IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: HCAA29/2022
COURT A QUO CASE NO:1235/2018
REPORTABLE: ~~YES~~/NO
OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
REVISED
Date: 04 AUGUST 2023
AJP SEMENYA M.V

In the matter between:

STONEY RIVER PROPERTIES 199 CC **: APPELLANT**
(Registration number: 2006[…])

And

THE CHAIRPERSON: MUNICIPAL APPEALS
TRIBUNAL MAKHADO LOCAL MUNICIPALITY **: FIRST RESPONDENT**

THE CHAIRPERSON: MUNICIPAL PLANNING
TRIBUNAL MAKHADO LOCAL MUNICIPALITY **: SECOND RESPONDENT**

MAKHADO LOCAL MUNICIPALITY **: THIRD RESPONDENT**

AUTOMOTIVE PARTS EXPORTS (PTY) LTD **: FOURTH RESPONDENT**
t/a BP AUTO BRIDGE
(Registration number 1991[…])

CAPRICORN N1 EAST FILLING STATION CC t/a TOTAL CAPRICORN PLAZA : **FIFTH RESPONDENT**

(Registration number: 2010[…])

AYOBA 1 STOP (PTY) LTD : **SIXTH RESPONDENT**

(Registration number: 2016[…])

BANDELIERKOP SENTRUM (PTY) LTD t/a VIVA BANDELIERKOP : **SEVENTH RESPONDENT**

(Registration number: 2013[…])

CLASS A TRADING 514 (PTY) LTD t/a TOTAL MAKHADO : **EIGHTH RESPONDENT**

(Registration number: 2002[…])

JUDGMENT

Heard: **05 May 2023**

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **04 August 2023**.

SEMENYA AJP:

[1] This appeal concerns the court *a quo*'s decision to review and to set aside the decision of the first respondent, the Chairperson of Makhado Local Municipality Appeals Tribunal, in which it upheld the second respondent's decision to approve the appellant's application for the establishment of a township to be known as Makhado Fuel City on its land. The second respondent approved the application in its capacity as the Planning Authority of the third respondent in whose jurisdiction the land is situated. The review application before the court *a quo* was launched by the fourth to eighth respondents who were the objectors to the granting of such approval. The appeal is with leave of the Supreme Court of Appeal.

[2] The court *a quo* approached the issues between the parties to be revolving, in the main, on whether the subject property has been properly identified to enable potential objector to can identify it.

[3] The appellant avers that it had complied with the provisions of section 69 read with section 96 of the Town Planning and Townships Ordinance 15 of 1986, by submitting the application to the third respondent. According to the appellant, the application was supported by the necessary documentation and that the procedure laid down in section 96 has been followed. The fourth to the eighth respondents lodged their objections to the development as envisaged in section 69(7) of the Ordinance. The third respondent considered the application and the objections and thereafter approved the application.

[4] Aggrieved by the approval of the application, the fourth to eighth respondents appealed to the first respondent. The dismissal of the appeal by the first respondent, in turn, led to the review application in the court *a quo*. The review application was launched in terms of section 6 of the Promotion of Administrative Justice Act, 3 of 2000.

[5] The respondents in this appeal relied on the following eight grounds for review:

> i. that the first and second respondents decided the application for the removal of a restrictive title condition in circumstances where the Ordinance and the Spatial Planning and Land Use Management Act, 16 of 2013 (SPLUMA) did not provide for such procedure;
>
> ii. Fourth respondent's failure to comply with Regulation 18 and the peremptory requirement contained in section 6 and 7 of SPLUMA.
>
> iii. the public participation process followed was unfair in that the application for the removal of a restrictive condition was brought on an unauthorised basis and the subsequent submission of crucial documentation as part of Heads of Argument, which did not lay for inspection, should not have been allowed;

iv. the first and second respondents erred in considering the application for the removal of the restrictive title conditions.

v. the first and second respondents failed to apply their minds to the evidence before them because irrelevant considerations were taken into account and relevant considerations were ignored;

vi. the action was taken arbitrarily;

vii. the action was not authorised by the empowering provisions; and

viii. the action is not rationally connected to the purpose for which it was taken, the purpose of the empowering provision, the information before the administrator and the reasons given for it by the administrator.

[6] The administrative action taken by the second respondent, in which approval for the development of the township was granted, was reviewed and set aside solely on the ground that the subject property was not properly described and lacking in compliance with Regulation 18. The judgement of the court *a quo* did not deal with the other seven grounds relied upon by the fourth to eighth respondents in the review application.

[7] It was common cause in the review application that the appellant described the subject property differently in the advertisement in the Provincial Gazette, in the application for the development of a township, in the Deed of Grant and in the motivating memorandum. In the Gazette, the subject property is described as:

"a part of portion 42 Rondebosch 287-LS (remainder), registration division LS, Limpopo Province".

In the motivating memorandum, it is described as

"part of the remainder of portion 42 Farm Rondebosch 287-LS".

In the application, it is stated that the application is brought in respect of a *"part"* of the subject property which consist of:

"Erf 1, zoned "Special" for purposes of a filling station, Quickshop (convenient store), restaurant and car wash, 4.3ha in extent, and

Erf 2, zoned "Special" for purposes of a solar energy power generation facility of 1.65ha in extent; and

A street of 0.87ha in extent".

The Deed of Grant describes the subject property as

"Remaining Extent of Portion 42 of the Farm Rondebosch 287, Registration Division L.S Limpopo Province".

[8] The court *a quo* found that:

"The description of the property is the kernel pillar in Township Establishment applications. Failure to describe the property promptly as described in the Title Deed collapses the entire application before either MPT (second respondent) or MAT (first respondent) respectively and the rest falls in the collapsed pit created thereby…"

As stated earlier, the decision was reviewed and set aside on this basis only.

[9] Regulation 18 (1) of the Ordinance provides that the application must be accompanied by 25 prints. The Regulation contains quite a long list of items. It should be noted that the respondents did not specify which of the items in Regulation 18 (1) were not submitted by the appellant. It simply refers to a google map which, according to the respondents, does not assist in the identification of the relevant portion of land on which the appellant wishes to establish a township.

[10] The appellant contends that the Township Application incorporated several maps and diagrams. It further contends that the mere reading of the public participation notice, the Township Application or the Title Deed would have enabled a *bona fide* reader and any objector to can easily identify the subject property. The appellant further contends that the locality map which was included in the application showed the exact locality thereof.

[11] The subject property is described in the notices as being adjacent to the N1 road, approximately 1km South of the township known as Louis Trichardt X5 on the South-Western corner of the intersection of the N1 road and road R578, also known as the Elim/Waterval/Ledig Road intersection. It is indeed correct that the appellant submitted photographs and maps which would assist in identifying the subject property. The respondents chose not to address this description in their founding affidavit filed in support of the review application.

[12] Although Regulation 18 of the Ordinance states that the documents listed therein shall accompany an application in terms of section 69 and 96 of the Ordinance, Counsel for the appellant contends, with reliance on **J.E.M Motors Ltd v Boutle and Another**[1] that "*imperative provisions, merely because they are imperative will not, by implication, be held to require exact compliance with them where substantial with them will achieve all the objectives aimed at".*

[13] The issue of substantial or exact or adequate compliance has also been dealt with in **Maharaj v Ramersad**[2]**.** The court in that case stated that:

> *"The enquiry, I suggest, is not so much whether there has been "exact" "adequate" or substantial compliance with this injunction but rather whether there has been compliance therewith. This enquiry postulates an application of the injunction to the facts and a resultant comparison between what the position is and what, according to the requirements of an injunction, it ought to be…"*

[1] 1961(2) SA 320 at 328
[2] 1964 (4) SA 638 (A) at 646C-E

> Counsel for the respondents submits that the object of the information required in terms of Regulation 18 is to enable the public and the objectors to identify the exact property sought to be developed. This is not the only determining factor if one has regard to the two cases referred to above.

[14] In the present case, I agree with counsel for the appellant that any *bona fide* member of the public would have been able to identify the subject property by the manner in which it is described in the advertisement and other documents filed in terms of Regulation 18. That been said, I find that the court *a quo* erred in finding that the different manner in which the property is described alone, without reference to other documents that also described the property, renders the decision of the first respondent invalid.

[15] The court *a quo*, as already stated above, decided not to deal with the remaining seven grounds relied upon by the respondents. I am of the view that this court cannot deal with them on appeal and should, on that basis, refer the matter back to the court *a quo* for its consideration.

[16] The appeal is also against the court *a quo*'s dismissal of the point of law of unreasonable delay in the launching of the review application, which was raised by the appellant in the court *a quo.* The appellant avers that the respondents inordinately delayed in launching the application after they knew about the decision of the first respondent and further unduly delayed in the prosecution of the review application in order to procure a final adjudication of the review. The appellant contends that the court *a quo* ought to have refused to entertain the application and to have dismissed it on this point of law.

[17] Section 7 of Promotion of Administrative Justice Act, 3 of 2000 (PAJA) provides that proceedings for judicial review in terms of section 6 of PAJA must be instituted without unreasonable delay and not later than 180 days after the decision was made.

[18] It is common cause that the application was launched within the period of 180 days. The appellant contends that the respondents were required to explain why it took them 180 days to launch the review application in circumstances where it could

have done so earlier. The court *a quo* dismissed this point of law on the basis that the appellant failed to prove the prejudice it may have suffered as a result of the respondents' delay in launching the application. It was stated in **OUTA v SANRAL**[3] that the rationale behind the principle that judicial review of administrative decisions of public bodies should be initiated without undue delay is two-fold. One is that undue delay may cause prejudice to the respondents. The other is the public interest in finality of administrative decisions and the exercise of administrative powers.

[19] The appellant concedes that part of the delay was caused by the first to third respondents' failure to furnish the respondents with Rule 53 records and that, when it finally did, the record was found to be wanting. The parties' endeavour to settle the matter out of court also contributed towards the delay in the prosecution of the review applicant. I agree with the respondents that the delay was not solely due to fault on their part.

[20] The appellant states that it had to persuade the first to third respondents inti delivering the record without explaining how It deed that. I agree with the court a quo's finding that the appellant failed to show how the delay may have prejudiced it. The appellant agrees that it is the responsibility of the first to third respondents to provide the record and that they thought it was not necessary to do so.

[21] It is my view that the court *a quo* erred in setting aside the decision of the first respondent on the basis that the subject property was not adequately described. Furthermore, the court *a quo* ought to have considered the other grounds relied upon by the respondents.

[22] On this basis I make the following order:

22.1. The appeal is upheld;

22.2 The matter is remitted to the court *a quo* for reconsideration and argument on the remaining grounds for review.

[3] [2013] All SA 639 (SCA)

M V Semenya
Acting Judge President
Limpopo Division.

I concur

M Naudè-Odendaal
Judge of the High Court
Limpopo Division.

I concur

M S Monene
Acting Judge of the High Court
Limpopo Division

APPEARANCES:

Counsel for the Applicant	**: Adv. L. Kotze**
Instructed by	**: Jacques Classen Attorneys**
Counsel for the Respondent	**: Adv. C. Erasmus SC**
Instructed by	**: Adrian Venter Attorneys**
Date of hearing	**: 05 May 2023**
Date of judgment	**: 04 August 2023**