THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable/Not Reportable

Case No: 832/2024

In the matter between:

MALAKITE BODY CORPORATE **FIRST APPELLANT**

GREENSTONE CREST BODY CORPORATE **SECOND APPELLANT**

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY **FIRST RESPONDENT**

CITY POWER, JOHANNESBURG SOC LIMITED **SECOND RESPONDENT**

Neutral Citation: *Malakite Body Corporate and Another v City of Johannesburg Metropolitan Municipality and Another* (832/2024) [2025] ZASCA 192 (15 December 2025)

Coram: DAMBUZA, SMITH and COPPIN JJA and CHILI and NUKU AJJA

Heard: 19 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 15 December 2025.

Summary: Municipal Law – Standardisation of Electricity By-Law 1999 – appropriate electricity tariff classification – meaning of and application of

s 5(10) of the Standardisation of Electricity By-Law 1999 – communal loads for both domestic and non-domestic users that cannot be separated to be charged at appropriate non-domestic rate determined by the municipality from time to time.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Windell, Maier-Frawley and Crutchfield JJ sitting as the full court on appeal):
The appeal is dismissed with costs, including the costs of two counsel, where so employed.

JUDGMENT

Coppin JA (Dambuza and Smith JJA and Chilli and Nuku AJJA concurring):

[1] This is an appeal against the order of the full court of the Gauteng Division of the High Court, Johannesburg (the full court) in terms of which an appeal to it by the appellants, the Malakite Body Corporate (Malakite), and the Greenstone Crest Body Corporate (Greenstone), against an order of the court of first instance (the high court) was dismissed with costs. The high court had dismissed an application brought by Malakite and Greenstone, in essence, to direct the respondents, City of Johannesburg Metropolitan Municipality (the City) and City Power Johannesburg SOC Ltd (City Power) (collectively referred to as 'the municipality'), to cease charging their residents a business tariff for their electricity consumption; to charge them a domestic tariff instead; and to rectify their records accordingly. The high court found that the rate charged by the municipality was justified. Special leave to appeal to this Court was granted on petition.

[2] The main issue for determination in this appeal is whether the full court erred in confirming the findings and order of the high court. This entails determining whether the charging of a business tariff for mixed (domestic and

non-domestic) electricity consumption is justified in terms of the standardised electricity by-laws[1] (by-laws) and tariff policies[2] of the municipality.

[3] Both appellants are body corporates of residential estates, established in terms of s 36(1) of the Sectional Titles Act 95 of 1986. Malakite was established on 24 October 2016, with its principal place of business at Greenstone Hill, Extension 21, Modderfontein, Gauteng. Greenstone was established on 7 May 2015, with its principal place of business at Greenstone Hill, Extension 33, Modderfontein, Gauteng. Malakite has 290 residential units and Greenstone has 620 residential units. Both estates are zoned 'Residential 3', which allows for the establishment of recreation clubs and taverns in their precincts. Within these two estates, there are 2 units that serve as Lifestyle Centres. Both, respectively, have a restaurant and a gym.

[4] After the appellants took ownership of their (respective) estate properties from their common developer, Balwin Properties, each concluded an agreement with the municipality for the provision of municipal services, including the supply of electricity to their property. A dispute arose between the appellants and the municipality in respect of the electricity tariff charged by the municipality. They were being charged a commercial or business tariff. The reason given was that since there were restaurants on the respective properties, which were not separately metered from the residential units, the appellants were liable to pay commercial or business rates for their mixed domestic and non-domestic use. The solution proposed by the municipality was for the respective estates to install split meters, which would enable the electricity supply to and consumption of the dwellings (domestic use) to be metered separately from that of the restaurant (non-domestic use). This would then allow for the occupiers of the dwellings to be charged a residential rate for their electrical consumption, while the restaurant would be charged a commercial, or business tariff.

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[1] Standardisation of Electricity By-law, Gauteng GN 1610, *Gauteng Provincial Gazette* 16, 17 March 1999.
[2] Tariff Determination Policy, City of Johannesburg.

[5] On 15 March 2019, Malakite, submitted an application to the municipality for the installation of a split meter. Greenstone, made a similar application on 30 October 2018. The disputes regarding the charges for electricity by the municipality could not be resolved, and the installation of the split meters was abandoned or pended by both the appellants, apparently due to the high cost of the installation.

[6] The electricity woes of the appellants were exacerbated because of actual disconnections of the electricity supply by the municipality due to alleged outstanding payments, and because of continuous threats of disconnections. On 4 July 2019, the attorney for the appellants advised the municipality by letter that the body corporates had elected to proceed with their respective applications for the installation of split meters. In the letter, the appellants also demanded that an undertaking be given by the municipality by a set date and time, that municipal services would not be disconnected pending the finalisation of their respective applications for installation of split meters. When the undertaking was not forthcoming, the appellants brought an application against the municipality in the high court for interdictory and other relief. Initially, they sought to interdict the municipality from disconnecting their municipal services pending the outcome of their applications for the installation of split meters.

[7] Subsequently, the appellants amended their notice of motion and filed a supplementary affidavit in which they contended that they did not have to apply for split meters, and that they, as residential users, had to be billed for the estates' electricity consumption at a domestic tariff. They intimated that they intended withdrawing their (respective) applications for the installation of split meters because of the high costs, and 'because the split meter systems were not necessary'. They also tried to capitalise on internal emails of an official of the City, dated 17 May 2019 and 20 May 2019, claiming that the views expressed by the official in the emails were binding on the municipality. In the first email, the official states the following:

'Based on the information at hand the valuation department is satisfied that the value of the ancillary uses [is] included in that of the units and should not be valued

separately and that the category of the “mother stand” should remain at “Sectional Title Residential”.’

In the second email dated 20 May 2019, the official stated, among other things, the following:

‘The “lifestyle” facilities provided by Balwin Properties within their developments have been valued as part of the schemes and therefore seen as residential for the purpose of valuation. Electricity billing in this development needs to be corrected to residential in order to achieve the alignment.’

[8] The application was opposed by the municipality, which filed answering papers. The appellants filed a replying affidavit. In their amended notice of motion the appellants sought the following orders, in addition to condonation and alternative relief:

(a) that the municipality be directed ‘to align and rectify their records and billing to reflect’ their estates as ‘residential’ for the purpose of valuation and billing of electricity and municipality services.
(b) that the municipality be directed to comply with that order within 30 days of the order being made.
(c) interdicting and restraining the municipality from disconnecting the supply of municipal services to them pending compliance with that order, and
(d) that the municipality be ordered to pay their costs on the scale as between attorney and client.

[9] The high court granted the requested condonation. However, it found, inter alia, that the appellants did not discharge their onus of proving that the lifestyle centres on their respective properties fell within the definition of ‘domestic use’, and that they were not being used for ‘a business purpose’. Regarding the zoning of their properties as ‘residential’, the high court rejected the appellants’ argument that they should be billed at a domestic or residential tariff because of their zoning as ‘Residential 3’ and because the lifestyle centres usage is ancillary to such zoning. The high court held that there was nothing in the by-laws of the municipality’s tariff policy to suggest that any determination made in respect of the zoning of the property had any

bearing on the definitions of ‘domestic tariff’ and ‘business tariff’ in the tariff policy.

[10] The high court found that the City official’s explanation of the emails was not gainsaid. The official stated that he was merely making a suggestion to his colleagues and did not make or convey a decision. In any event, so the high court found, he did not have the authority to make the kind of binding decision contended for by the appellants. The high court consequently dismissed the appellants’ application, with costs and granted the appellants leave to appeal to the full court.

[11] The full court dismissed that appeal with costs, including the costs of two counsel where so employed. In a well-reasoned judgment, the full court refused an application by the appellants to adduce further evidence, and having considered the relevant laws (including by-laws) and the municipality’s tariff policy, it concluded as follows: (a) the appellants’ argument, that the lifestyle centres are of secondary importance and that the municipality’s description of the applicant’s electricity consumption as mixed domestic and non-domestic was therefore incorrect, was not persuasive; (b) the tariff policy and by-laws in terms of which they were being charged were approved by the municipality’s council and have not been challenged by the appellants; (c) there can be no dispute that the restaurant is a business – ‘[i]t sells food to the residents and their guests at a profit’; the restaurant is commercial in nature and not domestic, and it is not merely ‘ancillary’ to the residential units; (d) the lifestyle centres are not intended to be used for residential habitation, but for commercial purposes; (e) the electricity usage of a business premises is different to that of a residential dwelling, hence the application of a commercial tariff to the former; (f) the by-laws and municipal policy are clear – communal loads for domestic and non-domestic use which cannot be separated must be metered at the appropriate non-domestic tariff, as determined by the municipality’s council from time to time; (g) a residential tariff is not applicable to properties zoned as residential, but used for business, or for mixed-use reseller consumers, unless a split meter is

installed; and (h) the municipality is therefore justified in charging the body corporates a business or commercial tariff for their electricity consumption.

[12] On petition to this Court, the appellants were granted special leave to appeal the full court's order. They argued in this Court that the by-laws (s 5(10)) and the tariff policy of the municipality, properly construed, did not mean that the municipality was justified in charging them a business/commercial tariff for their consumption of electricity. Their argument, stripped of its non-essential detail was that their 'entire estates were clearly predominately [a] domestic load and the small lifestyle centre within each estate is ancillary to the predominate residential use of the properties as a whole . . . the term "mixed domestic and non-domestic load" (in s 5(10) of the by-laws and the municipality's tariff policy is not applicable to them or their estates) and is reserved for those developments which incorporate residential and business to the extent that it is not possible to determine whether it is predominately "domestic" or "non-domestic"'.

[13] The issue to be determined basically involves the interpretation of the municipality's by-laws and tariff policy. The general principles of interpretation referred to in *Endumeni*[3] *and Capitec*[4] and summarised by the Constitutional Court in, amongst other matters, *Minister of Police and Others v Fidelity Security Services (Pty) Ltd*,[5] are now trite. It is also well established that the wording of statutory or (legal) provision is vital in the process of its interpretation, because 'interpretation is a process of attributing meaning to the words used' in their proper context. The words of a statutory or legal provision are the starting point of any interpretation, be it purposive, or otherwise. It is therefore self-evident that the interpretation of any provision must illustrate an engagement with the actual wording of that provision.[6] It is

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[3] *Natal Joint Municipality Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA).
[4] *Capitec Bank Holding Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA).
[5] *Minister of Police and Others v Fidelity Security Services (Pty) Ltd* [2022] ZACC 16; 2022 (2) SACR 519 (CC); 2023 (3) BCLR 270 (CC), para 34.
[6] *SATAWU and Others v Moloto and Another NNO* [2012] ZACC 19; 2012 (6) SA 249 (CC); 2012 (11) BCLR 1177 (CC).

also trite that when interpreting a provision in a by-law, courts are required to ascertain the purpose of the provision and possibly what mischief it was aimed at preventing.[7]

[14] In terms of s 160(2) of the Constitution,[8] it is the responsibility of municipal councils to impose rates and tariffs, including electricity tariffs. Section 11(1) of the Local Government Municipality Systems Act 32 of 2000, provides that 'the executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality subject to s 59'. Section 11(3) provides that a municipality exercises its legislative or executive authority by, amongst other things, 'imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies', and by 'passing by-laws and taking decisions. . .'.

[15] The standardised electricity by-laws apply to the entire metropolitan area of the municipality. The appellants, respectively, entered into an agreement with the municipality for the supply of electricity. In terms of s 5(10) of the by-laws, which is also applicable to the supply of electricity by the municipality to the appellants (and their residents):

'Communal loads for both domestic and non-domestic uses which cannot be separated shall be metered at the appropriate non-domestic charge as determined by the Council from time to time.'

[16] There are several categories of tariff structures in the municipality's tariff policy, two of which are 'domestic tariffs' and 'business tariffs'. In clause 6 of the municipality's tariffs policy, a 'domestic tariff' is defined as follows:

'Domestic tariff: This tariff is applicable to private houses, dwelling units, flats, boarding houses, hostels, residences or homes run by charitable institutions, premises used for public worship including halls or other buildings used or religious purposes, prisons and caravan parks. There are, however, certain rules applicable, which may change the status of these consumers.'

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[7] *Pottie v Kotze* 1954 (3) SA 719 (A) at 726H-727A.
[8] Constitution of the Republic of South Africa, 1996.

[17] The policy defines 'business tariff' as follows:

'Business Tariff: This tariff is applicable to supplies not exceeding capacity of 100kVA. Applicable for business purposes, industrial purposes, nursing homes, clinics, hospitals, hotels, recreational halls and clubs, educational institutions (including schools and registered creches), sporting facilities, bed and breakfast houses, *mixed domestic and non-domestic loads*, welfare organisations of a commercial nature and premises used for public worship and religious purposes.'

[18] In their argument before this Court the appellants did not take issue with the legality or validity of the legislative framework, including the by-laws and the policy – but disputed that their consumption (ie by their residents and the lifestyle centres, or restaurants on their premises) constituted 'mixed domestic and non-domestic loads' as contemplated in s 5(10) of the by-laws and in clause 6 of the municipality's policy. They contend that their use remained residential – and therefore a 'domestic load' since 'the lifestyle centres are clearly ancillary to the residential nature of the estates'.

[19] According to their argument, the lifestyle centres are not an essential or necessary aspect of their respective residential estates – which are primarily for housing. They contend that the lifestyle centres cannot function without the residential estate; the restaurant is only accessed by residents and is run as a business by a third-party operator. According to the appellants, the solution to their conundrum was to be found in a proper construction of the phrase 'mixed domestic and non-domestic load'. They submit that in their case, there are essentially two 'types of uses of electrical load – domestic and business'. Theirs is not the classic type of 'mixed use', such as that of the development that this Court dealt with in *Bedford Square Properties (Pty) Ltd v ERF 179 Bedfordview (Pty) Ltd.*[9] They argue that the development there was 'archetypal "mixed use"' since it included shops, offices and residences.

[9] *Bedford Square Properties (Pty) Ltd v ERF 179 Bedfordview (Pty) Ltd* [2011] ZASCA 37; 2011 (5) SA 306 (SCA).

[20] According to the appellants, therefore, before concluding that a development's use was 'mixed use' and its electricity load(s) was 'mixed domestic and non-domestic' it had to be determined what 'the predominant or primary purpose of the development and the lifestyle centre was'. If the lifestyle centre was merely ancillary to what was, essentially, zoned as 'Residential 3' for private housing, the combined load was not a 'mixed domestic and non-domestic load'. The appellants thus effectively argue that the words 'a mixed domestic and non-domestic load' would only be of application where the 'mixing' was significant. In other words, where the development consisted of clearly identifiable significant business and residential components. To buttress their argument, they give additional, albeit hypothetical, examples.

[21] They argue that in their case, the buildings on their properties are primarily residential and for use as dwelling units. They contend that the restaurant and gym, forming the lifestyle centre, are clearly ancillary, being purely for recreational purposes and for the benefit of the owners of the residential units on the estates, who have a choice to utilise those centres.

[22] The hypothetical examples cited by the appellants of the alleged unjustified impact the full court's judgment would have, were the following: All residential units in a large estate with many hundreds of residential units, and which is almost exclusively residential (except for the exclusive residential-use restaurant) must now be charged business tariffs at great cost to the residents. Second, a caravan park, which is otherwise to be charged a domestic tariff, will be charged a business tariff if it has a small kiosk on its premises that sells goods to inhabitants of the park – because of the mixed domestic and non-domestic loads. Third, a church, which is otherwise to be charged a domestic rate for consumption of electricity, would have to be charged a business rate if it sells sandwiches to its congregants from a kiosk on its premises, because of the mixed load.

[23] The appellants' contention that the solution to their electricity woes lies in the interpretation of the policy and by-laws, is not a solution at all. First,

s 5(10) of the by-laws and the accompanying policy are clear and unambiguous. If there is a mixed domestic and non-domestic load that cannot be separately metered, the municipality must charge a business tariff for the load. The purpose is to enable the municipality to recover all the costs attendant on its supply of electricity. If it is merely going to charge a domestic tariff in such instances, it might well under-recover its costs. The solution is separate or split metering.

[24] For the appellants to contend, effectively, that the meaning of 'mixed domestic and non-domestic use' is dependent on the degree of, respectively, domestic and non-domestic use, is untenable and will only introduce great uncertainty. The threshold would not only be difficult to set, but would, inevitably, be arbitrary. A proper interpretation of the said section and the accompanying policy must not only be purposive but also eschew uncertainty and arbitrariness.

[25] In any event, insofar as the appellants are contending for words to be read into the by-law or policy, they have misconceived the nature and purpose of 'reading-in'. It is not a mode of interpretation, but in constitutional cases, it is a remedy, the appropriateness of which a court, having found constitutional invalidity, may have to decide on. Even as a remedy, it is not readily employed because, it entails 'reading-in' words into an impugned legislative provision in order to render it constitutionally compliant. This essentially involves law-making, which is a power that essentially belongs to the legislature.

[26] The appellants have not attacked the validity of the said by-laws or accompanying tariff policy of the municipality. Thus, one can hardly begin to consider applying 'reading-in' as a remedy. Ultimately, it appears as if their main complaint is the fact that those provisions have been applied against them. The examples they cite are hypothetical. The appellants neither claim nor attempt to establish a case of unfair discrimination. Thus, their comparative effort, in the context of their case, is presumptive and serves no practical purpose.

[27] The full court cannot be faulted in its reasoning and conclusion. That includes its refusal to allow the body corporates to file a further affidavit placing evidence before the court regarding the business nature of the restaurant and gym on their properties. That evidence does not meet the legal requisites for the admission of new evidence on appeal and would, in any event, not have made a difference to the outcome. It follows that the appeal must fail. No reason has been proffered why the costs should not follow the outcome.

[28] In the result, the following order is issued:

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

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JUDGE OF APPEAL

Appearances:

For the Appellants:	G Kairinos SC (with B D Stevens) Instructed by: Jurgens Bekker Attorneys Inc., Bedfordview Hendrie Conradie Inc., Bloemfontein
For the Respondents:	T J Bruinders SC (with E Richards) Instructed by: Moodie & Robertson, Johannesburg Claude Reid Attorneys, Bloemfontein.