THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

REPORTABLE
Case No: 282/2013

In the matter between:

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY **Appellant**

and

THE CHAIRMAN OF THE VALUATION APPEAL BOARD FOR THE CITY OF JOHANNESBURG **First Respondent**

CONNAUGHT PROPERTIES (PTY) LTD **Second Respondent**

Neutral citation: *The City of Johannesburg Metropolitan Municipality v The Chairman of the Valuation Appeal Board for the City of Johannesburg* (282/2013) [2014] ZASCA 5 (12 March 2014)

Coram: Mthiyane DP, Maya, Leach and Willis JJA and Mocumie AJA

Heard: **18 February 2014**

Delivered: **12 March 2014**

Summary: Local authority – valuation of rateable property zoned and used for multiple permitted uses – municipal value to determine the rates categories into which those uses fall and to apportion the market value between them under s 9(2) of Act 6 of 2004.

O R D E R

On appeal from: South Gauteng High Court, Johannesburg (Tsoka J sitting as court of first instance):

The appeal is dismissed with costs.

J U D G M E N T

Leach JA (Mthiyane DP, Maya and Willis JJA and Mocumie AJA concurring)

[1] This is an appeal against an order by the South Gauteng High Court dismissing an application to review a decision taken by a valuation appeal board established under s 56 of the Local Government: Municipal Property Rates Act 6 of 2004, (the Act). Leave to appeal was refused a quo but granted by this court.

[2] Section 2 of the Act extends the power to a municipality to levy rates on property within its municipal area. On 24 April 2008 the appellant, the City of Johannesburg Metropolitan Municipality, acting in purported compliance with its power to do so and its obligation under s 3(1), adopted a rates policy relating to the levying of rates. It simultaneously adopted by-laws under s 6(1) of the Act to give effect to such rates policy. Both the rates policy and the by-laws came into effect on 1 July 2008. By then the appellant had prepared a new valuation roll for the levying of rates within its area that had lain for inspection for 90 days from 27 February to 27 May 2008. (I should mention at this stage that the rates policy has since been replaced and is no longer of application. Despite this, resolution on the parties' dispute is not moot. It affects the second respondent's rates liability already imposed and other ratepayers in a similar position are awaiting the outcome of this appeal, presumably with bated breath.)

[3] Situated in Catherine Street, Hillbrow, Johannesburg, the property that lies at the heart of this dispute is a ten story building known as 'Park Mews'. It stands on erven 3563 and 3564 that adjoin each other. Under the applicable Johannesburg town planning scheme, each erf is zoned as 'Residential A' although the use rights include 'shops and offices on the ground floor'. There are indeed shops on the ground floor of the building whilst the remaining nine floors consist of residential apartments. The fact that the property is used for multiple purposes lies at the core of the dispute between the parties.

[4] It is necessary to place that dispute in its statutory matrix. Section 8(1) of the Act provides that:

'Subject to section 19, a municipality may in terms of the criteria set out in its rates policy levy different rates for different categories of rateable property, which may include categories determined according to the ─

(a) use of the property;

(b) permitted use of the property; or

(c) geographical area in which the property is situated.'

Section 8(2) ─ which is echoed in the appellant's rates policy ─ goes on to provide that the categories of rateable property that may be determined in terms of s 8(1) include both 'residential properties'[1] and 'business and commercial properties'[2] Importantly, a further category mentioned in s 8(2)(*r*) is 'properties used for multiple purposes, subject to section 9.'

[5] Section 9 of the Act is crucial to the outcome of this matter. It provides as follows:

'(1) A property used for multiple purposes must, for rates purposes, be assigned to a category determined by the municipality for properties used for─

(a) a purpose corresponding with the permitted use of the property;

(b) a purpose corresponding with a dominant use of the property; or

[1] Section 8(2)(*a*).
[2] Section 8(2)(*c*).

(c) multiple purposes in terms of section 8(2)(*r*).

(2) A rate levied on a property assigned in terms of subsection (1)(*c*) to a category of properties used for multiple purposes must be determined by -

(a) apportioning the market value of the property, in a manner as may be prescribed, to the different purposes for which the category is used; and

(b) applying the rates applicable to the categories determined by the municipality for properties used for those purposes to the different market value apportionments.'

[6] Clause 7 of the appellant's rates policy provided for the appellant to levy different rates in respect of different categories of rateable property and that rateable property 'will be classified in a category and will be rated based on the zoning, or permitted use of the property, unless otherwise stated in the Policy'. It proceeded to determine a number of categories of property for the purpose of levying differential rates based on the 'permitted use of properties'. Amongst those listed, echoing s 8(2), were 'Business, Commercial and Industrial',[3] 'Residential Property'[4] and 'Property used for Multiple Purposes'.[5] However, in seeking to 'clarify the categories of property' determined in clause 7, the rates policy further circumscribed in clause 8 that the category of property used for multiple purposes 'shall be rated according to the highest tariff applicable to the permitted uses thereof'.

[7] Both of the erven on which Park Mews stands were categorised as 'property used for multiple purposes' under the rates policy in the valuation roll that became effective on 1 July 2008. The value of erf 3563 was reflected as R170 000 and that of erf 3564 as R3 209 000. Essentially, then, Park Mews was valued at R3 379 000 for rates purposes, but without there being any mention of the two categories of use to which the property was being put, viz 'business' (relating to the ground floor of the building) and 'residential' (relating to the remaining nine floors of residential apartments)' nor an apportionment of value between those categories.

[8] It is common cause that property categorised as 'business, commercial and industrial' attracted a higher rate than that categorised as 'residential'. Consequently, as Park Mews was zoned as 'property used for multiple purposes' and one of its

[3] Clause 7(a).
[4] Clause 7(b).
[5] Clause 7(i).

permitted uses was to have shops and offices on the ground floor – a use falling within the rates category of 'business' – the appellant's rates policy rendered the second respondent liable to pay rates determined by applying the higher 'business' rate to the overall value of the property without any allowance being made for the fact that nine of the ten stories of the building were in fact being used for residential and not business purposes.

[9] Faced with this, the second respondent filed an objection to the valuation roll while it was still lying for inspection. In doing so, it contended that there ought to have been an apportionment of the market value between the different categories of 'business' and 'residential'. Although the Act required the objection to be decided 'promptly',[6] it took eight months for the second respondent's objection to be dealt with. Eventually, on 17 February 2009, the municipal valuer rejected the objection, stating:

'Property category is correct. Multiple purpose. Zoned Rd 4'.

[10] Dissatisfied with this, the second respondent appealed under s 54 of the Act to the Valuation Appeal Board of the City of Johannesburg[7] (whose chair is cited as the first respondent in this appeal), stating:

'Please note that we are appealing against:

1. Incorrect category.
2. Market value. Split Valuation.'

It is clear from its submissions accompanying the appeal that the second respondent accepted the municipal valuer's assessment of the market values of the two erven (R170 000 for erf 3563 and R3 209 000 for erf 3564) and their categorisation as 'multiple purposes', but contended that their respective market values should also be apportioned between 'residential' and 'business' for the purpose of assessing rates. In that regard it submitted that 79,44% of the market value should be allocated to 'residential' with the remaining 20,56% to be regarded as 'business'.

[11] Despite opposition from the appellant, the valuation appeal board upheld the second respondent's appeal on 23 March 2011. Although it accepted the municipal

[6] See s 50(5) of the Act.
[7] Established under s 56 of the Act.

valuer's market valuations of the two erven and that each erf had been correctly categorised as 'multiple purpose' which had not been disputed, it held that s 9 of the Act required the valuation roll to reflect the apportionment of the market value of each property between the different purposes for which it was being used. It accordingly directed that the values proposed by the second respondent in respect of those categories be 'rounded off' and confirmed as follows:

(a) Erf 3563: a 'shops value' of R13 700 in the category 'business/commercial' and a 'residential' value of R156 300 in the category 'residential A';

(b) Erf 3564: a 'shops value' of R259 000 in the category 'business/commercial' and a 'residential' value of R2 950 000 in the category 'residential A'.

[12] It was this decision that the appellant applied to have reviewed by the high court. The basis of its review was that it had elected to levy rates according to the permitted uses of properties as zoned and not on their actual use; that s 9 of the Act relates to the actual uses of property and is of no application to a rating system based not on actual use but on permitted use; and that the valuation appeal board had therefore erred in law by having regard to s 9 and in holding that the valuation roll ought to have reflected the values of the various categories of use. Consequently it sought an order setting aside the valuation appeal board's decision and declaring that the entries relating to the two erven on the valuation roll prepared by the municipal valuer were correct. The application was dismissed and hence this appeal.

[13] The appellant's argument in its heads of argument, as I understood it, was the following: As recognised in ss 8(1)(*a*) and (*b*) of the Act, there is a fundamental distinction between the actual use of a property and its permitted use; that the appellant's rates policy was based on permitted use as authorised by s 8(1)(*b*) rather than actual use as envisaged by s 8(1)(*a*); that the appellant was not bound to slavishly follow the categories of rateable property set out in s 8(2) of the Act in its rates policy but was entitled to create category over and above those so listed;[8] that the category of 'property used for multiple purposes' created in clause 8(1)(*r*) in its rates policy was not what its name implied but, rather, a category in which properties carried multiple permitted uses under their zoning purposes, and was not the same

[8] In this regard reliance was placed on the judgment of this court in *City of Tshwane v Marius Blom & G C Germishuizen Inc* 2014 (1) SA 341 (SCA) para 16.

as that in s 8(2)(i) of the Act which is based on actual use; and that s 9 of the Act, which relates to the actual use of properties and the category referred to in s 8(2)*(i)*, was therefore of no application.

[14] This somewhat tortuous argument was unlikely to fly in the light of the provisions of the Act, particularly s 2(3)(*b*) which obliges a municipality to exercise its power to levy rates on property subject to the provisions of the Act, s 3(1) which requires the rates policy to be consistent with the Act, and s 9(1) which provides that property used for multiple purposes *must* for rates purposes be assigned to a category determined by the municipality for properties used in various ways. At first blush, then, where a property has multiple uses the provisions of s 9 become applicable, and the argument that they do not appears to be unsupportable.

[15] In the light of this it is hardly surprising that the appellant abandoned this argument (and a final decision on its correctness or otherwise does not have to be taken). Instead it advanced an argument not foreshadowed in its heads, contending that:

(a) The process of valuation and categorisation of property in the preparation of the valuation role is the function of the municipal valuer.

(b) On the other hand, as s 14(i) of the Act provides for a rate to be 'levied by a municipality by resolution passed by the municipal council', the levying of rates on the properties reflected on the valuation roll is the function of the appellant's municipal council;

(c) Section 9(2), which requires the market value of a property to be apportioned between the different purposes for which the property is used and the rates applicable to the categories of properties used for those purposes to be applied to the market values so apportioned, is a rates levying function;

(d) The apportionment in s 9(2) is thus a function of the municipal council and falls beyond the function of the municipal valuer who, consequently, does not have to reflect the apportioned categories and market values on the valuation roll;

(e) Instead, all the municipal valuer has to reflect on the roll is the zoning of a property, its market value and its category for rates purposes (the latter in the given case being 'multiple purposes') without any further categorisation or

apportionment of value as envisaged in s 9(2), that being a function of the municipal council in respect of which the municipal valuer plays no part.

[16] On this interpretation, the appellant argued that the valuation roll in its initial form had reflected all that had been required from the municipal valuer and that the valuation appeal board had erred in directing that it be amended. Accordingly, so it was argued, the appeal should succeed as the court a quo had erred in not setting aside that decision.

[17] Before proceeding to deal with this argument it is unfortunately necessary to say something about the manner and the stage at which it was raised. We were informed from the bar that counsel for the respondents had been told of the appellant's change of stance a few days before the appeal. This was a courtesy not afforded the members of this court. Instead we first heard of it when appellant's counsel rose to address us in court. Nor were we afforded heads of argument dealing with the issue as we should have been, even if they had only been handed in during the appeal. As a result, not only were we unable to prepare in respect of the argument but, truthfully, counsel were also not properly prepared. As a result, the issue was not comprehensively canvassed and what is set out below is largely the fruit of this court's research without the benefit of full and detailed argument. This is most undesirable, and litigating parties are to be warned that this court will not always be as indulgent as we were in the present matter and that they run the risk of their appeals being postponed or struck from the roll should proper notice of an argument not be given.

[18] I turn to consider the appellant's latest argument. In doing so, I immediately accept that s 14(1) of the Act vests the function of levying rates in the municipal council. I also accept that the compilation of the municipal valuation roll is the responsibility of the municipal valuer designated by the municipality under s 33(1) of the Act who is to determine both the rates category and the market value of each property and to record this information on the roll. But a closer analysis of the provisions of the Act and the functions of a valuer exposes the fallacy of the conclusion the appellant seeks this court to draw.

[19] At the outset, the scheme followed in drawing the valuation roll is relevant. Section 34 of the Act prescribes that:

'The valuer of a municipality must in accordance with this Act ─

(*a*) value all properties in the municipality determined in terms of section 30(2);

(*b*) prepare a valuation roll of all properties in the municipality determined in terms of section 30(3);

(*c*) sign and certify the valuation roll;

(*d*) submit the valuation roll to the municipal manager within a prescribed period;

(*e*) consider and decide on objections to the valuation roll;

(*f*) attend every meeting of an appeal board when that appeal board ─

(i) hears an appeal against a decision of that valuer; or

(ii) reviews a decision of that valuer;

(*g*) prepare a supplementary valuation roll whenever this becomes necessary;

(*h*) assist the municipality in the collection of postal addresses of owners where such addresses are reasonably determinable by the valuer when valuing properties; and

(*i*) generally, provide the municipality with appropriate administrative support incidental to the valuation roll.'

For completeness I should mention that under s 35 of the Act, the municipal manager may designate officials of a municipality or persons in private practice to act as assistant municipal valuers to assist the valuer with the performance of these functions. Section 36 also authorises the municipal manager to designate persons as data-collectors to assist the municipal valuer with the collection of data 'and other related work'. These persons may include, but need not necessarily be, officials of the municipality.

[20] After collecting the necessary data and doing whatever else may be necessary (which may require the inspection of the property[9] and calling on the owner, tenant or occupier of the property to provide information[10]) the municipal valuer is then to value the property 'in accordance with generally recognised valuation practices, methods and standards'[11] and, after doing so, to draw the valuation roll. In that regard, s 48(2) of the Act, one of the cornerstones of the appellant's argument, provides:

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[9] Section 41.
[10] Section 42.
[11] Section 45(1).

'The valuation roll must reflect the following particulars in respect of each property as at the date of valuation to the extent that such information is reasonably determinable:

(*a*) The registered or other description of the property;

(*b*) the category determined in terms of section 8 in which the property falls;

(*c*) the physical address of the property;

(*d*) the extent of the property;

(*e*) the market value of the property, if the property was valued;

(*f*) the name of the owner; and

(*g*) any other prescribed particulars.'

[21] The certified valuation roll is then submitted to the municipal manager and published for public information, with any person who wishes to lodge an objection in respect of 'any matter in, or omitted from, the roll' being invited to do so.[12] The Act entitles a person to inspect the roll so published and to lodge an objection[13] that is to be considered by the municipal valuer who may, as a result, adjust or add to the valuation roll.[14] The objector is then entitled to be notified of the outcome of the objection and to be given reasons for the decision taken. And of course, as I have already mentioned, it is against the decision taken by the municipal valuer regarding an objection that a right of appeal lies to the valuation appeal board.

[22] In the scheme of these proceedings, the function of the municipal valuer is of considerable importance. In order to determine the market value of property, valuers should have regard to various factors in order to determine what a notional willing buyer would probably pay to a willing seller in the open market. These include comparable sales of similar properties in the open market; the extent to which the parties to previous transactions acted voluntarily and negotiated on equal terms or acted under compulsion; the motivation of the respective parties in previous transactions to buy and sell; restrictions on the use of the property and the possibility of their removal; the improvements on the land and the depreciation of those improvements; the potential uses to which the land may be put; and the income that

[12] Section 49(1)(*a*)(ii).
[13] Section 50.
[14] Section 51.

may be derived from the property (this list is not meant to be exhaustive).[15] As was said more than a century ago in a passage regularly approved by this court thereafter:[16]

'It may not be always possible to fix the market value by reference to concrete examples. There may be cases where, owing to the nature of the property, or to the absence of transactions suitable for comparison, the valuator's difficulties are much increased. His duty then would be to take into consideration every circumstance likely to influence the mind of a purchaser, the present cost of erecting the property, the uses to which it is capable of being put, its business facilities as affording an opportunity for profit, its situation and surroundings, and so on. There being no concrete illustration ready to hand of the operation of all these considerations upon the mind of an actual buyer, he would have to employ his skill and experience in deciding what a purchaser, if one were to appear, would be likely to give. And in that way he would to the best of his ability be fixing the exchange value of the property.'[17]

[23] This remains as true today as it did then. As was more recently commented, correctly in my view:

'The valuation process consequently calls for skill and experience, without which a valuer would find it difficult to arrive at a logical deduction from the facts . . . A valuer's awareness of existing market conditions and trends, together with his knowledge of the circumstances and the facts relating to the property concerned, enable him to understand how the buying and selling public think, and through his skill and experience he should be able to recognise the elements most likely to influence intending purchasers.'[18]

[24] Valuation is accordingly not an exact science. The market value of a property can only be estimated and not precisely determined,[19] and a valuer is called on to exercise professional skill and expertise in a specialised field by expressing an opinion on the market value in monetary terms.[20]

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[15] See eg *Estate Marks v Pretoria City Council* 1969 (3) SA 227 (A) at 253A-255A; *Minister of Agriculture v Davey* 1981 (3) SA 877 (A) at 902F-903B and *Sher and others NNO v Administrator, Transvaal* 1990 (4) SA 545 (A) at 547H-548J.

[16] Eg *Sher*'s case at 556F-H.

[17] Per Innes J in *Pietermaritzburg Corporation v SA Breweries* 1911 AD 501 at 516.

[18] Ellenberger *The Valuer* (2 ed) Part 6 (Published by the South African Institute in the Valuers' Valuation Manual).

[19] See eg *Lornadawn Investments (Pty) Ltd v Minister van Landbou* 1980 (2) SA 1 (A) at 8B-C and 19A-B.

[20] Raubenheimer *Waardasiereg* at 4-5.

[25] In order to do so, a municipal valuer needs to be appropriately qualified. Section 39(1)*(a)* of the Act requires a municipal valuer to be a person registered as 'a professional valuer or professional associated valuer' under the Property Valuers Profession Act 47 of 2000 (the Valuers Act) whilst an assistant municipal valuer must be similarly registered (although in his or her case, registration as a 'candidate valuer' will suffice). But in order to be registered under the Valuers Act, a valuer needs to satisfy the South African Council for the Property Valuers Profession[21] (the council) that he or she has passed the necessary examinations and has 'gained practical experience in property valuation . . . of the prescribed scope, variety, nature and standard'[22] as contained in the rules published by the council.[23] (Qualification requirements in respect of candidate valuers are also prescribed but are unnecessary to consider for purposes of this judgment.)

[26] In addition, but most importantly, valuers function not as arbitrators but as estimators of value and, as such, are called on to exercise an honest judgment and to be influenced by neither who has engaged them nor the purpose for which their valuations are required.[24] Simply put, valuers should be impartial in the opinions they express.[25] Any doubt about this is dispelled by clause 5*(d)* of the Code of Conduct for persons registered under the Valuers Act, drawn up by the council under s 28 of the Valuers Act.[26] It prescribes that any person registered under that Act shall 'act with the strictest independence, objectivity and impartiality in performing a property valuation'.

[27] As already mentioned, s 39(1) requires the municipal valuer to be registered as a professional valuer or professional associated valuer under the Valuers Act. That being so, the municipal valuer is duty bound to comply with the norms of independence, objectivity and impartiality outlined in this code. That this is the case is reinforced by the further provisions in s 39 which provide that a municipal valuer or an assistant municipal valuer may not be a councillor of the relevant municipality.

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[21] Established under s 2 of the Valuers Act.
[22] Section 20(2)(*a*)(ii) of the Valuers Act.
[23] Rules for the Property Valuers' Profession, BN 119, GG 31604, 21 November 2008.
[24] *Estate Milne v Donohoe Investments (Pty) Ltd* 1967 (2) SA 359 (A) at 373H-374D.
[25] Ellenberger at 2.
[26] Published at http://www.sacpvp.co.za/Portals/0/downloads/SACPVP_Code_of_Conduct.pdf.

[28] The object of all of this is clear. The legislation envisages that the valuation of rateable property is not only to be done by an impartial person, but that it be seen to be so done.[27] Thus the appointment of an independent valuer, together with the right of objection against such valuer's compilation of the valuation roll and the right of appeal to the valuation appeal board against any decision made by the municipal valuer in respect of an objection, provides a bulwark between the interests of the municipality on the one hand and the owner of the rateable property on the other. It results in the municipality being able to levy rates against the value of a property only where the valuation had been done impartially and after the voice of the taxpayer has been heard.

[29] Now it may be so, as the appellant argued, that s 48 of the Act does not specifically direct the municipal valuer to mention any apportionment of value between different categories of use, but all this would be rendered nugatory if, after the valuation roll has been prepared, the municipal council could, off its own bat, so to speak, determine into which of the different rateable categories the property is being used and then itself apportion market value. Indeed it would be absurd to interpret that section in such a way. To do so would result not only in a municipality being able to largely turn its back on the specialised expertise in valuation that the Act has so carefully bestowed upon municipal valuers, but municipal councillors, who are specifically disqualified from being municipal valuers by s 39 of the Act, would be the persons vested with the authority to apportion market value. This could never have been intended, and really merely has to be stated to be rejected.

[30] Not only would the interpretation now advanced by the appellant be absurd for the reasons mentioned, but one of the details that has to be recorded on the valuation roll under s 48 is 'the category determined in terms of section 8 in which the property falls'.[28] Section 8*(r)* of course provides for a category of 'properties used for multiple purposes *subject to section 9'* (my emphasis) and, under s 45(1) of the Act, the municipal valuer is required to carry out the valuation of rateable property in accordance with the provisions of the Act. This clearly makes s 9 applicable, at least in part, to the compilation of the valuation roll. The obvious intention is that where a property is used for multiple purposes, those categories of use – in respect of which

[27] Compare *Roodepoort City Council v Shepherd* 1981 (2) SA 720 (A) at 735A-736B.
[28] Section s 48(2)(*b*).

different rates are to be applied under s 9(2)*(c)* – should be determined and recorded, as should the values apportioned to each such category. This is all to be done by the municipal valuer who is, after all, the person possessed with the necessary skill, expertise and experience to do so (which the municipal council lacks). Moreover, although s 48(2) does not specifically state that the market value apportioned between categories of use should be recorded in instances of multiple use properties, the provision in s 48(2)(*g*) that the valuation roll is to include 'any other prescribed particulars' in addition to those specifically mentioned, reinforces my conclusion that the Act, properly interpreted, requires it to be done.

[31] The inevitable conclusion is that where a property is being used for multiple permitted purposes, it is necessary for the municipal valuer compiling the valuation roll to determine and record those uses and to apportion the market value of the property between them. In the present case, this was not done. The municipal valuer therefore incorrectly dismissed the second respondent's objection to the valuation roll and the valuation appeal board correctly ordered that it should be amended.

[32] The appeal must accordingly fail, and costs should follow that event. There are, however, two matters that need briefly to be mentioned.

[33] First, in dealing with the argument as finally presented by the appellant, it has not been necessary to consider the legality of clause 8 of the appellant's rates policy. As pointed out above, in the case of a property categorised as having multiple purposes, this clause allows the municipality to apply the highest tariff of the various categories of permitted use to the overall value of the property in determining liability for rates. This effectively ignores the property's other categories of use. But the obvious corollary of our conclusion that it was necessary for the municipal valuer to categorise the multiple uses and to apportion market value, is clear. A municipality is bound to follow the prescripts of s 9(2) in cases of multiple use, even where its rates policy, as in the present instance, is based on permitted rather than actual use. And once the valuer has categorised the uses and apportioned value between them, it is then for the municipality to apply the tariffs for those categories to the apportioned values. Section 3(1) of the Act requires a municipal rates policy to be consistent with the Act but clause 8 appears to fly in the face of the Act, notwithstanding the wide

powers bestowed upon a municipality under ss 3(3)(*b*)(i) and 3(3)(*d*). Strictly speaking it is unnecessary to reach a final decision on this point as it is extraneous to the limited issue we were asked to decide, but as it was an issue raised in argument it is best to spell out our view in that regard.

[34] Secondly, the first respondent was represented in this appeal by a senior counsel who appeared alone. He asked for costs 'on the scale of senior counsel'. I know of no such scale. Should the complexity of a matter and the amount involved justify the employment of two counsel as a wise and reasonable precaution, a court will make a special order in that regard. Where a single counsel is employed, no special order is required and it is for the taxing master to determine a fair and reasonable fee to be allowed on taxation. Even where the matter is one deserving of the employment of senior counsel (which this clearly is) it would be wrong for a court to somehow attempt to fetter that discretion; just as it would be wrong for a taxing master not to consider the reasonableness of a senior counsel's fee in a deserving case merely as the court did not order that the fee of a senior counsel should be allowed. I therefore see no need to make any specific order as to costs.

[35] The appeal is dismissed with costs.

L E Leach

Judge of Appeal

APPEARANCES:

For Appellant:	S du Plessis SC (with him B Makola) Instructed by: Ramushu Mashile Twala Inc, Sandton Claude Reid Inc Attorneys, Bloemfontein
For 1st Respondent:	M Rip SC Instructed by: Ivan Pauw & Partners, Durban Phatshoane Henney Inc, Bloemfontein
For 2nd Respondent:	H P West Instructed by: Tuckers Incorporated, Ravenwood Phatshoane Henney Inc, Bloemfontein