

SOUTH AFRICA / JUDGMENT

Sibanye Gold Limited and Others v Valuation Appeal Board Rand West City Local Municipality and Others (2022/043793) [2024] ZAGPJHC 877 (9 September 2024)

[2024] ZAGPJHC 877

COURT

South Gauteng High Court, Johannesburg

BEFORE

M A Makume

CASE / FILE NUMBER

2022/043793

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

JOHANNESBURG

CASE NO: 2022-043793

1. REPORTABLE:

YES / NO

2. OF

INTEREST TO OTHER JUDGES: YES/NO

3.

REVISED.

In

the matter between:

SIBANYE
GOLD LIMITED
1st
Applicant
GOLD
FIELDS OPERATIONS LIMITED
2nd
Applicant
GFI
JOINT VENTURE HOLDINGS
3rd
Applicant
AND
THE
VALUATION APPEAL BOARD
RAND
WEST CITY LOCAL MUNICIPALITY
1st
Respondent
THE
MUNICIPAL VALUER FOR RAND WEST CITY
LOCAL MUNICIPAL
2nd
Respondent
RAND
WEST CITY LOCAL MUNICIPALITY
3rd
Respondent

JUDGMENT

MAKUME, J:

INTRODUCTION

- [1] This judgment relates to a point in limine raised at the commencement of the hearing by the respondents. It concerns the application of Section 7(2) (a) read with Section 7(2) (c) of the Promotion of Administrative Justice Act[1] (“PAJA”).
- [2] The two sections read together provide that a court or tribunal shall not review an administrative action unless all the internal remedies provided for in any other law have first been exhausted. The court may only do so if exceptional circumstances exist justifying an exemption of the application from exhausting internal remedies.

FACTUAL BACKGROUND

- [3] At the commencement of the hearing the respondents indicated that they were not pursuing the application in terms of Rule 30(2)(b) of the Uniform Rules of Court.
- [4] The first, second and third Applicants are mining companies in and around Gauteng and the Northwest Province. Some of their operations are located within the municipal jurisdiction of the third respondent.
- [5] It is common cause that in terms of the Municipal Property Rates Act[2] (“the Rates Act”) the third Respondent determines and places value on assets and activities of the residents and companies within their area of jurisdiction. Such valuations are undertaken by a qualified valuer appointed by the municipality.
- [6] Once the valuer has placed value on a resident’s property the valuation roll is published for comment and residents are given an opportunity to object or to accept a valuation placed or determined by that valuer.
- [7] The objections are then placed before a Valuations Appeal Board appointed by the Minister who would then interrogate the valuation and listen to submissions by both the valuer and the objector and thereafter make a ruling. Any party not satisfied by a ruling of the Valuations Appeal Board is then free to take that decision on review to the High Court.
- [8] During or about October 2019 the applicants lodged objections against entries and values reflected in the Municipalities Supplementary Valuation Roll number 4 in respect of the following:

8.1 Converted Mining Rights GP30/5/1/2/2 (66) MR held by Sibanye in respect of Kloof Mine.

8.2 Converted Mining Rights GP30/5/1/2/2 (220) MRC held by South Deep JV in joint venture in respect of South Deep Mine.

- [9] The Municipal valuer attended to the objection, applied his mind thereto and on the 8th February 2021 the valuer advised the applicants about the outcome of their objections in the following words:

“Since the objector has failed to provide me with any factual and/or legal motivation to substantiate the objection valuation, other than in relation to objection 20 the other 56 supplementary objections are dismissed and the market value entry on the Supplementary Valuation Roll 4 will remain unchanged.”

You are advised of your client’s rights of appeal provided for in Section 54 of the MPRA in terms of which an appeal to an Appeal Board against my decision may be lodged with the Municipal Manager within 30 days after the date on which this notification was sent.”

- [10] On or about 4 May 2022 the applicants lodged an appeal in terms of section 54 of the Rates Act against the decision of the Municipal valuer. The hearing of the Appeal before the first respondent being the Valuation Appeal Board commenced during May 2022 and by agreement between the parties the following issues were separated for decision they are the following:

10.1 Whether the items listed in annexure A to this order are rateable in terms of Section 17(1) (f) of the Local Government Municipal Property Rates Act, 6 of 2004 (Rates Act) with reference to: -

10.1.1. Whether they are moveable or immovable

10.1.2. Whether they are above the surface of land

10.1.3 Whether they are required for purposes of mining

10.2 In relation to those items that the VAB find to be rateable, whether they fall to be disregarded because they are: -

10.2.1. under the surface of the property as contemplated in Section 46(3)(a) of the Rates Act or

10.2.2 . equipment as contemplated in Section 46(3)(b) of the Rates Act or

10.2.3. Machinery as contemplated in Section 46(3)(b) of the Rates Act

10.3. That the remaining issues in the appeal proceedings be postponed to a date as agreed between the parties or as determined by the VAB

[11] On the 19 July 2022 the Valuation Appeal Board made a ruling in respect of the separated issues. It ruled that save with respect to the railways and railway station all the other items were rateable in terms of Section 17(1) (f) of the Rates Act and cannot be disregarded in terms of Section 46(3) (b).

[12] On the 21 July 2022 the applicants Attorneys addressed a letter to the Chairperson of the Valuation Appeal Board as well as to the Board's attorneys requesting reasons for the decision and informing them that their instructions were to have the ruling reviewed.

[13] On 19 August 2022 the Valuation Board furnished their reasons in writing and on the 31 August 2022 a meeting of all the parties met with the Board. At that meeting the Chairperson reminded the parties that a date to finalise the outstanding issues must be set. The Board had in fact provided preliminary dates on which to deal with the outstanding issues in the Appeal being 3 to 5 October 2022 as well as 10 to 12 October 2022. At that meeting Adv Van der Merwe for the applicants informed the Board that they are taking their decision on review. This was despite the attorney for the Municipality and the Board having indicated that the applicants must first exhaust the internal process prior to considering any review process. At the close of that meeting the Chairperson of the board ruled that the further hearing of the appeal will recommence on 28 November 2022 up to 9 December 2022.

[14] On 4 November 2022 the applicants filed an application to review the Board's decision on the separated issues. The respondents filed their answering affidavit.

[15] In the Answering affidavit the Board raised the following issues. Firstly, that the application was not urgent in that a ruling had been made in July 2022 and the reasons furnished on the 19 August 2022, but it took the Applicants 3 months to bring the urgent application in respect of Part A, being the interdict. Secondly, the Chairperson indicated that the dates of hearing of the balance of the Appeal were agreed upon by all parties and that it is now a surprise that there is now the interdict on the 4 November 2022.

[16] Thirdly the Board at paragraph 16 of the answering affidavit deposed as follows:

“The appeal before the Board is part heard. The hearing scheduled for 28 November 2022 to 5 December 2022 was for the leading of further evidence to complete the appeal process. To now stay the proceedings pending the hearing of Part B will lead to the piecemeal hearing of the appeal before the Board. The review or appeal Courts do not readily entertain review or appeals where such reviews or appeals would interfere with the uncompleted proceedings.”

[17] The point in limine is based on paragraph 16 of the answering affidavit, simply put, the respondents say that the applicants must go back and finalise the appeal and only then come back for review before this Court.

[18] In response to paragraph 16 of the answering affidavit the applicants through Ms Elane Botha firstly deny that this review will result in a piecemeal hearing of the appeal, secondly that the ruling of the Board is final and is fit for review. Thirdly the applicants maintain that this appeal is not part-heard. I find this reasoning flimsy it is clear the matter is part-heard before the Appeal Board. The Board ordered separation at the request of the applicants, it did not decide that on its own.

THE POINT IN LIMINE

[19] Having set out the background facts I now deal with the point in limine raised by the respondents. It is based on Section 7(2) (a) read with Section 7(2) (c) of the PAJA. The two sections provide that a court or tribunal shall not review an administrative action unless the internal remedy provided for in any other law has first been exhausted. A court or tribunal may only do so if exceptional circumstances exist to exempt an Applicant from exhausting Internal

remedies in the interest of Justice.

[20] The Valuation Appeals Board is established by the Minister in terms of section 56 of the Rates Act and its function as set out in section 57 are the following:

- a) to hear and decide appeals against the decision of a municipal valuer concerning objections to matters reflected in, or omitted from, the valuation roll of a municipality in the area for which it was established...; and
- b) to review decision of a municipal valuer submitted to it in terms of Section 52.

[21] The Regulation promulgated in terms of the Rates Act provides for the internal procedure of the Board to dispose with appeals within specified time in fact the whole process beginning with the valuer requires that within a period of 141 days the process should have been finalised. It is clear that on a proper interpretation of the reading of the Act and the Regulations appeal before the Board have to be finalised speedily.

[22] Section 7(2)

(b) of PAJA is more instructive it reads as follows:

“Subject to paragraph (c), and court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.”

[23] In *Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)*[3] the Constitutional Court explained the position as follows:

“Internal remedies are designed to provide immediate and cost-effective relief, giving the executive the opportunity to utilise its own mechanism, rectifying irregularities first, before aggrieved parties resort to litigation. Although courts play a vital role in providing litigants with access to justice, the importance of more readily available and cost-effective internal remedies cannot be gainsaid. First, approaching a court before the higher administrative body is given the opportunity to exhaust its own existing mechanisms undermines the autonomy of the administrative process. It renders the judicial process premature, effectively usurping the executive role and function. Once an administrative task is completed, it is then for the court to perform its review responsibility, to ensure that the administrative action or decision has been performed or taken in compliance with the relevant constitutional and other legal standards.”

[24] In *Gavric v Refugee Status Determination Officer and Others*[4] the Constitutional Court also made it clear that a party must exhaust internal remedies unless an exemption application is made and granted under Section 7(2) of PAJA. In this matter there are no exceptional circumstances that warrant that the Applicant be exempted in terms of Section 7(2) (c) of PAJA.

[25] It is common cause that the Appeal proceedings before the Valuation Appeal Board have not been completed in that the valuation process still has to be attended to by the Valuation Appeal Board. It therefore makes sense that the process should be finalised and then the review can take place possibly including the valuation process.

[26] The proceedings before the Valuation Appeal Board remain uncompleted and because the applicants have failed to apply under Section 7(2)(b) to be exempted from the duty to exhaust internal remedies, this Court does not have the jurisdiction at this stage to deal with the merits of the review.

- [27] The Court in *Nichol and Another v Registrar of Pension Funds and Others*[5] interpreted what makes circumstances exceptional for purpose of Section 7(2) (c). It said that it means that the circumstances must be such as to require immediate intervention of the courts rather than resort to applicable internal remedy.
- [28] There is nothing that requires immediate attention. The Applicants have been dragging this matter unnecessarily since 2021. This is to the detriment of the Municipality who are being deprived of income.
- [29] The point in limine is well taken and must be granted. In the result I make the following order:

Order

1. Application is dismissed.
2. The Applicants are ordered to proceed with the Appeal proceedings before the first Respondent to finality in accordance with Section 7(2)(b) of the Promotion Administrative Justice Act, 3 of 2000.
3. The Applicants are ordered to pay the costs of Respondents, including costs of two Counsel where so employed.

Dated at Johannesburg on this 9th day of September 2024

M A MAKUME

JUDGE OF THE HIGH COURT

Appearances:

DATE OF HEARING DATE OF JUDGMENT 20 AUGUST 2024 09SEPTEMBER 2024 FOR APPLICANT INSTRUCTED BY ADV BOTHA SC MESSRS SIM ATTORNEYS INC. FOR 1,2 & 3 RESPONDENTS INSTRUCTED BY ADV GD WICKINS SC MESSRS BROOKS & BRAADVELDT INC.

[1] 3 of 2000.

[2] 6 of 2004.

[3] 2010

(4) SA 327 CC at para 35-36.

[4] 2019

(1) SA 21 (CC).

[5] 2008

(1) SA 383 (SCA).

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