



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A72/2024

In the matter between:

MANGAUNG METROPOLITAN MUNICIPALITY

APPELLANT

and

**HILLANDALE HOMEOWNERS ASSOCIATION t/a
WOODLAND HILLS WILDLIFE ESTATE**

FIRST RESPONDENT

**MEC: CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS, FREE STATE PROVINCE**

SECOND RESPONDENT

Neutral citation: *Mangaung Metropolitan Municipality v Hillandale Homeowners Association t/a Woodland Hills Wildlife Estate & Another*
(A72/2024) [2025] ZAFSHC 297 (18 September 2025)

Coram: MHLAMBI ADJP and LOUBSER J and DE LA REY AJ

Heard: 25 July 2025

Delivered: 18 September 2025

Summary: Appeal – against court order declaring that a private security estate shall be responsible for the removal of household refuse from the estate, and not the municipality.

ORDER

The appeal is dismissed with costs, such to include the costs of two counsel where so employed on scale C.

JUDGMENT

Loubser J (Mhlambi ADJP and De La Rey AJ concurring):

[1] This is an appeal against the judgment and orders handed down by a single judge of this division, declaring that the first respondent shall be responsible for the removal of household refuse from the Woodlands Hills Wildlife Estate to a designated landfill site in Bloemfontein. It was further ordered that the appellant shall forthwith cease to charge fees related to refuse removal services in respect of all immovable properties situated within the Woodland Hills Estate.

[2] The first respondent featured as the applicant in the court *a quo*, moving for the orders handed down by the trial judge. Only the appellant, who was the first respondent, opposed the application. Having been dissatisfied with the outcome of the application, the appellant then initiated appeal proceedings, and the appeal came before this Court with leave of the court *a quo*.

[3] Before venturing into the issues that came before the court *a quo* and this Court, it needs mentioning that the first respondent is a popular security estate situated a few kilometers outside the city of Bloemfontein, but still within the municipal boundaries of the appellant. It boasts large residential areas within a natural environment with an abundance of wildlife.

[4] The history of the relationship between the appellant and the first respondent appears from the record of papers filed in the application in the court *a quo*, and is mostly common cause between the parties. It all started in August 2000 when the

developers of the Woodland Hills Township, which later became known as the Woodland Hills Wildlife Estate, applied for the establishment of a township to the second respondent. On 20 August 2000, the Head of the Department of Local Government and Housing approved the application in terms of s 10 of the Township Ordinance No 9 of 1969. This approval was made subject to a number of conditions, one of which was that a signed service agreement had to be concluded between the developer and the municipality of Bloemfontein comprising the rendering of all services before proclamation takes place.

[5] On 16 April 2004, Phase 1 of the Woodland Hills development was included in the municipality as Bloemfontein Extension 166 by way of a Proclamation published by the responsible Member of the Executive Council of the second respondent. Years later, on 9 March 2018, Phase 2 of the development was also included in the municipality as Bloemfontein Extension 275, by another Proclamation published on that date. Both the Proclamations contained certain conditions in terms of which Woodland Hills became established. One of the conditions appearing in both Proclamations provided that ‘the Town Owner shall be responsible for the removal of household refuse in the town’.

[6] Before the publication of the first Proclamation, the appellant and Woodland Hills duly concluded a signed Service Level Agreement to fulfill the condition of approval referred to above. Although this agreement dealt pertinently with the supply of electricity, water, sewerage effluent and other services, no reference whatsoever was made to the aspect of the refuse removal. Likewise, before the publication of the second Proclamation, the parties signed an Extension to the prior Service Level Agreement, in which they again omitted any reference to the removal of refuse. As already pointed out, it was only in the pursuant two Proclamations itself that it was specifically stated that the town owner shall be responsible for the removal of household refuse in the town.

[7] Curiously enough, the appellant did nothing to record its disapproval or objection to the removal of refuse stipulation when the application for the establishment of the township was published in the Government Gazette in terms of the applicable procedure.

[8] As things turned out, the appellant at all material times went on to render the refuse removal service by itself or by hiring private contractors to do so. It was the case for the appellant in the court *a quo* that this was done in terms of the Service Level Agreement and its Extension, subject to the authority of Woodland Hills. In terms of the said two agreements, all services were rendered by the appellant, it was contended. Woodland Hills was therefore prevented from relying on the Proclamations, the argument went. It further transpired from the papers before the court *a quo* that the appellant chose to oppose the application for a declarator mainly because it did not want to lose the income it generated by the removal of household refuse from Woodland Hills.

[9] On the other hand, it was the case for Woodland Hills in the court *a quo* that it needed to enforce the stipulation in the two Proclamations that the town owner shall be responsible for the removal of household refuse in the town. This stipulation was a condition of the township establishment, but was never implemented. Consequently, there was now a need for the relief sought, it was contended in the court *a quo*.

[10] In his judgment, the trial judge firstly referred to s 76(b) of the Local Government: Municipal Systems Act 32 of 2000 (Municipal Systems Act), which provides that the provision of services may be given by the municipality itself, or may be provided by the municipality through other arrangements with other municipal service partnerships. For that reason, he found that the provision of refuse removal services is a municipal executive and legislative competency and a service that municipalities usually render, but not a right of a municipality.

[11] Secondly, the trial judge referred to correspondence between the parties and came to the conclusion that the appellant apparently did not want to lose the income it generated from the refuse removal, as opposed to the contention that it has the exclusive authority to render the refuse removal service.

[12] Thirdly, the trial judge referred to the fact that, while the Service Level Agreement and its Extension deal with the rendering of all sorts of services, no reference whatsoever was made to the removal of refuse. Taken together with the

fact that the appellant never objected to the reservation of refuse removal for the town owner in the Proclamations, the trial judge found that the refuse removal was reserved for the Woodland Hills Estate, and was never intended to be a service to be performed by the appellant.

[13] When the appellant later made application for leave to appeal against the judgment and orders handed down, the trial judge granted leave to appeal to this Court for the following reasons:

‘The dispute between the parties lies in the interpretation of the letter of approval in terms of s 10 of the Township Ordinance No. 9 of 1969 as well as the two subsequent proclamations by the Member of the Executive Council for the second respondent in the main application. For this reason, I hold the view that leave to appeal should be granted.’

[14] At the hearing of the appeal in this Court, it was submitted on behalf of the appellant that the court *a quo* had erred by approaching the issue between the parties from the angle of a right that the appellant had or did not have to refuse removal. That approach was wrong, it was submitted, because the issue did not concern a right, but a constitutional obligation to provide services. In this respect the Court was referred to ss 152 and 156 of the Constitution and to Chapter 8 of the Municipal Systems Act. Consequently, the removal of refuse is rather an exclusive obligation of a municipality, and not a right as such. Because of this wrong approach by the trial judge, the judgment of the court *a quo* ought to be set aside, it was contended on behalf of the appellant.

[15] Now, to begin with, the Service Level Agreement and its Extension both deal specifically with the various services by name, but not with the removal of refuse. The fact that the Approval of the township was made subject to the condition that a signed service agreement had to be concluded between the developer and the appellant comprising the rendering of all services cannot be of any consequence in the determination of this appeal. This is so because of the fact that the removal of refuse was eventually not mentioned in any of the two service agreements, and the conditions in the Approval can therefore take the matter no further.

[16] In contrast thereto, the two Proclamations leave no doubt as to their meaning. They both expressly state that the town owner shall be responsible for the removal of household refuse. The trial judge can therefore not be faulted in his finding that the refuse removal was never intended to be a service to be performed by the appellant. However, it goes further than that. As a result of the Supreme Court of Appeal decision in *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others*,¹ the decision of the MEC to determine by way of the Proclamations that Woodland Hills shall effect refuse removal in the township, should be given effect to, since it comprised of a valid and legally determined public law right. Unless revoked by a competent court, its substantive validity is accepted as a fact. Whether or not it was indeed valid, is of no consequence.²

[17] *In casu*, the two Proclamations in question have not been challenged in any manner by the appellant and have not been set aside. Its substantive validity must therefore be accepted as a fact. The Proclamations and their terms and or conditions remain in full force, including the condition that the town owner shall be responsible for the removal of household refuse. This position became confirmed by s 60(1) of the Spatial Planning and Land Use Management Act 16 of 2013, which provides that the repeal of laws referred to in s 59 or by a provincial legislature in relation to provincial or municipal planning does not affect the validity of anything done in terms of that legislation. The conclusion is then justified that the appellant has not shown any right or the exclusive obligation to remove the household refuse from Woodland Hills on the facts that served before the court *a quo* and before this Court. The appeal consequently stands to be dismissed.

[18] In view of this conclusion, it is not necessary to evaluate in general the rights or the exclusive obligations of municipalities as far as the rendering of services is concerned. The following order is made:

The appeal is dismissed with costs, such to include the costs of two counsel where so employed on scale C.

¹ *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] ZASCA 48; [2004] 3 All SA 1 (SCA) 2004 (6) SA 222 (SCA) paras 27 and 37.

² *Camps Bay Ratepayers and Residents Association and Another v Harrison and Another* [2010] ZACC 19; 2011 (2) BCLR 121 (CC); 2011 (4) SA 42 (CC) at para 62.

P J LOUBSER
JUDGE OF THE HIGH COURT

I concur.

J J MHLAMBI
ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

I concur.

H E DE LA REY
ACTING JUDGE OF THE HIGH COURT

Appearances

For the appellant: W Mokare SC, assisted by M C Louw
Instructed by: Hill, McHardy & Herbst Incorporated
Bloemfontein

For the first respondent: S Grobler SC, assisted by J S Rautenbach
Instructed by: Symington & De Kok
Bloemfontein.