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

Case no: 103018/2025

In the matter between:

SOUTH AFRICAN PROPERTY OWNERS' ASSOCIATION **Applicant**

and

CITY OF CAPE TOWN **Respondent**

and

GOOD PARTY **Intervening Party**

SOUTH AFRICA FIRST FORUM **First amicus curiae**

CAPE TOWN COLLECTIVE RATEPAYERS' ASSOCIATION **Second amicus curiae**

and

Case no: 139023/2025

In the matter between:

AFRIFORUM NPC **Applicant**

and

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY **First Respondent**

MUNICIPAL COUNCIL OF THE FIRST RESPONDENT **Second Respondent**

EXECUTIVE MAYOR OF THE FIRST RESPONDENT **Third Respondent**

MUNICIPAL MANAGER OF THE FIRST RESPONDENT **Fourth Respondent**

MINISTER OF WATER AND SANITATION **Fifth Respondent**

MINISTER OF FINANCE **Sixth Respondent**

MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS **Seventh Respondent**

Heard: 2 to 4 December 2025

Delivered: 30 April 2026

Coram: Mabindla-Boqwana JP and Le Grange and Savage JJ

Summary: Municipal powers – Section 229 of the Constitution – Sections 74, 75 and 75A of the Systems Act – municipality's entitlement to charge for services based on property value bands – unlawful and invalid.

ORDER

1. The Good Party is granted leave to intervene and is joined as a party in case number 103018/2025.

2. The late filing of the opposing affidavit of the seventh respondent, the Minister of Cooperative Governance and Traditional Affairs, in case number 139023/2025 is condoned.

3. It is declared that the charges imposed on ratepayers by the City of Cape Town (the City), as respondent in case number 103018/2025 and first respondent in case number 139023/2025, in its 2025/2026 budget in respect of city-wide cleaning, water and sewerage, are unlawful and invalid insofar as they are inconsistent with the Constitution, national legislation and the City's Tariff By-law. Such charges are set aside with effect from 30 June 2026.

4. The City's counter-applications are dismissed.

5. The City is to pay the costs of:

   5.1 the applicants in case numbers 103018/2025 and 139023/2025, including those of two counsel on scale C;

   5.2 the applicants in opposing the City's counter-applications, also including those of two counsel on scale C; and

   5.3 the Good Party in case number 103018/2025, also including those of two counsel on scale C.

JUDGMENT

THE COURT

Introduction

[1] Before us are two applications, which were heard together, which concern the scope of local government's revenue-raising powers in the delivery of municipal services (main applications). At issue is the lawfulness of three charges, a City-wide cleaning charge, a fixed water charge and a fixed sewerage charge (the charges), imposed by the City of Cape Town (the City) on ratepayers with effect from 1 July 2025 in terms of the City's 2025/6 budget.

[2] In the first application, the applicant, the South African Property Owners' Association (SAPOA), seeks a declaratory order that the charges, each calculated from property value bands established by the City, are unlawful and invalid insofar as they are inconsistent with the Constitution, national legislation and the City's Tariff By-law. SAPOA further seeks that the order of invalidity be suspended for a period of two months to enable the City to correct the constitutional defects that arise from the imposition of such charges.

[3] In the second application, the applicant, AfriForum NPC (AfriForum), seeks a declaration that the charges are inconsistent with the Constitution and the principle of legality to the extent that they are determined from property values. Such relief is sought on the basis that the City is not empowered to use property values to determine any fees, surcharges, tariffs, taxes, levies and duties, and may do so only when imposing a rate in terms of the Local Government Property Rates Act 6 of 2004 (the Rates Act). AfriForum seeks that the declaration of invalidity be suspended until the end of the 2025/2026 financial year, 30 June 2026, to allow the City to rectify the defects in their imposition.

[4] The City opposes both applications. It contends that, if it is unsuccessful, a just and equitable remedy would be to suspend the declaration of invalidity with a sufficient period granted to the City to address budgetary shortfalls resulting from the order. The City launched conditional counter-applications, only in the event that this Court upholds the main applications, in both the SAPOA and AfriForum matters. In both it seeks a

declaration that section 75A, read with 74(2) of the Local Government: Municipal Systems Act (Systems Act),[1] is inconsistent with the Constitution and invalid to the extent that it does not make provision for a municipality to impose fixed tariffs with due regard to property value bands. It seeks that the order of invalidity be suspended for 24 months. Pending remedial legislation, the City proposes the following reading-in to section 75A(1):

'(1) A municipality may—

(a) levy and recover fees, charges or tariffs **(including fixed tariffs determined by reference to property value bands)** in respect of any function or service of the municipality.'

[5] In its counter-application in the AfriForum matter, the City seeks, in addition to the aforementioned relief, a declaration that section 75 of the Systems Act and sections 10 and 17 of the Water Services Act[2] are unconstitutional and invalid.

[6] SAPOA and AfriForum oppose the City's counter-applications.

[7] The Minister of Water Affairs and the Minister of Finance, the fifth and sixth respondents in the AfriForum application, respectively, do not oppose the matter. The seventh respondent in the same application, the Minister of Cooperative Governance and Traditional Affairs (the Minister), opposes only the City's conditional counter-application.

[8] The Good Party seeks leave to intervene in SAPOA's application. The City abides that application, having opposed its admission as an amicus curiae. The Cape Town Collective Ratepayers' Association (CTCRA) and South Africa First Forum (SAFF) were admitted, prior to the hearing of the matter, as amici curiae in the SAPOA application.

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[1] Act 32 of 2000.

[2] Act 108 of 1997.

Parties

[9] SAPOA is a not-for-profit company that has operated in the commercial and industrial real estate sector since its establishment in 1966. It launched this application to represent, protect and advance the interests of its members, which currently comprise more than 90% of South Africa's commercial property industry, including both large and small-scale property-owning entities in Cape Town. It relies on section 38(*a*), (*d*) and (*e*) of the Constitution as the basis for its legal standing, acting in its own interest, in the public interest and as an association in the interest of its members.

[10] AfriForum is a not-for-profit company and registered non-governmental organisation. Its purpose and objectives include the promotion of and advocacy for human, civil and other constitutional rights. AfriForum pursues this application in the public interest on behalf of ratepayers in the City.

[11] The Good Party is a registered political party and opposition party in the City's Municipal Council.

[12] The City is a Category A metropolitan municipality, responsible for all local government matters set out in Chapter 7 of the Constitution.

[13] The Minister, in opposing the City's counter-applications, cites the role of the Department of Cooperative Governance and Traditional Affairs (COGTA) in providing support and oversight to local governments to ensure the governments fulfil their developmental roles and deliver essential services to local communities. COGTA seeks to foster collaboration between the different spheres of government to enhance service delivery and governance effectiveness.

[14] The CTCRA is a voluntary association representing the interests of residents and ratepayers in Cape Town. SAFF is a national civic society group based in Cape Town with a focus on public accountability and governance issues.

Factual background

[15] On 30 April 2018, the City's Acting Executive Director of Finance wrote to the Director-General of COGTA stating that, due to the drought and water restrictions, water consumption in the City had fallen to almost half of what it was in 2015. This was due to residents having reduced water consumption and property owners having invested in boreholes, water harvesting mechanisms and grey water systems. Since sewerage tariffs are based on a portion of the water consumed, the reduction in water consumption had resulted in consumers benefiting from the use of the sewerage system without being charged for it. It was noted in the letter that the City was restructuring water tariffs to compensate for lower usage levels and the provision of infrastructure to provide potable water to properties.

[16] The letter proposed:

(i) Changes to the funding mechanism for sanitation from 'Rates and General Service income' (the property Rates stream) to a mechanism that uses property valuation. It was noted that a legal opinion obtained had advised that while this was legally permissible, it would cause the charge to be a municipal tax and not a tariff, therefore falling outside of the Rates Act.

(ii) Since section 19(1)(*d*) of the Rates Act prohibits a municipality from imposing more than one cent in the Rand per property, which is assessed on property values, if the City funds sanitation costs through a property rate, it loses its VAT zero rating and value-added tax (VAT) is payable on the whole property rate. All sanitation charges are subject to VAT under the VAT 419 – Guide for Municipalities, irrespective of whether they are funded through a tariff or property tax. To 'maintain the zero rating for that portion of property rates that are not part of the sanitation budget, a second cent in the Rand is essential'.

(iii) The effecting of an amendment to the Rates Act to allow the City to charge more than one cent in the Rand to ensure 'a certain/sound/reliable

> basis' to receive the revenue to transparently fund the service, with each municipal account to clearly indicate the cost of the sanitation service. This would be progressive and developmental as lower-valued properties would pay less; exemptions, reductions rebates and cross-subsidisation of the poor could be implemented; and it would solve the VAT dilemma faced by municipalities.

[17] The Rates Act was not amended. Instead, in 2018, the City imposed a water tariff structure which contained a fixed charge component, determined with reference to the size of a property's water meter, and a consumption-based component. Sewerage costs were determined as a percentage of municipal water consumption.

[18] This remained the position until the City's 2025/2026 budget was approved on 26 June 2025. A draft budget published on 27 March 2025 received over 14 000 comments, with a revised budget published thereafter. In terms of the final budget adopted, since 1 July 2025, residential customers have been billed for three additional charges not linked to consumption: a city-wide cleaning charge, a fixed water charge and a sewerage charge, all calculated against the value of a property within property value bands established by the City. This is in addition to the applicable consumption-based tariff. Given that the charges amount to a fee for services, the charges are subject to VAT under the Value-Added Tax Act[3] (VAT Act). The implementation of the water and sewerage charges for commercial properties has been delayed for one year from 1 July 2025.

[19] The city-wide cleaning charge was previously funded from rates. However, until more recently, the service was funded by 10% of electricity sales. From 1 July 2025, this charge is calculated against the value of a property within fixed property value bands established by the City. Commercial property owners continue to contribute to city-wide cleaning through an electricity surcharge.

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[3] Act 89 of 1991.

Legislative framework

The Constitution

[20] The City has executive authority and administers local government matters listed in Part B of Schedules 4 and 5 of the Constitution and any other matter assigned to it by national or provincial legislation.[4] The executive and legislative authority of a municipality is vested in its municipal council,[5] with municipalities having 'the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions'.[6] It may, in terms of section 156(2) 'make and administer by-laws for the effective administration of the matters which it has the right to administer'. A by-law that conflicts with national or provincial legislation is invalid under section 156(3).

[21] Section 215(1) of the Constitution requires that '[n]ational, provincial and municipal budgets must promote transparency, accountability and the effective management of the economy, debt and the public sector'.

[22] Section 229 makes provision for municipal fiscal powers and functions:

'(1) Subject to subsections (2), (3) and (4), a municipality may impose—

(a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and

(b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.

(2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties—

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[4] Section 156(1) of the Constitution.

[5] Section 151(2) of the Constitution.

[6] Section 156(5) of the Constitution.

(a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and

(b) may be regulated by national legislation.'

The Local Government: Municipal Systems Act

[23] The Systems Act, which came into force on 1 March 2001, provides necessary definitions for 'municipal service'[7] and 'basic municipal service.'[8] Section 4 permits municipal councils to finance municipal affairs by 'charging fees for services' and 'imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties'.

[24] Standards for tariff policies are established by sections 74, 75 and 75A. Section 74 states:

'(1) 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.

(2) A tariff policy must reflect at least the following principles, namely that—

(a) users of municipal services should be treated equitably in the application of tariffs;

(b) the amount individual users pay for services should generally be in proportion to their use of that service;

(c) poor households must have access to at least basic services through–

(i) tariffs that cover only operating and maintenance costs,

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[7] 'A service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether—

(a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and

(b) fees, charges or tariffs are levied in respect of such a service or not.'

This definition was inserted by section 35(a) of Act 51 of 2002.

[8] 'A municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.'

(ii) special tariffs or lifeline tariffs for low levels of use or consumption of services or for basic levels of service; or

(iii) any other direct or indirect method of subsidisation of tariffs for poor households;

(d) tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;

(e) tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;

(f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service;

(g) provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;

(h) the economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged;

(i) the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.'

[25] Section 75 provides:

'(1) A municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.

(2) By-laws in terms of subsection (1) may differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.'

[26] Section 75A, introduced with effect from 5 December 2002, reads:

'(1) A municipality may—

(a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and

(b) recover collection charges and interest on any outstanding amount.'

Section 75A(2) provides that the fees, charges or tariffs are levied by a municipality by way of a resolution passed by the Municipal Council, with a supporting vote of a majority of its members.

The Local Government: Municipal Property Rates Act

[27] The Rates Act came into force on 2 July 2005. Though the Act does not define 'rates on property', it defines a 'rate',[9] 'rateable property'[10] and 'public service infrastructure'.[11]

[28] A municipality, in terms of section 2 of the Rates Act, 'may levy a rate on property in its area' though, pursuant to section 2(3), this power is subject to the Constitution, the Rates Act and the rates policy required by section 3.

[29] Section 3 concerns the adoption and contents of a rates policy, with section 4 requiring that before adopting such a policy, a municipality 'must' engage in community participation in accordance with Chapter 4 of the Systems Act, advertise that the policy has been prepared and invite the local community to comment and make representations on it. By-laws may then, in terms of section 6, be adopted and published to give effect to the rates policy.

[30] In terms of section 7(1), 'when levying rates, a municipality must, subject to subsection 2, levy rates on all rateable property in its area'. Section 7(2) does not oblige a municipality to levy rates on certain types of property, including those that are municipal-owned or constitute public service infrastructure. However, the rate levied

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[9] 'A municipal rate on property envisaged in section 229(1)(a) of the Constitution.'

[10] 'Property on which a municipality may in terms of section 2 levy a rate, excluding property fully excluded from the levying of rates in terms of section 17'

[11] 'Publicly controlled infrastructure', which includes—

> '(b) water or sewer pipes, ducts or other conduits, dams, water supply reservoirs, water treatment plants or water pumps forming part of a water or sewer scheme serving the public;
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> . . .
>
> (j) any other publicly controlled infrastructure as may be prescribed.'

by the municipality on a property 'must be an amount in the Rand on the market value of the property'.[12]

[31] Part 3 of the Rates Act concerns limitations on the levying of rates. Section 16 provides—

'(1) In terms of section 229(2)(*a*) of the Constitution, a municipality may not exercise its power to levy rates on property in a way that would materially and unreasonably prejudice (a) national economic policies; (b) economic activities across its boundaries; or (c) the national mobility of goods, services, capital or labour.

2(*a*) If a rate on a specific category of properties, or a rate on a specific category of properties above a specific amount in the Rand, is materially and unreasonably prejudicing any of the matters listed in subsection (1), the Minister, with the concurrence of the Minister of Finance, must, by notice in the Gazette, give notice to the relevant municipality or municipalities that the rate must be limited to an amount in the Rand specified in the notice.

...

(3)(*a*) Any sector of the economy, after consulting the relevant municipality or municipalities and organised local government, may, through its organised structures, request the Minister to evaluate evidence to the effect that a rate on any specific category of properties, or a rate on any specific category of properties above a specific amount in the Rand, is materially and unreasonably prejudicing any of the matters listed in subsection (1).

(*b*) If the Minister is convinced by the evidence referred to in paragraph (*a*) that a rate on any specific category of properties, or a rate on any specific category of properties above a specific amount in the Rand, is materially and unreasonably prejudicing any of the matters listed in subsection (1), the Minister must act in terms of subsection (2).'

The Municipal Fiscal Powers and Functions Act

[32] The Municipal Fiscal Powers and Functions Act[13] (the MFPFA) came into force on 7 September 2007. The purpose of the MFPFA is—

'[t]o regulate the exercise by municipalities of their power to impose surcharges on fees for services provided under section 229(1)(*a*) of the Constitution; to provide for the authorisation of taxes, levies

[12] Section 11(*a*) of the Rates Act.

[13] Act 12 of 2007.

and duties that municipalities may impose under section 229(1)(*b*) of the Constitution; and to provide for matters connected therewith.'

[33] The objects of the MFPFA, set out in section 2, include to 'promote predictability, certainty and transparency in respect of municipal fiscal powers and functions'; and 'ensure that municipal fiscal powers and functions are exercised in a manner that will not materially and unreasonably prejudice national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour'.

[34] The MFPFA similarly provides definitions for 'municipal base tariff',[14] 'municipal surcharge'[15] and 'municipal tax'.[16]

[35] Section 3 provides that the MFPFA applies to—

'municipal surcharges and municipal taxes referred to in section 229 of the Constitution, other than rates on property regulated in terms of the Local Government: Municipal Property Rates Act, 2004 (Act 6 of 2004), and municipal base tariffs regulated under the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), or sector legislation'.

[36] In terms of section 8(1):

'The Minister may prescribe compulsory national norms and standards for imposing municipal surcharges, which may include, amongst others, maximum municipal surcharges that may be imposed by municipalities.'

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[14] '[T]he 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;

(d) a reasonable rate of return, if authorised by a regulator of or the Minister responsible for that municipal service.'

[15] 'A charge in excess of 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.'

[16] A 'tax, levy or duty that a municipality may impose in terms of section 229(1)(b) of the Constitution.'

[37] Section 8(2) details issues that such norms and standards may contain. To date, the Minister has not prescribed applicable norms and standards. Section 9 sets out the obligations of a municipality in respect of municipal surcharges, including requiring compliance with the norms and standards prescribed and annual reviews of municipal surcharges as part of the municipality's budget preparation process. In terms of section 9(2):

'Section 75A(2), (3) and (4) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), relating to the manner in which fees, charges or tariffs are levied and how a resolution in that respect must be made known, applies with the changes required by the context to a municipal surcharge.'

The VAT Act

[38] Section 11(2) of the VAT Act provides that:

'Where, but for this section, a supply of services, other than services contemplated in section 11(2)(*k*) that are electronic services, would be charged with tax at the rate referred to in section 7(1), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—

...

(w) a 'municipal rate' as defined in section 1,[17] is levied by a municipality'.

Water Services Act

[39] Section 10(4) of the Water Services Act prohibits water services institutions from using tariffs that are 'substantially different from any prescribed norms and standards'. Sections 12 to 18 require water services development plans to establish the

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[17] 'A rate levied by a municipality in terms of section 2 of the Local Government: Municipal Property Rates Act, 2004 on 'rateable property' as defined in section 1 of that Act respectively: Provided that a municipal rate does not include—

(a) A single charge levied by that municipality for rates and other supplies of goods or services such as—

(i) electricity, gas, water; or

(ii) drainage, removal or disposal of sewerage or garbage or

(iii) goods or services that are incidental to, or necessary for the supply of those goods or services to that owner; or

(b) a rate levied in respect of supplies of goods or services contemplated in paragraph (a).'

scope of water provision and related tariff structures. The prescribed norms and standards referred to in section 10(4) include the City's Water Services Development Plan.

[40] Section 21 of the Water Services Act requires there to be compliance with municipal by-laws. Regulations 4(1) and 4(2) of the Regulations[18] promulgated under the Water Services Act do not permit differentiation on the basis of property value.

Tariff By-law

[41] Section 1(5) of the City's 2007 Tariff By-law (By-law) provides that the By-law may differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination. In terms of section 4(4), the contents of a tariff policy must specify the basis of differentiation for tariff purposes between these categories.

[42] The By-law requires that the City's tariff policy reflect the principles referred to in section 74(2) of the Systems Act and states that it may specify any further principles for the imposition of tariffs which the City may wish to adopt, with the manner in which such principles are to be implemented to be detailed in terms of the tariff policy. Compliance with the principles in section 74(2) of the Systems Act is mandatory. Clause 3(2) of the By-law provides that 'the City shall not be entitled to impose tariffs' other than in terms of a valid tariff policy.

Tariff Policy

[43] The City's Tariff Policy (Tariff Policy), which took effect on 1 July 2007, defines a City-wide cleaning charge in Annexure 7 as 'a fixed basic charge recurring on a monthly basis on Residential properties (including Sectional Title Units) and Vacant land'. It is calculated based on the value of a property, set out in bands, to which

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[18] *Norms and Standards in respect of Tariffs for Water Services in terms of Section 10(1)* GN R652 *GG* 22472, 20 July 2001.

15% VAT is added. The Policy details the cleaning services to be rendered and provides for certain exemptions from its reach.

[44] Chapter 2 of the Tariff Policy defines a fixed basic charge[19] and provides that it is charged 'irrespective' of consumption or use of the service and that it is paid when premises are connected to the supply.

[45] Chapter 4 of the Tariff Policy explains the rationale for the City-wide cleaning tariff on the basis that it is—

'embedded in the 'polluter pays' principle, which is the cornerstone of the National Environmental Management Act, Act 107 of 1998, which amply specifies that all generators of waste (including businesses and households) are responsible for the costs of managing the waste generated. The range of services covered by the City-Wide Cleaning tariff cannot be measured using a standard unit e.g. consumption or usage, as the specific benefit to each property or user category is difficult to determine. The City-Wide Cleaning tariff is therefore not based on individual consumption but instead designed to provide a collective benefit, ensuring a reasonably clean and hygienic environment for all Residential customers.'

Parties' Submissions

SAPOA

[46] SAPOA takes issue with the charges imposed by the City on the basis that they constitute property rates, calculated against property value bands, that were not adopted in the manner required by the Rates Act. With reliance on *Gerber v MEC for Development Planning and Local Government, Gauteng (Gerber)*,[20] it submits that a property rate is a rate linked to the size of the property or in proportion to its value.[21] In light of this interpretation and section 229(1)(*a*) of the Constitution, SAPOA argues that

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[19] 'A fixed basic charge/fee recurring on a monthly basis as payment to the right of service provision/access to the network. It is applicable throughout the entire period during which the relevant premises are connected to the supply mains irrespective of whether any consumption is used or not.'

[20] *Gerber v MEC for Development Planning and Local Government, Gauteng (Gerber)* 2003 (2) SA 344 (SCA).

[21] See too *Rates Action Group v City of Cape Town (Rates Action Group SCA)* 2006 (1) SA 496 (SCA).

it would be absurd to regard charges based on property values as service charges, as this would permit a circumvention of the Rates Act.

[47] If the charges amount to service charges, SAPOA asserts that they do not conform with section 74(2)(*b)* and *(d)* of the Systems Act as they are not proportional to use, nor do they reasonably reflect the cost of rendering the service concerned. In addition, it states that the charges are also inconsistent with the By-law. It contends that charging for services must be limited to services actually rendered to the ratepayer.[22] Further, the charges are irrational in that, unlike rates which are not subject to VAT, their imposition disregards the fact that VAT is payable on such charges by property owners. Reliance on principles of equity, fairness and affordability does not cure this irrationality or the lack of compliance with section 74(2)(*b*).

[48] In addition, in relation to the cleaning charge, SAPOA says that the City is unable to correlate the charge with the real cost of cleaning. No explanation was provided for the significant reduction in the charge between the first and final iterations of the City's budget and how the significant reduction would not correlate in a reduction in the extent or scope of the cleaning services to be provided. Furthermore, the cleaning charge is impermissible because it rests on a fundamental error of fact, namely, that it is cheaper to impose such a charge than to increase rates. This, says SAPOA, is fundamentally false and inherently impossible, which makes its imposition reviewable on the basis of such material error of fact.

[49] In relation to the fixed water charge, SAPOA contends that it is irrational not to align the charge with section 74(2)(*b*) of the Systems Act and base it on actual use. High-value properties already pay higher tariffs for consumption. It also contends that the charge violates section 25 of the Constitution by penalising property owners who use alternative water-harvesting solutions, such as boreholes and rainwater systems. This, SAPOA contends, is a substantial interference with property use, is exploitative in that it disproportionately affects owners with alternative water solutions and is arbitrary insofar as there is no sufficient reason to impose a higher fixed water charge

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[22] *Rademan v Moqhaka Local Municipality (Rademan)* 2013 (4) SA 225 (CC) para 42.

on property owners regardless of their consumption. SAPOA notes that the City's justification, that it seeks to prevent the risk of budgetary shortfall and ensure the upkeep of infrastructure, is a political decision. It contends that the true reason for not increasing rates is to avoid public outcry, which is not a justification for deprivation of property.

[50] Contrary to the City's argument that the factors in section 74(2) of the Systems Act merely create an enabling framework, SAPOA contends that context and purpose cannot be used to override the requirements of the legislative text, which reflects certain mandatory principles. According to SAPOA, the City must demonstrate that it is permitted to charge 'sundry tariffs' which are not in compliance with section 74(2).

[51] SAPOA disputes the City's contention that its failure to attack the Tariff Policy bars it from challenging the lawfulness of individual charges or tariffs provided for in such Policy. It argues that, if this were not permissible, there would be no recourse for affected persons when charges are applied in a manner contrary to section 74(2) of the Systems Act.

[52] SAPOA opposes the City's conditional counter-application on the basis that the constitutional challenge is collateral: it is not the right remedy sought by the right person at the right time in the right proceedings.[23] In addition, the City failed to plead its case with sufficient specificity, doing so in a manner which is impermissibly vague. It contends further that section 75A of the Systems Act is not unconstitutional, given that a municipality is entitled to charge fees for services under section 74. It takes issue with the conditionality of the counter-application on the grounds that it is at odds with the basis of the City's opposition to the main application.

[53] SAPOA argues further that the City's constitutional obligations can be achieved through consumption-based fees or rates increases. As a result, there is no merit in the contention by the City that section 75A is restrictive. It says it is material that the City

[23] As stated in *Oudekraal Estates (Pty) Ltd v City of Cape Town (Oudekraal)* 2004 (6) SA 222 (SCA) para 35.

does not challenge section 74(2) of the Systems Act. Lastly, if the charges imposed constitute rates as contended by the applicants, the reading-in relief sought by the City would cause significant conflict between section 75A and the remainder of the Systems Act and other national legislation.

AfriForum

[54] AfriForum contends that the charges imposed are unlawful under sections 74, 75 and 75A of the Systems Act as they are not proportional to use or reflective of the real costs incurred by the City for services rendered, nor do they align with the Tariff By-law, which requires compliance with section 74 of the Systems Act. Linking the charges to property value bands imposes a flat service charge on all properties within a value band in a manner which is not proportional to the value of a property, nor consumption-based. The result is that the charges imposed amount to a flat rate, akin to a property rate or municipal tax, which, AfriForum submits, is unconstitutional.

[55] AfriForum further contends that the only categories of permissible exceptions indicated by the word 'generally' in section 74 of the Systems Act, are if an exception is expressly authorised by legislation or if it is not reasonably possible to comply with the principle. The tariff principles listed in section 74(2) are, in its contention, peremptory with all words in the section required to be given meaning, as was confirmed by the Supreme Court of Appeal in *Capricorn District Municipality and Another v South African National Civic Association (Capricorn)*.[24]

[56] AfriForum furthermore contends that the charges are not 'sundry tariffs', with no reference to monthly or value-based fixed charges in the definition of sundry tariffs, nor do they comply with the By-law. This is in violation of section 75 of the Systems Act, which requires the adoption of municipal by-laws to give effect to a municipality's tariff policy. According to AfriForum, there is no congruence between the three charges and the By-law. This renders the charges unlawful and impermissible. Pursuant to section 156(3) of the Constitution, municipal by-laws which conflict with national

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[24] *Capricorn District Municipality and Another v South African National Civic Association (Capricorn)* [2014] ZASCA 39; 2014 (4) SA 225 (SCA) paras 21-2.

legislation are invalid. As such, the By-law cannot be used by the City as an avenue to bypass national legislation.

[57] AfriForum contends further that the City's entitlement under section 75A to recover fees, charges and tariffs in respect of municipal functions or services is bound by section 74. Contrary to the City's assertions, section 75A must still operate within the framework of the Constitution and other legislative provisions.

[58] AfriForum submits that the charges are also impermissible under the Water Services Act, in that section 10(4) prohibits water services institutions from using tariffs that are 'substantially different from any prescribed norms and standards'. The prescribed norms and standards referred to in section 10(4) do not provide for water tariffs determined based on property value, but requires both fixed and volume-based charges to be reflective of cost. Since the charges imposed substantially deviate from the City's Water Services Development Plan, the charges are impermissible. They are also contrary to regulations 4(1) and 4(2) made pursuant to the Water Services Act, which do not allow for differentiation on the basis of property value, and section 21 of the Water Services Act which requires compliance with City by-laws.

[59] AfriForum further argues that the City's imposition of the charges has resulted in the City assuming a fiscal power not recognised by the Constitution or legislation. The exercise of this power and the imposition of the charges is irrational and an arbitrary deprivation of property in violation of section 25 of the Constitution, with no 'sufficient reason' for this and when there exist other lawful methods available to achieve the same result.

[60] AfriForum contends further that the exercise of the City's fiscal duties, powers and rights must be subject to national legislation.[25] It states that the existing balance of power as set out in the Systems Act and Water Services Act conforms with principles of co-operative governance and sections 40(2) and 41 of the Constitution. Sections 75 and 75A(1) of the Systems Act give effect to the implementation and enforcement of

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[25] *Govan Mbeki Local Municipality v Glencore Operations South Africa (Pty) Ltd and Others (Govan Mbeki)* 2025 (2) SA 238 (CC) paras 45-51.

municipal tariffs, and, it is submitted, do not infringe the City's exercise of constitutional rights and obligations. Regarding the constitutionality of the provisions of the Water Services Act, AfriForum notes that section 155(7) of the Constitution permits national and provincial oversight of a municipality's exercise of exclusive authority. Sections 10 and 17 of the Water Services Act are such oversight.

[61] AfriForum also opposes the City's conditional counter-application, arguing that it is material that the City has failed to challenge the constitutionality of the Systems Act and Water Services Act and that the City should be held to its pleaded case that section 75A of the Systems Act is unconstitutional insofar as it infringes on the constitutional powers and obligations of municipalities. AfriForum contends that the City's case of unconstitutionality is inconsistent with the basis of its opposition to AfriForum's application, namely that it would lose revenue if it the charges were found impermissible, rather than it would be prevented from providing essential services. According to AfriForum, the counter-application is also defective because it is unclear under what circumstances the conditions for it would be met. The interim reading-in sought by the City is not a just and equitable remedy as it impacts on national legislation and would permit municipal abuse of fiscal powers in conflict with the City's central argument.

City of Cape Town

[62] The City opposes both applications. It states that, in imposing the three charges, it exercised its powers as provided by the Constitution and national legislation and acted rationally. It contends that the Constitution and relevant national legislation do not impose a limitation on charges that may be imposed and that the relief sought by the applicants would substantially limit its ability to provide necessary basic services, more so given the wealth disparities within the City.

[63] The City disputes that the imposition of the charges is *ultra vires*. It contends that the water and sanitation charges have volumetric and fixed components and the cleaning charge amounts to a sundry tariff. The power to impose such charges stems

from section 229(1) of the Constitution, which does not limit the form of charge or method by which such charges must be calculated.

[64] The City argues that courts should be slow to interfere with its exercise of an original constitutional power articulated in its tariff model and funding of its basic services. It states that it has the right to levy charges 'reasonably necessary for, or incidental to, the effective performance of its functions' pursuant to section 156(5) of the Constitution. No statutory provision places constraints on the forms of tariffs or charges which can be imposed by local governments. The imposition of fixed charges can be used to cross-subsidise the provision of services across the City to address entrenched poverty and inequality and the imposition of the charges should be viewed through this lens.

[65] The City contends further that the charges imposed are not rates under either the Constitution or the Rates Act. Even if they were, as an amount in the Rand, rates are not required by the Constitution or national legislation to be solely based on consumption, and property value bands are distinct.

[66] According to the City, section 75A should not be interpreted in such a manner as to lead to an impermissible conclusion that a fixed charge is a rate because the mode of calculating the two overlap when there is no support for this interpretation in either the Constitution or the Systems Act. The City is entitled to impose charges for services under section 75A, with the word 'any' in section 75A to be read broadly to grant the City expansive and permissive powers as needed to address its service delivery obligations.

[67] The City denies that the charges imposed are irrational. It submits that given the constitutional obligation on municipalities to provide municipal services, prioritise basic needs, promote social and economic development and further the realisation of socio-economic rights, an expansive interpretation of the relevant legislation, which does not constrain the municipalities' powers, should be preferred.

[68] The City argues that in imposing the charges it complied with sections 74(2) of the Systems Act and that, in accordance with *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism (Bato Star)*,[26] not every listed principle is relevant to every decision pertaining to its Tariff Policy. The City's priorities are to ensure the equitable, but not identical, treatment of users, insofar as resources and services are fairly distributed but also addressing the legacy of apartheid and inequality in service provision. If feasible, there must be general proportionality between the amount a user pays and their use of the service; direct or indirect subsidisation of basic services to poor households; financial sustainability of services; and the economical, efficient and effective use of resources, including through cross-subsidisation.

[69] The City submits that differentiation based on property value bands is permissible and does not amount to unfair discrimination. It contends that the effect of the applicants' interpretation of section 74(2), is that the City would only be allowed to levy consumption-based tariffs across all municipal services. This is contrary to section 4(1)(c)(i) of the Systems Act, in which 'charging fees for services' does not have to be authorised by national legislation.

[70] The City says that section 74(2) does not establish mandatory principles, nor should the word '*generally*' in section 74(2)(*b*) be understood to impose an obligation on the City which cannot be derogated from. Rather, it accords with this Court's jurisprudence which, the City contends, found section 74(2) and 75(2)(*b*) to be non-mandatory.[27] The interpretation of section 74(2) advanced by the applicants cannot constrain the City's wide powers to impose tariffs for municipal services in light of the ordinary grammatical meaning of section 74(2)(*b*) and the nature of the principles therein.

[71] The City states, in addition, that the charges imposed and its Tariff Policy are consistent with section 74(2)(*d*) of the Systems Act. It submits that the case of

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[26] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism (Bato Star)* 2004 (4) SA 490 (CC) para 35.

[27] With reference to *White v City of Cape Town* [2010] ZAWCHC 79.

Capricorn is distinguishable on the facts and is not authority for the contention that the provisions of section 74(2) are obligatory or that flat charges for services are an arbitrary deprivation of property.

[72] The City contends that the applicants do not address the use of municipal sanitation systems and the need to maintain fixed water infrastructure regardless of consumption levels. If the Tariff Policy complies with section 74(2)(*b*) and (*d*) of the Systems Act, it is irrelevant if there are other lawful means by which the same result can be achieved.

[73] The City submits that the charges are necessary and desirable to guarantee certainty and predictability in revenue streams. It says that it is obliged under section 215(1) of the Constitution to promote effective financial management, and is empowered by section 227(2) to raise revenue. Imposing fixed charges based on property value bands enables equitable determination and ensures appropriate contribution to infrastructural services, which allows the City to meet its Integrated Development Plan obligations. The fixed charges are the only means through which it can raise sufficient funds with certainty to address its constitutional duties and powers and do not create a 'double burden' or penalty for self-sufficient properties with water-harvesting solutions, who pay less.

[74] The City argues that the Water Services Act is outside the scope of the 'suite of local government legislation' as conceptualised by Chapter 7 of the Constitution.

[75] The City raises a concern as to the inadmissibility of expert evidence presented by SAPOA, Good Party and the CTCRA, noting the bias of the experts and their lack of experience in municipal service delivery. It contends that the evidence and submissions of the amici curiae should not be taken into consideration or should be accorded little weight.

[76] In relation to its conditional counter-applications the City argues that, if municipalities are not entitled to impose fixed charges based on property value bands, this will be an impermissible constraint on a municipality's ability to exercise its

constitutional powers and duties, including providing services to low-income individuals. As a result, it contends that section 75A of the Systems Act, read with section 74(2), is unconstitutional insofar as this section does not authorise and empower the City to levy fixed charges. These charges have been imposed in an effort to realise the right to water and sanitation in section 27(1)*(b)* of the Constitution; address the constitutional obligation of local governments to provide municipal services; and reconcile the City's developmental duties pursuant to section 153 of the Constitution. The decision to levy the charges is reasonable,[28] especially in light of its funding constraints, the infeasibility of alternative funding methods and a need to lessen the disproportionate debt burden borne by lower to middle value properties.

[77] Accordingly, the City seeks a declaration that section 75A of the Systems Act and Water Services Act are unconstitutional insofar as they limit the power of local government to impose fixed tariffs, including those based on property value bands, which is an impermissible interference with a power of local government and curtailment of a reasonable measure for the realisation of constitutional rights.

Minister of COGTA

[78] The Minister argues that the purpose of the Systems Act is to regulate municipal fiscal power in the rational manner envisaged by the Constitution. He contends that there is nothing objectively unconstitutional about sections 75 or 75A of the Systems Act, or sections 10 and 17 of the Water Services Act.

[79] Furthermore, he submits that it is material that neither SAPOA nor AfriForum invoke section 75A in their attack against the validity of the charges. The Minister submits that the counter-applications are therefore not in the nature of a collateral challenge, which constitutes a challenge to the source of law underpinning coercive action enforced against the opposing party. There is no coercive action against the City when SAPOA and AfriForum seek declaratory relief. As a result, the City's counter-

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[28] According to the standards set in cases such as *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC) and *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC).

applications amount to an attack rather than a reactive defence, which is impermissible when *Merafong City Local Municipality v AngloGold Ashanti Limited (Merafong)*[29] requires collateral challenges to be brought by the right person, in the appropriate proceedings, at the right time, with all relevant evidence. The City does not meet these requirements in its papers in the counter-applications, with no primary facts placed before the Court in support of its challenge.

[80] The Minister contends that section 75A of the Systems Act was inserted to address a lacuna in the law in not empowering municipalities to levy and recover charges for municipal services and has a rational relationship to the legitimate government purpose of empowering municipalities to perform their constitutional functions and duties, with section 75A(1) enabling municipalities to levy and recover fees. Since nothing in section 75A limits sections 152 and 156 of the Constitution, the section is not inconsistent with the Constitution.

[81] If the conditional counter-applications are successful, the Minister notes that the Department has not had the opportunity to comment on the reading-in advanced by the City but takes issue with it, especially the potential abuse which could result from allowing charges to be based on property value bands. In the event that the counter-applications are successful, the Minister seeks that the retrospective effect of the declaration of invalidity be limited, that the declaration be suspended for 24 months and that the reading-in proposed by the City be rejected.

Good Party

[82] The Good Party seeks to intervene as a party in the SAPOA application on the basis that it has a material interest in the applications before this Court. It limits its submissions to two main contentions: first, the fixed charges are unlawful and imposed in violation of section 74(2)(*b*) of the Systems Act in that they are not linked to

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[29] *Merafong City Local Municipality v AngloGold Ashanti Limited (Merafong)* [2016] ZACC 35; 2017 (2) BCLR 182 (CC); 2017 (2) SA 211 (CC).

consumption. Second, it is factually incorrect for the City to contend that the cleaning charge is cheaper than charging rates for the provision of this service.

[83] The Good Party contends that the fixed charges are not authorised by section 74(2) of the Systems Act in that they are inconsistent with section 74(2)(*b*) and are not proportional. The use of the word '*generally*' in section 74(2) does not permit the City to depart from the requirement of the section and does not allow the absence of a link between the charge and the consumption of services. If the charges are inconsistent with section 74(2), they are impermissible. The drafting history of section 74 indicates that payment proportional to usage was expressly desired 'as far as practically possible'. Given that the charges are not proportional to usage, they are *ultra vires* section 74(2) of the Systems Act and thus in violation of the principle of legality.

[84] The Good Party contends that the City's Tariff policy links its cleaning tariff to the 'polluter pays' principle. However, the cleaning charge is unrelated to this principle as it is a fixed rate for cleaning services calculated against property value bands, with no link between the service provided and the charge for it. Paying for City-wide cleaning through rates would provide a saving on electricity charges and there would be no payment of VAT. The Good Party further contends that the City erroneously argues that the fixed charge for cleaning services is cheaper than charging rates, yet R1.48 billion for City-wide cleaning previously paid through the surcharge on electricity is removed from the City's rates calculation.

[85] Finally, the Good Party seeks that the charges be declared constitutionally invalid under section 172(1)(*a*). On remedy, it proposes that the declaration of invalidity be suspended for an appropriate period, with all payments made to date refunded.

CTCRA and SAFF

[86] The CTCRA, as amicus curiae, submits that the charges are *ultra vires* the Systems Act in that they amount to the imposition of a rate based on property value bands; and, to the extent that the charges are not a rate, on the authority of *Rates Action*

Group v City of Cape Town (*Rates Action Group HC),*[30] charging of fixed fees for services is unlawful. The CTCRA notes that the City accepts that the fixed charges were not imposed under the Rates Act and that, given as much, the City has levied fixed charges, which significantly increase the amount ratepayers are charged by the City. This, it is submitted, has led to an effective increase ranging from 5.8% to 23.9% for houses within the range of R3.5 million to R7 million and disproportionally affects sectional title unit owners. This, when there are alternative ways to collect revenue that are not linked to property values.

[87] Like the CTCRA, SAFF states that the charges imposed by the City are *ultra vires* the Systems Act as they are unrelated to consumption or usage; and that the resultant increase for ratepayers is excessive, unaffordable, unfair and unlawful. Charges levied by the City must accord with section 229(1) of the Constitution and national legislation. If the primary purpose of the charges is to raise revenue, they are taxes.[31] SAFF states that the charges are *ultra vires* the Systems Act in that they fail to comply with the listed principles in section 74(2), because the amount paid for services is not generally in proportion to usage and the charges do not reflect the cost reasonably associated with rendering the service. Since the charges amount to revenue-raising taxes and as they are not linked to consumption, they are unlawful.

[88] SAFF therefore proposes that the charges be declared invalid, on the basis that they are unconstitutional and unlawful, with a just and equitable remedy being the suspension of the invalidity of such charges for two months.

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[30] *Rates Action Group v City of Cape Town* 2004 (5) SA 545 (C) (*Rates Action Group HC*) para 71.

[31] With reference to *Casino Association of South Africa v Member of the Executive Council for Economic Development Environmental Conservation and Tourism* [2023] ZACC 39; 2024 (5) BCLR 611 (CC) at para 47 and *Randburg Management District v West Dunes Properties 141 (Pty) Ltd* [2015] ZASCA 135; 2016 (2) SA 293 (SCA).

Discussion

Intervention application: Good Party

[89] In *Snyders and Others v de Jager (Snyders)*,[32] it was confirmed that to intervene in and be joined as a party to proceedings, a litigant must have a direct and substantial legal interest that may be affected prejudicially by the judgment of the Court in the proceedings concerned.

[90] We are satisfied that the Good Party has such a direct and substantial legal interest in the merits of the SAPOA application. We accept that if it is not afforded an opportunity to be heard, its rights or interests, and those of the residents of the City that it represents, will be prejudicially affected by any judgment that may result from these proceedings. As was made clear in *Snyders,* this goes against one of the most fundamental principles of our legal system that, as a general rule, no court may make an order against anyone without giving that person the opportunity to be heard.[33] For these reasons, we find that the Good Party is entitled to intervene in and be joined as a party to the SAPOA application.

Condonation

[91] The Minister seeks condonation for the 19-day delay in filing an affidavit in the SAPOA matter, which is explained as having been caused by a delay in procurement processes to appoint counsel. This application was not opposed and we can find no reason not to grant it having regard to the extent of the delay and the reasons for it.

Powers of the City

[92] The exercise of public power is only legitimate when it is lawful. Like other spheres of government, local government may only act within the powers lawfully

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[32] *Snyders v De Jager (Joinder)* [2016] ZACC 54; 2017 (5) BCLR 604 (CC) para 6.

[33] Id para 9.

conferred on it.[34] Municipal powers derive from the Constitution or from legislation. When a court is seized with the delineation of the powers, functions, rights and duties of a sphere of government conceived and entrenched under the Constitution, the proper starting point of the enquiry must be the Constitution itself.[35]

[93] In terms of section 152(1) of the Constitution, the objects of local government, as a distinct sphere of government, include to ensure the provision of services to communities in a sustainable manner and promote social and economic development. A municipality must structure and manage its administration and planning processes, in terms of section 153, to give priority to the basic needs of the community and promote the community's social and economic development. This includes ensuring that the damaging effects of discriminatory apartheid policies are addressed and that the living conditions for all of those living in our country's cities are improved.

[94] In the exercise of its powers, a municipality is expected to be conversant with the law applicable to its sphere of government and conduct its affairs within the confines of the law. Where it fails to do so, the courts should not be held back from granting an appropriate order that would have the effect of vindicating the rule of law.[36]

[95] The challenge before this Court concerns the constitutionality of the three charges imposed by the City, each calculated from property value bands.

Nature of the charges

[96] As indicated, the City is authorised by section 229(1)(*a*) of the Constitution to impose rates on property and 'surcharges on fees for services provided for or on behalf of the municipality'. If authorised by national legislation, 'other taxes, levies and duties

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[34] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* [1998] ZACC 17; 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC).

[35] *City of Cape Town v Robertson (Robertson)* [2004] ZACC 21; 2005 (2) SA 323 (CC); 2005 (3) BCLR 199 (CC); 67 SATC 176 para 60.

[36] *Thaba Chweu Rural Forum and Others v Thaba Chweu Local Municipality and Others* [2023] ZASCA 25 para 37.

appropriate to local government' may, in terms of section 229(2)(*b*), be imposed by a municipality.

[97] A municipality may finance its affairs, in terms of section 4(1)(*a*) of the Systems Act, by '(i) charging fees for services; and (ii) imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties'.

[98] Although the Constitution does not expressly provide for 'charging fees for services', this Court has held that the power to impose a surcharge on fees for services necessarily implies the power to charge fees for services, as a power distinct from the power to charge property rates.[37]

[99] Within this context, the nature of the three charges imposed must be determined: whether rates on property; fees for services; surcharges on fees for services; or other taxes, levies and duties appropriate to local government as contemplated in section 229 of the Constitution. As aptly put by this Court in *Rates Action Group HC*, 'the nature of the payment which has to be made is determined by its actual nature, not by the label which is put on it'.[38]

[100] The applicants contend that the charges imposed are property rates, regardless of what the City has named them. A rate on property is a form of taxation levied under section 229(1) of the Constitution and the Rates Act. It is not defined in the Constitution.

[101] In *Gerber*,[39] the Supreme Court of Appeal held that a rate is an 'assessment levied by local authorities for local purposes as so much per pound of assessed value of buildings and land owned', which is 'the tried and tested practice of calculating property rates in relation to size or value of properties.'[40] A property rate was found to be one

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[37] *Rates Action Group HC* above n 30 para 71.

[38] Ibid.

[39] *Gerber* above n 20.

[40] Id at paras 23 and 24.

determined according to the size of property or in proportion to the value of the property. Steytler and Visser note that:

'What the *Gerber* decision establishes unequivocally is that property rates have a well-established meaning of setting a rate against a valued property. This principle thus eschews 'flat rates' which, by definition, do not qualify as a rate on property. The converse is equally true, a service charge based on consumption, but as a rate against the value of the property is a property rate, whatever it may otherwise be called.' [41]

[102] In *Rates Action Group HC*,[42] this Court considered the legality of a sewerage charge and refuse removal charge which were calculated based on estimated water consumption and the value of a property. Relying on *Gerber* the Court found that the charges were a property rate and not fees for services and that the label which the City put on them were not determinative of the nature of the charge. It held that:[43]

'A payment which is to be determined by an assessment levied by a local authority at so much in the rand per assessed value of buildings and land is, following the definition in the *Concise Oxford Dictionary* which was adopted by the Supreme Court of Appeal in the *Gerber* case, a property rate. It follows that the amounts set out in the first notice were property rates, and not fees for service.'

[103] The provision of a range of services may be funded by rates or other funding sources. As was held in *Rates Action Group SCA,* the Systems Act does not preclude the City from levying a property rate to cover the cost of services.[44] It is accepted that the Rates Act did not yet exist when these cases were decided. However, nothing turns on that, as they remain useful in assessing the nature of a charge imposed by a municipality.

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[41] *Steytler and De Visser's Local Government Law of South Africa*, 2023: Chapter 13 'Municipal Property Rates', at 1.4.

[42] *Rates Action Group HC* above n 30.

[43] Id at para 53.

[44] *Rates Action Group SCA* above n 21 para 12.

[104] To constitute a 'rate', as was made clear in *Gerber*, the amount levied on ratepayers must be calculated as a 'rate in the rand' based on individual property values. The City contends that it used property value bands, and not a rate in the Rand, to calculate the three charges. While that is so, in having calculated the charges with reference to property value bands, the City moved into the realm of property rates, yet adopted an approach which fell outside the method for determining such rates.

[105] The City also failed to adhere to the procedures required to impose a property rate. In *Kungwini Local Municipality v Silver Lakes Home Owners Association*[45] the Court found a flat rate for water consumption to be incompetent and out of kilter with the foundational principles of our constitutional order. It stated:

'In a post-constitutional South Africa, the power of a municipality to impose a rate on property is derived from the Constitution itself...The principle of legality, an incident of the rule of law, dictates that in levying, recovering and increasing property rates, a municipality must follow procedure prescribed by the applicable national or provincial legislation in this regard.'

[106] There are further reasons why the charges cannot constitute a proper rate on property. In order to impose rates on property, a municipality must adopt a rates policy, which must be advertised and subject to community participation and comment; and thereafter adopt a by-law to give effect to such rates policy. The charges do not form part of the City's adopted rates policy, nor have by-laws been passed to provide for such charges in accordance with such a rates policy.

[107] Furthermore, VAT is payable on the charges. This, when the VAT Act expressly provides that it is only rates that are excluded from the payment of VAT. The three charges are therefore not treated, for taxation purposes, as rates. It follows for all these reasons that the charges do not meet the requirements of a rate on property and cannot therefore lawfully be imposed by the City as such.

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[45] *Kungwini Local Municipality v Silver Lakes Home Owners Association* [2008] ZASCA 83; 2008 (6) SA 187 (SCA); [2008] 4 All SA 314 (SCA); 70 SATC 205 para 44.

[108] If the charges cannot constitute a rate on property for reasons discussed, it must be determined whether they constitute 'a fee for services'; or a 'surcharge on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties'.

[109] A municipality is not obliged to levy fees, charges or tariffs in respect of all of the services which it provides, with it recognised in *South African Municipal Workers Union v City of Cape Town and Others*[46] that, in respect of many municipal services, no charge is or can notionally be levied because those who benefit from the services are not usually identifiable individuals but members of the public generally.

[110] Where services are funded through fees, section 74(1) of the Systems Act requires that a tariff policy on the levying of such fees for services must be adopted and implemented. In *Capricorn*, it was held that a tariff policy '*must reflect at least*', the principles set out in terms of section 74(2) of the Act.[47]

[111] These principles include that (a) users of municipal services should be treated equitably in the application of tariffs; (b) the amount individual users pay for services should generally be in proportion to their use of that service; (c) poor households must have access to at least basic services through, amongst others, direct or indirect methods of subsidisation of tariffs for poor households; (d) tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges; (e) tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned; and (f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service.

[112] While section 75A(1)(*a*) of the Systems Act permits a municipality to 'levy and recover fees, charges or tariffs in respect of any function or service of the municipality', by way of a resolution passed by the municipal council,[48] this provision must be read in

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[46] *South African Municipal Workers Union v City of Cape Town and Others* [2003] ZASCA 111; [2003] 4 All SA 348 (SCA); 2004 (1) SA 548 (SCA); [2004] 1 BLLR 41 (SCA); (2004) 25 ILJ 193 (SCA) para 8.

[47] *Capricorn* above n 24.

[48] Section 75A(2).

conjunction with sections 4, 74 and 75 of the Act. Having regard to the context, language and purpose of the provision, section 75A(1)(*a*) does not grant an unbridled power to a municipality to levy and recover fees, charges or tariffs in respect of any function or service provided by the municipality, untethered to a tariff policy or by-law.

[113] Were this to be so, it would allow a municipality to bypass the constraints imposed by section 74(1) and (2) of the Act and permit it to exercise a wide-ranging power to levy and recover fees, charges or tariffs, subject only to the approval of the municipal council. We do not accept the City's contention that it is entitled to impose charges for services under section 75A, with the word 'any' in section 75A to be read broadly to grant the City whatever expansive and permissive powers it may consider itself to need in order to address its service delivery obligations.

[114] The City, in terms of its tariff policy, levies fees at prescribed rates for the provision of municipal services such as water, sanitation, electricity and other services, with users paying for these services, in accordance with section 74(2) generally in proportion to their use of the service provided by or on behalf of the municipality. It does so having regard to the 'municipal base tariff' as defined in the MFPFA.[49]

[115] The three charges levied by the City are also not surcharges imposed in excess of the base tariff on fees for municipal services, but are distinct stand-alone charges levied against ratepayers. We say so for the following reasons. As stated earlier, a surcharge is 'a charge in addition to the usual amount paid for something'[50] or 'an additional fee, cost, or tax added to the standard price of a good or service, often to cover increased expenses like fuel, credit card processing, or late payments'.[51]

[116] A municipal surcharge may, in terms of section 9(2) of the MFPFA, be imposed in the same manner set out in the Systems Act for the levying of fees, charges or tariffs, with a municipality obliged in terms of section 9(3) annually as part of its budget preparation process to review any municipal surcharges. Thus, where a municipality

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[49] See above n 14.

[50] Cambridge English Dictionary.

[51] Collins Dictionary.

seeks to impose a surcharge, section 74(2)(*f*) requires that provision be made for such a surcharge in the municipal tariff policy.

[117] Since there is no municipal base tariff for cleaning, the city-wide cleaning charge is not a charge in excess of such base tariff. Similarly, the water and sewerage charges are not charges in excess of the base tariff. The three charges are unrelated to the provision of services calculated in accordance with such base tariff, but are separate charges directed not at the provision of services to a particular user but at funding city-wide infrastructural development and maintenance. If the three charges are not surcharges, and since they do not constitute a municipal tax, it follows that they would necessarily then amount to fees for services.

[118] The City's allegation that the charges should be viewed as 'sundry tariffs' as provided for in the policy must equally fail. A 'sundry tariff' means 'a tariff set as a fixed rand amount charged for specific services (e.g. connections) and published in a tariff schedule adjusted from year to year'. A sensible meaning to these tariffs, taking into account the context, is that they are once-off fees or tariffs that are charged when a 'connection' is made. Whatever label is given to the charges, the question is whether it complies with section 74(2) of the Systems Act.

[119] At issue therefore is whether the manner in which such charges have been imposed is lawful.

Lawfulness of the charges as fees for services

[120] The City contends that the power to impose the three charges stems from section 229(1) of the Constitution, which does not limit the form of charge or method by which such charge must be calculated.

[121] It argues that section 74(2) does not limit it to imposing only consumption-based tariffs; and section 4(1)(*c*)(i) of the Systems Act allows 'charging fees for services' without being authorised by national legislation. It states that section 74(2) does not establish mandatory principles, nor should '*generally*' in section 74(2)(*b*) be understood

to impose an obligation on it from which it cannot derogate. It therefore submits that section 74(2) and 75(2)(*b*) should be construed as non-mandatory.

[122] We do not agree. The power of a municipality to levy the charges as fees for services is not unconstrained or unlimited, but subject to the powers lawfully conferred by the Constitution and legislation on it. Whether the charges are necessary or desirable, or ensure an equitable or appropriate contribution to infrastructural services which may allow the City to meet its Integrated Development Plan obligations, does not resolve whether they are lawful.

[123] What is clear is that the charges are not the only means through which the City can raise sufficient funds with certainty to address its constitutional and statutory obligations. Yet, having decided to impose charges as fees for services on ratepayers, such charges must accord with the requirements set out in section 74 of the Systems Act. As such, they must be brought into operation by way of a by-law, which follows the adoption of a tariff policy in respect of which public comment is invited.

[124] Such a tariff policy 'must reflect *at least*' the principle that users of services must be treated equitably in the application of tariffs and that the amount that individual users pay for services generally be in proportion to their use of that service, with the exception being the cross-subsidisation of poor households. Given the language of section 74(2) and the recordal of the minimum requirements that such a tariff policy *must* reflect, we find no merit in the City's submission that not every listed principle in section 74(2) must be reflected in its tariff policy.

[125] The decision in *Bato Star*[52] does not come to the aid of the City. In that matter, it was found that in the Marine Living Resources Act,[53] no particular preference for the manner in which transformation should be achieved was suggested, with this, to a significant extent, left to the discretion of the decision-maker.[54] The Systems Act is

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[52] *Bato Star* above n 26.

[53] Act 18 of 1998.

[54] *Bato Star* above n 26 para 35.

prescriptive of the principles which must, at a minimum, 'at least' be reflected in a tariff policy, which are not subject to the City's discretion.

[126] The charges imposed are directed at the provision of services in respect of city-wide cleaning, water and sewerage. They do not accord with the section 74(2) principle that they are consumption-based, with users billed according to the extent of their use of the services in question. Instead, the charges are fixed amounts determined from a schedule of property value bands created by the City, in respect of which VAT is levied. Users of services are therefore not treated equitably in the application of the charges in that services are not generally paid be in proportion to their use of that service. It follows that the City has not adhered to the principles set out in section 74(2), the importance of which was emphasised in *Capricorn.*[55] For all of these reasons, the charges are unlawful insofar as they do not comply with section 74 of the Systems Act.

[127] In addition, the charges deviate from the City's Water Services Development Plan, developed in accordance with section 10(4) of the Water Services Act, which does not provide for water tariffs determined on the basis of property value and requires both fixed and volume-based charges to be reflective of cost. The charges are also contrary to the aforementioned Regulations 4(1) and 4(2), which do not permit differentiation on the basis of property value. The suggestion by the City that the Water Services Act exists outside the scope of the suite of local government legislation as conceptualised by Chapter 7 of the Constitution lacks merit and cannot be sustained when the powers of local government are subject to all law.

[128] Furthermore, the city-wide cleaning charge, in addition to failing to comply with section 74(2) of the Systems Act, also stands in contrast to and does not comply with Chapter 4 of the Tariff Policy, which provides that City-wide cleaning is embedded in the 'polluter pays' principle. This is so because the charge is directed at funding City-wide services and is not measured on the basis of individual usage or payment by an individual polluter.

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[55] *Capricorn* above n 15 para 11.

[129] The City contends that neither applicant challenges the lawfulness or rationality of the City's Tariff Policy, and having not done so, the issue is not before this Court for determination. The Good Party, however, in its intervening application, seeks a declaration that the 'tariffs' as included in the City's budget and Tariff Policy for 2025/26 be declared unlawful, unconstitutional, and invalid. It is, therefore, permissible in our view to determine the lawfulness of parts of the policy, while the rest of the document remains intact.

[130] Having regard to the Tariff Policy, we find that the city-wide cleaning charge does not comply with the definition of a fixed basic charge in Chapter 2 of such Policy, which is defined as a 'charge/fee recurring on a monthly basis as payment to the right of service provision/access to the network'.

[131] For all of these reasons, we find the imposition of the three charges to be unlawful and invalid in that they do not amount to a lawful charge for a service provided in terms of sections 74 of the Systems Act. In addition, the charges imposed in respect of water and sewerage deviate from the City's Water Services Development Plan and the city-wide cleaning charge deviates from the Tariff Policy. We find that the City's imposition of the charges has resulted in it unlawfully assuming a power not granted to it by the Constitution or legislation. The exercise of this power and the imposition of the charges are consequently unlawful and invalid.

[132] It is not the task of this Court to consider what the least expensive method would be to fund the provision of the services in question. It is equally unnecessary to address the other challenges mounted against the imposition of the three charges, including whether they constitute a violation of section 25 or whether their imposition is irrational or arbitrary.

[133] We accept that the City is under a constitutional obligation to expand infrastructural development and ensure the delivery of services across the city, in order to progressively improve the socio-economic conditions of all its residents. However, it must do so in a manner that accords with the law. As noted, rates may be used to achieve its obligations, while tariff policies may, under section 74 of the Systems Act,

subsidise poor households and cross-subsidise the provision of services from other sources. In addition, in the implementation and enforcement of a tariff policy, a municipality may, in terms of section 75(2), differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.

[134] We accept that the City must make provision to cover the costs reasonably associated with the provision of municipal services, including capital, operating, maintenance, administration and replacement costs, to facilitate not only the sustainability of such services but also their expansion and improvement. We are, however, not persuaded that funding structures permitted by existing legislation, which allow for charges to be levied against ratepayers on the basis of the extent of services consumed, impede the City from fulfilling its constitutional obligations.

City's conditional counter-applications

[135] The essence of the City's conditional counter-applications is that section 75A, read with section 74(2) of the Systems Act, are unconstitutional and invalid. In its conditional counter-application to the AfriForum matter, the City seeks a further order that sections 10 and 17 of the Water Services Act be declared inconsistent with the Constitution insofar as they unduly curtail the powers of the City to impose the charges in question.

[136] There are a number of difficulties with the City's conditional counter-applications. As the Minister correctly stated , a collateral challenge must be brought by the right person, in the appropriate proceedings, at the right time, with all relevant evidence.[56] Neither SAPOA nor AfriForum invoke section 75A as the basis for the charges' invalidity. We are consequently not satisfied that the City meets the requirements for a collateral challenge, as the remedy is not the right one sought by the right person at the right time in the right proceedings.[57] There appears to be no logical

[56] *Merafong* above n 29.

[57] As stated in *Oudekraal* above n 23 para 35.

connection between the counter-applications and the relief sought by the applicants. Even so, the merits of the counter-applications are nevertheless considered below.

[137] Section 75A(1)*(a)* permits a municipality to 'levy and recover fees, charges or tariffs in respect of any function or service of the municipality'. The City seeks that, pending remedial legislation, it be read into section 75A that this includes fixed tariffs determined by reference to property value bands.

[138] Section 75A does not limit the City's right to charge fees for services. In fact, section 4(1)(*a*) of the Systems Act expressly provides that a municipality may charge fees for services, surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties. What is required is that in order to do so, in terms of section 74(1), a municipal council 'must adopt and implement a tariff policy on the levying of fees', which 'must reflect at least' the principles set out in section 74(2).

[139] This does not impede the City's obligation to realise fundamental rights to water, sanitation and a safe and healthy environment or its powers and duties as enunciated by sections 152(1)(*b*), 153 and 156(1) of the Constitution. Rather, it permits the City to charge fees for services subject to appropriate legislative control. Such control ensures a balance between the right of a municipality to charge for services and the interests of the community to receive services on a fair, equitable and affordable basis.

[140] It is important that this is so. As we have demonstrated, a municipality does not have an unconstrained power to charge fees for services at its own discretion. The exercise of such fiscal power is subject to important constitutional and legislative constraints.[58] This ensures that the exercise of such power is not unlimited or unconstrained but is subject to law, which requires a careful balancing of the municipality's obligation to provide services with the rights and duties of its residents and ratepayers. Nothing in section 75A, or sections 10 and 17 of the Water Services Act, violates the Constitution. Accordingly, the City's conditional counter-

[58] *Govan Mbeki* above n 25 paras 45-51.

applications, seeking in the first instance that section 75A of the Systems Act, and in the other that section 75, section 75A of the Systems Act and sections 10 and 17 of the Water Act, be declared invalid, are both without merit.

Remedy

[141] Determining what constitutes appropriate relief, as was stated in *Fose v Minister of Safety and Security*,[59] requires a careful consideration of 'the interests of both the complainant and society as a whole ought, as far as possible, to be served',[60] balancing the various interests that might be affected by the remedy imposed.[61]

[142] Section 172(1)(*b*) confers wide remedial powers on a competent court adjudicating a constitutional matter. Such remedial powers are not only available when a court makes an order of constitutional invalidity of a law or conduct under section 172(1)(*a*).[62] It is an 'ample and flexible remedial jurisdiction in constitutional disputes', one which permits a court to forge an order that would place substance above mere form.

[143] Both applicants seek that the three charges be declared inconsistent with the Constitution. SAPOA seeks that the charges be set aside with retrospective effect, in line with *Ekapa Minerals (Pty) Ltd and Another v Sol Plaatje Local Municipality and Others,*[63] but that the order of invalidity be suspended for two months to allow the City to remedy the defects identified. AfriForum seeks that the order of this Court operate prospectively. The City contends that a just and equitable remedy would be to suspend

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[59] *Fose v Minister of Safety and Security* [1997] ZACC 6; 1997 (3) SA 786 (CC); 1997 (7) BCLR 851 (CC) para 38

[60]Id para 96.

[61] *Hoffmann v South African Airways* [2000] ZACC 17; 2000 (11) BCLR 1235 (CC); [2000] 12 BLLR 1365 (CC); (2000) 21 ILJ 2357 (CC); 2001 (1) SA 1 (CC).

[62] The Court in *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC) referred to *Thint (Pty) Ltd v National Director of Public Prosecutions and Others; Zuma and Another v National Director of Public Prosecutions and Others* [2008] ZACC 14; 2008 (2) SACR 421 (CC); 2008 (12) BCLR 1197 (CC). In *Sibiya and Others v Director of Public Prosecutions, Johannesburg High Court, and Others* [2005] ZACC 16; 2005 (5) SA 315 (CC); 2006 (2) BCLR 293 (CC).

[63] *Ekapa Minerals (Pty) Ltd and Another v Sol Plaatje Local Municipality and Others (Ekapa)* [2025] ZACC 1; 2025 (5) BCLR 505 (CC) para 65.

the declaration of invalidity with a sufficient period granted to it to address budgetary shortfalls resulting from the order.

[144] Having found the charges to be unlawful and invalid, we consider it just and equitable to order the suspension of the charges with effect from 30 June 2026. This will grant the City an appropriate opportunity to determine whether it requires the services to which the charges pertain to be funded from other sources of revenue, or to comply with the provisions of the law.

Costs

[145] Given the success the applicants have enjoyed in their respective applications, we see no reason why they should not be entitled to their costs, including those of two counsel. The complexity of the case warrants granting of costs on scale C. The same applies in relation to the applicants' opposition to the City's counter-application.

[146] The Minister submits that he would not have asked for costs had it not been for the City's attitude against him in these proceedings. While the City does not seek costs against SAPOA and AfriForum in the counter-applications, it does so against the Minister. While we understand the Minister's surprise at the City's attitude, we are not convinced that it is sufficient reason to depart from the usual consideration adopted by the courts that courts should be slow in granting costs between two organs of state, as both their funding is sourced from the same public purse.[64] We consider it appropriate that the Minister, for this reason, bear his own costs.

[147] The Good Party initially sought to be joined as amicus curiae in these proceedings. The City opposed that application. It then decided to apply to be joined as an intervening party to the proceedings. While the City abides the intervening application, the joinder of the Good Party has cost implications. Having been granted leave to intervene and having been joined as a party to the SAPOA application, we are of the view that the Good Party is entitled to its costs.

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[64] *Minister of Police and Others v Premier of the Western Cape and Others* [2013] ZACC 33; 2013 (12) BLCR 1365 (CC); 2014 (1) SA 1 (CC) paras 64 and 72.

Order

[148] The following order is accordingly made:

1. The Good Party is granted leave to intervene and is joined as a party in case number 103018/2025.

2. The late filing of the opposing affidavit of the seventh respondent, the Minister of Cooperative Governance and Traditional Affairs, in case number 139023/2025 is condoned.

3. It is declared that the charges imposed on ratepayers by the City of Cape Town (the City), as respondent in case number 103018/2025 and first respondent in case number 139023/2025, in its 2025/2026 budget in respect of city-wide cleaning, water and sewerage, are unlawful and invalid insofar as they are inconsistent with the Constitution, national legislation and the City's Tariff By-law. Such charges are set aside with effect from 30 June 2026.

4. The City's counter-applications are dismissed.

5. The City is to pay the costs of:

    5.1 the applicants in case numbers 103018/2025 and 139023/2025, including those of two counsel on scale C;

    5.2 the applicants in opposing the City's counter-applications, also including those of two counsel on scale C; and

    5.3 the Good Party in case number 103018/2025, also including those of two counsel on scale C.

NP MABINDLA-BOQWANA

Judge President

A LE GRANGE

Judge of the High Court

KM SAVAGE

Judge of the High Court

Appearances:

For SAPOA:	HJ De Waal SC (heads of argument) J P Steenkamp with D Van Reenen
Instructed by:	GVS Law, Cape Town
For the Good Party:	M De Beer with L Farmer
Instructed by:	Lionel Murray Schwormstedt & Louw, Cape Town
For AfriForum:	E Botha SC with P Eilers
Instructed by:	Hunter Spies, Cape Town
City of Cape Town:	N Bawa SC with K Pillay SC and N de Jager
Instructed by:	Timothy and Timothy Attorneys, Cape Town
Minister of Cooperative Governance and Traditional Affairs:	M Edmunds SC with Adv A Nacerodien
Instructed by:	State Attorney, Cape Town
First *amicus curiae*: Cape Town Collective Ratepayers' Association	M De Beer with L Farmer
Instructed by:	Lionel Murray Schwormstedt & Louw, Cape Town
Second *amicus curiae*:	A Cockrell SC (heads of argument) V Seymour
SA First Forum	
Instructed by:	Lionel Carr Attorneys, Cape Town