**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Reportable**

Case no: 1239/2017

In the matter between:

**THE CHAIRPERSON OF THE MUNICIPAL APPEALS TRIBUNAL, CITY OF TSHWANE** **FIRST APPELLANT**

**THE CHAIRPERSON OF THE MUNICIPAL PLANNING TRIBUNAL, CITY OF TSHWANE** **SECOND APPELLANT**

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY** **THIRD APPELLANT**

**CALIBER 651 (PTY) LTD** **FOURTH APPELLANT**

and

**BROOKLYN AND EASTERN AREAS CITIZENS ASSOCIATION** **FIRST RESPONDENT**

**Neutral citation:** *The Chairperson of the Municipal Appeals Tribunal, City of Tshwane & others v Brooklyn and Eastern Areas Citizens Association & others* (1239/2017) [2019] ZASCA 34 (28 March 2019)

**Bench:** Ponnan, Majiedt and Swain JJA and Eksteen and Rogers AJJA

**Heard:** 18 February 2019

**Delivered:** 28 March 2019

**Summary:** Appeal – mootness – s 16(2) of Superior Courts Act – court a quo setting aside decision by administrative appeal tribunal dismissing internal appeal against rezoning decision – in meanwhile building on subject property completed and occupied – appeal not rendered moot by such completion and occupation

Appeal – piecemeal appellate adjudication – merits of rezoning still to be determined by administrative appeal tribunal if review successful – s 17(1)(*a*) of Superior Courts Act not engaged – court a quo finally determined all issues before it – order appealable.

Town planning – internal appeal against rezoning decision – appeal lodged after coming into force of Tshwane's Land Use Management By-Law 2016 – applicable appeal procedure one laid down in s 20 of By-law read with s 51 of Spatial Planning and Land Use Management Act 16 of 2013 – s 59 of Town Planning and Townships Ordinance 15 of 1986 inapplicable and inconsistent as contemplated in s 2(2) of Act 16 of 2013 – objector's first internal appeal valid and timeous appeal in terms of By-law – objector's second internal appeal unnecessary and invalid.

---

**ORDER**

---

**On appeal from**: Gauteng Division of the High Court, Pretoria (Tuchten J sitting as court of first instance):

(a) Save to the extent set out in the revised order below, the appeal is dismissed.

(b) The appellants jointly and severally shall pay the first respondent's costs of appeal, including those attendant on the employment of two counsel.

(c) Para 2 of the court a quo's order is set aside and replaced with the following:

'2.1 The matter is remitted to the Appeals Tribunal with directions:

2.1.1 to deal with the points in limine of the fourth respondent as follows, namely to dismiss the points in limine in regard to the first internal appeal by the applicant and the University of Pretoria but to uphold them in regard to the applicant's second internal appeal;

2.1.2. to consider and determine the first internal appeal after following such further procedures as it may be required to follow in terms of s 20 of the Tshwane Land Use Management By-law of 2016 read with s 51 of the Spatial Planning and Land Use Management Act 16 of 2013.'

---

**JUDGMENT**

---

**Ponnan JA (dissenting)**

[1] During September 2015 the fourth appellant, Caliber 651 (Pty) Ltd (the developer) applied, in terms of s 56 of the Town Planning and Townships Ordinance 15 of 1986 (the Ordinance), read with s 2(2) of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA), to the City of Tshwane Metropolitan

Municipality (the Municipality) for the rezoning of Erf 908,[1] Brooklyn (the property) from 'Residential 1' to 'Special'. The application drew objections from, amongst others, the respondent, the Brooklyn and Eastern Areas Citizen Association (BEACA) and the University of Pretoria (the University). On 18 May 2016 the Municipal Planning Tribunal of the Municipality (the Tribunal) resolved, after conducting a hearing, to approve the application. That decision was communicated to the developer and the objectors by letter dated 8 June 2016.

[2] On 2 August 2016 BEACA gave notice of its intention to appeal against the decision of the Tribunal. In response, by letter dated 8 August 2016, the developer raised certain points *in limine*, which, so it contended, rendered the appeal invalid and void *ab initio*. On 19 October 2016 BEACA filed a second notice of appeal against the Tribunal's decision. The second notice appears to have been designed to address the criticism raised by the developer in its letter of 8 August 2016. On 31 October 2016 the City informed the parties that the Municipal Appeals Tribunal of the Municipality (the Appeals Tribunal) would consider the points *in limine* raised by the developer at a hearing to be convened on 25 November 2016 and, depending on the decision arrived at on those points, the 'merits' would be dealt with thereafter.

[3] On 31 January 2017 the Appeals Tribunal issued the following ruling:

'That the *point in limine* of the 2nd respondent is upheld;
That the appeal be dismissed as it is invalid; and
No cost orders were made.'

The reasons furnished by the Appeals Tribunal for its ruling were:

'The appellant misinterpreted Section 3(12) of the LUM By-Law, due to the fact that its subject is very clear regarding its purpose and intention, further to this the chapter clearly states these provisions are for transitional arrangements;
In both the 1st and the 2nd appeal incorrect reference is made to legislation which creates conflict on the timelines to be adhered to in the legislation.

[1] The rezoning application related to 4 erven (Rem and Portion 1 of Erf 32; Rem and Portion 1 of Erf 33). Subsequently the 4 erven were consolidated into Erf 908.

The application was considered by the Municipal Planning Tribunal and the appeal procedure under Section 51 of SPLUMA read with Section 20 of the LUM By-Law is clear and should have been followed in this case; and

It is clear that the subject appeal does not qualify as a "pending appeal" as it was not an appeal that was submitted prior to the coming into operation of the LUM By-Law. On these bases the Tribunal is of the view that the appeal is invalid and is dismissed.

The 1st appeal relies on section 59 of the Ordinance and clearly requires the promulgation of the land use rights at the time of lodging the appeal.'

[4] On 20 March 2017 BEACA applied to the Gauteng Division of the High Court, Pretoria for an order:

'1. That the decision of Tshwane Metropolitan Municipality's Municipal Appeal Tribunal dated 31 January 2017 to dismiss an appeal by the first applicant against the decision of the Municipal Planning Tribunal be reviewed and set aside.

2. That Tshwane Metropolitan Municipality's Planning Tribunal decision dated 8 June 2016 to approve an application in terms of section 56 of Town Planning and Townships Ordinance 15 of 1986 ("the Ordinance") to amend its Town Planning Scheme, 2008 (revised 2014) by rezoning the Remainder and Portion 1 of Erf 32 and the Remainder and Portion 1 of Erf 33, Brooklyn ("the properties") from "residential" to "special use" be reviewed and set aside.

3. That it is declared that the Planning Appeal Tribunals of the City of Tshwane Metropolitan Municipality were constituted irregularly as prescribed in sections 36 and 51 of Spatial Planning and Land Use Management Act, 16 of 2013 ("SPLUMA") read with its Regulations and sections 17 and 19 of the Municipality's Land Use Management By-laws of 2016.

4. That the application to rezone the properties in terms of section 56 of the Ordinance by Caliber 651 (Pty) Limited, the owner of the properties, be referred back to the City of Tshwane Metropolitan Municipality.

5. Ordering the respondents to pay the costs of this application, jointly and severally, the one paying the other to be absolved.

6. Further and/or alternative relief.'

[5] The application cited the Chairperson of the Appeals Tribunal, the Chairperson of the Tribunal, the Municipality, the developer, the Minister of Rural Development and Land Reform, the Minister of Cooperative Governance and Traditional Affairs and the

University as the first to seventh respondents respectively. The application succeeded before Tuchten J, who issued the following order:

'1. The review is upheld. The decision of the Municipal Appeals Tribunal of the first respondent (the Appeals Tribunal) made on 31 January 2017 to uphold the point *in limine* of the fourth respondent and dismiss the appeals brought by the first applicant and the University of Pretoria as invalid is hereby set aside.

2. The matter is remitted to the Appeals Tribunal with directions:

2.1.1 to deal with the point *in limine* of the fourth respondent in accordance with this judgment;

2.1.2 to consider the merits of the dispute between the parties and any other submissions the parties may make in the appeals which were brought before it by the first applicant and by the University of Pretoria; and

2.2 in the case of the first appeal, to confirm, vary or revoke the decision of the second respondent appealed against as required by s 52(3) of the Spatial Land Use and Management Act, 16 of 2013; and

2.3 in the case of the second appeal, to uphold the appeal subject to any condition the Appeals Tribunal may consider expedient or dismiss it, all as required by s 59 of the Town-planning and Townships Ordinance, 15 of 1986 (T).

3. The third and fourth respondents, jointly and severally, must pay the costs of the applicant, including the costs consequent upon the employment of both senior and junior counsel.'

[6] With the leave of the learned judge, the Chairperson of the Appeals Tribunal (as the first appellant), the Chairperson of the Tribunal (as the second appellant), the Municipality (as the third appellant) and the developer (as the fourth appellant) appeal against his judgment.

[7] Shortly before the appeal was due to be heard, the developer filed what was described as a 'supplementary & clarifying affidavit', the relevant portion of which reads:

'3.2 . . . At the time that the litigation commenced, the building was under construction and although there were two applications for interdicts to prevent the continued building of the building in question, such applications were unsuccessful. The fourth appellant accordingly continued with the construction of the building.

3.3 The building was completed in phases and as the phases were completed, certificates of occupancy were issued by the City of Tshwane, as appears from such certificates of occupancy annexed hereto as Annexures “SA1” to “SA3”.

3.4 Annexure “SA1” shows a certificate of occupancy dated 16 March 2018 for phase 1 of the building allowing occupancy of 5 338.2 m² of building.

3.5 This was followed-up with a further certificate of occupancy dated 16 July 2018 in terms of which 10 681.8 m² of occupancy was approved (this included phase 2 with phase 3) and finally on 5 December 2018 in terms of which 11 553 m² of building was approved.

3.6 The building is totally complete and the entire building has been certified for occupancy by the City of Tshwane.

4.1 What is of significance is that the entire building has also been let out and will be fully occupied in January 2019. Some 1 200 beds are to be occupied and have been occupied in the building in question.

4.2 What is also of significance is that it will have been seen from the record that the first respondent, Brooklyn Eastern Areas Citizen Association made much of the purported allegations that the University of Pretoria was diametrically opposed to the construction of the building and the making available of units for occupation by young people and/or students in the area of the university.

4.3 In fact this was one of the main contentions relied upon by the first respondent as to why it was undesirable that this building should be approved for construction. The fourth appellant has always denied these allegations and stated that there was a tremendous need for student accommodation in the area.

4.4 On 5 December 2018 a contract was entered into between First Property Trust (Pty) Ltd, an agent with the right to lease out the units in the building situated at 180 William Road, Brooklyn with the University of Pretoria. In this regard, I annex hereto as Annexure “SA4”, a true copy of such agreement of lease, without annexures.

4.5 In such agreement of lease the University of Pretoria itself and directly leases 904 beds in the building on the basis as set out in paragraph 1.3 of Annexure “SA4”. Such constitutes approximately 75% of the total beds available in the building.

4.6 As can been seen from the lease agreement, the University of Pretoria itself shall allocate the beds to students itself and this has transpired due to the fact that there is a dire shortage and need for student accommodation in the immediate vicinity of the university.’

[8] This raises starkly the question of whether the judgment sought on appeal will have any practical effect or result as contemplated by s 16(2)(*a*) of the Superior Courts Act 10 of 2013. That section provides: 'When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.'

[9] It has been suggested that we should pay no heed to the affidavit filed on behalf of the developer. I cannot agree. The affidavit has been filed by one of the appellants. It reveals that the building, the subject of the zoning challenge, has been completed and the entire building certified for occupation. That, whilst the appeal was pending before this court. Moreover, all of this occurred with the approval of the relevant officials in the employ of the Municipality – the other appellants under a different guise. What is more is that the building is fully tenanted, with approximately 75% of the available beds having been taken up by one of the objectors, the University, with a view to sub-letting the accommodation to students of its own choosing. Indeed, by the time of the hearing of the appeal, such allocations had been made and students were in occupation since the commencement of the 2019 academic year.

[10] BEACA sought to suggest that the receipt of the affidavit would occasion it prejudice. The nature of such prejudice is unclear to me. First, that the building has been fully completed, approved for occupation and let is not in dispute. Second, insofar as this aspect of the case, namely mootness, is concerned, the affidavit filed is adverse to the interests of the developer. Its receipt therefor far from occasioning any prejudice, in truth, redounds to the benefit of BEACA. Third, although in general an appeal court decides whether the judgment appealed is right or wrong according to the facts in existence at the time, the affidavit was filed, as the deponent to the affidavit points out:

'5.1 I have been advised that it is necessary and essential that these facts be placed before the Honourable Court so that the Honourable Court has all relevant factors and information before it at the time of the hearing.'

I cannot but agree. It seems to me that a litigant in the position of the developer has a duty in circumstances such as this to bring these facts to the attention of this court.

Fourth, in deciding whether the affidavit should be received, this court has the power to regulate its own process.[2]

[11] There are indeed several instances where this court has had regard to post-judgment facts in considering whether or not an appeal is moot as contemplated by s 16(2)*(a).*[3] *Tecmed Africa v Minister of Health*[4] is a clear case in point. There, in analogous circumstances, this court had regard to an affidavit filed on behalf of the respondent in arriving at the conclusion that the appeal was moot. That the affidavit had been filed absent a substantive application, and without the requisite leave of this court mattered not. Nor can it be of any moment that it was filed by a respondent with the specific view to persuading this court that the relief sought by the appellant would not have any practical effect or result. The purpose of the affidavit can hardly be decisive, but rather, and predominantly, its effect. Moreover, that it has been filed by an appellant ought, at any rate, to weigh more heavily in this case. For, during the pendency of the appeal and whilst the objection to the rezoning remains unresolved, the developer elected, with the approval of the Municipality, to finalise construction of - and let - the building. It follows, in my view, that no warrant exists for disregarding the affidavit, the significance of which, as counsel for the developer submitted in his supplementary heads of argument is that 'in these circumstances the events have overtaken the dispute between the parties.'

[12] This Court has a discretion in regard to s 16(2)(*a*). There are cases where, notwithstanding the mootness of the issue as between the parties to the litigation, it has dealt with the merits of an appeal.[5] With those must be contrasted cases where it has

---

[2] *Mukkadam v Pioneer Foods (Pty) Ltd and Others* 2013 (5) SA 89 (CC) paras 31 – 34 and 42.
[3] See inter alia *Radio Pretoria v Chairman, Independent Communications Authority of South Africa & another* 2005 (1) SA 47 (SCA); *Western Cape Education Department v George* 1998 (3) SA 77 (SCA); *The Kenmont School & another v DM & others* [2013] ZASCA 79 (SCA); *Legal Aid South Africa v Magidwana & others* [2014] 4 All SA 570 (SCA); *Deutsches Altersheim Zu Pretoria v Dohmen & others* [2015] ZASCA 3 (SCA); *Tecmed Africa v The Minister of Health* [2012] ZASCA 64; [2012] 4 All SA 149 (SCA) and *Absa Bank Ltd v Van Rensburg & another* 2014 (4) SA 626 (SCA).
[4] *Tecmed Africa v The Minister of Health* [2012] ZASCA 64; [2012] 4 All SA 149 (SCA).
[5] See inter alia *Natal Rugby Union v Gould* [1998] ZASCA 62; 1999 (1) SA 432 (SCA) at 444I-445B; *The Merak S: Sea Melody Enterprises SA v Bulktrans (Europe) Corporation* [2002] ZASCA 18; 2002 (4) SA 273 SCA para 4; *Land en Landbouontwikkelingsbank van Suid-Afrika v Conradie* [2005] ZASCA 15; 2005 (4) SA 509 (SCA) paras 5-7; *Executive Officer of the Financial Services Board v Dynamic Wealth Ltd & others* [2011] ZASCA 193; 2012 (1) SA 453 (SCA) paras 43-46.

declined to do so.[6] As Wallis JA pointed out in *Qoboshiyane NO & others v Avusa Publishing Eastern Cape (Pty) Ltd & others:*[7]

'The broad distinction between the two classes is that in the former a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this Court was required, whilst in the latter no such issue arose.'

[13] It was submitted on behalf of the appellants that a discrete legal issue, namely the jurisdiction of the Appeals Tribunal to consider an appeal of the kind encountered here, did indeed arise in this case. That issue, so the submission went, appertaining as it did to jurisdiction, had of necessity to be determined as a point *in limine* by the Appeals Tribunal. Accordingly, so the submission continued, as Tuchten J had erred, it was necessary for this court to put matters to right. The point hardly need detain us, for the answering affidavit filed in opposition to the review application in the court a quo recorded:

'9. <u>The transition of municipal planning and municipal planning law: the period after the enactment of the by-law</u>

9.1 On 2 March 2016, some 9 months after the enactment of SPLUMA and some 3½ months after the SPLUMA Regulations came into operation – in the absence of the promulgation of any new provincial planning legislation in the Gauteng Province to support SPLUMA – the Municipality adopted the By-law.

9.2 After the said date, rezoning applications could only be dealt with in terms of SPLUMA, the SPLUMA Regulations and the By-law.

9.3 Any appeal noted after 2 March 2016 against a rezoning decision, regardless of whether the rezoning application was made during the pre-SPLUMA period or the interim period of transition, would be dealt with in terms of SPLUMA (section 51), the SPLUMA Regulations (regulations 20-30) and the By-law (sections 19-20).

---

[6] See inter alia *Radio Pretoria v Chairman, Independent Communications Authority of South Africa* see fn 3 above; *Rand Water Board v Rotek Industires (Pty) Ltd* [2003] ZASCA 22; 2003 (4) SA 58 (SCA); *Minister of Trade and Industry v Klein NO* [2009] ZASCA 77; [2009] 4 All SA 328 (SCA); *Clear Enterprises (Pty) Ltd v Commissioner for South African Revenue Services & others* [2011] ZASCA 164 (SCA); *The Kenmont School & another v DM* see fn 3 above; *Ethekwini Municipality v South African Municipal Workers Union & others* [2013] ZASCA 135 (SCA); *Legal Aid South Africa v Magidwana* see fn 3 above; and *Deutsches Altersheim Zu Pretoria v Dohmen & others* see fn 3 above.

[7] *Qoboshiyane NO & others v Avusa Publishing Eastern Cape (Pty) Ltd & others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA) para 5.

9.4 On 24 March 2016, by Council Resolution (Annexure “A7”), the Municipality finalised the establishment of the MPT and the MAT.

9.5 The said resolution informs that as far as the MPT was concerned:

9.5.1 all municipal officials that served on the CP & DC would henceforth serve as members of the MPT; and

9.5.2 the following non-municipal officials were then appointed to the MPT in terms of section 36 (1) of SPLUMA, namely Ms Viwe Qegu, Mr Israel Moketla Mamabolo, Ms Stefani Chetty, Mr DO Nkoane, Mrs R Du Plessis and Mr Theslgan Pillay.

9.6 On 28 April 2016, the names of all members of the MPT so appointed were published in the Provincial Gazette No. 153 (Annexure “A8”).

9.7 As far as the MPT was concerned, the said resolution confirmed that all councillors serving on the SLDT would henceforth serve on the MAT.

9.8 With the establishment of the MPT and the MAT having been finalised, these tribunals were then put to work.

10. <u>The hearing of the 4th respondent’s rezoning application and objections thereto</u>

10.1 Since the 4th respondent’s rezoning application was submitted to the Municipality after the enactment of SPLUMA, but before the enactment of the SPLUMA Regulations and the By-law by which the format in which rezoning applications had to be submitted after 1 June 2015 and procedural and substantive considerations that would apply during the consideration thereof, were not yet in existence. SPLUMA, which was enacted by then, being framework legislation, also does not contain any guidance in this regard. As a result of these *lucanae*, section 56 of the 1986 Ordinance continued to provide such guidance.

10.2 The 4th respondent’s rezoning application was consequently brought in terms of section 56 of 1986 Ordinance, within the very broad principles contained in SPLUMA applying thereto. Such an approach is not novel. Before the demise of the DFA, rezoning applications would be submitted in terms of section 56 of 1986 Ordinance and the principles and guidelines contained in the DFA would guide the Municipality’s decision making process in respect of such an application.

10.3 SPLUMA, as framework legislation, empowers the Municipality, by virtue of section 41(2)(d) of SPLUMA, read with section 40(4) thereof, to consider applications referred or submitted to it, such as the 4th respondent’s rezoning application.’

[14] The issue accordingly did not arise for adjudication before Tuchten J. Nor is it encompassed by any of his orders. Tuchten J arrived at a contrary conclusion to the Appeals Tribunal on the point *in limine*. However, so argued counsel, some of the reasoning of the learned judge now conduces to confusion and gives rise to uncertainty before the Appeals Tribunal, thus this court should pronounce on those issues for the benefit of litigants who will in the future approach the Appeals Tribunal.

[15] Several obstacles stand in the way of acceding to counsel's request. First, an appeal lies against the substantive order of a court, not its reasoning.[8] Second, absent an undisputed factual substratum, it would be extremely difficult to define the limits of any order that should issue in this case. Third, whatever issues are likely arise in the pending matters none of them are yet 'ripe' for adjudication by this court.[9] Fourth, 'it is desirable that any judgment of this Court be the product of thorough consideration of, *inter alia*, forensically tested argument from both sides on questions that are necessary for the decision of the case'.[10] Fifth, as Innes CJ observed as long ago as *Geldenhuys and Neethling v Beuthin* 1918 AD 426 at 441:

'Courts of Law exist for the settlement of concrete controversies and actual infringements of rights, not to pronounce upon abstract questions, or to advise upon differing contentions, however important.'

In *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs & others* 2000 (2) SA 1 (CC) 2000 (1) para 21 fn 18 the Constitutional Court echoed what the learned Chief Justice had stated over eight decades earlier when it said: 'A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the court is to avoid giving advisory opinions on abstract propositions of law.' This principle has been emphasised in a long line of cases of this court.[11]

---

[8] *Absa Bank Ltd v Mkhize & another, Absa Bank Ltd v Chetty, Absa Bank Ltd v Mlipha* 2014 (5) SA 16 (SCA); [2013] ZASCA 139 para 64.
[9] See *Clear Enterprises (Pty) Ltd* fn 5 above.
[10] Per Howie JA in *Western Cape Education Department v George* see fn 3 above at 84E.
[11] See by way of example *Legal-Aid South Africa v Magidiwana & others* and *Deutsches Altersheim Zu Pretoria v Roland Heinrich Dohmen* fn 14 above and the cases there cited. In *Radio Pretoria* para 41, Navsa JA said:

[16] The cumulative consequence of all the factors that I have alluded to is that no practical effect or result can be achieved in this case.

[17] In the result, I would strike the appeal from the roll with costs, including those consequent upon the employment of two counsel.

_____

V M Ponnan

Judge of Appeal

**Rogers AJA (Majiedt and Swain JJA and Eksteen AJA concurring)**

[18] I respectfully disagree with Ponnan JA's judgment. In my view the appeal is not moot and this court is obliged to determine it on its merits. I adopt the abbreviations my colleague uses save that I shall refer to the Municipality's Appeals Tribunal as the MAT.

*Appealability*

[19] The circumstances in which the developer came to file the affidavit on which my colleague bases his decision are the following. On 5 December 2018 the registrar of this court addressed a letter to the parties directing them to file further heads of argument on the following questions: (a) whether the order of Tuchten J was dispositive of any of the substantive issues between the parties, and appealable; (b) whether entertaining the appeal would not conduce to a fragmented disposal of the issues and a possible proliferation of piecemeal appeals. (Simply for convenience, I shall refer to these points collectively as the piecemeal points.) The municipal parties and the developer filed their supplementary submissions on 7 January 2019 while BEACA filed its supplementary submissions on 21 January 2019. The developer's affidavit was delivered together with its supplementary submissions.

[20] From the developer's supplementary submissions one can see that it did not seek to deploy the evidence in the belated affidavit in order to show that the appeal was

---

'Courts of appeal often have to deal with congested court rolls. They do not give advice gratuitously. They decide real disputes and do not speculate or theorise (see the *Coin Security* case (*supra*) at para [7] (875A-D)). Furthermore, statutory enactments are to be applied to or interpreted against particular facts and disputes and not in isolation.'

moot. On the contrary, the developer wished the court to hear the appeal and to reverse Tuchten J's decision. The developer relied on the completion and occupation of the building for purposes of an argument that it would not be just and equitable, in terms of s 8(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), for the MAT's decision dismissing the internal appeals to be set aside. For this reason, so the argument ran, the court a quo's granting of consequential relief – the setting aside of the MAT's decision – should be reversed, even if the MAT's decision was vitiated by a review irregularity. The developer's contention was not that the appeal was moot in terms of s 16(1)(*a*) of the Superior Courts Act; its contention was that, on the merits of the appeal, the granting of consequential review relief was not just and equitable.

[21] At the hearing of the appeal counsel made submissions on the piecemeal points and on the merits of the appeal. Counsel for the municipal parties and the developer submitted that this was not a case of undesirable piecemeal appellate jurisdiction. BEACA argued the contrary. The developer's counsel did not expand on its supplementary submissions regarding the appropriateness of setting aside the MAT's decision in view of the completion of the building. The question whether the information in the belated affidavit rendered the appeal moot was raised by a member of the court but hardly touched on in argument. None of the litigants took the view that the appeal was moot.

[22] Although my colleague does not base his judgment on the piecemeal points, it is necessary to deal briefly with them since they were embraced by BEACA. I am satisfied that the appeal is not one which this court is entitled to decline to entertain. Tuchten J's judgment has all three attributes of a final appealable judgment as laid down in *Zweni v Minister of Police*:[12]

(a) He upheld the review, granted consequential relief and ordered the appellants to pay the costs. Those orders were final in effect. The court a quo could not alter them.

(b) Tuchten J's judgment was definitive of the rights of the parties. This requirement must be understood as referring to the rights at issue in the court a quo since those are the only rights which that court can adjudicate. The rights at stake in the court a quo

[12] *Zweni v Minister of Police and Order* [1992] ZASCA 197; 1993 (1) SA 523 (A) at 532J-533B.

concerned the jurisdiction of the MAT, ie whether the internal appeals were validly before the MAT. BEACA asserted that it had lodged valid internal appeals and had the right to have them decided by the MAT on their merits. The appellants contested those rights. The court a quo finally determined them in favour of BEACA.

(c) Tuchten J's judgment disposed not merely of a substantial portion but the whole of the relief claimed in the main proceedings. The 'main proceedings' in *Zweni* is a reference to the proceedings in the court a quo. In the present case there is nothing left of those proceedings.

[23] It is true that Tuchten J did not determine the merits of the rezoning decision. That is because those merits were not an issue in the case before him. The merits of the rezoning decision will never serve before a court. There is no statutory appeal from the MAT to the High Court. Our courts have been astute to maintain the distinction between appeal and review, between merits and process. As Prof Hoexter writes:[13]

'Appeal . . . is concerned with the merits of the case, meaning that on appeal the second decision-maker is entitled to declare the first decision right or wrong.

Review, by contrast, is not concerned with the merits of the decision but whether it was arrived at in an acceptable fashion.'

[24] Conceivably the way in which the MAT decides the merits (if the present appeal fails) may be vitiated by a review irregularity, but that is speculation. There is no reason to think it more likely than not that the MAT's decision on the merits will be open to a review challenge. If it were not irregular, the present appellants could not have it set aside on the ground that no valid internal appeals served before the MAT because that question has been rendered *res judicata* by Tuchten J's decision. If there were in due course a review challenge on the merits, that would give rise to fresh litigation in the High Court involving the adjudication of different rights to those which Tuchten J finally determined.

[25] Where legislation has entrusted the merits of a matter to an administrative functionary, the merits are hardly ever a matter for the courts. The usual order where a

---

[13] Cora Hoexter *Administrative Law in South Africa* 2 ed 108

review succeeds is that the matter is remitted to the functionary to determine the merits afresh. In all successful reviews where the usual order is made it could be said that the 'substantive issue' between the parties (ie the merits of the decision entrusted to the functionary) has not yet been determined. And in all such cases the remittal is pregnant with the possibility that the functionary's fresh decision will be vitiated by review irregularity, spawning further review proceedings. There are many instances where this court has adjudicated such appeals and not a single instance, so far as I am aware, where it has declined to do so.

[26] Section 17(1)(*c*) of the Superior Courts Act, which embodies the legislative policy against piecemeal appellate adjudication, is confined to situations where the appeal will not dispose of 'all the issues in the case'. The 'case' must mean the legal suit in the court a quo. It cannot encompass issues with which the court a quo is not concerned but which might have to be adjudicated by an administrative functionary from whose decision no appeal lies.

[27] Turning to the question of mootness, s 16(2)(*a*) of the Superior Courts Act applies where the issues are of such a nature 'that the decision sought will have no practical effect or result'. So one tests mootness by asking whether the relief the appellants seek in the appeal will have practical effect or result. Only where such relief would have 'no' practical effect or result (which would include effects and results so trivial as to be disregarded as *de minimis*) is the appeal moot. The relief the appellants seek on appeal is a reversal of the court a quo's judgment setting aside the MAT's decision dismissing the internal appeals. One must thus determine whether such an outcome will, in its practical results and effects, differ from the status quo to an extent that is not trivial.

[28] If the court a quo's judgment stands, the MAT and the bevy of municipal officials involved in its work must deal with the merits of the internal appeals. The developer and BEACA must participate in the appeals. Probably they will feel it wise to be legally represented as hitherto. If the MAT were to give a decision on the merits which a party regards as vitiated by a review irregularity, such party would have to institute further review proceedings with considerable outlay of money, time and effort by everyone concerned. All of this would be avoided if the appellants achieve what they seek on appeal, namely an affirmation that the MAT rightly upheld the in limine objections.

[29] There are several reasons why, in my respectful view, a mootness objection, based on the completion of the building, must fail. The first is procedural. The registrar's letter requesting supplementary submissions on the piecemeal points did not authorise the filing of an affidavit. The belated affidavit did not even deal with the piecemeal points. In their responding submissions BEACA's counsel objected to this irregularity and said that their client was prejudiced by lack of opportunity to present evidence rebutting or explaining the developer's averments. At the hearing the developer's counsel did not apply for leave to file the affidavit. It is thus not properly before us. And as I have said, the question of mootness (which was not the point raised in the supplementary affidavit), and the possible answers to it, were hardly touched on in argument.

[30] Even if it were appropriate to receive the affidavit and engage with the question of mootness, the appeal is not moot. A decision by this court to decline jurisdiction would mean that Tuchten J's judgment stands, and the effects and results described in para 28 above would ensue. The difference between those effects and results on the one hand, and their avoidance on the other, is real and substantial. This is so even if it were certain that the MAT could and would have regard to the fact that the building has been completed.

[31] In any event, it is by no means certain that the MAT can permissibly have regard to the completion of the building. Counsel for the first to third appellants (the municipal parties) said in their supplementary submissions that such evidence would be inadmissible by virtue of s 20(11)(*d*)(ii) of the By-law, which precludes the MAT from considering new evidence that may negatively affect the respective rights and obligations of interested and affected parties. The developer and BEACA did not argue otherwise.

[32] Even if one were to assume that the MAT could and would receive evidence of the completion of the building, it does not follow that the MAT could or would rely on this evidence to avoid a decision on the merits of the rezoning decision. The MAT is likely to regard Tuchten J's judgment as a mandatory injunction to adjudicate the merits. If the MAT were to decide the merits in favour of BEACA, the latter has held out partial demolition as something it may pursue. We cannot know how things will unfold. Viewing

matters from the developer's perspective, success before us would mean that it would not be exposed to the risks inherent in the course BEACA intends to follow.

[33] If my colleague's suggestion is that the developer can safely ignore the internal appeals on the basis that, whatever the MAT does, its interests cannot conceivably be prejudiced because the building is now completed (ie that the internal appeals are now a dead-letter), I respectfully disagree. The developer has not stated in its affidavit that it will withdraw from the internal appeals if Tuchten J's judgment stands. That would be a high-risk strategy. The developer is before us precisely because it wants Tuchten J's judgment reversed. The developer's interests would clearly be adversely affected by a decision of the MAT that the subject properties should not have been rezoned so as to permit the building that now stands on them.

[34] Finally, reliance on mootness here will not have the effect it ordinarily has, namely putting an end to formal contestation which is already practically dead. A refusal to decide the appeal will lock the parties into further contestation before the MAT. The one course which would assuredly bring contestation to an end is if the appellants could persuade us of the correctness of their submissions on the merits of the appeal. The only other course which might have this effect is the one which the developer has urged us to take, namely to rely on the completion and occupation of the building as a basis for a discretionary decision, in terms of s 8 of PAJA, to decline to set aside the MAT's dismissal of the internal appeals. This course, which my colleague does not adopt and which does not commend itself to me, would not involve the invocation of s 16(2)(*a*) but would be a decision on the merits of the appeal.

*The merits of the appeal*

[35] The developer lodged its rezoning application with the Municipality in September 2015. Although SPLUMA came into force on 1 July 2015, the regulations necessary to make it effective were only promulgated in November 2015. This explains why the developer described its rezoning application as one submitted in terms of s 56 of the Ordinance read with s 2(2) of SPLUMA. Section 2 (2) provides:

'Except as provided for in this Act, no legislation not repealed by this Act may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use,

land use management and land development in a manner inconsistent with the provisions of this Act.'

[36] As Tuchten J explained in his judgment, SPLUMA was the second legislative attempt to create a uniform town planning regime for South Africa. The first attempt was the Development Facilitation Act 67 of 1995, but Chapters V and VI thereof were found by the Constitutional Court to be invalid because they infringed the autonomy of municipalities to regulate the land use and municipal planning within their areas of jurisdiction.[14] These defects were remedied by SLPUMA. The Municipality gave further effect to SPLUMA by enacting the By-law which came into force on 2 March 2016. A feature of SPLUMA and the By-law is that land use adjudication, including internal appeals, remains within the municipal sphere. In terms of the Ordinance, by contrast, internal appeals are determined at provincial level.

[37] Section 3 of the By-law contains transitional provisions. Section 3(1) deals with land use or development applications which were pending on 2 March 2016 when the By-law was promulgated. That section applied to the developer's pending rezoning application. It was common cause in the court a quo that, pursuant to s 3(1) of the By-law, the developer's rezoning application came before the MPT functioning in terms of SPLUMA and the By-law. The MPT granted the rezoning application on 18 May 2016.

[38] Section 3(12) of the By-law is headed, 'Appeals pending or submitted in terms of other legislation upon the coming into operation of this By-law', and reads:

'Upon the coming into operation of this By-law, any other legislation, which as a result of the coming into operation of this By-law in terms of section 2(2) of the Act, is inconsistent with the Act, and which provides for an appeal procedure against a decision of the Municipality on land development application shall be dealt with by the Municipal Appeals Tribunal, in terms of the processes and procedures as contemplated in that legislation.'

[39] The Act referred to in s 3(12) is SPLUMA. As Tuchten J observed, s 3(12) as formulated does not make sense. He held that it should be interpreted as follows (the underlined words being his insertion):

---

[14] *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal & others* 2010 (6) SA 182 (CC).

‘ Upon the coming into operation of this By-law, any appeal pending or submitted in terms of any other legislation . . . shall be dealt with by the Municipal Appeals Tribunal, in terms of the processes and procedures as contemplated in that legislation.’

This interpretation was not challenged before us and is in my view correct, particularly having regard to the subject matter of s 3 as a whole and the sub-heading of s 3(12).

[40] On 28 September 2016 the Municipality, evidently regarding the Ordinance as still regulating the developer’s application, caused the MPT’s decision to be notified by publication in the *Provincial Gazette* in terms of s 57 of the Ordinance. In its answering papers, the developer said that since the procedures relating to its application were no longer governed by the Ordinance, such publication had been unnecessary.

[41] Be that as it may, some weeks earlier, on 2 August 2016, BEACA lodged the first of two internal appeals against the MPT’s decision. The following features of the documentation lodged by BEACA may be noted:

(a) The covering letter from BEACA’s attorneys, JIR Attorneys & Associates (JIR), described the appeal as one against the MPT’s decision without identifying the legislative regime under which it was lodged.

(b) The notice of appeal, apparently a prescribed municipal form, required the appellant, in a section headed ‘APPEAL DETAILS’, to describe the ‘Type of application’ and ‘Relevant legislation applicable’. In a footnote to the former item, there appeared the pre-printed words: ‘Application i.t.o. section 58 of the [Ordinance] read with sections of [SPLUMA] read with [the By-law].’ BEACA simply copied this wording in the spaces provided. This information related to the rezoning application lodged by the developer rather than to the appeal.

(c) At the foot of the prescribed form the appellant was required to declare that the appeal was submitted to the ‘Appeals Authority’ in terms of s 20 of the By-law and that the appellant was bound by all the provisions of the By-law. The appellant was also required to acknowledge that the appeal contemplated in s 20 could be written or oral. BEACA duly signed the declaration and acknowledgment. (It was common cause in the court a quo that as at August 2016 the MAT was the Municipality’s only appeal authority.)

(d) Attached to the prescribed form was a lengthy document, on a JIR letterhead, setting out the grounds of appeal. The heading read: 'Appeal submitted in terms of section 59 of the [Ordinance] read with section 4 of the [By-law] in respect of [the subject properties]'.

(e) In the introductory part of the grounds of appeal JIR noted that the By-law had been promulgated on 2 March 2016. Attention was drawn to the transitional provisions of ss 3(1) and 3(12) of the By-Law. JIR said that, in the light of these provisions, BEACA's appeal was submitted in terms of s 59 of the Ordinance to the MAT established in terms of SPLUMA.

(f) After advancing several points in limine, including that the developer should have resubmitted the rezoning application in terms of SPLUMA and the By-law, JIR dealt at length with the merits. (BEACA's so-called points in limine were not in truth points in limine in relation to the appeal. They were grounds of appeal based on technicalities rather than the merits.)

[42] On 8 September 2016 the developer filed a response to the first internal appeal. The developer raised its own points in limine, which can be summarised thus.

(a) BEACA elected to note its appeal in terms of s 59 of the Ordinance read with s 3(12) of the By-law. Having done so, BEACA was obliged to follow the procedure laid down in the Ordinance, which meant that the appeal could only be noted within the 56-day period following publication of the scheme amendment in the *Provincial Gazette*. The internal appeal was thus premature.

(b) In any event, BEACA should not have noted its appeal in terms of s 59 of the Ordinance but in terms of s 20 of the By-law. This was so because no internal appeal in terms of the Ordinance was pending when the By-law came into force on March 2016, so that s 3(12) of the By-law was inapplicable.

[43] As stated, the Municipality published the scheme amendment in the *Provincial Gazette* on 28 September 2016. On 19 October 2016 BEACA lodged a second internal appeal. The covering letter and prescribed form were the same as before. Attached to these documents was a 'Notice of Appeal' which set out the grounds of appeal in detail. This document in its heading stated that the appeal was directed to the MAT in terms of

s 59 of the Ordinance read with s 51 of SPLUMA. It stated, further, that the first internal appeal had been filed as a precaution and that the second appeal supplemented the previous one and should be read with it. (It may be more accurate to say that the second appeal was filed as a precaution in order to meet the developer's prematurity point.)

[44] The MAT heard submissions on the parties' points in limine on 25 November 2016. In advance of the hearing the developer's attorneys filed heads of argument. In regard to the first internal appeal, the developer advanced the same points in limine I summarised earlier. In regard to the second internal appeal, the developer complained that it was legally impossible for an appeal to be noted in terms of both s 59 of the Ordinance and s 51 of SPLUMA. To the extent that the second internal appeal was brought in terms of SPLUMA, s 20(1)(*b*) of the By-law required it to be lodged within 21 days of notification of the rezoning decision. The second internal appeal was thus late by several months.

[45] Following the hearing of argument, the MAT upheld the developer's points in limine. My colleague has quoted the reasons which the MAT gave. In essence, the MAT held that s 3(12) of the By-law was inapplicable because no internal appeal was pending when the By-law came into force. In the event, therefore, BEACA should have pursued its appeals in terms of s 51 of SPLUMA and s 20 of the By-law.

[46] I have already mentioned that Tuchten J, in an obiter dictum, expressed the view that the MAT was not in general entitled to determine points in limine, its primary statutory function being to deploy its expertise to decide internal appeals on their merits. I disagree. Section 20(9)(*e*)(i) read with ss 18(3)(*a*)-(*e*) of the By-law requires the MAT to deal with points in limine first and, having decided them, either to terminate or proceed with the hearing. Even in the absence of these statutory requirements, an administrative functionary must always take care to ensure that the jurisdictional prerequisites for the invocation of its powers are present. If it finds that they are not, it must refrain from adjudicating. The rule of law is not enhanced by insisting that administrative functionaries perform their adjudicative functions despite their view that the jurisdictional prerequisites for the exercise of such functions are absent. This does not mean that an administrative functionary's decision on the presence or absence of a jurisdictional prerequisite is binding or that the functionary can in this way confer on itself, or deprive itself of, statutory

jurisdiction, only that the functionary must endeavour to act within the limits of the law, leaving it to a court on review to correct it if it has gone wrong.[15] In our current system of judicial review under PAJA, where an administrative decision can be impeached if it was materially influenced by an error of law,[16] it no longer matters much whether or not the power to determine points in limine is expressly conferred on the statutory functionary; in either case, a review court can set aside the decision if it is vitiated by an error of law.

[47] I thus turn to consider the validity of BEACA's first internal appeal. In their opposing papers in the court a quo the appellants stated that the only appeal procedure available to BEACA was an appeal to the MAT in terms of s 51 of SPLUMA read with s 20 of the By-law. They supported the MAT's decision along the same lines as the points in limine the developer had advanced. By purporting to bring its appeal in terms of s 59 of the Ordinance, BEACA had, they contended, followed the wrong procedure.

[48] The appellants alleged, in this regard, that because BEACA's internal appeal was not pending on 2 March 2016, s 3(12) of the By-law was inapplicable. If that transitional provision had been applicable, the processes and procedures contemplated in the Ordinance would have been applicable but the MAT rather than provincial functionaries would have been the appeal authority. However, because BEACA's internal appeal was only lodged on 2 August 2016, the applicable processes and procedures were those laid down in s 51 of SPLUMA read with s 20 of the By-law.

[49] The municipal parties added, in their opposing papers, that the appeal procedure contemplated in s 59 of the Ordinance ran foul of s 2(2) of SPLUMA, even though the Ordinance had not formally been repealed. That contention is undoubtedly correct. It is thus a matter of surprise that the municipal parties went on to allege that BEACA, having brought its appeal in terms of s 59 of the Ordinance, was obliged to pursue it to the provincial appeal authority contemplated in s 59 of the Ordinance, namely the Townships Board. Such a course would not only have been constitutionally repugnant; it was contrary to the case which both the municipal parties and the developer advanced,

---

[15] Cf *Minister of Public Works v Haffejee NO* 1996 (3) SA 745 (A) at 751F-H.
[16] Section 6(2)(*d*).

namely that the only permissible appellate regime was the one contemplated by s 51 of SPLUMA read with s 20 of the By-law.

[50] In their written and oral submissions in this court the municipal parties engaged in a tactical retreat from the position so clearly articulated in their answering papers. They now claim that because the developer's rezoning application was lodged in terms of the Ordinance and could only have been considered by the MPT in terms of the Ordinance, that legislation continued to govern the appeal process, including the requirement that an appeal be adjudicated by the provincial Townships Board (the papers are silent as to whether such a body still exists) and ultimately by the MEC (in lieu of the 'Administrator'). References by the developer and the MPT to planning considerations arising from SPLUMA are now dismissed by the municipal parties as 'meaningless'.

[51] At least insofar as the appeal regime is concerned, the municipal parties' new case is untenable. The pending appeals contemplated in s 3(12) of the By-law would include appeals against decisions made by the MPT in terms of the Ordinance, since that is the primary (if not the only) legislation under which such planning decisions would have been made prior to 2 March 2016. Such pending appeals are required to be determined by the MAT, not the Townships Board. Only the 'processes and procedures' of the Ordinance remain applicable. This is understandable, since in respect of such appeals aggrieved parties would already have embarked upon their appeals under the Ordinance's processes and procedures. The lawmaker could not have intended to prejudice them by requiring them, in effect retrospectively, to comply with new processes and procedures (particularly new time-limits). The contention now advanced by the municipal parties would entail that older appeals (ie those already pending as at 2 March 2016) must be decided by the MAT whereas newer appeals (those lodged on or after 2 March 2016) must be dealt with by the provincial bodies under the Ordinance. That is absurd and counter-intuitive, and is not dictated by the wording of the legislation. It must be accepted now that after the commencement of SPLUMA and the By-law the provincial appeal authority, the Townships Board, lacks the requisite jurisdiction to hear appeals emanating from rezonings granted by the Tshwane Municipality.

[52] In my view, the appellants were correct, when they contended in their answering papers, that s 3(12) was inapplicable, given that BEACA's appeal was not pending as at 2 March 2016. And it seems to me to be a necessary implication of s 3(12) that an internal appeal lodged after the coming into force of the By-law must also be brought to the MAT, but wholly in terms of SPLUMA and the By-law, rather than in terms of the processes and procedures contained in the Ordinance. Put differently, s 20 of the By-law is operative in respect of all appeals against MPT decisions where the appeals are lodged on or after 2 March 2016.

[53] It does not follow that BEACA's internal appeal was invalid. As Tuchten J observed, SPLUMA and the By-law do not require an aggrieved party to identify the legislation under which its appeal is brought. BEACA quite clearly intended to pursue an appeal to the MAT, not to the moribund provincial functionaries contemplated in the Ordinance. BEACA and its advisors evidently found the legislative regime confusing, which is unsurprising. In the prescribed form BEACA (correctly) identified the appeal as one submitted to the MAT in terms of s 20 of the By-law. In the accompanying grounds of appeal, by contrast, BEACA's attorneys (incorrectly) identified the legal route to the MAT as lying via s 59 of the Ordinance read with s 3(12) of the By-law. If it was unnecessary to identify the legislative route, an erroneous setting out of the legislative route cannot invalidate the appeal, particularly where the error was of a kind that is excusable and could cause no prejudice.

[54] The MAT, having found that BEACA had a right to pursue an internal appeal in terms of s 20 of the By-law, should have asked itself whether in substance BEACA's internal appeal complied with the requirements of the law. BEACA's appeal so complied. The prescribed fee was paid. The appeal was lodged within the 21-day limit prescribed by s 20(1)(*b*), ie within 21 days of the date on which BEACA was notified of the MPT's decision (BEACA was so notified on 12 July 2016). The documents prescribed by s 20(8) were submitted. No other non-compliance was alleged. The only complaint was that the grounds of appeal incorrectly identified the legal basis on which the MAT was seized with the matter.

[55] The developer's other point in limine, which the MAT also upheld, was that the first internal appeal was premature. That contention, however, presupposes that the

appeal was before the MAT in terms of s 59 of the Ordinance read with s 3(12) of the By-law. Only in that event would the applicable time-limit have been the one prescribed by the Ordinance rather than the By-law. Since the appeal was validly and substantively brought in terms of s 20 of the By-law, the prematurity point fell away. It is thus unnecessary to decide whether the court a quo was correct to find that an aggrieved party wishing to pursue an appeal in terms of the Ordinance can do so before the scheme amendment is published in the *Provincial Gazette*.

[56] During argument before us BEACA's counsel conceded that, if we were to find that the first internal appeal was validly before the MAT, there was no basis on which BEACA was entitled to lodge, or indeed needed to rely on, the second internal appeal. Apart from anything else, if s 20 of the By-law rather than s 59 of the Ordinance governed the procedure, as I have found to be the case, the second appeal was out of time, having been lodged more than 21 days after BEACA was notified in writing of the MPT's decision. The court a quo seems to have thought that in terms of s 3(12) of the By-law BEACA was entitled to submit an appeal in terms of s 59 of the Ordinance. For reasons I have explained, that is incorrect.

[57] It follows that I would in substance uphold the court a quo's orders, except for para 2.3, which directed the MAT to determine the second appeal as well as the first. There is no basis for interfering with the costs order in the court a quo, given that BEACA remains the dominantly successful party in that court. BEACA is also the dominantly successful party in this court, the appellants' limited success being technical in nature. A minor revision in the wording of para 2 of the court a quo's order is desirable to avoid confusion.

[58] The following order is made:

(a) Save to the extent set out in the revised order below, the appeal is dismissed.

(b) The appellants jointly and severally shall pay the first respondent's costs of appeal, including those attendant on the employment of two counsel.

(c) Para 2 of the court a quo's order is set aside and replaced with the following:

'2.1 The matter is remitted to the Appeals Tribunal with directions:

2.1.1 to deal with the points in limine of the fourth respondent as follows, namely to dismiss the points in limine in regard to the first internal appeal by the applicant and the University of Pretoria but to uphold them in regard to the applicant's second internal appeal;

2.1.2. to consider and determine the first internal appeal after following such further procedures as it may be required to follow in terms of s 20 of the Tshwane Land Use Management By-law of 2016 read with s 51 of the Spatial Planning and Land Use Management Act 16 of 2013.'

O L Rogers
Acting Judge of Appeal

APPEARANCES:

| | |
|---|---|
| For First to Third Appellants: | A Liversage SC (with him L Kotze)<br><br>Instructed by:<br>Malebye, Meleho Attorneys, Pretoria North<br>Rossouws, Bloemfontein |
| For Fourth Appellant: | M Rip SC<br><br>Instructed by:<br>Ivan Pauw & Partners Attorneys, Pretoria<br>Phatshoane Henney Attorneys, Bloemfontein |
| For First and Second Respondent: | LGF Putter SC (with him H van Eetveldt)<br><br>Instructed by:<br>Shaukat Karim & Co., Durban<br>Honey Attorneys, Bloemfontein |