THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 1112/2019

In the matter between:

MERIFON (PTY) LTD **APPELLANT**

and

GREATER LETABA MUNICIPALITY **FIRST RESPONDENT**

HOUSING DEVELOPMENT AGENCY **SECOND RESPONDENT**

Neutral citation: *Merifon (Pty) Ltd v Greater Letaba Municipality and Another* (1112/2019) [2021] ZASCA 50 (22 April 2021)

Coram: PETSE AP, MAKGOKA and SCHIPPERS JJA and GORVEN and POYO-DLWATI AJJA

Heard: 23 February 2021

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 09h45 on 22 April 2021.

Summary: Agreement for purchase and sale of immovable property – validity – section 19 of the Local Government: Municipal Finance Management Act 56 of 2003 – municipality concluding agreement without compliance with peremptory provisions of s 19 – claim for specific performance by seller – seller not entitled to order of specific performance – no court competent to compel a party to commit an illegality.

ORDER

On appeal from: Limpopo Division of the High Court, Polokwane (Ledwaba AJ sitting as court of first instance):

The appeal is dismissed with costs, including the costs attendant upon the employment of two counsel.

JUDGMENT

Petse AP (Makgoka and Schippers JJA and Gorven and Poyo-Dlwati AJJA concurring):

[1] The doctrine of legality and the rule of law lie at the heart of the Constitution.[1] There are numerous reported decisions of our courts that have unequivocally affirmed the fundamental truism that the exercise of public power derives from the law. Accordingly, no organ of state or public official may act contrary to or beyond the scope of their powers as laid down in the law.[2] This is one of the foundational values of our constitutional democracy.

[2] In *Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another* [2008] ZACC 8; 2008 (5) SA 94 (CC); 2008 (9) BCLR 865 (CC) Madala J aptly put it thus:

'Certain values in the Constitution have been designated as foundational to our democracy. This in turn means that as pillar-stones of this democracy, they must be observed scrupulously. If these values are not observed and their precepts not carried out conscientiously, we have a recipe for a constitutional crisis of great magnitude. In a state predicated on a desire to maintain the rule of law, it is imperative that one and all should be driven by a moral obligation to ensure the continued survival of our democracy.'[3]

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[1] Section 1*(c)* of the Constitution of the Republic of South Africa Act 108 of 1996.
[2] *Affordable Medicines Trust and Others v Minister of Health and* Another [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) para 49 and paras 75 to 77; *Albutt v Centre for the Study of Violence and Reconciliation and Others* [2010] ZACC 4; 2010 (3) SA 293 (CC); 2010 (2) SACR 101 (CC); 2010 (5) BCLR 391 (CC) paras 49-50; *Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others* [2017] ZACC 17; 2017 (9) BCLR 1108 (CC) paras 25, 110-112; *Minister of Constitutional Development and Another v South African Restructuring and Insolvency Practitioners Association and Others* [2018] ZACC 20; 2018 (5) SA 349 (CC); 2018 (9) BCLR 1099 (CC) paras 27-29.
[3] Paragraph 80.

[3] Almost ten years previously, in *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC);1998 (12) BCLR 1458 (CC), the Constitutional Court was even more emphatic in underscoring the principle of legality. The Court said the following:

'[A] local government may only act within the powers lawfully conferred upon it. There is nothing startling in this proposition - it is a fundamental principle of the rule of law, recognised widely, that the exercise of public power is only legitimate where lawful. The rule of law - to the extent at least that it expresses this principle of legality - is generally understood to be a fundamental principle of constitutional law.'[4]

[4] The central question which arises for determination in this appeal is whether it would be appropriate, in the context of the facts of this case, for this Court to grant an order of specific performance in favour of the appellant, Merifon (Pty) Ltd (Merifon), together with consequential relief sought by Merifon in this litigation. This question pertinently arises because of the provisions of s 19 of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA). The section, which is headed '**Capital projects**', reads as follows:

'(1) A municipality may spend money on a capital project only if–

(a) the money for the project, excluding the cost of feasibility studies conducted by or on behalf of the municipality, has been appropriated in the capital budget referred to in section 17(2);

(b) the project, including the total cost, has been approved by the council;

(c) section 33 has been complied with, to the extent that that section may be applicable to the project; and

[4] Paragraph 56 (Citations omitted).

(d) the sources of funding have been considered, are available and have not been committed for other purposes.

(2) Before approving a capital project in terms of subsection (1)*(b)*, the council of a municipality must consider–

(a) the projected cost covering all financial years until the project is operational; and

(b) the future operational costs and revenue on the project, including municipal tax and tariff implications.

(3) A municipal council may in terms of subsection (1)*(b)* approve capital projects below a prescribed value either individually or as part of a consolidated capital programme.'

[5] The factual background to this appeal may be summarised as follows. For a considerable length of time, the Greater Letaba Municipality (the municipality) had been in dire need of land for human settlement within its area of jurisdiction. Yet it did not have the money to acquire land for this purpose. As a result, it lost out, over several years, on the Limpopo Government's provincial allocation of funds to municipalities in the province to build low-cost houses for the less privileged citizens residing within its municipal area because it did not have land.

[6] In order to extricate itself from this predicament the Executive Mayor at the time, on 4 April 2011, wrote a letter to the Provincial Member of the Executive Council (MEC) of the Department of Local Government and Housing (the department) in which he proposed that the department purchase three farms – identified in the letter – for the municipality. The department expressed its willingness to assist. To this end, it engaged the Housing Development Agency[5] (the HDA) for assistance. The intervention of the HDA

[5] The Housing Development Agency is an organ of state with juristic personality established in terms of s 3 of the Housing Development Agency Act, 23 of 2008 whose establishment is principally for the purposes of,

yielded positive results. Land was identified and negotiations with a representative of the prospective seller for the purchase of a farm known as Portion 5, 6, and the Remaining Extent of the Farm Mooiplaats 434 LT in the Limpopo Province (the property), commenced. The negotiations bore fruit. In the result, on 6 March 2013, the Head of the department addressed a letter to the municipality in these terms:

'We refer to the above mentioned transaction and hereby [confirm] that the Department in the current financial year ending 31 March 2013 has budgeted the required R52 Million excluding VAT required to acquire the above mentioned property required for human settlements development. The funds will be paid into the trust account of the transferring Attorneys after the Deed of Sale between the Municipality and the Seller has been concluded. The Department will furthermore pay the applicable transfer and registration costs amounting to R209 892.90.'

[7] The letter from the Head of the department was placed before the municipal council for adoption at its special meeting held on 22 March 2013. Amongst the various resolutions adopted at this meeting was one under the caption:

'**COUNCIL RESOLUTION A. 1038/ 22/03/2013 / ACQUISITION OF REMAINING EXTENT AND PORTION 5 AND 6 OF THE FARM MOOIPLAATS 434-LT**'

And the resolution adopted by the council in relation thereto reads:

'1. That the commitment letter from Department of Cooperative Governance, Human Settlements and Traditional Affairs to purchase portion 5 and 6 of the farm Mooiplaats 434-LT is approved.'

[8] Pursuant to the adoption of the resolution described in the preceding paragraph, Merifon concluded a written agreement of sale in respect of the

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inter alia, facilitating the acquisition of land and landed property in order to compliment the capacity of Government across all spheres and providing housing development services for the purpose of creating sustainable human settlements.

property. It turned out, however, that before committing itself to pay the purchase price for the property and transfer costs on behalf of the municipality, the department had, on 18 October 2012, applied to the Provincial Treasury seeking authorisation to disburse the amounts mentioned in its letter of 6 March 2013. But, on 27 March 2013, the Provincial Treasury declined the department's request on the grounds that, inter alia, the purchase price was excessive. This had the effect of scuppering the transaction because it meant that the department could no longer pay over the funds that it had committed for the purchase price. And with the financial year-end being only four days away, this meant that all of the entire unspent funds in the department's 2012/2013 budget would have to be returned to the Treasury. In the interim, Merifon was determined to enforce the agreement it had concluded with the municipality. To that end, its attorneys addressed a letter of demand to the municipality giving the latter 14 days within which to pay the purchase price and transfer costs or, failing that, face legal proceedings enforcing the agreement. This notice was not heeded.

[9] Consequently, during 2014 Merifon instituted an action in the Limpopo Division of the High Court, Polokwane (the high court) against the municipality as first defendant and the HDA as second defendant. Merifon claimed payment, as against the municipality only, of the purchase price of R52 million and transfer costs in the sum of R209 892.90. The foundation for this claim was the agreement of sale for the purchase of property[6] to which reference has already been made in paragraph 8 above. No relief was sought against the HDA. Consequently, the HDA did not enter the fray. It has

[6] The agreement expressly provided that 17 industrial stands situated within the property were to be excluded from the sale.

therefore played no part in this litigation either in the high court or in this Court.

[10] In its particulars of claim, Merifon alleged that on 7 March 2013,[7] represented by a Mr Mangena, and the municipality represented by its municipal manager, Ms Mashaba, it sold the property to the municipality for R52 million. The municipality also bound itself to pay the transfer costs amounting to R209 892.90. Merifon alleged that Ms Mashaba was properly authorised, alternatively, had ostensible authority to represent the municipality.

[11] The municipality resisted the claim on several grounds. For present purposes, it suffices merely to make reference to four of its defences. First, it was denied that its representative had the requisite authority – whether actual, ostensible or otherwise – to enter into the agreement. Second, it pleaded that the agreement was 'illegal and null and void' for want of compliance with s 19 of the MFMA because the subject-matter of the sale constituted a capital project. Third, it alleged that the municipal council 'never approved the purchase of the property including the total costs thereof'. Fourth, it was asserted that the municipality was precluded from incurring expenditure otherwise than in accordance with 'an approved budget and within the limits of the amounts appropriated . . . in the approved budget'.

[12] The municipality also filed a counter-claim in which it sought an order declaring the agreement null and void and unenforceable. In the alternative –

[7] There was a dispute at the trial in regard to the date of sale. The municipality's witness testified that she signed the agreement after 22 March 2013. But nothing turns on this.

and conditional upon the first counter-claim being unsuccessful – the municipality alleged that the agreement fell to be rectified because to the knowledge of the parties the purchase price was to be paid not by the municipality but by the Limpopo Provincial Government: Department of Cooperative Governance, Human Settlements and Traditional Affairs (CoGHSTA).

[13] The action came before Ledwaba AJ for trial who delivered his written judgment on 18 July 2019. He dismissed the action and granted judgment in favour of the municipality with costs, declaring the agreement 'null and void and unenforceable'. After considering the import of the relevant provisions of the MFMA, the learned Acting Judge in essence found, inter alia, that the municipality's representative lacked the authority to sign the agreement because the municipality had at no stage resolved 'to acquire the property'. And the municipality had not appropriated funds for the acquisition of the property either in its 2012/2013 annual approved budget or adjusted budget. He further held that the municipal representative's authority to conclude the agreement, actual or ostensible, had in any event not been established. Finally, insofar as estoppel was concerned, upon which Merifon also relied, he held that it did not avail Merifon. He reasoned thus:

'Failure by a statutory body to comply with the provisions which the legislature has prescribed for the *validity* of a specified transaction cannot be remedied by estoppel because that would give validity to a transaction which is unlawful and therefore ultra vires.'

Subsequently, on 30 September 2019, Makgoba JP granted Merifon leave to appeal to this Court on the basis that there was 'a compelling reason why the appeal . . . should be heard . . .'.

[14] Apart from s 19 of the MFMA, there are also other provisions of the MFMA to which reference has been made both in the judgment of the high court and counsel's heads of argument. As these provisions play a significant role in the determination of the issues that arise in this appeal, it is necessary to give a brief overview of them before dealing with the issues in the context of the relevant statutory framework.

[15] According to its preamble, the MFMA seeks to 'secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government . . .'. One of the objects of the MFMA is 'to secure sound and sustainable management of the fiscal and financial affairs of municipalities . . . by establishing norms and standards and other requirements for–

(a) ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;

(b) the management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings;

(c) budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government;

(d) . . .

(e) . . .

(f) supply chain management; and

(g) . . .'.[8]

[8] See s 2.

[16] Section 3(1) provides that the MFMA applies to–

(a) all municipalities;

(b) all municipal entities; and

(c) national and provincial organs of state to the extent of their financial dealings with municipalities.

Section 3(2) in turn provides that where there is any inconsistency between any provision of the MFMA and any other legislation which regulates any aspect of the fiscal and financial affairs of municipalities, the provisions of the MFMA shall prevail.[9]

[17] Section 15 provides for the appropriation of funds for expenditure. It reads:

'A municipality may, except where otherwise provided in this Act, incur expenditure only–

(a) in terms of an approved budget; and

(b) within the limits of the amounts appropriated for the different votes in an approved budget.'

The adoption of annual budgets for municipalities is provided for in s 16.[10] Section 17(2) provides that an 'annual budget must generally be divided into a capital and an operating budget in accordance with international best practice, as may be prescribed'.

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[9] It reads:
'In the event of any inconsistency between a provision of this Act and any other legislation in force when this Act takes effect and which regulates any aspect of the fiscal and financial affairs of municipalities or municipal entities, the provision of this Act prevails.'

[10] Section 16 is headed '**Annual budgets**' and it reads:
'(1) The council of a municipality must for each financial year approve an annual budget for the municipality before the start of that financial year.
(2) In order for a municipality to comply with subsection (1), the mayor of the municipality must table the annual budget at a council meeting at least 90 days before the start of the budget year.
(3) Subsection (1) does not preclude the appropriation of money for capital expenditure for a period not exceeding three financial years, provided a separate appropriation is made for each of those financial years.'

[18] Finally, there is s 19 of the MFMA which is central to this appeal. Its provisions have already been quoted in paragraph 4 above. In support of its invocation of s 19, the municipality pleaded that: (a) the proposed acquisition of the property constituted a capital project as contemplated; (b) it could spend money on such a project only if– (i) the money for the project has been appropriated in terms of s 17(2); (ii) the project has been approved by the council; (iii) the sources of funding have been considered, are available and have not been committed for other purposes. In addition, the council is required to consider, before approving a capital project, that the projected cost covering all financial years until the project is operational and future operational costs and revenue on the project have been catered for.

[19] The municipality then asserted that: (a) the purchase price for the property was never budgeted for; (b) its council never approved the project, including the total cost thereof. Thus, the sources of funding were never considered. Nor were projected costs covering all financial years until the project is operational; and future operational costs and revenue considered. Consequently, it was contended that the agreement that Merifon sought to enforce was plainly unenforceable for want of compliance with the peremptory provisions of s 19.

[20] It will be convenient first to deal with the most important issue in this appeal for if it is determined in favour of the municipality that result would render it unnecessary to delve into the other issues. This issue concerns the question whether s 19 finds application in this litigation at all, to which I now turn.

[21] The language of s 19 could not be clearer. It is by now well established that in interpreting a statutory provision the language employed, its nature and scope, the mischief sought to be prevented, consequences for non-compliance and its purpose are all relevant factors.[11] Equally important is the context in which the provision under consideration is located.[12] There can be no doubt that one of the manifest underlying purposes of s 19 is to prevent municipalities from spending money on capital projects that have not been budgeted so as to ensure that transparency, accountability as well as fiscal and financial discipline are fostered. Thus, it is beyond question that s 19 and the other provisions adverted to above are intended to promote good governance within the local sphere of government.

[22] Does s 19 apply to the transaction under consideration here? There can be no denying that the procurement of land entails an acquisition of a capital asset and thus a capital project as contemplated in s 19. There was no dispute between counsel as to this categorisation. Nevertheless, counsel for Merifon initially sought to argue that this section was not implicated in the litigation.

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[11] See, for example, *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18; *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12; 2007 (10) BCLR 1027 (CC) ; 2007 (6) SA 199 (CC) para 53; *Independent Institute of Education (Pty) Limited v KwaZulu-Natal Law Society and Others* [2019] ZACC 47; 2020 (2) SA 325 (CC); 2020 (4) BCLR 495 (CC) para 41; *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) para 90; *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 28.

[12] See: *Jaga v Dönges N O and Another; Bhana v Dönges, N O and Another* 1950 (4) SA 653 (A) at 662G-H in which Schreiner JA said:

'Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that "the context", as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background.'

But when his attention was drawn to the provisions of s 3 (which explicitly states that the MFMA applies to all municipalities) counsel was constrained to accept that s 19 finds application in this case. This notwithstanding, counsel argued that the MFMA does not apply to third parties such as private entities like Merifon. Counsel's acceptance that s 19 binds the municipality raises the question whether this section was in fact complied with by the municipality when it concluded the agreement upon which Merifon relied for the relief it seeks.

[23] Counsel for Merifon argued that the municipality had to all intents and purposes complied with the prescripts of s 19. In developing his argument, counsel submitted that the department had by letter, dated 6 March 2013, confirmed the availability of the requisite funds. And, pursuant thereto, the municipality had, on 22 March 2013, adopted a resolution to acquire the property. In support of the latter contention counsel relied on the council resolution adopted on 22 March 2013. Because of its centrality in counsel's contention, it is necessary to quote this resolution again. It reads:

'1. That the commitment letter from Department of Cooperative Governance, Human Settlements and Traditional Affairs to purchase portion 5 and 6 of the farm Mooiplaats 434-LT is approved.'

[24] But as I see it, this resolution does not bear out counsel's proposition. Even on a charitable interpretation of its terms, it cannot be read to mean that the council in actual fact resolved to acquire the property. On its own terms, it is no more than a mere recordal that '[t]he commitment letter from the Department of Cooperative Governance, Human Settlements and Traditional Affairs to purchase portion 5 and 6 of the farm Mooiplaats 434-LT is approved' whatever this phraseology was intended to mean. This is neither a

case of being pedantic or indulging in pure semantics. Far from it. Rather, it is because a prominent feature of the resolution heavily relied upon does not support the case advanced by Merifon. As already indicated, all that the municipality did was merely to 'approve' the commitment letter from CoGHSTA. In contrast to the council resolution A901/29/04/2011 adopted on 29 April 2011 in relation to the purchase of portion 3 of the selfsame farm Mooiplaats 434-LT which explicitly stated that '[c]ouncil approves that full settlement of R4 million for the purchase of Portion 4 of the farm 434-LT Mooiplaats in the current financial year 2010/2011', the 2013 resolution says nothing of the sort. On the contrary, the 2011 resolution, unlike the one adopted in 2013, is couched in explicit terms leaving no room for any doubt as to its purport.

[25] It therefore follows that the high court was correct in concluding that the agreement which is the foundation of Merifon's claim was legally unenforceable on account of the municipality's non-compliance with the prescripts of s 19. As the performance undertaken by the municipality under the impugned agreement would have been unlawful it cannot be sanctioned through the remedy of specific performance. This conclusion is indeed determinative of the outcome of this appeal.

[26] But Merifon had another string to its bow. Relying on *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd* [2007] ZASCA 28; 2008 (3) SA 1 (SCA) (*RPM Bricks*),[13] Merifon invoked estoppel. However, its counsel was cognisant of the fact that as a general rule estoppel cannot be invoked in circumstances where to uphold it would be tantamount to a court

[13] Paragraphs 11-13.

giving its imprimatur to an illegality.[14] Accordingly, counsel argued that on the facts of this case it was not incumbent upon Merifon to enquire whether the municipality had observed the relevant internal arrangements or formalities, but was entitled to assume that these were in actual fact complied with.[15]

[27] Counsel's proposition is only correct so far as it goes. But in the context of the facts of this case it is plainly unsustainable. This is because the municipality's non-compliance with s 19 falls not in the category for which counsel contended but in a different one where the conclusion of the agreement in issue amounts to an act beyond or in excess of the statutory powers of the municipality as a public authority. Thus, the principle of legality is manifestly implicated for what the municipality had done was at odds with the dictates of s 19. If the peremptory provisions of the MFMA were not complied with, as I have found, the agreement to purchase the property cannot be 'validated' through the doctrinal device of estoppel. To do so would render the relevant provisions of the MFMA nugatory. And the public interest of promoting transparency, accountability and good governance within the local sphere of government, which is the underlying purpose of the MFMA, would be undermined. And, as this Court made plain in *RPM Bricks* (para 13):

'failure by a statutory body to comply with provisions which the legislature has prescribed for the *validity* of a specified transaction cannot be remedied by estoppel because that would give validity to a transaction which is unlawful and therefore ultra vires.' (Citations omitted.)

That is precisely the situation in this case in more than one respect.

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[14] See in this regard: *Trust Bank van Afrika Bpk v Eksteen* 1964 (3) SA 402 (A) at 411H-412B.
[15] See also, *National and Overseas Distributors Corporation (Pty) Ltd v Potato Board* 1958 (2) SA 473 (A); *Potchefstroom se Stadsraad v Kotze* 1960 (3) SA 616 (A).

[28] It remains to deal with the last of Merifon's principal submissions. It relates to the authority of the municipality's municipal manager to conclude the impugned agreement on its behalf. It is not necessary to delve into this aspect in the light of the earlier conclusion that the agreement is hit by s 19. Suffice it to say that whether the municipality's representative had the requisite authority, actual or ostensible, to conclude the agreement on its behalf matters not, because the agreement itself is unenforceable for want of compliance with the peremptory prescripts of the MFMA, and in particular s 19 for the reasons stated above.

[29] To sum up: it was plainly impermissible for the municipality to enter into an agreement involving a capital project contrary to the prescripts of s 19. This being the case, it must ineluctably follow that this Court cannot grant the order for specific performance sought by Merifon in this litigation. To do so in the face of the clear provisions of s 19 would, as Innes CJ said in *Schierhout v Minister of Justice* 1926 AD 99 at 109,[16] be tantamount to granting the court's imprimatur to something proscribed by the law.[17] The reason for this principle is self-evident: no court can compel a party to flout the law and, more fundamentally, the principle of legality which is the cornerstone of our constitutional democracy. And sight should never be lost of the fact that in

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[16] Innes CJ put it thus:
'It is a fundamental principle of our law that a thing done contrary to the direct prohibition of the law is void and of no effect . . . So that what is done contrary to the prohibition of the law is not only of no effect, but must be regarded as never having been done - and that *whether the law giver has expressly so decreed or not; the mere prohibition operates to nullify the act*.' (Emphasis added.)

[17] *Lester v Ndlambe Municipality and Another* [2013] ZASCA 95; [2014] 1 All SA 402 (SCA); 2015 (6) SA 283 (SCA) paras 23-24 and the authorities therein cited; *Home Talk Developments (Pty) Ltd and Others v Ekurhuleni Metropolitan Municipality* [2017] ZASCA 77; [2017] 3 All SA 382 (SCA); 2018 (1) SA 391 (SCA) paras 71-72; *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 99.

exercising their judicial functions, courts are themselves constrained by the principle of legality.[18] With all of Merifon's principal arguments having been determined against it, this result renders it unnecessary to consider the other related issues argued on its behalf.

[30] For all the aforegoing reasons, Merifon's appeal against the dismissal of its action by the high court is ill-founded. It therefore falls to be dismissed. In the result the following order is made:

The appeal is dismissed with costs, including the costs attendant upon the employment of two counsel.

X M PETSE
ACTING PRESIDENT
SUPREME COURT OF APPEAL

[18] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA) paras 15-16.

Appearances

For appellant:	C A da Silva SC (with him D Prinsloo) Instructed by: Becker Attorneys Polokwane, Bellville Symington & De Kok, Bloemfontein
For first respondent:	A B Rossouw SC (with him J A L Pretorius) Instructed by: Mohale Attorneys, Polokwane Honey Attorneys, Bloemfontein
For second respondent:	None