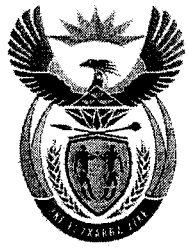


**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE NO.: 20650/11

In the matter between:

**BEAUFORT-WES LANDELIKE BELASTING-BETALERSVERENIGING** Applicant

And

**BEAUFORT-WEST MUNICIPALITY** Respondent

---

**JUDGMENT DELIVERED ON 11 OCTOBER 2012**

---

**LE GRANGE J:**

Introduction:

[1] In the determination of property rates and other tariffs by a local municipality there has always been an opportunity for ratepayers

and other interested persons to participate, make representations and to submit objections before any rate or tariff is finally fixed by a municipal council. The Applicant, whose members are all owners of rural agricultural properties, was aggrieved by the rates policies adopted by the Beaufort-West Municipality ("the Respondent"). They rely on the well- established principle of legality. It is not in dispute that the Respondent when imposing rates and levies must comply with the provisions of the statutes that govern their powers and duties. In this regard see Gerber and others v Member of the Executive Council for Development Planning and Local Government, Gauteng and Another 2003 (2) SA 344 (SCA) and Kungwini Local Municipality v Silver Lakes Home Owners Association and Another 2008 (6) SA 187 (SCA).

[2] In this instance, the main issues for determination are whether the Respondent exercised its powers in a lawful manner when it adopted a rates policy in terms of section 3 of the Local Government: Municipal Property Rates Act, 6 of 2004 ('the Rates Act') and whether the rates levied, in respect of agricultural properties for the financial

years 2009/2010, 2010/2011 and 2011/2012 are lawful and recoverable.

[3] Mr. E A S Ford, SC, assisted by Ms M L Beard appeared for the Applicant and Mr. A M Breitenbach, SC appeared for the Respondent. Counsel for both parties have argued extensively on the points in issue and filed complete heads of argument, which was of great assistance in preparing this judgment.

The Relief Sought:

[4] The attack on the rates policies adopted by the Respondent is premised on a number of grounds. The relief sought in Prayers (a) and (b) of the Notice of Motion is for an order declaring that the Respondent's Rates Policy, as adopted in terms of the Rates Act, on 27 November 2007 and amended on 26 May 2009, and as adopted on 13 May 2011, is unlawful.

[5] In respect of Prayers (c), (d) and (e), the relief sought is an order declaring the rates levied by the Respondent in respect of

agricultural properties for the 2009/2010, 2010/2011 and 2011/2012 municipal financial years, to be unlawful and irrecoverable.

[6] The Applicant in respect of prayers (a) and (b) has challenged the Respondent's Rates Policy on the following grounds. Firstly, the Applicant alleges that the Respondent's Rates Policy does not comply with the provisions of Section 3(3)(b) of the Rates Act because its rates policy does not determine the criteria to be applied by the Respondent when it: levies different rates for different categories of properties; grants to a specific category of owners of properties, or to the owners of a specific category of properties, in this instance, owners of agricultural properties, a rebate on or a reduction in the rate payable in respect of their properties.

[7] Secondly, the Applicant alleges that the Rates Policy does not comply with the provisions of Section 3(3)(c)(i) of the Rates Act because it does not provide criteria for the determination of categories of properties for the purpose of levying differential rates.

[8] Thirdly, the Applicant alleges that the Rates Policy does not comply with the provisions of Sections 3(3)(c)(ii) and (4) of the Rates Act because it does not determine criteria to be applied in respect of

any exemptions, rebates or reductions on properties used for agricultural purposes, and consequently the Respondent failed to take into account: the extent of services provided by the municipality in respect of such properties; the contribution of agriculture to the local economy; the extent to which agriculture assists in meeting the service delivery and development obligations of the municipality; and the contribution of agriculture to the social and economic welfare of farm workers.

[9] Fourthly, the Applicant alleges that the Rates Policy does not comply with the provisions of Regulation 2 of the Regulations promulgated in GN R.363 of 27 March 2009 ('the Municipal Property Rates Regulations'), read with Sections 19(1)(b) and 11(1)(a) of the Rates Act because the provisions of the Rates Policy do not clearly differentiate between, firstly, the criteria and method of determining the rates to be paid in respect of agricultural property as distinct from residential property and, secondly, the rate to be paid and the reductions or rebates to be applied to the rate to be paid as provided for in Section 15 of the Rates Act.

[10] In addition, the Applicant avers that the Rates Policy is not consistent with the Rates Act as required by Section 3(1) of the Rates Act. Furthermore, it does not comply with Section 3(3)(a) because it does not treat ratepayers equitably.

[11] The Applicant in prayers (c), (d) and (e) challenged the rates levied on agricultural properties for the financial years 2009/2010, 2010/2011 and 2011/2012, on the following grounds. Firstly, the Applicant alleges that the rates payable in respect of agricultural properties in the 2009/2010 financial year did not comply with Section 19(1)(b) of the Rates Act read with Municipal Property Rates Regulations because the rates were the same as those for residential properties, whereas they should have been 25% or less of the rates for residential properties. The Applicant further alleges that it is not good enough that in respect of agricultural properties the Respondent granted a 75% rebate on the rates levied on residential properties.

[12] Secondly, the Applicant alleges that the increase in the rates payable in respect of agricultural properties in the 2009/2010 financial year due to the revaluation of properties for rates purposes, which the Applicant alleges was perpetuated in the two subsequent financial

years, when compared to the preceding financial year (2008/2009), was inequitable and unlawful.

[13] Thirdly, the Applicant alleges that the Respondent did not comply with the provisions of Section 14(2) of the Rates Act because the resolutions of the Municipal Council levying the rates in respect of the 2010/2011 and 2011/2012 financial years were not promulgated by publishing the resolutions in the Provincial Gazette.

[14] Fourthly, the Applicant alleges that the rates in respect of the 2011/2012 financial year prior to the rebate exceed the rate provided for in paragraph 13(2) of the Rates Policy.

[15] Lastly, the Applicant alleges that in the 2011/2012 financial year the Respondent impermissibly applied a differential rate between agricultural properties inside and outside of the area which previously had been administered by the Central Karoo District Municipality. In addition to the above, the Applicant alleges that the Respondent's rates levied on agricultural properties for the financial years 2009/2010, 2010/2011 and 2011/2012 are unlawful because the Rates Policies 'in terms of which' the Applicant alleges the rates were levied, were unlawful.

[16] The Respondent in resisting the relief sought argued that its rates policies were determined properly and are therefore lawful. Moreover, the Respondent took issue with the unreasonable delay by Applicant in bringing this application in relation to its property rates for the 2009/2010 and 2010/2011 financial years. According to the Respondent, it will suffer severe prejudice should the rates for such periods be declared unlawful. In this regard it was noted that the property rates for the years mentioned had already lapsed before the present proceedings were instituted. As such, the Respondent will not be able to remedy the problem and will lose the affected rates.

Background:

[17] The background facts underpinning this application are largely common cause between the parties. Agricultural properties had previously fallen outside the boundaries of municipal areas before their incorporation within the jurisdiction of rateable properties of the local municipalities. The Respondent, a local municipality, resolved in March 2007, to approve in principal a draft Rates Policy. A notice in April 2007 was published in the local newspaper to this effect and invited comments or proposals from the public and interested groups in writing. The Applicant submitted its proposals timeously to the

Municipal Manager of the Respondent. In November 2007, the Respondent rejected the proposal put forward by the Applicant and adopted the Rates Policy on 27 November 2007. Notwithstanding the approval of the Rates Policy in 2007 and approved amendments thereto in March 2009, the Rates Policy only took effect after the first Valuation Roll prepared by the Respondent in terms of the Rates Act.

[18] It is not in dispute that the Respondent on 1 July 2009 implemented the new Valuation Roll for properties in its jurisdiction. It appears that in the past, for a period of six years, before the introduction of the new Valuation Roll, the Respondent had six Valuation Rolls for properties in its jurisdiction, the effective date of all of which was 1 July 2003. The six different property valuation rolls included, Merweville, Nelspoort, the previous racially segregated areas of Beaufort West, and the rural area, except for the area comprising the former Murraysburg District Management Area ("Murraysburg DMA"). The values reflected on the Valuation Rolls, except for the rural areas, were approximates of the market values of the properties listed on those rolls. The values on the valuation roll for the rural areas were based largely on the carrying capacities and sizes of the agricultural

properties, which yielded values significantly lower than the market values.

[19] In terms of the Rates Act, all properties in the Respondent's area of jurisdiction are valued for rates purposes in a General Valuation and included in a General Valuation Roll. The new Valuation Roll presently reflects the market value of every property which has been valued as the amount the property would have realized if sold on the date of valuation in the open market by a willing seller to a willing buyer. Consequently, all agricultural properties on the Respondent's new General valuation Roll were reflected at their market values.

[20] On 9 April 2009, the Respondent published a Notice, as required in terms of s 22 of the Municipal Finance Management Act, 56 of 2003, stating that its draft budget for the 2009/2010 financial year had been tabled on 31 March 2009 and was open for inspection. The Notice also invited objections or comments relating to the budget and the rates levied in respect thereof. According to the Notice the rates payable in respect of residential properties and rural properties would be rated at 0,011 in the Rand based on the provisional Valuation Roll that would

come into effect on 1 July 2010. In terms of the special meeting held by the Respondent on 29 May 2009, the following rebates were approved in respect of agricultural properties.

"*1.2.6 A rebate on agricultural properties to the extent that services are not rendered as per paragraph 13 of the policy;*

| | | |
|---|---|---|
| *1.2.6.1* | *Roads* | *-5%* |
| *1.2.6.2* | *Sewerage* | *-5%* |
| *1.2.6.3* | *Electricity* | *-5%* |
| *1.2.6.4* | *Water* | *-5%* |
| *1.2.6.5* | *Refuse removal* | *-5%* |

*1.2.7 Bona fide farmers [paragraph 19]-50%"*

[21] It is also not in dispute that the Respondent obtained a report compiled by a person named 'Du Pisani' with a view to seek certain guidance on an approach to the Rates payable in respect of agricultural properties for the 2005/2006 and 2006/2007 financial years. In terms of the report it was recommended that the rate on agricultural properties be R 0,001 of the Valuation at a time when the average value of the relevant properties was R 246 per hectare and

that this rate should decrease proportionately to the increase in value of the properties to ensure fairness.

[22] The Applicant appears to be in support of the suggestions made in the 'Du Pisani' report. The further suggestion by the Applicant is that the Rates could be adjusted upwards by 5 to 6% per annum from the 2006/2007 financial year to the 2011/2012 financial year to allow for inflation as opposed to the present increase on re-valuation by approximately 309% to R760 per hectare. The Applicant has also furnished its own draft rates policy attached to the founding papers. In addition, the Applicant states that its members decided to make certain payments towards the arrear rates commencing with the 2009/2010 financial year at a rate that according to them is affordable and lawful. This rate was calculated at R0,000428 per R 1,00 of the Valuation Roll and an amount of R 334 096, 12 was paid by members of the Applicant to the Respondent.

[23] The Respondent viewed the 'Du Pisani Report' somewhat differently. According to the Respondent, the Report related to the rates levied before the 2009 general valuation of properties. There was

apparently an agreement on the rates for the 2005/2006 and 2006/2007 financial years. The Respondent has denied that there was an agreement, as alleged by the Applicant, on the rates for the 2007/2008 and 2008/2009 financial years. In this regard the Respondent stated that a dispute existed that led to litigation between the Respondent and one of the Applicant's members. According to the papers this dispute was only settled in May 2010.

[24] The Respondent is of the firm view that its Rates Policy and the rates levied accordingly are equitable and *intra vires*. Furthermore, according to the Respondent there is no substance in the allegation that the Respondent's property rates based on the new general valuation of properties are not affordable to the owners of the agricultural land. In its answering papers the Respondent made the point that for the financial years 2008/2009, it imposed different rates on, amongst others, properties in Beaufort West ( 3.237c/1R) and properties in rural areas (0.63c/R 1) the latter being 20% of the former. In addition, the Respondent's municipal council took a decision in February 2007 to the effect that, in respect of properties used for agricultural purposes, a rebate of 83% would be applicable regarding

properties up to 3 000ha; 78% for properties of between 3 001 and 6000ha in extent; 73% for properties between 6001 and 9000ha in extent and 68% for properties of 9001 and larger in extent.

[25] In determining the rates for the 2009/2010 financial year the Respondent states that its municipal council endeavoured, amongst other things, to replace the inequitably low effective rates paid by the owners of properties in the rural area used for farming purposes in 2008/2009 with what it considered to be equitable rates based on the market values of such properties. It did so by requiring such owners to pay 25% of the rate payable by owners of residential properties.

[26] The Respondent conceded that the result of the new Rates Policy was a 'once-off' steep increase in the total quantum of rates payable by farmers in its jurisdiction from R 509 650 in 2008/2009 to R 3 040 949 in 2009/2010, but denied that the new rates were inequitable. According to the Respondent, the rates that the farmers were liable to pay in 2009/2010 was, in the Municipal Council's estimation, equitable and in line with the applicable factors and the 25% norm laid down by s 19(1)(b) of the Rates Act and Regulation 2 of the Municipal Property Rates Regulations.

[27] The Respondent also emphasized the point that fixing of the property rates for each financial year is part of a complex series of financial management decisions which the Respondent's Municipal Council must make each year as a democratically -elected deliberative body and are inevitably influenced by political considerations. Moreover, the Respondent viewed the draft rates policy proposed by the Applicant as complicated and unrealistic. In addition, the Respondent states it does not have the capacity and manpower to effectively investigate, collate and audit the information that is required in terms of such policy.

[28] The central issue underlying the dispute between the parties is largely premised on the interpretation of the relevant sections of the Rates Act.

The legal framework:

[29] It is trite that section 229 of the Constitution provides for the imposition of rates by a municipality and that the imposition of such rates is regulated by national legislation. In the present instance, the Rates Act is the applicable legislation which provides for the manner in

which municipalities may levy rates on property owners within the area of jurisdiction of a municipality. In our law the Constitution requires that, where necessary, legislation must be interpreted in harmony with its objects and values. In this regard see City of Cape Town v Robertson 2005 (2) SA 323 CC at 348 A.

[30] Moreover, in determining whether a municipality's failure to comply with the relevant statutory provisions and regulations should be followed with a declaration of nullity, consideration must be given to whether the legislation in question contemplates that failure strictly to comply with the requirement should result in the process being invalidated. Our Higher Courts have consistently held that '[t]o nullify the revenue stream of a local authority merely because of an administrative hiccup appears to be so drastic a result that it is unlikely that the Legislature could have intended it'. See in this regard, JJ Liebenberg NO and 86 Others v Bergrivier Municipality (737/11) [2012] ZASCA 153 (28 September 2012) at [29].

[31] In the present instance, the Respondent had adopted a Rates Policy on 27 November 2007 that was promulgated as Notice No. 140/2007 in the Provincial Gazette No. 6494 of January 2008. This

policy was thereafter amended on two occasions. The first amendment took place on 26 May 2009 promulgated as Notice No. 76/2009 in Provincial Gazette No. 6635 of June 2009 and the second on 13 May 2011 promulgated as Notice No. 60/2011 Provincial Gazette No. 6882 of 17 June 2011.

[32] The Applicant's attack on the property rates commence with an attack on those levied for the 2009/2010 municipal financial year which ran from 1 July 2009 to 30 June 2010. The version of the Rates Policy applicable to that financial year is the Rates Policy adopted on 27 November 2007 as amended on 26 May 2009. The same version of the Rates Policy as amended applies to the rates levied for the three Municipal financial years under attack.

[33] In my view, when considering the attack against the Rates Policy adopted by the Respondent, the correct approach to follow is to consider the purpose and object of the Rates Act and whether there was substantial compliance with the legal framework of the Act. The preamble of the Rates Act clearly stipulates that *inter alia,* the purpose and object of the Act is to regulate the power of a municipality to impose rates on property and to make provision for the municipalities

to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies. Moreover, it stipulates that it is essential that municipalities exercise their power to impose rates within the statutory framework that not only enhances certainty, uniformity and simplicity across the nation, but also takes into account historical imbalances and the rates burden of the poor.

[34] Section 3 of the Rates Act, provides as follow:

***"3 Adoption and contents of rates policy***

*(1) The council of a municipality must adopt a policy consistent with this Act on the levying of rates on rateable property in the municipality.*

*(2) A rates policy adopted in terms of subsection (1) takes effect on the effective date of the first valuation roll prepared by the municipality in terms of this Act, and must accompany the municipality's budget for the financial year concerned when the budget is tabled in the municipal council in terms of section 16 (2) of the Municipal Finance Management Act.*

*(3) A rates policy must-*

*(a) treat persons liable for rates equitably;*

*(b) determine the criteria to be applied by the municipality if it-*

*(i) levies different rates for different categories of properties;*

*(ii) exempts a specific category of owners of properties, or the owners of a specific category of properties, from payment of a rate on their properties;*

*(iii) grants to a specific category of owners of properties, or to the owners of a specific category of properties, a rebate on or a reduction in the rate payable in respect of their properties; or*

*(iv) increases rates;*

*(c) determine, or provide criteria for the determination of-*

*(i) categories of properties for the purpose of levying different rates as contemplated in paragraph (b) (i); and*

*(ii) categories of owners of properties, or categories of properties, for the purpose of granting exemptions, rebates and reductions as contemplated in paragraph (b) (ii) or (iii);*
*(d) determine how the municipality's powers in terms of section 9 (1) must be exercised in relation to properties used for multiple purposes;*
*(e) identify and provide reasons for-*
*(i) exemptions;*
*(ii) rebates; and*
*(iii) reductions;*
*[Para. (e) substituted by s. 25 (a) of Act 19 of 2008.]*
*(f) take into account the effect of rates on the poor and include appropriate measures to alleviate the rates burden on them;*
*(g) take into account the effect of rates on organisations conducting specified public benefit activities and registered in terms of the Income Tax Act for tax exemptions because of those activities, in the case of property owned and used by such organisations for those activities;*
*[Para. (g) substituted by s. 25 (b) of Act 19 of 2008.]*
*(h) take into account the effect of rates on public service infrastructure;*
*(i) allow the municipality to promote local, social and economic development; and*
*(j) identify, on a basis as may be prescribed, all rateable properties in the municipality that are not rated in terms of section 7 (2) (a).*

*(4) When considering the criteria to be applied in respect of any exemptions, rebates and reductions on properties used for agricultural purposes, a municipality must take into account-*
*(a) the extent of services provided by the municipality in respect of such properties;*
*(b) the contribution of agriculture to the local economy;*
*(c) the extent to which agriculture assists in meeting the service delivery and development obligations of the municipality; and*
*(d) the contribution of agriculture to the social and economic welfare of farm workers.*

*(5) Any exemptions, rebates or reductions referred to in subsection (3) and provided for in a rates policy adopted by a municipality must comply and be implemented in accordance with a national framework that may be prescribed after consultation with organised local government.*

*(6) No municipality may grant relief in respect of the payment of a rate-*

*(a) to a category of owners of properties, or to the owners of a category of properties, other than by way of an exemption, a rebate or a reduction provided for in its rates policy and granted in terms of section 15; or*
*(b) to the owners of properties on an individual basis."*

The Legal Issues:

[35] I now return to the relief sought by the Applicant in the Notice of Motion. Item 2 of the Respondent's Rates Policy provides as follows:

'***2. Criteria for levying different rates for different categories of properties***

*The following criteria will be used when levying different rates for different categories of properties-*

*(a) use of the property;*

*(b) permitted use of the property; or*

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

[36] The Respondent, in order to comply with s 3(3)(b)(i) of the Rates Act, determined the criteria to levy different rates for different

categories of properties, and used the same terminology as provided in s (8)(1) of the same Act. The provisions of s 8(1) are the following:

*"8. Differential rates.-(1) 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.'*

[37] The question that needs to be answered is whether the Respondent in this instance in determining the relevant criteria for an equitable levying of rates for different categories of properties by repeating certain phrases in the same Act, verbatim in Item 2 of its Rates Policy, has achieved the objects and values of the Rates Act. In my view the question must be answered in the affirmative. There is nothing in the Rates Act that 'strictly prohibits' the Respondent from specifying in its rates policy under s 3(3)(b)(i), the criteria as they appeared in s 8(1) of the Rates Act, as the determined criteria for the

levying of different rates for different categories of properties. Furthermore, the criteria as stipulated in the Respondent's Rates Policy are clearly relevant in determining the different rates for the different categories of property. The criteria so determined, in my view, constitute substantial compliance with the statutory framework of the Act. They enhance certainty, uniformity and bring about simplicity across the entire spectrum of rateable property within the jurisdiction of the Respondent. Item 2 of the Respondent's Rates Policy can as a result not be inconsistent with the Rates Act.

[38] The Applicant further contend that the Respondent has impermissibly confused the criteria for the determination of rates on agricultural properties with the criteria for the granting of rebates on the rates for agricultural properties, and consequently the Municipality conflated the determination of the rate for agricultural properties with the rebate or reduction to be applied to the rate for agricultural properties. The Applicant based this attack on the premise that the terms of s 3(3)(b)(i), which deals with the levying of different rates for different categories of properties, and s 3(3)(b)(iii), which deals with the granting of a rebate on the rate payable by a specific category of owners of properties or the owners of a specific category of properties,

clearly require that the Respondent must always determine two sets of criteria. Firstly, it must determine the criteria for the determination of the category of property or owners eligible for the rebate and secondly, it must determine the criteria for the determination of the quantum of the rebate granted to them. The premise on which the Applicant based this challenge is in my view misplaced.

[39] The proposition by counsel for the Respondent that the words '*if it*' at the end of the first line of s 3(3)(b) and the word '*or*' between (iii) and (iv) confer on the Respondent the power to exercise an option to choose any one of the sub-clauses as alternatives, is not without substance. In my view, s 3 of the Rates Act viewed in its proper context, can only be interpreted that s 3(3)(b)(i), the levying of different rates for different categories of properties, and s 3(3)(b)(iii), the granting of a rebate on the rate payable by a specific category of owners of properties or the owners of specific a category of properties, are alternatives.

[40] In considering the aims and objectives of the Rates Act, s 3 in my view affords the Respondent a range of choices. It can determine the category and levy a different (lower) rate for that category; or

grant properties in that category a rebate on the rate payable by properties in another category; or levy a different lower rate for that category and in addition grant a rebate on that lower rate. Differently put, if a municipality decides to grant properties in one category (e.g. agricultural properties) a rebate, it may use the rate for another category (e.g. residential properties) as the base rate, and then the granting of the rebate determines the effective rate payable by the rebated category (agricultural properties), this being the approach adopted by the Respondent in the present instance.

[41] Item 5(2) of the Respondent Rates Policy has also come under attack by the Applicant. The attack is based on the premise that the Respondent failed to comply with s 3(4) of the Rates Act, in that the Respondent in Item 5(2) of its Rates Policy has simply repeated the factors set out in s 3(4) which a municipality needs to take into account when considering the criteria to be applied in respect of any exemptions, rebates and reductions on properties used for agricultural purposes.

[42] Item 5(2) of the Rates Policy provides as follows:

*"(2) The following criteria will be used when granting an exemption, rebate and reduction on the properties used for agricultural purposes-*

*(a) the extent of services provided by the municipality in respect of such properties;*

*(b) the contribution of agriculture to the local economy;*

*(c) the extent to which agriculture assists in meeting the service delivery and development obligations of the municipality; and*

*(d) the contribution of agriculture to the social and economic welfare of farm workers."*

[43] The Rates Act does not prohibit the Respondent from using the factors set out in s 3(4) in its rates policy as criteria for granting of exemptions, rebates and reductions on the rates for properties used for agricultural purposes, under s 3(3)(b)(ii) or (iii). The listed criteria in Item 5(2) must surely be relevant considerations when the Respondent determines exemptions and rebates on the rates of properties used for agricultural purposes. Furthermore, Item 5(2) is not the only provision in the Respondent's Rates Policy containing the

criteria governing the granting of exemptions, rebates and reductions on the rates of properties used for agricultural purposes. In this respect, the criteria in Item 5(2)(a) and 5(2)(b) are supplemented by the further criteria in Item 13(1) and 13(2), which are similar to the further criteria set out in Sections (A), (B) and (C) of the "General Guidelines on the Municipal Property Rates", in the Rates Act. In addition, Item 13(3), 14 and 19, as amended, read together, provide for a further rebate for the owners of agricultural properties who are *bona fide* farmers.

[44] The Applicant has also challenged Items 13(1) and (2) of the rates policy as amended in 2011. The Applicant alleges that item 13(2) of the Rates Policy as amended in 2011 renders item 13(1) which was also amended, meaningless as the criteria mentioned therein are never applied. Items 13 (1) and (2) as amended provide as follows:

*"(1) The council will, when it imposes rates and sets tariffs for the budget year, grant a rebate as stipulated in paragraph 13(2) on the rates payable in respect of agricultural properties where-*

*(a) there are no municipal roads next to the property;*

*(b) there are no municipal sewerage to the property;*

*(c) there are no municipal electricity to the property;*

*(d) water is not supplied by the municipality;*

*(e) refuse removal is not provided by the municipality.*

*(2) As a result of, and taking into account, limited rate-funded services supplied to such properties in general, the contribution of agriculture to the local economy, the extent to which agriculture assists in meeting the service delivery and development obligations of the municipality, and the contributions of agriculture to the social and economic welfare of farm workers, the Municipality grants a rates rebate in respect of properties subject to agricultural use, which rebate is 80% of the rate levied on Residential Properties."*

[45] The challenge by the Applicant against the above-mentioned Items is without merit. On a proper reading of the Rates Policy Item 13(2) merely records the application of the Municipality's rating decision for the 2011/2012 financial year. According to the Respondent both the decision to amend the Rates Policy and the decision to impose the rates for the 2011/2012 financial year were taken on the

same date. The specification of the effective rate in Rates Policy (i.e. the rate on residential properties less a rebate of 80%), is therefore unobjectionable.

[46] The Applicant's further contends that as the municipality's policy was unlawful, the rates levied in terms of such policy must be viewed as unlawful and irrecoverable. I disagree. In my view, there must be a legal distinction between a Municipality's decision to adopt a Rates Policy under s 3(1) of the Rates Act and its annual decision to levy rates on property for a particular financial year under ss 2(1), 12(1) and 14(1) and (2) of the Rates Act. The practical significance of this distinction must be that the failure to comply with a legislative provision concerning the Rates Policy does not necessarily mean the rates based on the Policy are void. It will depend on whether the legislature contemplated that the relevant failure should be visited with nullity and on the materiality of the failure, because 'to nullify the revenue stream of a local authority because of a mere administrative hiccup is so drastic a result that it is unlikely that the legislature could have intended it'. In this regard see JJ Liebenberg NO v Bergrivier Municipality *supra*, at [29].

[47] The Applicant challenged the 2009/2010 rates resolution on the grounds that the Respondent did not fix a rate for agricultural properties at all, but instead fixed the residential rate and then applied a rebate of 75%. Moreover, the Applicant contends that the 2009/2010 rates resolution is bad in law because it is incompatible with the prescribed rates ratio between residential and agricultural properties. As stated previously in paragraph [38] herein, there is in my view no prohibition in the Rates Act that if a municipality decides to grant properties in one category (e.g. agricultural properties) a rebate, it may not use the rate for another category (e.g. residential properties) as the base rate, and then grant a rebate thereon, thereby determining the effective rate payable by the rebated category, as in this instance (agricultural properties). The Applicant raised a related attack, namely that '*those upon whom the rate is intended to be binding cannot, from a reading of the notice, establish what rate is to be levied on agricultural properties*'. This attack, even though it was not raised in the Applicant's founding papers, is without substance. The resolution as published accords with the resolution as adopted and the context of the notice makes it clear that the rebates for agricultural

properties are on the rate for residential properties. The effective rate can therefore be determined in a rather simple manner.

[48] The rates ratio referred to in s 19(1)(b) of the Rates Act and prescribed in Regulation 2 of the relevant Regulations is the ratio between the rate which the owners of residential properties have to pay and the rate which the owners of agricultural properties have to pay. In terms of a circular issued on 31 March 2009 by the Department: Provincial and Local Government the ratio for agricultural properties is the effective ratio, meaning that the ratio implies rates after having taken into account any rebates applied by the municipality. According to the Respondent, due to the across-the-board rebates totaling 75%, applied to the agricultural properties, the rate payable in respect of agricultural properties was 25% of that in respect of residential properties, which is in line with Regulation 2. The Respondent further stated that if it had to first specify the rate on agricultural properties as being 25% of the rate on residential properties (1.1c/R ÷ 4 = 0.275c/R), the result would have been the same and the mistake, if indeed there was one, was consequently not

a material mistake. I am in agreement with this submission by the Respondent.

[49] The promulgation by the Respondent of the resolutions levying the rates for 2009/2010, 2010/2011 and 2011/2012 was also challenged on the grounds that such resolutions were promulgated after the commencement of the financial years in respect of which such rates applied. The complaint by the Applicant is premised on the provisions of s 14 of the Rates Act.

[50] It is not in dispute that the promulgation of the resolution for levying of the property rates for the financial year 2009/2010, that is, from 1 July 2009-30 June 2010, was published by the Respondent on 3 July 2009 in the Provincial Gazette. In respect of the 2010/2011 financial year, that is 1 July 2010 to 30 June 2011, the resolution was promulgated on 9 July 2010. In respect of the 2011/2012 financial year, that is 1 July 2011 to 30 June 2012, the resolution was promulgated on 28 October 2011.

[51] In response to the Applicant's argument that there is a provision in the Rates Act (s 14) which requires that the resolution be promulgated before the start of the financial year to which it relates,

being 1 July of that particular year, the Respondent claimed that there was no such provision in the Act. According to the Respondent, what the Rates Act provides in this regard, by necessary implication, is the following: unless and until the resolution is promulgated, i.e. put into operation, the amounts of rates payable under the resolution are not able to be levied, and if the resolution is promulgated after the end of the financial year (i.e. by 30 June of the next calendar year), the amounts of the rates payable under the resolution will not be able to be levied because s 12(1) provides that a rate lapses at the end of the financial year for which it was levied. However, if a resolution is promulgated during the course of the relevant financial year, pursuant to s 13(1)(a) of the Rates Act, the rate(s) in question becomes payable as from the start of that financial year.

[52] The provisions of s 14 stipulate the following:

"*14 Promulgation of resolutions levying rates*

*(1) A rate is levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members.*

*(2) A resolution levying rates in a municipality must be promulgated by publishing the resolution in the* Provincial Gazette.

*(3) Whenever a municipality passes a resolution in terms of subsection (1), the municipal manager must, without delay-*

*(a) conspicuously display the resolution for a period of at least 30 days-*

*(i) at the municipality's head and satellite offices and libraries; and*

*(ii) if the municipality has an official website or a website available to it as envisaged in section 21B of the Municipal Systems Act, on that website; and*

*(b) advertise in the media a notice 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.'*

[53] Based on a reading of s 14, the contention by the Respondent that there is no such provision that requires the resolution in respect of the levying of rates be promulgated before the start of the financial year to which it relates being 1 July of that particular year, is correct.

[54] In the present instance the Rates Act is the source of the power to levy rates. In my view it is necessary for the Municipality to satisfy the requirements of the Rates Act in order to set a rate and levy it. Promulgation is therefore necessary for the rates to have been validly imposed. The object of these provisions must be viewed in the same manner as stated by Van Heerden JA in Kungwini, supra at 200 B, and that is, to ' *ensure that residents in the municipal area concerned are 'properly and optimally informed' of what their financial*

*obligations will be, should the published amendments (in this case, the rates increases) take effect, and precisely when such obligations will become enforceable. In the absence of such information, it would be well-nigh impossible for resident timeously to arrange their financial affairs such that they make allowances for any anticipated increased demand upon their purses. Just as financial discipline and advance planning is legitimately required of a municipality, so too can it be expected of ratepayers.'*

[55] In my view, in levying rates for the periods prior to the dates of promulgation, what the Respondent in practical effect wanted to achieve was to levy rates with retrospective affect. S 13 of the Rates Act does provide that rates 'becomes payable as from the start of a financial year; or (b) if the municipality's annual budget is not approved by the start of the financial year, as from such later date when the municipality's annual budget, including a resolution levying rates, is approved by the provincial executive it of section 26 of the Municipal Finance Management Act.'

However, it unquestionably does not authorize the retrospective levying of rates.

[56] In my view, the reasoning by Van Heerden JA, in Kungwini, *supra* at 200 B, is particularly pertinent in a situation in which the resolution levying rates is promulgated on a date after the rates had become payable, i.e. after the commencement of the financial year, and the rates so levied are finally determined. In a situation where rates have been effectively retrospectively imposed, and where there is no opportunity to dispute the rates owing to the finality of the determination, the ratepayer is entirely denied the opportunity to timeously arrange their finances to prepare for any rate changes. Their right to have been properly informed as to their financial obligations has been denied. That such a situation could arise could not have been the intention of the legislature.

[57] Apart from this shortcoming, there was substantial compliance with the requirements of s 14 of the Rates Act. The wording of the notices, which are similar in all material respects, makes it clear that they embody the resolution levying rates for the respective years in question. The Notices make reference in the headings to the levying or fixing of property rates. The headings also refer to the decision of the

Municipality's Municipal Council regarding the property rates, the effective date of the increase, the valuation roll on which the property rates will be based, the amounts of the rates on residential, commercial and agricultural properties and the fact that discount on certain qualifying properties will be considered in terms of the Council's Rates Policy. The Notice was also made available as required in terms of s14(3)(b).

[58] The proposition by the Respondent that despite the fact that the resolutions were promulgated in the three instances during the course of the relevant financial years, pursuant to s 13(1)(a) of the Rates Act the rates in question become payable as from the start of those financial years, is questionable. Substantial fairness to the ratepayer, in the present instance, requires that in the situation where a resolution levying rates is promulgated after the commencement of the financial year, only the amounts of the rates levied in respect of the period subsequent to the date of promulgation should be recoverable.

[59] The Applicant's contention that the notice for 2011/2012 is inconsistent with paragraph 13.2 of the amended Rates Policy because the agricultural rates specified are 75%, not 80%, lower than the

residential rate, is in my view unconvincing. The Respondent afforded the owners of agricultural properties a 75% rebate on the residential rate and in addition thereto provided all agricultural properties with a further 5% rebate of the residential rate.

[60] The attack by the Applicant that the Rates Policy of the Respondent differentiates inequitably between agricultural properties of Beaufort West and those of the area which previously had been administered by the Central Karoo District Municipality, i.e. the former Murraysburg District Management Area ('Murraysburg DMA'), is in my view contrived.

[61] The Respondent in its papers has filed a brief history regarding the incorporation of Murraysburg under its jurisdiction. In my view the Respondent has cogently demonstrated that it did not impermissibly apply a differential rate between agricultural properties in its jurisdiction.

[62] It is not in dispute that until recently Murraysburg and its environs fell solely within the jurisdiction of the Central Karoo District Municipality ('CKDM'), and was not within the jurisdiction of a local

municipality like the Respondent. The apparent reason for this was that the Murraysburg area is generally an impoverished area with an unemployment rate of nearly 80%. Consequently, through the CKDM the Murraysburg DMA was to a very large extent subsidized by central government and the CKDM did not rely, to any appreciable degree, on rates income from residential or rural properties in its area. According to the Respondent in the 2010/2011 financial year, at a stage when the property rates in the Murraysburg DMA were still levied by the CKDM, the CKDM had afforded rural properties in the former Murraysburg DMA, in accordance with paragraph 14 of its rates policy a discount of 93.4% on the property rate applicable to residential properties in Murraysburg. As a result of the Respondent's Municipal Council's decisions in relation to the 2011/2012 financial year, therefore, in that financial year the rural properties in the former Murraysburg DMA had received a discount of 93.4% on the residential property rate. The Respondent during the 2012/2013 budget process considered the alignment of the former Murraysburg in respect of the rates and tariffs imposed with those applicable in the remainder of the Respondent's municipal area.

[63] The Respondent further contended that before the 2009/2010 year the rates payable by the owners of agricultural properties were inequitably low in relation to the owners of residential properties due to the fact that the prior system of valuation used carrying capacity, which resulted in farm properties being valued lower than their market value; and the fact that the prior system of rebates resulted in the effective rate of agricultural properties ranging between a low of 3.4% and a high of 6.4% of the rate for residential properties. In my view, such factors cannot be ignored and the Respondent was correct to give due consideration to it.

Conclusion:

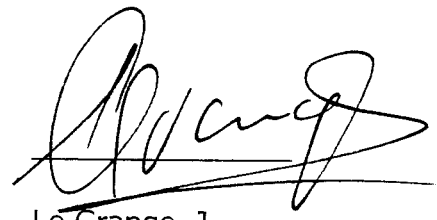
[64] For these reasons I am satisfied that the relief sought by the Applicant cannot succeed. It is therefore unnecessary to consider the issue taken by the Respondent regarding the unreasonable delay by the Applicant in attacking the 2009/2010 and 2010/2011 property rates.

In the result the following order is made.

1. In respect of Prayers (a) and (b) of the Notice of Motion; the Respondent's Rates Policy, adopted in terms of the Local Government: Municipal Property Rates Act 6 of 2004 as adopted

on 27 November 2007 and amended on 26 May 2009 and 13 May 2011, is declared to be lawful.

2. In respect of Prayers (c), (d) and (e), of the Notice of Motion the rates levied by the Respondent in respect of agricultural properties for the 2009/2010, 2010/2011 and 2011/2012 municipal financial years are lawful. The rates so levied are recoverable, from the dates it was promulgated.
3. The Applicant to pay the costs of this application.



Le Grange, J