

SOUTH AFRICA / JUDGMENT

Coutsourides N.O and Another v Nelson Mandela Bay Metropolitan Municipality and Others (3565/2015) [2015] ZAECPHC 66 (8 December 2015) [2015] ZAECPHC 66

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

Goosen

CASE / FILE NUMBER

3565/2015

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, PORT ELIZABETH

CASE NO: 3565/2015

Date heard: 30 July 2015

Date delivered: 8 December 2015

In the matter between

DIMITRI COUTSOURIDES N.O

First Applicant

RAFAEL SEVILYA N.O.

Second Applicant

And

NELSON MANDELA BAY

METROPOLITAN MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER

METRPOPOLITAN MUNICIPALITY

Second Respondent

GEORGE RENTZKE, CHIEF VALUER

Third Respondent

JUDGMENT

GOOSEN, J.

1. This is an application to compel the third respondent to provide adequate reasons for a decision to dismiss an objection to the valuation of immovable property owned by the applicant. The application is brought by the trustees of the Markman Venture Trust (hereinafter “the applicant”), which is the registered owner of erf 451, Wells Estate, Port Elizabeth (hereinafter “the property”). The first respondent is the municipality in whose area of jurisdiction the property is situated. The second respondent is the municipal manager of the first respondent and the third respondent is the designated municipal valuer in terms of s 33 of the Local Government: Municipal Property Rates Act 6 of 2004 (hereinafter “the Rates Act”).
 2. The application arises from the conduct of a general valuation of property within the municipal area of the first respondent during
2012. The relief sought by the applicant is framed as follows in the notice of motion:
1. Declaring that the Third Respondent’s reasons, dated 20 January 2014 are invalid, and do not constitute lawful reasons, justifying the taking of any decision by the Third Respondent, as contemplated in terms of Sections 53 (2) and 53 (3) of the Local Government: Municipal Property Rates Act No 6 of 2004.
 2. Ordering the Third Respondent to provide adequate written reasons for his decision dated 19 November 2013[1] and, in respect of the Applicant’s objection, dated 18 April 2013 to the applicant within 15 days of the date of service of this Order.
 3. In addition, the applicant also seeks costs against each of the respondents jointly and severally on an attorney and own client scale.
 4. The facts are essentially common cause. During 2012 the first respondent conducted a general valuation of property situated within its area in accordance with the Rates Act. The third respondent was duly appointed as the municipal valuer in terms of s 33 of the said Act and conducted the valuation pursuant to the provisions of the Act. The applicant’s property was valued and in December 2012 the second respondent served a notice, as contemplated in section 49 (1) (c) of the Rates Act, upon the applicant reflecting that the applicant’s property had been valued at R1 700 000.[2] On 18 April 2013 [3]the applicant lodged an objection to the valuation as contemplated by s 50 (1) (c) of the Act. In its objection the applicant submitted that:

Subject property has been vacant for 18 months. Market has declined therefore the market value of my property should also be reduced.

5. The objection was submitted to the third respondent for consideration and the outcome of the objection was communicated to the applicant on 19 November 2013. On 7 January 2014 the applicant's attorneys requested reasons for the decision in terms of s 53 (2) of the Act.[4] On 20 January 2014 the third respondent responded to the request as follows:

The information submitted by the objector is insufficient to justify a change in valuation.

6. What followed was an exchange of correspondence in which the applicant asserted that the reasons were inadequate and requested to be furnished with adequate reasons, inter alia, in terms of s 5 (1) of the Promotion of Administrative Justice Act 3 of 2000 (hereinafter "PAJA"). In the interim an appeal was lodged against the third respondent's decision in terms of s 54 of the Rates Act.
7. The respondents oppose the application on several grounds. Firstly, the respondents deny that the applicant has made out any case at all for any relief in relation to reasons for the decision taken in respect of the original valuation of the property. It is accordingly submitted that if the original incorrect date in the notice of motion is intended to refer to the valuation decision

which was taken in December 2012, no request for such reasons was filed and, accordingly, there is no relief in respect thereof which may competently be given. In addition the respondents contend that the applicant has failed to make out a case for the requested

reasons

inasmuch as the applicant has failed to establish that its rights are adversely affected by the failure to furnish reasons, as is required by s 5 (1) of PAJA.

8. In regard to the claim based on the fact that the furnished reasons are inadequate, the respondents deny this and contend that the reasons furnished are wholly adequate and that no further reasons are required. In any event, on 4 December 2014 the third respondent furnished detailed reasons via the respondent's attorneys in an effort to avoid unnecessary litigation.[5] Notwithstanding this the applicant persisted with the application. On this basis it was further argued that to the extent that the court finds that the reasons furnished on 19 November 2013 are not adequate, such adequate written reasons have now been furnished that and the applicant is not entitled to its costs beyond the date upon which those reasons were furnished, namely 4 December 2014.
9. It is appropriate to address the first two bases of the respondents' opposition briefly at the outset. The relief sought by the applicant clearly only relates to the adequacy of the reasons furnished by the third respondent in relation to the dismissal of the objection to the valuation of the applicant's property. No request for reasons for the original valuation was addressed to the respondents. Accordingly, insofar as the applicant's papers proceed on the

basis that the third respondent ought to have furnished detailed reasons for the valuation, this is plainly incorrect. I shall deal with this aspect further hereunder when

dealing with the adequacy of the reasons provided by the third respondent.

10. In regard to the second issue, namely whether the applicant has made out a case for the relief based on the threshold requirement of s 5(1) of PAJA, Mr Rorke, on behalf of the respondents, submitted that the applicant had failed to allege facts to establish the assertion of alleged prejudice arising from an inability to formulate an appeal. Reference was made to *Hülse-Reutter & others v Gödde*[6] in which it was held that allegations of fact, as opposed to mere assertions, must be advanced by an applicant in order to make out its case and that assertions are irrelevant. There is much to commend the argument advanced by the respondents. The applicant's papers are premised in large measure upon the mere assertion of prejudice regarding its ability to prosecute an appeal against the decision.
11. The entitlement to reasons for administrative decision-making is essentially request driven. In order to qualify for reasons the applicant must, in terms of PAJA, show that his or her rights have been materially and adversely affected by the decision. A failure to furnish reasons where those are required to be given upon mere request (such as in this instance)[7] will ordinarily impact the right to fair and just administrative action as provided by s 33 of the Constitution. In this context the threshold requirement of s 5 (1) of PAJA is met by the failure to provide reasons (cf. *Transnet Ltd v Goodman Brothers (Pty) Ltd*[8]). Where reasons have been furnished, a party to whom the reasons have been furnished would be entitled to raise a challenge to the adequacy of such reasons on the basis of the administrator's failure to comply with s 5(2) of PAJA. Considerations of "adequacy" of the reasons already furnished may involve determination of the sufficiency of the reasons and whether such reasons enable the person concerned to decide on further steps to remedy the administrative action. In *Joseph and others v City of Johannesburg and others*[9] it was held that the term 'materially and adversely affects' means that administrative action had a 'significant and not trivial effect'. In this instance the assertion that the applicant is unable, on the basis of the reasons furnished, to determine whether and on what basis to pursue its further remedies is sufficient to bring the applicant within the ambit of s 5(1) of PAJA.
12. In order to address the question of the adequacy of the reasons furnished it is necessary to set out the legislative framework which is relevant to the valuation of municipal property in order to understand the context within which the obligation to furnish reasons arises.
13. Chapter 4 of the Rates Act deals with the general valuation of rateable property. Section 34 sets out the functions of the municipal valuer appointed in terms of section 33. The section provides that:

The valuer of a municipality must in accordance with this Act –

- (a) value all properties in the municipality determined in terms of section 30 (2);

- (b) prepare a valuation roll for properties in the municipality determined in terms of section 30 (3);
 - (c) sign and certify the valuation roll;
 - (d) submit the valuation roll to the municipal manager within the prescribed period;
 - (d) consider and decide on objections to the valuation roll;
 - (f) attend every meeting of an appeal board when that appeal board – –
 - (i) hears an appeal against a decision of that valuer; or
 - (ii) reviews a decision of that valuer;
 - (g) prepare a supplementary valuation roll when this becomes necessary;
 - (h) assist the municipality in the collection of postal addresses of owners when such addresses can reasonably be determined by the valuer when valuing property; and
 - (i) generally, provide the municipality with appropriate administrative support incidental to the valuation roll.
14. Section 39 stipulates the qualifications of the municipal valuers and, inter alia provides that a valuer must be a person registered as a professional valuer or professional associated valuer in terms of the Property

Valuers Professions Act 2000. Sections 41 and 42 provide statutory authorisation for inspection of properties and access to certain

information to enable the valuer to perform his or her tasks.

15. Chapter 5 deals with the valuation criteria to be applied in the process of valuing property situated within a municipal area.
16. Section 45 provides as follows:
- (1) Property must be valued at in accordance with generally recognised valuation practices, methods and standards, and the provisions of this Act.
 - (2) For the purposes of subsection (1) –
 - (a) physical inspection of the property to be valued is optional; and
 - (b) comparative, analytical and other systems or techniques may be used, including aerial photography and computer assisted mass appraisal systems or techniques, taking into account changes in technology and valuation systems and techniques.
17. Section 46 provides:

- (1) Subject to any other applicable provisions of this Act, the market value of the property is the amount the property would have realised if sold on the date of valuation on the open market by willing seller to a willing buyer.
- (2) In determining the market value of the property, the following must be considered for purposes of valuing the property:
 - (a) The value of any licence, permission or other privilege granted in terms of legislation in relation to the property; open.
 - (b) the value of any immovable improvement on the property that was erected or is being used for a purpose which is inconsistent with or in contravention of the permitted use of the property, as if the improvement was erected or is being used for a lawful purpose; and
 - (c) the value of the use of the property for a purpose which is inconsistent with or in contravention of the permitted use of the property, as if the property is being used for a lawful purpose.
- (3) In determining the market value of a property the following must be disregarded for purposes of valuing the property:
 - (a) Any building or other immovable structure under the surface of the property which is the subject matter of any mining authorisation or mining right defined in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
 - (b) any equipment or machinery which, in relation to the property concerned, is immovable property, excluding –
 - (i) a lift;
 - (ii) an escalator;
 - (iii) an air-conditioning plant;
 - (iv) fire extinguishing apparatus;
 - (v) a water pump installation for a swimming pool or for irrigation or domestic purposes; and
 - (vi) any other equipment or machinery that may be prescribed; and
 - (c) any unregistered lease in respect of the property.
- (4) In determining the market value of a property used for agricultural purposes, the value of any annual crops or growing timber on the property that have not yet been harvested as at the date of valuation must be disregarded for purposes of valuing the property.
18. A consideration of these provisions indicates that once a valuation of property has been carried out, the municipal valuer is required to prepare for publication a valuation roll which contains particulars in respect of each property as at the date of valuation, including the registered description of the property; the category in terms of which the property falls;

the physical address; the extent of the property; its market value and the name of the owner. Public notice must be given of the publication of the valuation roll and notice must be given to the registered owner of a property in terms of s 49 and that person afforded an opportunity to

lodge an objection thereto. The legislation does not make provision for reasons for the valuation of the property to be given.

19. The objection procedure is initiated by the owner or the person to whom notice of the valuation has been given. Section 50 provides that:

- (1) Any person may, within the period stated in the notice referred to in section 49 (1) (a) –
 - (a) inspect the roll during office hours;
 - (b) on payment of a reasonable fee, request the municipality during office hours to make extracts from the roll; and
 - (c) lodge an objection with the municipal manager against any matter reflected in, or omitted from, the roll.

(Emphasis added)

20. Once an objection has been lodged s 51 requires the municipal valuer to promptly consider and decide upon the objection. The relevant portion of the section provides that the municipal valuer must:

- (b) decide objections on facts, including the submissions of the objector, and, if the objector is not the owner, of the owner; and
- (c) adjust or add to the valuation roll in accordance with any decisions taken.

21. Section 53 makes provision for the notification of the outcome of objections, as well as the furnishing of reasons and section 54 provides for a right of appeal against the decision taken in relation to such objection, which appeal lies to the valuation appeal board established in terms of section 56 of the Act.

22. It is necessary to set out the provisions of section 53, which states that:

- (1) A municipal valuer must, in writing, notify every person who has lodged an objection, and also the owner of the property concerned if the objector is not the owner, of –
 - (a) the valuer's decision in terms of s 51 regarding that objection;
 - (b) any adjustments made to the valuation roll in respect of the property concerned; and
 - (c) whether section 52 applies to the decision.

- (2) Within 30 days after such notification, such objector or owner may, in writing, apply to the municipal manager for the reasons for the decision. A prescribed fee must accompany the application.
- (3) The municipal valuer must, within 30 days after receipt of such application by the municipal manager, provide the reasons for the decision to the applicant, in writing.
- 23. As already indicated reasons were furnished to the applicant pursuant to the provisions of s 53 (3) of the Rates Act. The applicant contends that these are, in effect, not reasons at all by reason of their inadequacy. Hence the applicant seeks an order declaring them to be “unlawful” and a further order that the respondents provide “adequate written reasons”. The declaratory relief refers to “unlawful reasons, justifying the taking of any decision by the third respondent”. If by this it is intended that the reasons furnished may be regarded as not being reasons if they do not justify the decision taken then the applicant is mistaken.
- 24. In *Commissioner, South African Police Services and others v Maimele and another* [10] it was held that:

A court can make an order for reasons to be furnished only if it concludes that the decision maker did not give reasons at all or that what purported to be “reasons” did not in law constitute reasons. A court cannot prescribe to an administrative decision-maker what his/her/its reasons should be. Should the person whose rights or interests affected by an administrative action contend that the reasons do not justify the action, the appropriate remedy is to have the action reviewed, not to attempt to force the decision maker to provide better reasons or to supply particulars to the reasons.

- 25. In *Réan International Supply Company (Pty) Ltd and others v Mpumalanga Gambling Board* [11] it was stated that:

It is impossible to lay down a general rule of what could constitute adequate or proper reasons, for each case must depend on its own

facts.

- 26. In the *Maimele* it was observed that the obligation to furnish reasons serves a variety of functions, inter-alia to improve the quality of administrative decision making and to ensure accountability in state administration. They also serve to inform the person affected by the administrative decision why the decision-maker thinks that the act is justified and enables the person to determine whether or not he or she should abide the decision or take steps to have it corrected.[12] The court then went on to state that:

The adequacy of reasons will depend on a variety of factors, such as the factual context of the administrative action, the nature and complexity of the action, the nature of the proceedings leading up to the action and the nature of the functionary taking the action. Depending on the circumstances, the reasons need not always be “full written reasons”; the “briefest pro forma reasons may suffice” (see Hoexter (op cit) at 246; Réan International Supply Company (Pty) Ltd and others v Mpumalanga Gambling Board 1999

- (8) BCLR 918 (T) at 927A-B.) Whether brief or lengthy, reasons must, if they are read in their factual context, be intelligible and informative. It must be informative in the sense that they convey why the decision-maker thinks (or collectively think) that the administrative action is justified.[13]
27. In *Koyabe and others v Minister for Home Affairs and others (Lawyers for Human Rights as Amicus Curiae)* [14] the Constitutional Court had occasion to deal with the importance of providing reasons for administrative decisions and held:

Further, in our constitutional democracy, officials are enjoined to ensure that the public administration is governed by the values enshrined in our Constitution. Providing people whose rights have been adversely affected by administrative decisions with reasons, will often be important in providing fairness, accountability and transparency. In the context of a contemporary democratic public service like ours, with the principles of *batho pele*, coupled with the values of *ubuntu*, enjoin the public service to treat people with respect and dignity and to avoid undue confrontation, the Constitution indeed entitles the applicants to reasons for the decision declaring them to be illegal foreigners.

(Footnotes omitted)

28. The court then went on to state that:

Although the reasons must be sufficient, they need not be specified in minute detail, nor is it necessary to show how every relevant fact weighed in the ultimate finding. What constitutes adequate reasons will therefore vary, depending on the circumstances of the particular case. Ordinarily, reasons will be adequate if the complainant can make out a reasonably substantial case for a ministerial review or an appeal.[15]

29. The constitutional court specifically approved the passage from Maimele quoted hereinabove, and then stated that:

The purpose for which reasons are intended, the stage at which these reasons given, and what further remedies available to contest the administrative decision are also important factors. The list, which is not closed, will hinge on the facts and circumstances of each case and the test for the adequacy of reasons must be an objective one.[16]

30. What this points to is the necessity of examining the context in which reasons are furnished. Such context may, as noted in the *Réan International* matter, mean that the briefest of reasons are wholly adequate. Here the Rates Act provides the proper context. The function

of valuation of property is undertaken by an independent professionally qualified valuer who does so in accordance with the generally accepted practice of valuation of immovable property.[17] Such valuation may involve physical inspection of the property although it is not always required. It involves the consideration and evaluation of market related data that is available in respect of the particular immovable property concerned. The municipal valuer is required to determine a market value which takes into account certain features or attributes of the property and which specifically does not take into account certain other features or attributes. Having done so, a market value is determined in accordance with the provisions of s 46 (1).

31. It is the result of this valuation process which, together with other information concerning the property concerned is incorporated into the valuation roll. It is published and notice is given to the owner of the said immovable property. The purpose of this notice and objection procedure is to allow persons affected to place before the valuer relevant information and facts which bear upon the decision regarding the valuation. An objection can only relate to a specific immovable property and the objection may deal with any one of the entries in relation to such property. The municipal valuer is required to consider the specific objection and

to decide it on the basis of facts. This requires that the municipal valuer have regard to the valuation already conducted and any facts or submissions advanced in respect thereof by the objector. The decision to dismiss the objection or uphold it, necessarily occurs on the basis of the consideration of the particulars raised in an objection. This is clear from a reading of the provisions of the Rates Act. What is also apparent is that the reasons to be furnished by the municipal valuer are reasons for the decision taken in relation to the objection. They are not reasons for the original decision regarding the valuation of the property concerned. It is in this context that the adequacy of the reasons must be evaluated.

32. In this instance the objection was that the property had been without a tenant for a period of 18 months and that the “market has deteriorated”. This was an objection in the tersest of terms in which no particular challenge was raised to the conduct of the valuation by the municipal valuer as is provided for in terms of the Rates Act.
33. In this context the reasons given by the municipal valuer are, in my view, entirely adequate. No substantive information was submitted to challenge or dispute the valuation that had been undertaken. The submission was merely that the property had been vacant for a period of 18 months. The existence or otherwise of unregistered lease agreements and therefore the tenancy of an immovable property is, in any event, to be disregarded in the process of determining the market value of the property. This much is clear from s 46 (3)(c) of the Rates Act. The statement that there is insufficient information contained in the objection to justify a variation of the valuation explains not only the reason for the decision, but also why the municipal valuer considers that the decision not to uphold the objection is justified.

34. It was argued that that what was required was a full and detailed explanation for the basis upon which the property was valued and that in the absence thereof, the applicant is unable to decide whether or not to persist with the appeal. In my view the argument is without merit. The municipal valuer is required to address the objection and to provide reasons for a decision in relation thereto. The mere lodging of an objection, however ill-founded, does not trigger an obligation to furnish detailed reasons for the underlying decision relating to the valuation of the property. If that was intended then no doubt the Rates Act would have contained a provision to this effect.
35. The reasons furnished by the third respondent make it clear that the applicant failed to put up any basis upon which the underlying valuation is to be reconsidered or challenged. This explanation would, in my view, provide the applicant with the clearest of indications as to the desirability of pursuing an appeal against the decision to refuse the objection. It must be emphasised that the appeal that lies from a decision to refuse the objection is an appeal against that decision. It is not an appeal against the original valuation decision except to the extent that the factual basis for the objection and the reasons for refusing it implicate the underlying decision-making relating to the valuation. In this instance the objection plainly does not do so and so it cannot be suggested that the applicant is not in a position to decide whether or not it should pursue any further administrative remedies pursuant to the refusal of the objection. It accordingly follows that the reasons furnished that are neither unlawful nor in any respects inadequate. In the circumstances the application must fail.
36. I therefore make the following order:

The application is dismissed with costs.

G. GOOSEN

JUDGE OF THE HIGH COURT

Appearances: Adv. A. Moorhouse

For Applicants

Instructed by Robert J Martindale Attorneys

Adv. S. C. Rorke SC

For Respondents

Instructed by Ketse Nonkwelo Incorporated

- [1] The notice of motion refers to 17 December 2014. This is clearly an error and it appears to have been informally amended to 19 November 2013 to reflect the date on which the outcome of the objection was communicated to the applicant.

- [2] The public notice was published on 19 December 2012 indicating that the Supplementary Valuation Roll was open for inspection and that objections thereto may be lodged by 11 January 2013.
- [3] The objection form is dated 18 March 2013 but it appears was delivered to the first respondent on 18 or 19 April 2013.
- [4] The applicant's papers raise issues of compliance with the provisions of s 49 and the date on which it received the notice.

This explains the delay in submission of the request for reasons. Nothing however turns on these issues since it was common cause that reasons were requested and that the respondents furnished certain reasons. The central issue was whether these reasons were adequate in the circumstances.

- [5] The letter states that: "Your client's objection form (annexure "DL2") is incomplete and according does not provide sufficient information in order to sustain a valid objection or which justifies the furnishing of reasons over and above those already furnished. When lodging an objection, an objector is required to provide comprehensive information relating to the property so as to enable the municipal valuer to reconsider adequately his valuation taking into account the facts provided by the objector. Your client's objection does not meet these requirements.

- [5] The letter states that:

"Your client's objection form (annexure "DL2") is incomplete and according does not provide sufficient information in order to sustain a valid objection or which justifies the furnishing of reasons over and above those already furnished. When lodging an objection, an objector is required to provide comprehensive information relating to the property so as to enable the municipal valuer to reconsider adequately his valuation taking into account the facts provided by the objector. Your client's objection does not meet these requirements.

- [6] 2001 (4) SA 1336 (SCA) at para 14
- [7] In this case the requirement to furnish reasons for a decision upon an objection does not require that a material and adverse effect on a right or rights be established (cf. s 53 of the Rates Act referred to later in this judgment).
- [8] 2001 (1) SA 853 (SCA)
- [9] 2010 (4) SA 55 (CC) at par 31
- [10] 2003 (5) SA 480 (T) at 487C-D
- [11] 1999 (8) BCLR 918 (T) at 96F
- [12] Supra at 485G -I
- [13] Supra at 485J-\$86C

[14] 2010 (4) SA 327 (CC) at par 62

[15] Supra at par 63

[16] Supra at 350 F-G

[17] See in this regard the description of the valuation process by Leach JA in *City of Johannesburg Metropolitan Municipality v The Chairman ,Valuation Appeal Board for the City of Johannesburg* 2014 (4) SA 10 (SCA) para 24 - 28

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Prepared on 11 October 2026 · Esheria