

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**Case Number: 10714/2009**

In the matter between:

<b>Stellenbosch Ratepayers' Association</b>	<b>First Applicant</b>
<b>Alberta Hayes</b>	<b>Second Applicant</b>
and	
<b>Stellenbosch Municipality</b>	<b>First Respondent</b>
<b>Dennis Moss Planners and Architects</b>	<b>Second Respondent</b>

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**JUDGEMENT DELIVERED ON 2 DECEMBER 2009**

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**BAARTMAN, J**

- [1] In this application, the Stellenbosch Ratepayers' Association (**the first applicant**) initially, on an urgent basis, sought the review and setting aside of decisions taken by the Stellenbosch Municipality (**the first respondent**). One of the decisions the first applicant sought to have reviewed and set aside was the first respondent's appointment of Dennis Moss Planners and Architects (**the second respondent**). I deal more fully with the decisions that form the subject of this application below. The second respondent indicated that it would abide this court's decision.

- [2] The first respondent also opposed Alberta Hayes' (**the second plaintiff**) joinder application. She is a ratepayer in the Stellenbosch municipal district and a member of the first applicant.
- [3] On the second day of the hearing of this matter, the first applicant indicated that it no longer sought the setting aside of the decisions – only that they be declared invalid. I deal more fully with the amended relief below.
- [4] In this judgment, I deal first with the *locus standi* of the first applicant thereafter with the second applicant's application for joinder. I will thereafter deal with the merits of the amended relief.

### **THE FIRST APPLICANT'S *LOCUS STANDI***

- [5] The Stellenbosch municipal area consists of 19 wards. The first applicant represents 5 of these wards. In terms of clause 5.1.1 of the first applicant's constitution, each ward must be represented by 4 or more persons. The first applicant admitted that two of its wards were represented by 2 rather than the required 4 persons.
- [6] On 25 May 2009, the first applicant's Sentrale Bestuur (**Sentrale Bestuur**) resolved to institute these proceedings. In terms of the first applicant's constitution, half of its members would form a quorum at any Sentrale Bestuur meeting. The first respondent argued that because two of the wards consisted of only two members, the Sentrale Bestuur could not form a quorum.
- [7] The first applicant then attempted to remedy the complaint through its Dag Bestuur (**Dag Bestuur**). On 17 June 2009, the first applicant's Dag Bestuur met and ratified the Sentrale Bestuur's decision to institute these proceedings. However, the first respondent pointed out that only 3 persons were present at that meeting instead of 5 as required in terms of clause 5.3 of the first applicant's constitution. On 30 June 2008, 20 of the first applicant's members requested its Sentrale Bestuur to convene a 'Buitengewone Algemene Vergadering'. The Sentrale Bestuur failed to convene the meeting within 14 days, as required. On 30 July 2009, the first

applicant's members, acting in terms of clause 6.2.3 of its constitution, convened a meeting of its members. The section permits the meeting in the event of failure on the part of the Sentrale Bestuur, when requested, to convene a meeting within 14 days.

- [8] On 30 July 2009, the first applicant's members ratified the earlier decision to institute these proceedings. The first respondent argued that the Sentrale Bestuur could not validly receive any request because it could not form a quorum. However, if the first respondent is correct, it means that the members should not have convened the 30 July meeting.
- [9] It would also follow that the first applicant would have to correct its membership in the 2 under-represented wards or amend its constitution. However, if the first applicant's governing bodies are unable to form a quorum because of the under-represented wards, it effectively means that the first applicant is rendered ineffective. Therefore, the first respondent argued that any resolution taken by the first applicant, either through the Sentrale Bestuur or the members themselves in terms of clauses 6.2.1, 6.2.3 and 6.3.6, were invalidly taken.
- [10] The first respondent, in my view, lost sight of the fact that the first applicant was a voluntary association of non-professionals. The courts have cautioned against an overly technical approach when dealing with entities such as the first applicant. In the matter of ***Moutaung v Mukubela and Another NNO: Motaung v Mothiba NO, 1975 (1) SA 618 (0) at 626 J-627 D Steyn J held that:***

*"In considering whether there has been a material breach of the constitutional provisions of a voluntary association, a Court of law should not, view the matter as if under a strong magnifying glass and should not carpingly ferret out and unduly enlarge every minor deviations from the strict letter of the constitutional provision being examined. Much rather should it adopt a practical, common-sense approach to the matter, constantly bearing in mind that the persons called upon to administer such a constitution are usually laymen who are unversed in the ways of the law."*

[11] Although the first respondent was entitled, as it did, to challenge the first applicant's *locus standi*, the attack cannot succeed. I find that the first applicant's members were entitled to act as set out above. (See **Garment Workers' Union v De Vries and Others**, 1949 (1) SA 1110 (W) at 1129.)

[12] In terms of clause 1A4 of the first applicant's constitution, it is able to institute legal proceedings. Therefore, the decision the first applicant took through an incorrect procedure was validly ratified on 30 July 2009. (see **Grundling v Beyers 1967 (2) SA 131 W at 139 H-140B** and the unreported matter of **Stellenbosch Ratepayers Associates v Stellenbosch Municipality** case number 11938/09 delivered by Meer J on 18 November 2009.)

### **The Joinder Application**

[13] As indicated above, the second applicant applied to be joined in these proceedings in an attempt to remedy the defects in the first applicant's *locus standi*. The first respondent objected to her application for joinder and argued that these proceedings were a nullity due to the first applicant's lack of *locus standi* and therefore she could not join. I have found that the first applicant had the requisite *locus standi* to have instituted these proceedings. Therefore, the application for joinder on the part of second applicant must succeed.

## **THE MERITS OF THE MAIN APPLICATION**

[14] I have indicated above that the applicants have amended the relief sought in these proceedings. It is convenient to first deal with the circumstances that led to these proceedings before dealing with the exact nature of the relief sought.

### **Background**

[15] There are 9 sports stadia (**the viewing stadia**) within the first respondent's municipal area and they are in previously disadvantaged areas. The first respondent had done maintenance and upgrading work to these 9 stadia

since 2007 and it appears from the papers that the first respondent had, since 2007, made provision in its budget for the maintenance and upgrading of the viewing stadia. The first respondent decided to do considerable work to these stadia before the 2010 Fifa Soccer World Cup.

- [16] On 19 November 2008, the first respondent's Mayoral Committee (**Mayco**) resolved to obtain, in principle, the first respondent's Council's approval for the first phase of the viewing stadia. The following appears from the minutes of that meeting:

*"Council has in principle decided to make use of the opportunity of the 2010 Soccer World Cup to create legacy projects which will benefit the community of Stellenbosch long after South Africa has hosted the event.*

- a) that the 1<sup>st</sup> phase of the 2010 Soccer World Cup (viewing stadiums and related facilities) to the amount of R10 000 000.00 be approved in principle; and*
- b) that the Municipal Manager be requested to investigate ways of financing the expenditure, as well as amending the Adjustments Budget accordingly and advise Council in this regard; and*
- c) that the Municipal Manager be tasked to make a presentation regarding the design layout and concepts to the Council prior to the Adjustments Budget Processes."*

- [17] That was the start of this project. At a subsequent meeting on 22 October 2008, the municipal manager made a presentation to Mayco in respect of the proposed project. The purpose of this meeting was to obtain permission from Mayco for the proposed 2010 strategy. The recommendation from that meeting appears from its minutes to have been:

*"...that the draft strategy be approved as an outline and basis for the 2010 approach and activities. The strategic working group on the 2010 project was responsible for the draft."*

[18] On 19 November 2008, Mayco met again. The purpose of that meeting appears to have been the following.

*"To obtain in principle Council's approval for the 1<sup>st</sup> phase of the 2010 viewing stadiums, the mayoral committee on 19 November 2008 made the following recommendations:*

- a) that the 1<sup>st</sup> phase of the 2010 Soccer World Cup (Viewing Stadiums and related facilities) to the amount of R10 000 000.00; be approved in principle; and*
- b) that the Municipal Manager be requested to investigate ways of financing the expenditure, as well as amending the Adjustments Budget accordingly and advise Council in this regard; and*
- c) that the Municipal Manager be tasked to make a presentation regarding the design layout and concepts to Council prior to the Adjustments Budget Processes."*

[19] On 31 August 2009, the property manager sought the municipal manager's approval for the appointment of the second respondent using a "single source selection process in terms of Regulation 36(2)(a) and (b) of the Municipal Supply Chain Management Regulations". The effect of this was a deviation from the regulations that required a competitive bidding process for appointments of this nature.

[20] It appears from a letter dated 8 October 2008 that the first respondent appointed the second respondent to complete the following tasks related to the viewing stadia.

*"Viewing Stadiums for Soccer 2010 World Cup*

*This project entails the establishment of nine (9) viewing stadiums for the Soccer World Cup 2010. The various areas / stadiums that have been prioritized as well as the estimated capital budgets determined are:*

*1.1 Phase 1*

- Kayamandi: Main Soccer Field: R15,8 million*

•	<i>Cloetesville:</i>	<i>Soccer Field:</i>	<i>R7,8 million</i>
•	<i>Idas Valley:</i>	<i>Soccer Field:</i>	<i>R7,7 million</i>
•	<i>Jamestown:</i>	<i>Soccer Field:</i>	<i>R5,0 million</i>
•	<i>Klapmuts:</i>	<i>Soccer Field:</i>	<i>R4,9 million</i>
•	<i>Kylemore:</i>	<i>Soccer Field:</i>	<i>R3,9 million</i>
•	<i>Pniel:</i>	<i>Soccer Field:</i>	<i>R3,4 million</i>
•	<i>Franschoek/Groendal</i>	<i>Soccer Field:</i>	<i>R4,1 million</i>
•	<i>Raithby:</i>	<i>Soccer Field:</i>	<i><u>R5,6 million</u></i>

*Total R58,2 million (excl. VAT)"*

[21] It appears from the same letter that the second phase of the project would include the following:

*"Kayamandi: Main Soccer field (viewing stadium) R11 million (excl. VAT)"*

[22] The second respondent's obligations included the following:

- (a) Producing the designs and plans for the project;
- (b) The preparation of tender documentation for the project;
- (c) Recommending the appointment of specialist consultants for the project;
- (d) Supervising the construction work.

[23] The second respondent's fee in terms of the project was in excess of R5 million. The first respondent was to pay the amount in instalments. The first payment of R732 000 was due in December 2008 and a final payment of R123 000 in February 2010.

[24] On 11 December 2008, the Council adopted Mayco's 19 November 2008 resolution, but included a requirement that *"the Municipal Manager gives feedback on this matter to the Council on a regular basis"*.

[25] On 20 March 2009, the first respondent put the project out to tender. In terms of the tender invitation, prospective applicants had to direct technical queries regarding the project to the second respondent.

## THE RELIEF CLAIMED IN THESE PROCEEDINGS

[26] The applicants in their amended prayers claimed: (I quote from counsel's heads).

1. *"Declaring invalid, without setting aside, the decisions to appoint the Second Respondent and to approve the use of a single source selection in appointing the Second Respondent, for failure to comply with sections 15 and 19 of the MFMA, and paragraphs 4.13 and 4.36 of the SCMP (prayers 4.1 and 4.2 of the original Notice of Motion).*
2. *Declaring unlawful and invalid, without setting aside, the resolutions effectively calling upon the Municipal Manager to make provision in an adjustment budget for the allocation of R10 million for the first phase of the project on approving this in principle for contravention of sections 15 and 19 of the MFMA and of paragraph 4.2.4 (a)(ii) of the SCMP (prayers 5.1 and 5.2).*
3. *Declaring that the expenditure incurred by the First Respondent in relation to the project prior to the adoption of its 2009/2010 budget is unauthorised expenditure in terms of section 32 of the MFMA, and directing the accounting officer of the First respondent ...to promptly inform the Mayor,..."*

[27] I deal below with the amended relief sought.

### The appointment of the second respondent

[28] Ian Bruce Roland Kenned (**Kenned**) attested to the first respondent's answering affidavit. At the time, he was the municipal manager of the first applicant. He described the circumstances surrounding the appointment of the second respondent as follows:

*"Early in September 2008, the Second Respondent was authorised to commence with exploratory and preparatory work in order to establish the feasibility of the proposed upgrade, and the extent of the work required. The terms of the Second Respondent's appointment were only finalised*

thereafter and are as set out in the First Respondent's letter dated 8 October 2008...

*The Second Respondent was also contracted to provide tender documentation for the construction work involved and to supervise work at the sites (although in relation to the Kayamandi viewing stadium, the supervision task was subject to funding).*

*The Second Respondent was instructed to undertake the work on an urgent basis so that construction could be completed in time for the 2010 World Cup Soccer event. In order for proper landscaping to be done, construction had to be completed by the end of January 2010."*

- [29] Kenned also said that in terms of Regulation 36(1)(a), the municipality's supply chain management policy made provision for the deviation from official procurement procedures in certain circumstances. In these proceedings, the first respondent relied on sub-paragraph (v) of that policy as justification for the procedure followed in the appointment of the second respondent. The section provides that:

*"The accounting officer may –*

*dispense with the official procurement processes established by this policy and... procure any required goods or services through any convenient process, which may include direct negotiations, but only –*

*in an emergency;*

*if such goods or services are produced or available from a single provider only;*

*for the acquisition of special works of art or historical objects where specifications are difficult to compile;*

*acquisition of animals for zoos and/or nature and game reserves; or*

*in any other exceptional case where it is impractical or impossible to follow the official procurement processes..."*

[30] Kenned described the exceptional circumstance that justified the first respondent's reliance on the section as follows:

- a) Normally, the official procurement process would require a competitive bidding process for the project that forms the subject of this application. This is so because the value of the transaction exceeds R20 000. The competitive bidding process is a two-stage process. Had the first respondent followed that process, it would have caused a delay of approximately 3 months.
- b) Secondly, the first respondent lacked the required expertise to draw up the specifications for the tender invitation and to evaluate the tender, once received.
- c) Therefore, it was impossible for the first respondent to put out to tender tasks assigned to the second respondent.

[31] It is the first respondent's case that the second respondent was the only multi-disciplinary practice in Stellenbosch of its size and capacity and further that the second respondent provided architectural, planning, engineering, landscape design and quantity surveying services both locally and internationally. The second respondent had undertaken "many and varied development projects" on the first respondent's behalf over a 25-year period. For that reason, the second respondent possessed "valuable institutional memory and extensive and intimate knowledge of the area".

[32] The first respondent also alleged that the second respondent had "performed the spatial analysis for one of the first respondent's previous IDPs" and the second respondent had at its disposal all of the first respondent's structure plans, guide plans and sector plans".

[33] The first respondent further alleged that, over a number of years, the second respondent had acquired an in-depth knowledge of the first respondent's zoning scheme and building regulations. In 2002, the second respondent had developed the designs for the upgrade of the Kayamandi town centre, a tourism corridor and a new sport and recreational facility for Kayamandi. The second respondent had also acted as the supervising

contractor in respect of an upgrade at the clubhouse and youth centre at the Pniel sport grounds.

- [34] Regarding the financial implications of the appointment, the first respondent said that contracts such as the one under discussion were usually concluded at the applicable government tariff. However, for this matter, the first respondent's chief financial official negotiated a ten percent discount with the second respondent.
- [35] The applicants denied that the second respondent was the only multi-disciplinary firm in the Stellenbosch area as alleged by the first respondent. However, the applicants did not point me to any other firm with the same capacity; therefore, I accept the first respondent's assertion that the second respondent was the only multi-disciplinary firm in the Stellenbosch municipal area with the capacity for the project.
- [36] The applicants' counsel further argued that to allow the appointment of the second respondent to stand would mean that others who did not have a history with the first respondent would never be able to compete for work with the second respondent. That submission would be correct if that was the only reason the first respondent chose the second respondent. However, I have detailed the first respondent's reasons above and find them compelling.
- [37] I accept that had the first respondent acted timeously, it would have had sufficient time to follow the competitive bidding process. The first respondent explained the delay as follows: (I quote from counsel's heads)
- "... That it took a year from the time that the potential presented by the 2010 World Cup event was formally recognised for matters to progress to this point is not extraordinary in the context of the evolution of a project as complex as the 2010 World Cup, coupled with the realities of the day-to-day life of a municipality. There was also a high turnover of membership of the steering committee during this period.*
- On 1 August 2008 the municipal manager presented the strategic plan to the directors of the First Respondent and in early September 2008 he*

*appointed the Second Respondent. The Second Respondent was appointed to conduct exploratory and preparatory work in order to establish the feasibility of the proposed upgrade. This was necessary in order to arrive at relatively accurate cost estimates. In order to arrive at such estimates, site development plans for each site would have to be prepared, as well as development plans for each site would have to be prepared, as well as detailed building sketch plans and preliminary building specifications. The Second Respondent would also be required to consult with structural and civil engineers to ensure optimal design solutions and with quantity surveyors to determine cost estimates.*

*The Second Respondent started work in September 2008. At the time negotiations between the Acting Director: Corporate Services and the Second Respondent were still underway regarding the exact terms of the appointment of the Second Respondent should the First Respondent's Council decide to go ahead with the project, as well as the estimated costs of the project.*

*Shortly after 26 February 2009, when the Second Respondent had completed a proposal and managed to arrive at relatively accurate cost estimates, the Acting Director: Corporate Services finalised the letter of appointment which is annexed...He dated it 8 October 2008, which was the day after the second respondent's initial deadline to come up with the preliminary estimates for the project. The Municipal Manager then approved the formal appointment."*

- [38] I am persuaded that the first respondent adequately explained the reasons for the delay. I find that in the circumstances of this matter, the first respondent had shown exceptional circumstances existed for the appointment of the second respondent through the single source selection process. The application to declare the decision to appoint the second respondent, described in para 26 above, cannot succeed. (See section 8 of PAJA and *Millennium Waste Management (Pty) Ltd v Chairperson Tender Board: Limpopo Province and Others 2008 (2) ALL SA 145 (SCA)*)

## Setting aside the resolutions

- [39] I now deal with the applicants' second claim as amended, paragraph 26(2) above. As indicated above, Mayco had, on 19 November 2008, resolved to request the municipal manager to investigate ways of financing the expenditure, as well as to amend the adjustments budget accordingly and to advise the council in that regard.
- [40] In terms of the resolution, the municipal manager also had to make a presentation in respect of the design layout and concepts to the council prior to the adjustments budget processes. On 11 December 2008, the first respondent's council unanimously accepted Mayco's recommendation.
- [41] The first respondent's counsel argued that:
- (a) the 19 November 2008 resolution merely set in motion a chain of events intended to culminate in the adoption of an adjustments budget in terms of which spending on the first phase of the 2010 Soccer World Cup project might be authorised up to a maximum of R10 000 000.
  - (b) the resolution did not involve incurring expenditure nor did it purport to be authority for such expenditure.
  - (c) the council's decision of 11 December 2008 involved the adoption of this recommendation which in turn resulted in the adoption of an adjustments budget.
  - (d) On 29 January 2009, at a special meeting of the first respondent's council, it approved an adjustment budget making a total amount of R11 405 000 available for the viewing stadia project. The amount was made up as follows:
    - (i) R2 055 000 in terms of s 28(2)(d) of the Municipal Finance Management Act (**the MFMA**): these were several amounts which had been allocated to sports grounds in the 2008/2009 budget which remained unspent;

- (ii) R3 million in terms of s 28(2)(b) of the MFMA: from the sale of land; and
- (iii) R6 350 000 in terms of s 28(2)(b) of the MFMA: from capital replacement reserves.

[42] Section 15 of the MFMA provides for the following:

*"A municipality may, except where otherwise provided in this Act, incur expenditure only –*

- (a) *In terms of an approved budget; and*
- (b) *Within the limits of the amounts appropriated for the different votes in an approved budget.*

[43] Section 19 of the same Act provides as follows with regard to "Capital projects"

*"(1) A municipality may spend money on a capital project only if –*

*...(a) the money for the project, excluding the cost of feasibility studies conducted by or on behalf of the municipality, has been appropriated in the capital budget...;*

*...(b) the project, including the total cost, has been approved by the council;*

*...; and*

*...(c) the sources of funding have been considered, are available and have not been committed for other purposes."*

*(2) Before approving a capital projects in terms of subsection (1) (b), the council of a municipality must consider –*

*...(a) the projected cost covering all financial years until the project is operational; and*

*...(b) he future operational costs and revenue on the project, including municipal tax and tariff implications.*

(3) *A Municipal council may in terms of subsection (1)(b) approve capital projects below a prescribed value either individually or as part of a consolidated capital programme.*"

[44] It appears, from sections 15 and 19 above, that the sections aim to regulate expenditure. The 19 November and 11 December resolutions did not authorise expenditure. The application in respect of these resolutions cannot succeed.

### **The expenditure incurred prior to the 2009/2010 budget**

[45] I now deal with the relief set out in paragraph 26.3 above. It is the applicants' case that the first respondent's failure to have provided in its Capital Budget for the project meant that it could not make allowance for the project in an adjustments budget.

[46] The first respondent argued that the upgrading of the sports grounds had formed a capital project in its respective budgets since 2005, therefore, it was not newly added and funding in respect of the upgrading had been increased in the adjustments budget as a result of the increase priority status of the project. That increase, according to the first respondent, was permitted in terms of section 28 of the MFMA. The section provides that:

*"A municipality may revise and approved annual budget through an adjustments budget.*

*An adjustments budget –*

*...(c) may appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for;*

*...(d) may authorise the utilisation of projected savings in one vote towards spending under another vote;..."*

[47] The applicants in Van der Walt's replying affidavit dated 12 June 2009, in paragraph 61 said that:

*“... in terms of s28 (5) of the MFMA, when an adjustments budget is tabled, it must be accompanied by – (a) an explanation how the adjustments budget affects the annual budget; (b) a motivation of any material changes to the annual budget; (c) an explanation of the impact of any increased spending on the annual budget and the annual budgets for the next two financial years; and (d) any other supporting documentation that may be prescribed.” There is no indication in the minutes attached to the answering affidavit (“SM14”) that this was done.”*

- [48] The first respondent's counsel submitted that it was not open to the applicants to raise the non-compliance with section 28(5) in replying papers, as the first respondent had not had an opportunity to reply thereto. I agree.
- [49] The first respondent argued that the payment made to the second respondent before the approval of the adjustments budget in 2009, related to work done in respect of the feasibility of the project, including the establishment of cost estimates and preparatory design work. It appears from Kenned's affidavit that the second respondent's fee was approximately R5 million that was to be paid in instalments. The first respondent made the first payment of R723 000 in December 08.
- [50] The first respondent's counsel argued that the tasks the second respondent had performed reasonably related to feasibility studies as contemplated and were lawful by virtue of section 19 of the MFMA, which allows expenditure on feasibility studies in respect of capital projects without funds being allocated.
- [51] It is necessary to determine whether the viewing stadia were a capital project and whether any of the work done by the second respondent could be categorised as feasibility studies.
- [52] The first respondent alleged that the expenditure was part of capital expenditure. It alleged that:

- (a) the first respondent provided for the upgrading of the infrastructure of the sports facilities in Stellenbosch in its annual budget as a capital project as far back the 2005/2006 financial year.
- (b) the first respondent initially conducted the upgrading of the fields on a piecemeal basis. The approach was unsustainable, resulting in the decision to make provision for the upgrading of the facilities as a co-ordinated and structured project. Sums of between R800 000 and R5 million were appropriated towards it.

[53] The first respondent made the following allocations in its respective budgets:

- (a) The 2005/2006 budget included the upgrading of sports facilities at Cloetesville, as well as the upgrading of the sports club at Ida's Valley.
- (b) The 2006/2007 budget provided for the construction of phase 2 of the clubhouse at Kylemore, a general upgrade at Raithby and Klapmuts, upgrading of the drainage and fencing at Groendal, and improving the clubhouse at Pniel.
- (c) In the 2007/2008 budget, the first respondent provided for fencing at Kayamandi and safety gates at Kylemore.
- (d) In 2008/2009 budget, the first respondent provided for the upgrading at Kylemore, Jamestown and Kayamandi, the building of a storeroom and cloakrooms at Pniel, and painting and fencing at Kylemore and Klapmuts.

[54] The amounts that the first respondent allocated to the different stadia suggest that it had budgeted for more than mere routine maintenance. I accept that the 9 stadia that form the subject of this application were part of a capital project. In addition to the upgrading, routine maintenance would always be an item on the budget.

[55] Section 28 of the MFMA provides that:

(1) *"A municipality may revise an approved annual budget through an adjustments budget.*

(2) *An adjustments budget –*

*...(b) may appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for;*

*...(d) may authorise the utilisation of projected savings in one vote towards spending under another vote;..."*

[56] I am satisfied that on the papers before me, the first respondent in terms of section 28 could revise its budget through the adjustments budget, as it did in this matter.

***Did the first payment to second respondent relate to feasibility studies?***

[57] I agree that all the work, to date, done by the second respondent cannot be categorised as feasibility studies. I am not able to determine on these papers exactly which tasks can be categorised as feasibility studies and which not.

**CONCLUSION**

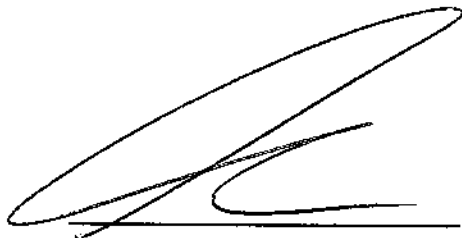
[58] It follows from the above that the applicants cannot succeed in this application. I have considered the question of costs and am of the view that in the circumstances of this matter it is appropriate to make no order as to costs. The first respondent failed in its attack on the *locus standi* of the first applicant and in its objection to the joinder of the second applicant. The first respondent successfully opposed the main application.

[59] The applicants are members of the municipal district, which the first respondent serves. They are ratepayers and fulfil a necessary function in

that they hold the municipality accountable for the expenditure of public money. In this matter, they had reasons to question the large expenditure the first respondent undertook. Although, I have accepted the reasons for the first respondent's delay that led to the appointment of the second respondent through a single source selection process the applicants were entitled to have challenged the appointment.

**Order**

[60] The application is refused. I make no order as to costs.

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal line and a small flourish.

**BAARTMAN, J**