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

CASE NO: **2025-140081**

- (1) REPORTABLE: ~~YES~~ / NO
- (2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
- (3) REVIEWED: YES/NO

27 October 2025

In the matter between:

OLIFANTSFONTEIN RESIDENTIAL APARTMENTS (PTY) LTD Applicant

and

CITY OF JOHANNESBURG Respondent

JUDGMENT

AC OOSTHUIZEN AJ:

- 1 On 6 October 2025 I granted the order annexed hereto marked “**A**” in the above matter. The matter was not opposed. When granting the order, I suggested to counsel for the Applicant that written reasons for my order might serve a useful purpose and provide guidance to the City of Johannesburg, in its future application of the Tariff referred to below. Counsel agreed with the proposal. These are my reasons.
- 2 The Applicant is the owner of Erf 1[...] Sagewood Extension 16 (*“the Applicant’s property”*), which is situated within the First Respondent’s municipal area. Apartments comprising 270 residential units are situated on the Applicant’s property. Respondent renders various municipal services to the Applicant’s property, pursuant to Chapter 8 of the Local Government: Municipal Systems Act, No 32 of 2000 as amended (*“the Systems Act”*).
- 3 In terms of Section 11(3)(i) of the Systems Act, a municipality is empowered to impose and recover surcharges on fees, and implement tariffs. Section 74 of the Systems Act requires a municipal council to adopt and implement a Tariff Policy for the levying of fees for municipal services. Section 74(2) requires that users of municipal services be treated equally in the application of tariffs; that tariffs must reflect direct and indirect methods of subsidisation for tariffs provided for poor households; and that tariffs must reflect the cost reasonably associated

with the rendering of services. Section 74(2)(d) states that an extension of subsidisation of tariffs for poor households should be fully disclosed.

- 4 Section 75 requires a municipality to adopt by-laws to give effect to the implementation and enforcement of its tariff policy. Sections 21 to 24 of the Municipal Finance Management Act, No 56 of 2003 as amended (*“the MFMA”*) provide structures in terms whereof annual budgets are prepared, published for participatory comment by local communities, and approved. Section 24(2)(c)(ii) requires that the annual budget must set out any municipal tariffs for the budget year.
- 5 This matter concerns the Respondent’s Sewerage Tariff for 2025/26. The 2025/26 Tariff was preceded by various tariffs which drew a distinction between a dwelling unit, a multi-dwelling and a block of flats. Thus, for example, the definition section of the 2023/24 Tariff defined the term *“dwelling unit”* as meaning one or more rooms designed as a unit for occupancy. A multi-dwelling was defined as an arrangement of premises that comprises more than one dwelling unit on a property. A block of flats was defined as a single multistorey building which comprises more than one dwelling unit.
- 6 The 2023/24 Tariff, in common with various of its predecessors, provided for a subsidised charge to be levied in respect of blocks of flats.

- 7 It is alleged that the 2024/25 Tariff made a differentiation between a block of flats, a dwelling unit and a multi-dwelling. These distinctions were much criticised and became the subject of several legal challenges. In due course, and following a public participation process, the 2025/26 Tariff was published. Of relevance to this application are the provisions in the 2025/26 Tariff dealing with subsidised multi-dwellings. These provisions (*“the subsidisation provisions”*) read as follows:

“Subsidized multi-dwellings:

- (a) *A multi-dwelling where the property rates value for each unit does not exceed R700 000.00 (Where the rates valuation is provided for the total stand the rates valuation should be divided by the number of dwelling units to get the value per dwelling unit) shall qualify for a subsidised charge of R314.68.*

Other multi-dwellings:

- (b) *Where two or more dwelling units have been erected on a single erf, an erf size shall be determined in respect of each dwelling house erected on such property, by dividing the area of the erf by the number of dwelling units erected thereon. The charge shall then be levied in respect of each*

such dwelling unit in accordance with the provisions of sections 2.1 above, provided that the minimum charge shall be: R612.58 per unit per month.

(c) Where information to the satisfaction of the Managing Director: Johannesburg Water, or his duly authorized , has not been furnished as per the number of dwelling units on a complex: for each kilolitre or part of the metered or estimated water consumption: R46.40/kl."

- 8 Applicant's property is designed to provide accommodation for low to middle income households in the Midrand area. The housing offered by Applicant services a much-needed and unfulfilled section of the Johannesburg housing market.
- 9 Up to the date in which these proceedings were launched on 15 August 2025, Respondent had consistently failed to grant the tariff subsidy referred to in paragraph 7 above to the multi-dwelling units on Applicant's property having a property rate value of less than R700 000.00. Over a period of some five months, various queries, by telephone and email, were addressed by Applicant to Respondent seeking to ascertain why the subsidy was not being made available, did not elicit any reply from Respondent. Eventually, on 2 May 2025, a written response was received

from Mr E Mohau, an Operational Manager in the employ of Respondent, which contained the following statement:

“After consulting the management regarding the amendments made to the lower tariff framework referred to in your email, it has been confirmed as per the approved 2024/25 Tariff Policy found in Annexure B2.2, that the amended subsidised sewer tariff charge of R314.68 shall be applicable to subsidised multi-dwellings. This refers to housing where a portion of the cost is covered by the government in order to make housing more affordable for lower income individuals”. [Emphasis supplied]

- 10 Subsequent interactions between Applicant and Respondent did not lead to a reversal of the stance as recorded in the letter of 2 May 2025. Applicant accordingly launched these proceedings, contending that the stance recorded in the letter of 2 May 2025 constitutes a decision falling within the definition of the term “*decision*” in Section 1 of the Promotion of Administrative Justice Act, No 3 of 2000 (“*PAJA*”).
- 11 Quite clearly, on the material made available, that which is recorded by Respondent in the letter of 2 May 2025 does indeed constitute such a decision, and the statement in the letter quoted in paragraph 9 above will hereinafter be referred to as “*the May decision*”.
- 12 The application for review and declaratory relief brought by the Applicant requires, firstly, an interpretation of the subsidy provisions in the 2025/26

budget. That process of interpretation is to be undertaken in the light of what was said in the oft-quoted **Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)** at para 18 as follows:

“The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon it coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”

- 13 The dictum in **Endumeni** has been referred to and adopted in a host of subsequent cases, and it would serve no purpose to trawl through these. It is useful to refer to the comment found in **Capitec Bank Holdings Ltd & Another v Coral Lagoon Investments 194 (Pty) Ltd 2022 (1) SA 100 (SCA)** at para 50, namely that **Endumeni** emphasises that the meaning of a term is to be understood “*not simply by selecting standard definitions of*

particular words, often taken from dictionaries, but also by understanding the words and sentences that comprise the contested term as they fit into the larger structure of the agreement, its context and purpose”.

- 14 These authorities apply not only to contractual interpretation but to the interpretation of legislation, and indeed to written instruments generally. There is in my view no reason why the aforesaid principles should not be invoked in interpreting provisions of a municipal budget.
- 15 The subsidised multi-dwelling provisions in the 2025/26 budget explicitly state that “*multi-dwelling where the property rates value for each unit does not exceed R700 000*” shall qualify for a subsidised charge of R314.68. Nothing in the subsidy provisions indicates that the subsidised charge is made available only where the property rate value does not exceed R700 000 and the occupant is in receipt of a government housing subsidy. Respondent has not, in any of the documentation emanating from it, explained from what source (if any) it believes that it derives the power to impose this further limitation or what factors (if any) it has taken into account in arriving at the decision recorded in paragraph **XXX** above,
- 16 Admittedly, contextual considerations might play a role in showing that the words contained in a written instrument should be interpreted in a particular fashion, but that does not allow a court to modify the meaning of clearly worded and unambiguous provisions (**Scottish Union & National Insurance Co Ltd v Native Recruiting Corporation Ltd 1934 AD 458** at

465-466; Plettenberg Bay County Club v Bitout Municipality (2006) 4 Akk SA 395 (C) at para 29, 30; Invula Quality Protection (Pty) Ltd v Loureiro 2013 (3) SA 407 (SCA) at para 13).

- 17 In the matter before me, Respondent has not filed an answering affidavit suggesting that there are any such contextual considerations which qualify the plain wording of the subsidisation provisions. There is also nothing raised in the papers which indicates that the local authority, when promulgating its 2025/26 budget, deemed it appropriate to divide low to middle income dwellings, to whom sewage services are provided, into various categories of need, and to extend the benefits of the subsidy only to those already in receipt of a government funded housing grant.
- 18 I am therefore persuaded that the decision was based on an incorrect interpretation of the salient provisions of the 2025/25 budget. In **South African Property Owners' Association v Johannesburg Metropolitan Municipality & Others 2013 (1) SA 420 (SCA)** it was held that, when budgeted rates are amended after the budget has been tabled and advertised for comment, such amendment could not be effected unless certain procedures had been followed, and there had been adequate opportunity for the public to comment on the proposed amendment. Respondent in this case has not even purported to amend the budget in the manner provided for in the Municipal Finance Management Act but has, instead, sought to unilaterally amend the application of the subsidy provisions in a manner not envisaged in the budget itself. This has been

done without any public participation process, and the Respondent's conduct is clearly impermissible and irregular.

- 19 I am accordingly inclined to grant the review and declaratory relief sought. The remaining issue is whether I should remit the matter to the functionary for consideration, or issue a substitutionary order. In the ordinary course, it is preferable to remit the matter to the functionary (**Gauteng Gambling Board v Silverstar Developments Ltd 2005 (4) SA 67 (SCA)** at para 29). There are, however, various circumstances under which the Court will substitute its own finding. These include the position where the Court is as well qualified as the original authority to make the decision (**Commissioner, Competition Commission v General Council of the Bar 2002 (6) SA 606 (SCA)**; **Hennie De Beer Game Lodge CC v Waterbok Bosveld Plaas CC 2010 (5) SA 124 (CC)** at para 16).
- 20 The case before me turns on the interpretation of subsidy provisions in a municipal budget. As already pointed out, the provision under scrutiny is clearly worded, the relevant facts appear from the affidavits, and this Court is therefore in a position to interpret the applicable provisions of the budget, have regard to the statutory framework, and to reach its own conclusion and make its own decision on the matter.
- 21 I am satisfied that a case is made out for the granting of a substitutionary order.

22 The order made by me, as set out in Annexure “A” hereto, is accordingly confirmed.

A C OOSTHUIZEN

**ACTING JUDGE OF THE HIGH COURT,
JOHANNESBURG, GAUTENG**

For the Applicant:

**Adv B Bhabha instructed by
Vermaak Marshall Wellbeloved Inc**

For the Respondents:

**No representation/No notice to
oppose**

Date of hearing:

06 October 2025

Order granted:

06 October 2025

Date of judgment:

27 October 2025