IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2025-090751

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED ✓

31-7-2025
DATE

SIGNATURE

In the matter between:

AFRIFORUM NPC	**APPLICANT**
and	
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**FIRST RESPONDENT**
THE MUNICIPAL COUNCIL OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**SECOND RESPONDENT**
THE EXECUTIVE MAYOR OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**THIRD RESPONDENT**
THE MUNICIPAL MANAGER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**FOURTH RESPONDENT**
THE MINISTER OF FINANCE	**FIFTH RESPONDENT**

This judgment is made an order of court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court, and is submitted electronically to the parties/their legal representatives by email. This judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her secretary. The date of this order is deemed to be 31 July 2025.

JUDGMENT

AVVAKOUMIDES, AJ

INTRODUCTION

1. This is an application brought by way of urgency and was scheduled to be heard on 24 June 2025. On 27 June 2025 the Honourable Ms Justice Bam issued the following court order, by agreement between the parties:

   1.1 The first to fourth respondents are given leave to supplement their answering affidavit before or on 9 July 2025.

   1.2 The applicant is given leave to file a reply to the respondents' supplementary affidavit in paragraph 1 *supra*, before or on 16 July 2025.

   1.3 The parties shall file their respective heads of argument by 18 July 2025.

   1.4 The case is referred to the Acting Judge President for judicial case management.

   1.5 Having regard to the referral in paragraph 4, the court cannot postpone the case to 22 July 2025 as requested by the parties, and it

is accordingly postponed *sine die*.

1.6 All the issues arising from the papers, including that of urgency, remains alive for determination by the court hearing the case in due course.

1.7 Costs are reserved.

2. On 27 June 2025 the applicant's attorneys addressed a letter to the Acting Judge President Ledwaba and copied the first to fourth respondents' attorneys therein. In such communication a request was made to the Acting Judge President for an urgent judicial case management meeting. Of importance is the communication included mention that senior counsel for both parties agreed that the importance of this case justifies a request for hearing on 22 July 2025. The aforesaid communication referred to the order of Justice Bam and, specifically the parties' right to supplement their papers along specific timelines. Following the communication to the Acting Judge President, this application was allocated to me as a special motion and set down for hearing on 24 July 2025.

3. Despite the first to fourth respondents having been granted leave to supplement its papers by 9 July 2025, the supplementary answering affidavit was only filed on 12 July 2025. No explanation for the late filing appears from the supplementary answering affidavit neither is there any condonation application for the late filing. On the other hand, the applicant was afforded until 16 July 2025 to file any supplementary papers and was only able to do so on 17 July 2025. I will deal with the late filing of the affidavits later in the context of how the City has conducted itself.

APPLICANT'S CASE

4. The applicant contends that the City of Tshwane Metropolitan Municipality ("the City") has resolved to levy what the City calls a cleansing levy, for the 2025 / 2026 financial year, commencing on 1 July 2025 and ending on 30 June 2026. The applicant, acting in the public interest has sought relief reviewing the imposition of the cleansing levy on the basis that the imposition of the levy is unlawful and irrational and further seeks to prevent the City from unlawfully taxing the public.

5. The applicant submitted that thousands of the members of public will be called upon the pay an unlawful levy for a waste collection service that the City does not provide. The applicant contends that because of the City's inability over the years to provide waste collection services, the public was constrained to establish alternative ways of having their waste disposed of at their own cost.

6. I will deal with the constitutional and legislative provisions hereunder together with the City's rationale for imposing such level.

7. I have perused all the papers filed and uploaded onto CaseLines, which run well at around 3792 pages, and I shall similarly deal with the unnecessary documents uploaded without providing the courtesy to the court to only peruse the necessary extracts from such documents. Having considered the date of the resolution adopted by the City on 29 May 2025 and the sequence of events thereafter, more particularly the importance of this case to the public at large, I find that the application is indeed urgent, and the application is deserving of being dealt with as one of urgency. I will discuss the question of urgency hereunder.

8. In its notice of motion, the applicant seeks the following relief:

8.1 Dispensing with the forms and service provided for in the rules in hearing the application as a matter of urgency

8.2 Declaring the imposition of a cleansing levy by the first to fourth respondents unlawful, invalid and of no force and effect and to set it aside.

8.3 That the declaration in paragraph 2 shall include the relevant portions applicable to the cleansing levy in the following:

(a) The 2024 / 2025 Funding Plan to approve the unfunded budget position of the City (identified by the copy attached as Annexure "FA7" to the Founding Affidavit.

(b) The 2024 / 2025 Medium-Term Revenue and Expenditure Framework (identified by the copy attached as Annexure "A" to "FA10" to the Founding Affidavit and council resolution, dated 29 May 2025 (identified by the copy attached as Annexure "FA12" to the Founding Affidavit.

(c) The Tariff Policy with effect from 1 July (identified by the copy attached as Annexure "FA13" to the Founding Affidavit.

(d) The City of Tshwane Metropolitan Municipality's By-law (identified by the copy attached as Annexure "FA16" to the Founding Affidavit; and

(e) City of Tshwane Metropolitan City Refuse Service Schedule with tariffs for Refuse Removal Services (identified by the copy attached as Annexure "FA16" to the Founding Affidavit).

9. In the event of the by-law in paragraph 8 (3) (b) above not having been published by the time this order is made, an order prohibiting the City from published the resolution and compelling it to forthwith take all reasonable measures that it will not be published.

10. In the event that the City having activated its billing system to render accounts to residents and businesses with the cleansing levy, an order –

(a) compelling the City to take all reasonable measures to ensure that residents and businesses are not billed for the cleansing levy; and

(b) to the extent that it may be too late for such reasonable measures to succeed, to forthwith take alle reasonable measures to ensure that the accounts of those residents and businesses who are billed for a cleansing levy, be credited with the same amount during the next billing cycle.

(c) just and equitable relief, in the discretion of the court.

7. [In the alternative to prayers 2 – 6 –

7.1 that the final relief sought in prayers 2 – 6 be postponed sine die.

7.2 that the case be referred to case management to the Acting Deputy Judge President.

7.3 that an order be granted pendente lite –

(a) suspending the implementation of the cleansing levy by the City;

(b) interdicting the City from levying and in any manner enforcing

the payment of cleansing levy].

8. *That the first respondent pays the costs of this application, including the costs consequent upon the appointment of senior counsel on Scale C.*

9. *Such further or alternative relief which the court may grant."*

11. Insofar as the standing of the applicant is concerned, I find no reason to accept that the applicant has the necessary standing required to launch this application. The applicant is a well-known litigant and acts as a civil rights organization. I will deal with this more fully hereunder.

12. The applicant contends that the respondents' offending resolution was taken by the City's Council on 29 May 2025. This resolution came to the attention of the applicant on 30 May 2025 when the City's attorney responded to three prior letters which the applicant and its attorneys had addressed to the City to seek clarity concerning the subject matter of this case.

13. Pursuant to correspondence addressed to the City requesting it to desist from imposing the cleansing levy, the City, on 9 June 2025 indicated in writing that it would proceed with the imposition of the cleansing levy.

14. The applicant contends that, and it is common cause, that every owner and occupier of a property has a legal obligation not to accumulate waste but to dispose of it in a lawful manner. This is an obligation that may be enforced against every owner and occupier of property by the City. The applicant further contends that the City has for years, in accordance with its functions and obligations, rendered waste removal services to many residents and

occupiers of properties, businesses, industries and so forth and continues to do so. It is also common cause that waste removal comprises of various forms, including the provision of and the regular emptying of bins, larger containers and similar equipment.

15. It is further common cause that citizens who enjoy the benefit of these services ordinarily pay a waste removal charge which is commensurate with the type and volume of waste, which is removed, and this is calculated by a fixed amount per month per bin or for container rental and removal. It is similarly so that there are residents who are financially unable to pay for the services but this notwithstanding, the City continues to supply such services to them by way of an exception and the applicant contends that the City is correct to absolve such residents on an equitable basis.

16. On the other hand, there have been (and this is ongoing) many other residents and businesses who do not enjoy the benefit of the City's waste removal services and out of necessity, these residents have adopted alternative arrangements to dispose of their waste. The applicant contends that this is so because the City cannot or will not provide the services.

17. The group of residents who arrange for the removal and disposing of their own waste at their own expense do so by making use of the service of private contractors. Many residents arrange private contractors through a body corporate or some form of association according to the applicant, residents and business are increasingly making use of private refuse removal services in the form of recycling companies and in order to achieve this these businesses and residents have to, through their own effort, distinguish between the nature of the waste for purposes of recycling and have to pay such companies to collect the separately identified waste for purposes of

recycling. This waste is not dumped at municipal dumping sites or in the street and the applicant contends that this minimizes the City's waste burden.

18. The applicant contends that residents who have, or business that produced such waste have to make use of private contractors and facilities to dispose of the waste in a lawful manner. The City is only able to manage general waste and cannot transport or dispose of any other types of waste at the City's own landfills, because it is not permitted to. As examples, the applicant contends that this waste includes industrial waste such as steel, and hazardous waste such as chemicals.

19. The applicant contends that because these businesses and residents arrange, and pay for the waste collection, this should not be seen as something they do for their own benefit because it is a legal obligation resting upon such residents and businesses and greatly contributes and lends assistance to the City to comply with its legal obligations in managing waste. The applicant contends that instead of the City appreciating the efforts of the residents and businesses who arrange and pay for their own waste collection, the City, in adopting the resolution which I will deal with hereunder, intends taxing these residents and businesses.

20. The applicant contends that, on the City's own data there are 194 396 residential accounts and 62 055 business accounts for properties which are not serviced by the City insofar as waste removal is concerned. The expenses incurred by these residents and businesses are necessitated by firstly the need to dispose of the waste and secondly because they are legally obliged to dispose of the waste. The group of residents and businesses so described, employ a private contractor who in turn incurs the cost of personnel, vehicles, fuel and associated costs to dispose of the waste. The costs of the private

contractor are passed on to residents and occupiers who are obviously obliged to pay their portion of the total cost. In addition, there are additional costs which the residents and businesses have to carry in respect of dumping of the waste, the reason being that the City's dumping sites are geographically located farther than the dumping sites at private landfill sites and this route is followed to minimize the total cost which the residents and businesses have to pay.

21. The City attempted to resolve and pass a cleansing levy in 2017. The City's attempt to proceed with the levy was prevented by the intervention of the applicant. On 28 June 2017, the City published Local Authority Notice 923 of 2017 which provided:

"Withdraw and determination of various fees, charges, tariffs, and property rates and taxes payable to the City of Tshwane".

22. The applicant contends that the City sought to impose the City cleansing levy on properties with no waste account. On 28 November 2017 the applicant addressed a letter to the City objecting to the imposition of the cleansing levy therein recording that it is unlawful for the City for the reasons advanced in its founding affidavit for the City to proceed with the levy. I have had regard to Annexure "FA2" to the founding affidavit. This is the letter which the applicant addressed to the City on 28 November 2017. Of importance is paragraph 4 of such letter which states the following:

"On 28 June 2107, the City of Tshwane published a Local Authority Notice 923 of 2017 regarding the WITHDRAWAL AND DETERMINATION OF VARIOUS FEES, CHARGES AND PROPERTY RATES AND TAXES PAYABLE TO THE CITY OF TSHWANE."

23. In schedule 5 of this notice, reference is made to the imposition of the following City Cleansing Levies on properties with no waste account:

"4.1 Residential properties R127.04 per month.

4.2 Business properties R2 911.67 per month.

Under the notes it is stated that tax is payable in terms of the Value Added Tax Act (No. 89 of 1991) will be levied on charges as detailed in Schedule 5."

24. In the same letter, at paragraph 5.4 the City is advised as follows:

"The City of Tshwane is only empowered by Section 74 of the Municipal Systems Act to charge users in proportion to their use of a service. In this instance, no service is rendered at all. Furthermore, at paragraph 5.5 of such letter the following appears:

"Section 4 of the Municipal Powers and Functions Act provides that municipal taxes, other than municipal property rates which are governed by a specific act, may only be introduced by the Minister of Finance or on his or her own accord, or on application by a municipality, group of municipalities or organized local government in terms of Section 5 of this law. Whatever the case, the Minister must consult the Minister responsible for Local Government, affected municipalities and organized Local Government, the Financial and Fiscal Commission, and other Organs of State and interested persons. No regulation in this regard has been promulgated".

25. In paragraph 5.6 of the same letter the following appears:

"In the Reviewed 2017 / 2018 Integrated Development Plan (IDP) of CoT, the only reference to cleansing the City is that "Refuse removal and illegal "dumping need urgent attention and the City as a whole is becoming filthy, which must be addressed. Our refuse removal teams affected and monitored on the respective schedules?" [P5/1005 of the CoT IDP published on the website of National Treasury – no copy was available on the CoT website]. No proof could be found that the proposal of City Cleaning Levy was contained in the Peremptory Financial Plan, which every municipality must adopt as part of its annual IDP as prescribed by Regulation 2(3) of the Local Government – Municipal Planning and Performance Management Regulations, 2001 (published under GN R797NGG22605 of 24 August 2001). In addition, no proof could be found that the introduction of this cleansing levy was subjected to a process of public participation or of any compromises reached in this instance.

26. The City responded on 12 December 2017 stating that: "*a municipality has executive authority in respect of and has the right to administer the Local Government Notice listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996. Refuse removal, refuse dumps and solid waste disposal is listed as one such function in Part B of Schedule 5. Section 156(5) of the Constitution also determines that a Municipality has the right to execute and exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions. A municipality exercises its executive authority by, inter alia, "imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax*

and debt collection policies;" (Section 11 of the Local Government: Municipal Systems Act 2000 (Act 32 of 2000)."

27. It would seem to me that the concerns raised by the applicant in its letter to the City did not deal with the objection lodged by the applicant. At paragraph 9 of the City's letter the following appears:

"Given that the City Cleaning Levy Charge by the City if not a tax or surcharge but a direct service charge none of the incorrect assumptions inferred in your letter in this regard are applicable".

28. The applicant continued corresponding with the City in February and April 2018 and ultimately the City did not implement the cleansing fee and this position remained unchanged until the resolution adopted by the City which forms the subject matter of this application.

29. The applicant contends that on 14 March 2025 the Mayor of the City distributed several documents under cover of a letter with even date comprising of a document titled *"2024 / 2025 Funding Plan to improve the unfunded position of the City"*. This appears at Annexure "FA6" (CaseLines 001-50) and "FA7" (CaseLines 001-51) to the founding affidavit and at paragraph 3, under the heading "BACKGROUND" the Funding Plan set out the City's estimation of the reasons for it being in an unfunded state and the need to improve its current cash position, the revenue value chain, revenue collection rate and current ratio; and to prioritize revenue collection. In paragraph 4 of the Funding Plan the following is included:

"…waste collection into a sustainable trading service by: "Inter alia introducing plans to introduce the environmental charge in 2025 / 2026, informed by the

audit of waste collection services, can be considered as part of the program to fund the needed changes to make waste collection a trading service." "

30. The applicant refers to paragraph 6.1 of the Funding Plan which in turn refers to Section 74(2) of the Systems Act, stating:

"Tariffs must be set at a level that facilitate the financial sustainability of the service. The City is exploring the introduction of an environmental charge for all properties not receiving City service – including all vacant properties above 150 000. There are 194 396 residential accounts without waste and 62 055 business accounts without waste with possible revenue per annum of R540 million. This will come effect in (sic) *25/26 financial year".*

31. On 2 April 2025 the applicant took issue in writing with the Municipal Manager of the City referring to the Funding Plan and what is intended and requested the City to reconsider its position. The City failed to respond.

32. On 24 April 2025 the applicant again corresponded with the Municipal Manager of the City therein providing formal comments about the intended implementation of the City Cleaning Levy. By 15 May 2025 the City having not responded, the applicant's attorney addressed a further letter to the City's Municipal Manager therein referring to the City's publication of the draft 2025 / 2026 Medium Term Revenue and Expenditure Framework ("the MTREF") the City failed to respond and on 29 May 2025, unbeknown to the applicant, the council adopted the MTREF.

33. Instead, on 30 May 2025 the City's attorneys of record corresponded with the applicant (Annexure "FA11" to the founding affidavit). In this letter the following paragraphs are important:

"5. The Cleansing charge also known as the Environmental charge, falls within the ambit of a service-related tariff or a surcharge as contemplated by Section 229(1)(a) of the Constitution; Sections 74 and 75A of the Municipal Systems Act 32 of 2000 (MSA); and the constitutional duties imposed on municipalities to ensure clean and sustainable environments under Section 24 of the Constitution." At paragraph 6 of the same letter the City's attorneys state the following:

"6. The Cleaning levy is not a general tax, it is a service-related fee imposed to recover the system-wide costs of public cleansing, including street sweeping, illegal dumping enforcement, landfill rehabilitation, and the operation of municipal waste infrastructure not directly billable to refuse collection clients." At paragraph 12.1.4 of the City's attorneys' letter the following appears:

"12.1.4 "City Cleaning is an essential unbillable service and municipality must provide to achieve the objective of a clean environment as per Section 24." (this means Section 24 of the Constitution).

34. The resolution of council dated 29 May 2025 was annexed to the City's attorneys' letter of 30 May 2025. On page 4 of this document (Annexure 12 to the founding affidavit, CaseLines 008-78) under the heading "***Objection to City Cleansing Levy – Tax not tariff***", the following appears:

34.1 "Several submissions were received from the South African Property Owners Association (SAPOA), DA Caucus, AfriForum, Agricultural Holding, community members with the following concerns:

- *The proposed levy constitutes double taxation, as cleaning*

services and similar non-revenue generating functions are traditionally and legislatively funded through property faxes.

- *Tariffs must reflect the actual usage of municipal services rather than imposed fixed charges.*
- *The introduction and the determination of the tariff of the new City Cleansing Levy in the current economic climate is questioned. It is simply determined as 50% of the refuse removal tariff for a 240l x 1 per day removal. Although the principle of a monthly fixed charge (Flat rate) for the service is recognized, it should be based on the actual cost and then made applicable on all consumers."*

35. Adjacent to the recorded objections and under the heading "**Response**", the following appears:

- *"Tax – is a charge which arises simply from owning or possessing a property, i.e. the charge flows as consequence of the ownership of that property.*
- *Charge – is a fee connected to a use or benefit of a service, i.e. a property has been provided with the opportunity to use a service and have attracted a charge or a property or as resident benefit from a service provided.*
- *The City Cleansing Charge refers to a fee levied by municipalities for providing waste-related services such as, street cleaning and general urban hygiene management. These services are essential for maintaining public health and a clean environment and ae directly provided to the residents and businesses who pay for the charge.*
- *The Constitution of the Republic of South Africa, 1996 under Section 156(1)(a) and Part B of Schedule 4, empowers municipalities to*

administer functions such as cleansing and waste removal. Furthermore, Section 229(1)(a) of the Constitution provides that:

"A municipality may impose surcharges on fees for services provided by or on behalf of the municipality".

- *This provision legally affirms that municipalities may levy charges for the services they render, which includes urban cleansing. These services are not considered taxes because they are not compulsory contributions for general revenue purposes; instead, they are payments linked to direct service delivery benefit.*" Based on this resolution, it is clear that the City relied on its powers in terms of Section 229(1)(a) of the Constitution in resolving to impose the cleansing levy in issue. In considering the City's tariff policy, effective 1 July 2025, located at CaseLines 001-79 I had regard to paragraph 3.3 of the policy which refers to the Municipal Systems Act, 2000 (Act 32 of 2000) which enables the City to impose and recover rates, taxes, levies, duties, service fees and surcharges on fees. At subparagraph d) of paragraph 3 it is specifically stated that tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration, including credit control and debt collection measures as well as the replacement costs and reconnection fees, and interest charges as well as:

(i) ...

"(ii) The amount of money paid by individual users for services rendered should generally be in proportion to the use of that service."

36. In paragraph 20 of this policy under the heading City Cleansing Levy for households, business not using the solid waste removal service of the municipality, reference is made to the City's constitutional obligations and again there is provision under Section 229(1)(a) of the Constitution which provides that *a municipality may impose surcharges on fees for services provided by or on behalf of the municipality.*

37. At subparagraph e) the following appears:

"The tariff for City cleansing (included in the waste removal tariff) is levied against all premises to the equivalent of the number of waste-removal service units that are provided or could be provided at the premises. These tariffs are applicable irrespective of who removes the generated waste from the premises."

38. From a plain reading of subparagraph e) it would appear that the City has appropriated to itself the right to charge residents and businesses a waste removal service fee even under circumstances where the City has not removed the generated waste from the particular premises.

39. On 3 June 2025 the applicant's attorneys of record addressed correspondence to the City and recorded therein the reasons why the council resolution is unlawful in view of the City having approved the MTREF and the tariff policy. The City was invited to present a solution and the imposition of the tariff policy. However, on 9 June 2025 the City, through its attorneys of record, advised the Applicant that the resolution had been passed and that it would come into effect on 1 July 2025. The applicant has uploaded onto CaseLines under 001-94 an unsigned publication of the City of Tshwane Metropolitan Municipality Waste Management By-law.

40. The applicant contends that the reasons relied upon by the City show that the cleansing levy is unlawful and so much is evident from the City's own documentation which has been confirmed by the City's attorneys of record. The applicant emphasized that the City's reliance on Section 229(1)(a) of the Constitution and according to the applicant, the City specifically and expressly disavows reliance on Section 229(1)(b) of the Constitution which provides that the City may impose other taxes, levies and duties and *if it is authorized by national legislation*. The applicant further contends that Section 229(1)(a) of the Constitution authorizes the City to impose rates on property and surcharges on fees for services provided by or on behalf of the City. However, the City does not contend that the cleansing levy is a rate on property. Consequently, the applicant contends that what the City is left with is its contention that the cleansing levy is a surcharge on fees for services provided by or on behalf of the City.

41. The applicant finds support for the aforesaid in the City's attorneys of record's letter confirming that *"the Cleansing charge, also known as the Environmental charge falls within the ambit of a service-related tariff or a surcharge as contemplated by Section 229(1)(a) of the Constitution…"*. The applicant relies on Section 4(1) of the Systems Act to illustrate that the City can only impose a surcharge where there is a fee payable for services. The applicant further contends that there may be a fee without surcharges however, there cannot be surcharges without fees for services.

42. The applicant further relies on the Municipal Fiscal Powers and Functions Act, 12 of 2007 which was specifically promulgated to regulate the exercise of power by the City in imposing surcharges on fees for services provided under Section 229(1)(a) of the Constitution. The aforesaid act also makes provision

for the authorization of taxes, levies and duties that municipalities may impose under Section 229(1)(b) of the Constitution. However, Section 229(1)(b) does not find application. Section 1 of the Municipal Fiscal Powers and Functions Act defines a *'municipal surcharge'* as a charge *in excess of the municipal base tariff that a municipality may impose on fees for a municipal service provided by or on behalf of a municipality in terms of Section 229(1)(a) of the Constitution.* The applicant contends that this provision is a further illustration that there may only be a surcharge if there is a fee for services.

43. Section 74(1) of the same act makes provision for the City to adopt and implement a tariff policy on the levying of fees for municipal services provided. Section 74(2)(b) of the same act provides that the amount which individual users are liable to pay for services should generally be in proportion to the use of that service and Section 74(2)(d) further provides that the tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement cost and interest charges. In the letter addressed to the applicant by the City's attorneys of record, the following appears:

"...the cleansing levy...is a service-related fee to recover system-wide costs of public cleansing, including street sweeping, illegal dumping enforcement, landfill rehabilitation, and the operation of municipal waste infrastructure not directly billable to refuse collection clients...The nature of public cleansing services such as street sweeping, refuse disposal monitoring and illegal dumping clean-up, is such that usage cannot be measured on an individual basis. Hence, a fixed availability or system contribution fee is both rational and lawful".

44. This being the case documented by the City, the applicant contends that the cleansing levy does not comply with Section 74 of the Systems Act.

45. The applicant therefore argues that the City seeks to recover costs for municipal services irrespective of whether residents who benefit from the services are not specifically identifiable individuals, but simply members of the general public.

46. The applicant further contends that Section 1 of the Fiscal Powers Act defines a *"Municipal Base Tariff"* as the fees necessary to cover the actual cost associated with rendering a municipal service, and includes (a) bulk purchasing costs in respect of water and electricity, reticulation services, and other municipal services; (b) overhead, operation and maintenance costs; (c) capital costs; and (d) a reasonable rate of return, if authorized by a Regulator of or the Minister responsible for that municipal service. The applicant therefore argues that the City has not complied with Section 1 aforesaid because on its own version the City argues that the cleansing levy is a surcharge and not a base tariff.

47. The applicant contends that Section 1 of the Fiscal Powers Act defines a *'municipal tax'* as a tax, levy or duty that a municipality may impose in terms of Section 229(1)(b) of the Constitution, however, reiterates that the City has disavowed reliance upon Section 229(1)(b). The applicant thus contends that it has demonstrated that the passing of the resolution which includes the cleansing levy dated 29 May 2025 and the City's attempt to pass the by-law is unlawful and in conflict with the Constitution and national legislation. The applicant has referred the court to Section 156(2) of the Constitution which empowers the City to make the by-laws for the effective administration of matters which the City has the right to administer; however, Section 156(3)

provides that a by-law which conflicts with national legislation, is invalid.

48. The applicant has further highlighted the provisions of Section 75A of the Systems Act which provides that a municipality may levy and recover fees, charges or tariffs in respect of any function or service of the City and that these are levied by a municipality by way of resolution passed by the council of the municipality with a majority vote of its members. The applicant qualifies the reference to Section 75A and emphasizes that Section 75A is not an overriding catch-all provision which is designed to dispense with all other constitutional and statutory provisions.

49. The applicant argues that the cleansing level is further unlawful as a result of it being irrational. The applicant refers to the City's motivation in endeavouring to impose the cleansing levy in 2017 and refers back to the City's attempt to address the shortfall in its budget as set out in the Funding Plan to improve the unfunded position of the City. I had already dealt with the Funding Plan (Annexure "FA7" to the Founding Affidavit). The applicant has argued that the primary motivation for the Funding Plan was not to provide or improve service to the residents and businesses who do not enjoy waste removal services, but rather to address the difficulties in the City's budget. The applicant thus argues that the Funding Plan indicates that the City is aiming to collect R540 million for the 2025 / 2026 financial year and has identified 194 396 residents and 62 055 business accounts who do not receive waste collection services from whom the City intends to recover R540 million.

50. The applicant elaborates on the issue of irrationality by arguing that the City is mistaken in its notion that the 194 396 and 62 055 businesses have the benefit of the City's services without having to pay for such services. These residents and businesses do not use the City's services for waste collection and

disposing of waste and, as the applicant argues these residents and businesses create revenue for the City which is directly linked to the City's Waste Management Policy which in turn includes fees for dumping domestic waste at waste removal sites and annual waste transportation permits. Moreover, the applicant argues that these residents and businesses alleviate the City's waste burden by assisting the City to comply with its constitutional and other legal obligations concerning waste, cleansing and the environment, and consequently it is irrational to expect these residents and businesses to pay for a cleansing levy where they do not receive any services from the City.

51. Paragraph 3.3(d) of the City's Tariff Policy provides that tariff must reflect the costs reasonably associated with the rendering of the service and that the amount of money to be paid by individual users for services rendered, should generally be in proportion to the use of that service. The applicant contends that it is irrational of the City to attempt the shortage of revenue collection because the City does not have the means or the opportunity to collect revenue as a result of its own inefficiencies. Furthermore, paragraph 3.3(h) of the City's Tariff Policy provides that tariffs must reflect the economical, efficient and effective use of resources, the recycling of waste and encouragement of achieving other appropriate environmental objectives. In addressing the rationale provided by the City the applicant contends that the City maintains that the cleansing levy is to recover the costs of illegal dumping. The applicant emphasizes that illegal dumping is specifically provided for in Section (f) for Schedule of Tariffs for Refuse Removal Services and this is found in Annexure "FA16" to the Founding Affidavit (CaseLines 001-50).

52. The applicant further contends that the City relies on the cleansing levy to recover the costs of landfill rehabilitation and the operation of municipal waste

infrastructure. Section (e) however of the Schedule of Tariffs for Refuse Removal Services (Annexure "FA16" to the Founding Affidavit) provides for revenue from dumping of refuse at waste disposal sites and similarly, Section (l) provides for revenue from applications for waste transportation permits.

53. The applicant further refers to Section 4(2) of the Systems Act which imposes a duty of the council of the City to exercise the City's executive and legislative authority and use the resources of the City in the best interest of the local community; provide, without favour or prejudice, a democratic and accountable government; encourage the involvement of the local community; strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner; consult the local community about the level, quality, range and impact of municipal services provided by the municipality; promote a safe and healthy environment in the municipality; and contribute, together with other Organs of State, to the progressive realization of the fundamental rights contained in the Constitution. The applicant contends that the City has fallen short of its legal obligations and further failed to consider the applicant's comments on the intended cleansing levy.

54. The applicant, relying on the contentions as set out above seeks an order declaring the cleansing levy to be unlawful, invalid and for such levy to be set aside. The applicant contends further that if such order is granted, it should include all the documents or portions of the documents which permit the implementation of the cleansing levy, including the relevant portions of the MTREF, the resolution, the Tariff Policy and the by-law, if such by-law has been published. To the extent that the by-law has not been published, the applicant seeks an order prohibiting the City from publishing the by-law and to

take all such steps to ensure that such by-law will not be published.

55. The applicant further seeks that the order be extended to include that, to the extent that the City has activated its billing systems to render accounts to the residents and businesses for the cleansing levy, that the City be compelled to forthwith take all measures necessary to ensure that such residents and businesses are not billed for the cleansing levy and, to the extent that such residents and businesses have been billed for the cleansing levy, that the City forthwith take all steps necessary to ensure that the accounts of residents and businesses who were billed for the cleansing levy, be credited with an amount equal to the cleansing levy in the following billing cycle.

THE RESPONDENTS' CASE

56. The first to fourth respondents filed an answering affidavit wherein almost a quarter of the affidavit is a repetition of the applicant's case and its contentions. The first to fourth respondents (the respondents) take issue with the urgency of the application and argue that urgent proceedings in terms of Rule 6(12) of the Uniform Rules of Court are not intended to limit a right to fair hearing guaranteed by Section 34 of the Constitution. I have considered the submissions made in respect of urgency, on the basis contended by the respondents that they had insufficient time to file the necessary papers. All the parties were afforded additional time to supplement their papers and, despite the respondents arguing that they had 2 days to file an answering affidavit, it is factually so that the answering affidavit were served 13 days after service of the applicant's notice of motion and founding affidavit.

57. The respondents contend that the nature of this application is that of a judicial review and as such there are specific time periods within which the review proceedings are dealt with, namely 70 days, according to the respondents. This argument naturally flies in the face of the urgent nature of the application and the facts before court which have to be considered and adjudicated upon. Furthermore, the respondents rely on the applicant's alternative proposal that if the City charged any resident or business with a cleansing levy, then the order proposed by the applicant that the City credit such amounts in the next billing cycle vindicates any unlawfulness on the part of the City in so charging for the cleansing levy. I find this to be an untenable argument. I will deal with urgency and locus standi in more detail hereunder.

58. The respondents further argue that the law is clear that where the municipality unlawfully imposes rates, taxes, or tariffs and/or charges fees or surcharges on a fee, the setting aside of the underlying decision would invariably be coupled with an order directing the municipality to repay the amounts unlawfully paid to it. These submissions do not support the respondents' case neither do they address the issue of legality as contended by the applicant. The respondents contend that if it turns out that the impugned decisions are declared unlawful, the court would be in a position to grant substantial redress to the affected ratepayers in the form of an order of reimbursement. Again, I find this argument to be untenable, and it falls short of addressing the legislative concerns and the City's failure to adhere to applicable legislation.

59. The respondents argue that the harm projected is not irreparable and there is no real immediate prospect of the alleged harm. This submission disregards the legality issue and the City's failure to comply with the legislation applicable to it.

60. The respondents' argument that the urgent motion court is not geared to deal with complex legal questions is gainsaid by the fact that this application was case managed by the Acting Judge President and allocated to be heard as a special motion over a period of 2 days.

61. The City relies on the cleansing levy that was decided on as a concept through the medium of Waste Management By-law, Item 40(5) issued under Local Authority Notice 1393 of 2016 [24 August 2016]. A copy of such by-law is attached to the answering affidavit. This by-law appears not to have been promulgated; however, the City contends that it has decided on the tariff of R194.37 per month in terms of Section 75A of the Local Government: Municipal Systems Act [Act No. 3 of 2000]. The City contends that relying on Section 75A aforesaid it gave notice to this effect under Local Authority Notice 648 of 2025 (18 June) [which is found at Annexure "RAA3" to the answering affidavit]. The Waste Management By-law of 24 August 2016 is raised in the answering affidavit for the first time and does not appear in any of the correspondence between the parties. The respondents thus contend that the applicant has not attacked such By-law, and it remains unchallenged and exists as a matter of law and fact.

62. The respondents deny that the City does not render a waste management service to the 194 396 residents and to 60 255 businesses and argues that many of these ratepayers' waste is ultimately delivered at the facilities of the City for processing and management. The City contends that many of the ratepayers to be affected by the cleansing levy do receive service from the City in respect of waste collection into bins and the collection of transportation of bins to waste management sites. Given the fact that there are thousands of residents and businesses involved it is worrisome that the City simply refers

to these residents and businesses as *"many of the ratepayers"*, without identifying such ratepayers and simply making a sweeping comment about the ratepayers receiving a service from the City.

63. The respondents further contend that the City has never denounced or neglected its constitutional obligation to provide all citizens within its territory with waste management services. It contends that the service is available to all citizenry, and it is only the affected ratepayers who choose not to take up an available service who will be affected.

64. The respondents describe in detail the infrastructure capacity of the City in respect of its landfill sites, the different refuse sites, the vehicles it uses to provide the services including compacted trucks and issues 15 000 waste containers. In making these submissions, the City simply avoids answering its failure to comply with the applicable legislation in issue.

65. The respondents take issue with the applicant's standing and contends that the applicant has not conveyed its case clearly in the remit of Section 38 of the Constitution. In addition, the respondents contend that the applicant has failed to identify a right in Chapter 2 which is infringed upon by the impugned decision.

66. The respondents further argue that the City has no difficulty with the applicant pursuing these proceedings as an only interest litigant but that the applicant must, at a minimum, allege that the impugned decision will affect its position. In my view, this contention is misplaced and yet again the respondents seek to avoid addressing the clear issue of legality on the facts pertaining to this case and not to describe its processes in general.

67. Of importance is the respondents' contention that the applicant has conflated the introduction of a cleansing levy concept and the determination of a cleansing tariff. The respondents argue further that a review against a concept introduced on 24 August 2016 cannot be urgent in June 2025. However, as I will more fully deal with this aspect, the City did not rely on the 2016 by-law and can thus not rely thereupon. The obvious answer is that the Tariff Policy of 2016 did not form part of the court papers, and I will deal with this more fully hereunder.

68. What appears to be worrisome, the respondents contend to the extent that the applicant alleges that the City does not provide a service, the City contends that the service is available for the ratepayers to take up. The inescapable inference is that even if the service is not provided to ratepayers, the ratepayers must pay for the cleansing levy.

69. The respondents deny that the cleansing levy is a tax. The respondents contend that the City is actively engaged in providing a waste management service and that the waste management service is available for all citizenry to take up.

70. The deponent to the respondents' answering affidavit alleges that the City's effort to introduce a payable tariff in 2016 were aborted for reasons which prevailed in 2017 and are unknown to the deponent. At Annexure "RAA6" of the answering affidavit the council resolution in respect hereof appears.

71. The respondents further contend that since 2018, after the aborted process, the City carried the costs of waste management without the contribution of many other ratepayers such as the ones to be affected presently. The number of these ratepayers, according to the City, has now significantly increased,

and it is not possible for the City to continue to provide a service for these ratepayers without a contribution on their part, and/or to make a service available to them, without a contribution on their part.

72. The respondents disclose that the City operates the waste management activities on an ongoing deficit of approximately R150 million. The respondents contend that the actual work that is required for waste management is in the region of R500 million, more than what the City currently expends. The respondents further contend that the City's improvement of its cash position is specific to the expenses of the City and for current purposes, the City requires added contribution from *"free riders"*.

73. The respondents contend that the City cannot continue to carry costs associated with waste from 194 396 in respect of residential property ratepayers and 60 255 in respect of business ratepayers without any contribution on their part. This, in my view, is a clear admission of the numbers of residents and businesses who may be affected and the fact that these residents and businesses do not make use of the City's services.

74. The respondents further contend that the applicant's arguments are misplaced in that there has never been a direct attack on the Waste Management By-Law, Item 40(5), issued under Local Authority 1393 of 2016 [24 August 2016]. In this regard the respondents further contend that the reality is that this by-law introduced a cleansing levy in 2016 and the subsequent action taken on 18 June 2025, in terms of Section 75A of the Local Government: Systems Act, introduced the tariff payable. I will deal with the reasons why the respondents' contentions fall short of compliance with the applicable legislation. Moreover, the 2016 Tariff Policy did not form part of the court papers, and this submission is a clear indication that the City avoided the real issues of legality and shifted

the goal posts at every opportunity.

75. It is crystal clear that the respondents contend that where a service is available from the City, failure to take up such service occasions a cost.

76. Lastly, the respondents contend that the current proceedings do not constitute vindication of constitutional rights and that this being the case, the application ought to be dismissed with costs on the scale as between attorney and client, including the cost of two counsel.

APPLICANT IN REPLY

77. The applicant in its replying affidavit emphasizes how the City has sought to avoid the illegality of the cleansing levy by relying on an old by-law of 2016 and not providing any lawful basis for the cleansing levy in the City's tariffs which it has now published. The applicant contends that the tariff does not have its origin in the old by-law and the City cannot rely on such old by-law because the tariffs were published on 18 June 2025 (after the filing of this application) and published in Schedule 5, Refuse Services, Tariffs for Refuse Removal Services which are found at Annexure "RAA2" of the replying affidavit at 004-264 to 004-272 on CaseLines. These tariffs were based on the MTREF and the new tariff policy that was adopted by the council of the City on 29 May 2025.

78. The applicant argues that under circumstances where Schedule 5 was published without the City promulgating the new by-laws, including the new tariff policy, this must also be declared unlawful, invalid and be set aside to the extent that it provides for the cleansing levy. The applicant contends that Schedule 5 is not based on the old by-law but on the tariff policy that has not

taken effect. In substantiation hereof, the applicant states that one has to have regard to the relevant content of Schedule 5, as it has been published, and compare it with the new tariff policy and then the old by-law. A simple comparison shows that Schedule 5 finds the source of the tariffs including the cleansing levy in the new tariff policy and not in the old 2016 by-law.

79. Schedule 5 provides for City cleansing to be levied against all premises with no waste account to the equivalent of refuse removal units that are provided or could be provided at the premises. The new tariff provides for City cleansing and is levied to all premises equipped to the equivalent of the number of waste removal service units that are provided or could be provided at the premises. Schedule 5 further provides that these tariffs are applicable irrespective of who removes the generated refuse from the premises. The new tariff provides for the tariffs to be applicable irrespective of who removes the generated waste from the premises.

80. The applicant thus contends that if a comparison is drawn between Schedule 5 and the new Tariff Policy, the old by-law only contains one provision that vaguely resembles a reference to cleansing. The old by-law does not resemble Schedule 5 at all because Section 40(5) provides:

"[t]he owner or occupier within the area of jurisdiction of the Municipality is liable for the full payment of City cleansing components in accordance with the applicable tariff."

81. Thus, argues the applicant, unlike the new Tariff Policy in Schedule 5, the old by-law has no provisions concerning anything similar to the provisions outlined by the applicant and this demonstrates that the City's reliance on the old by-law is a ruse. Furthermore, if the City wished to rely upon the old by-law it

would have to show that the cleansing levy was in accordance with a tariff policy that was enforced during 2016 and that the policy remains in force.

82. The applicant contends that the justification for the cleansing levy is unconvincing, premised on the old by-law and is directly contradicted by the justification for the cleansing levy which the City provided to the applicant, via the City's attorneys of record acting on the City's express instruction. So much is clear and appears at CaseLines 001-71 to 001-74.

83. The applicant refers to Section 74(1) of the Systems Act which provides that the council of the City must adopt an implemented current policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements which comply with the provisions of the act itself, the MFMA and other applicable legislation. Section 75 of the Systems Act provides that the council of the City must adopt by-laws to give effect to the implementation and enforcement of its new tariff policy. The applicant emphasizes that this is not what has factually occurred and the City, in its answering affidavit does not contradict the applicant's contentions.

84. The applicant further contends that the unpromulgated by-law provides that:

"[t]he waste management service tariffs and charges will be determined in terms of the tariff policy of the municipality". (Paragraph 35, CaseLines 001-119).

85. Thus, the City cannot deny that it had knowledge that it had to pass unpromulgated by-law and a by-law to give effect to the new tariff policy.

86. The applicant contends that the City is not forthcoming about what its intentions are with the new tariff policy if one has regard to the resolution and

other documents referred to in the founding affidavit. It is the applicant's case that the City and deponent to the answering affidavit ought to know that the function of public servants is to serve the public, and that the public has the right to insist upon them to act lawfully within the boundary of their authority. The applicant thus contends that the City has failed to take the court into its confidence by fully explaining the facts so that an informed decision may be taken in the interest of the public and good governance. This being the case, the applicant contends that this provides further reason for the court to declare the cleansing levy unlawful and to grant the additional relief. I will deal with this more fully hereunder. The applicant, with reference to the City's answering affidavit, contends that the City has now sought a deviation from the rationale for the cleansing levy, which is found in its own documents, including the City's attorneys' explanation on the City's instruction. This deviation is further evidence that the cleansing levy is irrational.

87. The applicant refers to paragraphs 49 – 60 of the answering affidavit (CaseLines 005-7) wherein the deponent to the answering affidavit states the following:

"In the result, I submit that the City has the capacity to provide the service and offers the service to ratepayers. The waste management service is available to all ratepayers, and it is a pity that some ratepayers choose not to take up the available service".

88. The inference, according to the applicant is that the City is attempting to contradict what the applicant's case is, that the City does not provide a waste management service to the 194 396 residents and 62 055 businesses. The City further refers to members of the public who choose not to make use of the services as *"freeloaders"*. The applicant thus contends that this is an

attempt by the City to make members of the public pay for waste removal under circumstances where a sector of the public does not make use of the City's services.

89. I note from paragraph 12.1.4 of the City's attorneys' letter (001-73) where the following appears:

"City cleansing is an essential unbillable service a municipality must provide to achieve the objective of a clean environment…".

90. However, the applicant contends that the City does not provide any evidence where the City is capable of providing waste removal services, where the public refuses that service. Further in this regard, the applicant contends that many affected members of the public have had to find alternative means out of necessity and this is uncontradicted by the City. The applicant refers to the supporting affidavit by Mr Kruger of Waste Group and his knowledge on the subject is not disputed by the City.

91. The applicant has demonstrated that the City has not denied that the specific members of the public pay for services, including keeping the City clean, providing for and emptying public dustbins, litter collection, street sweeping and so forth, by way of payment of property rates. The City does not disclose to the court that, in relying on the old by-law, this contradicts the City's case in respect of the rationale of billing those who choose not to use the City's waste services. In reality the members of the public in issue have no choice because the City has not provided them with services relating to waste removal.

92. The applicant has referred the court to paragraph 3 under the heading *"Responsibilities"* (CaseLines 004-68) where the following appears:

"(1) The municipality shall provide or ensure a service for the collection and removal of business waste and domestic waste from a premises at the applicable tariff.

...

(3) The occupier of the premises on which business or domestic waste is generated is liable to the municipality for payment of the applicable tariff in respect of collection, removal and disposal of domestic and business waste from the premises and remains liable for payment of the tariff..."

93. The applicant thus argues that there is no reasonable basis upon which it can be accepted that any member of the public will refuse a legitimate service provided by the City instead of paying a private waste removal company.

94. The scenario contended by the applicant appears in the new unpromulgated by-law (Annexure "FA16" to the founding affidavit) and the old by-law. The applicant refers to Section 25(3) (CaseLines 004-80) which provides:

"The owner of the property or premises remains liable to pay the prescribed municipal service fee for the provision of the municipal service, and is not entitled to exemption from or reduction of the amount of such fee by reason of not making use, or making partial or limited use of the municipal service."

95. The applicant further refers to Section 36(2) (CaseLines 004-81) where the following appears:

"Where a waste removal service cannot be rendered in respect of premises because of the action of the owner and/or the occupier of the premises, the

owner and/or the occupier remains liable for the payment of the costs of the service in terms of the provisions of section 40(1)."

96. The above approach, the applicant contends, is vastly different from the cleansing levy approach regard being had to the old and the unpromulgated by-laws the applicant contends that is lawful and rational because a member of the public would then pay for the service of waste removal and should such member fail to make use of it despite it being available, and offered by the City, the specific member of the public must then pay for such service. This is vastly different to circumstances where the City does not or cannot provide waste removal services, due to no fault of the member of the public and as such, the public does not have to pay for such service.

97. The applicant emphasizes, in support of its contention of irrationality, that when the City called for public participation, it did so with reference to the MTREF, which included the new tariff policy and not on the basis of the old by-law. Thus, if the City's intentions were to rely on the old by-law, the City must let the public know and this would render the entire process unlawful. The applicant argues that this is a demonstration that the City never sought to rely on the old by-law for the imposition of the cleansing levy and now that the City has realized that it acted unlawfully, the reliance upon the old by-law is a belated ploy.

98. The City has challenged the applicant to provide evidence of private waste collection which pay the City for use of its waste disposal sites. The applicant has annexed a statement of account from the City provided to the applicant by Smart Waste, a private waste removal company. This statement is attached to the replying affidavit as Annexure "FX1" and is referred to CaseLines 005-11. The statement reveals that Smart Waste is billed for

domestic waste dumped by its vehicles at the City's waste disposal sites. A confirmatory affidavit by Mr Claassen of Smart Waste has been filed in confirmation hereof. Consequently, the applicant contends that the City's allegations that there is no cost for dumping at the City's waste disposal sites for household waste is not factually true and the City's stance is further contradicted by Schedule 5. The applicant argues that this is an important point surrounding rationality: The public that receives no waste removal services already for it, directly and indirectly.

99. Insofar as the City contends that the applicant is not acting in the public interest or that it does not have any grounds to act in its members' interest is misplaced. The nature of the inquiry is not what the citizenry prefers, but rather about what the law demands. The applicant thus contends that it is the City that is arrogating onto itself a power to tax the citizenry unlawfully.

100. Insofar as the City contends that the applicant is not acting in the public interest or that it does not have any grounds to act in its members' interest is misplaced. The nature of the inquiry is not what the citizenry prefers, but rather about what the law demands. The applicant thus contends that it is the City that is arrogating onto itself a power to tax the citizenry unlawfully.

101. The applicant points out that it is important for organisers like the applicant to intervene where the City places the public the impression that it is acting lawfully and taxing them, where the City is not acting lawfully. The applicant relies on a petition which appears on the applicant's website since 3 April 2025. On this petition, approximately 451 persons signed the petition, and the applicant refers to an addition 1628 persons who signed the petition on the applicant's Facebook page. The applicant has sought leave that this evidence, being hearsay in nature and electronic data to be admitted in accordance with

the rules of court and the relevant legislation. Nothing turns on this issue as will more fully hereunder.

102. The applicant takes issue with the City who suggests that if it is found that the City has fallen short of the issue of legality and unlawfully imposed tariffs, rates, taxes or surcharges on a fee, then the setting aside of the underlying decision would invariably be coupled with an order directing the City to pay the amounts unlawfully paid to it. The applicant argues that this does not address or remove the harm caused because it constitutes a notion or future solution to some of the effects of the harm that may be caused by the City's illegality. The applicant emphasises that the process of repaying or crediting accounts has historically been an administrative nightmare with individual households having been required to issue formal disputes and ultimately taking months to obtain a credit from the City.

103. The applicant further contends that the above solution offered by the City is not just and equitable and is simply not an answer to the City's failure to comply with the legality issues. Furthermore, by relying on Section 40(4) of the old by-law the City exacerbates the situation because in the aforesaid section provision is made for a person who fails to pay the applicable tariff to be found guilty of an offence. (CaseLines 004 – 85)

104. The applicant contends that the City's attack on the urgency of this application is the City's mistaken reliance on the old by-law. The applicant has not made out a case based on the old by-law and contends that the triggering event for this application was the City's communication to the applicant on 30 May 2025 that the resolution including the cleansing levy had been passed by the Council on 29 May 2025.

105. The applicant illustrates that the City's approach on the basis that the application does not belong in the urgent court due to the voluminous papers uploaded deserves consideration. It is so that the City has uploaded hundreds of documents which are irrelevant or to which the City has made no or little reference. The provincial gazette no. 217 consists of 348 pages of which only 9 are relevant for purposes of this application. Moreover, the entire bid document consists of 244 pages and is of no relevance to the legal issues involved in this application. Moreover, the City has annexed the council's resolution that led to the 2016 old by-law on which the City evidently relies, and this comprises of 606 pages and is of no use to the court. Moreover, I reiterate that the deponent to the answering affidavit alleges that he has no knowledge of the circumstances why the tariff was brought in 2017.

106. The City has further annexed its entire budget and every support document thereto which exceeds 1000 pages, and I cannot find any relevance of this document to the issue of legality contended by the applicant.

107. Insofar as the City's complains that the applicant afforded it only 2 days to file an answering affidavit, this is not borne out by the facts which are demonstrated by the applicant and culminating in a period of 13 days which the City had to file an answering affidavit.

108. In response to the applicant's contention that the City did not consider the recommendations made by the applicant but rather the objections, that the City raises the questions whether the recommendations could have been considered by the City because the comments were sent to the incorrect email address. This allegation is naturally again set by the City's resolution of 29 May 2025 which clearly shows that the City had the applicant's comments in its possession (CaseLines 001 – 78).

RESPONDENTS' SUPPLEMENTED ANSWERING AFFIDAVIT

109. In line with the order of the Honourable Mrs Justice Bam the respondents filed the supplementary answering affidavit, and, in my view, the supplementary answering affidavit does not provide an explanation for the failure of the City to comply with the legislative framework. I note that the City insists that the waste management by-law is in fact a promulgated by-law in terms of no. 274 of the Provincial Gazette dated 24 August 2016. The City contends that there can be no doubt as to the standing of the waste management by-law. I furthermore note with concern that the deponent to the supplementary answering affidavit alleges that the respondents had tried to locate the City's tariff policy of 2016 however it is proved to be a timeous exercise, and this policy will be produced on the date of the hearing of this application. I find the allegation untenable and the City's contention being fundamentally anchored on the tariff policy of 2016, it cannot be permitted to fail to produce the tariff policy of 2016 and submit that it will be produced at the date of hearing.

110. The respondents again annex some 180 pages dealing with the tariff policy with effect from 1 July 2018 and I cannot find the relevance of this tariff policy if the City relies on the Tariff Policy of 2016 which it has not produced. Furthermore, the respondents have annexed to their supplementary answering affidavit the Local Authority Notice 1031 of 1018 which runs over 350 pages, and I respectfully cannot see the relevance of the document where only one paragraph thereof dealing with schedule 5 and the refuse removal service tariff is referred to.

APPLICANT'S SUPPLEMENTED REPLYING AFFIDAVIT

111. The applicant, in line with the order of Bam J supplemented its replying

affidavit therein highlighting the City's reliance on a 2016 tariff policy that the City cannot produce and the City's new attempt to invoke a 2018 tariff policy and by-law.

112. The applicant contends that the City relies upon the following:

> *"[C] Crucially, with due reference to section 74(1) of the Municipal System's Act, the source of the cleansing levy is the City of Tshwane Metropolitan Municipality Tariff of 2016. However, the City is not able to produce the tariff policy of 2016 and it must follow that the City could not have relied on the 2016 policy at the stage it adopted schedule 5 on 30 May 2025 (or when it was publicized on 18 June 2025) if the policy could not be located. The inexplicable conclusion is that the police could not have been considered and could not further a source of the City's power at the relevant stage."*

113. The Applicant further contends that the City's reasoning is further undermined by Section 39 of the 2016 by-law which provided the following:

> *"The waste management service tariffs and charges will be determined in terms of the Tariff Policy of the municipality in compliance with Section 47 of the [system's act]".* This is found at CaseLines 004 – 85.

114. Consequently, on the City's own version, the City did not have access to the 2016 tariff policy when it prepared, published, debated and adopted schedule 5. It must follow that the City acted contrary to the By-Law upon which it now relies when it determined the new tariffs, including that of city cleansing. The applicant submitted that even if the 2016 tariff policy exists it does not provide the power which the City claims because the City itself acknowledges that

there were later policies.

115. The applicant contends that the City, having realized that reliance upon the 2016 by-law relied upon in its answering affidavit does not come to the City's assistance, and it now refers to a 2018 tariff policy and by-law. The 2018 by-law, to which I have referred above, is not a by-law concerning waste management or tariffs. This document is the *"property rates by-laws"*, which give effect to the City's rates policy under the Rates Act. This document (at 52 – 206) refers to and includes the implementation of the rates policy and not the 2018 tariff policy. The aforesaid by-law has no nexus to waste management or any city cleansing tariff and the City cannot therefore not rely thereupon for the source of its power.

116. The applicant contends that the City's reference to *"Schedule 5 thereof..."* (paragraph 25, CaseLines 052 – 11) is ill considered. Schedule 5 in this context is not part of the property rates by-law which was attached by the City but relates to a separate council resolution published under Section 75A(3) (CaseLines 052 – 222).

117. Insofar as the 2018 tariff policy is concerned the applicant contends that Section 6 thereof provides the following:

> *"[a]s far as practically possible, consumers should pay in proportion to the demand of services consumed... [and that] ... [a] ll households, with the exception of the poor (indigent) should pay the full costs of services consumed... [and that it must include the] ... cost reasonably associated with the rendering of the service ..."* (CaseLines 052 – 22, annexure SSA to the supplementary answering affidavit.)

118. The applicant further contends that Section 7.1 thereof defines *"trading services as" "measurable services"* that can be apportioned to an individual consumer and lists waste removal *"as an example"*. This is found at annexure "SAA1" to the supplementary answering affidavit at CaseLines 052 – 022)

119. The applicant emphasizes that the versions before Court shows clearly that the cleansing levy is not measurable and cannot be accurately apportioned. The City itself describes the cleansing levy as an *"unbillable service"*. The City then relies on Section 10.4.1 on the 2018 tariff policy which refers to a cleansing levy. However, this reference is not in line with the form of the levy set out in the current schedule 5 of 18 June 2025 (annexure RAA2, CaseLines 004 – 264).

120. The applicant emphasizes that the current schedule 5 states that the *"tariff for city cleaning is levies against all premises with no waste account"* (CaseLines 004 – 265). This includes both residential and business properties, with limited exceptions. By contrast, Section 10.4.1 of the 2018 policy limits the imposition to only residential properties with no waste account (CaseLines 052 – 51). Businesses were excluded in 2018 but apparently are now included. The applicant therefore contends that this inconsistency underscores the City's reliance on the 2018 documents and is legally unsustainable. Even if the 2018 tariff policy would serve as a source of power, the City exceeded its power in applying the levy to businesses which conflicts with the policy's terms. Lastly the applicant contends that the reasons it has submitted in respect of the 2016 by-law, the cleansing levy set out in schedule 5 is both unlawful and irrational.

121. The applicant has drawn the court's attention to the City's 2017 withdrawal notice but has omitted any reference to withdrawal notices between 2018 and

2025. This notwithstanding that tariff policies are reviews annually and the City has also omitted to make mention of the tariff policies between 2018 and 2025. The applicant argues that these omissions are calculated to create the impression that the 2018 documents remain in force. I agree.

DISCUSSION AND CONCLUSION

122. It is clear that the City intends to impose a levy on approximately 250 000 affected members of the public for services which the City does not provide to such affected members. In doing so I have dealt with the legislative shortfalls by the City and the issue of legality which the City has not taken seriously. Because of the City's inability to provide sufficient waste removal services over the years it has become necessary for the public to identify other means to have their waste disposed of.

123. I am persuaded that the cleansing levy is unlawful for want of compliance with the Constitution and the statutory framework under which the city is obliged to operate. I am furthermore persuaded that the City does not have the power to conduct itself as it intends to and that the intended cleansing levy is irrational because the City's reasons for taxing the public are objectively sustainable.

124. The Applicant has referred the court to Rademan v Moqhaka Local Municipality and Others (CCT) 41-12 [2013] ZACC 11; 2013 (4) SA 225 (CC); 2013 (7) BCLR 791 (CC) (26 April 2013) at paragraph 42 where Zondo J stated the following:

"... where the Municipality claims payment from a resident or ratepayer for services, it is only entitled to payment for services that it has rendered... There is no obligation on a resident, customer or ratepayer to pay the

Municipality for a service that has not been rendered."

125. Section 1(c) of the Constitution provides that the Republic of South Africa is one, sovereign, democratic state founded on the following values:

"... c Supremacy of the Constitution and the Rule of Law.

126. Section 2 of the Constitution provides:

"This constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

127. Section 172(1)(a) provides:

"*When deciding a constitutional matter within its power, a court – (a) must declare that any law of conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency".*

128. In respect of the powers of Local Government the Constitutional Court in Fedsure Life Assurance Limited & Others v Greater Johannesburg Transitional Metropolitan Council & Others 1999 (1) SA 374 (CC) at para [58] state that:

"[i]t seems central to the conception of our constitutional order that the Legislator an Executive in every sphere are constrained by the principle that they may exercise no power and to perform no function beyond conferred upon them by law."

129. The decision in Fedsure has been reaffirmed in various cases dealing with Municipal Powers, including the imposition of rates and tariffs. In Thaba

Chweu Rural Forum and Others v The Thaba Chweu Local Municipality and Others (737/2021) [2023] ZASCA 25 (14 March 2023) at para [37] the Supreme Court of Appeal held that:

"It is important to bear in mind that in the fabric of our constitution, the First Respondent is the sphere of government and the Second and Third Respondents are organs of state. I constitutional democracy is based on the rule of law. As stated by this Court in Kalil NO & Others v Mongaung Metropolitan Municipality & Others[1] *'... the function of public servants-... is to serve the public, and the community at large has the right to assist upon and to act lawfully and within the bounds of the authority...' the municipalities are thus expected not only to be conversant with the law applicable to their sphere of Government, but also to conduct their affairs within the confines of the law. Should they fail to do so, the courts should not be impeded from considering and granting an appropriate order that would have the effect of vindicating the principle of legality."*

130. The starting point for the City when asserting that it has a right to do what it has done or intends doing is found in Section 229 (1) of the Constitution.

131. I have had careful regard to the comprehensive heads of argument filed on behalf of all the parties. Insofar as the respondents' heads of argument are concerned, I find the heads unhelpful because the thrust thereof is the continuation of an untenable argument put up by the City and falls short of fully addressing the failure of the City to comply with applicable legislation. Moreover, having conveyed to the court that the City will move and application in terms of rule 6 (5) (e) of the uniform rules of court to introduce into evidence

[1] 2014 ZASCA 90; 2014 (5) SA 123 (SCA) at para [30]

the 2016 Tariff Policy, there was no attempt to do so on Friday 25 July 2025. That being the case, the City's opposition to the applicant's case was unmeritorious and its continued and incorrect reliance upon a document which was not before court, and incorrectly relied upon, in the face of incontrovertible evidence of failure to adhere to the principle of legality. The City continued vehemently with irrelevant and untenable arguments which did not assist the court in any manner whatsoever. The challenge on the urgency and locus standi of the applicant was disingenuous, given the facts of the application but warrant an explanation, which will follow hereunder.

132. Insofar as the legality principle and municipal tariffs are concerned Section 1(c) of the Constitution provides: *"The Republic of South Africa is one, sovereign, democratic state founded on the following values: ... (c) Supremacy of the Constitution and the rule of law."* Section 2 reads: *"This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."*

133. Section 172(1)(a) provides: *"When deciding a constitutional matter within its power, a court - (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency."*

134. In *Rates Action Group* 2006 (1) SA 496 (SCA) at paras [17] to [20] the City of Cape Town charged separate amounts for sewerage and refuse removal; both at least partially coupled to the value of the property and not on actual usage. However, where the amounts were coupled to the value of property, the court held that the municipality could do so through property rates, meaning that the City derives its power from Section 229(1)(b). This decision is authority for the proposition that these cleansing levy – services described by the City are the kind of services which cannot be charged to individuals as a tariff. The

authority also recognises that the *Systems Act* does not oblige a municipality to charge for services in accordance with a tariff. It simply entitles it to do so, provided that a tariff policy has been adopted and by-laws promulgated in terms of the act.

135. The documents annexed to the founding affidavit make it clear that the City had adopted a new Tariff Policy on 29 May 2025, which was not yet promulgated. Despite this, Schedule 5 was adopted and published as if based on law. The City failed to explain whether it still intends to promulgate the new Tariff Policy and the accompanying by-laws, or whether it has abandoned that process. The evasive stance by the City deprived the Court of critical information necessary to assess the legality of the cleansing levy.

136. In Lombardy City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd & others (724/2017) [2018] ZASCA 77 (31 May 2018) at para [15] and Thaba Chweu Rural Forum *supra* the Supreme Court of Appeal was similarly faced with omissions to produce documents that were material to deciding whether the municipalities had followed due process in determining rates, holding that in such cases there is obviously no evidence of compliance. In this case, the City finds itself in a far worse position because the production of the documents is not only relevant in respect of the process followed, but because the City is powerless to promulgate tariffs without the required documents.

137. The City, having adopted the new Tariff Policy and, while being subject to the applicant's attack on its legality in respect of the cleansing levy, the City had a statutory obligation to implement it. Section 74(1) of the *Systems Act* provides that *"A municipal council must adopt and implement a tariff policy on*

the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of this Act, the Municipal Finance Management Act and any other applicable legislation."

138. The deponent to the answering affidavits is silent on these matters amounts to dereliction of the duties of public officials, who are constitutionally required to act lawfully, transparently, and in good faith. This failure supports the inference that the City is attempting to hide the unlawfulness of its conduct.

139. The City's belated reliance on the 2016 by-law is misconceived. In the first answering affidavit In its first answer, the City sought to justify the cleansing levy by relying on a 2016 by-law. This is a clear departure from its previous position, conveyed through its attorneys and reflected in its own documents. The reliance on the 2016 by-law is legally untenable. The cleansing levy published in Schedule 5 is not based on that by-law but on the 2025 MTREF and the new Tariff Policy adopted by the Council on 29 May 2025.

140. The new Tariff Policy, by the City's own formulation, defines a "Tariff schedule" as referring to the tariff tables accompanying the annual budget tabled under section 17(3) of the MFMA.34 The policy further provides that tariffs must be consistent with this new policy. The City has not promulgated the by-laws necessary to give effect to the new Tariff Policy, the tariffs in Schedule 5 stand to be declared unlawful to the extent that they provide for the cleansing levy.

141. Schedule 5 is identical to the draft tariff schedule attached to the founding affidavit. Annexure "RAA2", CaseLines 004-264 to 272. The comparison between Schedule 5 and the new Tariff Policy reveals The City's alignment

and the fact that both deviate from the 2016 by-law. This demonstrates that Schedule 5 in its published form did not, and could not, derive its power from the 2016 by-law.

142. The City's reliance on the 2016 by-law is also contradicted by its own attorney's letter (Replying Affidavit, CaseLines 005-6, paragraph 16) which justifies the levy with reference to a different rationale. The 2016 by-law is not given emphasis to by a tariff policy.

143. In its supplementary answering affidavit, the City attempts to illustrate that the source of the cleansing levy is the 2016 Tariff Policy, Supplemented Answer, 052-9, paragraph 9, however it concedes: *"We have tried to locate the City's Tariff Policy of 2016 however, it proved to be a timeous exercise."* (Supplemented Answer, 052-9, paragraph 9).

144. In my view it is irrational and in fact misleading to submit that the Council relied on a policy as the source of its power, if it had been unable to locate the policy at the stage when the policy was not available to it when it adopted Schedule 5. The inescapable inference is that the 2016 policy was not considered at the time and could never have been the source of the City's power.

145. In Wightman t/a JW Construction (Pty) Ltd v Headfour (Pty) Ltd and another [2008] ZASCA 6; 2008 (3) the Supreme Court of Appeal, in respect of ambiguities where a party must necessarily possess knowledge, held the following: *"A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. ... When the facts averred are such that the disputing party must necessarily*

possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied."

146. The above is supported by section 39 of the 2016 by-law, which states that tariffs must be determined in terms of a tariff policy compliant with section 74 of the *Systems Act*.43 The City did not have access to such a policy when it adopted Schedule 5 and therefore, to the extent that it now relies on the 2016 by-law, it acted contrary to it. If the 2016 tariff policy had any force or, the City should have had no difficulty to produce it, because it would have to form part of the City's and other institutions' public records.

147. The question remains: why did the City, if it really intended to rely on the 2016 by-law and policy as the source of its power on 29 May, approve a new tariff policy on the same day? Again, the inescapable inference must be that when the shoe was pinching the City adopted a different stance and shifted to the 2018 policy and by-law which is similarly flawed. In the City's first answering affidavit the City repeatedly relied on the 2016 by-law as a source of power. The City contended: *"[a]bsent a frontal attack against the Waste Management By-Law (24 August 2016), the concept of cleansing levy remains unchallenged and exists as a matter of both law and fact"*. Answering Affidavit, paragraph 46, CaseLines 004-19.

148. After seeing its errors in applicant's the replying affidavit, the City steered away from what it submitted was: *"unchallenged ... matter of both law and fact"* to another source. The 2018 by-law referred to in the City's supplemented answer is not a tariff bylaw at all. It is the *Property Rates By-Laws* giving effect

to the *Rates Policy* under the *Rates Act.* Answering Affidavit, paragraph 46, CaseLines 004-19.

149. This Act makes no provision for waste management or cleansing levies and the City did not show a 2018 by-law in respect of waste management or cleansing levies.

150. Furthermore, section 6 of the 2018 tariff policy provide as follows: *"[a]s far as practically possible, consumers should pay in proportion to the amount of services consumed ... [and that] ... [a]ll households, with the exception of the poor (indigent), should pay the full costs of services consumed ... [and that it must include the] ... cost reasonably associated with rendering the service...".*

151. Section 7.1 of the policy defines *"trading services"* as *"measurable services"* that can be *"accurately apportioned to an individual consumer"* and lists *"waste removal"* as an example. On the version of both parties the cleansing levy is not measurable and cannot be accurately apportioned. The City itself describes it as an *"unbillable service."* Annexure "FA11", CaseLines 001-73, para 12.1.4. On a simple reading of the 2018 policy, the policy does not correspond with the newly published Schedule 5. Answering Affidavit, Annexure "RAA3", CaseLines 004-265.

152. In the supplemented reply, CaseLines 052-5, para 22 to 26 the policy limits the cleansing levy to residential properties without a waste account. In contrast, the current Schedule 5 applies the levy to all properties, including businesses.

153. In Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others 2000 (2) SA 674 (CC) at para [85], the Constitutional Court held: *"It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action."*

154. The same court held further that*: "The question whether a decision is rationally related to the purpose for which the power was given calls for an objective enquiry. Otherwise, a decision that, viewed objectively, is in fact irrational, might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance and undermine an important constitutional principle."*

155. The City has attempted to defend the imposition of a cleansing levy for an ulterior motive of funding a historical, underfunded budget (founding affidavit, 001-28, para 97 (read with 001-20, para 64 to 67) which is already paid for by the public through property rates and other levies and tariffs. This is my view. The City's inability to provide waste management services, has caused the public to incur additional expenses and effort to dispose of waste in an alternative and lawful manner.

156. The disingenuous submission by the City that there is doubt about whether applicant's contentions that private waste services must pay the City for the

use of its waste disposal sites and challenging the applicant to provide evidence hereof demonstrates that the City misled the Court. The applicant provided the relevant evidence.

157. In *Wightman* supra, the court expressed itself regarding disputes and it is equally relevant here. In the City's answering affidavit, the deponent for the City sought to undermine the rationale for the cleansing levy the City provided before the application was launched by introducing a completely new rationale. This created further ambiguity with regards to the purpose for which the power was given *vis a vis* versus the purpose the City sought to achieve. This demonstrates that the City's version cannot be accepted and that its rationale is not objectively sustainable.

158. The City sought to introduce a new rationale which is equally irrational. In line with its reliance on the tariff policies and by-laws, the City's new rationale for the levy shifted. In its supplemented papers and heads the City describes the levy as a charge on those who *"choose"* not to use the City's waste management services and naming these members of the public as *"free loaders."* This submission is at odds with the City's earlier rationale, as stated in the attorney's letter, which described city cleansing as *"an essential unbillable service"*, and that it is related to *"public cleansing, including street sweeping, illegal dumping enforcement, landfill rehabilitation, and the operation of municipal infrastructure not directly billable to refuse collection clients."*

159. I do not understand how approximately 250 000 affected members of the public are able to choose between using or refusing *"...public cleansing, including street sweeping, illegal dumping enforcement, landfill rehabilitation*

and the operation of municipal infrastructure. The City has not explained this conundrum or the clear contradiction between the City's answer through its attorneys and the differing rationale. Nor does the attorney the City's explanation through its acting on the City's instructions.

160. The City has failed to provide evidence that members of the public refuse waste removal services that are available and capable of being rendered. This was highlighted by the applicant in its replying affidavit, (replying affidavit, paragraph 26, CseLines 005-8). Despite the City having had the opportunity to supplement its answer in this regard, it did not do so.

161. The applicant lastly argued that, with reference to State Information Technology Agency Soc Ltd v Gijima Holdings (Pty) Ltd [2017] ZACC 40 (CC); 2018 (2) SA 23 (CC) para 53, that *"... under s 172(1)(b) of the Constitution, a court deciding a constitutional matter has a wide remedial power. It is empowered to make 'any order that is just and equitable'. So wide is that power that it is bound only by considerations of justice and equity."*

162. The applicant pointed out that this is not the first time the City has been in this position. In *Lombardy*, supra, Supreme Court of Appeal, relying on the Constitutional Court's judgment in Bengwenyama Minerals (Pty) Ltd and others v Genorah Resources and others (Pty) Ltd and others [2010] ZACC 26; 2011 (4) SA 113 (CC) para 84-85 held in respect of the City and a litigant in the City's position that: *"... it is important to emphasise that a litigant seeking a just and equitable remedy limiting the impact of the mandatory remedy of a declaration of invalidity must make out such a case. In particular, facts should be adduced as to the deleterious consequences for the public interest of setting aside a decision that has been declared invalid. This is to enable the*

Court to weigh up those consequences against the imperative to vindicate the principle of legality. No such case has been made out by the City in its papers."

163. In Thaba Chweu Rural Forum, supra, the Supreme Court of Appeal held and described the weighing of consequences in fashioning a just and equitable remedy as follows: *"In fashioning appropriate just and equitable relief, the approach in Lombardy finds application whereby this Court has to weigh the consequences ... against the imperative to vindicate the principle of legality. Should matters be left as they are, the respondents stand to unjustifiably claim the unlawfully imposed excessive portion of the municipal rates, levied on the agricultural properties of the ratepayers. The scale of justice will be tilted."*

164. In Lombardy, supra, the Supreme Court of Appeal held the following: *"It cannot plausibly be so that the City proceeded to arrange its affairs in the confident expectation that ratepayers would not challenge its conduct. Indeed, the City does not even attempt to suggest what other remedy might be preferable from the standpoint of justice and equity other than that the Court should decline to set aside the 2012 valuation roll."*

165. On the question of urgency, the applicant argued that the triggering event for this application was the City informing the applicant on 30 May that the resolution including the cleansing levy had been passed by the Council on 29 May 2025. Until the City filed its answering affidavit, its uncontested position on implementation of the cleansing levy was that it would be implemented on 1 July. This required that the application to be brought before then. If the case were to be heard in the normal course, it would only be heard after 30 June 2026, after the end of the financial year in which the cleansing levy would have affected the more than 250,000 affected members of the public. The City's

primary attack on the urgency and the applicant's alleged delay is the City's mistaken reliance on the old by-law. The applicant has never sought to make out a case based on the old by-law and it is irrelevant for purpose of determining urgency. I do not believe that the attack on urgency is justified, and I accordingly find that the applicant was justified to launch the application on an urgent basis.

166. On the question of the applicant's standing to have brought this application, the City's argument is similarly misguided. The City anchored its argument on this issue on the applicant's alleged failure to identity a section 38 (of the Constitution) right enabling the applicant to show its locus standi. The applicant argued that specific regard must be had to the public interest as it appears from the City's papers, the Constitutional issues involved and the principle of legality.

167. The City's denial of the applicant's standing emanates from a misconceived, narrow view of the Section 38 of the Constitution. The City It is also ill informed about the way the public's basic rights are affected by its actions. Its approach creates doubts as to its motivation for raising the objection against a civil rights organisation calling for judicial oversight. In Ferreira v Levin NO 1996 (1) SA 984 (CC) at para 165 Ferreira, Chaskalson P held that a broad approach had to be adopted to standing in constitutional cases. Since, there has been increasing judicial support for the proposition that Section 38 of the Constitution is not merely confined to the Bill of Rights, as the City contends, but to all constitutional matters.

168. In Kruger v President Of Republic Of South Africa And Others 2009 (1) SA 417 (CC) at para 23, Skweyiya J pointed out that constitutional litigation is

particularly important in this country, *"...where we have a large number of people who have had scant educational opportunities and who may not be aware of their rights"*, and that a broad approach to standing would *"facilitate the protection of the Constitution."*

169. In considering the City's conduct, I have considered the case of MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd 2014 (3) SA 481 (CC) at para where Cameron J said: *"... there is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure circumventing lifeline. It is the Constitution's primary agent. It must do right, and it must do it properly."*

170. Given the City's conduct and aim to obfuscate the real issues, compounded by its failure to comply with its own legislation, and, further compounded by uploading several hundred of irrelevant pages and documents, I must express my disapproval by considering a punitive cost order. Any other cost order would not be justified under these circumstances.

171. In Electoral Commission v Mhlope and Others 2016 (5) SA 1 (CC) at para 130 the Constitutional Court held: *"The rule of law is one of the cornerstones of our constitutional democracy. And it is crucial for the survival and vibrancy of our democracy that the observance of the rule of law be given the prominence it deserves in our constitutional design. To this end, no court should be loath to declare conduct, that either has no legal basis or constitutes a disregard for the law, inconsistent with legality and the foundational value of the rule of law. Courts are obliged to do so. To shy away from this duty would require a sound*

jurisprudential basis. Since none exists in this matter, it is only proper that we do the inevitable."

172. Before issuing the order which I intend to make, I need to record a few aspects which I found warranting comment. Both sides employed senior counsel, the respondent's having employed the services of three counsel. I find that the employment of senior counsel was warranted, subject to what follows. On the first day of hearing, after lunch I was approached by counsel for the parties in the corridor where the respondent's senior counsel advised me that he would not be able to complete his submissions on that day, namely 24 July 2025. The application, in my view had been set down for two days, and, when I enquired about 25 July 2025, senior counsel for the respondents advised me that he would be in Lesotho the next day and asked whether the application could stand down to the following week.

173. I declined the request, firstly because my acting appointment would end on 25 July 2025 and, secondly, perhaps more importantly, counsel in opposed applications, let alone special motions, should follow the well-known practice of being available for the whole week in which their case will be heard. I was then asked whether the case could continue virtually on 25 July 2025. I acceded to the request, the applicant's senior counsel not having difficulty with the request. On the morning of 25 July 2025 I was informed by Mr Manala, the respondents' one junior counsel that the senior counsel had contacted him early that morning to inform him that he had no internet connectivity and could not appear. That was the last I saw or heard from the senior counsel, and no explanation has been proffered to me by the senior counsel for not having foreseen the possibility of connectivity issues.

174. I must also make of my disapproval at the City having employed three counsel and who put up a completely unmeritorious defence to the applicant's case. Ordinarily I would have debated this question with counsel but given the absence of the respondents' senior counsel and insufficient time, I find it appropriate to send out a message to legal practitioners on prosecuting or defending cases unmeritorious. The aim is not to discourage legal practitioners from taking on cases where the line between meritorious and unmeritorious case is thin, for fear of being ordered to pay the costs of the litigation *de boniis propriis* but rather warn legal practitioner of the obligations to the court and limited resources, let alone their client's funds which may be depleted for no good reason.

175. The Constitutional Court ("CC") in Ex Parte Minister of Home Affairs v Lawyers for Human Rights [2023] ZACC 34; 2024 (1) BCLR 70 (CC); 2024 (2) SA 58 (CC) (30 October 2023); See also: South African Social Security Agency v Minister of Social Development (Corruption Watch (NPC) RF Amicus Curiae) [2018] ZACC 26; 2018 JDR 1451 (CC); 2018 (10) BCLR 1291 (CC) (SASSA); Public Protector v South African Reserve Bank [2019] ZACC 29; 2019 (6) SA 253 (CC); 2019 (9) BCLR 1113 (CC), expressed its displeasure towards the legal practitioners pursuing litigation in the manner that the court found to be in contrast with their ethical duties and said the following:

"[107] In Canada, the Court of Appeal for British Columbia held in Lougheed that in an adversarial system the usual approach of judicial non-intervention presupposes that counsel will do their duty, not only to their client but to the court in particular. That duty, said the Court, entails: "to do right by their clients and right by the court .... In this context, 'right' includes taking all legal points deserving of

consideration and not taking points not so deserving. The reason is simple. Counsel must assist the court in doing justice according to law".

[108] My Colleague states in his article that the rules of professional conduct of the law societies of Canada contain provisions supporting a conclusion that it is improper to advance a hopeless case.

[109] In his article, Rogers J concludes, amongst others, in respect of the ethical duties of counsel (which, self-evidently are of equal application to attorneys; the emphasis is my own):

(a) Pleadings and affidavits must be scrupulously honest. Nothing should be asserted or denied without reasonable factual foundation.

(b) It is improper for counsel to act for a client in respect of a claim or defence which is hopeless in law or on the facts.

(c) A necessary correlative is that counsel must properly research the law and insist on adequate factual instructions.

(d) In principle counsel may properly conclude that a case is hopeless on the facts though in general counsel cannot be expected to be the arbiter of credibility.

(e) There is an ethical obligation to ensure that only genuine and arguable issues are ventilated and that this is achieved without delay.

(f) Misconduct of this kind must be assessed subjectively – the question is whether counsel genuinely believes that the case is

not hopeless and is thus properly arguable…" (own underlining for emphasis).

176. Relying on an earlier decision on the issue of costs being awarded against the legal practitioners, the Full Court of Gauteng Local Division in a judgment dated 29 July 2024, penned by Mlambo JP, said the following:

"[25] In Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd, this Division elaborated on the principles relating to an order of costs *de bonis propriis* as follows:

"*Costs are ordinarily ordered on the party and party scale. Only in exceptional circumstances and pursuant to a discretion judicially exercised is a party ordered to pay costs on a punitive scale. Even more exceptional is an order that a legal representative should be ordered to pay the costs out of [their] own pocket. It is quite correct, as was submitted, that the obvious policy consideration underlying the court's reluctance to order costs against legal representatives personally, is that attorneys and counsel are expected to pursue their client's rights and interests fearlessly and vigorously without undue regard for their personal convenience. In that context they ought not to be intimidated either by their opponent or even, I may add, by the court. Legal practitioners must present their case fearlessly and vigorously, but always within the context of set ethical rules that pertain to them, and which are aimed at preventing practitioners from becoming parties to a deception of the court. It is in this context that society and the courts and the professions demand absolute personal integrity and scrupulous honesty of each practitioner.*" (Citation omitted and emphasis added.)

[26] The Court went on to explain the circumstances in which an order of costs de bonis propriis can be granted against a legal representative as follows:

"It is true that legal representatives sometimes make errors of law, omit to comply fully with the rules of the court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not, however, per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioner, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context. Examples are, dishonesty, obstruction of the interest of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, and gross incompetent and a lack of care." …

"[28] …In Ex Parte Minister of Home Affairs; In re Lawyers for Human Rights v Minister of Home Affairs and Others, supra, the Constitutional Court emphasised that-

"[l]egal practitioners are an integral part of our justice system. They must uphold the rule of law, act diligently and professionally. They owe a high ethical and moral duty to the public in general, but in particular to their clients and to the courts."

177. Under the circumstances, I make the following order:

1. The applicant is authorised to have dispensed with the forms and services provided for in the Rules and hearing of this application as a matter of urgency.

2. The imposition of cleansing levy by the First to Fourth Respondent (the City) is hereby declared unlawful, invalid and is of no force and effect and is accordingly set aside.

3. The declaration of unlawfulness and setting aside of the cleansing levy, in paragraph 2 above includes relevant portions applicable to the cleansing levy in the following documents:

    a. 2024/2025 funding plan to improve the upfronted budget position of the City, annexed as annexure FA7 to the founding affidavit).
    b. The 2024/2025 medium term revenue and expenditure framework (annexed as annexure A to annexure FA10 to the founding affidavit).
    c. Council resolution dated 29 May 2025 (annexed as FA12 to the founding affidavit).
    d. Tariff policy with effect from 1 July (annexed as FA13 to the founding affidavit).
    e. The City of Tshwane Metropolitan Municipality Waste Management By-law (annexed as FA16 to the founding affidavit).
    f. City of Tshwane Metropolitan Municipality Refuse Service Schedule with tariffs for refuse removal services (annexed as

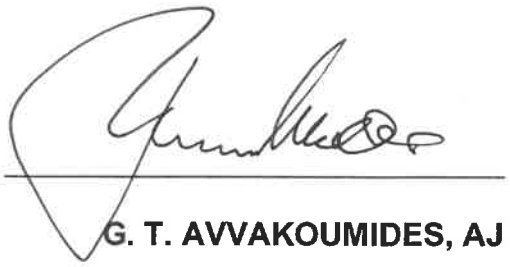
FA16 to the founding affidavit).

4. In the event of the by-law in paragraph 3(f) above not having been published as at date of this order, the City is prohibited from having it published and is furthermore compelled to forthwith take all reasonable measures to ensure that such by-law will not be published. To the extent that publication has taken place, the City is ordered to take immediate steps to retract the publication by way of a further publication in which the previous publication City of Tshwane Metropolitan Municipality Waste Management By-law is forthwith withdrawn.

5. In the event that the City has activated its billing systems to render accounts to residents and businesses with a cleansing levy:

   a. The City is ordered to forthwith take all reasonable measures and steps to ensure that residents and businesses are not billed for the cleansing levy; and
   b. To the extent that the City has already proceeded with the billing systems and has rendered accounts to residents and businesses with the cleansing levy, the City is order to forthwith take all such reasonable steps and measures to ensure that the accounts of the affected residents and businesses who have been billed for a cleansing levy, are credited with an amount equal to the cleansing leavy during the following billing cycle.

6. The City is ordered to pay the applicant's costs on the scale as between attorney and client, including senior counsel costs.



G. T. AVVAKOUMIDES, AJ

Acting Judge of the High Court

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