



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 1 December 2023

Status: Immediate

The media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Kouga Local Municipality v St Francis Bay (Ward 12) Concerned Residents' Association and Others (Case no. 1056/2022) [2023] ZASCA 168 (1 December 2023)

On 23 May 2018, the Kouga Local Municipality resolved to approve an application for the establishment of a special rating area (SRA) in part of St Francis Bay. The application was submitted by the St Francis Bay Property Owners' Association (the second respondent) and the St Francis Bay Property Owners NPC (the third respondent) in the manner contemplated by the provisions of Part A of the Municipality's rates policy.

The St Francis Bay (Ward 12) Concerned Residents' Association (the first respondent) thereafter applied in the Eastern Cape Division (Gqeberha) of the High Court for orders (i) declaring that part A of the Municipality's rates policy was 'unconstitutional as being in conflict with section 22 of the Local Government: Municipal Property Rates Act 6 of 2004', (ii) reviewing and setting aside the decision of the municipal manager or other municipal officials to permit the second and/or third respondents to conduct and manage the process leading up to the municipal council's decision to establish the SRA and (iii) reviewing and setting aside the municipal council's decision to establish the SRA.

The essence of the first respondent's case was that the Municipality had unlawfully abrogated its statutory responsibilities and functions by delegating them to the second and/or third respondents.

The High Court upheld the first respondent's application and made the orders sought by the first respondent in its notice of motion. The High Court granted the Municipality leave to appeal from its judgment to the Supreme Court of Appeal (SCA).

Today the SCA upheld the appeal and made an order setting aside the orders of the High Court and replacing them with an order dismissing the application by the first respondent, with no order as to costs.

The SCA held that there was no merit in the first respondent's contention that Part A of the Municipality's rates policy was inconsistent with section 22 of the PRA. The first respondent's construction of the provision was held to be premised on too narrow an interpretation of the word 'municipality'. The SCA held that Part A of the Municipality's rates policy effectively facilitated compliance with section 22 of the PRA. The Court rejected the first respondent's contention that the Municipality had abrogated its statutory functions and responsibilities. On the contrary, the Municipality played a participatory and supervisory role at every stage of the process preceding the establishment of the SRA. The financial agreement concluded between the Municipality and the third respondent in respect of the management of the SRA was compliant with s 67 of the Local Government: Municipal Finance Management Act 56 of 2003.

The SCA declined to entertain argument by the first respondent's counsel on issues for which a proper foundation had not been laid in the first respondent's founding papers.

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