THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025 - 048809

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

24/02/2026 [redacted]

....

DATE SIGNATURE

In the matter between:

PROPERTY PARK (PTY) LTD **REG NO. 2009/006810/07**	**1ST APPLICANT**
VERGIL (PTY) LTD **REG NO. 2012/094773/07**	**2ND APPLICANT**
WAYABOVE INVESTMENTS (PTY) LTD	**3RD APPLICANT**
JF ROUX	**4TH APPLICANT**
CP WIERSMA	**5TH APPLICANT**
MORGEN UYS	**6TH APPLICANT**

and

LESEDI LOCAL MUNICIPALITY	**1ST RESPONDENT**
SIBUSISO DLAMINI, N. O.	**2ND RESPONDENT**
GUGU MCUBE, N.O.	**3RD RESPONDENT**
JUDAH MBELE, N.O.	**4TH RESPONDENT**
COGTA – G	**5TH RESPONDENT**

JUDGMENT

BHOOLA AJ,

Introduction

[1] This application concerns the lawfulness of the first respondent's general valuation roll for the 2024- 2029 cycle, adopted under the Municipal Property Rates Act 6 of 2004 ("the MPRA"), and the consequent levying of property rates.

[2] Before turning to the facts in this matter, it is necessary to distinguish between the valuation roll and the annual rates tariff. The valuation roll adopted under section 32 of the MPRA, establishes property values for a multi-year cycle, typically four to five years.

[3] By contrast, the rates tariff is an annual decision taken by the Municipality as part of its budget process for each financial year running from 1 July to 30 June. The 4,9% increase referred to in the pleadings was the tariff applicable only to the 2024/2025 financial year.

[4] Each subsequent financial year requires the Municipality to adopt a new tariff, which is then applied to the property values contained in the valuation roll.

[5] Accordingly, while the tariff is an annual measure, its application depends on the validity of the underlying valuation roll. If the valuation roll is unlawful, all tariffs applied to it are contaminated, but the percentage increase itself is always confined to the financial year in which it was adopted.

[6] For ease of reference, the term "applicants" refers collectively to the first through sixth applicants, unless otherwise specified. Similarly, the term "respondents" in this judgment refers collectively to the first through fourth respondents, unless otherwise indicated.

[7] The fifth respondent, the Department of Cooperative Governance and Traditional Affairs – Gauteng (COGTA-G), was cited in the proceedings, was served with the application, but did not enter a notice of intention to oppose and is not represented before this Court.

[8] The respondents filed their answering affidavit outside the prescribed time period and applied for condonation. The applicants likewise filed their replying affidavit late and sought condonation. Both applications for condonation were granted, and the affidavits were admitted.

[9] The applicants seek a declaratory order to review and set aside the tariff for the 2024/2025 period. They contend that the first respondent failed to comply materially with section 49 of the MPRA when bringing the valuation roll of 2024-2029 into operation.

[10] The respondents, in their answering affidavits, initially contended that the matter falls to be determined under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). During oral argument, however, Counsel for the respondents' conceded that the challenge is one grounded in the principle of legality.[1]

[11] The concession was correctly made. The adoption of a valuation roll and the levying of rates are jurisdictional prerequisites flowing from statute. They are not "administrative actions" within the meaning of PAJA, but rather exercises of public power subject to the constitutional principle of legality. As held in *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council*[2], the exercise of public power must be authorised by law and rationally connected to its purpose. The court must therefore determine whether the Municipality acted within the bounds of its empowering legislation and whether its conduct was rationally connected to the statutory purpose.

Jurisdiction and Locus Standi

[12] Jurisdiction was admitted between the parties. The applicants are all registered property owners within the Municipality's jurisdiction and/or the cause of action arose within the jurisdiction of this Honourable Court.

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[1] City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others [2018] 3 All SA 605 (SCA) para 2 -3

[2] [1998] ZACC 17, 1999 (1) SA 374 (CC)

[13] Regarding standing, the court requested both Counsel to address section 38 of the Constitution. This was because the sixth applicant alleged that she acted both in her personal capacity and in a representative capacity and organiser of concerned property owners (the "CPO") listed as persons in the community with an interest in the matter. A list of 120 names was submitted in support of this claim, when the sixth applicant lodged a petition.

[14] The applicants asserted that *locus standi* was relied upon in terms of section 21 of the Superior Court Act[3], and not in section 38 of the Constitution as they did not rely on any infringement of rights in the Bill of rights.

[15] The respondents' contended that they knew nothing of the persons listed. They argued that all the parties seeking declaratory relief, must be before the Court and properly joined under section 21 of the Superior Court Act.[4]

[16] The respondents further argued that in terms of section 38, the Constitutional Court, in the case of *Maluleke v MEC for Health and Welfare, Northern Province*[5], considered the prerequisites for standing in terms of section 38. It was held that a right in the Bill of Rights must be infringed or threatened and this must be asserted in the papers. Furthermore, if a class action is brought it must be certified.

[17] Although the respondents did not dispute *locus standi* in their papers, they later argued that Applicant 6 could not represent 120 individuals without certification of a class action, relying on *Maluleka v MEC for Health and Welfare, Northern Province*.[6] Applicant 6 contended that she acted in her own interest and in the interest

[3] Act 10 of 2013
[4] 10 of 2013
[5] 1999(4) SA 367(T)
[6] 1999(4) SA 367(T)

of the CPO. This Court accepts that standing is established for Applicant 6 and the applicants properly before it. However, the application was not brought as a certified class action under section 38 of the Constitution, nor were the procedural safeguards for representative litigation satisfied. Accordingly, *locus standi* is confined to the applicants before the Court, and retrospective relief cannot extend to the 120 individuals listed.

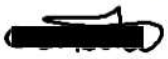
Factual Background.

[18] On 23 May 2024, the Lesedi Local Municipality approved the final rates tariff for the 2024-2025 financial year, which was advertised on 7 August 2024. The projected increase in property rates was confirmed as 4,9% for the said financial year. Importantly, the tariff was approved before the purported objection period had expired.

[19] Despite this projection, the applicants experienced increases beyond the 4,9% prompting objections and petitions. Internal disputes were lodged under section 102(2) of the Municipal Systems Act on 2 September 2024. However, the Municipality on 24 October 2024, advised the applicants' that the higher increases were due to the implementation of the new 2024–2029 valuation roll. The applicants were advised that property owners were invited to lodge objections but the period for lodging such objections had lapsed and remained meritless.

[20] Given that the general valuation roll (GVR) was not adopted properly, the applicants contend that the disputes raised by them remain extant and should be upheld in terms of section 102(2) of the Municipal Systems Act.

[21] On 14 February 2024, the Municipality published a public notice in the local newspaper inviting the property owners to inspect the tariffs for 2024/2025 between 1



March 2024 and 31 March 2024. The same notice also appeared in the Provincial Gazette No.54 on 20 February 2024.

[22] It is common cause that no consecutive notice for public inspection was published in the week following the 14 February 2024, as regulated by section 49(1)(a) of the MPRA.

[23] On 10 April 2024, however, the Municipality published a further, different notice in the local newspaper, purporting to extend the inspection period to 31 May 2024. The respondent relies on this notice as the "purported 'second notice'", together with the publication in the Provincial Gazette, the transmission of notices by email, delivery by post box, and website publication to assert compliance.

[24] The applicants dispute that there was compliance with the empowering provisions. They contend that the 10 April 2024 notice did not comply with the enabling legislation and the promulgated regulations.[7] They argue that the purported extension notice, lacked particularity, that no consecutive notice was published, that individual notices purportedly served under section 49(1)(c) were undated, and not received by all applicants, and that website publication occurred belatedly on 8 November 2024. Consequently, the applicant's argue that the valuation roll never validly commenced under section 32(1)(a) of MPRA.

Issues for determination

[25] The issues for determination are:

(1) Whether there was substantial compliance with, and materiality under, section 49 of the MPRA.

[7] Regulations 4(1)(b) and (c)

[redacted]

(2) Whether the applicants were obliged to exhaust internal remedies under sections 50 -54 of MPRA.

(3) Whether the lapse or expiry of the 2024/2025 financial year affects the relief sought.

[4] The just and equitable remedy to be granted under section 172 of the Constitution.

(5) The appropriate costs order

Legislative Framework

[26] Municipalities derive the power to levy rates from section 229 of the Constitution.[8]

[27] In *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council*,[9] the Constitutional Court held that the exercise of the original municipal fiscal power does not constitute administrative action but must comply with the Constitution and the principle of legality.

[28] In *Pharmaceutical Manufacturers Association of South Africa: In re Ex parte President of the RSA*,[10] the court held the principle of legality requires that the exercise of public power must be authorised by law and procedurally compliant with statutory prescripts.

[29] The jurisdictional prerequisites for a valid valuation roll to take effect in terms of section 32(1)(a) of the MPRA are completion of the public inspection and objection

[8] Constitution of the Republic of South Africa, 1996
[9] [1998] ZACC 17, 1999 (1) SA 374 (CC)
[10] [2000] ZACC 1, 2000 (2) SA 674 (CC)

process envisaged section 49. Compliance with section 49 is therefore a condition precedent for the roll's validity.

[30] Section 49(1)(a) requires the municipality to publish a notice in the Provincial Gazette for once a week for two consecutive weeks in the local newspaper, stating that the roll is open for inspection and inviting objections.

[31] Section 49(1)(c) requires that every property owner be given notice of the valuation of their property, together with an extract from the roll.

[32] Section 49(2) requires publication of the roll and the notice on the municipality's official website.

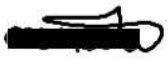
[33] Succinctly, without compliance with section 49, the valuation roll cannot validly commence under section 32(1)(a) of MPRA, and rates levied pursuant to such a roll are unlawful.

Analysis

Whether there was substantial compliance with, and materiality under, section 49 of the MPRA.

[34] The respondents concede that no second consecutive notice was published in the week following the first newspaper notice, as required by section 49(1)(a). They argue however, that there was substantial compliance by the Municipality.

[35] The respondents rely on the notice of 10 April 2024 which extended the inspection period until 31 May 2024, the publication of the April notice in Provincial



Gazette, email transmissions and post box deliveries of the April 2024 notices to assert that there was substantial compliance with section 49 of the MPRA.

[36] The first respondent, in its answering affidavit, provides detailed explanations of how it complied substantially with the provisions of section 49 of MPRA. The respondents assert that the purpose of section 49 was met.

[37] The applicants contend that if section 49 of MPRA is not complied with, then the public inspection period as required by section 32(1)(a) cannot be completed. This would mean any decision to impose property rates based on the valuation roll is consequently unlawful. They argue that the requirements, in section 49(1), 49(2) and Regulation 4 are peremptory and unambiguous, and therefore, should strict compliance is required.

[38] Where legislation refers to mandatory or peremptory provisions, the courts enquire into substantial compliance by considering the purpose of the provision and whether that purpose was achieved. In *AllPay Consolidated Investment Holdings v CEO, South African Social Security Agency and Others (No2)*[11], the Constitutional Court held that the test is whether a deviation is material in light of the statutory purpose.

[39] Section 49 of the MRPA is crafted to ensure transparency and accountability. It affords property owners a meaningful opportunity to inspect the roll and lodge the necessary objections timeously before implementation of the roll by the Municipality.

[11] 2014(1) ZACC 12

[40] In *Weenen Traditional Local Council v Van Dyk*,[12] the Supreme Court of Appeal emphasised that where a statutory requirement is designed to protect rights and ensure public participation, strict compliance is required.[13]

[41] The defects or non-compliance with the provisions of section 49 of MPRA in this matter are material. The absence of consecutive publication in the week following the first consecutive notice, the lack of particularity in the 10 April 2024 notice, the failure to provide proof of service of the disputed email transmissions and post-box deliveries, and the belated website publication on 8 November 2024 deprived the registered property owners of the opportunity to exercise their statutory rights.

[42] In *City of Tshwane Metropolitan Municipality v New Ventures Consulting & Services (Pty) Ltd,* [14] the Supreme Court of Appeal confirmed that Municipalities must strictly comply with the MPRA before levying rates. Similarly, in *Astirshell No. 14 CC and Others v Victor Khanye Local Municipality and Others,* [15] the High Court held that failure to comply with section 49 rendered the valuation roll unlawful.

[43] Applying these authorities, the defects and deviations, in this matter are not minor or technical. They undermine the statutory purpose of section 49, which is to secure meaningful, and accessible public participation. As affirmed in *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd*[16], legality review requires fidelity to statutory preconditions.

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[12] 2002 ZASCA 6, 2002 (4) SA 653 (SCA)

[13] City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others [2018] 3 All SA 605 (SCA) para 20-21. This case is distinguished from Lombardy to the extent that it dealt with Recatergorisation of the property and PAJA was applicable it is relevant when dealing with the purpose of the publication and notice as required by section 49.

[14] [2018] ZASCA 166

[15] [2004] ZAMPMHC 13

[16] 2019 (4) SA 331 (CC)

[redacted]

[44] Similarly, in *City of Tshwane Metropolitan Municipality v Uniqon Wonings*[17], the court emphasised that Municipalities must strictly comply with the MPRA before levying rates.

[45] The court finds that the respondent accordingly lacked authority to levy rates pursuant to the impugned roll. The 2024 -2029 valuation roll is therefore unlawful and invalid under the principle of legality.

Whether the internal remedies ought to have been exhausted

[46] The respondents concede that the first to fifth applicants lodged disputes in terms of section 102(2) of The Municipal Systems Act[18], read with the Credit Control and Debt Collection Policy, in relation to what they considered as "exorbitant tariff increases" on their properties.

[47] In response, the applicants were informed by the first respondent that such higher percentage increases were a result of the commencement and implementation of the Municipality's 2024 general valuation roll ("GVR").

[48] The applicants' contend that this is not a PAJA application and they were not obliged to exhaust internal remedies. They argue that sections 50-54 of MPRA. presuppose a validly commenced valuation roll. Where the roll itself is unlawful due to non-compliance with section 49, the valuation roll cannot be said to have taken effect in terms of section 32(1)(a).

[17] [2015] ZASCA, 162
[18] Local Government: Municipal Systems Act 32 of 2000

[49] The applicants further argue that they exhausted the remedies that were open to them, including lodging disputes under section 102(2) of the Municipal Systems Act[19] and referring the matter to G-COGTA, but that these steps were taken out of caution and did not cure the underlying jurisdictional defect.

[50] The principle is well established that where a legality review is applicable and not a PAJA review, there is no requirement to exhaust internal remedies.

[51] In *Mapholisa NO v Phetoe NO and Others*[20], the Supreme Court of Appeal held that "… in fact, the common-law approach to the exhaustion of internal remedies is to the exact opposite effect – there is no duty to exhaust internal remedies, unless a statute places an obligation on a person to do so." The duty to exhaust remedies applies only where such remedies are effective and available. The court further explained that the mere creation of an internal remedy does not impose a duty to use it and where the remedies are illusory or incapable of addressing the complaint, a court may be approached directly.

[52] In *Nichol and Another v Registrar of Pension Funds and Others,*[21] the Supreme Court of Appeal confirmed that internal remedies cannot cure a jurisdictional defect. If the empowering statute has not been complied with, the defect is not one that can be corrected through internal appeal processes.

[53] Applying these principles, the applicants were not obliged to pursue internal remedies in terms of section 50 -54 of MPRA.[22] Those remedies presuppose a valid valuation roll. Where the roll never validly commenced due to non-compliance with

[19] Local Government: Municipal Systems Act 32 of 2000
[20] 2023 (3) SA 149(SCA)
[21] 2005 SA 383 (SCA), [2006] 1 All SA 589 (C)
[22] City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others [2018] 3 All SA 605 (SCA)

section 49, the matter triggers a legality review. It remains the prerogative of the applicants to determine whether to pursue internal remedies, but in this case, they were entitled to approach the Court directly.

The effect of the lapse of the 2024/2025 financial year

[54] The respondents contend that the matter has become moot because the 2024/2025 financial year has lapsed, and the current roll remains extant.

[55] The applicants contend that the relief remains live, as the 2024–2029 general valuation roll support rates for multiple financial years. The lawfulness of the roll affects not only the 2024/2025 period but also subsequent years until the roll is lawfully replaced.

[56] The Constitutional Court has emphasised that mootness does not arise where the dispute has continuing practical effect. In *JT Publishing (Pty) Ltd v Minister of Safety and Security*[23], the Court held that a matter is not moot if the order will have a practical impact on the parties or on future conduct.

[57] Similarly, in *President of the Republic of South Africa v Democratic Alliance*[24], the Court confirmed that legality review serves to vindicate the rule of law, even where the immediate decision has lapsed, because unlawful exercises of public power cannot be insulated from judicial scrutiny.

[58] In *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exploration and Exploitation SOC Ltd* [25] the court held that 'mootness is not

[23] [1996] ZACC 23, 1997 (3) SA 514 (CC)
[24] 2020 (1) SA 428 (CC)
[25] Normandien Farms (Pty) Limited v South African Agency for Promotion of Petroleum Exportation and Exploitation SOC Limited and Others [2020] ZACC 5

an absolute bar to the justiciability of an issue …. where the interests of justice so require.'

[59] Considering these principles, the lapse of the 2024/2025 financial year tariff does not render the matter moot. The 2024–2029 GVR continues to regulate rates for the subsequent years, and a declaration of invalidity will have practical effect by preventing ongoing reliance on an unlawful roll and ensuring compliance with the MPRA.

[60] The expiry of the financial year is, however, relevant in crafting a just and equitable remedy, as it reduces potential disruption to the Municipal administration.

[61] The court therefore finds that the matter retains practical significance and that the declaratory relief remains appropriate to vindicate the rule of law.

Just and equitable Remedy

[62] Section 172(1)(a) of the Constitution provides that when a court finds conduct inconsistent with the Constitution, it must declare such conduct invalid.

[63] Section 172(1)(b) empowers the court to make any order that is just and equitable, including limiting the retrospective effect of a declaration of invalidity or suspending its operation to allow corrective action.

[64] The Constitutional Court has consistently emphasised that remedies in legality review must balance application to the rule of law with the practical consequences of invalidity. In *AllPay Consolidated Investment Holdings v CEO, South African Social*

Security Agency and Others (No2)[26], the Court held that once unlawfulness is established, the default position is invalidity, but the court must then craft a just and equitable remedy.

[65] In *Minister of Health v New Clicks South Africa (Pty) Ltd*[27], the Court recognised that suspension of invalidity may be appropriate to avoid administrative chaos. Similarly, in *Mvumvu v Minister of Transport*[28], the Court suspended invalidity to allow Parliament to cure defects in legislation.

[66] More recently, in *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* [29], the Court reaffirmed that the principle of legality requires invalidity, but section 172(1)(b) allows the court to temper its order to protect the public interest.

[67] Applying these principles, the defects in compliance with section 49 of the MPRA render the 2024–2029 valuation roll unlawful. However, immediate invalidity would disrupt Municipal finances and prejudice service delivery. A suspension of invalidity for six months is therefore just and equitable, affording the Municipality time to rectify defects while vindicating the rule of law.

The appropriate costs order

[68] The general rule is that costs follow the result. In *Ferreira v Levin NO; Vryenhoek v Powell NO*[30], the Constitutional Court held that costs orders are discretionary but must be exercised judicially, considering fairness and the circumstances of the case.

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[26] 2014(1) ZACC 12
[27] [2005] ZACC 14, 2006 (2) SA 311 (CC)
[28] [2011] ZACC 1, 2011 (2) SA 473 (CC)
[29] [2019] ZACC 15, 2019 (4) SA 331 (CC)
[30] 1996 (2) SA 621 (CC)

[69] The applicants have succeeded in establishing that the respondent Municipality acted unlawfully in implementing the 2024–2029 valuation roll without complying with section 49 of the MPRA. The defects were material and jurisdictional, depriving property owners of their statutory rights.

[70] The respondent persisted in its defence of substantial compliance despite conceding non-compliance with the statutory requirements. In these circumstances, fairness dictates that the applicants should be awarded their costs.

[71] Both parties employed senior and junior council. The issues raised were constitutional and statutory in nature and justified the employment of two counsel.

[72] The appropriate cost order is that the first respondent must pay the applicants' costs on scale C, including the costs consequent upon the employment of two counsel.

Conclusion

[73] The respondents have throughout characterised the levying of rates as an administrative action. This Court does not adopt that classification. The relief granted in respect of the applicant's rates is not premised on a finding that the levying of rates constitutes administrative action under PAJA. Rather, it flows directly and consequentially from the declaration of invalidity of the valuation roll under section 172(1)(a) of the Constitution.

[74] Once the roll is unlawful, any rates levied pursuant to it cannot stand. The setting aside of the applicant's rates is therefore a derivative remedy, necessary to

give effect to the declaration of invalidity, and does not depend on whether the levying of rates is properly classified as administrative action.

[75] In framing the relief, it is necessary to distinguish between the remedies appropriate to the valuation roll and those appropriate to the levying of rates.

[76] The adoption of a general valuation roll is a statutory act under the MPRA. Where it fails to comply with section 49, the proper constitutional remedy under section 172(1)(a) is a declaration that the roll is unlawful and invalid.

[77] By contrast, the levying of property rates against the applicants pursuant to the unlawful valuation roll is a consequence of that invalidity, and must therefore be set aside

Order

[78] In the result, I make the following order:

(1) The respondents' valuation roll for the period 2024–2029 is declared unlawful and invalid for failure to materially comply with section 49 of the Local Government: Municipal Property Rates Act 6 of 2004, in terms of section 172(1)(a) of the Constitution.

(2) The levying of property rates against the applicant pursuant to the unlawful valuation roll is reviewed and set aside for the 2024/2025 financial year.

(3) The declaration of invalidity shall operate prospectively, save insofar as it applies to the applicants, who are entitled to retrospective relief.

(4) The respondent is directed, within 60 days of this order, to:

(i) recalculate the rates lawfully payable by the applicants for the 2024/2025 financial year;

(ii) credit the applicant's municipal account with any overpayment; and

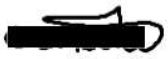
(iii) issue an adjusted municipal statement reflecting the reconciliation.

(5) Pending compliance with paragraph 4, the first respondent is interdicted from instituting or continuing debt recovery proceedings against the applicants in respect of rates levied pursuant to the impugned valuation roll.

(6) The interdict in paragraph 5 shall lapse upon issuance of the adjusted statement referred to in paragraph 4(iii).

(7) This order concerns the 2024/2025 financial year only and does not invalidate rates levied in subsequent financial years unless such rates are shown to have been levied pursuant to the same unlawful valuation roll.

(8) The respondent is ordered to pay the applicants' costs on scale "C", including the costs consequent upon the employment of two counsel.



CB. BHOOLA

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 24 February 2026 and is handed down electronically by circulation to the parties/their legal representatives by e- mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 24 February 2026

APPEARANCES

Date of hearing: 27 November 2025

Date of judgment: 24 February 2026

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[redacted]