IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE **CASE NO.698/2023**

In the matter between:

LA HULLEY (PTY) LIMITED AND 79 OTHERS **Applicants**

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 N.O. **4TH Respondent**

JUDGEMENT

Neutral citation : *LA Hulley (Pty) Limited &79 others and Minister of Housing and Urban Development & 4 others (698/2023) SZHC 247 (7th September 2023).*

Corum **S.M MASUKU J**

Date Heard **18th July 2023**

Date Delivered **07th September 2023**

Fly Note: *Administrative Law- application to review, correct and or set aside the 1st Respondent's decision to extend the boundaries of the Malkerns Urban Area (by Legal Notice No 173 of 2022) which included the immovable properties of the Applicants.*

Summary: *Stripped to its core the issue required to be determined by the Court is whether Legal Notice No 173 of 2022 issued by the 1st Respondent purporting to alter and extend the boundaries of Malkerns Town to include Applicants registered agricultural farms or properties was lawful, regular and valid.*

Held: *The extension of boundaries to include the properties registered in Applicants' names by legal Notice No 173 of 2022 is declared irregular, unlawful, invalid and - set aside.*

Introduction

[1] The declaration of Malkerns as a Town has been a bone of contention since 1995/1996 when the then Ministry of Housing and Urban Development,

published a notice in the Government Gazette, being **Notice No.31 of 1995** entitled 'Notice of Intent to Declare Malkerns an Urban Area."

[2] The Notice invited all interested parties to submit or to make representations concerning the proposed declaration, and further defined the proposed urban boundary and included a schedule of properties to be affected by the declaration (the Applicants were not spared from the schedule).

[3] Pursuant to the notice, a Commission of enquiry was constituted and gazetted in terms of **Legal Notice No.92 of 1995**. The Commission of Enquiry was mandated to consider the representations made by interested parties and to compile a report. On completion it made specific recommendations for the Minister. Noted from the report is that the commission recommended against the incorporation of the whole area proposed in the Notice because the proposed area included agricultural land, or farms. No declaration was immediately made pursuant to the notices and the commission of enquiry.

[4] It was only in 2010 that the then Minister of Housing and Urban Government issued **General Notice No.97 of 2010**. The notice was an intent to declare Malkerns as a controlled area under section 4 of the Building Act, 1968. In the Notice, the purpose was stated to be regulating Urban Development in order 'to control and regulate Urban development and to protect and reserve prime available agricultural land'. The Notice invited public comment on the proposed declaration and it included a schedule of properties to be affected by the declaration. Although the Applicants were included, they however, did not object to the proposed declaration because, as they said, it stated its purpose'.

[5] In 2011 by means of another **Legal Notice 30 of 2011**, for which the purpose of the intended declaration was amended by deleting the word "agricultural" such that the purpose then read 'to control and regulate Urban development in order to protect and reserve prime land.' There were apparently no objections from the Applicants to the proposed declaration of Malkerns as a controlled area.

[6] In or about May 2012, the then Minister caused another notice to be published in the Government Gazette, being **Legal Notice No.49 of 2012** entitled "Declaration of a Town (Malkerns) Notice, 2012 under section 111 of the Urban Government Act 1969 ("the Act"). The express terms of the Notice were that;..."The Minister of Housing and Urban Development announces that she has declared the area within boundaries defined in the schedule hereto a Town. The purpose of the Town, which will be mainly agricultural, is to control and regulate urban development as well as to protect and reserve prime arable (agricultural) land thereby providing the population of Malkerns area in addition to ensuring that food self-sufficiency remains an attainable goal 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 584 Hectares is for human settlements".

[7] In August 2016, sixty (60) property owners, the majority being the Applicants herein instituted proceedings in this court under case No.1366/2016 challenging the declaration of Makerns as a Town and praying *inter alia* for the reviewing, correcting and or setting aside of the 1st Respondent's decision as *ultra vires* and unlawful, in thats she failed to act

within her powers and to comply with the prerempony provisions of section 4 of the Act.

[8] The Respondents (being the same parties herein) opposed the application and this court in a judgement delivered on the 11th August 2017 by her Ladyship M.Dlamini J afforded the applicants the following relief;

'In the above, I enter the following orders:

1. *Applicant's application succeeds;*
2. *First Respondent's decision declaring Malkerns a town in terms of Legal Notice 49 of 2012 is hereby reviewed and set aside.*
3. *The 2013 valuation roll is hereby set aside.*
4. *Cost to follow the event.*

[9] The respondents (in that case) being dissatisfied with the judgement of the court noted an appeal with the Supreme Court. The applicants represented by its former attorneys opposed the appeal and before the merits of the appeal were argued, a consent order was entered into between the applicants' erstwhile attorneys and the respondents' attorneys and the Attorney General. The consent order will be dealt with later in this judgement.

[10] About nine months after the Supreme Court's Consent Order ("the consent order"), in January 2020 the 1st Respondent published yet another Notice to extend the boundaries of Malkerns Town to incorporate certain properties. In March 2019 V.I.P Dry Cleaners (Pty) Ltd and Masina family (the VIP applicants) launched proceedings in this court under case No. 548/2019 in protest.

[11] In the VIP matter the applicants sought to review, correct and set aside the 1st Respondent declarator that Malkerns was a Town 'on the basis that he acted unlawfully and *ultra vives*. He infringed the constitutional rights of the applicants to be heard before a decisions prejudicial to them was taken.'(Paragraph [1] of the judgement).

[12] His Lordship Fakudze J made the following observations before the *ratio decidendi* of the judgement;..."[8] The Respondents, particularly First Respondent, state that there is no dispute that procedure was not followed following(*sic*) the promulgation of **General Notice No.49 of 2012**. It is true that the right to be heard was not given to the Applicants. So whatever the Applicants say in their founding affidavit is true."

[13] In paragraph [15] of the judgement His Lordship Fakudze J further recorded that "The Respondents contend that they accept that the declaration of Malkerns as Town by means of **General Notice No.49 of 2012** was invalid"

[14] The court observed further that,..."[19] It is worth noting that the Respondents do not dispute the allegations by the Applicants pertaining to the validity of the **General Notice No.49/2012**. The parties are all agreed that the General Notice is invalid because it did not attach the map of the affected areas and that the Applicants were not invited to make submissions regarding the proposed boundaries. The Respondents are saying that notwithstanding the invalidity it took the Applicants long time to institute the proceedings to invalidate **General Notice 49/2012**... The court should therefore validate the actions of the First Respondent...[20] The due process of the law was not followed in the promulgation of **General Notice No.49/2012**. This include the fact that no compliance with section 4 and

section 111 of the Urban Government Act,1969, a commission was not set up to allow the Applicants to make their representations."

[15] The court came to conclude that..."[22] it is therefore the court's humble view that the case at hand is not at all materially different from case No. 1336/2016 (referring to the Mabila applicants' case) Where almost similar facts were considered and the court in that case set aside **General Notice No.49 of 2012**. In the circumstances this court grant the Applicants' application with costs at the ordinary scale."

[16] After this second Judicial correction or review, the 1st Respondent' in the exercised of his statutory discretion conferred by section 123 of the Act, as he contend published in the daily newspaper and government gazette respectively (06 December 2019 and 06 January 2020) giving his intention to alter the boundaries of Malkerns and gave a description of the properties intended to be included in the extended boundaries.

[17] The Notice also invited members of the public to make written submissions or objections to the proposed alteration and extension of the boundaries of Malkerns. **A Legal Notice 115/2020** appointing a Commission of enquiry to consider objections received in response to the notice to alter was issued. It was published in the Government Gazette of 1st June 2020. The commission of enquiry made a factual finding that there were compelling reasons made to it to prevent the extension. It recommended that the Minister alters the boundaries of Malkerns. The 1st Respondent accepted the recommendations and published **Legal Notice No173/2022** on the 20th May 2022 to extend the boundaries of the Malkerns urban area. The extension included the agricultural farms owned and registered in the names of the Applicants.

[18] The last in the series of the Legal Notices was thereafter published in July 2022 declaring Malkerns as a Municipality this time around. The declaration was by **Legal Notice No.285 of 2022** which stated that it had been taken in terms of section 4 of the Urban Government Act, 1969. The 1st Respondent in this matter said the Legal Notice was issued out of '*abundance of caution and that it reaffirmed'* that Malkerns was a Municipality and outlined its boundaries.

[19] On the one hand the Applicants in *casu* described these episodes by the 1st Respondent as 'a consequence of a number of years of well intentioned but misguided bureaucratic bungling'. On the other hand the 1st Respondent took the responsibility of admitting in his opposing affidavit that the declaration of Malkens as a Town was set aside (in the Mabila judgment) to the extent that it included the immovable properties of the Applicants. This he said was because of an error or omission made by his predecessor 'twice removed.' The error was not following the peremptory provisions of sections 4 of the Act.

[20] It turned out belatedly, in the 1st and 2nd Respondents' heads of argument and in argument and in court that the latest Notice in the series, **Legal Notice No. 285 of 2022** had to suffer the same fate as that of the removed **Legal Notices**. The Respondents conceded that it was also procedurally non-compliant with section 4 of the Act prior to its issuance and therefore liable to be set aside.

[21] It behoves this court to scrutinize the effect of the remaining **Legal Notice No.173 of 2022,** first in the light of the High Court judgements in case No.1336/2016, the Mabila judgment and case 548/19 the VIP Dry Cleaners (PTY) Ltd and Others judgement where the court in the latter judgement

found that the cases were not all materially different from each other. Similar facts were considered and in the former, where the court reviewed and set aside **General Notice No.49 of 2012** as invalid. As can be seen eight years later (in the VIP Dry Cleaner's case) the court also held that all the parties in that case admitted that the General Notice was invalid because it did not attach a map of the affected the areas and that the applicants were not invited to make submissions regarding the proposed boundaries. The court granted applicants' prayers by reviewing, correcting and setting aside **General Notice No.49/2012** as invalid.

[22] The VIP Dry Cleaners' judgement was not appealed and it was delivered after the consent order recorded by the parties of the Mabila application at the Supreme Court. This court is also called upon to scrutinize the effect of **Legal Notice No.173 of 2022** in light of the consent order of the 9th May 2018 in the Supreme Court.

[23] **Legal No.173 of 2022** has to be scrutinized further in light of Respondents' concession that **Legal Notice 285 of 2022** was non compliant with Section 4 of the Act. That Notice intended to repeal **Legal Notice 173 of 2020**. What is then the effect of the 1st and 2nd Respondents' concession and the effect of the repeal clause if the court were to confirm or declare **Legal Notice 285 of 2012** as invalid.

[24] Stripped to its core the issue that needs to be determine by this court is whether the **Legal Notice No.173 of 2022** issued in May 2022 that purports to alter and extend the boundaries of Malkerns Town to include the

Applicants' properties was lawful and regular. Put differently, whether **Legal Notice No.173 of 2022** issued in May 2022 altering and extending the boundaries of Malkerns to include the Applicants' Properties is irregular and or unlawful.

[25] Despite the concession made by the 1st and 2nd Respondents that there was non compliance of section 4 of the Act when **Legal Notice 285 of 2022** was issued, the Applicants' prayer that this court reviews and sets aside the decision of 1st Respondent to issue **Legal Notice 285 of 2022** is still to be determined. This is more so because the 1st and 2nd Respondents suggested that once **Legal Notice 285 of 2022** is set aside, it would become invalid, which means the intended repeal of 173 of 2022 becomes ineffectual and survives the invalidity of **Legal Notice 285 of 2022**.

[26] On the parties' admission (save for the 3rd Respondent) that the 1st and 2nd Respondents did not follow the peremptory requirements of section 4 of the Act to declare Malkerns as a municipality, this court therefore reviews and sets aside the 1st Respondents declaration contained in **Legal Notice No.285 of 2022** as invalid.

[27] Having set aside the 1st Respondent's **Legal Notice No.285 of 2022**, the repeal or revocation clause purported to affect **Legal Notice 173 of 2022** becomes ineffectual and falls away. The question still remains whether the latter Legal Notice extending the boundaries of including the boundaries of Malkerns Town is lawful and valid.

[28] The procedure culminating to the publication of **Legal Notice No.173 of 2022** by the 1st Respondent does not seem to be an issue to all the parties. Its validity or otherwise is challenged for different reasons of which a brief survey is provided for here under;

THE PARTIES CONTENTION REGARDING LEGAL NOTICE 173/2022.

[29] The Applicants contended in their founding affidavit that **Legal Notice No.173 of 2022**, is unlawful or invalid and has been irregularly issued, and therefore ought to be reviewed and set aside.

[30] Save for the 3rd Respondent who seem to approbate and reprobate in the same breath in that it relied on **Legal Notice 173 of 2022** on the one hand, yet it also claimed that the legal Notice was repealed by **Legal Notice No.285 of 2022**, Whilst the 1st and 2nd Respondents had readily conceded that the issuance of **Legal Notice 285 of 2022** was procedurally non-compliant with section 4 Act and is liable to be set-aside.

[31] The thrust of the Applicants' argument to have **Legal Notice 173 of 2022** declared unlawful is that; (i) it is logical to conclude that **Legal Notice 173 of 2022** was issued on the basis of Legal Notice No.49 of 2012 which itself was declared unlawful for reasons advanced in the Mabila application (Case No.1366 of 2016) and its judgement thereto. The declaration of Malkerns Town was also declared unlawful by this court in the VIP Dry Cleaners (Pty) Ltd judgement (Case No. 548 of 2019) which has not been appealed as it was pronounced long after the consent order of the Supreme Court. (ii) that the Notice has been issued in violation of the consent order because of its inclusion (the Notice) of the sixty (60) Applicants' properties which were expressly excluded in the said consent order. (iii) the Legal Notice is presumed on the agreement recorded by the consent order, that seeks to endorse or legitimize an act that is *null and void abinitio* (that of declaring Malkerns as a Town) yet nothing can legally flow from such a nullity. This they say is the gist or essence of an application for review of the Supreme Court's Order, pending in the apex court. (iv) the Legal Notice seeks to

extend the boundaries of Malkerns Urban Area to include agricultural farms under the Urban Government Act 1969, yet the Act is not an enabling statute entitling the 1st Respondent to deal with agricultural farms.

[32] On the other hand the 1st and 2nd Respondents in their quest to defend their action argue that the alteration and extension of the boundaries of Malkerns Town by the issuance of **Legal Notice No.173 of 2022** to include the Applicant' properties was regular and lawful.

[33] They contended that; (i) all land in the Kingdom including agricultural land, is susceptible to be declared a municipality. (ii) that the Supreme consent order lawfully established Malkerns as a Town but excluded the Applicants properties from being part of the Town. That order, they contended does not prohibit the Minister from following the consequences which flow from it that Malkerns is a Town. This means that in their contention the 1st Respondent was perfectly entitled to issue **Legal Notice 173 of 2022**. (iii) the rating Act, 1995 entitles a Town to levy rates on immovable property situate within the boundaries, that all the prayers that relates to the collection of rates in the notice of motion is contingent on the unlawfulness of **Legal Notice No.173 of 2022** which they submit is regular and lawful for the 3rd Respondent to levy and collect rates on Applicants properties.

[34] The 3rd Respondent's contention was that, (i) Malkerns has been lawfully established as a Town regard being had to the Supreme Consent Order, (iii) once established, the extension of its boundaries to include the Applicants' properties was carried out lawfully by the issuance of **Legal Notice 173 of 2022** and (iii) the levying and collection of rates by it from Applicants' properties is lawful.

APPLYING THE PARTIES'CONTENTION TO THE FACTS AND LAW.

[35] The starting premise is to endorse what seem to be a fact of common cause to all the parties to this matter that is the factual allegations as to the publication of notices in the daily Newspapers and Government Gazette that the 1st Respondent gave of his intention to alter and extend the boundaries of Malkerns with the described properties was carried out. The Notices also invited members of the public to make written submission or objections on the proposed alteration. The issuance of **Legal Notice No.115 of 2022** appointing a commission of enquiry to consider the objections made in response to the notice was also carried which all gave the effect to **Legal No.173/2022** extending the boundaries' of Malkerns Urban area to include properties of the Applicants. The process leading up to the issuance of **Legal Notice 173/2022** followed procedures as envisaged by Section 4 (1) (2) & (3) of the Act.

[36] The setting-aside of **Legal Notice No.285 of 2022** by this court despite the repeal clause of all other Notices prior to it, left intact **Legal Notice 173/2022.**

[37] The 1st 2nd and 3rd Respondents contended that the court is not legally entitled to make a pronouncement on **Legal Notice 173 of 2022** because of the consent order of the Supreme which they alleged established Malkerns as a Town requires further scrutiny.

[38] The contention should fail simple because non of the judgments of the High Court in the Mabila application and the VIP Dry cleaners application was called upon to deal with or review **Legal Notice 173 of 2022**. Consequently,

the appeal at the Supreme Court that resulted in the consent order was not about **Legal Notice 173 of 2022**. The High Court has unlimited original jurisdiction in civil matters per section 151 (1) of the constitution Act 2005. Section 152 of the Constitution bestows the High Court with review and supervisory jurisdiction... on any lower adjudicating authority, in the exercise of that jurisdiction it can issue orders and directions for purposes of securing the enforcement of its review or supervisory powers.

[39] The Supreme Court has appellate jurisdiction and such other jurisdiction as may be confined by the constitution or by any other law (section 146 (1) of the constitution). This court would therefore be abdicating its duties were it to fail to consider and determine the prayers in the notice of motion including the procedure and legality of **Legal Notice 173 of 2022.**

[40] I now want to answer the vexed question of whether the issuance of **Legal Notice No.173 of 2022** by the 1st Respondent to alter and extend the boundaries of Malkerns Town to include the Applicants' properties was irregular or unlawful.

[41] Pivotal to this question is the Supreme Consent Order of the 9th May 2018 that was recorded by counsel for the Appellant and the Respondents being an agreement between the parties for which the court ordered that;

"Whilst agreeing that Malkerns is a duly established Town in terms of the laws of the Kingdom of Eswatini,, the properties owned by the 1st Respondent and all of the Respondents referred to in the schedule annexed hereto Marked 'A' are specifically excluded from being part of the said Town of Malkerns" (underlining added).

[42] The Applicants in this matter were the Respondents on appeal and their properties in annexure 'A' therein are the properties whose boundaries were altered and extended by the 1st Respondent under **Legal Notice 173 of 2022,** the subject matter of this case.

[43] The Applicants contention on the implications of the Supreme Court Order in essence is that **Legal Notice No.173 of 2022** is unlawful or invalid because it violates the second part of the Supreme Court Order which were expressly excluded their properties. The extension is in itself unlawful for reasons advanced in the Mabila judgement and the VIP Dry Cleaners judgement issued long after the consent order which also declared the declaration of Malkerns as a Municipality. Finally, that **Legal Notice No.173 of 2022** is premised on the agreement recorded in the Supreme Court in the consent order which seeks to endorse and legitimize an Act that is null and void *abinitio*

[44] The 1st and 2nd Respondents contend that the Supreme Order is valid in as far as it established Malkerns as a Town. An order of court, even a 'wrongly' issued one exists with legal consequences. A party who genuinely believes that an order is a nullity has a duty to pursue an appeal or review to correct the illegality.

[45] The Respondents argued that this is the case at hand, the Supreme Order clearly says Malkerns is a lawfully established Town but some properties were not part of the Town (Applicants properties). They argue further that flowing from the first part of the order, the 1st Respondent was empowered following section 123 of the Act to rectify error or omissions to be done in terms of the Act by issuing **Legal Notice 173 of 2022** to extend the Malkerns Town to include the Applicants boundaries. The process they

argued followed by the 1st Respondent complied with section 4 of the Act hence regular, lawful and not susceptible to be set-aside.

[46] The 3rd Respondent's contention is that the 3rd Respondent is a lawfully established town per the Supreme Court judgment. The Supreme Court Judgement has not been reviewed and in binding in terms of the law. In the absence of an order reviewing the Supreme Judgment action taken post the order was given by the 1st Respondent when he issued **Legal Notice 173 of 2022**. The 1st Respondent followed all the processes as spelt out in section 4 of the Act. The 3rd Respondent is therefore within its rights to levy and collect rates in terms of the Rating Act 1995.

[47] Whilst the court is mindful of the constitutional provision that 'a decision of the Supreme court shall be enforced, as far as that may be effective, in like manner as if it were a judgement of the court from which the appeal was brought, whilst it is not bound to follow the decisions of other courts save its own, the Supreme Court may depart from its own previous decisions when it appears to it the previous decision was wrong. The decisions of the Supreme Court on questions of law are binding on other courts' (*underlining added*). The High Court being one such other court. It is clear from parties submission that the Supreme Court order is still subject for review on whether that court could on the first part of the order have lawfully established Malkerns as a Town.

[48] The case of Gareth Evans vs Lisa Evans High Court Case No.26/09 page 21, Paragraph 36, His Lordship T.S.Masuku observed that,

"For that reasons, it would appear on the principle that this court ordinarily has no business in deciding on a matter which is placed before the Supreme Court on appeal. That appeal lying as it does with the Supreme court it is in my view, that it is that court that should deal with the issue of the validity or otherwise of any notice or document by which an appeal is noted".

[49] It is appropriate with respect to say likewise that this court would ordinarily have no business in determining any matter placed before the Supreme Court on review. The review as it lies before the Supreme Court is to be dealt with by that court. Thus all the issues pertaining to the legality of the consent order is to be dealt with by the Supreme Court.

[50] As mentioned earlier on this judgement that the *caveat* on the above principle for the matter in *casu* is that **Legal Notice 173 of 2022** challenge comes for the first time before this court and with the courts inherent original jurisdiction, the court cannot abdicate its revisional and supervisory jurisdiction over actions exercised by the 1st and 2nd Respondents. If anything, the parties require a decision of this court before the exercise of their rights to appeal.

[51] Proceeding with that caution in mind and having considered the contention made by counsel for the parties, I find that the alteration and extension of the boundaries for the Applicants' properties by the 1st Respondent under **Legal Notice 173 of 2022** is in violation of the second part of the Supreme Court Order. This is the part that states, 'the properties owned by the 1st Respondent and all of the Respondents referred to in the schedule annexed hereto marked 'A' are specifically excluded from being part of the said Town of Malkerns'.

[52] Not only is it in violation to that order, it is also contrary to the judgements of this court under case 1366/2016 (the Mabila judgment) and case No.548/2019 (the VIP Dry Cleaners' judgement) which were premised on **Legal Notice No.49 of 2012**. The former judgment (1366/2016) is captured by the first part of the Supreme Court Order as an agreement of counsel for the parties that Malkerns is a duly established Town. That agreement or establishment does not extend to the Applicants' properties or as put by the second part of the order, 'Applicants properties are specifically excluded from being part of the said Town of Malkerns'.

[53] The purported extensions of the boundaries was executed by the 1st Respondent under the auspices of his powers to rectify his predecessor's previous errors, twice corrected for not following the preremptory provisions of section 4 of the Act. The 1st Respondent contended wrongly in my view that he can rectify the previous mistakes by simply extending (the non established boundaries of Applicants' properties) by following section 123 of the Act even where the Supreme Court order recognized the agreed establishment of Malkerns Town to the exclusion of Applicants' properties.

[54] The court is of the considered view that the 1st Respondent ought to have first declared the Applicants' properties as part of the Town of Malkerns in the exercise of his powers in recognition of the exclusionary part of the order recorded by the Supreme Court. Accordingly he had to follow the peremptory requirements of section 4 of the Act. To be precise, the declaration of the Applicants' properties as a Municipality or town still required its own publication of the Notices and the establishment of a commission of enquiry in terms of section 4 of the Act. The extension of a non- unestablished Town in the case of Applicants' properties is irregular,

unlawful and ought to be set-aside. **The Legal Notice No. 173 of 2022** is therefore irregular, invalid and is set-aside.

[55] Consequently, the Respondents' valuation rolls the computation of rates, the assessment and levying and collection of rates from the properties registered in the names of the Applicants should suffer the same fate,that of being irregular, invalid and is set aside.

[56] The court however cannot issue a blanket order for the refund to Applicants rates collected and paid consequent to **Legal Notice 173 of 2022** to the 3rd Respondent.

[57] The court makes no order for contempt of the Supreme Court Order by any of the parties in these proceedings for the same reason that it can only be the Supreme Court that may charge any of the parties with contempt *see* also Swazi MTN LTD and Another vs Swaziland Posts and Telecommunication Corporation and another (58 of 2013) [2013]SZSC 46 (29 November 20130). In any event, the contempt question was not necessarily pursued for determination by the parties. It is therefore refused.

[58] In the result the following final orders are made:

1. The extension of boundaries to include the properties registered in the name of the Applicants in terms of **Legal Notice No.173 of 2022** is declared irregular, unlawful, invalid and is set aside.

2. The actions of the Respondents' valuation rolls, the computation of rates, the assessment, carrying and collection of rates from the properties registered in the names of the Applicants is irregular, invalid and is also set-aside.

3. The decision of the 1st Respondent to extend the boundaries of Malkerns Urban Area (in terms of **Legal Notice No.173 of 2022**) to include the immovable properties registered in the names of the Applicants, is reviewed, corrected and set-aside.

4. The decision of the 1st Respondent declaring Malkerns as a Municipality in terms of **Legal Notice No.285 of 2022** is reviewed, corrected and set aside.

5. Costs of suit against the Respondents, jointly and severally including certified costs of Senior Counsel.

S.M. MASUKU J
JUDGE - OF THE HIGH COURT

For the Applicants:	**Mr. Francois Jourbet SC, instructed by KN Simelane Attorneys.**
For the 1st and 2nd Respondents:	**Mr. M Vilakati from Attorney General's Chambers.**
For the 3rd Respondent:	**Mr. Donga of S.V Mdladla and Associates.**