REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 11550/20

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED: YES/NO

18 May 2022

In the matter between :

SAN RIDGE RENTAL PROPERTY (PTY) LTD Applicant

and

THE MUNICIPAL MANAGER : CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY First Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Second Respondent

JOHANNESBURG WATER (SOC) Third Respondent

JUDGMENT

STRYDOM J :

[1] This is an opposed application for leave to appeal, filed on behalf of the respondent, against my judgment delivered on 1 March 2022. The parties will be referred to as in the main application.

[2] This court ordered the review and setting aside of the decision, made by an unknown official of the first respondent, in terms of which the dwellings of the applicant on its premises were classified as a “multiple dwelling” for purposes of levying charges for sewerage services.

[3] The tariff policy of the respondents created various categories of dwellings. Depending on which classification is applied different tariffs will apply.

[4] The court reviewed the respondents decision to classify the dwellings of applicant as “multiple dwelling “ as defined in the tariff policy.

[5] The court found that the dwelling of applicant was excluded from the definition of a “multiple dwelling “as it falls within the ambit of the exclusion contained in the definition, to wit,” a block of flats”. The court found that the plural “blocks of flats” will also be excluded as contemplated in section 6 of in the Interpretation Act 33 of 1957

[6] The respondent raised 9 grounds for leave to appeal. I do not intend to deal with all 9 grounds suffice to say that the grounds suggesting that the court interfered with the respondent’s legislative authority are meritless. The court acknowledged that the respondent could determine categories of dwellings and could determine tariffs. The review was aimed against the decision by some unknown person who decided to classify the dwelling of the applicant in the “multi-dwelling “category. Unfortunately the respondents provided no evidence on who took the decision and the reasons for such a decision. Before the court the application was opposed on legal argument on the facts as presented by the applicant.

[7] It was argued that the court order created a non-existing category of “block of flats” or “blocks of flats”. It is indeed correct that only two categories, relevant to this application, were created through the legislative process. The defined categories are “multi-dwelling” and “flat”. In the policy reference is made to “multiple-dwellings” and “block of flats”. Although the latter term is not separately defined it is used as an exclusion in the definition of “multi-dwelling”.

[8] In the application the issue was whether the dwellings of the applicant could be classified to be covered by the exclusion. The court found that it was with reference to the facts.

[9] To consider the reasonableness of the classification the court had to interpret and decide whether the dwellings of the applicant were “block of flats “and therefore

excluded. A new category was not created by the court but rather whether the dwellings of the applicant fell outside the ambit of a “multi- dwelling” category. If so, the tariff policy for “flat” should have applied.

[10] It was argued that the court wrongly excluded the dwelling of the applicant from this definition of “multi-dwelling” as this definition means any arrangement of premises that encompasses more than one dwelling unit and the exclusion only referred to a “block of flats” in the singular. Further, “flat” refers only to ”a dwelling unit” set aside in a single multi-story building on a single erf with a communal entrance to the building. It was argued that the applicants’ dwelling had more communal entrances. In short, it was argued that a “flat” can only be such if the flat is in one building with a communal entrance, which have to be used by all occupants and with the exclusion of multiple buildings.

[11] Despite the fact that respondents laid no factual basis for its classification and decision, I am of the view that on the facts presented by the applicant a legal argument could have been advanced by the respondents to defend the decision and whether it was reasonable and not or arbitrarily taken. This will require the interpretation of the definitions. I am of a view that another court may come to a different conclusion as was the position in a matter decided some two weeks before my judgment. I was not made aware of this judgment. My brother Wright J in the matter of Park More Body Corporate v The City of Johannesburg Metropolitan Municipality, Case number: 2021/21592, was also faced with the interpretation of the same tariff policy and definitions. Although this case is to some extent to be distinguished from this court’s decision there are similarities. Wright J took the view that even if a dwelling has a communal entrance but ground floor occupiers of flats could gain entry to their flats without using the communal entrance then the dwelling is not a “flat” as defined in the policy but a “multi-dwelling”. Wright J found the description of “flat” could only cover a dwelling with one communal entrance whilst I found that “blocks of flats”, each having a communal entrance, are excluded from the definition of a “multi-dwelling”. By way of exclusion the tariff described in paragraph 2.2 would then apply which is similar to the tariff for a flat.

[12] It was argued on behalf of the respondent that the court should not have made a substitution order and that this was not an exceptional case as contemplated in section 8 (1)(c)(ii) of PAJA The court should have remitted the matter for reconsideration to the decision maker. In my view there exist a reasonable possibility that another court could come to such a conclusion as paragraph 2.2 of the tariff policy creates jurisdictional facts for a dwelling to be levied as determined in paragraph 2.2 of the tariff policy.

[13] I am of the view that there exist a reasonable possibility that another court may differ from my interpretation of the tariff policy and the existence of grounds upon which the decision of the respondent could have been reviewed and set aside. Further, I am of the view that even if the decision should have been review another court may reasonable conclude that a substitution order should not have been granted. Then there is the issue of the conflicting judgments both in this Division. Despite the fact that these judgment are to some extent distinguishable legal certainty should be obtained on how the tariff policy should be interpreted and applied. For these reason I am of the view that leave to appeal should be granted to the respondent to appeal this court's decision.

ORDER

[12] The following order is made:

12.1 Leave to Appeal to the Supreme Court of Appeal is granted against the whole of my judgment, including the cost order;

12.2 Costs of this application to be costs in the appeal.

RÉAN STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

For the Applicant	
(Respondent in the leave to Appeal):	Adv. HW van Eetveldt
Instructed by:	JDB Attorneys
% Pagel Schulenburg Inc.	
For the Respondents	
(Applicants in the Leave to Appeal)	Adv. S. Ogunronbi
Instructed by:	Prince Mudau & Associates
Date of Hearing:	14 May 2022
Date of Judgment:	18 May 2022