THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 089/2012

In the matter between: Reportable

EMALAHLENI LOCAL MUNICIPALITY	**FIRST APPELLANT**
WITBANK MUSLIM JAMAAT	**SECOND APPELLANT**

and

PROPARK ASSOCIATION	**FIRST RESPONDENT**
THE REGISTRAR OF DEEDS	**SECOND RESPONDENT**

Neutral citation: *Emalahleni Local Municipality & another v Propark Association & another* (089/12) [2012] ZASCA 177 (28 November 2012)

Coram: NUGENT, CACHALIA, LEACH, and PETSE JJA and SOUTHWOOD AJA

Heard: **2 NOVEMBER 2012**

Delivered: **28 NOVEMBER 2012**

Summary: Constitutional law – review in terms of Promotion of Administrative Justice Act 3 of 2000 – whether the first appellant complied with s 79(18) of the Local Government Ordinance 17 of 1939 (Transvaal) and s 14 of the Local Government: Municipal Finance Management Act 56 of 2003 before it alienated a public open space (a park) to the second appellant and whether the first appellant complied with s 68 read with s 67 of the Ordinance before it decided to close the public open space permanently.

ORDER

On appeal from: North Gauteng High Court, Pretoria (Tolmay J sitting as court of first instance):

1. The order of the court a quo reviewing and setting aside the first appellant's resolution of 25 October 2007, to invite tenders for the alienation and development of the public open space is set aside;
2. The order of the court a quo reviewing and setting aside the first appellant's resolution of 31 January 2008, to accept the second appellant's tender for the alienation and development of the public open space is set aside; and
3. The order declaring the deed of sale between the first and second appellants dated 8 February 2008 (for the purchase of the property) *ab initio* invalid is set aside;
4. Save as above, the appeal is dismissed. The first respondent is ordered to pay the first and second appellants' costs of appeal, including, in the case of the second appellant, the costs of two counsel.

JUDGMENT

SOUTHWOOD AJA (NUGENT, CACHALIA, LEACH and PETSE JJA CONCURRING):

[1] The issue in this appeal is whether the Emalahleni Local Municipality (first appellant) complied with the relevant provisions of the Transvaal Local Government Ordinance 17 of 1939 (LGO) and the Local Government : Municipal Finance Management Act 56 of 2003 (MFMA) before it sold or

alienated a portion of Stand 2243 Witbank Extension 10 (the property) to the Witbank Muslim Jamaat (second appellant) and decided to close the property permanently.

[2] In an application for review in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) in the North Gauteng High Court, Pretoria, Propark Association (referred to herein as the respondent as the second respondent played no part in the proceeding) obtained orders –

(a) Reviewing and setting aside the first appellant's resolutions –
    (i) of 25 October 2007, to invite tenders for the alienation and development of the property;
    (ii) of 31 January 2008, to accept the second appellant's tender for R1 076 000 for the alienation and development of the property; and
    (iii) of 25 November 2008, to permanently close the property;
(b) Declaring the deed of sale between the appellants dated 8 February 2008 (for the purchase of the property) *ab initio* invalid; and
(c) Ordering the appellants to restore the *status quo ante* in respect of the property.

The appellants appeal against all these orders with the leave of the court a quo. The appellants persist with their contentions that the respondent does not have *locus standi* and that there was an unreasonable delay before the respondent brought its application for review. Lawyers for Human Rights (LHR), which was granted leave to intervene as an *amicus curiae,* filed heads of argument and sought leave to file an affidavit in support of its contentions at the hearing of the appeal.

[3] With regard to the sale and alienation of the property, the respondent's case in its founding affidavit was that the first appellant had decided to sell, and had in fact sold and transferred, the property to the second appellant before the first appellant had complied with the provisions of s 79(18) of the LGO and s 14 of the MFMA. The first appellant contended that it was not obliged to comply with s 79(18) of the LGO (it admitted in its answering affidavit that it had not done so before entering into the deed of sale or

alienating the property) and that it was only obliged to comply with s 14 of the MFMA, which it had done. With regard to the closing of the property the respondent's case in the founding affidavit was that the first appellant was obliged to comply with s 68 read with s 67 of the LGO before it could decide to permanently close the property and that the first appellant had failed to do so. The first appellant contended that it had complied or substantially complied with these provisions.

[4] Witbank Extension 10 is an established residential township in Emalahleni. Before it was subdivided and the property was transferred to the second appellant, Stand 2243 was 10 385m² in extent and was zoned 'Public Open Space' (Primary uses: parks, public sport and recreation grounds, public open space, gardens, play parks). In terms of s 63 of the LGO the council of the first appellant was obliged to manage and control the stand which was vested in the council 'in trust to keep the same open (save as is otherwise provided in this Ordinance or any by-law), and in repair so far as the finances of the council will permit, for the use and the benefit of the inhabitants'.

[5] The salient facts are as follows: During 2006 and 2007 the second appellant lobbied the national Minister of Public Works to allocate or identify a site in Emalahleni that the second appellant could acquire for the purpose of erecting a mosque. The second appellant also approached the Mayor of Emalahleni with a similar request. The first appellant receives many such requests from religious organisations of different denominations.

[6] The first appellant's municipal manager then instructed Mr Eric Parker, the Director: Development Planning, to identify potential sites suitable for 'church sites'. Mr Parker identified seven such sites including erf 2243 Witbank Extension 10. On 2 February 2007 he prepared a memorandum in which he identified the sites. (The first appellant's deponent alleges that the municipal manager instructed Mr Parker to identify sites that were not needed by the first appellant to provide a minimum level of basic municipal services – a requirement of s 14(2) of the MFMA – which Mr Parker confirms. However,

it is noteworthy that in his memorandum Mr Parker did not refer to such an instruction or state that the sites identified are such sites and no document has been annexed to the answering affidavit in support of these allegations. In the absence of such evidence the bald allegations cannot be accepted).

[7] The first appellant informed the second appellant of the properties identified as potential 'church sites'. After inspecting the sites the second appellant, on 10 May 2007, addressed a letter to the municipal manager to inform him that it regarded the property as the most suitable for its needs and indicated that it wished to acquire the property.

[8] The second appellant's application to purchase the property was considered by the first appellant's Section 79 Committee on 3 October 2007 and by the Mayoral Committee on 16 October 2007. The latter committee was advised that it would be advisable to obtain tenders for the alienation and development of Stand 2243 Witbank Extension 10 and that tenderers should be made aware of the fact that the property would have to be subdivided, rezoned and closed and that an exemption would have to be obtained in respect of an environmental impact assessment, all at the developer's expense.

[9] On 25 October 2007 the first appellant's council resolved to invite tenders for development proposals for the alienation and development of the property for the purposes of a church and ancillary uses 'subject to' a number of conditions. These included the rezoning and sub-division of the stand and the closure of the property. The stated purpose of the resolution was to enable the council to consider the alienation of Stand 2243 to the second appellant and it pertinently referred to three other applications to acquire the property, none of which was from a religious organisation. The report incorporated the Chief Financial Officer's comments that public participation must be completed before the council took a resolution and that the alienation of land must take place in terms of section 14(1) of the MFMA. The report recommended that the stand be alienated by a competitive bidding process in accordance with the MFMA.

[10] On 29 November 2007 the first appellant instructed a valuer to provide a valuation for the property when zoned 'Institutional' (for the purpose of a church). On 8 January 2008 the valuer provided a valuation in the sum of R570 000.

[11] On 30 November 2007 and 7 December 2007 the first appellant published in the Witbank News invitations to submit development proposals for the alienation and development of the property, which would be subject to the conditions in the bid documentation. The invitation was also attached to the first appellant's notice boards.

[12] The first appellant received two proposals: one from Shalom Ministries for the sum of R399 000 (including VAT) and the other from the second appellant in the sum of R1 140 896.04 (including VAT). The first appellant's Bid Evaluation Committee evaluated the two proposals and recommended that the second appellant's proposal be accepted subject to a number of conditions. The Bid Evaluation Committee's report records that the development of the property for the purpose of creating a church was approved by the council on 16 October 2007 and that the council resolved that proposals should be invited for the alienation and development of the property subject to sixteen conditions.

[13] On 31 January 2008 the first appellant's Bid Adjudication Committee accepted the Bid Evaluation Committee's recommendation with a minor amendment.

[14] The municipal manager accepted the two committees' recommendations and, on 5 February 2008, the municipal manager notified the second appellant that its proposal had been accepted subject to fourteen conditions; requested the second appellant to indicate whether these conditions were acceptable and informed the second appellant that as soon as it received such indication the council would commence with the permanent closing of the property.

[15] On 8 February 2008 the appellants signed the deed of sale prepared by the first appellant's attorneys. The agreement recorded that the first appellant sold the property to the second appellant 'subject to the conditions, limitations and servitudes (if any) referred to in the existing Title Deed to the property, compliance with: The Local Government: Municipal Finance Management Act No 56 of 2003, any other Acts, ordinance by law or regulations as may be applicable to the sale, and subject to the following conditions and terms as set out in this agreement and as incorporated in terms of the inner procedure as undertaken by Emalahleni Local Municipal Council'. (It is common cause that the agreement was subject to suspensive conditions, *inter alia*, that there must be compliance with the relevant provisions of the LGO and the MFMA; that the second appellant have the property rezoned from 'Public open space' to 'Institutional'; that the second appellant have stand 2243 subdivided so that approximately 1000m² would be retained as public open space; that the first appellant permanently close the property in accordance with s 68 of the LGO and that the second appellant obtain authorization to undertake a listed activity in terms of s 22 of the Environment Conservation Act 73 of 1989.).

[16] On 28 March 2008, purporting to act in terms of s 67 of the LGO and s 21(1)*(a)* of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act), the first appellant gave notice in the Provincial Gazette and the Witbank News that the first appellant intended to permanently close erf 2243 Emalahleni Extension 10 and indicated where the relevant plan could be inspected and when and where objections and recommendations could be lodged. Another notice was also placed at the property for two weeks.

[17] Propark's members, who were ignorant of the fact that the first and second appellants had already entered into the sale agreement, lodged objections to the closure of the public open space. Some of them also objected to the alienation of the property. The first appellant's Mayoral Committee considered these objections and made recommendations to the council. On 26 June 2008 the council resolved that –

(a) The objections to the permanent closure and alienation of a Portion of Public Open Space, erf 2243, Emalahleni Extension 10, were noted;
(b) The objections to the alienation of erf 2243, Emalahleni Extension 10 were rejected based on the reasons in the report of the Director: Development Planning; and
(c) A hearing of the council's Land Use Committee must be arranged in terms of the provisions of the MFMA and the Supply Chain Management Regulations to consider the objections received against the permanent closure of a Portion of Public Open Space, erf 2243, Emalahleni Extension 10.

The council did not accept the recommendation of the Mayoral Committee that a hearing by an independent person be arranged in terms of the MFMA to consider the objections to the alienation of the property. It simply noted, and then rejected, the objections to the alienation despite the fact that the objections were not lodged in accordance with any procedure prescribed by the LGO or the MFMA.

[18] On 31 July 2008 the first appellant notified the objectors that in terms of s 67 of the LGO and s 62 of the Systems Act the hearing to consider the objections to the permanent closure of the property would take place on 19 August 2008.

[19] On 19 August 2008, at the hearing of the first appellant's Land Use Committee to consider objections to the permanent closure of the property, the committee resolved that 'more information was needed to take a resolution and that a further investigation be conducted with regard to the processes which were followed'. At the hearing the objectors pointed out that the procedures prescribed by ss 68 and 67 of the LGO had not been complied with.

[20] On 25 November 2008, the Land Use Committee met again to consider a further report of the Director: Development Planning. The committee approved the permanent closure of the property. It did not uphold the

objections to the closure *inter alia* because 'the public participation process as prescribed by ss 67 and 68 of the Local Government Ordinance, 1939, was substantially complied with and afforded the public sufficient opportunity to lodge objection'. (The first appellant's deponent simply refers to the resolution. He sets out no facts to show that there was substantial compliance with ss 68 and 67 of the LGO. On the strength of the resolution he alleges that the procedure prescribed by ss 68 and 67 was complied with, alternatively, substantially complied with. This is clearly not correct as the first appellant did not give notice of the first appellant's intention to permanently close the property to any of the owners of the abutting properties and there is no evidence to show how the notice was displayed on the property. It also appears that none of the objectors was present at the meeting because no notice of the meeting was given.)

[21] On 9 December 2008 the first appellant informed the respondent's members of the resolution taken on 25 November 2008 and they were informed of their right to appeal.

[22] On 23 December 2008 the respondent's members lodged an appeal against the decision to close the property and, on 14 October 2009, they were informed that their appeal against the decision had been dismissed.

[23] The respondent launched its application in March 2010.

[24] As far as the sale and alienation of the property are concerned, it is clear that two statutory provisions were applicable: s 79(18) of the LGO and s 14 of the MFMA. The relevant part of s 79(18) of the LGO reads:

'**79 General powers** – The council may do all or any of the following things, namely –

(18)*(a)* …[S]ubject to the succeeding paragraphs and the provisions of any other law –

(i) let, sell, exchange or in any other manner alienate or dispose of any movable or immovable property of the council. . .

(b) Whenever a council wishes to exercise any of the powers conferred by paragraph *(a)* in respect of immovable property. . . the council shall cause a notice of the resolution to that effect to be –

(i) affixed to the public notice board of the council; and

(ii) published in a newspaper in accordance with section 91 of the Republic of South Africa Constitution Act, 1983;

in which any person who wishes to object to the exercise of such power, is called upon to lodge his objection in writing with the town clerk within a stated period of not less than fourteen days from the date of the publication of the notice in the newspaper. . . .

(c) Where any objection is received by the town clerk in terms of paragraph *(b),* the council shall not exercise the power concerned if it is –

(i) a council referred to in Part I or II of the Sixth Schedule to this Ordinance unless the council has considered every objection;

(d) A council wishing to exercise any of the powers contemplated in paragraph *(b)* shall cause a valuer or associated valuer registered in terms of the provisions of the Valuers' Act, 1982 (Act 23 of 1982), to –

(ii) evaluate the immovable property it wishes to sell, exchange or in any other manner alienate or dispose of. . .

(e) A council, excluding a council referred to in Part I or II of the Sixth Schedule to this Ordinance shall not –

(ii) sell, alienate or dispose of immovable property in any other manner…at a lower amount than the amount at which it has been evaluated,'

in accordance with paragraph *(d). . . .*'

[25] In *Diggers Development (Pty) Ltd v City of Matlosana & another*[1] this court held that the section is 'triggered' once the council 'wishes' to exercise any power referred to in s 79(18)*(a)* and that the council must then publish the notices to enable persons to object. This court also held that the word 'wish' means 'a desire expressed in words, or the expression of such' and that, in context, the word connotes a settled intention.[2] In *Ferndale Crossroads Share Block (Pty) Ltd & others v Johannesburg Metropolitan Municipality & others*[3] this court held that s 79(18)(*b*) is intended to ensure that no immovable

[1] *Diggers Development (Pty) Ltd v City of Matlosana & another* [2012] 1 All SA 428 (SCA).
[2] *Diggers Development* supra 22.
[3] *Ferndale Crossroads Share Block (Pty) Ltd & others v Johannesburg Metropolitan Municipality* 2011 (1) SA 24 (SCA).

property of a local authority is alienated or disposed of without notice to its ratepayers, and without affording to interested persons the opportunity to object and to have such objections duly considered and that 'alienation' and 'disposal' are concepts that are obviously to be liberally construed in the public interest. The court summarised the effect of non-compliance thus*:*

'The effect of non-compliance with the provisions of section 79(18)*(b)* and *(c)* of the ordinance, ie failure by the respondent to cause a notice of its resolution, embodying its intention to let the area of land described in the agreement, to be affixed to its public notice board, and to publish it (the resolution) in a newspaper, calling for objections to the proposed lease before exercising the power to let, is that the jurisdictional fact necessary for the exercise of the power was absent. In terms of section 79(18)*(c)* a council "*shall not* exercise the power [to let immovable property] . . . unless [it] has considered every objection". (My emphasis.) In the absence of the necessary jurisdictional fact the respondent could not validly exercise the power, with the result that the lease element of the agreement was *ab initio* invalid.'[4]

[26] Neither s 79(18) nor the *Diggers* judgment stipulate when the provisions of s 79(18)*(b)* must be complied with after the section has been 'triggered' but it is clear that this must happen between the time the council forms a settled intention to exercise the s 79(18)*(a)* power and the time when it actually exercises the power. This appears from s 79(18)*(c)* which provides that the council shall not exercise the power unless it has considered every objection (which implies that it has given the required notice in the prescribed manner and received and considered the objections).

[9] The relevant part of s 14 of the MFMA reads:

'**Disposal of capital assets –**

(1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide a minimum level of basic municipal services.

(2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public–

[4] *Ferndale Crossroads* supra 22.

(a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services;

(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(5) Any transfer of ownership of a capital asset in terms of subsection (2) . . . must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.'

Clearly, what is contemplated is that the council must take the decision referred to in subsection (2)*(a)* and that it must be recorded in the minutes that the council has considered, in accordance with subsection (2)*(b),* the economic and community value to be received in exchange for the asset and that this must happen before ownership of the capital asset is transferred or permanently disposed of.

[27] There is no evidence that the first appellant complied with the abovementioned provisions of s 14 of the MFMA or s 79(18) of the LGO at any stage (the first appellant admits that it did not comply with s 79(18)). Although the first appellant alleged that it complied with s 14 of the MFMA and the first appellant's Supply Chain Management Policy before it alienated the property, the first appellant's deponent did not provide the facts for this conclusion. There is no allegation that, at a meeting open to the public, the first appellant decided that the stand was not needed to provide the minimum level of basic municipal services and he did not set out the reasonable grounds for such a decision. There was also no allegation that, at a meeting open to the public, the council considered the economic and community value to be received in exchange for the stand. The first appellant's deponent only referred to a valuation obtained for the stand (R570 000) and the tender price offered (R1 076 000) but said nothing about the 'community value' that would be received in exchange for the stand.

[28] The respondent's case in the founding affidavit, which was strenuously argued on appeal, was that the first appellant had to comply with these provisions before it resolved on 25 October 2007 to invite tenders for the

alienation and development of the property, before it resolved on 31 January 2008 to accept the second appellant's tender, before it entered into the deed of sale on 8 February 2008 and before it transferred the property to the second appellant on 18 December 2009. While the use of the word 'triggered' in the *Diggers Development* case seems to suggest that there must be immediate compliance with s 79(18)*(b)* before anything is done to give effect to the settled intention to sell, the answer to this is to be found in the interpretation of the section referred to. There had to have been compliance with the section before the property was sold or alienated. In the case of s 14 of the MFMA there had to have been compliance before the property was transferred. None of the first three actions constituted the sale, transfer or alienation of the property while the fourth act clearly did. The two resolutions were necessary to determine the identity of the purchaser of the property and the price for which it would be sold, but they were simply preparatory acts, not the sale or the alienation of the property. As far as the deed of sale is concerned, it was subject to suspensive conditions which had not yet been fulfilled: in other words there was not yet a completed agreement of sale.[5] The orders granted in respect of these resolutions and the deed of sale, were therefore wrongly granted. On the other hand, the transfer of the property (the alienation) to the second appellant before the first appellant complied with the relevant statutory provisions was unlawful and the order to restore the *status quo ante* was properly granted by the high court. The first appellant's counsel conceded this in argument and indicated that the first appellant would comply with the relevant provisions before the deed of sale develops into a completed contract of sale and the property is transferred to the second appellant. This is clearly correct and I did not understand the second appellant's counsel to seriously contend otherwise. The appeal against the orders reviewing and setting aside the resolutions taken on 25 October 2007 and 31 January 2008 and declaring the deed of sale entered into on 8 February 2008 invalid *ab initio* must be upheld. I now turn to the resolution to permanently close the park.

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[5]*Corondimas & another v Badat* 1946 AD 548 at 551; *Geue & another v Van der Lith & another* 2004 (3) SA 333 (SCA) para 8; *Paradyskloof Golf Estate (Pty) Ltd v Stellenbosch Municipality* 2011 (2) SA 525 (SCA) para 17; *Diggers Development (Pty) Ltd v City of Matlosona & another* [2012] (1) All SA (1) 428 (SCA) paras 23-29.

[29] Section 68 of the LGO reads:

'Notwithstanding anything to the contrary contained in this Ordinance, the council may close permanently, either in whole or in part, any square, open space, garden, park or other enclosed space, vested in the council under section 63: Provided that the provisions of section 67 shall *mutatis mutandis* apply to the council in the exercise of the power hereby conferred.'

[30] The relevant part of s 67 provides in respect of a park or open space (with the necessary changes) that a council (the first appellant's council is a council referred to in Part II of the Sixth Schedule to the Ordinance) may permanently close such park or open space, but only after the following conditions have been complied with –

(a) the council has accepted a proposal for the closing of the park or open space (s 67(1));

(b) the council has caused a plan to be prepared showing the position of the boundaries of the park or open space to be closed (s 67(2));

(c) on completion of the plan, the council has published a notice in the Provincial Gazette and in at least one English and one Afrikaans newspaper, circulating in the council's area of jurisdiction, setting out briefly the council's proposals, stating that the plan is open for inspection at a place and during the hours specified in the notice and calling upon any person who has any objection to the proposed closing or who will have any claim for compensation if such closing is carried out to lodge his objection or claim, as the case may be, with the council in writing, not later than the specified date which shall be at least 30 days from the date of publication in the Provincial Gazette or newspaper in which the notice is last published (s 67(3)*(a)*);

(d) the council has at least 30 days before the time for lodging of objections and claims will expire –

> (i) caused copies of the notice to be posted in a conspicuous manner on or near the park or public space which it is desired to close and has caused such copies to remain posted as aforesaid until the time for lodging objections and claims has expired (s 67(3)*(b)*(i));

(ii) caused a copy of the notice to be served on the owners or reputed owners, lessees or reputed lessees and the occupiers of all properties abutting upon the park or open space which it is proposed to close: Provided that if the name and address of any such owner, reputed owner, lessee, reputed lessee or occupier cannot after reasonable enquiry be ascertained a copy of the notice need not be served on him; Provided further that if any such property has more than one lessee, reputed lessee or occupier a copy of the notice may be posted on the principal door of the main building or in another conspicuous place on such property and need not be served on every such lessee, reputed lessee or occupier, except where such property is a sectional titles property, in which case the notice shall also be served on the owners of the units or body corporate (s 67(3)*(b)*(ii));

(e) any person who considers that his interests will be adversely affected by the proposed closing may at any time before the time for the lodging of objections and claims has expired, lodge with the council a claim, in writing, for any loss or damage which will be sustained by him if the proposed closing is carried out. If such closing is carried out, the council shall pay compensation for the damage or loss sustained by such person, the amount of compensation, in default of mutual agreement, to be determined by arbitration. In assessing the amount of compensation the benefit or advantage derived or to be derived by the claimant by reason of the closing shall be taken into account. If such person however, fails to lodge his claim with the council during the period during which objections and claims may be lodged, he shall not be entitled to any compensation for any damages or loss sustained by him (s 67(4)*(a)*);

(f) if the council finds that the payment of compensation will be too costly it may resolve not to proceed with the proposed closing (s 67(4)*(b)*);

(g) after the date specified for the lodging of objections and claims the council has considered every objection lodged and decided to carry out the proposed closing (s 67(6)*(a)*);

(h) after the proposed closing has been carried out, the council must forthwith, if the closing was carried out in terms of paragraph (6)*(a)*, notify the Surveyor-General and the Registrar of Deeds or other registration officer

concerned in writing that the closing has been effected properly in accordance with the provisions of the Ordinance (s 67(9)*(a)*);

(i) the council must supply the Surveyor-General with a diagram framed by an admitted Land Surveyor showing all the details of the closing. The Surveyor-General shall thereupon cause such amendments to be made in the general plan of the township as are necessary to show such closing and the Registrar of Deeds or other registration officer concerned shall thereupon make corresponding entries in his registers (s 67 (10)).

[31] Section 67 therefore provides in considerable detail for a notice to be given, the contents of the notice to be given, the manner in which notice must be given, the parties to whom notice must be given and the time to be allowed to interested parties to lodge objections or claims for compensation. The purpose of these provisions is clearly to ensure that residents are given every opportunity to take steps to safeguard their interests in the open space. In addition, the provisions of Chapter 4 of the Systems Act must be complied with as these provisions are designed to ensure public participation in decisions taken by the council which affect their interests.

[32] The first appellant's deponent alleges that the first appellant complied, or substantially complied, with these detailed provisions but does not set out the facts in support of this allegation. He does not refer to the council having accepted a proposal to close the park or attach a copy of the plan drawn up to show the boundaries of the closed space. The notices that he refers to do not comply with s 67 and the manner in which notice was given also does not comply with the section. There is no proof of the fact that the notices were displayed conspicuously at the park for the prescribed period and the first appellant's deponent states that the first appellant did not give the prescribed notice to the parties residing in the properties abutting on the park. The first appellant did receive some objections and obviously rejected them but it cannot be found on the first appellant's evidence that the first appellant complied or substantially complied with the provisions of s 67. The first appellant's deponent also does not allege that the first appellant complied with ss 21 and 21A of the Systems Act which is essential for compliance with the

council's community participation obligations in Chapter 4 of the Systems Act. The first appellant therefore acted unlawfully in resolving to close the property and the high court correctly reviewed and set aside the resolution to do so. The appeal against that order must also fail.

[33] The appellants contended that the respondent brought its review application in the high court outside the period of 180 days prescribed by s 7(1) of PAJA. They argued that each decision that the respondent sought to review was a separate decision and that the respondent was required to bring its review in respect of each decision within the prescribed period. The high court correctly did not uphold this argument which was not advanced with much conviction on appeal. As already pointed out, the transaction required that the stand be subdivided, rezoned and closed and that an exemption be obtained for an environmental impact assessment. All these matters were inextricably linked – there was, for all practical purposes, one composite transaction – and the refusal of the appeal against the decision to close the park was the last step before the respondent could institute its review application. That was done within the prescribed period.

[34] Although the appellants addressed the issue of locus standi in their heads of argument, counsel did not attempt of persuade this court of the correctness of the point in oral argument before this court. In my view there is no substance in the point and it requires no further consideration.

[35] LHR obtained leave to make submissions regarding the infringement of the second appellant's members' rights to freedom of religion and to practise their religion and form, join and maintain religious associations in terms of ss 15 and 31 of the Constitution in the event of the review succeeding. LHR gave notice that, at the hearing, it would seek leave to file an affidavit in support of the submissions it wished to make. Unfortunately LHR failed to file its affidavit before the hearing or comply with the provisions of Rule 16 of the rules of this court. Furthermore, LHR's counsel made no submissions as foreshadowed in LHR's heads of argument and it is therefore not necessary to consider the matters raised there.

[36] The appellants have achieved substantial success in this appeal and are entitled to their costs of appeal. The second appellant was represented by two counsel, and the costs of two counsel will be allowed.

[37] The following order is made:

1. The order of the court a quo reviewing and setting aside the first appellant's resolution of 25 October 2007, to invite tenders for the alienation and development of the public open space is set aside;
2. The order of the court a quo reviewing and setting aside the first appellant's resolution of 31 January 2008, to accept the second appellant's tender for the alienation and development of the public open space is set aside; and
3. The order declaring the deed of sale between the first and second appellants dated 8 February 2008 (for the purchase of the property) *ab initio* invalid is set aside;
4. Save as above, the appeal is dismissed. The first respondent is ordered to pay the first and second appellants' costs of appeal, including, in the case of the second appellant, the costs of two counsel.

B R SOUTHWOOD
ACTING JUDGE OF APPEAL

APPEARANCES

For First Appellant:	T STRYDOM SC Instructed by: D K Siwela Attorneys Pretoria Honey Attorneys Bloemfontein
For Second Appellant:	N CASSIM SC (with S BUDLENDER) Instructed by: Ayoob Kaka Attorneys c/o Friedland Hart Solomon & Nicolson Pretoria Symington & De Kok Bloemfontein
For Respondent:	J G BERGENTHUIN SC Instructed by: Van Zyl Le Roux Inc Pretoria McIntyre van der Post Bloemfontein
For *Amicus Curiae*:	R JANSEN (with G SNYMAN) Instructed by: Lawyers for Human Rights Pretoria Webbers Bloemfontein