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

JUDGMENT

Case no: **2025-086196**

In the matter between:

NEW SUPERMAN ASSET COMPANY (PTY) LTD
(Registration number 2017/09230/07) **FIRST APPLICANT**

CE CAPE TOWN NORTH NPC **SECOND APPLICANT**

and

CITY OF CAPE TOWN **RESPONDENT**

Coram: **ERASMUS J et JONKER AJ**
Heard: 5 February 2026
Delivered: 6 February 2026

Summary: Application for leave to appeal - No reasonable prospect of success or compelling reason for the appeal to be heard – Section 17(1)(a) of the Superior Courts Act 10 of 2013 - Leave to appeal refused with costs, including the costs of two counsel on scale C.

ORDER

1. The application for leave to appeal is refused.
2. The applicants are ordered to pay the respondent's costs of the application for leave to appeal, such costs to include the costs of two counsel on scale C.

JUDGMENT

JONKER AJ:

Introduction

[1] This is an application by the applicants for leave to appeal to the Supreme Court of Appeal ("the SCA") against the judgment and order of this Court, delivered on 8 October 2025. In that judgment, the application was dismissed with costs, including the costs of two counsel on scale C.

[2] The applicants advance seven grounds of appeal. In essence, they contend that this Court erred: (a) in finding that the respondent substantially complied with section 49 of the Municipal Property Rates Act 6 of 2004 ("the MPRA"); (b) in holding that reliance on section 49 was impermissible because it was not pleaded in the founding affidavit; (c) in the allocation of the onus of proof; (d) in distinguishing *City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd* ("*Lombardy*"); (e) in its findings regarding the service

requirements; (f) in finding that service on Ms Bradfield constituted valid service on the first applicant; and (g) in inferring receipt from past communications.

[3] The respondent opposes the application and submits that none of the grounds discloses a reasonable prospect of success on appeal or any other compelling reason why the appeal should be heard.

The Legal Framework for Leave to Appeal

[4] Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[5] In *Smith v S* [2011] ZASCA 15, the Supreme Court of Appeal held that there must be a sound, rational basis for the conclusion that reasonable prospects of success exist. The prospects must not be remote; there must be a realistic chance of succeeding. This principle has been consistently applied in *MEC for Health, Eastern Cape v Mkhitha* [2016] ZASCA 176 and *Ramakatsa v African National Congress* [2021] ZASCA 31 March 2021.

[6] It is with these principles in mind that we consider each ground advanced by the applicants.

The failure to plead Section 49 in the founding affidavit

[7] The applicants' first and most fundamental difficulty is that non-compliance with section 49 of the MPRA was never advanced as a ground of review in their founding affidavit. Their case, as pleaded, was directed at the lawfulness of the recategorisation of the property under section 17(1)(i) of the MPRA and at procedural unfairness under section 3 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). At the hearing on 5 September 2025, they abandoned

the section 17(1)(i) ground and sought to pivot their entire case to section 49. This Court held that such reliance was impermissible.

[8] The applicants now contend that we erred. They rely on *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa* 1999 (2) SA 279 (T) for the proposition that a party in motion proceedings may advance legal argument not specifically mentioned in the papers, provided it arises from the facts alleged. They also submit that section 49 compliance constitutes a jurisdictional prerequisite that may be raised at any stage.

[9] These submissions are unpersuasive for several reasons.

[10] First, the principle that an applicant must stand or fall by the case made out in the founding affidavit is well established. In *Shephard v Tuckers Land and Development Corporation (Pty) Ltd* 1978 (1) SA 173 (W) at 177, the court held that all necessary averments must appear in the founding affidavit, and the court will not permit an applicant to make or embellish its case in its replying affidavit. The indulgence of allowing new matter will only be granted in special or exceptional circumstances, and only where the respondent is afforded an opportunity to deal with it.

[11] Second, the *Swissborough* principle applies to legal *arguments* that arise from the pleaded *facts*. A section 49 challenge is not a mere point of law. It raises discrete factual questions about gazette publication, the form and timing of individual notices, the method of service, and the respondent's internal dispatch procedures. These are matters that the respondent was entitled to address with evidence had they known what case to were to meet. The founding affidavit did not plead these facts, and the respondent was not afforded the opportunity to respond to them.

[12] Third, the applicants' contention that the respondent suffered no prejudice because it addressed section 49 in its answering affidavit is misconceived. The respondent addressed service only in the context of rebutting the applicants' PAJA claim of procedural unfairness due to non-receipt of notice. Had the

respondent been on notice of a dedicated section 49 challenge, it could and no doubt would have placed additional evidence before the court, including gazette publication records, internal dispatch logs, and affidavits from the relevant officials responsible for the section 49 process. The prejudice to the respondent is manifest.

[13] We are not persuaded that another court would reach a different conclusion on this issue. The principles are trite, the application of those principles to the facts is straightforward, and no special or exceptional circumstances have been demonstrated. This ground does not disclose reasonable prospects of success.

<u>The applicability of Lombardy</u>

[14] The applicants rely extensively on *Lombardy* and submit that this Court erred in distinguishing that case. In *Lombardy*, the Supreme Court of Appeal held that the City of Tshwane's failure to comply with section 49 of the MPRA was fatal to the validity of the valuation roll. The applicants argue that the same result should follow here.

[15] The analogy is, however, inapt for at least three reasons.

[16] First, in *Lombardy*, and as the counsel for the applicant conceded in argument, non-compliance with section 49 was expressly pleaded in the founding papers. The municipality was squarely on notice of the challenge and was afforded every opportunity to respond. In the present matter, no such case was made.

[17] Second, in *Lombardy*, again as conceded by counsel in argument, the respondent of Tshwane conceded that it could not demonstrate *any* compliance with section 49 whatsoever, it was unable to produce any notices at all. Here, by contrast, the respondent has produced evidence of dual service: a postal notice dispatched to the first applicant's physical address and email notices sent to Ms

Bradfield's designated email address. The factual matrices are materially different.

[18] Third, the *Lombardy* proceedings, again as conceded by counsel in argument, were instituted as review proceedings under PAJA and Uniform Rule of Court 53, which required the municipality to produce the administrative record. The present application seeks declaratory relief, not review. This procedural distinction affects the framework within which compliance is assessed.

[19] The applicants' argument that the pleading-based distinction would allow municipalities to evade *Lombardy*'s authority through technical objections does not withstand scrutiny. The requirement that an applicant plead its cause of action in the founding affidavit is a foundational principle of motion proceedings, not a technicality. It exists to ensure procedural fairness to the responding party and the orderly administration of justice. An appeal court is unlikely to find error in this Court's adherence to that principle. This ground does not disclose reasonable prospects of success.

<u>Substantial compliance with Section 49</u>

[20] The applicants contend that this Court erred in finding that the respondent substantially complied with the procedural requirements of section 49 of the MPRA. They argue that section 49 uses mandatory language and requires strict compliance, leaving no room for the substantial compliance doctrine.

[21] This submission is contrary to established authority. The Constitutional Court in *Liebenberg NO and Others v Bergrivier Municipality* [2013] ZACC 16 held that a failure by a municipality to comply with relevant statutory provisions does not necessarily lead to the actions under scrutiny being rendered invalid. The question is whether there has been substantial compliance, taking into account the relevant statutory provisions in particular and the legislative scheme as a whole. The Supreme Court of Appeal in *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 100 (SCA) at para 22, stated that even where

formalities are peremptory, not every deviation is fatal; the question remains whether the object of the statutory provision has been achieved.

[22] The object of section 49(1)(c) is to ensure that property owners are informed of the contents of the valuation roll pertaining to their property and are afforded the opportunity to lodge objections. In the present matter, the respondent dispatched a postal notice to the first applicant's physical address and sent email notices to Ms Bradfield's designated email address, the very address at which the applicants admittedly received all other municipal communications over several years. The July 2024 supplementary valuation roll notice expressly informed the owner that the property was categorised as "miscellaneous", that rates would be charged from 1 October 2023, and that objections could be lodged between 19 July 2024 and 30 August 2024. The statutory purpose was plainly achieved.

[23] We are satisfied that the finding of substantial compliance is sound and that another court would not reach a different conclusion. This ground does not disclose reasonable prospects of success.

<u>The allocation of the onus of proof</u>

[24] The applicants argue that this Court erred in holding that the evidentiary burden shifted to them to demonstrate non-receipt of the notices. They contend that the overall onus rested on the respondent to prove compliance with jurisdictional prerequisites.

[25] The applicants bore the overall onus of establishing the grounds on which they claimed the respondent's conduct was unlawful. The applicants alleged non-receipt of notices. The respondent adduced prima facie evidence of service: dispatch by ordinary mail to the first applicant's physical address and service by email to Ms Bradfield's designated address. Once that evidence was before the court, the evidentiary burden shifted to the applicants to demonstrate that they were not, in fact, notified.

[26] This Court's treatment of the onus was entirely orthodox. No basis has been shown for concluding that the Supreme Court of Appeal would reach a different conclusion. This ground does not disclose reasonable prospects of success.

<u>Evidence of service and the Plascon-Evans principle</u>

[27] The applicants contend that the respondent produced no proof of posting, no proof of email transmission, no contemporaneous file notes, and no acknowledgement of receipt. They argue that where the respondent cannot produce such evidence, the only reasonable conclusion is that no notices were sent.

[28] This argument is undermined by the record. A matter of considerable significance, which the applicants have not satisfactorily explained, is that they themselves attached copies of both the postal notice and the email notices to their founding and replying affidavits, the very notices they claim not to have received. Their possession of these documents is an inherent contradiction. They cannot credibly deny receipt of notices that they have themselves placed before the Court as evidence. No explanation has been tendered on the pleadings, for how they came to be in possession of notices that they say were never served.

[29] Furthermore, where the papers disclose a factual dispute, with the applicants denying receipt and the respondent asserting dispatch and service, the well-established *Plascon-Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) principle applies: the court must decide the matter on the respondent's version, together with those parts of the applicant's version that are not in dispute. On the respondent's version, which must be accepted, notice was dispatched by ordinary mail and served by email. The applicants have not alleged that the email address was invalid, that it had been changed, or that the respondent's emails were returned as undeliverable.

[30] The applicants further rely on the respondent's statement in its answering affidavit that it "*has no way of confirming the postage of notices*." They characterise this as an admission of non-compliance. It is no such thing. Section 49(1)(c) permits service by ordinary mail. Ordinary mail, by its nature, does not generate tracking records. The respondent's inability to produce postal tracking documentation is entirely consistent with lawful service by ordinary mail. It is not an admission that no notice was posted.

[31] We are satisfied that this Court's findings on the evidence of service were correct. Another court would not reach a different conclusion. This ground does not disclose reasonable prospects of success.

<u>The validity of service on Ms Bradfield</u>

[32] The applicants contend that service on Ms Bradfield's email address cannot constitute valid service on the first applicant because section 49(1)(c) requires service on every owner of property listed in the valuation roll, and Ms Bradfield is not the owner. They further argue that no resolution, power of attorney, or written mandate was produced authorising Ms Bradfield to receive section 49 notices on the first applicant's behalf.

[33] These submissions disregard the established facts. It is common cause that the first applicant nominated Ms Bradfield's email address as its designated contact for all municipal communications. Ms Bradfield was described in the papers as the first applicant's authorised agent for municipal dealings, including billing and correspondence. Over a period of several years, the first applicant received monthly invoices and other municipal correspondence at this address without objection. No alternative contact details were ever provided. Ms Bradfield used this email address in her official capacity on behalf of both applicants. Numerous communications were exchanged between Ms Bradfield and the respondent from this address.

[34] An owner who designates a particular email address as the sole channel for all municipal communications, who accepts correspondence and invoices at that address for years, and who provides no alternative, cannot thereafter complain that statutory notices sent to the very same address do not constitute service on the owner. The first applicant is bound by the consequences of its own designation. Furthermore, no evidence is before the court confirming that Ms Bradfield had no authority to receive correspondence or notices. To hold otherwise would permit property owners to nominate a contact address for their convenience but repudiate it when served with inconvenient notices. That cannot be the law.

[35] This ground does not disclose reasonable prospects of success.

Inference of receipt from past communications

[36] The applicants' final substantive ground is that this Court erred in inferring receipt of the statutory notices from the fact that Ms Bradfield had previously received municipal communications at the same email address. They argue that receipt of routine billing invoices does not prove receipt of section 49 notices.

[37] The applicants mischaracterise the court's reasoning. The finding was not based solely on the receipt of past invoices. The respondent's evidence was that the specific supplementary valuation roll notices, dated 7 March 2023 (approximately, effective from 14 September 2023) and 16 July 2024, were sent to Ms Bradfield's email address, the same address at which the applicants admittedly received all other municipal correspondence. All notices, both those designating the property as "religious" and those recategorising it as "miscellaneous", were sent to the same email. The applicants never alleged that the address was invalid, that it had been changed, or that the emails were returned as undeliverable. Their denial of receipt, unaccompanied by any explanation, is precisely the kind of bare denial that the *Plascon-Evans* principle is designed to address.

[38] Indeed, the first applicant itself admitted that it noted the change of property rating category on its monthly account but did not enquire further because no rates were being imposed. This acknowledgement that the first applicant was aware of the reclassification on its account further undermines its claim that it was never notified.

[39] This ground does not disclose reasonable prospects of success.

Compelling reason

[40] The applicants invoke the public interest as a compelling reason for the appeal to be heard. They submit that the matter raises issues of general importance regarding the proper interpretation of mandatory statutory procedures governing municipal rates. We disagree. The issues in this case are narrow and fact specific. The central question is whether *these* applicants received notice of *this* recategorisation of *this* property. That is not a novel or unsettled point of law of general application. The principles governing pleading requirements in motion proceedings, the substantial compliance doctrine, the onus of proof, and the *Plascon-Evans* rule are all well established. There are no conflicting judgments on the matter under consideration. No compelling reason has been demonstrated.

The underlying merits

[41] It bears noting, as this Court observed in its judgment of 8 October 2025, that the applicants' original case was that the property qualifies for exemption under section 17(1)(i) of the MPRA as property owned by a religious community and used exclusively as a place of public worship. That ground was abandoned at the hearing because, on any proper construction of section 17(1)(i), the property does not qualify: it is owned by a private company whose sole shareholder is a trust, not by a religious community. The legislature deliberately limited the exemption to property owned by a religious community to prevent abuse. Even if the Supreme Court of Appeal were to find some procedural defect

in the service of the section 49 notices, the underlying merits remain: the property is not exempt, and rates are lawfully owing. The practical utility of the appeal is accordingly doubtful.

Conclusion

[42] We have considered each of the applicants' seven grounds of appeal individually and cumulatively. None discloses a reasonable prospect that another court would reach a different conclusion. No compelling reason for the appeal to be heard has been shown.

[43] In the circumstances, the application for leave to appeal must be refused.

Costs

[44] The applicants have been wholly unsuccessful. Costs should follow the result. The respondent has asked for the costs of two counsel on scale C, as was awarded in the main application. In the exercise of our discretion, we consider it appropriate to allow such costs.

Order

[45] The following order is made:

1. The application for leave to appeal is refused.

2. The applicants are ordered to pay the respondent's costs of the application for leave to appeal, such costs to include the costs of two counsel on scale C.

E JONKER

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

N ERASMUS

JUDGE OF THE HIGH COURT

Appearances

For applicant:	Adv WTB Ridgard
	Adv N Strydom
Instructed by:	Esterhuyze Attorneys, Bellville.
For respondent:	Adv N Bawa SC with Adv Samuels
Instructed by:	State Attorney, Cape Town.