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

Case Number: 4838 / 2021
Number: 3491 / 2016

In the matter between:

THE BODY CORPORATE OF THE OVERBEEK BUILDING, CAPE TOWN	Applicant
and	
INDEPENDENT OUTDOOR MEDIA (PTY) LTD (Registration Number: 1[...])	First Respondent
THE CITY OF CAPE TOWN	Second Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent

Coram: Wille, J

Heard: 1st of December 2021

Delivered: 21st January 2022

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This matter is concerned with two opposed applications about two outdoor advertising signs which are displayed on two different facades of a building.[1] The applicant and second respondent seek an order directing the first respondent to remove the signs from the building falling under the body corporate management of the applicant. This, because it is averred that these advertising signs contravene the second respondent's laws and regulations dealing with advertising of this nature.

[2] By contrast, the first respondent takes the position that the second respondent's laws and regulations fall to be struck down as void because they were promulgated without complying with the National Building Regulations and the Building Standards Act.[2] The second respondent seeks an order to declare a certain section of the Act to be unconstitutional, invalid and of no force and effect. The most important portion of this judgment deals with this latter direct challenge chartered by the second respondent against the validity of the impugned section.

RELEVANT BACKROUND FACTS AND CHRONOLOGY

[3] The applicant leased certain advertising space to the first respondent during 1999 and 2000 in terms of certain advertising contracts for financial gain. In accordance with the relevant advertising by-laws and regulations applicable at that time, authorisations were given by the second respondent for the utilization of these (2) advertising spaces for a period of (5) years respectively. The first respondent's core business is, *inter alia*, connected with the display and management of advertising signs and space on behalf of various clients for monetary reward.

[4] The initial authorization periods of (5) years lapsed on the 3rd of March 2004 and on the 5th of November 2005, respectively. Both the applicant and the second respondent take the position that any further use of this advertising space is and

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[1] The building is the 'Overbeek Building' in Long Street in Cape Town.
[2] Specifically section 29(8) of the Building Standards Act,103 of 1977 (the 'Act' and the 'impugned' section).

remains unlawful. The first respondent takes the position that these authorisations have not lapsed and remain valid in perpetuity.

[5] On the 1st of March 2016, the second respondent initiated proceedings[3] against the applicant and against the first respondent for the removal of these outdoor signage advertisements from the building. Relief was sought against the first respondent because it had erected the advertising and against the applicant because it was the body corporate responsible for the building on which this advertising had been displayed. In these latter proceedings, both the first respondent and the applicant opposed the relief sought by the second respondent. After discussion and agreement with the legal representatives of the parties, I ordered that these initial proceedings be determined together with the current application piloted by the applicant.[4]

[6] As far as the current proceedings are concerned the applicant launched an application for the first respondent to remove the subject advertising signs from the building. This application deals with the same signage space which featured in the initial enforcement proceedings. The applicant sought the relief on the basis that the approvals for the signage had lapsed due to the effluxion of time and that the said advertising was in breach of the relevant municipal 'by-law' and was therefore unlawful.

[7] No doubt this triggered the counter-application by the first respondent to declare the 'by-law' void on the basis that the second respondent did not obtain the necessary approval from the third respondent as indicated in the impugned section. The first respondent's current position on this counter-application remains unclear. This, because the second respondent subsequently adopted the stance that the impugned section failed constitutional muster for a number of reasons.

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[3] The initial proceedings which shall hereinafter be referred to as the 'enforcement' proceedings (Case number 3491 / 2016).

[4] The parties agreed that all the applications should be heard together absent a formal consolidation application.

[8] The second respondent, in the spirit of co-operative governance engaged with the third respondent and undertook to complete its engagements with the third respondent before it directly launched a constitutional challenge against the impugned section. Further, in a belt and braces approach, so it seems, to shield the appropriate 'by-law' from the attack launched upon it by the first respondent, the second respondent also sought a declaration to the effect that the impugned section found no application to the by-law under discussion. In the alternative, it chartered for the position that the impugned section had no legal force and effect.

[9] Thereafter, the third respondent and the second respondent completed their engagement in connection with the impugned section and agreed that the constitutional validity thereof fell to be ventilated by means of a direct challenge by the second respondent and that the constitutional procedural requirements had been so satisfied.[5]

THE 'DIRECT CHALLENGE' BY THE SECOND RESPONDENT

[10] The impugned section 29(8) indicates as follows:

> *'(a) A local authority which intends to make any regulation or by-law which relates to the erection of a building, shall prior to the promulgation thereof submit a draft of the regulation or by-law in writing and by registered post to the Minister for approval.*
>
> *(b) A regulation or by-law referred to in paragraph (a) which is promulgated without the Minister previously having approved of it shall, notwithstanding the fact that the promulgation is effected in accordance with all other legal provisions relating to the making and promulgation of the regulation or by-law, be void.'*

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[5] This, in terms of sections 40 and 41 of the Constitution of the Republic of South Africa, 1996 (the 'Constitution').

[11] The third respondent takes no issue with the direct challenge chartered by the second respondent, but the third respondent avers that a declaration of constitutional invalidity is wholly unnecessary on the facts of this case. Neither the applicant, nor the first respondent take issue with the position taken by the second respondent on this score, save for costs. The first respondent however contends for a period of grace prior to any immediate interdictory relief and accordingly for a suspended enforcement mechanism.

[12] The first respondent in essence seeks a further and additional opportunity to obtain approvals for the two offending signs, *de novo.* As alluded to earlier, the direct challenge piloted by the second respondent is the core issue that falls to be determined herein. The third respondent takes the position that the relief contended for as a result of the direct challenge by the second respondent, was only sought as an alternative prayer and makes some mileage with this complaint. On this, I disagree.

CONSIDERATION

[13] The core proposition is that the impugned section is constitutionally inconsistent and invalid, because it impermissibly infringes upon a municipalities power to legislate, is beyond parliamentary competence, usurps the powers of the courts, impermissibly regulates constitutional matters[6] and accordingly infringes upon the doctrine of the separation of powers.

[14] These are the challenges that bear further analysis and scrutiny. It is contended by the second respondent that the impugned section is the subject of a previously established unlawful leash of parliamentary supremacy. This, because it treats municipal by-laws on the same footing as administrative decision-making. Put in another way, this means that it permits the third respondent to control and enjoy a veto in respect of original municipal legislation. The argument is made that the impugned section is untenable under our new constitutional democracy and also

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[6] As set out in Schedule 5B of the Constitution.

infringes upon the framework which vests local governments with independent and original legislative powers.

[15] The Act came into being well before 1994. This, when municipalities were sub-ordinate to provincial and national authorities and exercised no original powers. Section 29(8) was introduced into the Act on the 30th of May 1989. There is accordingly no doubt that the impugned section is 'old order' legislation as constitutionally defined.[7] Under this previous order, municipalities exercised only delegated powers and all municipal by-laws were in essence 'sub-ordinate' legislation. Municipalities are no longer limited to sub-ordinate legislation and now enjoy original law-making powers, on a similar footing with those of the national and provincial legislatures.[8] In this connection, the following is provided for in terms of section 156(2)[9], namely that:

> '…a *municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer*…'

[16] Similarly, a municipality has the 'right to administer' any local-government matter listed in Schedules 4B and 5B.[10] One of the functional areas in Schedule 4B in respect of which a municipality has original and independent legislative power is in respect of the building regulations.[11]

[17] In order to exercise this law-making function, the second respondent introduced an adopted a plethora of by-laws which are in turn connected and inextricably linked and relate to the erection of buildings. What this in essence means is that the second respondent did not obtain the necessary approval under section 29(8) of the Act, before promulgating these by-laws. The second respondent takes the position that these by-laws are void unless the provisions of section 29(8) of the Act are declared invalid.

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[7] As defined in Item 1 of Schedule 6 of the Constitution.
[8] *Liebenberg NO and Others v Bergrivier Municipality* 2013 (5) SA 246 (CC) at paras 147-148.
[9] In terms of the Constitution.
[10] In terms of the provisions of section 156 (1) (a) of the Constitution.
[11] Section 156 (2) of the Constitution read with section 156 (1) (a).

[18] It is advanced by the second respondent that any adherence with and to the impugned section is constitutionally inconsistent for a number of reasons. The primary argument advanced is that the impugned section infringes upon the exclusivity of the right and power which constitutionally vests in various municipalities to make by-laws. This exclusive right and power now exists as our constitutional democracy shepherded in a new order in connection with the organisation of public power and legislative authority.

[19] This new order is set out, *inter alia*, by way the following constitutional provisions, namely; that the legislative authority of the national sphere of government is vested in the legislature of parliament; that of the provincial sphere of government is vested in the provincial legislatures and that of the local sphere of government is vested in the various municipalities.

[20] The independent and exclusive legislative authority of municipalities is constitutionally buttressed in unambiguous terms in that it is indicated that the executive and legislative authority of a municipality is vested in the various councils of the municipalities. Put in another way, there are no constitutional provisions that empower anyone else other than the municipalities to make by-laws or approve any by-laws made by municipalities.

[21] Undoubtedly, the impugned section violates this independent and exclusive legislative authority in that the third respondent is obliged to be provided with a draft of any by-law for approval. Most importantly, a by-law is rendered void in the event that it is not approved by the third respondent, prior to its promulgation.

[22] The constitutionally enshrined mutual respect clauses provide for an arena where all spheres of government and all organs of state, within each sphere, are obliged to respect the constitutional status, institutions, powers and functions of government in the other spheres. These mutual respect provisions are violated by the impugned section.

[23] The impugned section also desecrates the non-encroachment constitutionally enshrined provisions which provide that both the law-makers and the executive are mandated to exercise their powers and perform their functions in a manner that does not encroach upon the geographical, functional or institutional integrity of government in another sphere. It must be so that the constitutional status of local government, as a matter of logic, must translate into the security of municipal autonomy. This is precisely why constitutionally, a national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

[24] This autonomy must inform any and all interpretation of municipal powers. To stipulate that municipalities are obliged to obtain ministerial approval for by-laws relating to the erection of buildings which they are empowered to make independently, most certainly compromises and impedes a municipality's ability and right to exercise its powers and perform its functions.

[25] Besides, municipalities are obligated to discharge their functions fully and effectively. The impugned section peculiarly provides for the third respondent to receive a copy of any proposed by-law so that the content thereof is subject to external control. This in effect means that the third respondent has a legislative veto over by-laws and this is constitutionally impermissible in our new democracy.

[26] The impugned section deals in the main with regulations in and to the building trade. It is so that there may be a 'competence area' where there may also be applicable national and provincial legislation.[12] However, the national legislation that may be applicable is not unbridled. It must be so that the impugned section exceeds these constraints and is accordingly beyond parliamentary and provincial competence. These national and provincial powers cannot be interpreted to be concurrent with the exclusive legislative powers constitutionally bestowed on

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[12] Section 44(1)(a)(ii) of the Constitution.

municipalities. The parliamentary legislative powers in this connection are by their very nature limited.[13]

[27] The national government only has the power to regulate the exercise of a municipality's executive authority.[14] It does not authorise any intrusion in connection with a municipality's legislative authority in any manner or form. The impugned section manifestly exceeds this sacrosanct legislative competence.

[28] In accordance with our new democratic order, the power vested in the national government is further diluted in that it is essentially confined to a monitoring, supervising and a support function over municipalities. In addition, solely in certain peculiar and extreme circumstances, the provincial executive is authorized to assume some of a municipalities executive powers, but this notwithstanding, there exists no power to intervene in a municipalities legislative powers.

[29] To illustrate this point further, specifically in connection with the building regulations, constitutionally there are in existence no provisions that allow executive interference in the exercise of the constitutional powers exercised by municipalities. Besides, no intervention is permitted in a municipalities legislative powers. It is argued that the impugned section has the direct effect of restricting a municipalities' legislative powers, as opposed to regulating their executive powers. This must be so as the impugned section cannot be interpreted as simply a 'hands-off' regulation with reference to norms and guidelines which, in turn, is permissible.

[30] The municipalities' ability to manage their own affairs and exercise their own functions is severely curtailed by the provisions of the impugned section. The argument advanced is simply that a municipality cannot be obliged to obtain a national minister's approval for a by-law, which has already been constitutionally

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[13] *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) para 25.
[14] Section 155 (7) of the Constitution.

authorized. This can only mean that the impugned section is constitutionally inconsistent and therefore is invalid.[15]

[31] Turning now to the doctrine of the separation of powers. The impugned section operates to immerse the third respondent into the municipalities' legislative process. This because the third respondent essentially has a right of veto, which contravenes the doctrine of the separation of powers. What this really means is that the impugned section is constitutionally unsound because it imposes a different legislative process and a different legislator from that which is constitutionally envisioned.[16] Moreover, the provisions in the impugned section could never be ruminated as a valid species of delegation because the second respondent did not elect to divest itself of any of its own constitutional authority.

[32] Our courts have an exclusive and essential constitutional role in that they are the sole arbiters of legality.[17] They are vested with a broad discretion to grant any just and equitable remedy when invalidity is proven, including limiting retrospectivity and deciding whether a declaration of invalidity should be suspended or not. The impugned section and its provisions euthanize these essential judicial functions. This, by expressly stipulating that any contravention renders the offending by-law void and so excludes the power of the courts to adjudicate on any invalidity so as to grant a just and equitable remedy.

[33] As alluded to earlier, municipalities now are vested with an original power to make by-laws in respect of certain functional areas that are constitutionally listed.[18] This in turn ,validates once more, the prohibition on the legislature to deal with any of these 'ring-fenced' and listed functional areas. The impugned section, as formulated, allows for and contemplates impermissible national legislation in this sacrosanct functional area.

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[15] *Minister of Local Government, Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others* 2014 (1) SA 521 (CC) para 46.
[16] As set out sections 43 (c), 151 (4) and 160 (2) of the Constitution.
[17] *Department of Transport and Others v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) para 147.
[18] In Schedule 5B to the Constitution (section 156 (2) read with section 156 (1) (a) of the Constitution).

[34] The third respondent concedes that in the event that the impugned section does find application in connection with billboards and public advertising, then in that event, it would be unconstitutional. However, the third respondent advances that billboards and public advertising are not subject to regulation under the Act and that their structures and components do not fall within the definitions as set out in the Act. I disagree with this argument. I am rather persuaded by the reasoning in the judgments of *IOM*[19] and *SAPOA*[20] on this score. These authorities dictate that the Act indeed does apply to billboards and public advertising for the considered reasons set out therein.

[35] In addition, the third respondent advances that it is wholly unnecessary to strike down the impugned section for want of constitutional compliance. Again, I disagree. This because of section 172(1)(a) of the Constitution, which indicates as follows:

> *'When deciding a constitutional matter within its power, a court … must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency'*

[36] The argument by the second respondent is that this court is constitutionally obliged to issue out a declaration of invalidity.[21] The unlawfulness of the impugned section is mostly undisputed in connection with the extent of its inconsistency, which runs well beyond its 'competency infringement' with reference to billboards and public advertising. On this I again agree, because if the impugned section is allowed to remain, it will also, as a matter of logic, jeopardize the second respondent's current and future law-making, as well as a number of other by-laws of other municipalities, countrywide.

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[19] *City of Cape Town v Independent Outdoor Media (Pty) Ltd* 2012 JDR 0109 (WCC) paras 16-20.

[20] *South African Property Owners Association and Others v City of Johannesburg Metropolitan Municipality and Others* paras 58-65.
(Unreported case number 19656 / 18 (ZAGPJHC)

[21] *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA331 (CC) paras 63-66.

[37] In my respectful view, the *SAPOA* judgment did not go far enough so as to get rid of, once and for all, the impugned section of this 'old-order' statute that reflects its origins in the bygone legislative order of supremacy. Further, court orders should also be practical of implementation and in my view it would be wasteful of judicial resources for these same grounds of constitutional invalidity to be re-visited in any further discrete legal proceedings in the future.

[38] The required and appropriate co-operative governance engagements have been embraced and the third respondent is four-square a party to these proceedings.[22] The third respondent has also elected not to oppose any of the additional grounds of invalidity advanced by the second respondent.

[39] The position taken by the third respondent is that these impugned provisions should rather be 'interpreted' so that they do not apply to billboards or public advertising. This, they say is the complete solution without a declaration of constitutional invalidity. In my view, this approach helps little, because the result would be that an unconstitutional law would simply be allowed to remain in force with potential far reaching and harmful consequences for municipal governance. This, not even taking into account a violation of the doctrine of the separation of powers. The court process in the result could also stand to be undermined.

[40] At the heart of the argument by the third respondent is reliance on the doctrine of avoidance. The argument is that if it is possible to decide any case without touching a constitutional issue, that is the preferred course to be followed. By contrast, we are dealing here four-square with a constitutional dispute about the powers that may lawfully be conferred upon the third respondent. As it was pointed out, the doctrine of avoidance only applies if the dispute is capable of being decided differently in its entirety. The interpretation chartered for by the third respondent does not decide all the constitutional issues raised by the second respondent.

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[22] The appropriate notice in terms of Rule 16A of the Uniform Rules has also been appropriately issued out.

[41] Reliance was also sought in the grant of a ‘reading-down’ of the impugned section. However, this court is obligated to determine each constitutional issue that has been raised and its findings in this connection, in turn, fall to be constitutionally confirmed or rejected. In my view, there is nothing hypothetical about the direct challenge launched by the second respondent. This because the first respondent has specifically sought refuge in the impugned section so as to void the by-law.

[42] A determination of the validity of the impugned section has real consequences for a number of extant by-laws. The argument advanced is that if the second respondent’s direct challenge is not determined, many of the exercises of municipal law-making will be subject to uncertainty, as it will be unclear whether the impugned section has any legal effect or not. On this, I also agree. Further, I do not see any value in adopting a ‘band-aid and aspirin’ approach to an acute case of a severe constitutional violation as set out in the provisions of the impugned section.

[43] The counter-application piloted by the first respondent seeks a declaration that the by-law be declared void. In this connection, a law may only be declared invalid to the extent of its constitutional inconsistency. In my view, the supplementary challenges by the first respondent have regrettably not been sufficiently pleaded or engaged with and do not in any manner exhibit that any particular provision in the advertising by-law is constitutionally unjustifiable. Besides, the first respondent seems to have largely abandoned any opposition to the direct challenge chartered for by the second respondent. A comprehensive supplementary challenge in respect of the by-law by the first respondent, is absent these papers before me. Put in another way, this challenge has not been meaningfully pleaded and engaged with by the first respondent.

[44] Moreover, the second respondent’s case against the first respondent in the enforcement proceedings was that the approvals for the advertising granted under

the relevant by-law had lapsed due to the effluxion of time[23] and, that the continued advertising on the facades on the building thereafter was therefore unlawful.

[45] The first respondent identifies and contends for various criteria as shields to the unlawful advertising on the building. It is argued that the approvals granted to it were granted in perpetuity because the advertising structures were classified as 'buildings' under the Act. This may be dealt with swiftly. This, because they admit that the approvals under the by-laws were in force and were granted for a period of five years and moreover that the approvals in respect of the utilisation of the structures for third party advertisements, had also lapsed.

[46] In a final throw of the dice they advance that because they, *inter alia*, at times displayed 'political' messaging on the building, this does not constitute outdoor advertising under the by-law. Put in another way, they contend for the position that no commercial advertisements were displayed on the building. This despite the express concession that the first respondent had erected other third party advertising in this space from time to time.

[47] As a matter of logic the impugned section stands to be irrelevant for the duration of any approval issued under the by-law. These two functional areas are aimed at achieving different objectives. The administration of building regulations is particularly focused on generic concerns of building safety, building materials, aesthetics and impact on property values.[24] By contrast, the administration of billboards and public advertising is primarily focused on concerns specifically related to that functional area, such as the prevention of visual pollution, the furtherance of road safety and the protection of the second respondent's cultural history.

[48] Most importantly, building regulation approvals and public advertising approvals are issued pursuant to discrete processes, take into account different considerations and, result in different authorisations that are completely independent

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[23] In 2004 and 2005.
[24] Section 7(1)(b)(ii) of the Act.

of one another. The impugned section is a very different animal from the by-law and can only result in further authorisation being required and necessary. It must be so that no approval under the Act could alter the terms of a public-advertising authorisation that is subject to any by-law. Furthermore, the by-law provides for a range of considerations that are not covered in the Act, including, *inter alia*, locality and landscape,[25] the number of existing signs,[26] traffic, environmental and heritage concerns,[27] the outcome of any public-participation process,[28] whether the advertisement will cause offence[29] and illumination requirements and energy efficiency.[30]

[49] The duration of advertising authorisations granted by the second respondent are regulated by the by-law as it indicates as follows:

> '*Any approval of third party advertising granted by the Municipality in terms of this By-Law, shall endure for a maximum period of 5 years, calculated from the date of approval, unless extended in writing prior to the expiry of the approval period. The Municipality must receive a written application for extension of the approval period at least six calendar months prior to the lapse of the approval period'* [31]

[50] The first respondent's contention that some of the provisions in the Act had the effect of chameleonically transforming the five-year authorisations issued by the second respondent, under its advertising by-law, into perpetual approvals, is simply not sustainable.

[51] The approvals granted to the first respondent in respect of the building were expressly limited to five-year terms. At the time of the launching of the enforcement

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[25] Section 10.2.
[26] Section 10.3.
[27] Sections 10.4 and 29 to 42.
[28] Section 10.6.
[29] Section 10.9.2 .
[30] Section 25.
[31] Section 47.

proceedings any approvals that may have been issued by the second respondent would have since expired due to the effluxion of time.

[52] Undoubtedly, the advertising and supporting structures on the building fall within the definitions of 'signs and advertising structures' as set out in the by-law and may not be displayed, erected or used without an approval from the second respondent. Further, any approval that may have been obtained by the first respondent under the Act, could not have legally extended the term of an advertising approval under the by-law.

[53] Besides, factually the first respondent is possessed of no approvals under the Act. The plans exhibited by the first respondent were solely for the subject of scrutiny in terms of the then applicable advertising by-law and not authorised in terms of the Act. From the material before me it overwhelmingly establishes that there are no approvals in existence in respect of the signs on the buildings under the Act.

[54] Another argument advanced by the first respondent is that the signs currently display information that amounts to a 'community information' board.[32] This notwithstanding, the fact remains that the structures themselves require authorisation. As alluded to earlier, neither of these required authorisations were obtained.

[55] It cannot be the subject of any vigorous dispute or debate that the second respondent is possessed with a clear right to enforce the provisions of its by-laws and accordingly to seek interdictory relief in the event of a failure to comply with the terms thereof. The first respondent argues that the second respondent's remedy touches a criminal prosecution. This approach has been since rejected in strong terms by the SCA.[33]

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[32] It displays a sign in connection with the current pandemic.
[33] *Independent Outdoor Media (Pty) Ltd and Others v City of Cape Town* [2013] 2 All SA 679 (SCA) paras 35-36.

[56] The by-law stipulates that unlawful advertising may only be forcibly removed pursuant to a court order.[34] In this connection it is submitted that the first respondent's disregard for the legal constraints applicable to public advertising is motivated by its appetite for the large revenues it generates from this unlawful conduct. On this, I agree. The amount of advertising fees generated in connection with the advertising on this building, at one stage, amounted to approximately R345 000, 00 per month. Undoubtedly, the first respondent has substantially benefited from years of the lack of regard for the second respondent's by-laws.

COSTS

[57] The second respondent's direct challenge remains mostly unopposed. The second respondent has accordingly wisely elected not to seek costs from any of the other parties in this connection. The costs of and incidental to the enforcement application remain a totally discrete issue. The applicant now concedes that the advertising in question was at all relevant times illegal. In my view, this concession could and should have been made at a much earlier stage in the litigation. This election, as a racing certainty, should have been made at the commencement of the enforcement proceedings. However, in view of the nature of the 'consolidated' proceedings before me, I have elected in my discretion, judicially exercised, to give the applicant the benefit of some doubt on this score.

[58] The first respondent piloted a counter-application to declare the by-law void. This application was to a degree 'still-born'. As far as the first respondent's supplementary challenges to the constitutional validity of the by-law are concerned, the process may have been to a limited extent, abused by the first respondent. However, taking into account, *inter alia*, the peculiar circumstances of this matter, this in my view does not warrant a punitive costs order. Lastly, because of the complexity of the constitutional issues at stake, the costs of two counsel, in my view, were warranted.

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[34] Section 76.

ORDER

[59] In the result, the following order is issued out, namely;

1. That it is hereby declared that sections 29(8)(a) and (b) of the Building Standards Act, 103 of 1977, are inconsistent with the Constitution of the Republic of South Africa, 1996 and, are accordingly hereby struck down as being invalid to the extent of their inconsistency.

2. That the first respondent's counter-application is dismissed.

3. That the first respondent's supplementary challenges are dismissed.

4. That in respect of all the advertising structures and signs erected on the Overbeek Building situated on the Long Street facade and on the south-western facade of the Overbeek Building, situated at Erf 9[...], Number […] K[...] Street, Gardens, Cape Town, (the 'Overbeek Signs'), the following declarations are issued out, namely:

4.1 That it is declared that the 'Overbeek Signs' are not approved under the Building Standards Act or under any of the applicable municipal by-laws.

4.2 That it is declared that the 'Overbeek Signs' are accordingly unlawful.

4.3 That the first respondent is hereby ordered to remove at its own costs the offending 'Overbeek Signs' and any advertisements that they may support, within (15) court days from the date of the service of this order upon the first respondent by the second respondent.

5. That in the event that any of the offending 'Overbeek Signs' and the remaining parts thereof (if any), are not removed in terms of this order, then in that event, the Sheriff of the High Court (Cape Town-West), is hereby authorised and directed immediately to remove all the offending

'Overbeek Signs' and the remaining parts thereof (if any), at the sole cost of the first respondent.

6. That there is no order as to costs in respect of the order made in paragraph 1 hereof.

7. That the first respondent shall be liable for the second respondent's costs of and incidental to the first respondent's counter-application, including the costs of two counsel (where so employed), on the party and party scale, as taxed or agreed.

8. That the first respondent shall be liable for the second respondent's costs of and incidental to the first respondent's supplementary challenges, including those of two counsel (where so employed), on the party and party scale, as taxed or agreed.

9. That there shall be no order as to any further costs of and incidental to both these applications and no costs are awarded in favour of, or against the applicant.

10. That no further orders are made in accordance with the provisions of section 172(1)(b) of the Constitution of the Republic of South Africa, 1996.

11. That in accordance with the provisions of section 172(2)(a) of the Constitution of the Republic of South Africa, 1996 the Registrar of the High Court, (Western Cape Division), is hereby directed to forthwith file a copy of this judgment and order upon and with the Registrar of the Constitutional Court.

E. D. WILLE
Judge of the High Court
Cape Town