IN THE HIGH COURT OF SOUTH AFRICA
HIGH COURT WESTERN CAPE

CASE NO: 11938/09

In the case between:

STELLENBOSCH RATEPAYERS' ASSOCIATION	**Applicant**
And	
STELLENBOSCH MUNICIPALITY	**Respondent**

JUDGMENT: 18 November 2009

MEER, J

[1] This judgment is concerned with the validity of the rates and tariffs which took effect on 1 July 2009 in the Stellenbosch Municipal area. The Applicant seeks an order declaring such to be unlawful and invalid on the grounds that Respondent, in imposing the rates and tariffs, failed to comply with several peremptory statutory provisions prescribed in the applicable Municipal legislation. These are The Local Government Municipal Financial Management Act no 56 of 2003 ("the MFMA"), The Municipal Property Rates Act No 6 of 2004 ("the MPRA") and The Local Government Municipal Systems Act no 32 of 2000 ("the Systems Act"). Respondent, in opposing the application adopts the stance that there was compliance or substantial compliance with the applicable legislation.

[2] Whilst initially Applicant sought also to set aside the rates and tariffs, it no longer pursues such relief, given that the July 2009 rates and tariffs have come into effect since the inception of the application. Instead, Applicant calls for the suspension of the declaration of invalidity which it seeks, until 30 June 2010.

Preliminary Issues

[3] Respondent raises two preliminary issues. Firstly it challenges the authority of Applicant to bring these proceedings. Secondly it challenges a joinder application by Mrs Berta Hayes, a member of Applicant, to be joined as 2nd Applicant in her capacity as a registered voter, taxpayer and resident within the area of Respondent's jurisdiction.

The Authority of Applicant to bring these proceedings

[4] As authority to launch these proceedings, Applicant relies on a resolution taken at a meeting of Applicant's members on 30 July 2009. Respondent attacks the resolution, in essence, on the basis that it was taken contrary to Applicant's constitution. According to Applicant the resolution was in two parts, firstly a ratification of Applicant's earlier decisions and secondly a decision *de novo* to pursue this application.

[5] It is Applicant's stance that the resolution was taken at an extraordinary general meeting convened in accordance with its constitution, and called for by twenty members of Applicant, as provided for at paragraph 6.2.3 read with paragraph 6.2.1 of its constitution. The latter clauses permit the convening of an extraordinary general meeting either by Applicant's "Sentrale Bestuur" at the request of twenty members, or by such members themselves.

[6] It is so that a meeting was requested on 30 June 2009 by twenty members of the Applicant, purporting to act in terms of clause 6.2.1 of Applicant's constitution and that the Sentrale Bestuur did not convene a meeting within 14 days. Thereafter, Applicant contends an extraordinary general meeting was convened by the twenty members themselves, as permitted by clause 6.2.3 of the constitution, which allows the members to convene a meeting should the Sentrale Bestuur not do so within 14 days of their request.

[7] Respondent argues that as the Sentrale Bestuur was not validly constituted in accordance with Applicant's constitution, it could not have received a request for a meeting in terms of clause 6.2.1 of the constitution, could not have reacted thereto and a meeting by the members themselves could not accordingly have been effected. It is common cause that the Sentrale Bestuur was at the time not validly constituted, on account of two of its wards being under represented. In terms of Clause 5.1 of Applicant's constitution, Applicant's organisational structure is based upon a number of wards, each with a ward committee, the members of which constitute the Sentrale Bestuur. Clause 5.1.1 of Applicant's constitution provides that each ward must be represented by 4 or more members. Contrary to the clause, only two "Wykskomiteelede" represented Wards 7 and 10.

[8] It is apparent that Applicant wishes to rely upon the provisions of clause 6.2.3 in order to avoid any involvement by the Sentrale Bestuur, which for present purposes it accepts was not validly constituted. The difficulty for Applicant, submitted Respondent, is that it is a necessary jurisdictional requirement for clause 6.2.3 to find application, that clause 6.2.1 must first have been complied with. Given that the Sentrale Bestuur

was invalidly constituted, it could not have received a request in terms of clause 6.2.1 and could not have reacted thereto.

[9] The remedy available to Applicant in the circumstances, contends Respondent is either to ensure that the ward committees are properly constituted in accordance with its constitution, or to amend its constitution, although, in the absence of a body able validly to convene a general meeting or a special general meeting, this may prove impossible. Respondent further argues that as the Sentrale Bestuur is not properly constituted, it has the power neither to ratify previous resolutions, nor to resolve to institute legal proceedings. Previous resolutions of the Sentrale Bestuur to institute these proceedings are therefore a nullity and cannot be ratified. What is required is a decision *de novo* by a body competent to take such a decision.

[10] Respondent questioned also whether the resolution of 30 July 2009, adopted a new decision to institute legal proceedings. The effect of the resolution, Mr Jamie on behalf of Respondent submitted, was to ratify what had gone before.

[11] Mr Heunis on behalf of Applicant countered that clauses 6.2.1, 6.2.3 and 6.3.6 of Applicant's constitution, created a mechanism to convene a meeting in circumstances where the Sentrale Bestuur was unwilling or incapable of doing so, like in the present instance, where the Sentrale Bestuur was not validly constituted. Clause 6.2.3 in permitting the members to convene a meeting themselves, caters for a meeting in precisely such circumstances. I am inclined to agree.

[12] Clause 6.2.1 does not suggest that in the event of the Sentrale Bestuur not being properly constituted it cannot receive a request for a

meeting in terms of the clause and react thereto. Nor was my attention drawn to any provision which states so elsewhere in Applicant's constitution. This is hardly surprising, for the logical consequence of Respondent's stance, would be for Applicant to be rendered paralysed and ineffectual due to the Sentrale Bestuur not being properly constituted, a defect which, as alluded to by to Applicant, could prove impossible to remedy. In those circumstances, a general meeting in terms of clause 6.2.1 could not be called by the invalidly constituted Sentrale Bestuur, the latter would not be able to pursue the remedies to regularise itself, suggested by Respondent, and Applicant would not be able to pass resolutions to take legal action or *ex post facto* ratify resolutions to do so.

[13] In short, the incapacity of the Sentrale Bestuur would render the entire organisation powerless to pursue its objectives, a disquieting situation for any voluntary association, and especially for one representing the interests of residents and ratepayers. The interpretation contended for by Respondent would have the effect of disqualifying such persons from litigating in the public interest. It is an interpretation unsupported by Applicant's constitution and cannot be accepted. I am of the view that the resolution of 30 July 2009 was taken at an extraordinary general meeting held in terms of clause 6.2.3 of the constitution.

[14] On the question of ratification by Applicant *ex post facto,* such could have occurred if Applicant's actions were capable of being validated by ratification. In Grundling v Beyers 1967 (2) SA 131 W at 139 H-140B a distinction was drawn between acts which are permitted by a constitution and lend themselves to be validated by ratification, and those which are not so permitted, accordingly *ultra vires* and cannot be

so ratified. The following comments by Trollip J in respect of acts which the constitution of a trade union permitted it to take, are apposite:

" Now the constitution does specify certain acts which the union is required or permitted to do; it often specifies too the manner in which those acts are to be done. The former are the Union's powers, the latter its internal management (cf.*Mine Worker's Union v. Prinsloo,* 1948 (3) S.A. 831 (A.D.). If it exceeds the former powers, that is, does an act that the constitution does not require or permit it to do, that act is *ultra vires* and null and void. Such an act cannot be validated by ratification or estoppel, and the Union, any outsider affected by it, or a member may, if necessary, have it set aside or declared null and void. On the other hand, if the act is within its powers, but the manner of doing it deviates from or is contrary to the constitution, it is not null and void; at most it is voidable, but it can be validated by ratification or estoppel. Any right of (a) the Union, (b) a member, and (c) an outsider to have it set aside can be defeated in the appropriate circumstances……. by ratification"

[15] Clause 1A.4 of Applicant's constitution authorises Applicant to institute legal proceedings. This is an act within its powers, therefore capable of being validated by ratification and can be characterised as being in the latter category of acts referred to in Grundling *supra.* Deficiencies in authority due to the Sentrale Bestuur not being properly constituted were capable of being cured by ratification because the taking of a resolution to institute legal proceedings is a permissible act under the constitution. As the membership had the ability to institute legal action, they were capable of ratifying the decision. See also Metrogroup Retirement Fund and another v Murphy N.O and another [2002] 9 BPLR 3821 (C) at 3828; [2002] JOL 10039 (c) at PP. 15-16.

[16] Whatever decision was taken at the meeting of 30 July 2009, be it a decision *de novo* or a decision to ratify, and it would seem both may well have been taken, Applicant's constitution permitted the decision, and

Applicant was thus authorised to take it. The effect of the decision was to validate the legal proceedings.

[17] I note that whilst Respondent was of course entitled to attack the validity of Applicant's decision to launch these proceedings, and thereby attempt to prevent the merits of the application from being considered, its stance was formalistic, perhaps unnecessarily so. Such is contrary to the tenets of democratic and accountable municipal government, community involvement and civic intervention, tenets which resonate in the applicable municipal legislation, as appears from a consideration of the legal framework below. It ill behoves a Municipality in an era of participatory democracy characterised by increased standing especially in public interest litigation[1], to lightly challenge the standing of a ratepayer's association.

[18] As was said in Dalrymple and Others v Colonial Treasurer 1910 TS 372:

"Personally, I think that when an Act of Parliament creates a corporate council, provides for its election by the ratepayers, empowers it to raise monies in certain ways from the ratepayers, and to expend at only in certain channels and always for their benefit, then the council stands in a fiduciary relationship to the ratepayers, and the latter have an interest sufficiently direct to enable them to intervene when the statute has been violated."

[19] In Motaung v Mukubela and Another NNO: Motaung v Mothiba NO, 1975 (1) SA 618 (O) at 626 J-627 D Steyn J said:

[1] See Section 38 of the Constitution Act 108 of 1996; Ferreira v Levin 1996 (1) SA 984 CC; Rail Commuter Action Group v Transnet 2003 (5) SA 518 (C) at 556 H-J.

"In considering whether there has been a material breach of the constitutional provisions of a voluntary association, a Court of law should not, however, view the matter as if under a strong magnifying glass and should not carpingly ferret out and unduly enlarge every minor deviation from the strict letter of the constitutional provision being examined. Much rather should it adopt a practical, commonsense approach to the matter, constantly bearing in mind that the persons called upon to administer such a constitution are usually laymen who are unversed in the ways of the law."

[20] The following remarks of Price, J. in Garment Workers` Union v De Vries and Others, 1949 (1) SA 1110 (W) at 1129 are also apposite:

> 'In considering questions concerning the administration of a lay society governed by rules, it seems to me that a Court must look at the matter broadly and benevolently and not in a carping, critical and narrow way. A Court should not lay down a standard of observance that would make it always unnecessarily difficult and sometimes impossible to carry out the constitution. I think that one should approach such enquiries as the present in a reasonable commonsense way, and not in the fault-finding spirit that would seek to exact the uttermost farthing of meticulous compliance with every trifling detail, however unimportant and unnecessary, of the constitution. If such a narrow and close attention to the rules of the constitution is demanded, a very large number of administrative acts done by lay bodies could be upset by the Courts. Such a state of affairs would be in the highest degree calamitous…'."

[21] In persisting with its attack on the constitutional validity of Applicant's decision to bring these proceedings, the Respondent, it could be said, carpingly ferreted out minor deviations in aiming at an interpretation that would render it impossible to carry out the Applicant's constitution. The attack has not succeeded. In view of all of the above I find that the Applicant had the requisite authority to bring these proceedings.

The Joinder Application

[22] Respondent opposes the application of Mrs Berta Hayes to be joined as Second Applicant in her capacity as a registered voter, taxpayer and resident within the area of jurisdiction of Applicant. It does so on the grounds that she cannot be joined in an application which is a nullity. Given my rejection of Respondent's argument that the proceedings were not properly authorised, her application for joinder must succeed.

Basis for application and legislative framework

[23] As aforementioned, the application is based on the alleged failure of the Respondent to comply with the peremptory provisions of three pieces of Municipal legislation, namely, The Local Government Municipal Financial Management Act No 56 of 2003 ("the MFMA"); the Local Government Municipal Systems Act No 32 of 2000 ("the Systems Act") and the Municipal Property Rates Act, no 6 of 2004 ("the MPRA").

[24] The central theme of these statutes is to ensure that municipalities exercise their powers to impose rates in a transparent and accountable way, taking into account the interests expressed by the local community. In so doing they track the constitutional imperatives as contained in Section 152 of the Constitution, which provides as follows:

> **"152 Objects of local government**
>
> (1) The objects of local government are-
>
> (a) to provide democratic and accountable government for local communities;

(b) to ensure the provision of services to communities in a sustainable manner;

(c) to promote social and economic development;

(d) to promote a safe and healthy environment; and

(e) to encourage the involvement of communities and community organisations in the matters of local government.

(2) A municipality must strive, within its financial and administrative capacity, to achieve the object set out in subsection (1)."

[25] Section 2 of the MFMA provides as follows:

"**Object of Act -** The object of this Act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for-

(a) ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;

(b) the management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings;…"

[26] The preamble of the MPRA states *inter alia*:

……..

"AND WHEREAS it is essential the municipalities exercise their power to impose rates within a statutory framework that not only enhances certainty, uniformity and

simplicity across the nation, but also takes into account historical imbalances and the rates burden on the poor." …

[27] Section 4 of the Systems Act provides as follows:

"4. Rights and duties of municipal councils

(1) …

(2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to-

(a) exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;

(b) provide, without favour or prejudice, democratic and accountable government;

…

(3) A municipality must in the exercise of its executive and legislative authority respect the rights of citizens and those of other persons protected by the Bill of Rights."

[28] Applicant submits that Respondent failed to comply with a number of provisions of the abovementioned three Acts as follows:

28.1 The Respondent failed to adopt a draft resolution on the proposed rates and taxes at the tabling of the draft budget, 90 days before the start of the financial year, as required by section 17 (3) (a) (ii) of the Local Government Municipal Financial Management Act No 56 of 2003 ("the MFMA");

28.2 The Respondent failed to advertise and invite representations on any draft resolution on the proposed rates and taxes on its website and public libraries, as required by Section 22 of the MFMA and Section 21 A of the Systems Act;

28.3 It did not advertise the adopted rates in the media as required by Section 14 (3) (b) of the MPRA;

28.4 Respondent failed to advertise the adopted tariffs in a newspaper of general circulation as required by Section 75 A (3) (b) of the Systems Act;

28.5 Respondent did not comply with the requirements for public participation when adopting the rates and tariffs, as required by Sections 22 and 23 of the MFMA. In particular it failed to provide the first Applicant with information which was required to table the draft budget in terms of Section 17 of the MFMA and Section 75 of the MFMA.

I proceed to consider each of these allegations.

Respondent's alleged failure to adopt a draft resolution on proposed rates and taxes and to advertise and invite representations thereon.

[29] Section 17 (3) (a) (ii) of the MFMA provides as follows:

> '(3) When an annual budget is tabled in terms of section 16(2), it must be accompanied by the following documents:
>
> (a) Draft resolutions –
>
> (i) …

(ii) imposing any municipal tax and setting any municipal tariffs as may be required for the budget year.'"

[30] Section 16(2) of the MFMA provides that the tabling of the draft budget must take place at a council meeting at least 90 days before the start of the financial year.

[31] In keeping with Section 16 (2) of the MFMA the Council of the Stellenbosch Municipality held a meeting on 26 March 2009, ninety days before the start of the new financial year, at which the draft budget was tabled. An item on the agenda was a report in respect of the draft capital and operational budgets. The report dealt with the proposed rates and tariffs under the heading **"Draft operating budget"** as follows:

"**B DRAFT OPERATING BUDGET 2009/2010**

The basis of the operating budget relates to the principle of total possible income from all our services as well as a projection of total direct income. The extent to which tariffs and levies can be increased are influenced by:

28.5.1.1.1.1 the tariff increase in bulk purchases (water and electricity);

28.5.1.1.1.2 economic conditions of the community;

28.5.1.1.1.3 and the projected growth of the Greater Stellenbosch Area.

Taking all of these issues into consideration and to ensure the sustainability of our operations income flows, the following tariff increases are proposed for 2009/2010:

Electricity : 25%**

Sanitation	:	18.9%
Refuse removal	:	8%
Water	:	8% for all others consumers and
For domestic		8% consumers up to 50kl of
		Water
Rates	:	10% **decrease** on residential and
		Non-residential (current) tariff"

[32] With reference to the above extract, Mr Heunis for Applicant pointed out that no draft resolution on proposed rates and tariffs was tabled and reflected in the minutes. Instead, he contended, the minutes contain meaningless percentages in respect of rates and the proposed rates and tariffs do not appear as amounts in the rand as required by the legislation. Unless a reader could recall the rates or tariffs of the previous year from memory, and had the ability to make the mathematical calculation using the relevant percentages, the rates and tariffs, according to Applicant are not ascertainable from the agenda and minutes. As no resolution existed, submitted Applicant, Respondent failed to make the rates public and invite representations thereon.

[33] The Council approved the draft capital operating budgets at the meeting of 26 March 2009. Respondent conceded that there was not a separate document comprising a draft resolution on the proposed rates and tariffs, tabled together with the draft budgets.

[34] On 27 March 2009, a day after the tabling of the draft budget, according to Respondent, notice was given as required by Section 22 (a)(i) of the MFMA[2], that the budget was available on line, at municipal offices and at libraries. This, it was submitted, was in compliance with Section 21 A of the Systems Act[3] which informs the manner in which Section 22 (a) (i) of the MFMA is to be given effect to.

[35] It is so, as alluded to by Respondent, that the proposed rates and tariffs do not appear as amounts in the rand, and the rates are not readily ascertainable from the percentages expressed, a regrettable circumstance. The minutes do however record a proposal for the 2009/2010 rates, albeit as a percentage. I note that whilst Section 17(3)(a)(ii) refers to the adopting of a draft resolution on the proposed rates, it does not prescribe the format such resolution must take. Also whilst the above extract from the minutes does not express the 10% rate reduction as an amount in the rand, it is so, as indicated by Respondent, that such appeared in notices at all of the Respondent's municipal offices and official notice boards, including the public libraries, from 27 March 2009, and from 31 March 2009 on Respondent's official website.

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[2] Section 22 (a) (i) of the MFMA states: **22. Publication of annual budgets.** – Immediately after an annual budget is tabled in a municipal council, the accounting officer of the municipality must---

(a) in accordance with Chapter 4 of the Municipal Systems Act—
  (i) make public the annual budget and the documents referred to in section 17 (3); and
  (ii) invite the local community to submit representations in connection with the budget; and

(b) ……

[3] Section 21 A of the Systems Act states: **Documents to be made public**___(1) All documents that must be made public by a municipality in terms of a requirement of this Act, the Municipal finance Management Act or other applicable legislation, must be conveyed to the local community___

(a) by displaying the documents at the municipality's head and satellite offices and libraries;
(b) by displaying the documents on the municipality's official website, if the municipality has a website as envisaged by section 21 B; and
(c) by notifying the local community, in accordance with section 21, of the place, including website address, where detailed particulars concerning the documents can be obtained.

(2) If appropriate, any notification in terms of subsection (1)(c) must invite the local community to submit written comments or representations to the municipality in respect of the relevant documents.

[36] A notice was also published in the *Eikestad Nuus*, a newspaper of general circulation in the Stellenbosch area, on 9 and 10 April 2009. The notice, under a heading: **"Public engagement on Stellenbosch Municipality reviewed draft rates policy and draft budget 2009/2010"** stipulates the proposed changes for property rates as follows:

> "**The proposed changes in the tariffs for property rates are as follows:**
>
> | | |
> |---|---|
> | Residential | R0.006679 |
> | Non-residential | R0.009541 |
>
> The Draft Property Rates policy that informs and gives context to these proposals is available for public comment at the below mentioned venues. Possible granting of rebates and concessions to certain categories of property usage and/or property owners are also included in the Draft Property Rates Policy."

[37] According to Respondent, the above figures express the rates as an amount in the rand on the market value of residential and non residential property. Mr Jamie for Respondent submitted with reference to a table depicting the approved rates in 2008-2009 that the rate in the rand advertised and published above, accurately depicted a 10% reduction of the 2008/2009 rates as resolved at the meeting of 26 March 2009.

[38] Respondent, argued Mr Jamie had complied or at least substantially complied with Section 17 (3) of the MFMA read with Section 22 thereof in relation to a resolution on proposed rates and the advertisement thereof. From the evidence and documentation, it would appear to me that this is so. Respondent had complied or at the very least substantially complied albeit not entirely satisfactorily, with the tabling

of a resolution on the proposed rates and taxes and had thereafter advertised and invited representations thereon as required by Section 21 A of the Municipal Systems Act and Section 22 of the MFMA.

[39] I say this because from the proposal for the 2009/2010 rates recorded in the minutes, it would appear there was a resolution however inelegantly and unclearly stated, to reduce rates by 10%, albeit that the resolution was not contained in a separate document. It is common cause that what was proposed at the meeting, recorded in the minutes and thereafter advertised as aforementioned, was not the final rates. It would seem to me that whatever was proposed at the meeting, in whatever format and however unclearly, was a proposed draft resolution on the rates which were finally tabled and levied. What was tabled as a percentage in respect of rates at the meeting was thereafter expressed in a notice to the public as an amount in the rand, albeit once again inelegantly drafted and unaccompanied by any meaningful explanation, advertised, and the public was called to comment thereon.

[40] It cannot be, as was submitted on behalf of Applicant, that the advertisement was so ambiguous as to be meaningless, given it is undisputed that 1540 objections were received from the public, notwithstanding the poor draftsmanship. Clearly the advertisement was not meaningless for those who objected, even though they might have been of a group that was *au fait* with how rates and tariffs work, arguably unlike the average layperson. The rates ultimately levied were expressed as an amount in the rand as required by Section 11(A) of the MPRA.[4]

[4] Section 11 (1)(a) of the MPRA provides as follows:

> "A rate levied by a municipality on property must be an amount in the Rand –

[41] In deciding whether there has been compliance with the provisions of a statute, consideration must be given also to whether the object of the statute has been achieved. In African Christian Democratic Party v Electoral Commission 2006(3) SA 305 at 316H -317B, para 24, O' Regan J cited with approval the reasoning of Van Winsen AJA in Maharajh and others V Rampersad 1964 (4) SA 638 (A), at 646 C

" The enquiry, I suggest, is not so much whether there has been "exact", "adequate" or "substantial" 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 the injunction, it ought to be. It is quite conceivable that a Court might hold that, even though the position as it is, is not identical with what it ought to be, the injunction has nevertheless been complied with. In deciding whether there has been compliance with the injunction the object sought to be achieved by the injunction and the question of whether this object has been achieved, are of importance."

I am satisfied that in this case that the objects of the injunctions have been achieved. See also African Christian Democratic Party *supra* paragraphs 26 to 28 and 31 to 33; Weenen Transitional Local Government v Van Dyk 2002(4) SA653 SCA at paragraph 13.

[42] I am in the light of all of the above able to find that Respondent complied or at the very least substantially complied, albeit in a less than satisfactory manner, with the tabling of a resolution on the proposed rates and taxes, as required by Section 17 (3)(a)(ii) of the MFMA. Respondent also complied with the requirements for advertising and seeking

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(a) on the market value of the property,"

representations thereon, as specified at Section 21 A of the Municipal Systems Act and Section 22 of the MFMA.

[43] In the light of my finding there to have been compliance with the requisite statutes, it is hoped that my criticism of the format in which the draft resolution on the proposed rates was presented and advertised, will not be taken lightly by Respondent, and importantly, will not go unheeded. A more public friendly formulation and explanation of the rates in plain language ought to have been employed and it is hoped will appear in future, one which clearly explains to all ratepayers what the change in rates and tariffs on the market value of properties will be. Citizens have a right to be properly and intelligibly informed by municipalities about a vital issue such as rates, so as to assist them in planning their finances and budgets. The tenets of civic participation and of good, accountable, transparent municipal governance enshrined in the Constitution and municipal legislation demand no less of municipalities. See Kungwini Local Municipality v Silver Lakes Home Owners Association and Another 2008 (6) 187 SCA at paragraph 31 B-C.

Non- advertisement of the Adopted Rates and Tariffs in accordance with Section 14 (3) (b) of the MPRA and Section 75 A (3) (b) of the Systems Act

[44] Once a municipality levies a rate by resolution of its council, Section 14 (3) (b) of the MPRA requires a notice to be advertised in the media, stating that –

> (i) a resolution levying a rate on property has been passed by the council; and
>
> (ii) the resolution is available at the municipality's head and satellite offices and libraries for public

> inspection during office hours and, if the municipality has an official website or a website available to it, that the resolution is also available on that website."

[45] Section 75A(3)(b) of the Systems Act similarly requires the publishing of a notice in a newspaper of general circulation in the municipality, stating-

> (i) that a resolution as contemplated in subsection (2) has been passed by the council;
>
> (ii) that a copy of the resolution is available for public inspection during office hours at the main administrative office of the municipality and at the other places specified in the notice; and
>
> (iii) the date on which the determination will come into operation;

[46] Applicant's stance appears to be that the aforementioned sections require the actual adopted rates and tariffs to be advertised in the media. It is however apparent from Section 75 that what is required to be advertised is the fact that rates and tariffs have been adopted and an indication as to where these documents may be inspected.

[47] From the evidence and documentation I am satisfied that the requisite notices and the Respondent's resolution in respect of the new rates and tariffs were advertised in the Provincial Gazette of 10 July 2009 following the adoption, on 25 June 2009, of the minutes of the Respondent's council on 28 May 2009. They were also advertised in the media and displayed at the Respondent's offices and public libraries

throughout its jurisdiction, and were available on the Respondent's website from 2 June 2009 onwards. There was accordingly compliance with the requirements of notification and publication as required by the aforementioned sections.

Failure to comply with the requirements of public participation

[48] The complaint by Applicant is that Respondent failed to comply with the requirements of public participation in adopting the rates and tariffs as required by Sections 22 and 23 of the MFMA. In particular Respondent failed to provide Applicant with information which it was required to table with the draft budget in terms of Sections 17 and 75 of the MFMA.

[49] It appears from the founding affidavit that the information was requested in order to enable Applicant to provide meaningful comments on the draft budget. However, as alluded to by Respondent, the request was made for the first time on 30 April 2009, the final day on which comments in respect of the draft budget could be made, and therefore was too late for its intended purpose. It would also appear that Applicant did in fact submit detailed comments, both on the draft 2009/2010 rates policy and budget, on 30 April 2009.

[50] Respondent submitted moreover that the information requested was either already a part of the budget, or was not required to be furnished as part of the statutory process relating to the adoption of the budget and the imposition of rates and tariffs. On a consideration of the information requested, I am inclined to agree. I do not consider it necessary to analyse the items of information requested, save to say that Respondent's assessment thereof is accurate.

[51] Regarding the more widespread public participation process, Section 23 of the MFMA requires a Municipal Council to consider the views of the public after the annual budget has been tabled. This consideration takes place between the tabling of the draft budget in terms of Section 16 (2) of the MFMA and the approval of the final budget in terms of Section 24 of the MFMA. I have already found there to have been compliance with Sections 22 of the MFMA and Section 21 A of the Systems Act in respect of advertising and inviting representations on the proposed rates and taxes. I have also found there was compliance with the advertising of the adopted rates and tariffs as per the requisite statutes.

[52] Respondent moreover points out, and it is undisputed that there were ward committee meetings, and 1540 comments were received from members of the public. It is also undisputed that the comments were made available to Council Members and provided to the chief whips of all the parties represented in Council, for consideration before the budget was adopted. In the circumstances I find there to be no merit to Applicant's complaint about public participation.

[53] In view of all of the above I am unable to declare the rates and tariffs were unlawful and invalid, as Applicant would have me do.

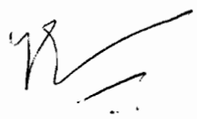
Costs

[54] Each party has achieved a measure of success in these proceedings. Applicant succeeded in dispelling Respondent's attack on its authority and Respondent warded off the attack on its alleged failure to comply with the peremptory statutory requirements. It must be borne in mind however, that whilst Applicant was found to have complied with the statutory requirements, the manner of its compliance was found not to

have been satisfactory in all respects and was criticised, especially in relation to the formulation of the draft resolution on the proposed rates, and advertisement thereof. Neither party therefore achieved outright success. In the circumstances, I am of the view that it would be just and equitable in the exercise of my discretion to make no order as to costs. I grant the following order

1. The Application is dismissed

2. There is no order as to costs



MEER, J