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

Case Number: 013170-2022

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

DATE SIGNATURE

In the matter between:

CHATAPROP HOLDINGS (PTY) LTD	Applicant
And	
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	First Respondent
COUNCIL OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	Second Respondent
MUNICIPAL MANAGER OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	Third Respondent
THE EXECUTIVE MAYOR OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	Fourth Respondent

JUDGMENT

MALINDI, J

Introduction

[1] In its amended notice of motion dated 3 November 2023, the applicant seeks an order in the following terms:

1. Declaring that the decision taken by the municipality to reclassify the electricity, water and sewage use of the property known as Erf 4[…] Northcliff Extension 2 township (the property) from residential to business as irrational, defective and invalid.
2. Reviewing and setting aside the decision in paragraph 1 above.
3. Substituting the decision in paragraph 1 above with the decision that the classification of the electrical, water and sewage use of the property is that of residential with consent use for a guest house ordering the first, alternatively the second, third or fourth respondent to repay the amount of R380 724,08 to the applicant, which amount the applicant paid to the respondents under protest.
4. Ordering the respondent to pay the costs of this application.
5. For further and/or alternative relief.

[2] The applicants have prepared a draft order which reads similar to the amended notice of motion.

[3] The matter was set down for 5 October 2023 but was postponed by agreement between the parties in order to allow the applicant an opportunity to amend its papers for the purposes of pleading alternative relief and to amend the notice of motion.

[4] The notice of intention to amend in terms of Rule 28 of the Uniform Rules of Court dated 3 November 2023 is set out at CaseLines 3-1, and on the same day 3 November 2023 an amended notice of motion was delivered.

[5] The matter was set down for hearing on 16 January 2023 on an unopposed basis.

[6] On 29 August 2022 the respondents delivered their notice of intention to defend.

[7] The applicant delivered heads of argument on 3 March 2023 and supplementary heads of argument on 7 May 2024 as a result of a postponement at the hearing of 2 October 2023 in order to address the question whether the applicant's claim for review had become mute due to the fact that the subject property was transferred prior to the hearing of the matter.

[8] The respondents filed their heads of argument on 9 May 2023 and supplementary heads of argument on 13 May 2024.

Issues for determination

[9] Two issues are for determination, that is, whether:

1) The application has become mute for the reason that the property has been sold and transferred at the time of the hearing of the matter.
2) The respondents' decision to reclassify the electricity, water and sewage usage of the property from residential to business stands to be reviewed on the grounds of rationality or defective procedure.

Background Facts

[11] The property is classified as 'residential with the consent of the municipality it may be used as a guest house'.

[12] In early 2022 it came to the attention of the applicant that the respondents intended to charge for services to the property at rates applicable to properties classified as "commercial."

[13] The applicant contends that the decision to convert the property from rates charged for residential to commercial property was never communicated to it until 2022. The applicant seeks relief of the repayment of the difference between the commercial rates it has paid so far and the "residential rates" it ought to pay as the property is classified residential. It states that the full

payments at "commercial rates" were made under protest. These payments were made in order to effect transfer to the current owner for a clearance certificate as applicant remained liable, therefor.

[14] Section 229(1) of the Constitution[1] empowers the respondent municipality and its agents to impose rates on property and surcharges on fees for services provided by it or on its behalf. This constitutional authority is exercised through legislation as envisaged in subsection (5).[2]

[15] In a letter dated 22 September 2009 the municipality informed the applicant of its resolution in respect of the property as follows. With reference to the above application this matter was considered by the City of Johannesburg Development Planning and Urban management planning committee on 9 September 2009 when the following resolution was adopted.

> "*That notwithstanding the provisions of any other law the city of Johannesburg supports concerned in terms of clause 14 of the Johannesburg Town Planning Scheme 1979 for the establishment of a residential building (guest house) on Erf 4[...] Northcliff extension 2 subject without prejudice to the general condition of the scheme to the following conditions*."

[16] The relevant condition to these proceedings is condition number 20 which reads: "All relevant legislation and council by-laws shall be complied with to the satisfaction of the council."

[17] The resolution preserves to the respondents the exercise of its rights and obligations under the town planning scheme and that 'all relevant legislation and council by-laws shall be complied with to the satisfaction of the council.'

[1] The Constitution of the Republic of South Africa.

[2] See Local Government Municipal Property Rates Act of 6 of 2004 (the rates Act), Local Government Municipal Systems Act of 32 of 2000 (MSA), Municipal Financial Management Act of 56 of 2003 (MFMA), Town Planning and Township Ordinance 15 of 1986 (TPPO), the ordinance land use regulations 15 of 1985, planning by-law 2016, Town Planning Scheme of 1979.

[18] The council determined property rates tariffs for the 2021/2022 financial year as 1:2 for residential consent use and 1:2:5 for business and commercial. This was for the period 1 July 2021 to 30 June 2022.

[19] On 11 October 2021 the municipality advised the applicant of the tariff change in respect of the sewer/water account, and it said at paragraph 1, 2 and 3 thereof:

> "*The city of Johannesburg has exercised an audit on your municipal account that intended to ensure revenue completeness and accuracy.*
> *The recent audit conducted revealed that the sewer/water tariff charged on the property is not in line with the approved tariffs description as published.*
>
> *"Residential purposes" shall be deemed not to include the letting of accommodation units for any category of hotel uses, which shall be deemed to constitute use for commercial purposes.*
>
> *This therefore serves to advise that the billing on the account will be amended in line with the approved tariffs from 2018/2019, 2019/2020, 2020/2021 and 2021/2022.*"[3]

[20] It appears therefore that the tariff change was a deviation from residential use at 1:2 to business and commercial use at 1:2:5 which was the rates set out in the 2021/2022 financial year, and perhaps a deviation to the 2018/2019, 2019/2020 and 2020/2021 tariff rates.

[21] On 19 January 2022 the applicant was advised as follows at paragraphs 1 and 2 of annexure FA8[4] with the heading 'Tariff change on municipal account'.

> "*The City of Johannesburg has exercised an audit on the above-mentioned account that intended to ensure that all five services are billed on the account*

[3] Annexure "FA6"; CaseLines 03-20.
[4] Annexure "FA8"; CaseLines 03-24.

and are accurate. The recent audit conducted revealed that the use of property is for a business purpose that did not correspond with the current billing.

This therefore serves to advise you that the billing on the account will be amended in line with the by-laws and the change from a residential tariff to a business tariff will be reflected on the next invoice."

[22] This advice was in respect of all five services provided by the respondents. It is correct therefore that the advice to the applicant, there being no similar advice until 11 October 2021 and 19 January 2022, was retrospective by a number of financial years.

[23] In respect of electricity charge correction section 9 paragraph 7 of the electricity by-law provides as follows:

> "*When it appears that a consumer has not been charged or incorrectly charged for electricity due to the application of an incorrect charge or on any other grounds other than inaccuracy of a meter, the council shall conduct such investigations, enquiries and tests as it deems necessary and shall, if satisfied that a consumer should have been charged or has been incorrectly charged, adjust the account accordingly – provided that no such adjustment shall be made in respect of a period in excess of six months prior to the date on which the incorrect charge was observed or the council was notified of such incorrect charge by the consumer. Where such consumer is found to have been incorrectly charged the consumer shall be charged the cost of conducting such investigations, enquiries and tests*."

Discussions

[24] First, the late filing of the supplementary affidavits was by agreement when the hearing was postponed at the hearing on 5 October 2023. There was therefore no need for leave to be sought and to show good cause, therefor.

[25] The applicant's contention that the respondents' classification of the charges in respect of the property from residential to commercial is irrational is incorrect. The legal framework followed by the respondents is that of charging business rates for a consent use property to business and commercial use regardless of the property remaining a residential property. In other words, a residential property that has obtained consent use as a business will be charged business rates for the services provided by the municipality. The applicant's contention that the respondent's reclassification of the charges in respect of the property from residential to commercial is irrational is incorrect. The legal framework followed by the respondents is that of charging business rates for a consent use property to business and commercial use regardless of the property remaining a residential property. In other words, a residential property that has obtained consent use as a business will be charged business rates for the services provided by the municipality.

[26] This makes administrative sense as the property may cease to be used as a business. Furthermore, it is a residential property in a residential zone, not a business or commercial zone. It merely obtained rights to be used as a business in a residential zoning. It is common cause that neither the zoning nor the category use of the property was changed.

[27] Secondly, the advises of tariff changes are in terms of the legal framework for effecting such changes. Should there be inaccuracies in calculations, the applicant is advised of the process to be followed as provided in such advice. The contested amount is levied in terms of section 118 of the Systems Act but subject to revision. It therefore does not become unlawful and subject to review. It is subject to revision to the extent necessary even after being paid. For example, should the applicant be of the view that electricity was charged inaccurately, it may challenge the calculation especially if the retrospectivity is for longer than six months as provided in section 9 paragraph 7 of the Electricity Guidelines.

[28] Thirdly, if there is a discrepancy between 'commercial' and 'consent use' the applicant will be entitled to such revision by lodging a dispute.

[30] Section 74 of the Systems Act empowers the respondents to impose tariffs on the basis of an adopted tariff policy. There is no suggestion that the tariff policies relied upon by the respondents do not comply with this section.

[31] As stated above, the issue of how much the applicant should have paid in terms of section 118 of the Systems Act remains a live issue and the issue. It is not mute.

[32] The applicant may succeed at the review of the amount paid and have that amount reduced either by reversing the electricity charged retrospectively by longer than six months and/or all rates charges being revised by what ratios were applicable in the financial years preceding 2021/2022.

[33] This matter is capable of being finalised without scrutinising whether there was compliance with the Promotion of Administrative Justice Act[5] (PAJA). The applicant has failed to make out a case as claimed. It is common cause that the property has not been rezoned and therefore the dispute remains one of discrepancies of charging business or commercial rates instead of consent use rates.

Costs

[34] The respondents enjoy a substantial success. There is no reason why costs should not be awarded in their favour fully.

Conclusion

[35] In conclusion, the following order is made:

1. The review application is dismissed.

[5] 3 of 2000.

2. The applicant is to pay the costs of the application including the cost of counsel at the B Scale.

G MALINDI

Judge of the High Court,

Johannesburg

Appearances

For the Applicant:	Neels Engelbrecht
Instructed by:	Neels Engelbrecht Attorneys
For the Respondent:	Adv Nathi Emmanuel Sithole
Instructed by:	Mojela Hlazo Attorneys
Date of Hearing:	14 May 2024
Date of ex tempore judgment judgment:	10 November 2024
Date of written judgment:	16 March 2026