



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

CASE NO: 4758/2024

Reportable: No

Circulate to Judges: No

Circulate to Magistrates: No

Circulate to Regional Magistrates: No

In the matter between:

JOZE MALETA

1st APPLICANT

SOUTH AFRICAN GEOMATICS INSTITUTE

2nd APPLICANT

and

**CITY OF MATLOSANA LOCAL
MUNICIPALITY**

1st RESPONDENT

**THE SOUTH AFRICAN COUNCIL OF
PLANNERS**

2nd RESPONDENT

**THE SOUTH AFRICAN PLANNING
INSTITUTE**

3rd RESPONDENT

**THE MINISTER OF THE DEPARTMENT
OF AGRICULTURE, LAND REFORM
AND DEVELOPMENT**

4th RESPONDENT

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **10 MARCH 2026 at 10h00.***

ORDER

- (i) The application is dismissed.
- (ii) The first and second applicants are ordered to pay the costs of the application jointly and severally, one paying the other to be absolved on a party and party scale, including the costs of counsel on scale "C".

JUDGMENT

MASIKE AJ

INTRODUCTION

- [1] The controversy in this application stripped of the details is about whether the City of Matlosana Local Municipality ("the first respondent") could introduce a by-law which prescribed applications in terms of the Land Use Scheme of the first respondent may only be submitted by registered planners in terms of the Planning Professions Act 36 of 2002 ("the PPA") when the South African Council for Planners ("SACPLAN") has not prescribed the areas of planning work to be reserved for each category of registered persons in terms of the PPA. Mr Joze Maleta ("the first applicant") and the South African Geometrics Institute ("the second

applicant”) approached this Court and sought an order in the following terms:

- “1. That the forms and services provided for in the Rules in the above Honourable Court be dispensed with and that the matter be treated as an urgent application in terms of the provisions of Rule 6(12) of the Uniform Rules of Court;
2. That registration with the South African Council for Planners alternatively registration in terms of the provisions of the Planning Profession Act, Act 36 of 2002 is not a prerequisite for launching, advancing or dealing with a land development application or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;
3. That section 11.1.1 and 11.1.1(a) of the Land Use Scheme be declared unconstitutional and invalid;
4. No order as to costs, subject thereto that this Application does not become opposed; and
5. Further and or alternative relief.”

[2] The first applicant is a major male person and a registered professional land surveyor. According to the affidavit deposed to by the first applicant, the second applicant, is a national voluntary association recognized as such by the South African Geomatics Council in terms of s 18 of the Geomatics Professions Act, Act 19 of 2013 with its offices situated at Unit 1[...], B[...] G[...] 2, Hydrangea, PI, Glen Hills, Durban North, Kwa – Zulu Natal Province, 4051.

[3] The application is opposed by the first respondent, the South African Council for Planners (“the second respondent”), and the South African

Planning Institute (“the third respondent). The application was initially set down for hearing in the urgent court on 17 October 2024. On 17 October 2024, the application was before Mfenyana J, who postponed it to 2 May 2025 for argument. Due to the postponement of the application on 17 October 2024, when the application was argued before this Court on 2 May 2025, this Court was not addressed on the issue of urgency. The question of urgency has fallen away following the postponement on 17 October 2024.

BACKGROUND FACTS

- [4] The first applicant alleges that on 16 February 2021, he submitted an application on behalf of his client to the first respondent. The application was considered by the Municipal Planning Tribunal (“MPT”) of the first respondent. The first applicant appeared before the MPT to motivate the application. The application submitted by the first applicant to the first respondent was for land development.
- [5] During the hearing of the application, the MPT enquired whether the first applicant was registered with SACPLAN. The first applicant is registered as a Land Surveyor in terms of s 10 of the Klipfontein Organic Products Corporation Act, Act 41 of 1950, and he is registered as a member of the Institute of Land Surveyors of the Transvaal. In addition, the first applicant was admitted as a Professional Land Surveyor by the South African Council for Professional Land Surveyors on 10 September 1984. Land Surveyors are also referred to as Geomatic Professionals in terms of the Geomatics Professions Act¹.

¹ s 10 of Act 19 of 2013.

- [6] The first applicant is not registered under s 13(1) of the PPA with SACPLAN. For the first applicant to be registered under s 13(1) of the PPA, the first applicant must be registered as either (a) a candidate planner², (b) technical planner³ or professional planner⁴.
- [7] The client's application was not considered by the first respondent. The first respondent stated that the first applicant was not registered with the PPA, which affected the *locus standi* to lodge the application with the first respondent and the first applicant's appearance before the MPT when the first applicant was making submissions in support of the application.
- [8] From the reading of the founding affidavit deposed to by the first applicant, this would not be a one-off incident. The first applicant applied on behalf of another client for the consolidation of two erven in Jouberton. The client of the first applicant provided him with a written special power of attorney. The application was submitted on 30 September 2021 with the first respondent.
- [9] On 21 December 2021, the first applicant received a letter from the first respondent, which read, amongst others, that the first respondent sought from the first applicant the following additional information, (a) a declaration that the first applicant in practicing and performing any work including the application is not contravening the provisions of s 13(2) of the PPA and (b) proof that the first applicant is registered in one of the categories specified in s 13(1)(a)-(b) of the PPA.

² s 13(1)(a) Act 36 of 2002.

³ s 13(1)(b) of Act 36 of 2002.

⁴ s 13(1)(c) of Act 36 of 2002.

- [10] The first applicant replied to the first respondent's letter on 18 January 2022. There was no response from the first respondent. In the first applicant's response, he asserted that he was not contravening s 13(2) of the PPA, as no work is reserved for the lodgement of the application in the matter. The first respondent, having failed to reply to the first applicant's letter dated 18 January 2022, the first applicant sent a second letter dated 27 January 2022. In that letter, the first applicant argued that the letter of the first respondent of 21 December 2021 is unconstitutional and illegal, and concluded by advising the first respondent to proceed with the application for consolidation.
- [11] No response came from the first respondent. The first applicant sent yet another letter dated 14 June 2022. The first respondent replied to that letter; the response, dated 27 June 2022, stated, amongst others, that the first applicant is in contravention of s 13(2) of the PPA.
- [12] The first applicant received a letter from the first respondent dated 19 August 2022, which related to another application submitted by the first applicant on behalf of a client to the first respondent. In that letter, the first respondent requested that the first applicant provide proof that the client had authorized the first applicant to act on its behalf and that the first applicant is registered under the PPA. The first applicant elected not to respond to this letter and instead approached the court for relief by way of an application under case number M23/24. The application under case number M23/24 was opposed by the first respondent, and answering papers were filed. According to the first applicant, there was an attempt to settle the matter under case number M23/24 between the parties, but nothing came of this. This contention is denied by the first respondent. The application under M23/24 was subsequently withdrawn.

[13] On 19 October 2023, the first applicant received the digital date of the new City of Matlosana Land Use Scheme, 2023 (“CMLUS, 2023”). CMLUS, 2023, was advertised on 28 March 2023 in the Government Gazette for a period of 60 days. For reasons unrelated to this application, the first applicant did not respond to the advertisement. CMLUS, 2023, was approved in the Gazette on 29 August 2023.

[14] The first applicant sought a meeting with the first respondent to discuss pending applications submitted by the first applicant on behalf of his clients. It was when the first applicant requested a meeting on 23 February 2023 that he was informed of the restrictions on submitting applications under Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023. That section reads as follows:

“11.1 Planning Applications

11.1.1 Application in terms of this land use scheme may only be submitted by:

- (a) Registered planners in terms of the Planning Profession Act 2002 (Act 36 of 2002).”

[15] The first applicant was of the view that the restrictions imposed in Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, offend against ss 11.3.1 of CMLUS, 2023, the by-law of 2016 of the first respondent, or the main Spatial Planning and Land Use Management Act, Act 6 of 2013 (“SPLUMA”). According to the first applicant, he attempted to resolve the impasse between himself and the first respondent without resorting to litigation. Meetings were held between the legal representatives of the first applicant and the first respondent. The last communication received from the attorneys of the first respondent was on 20 June 2024, when the

attorneys of the first respondent indicated that the first respondent does not agree with the contentions of the first applicant so far, as it relates to Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, and the contradiction with other legislation.

[16] It is the case of the first and second applicant that there is no reservation of work for categories as contemplated in terms of s 13(2) of the PPA and that Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023 is unconstitutional as it amounts to an unjustifiable limitation of the right to freedom of trade and profession protected by s 22 of the Constitution of the Republic of South Africa of 1996 (“the Constitution”).

[17] The contention of the first applicant that no work is reserved for registered planners is based on the fact that SACPLAN and the Minister of the Department of Agriculture, Land Reform and Development (“the fourth respondent”) have yet to gazette the list of reserved work as contemplated in the PPA. This argument by the first applicant is based on the reading of s 16(1), (2), (4) read with s 30 (1)(a), and 30(2)(a) of the PPA. s 16 of the PPA reads as follows:

“16 Identification of planning profession work

(1) The Council must consult with all voluntary associations and any person, body or industry determined by the Minister regarding the identification of certain areas of planning work to be reserved for registered persons, including work which may fall within the scope of any other profession.

(2) After such consultation, the Council must prescribe the areas of planning work to be reserved for each category of registered persons.

(3) A person who is not registered in terms of this Act, may not-

- (a) perform any kind of work reserved for any category of registered persons;
 - (b) pretend to be, or in any manner hold himself or herself out or allow himself or herself to be held out as, a person registered in terms of this Act; or
 - (c) use the name of any registered person or any name or title referred to in section 13 (1).
- (4) Notwithstanding the provisions of subsections (2) and (3), the Council may identify certain areas of work which may be carried out by persons registered in terms of other legislation, without subjecting such persons to the prohibitions contained in subsection (3).
- (5) The provisions of this section may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who must assume responsibility for any work so performed.” (own underlining)

[18] s 30 of the PPA reads as follows:

“30 Regulations and rules

- (1) (a) The Minister may, by notice in the *Gazette*, make regulations, not inconsistent with this Act, with regard to-
 - (i) any matter that he or she is required or permitted to prescribe in terms of this Act;
 - (ii) generally, all matters necessary for or incidental to the exercise of

the powers and the performance of the functions of the Council;
and

(iii) any other matter for the better execution of this Act.

(b) The Minister must, before making any regulation under subsection (1), publish a draft of the proposed regulation, repeal or amendment in the *Gazette* together with a notice calling on interested persons or voluntary associations to comment in writing within a period not less than 30 days from the date of publication of the notice.

(c) If the Minister alters the draft regulations as a result of any comment, he or she needs not publish those alterations before making the regulations.

(2) The Council may, by notice in the *Gazette*, make rules not inconsistent with this Act, with regard to-

(a) any matter it is required or permitted to prescribe in terms of this Act;

(b) the form of process and the procedure at or in connection with the proceedings of a disciplinary tribunal or the Appeal Board;

(c) the representation of any party before the Appeal Board;

(d) generally all matters necessary for or incidental to the exercise of the powers and performance of the functions of a disciplinary tribunal and the Appeal Board; and

(e) the fees payable in respect of the lodging of an appeal under this Act and the copying or transcription of records of a disciplinary tribunal or Appeal Board.

- (3) (a) Before the Council makes, repeals or amends any rule under this section, it must publish a draft of the proposed rule, repeal or amendment in the *Gazette* together with a notice calling on interested persons and voluntary associations to comment in writing within a period not less than 30 days from the date of publication of the notice.
- (b) If the Council alters the draft rules as a result of any comment, it needs not publish those alterations before making the rule.
- (4) The Council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (3): Provided that any person who objects to the said rule may-
- (a) comment after such publication; or
- (b) appeal to the Appeal Board against such a rule.” (own underlining)

[19] It is the argument of the first applicant that the effect on s 13 and 16 of the PPA when read with s 16(1), (2), (4), s 30 (1)(a), and 30(2)(a) of the PPA is clear. Unless, in terms of the PPA, work has been reserved by SACPLAN for any of the categories referred to in s 13(1) of the PPA, a person may practice in or perform such work. SACPLAN must prescribe the areas of planning work to be reserved for registered planners by way of rules made by SACPLAN in order for there to be a prohibition in respect of any work done other than by registered planners.

[20] SACPLAN has not, in terms of the PPA, reserved any work for any categories referred to in s 13(1) of the PPA. SACPLAN has not made specific rules regarding the reservation of work, and the fourth

respondent has not made any regulations in this regard. It is not in dispute between the parties that the fourth respondent has not made the regulations as stated by the first applicant, nor that SACPLAN has not made rules regarding the reservation of work.

[21] s 13(1) and (2) PPA reads as follows:

“13 Registration of persons

(1) The categories of registered persons are-

- (a) candidate planner;
- (b) technical planner; and
- (c) professional planner.

(2) A person may not practise in or perform any work, whether for reward or otherwise, which is reserved for any of the categories referred to in subsection (1) unless he or she is registered in that category and unless such practice or performance is supervised as may be required.”

[22] The first, second, and third respondents have opposed the application and filed their answering affidavits. The grounds of opposition of the first, second, and third respondents are similar. The first, second, and third respondents contend that the provisions of Chapter 11, s 11.1.1 and ss 11.1.1(a) of the CMLUS, 2023, do not offend against ss 11.3.1 of CMLUS, 2023, the by-law of the first respondent of 2016, or SPLUMA.

[23] The first, second, and third respondents contend that Chapter 11, s 11.1.1 ss 11.1.1(a) of CMLUS, 2023 does not restrict any person from submitting a planning application but simply sought to align the

Municipality's Land Use Scheme with the requirements of s 13(2) read with s 16(3) of the PPA.

[24] It is the further case of the first, second, and third respondents that, in response to the contention by the first applicant that there is no work reserved for persons registered as professional planners with SACPLAN under s 13 of the PPA, that contention is fundamentally flawed and misplaced.

[25] The first, second, and third respondents rely on s 2(a) of the PPA to counter the first applicant's argument. The first, second, and third respondents contend that s 2(a) of the PPA provides a clear indication of the work performed and services rendered by a professional planner. s 2 of the PPA reads as follows:

“2. The following principles apply to the Council and all registered persons and must guide the interpretation, administration and implementation of this Act:

(a) Planning and the planning profession are areas of expertise which involve the initiation and management of change in the built and natural environment across a spectrum of areas, ranging from urban to rural and delineated different geographic scales (region, subregion, town, village, neighbourhood), in order to further human development and environmental sustainability, specifically in the fields of-

(i) the delimitation, regulation and management of land uses;

(ii) the organisation of service infrastructure, utilities, facilities and housing for human settlements; and

- (ii) the co-ordination and integration of social, economic and physical sectors which comprise human settlements, through the synthesis and integration of information for the preparation of strategic, policy, statutory and other development plans within the South African development context.
- (b) Planning must pursue and serve the interests of the public to benefit the present and future generations.
- (c) The Council and the planning profession must-
 - (i) strive to achieve the transformation legitimacy and effectiveness;
 - (ii) strive to achieve high standards of quality and integrity in the profession;
 - (iii) promote the profession and pursue improvements in the competence of planners through the development of skills, knowledge and standards within the profession; and
 - (iv) promote environmentally responsible planning which will ensure sustainable development.” (own underlining)

[26] The first, second, and third respondents rely on the reading of s 13(2) read with 16(3) and s 2(a) of the PPA to show that the PPA has given a clear indication of the work and services rendered by a planner.

[27] In reply to the contentions by the first, second, and third respondents, the first applicant alleges that the first, second, and third respondents have conveniently overlooked s 16(1), s 16(2), and s 16(4) of the PPA.

- [28] The first applicant contends that no work being reserved in terms of PPA for registered planners, and land surveyors being able to do the work that is contemplated in the PPA, notwithstanding that the first respondent adopted Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, the effect of which is that work is reserved for registered planners.
- [29] The argument of the first applicant is that the first respondent has decided for itself, without SACPLAN having followed the process in terms of s 16(1) and (2) of the PPA, to reserve work for planners registered in terms of the PPA. It is the case of the first applicant that Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, is inconsistent with the PPA, with s 45 of SPLUMA, regulation 14 of SPLUMA, the by-law, in particular s 86(1)(b) and (c) of the first respondent. It is the argument of the first applicant that the reservation of work in Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, is not sanctioned by the Constitution and the relevant legislative framework.
- [30] The first, second, and third respondents contend that no constitutional rights are being infringed by Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023. The second and third respondents specifically contend that the provisions of CMLUS, 2023, regarding the registration of and submission of land development applications should be read in line with SPLUMA. The second and third respondents refer to s 54(e) of SPLUMA, which reads as follows:

“54 Regulations

- (1) The Minister may, after public consultation, make regulations consistent with this Act prescribing-
- (a)

- (b)
- (c)
- (d)
- (e) procedures concerning the lodging of applications and the consideration and decision of such applications, including the-
 - (i) submission by applicants and objectors of additional information, explanations and environmental impact assessments;
 - (ii) conduct of investigations in terms of sections 32 and 48; and
 - (iii) guidelines for the determination of what amounts to an undue delay for consideration and disposal of application by a Municipal Planning Tribunal for the purposes of this Act;”

[31] Regulation 14(a) of SPLUMA regulations reads as follows:

“LAND DEVELOPMENT AND LAND USE APPLICATIONS

Submission of land development and land use applications

(1) A municipality must determine

- (a) the manner and format in which a land development and land use application must be submitted;” (own underlining)

[32] The first respondent contends that it is empowered by section 156 of the Constitution and s 24 of SPLUMA to adopt and approve a Land Use Scheme to administer matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution. It is submitted that in terms of regulation 14(a) of SPLUMA, the provisions of Chapter 11, s 11.1.1 and ss 11.1.1(a) of the CMLUS, 2023 are in line with the provisions of SPLUMA as well as the PPA.

ANALYSIS

[33] In determining whether registration with SACPLAN, alternatively registration in terms of the provisions of the PPA, is not a prerequisite for launching, advancing, or dealing with a land development application or consolidation of land, or any deviation from the land use or uses permitted in terms of an applicable land use scheme of the first respondent. An exercise in interpretation of the PPA must be undertaken.

[34] In *C:SARS v United Manganese of Kalahari (Pty) Ltd*⁵(*United Manganese*) Wallis JA writing for the court said the following:

“It is unnecessary to rehearse the established approach to the interpretation of statutes set out in *Endumeni* and approved by the Constitutional Court in *Big Five Duty Free*. It is an objective unitary process where 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. The approach is as applicable to taxing statutes as to any other statute. The inevitable point of departure is the language used in the provision under consideration.”⁶ [footnotes omitted]

[35] On the reading of s 2(a) of the PPA, the section sets out in unambiguous terms the duties of professional planners; in other words, the planning principles as set out in s 2 (a) of the PPA provide guidance or explanation

⁵ (264/2019) [2020] ZASCA 16 (25 March 2020).

⁶ *United Manganese* Para [8].

on what planning work entails. In my view, planning work is clearly defined in s 2(a) of the PPA.

[36] In my view, it is axiomatic that any person who renders services on behalf of another as described in s (2)(a) of the PPA must be registered as provided for in the PPA; any other interpretation would lead to absurd results. In my view, further, there is no merit in the argument by the first applicant that “unless, in terms of the PPA, work has been reserved by SACPLAN for any of the categories referred to in s 13(1) of the PPA, a person may practice in or perform such work.” This interpretation is dangerous and is likely to result in abuse, with persons who do not hold the required qualifications rendering services that should be provided by professional planners. This cannot be allowed.

[37] I am satisfied that there is merit in the argument by the first, second, and third respondents that, on a proper interpretation of s 2(a) of the PPA to which Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023 is aligned, there is a clear reservation of planning work for registered planners. The relief sought in prayer 2 of the notice of motion must fail.

[38] I now turn to prayer 3 sought in the notice of motion. I have already found that Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, is aligned with the PPA. It is self-evident that Chapter 11, s 11.1.1 and ss 11.1.1(a) of the CMLUS, 2023 is consistent with the PPA.

[39] I understood the argument of the first, second, and third respondents to be that Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, relates to planning applications in terms of the Land Use Scheme which are submitted by a person who is not the owner of the property and that

person is submitting the application on behalf of the owner of the property concerned. Although s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, could have been more clearly worded, it is obvious in my view that it could never have been the intention of the first respondent to deny property owners the right to submit applications in terms of the Land Use Scheme on their own. The results would be absurd and unbusinesslike.

[40] My opinion in this regard is fortified by the contents of s 45(1)(a) and (b) of SPLUMA, by-law of the first respondent, in particular s 86(1)(b) and (c), s 1.11 of CMLUS, 2023, which refers to “owner”, s 1.13 which also refers to “owner” and other sections of CMLUS, 2023 which refer to “owner” in reference to applications in terms of the Land Use Scheme.

[41] In my view, the reservation of work in Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, is sanctioned by the Constitution, by SPLUMA, and by the PPA. s 156 of the Constitution reads as follows:

“156 Powers and functions of municipalities

- (1) A municipality has executive authority in respect of, and has the right to administer-
 - (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
 - (b) any other matter assigned to it by national or provincial legislation.
- (2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.
- (3) Subject to section 151 (4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.

- (4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if-
- (a) that matter would most effectively be administered locally; and
 - (b) the municipality has the capacity to administer it.
- (5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.”

[42] Part B of Schedule 4 of the Constitution reads as follows:

“The following local government matters to the extent set out in section 155 (6) (a) and (7):

Air pollution

Building regulations

Child care facilities

Electricity and gas reticulation

Firefighting services

Local tourism

Municipal airports

Municipal planning

Municipal health services

Municipal public transport

Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law

Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto

Stormwater management systems in built-up areas

Trading regulations

Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems”

[43] Part B of Schedule 5 of the Constitution reads as follows:

“The following local government matters to the extent set out for provinces in section 155 (6) (a) and (7):

Beaches and amusement facilities

Billboards and the display of advertisements in public places

Cemeteries, funeral parlours and crematoria

Cleansing

Control of public nuisances

Control of undertakings that sell liquor to the public

Facilities for the accommodation, care and burial of animals

Fencing and fences

Licensing of dogs

Licensing and control of undertakings that sell food to the public

Local amenities

Local sport facilities

Markets

Municipal abattoirs

Municipal parks and recreation

Municipal roads

Noise pollution

Pounds

Public places

Refuse removal, refuse dumps and solid waste disposal

Street trading

Street lighting

Traffic and parking”

[45] Municipal planning is listed under Part B of Schedule 4 as one of the areas that the first respondent enjoys executive authority to administer. It is not in dispute between the parties that the first respondent may make by-laws for municipal planning. The first applicant argued in his heads of

argument that the regulation of professions is not a matter mentioned in either Schedule 4 or 5 of the Constitution. The first applicant's argument goes further to state that s 156(3) of the Constitution provides that, subject to s 151(4), a by-law that conflicts with national or provincial legislation is invalid.

[46] The provisions of Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023 do not regulate the profession of planners. The PPA does that. It is s 2(a) of the PPA which has set out the terms and the duties of professional planners, and it is s 16(3)(a) (b) and (c) read with s 13(1) and (2) of the PPA which has determined which professions are competent perform the tasks set out in s 2(a) of the PPA. As stated above, Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, is in line with the provisions of SPLUMA and the PPA. I am satisfied that Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023 is not in conflict with national or provincial legislation. The relief sought in prayer 3 of the notice of motion must fail.

COSTS

[47] It is a trite principle in our jurisprudence that costs follow the cause. The first applicant in his heads of argument has submitted that if he and the second applicant are not successful, then the *Biowatch* principle⁷ should be applied. The first, second, and third respondents have argued that *Biowatch* is inapplicable to this matter.

[48] In *Biowatch*, the court said the following:

⁷ *Biowatch Trust v Registrar, Genetic Resources (Biowatch)* 2009 (6) SA 232 (CC).

“As stated above the general rule for an award of costs in constitutional litigation between a private party and the state is that if the private party is successful, it should have its costs paid by the state, and if unsuccessful, each party should pay its own costs. In the present matter, Biowatch achieved substantial success. Not only did it manage to rebut a number of preliminary objections aimed at keeping the case out of court altogether, it also succeeded in getting a favourable response from the Court to eight of the eleven categories of information it sought. In these circumstances the “misconduct” of Biowatch would need to have been of a compelling order indeed to justify a failure to award costs against the state. The reasons advanced by the High Court for making no award of costs do not, however, persuade.”⁸ (own underlining)

[49] I understand the arguments of the first, second, and third respondents on the question of costs to be that the first and second applicants brought an application for similar relief under case number M23/24, which they subsequently withdrew. The first applicant counters this argument by stating that in the application under case number M23/24, a constitutional challenge to Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023, was not raised.

[50] The purpose of an award of costs is to indemnify a successful party who has incurred expenses in instituting or defending an action.⁹ As stated in *Biowatch*, in constitutional litigation between a private party and the State, if the private party is successful, it should recover its costs from the State; if unsuccessful, each party should pay its own costs. This is subject to the proviso that the private party has not committed misconduct which would justify an order depriving it of its costs. In my view, misconduct by

⁸ Biowatch Para [43].

⁹ *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488.

the private party might deprive it of the protection afforded by the *Biowatch* principle.

[51] In this application, the first and second applicants were fully aware of the defence on which the first respondent relied. The first applicant went so far as to attach the answering affidavit of the first respondent to the application under M23/24, which, in substance, was similar to the answering affidavit filed in this application on behalf of the first respondent. The relief sought in the application under case number M23/24 was similar to the relief sought in prayer 2 of the notice of motion in the application before this Court.

[52] The first respondent contended in its answering affidavit that, in the application under case number M23/24, the first and second applicants failed to cite the second and third respondents, and that this was fatal to the application. Apart from denying that the failure to cite the second and third respondents in the application under case number M23/24 was fatal to that application, nothing more is said by the first applicant on why the application under case number M23/24 was withdrawn.

[53] I am of the view that the first and second applicants are abusing court processes in bringing the application under case number M23/24, withdrawing the application for no apparent reason, and bringing the current application for the same relief but adding a constitutional challenge to Chapter 11, s 11.1.1 and ss 11.1.1(a) of CMLUS, 2023. There is, in my view, no reason why this Court should deviate from the trite principle that costs follow the cause.

[54] This application was complex and important to the first, second, and third respondents. A costs order on Scale “C” is warranted¹⁰.

[55] Resultantly, the following order is made:

ORDER

- (i) The application is dismissed.
- (ii) The first and second applicants are ordered to pay the costs of the application jointly and severally, one paying the other to be absolved on a party and party scale, including the costs of counsel on scale “C”.

T MASIKE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

¹⁰ *Mashavha v Enaex Africa (Pty) Ltd* (2022/18404) [2024] ZAGPJHC 387; 2025 (1) SA 466 (GJ) (22 April 2024) Para [6].

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Date Heard: 2 May 2025

Date Handed Down: 10 March 2026