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

Case number no: 2025-123417

In the matter between:

CITY OF CAPE TOWN

Applicant

and

JINJA 2 OUTDOOR ADVERTISING (PROPRIETARY) LIMITED First Respondent

THE TRUSTEES OF THE HORIZON PROPERTY TRUST Second Respondent

Heard : 25 November 2025

Delivered : 27 March 2026

Summary : Local Government — Municipal By-laws — section 19 — City retains exclusive statutory authority over the administration and enforcement of all applicable building codes and by-laws — Outdoor Advertising — Unauthorised signage — Regularisation of an unpermitted structure is primarily a municipality

administrative matter — City is not legally mandated to offer regularisation as a prerequisite to enforcement — Building Regulations — National Building Regulations and Building Standards Act 103 of 1977 — Regulation A25(6) — Administrative Law — Meaning of "administrative action" under PAJA — Right to be heard at preliminary notice stage.

ORDER

1. The counter claim is dismissed;
2. It is declared that the sign structure erected by the first respondent at Erf 167[...], T[...], on the second respondent's property, contravenes:
 - a. The approval granted by the City under the Outdoor Advertising By-law, 2023 ("the By-law") and sections 16(1) (a), (b) and (c) read with Schedule 2 item 4 and schedule 17, item 2 (c) of the By-law itself; and
 - b. the approval granted under the National Building Regulations and the Building Standards Act 103 of 1997 ("the NBR") and section 4 (4) read with NBR Regulation A25 (5) itself.
3. The first respondent is directed to alter the sign structure within seven (7) days of the granting of this Order to bring it in line with the approvals applicable at the time of the Order, or to remove the sign structure, failing which the applicant is authorised in terms of section 19 (5) of the By-law to remove the said sign structure.
4. In terms of section 19 (8) of the By-law, it is directed that any cost incurred by the City in doing alteration or other works required in terms of compliance notice to the said sign structure may be recovered from the first and second respondent, whose liability in this regard is joint and several.

5. The first and the second respondent are to pay the costs of this application and the counter claim application, on scale C, jointly and severally, one paying the other to be absolved. Such cost to include the costs of two counsels where so employed.

JUDGMENT DELIVERED ELECTRONICALLY

Nziweni, J

Introduction

[1] In this application, the applicant (“the City”) amongst others, seeks a declaratory order, declaring that the sign structure (“billboard”) erected by the first respondent (“Jinja”) at Erf 1[...], 1[...] T[...] Road, Bridgetown on the second respondent’s property contravenes:

- i. the approval granted by the applicant under the Outdoor Advertising By-Law, 2023 and section 16 (1) (a), (b) and (c) read with schedule 2 item 4 and schedule 17, item 2 (c) of the By-law itself; and
- ii. the approval granted under the National Building Regulations and Building Standards Act 103 of 1997 (“NBR”) and section 4(4) read with NBR Regulation A25(5).

[2] On 18 July 2025, an email addressed to the mayor and other officials triggered an investigation into whether Jinja deviated from the approved plan. This email correspondence contained a complaint from a private citizen regarding Jinja’s alleged deviations from plans approved by the City. The complaint also reported a pattern of non-compliance incidents by Jinja on other sites.

[3] In this matter, it is common cause that while Jinja obtained approval to erect the billboard, the dimensions authorised were smaller than those of the billboard [Jinja] actually erected. Approval was granted for one freestanding electronic billboard

limited to an illumination area of 18m² only, where the display is west facing, targeting the eastbound traffic along the N2, and to a height of 7.5 metres.

[4] On 23 July 2025, a site inspection of the billboard was done by the City. Later, on the same day, the City issued a notice in terms of section 19(1) of the Outdoor Advertising By Law 2023 ("the By-law"). The notice to Jinja, stated the following:

"The said sign structure is unauthorised in that the sign structure as erected, materially and substantially deviates from the sign structure approved . . .

You have accordingly failed to comply with condition 5 of the approval granted . . .

You are hereby ordered, in terms of Section 19 (2) (b) and (c) of the By-law to immediately cease with the erection of such sign structure. You are further ordered to remove such sign structure or carry out any alteration thereto within 21 days of this Notice, so as to remedy your contravention of the approval granted.

You are required by **12 P. M.** on Thursday 24.07.2025 to provide the City with a written undertaking that you will comply with this notice, failing which the City reserves its rights a competent court on an urgent basis for appropriate relief . . ." Underlining added.

[5] On 24 July 2025, pursuant to a site inspection done on 23 July 2025, the City issued a cease-and-desist notice, ordering an immediate halt to all building activities. Annexure MS6 to the founding affidavit [site photos], reveals that work was still being performed on site on 24 July 2025. See photos in paragraph 120 below.

[6] On 24 July 2025, a Jinja executive director, wrote to the City, responding to the notice issued by the City. In the communicate the following was stated:

"The writer is currently travelling on business and somewhat hamstrung in finding out the facts and conducting a thorough investigation to provide a meaningful response to your notice in the unreasonably short time afforded in your notice. We pause to mention that the notice affords remedial measures to be taken within 21 Days, yet you require us to provide far reaching undertakings within 12 Hours.

May we suggest that you also carefully consider all relevant merits, facts, and the history about this matter that is complex, not to mention the interpretation of the confusing provisions of the newly promulgated legislative provisions. . ." Underlining added.

[7] In this application, the City also seeks an order directing Jinja to bring the Billboard into compliance with applicable approvals or remove it within seven days of

the Order. Failing compliance, the City seeks authorisation in terms of section 19(5) of the By-law to effect the removal.

[8] In response to the City's application, Jinja filed a counter application. In the counter application the following reliefs are sought.

- i. The respondents be exempted from exhausting any internal remedy as contemplated in section 7 (2)(c) of the Promotion of Administrative Justice Act 3 of 2000, in respect of the approval of the as-built building plans in respect of the digital billboard and or the approval of the Star College Sign under the City of Cape Town's Outdoor Advertising By-law;
- ii. reviewing and setting aside the compliance notices;
- iii. reviewing and setting aside the notice to stop the building work;
- iv. reviewing and setting aside the decision to launch the main application under the above case number;
- v. declare that the City is compelled to consider the waiver of the restriction of the height of the digital billboard even though the said sign has already been erected;
- vi. reviewing and setting aside the decision of the City, represented by Armine Kamalie dated August 2025, to refuse the building plan application of Jinja;
- vii. remitting back the building plan refusal decision to the City with the direction that it is not to take such decision based on the Star College sign's non-compliance with the City's By-law;
- viii. declaring that on proper interpretation of the By-law non-profit; bodies are not limited to only displaying electronic billboards up to a maximum of 18 m² per panel and that in terms of section 8(4)(i) as read with schedule 2 of the By-law, electric billboards up to 36 m² per panel may be displayed by non-profit bodies.
- ix. In the alternative to paragraph 8, declaring items 2 (c) and 2 (d) of schedule 17 of the City's By-law unconstitutional and invalid insofar as it limits non-profit bodies to displaying electronic Billboards or Flat signs to 18 m².
- x. To the extent that this Court orders that the declaration of invalidity in paragraph 6 is suspended, it should be declared that suspension of invalidity does not apply to the respondents and in particular but not limited to the Star College Sign or the Christmas Tinto signs, whether for the

purposes of prosecuting the respondents, any compliance notices and considering any applications for approval;

- xi. declaring that non-profit bodies may receive waivers in respect of the height of billboards in excess of 7.5 metres above natural ground level for up to an additional 5 metres in accordance with Schedule 2 of the By-laws and that in respect of billboards which face onto roads with a speed limit of 120km/h such an additional 5 metres is in addition to a height of 10 m above natural ground level;
- xii. declaring that the City is obliged to consider the height waiver in respect of the Star College Sign and directing that in considering such waiver the height of 10.8 m above the ground level falls within the parameters of the waiver that may be granted, and accordingly that such waiver should be granted;
- xiii. in the alternative to the foregoing and /or in addition thereto, especially in the event that the final relief cannot be granted at this stage or if the City first needs to reconsider the application for approval of the Star College Sign as erected, ordering that:
 - II. This application be consolidated with the applications under case numbers 12588/2024 and 2025-03145;
 - III. Pending finalisation of those applications, alternatively pending final consideration of the applications for approval of the Star College Sign as erected, the applicant be permitted to display advertising up to 36 m², alternatively 18 m² on the Star College Sign at its current height.

[9] There are thus two patentably distinct applications before this Court. The main application [by the City] proceeds principally on two related but distinct strands. In the first instance, the City seeks enforcement through section 19 of the Outdoor Advertising By-Law ("the by Law"). The second strand is an alternative through common law, by means of an interdict.

[10] The parties are in agreement that Jinja applied for and was granted approval for the 18m² sign, at 7.5m² high. I observe that it is common ground in this matter that without the City's approval Jinja went ahead and constructed a 36m² sign at 10. 5m²

high. Thus, it is common cause that there is a discrepancy between the approved sign and the as-built sign.

[11] Prior, to the discovery of the deviations to the approved plan; it is common cause that Jinja did not seek an amendment to the plan before making changes, nor did they apply for approval of the Billboard as-built. The City's application pertains to the enforcement for failure to build the sign in accordance with the approved plan. On the other hand, as mentioned above, Jinja's application seeks a review certain action taken by the City and declaratory orders. Jinja maintains that it does not intend to display an image exceeding 18m² until it obtains approval from either the City or the Court.

[12] It must be stressed that, the parties have devoted and advanced extensive and detailed arguments in this matter. Considering the complexity and the competing interests involved, it is necessary to set out the core components of these submissions in detail.

The City's submissions

[13] In the founding affidavit it is asserted that the conduct of Jinja constitutes a pattern of deliberate, flagrant and calculated disregard of the law. The founding affidavit also averrers that on the left side of N2 there is a provincial VMS Sign, i.e. a sign which provides real time information to motorists regarding traffic management and public safety, including accidents, traffic conditions and road closures. The City alleges in the founding affidavit that Jinja's billboard [the as-built sign] is higher and distracts the motorists' attention from the VMS sign.

[14] Mr De Waal SC argued on behalf of the City that in respect of enforcement through the by-law, it common cause that the main application is not challenged, but instead, the respondents bring a collateral challenge in the form of a counter application. The City further contends that the collateral challenge raised by Jinja is procedurally improper and should not be entertained by this Court.

[15] According to the City, Jinja's conduct amounts to criminal activity. The City maintains that Jinja contravened three sections of the by-law, which constitute criminal offences.

[16] It is the City's contention that the collateral challenge in the counter application doesn't attack the premise of the main application. According to the City, Jinja wants to regularise their application with the City, seeking an order that does not order for the sign to be knocked down, until such time as they have made an attempt, or had a chance to regularise the sign.

[17] Mr De Waal SC argues that Jinja wants this Court to grant the main application, but the operation of the main application order be suspended for a period of time in order to allow Jinja to regularise the sign. Mr De Waal SC identifies three specific reasons for not granting the counter application. Firstly, this Court should grant the final order, because Jinja is not asking for the alteration of the billboard, [to be reduced in size to conform to what was approved]. Secondly, it is impossible for Jinja to regularise the sign. Jinja cannot regularise the size requirement and the height of the sign.

[18] Thirdly, the law cannot and does not countenance an ongoing illegality. Furthermore, on the City's behalf it is argued that no case has been made out for exceptional circumstances to justify a stay, and that this Court should not countenance the criminal behaviour of Jinja.

[19] In the counter application, Jinja seeks declaratory order and other relief which may assist them when they apply in future or the approval. In this regard, the City contends that what is sought by Jinja in the counter application is not competent relief. The City contends that the counter application relates to future remedy and it is not relevant to non-compliance with the by-law. According to the City, the courts are not in the business of giving advisory opinions about what will follow in future.

[20] Mr De Waal SC contends that in the event of an illegal sign, the City has three options: it can require the owner to apply for approval (or 'planned approval'), order the cessation of the illegal structure, or demand its alteration. In this case, the

obvious choice was to order an alteration, given that approval for a smaller sign had already been granted.

[21] It is the City's contention that the applicant's challenges are without merit for three reasons: First, regarding the choice of sanction: since approval had already been granted for a smaller sign, the City's decision to order an alteration was both logical and appropriate. Second, the challenge to authority must fail; as previously addressed, the ECO was duly authorised to issue the notice. Third, the allegation that the ECO was procedurally required to grant Jinja a hearing prior to issuing the compliance notice is flawed.

[22] Regarding the right to a hearing before compliance notice is issued, the City relies exclusively upon the decisions of *City of Cape Town v Bouley Properties (Pty) Ltd* (9410/2010) [2010] ZAWCHC 650 (21 December 2010) and *City of Cape Town v Michels and Others* (22715/2023) [2025] ZAWCHC 159 (28 March 2025). Mr De Waal SC submits that the issuance of the notice does not constitute administrative action; consequently, neither PAJA nor the Constitution grants the affected party a right to be heard at that stage.

[23] In accordance with the principles set out in *Michels* case, Mr De Waal SC argued that the issuance of a compliance notice is merely the conclusion of the investigative phase; it does not in itself authorise the removal of a structure. And the actual removal or demolition can only be effected through subsequent court proceedings should the notice be disregarded.

[24] More generally, the City's counsel submits that pursuant to the City bringing the present application; Jinja seeks to review the City's dismissal of their application. According to Mr De Waal SC, the City objects to this on the basis that there is a clear internal remedy that has not been exhausted. In essence, the City's counsel submits that Jinja can't come to court for review before exhausting the internal remedy to the City Manager. This situation, so the City argued, shows that there was simply no effort to exhaust the internal appeal.

[25] Thus, the City argues that no case has been made for an exemption; specifically, there are no exceptional circumstances that justify bypassing the duty to exhaust internal remedies with the City Manager. And therefore, the administration was denied the opportunity to self-correct.

[26] Regarding the allegation of discrimination, the City submits that the applicant has failed to meet the requisite legal test. As established in the Eastern Cape jurisprudence, a party alleging discrimination by a municipality must demonstrate an intent to discriminate. Thus, there is a high threshold that accounts for the specific duties and peculiar characteristics of the entities involved, such as Jinja.

[27] The City raises three points to support this assertion, the first of which concerns Ms Debbie Evans. According to the City, the fact that Jinja alleges that she was seen at an international conference in Dubai socialising with a competitor. Mr De Waal SC submits that this does not give rise to a reasonable suspicion of bias. So, the argument continues that it is common and expected for officials at a specialised global conference on outdoor advertising to interact socially with industry participants [mingle socially with some of the signage companies]. To the extent the City further argued that Ms Evans is not the final decision-maker in this matter, rendering the allegation of bias legally irrelevant.

[28] The City further argues that the applicant's comparison between the Jinja and Generations signs is legally flawed. According to the City, Jinja's contention that the approval of the Generations sign entitles their own sign to similar approval, incorrectly assumes that both applications were governed by the same regulatory framework. In essence, Mr De Waal SC for the City submits that this argument ignores the change in regulatory context that attest to the fact that the Generations sign was approved when the area was designated a minimum control zone. The City contends that the area has since been reclassified as a maximum control zone, under which the Christmas Tinto sign is prohibited.

[29] Thirdly, regarding the presence of other illegal signs in the area, the City submits that a reasonable person would understand that enforcement is a process. This situation, so the City argued, leads to the City's applications to remove unlawful

signage proceed at different paces based on the specific circumstances of each case. Accordingly, the City argues that the existence of other non-compliant signs, does not grant an applicant a right to bypass the law or establish a claim of unfair discrimination. Mr De Waal SC developed these submissions in the course of his argument. He submitted that in addition, the City sought an urgent interdict because Jinja was caught actively erecting the sign. According to the City, this distinguishes the matter from older, existing illegal signs which, as the papers show, are being addressed through standard processes. It is further submitted that the City is not required to treat every instance of unlawful activity identically; it is entitled to prioritise immediate intervention to prevent the completion of an illegal structure.

[30] Regarding the review of the stop work order, The City asserts that the review of the stop-works order, issued under the National Building Regulations (“NBR”), is premature. The City contends that Jinja has failed to exhaust the internal appeal remedies required by the NBR and has failed to establish grounds for an exemption. Furthermore, the City argues that the outcome of this review is irrelevant to the main application, as the City’s current enforcement action is independently grounded in common law and the Signage by-law.

[31] Regarding the first leg of Jinja’s argument, the City submits that Jinja incorrectly relies on Regulation A25(6). According to the City, this regulation does not mandate an inquiry into the cause of deviation; rather, it provides a mechanism for a local authority to approve alternative materials if they are proven suitable. It does not create a duty to allow unauthorised work to continue while an investigation is pending.

[32] Regarding the review ground [paragraph 3 of the counter application notice of motion] predicated on the assertion that the inspector should have afforded Jinja a hearing before issuing the stop-works order, the City contends that its submissions concerning the compliance notice apply with equal force to this challenge.

[33] In respect of paragraph 4 of the counter-application, the City confirms that they rely upon the same contentions previously advanced regarding the allegation of bias.

[34] Regarding paragraph 5 of the notice of motion in the counter-application, in which Jinja seeks a declarator to compel the City to consider a waiver of the height restriction; the City contends that while it [the City] allows for the regularisation of existing illegal signs, Jinja's position is legally untenable. According to the City, this is so because Jinja seeks a declarator to compel a waiver of the 7.5m² height restriction prescribed in Schedule 2, item 4 for landscape billboards. The City argues that this request is both premature and incompetent; because Jinja has not yet applied for such a waiver, and the By-law provides no discretion to waive this specific height limit. The City asserts that the applicant is effectively seeking an advisory opinion from the Court on a prohibited deviation.

[35] Furthermore, the City submits that a waiver is only permissible for a proposed billboard and not one already built. And this is permissible only where the property is adjacent to an elevated section of a road or bridge. The City hold the view that the current sign meets neither criterion.

[36] In respect of paragraph six of the counter application notice of motion, the City contends that Jinja's attempt to distinguish electronic billboards from standard or non-illuminated signs is legally misplaced. According to the City, Jinja relies on Section 8(4)(h) of the by-law; however, that provision is inapplicable to this matter as billboards are exclusively regulated by the specific requirements set out in Schedule 2.

[37] Regarding prayer 7 of the counter-application, the City maintains that Jinja seeks to remit the building plan refusal with a directive that the City must ignore non-compliance with the by-law during reconsideration. The City firmly believes that this is not only an incompetent request for an advisory opinion, but it is also legally flawed. According to the City, Section 7(1) of the NBR expressly mandates that a local authority be satisfied that an application complies with 'any other applicable law' before approval. And that the Signage by-law constitutes such law; therefore, the City is legally obligated, and not merely permitted to consider by-law compliance when evaluating a building plan.

[38] Regarding paragraph 8 of the counter application, Jinja seeks a declarator that non-profit organisations (NPOs) are entitled to display 36m² billboards rather than being restricted to 18m². In this regard the City does not dispute the law but clarifies its application. According to the City, under Schedule 2, all entities including NPOs may erect 36m² billboards, provided they are located within an area of minimum control. However, the City provides a special dispensation under Schedule 17, allowing NPOs to erect billboards in more sensitive maximum or partial control zones where they would otherwise be prohibited. Because of the environmental sensitivity of these zones, such signs are strictly limited to 18m². The City contends that Jinja's request for a blanket declarator ignores this crucial zonal distinction.

[39] Insofar as the constitutional challenge raised in prayer 9 of the counter-application, the City submits that this issue is both premature and legally irrelevant to the current proceedings. Mr De Waal SC contends that the guidance and advisory opinions sought by Jinja relate to future events, rendering them irrelevant to the current proceedings concerning illegality. The City holds the view that Jinja's contention that it is irrational to limit NPOs to 18m² billboards while commercial owners are allowed 36m² is based on a fundamental misreading of the by-law.

[40] It is contended on the City's behalf that there is no discrimination against NPOs; in fact, the by-law grants them preferential rights. Under the standard Schedule 2 framework, NPOs are entitled to the same 36m² billboards as commercial entities in areas of minimum control. The 18m² limit only applies to the special dispensation under Schedule 17, which uniquely empowers NPOs to erect signs in sensitive maximum and partial control zones where commercial billboards are strictly prohibited. The City asserts that the applicant's constitutional attack is therefore factually incorrect as the by-law does not marginalise NPOs but provides them with expanded opportunities for exposure.

[41] Regarding paragraph 10 of the counter application notice of motion, the City contends that Jinja proposes that if the constitutional relief is granted and the order of invalidity is suspended, the court should specifically exempt the Jinja and Star College signs from that suspension.

[42] The City further submits that this request for exceptionalism is legally untenable. According to the City, the Constitutional Court has established that remedies in constitutional matters must consider the interests of all similarly situated parties; a court does not single out a specific litigant for preferential relief to the exclusion of the public at large. The City maintains that while the applicant refers to the COGA case that authority actually supports the opposite view. The City contends that relief in constitutional matters is intended to assist all affected parties, ensuring overall fairness and upholding the rule of law rather than granting a private dispensation for two specific signs.

[43] Regarding prayer 11 of the counter-application, according to the City, Jinja seeks a declarator that NPOs are entitled to height waivers under Schedule 2, specifically for roads with speed limits of 120km/h. The City maintains that this request is legally redundant. So the argument continues that while any party, including an NPO, may theoretically apply for a height waiver, Jinja cannot qualify as a matter of law. The City asserts that this is so because as previously submitted, such waivers are strictly reserved for billboards adjacent to bridges or elevated road sections, conditions which this site does not meet. According to the City, Jinja in their counter application is effectively asking the Court to declare a right in a vacuum that cannot be realised on the facts. The City argues that the entire counter application need not be considered by this Court because it is an exercise in law reform.

[44] In prayer 12 of the counter claim notice of motion, Jinja seeks a declarator to compel the City to consider a height waiver and, further, a directive that a waiver of up to 10.8metres be granted for the Star College sign.

[45] The City argues that this request is a blatant invitation for the Court to overstep its bounds. Beyond the fact that no such waiver is legally permissible in a maximum control zone, Jinja is asking the Court to engage in judicial overreach. This is a highly technical and discretionary administrative function; according to the City, this Court does not possess the specialised expertise to assess the safety or aesthetic impact of a 10.8-metre billboard. Consequently, the Court cannot substitute its own decision for that of the City in such a technical domain.

[46] The City contends that in prayer 13 of the counter-application, Jinja seeks interim relief to operate the billboard while they pursue regularisation or until this matter is consolidated with litigation involving their 14 other illegal signs currently before this Division. The City contends that this request is legally untenable. According to the City, the granting of such relief would effectively sanction ongoing illegality and pre-empt the City's enforcement powers. The City firmly maintains that there is no legal basis to allow a non-compliant structure to operate simply because the owner has initiated separate litigation elsewhere; to do so would undermine the rule of law and the very purpose of the City's by-laws.

Jinja's submissions

[47] As mentioned previously, Jinja does not dispute that the physical frame of the billboard exceeds the size and the dimension that were approved. Nonetheless, Jinja contends that the billboard remains in compliance so long as the actual content displayed does not exceed 18m², notwithstanding that the physical frame was constructed to accommodate 36m². Jinja acknowledges that this stands in direct contrast to the City's position: that the approval was granted for an 18m² structure, and the erection of a 36m² frame, regardless of the surface area utilised, constitutes a material breach of the authorised dimensions. The submission ran that the City's approval is limited to an illumination area of 18 metres squared only, where the display is West facing, targeting the East bound traffic along the N2. So, if they do not switch on the sign for 36 m², and they only illuminate 18m², it is in compliance.

[48] In essence, Jinja asserts that the sign has the capability to display an image of 36m², it is, in fact, capable of displaying a range of images, from small to large, up to 36m². Jinja further asserts that it is not their intention to display an image larger than 18m², until such time they get approval to do so from the City, or from the Court if the City refuses.

[49] Insofar as the height is concerned, Mr Botha SC, on behalf of Jinja, asserts that it is necessary for the billboard to be higher and larger than approved.

[50] The essence of Mr Botha's SC argument is that the situation encountered on-site [of the billboard] is a routine aspect of construction projects. Mr Botha SC developed the point by stating that the building regulations are designed with that in mind, allowing developers to proceed while rectifying deviations through amended plans.

[51] Mr Botha SC submits that Section 19(2) of the by-law provides the City with three distinct enforcement options. The first, under Section 19(2)(a), empowers the City to direct an owner to regularise an unauthorised sign rather than ordering its immediate removal. Jinja contends that when a party is directed to seek such approval, the unlawfulness is resolved through this specific statutory mechanism. Consequently, constitutional authorities regarding summary deprivation or illegal state action are inapplicable here, as the City is acting strictly within its legislated discretion.

[52] According to Jinja, the City's refusal is predicated on a narrow and inflexible application of Schedule 17(2)(d) of the by-laws Mr Botha SC emphasised that the City contends that the 18m² maximum is an absolute statutory ceiling that is not subject to further waiver. The emphasis of his argument is that the City, by framing the refusal exclusively within the four corners of the by-law and ignoring the broader discretionary powers afforded under the National Building Act, they have effectively closed the door on any meaningful administrative assessment, rendering their decision-making process predetermined and irrational.

[53] The thrust of this argument is that the City should not treat these circumstances as a simple illegal act requiring punishment. Instead, the City should adhere to its own election: allowing the owner to remedy the situation through the regularisation process from the outset.

[54] According to Jinja's argument, the City possessed three distinct enforcement options under the by-law. Without having followed such a course, or considering any alternatives, so the argument ran, the City jumped the gun by pursuing the most extreme measure. Even though the sign was incomplete, having been erected without its panels; and remained within the overall dimensions permitted by the by-

laws, the City refused to engage with Jinja's attempts to resolve the matter. Furthermore, the City's conduct was procedurally flawed: they launched their legal application without even responding to Jinja's correspondence, effectively ignoring the very regularisation path that is provided for by their own regulations.

[55] Mr Botha SC developed these submissions in the course of his argument and stated that the impression of the City's irrationality is bolstered by the fact that the client obtained formal approval for the electronic sign; the sole allegation is that the resulting structure is larger than initially approved. He submitted that crucially, even on the City's own version, the dimensions remain within the limits of the applicable by-laws. During oral argument Mr Botha SC stressed that the failure to consider a 'fix-it' approach for a structure that fundamentally meets by-law standards further underscores the disproportionate nature of the City's enforcement action.

[56] A billboard structure that is not yet displaying advertisements does not warrant tearing the whole thing down. To demand its immediate demolition while an application for regularisation is being considered is procedurally irrational. There is no justification for the permanent destruction of a substantial asset when a clear statutory path to compliance exists and is currently being pursued.

[57] Mr Botha SC submitted that he bears it in mind that Mr De Waal SC repeated contended that Jinja's review is premature. However, he also notes that the City confirmed that even if Jinja were to follow the City's prescribed process, the approval would be refused regardless. According to him, this position renders the prematurity argument a mere obstruction and reduces the administrative process to an exercise in futility.

[58] It is further submitted that Jinja's challenge is in no way pre-emptive; it is a direct and necessary reaction to the City's formal position. Jinja argues that the City has stated under oath that they are legally incapable of considering an application for amended plans until the existing structure is demolished. It is the contention of Jinja that in effect, the City contends that once a sign is erected, the right to seek regularisation is permanently forfeited. According to Jinja, this demolish-to-apply requirement is procedurally irrational and creates an administrative impasse that

leaves Jinja with no remedy other than this reactive challenge to the City's enforcement action.

[59] According to Jinja, as established by the Constitutional Court, the law does not require a party to engage in a process where the outcome has been predetermined, and where the decision-maker is merely being obstructive. According to Jinja, the City's own building plan refusal specifically citing the 18m² as an absolute, unwaivable barrier proves that they have already closed their minds to the merits of their application. To insist on exhausting a remedy that the City has already declared dead on arrival is a waste of judicial and administrative resources.

[60] Mr Botha SC submits that the City's position is that once a sign has been erected, it must be summarily demolished before any application for regularisation can even be considered.

[61] Finally, Mr Botha SC argues that should the Court find the City's decision to enforce removal under sections 19(2)(b) and (c) to be irrational, that decision must be set aside. In such an event, the billboard cannot be classified as illegal in a way that warrants demolition. Rather, it remains a structure eligible for retrospective approval, transforming the matter from an enforcement dispute into a standard administrative application for compliance.

[62] Jinja accuses the City of selective enforcement and competitor bias that undermines the City's impartiality.

[63] Jinja contends that its counterclaim constitutes a defensive challenge aimed at the underlying administrative acts. Mr Botha SC submits that the hallmark of a collateral challenge is that an aggrieved party is not required to litigate in advance. Instead, the party is entitled to wait until the administrative action is sought to be enforced before raising the validity of that action as a defence. According to Jinja, the reactive challenge goes to the heart of the enforcement proceedings, asserting that a person cannot be legally compelled to comply with an invalid or irrational administrative act.

[64] Jinja argues that the City cannot seek to enforce an act that is itself the subject of a legality challenge. According to Mr Botha SC, to suggest otherwise is to ignore the established jurisprudence that allows a citizen to test the validity of a decision as a primary defence in enforcement proceedings.

[65] Jinja, a seeks a declaratory order to provide necessary judicial guidance on the interpretation and application of the by-law. Such relief is appropriate and necessary for two reasons: should this Court find Jinja's interpretation of the by-law incorrect but the by-law itself unconstitutional, it ought to strike down the provision. Doing so would provide essential clarity not only to the parties but to all residents and entities within the City in a similar position.

The law

[66] The letter approving the application for the sign reads, in relevant part, as follows:

“ . . . Your application submitted on . . . for a freestanding electronic billboard measuring 18m² to be erected at the above-mentioned premises, refers.

Decision

After considering the merits of the application and the information furnished in the application, the application is approved in terms of Schedule 17 read with Schedule 2 of the Outdoor Advertising By-law, 2023, subject to conditions imposed in terms of section 10 of the By-law.

The approval is limited to an illumination are of 18m² only, where the display is west – facing, targeting the eastbound traffic along N2. . .

Reasons for the decision

This application has been assessed . . . and found compliant and desirable . . .

- This sign type is allowed in an area of Maximum Control.
- The sign is appropriate in this Area of Control.
- The addition of the proposed sign in this area is not excessive and will not create clutter.

- This sign does not obscure any previous approved signs.

- Public consultation was concluded with no objections.

National Building Regulations applicability

As this sign, including the sign structure exceeds the size, height and weight according to Table 1 of the By-law, such sign structure is deemed to be a temporary building and an application must be submitted and an approval obtained in terms of the National Building Regulations and Building Standard Act, . . .

Conditions

1. . . .

18. The City may, at any time, withdraw an approval granted in terms of this By- Law or its predecessor or amend any conditions or impose a further condition in respect of such approval, if a sign or advertising structure does not comply with any of the provisions set out in Section 10 (3) (a-e) of the By -law . . .”

[67] Section 19 of the by-law which is a key provision in these proceedings provides the following:

“19. ENFORCEMENT AND REMOVAL OF SIGNS (1) If any sign is displayed or is in the process of being erected in contravention of this Bylaw, or any provision, condition, requirement or condition of approval imposed or deemed to have been imposed in terms of this By-law, the City may serve a written compliance notice on one or more of the following persons: (a) the sign owner or lessee of the sign; (b) the land owner or tenant on whose land, building or premises the sign is erected; (c) a person whose products or services are advertised on the sign; (d) a person whose name or image appears on the sign; (e) a person or company who erected the sign; (f) the media agent, authorised agent; or (g) any other party responsible for or who benefits from the display of the sign.

(2) The City shall call upon such persons to (a) obtain approval for the said unauthorised sign subject to the applicable administrative penalty being paid; (b) cease the erection of such sign; or (c) remove such sign or carry out any alteration thereto.”

Evaluation

[68] Before dealing with the City’s application, in the circumstances of this case I consider it prudent to deal first with the counterclaim.

(a) Jinja’s counterclaim

[69] The thrust of Mr Botha SC’s argument [counsel on behalf of Jinja], centres upon the interpretation to be given to Section 19 of the by-law.

[70] The City’s Outdoor Advertising by-law is aimed at tightening up on the regulation and enforcement of unauthorised signs. The objects of the by-law are stated as follows:

“The purposes of this By-law are to—

(1) regulate outdoor advertising in the jurisdiction of the City of Cape Town to ensure that it respects the integrity of any site on which it is displayed, and does not negatively impact on

the character of the locality in which it is displayed. In this regard, the protection of visual, tourist, traffic safety, environmental and heritage characteristics are key considerations;

(2) create economic opportunities by improving the ease of doing business with the City, reducing red tape and providing for a number of signs that do not require applications to be submitted before they are erected;

(3) address the regulatory gap created by the introduction of digital and electronic signage technologies and promote the use of such creative technologies;

(4) determine areas of control to deal with the dynamics between the type of the sign, the sign itself and where it is to be located; and

(5) set out the procedures to be followed and the criteria to be used when seeking approval for a sign constituting outdoor advertising in the City of Cape Town.”

[71] It is evident that the primary objectives of the by-law are to establish an efficient administrative framework for sign approval, while ensuring effective regulation of outdoor advertising. These measures are designed to safeguard public welfare by promoting traffic safety and preserving the aesthetic integrity of the community.

[72] In the present case, the billboard in question violates the approved plan. Adherence to the plan is essential for regulating and enforcing standards regarding unauthorised signs. The City is responsible for managing billboards according to the by-laws and the approved plan.

[73] As one would expect, a plan can only be approved if it is consistent with the by-law. As such, a sign is considered displayed without permission [unauthorised] if it fails to meet the specific requirements of the Outdoor Advertising By-law

[74] Jinja’s defence in the counter application is therefore proceeded principally on three related but distinct strands.

1. The Defensive (Collateral) Challenge;
2. Legality vs. PAJA; and
3. Futility of internal remedies.

[75] As I have already indicated that, while the material facts are not in dispute as to size and capability of the as-built sign, it is common cause and Jinja effectively concedes that the as-built sign fails to comply with the City’s approval in two material respects. First, regarding dimensions: while the approval was strictly limited to 18m²,

the structure has been built to accommodate a 36m² display. Secondly, the height exceeded the approved 7,5 metres by $\pm 3\text{m}^2$. There is no factual dispute that the sign significantly exceeds its authorised specifications.

[76] Notwithstanding that, Jinja wants to portray the deviations as minor necessary technical deviations that do not justify the City's extreme response.

[77] Jinja is arguing that the purpose of the restriction is to limit the visual impact of the advertising. The corollary of Jinja's assertion is that: the sign is the advertisement itself, not the steel frame. Furthermore, Jinja holds the view that as long as they only use half the frame [18m²], they believe they are staying within the spirit of the approval.

[78] Jinja lodged an application to the City containing stipulated dimensions for the proposed structure and received approval for construction of 18m². The flipside of this point is that the application submitted by Jinja was unequivocal and deliberate in its specifications. As such, the approval letter dated 25 February 2025, that conveyed the approval of Jinja's application was couched in the following terms:

"Your application submitted on 23.01.2025 under case number 110025968 for one freestanding electronic billboard measuring 18m² to be erected at the above premises, refers.

Decision

After considering the merits of the application and information furnished in the application, the application is approved in terms of schedule 17 read with Schedule 2 of the Outdoor Advertising By-law, subject to conditions imposed in terms of Section 10 of the By-law.

The approval to an illumination area of 18m² only, where the display is west-facing, targeting the eastbound traffic along N2 . . .

Taking into consideration the General Factors as set out in Section 6(5) of the By-Law, this application was found to be acceptable for the following reasons:

- This sign-type is allowed in an area of Maximum Control.
- The sign is appropriate in this Area of Control.
- The addition of the proposed sign in this area is not excessive and will not create clutter.

- The sign does not obscure any previously approved signs.

Public consultation was concluded with no objections..."

[79] Pursuant to a complaint and a visit to the site by Ms Mohlapi [from the City], it was found that the billboard materially and substantially deviates from the sign structure approved by the City, in that it exceeded the approved 18m² in size and 7.5m in height on the approved plans. The approximate size was 36m² (almost double the size) and the height was approximately 10.5m (3m higher than the height depicted on the approved plan).

[80] In the circumstances, it is wrong for Jinja to effectively treat the sign approval as creating a limit only on usage rather than a limit on the entire construction. I do not think that by any fair construction of Jinja's application and the City's approval, Jinja is correct in their assertion. The safety standards for structures such as signage are governed by a framework comprising national legislation, technical engineering codes, and local municipal by-laws. Under this framework, the Municipalities are tasked with regulating the physical footprint and bulk of structures to ensure safety, structural integrity against wind-loading, and aesthetic compliance.

[81] Clearly, a 36m² frame has a different wind resistance and structural requirement than an 18m² frame. For that matter, no specialised expertise is required to understand this. Even if the display is small, the oversized structure remains an unauthorised building work under Section 4 of the National Building Act. Moreover, it bears noting that Jinja seeks to draw a distinction between usage and infrastructure. They contend that compliance is determined by the operational use of the sign's surface area [the 18m² display] rather than the physical dimensions of the structure [the 36m² frame]. The City's position is that this distinction is legally flawed, as a building permit regulates the physical infrastructure itself, regardless of its ultimate usage. I tend to agree with the City on this point. This conclusion is fortified by a consideration of the precise words employed in the approval letter. A fair reading of Jinja's submissions compels the conclusion that Jinja in this regard attempts to move the goal posts and recast the approval in focus solely to their interest. And away from the law.

[82] An even closer scenario to our case was addressed in *Bouley*, supra, where the sign was defined by its physical presence. This case is more instructive in the present circumstances. I gather that the City's approval is tied to the specifications

of the application. Where an application specifies 18m² but the resulting structure is 36m², the as-built design or structure is unlawful because it was never sanctioned by the City.

[83] Jinja asserts that the sign's structure is safe and that an engineering expert has confirmed this. However, this assertion does not override the requirement for municipal approval, nor can it be accepted at face value without a formal inquiry to test the validity of Jinja's claim. From the facts as set forth, it clearly appears that Jinja's submissions reflect a calculated attempt to re-characterise the regulatory framework to serve its private interests moving the focus away from statutory compliance and toward personal convenience.

Regularisation

[84] I am stating this at the cost of repeating myself, Jinja in paragraph 15.2 and 15.3 of Jinja's answering affidavit in respect of Part B, states that the City's application is premature and unjustified because it failed to follow the By-law's mandatory procedure. Specifically, the City should have issued a compliance notice allowing the Respondents to regularise the sign. According to Jinja this is a step that is particularly necessary given that the modifications were made to ensure economic viability and resolve traffic safety concerns. Jinja further states that the City's refusal to approve the subsequent building plan application is procedurally and substantively flawed. Specifically, the decision to reject the regularisation of the structure under the National Building Regulations (NBR) Act based on purported non-compliance with a local by-law is legally reviewable. This extends to the validity of the by-law provisions themselves and the City's underlying decision to initiate this application, both of which are subject to review in terms of Promotion of Administrative Justice Act 3 of 2000 ("PAJA").

[85] Mr. Botha SC [on behalf of Jinja] contends, whilst drawing an analogy to the City's own position. He argues that, rather than treating the matter as a 'speeding ticket' offence, the City should have first issued a 'fix-it notice,' providing Jinja with a formal warning and a meaningful opportunity to remedy the defect. As correctly pointed out by the City's counsel that it is unlawful for any person to construct a

building or structure in violation of an approved plan. It should be noted that the issue of regularisation, the whole question is, ultimately, to be judged in the light of the particular case.

[86] Paragraph 30 of the Jinja's answering affidavit in respect of part A, states that under the NBR Act and associated regulations, the sign is classified as a temporary building subject to less stringent requirements. Furthermore, Jinja submits that Regulation A25(6) allows for as-built plans to be approved by the municipality before the issuance of an occupancy certificate, which Jinja has already submitted.

[87] To reinforce this, Jinja alleges that the possibility of regularising a structure through as-built approval or amending conditions is present in both national and local frameworks.

[88] It is however significant to note that notwithstanding these submissions, the City retains exclusive statutory authority over the administration and enforcement of all applicable building codes and by-laws. As an organ of State with autonomous executive powers, the City's constitutional functions cannot be subverted by the unilateral demands of a private party. The City is entitled to, and indeed mandated to, insist upon strict adherence to its duly promulgated by-laws.

[89] Notably, Jinja's defences appear inconsistent, relying simultaneously on Regulation A25(6) of the NBR Act and Section 19 of the By-law, it does not follow a single clear legal path. The central issue, therefore, is whether the existing legal framework provides Jinja with the protection it claims under these circumstances.

[90] Jinja argues that in the circumstances of this case they are entitled to regularisation from the outset. Without meaning to be disrespectful to Mr Botha SC, that argument makes no sense to me. It is, I think, worthwhile pausing at this point to note that it is indeed a criminal offence to deviate from an approved plan. This is so because a person is expected to obtain an official approval from the municipal authority for any proposed deviation from the approved plan before the person may deviate from the plan. Moreso, if the deviations are substantial as in the instant case.

On the facts of the instant case, however, I am in no doubt whatsoever that the deviations involved in this case cannot be characterised as inconsequential.

[91] To put a billboard without permission may include the following:

- Failure to obtain prior written approval;
- Deviation from approved plans [As in the present case];
- Lapsed permits;
- Unauthorised alterations.

[92] In considering the competing submissions I believe the starting point must be recognising that section 19(2) of the by-law outlines three distinct options the City may exercise when demanding compliance from a non-compliant person. Thus, the City may serve a written notice on a non-compliant person demanding one of the following three actions:

- (a) obtain approval for the said unauthorised sign subject to the applicable administrative penalty being paid;
- (b) cease the erection of such sign; or
- (c) remove such sign or carry out any alteration thereto.

[93] In my view, Jinja's argument, that the City was obliged to serve a notice specifically in terms of section 19(2)(a), faces fundamental difficulties. Plainly, the words of the by - law do not warrant such a narrow construction. I bear very much in mind that regularisation of an unpermitted structure is primarily a municipality administrative matter. Furthermore, as the City asserts, it would be absurd to prohibit the municipality from preventing the display of an unauthorised sign.

[94] Hence, the City argues that at best, Jinja's submissions might support an application for a stay of proceedings, allowing for a period of regularisation before the City enforces the notice.

[95] In my mind, it is very clear that section 19(2) is unambiguous; it merely grants the City the clear discretion to choose any of the three prescribed actions based on

the specific circumstances of the non-compliance, to regulate the contents of the notice.

[96] Additionally, the City has some pecuniary interest in ensuring that there is always full compliance with the by-law. Hence, the City in this case exercised its discretion under the by-law by selecting options (b) and (c) as the required actions. Consequently, Jinja was mandated to comply with these specific directives to remedy the non-compliance. Options (b) and (c) are clearly complementary, as both actions seek to bring the sign into alignment with the approved plan. Here it is quite plain that the notice issued by the City directed Jinja either to desist from certain acts or to take specified affirmative actions to ensure compliance.

[97] As previously noted, Mr De Waal SC, [for the City] argues that since the issuance of the notice is not an administrative action, neither PAJA nor the Constitution requires a hearing at that stage. The notice issued under section 19(b) and (c) therefore did not violate Jinja's right to due process, even though it lacked a prior opportunity for regularisation. Ultimately, the absence of such an opportunity at the preliminary stage did not deprive Jinja of the hearing to which it was entitled. A special and even more difficult problem for Jinja, is that in this instance, the City's election was rational and appropriate, as the extent of the deviation from the approved plan necessitated a direct order to [remove the sign/cease work] rather than a mere request for minor alterations.

[98] I find no merit in Jinja's argument that they ought to have been given an opportunity to regularise before the issuance of the notice. I reject that submission in its entirety.

[99] Surely, the City is not legally mandated to offer regularisation as a prerequisite to enforcement; rather, it possesses the statutory discretion to select the most appropriate enforcement mechanism based on the specific nature of the contravention. A contravening party cannot assert a right to regularise an unlawful structure as a means to oust the City's enforcement powers. The authority to permit regularisation is a discretionary power vested in the municipality, not an entitlement held by the non-compliant party.

[100] The By-law empowers the City to initiate proceedings to correct or halt contraventions where it determines that public safety and welfare so require. This is consistent with Section 17(4), which, while providing a procedural mechanism for an owner to apply for rectification upon payment of a penalty, does not divest the City of its ultimate discretion to refuse such an application in favour of direct enforcement. The application is a right, but the approval remains at the City's discretion.

[101] In an apparent last-ditch argument, Jinja urges that this Court interprets section 19. Jinja's argument violates a basic rule of statutory construction, namely, that in construing legislative enactments the Court is not permitted to isolate single phrases but must consider them in the context in which they are found. As I have already mentioned, there is no ambiguity in the construction of section 19.

Relief to review the NBR refusal to approve as built building plan refusal

[102] The high-water mark of the City's opposition is that Jinja has failed to exhaust the internal remedies available to it. Consequently, Jinja is barred from seeking judicial relief as it cannot bypass the mandatory provisions of Section 7(2) of PAJA.

Review of compliance notices

[103] Considering the court's earlier finding, regarding the regularisation argument, this specific ground of review cannot be sustained. In this regard, I am inclined to agree that the issuance of the notice does not, in itself, constitute administrative action. Consequently, it does not fall within the ambit of PAJA, as it lacks the requisite direct, external legal effect and finality required by Section 1 of PAJA.

Bias

[104] The allegation of bias is entirely unsubstantiated. Jinja has failed to provide any objective evidence to support such a claim, let alone meet the high threshold of a reasonable apprehension of bias required for judicial review.

Review of stop work order

[105] This ground of review has been addressed concurrently with the regularisation argument. Having found that the City was entitled to enforce compliance through its statutory powers, the challenge to the stop-work order is similarly without merit and must fail.

Declarator to compel the City to consider a waiver of height restriction

[106] The prayer that this Court should compel the City to waive height restrictions is legally untenable. Under the constitutional doctrine of the separation of powers, the authority to grant or refuse a waiver is a discretionary executive function reserved exclusively for the municipality. Once it is established that the City was correct in its enforcement duty, a court cannot interfere with that discretion by substituting its own decision for that of the City. To do so would be to impermissibly arrogate to the court a planning function that belongs solely to the local authority.

[107] For that matter, Jinja has failed to establish a clear or protectable right that would warrant the granting of a declaratory order. A declarator is not a remedy for a mere hope or a commercial preference; it requires a legal interest in an existing or prospective right. Given that the sign remains a non-compliant structure, Jinja possesses no legal entitlement to a waiver of height restrictions.

[108] Jinja's application constitutes an impermissible attempt to achieve through the back door what ought to be secured through the proper administrative channels. In the circumstances of this case, by seeking a declarator to bypass the City's discretionary waiver process, Jinja effectively seeks that this Court should condone a clear contravention of the By-laws and subvert the City's constitutional authority.

[109] It does not follow either that a hypothetical future circumstance cures the current, admitted contravention. Furthermore, as I have already mentioned, the power to grant such a waiver resides exclusively within the City's discretion. Moreover, a discretion that cannot be pre-empted or dictated by this Court. Similarly, Jinja cannot rely on a speculative administrative outcome to shield itself from the

immediate consequences of its unlawful conduct. Such a strategy is legally untenable. Even if Jinja applies for a waiver, the City has the discretion to refuse it. It is my view that these factors weigh in favour of not granting the waiver.

[110] A court cannot grant relief based on a speculative application that hasn't happened yet. Jinja is essentially asking the Court to protect an illegal structure now because they might get permission for it later.

[111] The City is thus correct in asserting that Jinja's contention that the 7.5m height requirement in Schedule 2 might be waived in a future regularisation application is legally irrelevant to the present proceedings.

Remitting the building plan refusal with the direction that non-compliance with the by-law cannot be taken into account

[112] The request for remittal with a direction that the City ignore by-law non-compliance is legally untenable. This is particularly so due to section 7(1) of the NBR Act that creates a mandatory duty for the City to ensure compliance with any other applicable law, a category that includes duly promulgated municipal by-laws. A court order compelling an official to bypass these statutory requirements would constitute an impermissible intrusion into the City's exclusive executive domain and a violation of the principle of legality. Unless the relevant by-law is formally challenged and set aside, it remains binding on both the City and the court.

[113] Finally, I agree with Mr De Waal SC that the NBR and the By-law cannot be treated as independent, parallel tracks.

Declaring that non-profits are not restricted to 18m² Billboards and that they may display 36m² Billboard, Declaring item 2 (C) and 2 (D) of schedule 17 of the By-law to be invalid as it limits the rights of non-profits

[114] In the context of this matter, the abovementioned declaratory reliefs sought by Jinja are legally incompetent. A court cannot grant a declarator that effectively bypasses the City's legislative authority or grants rights that directly contravene

existing, valid by-laws. Furthermore, absent a successful direct challenge to the constitutionality of the by-law itself, the Court lacks the jurisdiction to write-in new dimensions or compel the City to ignore its own regulatory framework.

[115] The above reasoning applies with equal force to the prayer for a mandamus to compel the City to consider a height waiver. Jinja's request that the Court direct a specific waiver of up to 10.8m for the Star College sign is legally incompetent. It is not the function of the Court to pre-empt the City's executive discretion by prescribing a specific height; to do so would constitute an impermissible substitution of the Court's opinion for that of the designated regulatory authority.

[116] The interim relief sought by Jinja pending a hypothetical regularisation, is fundamentally flawed as it fails to address the City's primary application for enforcement. By focusing exclusively on its own commercial interests, Jinja ignores the City's statutory mandate and seeks to suspend the operation of valid By-laws without a proper legal basis. Significantly, effectively, Jinja requests this Court to stay the City's enforcement powers while it attempts to remedy a self-created illegality.

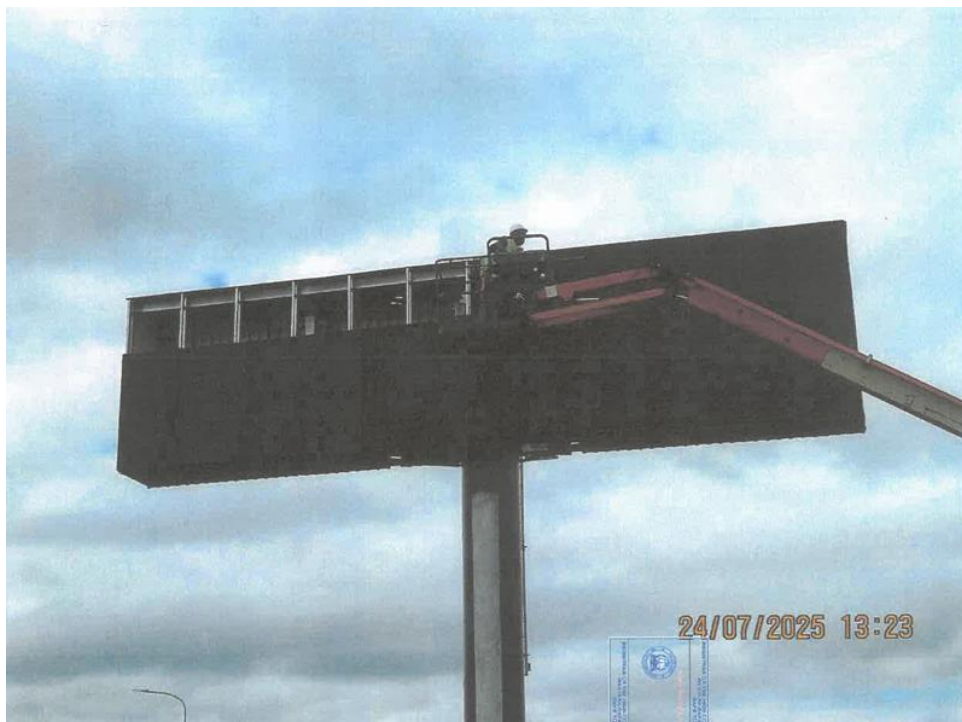
[117] The point that has troubled me most [with the counter-claim] is the underlying and persistent theme that runs through Jinja's application; which is the erroneous assumption that the City's statutory obligations should be subordinated to Jinja's commercial preferences. This position is fundamentally incompatible with the principle of legality, which requires all parties, regardless of their commercial objectives, to operate within the bounds of the law.

[118] This then leads me to the primary application brought by the City. It is right to point out and emphasise again that given the facts of this matter, it was procedurally efficient and convenient for this Court to first address Jinja's counter-application, as the merits of the counter claim serve to illuminate the strength of the City's main case.

The main application

[119] I have already indicated (in paragraphs 3 and 10 above) that the material facts and circumstances underpinning the City's application are largely common cause between the parties. By this I mean, of course, that the primary points of contention are limited to the legal consequences of Jinja's non-compliance. However, it is to be noted that when it comes to the application by the City, the City merely seeks a declaratory order and an order directing Jinja to alter the sign.

[120] The following photos in my mind clearly depict a structure that exceeds the permissible height restrictions and was erected in open defiance of the City's regulatory framework. They demonstrate that the violations were not merely technical or procedural but constitute a substantive and ongoing breach of the law that necessitates immediate judicial intervention.







Conclusion

[121] I can find no reason as to why this Court should not grant the reliefs sought by the City. I am thus satisfied that the City has presented a case that warrants the granting of the of the orders they are seeking. Save for the scale of the costs. I am not convinced that the circumstances of this case warrant a punitive cost order. The appropriate scale in this case is scale C.

[122] In the result I make the following order:

Order

1. The counter claim is dismissed;

2. It is declared that the sign structure erected by the first respondent at Erf 167[...], T[...], on the second respondent's property, contravenes:
 - a. The approval granted by the City under the Outdoor Advertising By-law, 2023 ("the By-law") and sections 16(1) (a), (b) and (c) read with Schedule 2 item 4 and schedule 17, item 2 (c) of the By-law itself; and
 - b. the approval granted under the National Building Regulations and the Building Standards Act 103 of 1997 ("the NBR") and section 4 (4) read with NBR Regulation A25 (5) itself.
3. The first respondent is directed to alter the sign structure within seven (7) days of the granting of this Order to bring it in line with the approvals applicable at the time of the Order, or to remove the sign structure, failing which the applicant is authorised in terms of section 19 (5) of the By-law to remove the said sign structure.
4. In terms of section 19 (8) of the By-law, it is directed that any cost incurred by the City in doing alteration or other works required in terms of compliance notice to the said sign structure may be recovered from the first and second respondent, whose liability in this regard is joint and several.
5. The first and the second respondent are to pay the costs of this application and the counter claim application, on scale C, jointly and severally, one paying the other to be absolved. Such cost to include the costs of two counsels where so employed.

CN NZIWENI
JUDGE OF THE HIGH COURT

Appearances:

Counsel for Applicant : Advocate J de Waal SC

Instructed by : Fairbridges Wertheim Becker

Counsel for Respondents : Advocate A Botha SC

Instructed by : Smit Sewgoolam Incorporated