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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: **127296/2023**

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED:

DATE: 30 JULY 2025

SIGNATURE

In the matter between:

LOTHAR OTTO BÖTTCHER

First Applicant

NICOLENE BÖTTCHER

Second Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

**THE MINISTER OF PUBLIC WORKS
AND INFRASTRUCTURE**

Second Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Third Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 30 July 2025.

JUDGMENT

RETRIEF J

INTRODUCTION

[1] The First and Second Applicant [Applicants] seek to review and set aside a decision taken by the First Respondent; the City of Tshwane Metropolitan Municipality [Municipality] as communicated to them on the 16 October 2023 by means of the section 7 notice [the section 7 notice] in terms of the Expropriation Act 63 of 1975 [Expropriation Act]. The section 7 notice referred to the acquisition of an immovable property registered in the First Applicant's name described as portion 176 (a portion of portion 2) of the Farm Kameeldrift 298, Registration Division JR, situated in the Gauteng Province [portion 176] [impugned decision]. The Applicant's review relief is brought, *inter alia*, in terms of the Promotion of Administrative Justice Act, 3 of 2000 [PAJA] [review relief].

[2] The Municipality opposes the review relief and the Second and Third Respondents filed a notice to abide. Over and above the review relief, the Municipality sought condonation for the late filing of their notice of opposition, the late filing of the record and, in consequence the late filing of their answering affidavit. According to the signed joint practice note this preliminary issue was not indicated as an issue for determination. This Court nonetheless has had regard to the Municipality's explanation and is satisfied that a full and acceptable explanation has been provided for the entire period of the delay and having considered the merits of the matter and that most of the relevant material background facts are common

cause, this Court will grant condonation as sought. The review relief will be dealt with having regard to all the papers filed.

[3] So, what is at the heart of the Applicants' complaint giving rise to their review relief? The Applicants complain that the section 7 notice is invalid as it offends section 7 of the Expropriation Act and that the procedure followed by the Municipality to justify the impugned decision is procedurally unfair and statutorily flawed. The Municipality conversely argues that it was entitled to take the impugned decision, that the reason for the expropriation of the First Applicant's property was justified and that all required procedures under the relevant legislation, including those in respect of section 7 was properly followed and complied with. It further argues that, in any event, the Applicants never objected to the process of expropriation itself but, if one has regard to the procedural steps taken by the Applicants before and after the section 7 notice, their core issue is, in fact, the compensation offered. It is common cause that the compensation offered has formally been rejected and that the Applicants have instituted action proceedings as envisaged in terms of section 14(1) of the Expropriation Act.

[4] Before dealing with the review relief, it will be helpful to consider the background facts that gave rise to both the Applicants' complaints, to consider the reason why the Municipality took the impugned decision and to view the steps taken by the Applicants, procedural or otherwise, in context.

BACKGROUND AND PROCEDURAL STEPS

[5] The Municipality is mandated to develop human settlement areas within its municipal region and district by, amongst other actions, zoning land as residential land. The farm Kameeldrift 298 JR [the farm] upon which portion 176 is situated, is land zoned for agriculture. The farm is located in the northern part of the city of Tshwane and therefore falls within the Municipality's regional and district jurisdiction. During 2002, the Gauteng Provincial Department of Human Settlement [the GDHS] sought to formalise portion 174 of the farm as it had been invaded by occupiers and had now become an informal settlement. GDHS had intended to establish a

township on portions 174 and 175 of the farm, in that way, it intended to formalise the informal settlement occasioned by the invasion of occupiers on the farm.

[6] In 2015 the Municipality took over the project from the GDHS and soon realised that due to the dense nature of the informal settlement, additional land would be required to decant some of these residents. Therefore, in 2020, the Municipality also acquired portions 178 and 179 of the farm for the development. Thereafter, the Municipality was approached by landowners of the surrounding properties all who expressed an intention to sell their properties to the Municipality to enable the extension of the portion 178 and 179 development. In 2021 and after a prefeasibility study was performed it was recommended that, *inter alia*, portion 176 should be acquired.

[7] To this end, and on the 22 June 2022, the Mayoral Committee resolved to acquire, at fair market value, certain properties from the surrounding landowners for the development, including portion 176. The fair market value for such properties, at that time, was determined by both the Cities internal valuers, the Group Financial Services Property Valuation section [internal valuation] and by external valuers Evaluations Enhanced Appraisals (Pty) Ltd.

[8] According to the filed records, the internal valuation of portion 176 was recorded as being R3,255,000.00 comprising a financial loss amount of R3,200,000.00 and R55,000.00 as a *solatium* amount. According to the external valuation the fair market value of portion 176 was recorded as R4,000,000.00. Unfortunately, although reference in the record is made to the respective valuation reports themselves as annexures, annexed to the 2023 report, no actual reports formed part of the record filed by the Municipality under uniform rule 53. The Municipality however dealt with and provided the external valuation report dated 26 October 2022 by Evaluations Enhanced Appraisals (Pty) Ltd, in their answer to the First Applications review relief. The record indicated that some of the landowners were satisfied with the valuations (internal and external) obtained by the Municipality, however, no consensus was recorded as being reached with the First Applicant as the owner of portion 176.

[9] Approximately a year later and on the 21 June 2023, the Group Property Department of the Municipality tabled another request before the Mayoral Committee relating to the same development. This time it now wished to table the prospect of acquiring portions 172, 173 and 176 of the farm by means of expropriation. To this end it proposed that the Mayoral Committees agree to resolve that the identified portions are to be acquired by means of expropriation, and that the resolution of 22 June 2022 be corrected to ensure that portion 176 which, was initially to be acquired by the sale method, now to be acquired by means of the expropriation method together with portions 172 and 173.

[10] The Mayoral Committee on the 21 June 2023 resolved the following material resolutions:

“RESOLVED:

1. *That Mayoral Committee resolution dated 22 June 2022 be corrected by removing the acquisition of portion 176 of the Farm Kameeldrift 298 – JR through a sale method, and instead the property be expropriated with portion 172 and 173 of the farm Kameeldrift 298 – JR;*
2. *That the Mayoral Committee approves the expropriation of portions 172, 173 and 176 of the farm Kameeldrift 298 – JR for human settlement development purposes;*
3. *That the properties (portion 172, 173 and portion 176 of the farm Kameeldrift 298 – JR) be expropriated at fair market values determined by the Group Financial Services Property Valuation section);*
4. -
5. *That the Acting/Group Head: Legal and Secretariate Services be authorised to issue notices of expropriation upon approval of the proposed expropriation of portion 172, 173 and 176 of the farm Kameeldrift 298 – JR (own emphasis);*

6. *That once said portions are approved to be expropriated (own emphasis), the said properties be declared Municipal Transitional Settlements in terms of clause 16 and 32 of the Planning Scheme, 2008 (Revised 2014);*
7. *That an environmental authentication through Gauteng Provincial Environmental Management Framework (GPEMF) Norms and Standard Process and a geological investigation be sourced by Human Settlement Department (a custodian department) to ascertain the geological constraints and developability of the properties.*

8-10-”

[collectively the June 2023 decision]

[11] According to the record, the next Mayoral Committee meeting was scheduled for the 5 July 2023. No record of that meeting ever taking place is before this Court nor did the minutes thereof form part of the record. The Municipality did not deal with the July 2023 meeting in its papers.

[12] Eight days after the June 2023 decision, and on the 29 June 2023 the Municipality sent a letter addressed to the First Applicant. The letter was headed **“EXPROPRIATION OF PORTION 176 OF THE FARM KAMEELDRIFT 298 JR”**. This letter was referred to by the Municipality as their notice in terms of section 3(2)(b) of PAJA [PAJA letter]. In the PAJA letter the First Applicant was informed of the following:

“The City of Tshwane Metropolitan Municipality intends to acquire portion 176 (own emphasis) of the farm Kameeldrift 298 JR, which will be utilised for the formalisation and development of Human Settlement by means of expropriation. See attached (Annexure A).

You are herewith notified in terms of section 3(2)(b) of the Promotion of Administration and Justice Act 2000 (Act 3 of 2000) (“PAJA”) of the proposed expropriation (own emphasis). The construction of the road is in the interest of the general public (own emphasis).

You will be compensated for the expropriated land at market value, and you will be able to claim compensation for actual financial loss caused by the expropriation.

You are given the opportunity to make written representation within 30 (thirty) days of the date of this letter regarding the principle of the proposed expropriation (own emphasis). You are requested to also (own emphasis) put forward any alternatives to the planned area to be affected by the servitude (own emphasis).

You are notified that, should a decision be made to proceed with the proposed expropriation after having considered your written objections or representations (own emphasis) you are entitled to request reasons for such decision in terms of section 5 of PAJA.”

[PAJA letter]

[13] Annexure A referred to was attached to the PAJA letter, and it was a copy of the subdivision plan in terms of section 24(b) of Act 9 of 1927 of the farm. The plan depicted portions 173 to 178 of the farm divided by a right of way servitude, such depicted by means of a broken line from point C to D.

[14] On the 12 July 2023 and before the expiration of the 30-day period referred to in the PAJA letter, the Municipality appointed its conveyancing attorneys Kutumela Sithole Inc to attend to the registration of, *inter alia* portion 176.

[15] On the 28 July 2023, the First Applicant’s attorney responded to the PAJA letter on behalf of the First Applicant, in which he, amongst other issues raised a number of concerns relating to the vague intent and purpose of the expropriation as

set out in the PAJA letter. He placed on record that the PAJA letter was confusing and required clarification. In amplification the First Applicant was unsure whether the Municipality now wished to acquire the entire portion 176 or just a portion thereof or merely the servitude for the purpose of a public road for the public interest. The First Applicant reserved his rights to make the representation referred to the PAJA letter to the Municipality after clarification was obtained. Notwithstanding the need for clarification, the First Applicant's attorney confirmed that, in the interim, The First Applicant was *"willing to enter into negotiations regarding compensation for the possible expropriation of the Property."*

[16] On the 3 August 2023, the Municipality responded to the First Applicant's letter of the 28 July 2023 and informed the First Applicant that:

"As per PAJA letter dated the 13th of July 2023 (own emphasis), the intention is to expropriate for human settlement development purposes. The road is part of such development as it will enhance access to human settlement development.

Furthermore, after the thirty days from the date of the PAJA letter, expropriation letters will be sent to your clients detailing the amount of compensation as approved by the Mayoral Committee dated the 21st of June 2023 (own emphasis)."

[letter of clarification]

[17] No PAJA letter of the 13 July 2023, as reference by the Municipality in the letter of clarification, formed part of the record nor did the Municipality deal with that in their papers.

[18] On the 15 August 2023, in an executive memorandum, a request was made to the Acting Legal Head for the signature of the section 7 notice. In support of the signature, the memorandum indicated the following:

“In compliance with (own emphasis) the aforementioned Committee resolution of the 21 June 2023 we served the property owner with a PAJA letter attached hereto. The 30-day period has lapsed since we served the letter to the owner. Therefore, (own emphasis) the expropriate must be served with the notice of expropriation.”

[19] Having regard to the memorandum, it is not clear from the June 2023 decision whether resolution 5 speaks of the PAJA letter as the notice as relied on by the author of the memorandum or the section 7 notice itself when the author stated, *“In compliance with the aforementioned Committee resolution of the 21 June 2023 we served the property owner with a PAJA letter.”* This is because the Municipality does not deal with it.

[20] At this stage of the process, the Acting Legal Head by virtue of the content of the covering letter is not asked to consider the First Applicant's letter calling for clarification in respect of the PAJA letter nor the Municipality's response thereto as these letters are not referred to nor attached to the memorandum marked for her attention. The only letter attached is the PAJA letter.

[21] Signature of the section 7 notice was approved on the 26 September 2023. On the 18 October 2023, the First Applicant acknowledged receipt of section 7 notice which informed him of the impugned decision.

[22] The section 7 notice was now accompanied by a covering letter which now confusingly made reference to the PAJA letter of the 13 July 2023 (ostensibly the PAJA letter of the 29 June 2023 but recorded as t the date of the receipt thereof), and significantly now only made reference to the First Applicant's clarification letter. The section 7 notice was addressed to the registered owner,¹ it set out a description of the property, it confirmed that the date of ownership and possession of portion 176 would be effected namely on the 1 November 2023, it drew the First Applicant's

¹ Section 7(4) of the Expropriation Act 63 of 1975.

attention to section 9(1), including 9(1)(d)(i) and 12(3)(a)(ii) and did set out a compensation offer.²

[23] The compensation offered was set out as follows:

“3. the total amount of R3,035,000.00 (three million and thirty-five thousand rand) (own emphasis) “the compensation OFFERED”) is hereby offered as compensation in terms of the Expropriation Act, which amount is broken down as follows:

3.1 In terms of section 12(1)(a)(ii) R3,200,000.00 (**two million nine hundred and eighty thousand rands**) (own emphasis) which is the financial loss,

3.2 In terms of section 12(2) R55,00.00 (fifty-five thousand rands, which is the solatium.”

[collectively the section 12 offer]

[24] The section 7 notice too, sets out further terms relating to the payment and how the offer was to be accepted. In particular in terms of paragraph 11, the following is stated:

“11. Should you fail to submit to a court as contemplated in section 14(1) of the Expropriation Act, before the 1st of July 2024, an application for settlement of the amount, you would be deemed in terms of the provisions of section 10(5)(a) of the Expropriation Act, to have accepted the compensation offered.”

[25] The First Applicant formally rejected the section 12 offer in writing on the 13 December 2023³ and initiated the review relief.

² Section 7((2)(a) and (b) of the Expropriation Act 63 of 1975.

³ Section 9(1)(a) of the Expropriation Act 63 of 1975.

[26] Thereafter, in May 2024 the Applicants served a statutory notice on the Municipality in terms of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002. This statutory notice was followed by the institution of legal proceedings against the Municipality and the Second Respondent before the 1 July 2024. The Applicants issued their summons commencing action on the 27 in accordance with the Expropriation Act.

LEGISLATIVE FRAMEWORK

The Constitution

[27] The Expropriation Act predates the Constitution by 20 (twenty) years. Therefore, it is not aligned with Constitutional provisions. The Expropriation Act does not refer to “*public interest requirement*” and that the calculation of the compensation must be just and equitable but rather based on a market value of the property. However, regard to the statutory provisions of the Expropriation Act through the Constitutional lens of section 25 dictates that the application of the Expropriation Act must be applied to conform with the fundamental values of the Constitution wherever possible.⁴ In this matter it is common cause that the law of general application is the Expropriation Act of 1975.

[28] Section 25 of the Constitution is relevant, and in this matter, it is appropriate to highlight, although applying weight to all of the other subsections where applicable, section 25(2)(b) and 25(3). In terms section of 25(2)(b) property may only be expropriated which reads that property may be expropriated only in terms of law of general application, *inter alia*, “25(2)(b) *subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.*”

[29] Section 25(3) speaks to the amount by providing that the same must be just and equitable. In subsection (c) thereof, as an open-ended factor⁵ in the

⁴ ***Du Toit v Minister of Transport*** (CCT 22.04) [2005] ZACC9; 2005 (11) BCLR 1053 (CC); 2006 (1) SA 297 (CC) at par 29.

⁵ *Ibid* para 28.

determination thereof, reference to the market value of the property is made. Such as prescribed the Expropriation Act, in particular section 12 when calculating the aggregate amount referred to in section 12(1).

The Expropriation Act 63 of 1975

[30] The Expropriation Act 63 of 1975 was enacted to provide for the expropriation of land and other property for public purposes. Section 1 of the Expropriation Act defines public purpose to include any purpose connected with the administration of the provisions of any law by an organ of state.

[31] Section 1, the definition of "*public purposes*" includes any purposes connected with the administration of the provisions of any law by an organ of State.

[32] Section 2 of the Expropriation Act states that:

"2. (1). Subject to the provisions of this Act the Minister may, subject to an obligation to pay compensation, expropriate any property for public purposes or take the right to use temporarily any property for public purposes."

[33] Section 5 of the Expropriation Act states that:

"5. (1) If a local authority has the power to expropriate property (own emphasis) or to take the right to use property temporarily, such power may only be exercised, mutatis mutandis, in accordance with the provisions of this Act and subject to the approval of and the conditions imposed by the executive committee concerned.

(2) For the purposes of the application of subsection (1) any reference in this Act to the Minister and the State shall be construed as a reference to the local authority concerned."

[34] Section 7 of the Expropriation Act states that:

“7. (1) *If the Minister has decided to expropriate, or to take the right to use temporarily, any property in terms of the provisions of section 2, he shall, subject to the provisions of subsection (5), cause to be served upon the owner in question an appropriate notice in accordance with the provisions of subsection (3).*

(2) *The notice of expropriation shall-*

(a)-(b) -

(c) *either state the amount which is offered as compensation* (own emphasis) *for the property or for the use thereof, or request the owner to advise the Minister in writing within sixty days from the date of notice of the amount claimed by him as such compensation and how much of the last-mentioned amount represents each of the respective amounts contemplated in section 12(1)(a)(i) and (ii) or (b) with full particulars as to how such amounts are made up: Provided that if the owner requests the Minister in writing within thirty days from the date of notice to extend the said period, the Minister shall extend such period by a further sixty days;*

(d) -

(3) *Subject to the provisions of subsection (5), the Minister shall cause the notice of expropriation to be served by causing the original or a true copy thereof to be delivered or tendered or sent by registered post to the owner in question.*

(4) - (5)”

[35] Section 9 of the Expropriation Act states that:

“9. (1) An owner whose property has been expropriated in terms of this Act, shall, within sixty days from the date of notice in question, deliver or cause to be delivered to the Minister a written statement indicating-

(a) if any compensation was in the notice of expropriation offered for such property, whether or not he accepts that compensation and, if he does not accept it, the amount claimed by him as compensation and how much of that amount represents each of the respective amounts contemplated in section 12(1)(a)(i) and (ii) or (b) and full particulars as to how such amounts are made up;

(b) to (e) -

(2) The Minister may, after receipt of a written statement contemplated in subsection (1), request the owner concerned to deliver or cause to be delivered to the Minister within such period not being less than one month as may be determined by the Minister, such further specified particulars in respect of any matter contemplated in the said subsection as he may consider necessary for the determination of the amount of the compensation.”

[36] Section 12(1) states that:

“12.(1) The amount of compensation to be paid in terms of this Act to an owner in respect of property expropriated in terms of this Act, or in respect of the taking, in terms of this Act, of a right to use property, shall not, subject to the provisions of subsection (2), exceed-

(a) in the case of any property other than a right, the aggregate (own emphasis) of-

- (i) *the amount which the property would have realized if sold on the date of notice (own emphasis) in the open market by a willing seller to a willing buyer; and*
- (ii) *an amount to make good any actual financial loss caused by the expropriation; and*
- (b) *-. ”*

Promotion of Administrative Justice Act, 3 of 2000

[37] Section 3(1) states that:

- “3. (1) *Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.*
- (2) (a) *A fair administrative procedure depends on the circumstances of each case.*
- (b) *In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1)-*
- (i) *adequate notice of the nature and purpose of the proposed administrative action;*
 - (ii) *a reasonable opportunity to make representations;*
 - (iii) *a clear statement of the administrative action;*
 - (iv) *adequate notice of any right of review or internal appeal, where applicable; and*

(v) *adequate notice of the right to request reasons in terms of subsection (5)."*

Local Government Ordinance of 1939

[38] Section 79(24)(1) permits the Municipality to *inter alia* purchase, expropriate or in any other manner acquire any immovable property, for the performance or discharge of any function or duty authorised or acquired in terms of any law. Such acquisition of immovable property may be achieved by expropriation as permitted in terms of section 2(4) of the Expropriation Act, or by negotiation with an owner of property for the acquisition thereof by means of agreement for public purposes.

DISCUSSION OF THE APPLICANTS' CASE

[39] Against the legislative background, the Applicants' attack both the process giving rise to the impugned decision and the section 7 notice itself. The Applicants contend that the section 7 notice is invalid and should be declared unlawful and that the process giving rise to the impugned decision was, *inter alia*, procedurally unfair, irrational and that such impugned decision stands to be reviewed and set aside.

The case regarding the expropriation process

[40] From a reading of the papers the Applicants take no issue with the fact that the Municipality is statutorily entitled to acquire the property by means of expropriation. They however contend that the process itself is to be scrutinised. In context the process was triggered by the June 2023 decision and initiated as against them, by means of the PAJA letter.

[41] The Applicants argue that the PAJA letter read with Annexure A was confusing in that they were unsure whether the Municipality intended to consider acquiring portion 176, a portion thereof or just the servitude. Furthermore upon a reading of the PAJA letter the Applicants stated that they were under the impression that a final decision to expropriate had not been taken yet and that is why the Municipality had called for their objections and their representations concerning the

process when it in the introductory paragraph stated that: “- *intends to acquire portion 176*” and later therein continues to make reference to: “*should a decision be made to proceed with the proposed expropriation after having considered your written objections or representations-*” The use of the words ‘*intend to-*’ and ‘*-should a decision be made to proceed-*’ to them meant that although there was an intention albeit a prospect, no final approval to proceed with expropriation had been made and that dialogue between the parties was open. In short, their representations could be meaningful.

[42] Notwithstanding their understanding and having written to the Municipality requiring clarification on certain unclear facts, the Municipality in its clarification letter of the 3 August 2023 conversely stated that: “ *Furthermore, after the thirty days from the date of the PAJA letter (own emphasis), expropriation letters will be sent to your clients detailing the amount of compensation as approved (own emphasis) by the Mayoral Committee dated the 21st of June 2023.*”

[43] From the clarification letter, the Applicants contended that without their input, expropriation letters would be sent detailing an amount already decided on by the Municipality even before the PAJA letter was even sent. Furthermore that, as at the 3 August 2023, “*-thirty days from the date of the PAJA letter,-*” being from the 29 June 2023 and not from the receipt, had factually expired. Any input from them to try and shift the barometer in any way was futile and as such, the call to make representation or objections was a farce. Furthermore, that after receiving the record it was clear that expropriation of portion 176 had finally been resolved by the June 2023 decision, conveyancing attorneys appoints and as such, the process was a farce. Therefore, the process was procedurally unfair. They reiterated that it was clear to the Municipality in their response to the PAJA letter that they reserved their rights to respond upon reflection of the Municipalities clarification response and that any negotiations regarding any proposed expropriation was interim pending such clarity.

[44] The Municipality contends that the June decision sanctioned expropriation and that is what triggered the process. The first step in the process was the PAJA letter. The Municipality confirms that although the Expropriation Act does not

prescribe the necessity of such a notice, for procedural fairness such a letter was sent as it is an organ of State and are therefore bound by the provisions of PAJA in such circumstances. Furthermore, they argued that both the PAJA letter dated the 29 June 2023 and the letter on the 01 August 2023 (this must have been a typographical error as the letter was dated the 3 August 2023) was sent to illicit representations from the First Applicant and *"-that expropriation was not going to follow on account of both of those letter."* In consequence the procedure was fair.

[45] The Applicants cast the review ground net wide without dealing pertinently with each ground raise. This Court only intends to deal with those grounds repeated in argument and sufficiently supported by facts.

Discussion

Was the process procedurally fair?

[46] The Municipality contends that the PAJA letter was sent to the First Applicant in compliance of section 3(2)(b). The PAJA letter dated 29 June 2023 gives the First Applicant notice of a proposed expropriation. Reference to "proposed expropriation", was used by the Municipality after the June 2023 decision already, absent any other decision, sanctioned expropriation on the admitted facts. Furthermore, the PAJA letter is poorly drafted, its content is confusing and, at times ambiguous with regard to material issues. In consequence, the purpose and nature of the proposed action as provided for in section 3 of PAJA is not met and the call for clarity by the First Applicant justified and reasonable. However, what was clear is that no indication in the PAJA letter was given that the June 2023 decision was taken at all and that such decision could adversely affect the rights of the First Applicant. This is probably why the Applicants were confused about what process the Municipality followed internally and thought that a mere proposal was made and no decision to expropriate would be made without consideration of their representations. The PAJA letter was not clear at all as envisaged in terms of section 3 of PAJA.

[47] Furthermore, it was only in the letter of clarification on the 3 August 2023, that mention of the June 2023 decision was made for the first time. Therefore, both the

letters being, the PAJA letter and the clarification letter of the 3 August 2023 had to be read together to obtain clarity and a fuller picture. Contrary to the Municipality's evidence that: "*-that expropriation was not going to follow on account of both of those letter.*" It did, in that, on a reading of the letter of clarification it cannot be said that its intention, as advanced by the Municipality, was to solicit a response from the Applicants. In fact, the facts demonstrate that the reverse is true as previously reasoned in that, the First Applicant was forewarned that the 30-day period for representations and objections started to tick from the date of the PAJA letter. The PAJA letter of the 29 June 2023.

[48] It is therefore reasonable for a reader, without been given an explanation to the contrary, to interpret and to accept that the window of opportunity to participate in a meaningful process had not been extended from the date of the Municipality's clarification letter in August 2023 nor, that that they as a fact could participate in the process after considering the content of the letter. In consequence, the next procedural step, the section 7 notice, would be dispatched consisting of compensation amount as agreed by the 23 June 2022 decision. The fact that the Applicants made no further objections and/or representation after the 3 August 2023 now comes into focus.

[49] Both the PAJA letter and the clarification letter in August 2023 were unclear causing procedural vagueness.⁶ The PAJA letter failed to fully comply with section 3(2)(b)(i)-(ii) of PAJA. The August 2023 clarification letter by its content truncated the Applicants participation in a meaningful process, and it is on this basis that the procedure followed by the Municipality, at this stage of the process was procedurally unfair to the Applicants. The Applicants after receiving the record indicated that they would have liked to put, *inter alia*, other alternatives to the Municipality as called for, but could not.

[50] Before dealing with the complaints raised as against the section 7 notice it appears from the executive memorandum that when the delegated person was

⁶ ***Allpay Consolidation investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others*** 2014 (1) SA 604 (CC) at para 88-90 read with section 6(2)(i) of PAJA.

called to sign the section 7 notice they did not possess knowledge of the First Applicant's response to the PAJA letter. This is because it was not referred to nor attached. In consequence the person could not consider the issues raised, did not note the interim request for negotiations nor for that matter that the First Applicant reserved his rights to make further representations and what became of them. Therefore, no further enquiries were made. The rubber stamp approach followed. This created a lack of consultation in the process.⁷ Such rendering the procedure unfair and seemingly creating the impression that the deprivation of the First Applicant's property was arbitrary.

[51] Lastly, from the record a further meeting by the Mayoral Committee was tabled to take place in July 2023. Whether that meeting took place or not is unknown. What is known from the papers is that the Municipality failed to deal with that fact emanating from the record. Its argument then that the June 2023 was the authority to finally sanction the expropriation if accepted is procedurally unclear. Furthermore, if that is so, then the Municipality has failed dismally to explain why the PAJA letter does not mention the final decision and why the language in the letter creates the impression that the expropriation is a prospect to be reconsidered when factually, that was not the position. The Applicants' complaint that the process was just a farce and simply going through the motions has weight.

[52] Having regard to the inevitable must flow and the Applicants are to succeed on this point as raised and argued.

The case regarding the section 7 notice

[53] Resolution 3 of the June 2023 decision makes reference to the determination of a fair market valuation by Group Financial Services. Section 12(1)(i) *makes reference to the determination of an “- amount which the property would have realized if sold on the date of notice (own emphasis) in the open market by a willing seller to a willing buyer.*

⁷ ***Bengwenyama Minerals (Pty) & Others v Genorah Resources (Pty) Ltd & Others***, 2011 (4) SA 113(CC).

[54] The Applicants deny receiving the original notice albeit a certified copy of the notice. They furthermore contend that no internal valuation report nor updated internal valuation report formed part of the record in support of section 12(1)(i). Furthermore, that the total compensation offered in the section 7 notice of R3,035,000.00 (three million and thirty-five thousand rand) was confusing if viewed as against the explanation which followed. The amounts which followed when added together do not tally with the total amount offered nor do some of the amounts written out in words accord with the actual figures themselves.

[55] Furthermore, the total compensation offered by the Municipality in the section 7 notice of R3,035,000.00 was, according to the Municipality's evidence not the intended offer as per the 2022 internal valuation. In that they contend that the total offer should have been R3 255 000.00. All these errors argue the Applicants' Counsel, offends section 7 of the Expropriation Act. The Municipality concedes the typographical errors. Other than that, the Municipality contends that such an error does not render the notice invalid.

[56] The Applicants also argue that the Municipality failed to follow statutory procedure and serve an original section 7 notice on both the Applicants. The Municipality is silent on compliance and the record indicates that the First Applicant did not sign for the receipt of the notice but one Bonita Botha. Ms Botha did not depose to a confirmatory affidavit. The Municipality contends it has complied by serving the section 7 notice as formally provided on the registered owner of the property, the First Applicant and, in any event, the property is excluded from community of property and thus there was no need to serve it on the Second Applicant.

Discussion

Did the section comply with the provisions of the Expropriation Act?

[57] The concession by the Municipality is well made but it does not address the failure by them to get the amounts written in words correct. To illustrate, in terms of the section 7 notice the financial loss in terms of section 12(1)(a)(ii) was set out as

“R3,200,000.00” but written out as “- (two million nine hundred and eighty thousand rands)” (own emphasis). The figures and words are at variance with one another.

[58] Section 12(1) of the Expropriation Act when applied correctly, speaks to the amount to be offered which should not exceed the aggregate of the amount which the property would have realised if sold at the date of notice in the open market by a willing seller to a willing buyer and the amount to make good in the actual financial loss caused by the expropriation.

[59] Applying the facts, in terms of section 12(1)(a)(i), no updated open market value was provided as at date of the section 7 notice, being the 16 October 2023. It is common cause that the First Applicant as at date of the section 7 notice did not provide his claim for financial loss either as envisaged in terms of section 12(1)(a)(ii). The latter is supported by the record with reference to the valuation done by the Acting Director: Property Valuations. This valuation in fact was simply a cut and paste exercise imported from the 2022 report and merely pasted in the report tabled before the Mayoral Committee again in 2023. It was not current, not even then. Furthermore, at the end of the cut and paste letter, the following paragraph states: *“The owner’s claim in terms of section 12(1)(a)(ii), if applicable, will be evaluated when it is received.”* This would explain why the letter of confirmation of the 3 August 2023 by the Municipality only refers to compensation to be offered being an amount approved by the Mayoral Committee (resolution 3). As indicated, no record of a further meeting of the Mayoral Committee was placed before Court.

[60] Reference to 12(2) in the section 7 notice, being the *solatium*, does not make sense in that the amount which should be offered is an amount equal to 10% of the amount payable in terms of section 12(1)(a)(i) plus other percentages. A formula is set out which can only be calculated once a figure in 12(1)(a) has been established.

[61] But does the confusion and the typographical errors as they appear, render the section 7 notice and its purpose *per se* invalid as advanced by the Applicants? Considering the section 7 other than the typographical errors relating to the amount of compensation, it does not offend the provisions section 7(2) as relied on by the

First Applicant and it is clear from the history of the matter that what statutorily was to be achieved with the section 7 notice was achieved. The section 7(2) does not indicate that the Municipality has to set out an amount for compensation in the notice nor that if it does, it has to qualify the total amount.

[62] However, one would expect that what appears in the section 7 notice would support a clear, rational and legitimate offer. To expand, the total offer in the section 7 notice was clear as the figures did accord with the words that followed, and it was only clear to both parties after the notice had been received that the total offered was not the intended amount. Although regrettable, the typographical errors as complained of by the Applicants does not disturb the validity of the section 7 notice with regard to section 7(2) complaint.

[63] Furthermore, if an offer was made, as it was, section 7(2)(c) is triggered, and the First Applicant is at liberty to reject the offer and inform the Municipality and it is common cause that the offer has been rejected. For what it is worth, the First Applicant has not indicated on the papers that if the intended offer of R3 225 000.00 was correctly offered as set out, that the offer would have been accepted, the procedural facts speak to the reverse.

[64] Section 25 of the Constitution and section 14 of the Expropriation Act are in harmony in that if the parties do not agree on the amount payable for compensation, that a court of law be approached to make that determination. It is common cause that the Applicants have initiated the proceedings contemplated in the Expropriation Act.

[65] Having reasoned the above this Court is acutely aware that having ruled that the process triggering the impugned decision is to be reviewed and set aside for want of procedural fairness, that this in consequence disturbs the section 7(1). In that the basis for the section 7 notice must be triggered by a decision to expropriate. For want of a decision to rely on, the notice cannot stand. In any event, procedural compliance with regard to service of section 7 notice in compliance of section 7(3) has not been satisfied by the Municipality.

[66] Having regard to all the evidence the Applicants must succeed in that the section 7 notice is to be set aside.

COSTS

[67] It is trite that costs follow the result, and in the circumstances, costs should be awarded to the Applicants. No other argument was tendered. The Court therefore awards the Applicants costs of suit.

[68] The following order:

1. The First Respondent is granted condonation for the late filing of the answering affidavit and the record.
2. The decision to approve the expropriation of Portion 176 (portion of Portion 2) of the farm Kameeldrift 298, Registration Division JR, Province of Gauteng, measuring 8,5653 hectares, held under Title Deed T[...] [the property] as communicated to the First Applicant through the notice of the 16 October 2023 [the notice] is reviewed and the decision and the notice is hereby set aside;
3. The Third Respondent is ordered to amend its records to indicate that the First Applicant is the owner of the property;
4. The First Respondent is ordered to pay the costs of this application on a party and party scale, taxed at Scale C.

L.A. RETIEF

Judge of the High Court
Gauteng Division

Appearances:

For the Applicants:	Adv J.G.C. Hamman Mobile: 084 910 0092 Email: hamman@ptalaw.co.za
Instructed by attorneys:	JDP Attorneys Email: justin@jdplaw.co.za
For the Respondent	Seneke SC Mobile: 082 652 8344 Email: seneke@law.co.za Adv Lekgetho Mobile: 076 090 5018 Email: lekgetho@loftusadv.co.za
Instructed by attorneys:	Marivate Attorneys Tel: (012) 341 1510 Email: leseho@marivate.co.za
Date of argument:	21 May 2025
Date of judgment:	30 July 2025