

The Limits of Local Government's Rating Powers

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28 September 2026

INTRODUCTION

The Supreme Court of Appeal (**SCA**) has clarified an important aspect of municipal property rating in ***Msunduzi Municipality v Capital City Housing NPC***¹ confirming that municipalities cannot create a separate rates category for social housing where the Local Government: Municipal Property Rates Act 6 of 2004 (**MPRA**) does not permit it. The case also addresses the limits of constitutional challenges to rating legislation and the principle that courts may not grant relief that the parties have not asked for.

The judgment provides important guidance for municipalities, developers, social housing institutions and property owners on the limits of municipal rating powers and the role of the courts in disputes involving municipal rates policies.

BACKGROUND

Capital City Housing NPC ("**Capital City**") is a non-profit company and an accredited social housing institution under the Social Housing Act 16 of 2008 ("**the Housing Act**"). It is also a registered public benefit organisation (PBO) under the Income Tax Act 58 of 1962. Capital City owns three residential developments in the Msunduzi municipal area comprising 1,656 rental units. Capital City lets these units to qualifying tenants whose monthly household income falls between R2 000 and R15 000. Capital City has been in business rescue since 2024. Although it is a registered **PBO**, the Msunduzi Municipality ("**the Municipality**") classified the properties as ordinary residential properties for rates purposes.

In terms of section 17 of the MPRA, residential properties receive only the statutory exclusion of the first R15,000 of each property's value the market value of each cadastral unit. Capital City argued that its properties should instead be treated as PBO properties under section 8(2)(h) of the MPRA, which would significantly reduce its rates liability.

Under the existing classification, Capital City received a rates exclusion of only R45 000 in aggregate across its three properties. Capital City contended that PBO classification would entitle it to rebates of approximately R250 million, although the Minister of Finance disputed this figure, calculating the correct rebate at approximately R1.08 million. Regardless of which figure was correct, either was considerably more than the R45 000 it was receiving.

On **30 July 2019**, Capital City applied in terms of clause 19.3 of Municipality's 2020/2021 Rates Policy to have its three properties classified as PBO properties. The Municipality refused the application on **29 August 2019**, relying on clause 1.32 of its Rates Policy, which adopts the definition of "**specified public benefit activity**" in section 1 of the MPRA. That definition is exhaustive. It recognises only activities listed under Items 1 (welfare and humanitarian), 2 (health care) and 4 (education and development) of Part I of the Ninth Schedule to the Income Tax Act 58 of 1962, while Item 3 (land and housing) is expressly excluded. The Municipality's position was that it had no legal authority to classify social housing properties as PBO properties for rates purposes.

THE HIGH COURT'S APPROACH

Capital City approached the High Court and the relief sought comprised a declaration of constitutional invalidity, a textual amendment of the impugned provisions, and consequential rates relief. The High Court declined to declare the legislation unconstitutional but nevertheless ordered the Municipality to create a new category of rateable property called "social housing properties" under section 8(3) of the MPRA and to amend its rates policy accordingly.

Section 8(3) of the MPRA confers a residual power. It permits a municipality to determine –

"... additional categories of rateable property, including vacant land: Provided that, with the exception of vacant land, the determination of such property categories does not circumvent the categories of rateable property that must be determined in terms of subsection (2)."

Aggrieved by the High Court's order, the Municipality appealed to the SCA, challenging the order in its entirety. Capital City, in turn, cross-appealed against the High Court's refusal to declare the impugned provisions unconstitutional and to grant the relief it had originally sought. The SCA was therefore called upon to determine three issues: first, whether the High Court was entitled to grant relief that had not been sought by the parties; second, whether the constitutional challenge to section 1 of the MPRA and clause 1.32 of the Municipality's rates policy should succeed; and third, the appropriate order as to costs.

THE SCA'S DECISION - MAJORITY JUDGMENT

The majority judgment, written jointly by Matojane JA and Kgoele JA, with Cloete AJA concurring, dealt with two central questions: whether the High Court was entitled to grant relief that Capital City had not sought, and whether Capital City's constitutional challenge to the MPRA and Municipality's rates policy should succeed.

THE HIGH COURT HAD GRANTED RELIEF THAT WAS NOT SOUGHT

The SCA emphasised that section 8 of the MPRA creates a structured system for categorising rateable property. While section 8(3) permits municipalities to determine additional categories, those categories may not circumvent the mandatory categories listed in section 8(2).

Because Parliament deliberately limited the PBO category in section 8(2)(h) to specified public benefit activities, a municipality cannot use section 8(3) to introduce a social housing category that effectively expands the statutory definition.

The majority held that the High Court had erred by creating a new category of rateable property, namely **"social housing properties"**, under section 8(3) of the MPRA. Capital City had not asked the High Court for such an order. Instead, its case was directed at declaring the relevant provisions unconstitutional and amending them.

The SCA reaffirmed the principle that, in an adversarial legal system, the parties define the issues through their pleadings and affidavits, and the court's role is to adjudicate those issues. The court should not introduce new issues that the parties did not raise, even where those issues involve constitutional rights. Basically, a court should ordinarily determine the dispute placed before it by the parties and should not, *mero motu* (that is, of its own initiative), fashion and grant substantive relief that was neither sought nor properly ventilated.

In this case, Capital City's case was specifically based on constitutional invalidity. It argued that excluding social housing from the relevant rates benefits was unconstitutional and sought a declaration of invalidity together with a textual amendment (reading-in) of the legislation. The Municipality and other respondents answered that case on that basis. The High Court had declined the constitutional relief sought by Capital City but nevertheless ordered the Municipality, in terms of section 8(3) of the MPRA, to create a new category of rateable property described as "social housing properties".

However, none of the parties asked the High Court to consider section 8(3) of the MPRA, which permits the creation of additional property categories. No evidence was presented concerning whether creating a social-housing category under section 8(3) would be legally permissible or would circumvent the mandatory categories in section 8(2).

Despite this, the High Court introduced section 8(3) itself and granted relief based on it, effectively creating a social-housing property category. The SCA found this difficult to reconcile with the principle established in *Fischer v Ramahlele*:² the court cannot override the parties' choices about how to formulate and litigate their case. Against this backdrop, the SCA majority held that the High Court had exceeded the permissible limits of judicial intervention in doing so.

THE CONSTITUTIONAL CHALLENGE WAS UNSUCCESSFUL

The majority then considered Capital City's challenge to the exclusion of land and housing activities under item 3 of Part I of the Ninth Schedule to the Income Tax Act from the definition of "specified public benefit activity" in section 1 of the MPRA. Capital City argued, among other things, that the exclusion undermined the section 26 constitutional right of access to adequate housing, because social housing institutions did not receive the same rates relief available to certain other public benefit organisations.

The majority rejected this argument. The majority held that the MPRA deals primarily with the **rating of property**, whereas the Social Housing Act and Housing Act provide the legislative framework through which the State gives effect to the right of access to adequate housing. The majority considered Capital City's challenge to be, in substance, an attempt to obtain housing-related relief through legislation dealing with municipal property rates. Capital City had not challenged those Acts or demonstrated that the measures under them were unreasonable or inadequately implemented.

The majority also relied on the **principle of subsidiarity**. This principle, as established by the Constitutional Court in *My Vote Counts NPC v Speaker of the National Assembly*, requires a litigant who seeks to enforce a constitutional right that has been given effect through specific legislation to challenge that legislation, rather than invoking the constitutional right directly. In essence, a party cannot bypass the laws Parliament has enacted to give effect to a right and go straight to the Constitution. Capital City had not challenged the Social Housing Act, the Housing Act or the policies implementing those statutes. Nor had it demonstrated that those legislative and policy measures were unreasonable or inadequately implemented. Consequently, the majority found that Capital City had not established that the overall measures adopted by the State to progressively realise the section 26 right were unreasonable.

On rationality, the majority found that the differentiation between public benefit organisations conducting activities falling within items 1, 2 and 4 and those involved in item 3 activities was not irrational. The legislature had a rational basis for the distinction. The activities in Items 1, 2 and 4 — welfare, healthcare, and education — are characteristically delivered through institutions that serve indigent and vulnerable beneficiaries directly, and which would otherwise need to be supplied or subsidised by the State. Land and housing (Item 3), by contrast, is a sector in which the State already provides substantial direct subsidisation through capital grants, restructuring zone subsidies, and a dedicated regulatory framework. The legislature's decision to direct rates relief to PBO sectors that are not so subsidised was therefore rational, not arbitrary.

NO REMITTAL WAS NECESSARY

The majority also rejected the minority's proposal that the constitutional challenge should be sent back to the High Court. It held that the constitutional issues had been sufficiently ventilated before the SCA and could properly be determined on appeal.

The majority therefore upheld the Municipality's appeal, dismissed Capital City's cross-appeal, set aside the High Court's order and replaced it with an order dismissing Capital City's application. The SCA made no order as to costs, either in the appeal or in the High Court proceedings. Capital City had argued that the Biowatch principle — which protects private litigants who, in good faith, vindicate constitutional rights against the State from adverse costs orders — shielded it from any costs liability. The majority accepted that, although the litigation was in practical effect concerned with the financial sustainability of Capital City's social housing operations, it had not been brought lightly and the issues were important to the social housing sector generally.

The Municipality was, however, ordered to pay the costs of the condonation application for its late filing of the notice of appeal.

MINORITY JUDGMENT

The minority agreed that the High Court's order could not stand, but differed as to the appropriate consequence. Coppin JA and Opperman AJA considered that the constitutional challenge had not been properly determined by the court of first instance. In their view, the matter should therefore have been remitted to the High Court so that the constitutional challenge could be considered on the basis upon which it had actually been brought. The minority emphasised that the enquiry under section 26 of the Constitution required consideration of the broader constitutional principles implicated by the right to housing, including progressive realisation, spatial justice and non-retrogression. The concept of "spatial justice" — drawn from recent Constitutional Court decisions in *Thubakgale v Ekurhuleni Metropolitan Municipality* and *Charnelle Commando v City of Cape Town* — concerns the importance of where housing is located, recognising that access to economic opportunities, healthcare, education and public life depends on proximity. "Non-retrogression" refers to the principle that the State should not take steps, or permit outcomes, that would set back the progressive realisation of housing rights. The minority argued that these principles had not been considered by either the High Court or the majority, and that Capital City's potential liquidation — with the consequent loss of 1,656 social housing units in Pietermaritzburg — raised precisely these concerns.

The divergence between the judgments therefore raises an important question concerning the role of an appellate court in constitutional litigation: where a court of first instance has granted relief that was not sought and has consequently failed to properly determine the constitutional case presented by the litigant, should an appellate court finally determine that constitutional challenge itself, or should it remit the matter for determination by the court of first instance? The majority favoured final determination, while the minority favoured remittal.

The judgment is consequently of particular relevance to municipal litigation involving constitutional challenges to rates legislation and municipal policies. It illustrates the importance of carefully framing the relief sought, while also demonstrating the potential consequences where a court departs from the case presented by the parties and fashions its own remedy.

CONCLUSION

The significance of this judgment lies not only in its treatment of the rating of social housing properties, but

also in the contrasting approaches adopted by the majority and minority concerning the limits of judicial intervention and the proper disposition of an unresolved constitutional challenge.

The judgment reinforces that municipal rates disputes are ultimately governed by the MPRA's statutory framework. Municipalities cannot create new property categories that contradict Parliament's chosen classifications, and courts cannot rewrite rating schemes by granting relief that falls outside the case before them.

For social housing institutions, the decision makes it clear that any broader rates relief will require legislative or policy reform rather than judicial intervention. For municipalities, it confirms that their rating powers remain subject to the boundaries set by the MPRA while preserving their discretion to make policy choices within those limits. The split between the majority and minority also has implications for the future. The minority's invocation of spatial justice and non-retrogression as components of the section 26 enquiry may well inform future constitutional challenges to rating legislation, particularly where the viability of social housing institutions is at stake. For now, however, the SCA has confirmed that the appropriate route for social housing institutions seeking broader rates relief lies in legislative or policy reform — whether through amendments to the Rates Act, engagement with municipalities through the community participation processes contemplated by the Act, or representations to the Minister of Finance — rather than through the courts.

¹ *The Msunduzi Municipality v Capital City Housing NPC and Others* (832/2024) [2026] ZASCA 83.

² *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA); [2014] ZASCA 88; [2014] 3 All SA 395 (SCA) paras 13-14.



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