REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 10/45230

DATE:03/08/2011

REPORTABLE

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

....
DATE SIGNATURE

In the matter between:

BORDEAUX
SOUTH RESIDENTS ASSOCIATION
(ASSOCIATION
INCORPORATED UNDER
SECTION 21) Applicant

and

L SEFTEL N.O First Respondent

MAVELA A V DLAMINI Second Respondent

CITY OF JOHANNESBURG Third Respondent

J U D G M E N T

HALGRYN, AJ:

1. The Applicant is a section 21 company registered and incorporated as such in terms of the company laws of South Africa. Its purpose – evidently – is to serve as a vehicle, by which the residents of the Bordeaux suburb in Johannesburg, can collectively seek to safeguard their rights and protect their interests.
2. The First Respondent is one Ms L Seftel, cited herein in her official capacity, as the decision-maker in respect of an application, made by the Applicant, in terms of Chapter 7 of the Rationalisation of Local Government Affairs Act, No. 10 of 1998 ("*the RLGA's Act*"), to restrict access to the Bordeaux South suburb in Johannesburg. The First Respondent dismissed the said application. The First Respondent is also the Executive Director: Transportation of the Third Respondent.
3. The Second Respondent is one Mr MAV Dlamini, cited herein in his official capacity as the decision-maker, in respect of the appeal, lodged against the First Respondent's refusal to grant the Chapter 7 application. The appeal was lodged in terms of section 62 of the Local Government: Municipal Systems Act, No. 32 of 2000 ("*the LGMS's Act*"). The Second Respondent dismissed the appeal against the First Respondent's decision. The Second Respondent is also the City Manager of the Third Respondent.
4. The Third Respondent is the City of Johannesburg Metropolitan Municipality, cited herein as having been established as a Metropolitan Municipality, by virtue of Provincial Notice 6766, of 1 October 2000 published in Provincial Gazette Extraordinary No. 141 on 1 October 2000 in terms of section 12 of the Local Government of the LGMS Act (as amended).
5. The Applicant seeks the following relief herein:-

1. *"Reviewing and setting aside the decision of the first respondent in respect of an application made by the applicant in terms of Chapter 7 [section 45] of the Rationalisation of Local Government Affairs Act, No. 10 of 1998 ("the Act") to restrict access to the Bordeaux South suburb in order to enhance safety and security.*
2. *Reviewing and setting aside the decision of the second respondent in respect of an appeal to him, lodged in terms of section 62 of the Local Government Municipal Systems Act, Act 32 of 2000, against the decision of the first respondent referred to in paragraph 1 above.*
3. *Correcting the decisions referred to in paragraphs 1 and 2 above and only that the Chapter 7 application be approved in terms of section 45 of the Act to the applicant for the restriction of access to the Bordeaux South area in order to enhance the safety and security of the said area.*
4. *Alternatively to paragraph 3 above, remitting the applicant's Chapter 7 application for approval referred to in paragraph 2 above to the first respondent for reconsideration by her with such directions as the court may deem just.*
5. *Alternatively to paragraphs 3 and 4 above, be remitted to the second respondent for reconsideration with such directions as this Court may deem just.*
6. *Ordering the first and second respondents to pay the costs of this application jointly and severally the one paying the other to be absolved.*
7. *Granting the applicant such further and/or alternative relief as this Court may deem just."*

6. This matter has a sorry history. It originated from an application in terms of Chapter 7 of the RLGA Act, brought as far back as February 2001 and in respect of which the Applicant received no response. That application was re-submitted in an amended form on 14 October 2009. Again, no response was forthcoming, despite verbal and written communications and meetings between the parties.

7. This lack of response caused the Applicant to erect certain structures - without approval - to the dissatisfaction of the Third Respondent.
8. During December of 2009 the Applicant brought an urgent application, in which application the Applicant sought various relief, including an interim declaratory Order, that it could retain the existing structures.
9. Significantly, immediately prior to filing its answering affidavit in opposition to this urgent application, the Third Respondent furnished the Applicant with a notice by the First Respondent, advising the Applicant that its section 7 application had been unsuccessful.
10. This notice was dated the 1st February 2010, but only received on or about the 24th February 2010. The reason for dismissing the Applicant's application is scantily recorded as:-

> "*1. The urban functionality would be seriously affected because of the size and scale of the proposed application. (Definition attached.)*"[1]

11. Not only is the stated reason devoid of any detail, but as if to add insult to injury, a *"definition"* of "*urban functionality"* was insipidly attached to the aforesaid notice, (some two pages of it). The Applicant was seemingly expected to do a comparison – between the stated reason and the definition - and work out for itself, somehow, why its application was unsuccessful. Even if one attempts to take on this comparison, it is not possible to make any sense of the stated "*reason"* for dismissing the Applicant's Chapter 7 application.
12. There is much to be said for the Applicant's complaints about the treatment it has received from the Third Respondent. The timing of this notice is significant as is the scarcity of reasons; or better put – the total lack thereof. The intention and

[1] At page 116.

purpose with the filing of the notice on the date time that it was - advising the Applicant that its Chapter 7 application was unsuccessful - was quite evidently to enable the Third Respondent to contend at the hearing of the aforesaid urgent application, that the purpose of that application had fallen away.

13. Moreover it cannot conceivably be said that this notice contained any reasons at all. Mr Aucamp on behalf of the Applicant submitted that when an administrator makes a decision which amounts to administrative action in terms of the Promotion of Administrative Justice Act,[2] ("PAJA"), and furnishes no reasons therefor, that an inference can justifiably be made that no reasons exist. The submission is tempting. The obligation to provide reasons for administrative action has always formed an essential part of our Administrative Law and the obligation to do so is now a statutory one; one so profound that non-compliance must unquestionably have consequences.

> *"Someone affected by an administrative action has the right to be furnished with reasons for the action in writing. It is important to have access to the reasons that informed a particular administrative action, since this will determine whether review thereof is possible."*[3]

14. The duty to furnish reasons burdens decision makers – with reason - and thus lead to good administrative functioning.[4]

15. The ability to set aside – on review – an administrative action, the unlawfulness of which has become apparent from the reasons furnished will be a welcome source of *"elation and relief"* as will be the refusal of reasons.[5]

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[2] No 3 of 2000.

[3] LAWSA, Volume 2, Second Edition, Paragraph 31. Section 33(2) of the Constitution of the Republic of South Africa, 1996, read with section 5 of PAJA.

[4] BEL PORTO SCHOOL GOVERNING BODY V PREMIER OF THE WESTERN CAPE 2002 9 BCLR 891 (CC); 2002 3 SA 265 (CC), at paragraph 159.

[5] DENDY V UNIVERSITY OF THE WITWATERSRAND 2007 8 BCLR 910 (SCA); 2007 3 ALL SA 1 (SCA) paragraph 18.

16. The furnishing of no reasons for an administrative action likens the refusal to provide reasons; which in turn evidences bad faith and is an important consideration in deciding if the decision had been actuated by ulterior motive or improper motives.[6]

17. If I understand the Respondents' case correctly – insofar as the First Respondent's decision is concerned – it contends that the First Respondent's decision "*has fallen away*" or has been "*replaced*" by the Second Respondent's decision on appeal. Hence its objection of "*misjoinder*", i.e. that the First Respondent ought not to have been joined herein at all.

18. This objection is without any merit. The First Respondent's decision continues to exist as a fact, irrespective of the fate of the Second Respondent's decision.[7] Mr Memani, on behalf of the Respondents also contended that the appeal cured any defects in the First Respondent's decision.

19. As a broad proposition, this submission is not sound. On the contrary - and although there exists no hard and fast rules - the ambit of an appeal curing defects of an initial hearing, is limited entirely to that where the appeal allows for a complete rehearing *de novo,* totally superseding the original decisional process and where the appeal tribunal – by observing the precepts of natural justice, gathers completely fresh evidence in a fair manner and to weigh it objectively and impartially.[8] I was not told that this was the case *in casu* and the papers do not make out such a case.

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[6] JUDES DISTRICT V DISTRICT REGISTRAR OF MININING RIGHTS, KRUGERSDORP 1907 TS 1046, 1052; DENDY V UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG 2005 9 BCLR 901 (W); 2005 2 ALL SA 490 (W); MAFUYA V MUTARE CITY COUNCIL 1984 2 SA 124 (ZH) 133F.

[7] OUDEKRAAL ESTATES v CITY OF CAPE TOWN 2004 (6) 222 (SCA).

[8] BAXTER, ADMINITSTRATIVE LAW, JUTA AND CO LTD, at p589-590. CALVIN V CARR [1980] AC 574, 592ff; TURNER V JOCKEY CLUB OF SA 1974 (3) SA 633 (A).

20. As Baxter points out further, a complainant is entitled to fairness at all stages of the decision-making process.[9] The learned author refers to the following dictum by Megarry J:-

> *"If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal?"*[10]

21. This approach – with respect - should be the preferred approach in our Law; especially with the advent of our Constitutional dispensation.

22. I cannot, on the facts before me find that the appeal cured the initial defective decision. I also do not agree that this decision *"fell away"* as a result of the second decision. Its continued existence – if I leave it unattended – will have consequences;[11] even if I review and set aside the second decision.

23. As far as the First Respondent's decision is concerned, it incontestably stands to be reviewed and set aside on the basis that it was actuated by no reason at all.

24. I continue, with what I referred to, as the sorry history of the matter. It was convenient to interpose my recordal thereof by dealing with the merits of the attack on the First Respondent's decision at this juncture.

25. The aforesaid urgent application served before Lamont J during March 2010 and the learned Judge ordered that:-

> *"1. The respondent is interdicted and restrained from removing the access control structures erected and implemented by the applicant.*
> *2. An order granted in terms of prayer 1 above is to operate as an interim order pending the final outcome of the applicant's Chapter 7 application ('the applicant's Chapter 7 application') in terms of the Rationalisation of Local Government Affairs Act*

[9] Supra, at 588.
[10] LEARY V NATIONAL UNION OF VEHICLE BUILDERS [1971] Ch 34, 49.
[11] See OUDEKRAAL, Supra.

> *10 of 1998 ('the Act') to the respondent dated 14th October 2009 and all the exhausting of all the domestic remedies of the Act and/or the respondent's procedures pursuant to the outcome of the respondent's decision by the applicant's Chapter 7 application.*
> *3. Any party opposing this application is to pay the costs of this application."*[12]

26. The Applicant filed an appeal against the First Respondent's decision, which dismissed its Chapter 7 application. It was common cause that this appeal had to be brought and was brought in terms of section 65 of the LGMS Act.[13]

27. As was the case with the Applicant's First and Second Chapter 7 applications, the Third Respondent did not respond, notwithstanding many requests to do so and the fact that the consideration of the appeal ought to have commenced within six weeks after the filing thereof.[14]

28. Moreover, a dispute arose between the parties as to the interpretation of the Order by Lamont J and as a result in June 2010, the Applicant brought a further application, which served before Makhanya J on an unopposed basis. The Order granted therein reads as follows:-

> "*Pending the finalisation of Part B of the applicant's application under the above case number and the finalisation of the applicant's application under Chapter 7 of the Rationalisation of Local Government Affairs Act, whichever is the latter:*
> 1. *The applicant is authorised to retain those structures already in place and implement it and immediately erect and implement the further access control structures referred to in paragraph 18 of the founding affidavit;*
> 2. *The respondent is interdicted and restrained from removing such access control structures.*"

[12] A copy of the Order appears at page 131.
[13] A copy of the notice of appeal appears at pages 119-125.
[14] This was also common cause and in terms of the LMGS – Act.

29. The aforesaid Order was made in respect of Part A of the notice of motion to that application. The Third Respondent filed an application for rescission of this Order by Makhanya J, which has been, opposed but not prosecuted further, by the Third Respondent.

30. Part B of the aforesaid notice of motion was thereafter set down for hearing on 27 October 2010. Again – significantly so - on the morning of 27 October 2010, the Applicant's attorney was advised telephonically that the Applicant's appeal had been dismissed. The matter served before Willis J who granted the following order:-

> "*1. The applicant is authorised to retain the structures already implemented and erected by it, during the finalisation of a review application to be instituted by the applicant by a court of first instance.*
> *2. The applicant is ordered to file its review application on or before close of business on Monday 8 November 2010, in which event the order in 1 above will automatically lapse and in which event the applicant will be liable for the costs of this application.*
> *3. The costs of this application will be costs in the review application, save for the costs already awarded by Motloung AJ.*"

31. The decision by the Second Respondent, to dismiss the Applicant's appeal, reads as follows:-

> "*Please be advised that your appeal was considered in terms of section 62 of the Local Government: Municipal Systems Act, 2000, and has been dismissed.*
>
> *In accordance with the provisions of the Promotion of Administrative Justice Act, 2000, the reason(s) for the above decision are as follows:*
>
> *a) Access to the existing commercial land use in the area namely, the Engen petrol filling station, a school, as well as a sports club will be affected by the proposed closures;*
> *b) There are two through roads, namely Garden Road and Main Road through the area that carry more*

than 900 vehicles per peak hour, therefore mobility on this running roads such as Jan Smuts Avenue will be affected if this access restriction is approved;

c) *Not all residents in this proposed action restricted area supported the closure as 19 objections were received.*

You are advised that due to the fact that this an [sic] *appeal for purposes of section 62 of the Local Government: Municipal Systems Act, 2000, no further internal appeal is possible."* [15]

32. The Applicant brought this review application on or about 8 November 2010 and there is no indication that it was brought late. The structure of the review application and the response thereto warrant comment. From my recordals herein thus far, it would be clear that the matter is not all that factually challenging. Yet, the record comprises of some 1 162 pages, excluding lengthy heads of argument. The Applicant included many allegations herein, unrelated to this review application; which properly should be restricted to the evidence which served before the decision-makers. This is not a wide review which would allow me to take new facts into consideration upon review.

33. It may well have been desperation or sheer exasperation – I do not know – but what is clear is that the Applicant took its eye off the ball. The Respondents are not blameless from this criticism. They rose to every occasion and responded in as much detail to new and irrelevant evidence, which never served before the two decision-makers herein. It is one thing – in a review application - to include evidence, the purpose of which is to show bias and which would comprise of evidence which did not serve before the decision maker; but it is quite another to include allegations which

[15] A copy of the notice appears at p177.

pertain to the merits of the review application - which did not serve before the decision maker - in an attempt to show the wrongness of the decision. This is impermissible.

34. Reading these papers was a very time-consuming exercise, made increasingly difficult by my attempts to try and ascertain what constituted evidence which served before the two decision-makers and what did not. I confess to simply giving up at some stage and opted – rather – to enquire from Mr Aucamp on behalf of the Applicant, at the commencement of the argument herein, to indicate to me which portions of the papers are indeed relevant. I record his responses herein as it may hopefully assist another Court enjoined to undergo the same exercise I did. I was informed that:-

- The second Chapter 7 application appears at pages 286 to 620.
- The decision by the first respondent appears at page 116 to 118.
- The appeal appears at pages 119 to 125.
- The decision by the second respondent in respect of the appeal appears at page 177.
- The record of the proceedings which was filed in terms of Rule 53 appears at page 284 to 855.

35. I have not had regard to that evidence which did not serve before the two decision-makers herein, in so far as it related to the merits of the decisions. I did have regard to the previous litigation herein as it impacts on a defence raised by the Respondents that the Applicant's application should not be entertained by reason of the fact that the Applicant comes to Court with "*bloody hands*".

36. It is convenient to deal with this defence at this stage. Mr Memani submitted a lengthy argument, and referred me to many authorities, in support of his submission that the

Applicant's application should not be entertained, by reason of the fact that it resorted to self-help - by unlawfully erecting structures – and it is thus guilty of sedition. Without belabouring the point, I am unable to find that this is so, by reason of the existence of the aforesaid Court Orders; which allow the Applicant to retain its structures and in fact disallow the Third Respondent from removing it. I am unable to find that the Applicant comes to Court with unclean hands and moreover, to the extent that I may not entertain its application.

37. I also did have regard to the history of the matter and the Third Respondent's conduct in relation thereto. Having regard to the manner in which:

37.1. the Third Respondent failed to deal with the Applicant's initial Chapter 7 application - for nearly 8 years;

37.2. the Third Respondent failed to timeously deal with the Applicant's second Chapter 7 application;

37.3. the Third Respondent – a day or two before it had to file its answering affidavit in the first urgent application – filed the First Respondent's "*reason*" for dismissing the Applicant's second Chapter 7 application;

37.4. the Third Respondent only filed its reasons for dismissing the Applicant's appeal against the First Respondent's decision on the day that Part B of the Applicant's second application was to be heard before Willis J;

37.5. the total lack of reasons provided in the First Respondent's notification and the insufficiency of reasons provided in the Second Respondent's notification;

leave me with the distinct impression of a local government institution which, either does not care, or is hell bent on frustrating the Applicant's Chapter 7 application/s. There exists no other guesses for this conduct.

38. The Third Respondent is of course entitled – and in fact duty bound to disagree and to dismiss Chapter 7 applications - if lawful reasons exist to do so – but its conduct herein smacks of an institution who never had any intention of affording this matter its due attention and consideration. Its apparent apathy in dealing with matters of understandable concern to the Applicant and its constituency is telling; and leaves one with a sense of disquiet.

39. The First Respondent's failure, to deal with the Chapter 7 applications and the appeal within reasonable periods of time, together with the Third Respondent's designed timing in furnishing the First and Second Respondents' reasons, justifies a finding that some form of bias against the Applicant exists.

38. It was unquestionably incumbent upon the Third Respondent to explain its apparent apathy or (deliberate) lack of action, as the Applicant expressly contends. I do not find any plausible or satisfactory explanation for the delays, let alone any explanation as to why the two decisions in question had to be filed on the dates and times, when they were in fact filed; which in turn leads to a justifiable conclusion that the timing thereof was deliberate, in designed attempts to frustrate. A sufficient case has been made out, to show bias and both decisions ought to be reviewed and set aside – for this reason.

39. I now turn to deal with another ground of review which affects both decisions. It is this. Section 45(2) of the RLGA Act provides as follows:-

> "*After receiving the application, the municipal council must arrange for a meeting to be convened with the applicant and the South African Police Service for purposes of enabling it to determine –*
>
> *(a) the merits of the application; and*
>
> (b) *the terms and conditions for granting the authorisation including the payment of fees and deposits.*"

40. It is not in dispute that such a meeting was not held. I need only decide whether such non-compliance constitutes a reviewable irregularity. This in turn depends on a finding if the requirement is merely a direction or whether it is peremptory; and if it is peremptory, if there had been substantial compliance with this requirement.

41. Whether a provision contained in a statute is peremptory or directory is determined, *inter alia*, with reference to the language of the provision, the scope and purpose of the statute and the context within which the relevant provision appears in relation thereto and the consequences, as regards possible inconvenience; which may even be more undesirable than the non-compliance itself.[16]

42. The use of the word "*must*" in section 45(2) is significant, although not finally determinative. The use of the words "*must*" or "*shall*" generally indicates that the intention of the legislature was to create a peremptory, obligatory, mandatory or imperative obligation.[17]

43. Steyn states the following:-

> "*Die woord 'moet' ('shall') gee gewoonlik uitdrukking aan 'n nietigheidsbedoeling. Dit is in ooreenstemming*

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[16] WENEN TRANSITIONAL LOCAL COUNCIL V VAN DYK 2000 (3) SA 435 (N) at 442; LYBRANDT V SOUTH AFRICAN RAILWAYS 1941 AD 9 at 12-13.

[17] See E, K GOVENDER, D H HULME; ADMINISTRATIVE LAW AND JUSTICE IN SOUTH AFRICA, pp 250-258. See also L C STEYN, DIE UITLEG VAN WETTE, 5th ed, Juta at p 196.

met die algemene reel dat 'n handeling in stryd met die wet verrig, nietig is."[18]

44. Mr Memani on behalf of the Respondents, on the other hand submitted, in his heads of argument, that:-

> *"45. It is submitted that the holding of a meeting is not the essence of section 45(2). The essence is to get the views of SAPS on matters that fall within their constitutional mandate. Thus, it could not be a ground of invalidity that a local authority discussed the application with the local station commissioner an applicant telephonically or on the internet instead of holding a meeting.*
>
> *46. Furthermore, it is difficult to see how an objector could be successful in having an approval set aside on the basis that section 45(2) has not been complied with in its ipsissima verba where, as in casu, the SAPS have expressed their support for the application, such support having been solicited by, and brought to the attention of the local authority by the applicant itself. Even worse, it is also difficult to see how an applicant, such as the present one, having solicited, and having got the support of the police for the application could successfully claim that the approval were* [sic] *invalid, where, as in casu, the disapproval is based on reasons that had nothing to do with the expertise of the police based on their constitutional mandate such as health, economic, traffic, or social reasons."*

45. The gist of Mr Memani's submission – as I understand it – is this. Section 45(2) specifically requires a meeting between an applicant, the local authority and the South African Police, which means that the purpose of the meeting is to be confined to issues where the SAPS can contribute, i.e. on issues relating to security and nothing else. I do not agree.

[18] STEYN; *supra* at p196. See also the authorities which STEYN refers to in footnote 22 at p 196. Mr Aucamp on behalf of the Applicant also referred me to FEINBERG V PIETERMARITZBURG LIQOUR LICENSING BOARD 1953 (4) SA 415 (A); NAIDOO V DIRECTOR OF INDIAN EDUCATION AND ANOTHER 1982 (4) SA (NPD) 278; MAHARAJ AND OTHERS V RAMPERSAD 1964 (4) SA 638 (A) at 643E-644B.

In the interpretation of a provision of a statute, our Courts adopt a purposive, ("*doeldienende*"), approach. In my view, section 45(2) must be read against the backdrop of the entire Chapter 7 of the RLGA Act, which deals with "*restriction of access to public places for safety and security purposes*".

46. It is true, as Mr Memani submits that an application such as this involves much more than simply security issues. This having been said, it can thus not be found that the purpose of such a meeting between an applicant, the local authority and the SAPS, is to deal with security issues only. Moreover, the section itself – expressly – provides that a meeting must be held:- "*… for purposes of enabling it to determine – (a) the merits of the application; and (b) the terms and conditions for granting the authorisation including the payment of the fees and deposits*".

47. It is clear that the section itself requires that the merits of the application must be discussed at such a meeting; which of necessity involves issues wider than – and not just restricted to - security issues. It cannot - conceivably - be otherwise.

48. Upon a proper construction, in my view, the section primarily provides for the right to be heard by an applicant, (*audi alteram partem*), on the merits of the application and the terms and conditions for the granting of the authorisation at such a meeting; and that at this meeting, the SAPS must also be present. The requirement of the presence of the SAPS is quite obviously to deal with security and safety issues, but the purpose of the meeting between such an applicant and the local authority is not restricted to only security issues. That would defeat the object of the compulsion to meet, for the purposes of enabling the local authority to determine the merits of the application and the terms and conditions of the authorization.

49. The requirement in section 45(2), to arrange and hold a meeting between the local authority, an applicant and the SAPS is peremptory; non-compliance of which would render any consequent decision/s a nullity.

50. In the premises therefore the First and Second Respondents' decisions ought to be reviewed and set aside for this reason - quite apart - of what I found herein above.

51. It is thus not necessary for me to say anything further. By reason, however, of the fact that I am not inclined to substitute the First and Second Respondents' decisions with my own and that I am disposed to referring the matter back to the Third Respondent for fresh consideration, a number of related issues warrant mention.

52. The first is that the Applicant in its notice of motion, albeit in the alternative, seeks orders that I refer the matter back to the First and Second Respondents for decision. I understandably cannot do this. I intend to refer the matter back to the Third Respondent, with the express ordinance that officials, other than the First and Second Respondents, be involved and entrusted with the decision-making process.

53. The reasons provided by the Second Respondent for dismissing the Applicant's appeal also warrants some comment. Mr Aucamp on behalf of the Applicant strongly submitted that these reasons by the Second Respondent are factually incorrect, save for the allegation that Garden Road is a through road. Mr Aucamp submitted that these were issues which could and would have been resolved had a meeting in terms of section 45(2) been held. On the face of it, there seemed to be much substance in the attack on the veracity of the stated reasons and the Third Respondent will be well advised to have regard to the criticisms thereof. I was unprepared, however, to make any definitive findings in this

respect, by reason of the fact that it was near impossible to dissect the evidence and to decide which evidence served before the decision makers and which did not. There was an unfortunate overlap in the way the papers were presented – as I have stated herein above - and I am unable to find that the stated reasons are factually incorrect.

54. In the premises I hold the view that the First and Second Respondents' decisions stand to be reviewed and set aside. I intend remitting the matter back to the Third respondent for reconsideration and in order to ensure that there are no longer any delays I intend to include set periods within which decisions have to be made in this regard. I also intend to ensure that the First and Second Respondents are no longer involved in the decision-making process. Pending the outcome of the reconsideration of the Applicant's Chapter 7 application I intend to extend prayer 1 of the order by Willis J.

In the premises I make the following order:

1. The decision by the First Respondent, dated the 1st of February 2010, a copy of which appears at pages 116 to 118 of the Applicant's founding affidavit herein, is hereby reviewed and set aside.
2. The decision by the Second Respondent, dated the 20th of October 2010, a copy of which is attached to the applicant's founding affidavit at page 177, is hereby reviewed and set aside.
3. The Applicant's application in terms of Chapter 7 of the Rationalisation of Local Government Affairs Act, No. 10 of 1998, to restrict access to the Bordeaux South Suburb, Johannesburg is hereby remitted back to the Third Respondent for reconsideration.

4. Such reconsideration may not involve the First or Second Respondents.
5. Such reconsideration must be finalised within two months of the date of this order.
6. Any appeal against such reconsideration must be finalised within two months of the date of the lodging of an appeal.
7. Pending the outcome of the reconsideration of the Applicant's application in terms of Chapter 7 of the Rationalisation of Local Government Affairs Act, No. 10 of 1998, as aforesaid, (and any appeals in respect of it), the Applicant is authorised to retain the structures already implemented and erected by it.
8. The Third Respondent is hereby ordered to pay the Applicant's costs, including the costs of those matters which were made to be dependent on the outcome herein.

LEON HALGRYN
ACTING JUDGE OF THE
SOUTH GAUTENG HIGH COURT,
JOHANNESBURG