REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2017/48038

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

13/10/2020

DATE

MOKOSE SNI

In the matter between:

COPPERLEAF COUNTRY ESTATE (PTY) LTD	Applicant
and	
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	1st Respondent
THE CHAIRPERSON OF THE APPEAL BOARD ESTABLISHED FOR THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	2nd Respondent
THE MUNICIPAL VALUER OF THE CITY OF TSHWANE METROPLOITAN MUNICIPALITY	3rd Respondent
THE MUNICIPAL MANAGER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	4th Respondent

and

CASE NO: 2017/61228

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Applicant
and	
THE CHAIRPERSON OF THE APPEAL BOARD ESTABLISHED FOR THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	1st Respondent
THE VALUATION APPEAL BOARD	2nd Respondent
COPPEERLEAF COUNTRY ESTATE (PTY) LTD	3rd Respondent

JUDGMENT

MOKOSE J

[1] This matter concerns two applications:

(i) an application brought by Copperleaf Country Estate (Pty) Limited ("Copperleaf") to enforce a decision made by the Valuation Appeal Board for the City of Tshwane in its favour; and

(ii) an application by City of Tshwane Metropolitan Municipality ("Tshwane") wherein it seeks a review and the setting aside of a decision made by the Valuation Appeal Board. This review application in turn led to a counter-application by Copperleaf

Country Estate seek to review and set aside certain decisions by the municipal valuer of Tshwane as well as certain valuation rolls prepared by the municipal valuer.

Background

[2] Copperleaf (who I shall refer to as "the applicant"), a property developer, established three adjacent property developments, namely townships in the municipal boundary of Tshwane. The developments known as Peach Tree Extensions 1, 2 and 3 were each subdivided into several hundred erven. This occurred between 2005 and 2009.

[3] During 2010 and 2011 Tshwane (who I shall refer to as "the respondent") imposed rates on the said properties at a rate higher in respect of Extension 2 than Extensions 1 and 3. The applicant contends that there was no relevant difference between the erven in the three townships as each erf consisted of a piece of unbuilt land owned by Copperleaf as developer which it held in stock to sell to a purchaser to build a house in the estate.

[4] A dispute arose between Tshwane and the applicant over rates owed having been levied by Tshwane pursuant to the Local Government Municipal Property Rates Act 6 of 2004 ("hereinafter called the Rates Act"). Numerous interactions followed and towards the end of 2011, the applicant was told by Tshwane's Deputy Director: Property Rates that Tshwane had decided to calculate the rates in respect of Extension 2 on the category known as *"vacant land"* which attracted much higher rates than the *"business/commercial"* category being what it had previously been rated as.

[5] The applicant contends that they interacted extensively with debt collectors instructed by Tshwane to collect the overdue rates and that at no time were they informed of the decision

to levy higher rates on Extension 2. In the interim, they continued to pay Tshwane under protest especially when a clearance certificate was required to transfer an erf. After numerous meetings had been held with the municipal manager of Tshwane in a bid to resolve the problem, correspondence was sent to the applicant informing them of a change in category of the erven in Extension 2 from *"business/commercial"* to *"vacant land"*. A supplementary valuation roll had been issued for the period 1 July 2010 to 30 June 2011 which categorized the said erven as *"vacant land"* which attracted much higher rates than the *"business/commercial"* category at which the applicant had previously been levied.

[6] It is evident from the papers that on or about 19 December 2008 Copperleaf applied to the office of the Registrar of Deeds for a Certificate of Registered Title and was issued it in terms of Section 43 of the Deed Registries Act 47 of 1937 ("the Deeds Registries Act") in respect of the 362 erven laid over Extension 2 that it previously held under the township title. As such, the erven changed status to individual properties which the municipal valuer then dealt with as separate individual properties in terms of the provisions of the Municipal Property Rates Act 6 of 2004 ("MPRA").

[7] A supplementary valuation was then issued in 2010 – 2011 in terms whereof the applicant's properties were individually valued and categorized as vacant land. It is alleged that in compliance with the MPRA, a notice was published in the Provincial Gazette inviting owners of such properties to lodge any objections they may have. Copperleaf did not lodge any objection in the prescribed manner and its properties were categorized as *"vacant land"* with effect from 1 September 2012.

[8] Tshwane's council approved and adopted the 2011 rates policy and the by-laws with effect from 1 July 2011. The category of *"business / commercial"* was defined as follows:

"a property used for the activity of buying, selling or trading in commodities or services on a property that includes any office or other accommodation on the same erf, the use of which is incidental to such business, with the exclusion of the business of agriculture, farming or inter alia, any other business consisting of the cultivation of soils, the gathering in of crops or the rearing of livestock or consisting of the propagation and harvesting of fish or other aquatic organisms and shall include (properties of a township developer registered in a township title) commercial property as the case may be."

[9] On or about 1 July 2013 Tshwane approved and adopted a rates policy wherein the by-laws defined the category "*business/commercial*" as was described in the 2011 rates policy described above. However, the applicant's properties were categorized as vacant land and each were individually valued and accordingly reflected as such in the 2013 – 2017 general valuation roll.

[10] Again and in compliance with the MPRA, it is alleged that a notice was published in the Provincial Gazette inviting owners of such properties to lodge any objections they may have. Copperleaf did not lodge any objection in the prescribed manner. On or about 12 November 2014 the applicant addressed a letter to Tshwane in which it indicated that they had become aware that the individual properties had been valued as 'vacant' by the valuation department and since the issuing of the certificate of registered title individual properties had been created and valued individually.

[11] Tshwane then responded and confirmed that the change in categorization of the properties had come about as a result of the issuance of the certificates of registered title in respect of the individual properties. It resulted in the re-categorisation of the properties from 'business/commercial' to 'vacant land'.

[12] The supplementary valuation roll of 2015 dealt with different erven within Tshwane's jurisdiction to those which had been dealt within the general valuation roll. None of the erven owned by Copperleaf were reflected therein. However, the applicant purported to lodge an objection in terms of the MPRA to the 2015 supplementary valuation roll in which it objected that for the period 1 July 2011 to 30 June 2013 the 2011 rates policy changed the category of the properties registered by certificates of registered title from 'business/commercial' to 'vacant'. It contended that on this basis its 2015 objection that the supplementary valuation roll incorrectly omitted to reflect the properties in the 2015 supplementary valuation roll as provided for in Section 78(1)(g) read with Section 78(1)(a) of the MPRA. Copperleaf maintained that its omission from the 2015 supplementary valuation roll underpinned its objection in terms of Section 50(1)(c) read with Section 78(2) of the MPRA.

[13] The objection was considered and dismissed by the municipal valuer who conveyed to Copperleaf that the properties had already been valued in the 2013 – 2017 general valuation roll and do not appear in the 2015 supplementary valuation roll. An appeal was then lodged by Copperleaf against the dismissal of the objection. On 12 August 2016 having heard the appeal, the Valuation Appeal Board ("VAB") upheld the appeal and held that Copperleaf's properties should accordingly be rated business/commercial as was the case before 30 June 2011. The decision required Tshwane to calculate the overpayment Copperleaf made to Tshwane in respect of 'incorrect' categorization of Extension 2 as *"vacant land"* during the relevant period.

[14] In May 2017 Tshwane sent statements of account to Copperleaf in respect of Extension 2 which reflected the category of the erven as *'business/commercial"*. However, Tshwane gave prospective effect to the VAB's decision and refused to give retrospective effect

thereto. Copperleaf then launched the enforcement application and Tshwane launched an application seeking a review and the setting aside of the VAB's decision.

Issues

[15] The main issues for determination in the main application are the following:

(i) whether Tshwane's categorisation of the erven in Extension 2 as *"vacant land"* with retrospective effect from 1 January 2009 due to the issuance of the certificates of registered title was unlawful in terms of Tshwane's rates policy and by-laws from time to time and unlawful due to its failure to give notice to Copperleaf in terms of Section 49(1)(c) read with Section 78(2) of the Rates Act of such categorization;

(ii) if the re-categorisation of the erven is unlawful, whether it is just and equitable relief in terms of Section 8(1) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") to order that the 2010 – 2011 Supplementary valuation roll, the 2013 – 2017 general valuation roll and the concomitant re-categorisation as *"vacant land"* are set aside and whether Tshwane should re-categorise the properties as *'business/commercial"* and correct the relevant valuation rolls and calculate the amounts of overpayment and whether such overpayment should be repaid to the Copperleaf.

[16] The applicant is of the view that if the court orders that the re-categorisation of the properties is unlawful and if the court orders that it is just and equitable to set aside the supplementary valuation roll, the general roll and the concomitant re-categorisation, then there will be no need to consider the relief sought by Tshwane and the enforcement relief sought by Copperleaf. Both these issues would become moot.

[17] The second determination by the court is whether the Valuation Appeal Board's decision should have been reviewed and set aside if the matter has not become moot.

[18] This requires some consideration of the MPRA as also certain relevant provisions of the 2011 rates policy. I have referred to the rates policy and by-laws in which the category *"business/commercial"* has been defined.

[19] In terms of Section 3 of the Rates Act the local authority is obliged to adopt *"a policy consistent with the Act on the levying of rates on rateable property in a municipality"*. The local authority is obliged to adopt by-laws to give effect to the implementation of the policy. Section 3(3)(a) requires the rates policy to treat persons liable for rates equitably.

[20] Section 8 of the MPRA permits a municipality to levy different rates for different categories of property and requires it specify the rates for different categories in its rates policy. The criteria for levying different rates for different categories of rateable property is determined according to the actual use of the property, permitted use of the property and geographical area in which the property is located.[1]

[21] The power to impose and collect rates from a property owner is dependent on the existence and validity of a valuation roll which reflects the market value of that property.

[1] City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others [2018] 3 All SA 605 (SCA) at para 3

Re-categorisation due to the certificate of registered title being taken out

[22] On 19 December 2008 Copperleaf obtained a certificate of registered title in terms of S46(1) of the Deeds Registries Act in respect of the erven in Extension 2. The question that arises is what the consequence of the issuing of a certificate of registered title.

[23] The relevant portion of Section 43 of the Deeds Registries Act provides as follows:

"43. Certificate of registered title of portion of a piece of land –

(1) If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the surveyor-general concerned, the registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land .....issue a certificate of registered title in respect of such portion....

(2) In registering the certificate the registrar shall endorse on the title deed that it has been superceded by the certificate in respect of the land described in the certificate.....and shall make....such entries in the registers as shall clearly indicate that the land is now owned by virtue of a certificate....."

[24] A certificate of registered title is prepared by a conveyancer in a manner similar to the preparation of title deeds and other documents. However, such certificates do not require a conveyancer to appear and execute them in the presence of a registrar of deeds. The document sets out the facts of the title deed and conditions which are carried from the preceding title being the township title.

[25] The respondent avers that the consequence of registering certificates of registered titles in respect of erven in Extension 2 was that the erven were taken out of the township

register (being part of the mother property) and 362 individual properties were created. As such, the status of the individual properties owned by the applicant has changed and that the municipal valuer now has to deal with the properties as separate and individual properties in terms of the provisions of the MPRA.

[26] The applicant, on the other hand, contends that the certificate of registered title is merely a substituted title which does not require execution in the presence of a registrar of deeds. It merely sets out the facts and conditions which are carried from the township title. It does not have the effect of transferring the property.

[27] In support of its interpretation of the Rates Policies and by-laws, the respondent proffered the opinion of Mr Allen West who describes himself as *"a property law consultant"* and is described by the respondent as *"an expert in conveyancer (sic)"*. Mr West's evidence was that *"there is little difference between properties held in terms of a township title and properties held under a certificate of registered title"*.

[28] The applicant objects to the use of the affidavit of Mr West in support of this application and submits that it should be struck for the reason that his views on the South African law, particularly on the effect of the provisions of the Deeds Registries Act and/or the interpretation of Tshwane's by laws is irrelevant as it expresses an opinion on the very legal issues the court is called upon to resolve.

[29] It is trite that a witness, whether a lay witness or an expert, is not permitted to give an opinion on the meaning and status of the words of a statute that the court has to interpret. The respondent has brought certain cases to the court's attention in which a conveyancer's

expertise has been presented. However, they are distinguishable. In the matter of **Estate Breet v Peri-Urban Areas Health Board**[2], the assistant registrar of deeds was called by consent to give evidence which was relevant to a factual question. The issue on hand does not concern a factual question of ownership. It concerns the interpretation of the respondent's by-laws and concepts of *"township title"* and *"a township register"*. I am in agreement with the submissions of the applicant and accordingly strike out the evidence of Mr West.

[30] When an owner of land endeavours to open a township register in respect of land of which he is the owner, he must apply to the Registrar of Deed in whose jurisdiction the property lies, to open a township register which is depicted on a general plan. Once the Registrar of Deeds is satisfied that all the requirements have been met (i.e. other legislation or relevant ordinances have been complied with) the title deed of the land will be endorsed to indicate that the former farm land has now been converted into a township comprising of the erven as depicted on the general plan. The title is then known as a township title. It must be noted that there is no definition in the Deeds Registries Act of a township title. It merely refers to the title when the endorsement as described above has been effected and show that a township has now been established. There is no transfer of property *per se*.

[31] Furthermore, as stated above, Section 16 of the Deeds Registries Act provides that ownership of land may be conveyed by means of a deed of transfer executed in the presence of a Registrar of Deeds. The issuance of a certificate of registered title is not executed in the presence of the Registrar of Deeds. The effect of the issuance of such title is merely creating a means for substituting one deed for another.

[2] 1955 (3) SA 534 (T) at 537 F - G

[32] A question that has then arisen as a result of the issuance of a certificate of registered title in respect of the 362 erven in Extension 2 is whether the issuing of the certificates of registered title have the effect of taking the erven *"out of the township register"*? The SCA in the matter of **Tshwane City v Uniquon Wonings (Pty) Ltd**[3] makes it clear that the erven in a township remain in the township register notwithstanding the transfer to a new purchaser when certificates of registered title are issued.

[33] I am of the view that when a certificate of registered title is issued in respect of erven, the properties remain in the township register and the status of the said erven does not change. Accordingly, I am of the view that the decision of Tshwane to re-categorise the erven to *"vacant land"* is incorrect and the decisions to do so are declared invalid.

Failure to give notice of re-categorisation of properties

[34] Section 49 of the MPRA describes the procedure to be followed when property has been valued by a valuer of the municipality which includes the opening of the roll for public inspection as also the invitation to every owner whose property is listed on the roll to lodge an objection within a stated period. The said section also provides that such notice must be served on every owner of property listed in the valuation roll together with an extract of such roll pertaining to the owner's property. The purpose of such notice is to provide the owner with an opportunity to lodge an objection within the stipulated period thus preventing an owner from being blindsided by changes in the amount of rates to be paid without notice and consultation.

[3] 2016 (2) SA 247 (SCA) at para 9 - 10

[35] A valuation roll takes effect from the start of the financial year following the completion of the public inspection process as required by Section 49 and remains valid for a period of no more than 4 years. A municipality must cause a supplementary valuation roll to be prepared in respect of property which has come to be included in the municipality after the last general valuation. The supplementary valuation roll takes effect on the first day of the month following completion of the public inspection process contemplated in Section 49 and remains valid for the duration of the municipality's current valuation roll.

[36] Section 49(1) of the Rates Act imposes an obligation of publication of a notice on the municipal manager in the prescribed form in the provincial gazette and in the local media stating that the roll is open for public inspection for a period of not less than 30 days from the date of publication. Such notice must invite every person who wishes to lodge an objection within a stated period. The said section also imposes an obligation on the municipal manager to "*serve, by ordinary mail.....on every owner of property listed in the valuation roll a copy of the notice inserted in the provincial gazette together with an extract of the valuation roll pertaining to that owner's property*". It is evident that the purpose of such notification is to provide the owner with an opportunity to lodge an objection within the stipulated periods.

[37] Copperleaf contends that Tshwane failed to give it the required notice in relation to the 2010-2011 supplementary valuation roll. By so doing, it deprived it of an opportunity to object to the roll and to pursue the remedies provided in the Rates Act. Copperleaf relied on the SCA decision in the matter of **City of Tshwane Metropolitan Municipality and others v Lombardy Development (Pty) Ltd and Others**[4] in respect of the issue of failure to give notice. Copperleaf contends that the same relief as was granted in the Lombardy matter (supra), must be granted and the 2010-2011 supplementary roll must be reviewed and set

[4] supra

aside, alternatively declared unlawful to the extent that the property was categorized as *"vacant land"*. The applicant contends further that the failure to give such notice was further perpetuated by Tshwane in incorrectly categorizing the properties in the 2013 – 2017 general valuation roll.

[38] The applicant notes that the issue whether proper notice had been given to property owners did not arise in the Lombardy matter (supra) in respect of the 2013 – 2017 general valuation rolls. The matter was decided on the basis that if a second act depends for its validity on a prior act, the invalidity of the prior act has the effect that the second act is also invalid. Furthermore, the matter was decided on the basis that Tshwane failed to take any steps to correct its failure to comply with the requirements of notifications to the land owners pertaining to the 2010-2011 supplementary valuation roll.

[39] It is important to bear in mind the sequence of events:

(i) on 27 February 2007 a township register had been opened in respect of the properties known as Extension 2 pursuant to Section 46(1) of the Deeds Registries Act;

(ii) on 19 December 2008 a certificate of registered title in respect of 362 erven was issued and the applicant became owner of the 362 erven individually;

(iii) on or about 1 July 2011 the respondent's council accepted the 2011 Rates Policy which laid down the circumstances, guidelines and principles relating to the categorization of properties on which valuations should be based for a particular policy period;

(iv) on 4 July 2012 the respondent issued a public notice in the Provincial Gazette and 2 local newspapers calling for objections to 2010/11 supplementary roll which included the 362 properties now owned individually by the applicant, individual certificates of registered title having been taken out in respect of each property;

(v) no objection was received from the applicant resulting in the supplementary valuation roll becoming effective on 1 September 2012 and causing the individual properties to be rated as 'vacant land';

(vi) the 2013-2017 valuation roll came into effect on 1 July 2013 from which time the properties were categorized as *'vacant land'*;

(vii) on 12 August 2015 the respondent issued a supplementary valuation roll in respect of properties within its jurisdiction but none of which belonged to the applicant;

(viii) on 20 November 2015 the respondent's valuer addressed a letter to the applicant advising them that the property valuations to which they had objected had in fact been valued in the 2013-2017 valuation roll and did not appear in the supplementary roll and as such, the objections were invalid.

[40] A reading of the Lombardy matter reveals that the SCA found that the failure by a municipality to comply with the provisions of Section 49 of the MPRA rendered a valuation roll invalid as the procedure are a jurisdictional prerequisite for the municipality to collect rates.

[41] The respondent contends that the present matter is distinguishable from the Lombardy matter in that the applicant's representatives had knowledge that the valuation rolls were the mechanism to change values and categories of properties and that compliance with Section 49 was necessary to give property owners an opportunity to object to the said valuations where necessary. They were of the view that despite having knowledge of the principles espoused in that judgment, they did not raise a point that they did not receive notice and did not have knowledge that the supplementary valuation roll had changed the category of the properties and as such, the valuations thereof. This was in July 2016 when heads of argument were drawn in preparation of argument before the Valuation Appeal Board.

[42] The respondent concedes in the review application that apart from the fact that invoices were sent out by Tshwane reflecting the value of the properties and categories thereof, there is no record of a separate notice having been sent out during 2012 as per the Rates Act. This is pertaining to the 2010-2011 supplementary valuation roll.

[42] In view of the concession by Tshwane, it follows that there was a failure to comply with S49(1) of the Act. As such, the relief as granted in the Lombardy matter (supra) must be granted by this court in relation to the 2010-2011 supplementary valuation roll. Accordingly, the 2010-2011 supplementary valuation roll is declared unlawful to the extent that it categorises the 362 erven of the applicant as *"vacant land"*.

[43] The court is obliged also to look at the 2013-2017 general valuation roll. The applicant is of the view that it must be declared invalid and set aside on the basis that the categorization of the properties relevant to the Lombardy case in the 2013-2017 general valuation roll as *"vacant land"* relied upon the validity of the categorization in the 2010-2011 supplementary valuation roll with the consequence that *"the consequence that a subsequent roll that relied on it for its validity would be invalid to the extent of such reliance."*[5]

[44] As stated above, the issue did not arise in the Lombardy matter (supra) and it was decided on the basis that if the second act depends for its validity on the first act, the invalidity of the prior act has the effect that the second is also invalid. Furthermore, the court also found that Tshwane did not take any steps to correct its failure to comply with the notification requirement in the 2010-2011 supplementary valuation roll. The applicant contends that this

[5] City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd & Others (supra) at para 23 - 24

too is a ground upon which this court should set aside the 2013-2017 general valuation roll in this matter regarding its properties.

[45] Tshwane denies this and avers that the 2013-2017 general valuation roll was *"hermitically sealed and became a separable process of assessment by the valuers"*. This averment was made in the Lombardy case and no evidence was proffered by Tshwane for the statement. So too was it alleged in this matter. No evidence was provided despite the deponent alleging same, nor was a confirmatory affidavit filed in proof of a new consideration having been made by the department responsible for same. I note that the notice which had been furnished by Tshwane included a sentence on certain invoices directed to the applicant. This is not in compliance with S49(1) of the Rates Act. Accordingly, I am of the view that as in the Lombardy matter, reliance on the re-categorisation in the 2010-2011 supplementary valuation as a basis for the 2013-2017 general valuation roll, without the steps to cure the defect having been taken, invalidates the 2013-2017 general valuation roll.

Further relief to follow the unlawfulness

[46] The question to be asked is what is *'just and equitable'* relief that should follow the declarations of unlawfulness of the 2010-2011 supplementary valuation roll, the 2013-2017 general valuation roll and the concomitant re-categorisation of the 362 erven as *"vacant land"*. Furthermore, is there any force in Tshwane's defence against the counterapplication that Copperleaf brought the challenge belatedly?

[47] The respondent contends that the applicant had delayed unreasonably in bringing the counter-application seeking to review the 2010-2011 supplementary valuation roll, the 2013-2017 general valuation roll and the concomitant re-categorisation of the erven could have no

bearing on whether the court would declare them unlawful. The applicant is of the view that the declaration must follow as a matter of course.

[48] The court's attention was brought to the matter of **Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd**[6] in which it was held that a court is constitutionally compelled to declare state conduct that is inconsistent with the Constitution, unlawful.

[49] Section 8 of PAJA sets out what relief the court may grant in a PAJA review. This section gives legislative content to the Constitution's *'just and equitable'* remedy as set out in Section 172(1) of the Constitution which provides as follows:

"172. Powers of courts in Constitutional matters –

(1) When deciding a constitutional matter within its power, a court –

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and

(b) may make any order that is just and equitable, including –

(i) an order limiting the retrospective effect of the declaration of invalidity; and

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect."

[50] The 'setting aside' of an action in this matter is a logical consequence of declaring the decision to be invalid. No submissions have been made as to what prejudice, if any the respondent would suffer. I therefore conclude that the respondent would suffer no prejudice

[6] 2019 (4) SA 331 (CC) at para 63-64 and para 101

if the 2010-2011 supplementary valuation roll, the 2013-2017 general valuation roll and the concomitant re-categorisation of the erven as *"vacant land"* were reviewed and set aside.

[51] For the court to consider the order of substitution as is sought by the applicant, the court must consider whether it is in as good a position as the administrator to make such a decision and secondly whether the decision of the administrator is a foregone conclusion.[7] Considerations such as bias, delay or the incompetence of the administrator must also be considered but most of all, the court needs to consider whether a substitution order would be just and equitable in the circumstances.

[52] The applicant is of the view that the substitution order should re-categorise the properties as *"business/commercial"* and correct both the supplementary valuation roll as also the general valuation roll. The re-categorisation of the erven could however be remitted to the respondent for reconsideration but the applicant is of the view that it would take several years which would have the effect of prejudicing the applicant in that the respondent has previously refused to give effect to the decision of the Valuations Appeal Board.

[53] Having considered all the elements which must be considered in granting a substitution, I am of the view that it would be just and equitable to order substitution of the order as sought by the applicant. The substitution sought is that Tshwane should re-categorise the properties as *'business/commercial'* and correct the valuation rolls.

[7] Aquila Steel (SA) (Pty) Ltd v Minister f Mineral Resources 2019 (3) SA 621 (CC) at para 103 - 118

Reason not to grant relief sought by Copperleaf

[54] Tshwane contends that the counter-application was brought out of time, more than 180 days in terms of Section 7(1) of PAJA. Tshwane argues that it published in the Provincial Gazette and two newspapers a notice calling for objections to the 2010-2011 supplementary valuation roll. It had also opened separate accounts in respect of the 362 properties and adjustments passed on the invoices to reflect the rating of the properties as *"vacant land"*. In November 2014 Copperleaf addressed a letter to Tshwane. The respondent is of the view that the applicant must have known from at least October 2014 that the relevant properties had been re-categorised and that the applicant was aware of the provisions of the Rates Act pertaining thereto. However, Copperleaf filed the counter-application only on 25 May 2018 where an order was sought that the 2010-2011 supplementary valuation roll be set aside and only amended the relief to include the 2013-2017 general valuation roll on 28 February 2019.

[55] The applicant disagrees with the respondent's view on the matter and submits that the internal remedy in the form of the Valuation Appeal Board's decision review had not been completed. The 180 days would only begin to run from the conclusion of the review application.

[56] Section 7(1) of PAJA states that any proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days after the date of which any proceedings instituted in terms of internal remedies have been concluded or where not remedies exist and the person became aware of the action and the reasons for it.

[57] Section 7(2)(c) provides that a court may in exceptional circumstances and on application by a person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.

[58] Section 8(1)(c)(ii) of PAJA states the following:

> *"The court or tribunal, in proceedings for judicial review in terms of Section 6(1) may grant any order that is just and equitable, including orders setting aside the administrative action and in exceptional cases, substituting or varying the administrative action or correcting a defect.....or directing the administrator or any other party to the proceedings to pay compensation."*

[59] It is trite that administrative action must be communicated to the affected persons. As I have found that Tshwane failed to inform Copperleaf of the administrative action by way of the Section 49(1) notice, I am of the view that the administrative action had not been communicated and as such, Copperleaf was not out of time in the launch of its counter-application.

[60] As I have come to the conclusion that the re-categorisation of the erven from *'business/commercial'* to *'vacant land'* by Tshwane is unlawful and that it is just and equitable to set aside both the supplementary valuation roll and the general valuation roll, there is no need to consider the relief sought by Tshwane as it has become moot as also the enforcement relief sought by Copperleaf.

[61] Accordingly, the following order is granted:

(i) the evidence of Allen Stanley West contained in paragraph 38.20 of and Annexure **"N"** to the founding affidavit in the review application and in paragraph 15.2 of and Annexure **"C"** to the answering affidavit in the enforcement application is struck out;

(ii) the 2010-2011 supplementary valuation roll, the 2013-2017 general valuation roll and the concomitant re-categorisation of the relevant properties situate in Peach Tree Extension 2 township (previously a portion of the Farm Knopjeslaagte 385) as *'vacant land'* by the municipal valuer are reviewed and set aside;

(ii) the decision to categorise the relevant properties as *'vacant land'* is substituted with a decision to categorise them as *'business/commercial'* and concomitant adjustments to the 2010-2011 supplementary valuation roll and 2013-2017 general valuation roll;

(iii) Tshwane shall adjust the 2010-2011 supplementary valuation roll and the 2013-2017 general valuation roll to indicate that the relevant properties are categorized as *'business/commercial'* within 30 days of service of this order;

(iv) the municipal manager is ordered to, within 45 days of the service of this order on him, calculate the amount actually paid by Copperleaf in respect of rates on the relevant properties from 19 December 2008 to the earlier of the date on which a specific property was registered in the name of a purchaser thereof or 30 June 2013;

(v) the municipal manager is ordered to, within 45 days of service of this order on him, repay to Copperleaf the difference between the amounts actually paid by Copperleaf to Tshwane from 19 December 2008 and the amount which would have been paid by Copperleaf is the properties had been categorized as *'business/commercial' from 19 December 2008* to the earlier date on which a specific property was registered in the name of a purchaser on 30 June 2013;

(vi) Tshwane is ordered to pay the costs of the counter-application including the costs pursuant to the employment of two counsel;

(vii) Tshwane is ordered to pay the costs of this application including the costs pursuant to the employment of two counsel.

MOKOSE J

Judge of the High Court of South Africa

Gauteng Division, Pretoria

For the Applicant:

Adv M Oosthuizen SC

Adv D Smit

instructed by

Veneziano Attorneys

For Respondents:

Adv T Strydom SC

Adv Mkhwanazi

instructed by

Gildenhuys Malatji Inc

Date of hearing: 17, 18 and 19 March 2020

Date of Judgement handed down electronically: 13 October 2020