

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2022-043793

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>18/2/2025</u> DATE	
 SIGNATURE	

In the matter between:

SIBANYE GOLD LIMITED

First Applicant

GOLDFIELDS OPERATIONS LIMITED

Second Applicant

GFI JOINT VENTURE HOLDING (PTY) LTD

Third Applicant

AND

**THE VALUATION APPEAL BOARD FOR THE
RANDWEST CITY LOCAL MUNICIPALITY**

First Respondent

**THE MUNICIPALITY VALUER RAND WEST
CITY LOCAL MUNICIPALITY**

Second Respondent

RAND WEST CITY LOCAL MUNICIPALITY

Third Respondent

JUDGMENT

INTRODUCTION

- [1] This judgement is a sequel to the judgement and order I handed down on the 9th of September 2024 in which this court upheld a point in limine, dismissing the review application by the Applicants.
- [2] The Applicants who I shall hence forth refer to as “the mining companies” save where only one of them is involved then I shall refer to that Applicant with its own name. Similarly, I shall refer to the respondents collectively as the “municipality” save where reference is made to a particular respondent. I shall then cite that particular Respondent in their own name.
- [3] There are two applications before me which were argued simultaneously. The first application is by the mining companies who seek leave to appeal (The leave to appeal application). The second application is by Rand West City Local Municipality (The third Respondent) in which it seeks relief in terms of Section 18(3) of the Superior Courts Act¹. The third Respondent seeks an order that the judgement handed down on the 9th of September 2024 be put into operation and be executed and not await the outcome of the appeal.
- [4] The application for leave to appeal is opposed by the second and third respondents. The Section 18(3) application brought by the third Respondent is opposed by the applicants.
- [5] I shall in this judgement deal first with the application for leave to appeal, to be followed by the Section 18(3) application.

THE APPLICATION FOR LEAVE TO APPEAL

¹ 10 of 2013.

[6] The relevant facts and chronology of events leading up to this application has been set out in the heads of argument by all the parties and I need not rehash same save for the following:

6.1 After the Municipal Valuer had dismissed the objection raised by the Mining Companies the matter proceeded on appeal to the first Respondent, the Valuation Appeal Board (VAB).

6.2 At the commencement of the appeal proceedings during May 2022 an agreement to separate issues in contention was made an order by the Valuation Appeal Board (VAB) which order reads as follows:

“That the following issues in the appeal proceedings before Valuation Appeal Board (VAB) be determined separately:

1.1 Whether the items listed in Annexure “A” to this order are rateable. in terms of Section 17(1) (f) of the Local Government: Municipal Property Rates Act² (Rates Act) with reference to:

1.1.1 Whether they are movable or immovable 1.1.2

1.1.2 Whether they are above the surface of land and

1.1.3 Whether they are required for purposes of mining

1.2 In relation to those items that the VAB finds to be rateable whether they fall to be disregarded because they are

1.2.1 Under the surface of the property as Contemplated in Section 46(3)(a) of the Rates Act; or

1.2.2 Equipment as Contemplated in Section 46(3) (b) of

² 6 of 2004.

the Rates Act or

1.2.3 Machinery as Contemplated in Section 46(3) (b) of
The Rates Act

That the remaining issues in the appeal proceedings be postponed to a date as agreed between the parties or as determined by the VAB.

- [7] On the 19th of July 2022 the VAB issued a ruling on the separated issues and delivered its reasons on the 19th August 2022. In short, the VAB ruled that the separated items were rateable in terms of Section 17(1) (g) and 46(3) of the Rates Act.
- [8] After this ruling what remained was the parties to agree on a date to proceed with the remaining issues before the VAB in accordance with the agreed order of the 4th of May 2022.
- [9] On the 31st of August 2022 all the parties together with their legal representatives met with the Board Chairperson who informed and ruled that the remaining issues will be heard from the 28th of November 2022 up to the 9th of December 2022. Significantly it was at that meeting that counsel for the Mining Company indicated that they are contemplating a review application challenging the decision of the VAB on the separated issues.
- [10] The review application was launched on the 4th of November 2022 two months after the meeting and 24 days before the commencement of the hearing on the remaining issues. It is on record that at that meeting the legal representatives of the municipal parties cautioned that the contemplated review application would be premature as the Mining Companies had agreed that the remaining issues be dealt with after the ruling by VAB.
- [11] The review application served before me on the 26th of August 2024. In opposing the review application, the VAB in their heads took up the point that the Mining Companies application was premature in that they had failed to

exhaust internal remedies and failed to show exceptional circumstances as to why an expert agency such as the Valuation Board should be interdicted where no malice or gross irregularity had been shown.

[12] The third respondent also took up the same point and referred this court to the provisions of Section 7(2) of their Promotion of Administrative Justice Act³ 3 of 2000 (PAJA) and argued that unless exceptional circumstances are found to exist by a court on application by the affected party PAJA requires that internal administrative remedies be exhausted first before a judicial review administrative act is instituted.

[13] I upheld the point in *limine* raised by the municipal parties and dismissed the application and directed that the remaining issues as agreed upon be dealt with first by the VAB

THE APPLICANTS' GROUNDS OF APPEAL

[14] The Applicants relies on four grounds of appeal which are as follows:

14.1 That this court erred in its interpretation of Section 7(2)(a) of PAJA by making a finding that the applicants failed to exhaust internal remedies prior to launching the review application. The applicants in dismissing reliance on the decisions quoted in this judgment place their reliance on the matter of *Basson v Hugo and Others*⁴.

14.2 that this court erred in finding that the applicant should have applied to court for exemption from the provisions of Section 7 (2) of PAJA.

14.3 that this court erred by making a finding on the merits when this court itself noted that it lacks jurisdiction to hear the merits.

³ 3 of 2000.

⁴ (968/16) [2017] ZASCA 192 (01 January 2018).

14.4 That this court erred in holding that the appeal before the VAB was part heard when in fact the internal remedy insofar as it relates to the separated issues was finally decided by the VAB.

[14] It must be appreciated that all four grounds of appeal circulate around one aspect, that is whether this court correctly interpreted the provisions of Section 7 (2) of PAJA.

[15] Section 17 (1) of the Superior Court act regulates applications for leave to appeal a decision of a judge or judges sitting in the High Court, it reads as follows:

“leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- (a) (i) The appeal would have a reasonable prospect of success or
- (ii) There is some other compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.
- (b) The decision sought on appeal does not fall within the ambit of section 16 (2)(a).
- (c) Where the decision sought to be appealed does not dispose of all issues in the case the appeal would lead to a just and prompt resolution the real issues between the parties.

[16] It is common cause that there are broadly speaking 2 issues in dispute in this matter the 1st is the rateability aspect in terms of section 17(1)(f) of Rates Act. The second is the placing of values by the municipal valuer on the items declared ratable.

[17] It is clear that granting applicant leave to appeal will not only cause further delay in the resolution of an issue that arose some six (6) years ago but it will not

dispose of all the issues in dispute and will not lead to a just and prompt resolution of the issues between the parties.

- [18] The applicants have totally misdirected themselves by equating the separation of issues that was agreed upon with the formal Rule 33(4) application, applicable in the High Court. Firstly Rule 33 (4) refers “to the court” which is the organ that has the discretion to grant or not grant separation. The Valuation Appeal Board is not a court.

- [19] Section 33 (4) reads as follows:

“If, in any pending action, it appears to the court mero motu that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the questions cannot conveniently be decided separately.”

- [20] It is not surprising that in this application the applicants avoided dealing in their heads with the provisions of Section 17(1)(c) and only concentrated on the provisions relating to reasonable prospects of success and compelling reasons Section 17 (1)(a) (i) & (ii).

- [21] In advancing their argument on reasonable prospects of success the applicants have referred this court to the SCA decision in *Cook v Morrison and Another*⁵. That matter dealt with the dispute concerning repudiation of an agreement in a business transaction. The SCA having said what it said in paragraph 8 of that

⁵ 2019 (5) SA 51 (SCA).

judgment concluded that there were no reasonable prospects of success and that no special circumstances had been shown to justify granting leave to appeal.

- [22] The first sentence in paragraph 8 makes it clear that the existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of leave to appeal.
- [23] In dealing with the requirements of “other compelling reasons” the applicant referred this court to the SCA decision of *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁶. The paragraph quoted therein is paragraph 2 of the judgment wherein the SCA whilst confirming that compelling reasons include an important question of law or a discreet issue of public importance that will have an effect on future dispute, concluded that merits remain vitally important and are often decisive.
- [24] The merits in this matter are distinguishable and can never be compared to the merits in *Caratco*. The SCA in that matter also refused leave to appeal.
- [25] The evidence in this matter demonstrates that the Applicant has been buying time in order to avoid implementation of the Valuation roll. I am satisfied that granting leave to appeal will not be in compliance with Section 17(1)(c) of the Superior Court Act. In the result the Application for leave to appeal stands to be dismissed.

THE SECTION 18(3) APPLICATION

- [26] Section 18(3) of the Superior Court Act deals with the suspension of decisions pending appeal. This Section has received attention in the High Court of our country starting with *Incubeta Holdings (Pty) Ltd & Another v Ellis and Another*⁷; *UFS vs Afriforum and Another*⁸ and *MV Ais Mamas Sentrans Maritime vs Owners, MV Ais Mamas & Another*⁹.

⁶ 2020 (5) SA 35 (SCA).

⁷ [2017] JOL 3723 (GJ).

⁸ [2016] ZASCA 165 (17 November 2016).

⁹ 2002 (6) SA 150 (C).

[27] Section 18(3) provides that:

- “(1) Subject to subsection (2) and (3) and unless the Court under exceptional circumstances orders, otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal.
- (2) Subject to subsection (3) unless the Court under exceptional circumstances orders otherwise the operation and execution of a decision that is an inter locutory order not having the effect of final judgement, which is the subject of an application for leave to appeal or if an appeal is not suspended pending, the decision of the application or appeal.
- (3) A court may only order otherwise as contemplated in subsection (1) or (2) if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the Court does not so order and that the other party will not suffer irreparable harm if the court so orders.”

[28] The purpose of this section can be likened to an application for summary judgement in which a defendant who has no credible or arguable defence is prohibited from proceeding further with such defence. The key words in Section 18(3) are:

- (a) Exceptional circumstances.
- (b) Irreparable harm.

[29] The SCA in *S v Lieschirig and Others*¹⁰ at page 231 paragraph 39 explains the meaning of exceptional circumstances in the following words:

¹⁰ 2019 (4) SA 219 SCA.

"The phrase exceptional circumstances is not defined in the Superior Courts Act. Although guidance on the meaning of the term may be sought from case law, our courts have shown reluctance to lay down a general rule. This is because the phrase is sufficiently flexible to be considered on a case-by-case basis since circumstances that may be regarded as ordinary in one case may be treated as "exceptional in another"

- [30] Rand West Municipality as a local authority has both statutory and Constitutional obligations to the residents and businesses under its jurisdiction, Section 153 of the Constitution of the Republic of South Africa reads as follows:

"A municipality must:

- a) Structure and manage its administration and budgeting and planning process to give priority to the basic needs of the community and to promote the social and economic development of the community and
 - b) Participate in national and provincial development programmes."
- [31] Amongst the pieces of legislation that enable municipalities to fulfil this constitutional imperative is the Local Government Municipal Property Rates Act (as amended).
- [32] The history and chronology of events in this matter not only constitutes exceptional circumstances but clearly demonstrates irreparable harm which the municipality continues to suffer.
- [33] In the financial year 2013/2014 the Municipality Valuer compiled a general Valuation roll. The mines objected to the roll and proceeded in the year 2015 to file an interdict against the Municipality prohibiting it from implementing the valuation roll.

- [34] An agreement was reached between the parties in 2018 in terms of which the mining companies agreed to in the interim pay R108 million per annum whilst awaiting the preparation and publication of a supplementary valuation roll. When that was done the mining houses once more objected as a result the matter ended up with the VAB in May 2022.
- [35] In my view these are exceptional circumstances, firstly because the municipality is currently prohibited from implementing the Supplementary Valuation Roll which is on appeal before the VAB with a total market Value of R3.7 billion until the VAB makes a final determination.
- [36] The provisions of the Local Government Municipal Property Rates Act require that there be a speedy resolution of process and appeals before the VAB for the benefit of the Municipality. The Act envisages such process to be finalised within 141 days. This matter has now been pending for nine (9) years much to the detriment of the Municipality. The Appeal itself before the VAB was instituted on the 15th of March 2021, some four years ago.
- [37] The Supreme Court of Appeal in *UFS v Afriforum and Another* (supra) found that prospects of success on appeal played a role regarding whether or not to grant suspension of an order. In this matter I have already made a finding that there are no prospects of success on appeal and dismissed the application for leave to appeal.
- [38] The Court in *MV Ais Mamas Seatrans Maritime vs Owner MV Ais Mamas and Another* (supra) held that whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion, their existence is a matter of fact which the Court must decide accordingly.
- [39] The cold facts in this matter are that the mining companies agreed to revert to the VAB to deal with remaining issues as soon as a ruling shall have been made on the separated issues. They bound themselves to an agreement and now because the ruling did not go in their favour they want to jump out of that agreement. What is further disturbing is that the mining companies committed

themselves to specific dates for the continuation of the appeal hearing only to renege on that a few days before the recommencement.

- [40] It is also on record that every single month goes by the Municipality is suffering irreparable harm which leads to significant budgetary and statutory compliance challenge. The Municipality Manager has explained that their failure to be able to implement the Supplementary Valuation Roll has caused havoc in the Municipality administration and finances.
- [41] The mining parties maintain that the suspension of the implementation of the Supplementary Valuation Roll 4 was an express term of the interim payment agreement and to this end have referred this Court to a without prejudice letter dated the 5th November 2016 from Messrs Norton Rose Fulbright Attorneys. Reference to that letter which is annexure AA2 of the Answering Affidavit about the remaining part of the separated issues. It is that agreement which is still binding.
- [42] This Court is satisfied that irreparable harm is being visited upon the Municipality in that it is unable to fully comply with its constitutional mandate to the broader community within its border.
- [43] On the other hand no harm is being caused to the mining parties. They have been litigating this matter lavishly and are prepared to go all the way to the Apex Court at the expense of the public in that area.
- [44] In the result this Court is satisfied that the Municipality has not only shown exceptional circumstances but also that it is suffering irreparable harm whilst no such harm is being caused to the mining parties. It is in my view in the best interest of justice that there be no further delay in the finalisation of the VAB proceedings. To this end the chairperson of the VAB is directed to fix a date for the continuation of the hearing within 30 days from the date of the order which is annexed hereto marked "X"

Dated at Johannesburg on this 18 day of February 2025

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

M A MAKUME
JUDGE OF THE HIGH COURT
JOHANNESBURG

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 043793/2022

BEFORE THE HONOURABLE MR JUSTICE MAKUME IN COURT _____

Date: 27th August 2024

In the matter between:

SIBANYE GOLD LIMITED

GOLD FIELDS OPERATIONS LIMITED

GFI JOINT VENTURE HOLDINGS (PTY) LTD

1ST APPLICANT

2ND APPLICANT

3RD APPLICANT

and

THE VALUATION APPEAL BOARD FOR
RAND WEST LOCAL MUNICIPALITY

1ST RESPONDENT

THE MUNICIPAL VALUER FOR
RAND WEST CITY LOCAL MUNICIPALITY

2ND RESPONDENT

RAND WEST CITY LOCAL MUNICIPALITY

3RD RESPONDENT

DRAFT ORDER

HAVING HEARD the parties and having read the documents filed on record, the following order is made:

1. The application is dismissed.

2. The Applicants are ordered to proceed with the appeal proceedings before the First Respondent to finality, in accordance with of section 7(2)(b) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").
3. The applicants are ordered to the pay costs of the respondents, including costs for two counsel where so employed.

BY COURT ORDER



REGISTRAR

