



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no. 1056/2022

In the matter between:

KOUGA LOCAL MUNICIPALITY

Appellant

and

**ST FRANCIS BAY (WARD 12)
CONCERNED RESIDENTS' ASSOCIATION**

First Respondent

**ST FRANCIS BAY PROPERTY OWNERS
ASSOCIATION**

Second Respondent

ST FRANCIS BAY PROPERTY OWNERS NPC

Third Respondent

Neutral Citation: *Kouga Local Municipality v St Francis Bay (Ward 12) Concerned Residents' Association and Others* (Case no. 1056/2022) [2023] ZASCA 168 (1 December 2023)

Coram: NICHOLLS and MABINDLA-BOQWANA JJA and BINNS-
WARD, MASIPA and UNTERHALTER AJJA

Heard: 13 November 2023

Delivered: 1 December 2023

Summary: Local government – section 22 of the Local Government: Municipal Property Rates Act 6 of 2004 (PRA) – establishment by municipalities of special rating area (SRAs) – attack on legal validity of the appellant’s rates policy and by-law concerning the establishment of SRAs on grounds of alleged inconsistency with s 22 of the PRA and allegation that the appellant unlawfully abrogated its powers and functions by delegating same to applicant ratepayers’ organisation and non-profit company (NPC) established to be management body of proposed SRA.

Civil practice and procedure – evidence and argument not cognisably related to relief sought in notice of motion, irrelevant – argument on grounds not properly founded in the papers disregarded for the purposes of determination of appeal.

ORDER

On appeal from: Eastern Cape Division of the High Court, Port Elizabeth (Mjali J, sitting as a court of first instance):

1. The appeal is upheld.
2. The order of the court a quo is set aside and substituted with the following:
‘The application is dismissed with no order as to costs.’

JUDGMENT

BINNS-WARD AJA (NICHOLLS and MABINDLA-BOQWANA JJA and MASIPA and UNTERHALTER AJJA concurring):

[1] It is notorious that most local authorities in South Africa struggle to deliver municipal services at anything approaching optimal levels. The phenomenon is by no means unique to this country. A way of alleviating the problem that has been adopted in many countries around the world is the creation of improvement districts within local government areas.¹ The owners or occupiers in such areas bind themselves to pay a premium on their property taxes. The extra tax is ring-fenced in the local authority’s accounts, and the revenue is expended on providing enhanced municipal services in the district in accordance with a contractual arrangement between the ratepayers, or an entity representing them,

¹ The nomenclature for such improvement districts varies country by country. In the United Kingdom, for example, one encounters ‘business improvement districts’ and in parts of the United States ‘community improvement districts’. The establishment of business improvement districts in Britain is regulated by part 4 of chapter 2 of the Local Government Act 2003 (cap.26).

and the local authority. In South Africa these are called ‘special rating areas’ (SRAs), although the term ‘city improvement district’ is also often used.

[2] The appellant is the Kouga Local Municipality, which has its seat in Jeffreys Bay, Eastern Cape. The appeal concerns the legality of the establishment by the appellant, of an SRA in St Francis Bay. The area demarcated for the SRA is in part of Ward 12 of the appellant’s municipal area.

[3] The establishment of SRAs is regulated by s 22 of the Local Government: Municipal Property Rates Act 6 of 2004 (the PRA). This appeal turns on the import of s 22, properly construed. The text provides as follows:

‘Special rating areas

(1) A municipality may by resolution of its council-

- (a) determine an area within that municipality as a special rating area;
- (b) levy an additional rate on property in that area for the purpose of raising funds for improving or upgrading that area; and
- (c) differentiate between categories of properties when levying an additional rate referred to in paragraph (b).

(2) Before determining a special rating area, a municipality must-

- (a) consult the local community, including on the following matters;
 - (i) the proposed boundaries of the area; and
 - (ii) the proposed improvement or upgrading of the area; and
- (b) obtain the consent of the majority of the members of the local community in the proposed special rating area who will be liable for paying the additional rate.

(3) When a municipality determines a special rating area, the municipality-

- (a) must determine the boundaries of the area;
- (b) must indicate how the area is to be improved or upgraded by funds derived from the additional rate;
- (c) must establish separate accounting and other record-keeping systems regarding-

- (i) the revenue generated by the additional rate; and
 - (ii) the improvement and upgrading of the area; and
- (d) may establish a committee composed of persons representing the community in the area to act as a consultative and advisory forum for the municipality on the improvement and upgrading of the area, provided representivity, including gender representivity, is taken into account when such a committee is established. Such a committee must be a subcommittee of the ward committee or committees in the area, if the municipality has a ward committee or committees in the area.

(4) This section may not be used to reinforce existing inequities in the development of the municipality, and any determination of a special rating area must be consistent with the objectives of the municipality's integrated development plan.

(5) This section must be read with section 85 of the Municipal Systems Act if this section is applied to provide funding for an internal municipal service district established in terms of that section of the Municipal Systems Act.'

[4] Section 22 falls to be construed with due regard to its context in the constitutional scheme for local government. A municipality derives its power to levy rates on property from s 229(1) of the Constitution, which makes that power subject to regulation by national legislation, the PRA. Section 2(3) of the PRA obliges municipalities to exercise their rating powers subject to the Act and the rates policy that every municipality is obliged by s 3 of the Act to adopt. A municipality is required by s 6(1) of the PRA to adopt and publish by-laws, in the manner prescribed by ss 12 and 13 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act), to give effect to its rates policy. Section 22 should also be understood with reference to the pertinent provisions

of Chapter 7 of the Constitution, especially ss 152² and 153³ concerning the objects of local government and the developmental duties of municipalities.

[5] On 19 December 2017, the appellant's municipal council adopted an amendment to its rates policy and passed a new by-law to give effect to it. The amendment to the policy introduced, in paragraph 23, a provision that Part A of the policy would 'apply to Special Rating Areas as envisaged in Section 22 of the [PRA]'. The new by-law was gazetted on 29 December 2017.

[6] The declared object of Part A of the rates policy is 'to provide a framework and procedure under which owners of properties within the jurisdiction of the Municipality can initiate the establishment of [an] SRA and undertake the improvement or upgrading of the SRA funded by additional rates to be levied on the SRA Properties by the Municipality, subject to an acceptable agreement being concluded between the Municipality and a management body to be established by the owners of the SRA Properties'. 'Management Body' is specially defined to mean 'the management body of [an] SRA which shall only be a Non-Profit Company established in terms of the Companies Act 71 of 2008'.

[7] The St Francis Property Owners Association, which is the second respondent in the appeal, submitted an application to the appellant on 23 February

² Section 152 of the Constitution provides:

'Objects of local government'

(1) The objects of local government are

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.

(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).'

³ Section 153 of the Constitution provides:

'Developmental duties of municipalities'

A municipality must-

- (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- (b) participate in national and provincial development programmes.'

2018 for the establishment of an SRA in a demarcated area of St Francis Bay.⁴ The application was supported by a majority of the affected ratepayers. The demarcated area, which includes a system of artificially created canals between the properties, is protected from the erosive and potentially flooding effects of the adjoining Indian Ocean by a spit of beach sand. The spit had, for several years, been diminishing in extent due to the forces of nature. Many property owners in the area were concerned that the spit's likely eventual disappearance would expose their properties to flooding and other damage. The municipality acknowledged the problem but was constrained to confess that it lacked the financial wherewithal to undertake effective measures to protect and restore the spit and the adjoining beach.

[8] The second respondent's primary object in seeking to have an SRA established by the municipality was to raise the necessary funding to address the perceived danger and create the mechanism through which that might be achieved. The other objects of the intended SRA were the improved maintenance of the municipal road network and the installation and maintenance of a CCTV security camera network in the demarcated area.

[9] The third respondent is St Francis Property Owners NPC, a non-profit company established in terms of the Companies Act, 2008. The company was set up at the instance of the second respondent during 2016, when it was initially sought to establish an SRA in the area, as the management body of the proposed SRA. The initial endeavour was frustrated because it became apparent that majority support from the owners in the larger area of Ward would not be obtainable and that the appellant's rates policy did not make provision for SRAs.

⁴ It appears that the application was formally submitted in the name of the third respondent, a non-profit company established at the instance of the second respondent. That was probably done by reason of the effect of the definition of 'Applicant' in paragraph 1 of Part A of the appellant's rates policy: "'Applicant' means any Owner who makes an application for the establishment of a SRA in accordance with the provisions of this Part, or when a Management Body is established in terms hereof, any reference to the 'Applicant' means the said 'Management Body'". I shall give a fuller description of the second respondent later in this judgment.

The third respondent was again utilised as the proposed management body for the purpose of the application submitted by the second respondent to the municipality in February 2018. The insertion of Part A into the appellant's rates policy appears to have been precipitated by the appreciation that a framework was required for the municipality to be able to process and determine the second respondent's application.

[10] After the completion of a process, which the appellant's municipal council was satisfied complied with the prescribed requirements in Part A of the rates policy, the council acceded to the application for the establishment of the SRA, with the third respondent being confirmed as the area's management body. The council decision to approve the establishment of the SRA was made at a special sitting on 23 May 2018, convened so that the establishment of the SRA could be accommodated in the municipality's budget for the financial year commencing on 1 July 2018. As a result of the decision, a special rate amounting to a surcharge of 25 percent on the normal rate has been levied by the appellant on the owners of property in the demarcated area with effect from 1 July 2018.

[11] On 26 September 2018, a newly constituted body called the St Francis Bay (Ward 12) Concerned Residents' Association⁵ (the first respondent) instituted an application in the High Court to set aside the decision by the appellant's municipal council to establish the SRA. Ward 12 extends well beyond the predominantly affluent area demarcated for the SRA. The first respondent's papers did not disclose what proportion of its membership is comprised of owners or residents within that part of Ward 12 demarcated for the SRA, as distinct from those owning property or living in the parts of the ward outside the SRA.

⁵ An unsigned copy of the body's constitution was annexed to the founding affidavit. The unsigned document provided for signature thereof to be effected on an unspecified date in 2018.

[12] The first respondent sought the following substantive relief from the court:

1. An order that Part A of the municipality's rates policy be declared 'unconstitutional *as being in conflict with section 22* of the [PRA]'. (Emphasis supplied.)
2. An order that the decision of the municipal manager or other municipal officials to permit the second and/or third respondents to conduct and manage the process in respect of which the decision to declare the special rating area was made be reviewed and set aside; alternatively, that the failure of the municipality's officials to conduct and manage the process be reviewed and set aside.
3. An order that the decision of the municipal council on 23 May 2018 to declare the special rates area be reviewed and set aside, alternatively be declared to have been unlawful and void.⁶

The appellant opposed the application. The matter was argued before Mjali J, who granted an order against the municipality in the terms sought in the notice of motion. The appeal comes to this Court with leave granted by the court a quo.

[13] The conceptual premise upon which the relief was sought by the first respondent was what it contends to be the import of s 22 of the PRA, properly interpreted. The first respondent contended that as s 22 of the PRA empowered *the municipality* to establish special rating areas, it was therefore only *the municipality*, and nobody else, that could initiate and run the process leading up to the establishment of such areas.

[14] If the argument were sound, it would have to follow that Part A of the appellant's rates policy was void by reason of its inconsistency with the enabling provision. Any decision of the municipal council following upon the process

⁶ Just as the appellant's counsel did in argument, I have rearranged the order in which the relief sought is described to create a more logical sequence than the arrangement in which it was set out in the notice of motion.

conducted by the second respondent in accordance with the framework provided by Part A would then fall to be vitiated because it was taken in terms of a legally invalid policy. The municipality would be unable to lawfully levy special rates, if that were done in terms of a rates policy that was void in relevant part. Were the first respondent to have made out a case that Part A was void, the second and third of the aforementioned heads of relief would accordingly fall to be granted consequentially; *aliter*, if it had not.

[15] Ironically, the first respondent adduced evidence in its replying papers attacking the council's decision to establish the SRA on the basis that the process had not been compliant with Part A of the appellant's rates policy and that the public consultation process in that connection had fallen short of the relevant prescripts in the Systems Act.⁷ That evidence was irrelevant, however. It is trite that in motion proceedings the papers stand as the pleadings and evidence do in action proceedings. The relevance of the evidence offered is dependent on its cogent connection with the relief being sought which, in an application, is defined in the notice of motion.

[16] In their argument in this Court, the first respondent's counsel attacked the municipal council's decision on a number of grounds unrelated to the case made out in the founding papers, including the alleged failure by the council and the second respondent to comply with the impugned part of the rates policy. The appellant's counsel, understandably, objected to those arguments being entertained because they were unrelated to the proper interpretation of s 22 of the PRA and the legal validity of Part A of the rates policy.

[17] Insofar as the first respondent's counsel sought to rely on *CUSA v Tao Ying Metal Industries and Others*,⁸ to argue issues outside the papers, this was

⁷ Notwithstanding an averment by the deponent to its replying papers that '*the Applicant's* [ie first respondent's] case is focussed on the content of the By-Law and the manner in which the SRA came into existence, not the public participation phase thereof'.

⁸ *CUSA v Tao Ying Metal Industries and Others* [2008] ZACC 15 (18 September 2008); 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC) ; [2009] 1 BLLR 1 (CC) ; (2008) 29 ILJ 2461 (CC) para 68.

misplaced. In *CUSA* it was held that ‘where a point of law is apparent on the papers but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, *mero motu*, to raise the point of law and require the parties to deal therewith.’ That was not the position here. In the current matter, the extraneous legal issues that the respondent’s counsel sought to argue were dependent on fact-based determinations for which a case had not been made out in the founding papers.

[18] The appeal will therefore be determined strictly with reference to the case advanced by the first respondent in its founding papers. The essence of it was the contention that the appellant had unlawfully delegated its role in terms of s 22 of the PRA to the second and third respondents. It argued that Part A of the appellant’s rates policy was unconstitutional because its provisions were directed at facilitating or enabling the allegedly unlawful delegation of the appellant’s governmental functions and responsibilities to persons or bodies outside government.

[19] I turn then to examine Part A of the appellant’s rates policy. It provides that any owner of rateable property or a non-profit company established for the purpose of administering an SRA may apply to the municipal council for the establishment of an SRA. The requirements with which such an application must comply are set forth in paragraphs 4 – 6 of Part A. In summary:

1. The application must be in writing in such form as the municipality might prescribe.
2. It must be submitted within nine months after the date of the holding of a public meeting that the applicant is required to convene to consider the proposal.
3. The applicant is required

- (i) to publish notice of the forementioned meeting in at least two daily newspapers circulating in the area of the proposed SRA, prominently place posters within the area of the SRA advertising the meeting and
- (ii) give written notice of it individually to all of the owners of rateable property within the proposed SRA.

4. The forementioned notice must state the purpose of the meeting and provide details of the place, date and time of the meeting, it must also state where –

- (i) the proposed 5-year SRA business plan,
- (ii) the memorandum (or draft memorandum) of incorporation of the proposed management body, and
- (iii) the motivational report compiled in compliance with paragraph 4.3.6

will be available for inspection. It must also identify the municipal offices at which objections to the SRA business plan may be lodged, and state by when that must be done.

5. The proposed SRA business plan is required to address the following matters:

- 5.1 the services to be provided to improve or upgrade the SRA;
- 5.2 the manner in which the proposed improvements or upgrades will be implemented;
- 5.3 the timescale for achievement of the improvements or upgrades;
- 5.4 ‘an implementation program’ setting out ‘the implementation milestones, dates and responsibilities’;
- 5.5 ‘the aggregate SRA rates that are proposed to be levied by the municipality’;

5.6 payment of any administration fee that the municipality may from time to time determine’.

6. The memorandum of incorporation of the proposed management body must provide –

6.1 that only owners of property within the proposed SRA may be members of the company, and

6.2 that each owner of each rateable property within the proposed SRA shall have one vote.

(If an application is approved, the municipality is entitled, in terms of paragraph 11 of Part A, to nominate a political representative to attend and participate, but not vote, at meetings of the management body.)

7. The prescribed motivation report is required to contain:

7.1 a list of all rateable properties in the proposed SRA, differentiated by category in accordance with s 8(2) of the PRA, with particulars of their owners and municipal valuation roll values;

7.2 a diagram clearly indicating the boundaries of the proposed SRA;

7.3 an executive summary of the improvement or upgrade proposed for the SRA as set out in the SRA business plan;

7.4 an explanation of how the proposed improvement or upgrade is linked to the geographical area of the SRA;

7.5 an explanation of why the proposed SRA will not reinforce existing inequities in the development of the municipal area; and

7.6 an explanation of how the SRA, if it were established, would be consistent with the municipality’s integrated development plan.

8. The advertised meeting must be held, ‘chaired by a suitably qualified and experienced person’ and attended by a representative of the municipality. Minutes must be kept of the proceedings which must be available for inspection by members of the local community.

[20] An application to the appellant’s municipal council for the establishment of an SRA must evidence that all of the forementioned requirements have been complied with. It must also be accompanied by copies of the draft agreements (if any) that the applicant considers necessary for the proposed management body and the municipality to enter into in order for the submitted SRA business plan to be successfully implemented. The applicant is required to provide proof, to the satisfaction of the municipality, that a majority of owners of rateable property within the proposed SRA have approved the proposed business plan and consented to the establishment of the proposed SRA.

[21] Part A of the appellant’s rates policy further provides that any owner of property within the proposed SRA and any member of the ‘local community’⁹ may submit written objections to the establishment of the SRA and provides for a four-week window of opportunity after the application has been lodged in which they can do so.

[22] It is clear that all of the forementioned requirements of the appellant’s rates policy were directed at achieving compliance with the prescripts of s 22 of the PRA.

[23] Section 22 does not contain any prescription concerning the initiation of the process to establish an SRA. All that it does is prescribe, in broad terms, the nature of consultation that must precede any decision by a municipal council to

⁹ ‘Local community’ bears the meaning defined in s 1 of the PRA, viz. ‘(a) ... that body of persons comprising (i) the residents of the municipality; (ii) the ratepayers of the municipality; (iii) any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality; and (iv) visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality; and (b) includes, more specifically, the poor and other disadvantaged sections of such body of persons’.

establish an SRA¹⁰ and the considerations that a council must weigh in making the decision.¹¹

[24] The provision, in relevant part, is conceptually, rather than procedurally, prescriptive. It gives municipalities a relatively free hand in how to go about establishing SRAs. Obviously, municipalities are obliged, in relation to s 22(2)(a), to comply with the Systems Act concerning public participation and notice. The detail of what is required in this regard in given cases will necessarily vary depending on the circumstances.

[25] Part A of the appellant's rates policy plainly contemplates that the initiating steps for the establishment of an SRA would ordinarily be undertaken by the affected ratepayers, culminating in an application by those ratepayers to the municipality. It does nevertheless also record that its provisions do not detract from the entitlement of the municipality itself to initiate the establishment of such a rating area.

[26] It is evident from s 22(2)(b) of the PRA that, irrespective of the identity of the initiating party, an SRA can only be established with the support of more than half of the ratepayers who will be liable to pay the additional rate.¹² This highlights that the establishment of an SRA will always entail a cooperative effort between the legislative and executive branches of a municipality, of the one part, and the affected ratepayers, of the other. A municipality is not empowered to unilaterally foist an SRA on a community of ratepayers, the majority of whom are opposed to its establishment.

[27] The construction of s 22 for which the first respondent contends is fundamentally dependent on giving the word 'municipality' wherever it appears

¹⁰ See s 22(2) of the PRA.

¹¹ See s 22(3) and (4) of the PRA.

¹² Section 22(2)(b). It may be gleaned from the rates policies of certain other municipalities that the measure of required support from affected ratepayers is sometimes fixed even higher than a simple majority. The rates policies of other municipalities are published online as contemplated by s 21B of the Systems Act.

in the provision a limited meaning, restricted only to the legislative and executive manifestations of the concept. The word, however, has a wider import; not only in ordinary English, but also in the specially defined language used in the suite of local government legislation enacted between the years 1998 and 2004, of which the PRA is an integral component. The suite comprises the Local Government: Municipal Structures Act 117 of 1998, the Systems Act, the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA) and the PRA.

[28] This Court held in *South African Property Owners Association v Council of the City of Johannesburg Metropolitan Municipality and Others*,¹³ that '[t]he three Acts [the judgment omitted Act 117 of 1998] must be read together as they form part of the suite of legislation that gives effect to the new system of local government'.¹⁴

[29] Section 2(b) of the Systems Act provides that a municipality consists of (i) the political structures and administration of the municipality; and (ii) the community of the municipality. The conceptualisation of 'municipality' in the Systems Act is consistent with the import of the word in ordinary English usage. The primary definition of 'municipality' given in *The Shorter Oxford English Dictionary* 3ed is 'A town, city, or district possessed of privileges of local self-government, also applied to its inhabitants collectively'.

[30] The definition of 'municipality' originally contained in s 1 of the PRA applied the definition in s 2 of the Systems Act. It was deleted by s 1(g) of the Local Government: Municipal Property Rates Amendment Act 29 of 2014, without substitution. Bearing in mind the integral relationship of the respective

¹³ *South African Property Owners Association v Council of the City of Johannesburg Metropolitan Municipality and Others* [2012] ZASCA 157; 2013 (1) SA 420 (SCA); 2013 (1) BCLR 87 (SCA); [2013] 1 All SA 151 (SCA) para 8.

¹⁴ The judgment took the term 'suite of legislation' from the preamble to the Systems Act, which describes that statute as 'an integral part of a suite of legislation that gives effect to the new system of local government'. See also *Nelson Mandela Bay Municipality v Amber Mountain Investments 3 (Pty) Ltd* 2017 (4) SA 272 (SCA) para 1.

statutes, there is every reason to interpret the language used in them consistently unless the context requires otherwise.

[31] Section 22 of the PRA contains nothing that would prevent the legislative or executive organs of a municipality of their own initiative establishing an SRA. In the ordinary case, however, it would only be ratepayers dissatisfied with the level of municipal services being delivered, and willing to pay a premium on their rates to improve the position, who would agitate for the creation of an SRA in their local area. Those ratepayers, collectively, would be the obvious persons to (i) decide how their interests would be best served by the establishment of an SRA, (ii) identify the issues it should address and (iii) devise a business plan directed at achieving the desired improvements within a budget that they were willing to finance. Giving the potentially affected ratepayers an initiating role in the process of establishing SRAs would therefore not only be pragmatic, it would also be a way of fulfilling a municipality's obligation, in terms of s 152(2) of the Constitution, to strive to achieve one of the important objects of local government, viz 'to encourage the involvement of communities and community organisations in the matters of local government'.¹⁵

[32] In contrast, construing s 22 in the manner contended for by the first respondent would be to place already resource-challenged local authorities under an additional administrative burden of having to identify areas that might benefit from the establishment of an SRA, canvassing the potentially affected ratepayers and running some form of electoral process to determine whether the statutorily required level of support for its establishment could be achieved. The exercise, which – as the initial attempt at establishing an SRA in a larger area in this case illustrated – could be abortive, and it would inevitably come at a cost to the general body of ratepayers and members of the local community, most of whom

¹⁵ Section 152(1)(e) of the Constitution.

would have little interest in the establishment of SRAs where their properties were not situated.

[33] The respondent appears not to have considered that the administrative burden that its construction of s 22 would place on municipalities would come at a cost, which municipalities that are finding it impossible to deliver services at the desired levels are unlikely to be able to afford. It is a construction that would thwart the objective that the legislature clearly had in mind and, would be antagonistic to the purposive approach enjoined by modern principles of statutory construction.¹⁶

[34] The appellant's rates policy on the establishment of SRAs does not abrogate the municipality's function. It provides for the municipality to play a participatory and supervisory role at every step of the way.

[35] In its founding papers, the first respondent also attacked the decision by the appellant's municipal council to establish the SRA because it was made subject to certain amendments to the business plan that was submitted in support of the application. It contended that the municipality's determination should, in the circumstances, have been deferred to enable further public consultation in terms of s 22(2) of the PRA.

[36] There is no merit in the point. Firstly, it assumes the validity of Part A of the appellant's rates policy and is consequently at odds with the essence of the first respondent's case, which was predicated on a contention to the contrary. Secondly, and in any event, the amendments were not material. They did not affect the amount of the extra levy that the affected ratepayers would have to pay, or the nature of the upliftment projects that the SRA was established to tackle. As pointed out by this Court in *Kouga Municipality v Bellingan and Others*,¹⁷

¹⁶ Cf *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 29.

¹⁷ *Kouga Municipality v Bellingan and Others* [2011] ZASCA 222; 2012 (2) SA 95 (SCA); [2012] 2 All SA 391 (SCA) para 9.

‘... not every change has to be advertised otherwise the legislative process would become difficult to implement’.

[37] Finally, the first respondent attacked the legality of the provisions in the appellant’s rates policy providing for the establishment of a management body for an SRA, and the municipality’s contractual relationship with it. Its primary contentions were that the concept of a management body was irreconcilable with s 22(3)(d) of the PRA which provides that a municipality may establish a consultative and advisory forum for the improvement and upgrading of an area that has been established as an SRA. However, a municipality is under no obligation to do so. A management body functions as an implementation agency of the municipality in respect of the business plan approved by the council for the purposes of satisfying the requirements of s 22(3)(b) and (c) of the PRA. It is not a consultative and advisory body of the character contemplated by s 22(3)(d).

[38] Secondly, it was argued that the financial agreement between the municipality, represented by its accounting officer, and the management body – an arrangement of the sort contemplated by paragraph 13 of Part A of the appellant’s rates policy – was at odds with the MFMA, which made no provision for the ‘delegation of the accounting officer’s functions to a private body such as the SRA Management Body’. In other words, the payment by the municipality of the special rates to the management body for use in terms of the approved business plan constituted an impermissible delegation of the appellant’s accounting officer’s powers and functions.

[39] The responsibilities of the accounting officer of a municipality are regulated by Chapter 8 (ss 60-79) of the MFMA. They include revenue management,¹⁸ expenditure management¹⁹ and budget implementation.²⁰ An accounting officer is not, however, precluded by the definition of his or her

¹⁸ Section 64 of the MFMA.

¹⁹ Section 65 of the MFMA.

²⁰ Section 69 of the MFMA.

responsibilities, or the limitations on his powers of delegation,²¹ from transferring funds to organisations and bodies outside government for municipal purposes. The transfer of funds by the appellant's accounting officer to the management body of the SRA is permitted by s 67 of the MFMA, subject to the prescripts of that provision.²²

[40] It follows that the first respondent failed to make a case for the relief that it sought in the court below, and the judge at first instance therefore erred by granting it. The appeal will accordingly be upheld. The parties accepted that in that event there should be no order as to costs.²³

[41] An order will issue in the following terms:

1. The appeal is upheld.

²¹ Section 79 of the MFMA.

²² Section 67 provides:

'Funds transferred to organisations and bodies outside government

(1) Before transferring funds of the municipality to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction, the accounting officer must be satisfied that the organisation or body-

(a) has the capacity and has agreed-

- (i) to comply with any agreement with the municipality;
- (ii) for the period of the agreement to comply with all reporting, financial management and auditing requirements as may be stipulated in the agreement;
- (iii) to report at least monthly to the accounting officer on actual expenditure against such transfer; and
- (iv) to submit its audited financial statements for its financial year to the accounting officer promptly;

(b) implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement; and

(c) has in respect of previous similar transfers complied with all the requirements of this section.

(2) If there has been a failure by an organisation or body to comply with the requirements of subsection (1) in respect of a previous transfer, the municipality may despite subsection (1) (c) make a further transfer to that organisation or body provided that-

(a) subsection (1) (a) and (b) is complied with; and

(b) the relevant provincial treasury has approved the transfer.

(3) The accounting officer must through contractual and other appropriate mechanisms enforce compliance with subsection (1).

(4) Subsection (1) (a) does not apply to an organisation or body serving the poor or used by government as an agency to serve the poor, provided-

(a) that the transfer does not exceed a prescribed limit; and

(b) that the accounting officer-

- (i) takes all reasonable steps to ensure that the targeted beneficiaries receive the benefit of the transferred funds; and
- (ii) certifies to the Auditor-General that compliance by that organisation or body with subsection (1) (a) is uneconomical or unreasonable.'

²³ Cf. *Biowatch Trust v Registrar, Genetic Resources, and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC) ; 2009 (10) BCLR 1014 (CC) para 21-25.

2. The order of the court a quo is set aside and substituted with the following:

‘The application is dismissed with no order as to costs’.

A G BINNS-WARD

ACTING JUDGE OF APPEAL

Appearances:

Appellant's counsel: A Byleveld SC and T Rossi

Instructed by: McWilliams & Elliot Inc

Gqeberha

Webbers

Bloemfontein

First Respondent's counsel: N J Mullins SC and G. Joubert

Instructed by: Richardt van Rensburg Inc

Graaff Reinet

Honey Attorneys

Bloemfontein