

Can a Municipality Effectively Create a New Property Category Through its Rates Policy Without Following the Statutory Requirements?

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would be categorised as business and commercial property for rating purposes with effect from 1 July 2023.

The Municipality subsequently reclassified Luhambo's property and imposed charges based on the business and commercial classification. Luhambo challenged the Municipality's conduct on several grounds and approached the High Court for relief under the principle of legality.

THE LEGAL ISSUES BEFORE THE COURT

Several grounds of review were raised, including:

1. whether the Municipality had complied with its public participation obligations;
2. whether the 2023/2024 Rates Policy had been properly published;
3. whether the Municipality could retrospectively apply its 2024/2025 Rates Policy;
4. whether the reclassification of student accommodation amounted to the creation of a new sub-category under section 8(4) of the MPRA;
5. whether student accommodation could properly be regarded as business and commercial property; and
6. whether the Municipality had acted within the powers conferred upon it by law.

Although a number of arguments were raised, the Court's findings concerning publication, retrospective application and the creation of a new property sub-category are particularly important.

THE MPRA AND THE CATEGORISATION OF PROPERTY

Section 8 of the MPRA provides the statutory framework for the categorisation of property for rating purposes. The Municipality argued that the appropriate criterion was the **actual use** of the property. Because Luhambo operated the student accommodation as a commercial venture and received payment from students, the Municipality contended that the property was commercial in nature. The Court rejected this approach.

INTRODUCTION

The classification of property for municipal rating purposes can have significant financial consequences for property owners. A change in classification may result in substantially higher municipal rates and, depending on the municipality's tariff structure, increased charges for municipal services.

A recent judgment of the Mpumalanga Division of the High Court, Mbombela, provides important guidance in this regard. In *Luhambo Students (Pty) Ltd v City of Mbombela Local Municipality and Others*¹, handed down on 14 July 2026, the Court considered whether the City of Mbombela Local Municipality ("**the Municipality**") could categorise student accommodation as "business and commercial property" for purposes of municipal rates. The Court held that it could not. The judgment is significant because the Court found that student accommodation falls within the concept of residential property under the Local Government: Municipal Property Rates Act 6 of 2004 ("**the MPRA**").

BACKGROUND TO THE DISPUTE

Luhambo Students (Pty) Ltd ("**Luhambo**") owns a property in Kamagugu Extension 4, Mbombela. During 2022, Luhambo developed the property specifically for student accommodation. The Municipality's Planning and Development section subsequently approved the property for "**student accommodation and dwelling houses**" and zoned the property as residential.

From January 2024, Luhambo provided accommodation to students of the University of Mpumalanga. The difficulty arose when the Municipality adopted a Rates Policy which provided that **student accommodation**

The Court focused on the definition of “residential property” in section 1 of the MPRA, which refers to property whose **primary use or permitted use is for residential purposes**.

The Court found that there was no basis in the MPRA for distinguishing between permanent and temporary residential occupation. In other words, the fact that students may occupy accommodation for a limited period does not transform accommodation that is primarily used for residential purposes into business and commercial property.

STUDENT ACCOMMODATION IS RESIDENTIAL PROPERTY

This was arguably the most important substantive finding in the judgment. The Municipality attempted to distinguish student accommodation from conventional residential property. It argued that student accommodation was a commercial venture because students occupied the premises temporarily and the owner operated the accommodation for profit. The Court rejected this distinction as misconceived. The Court reasoned that a residential property is a property used as a place of dwelling or human habitation. The MPRA does not require the occupation to be permanent.

Student accommodation may therefore constitute a **temporary place of residence**, while still being residential property for purposes of the MPRA. The Court further noted that the Municipality itself had approved the property for residential use, specifically as student accommodation and dwelling houses, under its Land Use Scheme.

The Court therefore found that the **primary use of the property was residential**. Any commercial aspect associated with the operation of the accommodation was, at most, secondary to its primary residential use. This distinction between the purpose for which a property is used and the commercial nature of the owner’s business is an important one.

THE MUNICIPALITY’S ATTEMPT TO CREATE A NEW SUB-CATEGORY

The Court then considered the consequences of the Municipality’s decision to treat student accommodation differently from other residential property. The Court found that the Municipality’s approach effectively created a **sub-category of residential property**. This brought section 8(4) of the MPRA into play.

Section 8(4) provides a mechanism through which a municipality may, subject to prescribed requirements, create sub-categories within the property categories identified in section 8(2).

Importantly, the Municipality must obtain the necessary authorisation from the Minister of Co-operative Governance and Traditional Affairs before creating such a sub-category. The Municipality had not obtained that authorisation.

The Court therefore concluded that the Municipality’s attempt to distinguish student accommodation from other residential property constituted an unauthorised sub-categorisation. The Municipality had acted **ultra vires** - outside the powers conferred upon it by legislation.

THE PRINCIPLE OF LEGALITY

The Court’s finding is grounded in the fundamental principle of legality. As the Court reiterated with reference to *Gerber v MEC for Development Planning and Local Government, Gauteng*², municipalities and other organs of state may act only within the powers conferred upon them by law. A municipality cannot create a power through policy where the enabling legislation does not confer that power.

PUBLICATION: A MUNICIPALITY CANNOT ENFORCE AN UNPUBLISHED RATES POLICY

The Court also dealt with an important procedural issue concerning the Municipality’s 2023/2024 Rates Policy. It was common cause that the 2023/2024 Rates Policy had not been published in the Provincial Gazette. The Court held that the Municipality’s enforcement of the relevant provision was unlawful.

This finding was linked to section 162(1) of the Constitution, together with sections 12 and 13 of the Local Government: Municipal Systems Act 32 of 2000 (“**Municipal Systems Act**”). The constitutional and statutory framework requires municipal by-laws to be properly published before they can be enforced. The Court consequently found that the Municipality could not lawfully enforce the relevant provision of its Rates Policy where the necessary publication requirements had not been met. The procedural requirements governing adoption and publication remain important.

THE PROBLEM WITH RETROSPECTIVE APPLICATION

The Court also considered the Municipality’s 2024/2025 Rates Policy. Although the Municipality eventually published the relevant property rates charges in the Provincial Gazette on **2 August 2024**, it attempted to give the relevant provision retrospective effect from **1 July 2023**. The Court found this to be unlawful.

Section 13(b) of the Municipal Systems Act provides that a municipal by-law takes effect upon publication, unless a future date is specified.

The Municipality therefore could not publish the relevant instrument in August 2024 and then retrospectively enforce it against property owners from July 2023.

The Court consequently held that the attempt to retrospectively impose the classification and associated charges was unlawful. This finding is particularly significant for property owners who receive retrospective adjustments to municipal accounts. A municipality cannot simply backdate the operation of a legislative instrument in order to justify charges that were not lawfully authorised at the time they were imposed.

THE DISTINCTION BETWEEN VALUATION AND CATEGORISATION

Another useful aspect of the judgment concerns the Municipality's reliance on the supplementary valuation roll. The Municipality argued that Luhambo should have challenged the Municipal Valuer's decision through the procedures provided by the MPRA and the Promotion of Administrative Justice Act 3 of 2000. The Court rejected this argument. The Court distinguished between **the valuation of the property and the categorisation of the property**.

The supplementary valuation concerned the property's value. It did not determine the underlying legal categorisation of the property. The Court therefore found that the real dispute concerned the Municipality's policy and its legal categorisation of student accommodation, rather than a reviewable decision by the Municipal Valuer.

The Court held that the Municipality's adoption of the Rates Policy and related legislative measures were legislative in nature and therefore reviewable under the principle of legality.

THE COURT'S ULTIMATE FINDING

The Court concluded that the Municipality's attempt to distinguish student accommodation from residential property was not supported by the MPRA. More importantly, the Municipality had effectively created a sub-category without obtaining the ministerial authorisation required by section 8(4). The Court therefore found the re-categorisation **ultra vires and unlawful**.

The relevant provisions of the Municipality's 2023/2024 and 2024/2025 Rates Policies were declared unlawful and invalid. The supplementary valuation rolls that categorised student accommodation as business and commercial property were also reviewed and set aside.

The Municipality was further directed to **credit the levies and business electricity tariffs** imposed on Luhambo's property as a result of the unlawful categorisation.

Costs were awarded against the Municipality, including the costs of counsel at Scale B.

WHY THIS JUDGMENT MATTERS

The judgment has implications extending beyond student accommodation. It demonstrates that municipal rates policies must comply with the statutory framework created by the MPRA and cannot be used to circumvent statutory requirements.

CONCLUSION

The judgment provides a significant reminder that municipalities must operate within the statutory framework governing municipal property rates. The judgment further confirms that student accommodation, where its primary use is residential, cannot simply be transformed into business and commercial property through a municipal Rates Policy.

Where a municipality seeks to create a distinct sub-category within the statutory categories contemplated by the MPRA, it must comply with the requirements of section 8(4), including obtaining the necessary ministerial authorisation. The judgment also demonstrates the importance of lawful publication and the limits of retrospective municipal decision-making.

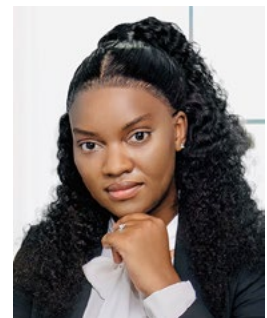
Ultimately, the case is a strong illustration of the principle of legality in the municipal environment: **a municipality may formulate policies and levy rates only within the powers conferred upon it by law.**

¹ *Luhambo Students (Pty) Ltd v City of Mbombela Local Municipality and Others* [2026] ZAMPMBHC 52.

² *Gerber v MEC for Development Planning and Local Government, Gauteng* 2003 (2) SA 344 (SCA) at para 35.



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