# IN THE HIGH COURT OF SWAZILAND

## JUDGMENT

Case No. 1366/2016

In the matter between:

| | | |
|---|---|---|
| **ROBERT MABILA AND 59 OTHERS** | | **Applicant** |
| **And** | | |
| **MINISTER OF HOUSING AND URBAN DEVELOPMENT** | **1st** | **Respondent** |
| **THE PRINCIPAL SECRETARY – MINISTRY OF HOUSING AND URBAN DEVELOPMENT** | **2nd** | **Respondent** |
| **MALKERNS TOWN BOARD** | **3rd** | **Respondent** |
| **THE ATTORNEY GENERAL** | **4th** | **Respondent** |

**Neutral citation:** ***Robert Mabila & 59 Others v Minister of Housing and Urban Development & 3 Others (1366 /2016) [2017] SZHC 174 (11th August 2017)***

**Coram:** **M. Dlamini J.**

**Heard:** **7th July 2017**

**Delivered:** **11th August 2017**

**Summary**: The applicant prayed that the first respondent's decision declaring Malkerns area a town be reviewed and set aside for want of consultation with them as immovable property owners of Malkerns. The respondents refuted the allegation of failure to consult. They contended that an invitation under Legal Notice 97 of 2010 was extended but applicants failed to honour it.

**The parties**

[1] The applicants are sixty in number and each is an owner of title deed land situate at Malkerns region of Manzini. The first respondent has declared their properties ratable.

[2] The first respondent is the Minister for Housing and Urban Development (Hon. Minister) ceased with the power among others to supervise urban areas and declare areas as urban or controlled area land as the case may be. The second respondent is the Principal Secretary in the Ministry of Housing and Urban Development. He is the apex administrator of the Ministry.

[3] The third respondent is the Malkerns Town Board ceased with the powers to *inter alia* collect rates from applicants. The fourth respondent is the Attorney General, the legal representative of all government Ministries and officials including first to third respondents.

The Synopsis

[4] The parties are in unison that on 10th March 1995 the Hon. Minister published Legal Notice No.31 of 1995. Its title was "*Notice of Intent to Declare Malkerns an Urban Area.*" It reads:

*"NOTICE OF INTENT TO DECLARE MALKERNS AN URBAN AREA (Under Section 111)*

*In exercise of the powers conferred by Section 111 of the Urban Government Act. 1969, the Minister for Housing and Urban Development hereby announces his intention to declare the area defined in the Schedule to this Notice to be a town.*

*The purpose of this proposed declaration is to facilitate the development and administration of this area.*

*Any person who wishes to submit any representations concerning the proposed declaration is hereby invited to lodge such representation in writing within 30 days of the publication of this Notice to the Principal Secretary, Ministry of Housing and Urban Development, P. O. Box 1832, MBABANE."*

[5] This notice was published in the government gazette and in the local newspapers. Attached to the Legal Notice 31 of 1995 was the schedule reflecting the description and the map of the properties to be affected by Legal Notice 31 of 1995.

[6] In the same year, the Minister issued Legal Notice 92 of 1995 with the heading: "*Establishment of a Commission to review representations on the Intentions to declare Malkerns an Urban area*." Under its paragraph marked 3, it expressed:

*"3. Functions of the Commission*

*a) The Commission shall consider representations received in response to the notification published under Section III of the Urban Government Act, 1968 and to advise the Minister for Housing and Urban Development whether or not the intended notice to declare the Malkerns Urban Area, referred to in such notification, should be published.*

*b) In the performance of its functions, and exercise of its powers, the Commission may invite the persons who have made representations in response to the subject notice to appear personally before the commission to submit their opinions."*

[7] Having completed its task, the Commission of Enquiry compiled and presented a report to the Hon. Minister. This report was presented as a public document. At pages 8 and 9 of the report, it is reflected:

> *"The Commission was not convinced from the evidence submitted by the Ministry of Housing and Urban Development and by physical inspection, that the entire area proposed in the Notice of Intent should be incorporated into the urban area.*
>
> *The need was not justified, except in respect to the area that is already settled....*
>
> *The area included in the Notice No. 31 of 1995 contained significant tracts of land currently being used for agricultural purposes. Submissions from the Ministry of Agriculture indicate that this land is viable agricultural land for prime production. The Commission received no evidence to the contrary, other than perceptional views that pineapple production has long term adverse impacts on soil quality. The Commission is in no doubt that the land referred to is prime agricultural land and consideration must be given to this finite national resource*."

[8] At page 6, the Commission opined:

> "*However, the Commission was not convinced that the entire area proposed for incorporation was necessary, particularly in view of the strong arguments presented in respect to maintaining limited agricultural land and the urban/rural dilemma.*
>
> *Accordingly, the Commission recommends that only these parts of the area intended for incorporation that display strong urban characteristics now, are intensively settled and those for which sound proposals for urban development are in place, be included in the Notice of Declaration of the Town of Malkerns. The other areas included on the Notice of Intention, but not proposed for urban area declaration are recommended to be declared 'controlled areas' to attain some control of development.*"

[9] Thereafter, the Hon. Minister published Legal Notice No.97 of 2010 (the Legal Notice) in the local newspapers. The Legal Notice reads:

*"GENERAL NOTICE NO.97 OF 2010*
*THE BUILDING ACT, 1968 (ACT No. 34 of 1968)*
*INTENT TO DECLARE MALKERNS A CONTROLLED AREA [Under Section 4]*

*In exercise of the powers conferred by section 4 of the Building Act, 1968, the Minister for Housing and Urban Development issues the following Notice:*

***Citation and commencement***

*1.*

*1) This Notice may be cited as intent to Declare Malkerns a Controlled Area Notice, 2010.*

*???? 2) This Notice shall come into force on upon date of publication in the Gazette.*

***Notice of Intent to declare controlled area***

*2. The general public is notified that the Minister intends to declare the areas defined in the schedule to this notice to be a controlled area in terms of Section 4 of the Building Act No. 34 of 1968*

***The purpose of this proposed declaration***

*3. The purpose of the proposed declaration is to control and regulate urban development in order to protect and reserve prime arable agricultural land.*

***Submissions and objections to the proposed declaration***

*4. Members of the public who intend to make submissions or object to the proposed declaration should do so in writing within 30 days of the first publication of this Notice.*

*5. ....."*

[10] Thereafter, Legal Notice No. 30 of 2011 was published under the same legislation, that is Building Act. It sought to make an amendment to Legal Notice No. 97of 2010. It reflected: Insert page 185

*"*

***Amendment of Legal Notice No. 97 of 2010***

*2 ...*

> *2. Legal Notice No. 97 of 2010 is amended by deleting section 3 and replacing it with a new section 3 as follows:-*
>
> *"3. The purpose of the proposed declaration is to control and regulate urban development in order to protect and reserve prime arable land"."*

[11] The Legal Notice No. 97 of 2010 was accompanied by Schedule of properties. It is worth noting that the Schedule herein had more significant number of properties than Legal Notices No. 31 of 1995. In 2012, the Hon. Minister published Legal Notice No. 49 of 2012. It reads:

> *"32. The terms of the Legal Notice are as follows:*
>
> *"In exercise of the powers conferred by Section 111 of the Urban Government Act 1969, the Minister for Housing and Urban Development announces that she has declared the area within boundaries defined the schedule hereto a Town. The purpose of the Town, which will be only agricultural, is to control and regulate urban development as well as to protect and serve prime arable (agricultural) land thereby providing much needed work opportunities for population of Malkerns area in addition to ensuring that food self-sufficiency remains an enable goals in the furtherance of the general prosperity of the Kingdom as a whole. The total measures 9036 hectares of which 8452 is for agricultural use and the remaining Hectares are for human settlements"."*

This Legal Notice (No.49 of 2012) did not have a schedule describing the properties although it had a map.

The applicants' case

[12] The applicants have deposed that firstly, the 1995 Legal Notice which carried the Hon. Minister's intent to convert Malkerns area into a town did not affect them because their properties were not in the schedule attached to the 1995 Legal Notice. As a result, they did not hid to the Hon. Minister's call to make representation to the Commission of Enquiry which was

established pursuant to the 1995 Legal Notice. Those whose properties appeared in the schedule did make presentation.

[13] Secondly, although the 2010 Legal Notice affected them following that the schedule attached thereto reflected their properties, they did not bother to make presentation for the reason that they welcomed the Minister's intent. Declaring Malkerns as a controlled area was good news to them as it meant that the sporadic sprouting of slams would be controlled. They deposed in this regard:

> "*30. I, as well as the other Applicants, did not object to the proposed declaration purely because of what was stated as the purpose of the declaration. Based on what was stated in the General Notice there was no reason for me to object, more so because the declaration would be consistent with the recommendations of the 1996 Commission of Enquiry. Most importantly, the declaration of the Controlled Area would not have the same legal consequences brought about by a declaration as a town in terms of the Urban Government Act.*"

[14] Applicants further asserted that the 2012 Local Notice (declaring Malkerns a town) was flawed in a number of ways. There was no schedule or map attached to it. There was neither a commission of enquiry set to receive presentation from affected individuals such as themselves nor an invitation by the Hon. Minister extended to affected parties to make presentation. The applicants then lamented:

> "*34. <u>Rates levy by the 2nd Respondent</u>*
> *Pursuant to the declaration of Malkerns as a Town the 2nd Respondent has proceeded in terms of the Rating Act, 1995 to levy rates on the properties owned by Applicants*."

[15] They proceeded to aver that the Hon. Minister failed to comply with section 4 and 111 of the Urban Government Act. In describing the affected properties, the Hon. Minister authored:

> *"AREA "A" is the overall extent of the urban boundary represented by figure A1- Z1, AA1 – AZ1 and BA1–BB1*
> *Area "B" is the Sub area of area A and represented by figure A-Z, AA-AZ, BA-BZ and CA-CB, represents the Human Settlements of Malkerns, in extent 584 Hectares, situated in the Manzini Region."*

[16] There were no explanatory notes to the scaled map above by the Hon. Minister. The applicants defined the actions of the Hon. Minister to impose rates upon them as grossly unreasonable for the reason that some of the applicants own large farms and therefore stand to be ***discenticised*** in farming following that their rate charges would be exorbitant. Some of the farms were self-sufficient in that no services would be needed from the central government yet they would be expected to pay rates.

[17] The Hon. Minister ought to have formulated an equitable and fair rate method in order to avoid proper large size property owners to pay high rates while those closer to the town with smaller sizes of properties would benefit from the town board and yet pay less rates. In this regard, the averment went by applicants, the Hon. Minister failed to apply her mind into the matter.

[18] The applicants call for the declaration of the valuation roll to be declared null and void *ab initio* as it includes properties listed under the Legal Notice declaring Malkerns a controlled area. They then deposed:

> "*38.2 As earlier stated in this application, the declaration of a town in terms of the Urban Government Act, on the one hand, and a Controlled Area in*

*terms of the Building Act, on the other, are two distinct processes with distinct legal consequences. The Valuation Roll cannot be prepared, and rates levied thereon, based on the fact that properties simply fall within a controlled area. The Rating Act clearly prescribes the "areas" within which properties will be liable to rates. Therefore, the Valuation Roll itself ought to be set aside in its entirety and / or to the extent that it included in it properties which were earmarked to be declared a controlled area.*"

[19] They finally averred that having discovered that their properties were in the valuation roll, they formed an *ad hoc* committee and approached the Hon. Minister. A number of meetings were held with the Hon. Minister and his officials. In August 2014, the Committee addressed a letter to the Chair of the Malkerns Town Board. The Hon. Minister responded to it but dismally failed to address a single issue.

[20] In the result, the applicants prayed:

"*1. Reviewing, correcting and/or setting aside the decision of the 1st Respondent declaring Malkerns a Town (in terms of Legal Notice No. 49/2012) in its entirety, or to the extent that it includes the immovable properties registered in the names of the Applicants within the Malkerns Urban Area boundaries, on one or more of the following grounds:*

*(a) The 1st Respondent acted ultra vires and unlawfully in that he failed to act within his powers and to comply with the peremptory provisions of Section 4 of the Urban Government Act 1969 and/or;*

*(b) The 1st Respondent failed to observe and violated the rules of natural justice in that the Applicants were not afforded a hearing before making a grossly prejudicial decision; and/or;*

(c) *The 1st Respondent's decision to incorporate the Applicant's immovable properties into the Malkerns Urban Area boundaries is grossly unreasonable.*

3. *That the 2013 valuation roll be and is hereby set aside on the ground that it includes properties registered in the names of Applicants.*
4. *...*
5. *..."*

Respondents

[21] The respondents attack applicants' deposition that Umbane is part of the applicant. It attaches a correspondence from Umbane's attorneys whose contents are to the effect that Umbane did not depose to any founding or confirmatory affidavit and therefore is not a party to the present application.

[22] The Hon. Minister then explained the rationale for declaring Malkerns a town. She stated that it "*is a concerted government effort to improve and also protect the Malkerns area from the* rapid *elements that were threatening to erode the very same prime arable land applicants are claiming to be defending.*"[1] She expatiated that Malkerns experienced sporadic increase of "*dumping refuse, solid waste, unofficial burial sites and unplanned human settlement.*"[2]

[23] They point out that the Hon. Minister was influenced in its decision to declare Malkerns an urban area by the 1995 Commission of Enquiry. It was deposed in this regard:

[1] see para 5.2 of respondents' answer
[2] see para 5.2 of respondents' answer

"*The Consequential Gazette to the 1995 Commission of Enquiry declaring Malkerns as a town was only revoked to allow further constitution with the Ministry of Agriculture."*[3]

[24] The Hon. Minister also attested:

"*5.7 May I state that it is in that strength that the General Notice No.97 of 2010 was issued which was intent to declare Malkerns a controlled area through the Building Act. The declaration of a controlled area through the Building Act serves as a curfew directed towards the development control whilst a preparation for a declaration of a fully fledged local authority is in terms of logistics underway.*

*Usually, where the unregulated development trends like subdivisions proliferate at an alarming rate in the intervening, the Minister is duty bound to upgrade the intervention to a declaration under the Urban Government Act so as to arrest the anomaly.*

*It is in this regard therefore that the Malkerns became declared as an urban area under the Urban Government Act in an effort to ensure that the intent behind Malkerns control is achieved.*

*5.8 May I aver further that this intent (General Notice No.97 of 2010) was published in the government gazette calling for any person objecting to the declaration of Malkerns as a town to object and no objections were received the government then considered the representations in the 1995 commission of enquiry and the none response in the publication of 2010.*

*5.10 May I aver that the Urban Government Act which was used to set up the Commission of Enquiry of 1995 was selected over the Building Act because over and above introducing building embargo it also introduces governance which also addresses the further concerns such as improving the town and maintaining its infrastructure.*

*5.11 May I submit further that the Rating Act 1995 of and the Urban Government Act 1969 are parallel instruments and the Minister is at liberty to make one of them to operate without the other and that is to mean an area can be declared a town without enforcing the Rating Act.*"

[3] see para 5.4 ibid

[25] The Hon. Minister explained that following that there were no presentation as a result of her extended invitation under the 2010 Legal Notice, there was therefore no basis to constitute a commission of enquiry.

[26] Expatiating on the large scope of the properties as compared to the 1995 Legal Notice Schedule, the Hon. Minister stated under oath:

> "*12.5 The comparison of the general map in the intent to declare the town in 1996 and the one of 2010 show significant changes in sizes of the farms; this is the result of the rapid subdivisions happening in Malkerns which is diminishing the capacity to continue with the agricultural goal.*"

[27] She also deposed:

> "*14.2 May I reiterate that the Legal Notice No.30 of 2011 was actually showing the new scope which was eventually declared an urban area.*"

[28] She highlighted her resistance as follows:

> *"15.4 May I aver further that the applicants cannot separate the processes from each other, the process began from the Legal Notice No.31 of 1995, followed by legal notice No.92 of 1995 which declared the commission of enquiry, then followed by the General Notice No. 97 of 2010 then legal notice No. 30 of 2011 and finally culminated with General Notice No. 49 of 2012. This shows that Respondents followed all the due process.*"

[29] On the issue of the map under Legal Notice No. 49 of 2012 that it was too general and therefore could not be held to include applicants' properties the Hon. Minister answered:

> *"16.2 May I state that the boundary of the properties to be affected was shown in the map which was attached and referenced. The actual marking of the map is the responsibility of the Surveyor General department who*

*are custodians of all maps. Their choice of showing cadastral is not influenced by the Ministry of Housing and Development.*"

[30] The Hon. Minister refuted the averment by applicants that owners of large properties would be subjected to high rate payments. She asserted that the rating method adopted had taken into consideration such factors.[4]

None issue

[31] It is common cause that the Hon. Minister issued Legal Notice 97 of 2010 and its amendment under Legal Notice No.30 of 2011. It is further not in issue that Legal Notice 2011's intent was to declare Malkerns a "*controlled area*". It is common cause that following an invitation to make presentation on Legal Notice No.97 of 2010, none of the applicants made presentation. It is without dispute that the Hon. Minister influenced by non presentation or objection from applicants then issued Legal Notice No.49 of 2012, declaring Malkerns a town.

Issue

[32] Was the Hon. Minister bound in law to invite the applicants to make presentation or objection in view of her ultimate decision as expressed in Legal Notice No. 49 of2012? If yes, did she do so?

Determination

[33] Legal Notice No. 97 of 2010 was issued by the Hon. Minister in terms of the Building Act No.34 of 1968 (Building Act) as evident from its heading. The legislature decided to provide a preamble to the Building Act. It reads:

[4] see para 18.2

"*An Act to provide for the control of building and the safety of buildings and for incidental or connected matters.*"

[34] Section 4(1) stipulates:

"*Application:*

*4. (1) This Act applies to a building situated –*

*(a) in a controlled area; or*

*(b) outside a controlled area and used or intended for use in commercial or industrial activities including a factory, hotel or shop or a building used for public purposes or public entertainment or a building to which the public have access;*

*and is of a class or type of building to which Regulations under this Act have been applied.*"

[35] From the above, it is clear that that the Building Act was promulgated for purposes of ensuring that buildings are constructed to a specific standard in controlled areas and outside area as envisaged by section 4(2)(a) and (b) above. In other words, Legal Notice 2010/11 was to the effect that should anyone wish to construct a building at Malkerns, he should do so in compliance with the Building Act and its Regulations. Any sub-standard houses such as stick-mud were therefore intended to be prohibited. Substantiating Legal Notice No.97 of 2010, the Hon. Minister correctly pointed out that its intention was to curb the mushrooming of slams at Malkerns.

[36] Section 4(2) reads in defining a controlled area:

> *"(2) For the purposes of subsection (1) a "controlled area) means an area within the jurisdiction of a town council or a municipality or town under the Urban Government Act, No.8 of 1969 or an area which the Minister after holding a public inquiry in the area concerned has by notice in the Gazette, declared to be a controlled area.*"

[37] Learned Council on behalf of the Hon. Minister submitted that from the above, the parties ought to have known that Malkerns was about to be declared a town. They ought to have therefore made presentation as per the invitation extended by the Hon. Minister under Legal Notice No.97 of 2010.

[38] This argument calls for me to resort to the interpretation of section 4(2). I must hasten to point out that section 4(2) reads *verbatim* to section 2(1). In terms of the canons of interpretation of statutes, the starting point is to give the words of the enactment their primary meaning. In other words I must resort to the plain, ordinary and day to day meaning of the words. However, where the "*grammatical construction of the words would lead to absurdity, such as the legislature could never have contemplated or that it would be plainly contrary to the general scheme disclosed in the context of the statute*."[5] My duty is to resort to the second principle on interpretation of enactment viz., intention of the legislature. **De Villiers JA** as he then was espoused on the canons:

> "*That rule is that, where the language of a statute is unambiguous, and its meaning is clear, the court may only depart from such meaning "if it leads to absurdity so glaring that it could never have been contemplated by the legislature, or if it leads to a result contrary to the intention of parliament as*

[5] As per Innes CJ in Venter v Rex 1907 TS 910 at 914

> *shown by the context or by such other consideration as the court is justified in taking into account".”*[6]

[39] The learned Judge wisely propounded further on the intention of the legislation and absurdity:

> "*Moreover, as has often been remarked by eminent judges, 'it is dangerous to speculate as to the intention of the legislature, and what seems an absurdity to one man does not seem absurd to another.' <u>The absurdity must be utterly glaring and the intention of the legislature must be clear, and not a mere matter of surmise or probability</u>."* (my emphasis)

[40] Turning to the present case, it is imperative that I first resort to the ordinary meaning of the words as expressed in section 2(1) and section 4(2). Should the literal meaning of the words result in "*utterly glaring*" absurdity or contrary to the intention of the legislature as evident in the preamble, then I shall embark on the second canon of interpretation which is giving effect to the intention of the legislature.

[41] Section 2(1) or section 4(2) explains what a controlled area is. It clearly and without any ambiguity provides that a controlled area is either (i) a town or municipality "*or*" (ii) one that has been so declared by the Hon. Minister after extending invitation for objection or input. The "*or*" means one or the other which translate into two instances. Counsel on the other hand, implored this court to interpret that "*control area*" means not only a place that has been declared to be so by the Hon. Minister, but one which when the Hon. Minister extends an invitation might be declared a municipality following such invitation. The interpretation accorded on behalf of the Hon. Minister would be correct but for the words of the statute which reads both under Section 2(1) and section 4(2) an area within the

[6] In Shenker v The Master & Another 1936 AD page 136 at 142

jurisdiction of a town council or municipality or town "*under the Urban Government Act No.8 of 1969*". These words *under the Urban Government Act No.8 of 1969*"must also be accorded a meaning. Their meaning is that where the Hon. Minister wishes to declare an area to be a "*controlled area*" and such controlled area to be recognised as a municipality or town, the Minister must follow the provisions of the Urban Act No.8 of 1969 (Urban Act) in so doing. Where on the other hand the Hon. Minister intends to declare an area a "*controlled area*" *strict sensu*, she must extend an invitation in terms of the provisions of the Building Act. That provision of the Building Act falls under section 4(2).

[42] It appears that the Hon. Minister appreciated the meaning of section 4(2) as she complied with it. She did extend an invitation to the property owners of Malkerns by Legal Notice No. 97 of 2010 as a step towards the public enquiry envisaged under section 4(2).

[43] The applicants contended that they did not respond to the invitation by the Hon. Minister for the reasons that Legal Notice No.97 of 2010 and its addendum (Legal Notice No.30 of 2011) was welcomed by them. I have already shed light on the purpose of the Building Act under which the Minister intended to declare Malkerns as a controlled area. It was to ensure that buildings that were constructed fell under a specified approved category. It was intended to prevent the sprouting of slams.

[44] The Hon. Minister correctly pointed out that having not received any presentation and the period of invitation having lapsed, it was imperative that she proceeded to declare Malkerns a controlled area. However, glaring from Legal Notice No.49 of 2012, is that the Hon. Minister did not do so. Instead of declaring Malkerns and particularly the area shown in the

attached map and schedule under Legal Notice No. 97 of 2010, a controlled area, the Hon. Minister resorted to the Urban Government Act No.8 of 1969 and declared Malkerns a town. This was a gross irregular step. Her actions were contrary to the intentions of the legislature under the Building Act 1968.

[45] In fact, Legal Notice 97 of 2010 and its addendum were contrary to the intentions of the legislature under the Building Act as evident from the intent of Legal Notice 97 of 2010. The intent points:

> *"The purpose of this proposed declaration"*
>
> *3. The purpose of the proposed declaration is to control and regulate urban development in order to protect and reserve prime arable agricultural land.*"

[45] Legal Notice No. 30 of 2011 which amended Legal Notice No.97 of 2010 reads:

> "*The purpose of the proposed declaration is to control and regulate <u>urban development in order</u> to protect and reserve prime arable land."* (underlined my emphasis)

[46] The Legal Notice No.97 of 2010 and its 2011 addendum was *intra vires* the Hon. Minister's powers in so far as its intent was to "*control and regulate urban development*". This urban development anticipated the terms of the Building Act, that is, construction of buildings which complied with the regulations as passed by Hon. Minister under the Building Act. It was however, *ultra vires*. The reason is, land could not be declared a "*controlled area*" for purposes of preserving arable land under the Building Act. This intent was in contrast to the Building .....

With due respect, this was a reserve for the Minister of Agriculture. I note that the Hon. Minister must have appreciated this position as she then published Legal Notice No.30 of 2011 whereby the term "*agricultural*" was removed. However, the expunging of the word "*agricultural*" did not detract from the position of the law that she acted *ultra vires* her powers.

[47] The Hon. Minister ought to have declared Malkerns a town after following the provisions of the Urban Government Act and not the Building Act. The two legislation, that is, Urban Government Act and Building Act cannot be used interchangeably for the reason that they carry different intentions, with each peculiar to itself.

[48] It is unnecessary for me to make a determination on whether the map attached to Legal Notice No. 49 of 2012 is inclusive of applicants' properties or not. This is because an expert from Surveyor General is needed to attest to the position of the map. I must however, point out that where rights of individuals are to be affected adversely by a piece of legislation or legal notice such as Legal Notice No. 49 of 2012, the issuer was obliged to show explicitly on the map all the properties to be affected. A general map such as the one annexed to Legal Notice No. 49 of 2012 would not accord well with the justice of the matter. However, for the evidence that the applicants have been demanded to pay rates following Legal Notice No.49 of 2012, it stands to fall as they were never invited in terms of the Urban Government Act. The invitation under Legal Notice No. 97 of 2010 was for purposes of declaring applicants' properties a controlled area for purposes of implementing the provisions of the Building Act.

[49] In the above, I enter the following orders:

1. Applicants' application succeeds;
2. First respondent's decision declaring Malkerns a town in terms of Legal Notice No. 49 of 2012 is hereby reviewed and set aside;

3. The 2013 valuation roll is hereby set aside;

4. Costs to follow the event.

M. DLAMINI
JUDGE

**For Applicant**: **M. Ntshangase of M. J. Manzini and Associates**

**For Respondent**: **T. Dlamini from the Attorney General's Chambers**