



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1)	REPORTABLE: YES / <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO
(3)	REVISED.
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08/12/2016	
DATE	SIGNATURE

Case No: 62092/2013

9/12/2016

In the matter between:

**THE SOUTH AFRICAN NATIONAL ROADS
AGENCY SOC LTD (SANRAL)**

Applicant

and

M & T DEVELOPMENT (PTY) LTD

First Respondent

BRANDHOUSE BEVERAGES (PTY) LTD

Second Respondent

JINJIA OUTDOOR ADVERTISING (PTY) LTD

Third Respondent

MINISTER OF TRANSPORT

Fourth Respondent

Date of Hearing: 24 August 2016

Date of Judgment:

JUDGMENT

BARNES AJIntroduction

1. This is an application by the South African National Roads Agency Soc Ltd ("Sanral") for an order compelling the Respondents to remove a billboard structure and an advertisement erected on a bridge crossing the N1 highway in Centurion between the John Vorster and Brakfontein interchanges.
2. The advertisement, at least at the relevant time, was one extolling the virtues of Johnnie Walker whiskey. Emblazoned on a massive billboard structure, it faces both directions of highway traffic.
3. Sanral contends that the billboard structure was erected illegally and that the advertisement is being illegally displayed in contravention of section 48 and section 50, respectively, of the South African National Roads Agency Limited and National Roads Act 7 of 1998 ("the Act"). Those sections require permission to be obtained from Sanral for the erection of structures and the display of advertisements which are broadly speaking: "*on, over or visible from national roads.*" It is common cause that no such permission was sought or obtained. Sanral contends that, in addition to being illegal, the advertisement poses a road safety risk on that particular stretch of the highway.
4. Sanral initially launched the application on an urgent basis in September 2013. In October 2013, it was struck from the roll for lack of urgency. The application

was, however, re-enrolled as a special allocation pursuant to certain constitutional challenges being raised to sections 48 and 50 of the Act. This necessitated the filing of additional papers. A postponement followed and the application eventually came before this Court for hearing on 24 August 2016.

5. The First Respondent is the owner of the property on which one side of the bridge, which sports the advertisement, is anchored. It does not oppose the application. Nor does the Second Respondent. It is the local distributor of the international whiskey brand: Johnnie Walker. The First and Second Respondents abide the decision of the Court.
6. The application is vigorously opposed by the Third Respondent: an agency specialising in outdoor advertising ("the Agency"). The Agency was responsible for the erection of the billboard structure and advertisement pursuant to a lease agreement concluded with the First Respondent in terms of which it, *inter alia*, indemnified the First Respondent against any legal action arising as a result of the erection or display of the advertisement.
7. The Agency opposes the application on a range of grounds which may conveniently be grouped into four categories:
 - 7.1 First, the Agency argues that sections 48 and 50 of the Act are not applicable to the billboard structure or the advertisement and that Sanral's permission was therefore not required.

7.2 Second, the Agency argues that Sanral's application is fatally defective on its own terms in that:

7.2.1 The notices issued by Sanral in terms of sections 48 and 50 of the Act are invalid;

7.2.2 Sanral lacks *locus standi* to obtain the relief it seeks in its Notice of Motion; and

7.2.3 Sanral has a suitable alternative remedy available to it in terms of sections 48 and 50 of the Act.

7.3 Third, the Agency argues that Sanral's contention that the advertisement poses a road safety risk is without foundation.

7.4 Fourth, the Agency argues that sections 48 and 50 of the Act (in the event that they are found to be applicable to the billboard structure and advertisement) are unconstitutional on various grounds.

8. As a result of the constitutional challenges raised, the Minister of Transport ("the Minister") sought leave to be joined as the fourth respondent in the application. There being no opposition thereto, the Minister filed an answering affidavit and heads of argument addressing the constitutional challenges raised. I formally joined the Minister as the fourth respondent at the hearing of the application.

9. In what follows below, I will assess each of the Agency's arguments in turn. First, however, it is necessary to set out Sanral's case as pleaded in its founding affidavit.

Sanral's Plead Case

10. In its founding affidavit, Sanral based its case squarely on sections 48 and 50 of the Act.

11. Section 48 of the Act provides, in relevant part, as follows:

"48 Structures and other works on, over or below national roads or certain other land

- (1) Except as provided in subsection (2), no person may do any of the following things without the Agency's written permission or contrary to that permission, namely –

- (a) on or over, or below the surface of, a national road or land in a building restriction area, erect or construct or lay, or establish any structure or other thing (including anything which is attached to the land on which it stands even though it does not form part of that land);
- (b) make any structural alteration or addition to a structure or that other thing situated on or over, or below the surface of, a national road or land in a building restriction area;
- (c) give permission for erecting, constructing, laying or establishing any structure or that other thing on or over, or below the surface of, a national road or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated.

.....

(5) Where a person without the permission required by subsection (1) or contrary to any permission given thereunder, has erected, constructed, laid or established a structure or other thing or has made a structural alteration or addition to a structure or other thing or given permission therefor, the Agency by notice in writing may direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which must be stated in the notice but which may not be shored than 30 days calculated from the date of the notice.

(6) If the person to whom a notice has been issued in terms of subsection (5), fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, it may be removed by the Agency itself which may recover the cost of removal from that person.

.....

(7) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine."

12. Section 50 of the Act provides, in relevant part, as follows:

"50 Advertisements on or visible from national roads

(1) Except as provided in subsection (2), no person may –

(a) display an advertisement on a national road, or permit it to be so displayed;

(b) display, outside an urban area, any advertisement visible from a national road, or permit any advertisement which is so visible, to be so displayed;

(c) display any advertisement visible from a national road in an urban area, on any land adjoining the national road or on land separated from the national road by a street, or permit it to be so displayed.

(2) Subsection (1) does not apply to the displaying of any advertisement complying with the prescribed requirements (if any) as to the nature, contents or size of such an advertisement or the time, manner or place of its display, where the display thereof is authorised by or under the regulations concerned.....

...

(3) Any person who displays an advertisement contrary to the provisions of subsection (1) or permits it to be so displayed.....and who has been directed by the Agency by notice in writing to remove that advertisement, must do so within the period stated in the notice which may not be shorter than 14 days.

(4) If the person to whom a notice in terms of subsection (3) is directed, fails to remove the advertisement specified in the notice within the period stated therein, it may be removed by the Agency itself which may recover the costs of removal from that person.

(5) Any person who contravenes subsection (1), is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months or a fine."

13. The regulations referred to in section 50(2) of the Act are the *Regulations on Advertising on or visible from National Roads*, published in 2000¹ ("the Regulations").

14. In its founding affidavit, Sanral pleaded that in terms of the provisions of sections 48 and 50 of the Act, read with the Regulations, its permission was

¹ GN R 1402 in GG 21924 of 22 December 2000.

required for the erection of the billboard structure and the display of the advertisement.

15. Sanral pleaded that *"the Respondents have, without the necessary permission and without even having applied therefor, erected a structure ... and commenced to display an unauthorised advertisement thereon."*

16. According to Sanral, it became aware on 14 September 2013 that a structure was being erected on the bridge without its permission. On 18 September 2013, it dispatched an employee to the site to attempt to stop the construction. This was unsuccessful and on the same day Sanral issued a notice to the First Respondent in terms of section 48 of the Act. This notice provided in relevant part as follows:

"This notice is directed to you in terms of the provisions of Section 48 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No 7 of 1998). Please note that in terms of Section 48(1) no person may on or over, or below the surface of, a national road or land in a building restriction area, erect, contract or lay, or establish any structure or thing.

You are hereby notified to terminate all work activities within the National Road Reserve and to remove the structure immediately."

17. This notice did not elicit the desired response. The construction continued, the billboard structure was completed and the vast Johnnie Walker advertisement was hoisted over the highway.

18. On 20 September 2013, Sanral, through one of its employees, Mr Van Eck,

laid criminal charges against the First Respondent and the Agency for their alleged contraventions of sections 48(1) and 50(1) of the Act.

19. On 25 September 2013, Sanral issued notices in terms of section 50 of the Act to the Second Respondent and the Agency. These notices provided in relevant part as follows:

"This notice is directed to you in terms of the provisions of Section 50 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act 7 of 1998). Please note that in terms of section 50 no person may display an advertisement on a national road or permit it to be so displayed.

You are hereby notified to remove the advertisement immediately."

20. These notices also did not elicit the desired response. Two days later, on 27 September 2013, Sanral launched its urgent application.

21. In its Notice of Motion, Sanral seeks the following relief:

"2. That the Second and Third Respondents be ordered to immediately take all necessary steps to have the advertisement of the Second Respondent's products on a bridge structure across the national route N1 section 21 at approximately kilometre mark 14.2, removed within 3 days from the date of service on them of this order;

3. That the First Respondent be ordered to take all necessary steps to have the structure which it has erected without the consent of the Applicant on the aforesaid bridge structure across the national route N1 section 21 at approximately kilometre mark 14.2 removed within 3 days from date of service on it of this order;

4. That, in the event of any of the Respondents failing to comply with the orders referred to in paragraphs 2 and 3 supra:

- 4.1 The Applicant and in particular its Regional Manager: North as well as such other employees and/or contractors of the Applicant as may be instructed by him, be authorised to take all necessary steps to remove the aforesaid advertisement and structure;

..."

22. That, in summary, is Sanral's case as pleaded in its founding affidavit. I now turn to consider the arguments advanced by the Agency. The first issue for determination is whether sections 48 and 50 of the Act are applicable to the billboard structure and the advertisement.

Are sections 48 and 50 of the Act applicable?

23. At the outset, it must be noted that there is an exception to the applicability of the Regulations, created by the Regulations themselves.² This is to the effect that the Regulations do not apply³ where a municipality having jurisdiction has promulgated by-laws which deal substantially with the matters covered by the Regulations and which are applicable to national roads in the area.⁴

24. In 2006, the City of Tshwane published the City of Tshwane Metropolitan Municipality: Control of Outdoor Advertising By-Laws ("the Tshwane By-

² Regulation 5.

³ With the exception of regulation 6 which always applies.

⁴ In terms of regulation 5.

Laws”).

25. Clause 2.1 of the Tshwane By-Laws provides that:

“No person shall erect, maintain or display a sign or allow any other person to erect, maintain or display a sign in a place or on a building or structure that is visible from any public place without the consent of the Municipality.”

26. The Tshwane By-Laws define “public space” as follows:

“‘public space’ means a Municipality owned and controlled area to which the public have free access that includes roads, streets, squares, transit facilities, sports stadia, sport and recreational facilities such as parks, nature trails and golf courses and also premises accessible to the general public on a more continuous basis such as large suburban shopping centres.”

27. Both Sanral and the Agency submitted that the Tshwane By-Laws do not apply in this case. They did so on the basis that the advertisement is visible only from the N1, which does not constitute an area owned or controlled by the Municipality as defined in the Tshwane By-Laws. This appears to be correct. But in any event, since the parties were *ad idem* on this point, it is not necessary for me to consider it any further.

28. Despite its submission that the Tshwane By-Laws do not apply in this case, the Agency sought to rely on the unreported judgment of *HMKL 3 Investments*

*(Pty) Ltd v South African National Roads Agency Limited and Others*⁵ as authority for the proposition that "Sanral is not required to legalise any advert displayed on land adjoining a national road within an urban area." The Agency argued that this effectively constitutes authority for the proposition that Sanral's permission was not required in this case.

29. In the *HMKL 3 Investments* case, the Court found that the Tshwane By-Laws and not the Regulations applied to the advertisement at issue. It is not open to the Agency to rely on a judgment which has as its foundation a finding that the Tshwane By-Laws applied and to contend, simultaneously, that the Tshwane By-Laws do not apply in this case. The Agency cannot have its proverbial cake and eat it.

30. In any event, the decision in *HMKL 3 Investments* was limited to the facts of that case, which were markedly different from those in the present one. There, the advertisement at issue had been erected on land situated within the municipal jurisdiction of the City of Tshwane which bordered the N1 highway on one side. That case therefore did not deal with the position where, as here, the advertisement has been erected on a bridge crossing a national highway. The *HMKL 3 Investments* judgment is accordingly distinguishable on that basis.

31. On what basis then does the Agency argue that sections 48 and 50 of the Act are not applicable in this case? The argument is a simple one. It is that the

⁵ (67270/2010) [2011] ZAGPPHC 24 (7 February 2011)

billboard structure is not *"on or over a national road"* but is rather *"on or over a private road crossing a private bridge which has been integrated into the provincial road system."*

32. Following the same logic, the Agency argues that the advertisement is not *"on a national road"* but is rather *"affixed to a structure which has been erected on a private road crossing a private bridge."*
33. There was much argument about whether the road crossing the bridge is a private or a public one. This is however a tangential issue which ultimately makes no difference to the Agency's argument. This is so because, whether private or public, the road crossing the bridge is not a national road as defined in the Act.
34. The Agency's argument, in a nutshell, is that neither the billboard structure nor the advertisement are *"on or over a national road"* (in this case the N1) as required by sections 48 and 50 of the Act. Instead, both are on or over the road crossing the bridge which is not a national road.
35. In my view the Agency's argument is a strained one. It fails to reflect a common sense approach to the provisions of the Act in line with its clear purpose to authorise and empower Sanral to manage and control national roads, including advertising thereon. It also fails to take proper cognisance of the definition of "road" in the Act. Importantly, "road" is defined to include, in addition to the roadway:

- “(a) the land of which the road consists or over which the road reserve in question extends;
- (b) anything on that land forming part of, connected with, or belonging to the road; and
- (c) land acquired for the construction of a connection between a national road and another road” (emphasis added)

36. Furthermore, the Agency's argument fails to take account of the common law principle of *superficies solo cedit*, in terms of which all permanently fixed structures form part of the immovable property on which they have been erected.

37. In my view, on a common sense reading of the provisions of the Act, it is clear that the billboard structure was erected “over a national road” within the meaning of section 48(1)(a) of the Act.

38. Further, the billboard structure was erected on the bridge which is supported by pillars constructed on the national road and is therefore “on the national road” within the meaning of section 48(1)(a) of the Act.

39. As for the advertisement, having regard to the principle of *superficies solo cedit* and since the advertisement is affixed to the bridge which is “on the national road,” the advertisement is in my view “on the national road” within the meaning of section 50(1)(a) of the Act.

40. Furthermore and in any event, the advertisement is visible from the national road in an urban area on a bridge which is erected on or forms part of land adjoining the national road. On that basis it clearly falls within section 50(1)(c) of the Act.

41. For all of the above reasons, I am of the view that the Agency's argument under this heading is without merit and that sections 48 and 50 of the Act are indeed applicable to the billboard structure and the advertisement at hand.

42. The next issue for consideration is whether Sanral's application is fatally defective on its own terms, as argued by the Agency.

Is the application fatally defective on its own terms?

43. The Agency argues that Sanral's application is fatally defective on its own terms, on three bases:

43.1 the notices issued by Sanral in terms of sections 48 and 50 of the Act are invalid;

43.2 Sanral lacks *locus standi* to obtain the relief it seeks in its Notice of Motion; and

43.3 Sanral has a suitable alternative remedy available to it in terms of sections 48 and 50 of the Act.

Were the notices issued by Sanral invalid?

44. As set out above, Sanral issued notices in terms of sections 48 and 50 of the Act pursuant to which it directed that the billboard structure and the advertisement be removed "immediately."
45. This was clearly not in accordance with the provisions of the Act. Section 48 requires such a notice to direct that the structure be removed "*within a reasonable period which must be stated in the notice but which may not be shorter than 30 days calculated from the date of the notice.*" Section 50, for its part, requires that the period stated in the notice may not be shorter than 14 days.
46. Advocate Davis SC, who appeared for Sanral, conceded that notice had not been given in accordance with the timeframes stipulated in sections 48 and 50 of the Act but submitted that it had not been practically possible to do so because of the urgency of the matter. Mr Davis submitted, without elaboration, that the failure to give notice in accordance with the timeframes stipulated in the sections was, in any event, no bar to approaching the court for relief.
47. Notably, Sanral's founding affidavit does not contain an averment to the effect that it was not practically possible to give the required notice because of the urgency of the matter. But in any event, the matter was found not to be urgent and struck from the roll. There was, at that stage, nothing to stop Sanral from giving the Respondents proper notice as prescribed by the Act.

48. Fundamentally however, and whether the matter was urgent or not, Mr Davis is incorrect in his submission that a failure to give the prescribed notice is no bar to approaching the court for relief. A failure in this regard may well translate into such a bar. Whether it will or not depends on two questions: firstly whether the provision at hand are peremptory or merely directory and secondly whether there has been substantial compliance with the provisions.⁶
49. Advocate Theron SC, who appeared for the Agency, submitted that the minimum notice periods in sections 48 and 50 are peremptory. He made this submission on the basis of the negative imperative language used in the sections as well as the legislative purpose sought to be achieved by the minimum notice periods. This, he submitted, was to afford affected third parties sufficient opportunity to protect their rights in view of the extensive enforcement powers granted to Sanral in terms of the provisions (to remove the advertisement or structure and recover costs from third parties) and the imposition of criminal penalties for contravention of the sections. I agree with these submissions.
50. Of particular importance, in my view, is that fact the erection of a structure and display of an advertisement in contravention of sections 48 and 50 of the Act are criminalised. The minimum notice periods stipulated in those sections are designed to afford affected third parties a reasonable opportunity to take corrective action or otherwise take steps to protect their rights in light of the

⁶ *Kungwini Local Municipality v Silver Lakes Home Owners Association and Another* 2008 (6) SA 187 (SCA)

drastic consequences which accompany a contravention of the provisions. In my view the sections are indeed peremptory.

51. The next question which arises is whether the notices issued by Sanral constituted substantial compliance with the sections. Given the purpose of the sections and in particular the minimum notice provisions stipulated therein, I am of the view that the notices, in order to substantially comply therewith had to, at the very least, afford the Respondents a reasonable period within which to remove the billboard structure and advertisement.
52. The notices issued by Sanral did not achieve this. They did not afford the Respondents any period of time to remove the billboard structure or the advertisement, but simply directed that they be removed "immediately." Sanral launched its urgent application 9 days after issuing the section 48 notice and a mere 2 days after issuing the section 50 notice. Furthermore, Sanral laid criminal charges against the Respondents two days after issuing the section 48 notice and before it had even issued the section 50 notice. The Respondents were accordingly not afforded a reasonable period of time within which to take corrective action or otherwise take steps to protect their rights as required by the Act.
53. I am therefore of the view that the notices issued by Sanral did not substantially comply with the peremptory requirements of sections 48 and 50 of the Act. They are accordingly invalid.

Does Sanral have standing to obtain the relief sought?

54. As set out above, Sanral seeks an order compelling the Respondents to remove the billboard structure and advertisement. In the event that the Respondents fail to comply with such order, Sanral seeks an order authorising it to remove the billboard structure and advertisement.
55. It is evident from the portions of the Act quoted above that sections 48 and 50 authorise Sanral to remove the billboard structure and advertisement itself, and to recover the costs thereof, provided that notice has been given and removal has not been effected by the third party concerned within the stipulated time frame.
56. Mr Theron submitted, correctly, that public authorities generally have only those powers which are expressly or impliedly conferred on them by their governing legislation and that the power to institute any particular kind of litigation must be assessed with reference to such empowering legislation.⁷
57. Mr Theron submitted that the Act does not entitle Sanral to obtain the interdictory relief that it seeks. He argued that if regard is had to the Act as a whole, it authorises Sanral to approach the High Court for interdictory relief in order to enforce compliance in relation to certain specified sections only, namely: section 43(2)(a) and section 46(6)(a). By contrast, the Act does not authorise Sanral to approach the High Court for interdictory relief in order to

⁷ *Financial Services Board and Another v De Wet NO and Others* 2002 (3) SA 525 (C) at para 146.

enforce compliance with sections 48 and 50 of the Act. Instead, those sections afford Sanral a different remedy: the authority to remove unauthorised structures and recover the cost thereof from the third party concerned. Mr Theron submitted that Sanral is limited to the specific remedy afforded it by the Act in order to enforce compliance with sections 48 and 50.

58. As authority for this, Mr Theron relied on the judgment of *Alberton Town Council v Zuanni*,⁸ in which a Full Bench of this Court held that where a local authority's by-laws gave it certain specific rights, including the right to demolish unauthorised structures itself, this did not confer on the local authority the right to require the owner to demolish the structures. The Court, per Nestadt J, held as follows:

"To sum up, where a notice in terms of s 42(2) is not complied with, the local authority can either have the owner prosecuted, or itself cause the offending building to be demolished. (There is authority that, only in the event of it being thwarted, it is necessary that a court order authorising it to effect the demolition be obtained: *Westville Townships Board v Stedman* 1947 (2) SA 1019 (D).) The council is not entitled to an order that the owner do the necessary work."⁹

59. Mr Davis, on behalf of the Agency, submitted in answer to this, that sections 25 and 26 of the Act granted Sanral wide powers which included the power to seek interdictory relief in the present circumstances and that the specific powers granted to Sanral in terms of sections 48 and 50 of the Act do not

⁸ 1980 (1) SA 278 (T).

⁹ At p 282.

detract from this.

60. There are, in my view, two difficulties with this argument. The first is that this was not Sanral's pleaded case. While Sanral did make reference to sections 25 and 26 of the Act in its founding affidavit, it did so in the context of describing its overall mandate and not as the basis for the interdictory relief it seeks. In its founding affidavit, Sanral's case against the Respondents and the relief it sought was based squarely on sections 48 and 50 of the Act.
61. Secondly, and in any event, sections 25 and 26 of the Act do not, in my view, authorise Sanral to obtain the relief it seeks in this case. Section 25 is entitled "Main functions of Agency" and describes Sanral's mandate in the following terms:
- "The Agency, within the framework of government policy, is responsible for, and is hereby given power to perform, all strategic planning with regard to the South African national roads system, as well as the planning, design, construction, operation, management, control, maintenance and rehabilitation of national roads in the Republic, and is responsible for the financing of all those functions in accordance with its business and financial plan, so as to ensure that government's goals and policy objectives concerning national roads are achieved...."
62. Section 26 is entitled "Additional powers of Agency" and confers on Sanral the powers necessary in order to execute its mandate. Sections 25 and 26 do not expressly confer on Sanral a general power of enforcement whether through the institution of High Court interdictory proceedings or otherwise.

63. It is of course true that in addition to the powers that are expressly conferred on public authorities, a proper construction of the empowering legislation may reveal that further powers have also been impliedly conferred.¹⁰ However, other than to simply assert that Sanral has the necessary implied power, Sanral's counsel did not present any substantive argument in this regard. It must also be borne in mind that the general principle in administrative law is that there is a presumption in favour of a narrow construction of the empowering provisions of administrative bodies such as Sanral.¹¹ An argument that Sanral possesses the necessary implied powers would have to take cognisance of this principle. No such argument was made on behalf of Sanral.
64. In any event however, it is not necessary for me to decide what Sanral's powers of enforcement are in all circumstances but only in the circumstances of this particular case. In this regard, the judgment of *Alberton Town Council v Zuanni* is on point and I see no reason to depart from it. As the Court stated there, it may well be (and there is authority) that a body such as Sanral would be entitled to apply for interdictory relief in the event of it being thwarted in the exercise of enforcement powers granted to it by statute. However, where, as here, the body is itself authorised by statute to do the necessary work, it is not

¹⁰ Baxter *Administrative Law* at pp 404 – 405.

¹¹ See for example the case of *Burghersdorp Municipality v Coney* 1936 CPD 305 in which it was argued that "the correct statement of the rights of a municipality is not that it is forbidden to do anything when it is not expressly or impliedly permitted to do by the ordinance, but rather that it may do anything which is not expressly or impliedly forbidden to do by it." Davis J rejected this submission as "startling" and one which was "opposed to the whole structure of the ordinance and the current of authority." For a more recent application of the principle see *Special Investigating Unit v Naasden* 2002 (1) SA 605 (SCA).

entitled to an interdict requiring the relevant third party to do it.

65. I am therefore of the view that, in this case, Sanral was indeed limited to the remedies afforded to it in sections 48 and 50 of the Act in order to address alleged contraventions of those sections by the Respondents. In any event, as will be dealt with further below, sections 48 and 50 afforded Sanral a suitable alternative remedy which it has failed to utilise.
66. Mr Davis submitted that, notwithstanding the wording of sections 48 and 50 of the Act, if Sanral were to simply remove the billboard structure and the advertisement without approaching a Court, this would amount to spoliation. In support of this, Mr Davis relied on the unreported judgment of *Ad Outpost (Pty) Ltd v Municipality of Cape Town*¹²
67. That was an application brought by the applicant, Ad Outpost, as matter of urgency, for the City of Cape Town to restore it in possession of a billboard advertisement that had been removed by the City. The City contended that it had been entitled to remove the billboard in terms of its by-Laws. The Court noted that "*It was common cause that [the City] would have a valid defence to the application if its spoliation had been carried out in terms of a statutory enactment.*"¹³
68. It became necessary for the Court to interpret the By-Laws in question. They

¹² Unreported judgment handed down by the Cape Provincial Division under case number 2589/99 on 27 May 1999.

¹³ At para 5.

did not expressly authorise the City to remove unauthorised structures or advertisements. Instead, they provided for the City to issue an "order" to the relevant third party for the removal of such structure or advertisement. In the event of the third party's failure to do so, the by-laws provided that the City could "itself give effect to such order or notice."

69. The Court held that the By-laws were to be restrictively interpreted and, on such interpretation, found that the by-laws did not contemplate that the City was entitled to "give effect to such order or notice" without recourse to a Court of law.
70. The provisions of sections 48 and 50 of the Act are markedly different from the by-laws that were at issue in the *Ad Outpost* case. They expressly authorise Sanral to remove unauthorised structures and advertisements and to recover the costs thereof. There is no need to interpret the provisions of section 48 or 50. Their terms are clear.
71. Accordingly, had Sanral acted in terms of sections 48 and 50, its actions would not have amounted to spoliation and any challenge to that effect could have been met by the defence (watertight in this case whereas it was not in *Ad Outpost*) that Sanral's actions were authorised by a statute.
72. For all of the above reasons, I am of the view that Sanral lacks standing to obtain the relief sought in its Notice of Motion. In any event, as set out below, sections 48 and 50 of the Act afforded Sanral a suitable alternative remedy.

Suitable alternative remedy

73. Mr Theron argued that a further consequence of Sanral's failure to act in terms of sections 48 and 50 of the Act is that there is a suitable alternative remedy available to it which it has failed to utilise.
74. It is trite that one of the requirements that an applicant for interdictory relief must establish is that there is no suitable alternative remedy available to it and that a Court will not ordinarily grant interdictory relief if there is such a remedy available.¹⁴ Mr Theron submitted that Sanral failed to establish this requirement on its founding papers. I agree. Notably, the alternative remedies afforded by section 48 and 50 of the Act remain available to Sanral.

Conclusion

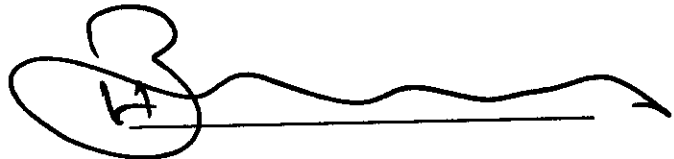
75. For all of the above reasons, I am of the view that Sanral's application is fatally defective on its own terms. In the circumstances, it is not necessary for me to consider the further arguments raised with regard to the alleged road safety risks posed by the advertisement and the alleged unconstitutionality of sections 48 and 50 of the Act.
76. Sanral has been unsuccessful and must pay the Third Respondent's costs. I do not think that Sanral should have to pay the Minister's costs. The Agency

¹⁴ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

raised the constitutional arguments which there was ultimately no need to decide. The Minister elected to intervene in order to address those arguments. The First and Second Respondents abided the decision of the Court.

77. I accordingly make the following order:

1. The application is dismissed.
2. The Applicant is ordered to pay the Third Respondent's costs.

A handwritten signature in black ink, appearing to be 'BARNES AJ', written over a horizontal line.

BARNES AJ

Appearances:

For the Applicant:	Adv Davis SC with Adv Kollapen instructed by Friedland Hart Solomon and Nicolson
For the First Respondent:	Adv Van Heerden instructed by A B Lowe Attorneys
For the Third Respondent:	Adv Theron SC with Adv Bleazard instructed by Mostert Attorneys
For the Fourth Respondent:	Adv Motepe instructed by the State Attorney