



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Not Reportable  
Case No: 16552/2024**

In the matter between:

**GERRIT LODEWICKUS COETZEE N.O**

First Applicant

**ANDREA COETZEE N.O**

Second Applicant

(in their capacities as trustees of the time being of  
**THE SOUTH AFRICAN GLOBAL  
CONQUEROR TRUST, I[...])**

and

**MOSSELBAY MUNICIPALITY**

Respondent

**Coram: RALARALA, J**  
**Heard on: 18 February 2025**  
**Delivered on: 15 September 2025**

**Summary:** Administrative law – Review - Administrative action - Validity of Municipal Council decision- Refusal of application for alienation of municipal low value property for benefit of public - Refusal to allow representations on public participation process objections - Infringement of the right to procedural fairness section 3(2)(b)(ii) of the Promotion of Administrative Justice Act 3 of 2000. Decision of Municipality reviewed and set aside.

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## **ORDER**

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1. The decision of the Municipality of 29 February 2024 not to grant the Trust approval is reviewed and set aside.
  2. The matter is remitted to the Municipality for reconsideration.
  3. The Municipality is to provide the Trust with the relevant objections by no later than 30 October 2025 and allow the Trust reasonable time for submission of the comments to the objections.
  4. The Municipality is to consider the Trust's application with all the comments within 90 days of this order.
  5. The Municipality is directed to pay the Trust's party and party costs, such costs to include the costs of Counsel on Scale C.
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## **JUDGMENT**

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**RALARALA, J**

[1] This is an application to review and set aside the decisions of the Respondent (*“the Municipality”*) to deny the acquisition by the Applicants (*“the Trust”*) of an immovable property owned by the Municipality situated at Erf 6[...], Mossel Bay (*“the property”*).

[2] The Trust's application to purchase the property for the benefit of the public, to provide access to the beach through the property was unsuccessful. The Trust asserts that the Municipality's decision constitutes an administrative action in terms of the common law and the Promotion of Administrative Justice Act 3 of 2000 (as amended) ("*PAJA*"). Initially, three grounds underpinned the Trust's review application, and at the hearing two of the grounds for review were abandoned by the Trust. The application is opposed by the Municipality contending that PAJA is not applicable.

## **FACTUAL BACKGROUND**

[3] The First Applicant submitted an application to buy the property from the Municipality. In light of the First Applicant's decision to abandon this application, the Trust submitted a new application, which is the subject matter of these proceedings. The purpose of acquiring this property was to provide public beachgoers with access to the beach and to construct public amenities and changing rooms. The property is situated on the south coast of the garden route and borders an exclusive residential estate, the Moquini Estate, Dana Bay, Mossel Bay. The property is said to be facing the Southern Ocean, which is adjacent to the beach of the south border. The property covers approximately 4800 square meters.

[4] On 30 November 2023, the Municipal Council considered the Trust's application and granted the Trust an 'in-principle' approval. This approval was to be followed by a public participation process ("*the PPP*") on the proposed alienation of the property to the Trust. On 15 December 2023 the Municipality published the proposed alienation of the property for public comment and pursuant thereto, on 31 January 2024 the Trust caused correspondence to be sent to the Municipality stating that it was alerted that objections had been lodged against the Trust's application and enquired whether it would be entitled to reply to the objections and what steps the Trust should take. Pursuant to consideration of the objections emanating from the PPP, on 6 March 2024 the Municipality informed the Trust of its decision not to alienate the property and the basis thereof notwithstanding the 'in principle' approval. The Trust was dissatisfied with the decision of the Municipality in this regard. The Trust seeks to impugn that decision in this application.

## **APPLICANT'S CASE**

[5] The Trust avers in its founding affidavit that the aforementioned administrative actions are unlawful and fall to be reviewed and set aside on the basis that they materially and adversely affect the Trust's rights and the rights of the general public, which in turn affects the legitimate expectations of the collective. The Trust further avers that the decision to revoke the initial 'in principle approval' to alienate the immovable property to the Trust was taken with wilful disregard of the collective interest and without complying with procedural fairness requirements stipulated in section 33 (1) of the Constitution and section 3 of PAJA. The decisions were taken by Municipality for all the reasons set out in section 6(2)(c), (e) and (f)(ii) of PAJA that justify judicial review.

[6] The Trust contends that the First Applicant visited the Garden Route area during March 2023 with the intent to acquire immovable property/ies for the Trust. The property, an exclusive residential estate, Moquini Estate, consisting of luxury private residential accommodation was spotted by First Applicant. Ownership of Moquini Estate vests in the Municipality. It is contended that the First Applicant approached the Municipality to ascertain the possibility of acquiring the property in order to provide public amenities to the general public at the beach and to facilitate easy access to the beach via the property.

[7] On 6 March 2023, the Municipality advised the First Applicant to make an application to the Municipality for the alienation of the property. The Municipality responded to the email correspondence setting out the process that must be followed in order to submit the appropriate or necessary application.

[8] In July 2023, the First Applicant enquired about the progress of the application and was advised that the application had been preliminarily approved by the Municipality's Mayoral Committee. The application would be included in the Council's agenda for approval at a meeting scheduled for 27 November 2023.

[9] The First Applicant received an email from Douw Steyn ("*Steyn*"), the Municipality's Legal Advisor, on 24 July 2023. The Municipality required information from the Trust regarding the purpose of the Trust together with the letters of Trusteeship and the Trust's resolution, in order to inform the public. Further, the Municipality advised the Trust that a Public Participation Process would be necessary.

[10] On 24 July 2023, the First Applicant addressed an email correspondence responding to Steyn proposing that the Municipality approve the alienation of the property to the Trust. Certain undertakings were made by the Trust including not to alter or in any way disturb any services.

[11] Further correspondence was exchanged between the First Applicant and Steyn which led to the virtual meeting on 24 August 2023. At the meeting, Steyn indicated that they were satisfied with the responses from the Municipality and that the application would be circulated to other departments within the Municipality for approval and comment. This was followed by additional correspondence from the First Applicant to Steyn, advising of a meeting with area consultants, "key people" in the Fisherman Village Moquini Estate etc. and aspects that were discussed as well as recommendations.

[12] The Municipality responded to the correspondence on 20 September 2023, advising that the aspects raised in the Trust's correspondence of 28 July 2023 were with the Directorate of Urban Planning for further comment, as part of the application's evaluation process.

[13] On 7 November 2023, the First Applicant was advised by the Municipality that its Legal Department was engaged in its final stages of discussions to make a recommendation to the Council of the Municipality. The Municipality enquired about the progress of the Department of Environmental Affairs.

[14] The Municipality conveyed that the item to be raised at the Council meeting was internal in nature and will only be published on the website once it had gone through the approval of all the relevant Committees of the Municipality. Further, it

was conveyed to the First Applicant that the Municipality first makes an “in-principle” decision, which will be communicated to the Trust. Alternatively, that further input and/or objections may be encountered which might require further amendment from the Trust and also having regard to the PPP which needs to be undertaken.

[15] Subsequently, further correspondence was exchanged between the parties. On 24 November 2023, the Municipality conveyed and confirmed that the application would be tabled at the Council’s meeting on 30 November 2023 following its approval by the Mayoral Committee.

[16] The Council’s resolution stipulating, inter alia, that approval was granted for the alienation of 4800m<sup>2</sup> of immovable property to the Trust at a market related price of R980 000 (V.A.T inclusive) and that it would be used for conservation and coastal access point for the general public. The Trust indicated that it accepts the resolution. Enquiries were addressed to the Municipality regarding the PPP and on 31 January 2024, the Trust advised the Municipality that they were alerted through the local Media regarding opposition to the proposal. The First Applicant avers that they had studied the objections and viewed the individual objections as unwarranted and biased. The Trust contends that it enquired from the Municipality as to whether the Trust would be afforded an opportunity to respond to the objections, since they were not aware if there were other comments and what the full extent and content of the objections is. The Trust also sought to determine how it could address any or all of the objections.

[17] The Municipality advised the Trust on 1 February 2024, that the Trust has no opportunity to comment on the objections. On 6 March 2024, the Trust was informed that the alienation approval was revoked. On 28 March 2024 the Trust’s legal representative addressed further correspondence to the Municipality requesting reasons for its decision and internal remedies available to the Trust insofar as review or appeal processes were concerned. To obtain the information requested, the Trust was directed to the provisions of the Promotion of Access to Information Act, 2 of 2000

[18] Essentially, the Trust asserts that the Municipality did not afford it a reasonable opportunity to make representations before the revocation of the 'in principle' approval. Furthermore, the Trust contends that the Municipality failed to provide it with adequate notification regarding any rights of review or how the applicant could exhaust internal remedies as envisaged in section 7 of PAJA.

## **RESPONDENT'S CASE**

[19] The Municipality on the other hand, sets out in its answering papers that none of the decisions constitute administrative action as envisaged in PAJA, as they have no adverse effect on the rights of the Trust or the general public.

[20] Further than on a factual level, the Municipality never made a decision to alienate the immovable property or revoke such a decision. The two decisions made by the Municipality's Council: First, on 30 November 2023, constitutes an 'in-principle' approval to alienate the immovable property but subject to a PPP, vested no rights and stipulated that the item will be referred back to Council for further consideration.

[21] The second decision was taken in February 2024 after the PPP which entails the following:

*“the comments and objections were substantive and significant in number and approval for the alienation of the property was not granted and the property is to remain undeveloped in its natural state subsequent to this decision Council is functus officio.”*

[22] The Municipality asserts that the Trust has failed to establish any case in which it or the collective had any legitimate expectation that could or would be adversely affected by any decision taken by the Municipality.

[23] The Municipality persists that it adhered to the appropriate procedure when managing reactive disposals of this nature, acknowledging that it is not legally obligated to alienate its immovable property. The Municipality further contends that

no decision was ever taken prior to the receipt of the Trust's offer to alienate the immovable property. The alienation of public property is a prerogative to be exercised only by the Municipality; and courts cannot compel the Municipality to exercise this prerogative.

[24] The Municipality avers that the decision was fair, and all parties involved, including the public, were afforded an opportunity to be heard and advised of the process and accepted same. Members of the public, who were interested parties objected to the Trust's application and filed objections and comments.

[25] The Municipality submits that in terms of its Asset Management Policy, it may not dispose of an immovable property unless its council has held a public meeting and determined on reasonable grounds that the property is not required for service delivery and has considered the fair market value.

[26] The Municipality asserts that the procedure adopted is consistent with the provisions of the Municipal Finance Management Act 56 of 2003 ("MFMA") and the Regulations. Consequently, it is a fair process for both the Trust and the public, constituting a fair procedure as envisaged in section 3(2), alternatively section 3(4) of PAJA.

[27] In March 2023, a letter was addressed to the First Applicant, as the Trust had not yet been registered. The Municipality in the aforementioned correspondence stated that the immovable property cannot be alienated. The Trust may request legal services to obtain a formal Council Resolution, and the procedure to be followed was encapsulated in this correspondence. The Municipality asserts that the Trust understood and accepted the process.

[28] The Municipality further asserts that the Applicant accepted the terms of the 'in principle' decision from the Council without making any further comments or raising objections. In addition, in terms of the process there is no provision for an applicant to be provided with the comments and objections received from the public. This was confirmed by legal services to the Trust on 1 February 2024, when advising

that the final decision of Council will be communicated to him after all objections and commentary had been taken into account.

[29] The Municipality's Council is required to determine whether to sell the property based on the item prepared by legal services, the remarks from the internal departments, and the results of the PPP. There is no legal or constitutional obligation to alienate its immovable property.

[30] The Municipality denies that an expectation was created that the different departments would approve the application. The Trust was informed of the Council meeting and the date but chose not to attend. When the Trust was informed that the Council would take a final decision and on what basis, it did not make any request to the Municipality to make further submissions.

## **ISSUES FOR DETERMINATION**

[31] The Trust's documents initially outlined three primary reasons for review. Firstly, that the revocation of the 'in principle approval' is unlawful; secondly, that the Municipality should have provided the Trust with an opportunity to comment on the objections received in the PPP; thirdly, that the decision to refuse the application is not rationally related to the information before the decision -maker, as objections have no merit. At the hearing, the Trust abandoned the first and the third grounds and proceeded on the basis of the second ground of procedural fairness under PAJA. Thus, this court is enjoined to determine the following, firstly, whether the Municipality's omission to permit the Trust to submit to its Council representations after the objections were lodged by the public is an administrative action, simply put, whether PAJA applies. Secondly, whether the Municipality infringed the applicant's right to procedural fairness as contemplated in section 3(2)(b)(ii) thereof. I turn to consider these disputed issues ad seriatim.

[32] To effectively address this question, I consider it important to provide a detailed overview of the legal principles that underpin administrative actions. In my view, these principles form the basis of how organs of state, the Municipality in this case, should exercise its public power when making decisions that affect individuals

and organisations. An examination of the relevant statutes, and relevant case law, will enable this court to unravel the responsibilities of the Municipality, an organ of state towards members of the public like the applicant to ensure fairness and accountability.

## **LEGAL PRINCIPLES**

[33] The Promotion of Administrative Justice Act 3 of 2000 (PAJA) section 1 defines a decision as follows:

**“‘decision’ means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under the empowering provision, including a decision relating to-**

- (a) making, suspending, revoking or refusing to make an order, award or determination;**
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;**
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;**
- (d) imposing a condition or restriction;**
- (e) making a declaration, demand or requirement;**
- (f) retaining, or refusing to deliver up, an article; or**
- (g) doing or refusing to do any other act or thing in administrative nature, and a reference to a failure to take a decision must be construed accordingly;”**

Section 1 defines ‘administrative action’ as meaning any decision taken, or any failure to take a decision, by-

- (a) an organ of state, when-**
  - (i) exercising a power in terms of the Constitution or a provincial constitution;**
  - or**
  - (ii) exercising a public power or performing a public function in terms of any legislation; or. . .”**

[34] Section 3 of PAJA reads:

**” Procedurally fair administrative action affecting any person**

- (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 to 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 section 5”**

## **DISCUSSION**

**Is the decision of the Municipality to revoke the ‘in-principle’ approval an administrative action?**

[35] Adv. De Waal SC, counsel for the Municipality argued that a decision to sell a low value capital asset reactively does not qualify as an administrative action under PAJA. The reasons for this submission are based on the fact that the decision is not administrative in nature, as the Council is not typically an administrative decision-making body. Further that there is nothing bureaucratic about the decision, nor does it involve ‘application of policy’ instead, the decision seems more commercial or managerial in nature, rather than administrative. Reliance was placed on *Grey’s Marine Hout Bay (Pty) Ltd v Minister of Public Works* 2005 (6) SA 313 (SCA) where

the court found that the decision to let state land was an administrative action but stated that:

*“[29] But section 3(1) of PAJA confers a right to procedural fairness only in respect of administrative action that materially and adversely affects the rights or legitimate expectation of any person.*

*[30] While ‘rights’ may have a wider connotation in this context, and may include prospective rights that have yet to accrue, it is difficult to see how the term could encompass interests that fall short of that. It has not been shown that any rights -or even prospective rights -of any of the appellants (or of any other person) have been adversely affected by the Minister’s decision. None of the appellants has any right to use the property that has been let, or to restrict its use by others, nor has any case been made out that rights of occupation of their own premises have been unlawfully compromised. As pointed out in Kyalami Ridge at para [95]*

*‘The general rule is that the reasonable use of property by an owner is not subject to restrictions, even if such user causes prejudice to others.’*

*[32] Nor has it been shown that any of the appellants (or any other person) has a legitimate expectation that the property would be left vacant, or even that they would be consulted, or their comments invited, before it was let.”*

[36] Section 160 of the Constitution stipulates that ‘A *municipal Council makes decisions concerning the exercise of all powers and the performance of all functions of the Municipality*’. In the present matter the decision was made by the Municipal Council exercising a public power or performing a public function. Moreover, the decision involves the implementation of a legislation, thus the exercise of the power is administrative in nature. Public power carries with it a duty to act in the best interest of the public. See *Law Society of South Africa v President of the Republic of South Africa* 2019 (3) SA 30 (CC) para 3. Moreover Section 239 of the Constitution defines an organ of state as to include ‘*any functionary or institution exercising a public power or performing a public function in terms of any legislation*’. Thus, I venture to say that Counsel’s argument in this regard cannot be sustained.

[37] In *Grey's Marine supra* (page 323 paragraph D to F) the court held as follows:

*“The PAJA definition of administrative action restricts administrative action to decisions that adversely affect rights of any person that literal meaning could not have been intended. For administrative action to be characterised by its effect in particular cases (either beneficial or adverse) seems to me to be paradoxical and also finds no support from the construction that has until now been placed on section 33 of the Constitution. Moreover, that literal construction would be inconsonant with section 3(1), which envisages that administrative action might or might not affect rights adversely. The qualification, particularly when seen in conjunction with the requirement that it must have a ‘direct and external legal effect’, was probably intended rather to convey that administrative action is action that has the capacity to affect legal rights, the two qualifications in tandem serving to emphasise that administrative action impacted directly and immediately on individuals. “*

[38] The Trust contends that in terms of section 40 (2) (b) (i) of the Municipal Supply Chain Management Regulations immovable property may be sold only at market related prices except when the public interest or the plight of the impoverished demands otherwise. The Municipality, in this manner when exercising its power may dispose of its rights in the property and such disposal constitutes administrative action. *Bullock NO and Others v Provincial Government, North West Province and Another* 2004(5) SA 262 (SCA). Significantly, section 3(1) of PAJA confers the right to procedural fairness only in respect of administrative action that materially and adversely affects the rights or legitimate expectations of any person. *Grey's Marine Hout Bay (Pty) Ltd v Minister of Public Works* 2005(6) SA 313 at 325 para 29. The decision was made in the exercise of the public power and impacted the public. This decision is an administrative action because it involved the application of Municipal Council's policy, the highest decision-making authority of the Municipality which had direct and immediate consequences to the members of the public who are meant to benefit from the provision of access to a natural resource through the property and public amenities. *Grey's Marine supra* para 24.

[39] It is of the utmost importance that the Trust's application is altruistic in nature, as it is intended to serve the public interest by facilitating public access to and enjoyment of the beach areas and nature. The Trust intended that the property be utilised by beach goers especially the poor of the community who cannot afford such amenities close by and would otherwise be precluded from visiting and enjoying a public beach. The Trust in its founding affidavit references the Municipality Council Resolution of 30 November 2023 which remains uncontroverted and states at paragraph 43.2:

**‘the immovable property would be utilised for conservation and costal access point for the general public.’**

At paragraph 43.6 it continues to state:

**‘the public will have free access to and over the immovable property at all times.’**

At paragraph 43.7 it is stated:

**‘the respondent is satisfied that the disposal would be for the benefit of the community.’**

[40] The Trust in dispelling the Municipality’s contention that its decision had no effect on rights of the Trust or the public, asserts that the Municipality admitted that it could not afford to render the required services and failed to deliver the required public services which the Trust offered to deliver on behalf of the Municipality. These services were neglected, refused, or failed to be provided for more than 30 years. It cannot be successfully argued that the decision to let state land in Grey’s Marine supra is akin to the present decision on the sale of municipal land. In that case, the Minister of Public Works concluded a lease agreement with Bluefin, a company established by a group of women with deep roots from Hout Bay where the leased property was located. These women wished to venture into the fishing industry and were historically excluded. The leased property was intended for constructing and operating a fish processing facility and restaurant on the quayside at Hout Bay. The

Appellants were neighbouring businesses on the quayside and were concerned that the development would result in traffic congestion on the quayside, deprive tenants and visitors of the necessary parking and manoeuvring space, and impede access to their premises and to the waterside. They sought to review and set aside the Minister's decision. The appellants were not parties to the lease agreement between the Minister and Bluefin.

[41] The second appellant was previously the tenant of the property that was leased, and the provisions of the lease required the second appellant to construct a clubhouse on the property within 12 months of the lease's commencement. The second appellant failed to act in this regard even after obtaining an extension. The second appellant proposed to terminate its lease agreement for the property; however, they requested an assurance that the property and the adjacent water area would remain vacant, and that they would not be rented to any other individual or used for the construction of any substantial structure. This proposition was declined by the state, and no such undertaking was given.

[42] This matter is distinguishable from the present matter in that the Trust is party to the alienation process as it initiated the alienation application and is directly affected by the decision of the Municipality. Further in *Grey's Marine* the appellants had not established any rights or prospective rights which had been adversely affected by the Minister's decision. In the current matter the application by the Trust explicitly stipulates that the procurement of the property is for the benefit of the public. Crucially, section 24 of the Constitution is of paramount importance, as it guarantees everyone a right to the protection of the environment for the benefit of the public through reasonable legislation and other measures that secure use of natural resources while promoting justifiable economic and social development. The beach is a natural resource, and as such the public is entitled to the access that the Trust seeks to provide. The Trust has indeed demonstrated that the rights of the public are at stake in this matter.

[43] The Municipality while appreciative of that right acted contrary to the provisions of section 24 of the Constitution and the Municipality's decision materially and adversely affects this right. There can be no doubt that the non-delivery of these

services has an adverse effect on the public. Thus, the proposition by Mr DeWaal that there is a grave doubt regarding whether the Trust was genuinely acting in the public interest fundamentally misses the point and cannot be sustained.

[44] Furthermore, the appellants in *Grey's Marine* did not establish a legitimate expectation, as no undertaking was made by the state that the property would be left vacant after the second appellant relinquished its rights thereto. The Trust asserts that the 'in-principle' approval created a legitimate expectation. In my view, it is clear that the decision of the Municipality falls within the purview of PAJA. For reasons set out above I take the view that PAJA is applicable in this matter and section 3 (2) (a)(ii) thereof was contravened by the Municipality.

#### **Did the Municipality deny the Trust the right to procedural fairness?**

[45] Regarding the issue of rebuttal of the objections from the PPP, the Trust argued that, in paragraph 20.1 of the founding affidavit, the Municipality contends that no steps were taken by the Trust when advised to furnish the Municipality by way of PPP or otherwise with any rebuttal or comment on the objections. This is while no invitation was extended to the Trust for comments notwithstanding the Municipality's stance that the Trust had no right to comment on the objections. This assertion by the Municipality is not sustainable.

[46] The Municipality's stand point is that the PPP was not applicable as the property was a low value asset but based on the MFMA, they had to comply with the requirement that a transfer of ownership of immovable asset must be fair, equitable, transparent and competitive, while Counsel for the Municipality in his written submissions states that because the property is a low value property no PPP was required in terms of the Asset Transfer Regulations therefore a decision on low value asset does not trigger PAJA's obligations to consult. Notwithstanding, the Municipality claims that the procedure followed was fair to both the Trust and the public. It is important to point out that the Municipality asserts that resolution E37-02/2024 in fact extended an invitation to the Trust not only to attend the PPP but also to lodge representations.

[47] Pragmatically, in such a case, the Trust's representations would not be based on the Trust's own application, but rather on the comments and objections received from the public. This denoting that the comments and objections would have to be provided to the Trust by the Municipality and allow reasonable time for comment by the Trust. The Municipality in this manner opened the door for the consideration of objections, comments, and representations, by extending the invitation. However, notwithstanding such invitation the Municipality only considered the objections and comments lodged by the public, without affording the Trust an equal opportunity to make representation to advocate for the section of the public it serves, even when this was clearly requested by the Trust.

[48] The Municipality's contention in its answering affidavit that '*the Trust took no steps when so advised to furnish the Municipality by way of the PPP or otherwise with any rebuttal or comment on the objections*' [para 20.1 of the answering affidavit] in the context of the preceding paragraph is telling. Furthermore, it is incongruous to the response proffered by the Municipality to the Trust's email correspondence of 31 January 2024 regarding the PPP objections. In addition, the Municipality in this paragraph propounds that the Trust was not precluded from providing comments or rebuttal to the objections. This renders the argument tendered by Mr De Waal, which posits that the administrator exercised his discretion not to allow the Trust an opportunity to present comments and dispute the objections, similarly meritless.

[49] The First Applicant pertinently requested an opportunity to respond to the objections in this correspondence, indicating that the Trust is not aware of the precise nature of the objections. In my view, this indicates that the Trust had a well-grounded, legitimate expectation that it would be afforded an opportunity to comment on the objections. The response to that correspondence from Steyn indicated that the Municipality was yet to consider the objections and comments and thus the opportunity could and should have been granted to the Trust before a decision was taken by the Municipality. It is concerning that the Municipality felt justified in not allowing the Trust an opportunity to make representations despite the Trust's expressed yearning to be heard. Significantly, from the above contention as correctly pointed out by Adv Bence for the Trust, the Municipality does not contend that the Trust was not entitled to provide comments and or rebuttal to the objections during

the PPP. Authority to make administrative decisions require that decision makers do so in a manner that is harmonious with PAJA. See *Zondi v MEC for Traditional and Local Government Affairs* 2005(3) SA 589 (CC) para101. The procedure that the Municipality followed was flawed and violated the Trust's right to procedural fairness as envisaged in PAJA read with section 33 of the Constitution.

[50] Besides, the argument proffered by the Municipality to the effect that it would be ineffective and cost-consuming to provide for a process where the Trust and objectors are provided with further opportunities would culminate in a process akin to trial proceedings in which the Council would be required to serve as an adjudicator, is disputed by the Trust. The Trust contends that the conduct of the Municipality instead resulted in a very costly litigation, evading responsibility necessitating the court to adjudicate on a gratuitous PPP. It is well to remind ourselves that no process of cross examination is envisaged but merely the submission of representations by the Trust and consideration thereof by the Municipality.

[51] In the Municipality's quest to achieve a fair, equitable, transparent and competitive process in the transfer of a low value asset, complete compliance with the MFMA the Municipality had anticipated that representations from the Trust in response to the public comments would be forthcoming. In its correspondence dated 08 July 2023 addressed to the Municipality the Trust intimated the same sentiments that *'it anticipated objections would come from the affluent residents, however, cognisance should be taken of the broader interests of the whole community'*. In light of the aforesaid, the PPP should have involved the Trust being granted an opportunity to make representations as that is what the application of procedural fairness in the form of the *audi alteram partem* requires. In *Janse van Rensburg NO V Minister of Trade and Industry NO* 2001 (1) SA 29 (CC) para 24 Goldstone J remarked as follows:

*"In the modern States it has become more and more common to grant far reaching powers to administrative functionaries. The safeguards provided by the rules of procedural fairness are thus all the more important . . . Observance of the rules of procedural fairness ensures that an administrative functionary has an open mind and complete picture of the facts and*

*circumstances within which the administrative action is to be taken. In that way the functionary is more likely to apply his or her mind to the matter in a fair and regular manner.”*

[52] Essentially, the determination of fairness must be based on the unique circumstances of each case. Although it is acknowledged that the process in the context of local government must not only lose the attributes of fairness but also those of transparency, competitiveness, and cost-effectiveness, permitting the Trust to submit representations clearly would not result in the over-judicialization of the administrative process. Regulation 7(i) of the Municipal Asset Transfer Regulations: Municipal Finance Management Act, 56 of 2003 in relation to consideration of proposals to transfer or dispose of non-exempted capital assets makes it peremptory that any comments or representations on the proposed transfer or disposal received from the local community and other interested parties be considered.

[53] Crucially, deeply embedded in the circumstances of the present matter is the conspicuous common feature that both the Municipality and the Trust are acting in the interest of the members of the same community. Another distinguishing feature from *Grey's Marine*, where the appellants were acting in their own interests while the Minister acted on behalf of the state. The Trust's benevolence is intelligible, it aims to provide public amenities to the general public and to facilitate easy access to the beach, a natural resource via the property and was intent to preserve the property while the Municipality will be gaining a financial advantage, and that remains uncontroverted. It bears emphasis that the 33 objectors are a small proportion of the 140,000 residents of Mossel Bay who stand to benefit from the alienation of the property. In my view, the argument proffered by Mr De Waal that there was no factual basis that the Trust was promised an opportunity to comment on the public's comments cannot be sustained.

[54] As already alluded to in the preceding paragraphs of the judgment, the Trust contended that the '*in principle*' approval by the Municipality gave rise to a legitimate expectation on the part of the Trust that the Municipality would alienate the property. In my view, the '*in principle*' approval, the service delivery intentions as demonstrated by the Trust, and the involvement of rights of Trust and those of the

public are even greater reason for the Trust to be afforded an opportunity to submit representations pursuant to the lodging of the objections and comments from the public in order to render the process fair, equitable, transparent and competitive.

[55] One final issue for consideration, the Municipality argues that the objectors have to be joined as they would have a direct and substantial legal interest in the matter. The matter before this court concerns the question whether the decision taken by the Municipality was through the correct decision-making process or not, specifically the decision not to grant the Trust the opportunity to comment on the objections and not the correctness of the decision not to alienate the property. In my view, the objectors would not have a substantial legal interest in those circumstances. Thus, the joinder of the objectors is not necessary for the purposes of these proceedings. In conclusion pertaining to the decision of the Municipality not to grant the Trust the opportunity to respond to the objections emanating from the PPP, the Trust established proper grounds for impugning the Municipality's decision.

## **ORDER**

[56] In the result, the following order is granted:

[56.1] The decision of the Municipality of 29 February 2024 not to grant the Trust approval is reviewed and set aside.

[56.2] The decision is remitted to the Municipality for reconsideration.

[56.3] The Municipality is to provide the Trust with the relevant objections by no later than 30 October 2025 and allow the Trust reasonable time for submission of the comments.

[56.4] The Municipality is to reconsider the Trust's application with the comments within 90 days of this order.

[56.5] The Municipality is directed to pay the applicant's costs, on a party and party scale such costs to include that of counsel on Scale C.

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**RALARALA J**  
**JUDGE OF THE HIGH COURT**

**Appearances**

For Applicants: J Bence  
Instructed by: PPM Attorneys

For Respondent: J De Waal SC  
Instructed by: H Oosthuizen Attorneys