



**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION, MAHIKENG**

**Not Reportable**

**CASE NO: M717/2023**

In the matter between:

**N12 EAST FILLING STATION (PTY) LTD**

**Applicant**

and

**CITY OF MATLOSANA  
MUNICIPAL MANAGER:**

**First Respondent**

**CITY OF MATLOSANA**

**Second Respondent**

**LESEDI LA KA TRADING AND PROJECTS CC**

**Third Respondent**

**CONTROLLER OF PETROLEUM PRODUCTS**

**Fourth Respondent**

**Coram:** Petersen ADJP

**Date enrolled:** 13 February 2026

**Judgment reserved:** 13 February 2026

**Delivered:** This judgment was handed down electronically, circulated to the parties’ representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 15h00 on 27 February 2026.

**Summary:** Judicial Review — Administrative Law — Land Use and Zoning — Promotion of Administrative Justice Act 3 of 2000 (PAJA) and principle of legality — application to set aside unilateral alteration of zoning from ‘Industrial 2’ to ‘Special’ — First Respondent raised points of law regarding non-exhaustion of internal remedies under Section 7(2) of PAJA and prematurity of review — internal appeal mechanism in Town-planning and Townships Ordinance 15 of 1986 previously declared unconstitutional by Constitutional Court in *Pieterse NO v Lephalale Local Municipality* — no obligation to exhaust non-existent or unconstitutional remedies — review not premature despite pending petroleum license appeals as land-use and petroleum regulation constitute separate functional domains — Municipality acted ultra vires by bypassing formal rezoning, public participation, and gazetting processes — administrative “reversion” of zoning rights is legally untenable under SPLUMA — zoning designation in 2023 Consolidated Scheme declared invalid to extent of the property — punitive costs on scale C awarded against First Respondent for serious dereliction of statutory duties and procedurally unfair conduct.

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## **JUDGMENT**

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**PETERSEN ADJP**

### **Introduction**

[1] This is an opposed review application brought under the Promotion of Administrative Justice Act 3 of 2000 (‘PAJA’). The applicant seeks to set aside a decision or a series of administrative acts by the first respondent (‘the Municipality’) which purported to alter the zoning of Erf 3[...], Stilfontein Extension 7 (‘the Property’) from ‘Industrial 2’ back to ‘Special’ without following the prescribed statutory procedures.

[2] The applicant further seeks declaratory relief regarding the City of Matlosana Land Use Scheme, 2023 (‘the 2023 Scheme’), to declare the zoning designation of the Property therein invalid to the extent that it reflects the unlawful ‘Special’ zoning.

[3] The first and second respondents opposed the application by way of a notice in terms of Rule 6(5)(d)(iii) of the Uniform Rules of Court, raising two points in law that the applicant failed to exhaust an internal remedy in terms of the Klerksdorp Land Use Management Scheme 2005 (KLUMS) as required by section 7(2) of PAJA; and prematurity of the review based on an intended

appeal by the applicant against a decision of the Controller of Petroleum Products. No answering affidavit was filed regarding the merits.

[4] The third, fourth, and fifth respondents have not actively participated in these proceedings until the third respondent, at the eleventh hour, sought to enter the arena on 12 February 2026. The third applicant sought to adduce, for the consideration of this Court, what it termed an ‘Explanatory Affidavit’ to assist the Court in determining a “just and equitable” remedy. I handed down an ex tempore judgment on 13 February 2026, refusing to admit the said affidavit. I do not propose to traverse the reasons for that order in this judgment.

### **Factual Background**

[5] Before turning to the Rule 6(5)(d)(iii) notice of the first respondent, it is apposite to sketch a background of the history of the matter. The relevant facts, which stand uncontested due to the lack of an answering affidavit from the Municipality, may be succinctly summarised as follows. The Property was originally established in 1991 with a ‘Special’ zoning that permitted, inter alia, a public garage. This right was carried forward into the Klerksdorp Land Use Management Scheme, 2005 (‘the 2005 Scheme’). However, in 2009, the Municipality approved Amendment Scheme 516. This amendment rezoned the Property from ‘Special’ to ‘Industrial 2’. This rezoning was duly promulgated in the Provincial Gazette on 29 September 2009. Under the 2005 Scheme, an ‘Industrial 2’ zoning does not automatically permit a public garage, as such use requires a special consent application. It is common cause that no such consent was ever granted.

[6] In January 2023, the third respondent applied to the fourth respondent for a site and retail license to operate a filling station on the Property. In support of this application, a zoning certificate issued by the Municipality on 16 January 2020 was submitted, erroneously reflecting the zoning as ‘Special’. Upon investigation, the applicant discovered that the Municipality had unilaterally treated the zoning as having ‘reverted’ to ‘Special’. This ‘reversion’ occurred without a rezoning application, public participation, a Municipal Planning Tribunal hearing, or gazette publication. The Municipality subsequently adopted the 2023 Scheme, which enshrined this incorrect ‘Special’ zoning based on the preceding unlawful administrative actions.

**The Rule 6(5)(d)(iii) notice of the first respondent: exhaustion of internal remedies and prematurity of the review**

[7] The first respondent has raised two primary legal points in terms of Uniform Rule 6(5)(d)(iii) against the application to review and set aside the decision to rezone Erf 3[...], Stilfontein Ext 7, from ‘Industrial 2’ to ‘Special’.

**The first point: non-exhaustion of internal remedies**

[8] The first respondent contends that the application must be considered within the purview of s 7(2) of PAJA’s peremptory provisions. On this contention, the applicant was required to first lodge an appeal to an internal planning authority. Essentially, the first respondent takes the point that the decision was taken under the Klerksdorp Land Use Management Scheme 2005 (KLUMS). Resultantly, Clause 47.1.9 of the KLUMS, read with the Town Planning and Township Ordinance 15 of 1986. In terms of KLUMS and the old Ordinance, the first respondent maintains a clear internal appeal mechanism is provided for objectors.

[9] The first respondent, therefore, submits that since the applicant's objection was dismissed on 09 November 2023, it failed to utilise the internal appeal process before approaching the High Court. The applicant so the argument goes has therefore allegedly failed to advance 'exceptional circumstances' to justify an exemption under s 7(2)(c) of PAJA.

### **The second point: prematurity of review**

[10] The first respondent, in its second point of law, takes the point that the review is premature. On this score, it argues that the fourth respondent, the Controller of Petroleum Products, granted certain licenses to the third respondent, which the applicant has indicated it intends to appeal internally. By proceeding with the High Court review while an internal appeal is pending on the same subject matter, it argues creates a risk of conflicting outcomes between the administrative and judicial arms.

### **The determination of the issues in the Rule 6(5)(d)(iii) notice**

[11] The first respondent's notice calls upon this Court to determine; whether the KLUMS and the 1986 Ordinance provide an internal remedy that must be exhausted before judicial review in terms of PAJA; whether the applicant has made out a case for 'exceptional circumstances' to be exempted from the duty to exhaust such remedies; and whether the existence of a pending internal appeal against the fourth respondent's license decision renders the current review application premature and an abuse of process.

[12] The determination of these points will require a strict application of established precedents regarding the hierarchy of administrative remedies,

specifically, s 7(2) of PAJA, which bars judicial review until internal remedies are exhausted, as reinforced by the Constitutional Court in *Koyabe and Others v Minister for Home Affairs and Others*<sup>1</sup>; and the interpretation of the Town Planning and Township Ordinance 15 of 1986 and its application within the North West Division.

### **The submissions on the points of law**

[13] As evinced from the case for the first and second respondents, they argue that the application is premature. They contend that s 7(2) of PAJA precludes this Court from hearing the review because the applicant failed to exhaust available internal remedies. They specifically rely on Clause 47.1.9 of the Klerksdorp Land Use Management Scheme, which suspends the effect of a decision for 28 days to allow for objections or appeals. They argue that the applicant should have utilised the appeal mechanisms provided for in the Town Planning and Townships Ordinance 15 of 1986 and the relevant municipal by-laws before approaching the Court.

[14] The applicant's submissions on the two points of law may be succinctly summarised as follows. On the first point of law, the applicant rebuts the Municipality's contention that the applicant's challenge to a zoning decision is barred by s 7(2) of PAJA because the applicant failed to pursue an internal appeal under the Town-Planning and Townships Ordinance 15 of 1986, on three grounds. The applicant maintains that the Municipality's claim that it dismissed the applicant's formal objection is factually incorrect. The applicant asserts that there was no formal land-use process or hearing. The impugned act was a 'unilateral administrative fiat' communicated via letter from the Municipal

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<sup>1</sup> *Koyabe and Others v Minister for Home Affairs and Others* (CCT 53/08) [2009] ZACC 23; 2009 (12) BCLR 1192 (CC) ; 2010 (4) SA 327 (CC) (25 August 2009).

Manager, who, in any event, was not authorised to take such a decision, rather than a structured decision following a lawful process. The applicant further argues that an internal appeal presupposes a decision made under an empowering provision. Since the official acted without authority, the act is an administrative nullity for which no internal appeal is contemplated.

[15] The applicant submits that the provincial appeal mechanism in the Ordinance was declared unconstitutional by the Constitutional Court in *Pieterse NO v Lephalale Local Municipality*<sup>2</sup>.

[16] On the second point of law, the applicant submits that the objection by the Municipality that a review is premature because a separate appeal is pending under the Petroleum Products Act (PPA) regarding retail licenses is ‘misconceived’. The applicant asserts that the review application seeks to review a municipal zoning decision, not the Controller of Petroleum Products’ licensing decision. Relying on *Maccsand (Pty) Ltd v City of Cape Town and Others*<sup>3</sup> The applicant argues that municipal land-use controls and national petroleum licensing are separate functional domains. Compliance with one does not ‘trump’ or stay the necessity of complying with the other.

[17] The applicant points out that if it were forced to wait for the conclusion of collateral PPA processes, it would risk falling foul of the 180-day time limit for bringing a review under PAJA. The applicant concludes that the points of law are unsupported by the record and inconsistent with administrative law principles and prays for an order for the dismissal of the first respondent’s

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<sup>2</sup> *Pieterse NO v Lephalale Local Municipality* (CCT184/16) [2016] ZACC 40; 2017 (2) BCLR 233 (CC) (10 November 2016).

<sup>3</sup> *Maccsand (Pty) Ltd v City of Cape Town and Others* (CCT103/11) (CC) [2012] ZACC 7; 2012 (4) SA 181 (CC); 2012 (7) BCLR 690 (CC) (12 April 2012).

points of law with costs, and an order directing that the application be determined on the uncontested facts of the application before Court.

### **Evaluation of the points of law raised by the first respondent**

#### *The first point of law*

[18] The first respondent's reliance on s 7(2) of PAJA and the appeal provisions of the Town Planning and Township Ordinance 15 of 1986 is misplaced in the specific context of this review. The first respondent's argument presupposes that a formal 'decision' was taken capable of being appealed. The uncontested evidence is that the Municipality ignored the 2009 Amendment Scheme and treated the property as 'Special' by administrative fiat. There was no formal application process, no notification to interested parties, and no resolution that could be the subject of a statutory appeal. One cannot appeal against a decision that, in law, does not exist or was taken outside of any cognizable statutory framework. While the Klerksdorp Land Use Management Scheme 2005 (KLUMS) provides for internal appeals, such remedies must be 'available' and 'effective' to trigger the bar in s 7(2).

[19] The applicant correctly contends that the 'internal remedy' cited by the first respondent, being an appeal to the provincial appellate body, has been rendered dysfunctional or legally non-compliant following the enactment of SPLUMA. Under SPLUMA, internal appeals are handled differently, where municipalities are the authorities of first instance, and the appellate authority must be an internal municipal body, not a provincial one, as contemplated by the old 1986 Ordinance. Section 51(1) of SPLUMA provides that anyone whose rights are affected by a municipal planning decision may appeal in writing to the municipal manager (or designated official) within twenty-one (21) days. This is

a statutory remedy under SPLUMA, not PAJA. In the present application, there is no evidence that any such internal appeal was instituted by the applicant, and very importantly, neither is it contended by the respondents that the applicant pursued such a course.

[20] There is a more fundamental and unavoidable reality the first respondent cannot skirt. Since the by-law appeals under the Ordinance are invalid, there was no available internal remedy for the applicant to pursue before turning to the Court. The provincial appeal mechanism in the Ordinance was declared unconstitutional by the Constitutional Court in *Pieterse NO v Lephalale Local Municipality*, where it found that s 139 of the Town-planning and Townships Ordinance 15 of 1986, in terms of the separation of powers between Provincial Government and Local Government, was constitutionally invalid. The Constitutional Court found that, in terms of s 155 of the Constitution, exclusive local government competences cannot be interfered with by the provincial government, and that all planning fell within the exclusive competence of municipalities. The Constitutional Court stated as follows:

‘[8] Municipal land use planning schemes are executive and administrative in nature. They are exclusively for the municipality to determine. Beyond their constitutionally allocated powers of oversight and assistance, neither national nor provincial government may, by legislation or otherwise, interfere with a municipality’s executive powers to administer municipal affairs.

...

[13] Local authorities have a constitutionally entrenched power to manage municipal planning. “This power is autonomous and under no circumstances can it be intruded upon.” The functional areas conferred on provinces, whether concurrently or exclusively, cannot be construed to include components of municipal planning. That would run counter to the scheme of the Constitution, particularly its provisions safeguarding municipalities’ autonomy and insulating them from interference by the

other spheres. So any mechanism that subjects municipalities' planning decisions to a provincial appeal process intrudes into constitutionally prohibited terrain.'

[21] In *Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal and Others*<sup>4</sup>, the Constitutional Court confirmed that provincial tribunals usurping municipal planning powers are unconstitutional.

[22] It follows axiomatically that s 7(2) of PAJA, which bars review where internal remedies exist and were not exhausted, does not apply here. Therefore, the 'remedy' suggested by the first respondent is a legal nullity. There is no obligation to exhaust a remedy that is unconstitutional or non-existent in law.

[23] The applicant's 'failure' to lodge a non-existent appeal cannot invalidate this review. The first respondent's preliminary point of law is consequently dismissed. The application is properly before the Court.

#### *The second point of law*

[24] The first respondent further argues that the review is premature because an appeal under the petroleum licencing regime is pending (presumably before the Controller or his appeal board). The reasoning of the first respondent appears to be that the outcome of the licencing appeal might negate the need for this court to intervene.

[25] This argument fails to distinguish between separate statutory regimes. The impugned decision here is a land-use planning decision (rezoning) taken by

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<sup>4</sup> *Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal and Others* (CCT114/15) [2016] ZACC 2; 2016 (4) BCLR 469 (CC); 2016 (3) SA 160 (CC) (29 January 2016).

the Municipality. The licensing process under the Petroleum Products Act is a distinct administrative process governed by the national Department of Energy.

[26] The validity of a zoning scheme is a prerequisite for the lawful exercise of land-use rights, regardless of whether a commercial license is granted. A delay in the petroleum appeal does not deprive the applicant of the right to challenge the underlying land-use legality. There is no ‘divergence of decisions’ because the two authorities determine different legal questions. One concerns town planning, and the other concerns petroleum industry regulation. The zoning of property and scheme validity precedes the issue of a petroleum licence. By law, no filling station may operate without correct land-use zoning. Section 29(1) of SPLUMA specifically requires a Municipality to coordinate with other approving authorities for any development, thereby providing a clear distinction between planning approval and sector-specific licences, such as petroleum licences, which are separate steps.

[27] In practical terms, the zoning of Erf 3[...] in the municipal scheme is a prerequisite to lawful licencing. The fact that the Controller of Petroleum granted or is considering a licence does not negate the applicant’s right to challenge a scheme amendment which was effected in breach of SPLUMA and may I hasten to add, the Constitution.

[28] If this Court were to uphold the argument of the first respondent in this regard, thereby effectively delaying the relief sought by the applicant until after an appeal under the petroleum argument, it would undermine municipal planning authority. The point is thus, the planning outcome should stand or fall on its own legal merits, regardless of related licencing.

[29] In the final analysis, a pending petroleum appeal does not render the zooming review premature or academic. The first and second respondents cannot avoid judicial review of its land-use decision simply because another separate and distinct application is pending. Given the fact that no lawful zoning was ever in place until this review was brought, the applicant is entitled to have the scheme and all related actions taken by the first and second respondents placed under the microscope of judicial scrutiny. The second point of law is also dismissed.

### **The Merits: Legality and Ultra Vires**

[30] Having dismissed the points in law, I now turn to the merits of the review. The core issue is the lawfulness of the Municipality's actions. Specifically, whether the inclusion of the 'Special' zoning in the 2023 scheme from 'Industrial 2' and the cancellation of the zoning certificates was authorised.

[31] The principle of legality, a subset of the rule of law, requires that public power be exercised only by law. In *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council*<sup>5</sup>, the CC made it plain that a local authority may only act within the powers conferred upon it by statute. In *Law Society of South Africa v President of the RSA*<sup>6</sup>, the CC further emphasized that '*the exercise of public power is only legitimate when it is lawful*'.

[32] Municipal Councils are creatures of statute and may only act within powers granted by legislation. The zoning of land is a strict statutory process regulated by SPLUMA and the Municipal Bylaws. A land use scheme has the force of law. Section 26(1)(a) of SPLUMA provides that 'an adopted and

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<sup>5</sup> *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC).

<sup>6</sup> *Law Society of South Africa v President of the RSA* 2019 (3) SA 30 (CC).

approved land use scheme...has the force of law, and all land owners and users of land, including the municipality...are bound by the provisions of such a land use scheme.’

[33] Once Amendment Scheme 516 was promulgated in 2009, the ‘Industrial 2’ zoning became the only lawful status of the Property. The Municipality’s contention that the zoning ‘reverted’ to its 1991 status is legally untenable. No provision in SPLUMA or the Bylaw allows for the automatic reversion of rights upon non-use or the mere passage of time without a formal process declaring such a lapse. The tenets of SPLUMA require that any change to a land use scheme must follow the procedures set by that Act. Even if ‘lapsing’ provisions existed, they would require a formal administrative decision to confirm the lapse, which would trigger procedural fairness requirements.

[34] The Supreme Court of Appeal in *Rustenburg Local Municipality v Mwenzi Service Station CC*<sup>7</sup> emphasized that a municipality is bound by its own land use scheme. Section 28(1) of SPLUMA allows a municipality to amend its scheme by rezoning, to achieve developmental goals, but s 28 (2) requires a full public participation process, including allowing for objections and appeals. Tellingly, s 28 (4) explicitly provides that ‘any change to the land use scheme...may only be authorised by the Municipal Council.’

[35] The Municipality’s actions clearly failed to meet these peremptory requirements. Its purported rezoning of Erf 3[...] to ‘Special’ on 13 February 2020, falls gravely shy of effective or proper compliance with SPLUMA. No formal amendment ordinance was passed or published, and no public hearing record is available. In any event, the Town Planning Scheme 2003 was replaced

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<sup>7</sup> *Rustenburg Local Municipality v Mwenzi Service Station CC* [2015] 1 All SA 315 (SCA).

by the new Land Use Scheme 2023, which itself incorporated that rezoning without due process.

[36] In the final analysis, the ‘Special’ zoning of Erf 3[...] was never validly enacted. The Municipality lacked authority to insert that zone outside of the formal scheme-amendment process. Since the scheme provisions in force have legal effect, any amendment outside the prescribed procedures is ultra vires and of no legal effect. This includes the 2020 resolution, which was never published, and the 2024 scheme amendment, which merely rubber stamped the illegitimate rezoning.

## **Conclusion**

[37] It should be accepted as trite that all aspects of planning and zoning must comply with the statutory scheme. The inclusion of the ‘Special’ zoning for Erf 3[...] in the 2023 Scheme is the fruit of an unlawful process and cannot be countenanced. While the 2023 Scheme is legislative in nature, it cannot validate a zoning designation that was never lawfully acquired. The original zoning, ‘Industrial 2’ therefore remains the only applicable zone. Accordingly, any purported certificate or approval dependent on the non-existent ‘Special’ zoning is invalid.

[38] The applicant is entitled to a declaration of invalidity to correct the public record. The decisions of the first and/or second respondents stand to be reviewed and set aside.

## **Costs**

[39] The Municipality's conduct represents a serious dereliction of its statutory duties. It attempted to circumvent established town planning laws, thereby prejudicing the rights of the applicant and the public. The failure to file an answering affidavit or provide a record until compelled to do so further demonstrates a disregard for this Court's processes. It evinces the notion of suppressing information to prevent the truth being revealed.

[40] In the circumstances, punitive costs are warranted to express the Court's displeasure at the first respondent's conduct.

## **Order**

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

1. The following decisions and actions by the first and/or second respondent are reviewed and set aside in terms of section 6, read with section 8(1) of the Promotion of Administrative Justice Act 3 of 2000:

- 1.1. The decision to rezone and consequently amend the Klerksdorp Land Use Management Scheme, 2005, by changing the zone categorisation for Erf 3[...], Stilfontein Ext 7, Stilfontein, North West Province (Title Deed T[...]) from "Industrial 2" to "Special" for purposes of a public garage, a drive-in restaurant and service enterprise.

2. The First and Second Respondents are ordered to take the necessary actions to amend the zoning for Erf 3[...], Stilfontein Ext 7, Stilfontein, North-West Province (Title Deed T[...]) to "Industrial 2."

3. The City of Matlosana Land Use Scheme, 2023 is declared invalid and set aside to the extent that it designates the zoning of Erf 3[...], Stilfontein Ext 7, Stilfontein, North-West Province (Title Deed T[...]) as “Special” (for the purposes of a public garage, a drive-in restaurant and a service enterprise) in terms of section 172(1) of the Constitution. The declaration of invalidity is limited to the aforesaid portion of the 2023 Scheme applicable to Erf 3[...], and does not affect the validity of the Scheme in respect of any other property.

4. The First and Second Respondents are ordered, in terms of section 172(1)(b) of the Constitution, to take all necessary steps to amend or rectify the City of Matlosana Land Use Scheme, 2023 so as to reflect that Erf 3[...], Stilfontein Ext 7, Stilfontein, North-West Province (Title Deed T[...]) is zoned “Industrial 2” (with all associated rights and land-use entitlements attaching to an “Industrial 2” zoning in terms of the 2023 Scheme).

5. The First and Second Respondents must furnish the Applicant and Third Respondent, within 30 days from this Court’s order, with a zoning certificate confirming that under the City of Matlosana Land Use Scheme, 2023, Erf 675, Stilfontein Ext 7, Stilfontein, North-West Province (Title Deed T[...]) is zoned “Industrial 2.”

6. The First Respondent is ordered to pay the costs of this application on scale C of Rule 67, which costs shall include the costs of counsel.

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**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT  
NORTH WEST DIVISION, MAHIKENG**

**Appearances:**

For the Applicant:           Adv E Van As  
Instructed by:               Ivan Pauw and Partners  
                                     c/o Maree & Maree Attorneys  
                                     Mafikeng

For the First and Second  
Respondents:               Adv H J Scholtz  
Instructed by:               Lezanne Swanepoel Inc  
                                     c/o LFS Attorneys  
                                     Mafikeng