



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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The Msunduzi Municipality v Capital City Housing NPC and Others (832/2024) [2026]

ZASCA 83 (04 June 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal by the Msunduzi Municipality (the Municipality) against a judgment of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court), concerning the rating of immovable property used for social housing.

The dispute arose after Capital City Housing NPC (Capital City), an accredited social housing institution and public benefit organisation, sought rates relief in respect of three social housing developments comprising 1 656 residential units within the Msunduzi municipal area. The Municipality categorised the properties as residential properties and applied the statutory exclusion of the first R15 000 of the market value of each cadastral unit. Capital City contended that it should instead have been classified as a public benefit organisation property, which would have entitled it to substantially greater rates relief. It consequently challenged the constitutionality of the definition of ‘specified public benefit activity’ in the Local Government: Municipal Property Rates Act 6 of 2004 (the Rates Act) and the corresponding provision in the Municipality’s rates policy, contending that the exclusion of social housing activities unlawfully denied social housing institutions benefits available to certain public benefit organisations and limited the progressive realisation of the right of access to adequate housing.

The high court declined to grant the constitutional relief sought by Capital City. Instead, it ordered the Municipality to create an additional category of rateable property for social housing

properties in terms of s 8(3) of the Rates Act, amend its rates policy accordingly, and recalculate rates previously levied on Capital City's properties.

The majority judgment, written jointly by Matojane JA and Kgoele JA, with Cloete AJA concurring, held that the high court erred by granting relief that had not been sought by any of the parties. The majority reaffirmed the principle that courts must determine the dispute placed before them by the litigants and may not introduce and decide a new issue of their own accord. It further held that Capital City's constitutional challenge lacked merit. Firstly, that Capital City had not challenged the Social Housing Act or the Housing Act, and that invoking s 26 against the Rates Act alone, without that broader foundation, ran directly into the subsidiarity rule.

Secondly, the majority found that the exclusion of social housing activities from the definition of 'specified public benefit activity' in the Rates Act was rationally connected to a legitimate governmental purpose and did not infringe the constitutional right of access to adequate housing. It also rejected the Capital City's reliance on s 229(2)(a) of the Constitution and held that Capital City had not identified any national economic policy said to be prejudiced, nor had it used the mechanism in s 16(3)(a) of the Rates Act. The majority also rejected the view held by the minority judgment regarding remittal of the matter to the high court. It reasoned that there was no basis to remit the matter for reconsideration because the constitutional issues had been fully ventilated and could be finally determined by the SCA.

A dissent (minority judgment) was penned by Coppin JA and Opperman AJA. While agreeing that the high court had erred in granting relief that was not sought and that the order made under s 8(3) of the Rates Act could not stand, the minority judgment disagreed with the majority's decision to finally determine the constitutional challenge. It reasoned that the high court had failed to decide the constitutional challenge that Capital City had actually advanced. The minority judgment identified several considerations which, in its view, warranted fuller consideration by the high court. In its view, the submission from *amicus curiae* would also be more beneficial if the matter is remitted to the high court as a court of first instance.

The order of the Court was that of the majority judgment. The SCA granted condonation for the late filing of the notice of appeal, upheld the appeal, dismissed the cross-appeal, and set aside the order of the high court. It substituted the high court's order with one dismissing the application and making no order as to costs. The Municipality was ordered to pay the costs of the condonation application, while no order as to costs was made in respect of the appeal or the proceedings in the high court.