

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GRAHAMSTOWN**

**CASE NO: 2251/2020
DATE HEARD: 21/10/2021
DATE DELIVERED: 18/01/2022**

In the matter between

AFRICORP GRAAFF REINET (PTY) LTD APPLICANT

and

**THE MUNICIPALITY APPEAL BOARD,
SARAH BATMAN DISTRICT FIRST RESPONDENT**

**THE DR BEYERS NAUDE
LOCAL MUNICIPALITY SECOND RESPONDENT**

**F2 WAARDEERDERS CC
T/A SUID KAAP WAARDEERDERS THIRD RESPONDENT**

JUDGMENT

MABENGE AJ:

[1] This is an application for an order to review and set aside the first respondent's decision dated 20 July 2020 dismissing the applicant's appeal against the municipal valuation of the applicant's immovable property known as Erf 7480, Graaff Reinet. Remitting the matter to the third respondent for handling in terms of sec 52 (1) (a) of the Local Government Municipal Property Rates Amendment act¹. The applicant seeks a further order that the third respondent is ordered to complete its written reasons as contemplated in

¹ Act 29 of 2014

section 52 (1) (a) that the third respondent is ordered to provide written reasons to the applicant's attorney of record and lastly that the matter be heard before a differently constituted appeal board and must be heard within one month of the third respondent's written reasons.

[2] The applicant submitted that he bought the property in March 1995 in the amount of R275 000.00. He then developed the property. On or about 2009 the municipal value of the property increased by more than 200%, the second respondent set the value of the property as R27 420 000.00. The property was further valued by the third respondent as R37 017 000.00 during the valuation roll of 1 July 2019. The applicant filed an appeal against the valuation of the property to the first respondent, the appeal board. The appeal board found that the R37 017 000.00 valuation should remain, hence this application to review and set aside the decision of the first respondent. The application is opposed by the second respondent.

[3] The applicant submitted various grounds under which the first respondent's decision should be set aside. In this application, the applicant seeks an order reviewing and setting aside the third respondent's decision dated 15 January 2021 not to exercise its jurisdiction to adjudicate the dispute involving the applicant and the first respondent. The applicant further seeks an order that the first respondent must file its statement of defence upon the applicant's attorneys of record and upon the third respondent within ten (10) days of the service of the order upon the first respondent and that the third respondent must hold a hearing to adjudicate the applicant's dispute within one month of the service of the order. The first respondent opposed the application.

[4] In the affidavit the applicant set out a number of instances on which he relied for the relief sought.

[5] The applicant submitted that the decision of the first respondent should be set aside based on procedural unfairness in terms of section 6(2)(c) , taking irrelevant considerations into account, decision not rationally connected to the information before it and arbitrary decision by the first respondent.

[6] The applicant submitted that the first respondent did not consider that the municipal evaluator no longer relied on its report on the day of the hearing as the evaluator received relevant information². The municipal evaluator admitted that the current evaluation of R27 million was indeed incorrect. The first respondent received the agreement on the evaluation of the experts but did not seek further information or clarity on the agreement which led the applicant to believe that the agreement was accepted by the first respondent as the municipal evaluator was part of the agreement.

[7] The applicant further submitted that the first respondent incorrectly found that the act does not allow the municipal evaluator to give reconsideration to evaluation when new information comes to light.

[8] The second respondent opposed the applicant stating that the applicant had simply used PAJA and found something amiss with each section of the first respondent's judgment. The applicant used PAJA to complain about everything in the judgment. The first respondent had no power to uphold the appeal based on the agreement from the experts. The second respondent further submitted that the onus was on the applicant to persuade the first respondent by adducing relevant evidence which the applicant failed to do as its evidence was wanting in material aspects.

² Application page 227 lines 1-4

Discussion

[9] It is trite that the purpose of the municipal appeal board is to find on evidence before it the true value of the property. In assisting the municipal appeal board to achieve this, the board is allowed to call a person to give evidence whether that person is summoned or not, and or to call a person to produce a document in that person's custody. The appeal board's duty is to consider the proceedings de novo without placing any onus on either party. The municipal appeal board is under a constitutional duty to offer a fair administrative action. The appeal board's decision must be rationally connected to the information before it as contemplated in section 6(2)(f)(ii)(c) of PAJA.

[10] The municipal evaluator admitted that his report that he had compiled was incorrect as he was not aware of the letter which accompanied the objection that the occupancy rate to the property in question is at 50%³. The municipal evaluator stated further that he personally confirmed the 50% vacancy rate upon his visit to the property. The evaluator further testified that he thereafter took the actual lease and the actual income of the building and having used the real rental income that has been provided by the applicant, he was then able to arrive at the realistic value of the property hence he now was of the opinion that the property had been incorrectly valuated prior to this information.

[11] It is clear that the first respondent relied extensively on a report by the municipal evaluator which the municipal evaluator by his own admission no longer relied on. This was as a result of having received further information

³ Volume 3 page 215 line 10

which the first respondent did not take into consideration. This shows this court that the appeal board's decision is not rationally connected to the evidence that was before it and this renders the board's decision such that no other reasonable decision maker could have reached the decision as contemplated in section 6(2)(h) of PAJA.

[12] In the circumstances the decision of the first respondent dated 20 July 2020 dismissing the applicant's appeal against the municipal valuation of the Applicant's immovable property erf 7480, Graff Reinet is set aside.

[13] An order is granted in terms of prayers 1 to 7 of the notice of motion.

N MABENGE
ACTING JUDGE OF THE HIGH COURT

Appearances

Applicant: Adv E Crouse SC , instructed by Kuban Chetty Incorporated

Respondent: Adv SC Rorke SC, instructed by Neville Borman & Botha attorneys