

17 OCTOBER 2023

Dispute Resolution ALERT

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INCORPORATING
KIETI LAW LLP, KENYA

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As stated by the SCA, section 33(2) of the Constitution imposes a duty on public administrators to give written reasons to those whose rights have been adversely affected by administrative action. This constitutional obligation is given effect in the Promotion of Administrative Justice Act 3 of 2000, which sets out that any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the decision, is entitled to demand reasons for the administrator's decision.

In such instances, the failure to give reasons is fatal and dispositive of the matter **but**, as held by the SCA, it must consider the appropriateness of the High Court substituting its decision for that of the administrator. In the High Court, the court ruled in favour of the owner of the property by declaring the Municipality's classification invalid and substituted it with a classification as "blocks of flats", effectively reducing the service charges.

The SCA, while confirming the court's authority to review administrative decisions, re-emphasised the need for caution in substituting administrative decisions with judicial ones. With reference to the Constitutional Court in *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC)*, the court stated that:

"It suffices to state that remittal is almost always the prudent and proper course. Appropriate deference ought to be afforded to the administrator. Whether a court was in as good a position as the administrator to make the decision and whether the decision was a foregone conclusion are two factors that had to be considered cumulatively. Other relevant factors include delay, bias or incompetence on the part of the administrator."



The graphic features a gold diagonal stripe across a grey background. At the top left, it displays 'The LEGAL 500 EMEA' logo. Below this, the text reads: 'Dispute Resolution 2023 Rankings', 'Dispute Resolution practice is ranked in Tier 1.', 'Leading Individuals: Tim Fletcher', 'Recommended Lawyers: Jackwell Feris | Anja Hofmeyr | Corné Lewis | Rishaban Moodley | Mongezi Mpahlwa | Kgosi Nkaiseng Lucinde Rhodie | Clive Rumsey | Tim Smit', and 'Next Generation Lawyers: Kgosi Nkaiseng | Tim Smit'.

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Accordingly, in the absence of crucial information (as in this case) the court *a quo* was not in a position to make a definitive judgment.

In the premises and in most administrative reviews, the prudent course of action is to remit the matter to the administrative body for reconsideration which ensures that administrative authorities have an opportunity to rectify any deficiencies in their decisions and to provide the necessary reasons.

This case underscores the role of the court in reviewing administrative decisions. While the court possesses the authority to review and, in exceptional cases, substitute administrative decisions, it does so cautiously and with due regard for the expertise of municipal authorities.

Courts must exercise this power judiciously and not overreach their judicial oversight. This safeguards the principles of transparency, accountability, and justice in administrative actions.

Corné Lewis and Oliver Marshall



Cliffe Dekker Hofmeyr

2023 RESULTS

Chambers Global 2022 - 2023 ranked our Dispute Resolution practice in Band 2: Dispute Resolution.

Chambers Global 2018–2023 ranked us in Band 2 for Restructuring/Insolvency.

Tim Fletcher ranked by **Chambers Global 2022 - 2023** in Band 2: Dispute Resolution.

Clive Rumsey ranked by **Chambers Global 2019 - 2023** in Band 4: Dispute Resolution.

Tobie Jordaan ranked by **Chambers Global 2022 - 2023** in Band 4: Restructuring/Insolvency.

Lucinde Rhodie ranked by **Chambers Global 2023** in Band 4: Dispute Resolution

Jackwell Feris ranked by **Chambers Global 2023** as an upcoming dispute resolution lawyer.

Kylene Weyers ranked by **Chambers Global 2023** as an upcoming restructuring/insolvency lawyer.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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