THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 517/2022

In the matter between:

THE MUNICIPAL MANAGER:	
THE CITY OF JOHANNESBURG	
METROPOLITAN MUNICIPALITY	**FIRST APPELLANT**
THE CITY OF JOHANNESBURG	
METROPOLITAN MUNICIPALITY	**SECOND APPELLANT**
JOHANNESBURG WATER (SOC) LIMITED	**THIRD APPELLANT**

and

SAN RIDGE HEIGHTS RENTAL	
PROPERTY (PTY) LTD	**RESPONDENT**

Neutral citation: *The Municipal Manager: The City of Johannesburg Metropolitan Municipality and Others v San Ridge Heights Rental Property (Pty) Ltd* (517/2022) [2023] ZASCA 109 (11 July 2023)

Coram: NICHOLLS, CARELSE, MABINDLA-BOQWANA, WEINER and MOLEFE JJA

Heard: 11 May 2023

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 at 11h00 on 11 July 2023.

Summary: Administrative action – review of the decision to classify property in terms of s 74(1) of the Local Government: Municipal Systems Act 32 of 2000 as a multi dwelling for sewer and sanitation purposes under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) – no reasons provided for administrator's decision in terms of s 5 of PAJA – remittal of decision for reconsideration.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Strydom J, sitting as a court of first instance):

1 The appeal is upheld, to the limited extent indicated below.

2 Paragraph 2 of the order of the court *a quo* is set aside and replaced with the following:

> 'The matter is remitted to the second and/or third respondents to reconsider their classification of Erf 827 Erand Gardens, Ext 36 Township, held by Certificate of Consolidated Title T1100883/2016, in terms of the second respondent's tariff policy under s 74(1) of Act 32 of 2000.'

3 Each party is to pay its own costs in the appeal.

JUDGMENT

Carelse JA (Nicholls, Mabindla-Boqwana, Weiner and Molefe JJA concurring):

[1] This appeal is against the judgment and order of the Gauteng Division of the High Court, Johannesburg, per Strydom J (the high court), in terms of which the high court granted an order in the following terms:

'1. The decision of the second and/or third respondent to classify Erf 827 Erard (*sic*) Gardens, Ext 36 Township, held by Certificate of Consolidated Title T1100883/2016, ("the property") as a "multiple dwelling", taken in terms of the second respondent's tariff policy under section 74(1) of Act 32 of 2000 ("the Act") and/or the second respondent's tariff resolution under section 75*(a)*(ii) of the Act is reviewed, declared invalid and set aside.

2. The decision in paragraph 1 is substituted with a decision that the property is classified as "blocks of flats" in terms of the second respondent's tariff policy and/or tariff resolution referred to above.

3. The respondents are ordered to pay the applicant's costs, including the costs of two counsel where so employed.'

[2] The Municipal Manager of the City of Johannesburg Metropolitan Municipality is the first appellant (the municipal manager). The City of Johannesburg Metropolitan Municipality is the second appellant (the City). Johannesburg Water (SOC) Limited (Johannesburg Water), the third appellant, is the agency responsible for providing water and sanitation services to the residents of Johannesburg and collecting charges on behalf of the City). The respondent, San Ridge Heights Rental Property (Pty) Ltd (San Ridge) is the owner of immovable property described as Erf 827, Erand Gardens in Gauteng measuring 5,2929 hectares, known as San Ridge Heights. The property was purchased from Zotec Developments (Pty) Ltd (Zotec), a property development company.

[3] The facts are largely common cause. San Ridge Heights consists of 42 buildings on a single erf (erf 827). Each of the 42 buildings is a multi-storey building with eight separate flats. In total, there are 470 flats on the erf. Each block has its own communal entrance, except the ground floor units which have direct access to the ground level.

[4] The City and/or Johannesburg Water provide both sewerage and sanitation services to San Ridge Heights. The City and/or Johannesburg Water charge San Ridge for sewerage and sanitation services in terms of its tariff policy, which is adjusted annually. The tariff policy sets out the charges payable by property owners for sewerage and sanitation services for different categories of property. The tariff policy distinguishes between different categories/classification of property, namely, a dwelling unit,[1] a multi dwelling,[2] and a flat.[3] The charges a property owner pays for sewerage and sanitation services is based on the category/classification that the property is assigned.

[5] The City and/or Johannesburg Water classified San Ridge Heights under the category 'multi dwelling', which attracts a tariff of R416.47 per month, per unit effective 1 July 2019. Zotec, the previous owner of San Ridge Heights, lodged an internal appeal, in terms of s 62 of the Local Government: Municipal Systems Act 32 of 2000[4] (Municipal Systems Act) against the City and/or Johannesburg Water's

---

[1] Dwelling unit is defined in the tariff policy as 'one or more rooms including a kitchen/s designed as a unit for occupancy for the purpose of cooking, living and sleeping which includes nearby outbuildings, sheds and granny flats within the curtilage of the property excluding multi dwellings and flats'.

[2] Multi dwelling is defined as 'any arrangement of premises that comprises more than one dwelling unit including semi-detached houses, simplex units, townhouses and any other arrangement of residential premises excluding a block of flats'.

[3] Flat is defined as 'a dwelling unit set aside in a single multi-storey building on a single erf with a communal entrance to the building, which building comprises more than one dwelling unit; and where the rates valuation does not exceed R700,000.00'.

[4] Section 62 of the Municipal Systems Act provides:

'(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) When the appeal is against a decision taken by-

(a) a staff member other than the municipal manager, the municipal manager is the appeal authority;

(b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority; or

decision to classify San Ridge Heights as a 'multi dwelling'. The notice of appeal and a subsequent follow-up letter to the City and/or Johannesburg Water was simply ignored. Dissatisfied with this classification, San Ridge contends that its property should fall under the category/classification of 'blocks of flats' and the tariff should be R250.00 per month, per unit.[5]

[6] In a letter dated 17 October 2019, Zotec informed the City and/or Johannesburg Water that if it did not receive a response to its notice of appeal it 'will be forced to assume that [its] appeal has been unsuccessful'. As a result of the incorrect tariff, it has suffered a loss of R950 876.64 per year and its ability to provide low cost rental-housing has been adversely affected. To date, San Ridge has not received a response from the City and/or Johannesburg Water.

[7] On 18 May 2020, San Ridge instituted review proceedings in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), alternatively on the grounds of legality. It submitted that the City and/or Johannesburg Water did not comply with s 5 of PAJA to the extent that it did not provide reasons for its decision to classify San Ridge Heights as a 'multi dwelling'. San Ridge relied on the following grounds of review: ss 6(2)*(c)*, 6(2)*(e)*(iii), 6(2)*(e)*(vi) and 6(2)(i) of PAJA.[6]

(c) a political structure or political office bearer, or a councillor-
(i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or
(ii) a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councillors.
(5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
(6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.'

[5] See clause 2 (sewerage and sanitation charges) of the draft rates and tariffs issued by the Council of the City of Johannesburg Metropolitan Municipality (1 July 2019 – 30 June 2020).

[6] Sections 6(2)*(c)*, 6(2)*(e)*(iii), 6(2)*(e)*(vi) and 6(2)(i) of PAJA provide that '[a] court or tribunal has the power to judicially review an administrative action if . . . the action was procedurally unfair'; 'the action was taken . . . because irrelevant considerations were taken into account or relevant considerations were not considered; . . . or arbitrarily or capriciously'; or 'the action is otherwise unconstitutional or unlawful'.

[8] On 22 June 2020, the Municipal Manager, the City and Johannesburg Water filed their notice of intention to oppose. They only filed the rule 53 record on 26 August 2020. On 18 May 2022, the high court found in favour of San Ridge in terms of the order mentioned above. Leave to appeal to this Court was granted by the high court.

[9] The record consisted of documents of the mayoral committee dated 6 March 2019, the planning scheme, the Land Use Scheme, the property rates policy for the period 2018/2019, 2019/2020, the Local Government: Municipal Systems Act 32 of 2000 and Local Government: Municipal Property Rates Act 6 of 2004. The City and/or Johannesburg Water do not deny that the record filed does not relate to the decision and/or reasons to classify San Ridge Heights as a 'multi dwelling'.

[10] It is common cause that the decision by the City and/or Johannesburg Water amounts to administrative action and is subject to review under PAJA. The City and/or Johannesburg Water concede that San Ridge's case is not an attack on the validity of the tariff policy, but on its decision to classify the property as a 'multi dwelling'. In sum, San Ridge's review challenge is premised on the implementation of the City's tariff policy and not the tariff policy itself.[7]

[11] Section 7 of PAJA provides:

---

[7] See *Greys Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others* [2005] ZASCA 43; [2005] 3 All SA 33 (SCA); 2005 (6) SA 313 (SCA) para 24, which reads:
'Whether particular conduct constitutes administrative action depends primarily on the nature of the power that is being exercised rather than upon the identity of the person who does so. Features of administrative action (conduct of "an administrative nature") that have emerged from the construction that has been placed on s 33 of the Constitution are that it does not extend to the exercise of legislative powers by deliberative elected legislative bodies, nor to the ordinary exercise of judicial powers, nor to the formulation of policy or the initiation of legislation by the executive, nor to the exercise of original powers conferred upon the President as head of state. Administrative action is rather, in general terms, the conduct of the bureaucracy (whoever the bureaucratic functionary might be) in carrying out the daily functions of the State which necessarily involves the application of policy, usually after its translation into law, with direct and immediate consequences for individuals or groups of individuals.'

‘(1) Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2)*(c)*, on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2)*(a)* have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

(2)*(a)* Subject to paragraph *(c)*, no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph *(c)*, a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph *(a)* has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

(c) A court or tribunal may, in exceptional circumstances and on application by the 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.

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must, before 28 February 2009, subject to the approval of the Minister, make rules of procedure for judicial review.

(4) Until the rules of procedure referred to in subsection (3) come into operation, all proceedings for judicial review under this Act must be instituted in a High Court or another court having jurisdiction.

(5) Any rule made under subsection (3) must, before publication in the *Gazette*, be approved by Parliament.’

[12] The following facts are not disputed: Zotec and San Ridge exhausted all internal remedies before launching the review application (this allegation is met with a bald denial); and the review application was launched timeously. More importantly, after both Zotec and San Ridge had sent numerous letters to the City and/or Johannesburg Water, and even after the launch of an internal appeal, they did

not provide any reasons for their decision to classify San Ridge Heights as a 'multi dwelling.' To put it bluntly, the City and /or Johannesburg Water have simply ignored all attempts by San Ridge to obtain reasons for their decision.

[13] Section 33(2) of the Constitution[8] imposes a duty on public administrators to give written reasons to those whose rights have been adversely affected by administrative action. This constitutional obligation is given effect in PAJA, which sets out that any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the decision, is entitled to demand reasons for the administrator's decision.[9]

---

[8] Section 33(2) of the Constitution provides that '[e]veryone whose rights have been adversely affected by administrative action has the right to be given written reasons'.

[9] Section 5 of PAJA provides:

'(1) Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.

(2) The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reasons in writing for the administrative action.

(3) If an administrator fails to furnish adequate reasons for an administrative action it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

(4)*(a)* An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances, and must forthwith inform the person making the request of such departure.

(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including-

(i) the objects of the empowering provision;
(ii) the nature, purpose and likely effect of the administrative action concerned;
(iii) the nature and the extent of the departure;
(iv) the relation between the departure and its purpose;
(v) the importance of the purpose of the departure; and
(vi) the need to promote an efficient administration and good governance.

(5) Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.

(6)*(a)* In order to promote an efficient administration, the Minister may, at the request of an administrator, by notice in the Gazette publish a list specifying any administrative action or a group or class of administrative actions in respect of which the administrator concerned will automatically furnish reasons to a person whose rights are adversely affected by such actions, without such person having to request reasons in terms of this section.

(b) The Minister must, within 14 days after the receipt of a request referred to in paragraph *(a)* and at the cost of the relevant administrator, publish such list, as contemplated in that paragraph.'

[14] In this case, San Ridge was not provided with any reasons by the City and /or Johannesburg Water for their decision to classify San Ridge Heights as a 'multi dwelling,' which San Ridge submits has adversely and materially affected its rights. Section 5(3) of PAJA makes it clear that, and in the absence of proof to the contrary, the failure to provide reasons can lead to the presumption that the administrative action was taken without good reason or in bad faith. When a request for reasons is refused, the administrator must provide reasons for such refusal because it is likely that the administrator's decision will have a material and adverse effect on the rights of the affected person, although, there may be exceptions (see s 5(4) of PAJA).

[15] The City and/or Johannesburg Water have taken an ill-considered view that the classification of San Ridge Heights as a 'multi dwelling,' which is defined in the City and/or Johannesburg Water's tariff policy, was self-explanatory and the reasons for the various classifications are embedded in the document itself. However, the tariff policy does no more than to define the different categories of residential property in Johannesburg. The City and /or Johannesburg Water do not explain what factors they took into account when they classified San Ridge Heights as a 'multi dwelling.' There may well be instances where what is contained in a document may be sufficient to formulate an objection.[10] In any event, none of these submissions by the City and/or Johannesburg Water are set out in their answering affidavit.

[16] The failure to give reasons by the City and /or Johannesburg Water in this case is fatal and dispositive of the matter. It is not necessary to deal with the other grounds

[10] *Commissioner for the South African Revenue Service v Sprigg Investment 117 CC t/a Global Investment* [2010] ZASCA 172; 2011 (4) SA 551 (SCA); [2011] 3 All SA 18 (SCA) para 17.

relied upon by San Ridge. This, however, is not the end of the matter. This Court must consider the appropriateness of the high court substituting its decision for that of the administrator.

[17] Section 8 of PAJA gives the courts a wide discretion to make any 'just and equitable' order to remedy the violation of the right to just administrative action.[11] This includes, in exceptional circumstances, the court substituting or varying the administrative action with a decision in terms of the court's order (s 8(1)*(c)*(ii)*(aa)*). Substitution, however, is an extraordinary remedy.[12]

[18] The Constitutional Court in *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another*[13] clarified the test for exceptional circumstances where a substitution order is sought. It suffices to state

---

[11] Section 8 of PAJA provides:
'(1) 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-
(a) directing the administrator-
(i) to give reasons; or
(ii) to act in the manner the court or tribunal requires;
(b) prohibiting the administrator from acting in a particular manner;
(c) setting aside the administrative action and-
(i) remitting the matter for reconsideration by the administrator, with or without directions; or
(ii) in exceptional cases-
(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or
(bb) directing the administrator or any other party to the proceedings to pay compensation;
(d) declaring the rights of the parties in respect of any matter to which the administrative action relates;
(e) granting a temporary interdict or other temporary relief; or
(f) as to costs.
(2) The court or tribunal, in proceedings for judicial review in terms of section 6(3), may grant any order that is just and equitable, including orders-
(a) directing the taking of the decision;
(b) declaring the rights of the parties in relation to the taking of the decision;
(c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties; or
(d) as to costs.'
[12] *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) para 42.
[13] Ibid para 32.

that remittal is almost always the prudent and proper course. Appropriate deference ought to be afforded to the administrator. Whether a court was in as good a position as the administrator to make the decision and whether the decision was a foregone conclusion are two factors that had to be considered cumulatively. Other relevant factors include delay, bias or incompetence on the part of the administrator.[14]

[19] The high court substituted its decision, that San Ridge Heights be classified as 'blocks of flats' in terms of the tariff policy for that of the City and/or Johannesburg Water's decision to classify the property as a 'multi dwelling'. In light of the abovementioned test, the high court erred in this regard for the following reasons.

[20] It is common cause that there were no rates valuations[15] of the individual flats attached to either San Ridge's or to the City and/or Johannesburg Water's affidavit. The high court required this information before making a determination as to whether or not San Ridge Heights is a 'multi dwelling' or not. As it did not have this information before it, it was not competent to substitute its decision for that of the administrator. Similarly, this Court does not have sufficient facts before it to substitute the administrator's decision. As a result of the City and/or Johannesburg Water's failure to provide reasons for their decision, the matter should be remitted to the decision-maker for reconsideration. In light of these findings, the appeal must succeed, although, only to the extent as provided for in the order below. Neither party has been fully successful and each should pay their own costs.

[21] In the result, the following is made:

---

[14] Ibid paras 43-54.
[15] See fn 3.

1 The appeal is upheld, to the limited extent indicated below.

2 Paragraph 2 of the order of the court *a quo* is set aside and replaced with the following:

> 'The matter is remitted to the second and/or third respondents to reconsider their classification of Erf 827 Erand Gardens, Ext 36 Township, held by Certificate of Consolidated Title T1100883/2016, in terms of the second respondent's tariff policy under s 74(1) of Act 32 of 2000.'

3 Each party is to pay its own costs in the appeal.

_____

Z CARELSE

JUDGE OF APPEAL

Appearances

For the appellants:	S Ogunronbi
Instructed by:	Prince Mudau & Associates, Midrand
	Webbers Attorneys, Bloemfontein
For the respondent:	F J Erasmus SC (with H van Eetveldt)
Instructed by:	JDB Attorneys Incorporated, Pretoria
	Honey Attorneys, Bloemfontein