REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2023-114530

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED: YES

DATE **2025-09-29**

SIGNATURE

In the matter between:

INSTITUTE OF MARKET AGENTS OF SOUTH AFRICA Applicant

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY First Respondent

JOBURG MARKET (SOC) LTD Second Respondent

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE Third Respondent

MINISTER OF PROVINCIAL AND LOCAL GOVERNMENT Fourth Respondent

MINISTER OF LABOUR AND EMPLOYMENT Fifth Respondent

MINISTER OF HEALTH AND FAMILY WELFARE Sixth Respondent

NATIONAL TREASURY/MINISTER OF FINANCE Seventh Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL

DEVELOPMENT Eighth Respondent

AGRICULTURAL PRODUCE AGENTS COUNCIL Ninth Respondent

This judgment was prepared and authored by the Judge whose name is reflected 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 29 September te2025.

JUDGMENT

POTTERILL J

Introduction

[1] The applicant, the Institute of Market Agents of South Africa [IMASA] seek an order directing the first respondent, the City of Johannesburg Metropolitan Municipality [COJ], the second respondent, Joburg Market (SOC) Ltd [Joburg market SOC] and the third respondent, the Minister of Public Works and Infrastructure [the Minister] to submit a Precinct Plan in respect of the Johannesburg Market Precinct [Joburg Market] which shall include a risk assessment and recovery plan/report.

[2] This draft precinct plan is to be submitted within 60 days of the order and a final plan within 120 days. The COJ must be ordered to include in the plan a risk assessment and recovery report concerning the Joburg Market with a focus on maintenance, upgrades, health and safety, quality and financial management, and details about the rollout and responsible parties. Furthermore, repairs and compliance pertaining to cold room storage, fire safety, electrical systems, security and lift and sanitation facilities must be implemented 60 days from the final plan being provided. Also, the COJ must allocate an additional R20 million to the current annual budget for both capital and operational expenditure to implement the Precinct

Plan including provisions for annual budget assessments as part of the Integrated Development Process. The COJ must also adopt and implement an immediate Code of Conduct or Code of Good Practice.

[3] Alternative relief is also sought, but I do not expand thereon in this introduction.

The parties

[4] It is common cause that the COJ is an organ of state that is obliged to provide municipal services. It has "transferred" its obligation to the Joburg Market SOC, a company formed with the COJ being its only shareholder. The COJ has filed a notice to abide the Court's decision. Counsel for the Joburg Market SOC accordingly, contrary to what was argued in Court, did not represent both COJ and Joburg Market SOC, that would constitute a conflict of interest simply because Joburg Market SOC opposes the relief and COJ does not. Furthermore, the argument presented on behalf of the Joburg Market SOC, that COJ agrees with its contentions "as it concurs with the issues raised by the Second Respondent and is satisfied with the Second Respondent's answering to the application encapsulating the extended views of the First Respondent …" is also wrong. In a carefully worded confirmatory affidavit, the only confirmation is "in so far as they concern the First Respondent, the Second Respondent and/or the First and Second Respondent's relationship." There is simply no confirmation of the issues raised as opposition. What is disturbing is that the COJ as an organ of state does not file an answering affidavit.

[5] IMASA is a non-profit voluntary organisation that advances the interests of the market agents and represents its members in various organisations including the Agricultural Products Agents Council [APAC].

[6] The other respondents did not partake in the proceedings.

Common cause facts

[7] The COJ has a Constitutional and statutory obligation to provide basic municipal services. The COJ "transferred" its duties towards Joburg Market to the

Joburg Market SOC. The COJ could not have entered the MOI and SDA if it did not have the duty to manage the Joburg Market. The COJ is the only shareholder of the Joburg Market SOC. In terms of the memorandum of incorporation [MOI] of the Joburg Market SOC the main purpose and object of the Joburg Market SOC is to provide, manage and operate the Market on behalf of the COJ. A service delivery agreement [SDA] was concluded between the COJ and the Joburg Market SOC. The Joburg Market SOC has as its main purpose to provide, manage and operate a fresh produce market in accordance with the Johannesburg Metropolitan Council social responsibility obligations as well as Broad Based Black Empowerment Policies. The MOI also provides that the Joburg SOC must provide any other municipal services assigned to it in terms of the SDA. In its own words it "functions as an external mechanism for delivery of municipal services as contemplated in Section 76(b) of the Systems Act."

[8] The Joburg Market SOC has to date had 38 CEO's that manifestly contributed to operational challenges. The market has an annual turnover of approximately R500 billion per year from which the COJ receives R5 million per year. This is not taxpayers' money but derives from sales commission payable to the relevant market agency and a levy payment of 5% which must be paid to the COJ.

[9] The Joburg Market is the stock exchange of the fresh produce industry. Between 9 500 and 11 000 buyers visit the Joburg Market daily. Various areas of the market are leased to wholesalers and traders by the Joburg Market SOC. A wide array of produce is sold at the market through various market agents. Market floor space is allocated based on agency volume and turnover. Cold rooms are assigned on a pay-as-you-use basis with costs recovered from the market agents. Farmers and producers supply fresh produce to the licensed market agents, who must have licences to trade at the Market.[1] IMASA's members collectively account for close to 90% of the market's revenue.

Locus standi

---

[1] Section 4(1) of the Market By-law

[10] A serious attack on many fronts was made against IMASA's lack of *locus standi*. There is no merit in these arguments. The correspondence attached to the founding affidavit reveals that IMASA has acted on behalf of its member for many years. IMASA also is a community as a body of persons comprising of rate payers, civic organisations or bodies that are involved in local affairs within the municipality as defined in S1of Act 32 of 2000.

[11] The argument by the Joburg Market SOC that IMASA set out that it represents the APAC while also citing the APAC as a respondent is meritless and rejected. On no interpretation did IMASA aver it was acting on behalf of APAC, but that it "represented its members in various organisations including APAC." It thus represented its members also when dealing with the APAC.

[12] It is disturbing that the Joburg Market SOC relies on the By-laws and the APAC's Rules of Conduct pertaining to renewal of the Fidelity Certificates, but as the entity having to run the market, does not know, or understand Rule 14 of the Rules regarding Fresch Produce Agents only requiring fidelity fund certificate holders to pay a fee to maintain its certificate; there is no renewal. It could not be denied that all IMASA's members are in good standing with the APAC.

[13] It is frowned upon by this Court that the Joburg Market SOC would submit that the IMASA's members do not hold licences when it is within their own knowledge that they in fact hold licences.

[14] IMASA has *locus standi,* has litigated in this Court[2] as a party and this point *in limine* is dismissed.

The Court's lack of jurisdiction

[15] On behalf of Joburg Market SOC it was argued that the Court lacks jurisdiction because IMASA has not "followed" internal remedies, it should have sought relief through the Ombudsman. I cannot find that there were internal remedies that needed to be exhausted before IMASA could approach the Court.

---

[2] *Institute of Market Agents of South Africa v City of Tshwane Metropolitan Municipality and Others* (2120/2022) [2025] ZAGPPHC 871 (11 August 2025)

Reliance on lease agreements between the Market Agents and the Joburg Market SOC are irrelevant to the declaration sought in this matter. Those lease agreements pertain to the rental of office space by the market agents and not to the floor space allocated to each market agency based on volume and turnover. There is simply no internal procedure to exhaust before approaching this Court on the issues raised.

[16] The argument pertaining to the CEO not cited does not pertain to jurisdiction of a Court and is not addressed under this incorrect heading. Furthermore, alleging that there is a prerequisite that the COJ must first institute proceedings against the Joburg Market SOC before IMASA can, is bad in law. This argument would lead to absurdities that if the COJ does not sue, no person or entity would ever be able to institute action against the Joburg Market SOC, an effective exclusion mechanism offending section 34 of the Constitution.

Non-joinder

[17] On behalf of the Joburg Market SOC it was argued that the application must be dismissed because the complaints relate largely to infrastructure and maintenance, hygiene, health and safety and security and for the period of the complaints, 2017 to 2023, service providers were appointed by Joburg Market SOC by means of service level agreements. Suggesting that these service providers must be cited is again untenable. The Joburg Market SOC can seemingly not fulfil its obligation to the COJ to run the market and therefore appoints subcontractors. There is no duty on IMASA to hold the subcontractors to account, the Joburg Market SOC is the “main contractor”, and it must be held liable. IMASA was not aware of these contractors and have no relationship or contracts with these contractors. The contractors do not have a direct and substantial legal interest of the subject matter of the litigation, and they will in no way be prejudiced by the judgment of the court ordering the COJ and the Joburg Market SOC to submit a precinct plan. No remedy is sought against them. The Joburg Market SOC should hold the these contractors liable if it so wishes, but IMASA need not.

Mootness of the relief sought

[18] The argument went that the Inception and Concept Design Report, the Maintenance Plan and the Integrated Report has resolved the controversy and there is no live dispute before the Court.

[19] I am mystified with this argument; having plans but not successfully implemented and executed the plans to address the complaints can never render a matter moot before this Court. This argument would lead to absurdities; any organ of state can then put up a defence of "I have a plan to fulfil my constitutional duties" but never be held accountable for not actually positively fulfilling their constitutional duties.

Non-citation of the CEO

[20] Another argument was that the Court could not usurp the functions of the CEO and Board. Allocating a budget for the implementation of the Precinct Plan is the function of the CEO and cannot be ordered by a Court.

[21] In oral argument the argument was expanded on that in fact IMASA should have held the different CEOs accountable by instituting legal proceedings against them.

[22] This argument is rejected. Asserting that the appointed CEO for every period he or she was appointed is to be held liable is so untenable that it need not even be addressed.

[23] As for the usurping of the functions of the Joburg Market SOC this will be addressed when addressing the remedy sought.

The merits of the application

[24] IMASA set out the general breakdown in the entire infrastructure of the Joburg market. Specifically, was highlighted the poor state in the sales halls resulting in flooding and damage to produce in the halls. The unsealed basin drainpipes resulting in water spillage on the platforms causing slippery and dangerous conditions for forklifts. The forklifts and cleaning machines supplied by the Joburg market SOC never being in a working condition forcing the market agents to procure

and operate their own forklifts without being reimbursed. Furthermore, the constant interrupted power supply and power outages and a defective ammonia plant causing a health risk and damage to fresh produce. Pertaining to the cold room there is inadequate cold room space and continuous cold room failures. There is a complete lack of security, and the conditions inside the market halls are generally unsafe. The market is unsanitary, filthy rendering the building not fit for human habitation with an added risk of contamination. The ripening rooms and the floor space, where cleanliness is paramount, is non-existent.

[25] IMASA attached to the founding affidavit a plethora of correspondence and agendas of meetings wherein complaints were lodged or discussed pertaining to the highlighted infrastructure problems above. Despite these attempts nothing has been addressed or rectified. Photographs were attached depicting the state of the Joburg market. A newspaper article was also attached quoting from responses received setting out that in essence the Joburg market is in serious trouble.

[26] The answer to these detailed complaints is surprising to say the least. It is averred that the complaints were already resolved or are being addressed. To sustain this averment reference is made to a plethora of reports, plans, medium term operating and capital budgets, a maintenance plan dated 2023 outlining the plan for maintenance and repairs and three Johannesburg Market Consignment Audit Function and Reconciliation reports dated 2017. If this is the answer to the complaints raised, then there is no factual dispute; the complaints are real and have not been resolved.

[27] The Joburg Market SOC relies on the Inception plan dated 9 November 2022 "dealing, in substance, with the issues largely raised in the notice of motion of the Applicant." And further "It is therefore unclear what the Applicants case is about as the very issues they are complaining about are being addressed albeit in stages as required in the Engineering Act." I reiterate, there are no factual disputes as the complaints are as claimed and has not been addressed from 2017 to 2025. The Joburg Market SOC further sets out that the "Inception stage is the beginning stage any refurbishment project and it is the first report which lays out the plan of the project". There has simply been no implementation of the plan, let alone execution of

the plan since 2022. The Joburg Market SOC has got no further than the inception for three years. This despite the clear evidence of non-compliance with basic hygiene for a food market, in fact the building being unfit for its purpose and dysfunctional. In the answering affidavit no timelines are set out for its proposed "plan". It is not the function of this Court to troll through reports to ascertain when implementation will take place, let alone execution.

[28] The further answer to the relief sought is that there is a duty on the market agents in terms of the by-laws regarding its employees. They thus have a reciprocal duty not only to the Joburg market but also their employees. This leads to: "It is thus disputed material fact the obligations alleged to entitle the Applicant to the relief sought are unilateral in nature, only to be furthered by the second respondent." This is a non-sensical conclusion. If the argument relates to the averred blockages caused by the employees of the market agents themselves and the changing rooms being abused, both are red herrings. IMASA denies that the blockages are caused by their employees and in fact classifies this averment as preposterous because the "blockages" are due to the lack of maintenance of the dilapidated infrastructure. Raising the changing rooms is not an answer to the operational requirements of the market, no relief is sought thereon and most certainly will not prevent any relief being granted.

[29] I find the statement under oath of the acting CEO of the Joburg Market that the complaints raised are merely consumer related issues that should be addressed to the Consumer Ombudsman disturbing. The market agents are its clients that need to be served, this attitude displays a disregard for their duties towards IMASA, the farmers, producers and the man in the street. As much as the Joburg Market SOC seems to want to distance itself from IMASA as having no duty to IMASA, such a stance is factually and legally wrong.

Is the relief sought legally competent?

[30] It is beyond debate that the COJ has a constitutional duty to provide basic municipal services and municipal services which are environmentally sustainable as provided for in the S1 of the Local Government Municipal Systems Act 32 of 2000. The Joburg Market SOC has taken over this function to provide the "functions as an

external mechanism for delivery of municipal services as contemplated in Section 76(b) of the Systems Act."

[31] The Constitution lists three relevant local government competencies namely trading regulations, markets and street trading. Pertaining to markets Municipalities must regulate and operate food markets and fresh produce markets. Municipalities must realise the strategic importance of fresh produce markets in the food value chain of access to healthy food particularly for lower income communities.[3] Municipalities must use these markets and trading regulations competencies to regulate trading practices in and around fresh produce markets. The COJ and the Joburg Market SOC thus has a constitutional duty to fulfil their duties in delivering this service.

[32] The COJ and the Joburg market SOC has not fulfilled this duty. The Joburg Market SOC has 300 employees that presumably are salaried. Despite this workforce contractors have been appointed to execute nearly every function complained of not being fulfilled. Neither the COJ or Joburg Market SOC, not fulfilling their constitutional duties themselves, have ensured that the passed-on responsibilities have been fulfilled by the contractors, The COJ and Joburg Market SOC must be held accountable for not fulfilling their constitutional duties. These obligations entail the maintenance, upgrade and promotion of a safe and healthy environment and conditions at the market. The COJ and Joburg Market SOC must uphold, maintain, and improve health, safety, water supply, electricity, security, and all related services and facilities at the Market. Proper facilities, including cold storage and ripening facilities, must be provided, ensuring they are fit for human consumption, safe, and hygienic. Furthermore, the obligations include upholding the rights of its community and develop a culture of governance that complements the rights of its citizens within its executive and legislative authority. They must facilitate effective and functional trading and business activities at the market for the local community including IMASA and its members, the other agents and the public. The COJ and Joburg Market SOE must develop and maintain mechanisms, processes,

---

[3] Chonco, T (2015) An analysis of municipal regulation and management of markets as an instrument to facilitate access to food and enhance food security LLM Thesis, University of the Western Cape at p 88

and procedures to enhance the services and infrastructure at the Market premises. The Municipality is required to provide services as detailed in Chapter 8 of the MSA and develop systems for their provision.

[33] In 2015, IMASA attempted, in conjunction with the COJ to prepare a code of best practice for national fresh produce markets, a Code_of_Conduct. The initiatives therein addressed were simply ignored and never implemented.

What is just and equitable relief?

[34] In terms of S172 of the Constitution the Courts can grant just and equitable relief to best address any conduct that is inconsistent with the Constitution. When organs of state have failed to fulfil their obligations in terms of the Constitution, Courts in terms of s165 of the Constitution are obliged to make such a finding. Courts must then grant relief that will protect and enforce the Constitution. “Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights.[4]

[35] The argument on behalf of Joburg Market SOC that there would be an unreasonable overreach is based thereon that there exists an Integrated report dated 30 November 2023, an Inception and Concept Design Report dated 9 November 2022 and a Johannesburg Market Consignment Audit and Reconciliation function dated November 2017. The Inception report deals in substance with the issues raised in the notice of motion and a “Precinct Plan” would be an overreach. Although only at the Inception stage the time frames are based on the Engineering Act and must be executed in six stages. Furthermore, the budget that is sought is far below the billion rand the project will cost and this relief sought is moot because it has been budgeted.

[36] Granting such relief is not an overreach as it is mandated by the Constitution

---

[4] *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC)

itself ensuring that all branches of Government act in accordance with the supreme law of the Constitution and the doctrine of legality, which is part of that law. Having plans only shows intentions but is not fulfilling of Constitutional obligations. Planning without executing the plans from 2017 to 2025 is futile and has left the Joburg Market unhygienic, unsafe and ineffective. Not being hampered by budget restraints is miraculous and the budget sought can be made available for the budget already allocated for the Joburg Market maintenance and upgrade. IMASA basically seeks immediate action to "fix" problems at the market for operational effectiveness, cleanliness and safety, not elaborate expansions worth billions requiring six stages that has not passed the inception stage. It seeks a plan to address maintenance to all cold room storage facilities, fire and smoke detection and equipment compliance, electrical connectivity, security and checkpoint management, lift and hoist facility compliance and damage to all sanitation facilities. This is not rocket science, but maintenance, and the time frames sought within which to comply is not unreasonable in view of the undertakings sought that never came to fruition in maintaining the market. The name of the plan is irrelevant, "a rose by any other name would smell as sweet".[5]

[37] As I am granting the main relief sought, I do not address the alternative relief. I have fashioned the following relief to ensure the COJ and The Joburg SOC fulfils its constitutional obligations towards the Joburg Market.

[38] I make the following order:

[38.1] That the first and second respondents are directed to submit a Precinct Plan in respect of the Johannesburg Market Precinct which shall include a risk assessment and recovery plan/report in respect of the market premises which shall include, but not be limited, to the following:

1.1 all aspects pertaining to the maintenance, upgrade and improvement of the market;

1.2 occupational health and safety management process;

1.3 quality management;

[5] William Shakespeare

1.4 financial management;

1.5 details of the date of the roll-out and implementation of the plan;

1.6 details of the person/party responsible for implementing and overseeing the plan.

[38.2] The plan/report referred to in paragraph 1 *supra,* must be submitted to the applicant and the fourth to nineth respondents by way of a draft plan, which shall be submitted within 60 days of this order, and a final plan which shall be submitted within 120 days of this order.

[38.3] To implement the contents of the approved precinct plan in respect of repairs and/or implementation of:

3.1 all cold room storage facilities;

3.2 fire and smoke detection and equipment compliance;

3.3 electrical connectivity and facility compliance;

3.4 security and checkpoint management;

3.5 lift and hoist facility compliance;

3.6 damage to all sanitation facilities;

which must be implemented/repaired/effected within 90 days of the date detailed in paragraph 2 *supra.*

[38.4] That the first and second respondents allocate a budget of R20 million, in addition to the current annual budget, alternatively such amount, as detailed in the Precinct Plan, alternatively that has already been budgeted for maintenance which amount must be ringfenced specifically to be utilised for both capital expenditure and operational expenditure to implement the Precinct Plan.

[38.5] That budgets must be determined annually as part of the Integrated Development Process to assess future budgets to be allocated and implemented in respect of the market premises/precinct.

[38.6] To implement the Code of Conduct/Code of Good Practice compiled/prepared by the applicant/IMASA annexed marked “A” to the notice of motion.

[38.7] The first and second respondents are ordered to pay the applicants’ costs of this application which costs shall include the costs occasioned by the employment of two counsel on Scale C.

S. POTTERILL

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

CASE NO: 2025-114530

HEARD ON: 6 August 2025

FOR THE APPLICANT: ADV. J. DE BEER SC
ADV. B. LEDWABA

INSTRUCTED BY: Lötz Baloyi Horn Inc

FOR THE 1st and 2nd RESPONDENTS: ADV. L. MAUNATLALA
ADV. S.P. MHLONGO

INSTRUCTED BY: Wakaba and Partners Inc

DATE OF JUDGMENT: 29 September 2025