REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case number: 2672/2020

In the matter between:

METROVINCIAL PROPERTIES (PTY) LTD	Applicant
And	
VALUATION APPEAL BOARD FOR BITOU MUNICIPALITY'S 2017 GENERAL VALUATION ROLL	First respondent
BITOU MUNICIPALITY	Second respondent
VALUATION APPEAL BOARD FOR BITOU MUNICIPALITY'S 2013 GENERAL VALUATION ROLL	Third respondent

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JUDGMENT DELIVERED ON 12 AUGUST 2022

VAN ZYL AJ:

Introduction

1. This is an application for the judicial review and setting aside of decisions taken by the respondents in relation to the levying of municipal rates on the applicant's immovable property, Erf 296, Plettenberg Bay. The property falls within the second respondent's area of jurisdiction.

2. The impugned decisions are:

2.1 The third respondent's decision to value the applicant's property at R14 million and categorise it as "business and commercial" for the purposes of the 2013 general valuation roll; and

2.2 The first respondent's decision to value the applicant's property at R16 million for the purposes of the 2017 general valuation roll.

3. The decisions were taken pursuant to the second respondent's powers under section 229 of the Constitution of the Republic of South Africa, 1996, read with the Local Government: Municipal Property Rates Act of 6 of 2004 ("the Rates Act"). It is common cause that the decisions taken by the respondents under the Rates Act in this matter constitute administrative action as contemplated in section 1 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). PAJA accordingly regulates the institution of applications such as the present one.

4. The applicant further sought relief in relation to the alleged incorrect rates billed on the property over the years from time to time, but that dispute was subsequently settled between the parties.

5. I have considered the application as a whole. In my view, the applicant does not cross a crucial hurdle that would allow for the determination of the merits of the dispute in accordance with PAJA – the issue of delay.

<u>The principles underlying the issue of delay in the context of PAJA</u>

6. Section 7(1) of PAJA provides as follows:

(1) Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have

been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

7. In *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd* [2013] 4 All SA 639 (SCA) at para [26] the Supreme Court of Appeal held that this Court cannot determine the merits of the review application unless condonation has been granted in the event of non-compliance with section 7(1):

"*At common law application of the undue delay rule required a two stage enquiry. First, whether there was an unreasonable delay and, second, if so, whether the delay should in all the circumstances be condoned (see eg Associated Institutions Pension Fund and others v Van Zyl and others 2005 (2) SA 302 (SCA) para 47). Up to a point, I think, s 7(1) of PAJA requires the same two stage approach. The difference lies, as I see it, in the legislature's determination of a delay exceeding 180 days as per se unreasonable. Before the effluxion of 180 days, the first enquiry in applying s 7(1) is still whether the delay (if any) was unreasonable. But after the 180 day period the issue of unreasonableness is pre-determined by the legislature; it is unreasonable per se. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. … That of course does not mean that, after the 180 day period, an enquiry into the reasonableness of the applicant's conduct becomes entirely irrelevant. Whether or not the delay was unreasonable and, if so, the extent of that unreasonableness is still a factor to be taken into account in determining whether an extension should be granted or not (see eg Camps Bay Ratepayers' and Residents' Association v Harrison [2010] 2 All SA 519 (SCA) para 54).*" [Emphasis supplied.]

8. The statement to the effect that the Court should not entertain the merits at all was qualified in *South African National Roads Agency Limited v City of Cape Town* 2017 (1) SA 468 (SCA) at para [81], in which it was held that the *dictum* "*cannot be read to signal a clinical excision of the merits of the impugned decision, which must be a critical factor when a court embarks on a consideration of all the circumstances of a case in order to determine whether the interests of justice dictates that the delay should be condoned.*"

9. There are three main principles governing the delay rule. The first principle is that a party must institute review proceedings within a reasonable time. In *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC) the Constitutional Court explained that the issue of delay is determined using a two-stage process.

10. In the first stage, the Court determines whether the delay is unreasonable. This is a factual enquiry in which all relevant circumstances are considered, and the Court makes a value judgment (*Buffalo City* at para [48]). The only difference between a legality review and a PAJA review is that there is no prescribed period for what will amount to an unreasonable delay in the former, whilst for the latter a delay of more than 180 days is *per se* unreasonable (*Bufffalo City* at para [49]).

11. It is thus important to determine when the starting point of the delay is. In terms of section 7(1) of PAJA, proceedings for judicial review must be instituted without unreasonable delay and in any event not later than 180 days after the applicant (1) is notified of the administrative action or (2) became aware of the action or (3) might reasonably have been expected to have become aware of the action. These are three alternative sets of circumstances that trigger the running of the statutory 180-day period. The commencement of the 180 days will therefore be triggered by whichever alternative occurs first. In *Buffalo City* at para [49] it was held that for both PAJA and legality reviews "*the proverbial clock starts running from the date that the applicant became aware or reasonably ought to have become aware*

of the action taken". The clock does not start to run when the applicant becomes aware of the irregularity or illegality complained of.

12. In the second stage, if the delay is unreasonable, the Court must determine whether it should exercise its discretion to overlook the delay. There must be a basis for the Court to do so, based on objective facts (*Buffalo City* at paras [48] and [53]). The test is flexible and is informed by several factors, including the potential prejudice to affected parties as well as the possible consequences of setting aside the impugned decision. Prejudice may be ameliorated by the Court's power to grant just and equitable remedies (*Buffalo City* at para [54]). It is, notably, the potential for prejudice, including prejudice to the efficient functioning of the decisionmaker, that informs the delay rule (*Gqwetha v Transkei Development Corporation Ltd* 2006 (2) SA 603 (SCA) at para [23]). Another factor to be taken into account is the nature of the impugned decision and the alleged irregularity. This requires a Court to "somewhat" consider the merits of the challenge. Where the prospects of success are strong, the Court is more likely to grant condonation. The converse is also applicable (*Buffalo City* at paras [55] to [58]).

13. The second principle underlying the delay rule is the need for certainty and finality, both for parties affected by a decision as well as for the administration of the State. It means that where a Court refuses to determine the validity of a decision (even a decision vitiated by irregularity) as a result of unreasonable delay, "*in a sense delay would ... 'validate' the nullity*" (*Harnaker v Minister of the Interior* 1965 (1) SA 372 (C) at 381C).

14. The third principle is that in exceedingly rare cases, even if a review is unreasonably late and there is no basis to overlook the delay, a Court may still be required to declare conduct unlawful (*State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC) at para [41], read with paras [52] to [53]). This principle (the so-called "*Gijima* principle") applies only where the unlawfulness of the impugned decision is clear and not disputed. In *Buffalo City* at para [71] it was held that this

principle must be interpreted narrowly and restrictively so that the valuable rationale behind the rules on delay is not undermined. The *Gijima* principle has, for example, been applied in cases where an organ of State lacked authority to make a decision or violated a statutory requirement (see *ICT-Works Proprietary Limited v City of Cape Town* [2021] ZAWCHC 119).

15. In assessing whether to extend the 180-day period, the Court should have regard to, *inter alia*, the following factors as set out in *City of Cape Town v Aurecon SA (Pty) Ltd* 2017 (4) SA 223 (CC) at para [46]:

> " *… s 7(1) of PAJA states that '(a)ny proceedings for judicial review . . . must be instituted without unreasonable delay'. The SCA, relying on this court's decisions in Van Wyk and eThekwini, adeptly set out the factors that need to be considered when granting condonation as follows:*
> *'The relevant factors in that enquiry generally include the nature of the relief sought; the extent and cause of the delay; its effect on the administration of justice and other litigants; the reasonableness of the explanation for the delay, which must cover the whole period of delay; the importance of the issue to be raised; and the prospects of success."* [Emphasis supplied.]

16. It is against this background that the applicant's application for condonation is considered.

The applicant's delay

17. It is common cause that the application was instituted after the expiry of the prescribed time period. The delay was therefore, on the authority of *Opposition to Urban Tolling Alliance*, unreasonable *per se*. The applicant seeks condonation in respect of the delay – but should it be granted in the interest of justice as required by the provisions of section 9(1) of PAJA?

18. The application concerns the valuation and categorisation of the applicant's property by way of, respectively, the 2013 and 2017 valuation rolls. The

respondents have therefore had to defend decisions taken respectively seven years and three years prior to the institution of the application in March 2020. The 2013 valuation roll covered the period 1 July 2013 to 30 July 2017, and the 2017 valuation roll related to the period 1 July 2017 to 30 June 2021.

19. It is clear from the papers filed of record that the applicant exhausted the internal remedies available to it under the Rates Act. In relation to the 2013 valuation roll, the applicant states that it has been disputing the valuation and categorisation of property since 2013. The applicant did not receive the second respondent's notice in relation to the valuation of the property within the time prescribed for the noting of an objection, as a result of a postal strike. That the applicant did however get the notice afterwards is borne out by the fact that it lodged a late objection to the valuation. Such objection was ultimately considered by the second respondent and changes were made in the first supplementary valuation roll in respect of the property. The applicant appealed to the third respondent, which appeal was finally determined in October 2013.

20. The applicant also objected to the 2017 valuation roll. It says that it never received the outcome of its objection. The second respondent, however, subsequently revalued the property by serving a notice under section 78(5) of the Rates Act. (Section 78 allows a municipality to issue corrections in respect of errors made on a roll by way of a notice to the owner of the property in question, and thereafter by placing the property on a supplementary roll.) A revised – lower- valuation accordingly appeared on the first supplementary roll for 2017. The applicant accepted this valuation.

21. The revised valuation underwent a compulsory review by the third respondent under section 52 of the Rates Act (applicable where a valuation is increased or decreased by more than 10% in response to an objection under section 51), and the valuation was increased again. The applicant knew about this. It does not appear from the record that the applicant took steps at that time to impugn the results of the automatic review.

22. Over the years there was regular correspondence between the parties. The applicant was at all material times represented by Mr Schwartz, one of two directors of the applicant, and the deponent to the applicant's affidavits, or by attorneys appointed by the applicant. When regard is had to the papers as a whole, the following chronology appears therefrom:

In relation to the 2013 valuation roll

22.1 22 February 2013: Notice in terms of section 49(1)(a) of Rates Act is published in the *Provincial Gazette* in respect of the 2013 valuation roll.

22.2 16 April 2013: The applicant sends a letter to the second respondent concerning the 2013 valuation, acknowledging that it received notice from the second respondent on 15 April 2013 regarding the valuation of the property for the purposes of the 2013 valuation roll.

22.3 18 June 2013: The applicant again sends a letter to the second respondent concerning the 2013 valuation, indicating that it had received notice of the general valuation and attaching a lengthy objection to the valuation of the property.

22.4 24 June 2013: The applicant sends a letter to the second respondent concerning the 2013 valuation, confirming the submission of its comprehensive objection.

22.5 4 July 2013: The second respondent (through its valuers) sends a letter to the applicant concerning the outcome of the valuers' decision in respect of the applicant's objection to the 2013 valuation roll.

22.6 15 July 2013: The applicant sends a letter to the second respondent regarding the outcome of its notice of objection to the 2013 valuation, recording that it had received such outcome and requesting reasons therefor. It also lodged an appeal against such outcome.

22.7 13 August 2013: The property categorisation is changed from business to residential on the first supplementary valuation roll.

22.8 13 September 2013: The applicant sends a further letter to the second respondent regarding outcome of its objection, requesting reasons for such outcome.

22.9 16 September 2013: The second respondent (through its valuers) sends a letter to the applicant concerning the reasons for the 2013 valuation (being R14 000 000, with a residential categorisation).

22.10 26 September 2013: The applicant's appeal is postponed to October 2013.

22.11 18 October 2013: The third respondent decides the applicant’s appeal and confirms the valuation of R14 000 000. The R14 000 000 valuation is applicable from 1 July 2013 to 31 December 2014.

23. A year passes before further action is taken.

23.1 30 October 2014: Notice is given to the applicant in terms of sections 48(1) and 78(2) of Rates Act for the 2013 valuation: the property is valued at R10 000 000 in a second supplementary valuation roll and categorised as residential. Mr Schwartz later acknowledges having received this notice.

23.2 1 January 2015: The effective date of the second supplementary

valuation roll (and the R10 000 000 valuation) was 1 January 2015. A billing dispute later arises concerning the value upon which rates were levied on the property from time to time, but that dispute has subsequently been settled between the parties.

23.3 1 January 2015 to 30 June 2017: Rates are charged upon the R10 000 000 valuation during this period.

23.4 2 August 2016: Mr Schwartz falls at the Gautrain Station and suffers injuries which, so the applicant alleges, cause the applicant to be unable to give proper attention to the valuation dispute over the following years.

In relation to the 2017 valuation roll

23.5 17 February 2017: Notice in terms of section 49(1)(a) of Rates Act is published in the *Provincial Gazette* in respect of the 2017 valuation roll.

23.6 March 2017: For the 2017 valuation roll, the second respondent values the property at R21 200 000 and categorises it for business use. This valuation is effective from 1 July 2017. The applicant acknowledges having received notice from the second respondent confirming this valuation and categorisation.

23.7 16 March 2017: The applicant objects to the 2017 valuation and categorisation.

23.8 20 February 2018: The second respondent sends a section 78 notice to the applicant indicating that the property's value has been reduced to R10 700 000.

23.9 13 March 2018: This is the date of an internal municipal report

compiled by officials of the second respondent in relation to the applicant's objections. (The applicant received a copy of this report during 2019 and argues that the date of receipt of such report should be the commencement date of the 180-day period prescribed by PAJA. I deal with this contention below.)

23.10 15 April 2018: The second respondent sends notice of the first supplementary valuation roll for 2017/2018, indicating that the property is valued at R10 700 000.

23.11 12 June 2018: The R10 700 000 valuation is subjected to a compulsory review in terms of section 52 of the Rates Act. The first respondent increases the value to R16 000 000, and categorises the property as residential. This is effective from 1 July 2017. The applicant acknowledges having received notice of this.

23.12 26 June 2018: The second respondent sends an email message to the applicant attaching the first respondent's decision (namely, the valuation of R16 000 000). The applicant admits receipt of this email on 24 October 2018 in a letter from its attorney.

23.13 6 July 2018: Mr Schwartz emails the second respondent: he acknowledges that the property value for the 2013 valuation was reduced from R14 000 000 to R10 000 000 on the second supplementary valuation roll, and does not object to such valuation.

23.14 10 July 2018: The chairperson of the first respondent sends an email to the applicant regarding the 2017 valuation.

23.15 13 July 2018: The chairperson of the first respondent sends a letter to the applicant regarding the 2017 valuation, confirming that the first respondent is *functus officio* and that it cannot make any further decisions in relation to the applicant's objections.

23.16 October 2018: The applicant approaches its attorneys for advice.

23.17 24 October 2018: The applicant's attorneys address a letter to the second respondent, setting out the disputes between the parties. The applicant launches separate legal proceedings (represented by attorneys and counsel) against the second respondent concerning certain electricity connection disputes. It does not challenge valuation of the property in those proceedings.

23.18 31 October 2018: The second respondent points out in its answering affidavit and in its heads of argument in the litigation concerning the applicant's electricity connection that the valuation dispute had to be taken to court on review if the applicant was still unhappy with the valuation.

23.19 5 July 2019: The applicant receives a copy of the internal municipal report dated 13 March 2018.

23.20 8 July 2019 to 31 July 2019: Mr Schwartz is abroad, visiting his granddaughter in Paris.

23.21 6 August 2019: The applicant's attorney files a section 62 appeal (in terms of the Local Government: Municipal Systems Act 32 of 2000) in relation to the "incorrect billing issue".

23.22 26 January 2020: The applicant's senior counsel settles the papers for this application.

23.23 4 February 2020: The applicant's attorney sends dispute letter to the second respondent in relation to the valuation of the property.

23.24 11 February 2020: The application is issued.

23.25 17 March 2020: The application is served on the respondents. This is therefore the date of the institution of the application for purposes of section 7(1) of PAJA (see *Commissioner for the South African Revenue Service v Sasol Chevron Holdings Limited* [2022] ZASCA 56 (22 April 2022) at paras [32] to [42]).

24. A consideration of the chronology indicates that, at the latest, the applicant had all of the information necessary to launch review proceedings in relation to the 2017 valuation by October 2018. This is clear from the letter dated 24 October 2018 from the applicant's attorneys to the second respondent. It was in a position to launch review proceedings in relation to the 2013 valuation much earlier, especially when regard is had to the fact that the complaints levelled against the 2013 decisions in this application had already been foreshadowed in some detail in the letters of objection written by the applicant to the second respondent in June 2013, July 2013, September 2013 and again in March 2017.

25. As alluded to earlier, the applicant contends that the delay should only be assessed from July 2019, when it received a copy of an internal report dated March 2018 from the second respondent. It is, however, clear from the answering papers that that report was intended for the second respondent's own use, and did not constitute reasons for the impugned decisions. The applicant's contention is moreover contrary to the principle set out in *Buffalo City* (at para [49]) that the "*proverbial clock starts running from the date that the applicant became aware or reasonably ought to have become aware of the action taken.*"

26. The applicant does not contend that it was not aware of the valuations before July 2019. Its expert reports pertaining to the valuation of the property for the purposes of the 2013 and 2017 valuation rolls are dated 5 July 2019 and 26 February 2019 respectively. The date of instruction in respect of the 2013 valuation report was 15 June 2019, and that of the 2017 valuation report 23

November 2018. Yet, the review application was instituted only in March 2020.

27. It is clear from the papers that the applicant had received notice of the 2013 valuation of its property by June 2013 at the latest. The applicant duly lodged an objection and received the outcome of such objection in July 2013. It received reasons for the outcome of the objection in September 2013. An appeal lodged by the applicant in July 2013 was decided by the third respondent in October 2013. The third respondent confirmed the valuation and provided its reasons therefor. The property was subsequently placed on the supplementary valuation roll and valued at R10 million. The applicant received notice thereof and confirmed its acceptance of the valuation.

28. In reply, the applicant contends that the second respondent followed an incorrect procedure throughout the course of the rates process. This may be so, but that does not detract from the fact that the applicant had everything it required (including a complaint in relation to the manner in which the process had been conducted) at its disposal to launch review proceedings in terms of PAJA by the end of 2013. It should have instituted such proceedings by mid-2014 at the latest. The applicant admits having disputed the 2013 valuation from the outset; yet, its explanation for the delay (essentially Mr Swartz's injury) begins in August 2016, more than two years later. This is unacceptable.

29. As far as the 2017 valuation is concerned, after the applicant’s objection to the property's initial valuation of R21 200 000, its value was adjusted to R10 700 000 by way of a supplementary valuation roll. In terms of section 52(1) of the Rates Act, the adjustment was subject to automatic review. On review, the valuation was adjusted to R16 million. This occurred during June 2018. By July 2018 the applicant had received the first respondent’s decision in respect of the 2017 valuation. In fact, in October 2018 the applicant’s attorneys addressed a lengthy letter to the second respondent, setting out its complaints about the valuations. On the applicant’s own version, therefore, by

this date at the latest it would have been in a position to launch a review application. It failed to do so until March 2020.

30. I am of the view that the applicant's explanations for the delay do not indicate that it would be in the interests of justice to condone such delay, especially given the obvious prejudice to the respondents.

31. The applicant's explanation that it could not procure the assistance of attorneys or valuers within the second respondent's area of jurisdiction to challenge the valuations earlier, allegedly because every attorney and valuer wanted work from the second respondent, has no merit. There are many attorneys and valuers – not necessarily within the second respondent's jurisdiction - who would have been able to assist it. In any event, the applicant was able to find an attorney to assist with the electricity connection dispute in 2018.

32. The non-availability of counsel is, likewise, no excuse for the delay between 2019 and 2020 when the application was finally launched (see *D'anos v Heylon Court (Pty) Ltd* 1950 (1) SA 324 (C) at 335-336). The applicant's explanation that its preferred counsel was not available to settle the papers over this period is without merit.

33. The alleged complexity of the matter, and the allegation that the applicant required legal advice before being able to challenge the decisions, does not support the grant of condonation. I do not regard the matter as particularly complex but, in any event, Mr Schwartz states that in October 2018 he consulted with the applicant's attorneys of record and that he "*understood what had transpired, and what the Applicant's rights were in regard to this dispute"*. If that was the case, a review application should have been brought forthwith. It is no answer to say that the applicant needed more information. In terms of Rule 53, it would have been entitled to the record underlying the decisions. It is, for this reason, also no answer to say that the applicant was only able to launch proceedings after receiving the second respondent's

internal report in July 2019.

34. A substantial element of the explanation for the delay is the injuries suffered by Mr Schwartz during 2016, and his travel and business commitments. There is no dispute on the papers that Mr Schwartz has been ill. He is, however, not the applicant's only director. There is no proper explanation provided for why the other director could not ensure that the applicant was in a position to institute these proceedings. Ms Schwartz merely alleges that he had more knowledge of the dispute, as he had been directly involved as managing director handling the day-to-day business of the applicant. The fact that he is a busy man with other business and personal commitments is obviously no excuse.

35. In reply Mr Schwartz alleges that his co-director does not have knowledge of the present matter and could not have deposed to an affidavit without committing perjury. This explanation has no merit. The second director could have driven the process and communicated with Mr Schwartz where his input was necessary. He was by no means so ill as to have been completely uncontactable. I agree with counsel for the respondents that, while it cannot be said that a person has personal knowledge of the affairs of a company solely by virtue of being a director (see, for example, *Misid Investments (Pty) Ltd v Leslie* 1960 (4) SA 473 (W) at 475E in the context of summary judgment applications), he or she can obtain such personal knowledge with reference to the relevant documents relating to the proceedings. In any event, the co-director could have obtained a confirmatory affidavit from Mr Schwartz.

36. In the light of the discussion above, I return to the relevant factors identified in *Aurecon* in considering whether condonation should be granted:

    36.1 Nature of relief sought: The applicant is seeking relief in relation to decisions taken in 2013 and 2017. Its delay means that the second respondent would potentially (at this stage, in 2022) be called upon

to reconsider these matters respectively nine and five years after it originally made its decisions, by which time memories would have faded, relevant documents are no longer available to the second respondent, and officials who had dealt with the matters in dispute and had knowledge of the impugned decisions have left its employ. The second respondent explains that it had to undertake various searches to obtain documents in its possession pertaining to the 2013 and 2017 valuations. The deponent to the answering affidavit explains that she was not in the second respondent's employ during the events surrounding the 2013 valuation roll, and she has been unable to consult with those who have the knowledge of what had occurred. She can accordingly only rely on the documents that the second respondent has in its possession. Since the first and third respondents are *ad hoc* bodies, there might be difficulty in reassembling the respective panels.

36.2 Effect on administration of justice and other litigants: I agree with the second respondent's argument that it is prejudiced by the delay, for the reasons set out under the first point above. For reasons I have explained, the interests of finality loom large, even in the absence of actual prejudice. In *Gqwetha* at para [23] it was emphasised that "*actual prejudice to the respondent is not a precondition for refusing to entertain review proceedings by reason of undue delay, although the extent to which prejudice has been shown is a relevant consideration...*"

36.3 Extent and cause of delay: The delay was gross, and unjustified by the alleged causes. Mr Schwartz's injuries is not an excuse, as the applicant has at all material times had another director who could have taken over the process.

36.4 Reasonableness of explanation for delay: The explanation is not reasonable and does not cover the whole period. Even during

phases of active correspondence, the applicant allowed weeks to intervene from one step to the next. This is not satisfactorily explained on the papers. The fact that the applicant corresponded with the second respondent throughout the years is thus not an excuse for the delay. In *Habitat Council v BPH Properties (Pty) Ltd* [2018] ZAWCHC 98 (17 August 2018) at para [34] a Full Court of this Division held as follows:

"*Endeavours to avoid litigation may well in appropriate circumstances be grounds for condoning non-compliance with the 180-day period but such endeavours must have a realistic and identifiable goal which will avoid litigation; should involve all interested parties; and must be conducted with reasonable expedition.*"

36.5 Importance of issues to be raised: The review does not raise any issues of general or great importance. It concerns the respondents' rates assessments of a single property, coupled with a billing dispute that has since been settled.

36.6 Prospects of success: I agree with the respondents that the applicant's prospects of success must be regarded as poor. This is so mainly because the manner in which the case has been pleaded renders it difficult to determine precisely what the applicant's complaint is about the legality of the relevant decisions. It lists conclusions without engaging with the facts and reasons underlying those conclusions (which constitute its grounds of review), namely reasonableness, correctness, and the absence of reasons being provided for some of the decisions. For example, it argues that the decisions "*are incorrect, because … irrelevant considerations were taken into account and relevant considerations were not considered*". It does not, however, set out in its founding affidavit which considerations were either taken into account or not. This is

an inappropriate manner to litigate which prejudices the respondents. In *Palala Resources (Pty) Ltd v Minister of Mineral Resources and Energy* 2014 (6) SA 403 (GP) at para [29] it was held as follows:

"*Unfortunately, by virtue of the fact that these grounds were not dealt with in the founding papers, it was left to the court to work out which are the relevant grounds, and what facts speak properly to those grounds. This is not acceptable. It is the duty of the legal representatives of litigants to ensure that their clients' cases are properly formulated and advanced before the courts. … This is particularly so in cases like this one involving constitutional rights. It is now almost 15 years since PAJA was enacted; there is a substantial body of jurisprudence on judicial review under PAJA and it is taught in every law school. There is no acceptable reason for founding papers in a review application to fall short of identifying the facts and grounds of review clearly and with appropriate reference to the relevant sections of PAJA that are relied upon. The papers should also draw the necessary link between the material facts and the identified grounds of review.*" [Emphasis supplied.]

36.7 The founding and supplementary affidavits do not draw any link between the material facts and the grounds of review relied upon by the applicant. The heads of argument delivered on the applicant's behalf mentioned further grounds of review, not pleaded in the founding or supplementary affidavits. These grounds, belatedly raised, cannot be taken into account in the determination of the application.

36.8 The failure to plead the grounds of review and the facts relied upon properly also means that the applicant has failed to displace the presumption of validity in relation to the impugned decisions (see *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2014 6

SA 222 (SCA) at para [27]).

36.9 It appears, moreover, that the applicant's problems with the decisions boils down to a difference of opinion about the correct valuation of its property. It essentially complains that the respondents were wrong in their valuations of the property. The applicant says, for instance, that the 2017 valuation should be set aside because it is "*wildly incredible*" when compared with a valuation given by its expert (procured long after the taking of the decisions). In reply, it contends that the valuations "*clearly can not be correct*". This is the language of appeal, not review.

36.10 In my view, the *Gijima* principle (referred to earlier) has no application in the present case. The irregularities complained of by the applicant cannot be construed as "clear and indisputable" unlawfulness.

37. In all of these circumstances I am of the view that the applicant has not established that condonation of its delay in the institution of the proceedings would be in the interests of justice. In these circumstances, it is not necessary to deal with the other defences raised by the respondents to the relief sought in the application.

Costs

38. The respondents were successful in the application, and there is no reason to depart from the general rule that costs follow the event. The application was postponed by agreement between the parties on 19 May 2022, with costs to be costs in the cause. The applicant is accordingly also liable for the costs occasioned by the postponement.

Order

In the circumstances, it is ordered as follows:

39. **The application is dismissed, with costs, including the costs of the postponement of the application on 19 May 2022**.

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P. S. VAN ZYL
Acting judge of the High Court

Appearances:

For the applicant:	Adv. A. J. Krige, instructed by Schindlers Attorneys
For the respondents:	Adv. M de Beer, instructed by Kemp & Associates