Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION – MAHIKENG

Case Number: M736/2021

In the matter between:

163 STILFONTEIN PROPERTIES CC **Applicant**

And

THE CHAIRPERSON OF THE VALUATION APPEAL BOARD FOR THE CITY OF MATLOSANA **1st Respondent**

CITY OF MATLOSANA **2nd Respondent**

Heard: **28 JULY 2023**

Delivered: The date for the hand-down is deemed to be on **02 NOVEMBER 2023**

ORDER

The following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay costs including costs of two counsel.

JUDGMENT

DJAJE AJP

[1] The applicant seeks an order to review the decision of the first respondent in dismissing the appeal against the valuation of its property and to substitute that valuation by a further municipal valuation. The relief sought by the applicant in the notice of motion is as follows:

> *"1. That the decision taken by the First Respondent on **29 October 2021** in terms of:*
>
> *1.1 The Applicant's appeal against the supplementary valuation of its property is dismissed.*
>
> *1.2 The entries in the supplementary valuation Roll pertaining to the Applicant's property subject to the appeal to be amended to a value of R11 800 000.00 be reviewed and set aside.*
>
> *2. Declaring the Second Respondent's supplementary valuation of the Applicant's property invalid and set it aside.*
>
> *3. Declaring that the Applicant pays rates to the Second Respondent in respect of the property known as: erf 974, Wilkoppies Ext 21, Klerksdorp ("property") owned by the Applicant at the valuation rate applicable to such property immediately preceding the coming into operation of the Second Respondent's 2020 supplementary valuation roll until the valuation applicable to such property is lawfully changed.*

5. The First and/or Second Respondents to pay the Applicants costs."

[2] There was an application for condonation of the late filing of the second respondent's answering affidavit. The reasons furnished were that the delay was as a result of the record of the appeal proceedings that was not provided to the second respondent. Condonation was granted as it was in the interest of justice that the issues between the parties be ventilated and there was no prejudice to the applicant.

[3] The brief background of this matter is that the applicant is the owner of property at Erf 974 Wilkoppies Ext 21, Klerksdorp which is used as a gymnasium. The property was for the valuation of **2016** valued at R4 500 000.00. The municipal valuer, valued the property effective **1 July 2019** at R9 800 000.00 and placed it on the general valuation roll for the period **1 July 2020** to **30 June 2025** at that value. There was an objection raised by the applicant and the property was placed on the supplementary valuation roll on **31 March 2021** in terms of section 78(1)(e) of the Local Government Municipal Property Rates Act 6 of 2004 ("MPRA") as being incorrectly valued. The municipal valuer determined that the property was correctly valued considering the market value as reflected on the roll. The applicant lodged an appeal against the decision of the municipal valuer with the first respondent. On **29 October 2021** the applicant was informed of the decision of the appeal by the second respondent, that the property was valued at R11 800 000.00.

[4] During the appeal hearing the applicant submitted a report by a Professional valuer, Aletta Margaretha Wentzel. In her report she concluded that with the information that she had, the property was valued at R5 000 000.00. The municipality called a Professional valuer, Mr Eshton Kendrick Eckler as a witness to testify. He determined the value of the property to be R11 800 000.00. It was this value that the second respondent agreed with.

[5] The applicant raise the following grounds of review:

"9.1 The provisions of section 49(1) of the MPRA are mandatory but found that the board cannot make a finding thereon and can only note the objection to non-compliance thereof and can only make a finding on the merits of the matter. The board ruled that only the High Court can make a finding on the effect of non-compliance to the Act. Notwithstanding this ruling the board continues to rule that the non-compliance to section 49(1) has no effect as the applicant was before the board and suffered no prejudice. The board failed to take cognisance to the fact that the power of a municipality to impose a rate on property is derived from section 229(1) of the Constitution itself which the Constitutional Court described as an 'original power'. In terms of the principle of legality a municipality must follow a procedure prescribed by the MPRA in levying, recovering and increasing property rates. The board should have ruled that the second respondent is bound by the principle of legality and that non-compliance to the MPRA renders the valuation void.

9.2 The valuation of the applicant's valuer (Wentzel) is incorrect as she ignored the mezzanine floor which may have a profound influence on the valuation. The board failed to take into consideration that Wentzel did not use the floor space or rental as a source of income but the membership fees being paid to the applicant. The exercise area on the

mezzanine floor will therefore make no difference to her valuation and was her valuation disregarded for the wrong reason. A copy Wentzel's valuation report is attached hereto as annexure "D".

9.3 *There is no substantive information or evidence submitted to the board to justify a deviation of the value placed on the property by the municipal valuer. (Valuation report dated 25 August 2021 annexed as annexure "E") Contrary to this finding the board and accepted the further valuation presented at the hearing and amend the valuation accordingly. A copy of the further valuation report is annexed hereto as annexure "F".*

9.4 *In terms of section 46(3) (c) of the MPRA any unregistered lease in respect of the property must be disregarded. In excepting the further valuation of R11, 800 000.00 the board found that the municipal valuer did not take cognisance to leases as no leases were given to him and that he applied the income method to determine the income value of the property. The board failed to take into consideration that the valuer calculated the income value of the property on the assumed rental income of the property. The board wrongly interpreted section 46(3)(c) to only refers to written rental agreements. A rental agreement need not be in writing. In stating that no rental agreement was given to the valuer the board implicates that "any unregistered lease in respect of the property" refers only to written agreements. The board should have found that the provisions of the section is mandatory and that the intention of the legislator is that the personal right in an unregistered lease, assumed or existing must be disregarded. The board should have ruled that the municipal valuer's valuation is not according to section 46 of the MPRA and therefore not valid.*

9.5 *The appeal board ruled that the second valuation (annexure "F") is a correct valuation of the property. The board should have ruled, had it applied its mind to the matter that the valuation is not according to the provisions of section 45(1) of the MPRA in that the valuation is not in accordance with general recognised valuation practices, methods and*

standards as the valuer failed to use the actual income of the property in using the capitilisation method of valuation.

9.6 The appeal board wrongly contrary the provisions of section 45(1) of the MPRA accepted the municipal valuer's comparison of rental income of properties not comparable with the applicant's property as reasonable comparisons. The board failed to apply its mind to the question of comparable properties as the board would have realised, if it did, that the subject property, being a dedicated gymnasium, with its highest and best use as such cannot be compared to rental income of retail and office properties situated in Gauteng and Potchefstroom (a University town) where market conditions vastly differs from the local economy. Neither can the sale of land prices in the vicinity of the Matlosana mall, being the largest development in the district of Matlosana, be compared to with the location of the property. Nor the sale of an office building having regard to the best use of the property."

[6] There was a supplementary affidavit filed by the applicant and in addition to the above grounds the following was stated:

"3. In addition to paragraph 9.1 of my supporting affidavit I wish to state:

3.1 I respectfully submitted that the first respondent (the Appeal Board) is competent to make a finding on the second respondent's failure to comply with section 49 of the Local Government: Municipal Property Rates Act, 6 of 2004 (MPRA). The DAVIES V CHAIRPERSON, COMMITTEE OF THE JOHANNESBURG STOCK EXCHANGE 1991 (4) SA 43 decision on which the Appeal board relies for its finding is not authority therefore that the Appeal board cannot make a finding o the non-compliance to the provisions of section 49 of the MPRA. This decision was about the tribunal 's entitlement to determine its own rules of procedure.

3.2 The provisions of the MPRA are subject to the provisions of the Constitution. In terms of section 33(1) of the Constitution everyone has the right to administrative action that is lawful, reasonable and procedurally fair. The audi alteram partem principal of the common-law is part of the administrative action referred to in section 33 of the Constitution. Section 3 of the Promotion of Administrative Justice Act, 3 of 2001 (PAJA) provides for prescriptions to ensure procedural fairness of administrative action affecting persons which entails amongst others than an effected person must be given adequate notice of the nature and purpose of the proposed administrative action.

3.3 I respectfully submit that the first respondent, as an independent tribunal, has the power to judicially review administrative action if a mandatory and material procedure prescribed by an empowering provision as contained in section 49 of the MPRA, that facilitates the procedural requirements for effective notice to property owners, was not complied with.

3.4 The requirements of administrative justice are applicable to decisions taken by the second respondent exercising its public powers under the MPRA, where such decisions adversely affect the rights of any person.

3.5 I respectfully submit that in order to comply with the requirements for procedural fairness set out in the PAJA, the second respondent must ensure that any person who may be adversely affected by administrative action is provided with adequate notice of the nature and purpose of the proposed administrative action. If the procedures were not followed the result is that the consequent collection of rates by the second respondent premised on the valuation roll is invalid.

3.6 I respectfully request that the Court find that the Appeal Board's ruling that it cannot make a finding on the respondent's failure to comply with the provisions of section 49 of the MPRA is not

rationally justifiable and that the Court declare that the second respondent's failure to comply with the compulsory provisions of the MPRA is an unfair administrative action rendering the valuation process invalid.

4. In addition to paragraph 9.1 of my supporting affidavit I which to state:

4.1 I respectfully submit that the peoples of excluding an unregistered lease is because the legislator intended the valuation to be limited to land and real rights to the land as referred to in the definition of property in subparagraph (a) and (b) of the MPRA and does not include personal right such as an unregistered lease that does not accrue to the property itself. I submit that the income capitalization method of valuation is the correct method of violation considering the best use and caracter of the property as a gymnasium. The municipal valuers use of assumed rental income instead of the actual income of the property is fatal to the valuation. I therefore respectfully request that the court find that by not complying to the mandatory provision of section 46(3)(c) of the MPRA renders the valuation invalid."

[7] The applicant in the heads table the following as issues to be determined herein:

"2. Whether the first respondents finding that it cannot make a finding on the question whether the second respondent complied with the provisions of section 49(1) of the Local Government: Municipal Property Rates Act, 6 of 2004 (MPRA) is irrationally justifiable.

3. Whether the first respondent was correct in its finding that the applicants valuer's valuation is incorrect.

4. *Whether the valuation of the second respondent's valuer complies with the provision of section 45 1 of the MPRA an invalid for not complying to section 46 3 of the MPRA.*

5. *Whether the first respondent was correct in accepting the further evaluation contrary to the finding that there is no substantive information or evidence submitted to the board to justify a deviation of the value placed on the property by the municipal valuer."*

[8] The applicant during the appeal process argued that there was no compliance with section 49 of the Municipal Property and Rates Act 6 of 2004 ("MPRA") pertaining to the service of the notice. This is what was stated by the applicant:

"There was no indication given to us, how these notices were sent, the objection periods were from 9 March 2020 until the 31 May 2020, and the implementation date 1 July 2020. According to the current regulation members of the public were not allowed to visit the offices of the municipality during the said period.

The municipality provided the copy of the public notice for inspection of the supplementary valuation roll dated 18 June 2021 addressed to the applicant's postal address add Orkney and his email address. In terms of this notice the supplementary roll is open for inspection for the period of 22 June 2021 to 21 July 2021, more than a year after the implementation date of 1 July 2020 being that the applicant was paying increased tariff. The onuses it's not on the applicants to prove that he did not receive the notice, the onus is on the municipality to prove that the notice was affected in terms of section 49There is no evidence. There is no evidence by the municipality that notice was published in the local newspaper as required by section 49(1)(a), there is no document provided and the record providing publication in the media as required by the MPRA. Such evidence of the compliance may exist is solely within the city's acknowledge but has failed to provide them.

I want refer the board respect to the matter, Wijndman trading as WJ Construction Pty Ltd vs Headfor Pty Ltd and another 2008 3 SA 371 Supreme Court of Appeal. The applicants therefore submit that the municipality failed to comply with the provisions of section 49 (1) of the act in that it failed to within 21 days or at all to publish a notice in the Provincial Gazette in terms of section 49 (1)(a)(i)(ii), publish a notice once a week for two consecutive weeks in the public media in terms of section 49 (1)(a)(i)(ii) disseminate the substance of the notice for the local community in terms of chapter 4 of the Municipal System Act, in terms of section 49(1)(b), served by ordinary mail or in terms of Section 115 of the Municipal System Act on every owner of the property listed or in this matter the appellant, listed in the valuation roll or copy extract of the valuation roll in terms of Section 49(1)(c).

The procedure as set out in the MPRA for the compilation of the valuation roll are jurisdictional prerequisites for the exercise by the city of its power to collect rates. The reference in any law to any action or conduct is presumed to be a reference to a lawful or valid action or conduct, and this is also being stated between a matter between MTN International (Mauritius) vs CSARS 2014 SA SCA or also then at the 2014 (5) SA 225 Supreme Court of Appeal at paragraph 10. Those procedures were not final the result is that the consequent collection of the rate by the city premised on the valuation was invalid. And it was put to the City of Johannesburg vs AD Outpost 2012 4 SA325 Supreme Court of Appeal paragraph 20 an administrative decision declared to have been invalid as to be retrospectively regarded as it has never been made."

[9] The first respondent in its ruling relating to compliance with section 49 found as follows:

"As to the compliance section 49, first of all I want to place it on record that the board is aware of the fact that there should be compliance to section 49 infect, the MPRA clearly stipulates that is a mandatory requirement , notices must be given to the owner of the property and there is also case law confirming that matter.

Having said that, the board is of the view that there was no prejudice to the appellant as to compliance with section 49, first of all, fact that the appellant is before the board, alta partem rule is applied and adhered to, that he should state his appeal, we are of the view in this regard that there is no prejudice to the appellant, just on that basis it is also straight that the processing before the board is quassi judicial tribunal, in that in terms of quassi judicial proceedings we as a board are not bound to follow strict rules which are being adhere to in a normal court of law. In that regard for the record I just want to refer to the decision of Davis vs Chairman, Committee of the Johannesburg Stock Exchange, decision reported in the Witwatersrand Local Division, 1991 (4SA43W) that the decision by Judge Zooman as he then was or later became Judge of the SCA. And I am not quoting from page 44, paragraph 6, rules related to judicial proceedings not necessarily apply quassi judicial proceedings. The body whose conduct was under review was entitled to its own rules, to determine its own rules of procedure. And the rules of natural justice did not require domestic tribunal to apply technical rules of evidence observed in the court of law, to hear the witness oral, to permit the person charged to be legally represented, or to call witnesses or to cross examine witnesses and as long as the alda ataram rule be applied. In this proceedings it is a perfect example thereto, submission was made by Mr Kirstein on behalf of the appellant and it was accepted. The report of Mrs. Wensel, which on the normal circumstances in the normal court of law, would not be admissible due to hearsay. In this proceedings it was admitted because we are not bound by strict rules. The reason for mentioning this above is that it hinges on Section 49, the board in terms of the MPRA, is entitled to determine its own internal procedures in terms of Section 67, which we have done and we have embarked on an informal procedure as it was stated and we then accepted the submission made by the appellant not a backed by viva voc evidence by the valuer. From the board point of view in carries the same weight and therefore on that basis the evidence was accepted.

Section 49, we acknowledge that there must be strict compliance to that but it's the board view that we cannon announce any legality on Section 49 or on whether this appeal should be dismissed on the basis that technical decision on non-compliance with Section 49. The appellant was however entitled to raise that as an issue and on that basis we are of the view that the board cannot announce on the compliance of Section 49 or to make an order with regards to that the appeal must be thrown out or dismissed on the basis that there was no strict compliance to Section 49, that is unfortunately only the privilege of the high court, we as the board can only note it in

passing and in view of the Davis decision we cannot announce technical aspect of Section 49."

[10] It was argued by the applicant that there was no evidence that the second respondent complied with section 49 of the MPRA and the procedure in the MPRA for the compilation of the valuation roll are a jurisdictional prerequisite for the exercise by the second respondent of its power to collect rates. Therefore, if the procedure was not followed, the result is that the collection of rates by the second respondent based on the valuation roll is invalid and as such the ruling by the first respondent that it cannot make a finding on failure to comply with section 49 of the MPRA by the second respondent is unjustified.

[11] The respondents contended that the applicant suffered no prejudice because it was before the board during the appeal and that the principle of *audi alteram partem* was applied. The applicant did not dispute that the second respondent published a notice in the Provincial Gazette and that on **25 February 2020** there was a notice sent to property owners including the applicant. Further that the applicant was able to participate in the appeal process and as such exhausted the internal remedies available under the Act.

[12] Section 49 of the MPRA provides that:

"49. Public notice of valuation rolls

(1) The valuer of a municipality must submit the certified valuation roll to the municipal manager, and the municipal manager must within 21 days of receipt of the roll—

(a) publish in the prescribed form in the Provincial Gazette, and once a week for two consecutive weeks advertise in the media, a notice—

(i) stating that the roll is open for public inspection for a period stated in the notice, which may not be less than 30 days from the date of publication of the last notice; and

(ii) inviting every person who wishes to lodge an objection in respect of any matter in, or omitted from, the roll to do so in the prescribed manner within the stated period;

(b) disseminate the substance of the notice referred to in paragraph (a) to the local community in terms of Chapter 4 of the Municipal Systems Act; and

(c) serve, by ordinary mail or, if appropriate, in accordance with section 115 of the Municipal Systems Act, on every owner of property listed in the valuation roll a copy of the notice referred to in paragraph (a) together with an extract of the valuation roll pertaining to that owner's property.

(2) If the municipality has an official website or another website available to it, the notice and the valuation roll must also be published on that website."

[13] The respondent in its argument referred to the case of **Supaluck Investments (Pty) Ltd v Valuations Appeals Board: City of Johannesburg and Another** (34752/2019) [2023] ZAGPJHC 166 (28 February 2023) where the court at paragraph 29 held that:

"[29] In addition to being procedurally unfair, it is also procedurally irrational. The purpose of a compulsory review is to ensure that the Municipal Valuer's decision is fair and reflects the market value of the property.

On the facts presented, the VAB's decision is irrational because it did not give Supaluck an opportunity to be heard."

[14] It is so that there must be compliance with the legislative prescript in relation to the service of notices as provided for in section 49 of the MRPA. The first respondent acknowledged compliance with section 49 as being mandatory. It went on further to find that there was no prejudice suffered by the applicant as the applicant was before it and stated its case. The first respondent went on further to state that it is a quassi judicial tribunal and not bound to follow strict rules that are adhered to normally in court. As quoted above the first respondent found that the determination of whether the appeal should be dismissed on the basis of technical decision on non-compliance with section 49 should be made by the High Court. The first respondent found that it could not deal with the technical aspects of section 49.

[15] The intention of section 49 is to allow every person wishing to object to the valuation roll an opportunity to do so in the prescribed manner within the stated period. The section further provides the manner in which the publication should be done and the stipulated period. In this matter the applicant's property was valued at R9 800 000-00 and placed on the general valuation roll for **1 July 2020**. The applicant received information on **9 July 2021** by email. The period for objections had already passed. The implementation date of **1 July 2020** had also passed. On **31 March 2021** the property was placed on the supplementary roll as being incorrectly valued. The second respondent published a notice of inspection of the

supplementary roll on **18 June 2021** and that the supplementary roll was open for inspection for the period **22 June 2021** to **21 July 2021**. Notably this was one year after the implementation date of **1 July 2020** of the previous valuation. This meant that the applicant had been paying the increased tariff from **1 July 2020**. In the main, the applicant argued that the second respondent failed to show that notices were published as required in terms of section 49.

[16] The court in **Nkisimane and Others v Santam Insurance Co Ltd 1978 (2) SA 430 (A)** cautioned that care must be exercised *"not to infer merely from the use of such labels [peremptory or directory] what degree of compliance is necessary and what the consequences are of non or defective compliance. These must ultimately depend upon the proper construction of the statutory provision in question, or, in other words, upon the intention of the lawgiver as ascertained from the language, scope and purpose of the enactment as a whole and the statutory requirement in particular."*

[17] The reading of section 49 clearly states that the municipal manager must serve by ordinary mail or if appropriate in accordance with section 115 of the Municipal Systems Act on every owner of property listed in the valuation roll. This means that the municipal manager must ensure that the information must reach the owner of the property. The Act makes it pre-emptory for the municipal manager to serve on the owners of property. In this matter the second respondent has not provided any evidence that this was actually done.

[18] It is important to bear in mind that the purpose of the MPRA is:

> *"To regulate the power of a municipality to impose rates on property; to exclude certain properties from rating in the national interest; to make provision for municipalities to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies; to make provision for fair and equitable valuation methods of properties; to make provision for an objections and appeals process; to amend the Local Government: Municipal Systems Act, 2000 so as to make further provision for the serving of documents by municipalities; to amend or repeal certain legislation; and to provide for matters connected therewith."*

[19] The respondent herein argued that the applicant did not suffer any prejudice as a result of the non-compliance with section 49 in that there was an objection heard by the appeal board on the valuation of the R9 800 000-00. The applicant confirmed that an objection was indeed filed and it was the subject of the appeal. This meant that the applicant had the opportunity to state its case before the appeal board on the valuation roll and the amount of the valuation. I agree with the argument by the respondent that there was no prejudice against the applicant. Despite that the respondent did not issue the notice in terms of section 49 timeously, the notice did come to the attention of the applicant and hence the appeal proceedings. The non-compliance did not render the process unfair against the applicant.

[20] The applicant argued that the appeal board rejected the valuation of Mrs Wentzel on their behalf who applied real income derived from the business of the applicant, being membership fees. The applicant did not call Wentzel at the hearing to testify. Her report

was handed in as evidence and could not be cross examined or a version put to her by the respondent to dispute or not. On the other hand, the respondent's valuer, Mr Eckler testified and was cross examined. He explained the process of valuation and the factors taken into account. He explained that a comparison was done in relation to the properties which fell in the same category as that of the applicant. That included the type of business and the size of the property. He further testified that he relied on the income approach to arrive at the valuation of R11 800 000-00. In its finding the first respondent concluded as follows:

"In conclusion, we are of the view that there was no substantive information or evidence submitted to the board which would justify deviation of the value placed on the property by the municipal valuer as already pointed out the only evidence which was submitted was that of Mrs. Wensel and its clear that the valuation was flawed in the instance already mentioned, on the other hand in the scale we take cognizance of the comprehensive report which was submitted by the municipal valuer in concluding the value of R11.8 million. In the result we make the following order, the appeal is dismissed, we confirm the value of R11.8 million for the subject property, category business commercial and we are also of the view that due to the fact that the appellant was entitled to bring this matter to this board it is well within his rights and we should not mark him with any cost order therefore we make no cost order as to costs. In conclusion the value of R11.8 million is confirmed, can I just add that in terms of the Rates Policy of the City of Matlosana Local Municipality gymnasium is categorized as a business commercial. In conclusion R11.8 million confirmed, appeal dismissed with effect from 1 July 2019. May I please then thank everybody in attendance today for their submissions, Mr Kirsten, Mr. Eckler and Mr. Nel and Mrs. Botha from DPP, I then wish you every happy weekend."

[21] The issue raised with the valuation of the applicant was that it excluded a portion of the property being the mezzanine floor. The effect being that it undervalued the property. This valuation is not based on the entire property of the applicant and was rendered defective. The evidence of Eckler was found to be more probable and accepted. The applicant could not argue that the method used by Eckler was not correct. As submitted by the respondent, the issue here is a difference of opinion which cannot be a ground to review and set aside the decision of the first respondent. The argument of the applicant is without merit and should be dismissed.

[22] It is trite that costs follow the result and the applicant should pay the costs of this application.

Order

[23] Consequently, the following order is made:

1. The application is dismissed.

2. The applicant is ordered to pay costs including costs of two counsel.

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J T DJAJE

ACTING JUDGE PRESIDENT

NORTH WEST HIGH COURT DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING	**: 28 JULY 2023**
JUDGMENT RESERVED	**: 28 JULY 2023**
DATE OF JUDGMENT	**: 02 NOVEMBER 2023**
COUNSEL FOR THE PLAINTIFF	**: ADV HITGE**
COUNSEL FOR THE DEFENDANT	**: ADV RIP SC with ADV NHLAPO**