IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

JUDGMENT

Not Reportable

Case no: 5138/2023

In the matter between:

NAD PROPERTY INCOME FUND (PTY) LTD **FIRST APPLICANT**

ERF [...] H[...] T[...]
INVESTMENTS PTY LTD **SECOND APPLICANT**

and

SASUL INVESTMENTS PTY LTD **FIRST RESPONDENT**

THE BUSHBUCKRIDGE LOCAL
MUNICIPALITY **SECOND RESPONDENT**

THE NATIONAL MINISTER OF AGRICULTURE, LAND
REFORM AND RURAL DEVELOPMENT **THIRD RESPONDENT**

THE SETHLARE TRADITIONAL COUNCIL **FOURTH RESPONDENT**

Neutral citation: NAD Property Income Fund (Pty) Ltd and Another v SASUL Investments (Pty) Lt

Coram: MANGENA AJ

Heard: **04 September** 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 14h30 on 12 December 2025.

Summary: Administrative law – review and setting aside –Promotion of Administrative Justice Act 3 of 2000 — Spatial Planning Land Use Management Act 16 of 2013.

ORDER

1. The decision of the Second Respondent on 07 June 2022 to approve the consent use application of the First Respondent and to issue a development permit to the First Respondent is reviewed and set aside.
2. The decision of the Second Respondent on 05 June 2023, to approve the site development plan of the First Respondent is reviewed and set aside.
3. The Second Respondent is ordered to pay the costs on a party and party scale B of the High Court tariffs.

JUDGMENT

Mangena AJ

Introduction

[1] Writing on the aftermath of the 1913 Natives Land Act, Sol Plaatjie said, "Awaking on Friday morning, June 20, 1913, the South African native found himself not actually a slave, but a pariah in the land of his birth." [1]

112 years later, Black people are still faced with the consequences of land dispossession and its sister twin of apartheid spatial planning, which excluded them from meaningful participation in the economy and only as providers of labour and consumers of goods. By no design of their own, they are economic pariahs in the land of their birth. Will they ever get a fair chance to develop their land and participate as equals in the economy of their country? Not unless those elected to govern us comply with the laws passed to develop rural land for the establishment of factories and creation of employment opportunities for the communities, which by apartheid design, occupy the periphery of the economy.

[2] This case is about the development of a portion of land known as Greenvalley Trust under the chieftaincy of Sethlare Traditional Council, the Fourth Respondent. It

[1] Plaatje *Native life in South Africa: Before and since the European War and the Boer Rebellion*, 1 ed (PS King & Son Limited, London, 1917) at 17, available at: https://archive.org/details/in.ernet.dli.2015.236312/page/16/mode/2up.

falls under Bushbuckridge Local Municipality, the Second Respondent, which is an organ of state with a constitutional mandate to co-ordinate land use, planning and development within its boundaries.

[3] The municipality granted a development permit for a filling station and ancillary retail shops to Sasul Investment (Pty) Ltd, the First Respondent. It also approved a site development plan for the establishment of a multi-purpose centre covering approximately 7500 square metres, which will include a convenience shop, restaurants, a tyre fitment workshop, a butchery, a supermarket as well as offices.

[4] In supporting the development, the municipality believed that it was pursuing its local economic goals and that this would assist in alleviating historical socio-economic imbalances through job creation and poverty eradication. These are indeed noble goals to pursue if rural land were to be exploited to arrest migration and create jobs closer to the people.

[5] However, the applicants see it differently and argue that every development must comply with the law. They seek an order from this court to review and set aside the decisions of the municipality on the basis that they are unlawful, irregular and constitute unfair administrative action as contemplated in the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Only the municipality opposes the application.

Parties

[6] The first applicant is NAD Property Income Fund (Pty) Ltd is a registered company with interests in property development and petroleum. It is the owner of the Acornhoek Mall established on a property known as Erf 9[...] Greenvalley Extension I Township. The first applicant holds a site licence issued by the Controller of Petroleum Products[2] (Controller) in respect of this ERF.

[2] Section 3(1) of the Petroleum Products Act 120 of 1977.

[7] The second applicant is Erf [...] H[...] T[...] Investments (Pty) Ltd, a company duly registered and carrying on business as a retailer of petroleum products under Puma Filling Station. It holds a retail licence issued to it by the Controller and carries on its retailing activities on a site owned by the first applicant, to wit, Erf 9[...] Greenvalley Extension I.

[8] The First Respondent is Sasul Investments (Pty) Ltd, a company duly incorporated, and the holder of the development permit granted by the municipality in respect of the land under the custodianship of the Sethlare Traditional Council. As alluded to earlier, the First Respondent was also issued with an approved Site Development Plan in respect of the affected land to establish a multi-purpose centre. The company is not participating in these proceedings, despite being invited to do so.

[9] The Second Respondent is Bushbuckridge Local Municipality, an organ of state duly established in terms of the laws of the Republic and is responsible for local government affairs within its area of demarcation. The affected land area, the Greenvalley Trust under the Sethlare Traditional Council, falls within its area of jurisdiction. It is the municipality which granted the development permit and the approval of the Site Development Plan, whose decisions are the subject of this review.

[10] The Third Respondent is the Minister of Agriculture, Land Reform and Rural Development, cited in these proceedings; however, no relief is sought against him. He is not participating. The Fourth Respondent is the Sethlare Traditional Council under Kgoshi Chiloane. Greenvalley Trust falls under its authority. No relief is sought against her.

Background

[11] In 2023, the First Respondent appointed a consulting company to conduct a Basic Assessment Process for the construction of a filling station on the farm Greenvalley 213 KU, Acornhoek.

[12] The consulting company published a notice inviting stakeholders to register as interested and affected parties but also to give their comments on the proposed development of the filling station. It is this advert that caught the attention of the Applicants, as they are also role players in the petroleum industry by virtue of the site and retail licences issued to them by the Controller. They registered as interested and affected persons as per the invitation.

[13] In the intervening period, the Applicants, through their attorneys, sought to obtain information from the municipality regarding the procedure used by the First Respondent to obtain approval for both the development permit and site development plan. When the information was not forthcoming, the Applicants utilised the Promotion of Access to Information Act (PAIA)[3] to exact a response from the municipality.

[14] The documents received subsequent to the PAIA request revealed the following:

(a) The consent use application consisted of two pages, and the motivation for the development comprises 2 (two) lines as follows: 'We want to develop business that will create jobs for the local community'.
(b) The existing land use was "Agriculture".
(c) The application was not accompanied by a power of attorney from the owner.
(d) The application for consent use was dated and submitted to the municipality on 07 June 2022, the same day upon which the development was issued.
(e) The site development plan was approved without being circulated to other departments in the municipality and was issued on the same day, 05 June 2023, that an application was submitted.

[3] Promotion of Access to Information Act 2 of 2000.

(f) Both the consent use application and site development application were granted and approved by one official, namely, Mr Hlabane, the municipality's town planning official.

[15] The Applicants contend that the above information shows that the procedure followed was flawed in that it did not allow for both internal and external comments from interested and affected persons. They argue that they were denied an opportunity to comment on the proposed development and participate in the process leading to its approval. Lastly, they argue that the municipality ignored its own byelaw and the governing legislation, namely, the Spatial Planning Land Use Management Act 16 of 2013 (SPLUMA).

[16] They further argue that as entities involved in the petroleum industry, the establishment of an additional filling station within their proximity will negatively impact their business.

[17] For the above reasons, they ask this court to grant the prayers as contained in the notice of motion and referred to in paragraph 5 above.

[18] The municipality opposes the application and the relief sought and contends in the main that the decisions taken are legally tenable and comply with the standard expected of a reasonable decision maker.

[19] Upfront, the municipality disputes the factual averments made by the Applicants relating to their interests in the matter. It is submitted on its behalf that the subject property is not located in close proximity to Puma filling station, operated and managed by the Second Applicant. By extension of logic, so it is submitted, the establishment of an additional filling station on the subject property will not negatively affect the business efficacy of Puma filling station.

[20] With regard to the use of the applicable law, the municipality says that it approved the development based on the provisions of the Local Government

Municipal Systems Act[4] and its Regulations which were in existence prior to the July 2022 enactments[5], namely the Land Use Scheme of 2017. Mr Hlabane as an authorised official of the municipality, had the requisite powers and authority to deal with the kinds of applications we are concerned with here. The application, according to the municipality, complied with all the requirements and Mr Hlabane was correct to approve them. It is not a requirement to give notice to interested parties before granting an approval.

[21] It is now trite that municipal planning is the exclusive terrain of municipalities in terms of section 156 of the Constitution.[6] This power includes granting of land use rights similar to the one we are dealing with in this case. In exercising its planning powers, the municipality is required to comply with the law.

[22] SPLUMA was enacted to regulate land development in a consistent, transparent and efficient manner by municipalities. Municipalities are required to pass Bye-laws applicable to their demarcated areas, and same must be aligned to the spirit and ethos espoused in SPLUMA.

[23] Bushbuckridge Local Municipality adopted the Land Use Management Byelaw 2014 and same was promulgated on 30 May 2014. It states that its purpose is to regulate the use and development of land within the municipality as well as to give effect to, and be consistent with, the National Spatial Development Framework[7] in order to promote amongst others economic growth, social inclusion, harmonious and land use patterns and efficient land development.

[24] Clauses 29, 30, 31 and 32 of the Byelaw deal with types of land use applications, the parties involved, as well as the procedure the municipality should follow upon receipt of an application.

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[4] Local Government Municipal Systems Act 32 of 2000.
[5] Bushbuckridge Spatial Planning and Land Use Management By-Law 2022, Provincial Gazette No 3397, Local Authority Notice 190, 1 July 2022.
[6] Constitution of the Republic of South Africa Act 108 of 1996.
[7] National Spatial Development Framework Gazette No 47999, Notice No 1594, 1 February 2023, enacted in terms of section 13(5) of SPLUMA,

[25] Clause 33 is headed public notice and participation, and I propose to quote it in full as it forms the core of the dispute between the parties. It says:

"**33 Public Notice and Participation —**

(1) After a land development application has been registered in terms of section 32(1)(b) the municipality, or applicant with consent from the municipality, must give notice of the application within 14 days, subject to the requirements in section 7, in the following manner: -

(a) Publication of notice, in the format as set out in Schedule 8, in two local newspapers and the *Provincial Gazette* once a week for two consecutive weeks;

(b) By posting a copy of the notice, in the format as set out in Schedule 8, the size of which must be at least 60 cm by 42cm, on every street boundary of the land which is the subject of the application, in a conspicuous and easily accessible place, no later than the date of first publication of the notice in the *Provincial Gazette*, which notice must remain visible and be maintained on the property for a period of 14 days;

(c) By written notice, in the format as set in schedule 8, to all adjoining owners and interested and affected parties;

(d) By circulating a copy of the application to all persons, bodies and state departments as referred to in section 32 (1)(e);

(e) By circulating a copy of the application to every municipality whose area of jurisdiction is situated within a distance of 10km from the land in respect of which application has been made; and

(f) The municipality may, in its discretion, prescribe any other reasonable means of notification that is appropriate for the local context and which is necessary to ensure that all persons whose rights may be affected by the application are adequately informed of it.

(2) The applicant must submit the following evidence of compliance with the requirements for public notification, only if the applicant placed the notices as contemplated in section 33 (1), by providing the municipality with the following documentation within 21 days from the date on which the notice was first published:-

(a) A copy of the record of the registered post or delivery of the notice to all persons and bodies as set out in subsections 1(c) and (d);

(b) Copies of the newspaper advertisements and *Provincial Gazette* notice as set out in subsection 1 (a);

(c) Photographs of the notice on site as set out in subsection 1 (b); and

(d) An affidavit that the notice, as set out in subsection 1 (b) was posted on site and maintained for 14 days after such posting."

[26] Clause 34 deals with objections and requires any person with an objection to lodge same in writing in a prescribed manner within 28 days from the first date of publication of the notice to the municipality and to the Applicant at the address provided for that purpose in the public notice.

[27] It will be recalled that the municipality has argued that it relied on the 2017 Land Use Scheme to grant both the development permit and the approval of the site development plan. It also contended that it is not a requirement for neither the Applicant nor the municipality to give notice to interested and affected parties before granting the approvals.

[28] The provisions of clauses 33 and 34 displace the municipality's argument and smashes it to smithereens. The Byelaw imposes a duty on the municipality to notify all adjoining owners and interested and affected parties. In addition to the prescribed manner, the municipality may in its discretion, formulate any other reasonable means of notification appropriate for the local context in order to ensure that all persons whose rights may be affected by the application are adequately informed.

[29] The Applicants are engaged in the retail of petroleum products as holders of a site and retail licenses, respectively. Puma filling station is located less than a kilometre from the proposed development. There is accordingly no gainsaying the fact that they are, in business terms, in close proximity to the land which is the subject of this application. They are, by virtue of their carrying on business in the retail of petroleum products, interested and affected parties. The municipality and/or the First Respondent owed them a duty to notify them about the land development application before taking a decision.

[30] The Applicants argued that the establishment of a new filling station will result in the reduction of their sales and that they are accordingly directly affected. They have a commercial interest which deserves protection. They have, in my view, sufficiently demonstrated how the proposed development is likely to affect them.

[31] In *Gensinger and Neave CC & Others v Minister of Mineral Resources and Energy & Others*[8]**,** the court said the following in relation to the issue of direct interest involving petroleum products:

> "The court in *Pine Glow* found that the fact that the Applicant was a site license holder, on its own, gave it a direct interest in the matter….The court found that, in the event of a decline in the number or volume of petroleum products sold by that Respondent, the knock-on effect on the Applicant, as a holder of a wholesale license, would be inexorable. It was found that the Applicant's interests were not only direct, but also real and not hypothetical. The court considered the Applicant's evidence to the effect that if the Respondents were to be allowed to open an outlet, the Applicant stood to lose on revenue…. the anticipated decline in volumes and resultant loss of revenue was material 'and that it will affect the Applicant negatively in so far as it will diminish its financial margins.'"

[8] *Gensinger and Neave CC & Others v Minister of Mineral Resources and Energy & Others* 2025(4) SA 84(SCA) at para 23.

[32] I align myself with the finding of the Supreme Court of Appeal in this regard, more especially because it was an affirmation of a decision of this Court per Mashile J.

[33] The Municipality as an organ of state cannot ignore its own Byelaw. A land use scheme adopted by the council constitutes binding legislation and the municipality was duty-bound to comply with it in execution of its functions. It was required to give the Applicants a notice of this land development as required by clause 33 of the Byelaw.

[34] The Municipality is undoubtedly a key player in the development of local communities and is required by law to take appropriate steps to ensure that there is both the racial and economic integration of the communities within its area. Rural land is an important resource in the fight against poverty and unemployment. Like all the land in our country, it has an economic value which can be exploited to take Black people out of the economic periphery, and this can only happen if appointed officials follow the letter and spirit of the law. This unfortunately did not happen in this case.

[35] Given the fact that the municipality did not follow its own legislated procedures and failed to notify the Applicants as persons who are interested and affected by the proposed land development, the decisions taken are indisputably unlawful and constitute an affront to the rule of law. They cannot be allowed to stand.

[36] In the result, the following order is made:

1. The decision of the Second Respondent on 07 June 2022 to approve the consent use application of the First Respondent and to issue a development permit to the First Respondent is reviewed and set aside.
2. The decision of the Second Respondent on 05 June 2023, to approve the site development plan of the First Respondent, is reviewed and set aside.
3. The Second Respondent is ordered to pay the costs on a party and party scale B of the High Court tariffs.

M MANGENA
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant	Adv JA Venter
Instructed by:	Ivan Pauw&Partners Attorneys
For the Respondent:	Adv G Shakoane SC (with Adv MH Mbatha)
Instructed by:	Mpho Mashiloane Attorneys