

# When a Valuation Appeal Board Goes Beyond its Powers

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## INTRODUCTION

The recent judgment of the Gauteng Division of the High Court, Johannesburg, in *City of Johannesburg Metropolitan Municipality and Another v Valuation Appeal Board: City of Johannesburg Metropolitan Municipality and Others*<sup>1</sup> provides an important reminder of the limits of statutory decision-making bodies and the consequences of exercising powers that have not been conferred by legislation.

The judgment concerned the powers of the City of Johannesburg's Valuation Appeal Board ("**the Board**") in determining an appeal regarding the categorisation of a property for municipal rating purposes. The central question was whether the Board, in exercising its appeal function under the Local Government: Municipal Property Rates Act 6 of 2004 ("**the MPRA**"), was entitled to disregard provisions of the City of Johannesburg Metropolitan Municipality's ("**the City**") Rates Policies because it considered those provisions to be inconsistent with the MPRA.

## BACKGROUND TO THE DISPUTE

The dispute arose in relation to the property described as the Remaining Extent of Portion 61 of the Farm Klipriviersberg 106 IR ("**the property**"). The property was owned by the Old Apostolic Church of Africa but was occupied and used by the Talisman Foundation, a registered public benefit organisation operating a mental health care facility from the premises.

When the City's general valuation roll for the period 1 July 2018 to 30 June 2022 came into effect, the property was categorised as "*Education*". The Talisman Foundation objected to the categorisation and contended that the property should instead be categorised as a property used for public benefit activities. After the objection process, the matter proceeded to the Board in terms of the MPRA.

The Board upheld the appeal and determined that the property should be categorised as a public benefit organisation property, retrospectively from 1 July 2018.

It further determined that the property qualified for the applicable public benefit organisation rating ratio of 1:0.25.

Importantly, in reaching its decision, the Board considered certain criteria contained in the City's Rates Policies to be inconsistent with section 8 of the MPRA and consequently declined to apply those criteria. The City and its Municipal Valuer approached the High Court seeking to review and set aside the Board's decision.

## THE STATUTORY FRAMEWORK

The MPRA establishes the framework governing municipal property rates, including the valuation of properties, the categorisation of properties and the process through which property owners may object and appeal against entries in a valuation roll. Sections 56 and 57 of the MPRA provide for the establishment and functions of Valuation Appeal Boards. The Board's function includes hearing and determining appeals against decisions of the municipal valuer.

Importantly, the Court accepted that an appeal before the Board is a *de novo hearing*. This means that the Board is not merely required to determine whether the municipal valuer was correct on the information before the valuer. The Board is entitled to reconsider the matter afresh and, where appropriate, substitute its own decision. However, the fact that an appeal is heard *de novo* does not mean that the Board possesses unlimited powers. The Board remains a creature of statute and derives its authority from the MPRA. It may exercise only those powers conferred upon it by its empowering legislation.

## THE CENTRAL ISSUE: WHAT COULD THE BOARD LAWFULLY DO?

The City's principal complaint was that the Board had gone beyond determining the correct categorisation of the property. The City argued that the Board was required to apply the City's Rates Policies when determining the appeal. Instead, the Board had effectively determined that portions of those policies were inconsistent with the MPRA and therefore refused to apply them.

The Board disputed this characterisation. It maintained that it had not declared the City's Rates Policies invalid. Rather, it argued that it had merely declined to apply provisions which it considered inconsistent with the MPRA and the Constitution. The distinction was ultimately rejected by the Court.

### A VALUATION APPEAL BOARD IS NOT A COURT

One of the most important aspects of the judgment is the Court's emphasis on the institutional limits of the Board. The Court held that the Board is a statutory body whose powers derive from the MPRA. It does not possess the powers of a court and, in particular, does not have constitutional review jurisdiction.

The Board was therefore entitled to interpret and apply the MPRA and the applicable Rates Policies in deciding the appeal. It was not, however, entitled to determine that the City's Rates Policies were unlawful and then disregard them on that basis. The Court explained that administrative action remains valid and binding until it is set aside by a court of competent jurisdiction.

This principle is particularly important in the municipal context. Municipal policies may be challenged on various grounds, including unlawfulness, inconsistency with empowering legislation or constitutional invalidity. However, the existence of such a potential challenge does not automatically empower every administrative or statutory decision-maker to disregard the policy.

### THE DISTINCTION BETWEEN INTERPRETATION AND REVIEW

The judgment highlights an important distinction. A Valuation Appeal Board may interpret a municipal policy when determining an appeal. It may consider what a policy means, how it applies to the facts before it and whether the property falls within a particular category contemplated by the policy.

What it may not do is take the further step of determining that the policy is unlawful or invalid and refusing to apply it on that basis. The Court considered that the Board's attempt to characterise its conduct as merely a refusal to apply inconsistent policy did not change the substance of what it had done.

In the Court's view, whether the Board described its conduct as a declaration of invalidity or as a refusal to apply the policy, the effect was substantially the same: it had assumed the power to determine that the policy was inconsistent with higher law. That power belonged to a court.

The Court found that the Board had therefore misconceived the nature and limits of its statutory powers. This amounted to a jurisdictional error.

The error was material because the Board's decision to categorise the property as a public benefit organisation property was reached after it had disregarded the applicable Rates Policies.

Consequently, the Court did not need to decide whether the Board's interpretation of section 8 of the MPRA was ultimately correct. This is an important aspect of the judgment. The Court's concern was not necessarily whether the Board had arrived at the "wrong" substantive answer. Rather, it was concerned with how the Board **arrived at that answer**. The decision-making process was legally flawed because the Board had acted outside the powers conferred upon it.

### THE PRINCIPLE OF LEGALITY

Because the review application was brought by one organ of state against another, the Court approached the review primarily through the **principle of legality**, rather than the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**"). The principle of legality requires every exercise of public power to be authorised by law and exercised within the boundaries of the power conferred.

The Court relied on *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd*<sup>2</sup>, among other authorities, in finding that where a decision-maker exceeds the bounds of its lawful authority, its decision is susceptible to review. The judgment therefore provides a practical illustration of legality review in the municipal environment.

A statutory appeal body cannot expand its own jurisdiction simply because it considers that the exercise of a particular power would produce a more legally correct outcome.

### THE ISSUE OF THE PBO CATEGORISATION

The case also raised a substantive dispute concerning the categorisation of the property as a public benefit organisation property. The City argued, among other things, that during the relevant period the applicable Rates Policies did not recognise the separate PBO category relied upon by the Board, and that the Board had incorrectly treated the use of the property as sufficient despite ownership of the property being vested in the Old Apostolic Church of Africa. The Board had effectively concluded that the use of the property for public benefit activities justified the categorisation and the applicable rating ratio.

However, because the Board had reached that conclusion after disregarding the applicable Rates Policies, the High Court considered it unnecessary to determine finally whether the Board's interpretation of section 8 of the MPRA was correct.

This demonstrates an important judicial-review principle: where the decision-making process is fundamentally unlawful, the reviewing court may set the decision aside without determining every substantive issue that would otherwise arise.

## THE REMEDY

Having found that the Board had exceeded its powers, the Court reviewed and set aside the Board's decision. Importantly, the Court did not substitute its own decision for that of the Board. Instead, the matter was remitted to the Valuation Appeal Board for reconsideration by a differently constituted Board. This approach recognises the specialised statutory role of the Board in determining valuation appeals.

The Court considered that it was not well placed to determine the correct categorisation of the property in the first instance. That function remained within the Board's specialised competence, provided that the Board exercised its powers lawfully. There was also no order as to costs, given that the litigation was between organs of state within the same municipal framework.

## CONCLUSION

This judgment is a useful reminder that the exercise of public power must remain within the boundaries of the empowering legislation. The Valuation Appeal Board has an important role in resolving disputes concerning municipal valuations and property categorisation. Its *de novo* appeal powers, however, do not permit it to assume the constitutional or review powers of a court.

The central lesson from the judgment is therefore one of institutional competence and legality: the Board may interpret and apply the law and the applicable municipal policy, but it may not declare that policy unlawful or simply disregard it because it considers it inconsistent with higher law.

Where the validity of municipal policy is in issue, the appropriate forum is a court exercising its review jurisdiction. The judgment consequently provides valuable guidance not only to Valuation Appeal Boards and municipalities, but also to property owners and legal practitioners navigating disputes concerning municipal property rates and valuation rolls.



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<sup>1</sup> *City of Johannesburg Metropolitan Municipality and Another v Valuation Appeal Board: City of Johannesburg Metropolitan Municipality and Others* [2026] ZAGPJHC 378.

<sup>2</sup> *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC).