**IN THE HIGH COURT OF SOUTH AFRICA**
**[GAUTENG DIVISION, PRETORIA]**

**CASE NUMBER**: 1950/2013

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: [redacted]/NO
(2) OF INTEREST TO OTHERS JUDGES: [redacted]/NO
(3) REVISED

14/08/2014
DATE

SIGNATURE

14/3/2014

In the matter between:

**SABLE HILLS HOME OWNERS ASSOCIATION** Applicant

and

**CITY OF TSHWANE METROPOLITAN MUNICIPALITY** First Respondent

**THE MEMBER OF TSHWANE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT OF THE GAUTENG PROVINCE** Second Respondent

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**JUDGMENT**

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**CILLIERS AJ**

[1] The Applicant is an association of all of the registered owners of immovable property in Sable Hills Waterfront Estate, an established township that was approved during 2005 in terms of the Town Planning and Townships Ordinance, 15 of 1986.

[2] The main relief that was sought by the Applicant in the notice of motion was a declaratory order to the effect that the determination of vacant land as a category of rateable property by the First Respondent is in conflict with and *ultra vires* The Local Government: Municipal Property Rates Act, 6 of 2004, in particular Section 8(2) read with Section 19(1) thereof and null and void.

[3] The legal basis on which the declaratory relief was sought can be summarised as follows:

(i) Section 8(2) of the Local Government: Municipal Property Rates Act, 6 0f 2004 ("*the Rates Act*") provides for an exhaustive list of categories of rateable property that may be determined by the First Respondent in terms of Section 8(1) of the Rates Act;

(ii) Section 8(2) of the Rates Act does not provide for a category of rateable properties such as vacant land;

(iii) The First Respondent adopted a property rates policy with effect from 1 July 2011. In this property rates policy, provision is made for "*vacant land*" as a determined category of rateable property for purposes of levying rates;

(iv) In consequence of the contention that the categories of property set out in Section 8(2) of the Rates Act is exhaustive, the First Respondent acted *ultra vires* the Rates Act when it determined a category or rateable property to include "*vacant land*".

[4] Since the present application was launched the Supreme Court of Appeal held that the list of categories of rateable property in Section 8(2) of the Rates Act is not intended to be exhaustive and that it is competent for a municipality to add a category "*non-permitted use*" to the list.[1]

[5] At the hearing of the application *Mr du Preez SC* for the Applicant, in my view correctly so, informed that the Applicant would not persist to seek a declaratory order in terms of the main relief formulated in the notice of motion.

[6] The Applicant nevertheless requested the Court to allow a supplementary replying affidavit and an "amended" notice of motion. I was informed from the bar that the supplementary replying affidavit and the "amended" notice of motion were already delivered in December 2013 and that it sought to introduce a new cause of action.

[7] *Mr Strydom SC*, on behalf of the First Respondent, objected to the introduction of a new cause of action in a supplementary replying affidavit as

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[1] **City of Tshwane v Blom 2014 (1) SA 341 (SCA) at paras [12] to [18].**

well as to the reliance on a document intended to be an amended notice of motion. In this regard reliance was placed on the principle that the Court will not allow the introduction of a new matter in a replying affidavit if the new matter sought to be introduced amounts to an abandonment of the existing claim and the substitution therefore of a fresh and completely different claim based on a different cause of action[2] and that the Court will not permit an applicant to make a case in reply when no case at all was made out in the original application.[3]

[8] During the hearing I ruled that, in the absence of any application seeking the permission from the Court to allow the delivery of the supplementary replying affidavit containing a new cause of action as well as for allowing an amendment to the existing notice of motion that it was not possible to determine whether the filing a supplementary replying affidavit and an amended notice of motion could be allowed and I refused to allow the supplementary replying affidavit.

[9] Consequent upon the above ruling Mr du Preez SC on behalf of the Applicant informed that the Applicant persists with the alternative relief sought in the notice of motion. The alternative relief sought in the notice of motion is formulated as follows:

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2 **Triomf Kunsmis (Edms) Bpk v Capital AE & CI Bpk 1984 (2) SA 261 (W) at 270A.**

3 **Poseidon Ships Agencies (Pty) Ltd v African Coal and Exporting Co (Durban) (Pty) Ltd 1980 (1) SA 313 (D) at 316A.**

*"..... alternatively, in the event of the Honourable Court finding that the First Respondent is entitled to determine vacant land as a category of rateable property a declaration that the First Respondent is not entitled to levy the rate determined in respect of vacant land on property zoned and categorised as residential."*

[10] In support of the alternative relief sought reliance was placed on the recent judgment in the Supreme Court of Appeal in *SA Property Owners v Johannesburg Municipality*[4], and in particular the following findings therein:[5]

"*[55] The Rules of statutory interpretation require that the words to be construed must be given their ordinary grammatical meaning in the light of their context where "context" includes the language of the rest of the statue, (which may throw light of a dictionary kind on the words to be interpreted), the matter of the statute, its apparent scope and purpose, and, within limits, its background. The Court must, from the outset consider the language to be interpreted, together with the context. Even where the words to be interpreted are (or appear to be) clear and unambiguous, regard must be had to the context.*

*[56] Section 19(1)(b) prohibits a municipality from levying "(a) Rate on a category of non-residential properties that exceeds a prescribed ratio to the rate on residential properties determined in terms of Section 11(1)(a)".*

*S11(1)(a) simply provides that a rate must be an amount in the rand and the municipality must apply this rate to the market value of the property..... s19(1)(b) uses the word "ratio", which ordinarily indicates a relationship between two similar magnitudes in respect of quantity, determined by the number of times one contains the other. In Section 19(1)(b) the magnitudes are the amounts in the rand determined by the Council. Although inelegantly worded, s (19)(1)(b) indicates that the ratio of the rate on non-residential properties (which obviously includes business, commercial and industrial properties) to the rate on residential properties may not exceed a prescribed ratio. The object of the section is clearly not to limit the rates on either non-residential or residential properties per se. It is to prohibit the relationship between the two rates*

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4 **2013 (1) SA 420 (SCA).**

5 **At pp 452-453, paras [55] to [58].**

*from exceeding the prescribed relationship. The problem which arises from the wording of the relevant part of s(19)(1)(b) is resolved if it is interpreted to read "a rate on a category of non-residential properties so that the prescribed ratio to the rate on residential properties determined in terms of s(11)(1) is exceeded."*

*[57]* *The regulations promulgated in terms of s(19)(2) are also inelegantly worded. Their object is obviously to give effect to s(19)(1)(b) by prescribing ratios of rates on residential property to non-residential properties, which may not be exceeded. They refer to the first figure (the rate) in the second column as the figure for residential properties and the second figure (the rate) in the second column as the figure for non-residential properties referred to in the first column. Confusion arises from the words "residential property" in the first column. This obviously should have been "non-residential properties", as that is how the properties in that column are described. The maximum ratio of the rate on residential property to the rate on non-residential property would therefore be 1:1 – the rates (the amounts in the rand) on the two categories of property may be the same, but the rate on non-residential property must not exceed the rate on residential property. This is consistent with the interpretation of s(19)(1)(b) above.....*

*[58]* *If this were the proper interpretation, then the Council would have been prohibited from levying a rate on business properties that was 3.5 times as much as the rate on residential property, as this would result in a ratio of 3.5:1. The most the Council could have levied was the same amount in the rand as it levied on residential property. The rates levied on business properties in the 2009/2010 budget year would therefore have been unlawful because they were contrary to s(19)(1)(b)."*

[11] In the argument *Mr Strydom SC*, on behalf of the First Respondent contended that no case was made out in the founding affidavit to the effect that the First Respondent did not apply the ratios of the rate on non-residential properties to the rate on residential properties otherwise than in accordance with the prescribed ratio.

[12] *Mr du Preez SC* submitted that a proper case was made out in the founding affidavit in this regard in that it was stated that, in terms of the First

Respondent's rates policy the property rates in respect of residential properties was 1.209 cents in the rand, subject to certain rebates, whilst the property rates tariff in respect of vacant land was 5.370 cents in the rand of the value of the property and no rebates were granted in respect of vacant land for the period 1 July 2011 to 30 June 2012. In addition it was stated in the founding affidavit that, since 1 July 2012 the property rates charged by the First Respondent in respect of vacant land increased to 6.014 and the rate in respect of residential properties increased to 1.354. In addition various correspondences were annexed to the founding affidavit in which complaints were made about excessively high property rates charged on vacant land and, in these sets of correspondences it was pointed out that Section 19(1)(a) of the Rates Act prohibits different rates on residential properties and that the First Respondent's rates policy unreasonably discriminated against the owners of residential properties in the township.

[13] The above references to the rates that is to be found in the founding affidavit amounts to a complaint about the excessive rates charged by the First Respondent in respect of vacant land, as opposed to the rates charged on residential property. In the founding affidavit the Applicant clearly sought to make out the case that the particular rates that were charged on vacant land were excessive.

[14] The above case that was sought to be made out is completely different from advancing that the rate determined in respect of vacant land is unlawful by

reason of the fact that the prescribed ratio in terms of Section 19(1)(b) was not followed.

[15] In fact, the Applicant, in the founding affidavit expressly excluded reliance on the provisions of Section 19 of the Rates Act. In this regard the following was stated:

> *"I am further advised that Section 19 of the Rates Act provides for "impermissible differentiation" and prohibits a municipality to levy different rates on residential properties except in certain circumstances which are not relevant in this application."*

[16] It is, of course, in the discretion of the Court in each particular case to decide whether the Applicant's founding affidavit contains sufficient allegations for the establishment of his case. Courts do not normally countenance a mere skeleton of a case in the founding affidavit, which skeleton is then sought to be covered in flesh in the replying affidavit.[6]

[17] The Supreme Court of Appeal[7] also held that where the facts are squarely raised in the papers before the Court the Court should not allow the continuation of the wrong because the legal representatives did not appreciate the legal principles. The *Nedbank-matter* dealt with the incorrect se of relief sought by the Appellant in that matter to wit relief under the Promotion of

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6 **Titties Bar and Bottle Store (Pty) Ltd v A.B.C. Garage (Pty) Ltd and Others 1974 (4) SA .. (T) at ...**

7 **Nedbank v Medelow NNO 2013 (6) SA 130 (SCA) at paragraph [17], p 136 F-G as well as the authorities cited therein.**

Administrative Justice Act, 3 of 2000 whilst under the Promotion of the present matter the legal representatives did not seek to obtain incorrect relief. The relief sought in main simply became untenable by reason of a judgement in the Supreme Court of Appeal that held directly the opposite.

[18] In my view the founding affidavit does not even contain the skeleton of a case made out that the prescribed ratios in respect of residential properties and non-residential properties were not complied with by the First Respondent. Neither is any case made out in the founding affidavit of improper differentiation in terms of the provisions of Section 19 of the Rates act.

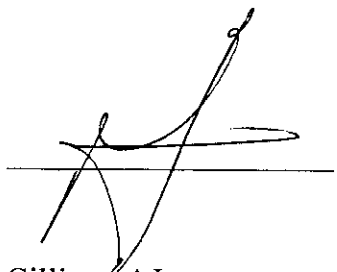
[19] **It follows from the aforesaid that the application must fail.**

**In the result I make the following order:**

1. **The application is dismissed.**

2. **The Applicant is ordered to pay the costs.**

SIGNED AT PRETORIA ON THIS 14 DAY OF MARCH 2014.



Cilliers, AJ

Acting Judge of the High Court of South Africa

Appearances:

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|---|---|
| For Appellant: | Adv.: D du Preez SC |
| Instructed by: | Johan Van der Vyver Attorneys |
| For Respondent: | Adv.: T Strydom SC |
| Instructed by: | Hugo & Ngwenya Inc |