other property category)} - (\text{rebates}))}{(\text{cR (residential property)} - (\text{rebates}))}$$

where: “cR” is the cent in Rand rate:

“rebates” are those of general application to the specific property category; and

“other property category” is either agricultural.....”

[93] When this court reads between the proverbial lines it appears by means of this applicant, to correct what it perceives to be the failure of the Municipality to follow the Rates Act in respect of promulgation of the rates resolution, cause the Municipality to apply the ratio of 1:0.25 by calculating the ratio after calculating applicable rebates and discounts, and as a result move the Municipality to issue clearance figures on the aforesaid basis and issue clearance certificates once no amounts are due. But this purpose was not achievable in the current form.

[94] The prayers in the notice of motion are imprecise and the case has been pleaded in such a fatal fashion that it is not possible for this court to exercise its discretion in favor of the applicant. For the reasons set out earlier in this judgment the application has to fail.

Costs

[95] There is no basis to deviate from the general principle that cost should follow the event.

Order

[96] I accordingly make the following order: -

1. The application is dismissed with costs.


GREYLING-COETZER AJ

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DELIVERED ON: This judgment was delivered electronically by circulation to the parties' representatives by way of email and by release to SAFLII. The date and time for delivery is deemed to be at 10h00 on 14 February 2024.

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