



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Kalil v Mangaung Metropolitan Municipality

The Supreme Court of Appeal (SCA) today unanimously dismissed an appeal against a judgment of the Free State High Court (Mhlambi AJ) in a dispute which arose between the first respondent, the Mangaung Metropolitan Municipality (the Municipality) and the appellants, who are municipal ratepayers in that area, regarding the legality of the Municipality's decision to increase the rates on business properties for the 2013/2014 budget year.

The matter was brought on urgent application in the court below, on 29 May 2013. The appellants sought to prohibit the municipal council from adopting a resolution at its meeting scheduled for that purpose on 30 May 2013. The resolution involved the approval of an increased rate to be applied on commercial properties in the municipal area. The application having been dismissed in the court below, the offending resolution was accordingly adopted as planned at the council meeting on 30 May 2013.

On appeal, as in the court below, the appellants argued that the proposed rates ratio of 1:3.8 between residential and commercial properties offended the principle of legality. This challenge was built on a previous minority decision of the SCA in the case of *South African Property Owners Association v Johannesburg Metropolitan Municipality and others* 2013 (1) SA 420 (SCA), wherein it was determined obiter that s 19(1)(b) of the Municipal Property Rates Act 6 of 2004, as read with its regulations, prohibit the imposition of a rate on any category of non-residential property higher than the rate levied on residential property. Furthermore, they argued that the Municipality had not complied with its statutory obligations to publish notice and invite public comment in relation to the rates increases.

The SCA held that the Rates Act and its accompanying regulations cannot be read to limit rates on non-residential properties to any specific ratio in relation to residential property. In terms of the SCA's reading, the rates to be levied in respect of business properties is a matter left open to determination by municipalities subject only to certain limitations imposed in Part 3 of the Rates Act – including s 16(1) which provides that rates may not be levied that would materially and unreasonably prejudice national economic policies, economic activities or the national mobility of goods, services, capital and labour.

The appellants' case was upheld in part, however, on the basis that the Municipality had indeed not complied with its statutory obligations to community participation. On this ground, the court below ought to have granted the urgent order sought on 29 May 2013. This being said, however, the SCA determined that the budget resolution of 30 May 2013 could not be set aside for that reason at this late stage, despite its illegality. A great deal of water has flowed under the bridge since its adoption and the Municipality is now considering its next annual budget. Counsel for the appellants conceded that at this stage he could not ask for the budget to be set aside solely by reason of the lack of proper public participation.

The SCA did, however, note its dissatisfaction with the Municipality's conduct in this litigation. It depreciated the manner in which the Municipality presented its case in its affidavits. On this basis, the court determined it just for there to be no order in regard to the costs of the appeal.