

REPUBLIC OF SOUTH AFRICA



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

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

CASE NUMBER: 2023-122940

20 April 2026

DATE

SIGNATURE

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY FIRST APPLICANT

MUNICIPAL VALUER: CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY SECOND APPLICANT

And

VALUATION APPEAL BOARD: CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY FIRST RESPONDENT

TALISMAN FOUNDATION SECOND RESPONDENT

OLD APOSTOLIC CHURCH OF AFRICA THIRD RESPONDENT

Heard: 2 March 2026

Delivered: 20 April 2026

Headnote: Administrative law — Review — Decision of Valuation Appeal Board — Scope of powers under Local Government: Municipal Property Rates Act 6 of 2004 — Whether Board entitled to disregard municipal Rates Policy on basis of alleged inconsistency with MPRA — No power to pronounce on legality or validity of municipal policy — Such power reserved for courts — Board acting ultra vires in declining to apply applicable policy framework — Jurisdictional error vitiating decision — Decision reviewable under principle of legality — Appropriate remedy — Remittal to differently constituted Board.

JUDGMENT

WINDELL J:

Introduction

[1] This application concerns a review of a decision taken by the Valuation Appeal Board of the City of Johannesburg ('the Board') on 30 May 2023. The Board upheld an appeal brought by the second respondent, the Talisman Foundation, and determined that the property known as the Remaining Extent of Portion 61 of the Farm Klipriviersberg 106 IR ('the property') should be categorised as a public benefit organisation ('PBO') property with retrospective effect from 1 July 2018. The Board further determined that the property qualified to be rated at the ratio applicable to PBO properties, namely 1:0.25.

[2] The applicants are the City of Johannesburg Metropolitan Municipality ('the City') and its Municipal Valuer. They seek to review and set aside the decision of the Board and

to have the matter remitted to a differently constituted Valuation Appeal Board for reconsideration.

[3] The review is brought by one organ of state against another. In such circumstances, the review ordinarily proceeds under the principle of legality rather than the Promotion of Administrative Justice Act 3 of 2000.¹ The question is whether the Board acted within the powers conferred upon it by law and, in doing so, complied with the requirements of lawfulness and rationality.

[4] The applicants contend that the Board acted outside the powers conferred upon it by the Local Government: Municipal Property Rates Act 6 of 2004 ('the MPRA'), principally by declining to apply the City's Rates Policies and by determining issues that fall within the competence of a court.

[5] The Board opposes the application. It contends that it acted within its powers under section 57 of the MPRA, exercised a de novo appeal function, and lawfully determined the correct categorisation of the property based on its use for public benefit activities.

[6] The dispute thus turns on the proper scope of the Board's powers under the MPRA and whether its decision is reviewable.

Background Facts

[7] The relevant background facts are largely common cause. The property in question is owned by the third respondent, Old Apostolic Church of Africa ('the Church'),

¹ *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC). See also *Mapholisa NO v Phetoe NO and Others* 2023 (3) SA 149 (SCA).

but is occupied and utilised by the second respondent, the Talisman Foundation, which operates a mental health care facility from the premises.

[8] The Talisman Foundation is registered as a public benefit organisation in terms of section 30 of the Income Tax Act 58 of 1962 and is recognised by the South African Revenue Service as conducting public benefit activities. When the City's general valuation roll for the period 1 July 2018 to 30 June 2022 came into effect, the property was categorised as 'Education'.

[9] In January 2022 the Talisman Foundation objected to the categorisation reflected in the valuation roll, contending that the property should instead be classified as a property used for public benefit activities. Following the objection process and subsequent supplementary valuation rolls, the categorisation remained disputed.

[10] Dissatisfied with the municipal valuer's determination, the Talisman Foundation lodged an appeal with the Board in terms of the MPRA. The appeal was heard on 27 February 2023.

[11] On 30 May 2023 the Board delivered its decision. It found that the property should be categorised as a public benefit organisation property with retrospective effect from 1 July 2018 and that it qualified for the applicable PBO rating ratio of 1:0.25. In reaching this conclusion the Board held, among other things, that certain criteria contained in the City's Rates Policies were inconsistent with section 8 of the MPRA and therefore could not be applied.

[12] The City now seeks to review and set aside that decision.

Evaluation

[13] The issues for determination are whether the Board exceeded the powers conferred upon it by the MPRA, whether it was entitled to decline to apply the City's Rates Policies, and whether its decision is reviewable on that basis. These issues arise within the statutory scheme governing municipal property rating and the respective roles of the municipal valuer and the Board.

[14] The starting point is the statutory framework. Municipal property rates are governed by the MPRA, which regulates the valuation of property, the compilation of valuation rolls, and the levying of rates by municipalities. Section 8 of the Act empowers municipalities to determine categories of rateable property and to levy different rates for different categories, and to adopt rates policies to give effect to that scheme. The valuation process is conducted by a municipal valuer who prepares a general valuation roll reflecting, inter alia, the categorisation of properties. The Act further provides a structured process for objections and appeals against entries in the valuation roll. In terms of sections 56 and 57, a Valuation Appeal Board is established to hear and determine appeals against decisions of the municipal valuer and to decide whether the entries in the valuation roll are correct.

[15] An appeal before the Board is a hearing de novo. The Board may reconsider the matter afresh and, where appropriate, substitute its own decision for that of the municipal valuer. That much is common cause.

[16] The Board relies on this power to contend that it acted within its statutory mandate. It submits that, in exercising its appeal function, it was entitled to determine the correct

categorisation of the property based on the evidence before it, and that its decision was rational and justified by the undisputed fact that the property is used exclusively for public benefit activities.

[17] The applicants' central complaint is that the Board exceeded the powers conferred upon it by the MPRA. They contend that, in determining the appeal, the Board was required to apply the City's Rates Policies together with the statutory framework, but instead impermissibly declined to apply those policies on the basis that they were inconsistent with section 8 of the MPRA. In doing so, so the argument goes, the Board effectively pronounced upon the legality and enforceability of the City's Rates Policies, a function reserved for a court. The applicants further submit that the Board misdirected itself in categorising the property as a PBO property for a period during which no such property category existed under the applicable Rates Policies, where PBO status operated only as an ownership-based rebate. In addition, they contend that the Board erred in granting the benefit of the PBO rating ratio notwithstanding that the second respondent is not the owner of the property, whereas, properly construed, the MPRA requires both ownership and use by a public benefit organisation.

[18] On this basis, the applicants submit that the decision was materially influenced by errors of law, involved the consideration of irrelevant factors and the disregard of relevant ones, and is accordingly reviewable under the principle of legality, alternatively in terms of section 6 of PAJA.

[19] The Board, for its part, denies that it declared the City's Rates Policies invalid. It contends that it merely declined to apply those aspects of the policies which it considered

to be inconsistent with the MPRA and the Constitution, and that this formed part of its lawful exercise of its appeal function. It further submits that the present application amounts to no more than a disagreement with the outcome of the appeal, rather than a proper basis for judicial review.

[20] In my view, the applicants' complaint is well-founded. The Board declined to apply the City's Rates Policies on the basis that they were inconsistent with the MPRA. In doing so, it acted beyond the limits of its statutory powers. The Board is a creature of statute and derives its authority solely from the MPRA. It does not enjoy the powers of a court and cannot exercise constitutional review jurisdiction.

[21] While the Board is required to interpret and apply the MPRA in determining an appeal, it is not empowered to determine the validity or enforceability of municipal policies. Administrative action remains valid and binding until set aside by a court of competent jurisdiction. It is therefore not open to a statutory appeal body to disregard applicable policy on the basis that it considers it to be unlawful.

[22] The Board's attempt to characterise its approach as merely a refusal to apply inconsistent policy does not alter the position. Whether framed as a declaration of invalidity or as a refusal to apply, the effect is the same: the Board assumed the power to determine that the policy should not be applied because it was inconsistent with higher law. That is a determination reserved for a court.

[23] By proceeding on that basis, the Board assumed a power it does not possess. Its function was to determine the correctness of the categorisation by applying the applicable legislative and policy framework, not to pronounce upon the validity of that framework or

to disregard it. In doing so, the Board misconceived the nature of its powers and acted outside the limits of its statutory authority.

[24] That misdirection constitutes a jurisdictional error which materially affected the outcome of the appeal. The decision accordingly falls to be set aside.

[25] The Board's categorisation of the property as a PBO property — including its conclusion that use alone was sufficient notwithstanding the absence of ownership — was reached only after it had disregarded the applicable Rates Policies. In those circumstances, the decision-making process was legally flawed, and the outcome cannot stand. It is accordingly unnecessary to determine whether the Board's interpretation of section 8 of the MPRA is correct. The defect lies in the process, not the conclusion.

[26] The applicants further challenge the Board's decision to apply the categorisation retrospectively from 1 July 2018, contending that the applicable policy framework did not recognise a separate PBO property category during that period.

[27] It is not necessary to determine that issue. The retrospective determination was made within the same flawed framework, following the Board's decision to disregard the applicable Rates Policies. For that reason, it suffers from the same defect and cannot stand.

[28] The decision of the Board is therefore reviewable under the principle of legality. As explained in *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd*,²

² 2018 (2) SA 23 (CC). See also *Mapholisa NO v Phetoe NO and Others* 2023 (3) SA 149 (SCA).

public power must be exercised within the bounds of the law. Where a decision-maker exceeds those bounds, the decision falls to be set aside.

[29] As to remedy, this court is not well placed to determine the correct categorisation of the property. That function lies within the specialised competence of the Board. The appropriate course is therefore to remit the matter to the Board for reconsideration. In light of the findings made above, it is appropriate that the appeal be reconsidered by a differently constituted Board.

[30] In the circumstances, and given that this is litigation between organs of state within the same municipal framework, there is no order as to costs.

[31] In the result the following order is made:

1. The decision of the first respondent, the Valuation Appeal Board of the City of Johannesburg, dated 30 May 2023, is reviewed and set aside.
2. The appeal lodged by the second respondent against the decision of the municipal valuer is remitted to the first respondent to be heard afresh by a differently constituted Valuation Appeal Board (being members other than those who determined the appeal culminating in the decision dated 30 May 2023).
3. No order as to costs.


L. WINDELL
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 20 April 2026.

APPEARANCES

For the applicant:	J C Uys SC N Loopoo
Instructed by:	Motsoeneng Bill Attorneys Inc.
For the first respondent:	T Makgate O Leketi
Instructed by:	ENS Africa
Date of hearing:	2 March 2026
Date of judgment:	20 April 2026