THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable
Case no: 615/2023

In the matter between:

NKOMAZI LOCAL MUNICIPALITY **APPELLANT**

and

THE VALUATION APPEAL BOARD
FOR THE DISTRICT OF EHLANZENI **FIRST RESPONDENT**

THE MUNICIPAL VALUER
FOR THE NKOMAZI LOCAL
MUNICIPALITY **SECOND RESPONDENT**

LEOPARD CREEK
SHARE BLOCK LIMITED **THIRD RESPONDENT**

Neutral citation: *Nkomazi Local Municipality v The Valuation Appeal Board For The District of Ehlanzeni & Others* (615/2023) [2024] ZASCA 155 (13 November 2024)

Coram: MOKGOHLOA, NICHOLLS and WEINER JJA and COPPIN and MJALI AJJA

Heard: 27 August 2024

Delivered: 13 November 2024.

Summary: Administrative Law – review of Valuation Appeal Board's decision dismissing the appeal on the valuation of the property – failure to give reasons for the decision irrational.

ORDER

On appeal from: Mpumalanga Division of the High Court, Mbombela (Mashile J sitting as court of first instance).

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

JUDGMENT

Mokgohloa JA (Nicholls and Weiner JJA and Coppin and Mjali AJJA concurring):

Introduction

[1] The appellant, the Nkomazi Local Municipality (the Municipality), appeals a decision of the Mpumalanga Division of the High Court, Mbombela (the high court), which reviewed and set aside a decision by the Valuation Appeal Board for the District of Ehlanzeni (the VAB) relating to the market value of the property belonging to the third respondent, Leopard Creek Share Block Limited (Leopard Creek). The appeal is with leave of the high court.

The facts

[2] The Municipality is a local municipality in Mpumalanga. It is empowered by s 2 of the Local Government: Municipal Property Rates Act 6 of 2004 (the MPRA) to levy rates on the properties located in its area of jurisdiction. The VAB is appointed as such in terms of Mpumalanga Provincial Notice 148 of 2018 in accordance with s 56(1) read with s 60 of the MPRA. The second respondent

is the Municipal Valuer for Nkomazi Local Municipality (the Valuer). Both the VAB and the Valuer did not participate in these proceedings.

[3] Leopard Creek is a share block company, established in terms of the provisions of the Share Blocks Control Act 59 of 1980, authorised to issue 112 505 shares apportioned between 262 residential share blocks and a country club share block. It is a single farm with 111 houses. Portion 20 of the Farm Riverside 173, JU, and in extent 335 724 hectares (the subject property) is registered in the name of Leopard Creek as an undivided piece of land.

[4] This subject property comprises 335 745 hectares of undivided land; 251 residential sites divided between 80 residential riverfront sites bordering the Crocodile River, overlooking the Kruger National Park and 171 bush or golf course sites. Of the 251 residential sites, 113 have been fully developed with 112 houses and 97 remain as unsold share blocks, retained by the developer. There is a hotel site that formerly housed the Malelane Hotel which was destroyed by fire; an 18-hole Gary Player design golf course; a clubhouse complex measuring approximately 3600 metres; a recreational centre measuring approximately 785 metres developed on the banks of the Crocodile River overlooking the Kruger National Park. All these are of high standard, complementing the quality of the development. The facilities include tennis and squash courts, a swimming pool and a gym.

[5] The property also has two maintenance workshops measuring in excess of 2000 metres for support services; an internal tarred road system with good stormwater management design forming part thereof; a bulk Eskom electricity supply facility to which an internal electricity network is connected; water services that include a water extraction plant, purification works, internal water distribution networks and sewer treatment plant and waste disposal facilities.

Also on the property are two houses for management accommodation; 27 units for staff accommodation; and six four-bedroom units providing casual overnight accommodation for guests.

[6] On 1 July 2008 the property was valued in the general valuation roll for the period 1 July 2009 to 30 June 2013 at R33 236 726. The general valuation was replaced in the supplementary valuation roll for the period 1 July 2011 to 30 June 2012 and reflected the value of property to be R1 424 100 000. Following an objection to this value, the supplementary valuation roll was amended, and the value was changed to R1 064 880 000. Another objection was lodged to this valuation and the Municipality reduced it to R904 700 000. This resulted in an appeal being lodged by Leopard Creek on 2 July 2013 (the first appeal). A new 2014 to 2018 valuation roll was advertised on 31 January 2014, with the value of the property reflected as R906 000 000. This was signed by the Valuer.

[7] During the appeal, a dispute arose concerning the correct valuation. The Municipality's submissions were that:

(a) only restrictions affecting the land such as servitudes, planning restrictions or rights of lease must be taken into account as it will affect the value of the land in the hands of any owner;

(b) the contractual restriction imposed by the share block constitutes personal rights that do not run with the land and as such do not apply to any owner;

(c) the valuer must deal only with the subject property and disregard the personal circumstances of the existing owner or someone else in relation to the property; and

(d) it is irrelevant for the purposes of determining the value that the existing owner is a share block company or that certain shares conferring certain occupational rights between the share block company and its shareholders exist.

[8] The Municipality stated that its case was that it was the land, the improvements and the potential use that had to be valued and not the value of unsold shares in residential share blocks, which were further reduced by improvement liens. According to the Municipality, these four submissions, detailed in the previous paragraph, represent well-established valuation principles. The dispute, according to the Municipality, related not to the valuation method to be used, but about what had to be valued.

[9] During the hearing of the appeal, the parties concluded a settlement in terms of which the market value of the property would be R550 000 000 for the period 1 March 2012 to 30 June 2014, and R750 000 000 for the period 1 July 2014 to 30 June 2018. The then VAB accepted this settlement.

[10] During February 2018, the general valuation roll reflected that the property was valued at R1 300 000 000. Leopard Creek objected to this value but was unsuccessful. On 24 July 2018, the second appeal was lodged against the decision to dismiss the objection.

[11] The appeal commenced before the VAB on 9 July 2019. Leopard Creek led evidence of three expert witnesses Mr David Nagle (Mr Nagle), Mr Sam Hackner (Mr Hackner) and Mr Norman Roger Griffiths (Mr Norman Griffiths). Mr Nagle is a property developer who has extensive experience in property development and golf course developments. He is known as a potential purchaser of golf course developments. He testified about factors that he, as a purchaser of golf course developments in a market, would consider when taking a decision on purchasing a golf course development. Mr Nagle testified further on the price he would pay that would make the development financially viable.

[12] Mr Hackner, is a qualified chartered accountant who has worked in the property business since 1981. He has personal knowledge of the sport of golf, and particularly the decline in number of golf course developments worldwide. He testified what could be done to make Leopard Creek viable.

[13] Mr Norman Griffiths has been a property valuer for 51 years. He has been active as a valuer throughout Southern Africa and is an independent property valuer and consultant. He has extensive experience in the valuation of property of all types, including land developed as golf estates. He testified as to the various methods and techniques that may be employed to determine the market value of the property.[1]

[14] The Municipality's only witness was Mr Derrick Griffiths, a registered professional valuer with more than 30 years' valuation experience. He prepared a valuation on behalf of the Municipality and testified regarding the purpose of the valuation of the property. According to Mr Derrick Griffiths, it is the duty of the valuer when determining the market value of the property, to place himself in the shoes of the willing buyer and willing seller and consider all factors that would influence their minds in determining the purchase price. He described the valuation method that he had adopted as a combination of the sales comparison and the cost methods.

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[1] These techniques are -

(a) comparable sales of Leopard Creek to other Golf Estate as to location,size, town planning rights,physical features etc.

(b) investment approach – whether the sale of the property would generate further income such as rentals or future sale.

(c) replacement cost approach – where a seller or a buyer may have regerd to costs of replacing certain improvements.

[15] On 15 July 2020 the VAB accepted the valuation method proposed to by Mr Derrick Griffiths and dismissed the appeal. It did so without assessing and evaluating the evidence of the witnesses, particularly the evidence of Leopard Creek's witnesses. The VAB also did not give reasons for preferring the evidence of Mr Derrick Griffiths to that of Mr Norman Griffiths.

In the high court

[16] In November 2020 Leopard Creek brought an application in the high court in which it claimed the following relief:

'1. that the [VAB's] decision of 15 July 2020 ("the impugned decision") is reviewed and set aside;

2. substituting the following for the impugned decision:

2.1 the appeal is upheld;

2.2 the valuation method applied by Mr Norman Griffiths is accepted; and

2.3 the market value of the property Portion 20 of the Farm Riverside No 173, Registration Division JJ, 335, 7245 hectares in extent and held by Deed of Transfer T67964/1988 as at 1 July 2017 is determined to be R330 000 000.00.

. . . .'

[17] Leopard Creek's grounds for the review were as follows. The VAB's conclusion was biased, as it rejected Leopard Creek's valuation method and accepted the Municipality's method without any basis and without furnishing any valid reasons. It failed to comply with the mandatory procedure prescribed by ss 45 (1) and 46 of the MPRA, in that it failed to determine the market value of the property by determining what the property would have realised if sold in the open market by a willing seller to a willing buyer. The decision was influenced by errors of law including the failure to apply the correct test and the failure to adhere to the prescripts contained in the MPRA. The VAB failed to consider relevant evidence and took into consideration irrelevant evidence. The decision was taken arbitrarily and capriciously. The decision was not rationally connected

to either the purpose for which it was taken, or the reasons given. The decision was therefore irrational.

[18] The high court granted the order reviewing and setting aside the VAB's decision and remitted the matter to a differently constituted VAB for a decision. Its main finding in granting the application was that the VAB failed to comply with the mandatory and material procedures prescribed by the empowering provisions of the MPRA. The high court held that:

'[112] . . . the assessment of the expert evidence remains critical so that the reasoning of the Court making the decision of selecting the evidence of the one expert against that of another is not left in doubt. A perusal of the judgment of the [VAB] reveals that the evidence of Messrs Nagle, Hackner, and Peak was summarised but there is no appraisal of why such evidence, on which Mr Norman Griffiths based his valuation, had to succumb to that of Mr [Derrick] Griffiths nor are there reasons for the unconditional acceptance of the latter's evidence.

[113] The [VAB] cannot evade the obligation of furnishing reasons for its decision on the basis of the case of Dormehl *supra* where it was held that it does not have to accept the evidence of any witness, even of the only witness. Where a body such as the [VAB] does so, however, it must do it with justification. This is what I am unable to find in the judgment of the [VAB].

. . . .

[117] How the [VAB] reconciled that approach and finally accepted [Mr Derrick Griffiths] testimony leaves me baffled. More extraordinary is [theVAB]'s claim that Mr Derrick Griffiths had used the comparable sale and cost methods to arrive at his valuation. Mr Derrick Griffiths himself stated in his evidence that the comparable sale method could not find favour with him because there has not been a similar transaction to which the subject property could be compared. To simply state that the evidence of the witnesses of [Leopard Creek] is not acceptable smacks of bias in the sense envisaged in Section 6(2)*(a)(*iii) of PAJA and therefore vulnerable to a review.'(Citation omitted.)

[19] Finally, the high court found that the VAB's rejection of the evidence of Leopard Creek's witnesses on the basis that 'it is trite that where one is confronted with two versions that are radically different, one of them ought to prevail over

the other', was unreasonable without a comprehensive assessment of the versions and without furnishing reasons why the one is preferred to the other.

In this Court

[20] The issues to be determined in this appeal are the following:

(a) Did the VAB assess and evaluate the evidence of the expert witnesses.

(b) Did the VAB give reasons for the rejection of the evidence of Leopard Creek's expert witnesses.

(c) Did the VAB give reasons for preferring the evidence of Mr Derrick Griffiths to that of Mr Norman Griffiths.

(d) If not, can this Court substitute the VAB and assess and evaluate the evidence and give reasons to its decision.

[21] Counsel for the Municipality submits that the high court erred in concluding that the VAB's failure to comprehensively assess the evidence of Leopard Creek's expert witnesses, before rejecting it, amounted to bias and rendered its decision unreasonable. Counsel submits that courts, in carrying out their task of ensuring that administrative decisions fall within the bounds of reasonableness, must guard against usurping the function of administrative agencies.

[22] Counsel referred to the test, stated in *Carephone (Pty) Ltd v Marcus NO and Others*,[2] namely whether there is 'a rational objective basis justifying the connection made by the administrative decision-maker between the material properly available to him and the conclusion he or she eventually arrived at?' He submits that the issues before the VAB have been exhaustively dealt with in two hearings, before two differently constituted VABs. The same expert witnesses ie

[2] *Carephone (Pty) Ltd v Marcus NO and Others* [1998] ZALAC 11; 1999 (3) SA 304 (LAC) para 37.

Mr Norman Griffiths and Mr Derrick Griffiths, gave evidence in both hearings and the parties were represented by the same legal representatives. The evidence and the details of the information put before the VAB on both occasions, the submission continues, are known to both the Municipality and Leopard Creek. Therefore, according to the Municipality, it cannot be said that the reasons of the VAB are not clear or adequate, and that either party did not have a clear understanding why their cases were successful or unsuccessful.

[23] The above submissions are ill-conceived for the following reasons. First, the VAB is an administrative decision-making body, tasked with an administrative duty to decide appeals brought before it. In doing so, it must assess and evaluate the evidence before it and give reasons for its decision. This is the core function of the decision-making body. It cannot be said that, because the facts of the appeal are known to the parties, the VAB can abdicate its duties and responsibilities including giving reasons for its decision.

[24] Second, the issue between the parties was that the Municipality was to determine the market value of the subject property, and to levy a rate on that property. To do so, the Municipality had to comply with the provisions of s 30(1) of the MPRA that requires it to carry out a general valuation of the subject property. This can only be done with the assistance of expert valuers. Therefore, the evidence of both Mr Norman Griffiths and Mr Derrick Griffiths was of considerable importance in deciding on the correct approach to the valuation, or the methods to be used, in determining the market value of the property. Their evidence was to be assessed, evaluated and analysed to determine its quality and cogency. This would have assisted the VAB to find and give reasons why the method testified to by one is preferred to that of another. This, the VAB failed to do.

[25] Leopard Creek contends that the VAB's failure to give reasons for its decision deprived it of its constitutional right to a fair administrative process. To this, the Municipality responds that the VABs are specialist tribunals, and their members have a unique understanding of the specialist valuation concept. They deal with appeals from several municipalities in the country. To expect the VABs to formulate reasons in the same manner as a court of law would cripple the very important administrative function of such boards. The Municipality submits further that it was not necessary for the VAB to give reasons for its decision because the parties who participated in the appeal were well informed of the context and knew exactly what was sought to be conveyed in the findings of the VAB's decision.

[26] This submission is without merit. It does not matter how many cases the VAB deals with. It must assess every piece of evidence, analyse it and provide reasons for its decision. Its failure to do so rendered its decision irrational and unlawful. I find that the high court was correct to set the decision of the VAB aside.

Substitution

[27] Appeals and reviews are ways in which the appeal court may reconsider a decision of the court of first instance. An appeal is appropriate where it is claimed that the decision-maker came to a wrong conclusion on the facts or the law. The appeal court would then have to declare the first decision correct or incorrect on the merits or the law. Review on the other hand, is concerned with whether the decision was arrived at in an acceptable manner and whether the correct procedure was followed in arriving at that decision. The focus is on the process and on the way in which the decision-maker came to the challenged conclusion. This distinction has been found to be largely artificial.

[28] In *Rustenburg Platinum-Mines (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*,[3] this Court explained why it is difficult to draw a line between a review and an appeal. It stated:

'. . . This is partly because process-related scrutiny can never blind itself to the substantive merits of the outcome. Indeed, under PAJA the merits to some extent always intrude, since the court must examine the connection between the decision and the reasons the decision-maker gives for it, and determine whether the connection is rational. The task can never be performed without taking some account of the substantive merits of the decision.'[4]

[29] Again in *Shoprite Checkers (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*,[5] this Court remarked that 'whilst at times it may be difficult to draw the line [between appeal and review], the distinction must not be blurred.'[6] Difficult as it may be, the distinction must not be obliterated as this will violate the doctrine of separation of powers. This doctrine holds that it would be unacceptable for judges to pronounce on the merits of an administrative decision, for they would be usurping the functions entrusted by the Constitution to the executive branch or a body, created by legislation or the Constitution, such as a VAB.

[30] Against this backdrop, I am of the view that this Court cannot substitute the decision of the VAB and analyse and evaluate the evidence of the witnesses and give reasons. To do so, would be usurping the functions entrusted by the Constitution to the VAB.

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[3] *Rustenburg Platinum Mines Ltd (Rustenburg Section) v Commission for Conciliation, Mediation and Arbitration* and Others [2006] ZASCA 175; [2007] 1 All SA 164 (SCA); 2007 (1) SA 576 (SCA); [2006] 11 BLLR 1021 (SCA); (2006) 27 ILJ 2076. Though the judgment was reversed by the Constitutional Court on appeal in *Sidumo and Another v Rusternburg Platinum Mines* infra, the Constitutional Court did not cast doubt on the remarks concerning the nature of the appeal and review.

[4] Ibid para 31.

[5] *Shoprite Checkers (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* 2009 (3) SA 493 (SCA) (*Shoprite Checkers*). See also *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] ZACC 22; [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC); (2007) 28 ILJ 2405 (CC); 2008 (2) BCLR 158 (CC) paras 109 and 244.

[6] *Shoprite Checkers* para 28.

[31] In dealing with the review application, the high court considered the merits and made findings. In my view, the high court was entitled to consider the merits as it did, as this was done in the process of examining the connection between the decision and the reasons the VAB gave for it. The problem arose when the high court made findings on the merits, that the method testified to by Mr Norman Griffiths was the correct one to determine the valuation value of the property. This was the duty of the VAB and not the high court. It is for this reason that I would consider the findings by the high court not to be binding on the differently constituted VAB to which the matter has been referred.

[32] For these reasons, I make the following order:

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

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F E MOKGOHLOA

JUDGE OF APPEAL

Appearances

For the appellant:	S J Grobler SC with A Liversage SC
Instructed by:	AM Vilakazi Tau Inc Attorneys, Pretoria
	Lovius Block Inc, Bloemfontein
For the third respondent:	F H Terblanche SC with H C Bothma SC and K S Moloisane
Instructed by:	Webber Wentzel, Johannesburg
	Symington De Kok Attorneys, Bloemfontein.