IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not Reportable

CASE NO: M303/2020

In the matter between:

RUSTENBURG PINE INN LODGE (PTY) LTD Applicant

and

RUSTENBURG LOCAL MUNICIPALITY First Respondent

Coram: Petersen ADJP

Date enrolled and heard: 13 March 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 11h00 on 09 April 2026.

Summary: Application for ancillary relief arising from non-compliance with the order of Gura J dated 13 August 2020 — applicant does not persist in prayers for joinder of the municipal manager, a contempt declaration or committal order — relief persisted in confined to leave to bring the ancillary application; a declaration of non-compliance with the 2020 order; ratification of the applicant's computation of the correct account balance; and a costs order — following a case management order by the Judge President dated 29 August 2025, the parties filed supplementary papers covering the period September 2022 to September 2025 — municipality continued to bill the applicant on an incorrect classification throughout — non-compliance with the 2020 order established — the applicant's account balance, recalculated from 28 February 2018 to account for all legitimate charges and payments through the extended period — costs awarded against the respondent on the attorney-and-client scale.

JUDGMENT

PETERSEN ADJP

Introduction

[1] This matter arises from a protracted and contentious dispute between Rustenburg Pine Inn Lodge (Pty) Ltd ("the applicant"), being the registered owner of Portion 399 of the Farm Waterkloof 305 JQ ("the property"), and the respondent, the Rustenburg Local Municipality ("the Municipality"), concerning the incorrect zoning classification of the property and the consequent overbilling of municipal charges spanning more than seven years. The applicant initially approached this Court in 2020 seeking rectification of its municipal account. On 13 August 2020, this Court (per Gura J) granted an order ("the 2020 order") directing the Municipality to correct the property's zoning to

‘High Potential/Unique Agricultural’ and to adjust the applicant’s account accordingly.

[2] Prayer 4 of the 2020 order expressly reserved to the applicant the right to approach this Court on papers duly supplemented for ancillary relief if the account queries were not resolved. Pursuant to that reservation, the applicant returned to this Court in August 2022, contending that the Municipality had failed to give full effect to the 2020 order. That application, opposed by the Municipality, was heard by Dewrance AJ. Regrettably, the proceedings were unduly delayed following certain orders granted by Dewrance AJ, who failed to see the matter through. The matter was thereafter referred to the Judge President, Hendricks JP, for further directions as to the conduct of the application. On 29 August 2025, the Judge President issued a case management order directing the parties to file supplementary affidavits covering the period September 2022 to September 2025, with updated municipal statements, and to set the matter down for hearing on the supplemented papers.

[3] The matter was enrolled before this Court on 13 March 2026 on the Opposed Motion roll. The applicant persists in prayers 1, 3, 4, and 7 of the notice of motion and accordingly seeks leave to bring this ancillary application; ratification of its computation of the correct account balance; a declaration that the respondent has failed to give effect to the 2020 order; and a costs order. The applicant does not persist in the joinder of the Municipal Manager (prayer 2), the declaration of contempt (prayer 5), or the committal order (prayer 6). The applicant's counsel, Adv Wijnbeek, confirmed at the outset of argument that the joinder prayer need not be pursued, as the applicant’s primary aim is the resolution of the account, and not the imprisonment of any person.

[4] This application serves to illustrate what this Court, in *Kgetlengrivier Concerned Residents and Another v Kgetlengrivier Local Municipality and Others*[1], characterised as "the chronic absence of service delivery" and the endeavours of affected residents to hold municipalities and their accounting officers accountable. Municipal functionaries, and Municipal Managers in particular, bear a solemn responsibility to ensure that their institutions comply with the law and with court orders. The present matter, which has now been before the courts for more than five years without the Municipality giving substantive effect to the 2020 order, is a stark illustration of that failure.

The parties

[5] The applicant is Rustenburg Pine Inn Lodge (Pty) Ltd, the registered owner of the property. The respondent is the Rustenburg Local Municipality, a local municipality duly constituted in terms of s 12 of the Local Government: Municipal Structures Act 117 of 1998.

Factual background

[6] The property was historically classified and zoned as 'High Potential/Unique Agricultural'. It was developed as a public resort pursuant to a permit issued by the North West Provincial Administration under Ordinance 18 of 1969. The permit, issued on 23 May 2001, authorised the development and use of the property for 17 single bedroom chalets, subject to specified conditions. The property has been operated as a lodge (Rustenburg Pine Inn) in accordance with that permit since 2001, and no material change in use has ever occurred.

---

[1] *Kgetlengrivier Concerned Residents and Another v Kgetlengrivier Local Municipality and Others* (CIV APP FB 04/22; UM69/2021; UM79/2021) [2023] ZANWHC 29 (17 March 2023).

[7] In or about October 2018, the applicant's municipal account reflected a dramatic and wholly unexplained increase. Property rates escalated from approximately R1 950.00 per month to approximately R27 000.00, and the account was suddenly shown as in arrears by more than R1.2 million. A review of the account statement for the period ending 30 September 2018 reveals the pattern with striking clarity. For all periods prior to October 2018, the account reflected agricultural rates in columns 1, 2, and 3, and the account was paid in full. From October 2018 onward, business/commercial rates were levied, and the inflated arrear figure materialized at the same time. The applicant, through its sole shareholder, Mr. Philippus Lodewijkus Ras, immediately engaged with municipal officials, including Mr. T. Mudziwa. The Municipality had unilaterally re-categorised the property as 'Business/Commercial' or 'Industrial' and had raised backdated charges, penalties, and interest.

[8] The applicant made extensive and conscientious efforts to resolve the dispute through administrative channels. Mr. Ras attended meetings at the municipal offices, furnished supporting documentation, and invited municipal officials to conduct a site inspection. A site inspection was conducted on 06 December 2018, during which the attending officials confirmed that the property was used for chalet accommodation, not for industrial purposes.

[9] Notwithstanding these engagements, the Municipality failed to correct its records. In July 2019, the applicant received a letter of demand from the Municipality's attorneys claiming R1 531 356.01, with notification that the account had been 'marked for summons'. An exchange of correspondence between the parties' attorneys ensued, but the impasse remained unresolved. The municipal account statement for June 2020, issued just before the Gura J order, reflected an opening balance of approximately R1.9 million, with

business/commercial rates being levied at approximately R9 000.00 per month. Charges for refuse removal and sewerage, services not rendered to the property, appeared on the account, as did continuing interest.

[10] On 13 August 2020, this Court (per Gura J) granted the following order:

'1. THAT: The Respondent, via its authorised personnel, correct and amend on the Respondent's billing and related system, the zoning of Portion 399 of the Farm Waterkloof 305 JQ ('Portion 399') to 'High Potential/Unique Agricultural' in accordance with the zoning certificate issued by the Respondent's Directorate: Planning & Human Settlement, dated 30 October 2018;

2. THAT: The Respondent, via its authorized personnel, correct the Applicant's account for Portion 399; by inter alia —

2.1.1 Removing the property rates charged as Business/Commercial and replacing the same with the appropriate tariffs applicable to zoning classified as 'High Potential/Unique Agricultural';

2.1.2 Withdrawing all penalties and interest on the account for Portion 399 resulting from the property rates charged on zoning Portion 399 as 'Business/Commercial' and/or 'Industrial';

2.1.3 Removing all items erroneously billed as a result of the incorrect zoning of Portion 399, such as levies for refuse removal and sewerage;

3. THAT: The Respondent is to, within 30 days, debate the account on Portion 399 with the Applicant; with such meeting to be arranged via the parties' respective attorneys;

4. THAT: The Applicant be and is hereby granted leave to apply to the Court on the papers duly supplemented for ancillary relief if the account queries are not resolved as per orders 1 to 3 herein above;

5. THAT: The Respondent to pay the costs of this application on an attorney and client scale.'

The events following the 2020 order

[11] The 2020 order was served upon the Municipality. Notwithstanding service, the applicant's account was not rectified. Invoices continued to reflect the incorrect zoning classification; interest continued to accrue; and charges for refuse removal and sewerage services not rendered to the property remained on the account.

[12] A meeting was eventually convened on the property on 04 June 2021, attended by Mr. Ras, his attorney Mr. Peens, and municipal officials, including Ms. Busisiwe Faku and Mr. Thabiso Mkhwanazi. At that meeting, the Municipality acknowledged that the rezoning of the property to 'Commercial Business' had been erroneous. The minutes of the meeting, as recorded in correspondence from the applicant's attorneys dated 09 June 2021, reflect the following agreements: (a) the rezoning from agricultural to commercial business was incorrect; (b) the Municipality would reverse all charges on the account with effect from October 2018; (c) a rectified account would be furnished in June 2021; (d) the Municipality would correct the applicant's registered name from Shamone Property Developers to Rustenburg Pine Inn Lodge (Pty) Ltd, which had been registered with the Companies and Intellectual Property Commission since 2015; and (e) no charges for refuse removal or sewerage would be reflected on the account, as those services had not been rendered.

[13] Despite these formal undertakings, the rectification was not effected. The applicant's attorneys pursued the matter assiduously. In May 2021, they issued a warning of contempt proceedings. In February 2022, the applicant received a further letter of demand, on this occasion from external debt collectors, Ntiyis

Consulting, demanding payment of R1 823 724.22, a demand issued in flagrant disregard of the extant 2020 order.

[14] Correspondence during February 2022 reveals that municipal officials were cognisant of the dispute. Mr. Lucky Molotsane sought a 14-day indulgence to attend to the matter. Ms. Busisiwe Faku asserted that the account had been "corrected in August 2021", an assertion belied, in the most direct terms, by the subsequent letter of demand and by the invoices that continued to be rendered thereafter. The applicant persevered in its endeavours to secure compliance, but the Municipality remained in default.

[15] On 08 March 2022, the Rustenburg Municipal Planning Tribunal confirmed that the property's zoning remained "High Potential/Unique Agriculture". This determination was made in the presence of, and with the participation of, the Municipality itself. The Planning Tribunal's decision recorded that the property was zoned 'High Potential Unique Agriculture'; that it was at that stage used 'with public resort land use rights' in accordance with the existing use rights; and that two of the relevant portions remained vacant. Any change in use was proposed for the future and was subject to conditions precedent. The Municipality's own planning authority thus confirmed the correct position as at March 2022. The use had always been within the ambit of the 2001 permit. Nothing had changed, essentially confirming what Gura J had ordered in 2020.

[16] As of August 2022, when the applicant launched the present application for ancillary relief, the Municipality had still not given full effect to the 2020 order. The applicant's account continued to reflect incorrect charges; interest continued to accrue; and the substantial alleged arrears, computed by the Municipality at more than R1.8 million, remained on its system. This persisted notwithstanding the Tribunal's confirmation of the correct zoning and the

Municipality's own admissions at the June 2021 meeting. In particular, the municipal account statement for March 2022, approximately two years after the Gura J order, still reflected an opening balance of approximately R2 million; sewerage charges continued to appear; and the property was now rated as 'residential', not agricultural as expressly directed by the 2020 order. The account for October 2022 (Annexure RLM2 to the Opposing Affidavit) reflected a balance brought forward of R1 383 166.80, of which R1 273 310.82 was recorded as more than 180 days in arrears, and the property continued to be billed as 'residential'.

The case management order of 29 August 2025 and supplementary papers

[17] When the ancillary application was argued before Dewrance AJ, the matter was not finally disposed of. As indicated above, it was subsequently referred to the Judge President for further directions. On 29 August 2025, Hendricks JP issued a case management order directing that the parties file supplementary affidavits updating the court on the position of the account for the period September 2022 to September 2025; updated municipal statements and all relevant billing documentation for that period be annexed to the supplementary papers; and the matter be enrolled for argument on the supplemented papers.

[18] In compliance with the case management order, the applicant filed a Supplementary Affidavit deposed to by Mr. Ras, together with a Supporting Affidavit by his attorney, Mr. A. Peens. Annexures A1 and A2 support Mr. Ras's Supplementary Affidavit. Annexure A1 is the Municipality's own account schedule, a printout of the Municipality's version of the account for the extended period. Annexure A2 is the applicant's reworked version of that same schedule, in which Mr. Ras adjusts only the credit column to reflect what the

applicant contends the Municipality was obliged to correct in accordance with the 2020 order, and recalculates the running balance accordingly.

[19] The respondent filed a supplementary opposing affidavit deposed to by Mr. AR Khuduge, the Municipal Manager, at the time, supported by a Confirmatory Affidavit from Mr. SJ Mokotedi. Annexures RTB1 accompany this affidavit to RTB15. Mr. Khuduge's affidavit represents a fresh deponent for the Municipality in these proceedings, replacing Ms. Mdhluli, who deposed to the original opposing affidavit. Like Ms. Mdhluli, Mr. Khuduge relies upon information furnished to him by municipal employees.

[20] Both parties filed updated practice notes and further heads of argument. The applicant's further heads of argument, filed 05 March 2026, expanded the grounds of relief to address the extended period of non-compliance and updated the quantum of the account balance accordingly.

The opposing affidavits

[21] The original opposing affidavit was deposed to by Ms. Vivian Mdhluli, the then Acting Municipal Manager, appointed 14 February 2023, who relied upon information from Ms. Busisiwe Faku and Mr. Thabiso Mkhwanazi. The respondent contended that the Municipality had complied with the 2020 order by effecting the following adjustments: (a) reversal of R1 052 570.04; (b) application of a net credit of R763 990.04; (c) reversal of interest of R157 836.40; and (d) reversal and deactivation of charges for sewerage and refuse of R25 983.31, R5 019.85, and R2 944.17 respectively. The respondent also contended that the account had been correctly reflected from May 2021 and that the property had been re-categorized as 'residential' by mutual agreement.

[22] In the supplementary opposing affidavit, Mr. Khuduge does not substantially depart from the position of Ms. Mdhluli. He asserts that the Municipality effected compliance with the 2020 order through the adjustments recorded in the original opposing affidavit, and that the continued balance on the account is attributable to outstanding lawful charges for the post-correction period and to the applicant's own failure to make regular payments in accordance with the corrected account. He contends, in particular, that the applicant made payments that did not correspond to the invoices rendered on the corrected basis, thereby creating ongoing allocation difficulties. The Municipality maintains that the property was correctly reclassified as 'residential' pursuant to an agreement reached at the August 2021 meeting.

[23] The respondent further challenges the applicant's computation of the account balance on the grounds that the Municipality alone has the statutory competence to calculate municipal revenues and that this Court may not usurp that function.

The applicant's replying affidavit and supplementary founding affidavit

[24] In the original replying affidavit, the applicant furnished a meticulous chronology, supplemented by extensive correspondence, demonstrating the Municipality's consistent and persistent failure to rectify the account. The applicant annexed emails and letters spanning from December 2022 to June 2023, establishing that, notwithstanding repeated promises of rectification, incorrect billing persisted throughout.

[25] The applicant's Supplementary Founding Affidavit (SFA) contained, as Annexure SFA13, a detailed computation reworking the account from 28 February 2018 by applying the correct 'High Potential/Unique Agricultural'

tariffs and reversing all charges improperly levied under the 'Business/Commercial' or 'Industrial' classification, together with all associated penalties, interest, and incorrectly billed service levies. As at 15 August 2022, the SFA13 computation showed the correct balance as R189 028.00.

[26] In his Supplementary Affidavit filed pursuant to the Judge President's case management order, Mr. Ras extends the SFA13 computation through the period September 2022 to September 2025. The updated computation (Annexures A1 and A2) reflects the municipal statements rendered during that period. It demonstrates that: (a) the Municipality continued throughout to bill on a 'residential' classification rather than 'High Potential/Unique Agricultural' as directed by the 2020 order; (b) sewerage charges continued to appear on certain statements; (c) the applicant continued to make payments throughout the extended period; and (d) on the applicant's corrected computation in Annexure A2, the correct balance as at 31 August 2025, applying the agricultural tariff throughout and crediting all payments made, reflects a credit of R8 005.17 in the applicant's favour, meaning the Municipality owes the applicant that amount rather than the applicant owing the Municipality.

Issues for determination

[27] The following issues fall to be determined. Whether the 2020 order was properly served upon the Municipality; whether the respondent failed to give effect to prayers 1, 2.1.1, 2.1.2, and 2.1.3 of the 2020 order; whether the applicant's computation of the correct account balance should be ratified, and if so, in what amount; and the appropriate order as to costs.

The applicable legal principles

[28] This application is brought pursuant to prayer 4 of the 2020 order, which reserved to the applicant the right to approach this Court on supplemented papers for ancillary relief. The standing of the applicant to bring this application is therefore beyond dispute and expressly authorised by the prior order. Prayer 1 of the notice of motion is accordingly granted as a matter of course.

[29] The declaratory relief sought is competent under s 21(1)(c) of the Superior Courts Act 10 of 2013, read with Rule 33(4) of the Uniform Rules of Court. An applicant for declaratory relief must demonstrate a direct and substantial interest in an existing, live dispute, and that the declaration sought would be of practical benefit.

[30] The principle that orders of court are binding and must be complied with is foundational to the rule of law. As the Constitutional Court stated in *Eke v Parsons*[2], court orders are not merely advisory; they are binding and enforceable, and failure to comply brings the administration of justice into disrepute. A court order establishing the steps a municipality must take to correct its billing records imposes a legal obligation that the municipality must discharge. The failure to do so entitles an applicant, at a minimum, to a declarator of non-compliance.

[31] Where a municipality fails to comply with a court order directing the correction of a municipal account, and the applicant is able to demonstrate what the correct account balance should be, a court exercising its declaratory jurisdiction may ratify the applicant's computation and declare the correct balance. This is an appropriate exercise of the court's supervisory function over the execution of its own orders, particularly where the respondent has

[2] *Eke v Parsons* (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015).

persistently and without reasonable justification failed to furnish a corrected account. In such circumstances, the Municipality's objection that it alone has competence to calculate its revenues cannot serve as a shield for its own non-compliance.

The statutory framework governing zoning and rating

[32] The Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) provides the national legislative framework for land use management. Municipal planning under SPLUMA encompasses the compilation and review of spatial development frameworks and land use schemes, and the control and regulation of the use of land within the municipal area. Section 26(1)(a) of SPLUMA provides that an adopted and approved land use scheme has the force of law, and that all landowners and users of land, including the municipality itself, are bound by the provisions of such a land use scheme. A municipality’s zoning scheme is therefore legally binding on the municipality. It is not an administrative convenience capable of alteration by informal instruction, internal resolution, or bilateral compromise.

[33] Under SPLUMA, any amendment to a land use scheme, including the rezoning of a specific property, must be processed through the formal procedures established in municipal by-laws enacted under the Act. Section 35 of SPLUMA requires each municipality to establish a Municipal Planning Tribunal (MPT), consisting of at least five members drawn from municipal officials and independent appointees with knowledge and experience of spatial planning and land use management. Land use and land development applications must be submitted to the municipality, processed through the MPT or an authorized official, and determined in accordance with the relevant by-

laws. Regulation 14(1)(d) of the SPLUMA Regulations (GN R239, GG38594 of 23 March 2015) requires that municipalities provide, in their by-laws, for the manner and extent of the public participation process for each type of land development and land use application. By-laws enacted under SPLUMA invariably require the serving of notices to affected parties, the receipt and consideration of objections, and, where objections are lodged, referral to the MPT for determination. No mechanism exists in SPLUMA, the North West Spatial Planning and Land Use Management Act, or the municipality's own by-laws for the zoning of a property to be altered by administrative instruction, bilateral agreement, or informal 'compromise' outside the formal statutory process.

[34] The reclassification of the zoning of a property constitutes an 'administrative action' within the meaning of s 1 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). An administrative action that materially and adversely affects a person's rights or legitimate expectations must satisfy the constitutional guarantee in s 33 of the Constitution, which provides a right to just administrative action that is lawful, reasonable, and procedurally fair. Section 3 of PAJA requires, as the minimum requirement of procedural fairness, that an affected person be given adequate notice of the nature and purpose of the proposed action and a reasonable opportunity to make representations. A municipality that unilaterally alters a property's billing classification, without initiating the formal rezoning process, without giving notice to the affected property owner, and without affording any opportunity to be heard, acts in violation of PAJA and in breach of the constitutional guarantee of just administrative action. The purported 'compromise' reclassification of the property to 'residential' in the present matter was not preceded by any formal process, notice, or opportunity for the applicant to be heard. It was implemented

entirely outside any recognized statutory framework. Such an action is unlawful and of no legal effect.

[35] The rates applicable to different categories of properties are determined under the Local Government: Municipal Property Rates Act 6 of 2004 (MPRA). Section 3 of the MPRA requires a municipal council to adopt a rates policy consistent with the Act, which must, among other things, determine the criteria for levying different rates for different categories of properties, as contemplated in s 8 of the MPRA. Permissible categories include 'residential properties', 'agricultural properties', and 'business and commercial properties'. Section 4 of the MPRA prescribes a mandatory process of community participation before a municipality adopts its rates policy. The municipality must follow the community participation process prescribed in Chapter 4 of the Municipal Systems Act and make a copy of its draft rates policy publicly available for inspection. The full municipal council must adopt the rates policy and must accompany the municipality's annual budget when it is tabled in terms of section 16(2) of the Municipal Finance Management Act. Rates categories and the tariffs applicable to each are not determined by municipal officials in bilateral discussions with individual property owners. Any reclassification of a property's rating category outside the formal MPRA process, without amendment to the municipality's lawfully adopted rates policy, is ultra vires and of no legal effect. A municipality that assigns a property to a different rating category by informal 'compromise' thereby acts in breach of its own legally adopted rates policy and in violation of the MPRA.

[36] The Local Government: Municipal Systems Act 32 of 2000 (MSA) provides, in section 74, that a municipality must have a tariff policy for the fees and charges for services it provides. Section 75 of the MSA requires that before a municipality adopts or amends its tariff policy, it must follow a process of

community participation in accordance with Chapter 4 of the Act. A tariff policy, once adopted by the municipal council, is binding on the municipality. It may not be amended or departed from by administrative instruction or by bilateral agreement with an individual ratepayer. Any change in the tariff applicable to a specific property outside the formal amendment process, whether framed as a 'compromise', an 'adjustment', or a unilateral reclassification, constitutes a departure from the lawfully adopted tariff policy and is therefore unlawful. The reading of these provisions together confirms that the legislative framework permits no short-cuts. Rate and tariff classifications are a matter of public law, not of private bargain.

[37] These principles were recently applied decisively by this Court. In *N12 East Filling Station (Pty) Ltd v City of Matlosana and Others*[3], this Court held that municipalities are creatures of statute and may only act within powers granted by legislation; that an adopted land use scheme has the force of law; and that all aspects of planning and zoning must comply with the statutory scheme. The Court further held that any amendment to a zoning designation effected outside the prescribed statutory procedures under SPLUMA is ultra vires and of no legal effect, even if the municipality purports to give it retrospective effect through a subsequent council resolution or scheme amendment. The Court emphasized that an 'administrative reversion' of zoning rights outside the formal statutory process is legally untenable. No provision in SPLUMA or the relevant by-law permits altering zoning rights without a formal application, public participation, and a decision by the MPT or an authorized official. These principles apply with equal force to the present matter. The Municipality's purported reclassification of the property from 'High Potential/Unique Agricultural' to 'residential' by way of informal agreement, without a formal

[3] *N12 East Filling Station (Pty) Ltd v City of Matlosana and Others* (M717/2023) [2026] ZANWHC 41 (27 February 2026).

SPLUMA application, without notice to the applicant, without community participation, and in direct contravention of an extant court order, was ultra vires, void, and of no legal effect from the outset.

[38] In respect of the oral submissions, this Court is mindful of the principles governing motion proceedings and the applicable *Plascon-Evans* rule that where factual disputes arise on the papers, the matter must be decided on the respondent's version unless that version is so farfetched or clearly untenable that it may be rejected.[4] As will appear, the resolution of most of the factual disputes in this matter does not turn on credibility assessments but on objective documentary evidence, the municipal statements themselves.

Discussion

Whether the 2020 order was properly served

[39] Whilst this issue was not addressed in argument before me, it remains prudent to address it, as it is raised by the respondent in the papers. The respondent raises a technical objection to service, contending that Mr. KH Tau, who served the 2020 order, is a Sheriff of the Magistrate's Court and lacked authority to serve a High Court order, and that the order was not personally served on the Municipal Manager.

[40] This objection is without merit. Section 43 of the Sheriffs Act 90 of 1986 empowers sheriffs to serve all processes of any court. A Sheriff of the Magistrate's Court is accordingly authorized to serve process of the High Court. The returns of service reflect that the notice of motion for ancillary relief was

[4] *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).

served on 13 October 2022 on the legal adviser at the Municipality's principal place of business. The 2020 order itself was served on the Municipality's legal department, as evidenced by the return of service dated 14 July 2020.

[41] Service on a municipality at its principal place of business, upon a person who appears to be in authority, constitutes proper service. The respondent's bare denial is disingenuous and unsupported by any countervailing evidence. The voluminous correspondence between the parties' attorneys, including correspondence from the Municipality's own attorneys responding to demands to implement the 2020 order, establishes unequivocally that the Municipality was at all material times aware of the 2020 order.

[42] In any event, actual knowledge of the order, rather than strict proof of formal service, is the governing consideration for establishing non-compliance. The correspondence establishes beyond doubt that the respondent had actual knowledge of the 2020 order throughout the period under consideration. The service objection fails.

Whether the Municipality complied with the 2020 order

[43] At the hearing on 13 March 2026, counsel for the applicant, Adv Wijnbeek, methodically took the Court through the documentary record in the bundle, including the municipal account statements. I deal with the oral submissions and the documents in turn.

[44] Counsel drew the Court's attention first to the account statement as at 30 September 2018 (bundle at 002-59). Before October 2018, the statement reflected three columns of agricultural rate charges, modest rates that were paid in full. From October 2018, business/commercial rates were levied, and a

balance of more than R1.2 million suddenly appeared in column six from the left under the heading ‘wrong rates’. Counsel submitted, correctly in my view, that this single document encapsulates the entire injustice done to the applicant. A change in categorization for which the Municipality has never furnished any coherent justification.

[45] The Municipal Planning Tribunal’s decision of 08 March 2022 (at 002-30 to 002-42) was taken to the Court. That decision confirms, at paragraph 1.3, that the property is currently zoned ‘High Potential Unique Agriculture’, and at paragraph 1.4, that the existing use is with public resort land use rights. Any proposed rezoning (to Residential 2 and Special zones) is prospective, conditional, and subject to a precedent condition requiring the cessation of the resort operation. The Municipality participated in those proceedings. It follows, as counsel submitted, that the Municipality’s own planning authority confirmed in March 2022 that the use had been consistent with the agricultural zoning and the 2001 permit throughout. Yet, the Municipality continued to bill on an incorrect classification.

[46] Counsel further referred the Court to paragraph 3.2 of the Tribunal decision, which imposed as a condition precedent the cessation of the existing public resort use and the demolition of existing structures before the proposed rezoning could take effect. This underscores that, as at the date of the Tribunal decision, and by necessary implication throughout the period of the Municipality’s incorrect billing, the property remained zoned as agricultural/public resort, exactly as the 2020 order directed.

[47] The document at 002-180, being the original provincial permit of 2001, was also canvassed in argument. That document confirms the authorized use from 23 May 2001. Clause 23 of the permit stipulates that if the chalets or flats

were to be occupied as permanent residences, the local municipality would be entitled to require township establishment, a process never invoked. The use has always been consistent with the permit, and the property has never been occupied as a permanent residential development.

[48] The invoices were then considered sequentially. The June 2020 invoice (002-43) shows a balance of approximately R1.9 million, business/commercial rates of approximately R9 000 per month, and the pre-order position. The March 2022 invoice (002-44) shows an opening balance of approximately R2 million, with sewerage charges and rates now levied as ‘residential’, not agricultural as directed. The October 2022 invoice (Annexure RLM2 at 002-96) shows a balance brought forward of R1 383 166.80. Throughout these invoices, the applicant was making payments; this is a common cause, but the account continued to be debited with incorrect charges, neutralizing those payments.

[49] The respondent’s answering affidavit (paragraphs 13, 16, 33, 35, 49, 54, 58, and 59) was then reviewed in oral argument. Counsel’s analysis was compelling. Paragraph 13 (at 002-75) attributes the business classification to ‘houses that cannot be correct, directly contradicted by the Tribunal’s own findings. Paragraph 16 alleges that an amount of just over R1 million was reversed and a credit passed, but this is irreconcilable with the invoices. Paragraph 33 (at 002-79) discloses the fundamental problem. The Municipality states that ‘as a compromise’ the parties agreed to zone the property as ‘residential’. This characterization must be firmly rejected. A municipality has no competence to alter a billing classification by informal ‘compromise’ in disregard of an extant court order. A court order directing ‘High Potential/Unique Agricultural’ zoning mandates precisely that classification, and no lesser or different classification can lawfully be substituted without a formal variation of the order.

[50] The ‘compromise’ reclassification of the property to ‘residential’ was not merely a departure from the 2020 court order. It was independently unlawful under the interlocking legislative framework surveyed above. The Municipality’s residential billing classification was never effected through the formal rezoning process prescribed by SPLUMA and the applicable by-laws. No application was lodged with the Municipal Planning Tribunal. No notice was given to the applicant. No community participation process was undertaken. No amendment was made to the Municipality’s land use scheme. No amendment was made to the Municipality’s rates policy adopted in accordance with ss 3 and 4 of the MPRA. No amendment was made to the Municipality’s tariff policy adopted under ss 74 and 75 of the MSA. What the Municipality purported to achieve by ‘compromise’ was not a legal reclassification; it was an unauthorized administrative act with no statutory foundation. As this Court held in *N12 East Filling Station*, a zoning alteration effected without compliance with the prescribed statutory procedures is ultra vires and of no legal effect, however it may be dressed up in administrative or contractual language.

[51] The PAJA dimension of the Municipality’s conduct further reinforces this conclusion. The applicant, as the property owner whose rights were directly and materially affected, was entitled under s 3 of PAJA to adequate notice of the nature and purpose of any proposed alteration to its zoning and rating category, and to a reasonable opportunity to make representations before any such alteration was implemented. None of these requirements was satisfied. The purported ‘agreement’ reached at the June 2021 meeting cannot amount to a waiver of the applicant’s statutory rights under PAJA, nor can it supply the missing statutory authorization for a process that was never undertaken. The applicant was not consenting to a lawful rezoning; it was attempting, through the mechanisms available to it, to secure implementation of the 2020 court

order. A municipality cannot rely on a bilateral arrangement, however characterized, to validate what was in law an ultra vires act taken without statutory authority and in violation of the applicant's constitutional right to just administrative action. The Municipality's conduct in purporting to give effect to a 'compromise' classification compounded, rather than remedied, its non-compliance with the 2020 order.

[52] Paragraph 35 (at 002-80) alleges that approximately R1 million was reversed and some R188 000.00 to R300 000.00 charged in its stead. This does not reconcile with the invoices. Paragraph 54 (at 002-84) states that changes and corrections were implemented in August 2021, plainly contradicted by the March 2022 and October 2022 invoices. Paragraphs 58 and 59 (at 002-81 and 002-85) assert that the property is zoned and reflected as 'residential'. But the property is not residential. The Municipality cannot unilaterally reclassify as 'residential' what the 2020 order directed should be 'High Potential/Unique Agricultural'.

[53] The respondent's contention that the Municipality complied with the 2020 order must be rejected in its entirety for the following reasons. First, the 2020 order required the Municipality to rezone the property as 'High Potential/Unique Agricultural'. It conferred no authority to re-categorise the property as 'residential'. The Municipality's purported decision to designate the property as 'residential' was a unilateral and impermissible departure from the express terms of the court order. If the Municipality genuinely believed that 'residential' was the correct classification, its proper recourse was to seek a variation of the order or to appeal against it. It did neither. Second, the Municipality's own Planning Tribunal confirmed in March 2022 that the property's zoning remains 'High Potential/Unique Agriculture'. It is fundamentally inconsistent and unlawful for the Municipality to participate in and accept a Tribunal determination confirming agricultural zoning while

maintaining a ‘residential’ classification on its billing system. Third, the February 2022 letter of demand from Ntiyis Consulting claiming R1 823 724.22 is itself compelling objective proof that the Municipality’s system at that stage continued to reflect a massive arrear balance. Had the account been corrected in August 2021, there would have been no basis for issuing that demand. Fourth, invoices rendered after August 2021 continued to reflect incorrect charges. The applicant has produced invoices demonstrating that levies for refuse removal and sewerage remained on the account in direct contravention of paragraphs 2.1.2 and 2.1.3 of the 2020 order. Fifth, the October 2022 statement (Annexure RLM2 at 002-96) reflects a balance of R1 383 166.80, the bulk of which, R1 273 310.82, is more than 180 days in arrears. If the Municipality had fully reversed all incorrect charges from October 2018, no such historic arrear balance could persist. Its continued presence demonstrates that the reversals were incomplete and that the incorrect billing was never fully remedied.

[54] I accordingly find that the respondent failed to give effect to prayers 1, 2.1.1, 2.1.2, and 2.1.3 of the 2020 order. The zoning was not corrected to ‘High Potential/Unique Agricultural’; it was unilaterally reclassified as ‘residential’. The property rates were not replaced with the appropriate agricultural tariffs. Penalties and interest arising from the incorrect zoning were not fully withdrawn. Items erroneously billed, including levies for refuse removal and sewerage, were not removed. The respondent’s purported compliance with the 2020 order is, on the evidence, illusory.

The extended period of non-compliance: September 2022 to September 2025

[55] The case management order of 29 August 2025 directed the parties to place before the Court the municipal statements for the period September 2022 to September 2025. The stated purpose, consistent with the applicant’s prayer 3,

was to enable the Court to determine the correct account balance as at the most recent statement date and to assess what, if any, amount the applicant is genuinely indebted to the Municipality.

[56] The municipal statements for the extended period (Annexures A1 and A2 to the Supplementary Affidavit of Mr. Ras) demonstrate a consistent and unbroken pattern. The Municipality continued throughout the period September 2022 to September 2025 to bill the applicant on a 'residential' classification rather than the 'High Potential/Unique Agricultural' classification directed by the 2020 order. The residential tariff was consistently applied to the property, notwithstanding that no formal rezoning to residential had ever been effected and notwithstanding the Planning Tribunal's March 2022 confirmation of the agricultural classification.

[57] The applicant continued to make payments throughout the extended period; this, too, is common cause on the papers. However, because the rates applied were not those set out in the 2020 order, each month's billing perpetuated the initial error, and the payments made by the applicant against inflated invoices do not reflect what the applicant would legitimately owe under the correct tariff. The respondent's supplementary opposing affidavit of Mr. Khuduge does not seriously engage with the specific billing entries in the extended period statements. The Municipality maintains its position that the residential classification is correct by agreement and attributes the remaining balance to the applicant's payment allocation. As I have found above, the residential classification is not and was not an agreed or lawful substitute for the agricultural classification directed by the court. The respondent's position on the extended period is no more sustainable than its position on the original period.

Ratification of the applicant's computation of the account balance

[58] The applicant persists in prayer 3 of the notice of motion, seeking ratification of its computation of the correct account balance. The original computation (Annexure SFA13) covered the period 28 February 2018 to 15 August 2022 and reflected a balance of R189 028.00. The Supplementary Affidavit of Mr. Ras (Annexures A1 and A2) extends the computation through September 2025.

[59] The respondent objects to ratification because the exclusive competence to calculate municipal revenues vests in the Municipality by operation of law. This objection, while superficially attractive, cannot be sustained in the circumstances of this matter. It is correct that the Municipality bears the primary obligation to calculate and issue its own billing. However, that proposition cannot serve as a shield for a municipality that has persistently refused to comply with a court order. To uphold the objection would be to permit the Municipality to benefit from its own non-compliance, a result that would be unconscionable and contrary to principle.

[60] The computation is a meticulous, document based exercise. It reworks the account from 28 February 2018 by: (a) applying the correct ‘High Potential/Unique Agricultural’ tariffs throughout; (b) reversing all charges improperly levied under the ‘Business/Commercial’, ‘Industrial’, or ‘Residential’ classifications; (c) reversing all associated penalties and interest arising from the incorrect classification; (d) removing all levies for refuse removal and sewerage (services not rendered); and (e) crediting all payments actually made by the applicant throughout the entire period. The respondent has not filed any competing computation that challenges the arithmetic of the applicant's figures. Its challenge is to the competence of the exercise, not to its accuracy.

[61] I am satisfied that the computation is consistent with the terms of the 2020 order. It correctly applies the directed tariff throughout both the original and extended periods. All payments made by the applicant are fully credited, and only legitimate charges in the correct category are retained. The computation is not arithmetically incorrect.

[62] In the exercise of this Court's supervisory declaratory jurisdiction, and having regard to the Municipality's persistent failure to furnish a corrected account notwithstanding more than five years having elapsed since the 2020 order, I ratify the applicant's computation and declare the correct account balance in the terms set out in the order below.

[63] The order also provides for the period from 01 September 2025 to date to avoid any anomalies that may arise after the recalculation period covered by the directive issued by the Judge President following case management of the matter.

Indebtedness of the applicant to the Municipality

[64] In determining what amount, if any, the applicant is indebted to the Municipality, it is necessary to distinguish between: (a) the inflated and unlawfully imposed charges which must be reversed in full; and (b) the legitimate agricultural rate charges properly applicable to the property throughout the relevant period, less payments already made.

[65] On the applicant's computation, which I accept for the reasons set out above, the net balance after applying the agricultural tariff, crediting all payments, and removing all unlawfully imposed charges and penalties, is a

credit of R8 005.17 in the applicant's favour as at 31 August 2025. The Municipality's own statement of account (Annexure A1) is dated 30 September 2025 and reflects an ostensible balance of R1 698 863.07 as purportedly owing by the applicant. The variance between the Municipality's claimed balance and the applicant's corrected balance is accordingly R1 706 868.24. That variance represents, in its entirety, the charges, penalties, and interest that the Municipality has continued to levy in persistent disregard of the 2020 order, and which it has never reversed. The respondent has not filed any credible computation demonstrating that the applicant owes an amount greater than that reflected in Annexure A2. The suggestion that the applicant owes in excess of R1.3 million (as the October 2022 statement suggested), or the R1 698 863.07 now claimed in the September 2025 statement, is wholly inconsistent with the undisputed fact that the applicant was consistently on the correct agricultural tariff, consistently paid, and consistently current, before October 2018.

[66] The corrected balance represents the only amount for which the applicant can lawfully be held liable. Any excess claimed by the Municipality over and above that amount arises entirely from the unlawful billing that the 2020 order directed should be reversed. I accordingly declare the correct balance in the order below, and the Municipality is not entitled to recover any amount in excess of that balance in respect of the pre-correction period charges arising from the incorrect business/commercial/residential classification. Adv Wijnbeek intimated that the applicant is prepared to forego the credit of R R8 005.17 in its favour, in the interest of bringing this matter to a close. Fairness to my mind dictates that the applicant, having been put to unnecessary cost in bringing the applications brought about by the conduct of the officials of the applicant, is entitled to the credit on its account.

Costs

[67] The applicant has been substantially successful in this application. It has obtained the declaratory relief sought in prayers 1, 3, and 4 of the notice of motion. The general rule is that costs follow the event. The applicant seeks costs on the attorney-client scale. The 2020 order itself was made with costs on that scale. The respondent's unreasonable conduct since that order, including persistent failure to rectify the account, the issuing of further demands through debt collectors in direct disregard of the order, the continued application of a patently incorrect classification for more than five years, and unmeritorious opposition to this application, warrants a further award on the same scale.

[68] The respondent's sustained failure to give effect to an order of court over a period of more than five years, the repeated deployment of fresh deponents in successive rounds of affidavits who rely on second-hand information and reiterate untenable positions, and the maintenance of a legally impermissible 'residential' classification as a 'compliance' position, warrant a punitive cost order. The award of costs on the attorney-and-client scale is appropriate for both the original application and the present ancillary proceedings.

Order

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

1. The applicant is granted leave to bring this application for ancillary relief in terms of prayer 4 of the order granted by this Court on 13 August 2020 under case number M303/2020.

2. It is declared that the respondent has failed to give full effect to prayers 1, 2.1.1, 2.1.2, and 2.1.3 of the order granted by this Court on 13 August 2020 under case number M303/2020.

3. The applicant's computation of the account for Portion 399 of the Farm Waterkloof 305 JQ (account number 0[...]), as set out in Annexure SFA13 to the Supplementary Founding Affidavit and as updated in Annexures A1 and A2 to the Supplementary Affidavit of Mr PL Ras filed pursuant to the case management order of 29 August 2025, is ratified.

4. The applicant's account with the respondent in respect of Portion 399 of the Farm Waterkloof 305 JQ (account number 0[...]) is declared, based on the applicant's corrected computation as ratified in paragraph 3 above, to reflect a credit balance of R8 005.17 in favour of the applicant as at 31 August 2025. The applicant owes no amount to the respondent in respect of that account; on the contrary, the respondent is indebted to the applicant in the sum of R8 005.17.

5. The respondent is directed, within 30 days of the date of this order, to correct its billing records to reflect account number 0[...] at the balance of R 8005.17 in credit, as declared in paragraph 4 above, and to ensure that all future billing of the applicant's account is effected based on the 'High Potential/Unique Agricultural' tariff in accordance with the 2020 order, until changed in accordance with the law.

6. The billing records for the period 01 September 2025, with due regard to paragraph 5, must be corrected to reflect the zoning of the property as ‘High Potential/Unique Agricultural’.

7. The respondent is ordered to pay the costs of this application, including all costs incurred in connection with the supplementary affidavits filed pursuant to the case management order of 29 August 2025, on the scale as between attorney and client.

_____

A H PETERSEN
ACTING DEPUTY JUDGE PRESIDENT
HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicant:	Adv D H Wijnbeek
Instructed by:	Andreas Peens Attorneys c/o Maree & Maree Attorneys Mahikeng
For the Respondent:	Adv G K Seleka
Instructed by:	Van Velden- Duffey Attorneys c/o Van Rooyen, Tlhapi Wessels Attorneys Mahikeng