

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

BEFORE THE HONOURABLE JUSTICE KUNY

HELD ON 13 AND 14 FEBRUARY 2023 via MS TEAMS

Case Number: 22/24174

In the matter between:

AFRIFORUM NPC

Applicant

and

THE COUNCIL OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY

Second Respondent

THE MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS

Third Respondent

THE MINISTER OF BASIC EDUCATION

Fourth Respondent

MEMBER OF THE EXECUTIVE COUNCIL
FOR EDUCATION, GAUTENG PROVINCE

Fifth Respondent

THE MINISTER FOR HIGHER EDUCATION
AND TRAINING

Sixth Respondent

THE EXECUTIVE MAYOR OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY

Seventh Respondent

and

Case Number: 22/24372

In the matter between:

THE INDEPENDENT INSTITUTE OF EDUCATION
(PTY) LTD

First Applicant

ADVTECH LTD

Second Applicant

and

THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

First Respondent

MUNICIPAL MANAGER OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Second Respondent

MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS Third Respondent

MINISTER OF FINANCE Fourth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG PROVINCE Fifth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION, GAUTENG PROVINCE Sixth Respondent

And

In the matter between:

CURRO HOLDINGS LTD First Applicant

and

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY First Respondent

MUNICIPAL MANAGER OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Second Respondent

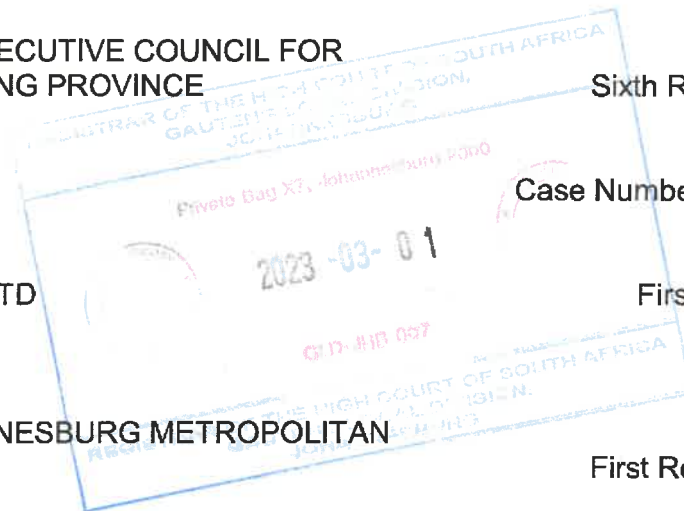
MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS Third Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG PROVINCE Fourth Respondent

MINISTER OF FINANCE Fifth Respondent

MEMBER OF EXECUTIVE COUNCIL FOR GAUTENG PROVINCIAL TREASURY, GAUTENG PROVINCE Sixth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION, GAUTENG PROVINCE Seventh Respondent



ORDER

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HAVING read and considered the papers filed of record and having heard counsel for the parties, the following joint order is made in respect of the aforesaid matters:

1 The property rates policy, municipal property rates by-law, annual budget and supplemented valuation roll set out below are declared to be unlawful and are set aside only insofar as they relate to the rates levied by the City of Johannesburg Metropolitan Municipality (the "City") on properties used for education (whether by independent, private or public educational institutions) that have been included in the categories "Business and commercial" or "Public service purpose" in terms of sections 8(2)(c) and 8(2)(f) of the Local Government: Municipal Property Rates Act 6 of 2004 ("the Rates Act"):

1.1 The City of Johannesburg Metropolitan Municipality's Property Rates Policy for 2022/2023;

1.2 The City of Johannesburg Municipal Property Rates By-law 2022/23 adopted by the City on 27 May 2022 and published in the Provincial Gazette on 29 June 2022;

1.3 The City's annual budget for 2022/2023;

1.4 The supplementation of the City's valuation roll for 2022/2023.

2 The decision of the City in its 2022/2023 Rates Policy, rating properties owned

and/or used by public and independent educational institutions, (whether used privately, for public service purposes or for a specified public benefit activity), with a ratio exceeding 1:0.25 and a rate tariff exceeding 0.002155, is declared unlawful and is set aside with effect from 1 July 2022.

3 Pending the City's adoption of its rates policy, budget, municipal property rates by-law, and supplementary valuation roll for the 2023/2024 financial year, the City is directed in respect of its property rates policy for the 2022/2023 financial year, to levy and collect rates on the properties referred to in paragraphs 1 and 3 above at the same rate and on the same tariff imposed in the 2021/2022 financial year, together with an inflationary increase of 4,85%.

4 Save as aforesaid, the City's Property Rates Policy 2022/2023, annual budget for 2022/2023, Municipal Property Rates By-Law 2022/2023 (promulgated on 29 June 2022), Amendment of Property Rates and Tariff of Charges and supplementary valuation roll for 2022/23, are of full force and effect.

5 It is declared that the first respondent is not precluded from determining the category of "Education" in terms of section 8(3) of the Rates Act in prospective municipal property rates policies on the grounds, only, that it would circumvent any of the categories set out in section 8(2) of the Rates Act.

6 In the matters under case number 22/24174 (Afriforum NPC as applicant) and case number 22/8831 (Curro Holdings Ltd as applicant) the following costs

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order shall apply:

6.1 Each party shall pay their own costs in respect of the urgent applications brought by the applicants in or about June and July 2022 against the first and further respondents.

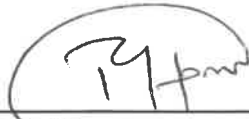
6.2 Save as aforesaid, the first and second respondent are ordered to pay the applicants' costs (including the costs of the hearing on 24 and 25 November 2022), such costs to include the costs of two counsel.

7 In the matter under case number 22/24372 (Independent Institute of Education (Pty) Ltd) the following costs order shall apply:

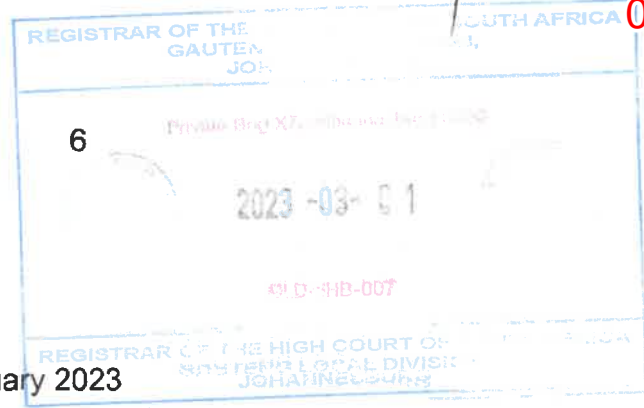
7.1 Each party shall pay their own costs in respect of the urgent applications brought by the applicant in or about June and July 2022 against the first and further respondents.

7.2 Save as aforesaid, the first, second and third respondent are ordered to pay the applicant's costs (including the costs of the hearing on 24 and 25 November 2022), jointly and severally, the one paying the others to be absolved, such costs to include the costs of two counsel.


BY ORDER



REGISTRAR



Date of hearing: 13 and 14 February 2023

Date of Order: 28 February 2023

Independent Institute of Education (Pty) Ltd - (Case No: 22/24372)

Applicant's Counsel

Mervyn Rip SC: 083 279 6488 / ripmerv@law.co.za
Jean Verwey: 076 868 8343 / Verwey.law@gmail.com

Applicant's Attorneys

Ivan Pauw & Partners Attorneys
Emails: travis@ippartners.co.za / nzuzo@ippartners.co.za
Telephone: 012 369 9180 / 071 684 6583

First and Second respondents Counsel:

Benny Makola SC: 082 498 6227/benny.makola@group621.co.za
Sunday Ogunronbi: 082 577 5655 / Sunday@law.co.za
KAR Thobakgale: 078 685 5508 / kthobakgale@group621.co.za

First and Second respondents Attorneys:

Moodie & Robertson Attorneys
Email: charlesb@moodierobertson.co.za
Tel: 011 628 8600/011 720 7541

Third Respondent's Counsel

R. Rathidili SC 076 152 0046 / rayr@live.co.za
Oscar Mudimeli 072 601 6552 / advmudimeli@rsabar.com

Third Respondent's Attorneys:

State Attorney
Ms Progressive Khosa
Email: PnKhosa@justice.gov.za
Tel: 011 330 7667

Afriforum NPC - (Case No: 22/24174)

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Applicant's Counsel:

Frik Erasmus SC: 082 337 5123 / frik@clubchambers.co.za
Albert Lamey: 082 492 5013 / alamey@lascircle.co.za

Applicant's Attorneys

Hurter Spies Inc
Email: marjorie@hurterspies.co.za
Tel: 012 (941) 9239 / 072 213 9676

First and Second respondents Counsel and Attorneys - as above

Curro Holdings Ltd (Case No: 22/8831)

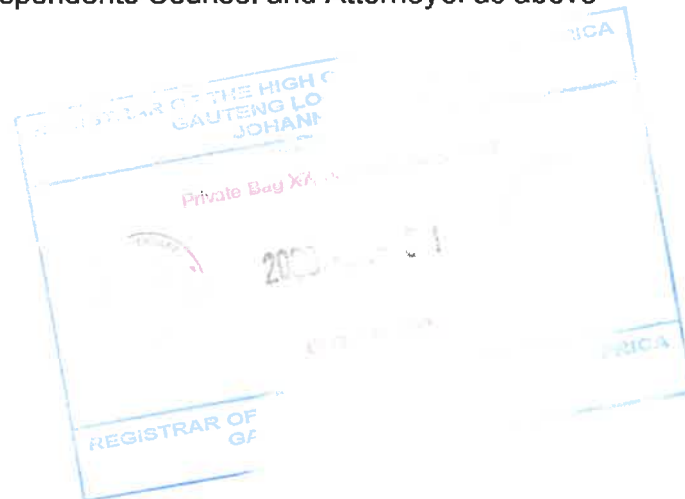
Counsel for Applicant:

JP Van Der Berg SC: Cell: 082 466 4588 / advjp1@gmail.com
Evert Van As: Cell: 076 741 2127 / Evert@Advocate-vanAs.com
Boipelo Ramela: Cell: 067 403 3629/ boipelor@group33advocates.com

Applicant's Attorneys

Couzyn Hertzog & Horak Attorneys
Email: WernerB@couzyn.co.za
Cell: 012 460 5090

First and Second respondents Counsel and Attorneys: as above



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