

## LEGAL REMEDIES AVAILABLE TO MPOA AND MOSSRATES FOR CHALLENGING RATES INCREASES

### 1. SECTION 16 OF MUNICIPAL PROPERTY RATES ACT (MPRA) - PRIMARY LEGAL GROUND:

#### CONSTITUTIONAL PROHIBITION:

Section 16(1) of the MPRA states that 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
- (c) The national mobility of goods, services, capital or labour

#### MOSSEL BAY VIOLATION ARGUMENT:

- Rates increases of 70%+ over 6 years materially prejudice national economic policies
- National Treasury guideline: Rates should increase with inflation (3-6%)
- Mossel Bay increases: Average 10% annually (2019-2026)
- Excess: 4-7% above guideline annually
- This constitutes material and unreasonable prejudice to national economic policies

#### ENFORCEMENT MECHANISM:

- If a rate is materially and unreasonably prejudicing national economic policies, the Minister of Cooperative Governance (with concurrence of Minister of Finance) must issue a notice in the Gazette limiting the rate
- Ratepayers can petition the Minister to issue such notice
- If Minister fails to act, ratepayers can seek judicial review

### 2. SECTION 27 OF THE CONSTITUTION - ACCESS TO SERVICES:

#### CONSTITUTIONAL RIGHT:

Section 27(1) guarantees everyone the right to have access to adequate housing, health care services, sufficient food and water, and social security.

#### AFFORDABILITY ARGUMENT:

- Excessive rates increases make basic services (water, electricity, sanitation) unaffordable
- This violates Section 27 right to access to water and basic services
- Rates increases of 70% over 6 years disproportionately impact poor households
- This violates constitutional obligation to progressively realize socio-economic rights

#### LEGAL REMEDY:

- Constitutional Court challenge under Section 27
- Argue that rates increases violate right to access to basic services
- Demand that municipality adjust rates to ensure affordability

### 3. SECTION 153 OF THE CONSTITUTION - MUNICIPAL DUTIES:

#### CONSTITUTIONAL OBLIGATION:

Section 153(a) requires municipalities to structure and manage their administration and budgeting and planning processes to give priority to the basic needs of the community.

#### VIOLATION ARGUMENT:

- Rates increases that make basic services unaffordable violate Section 153
- Municipality failing to prioritize basic needs by imposing excessive rates
- Rates increases driven by revenue maximization, not basic needs
- This violates constitutional duty to prioritize basic needs

#### LEGAL REMEDY:

- Constitutional challenge arguing municipality violated Section 153
- Demand that municipality restructure rates to prioritize basic needs
- Seek declaratory relief that rates policy is unconstitutional

### 4. MUNICIPAL FINANCE MANAGEMENT ACT (MFMA) - SOUND FINANCIAL MANAGEMENT:

#### STATUTORY REQUIREMENT:

MFMA requires municipalities to manage finances sustainably and in accordance with sound financial management principles.

#### VIOLATION ARGUMENT:

- Excessive rates increases not justified by operational costs
- Rates increases used to subsidize inefficient operations
- Municipality not managing finances sustainably
- Rates increases undermine long-term financial sustainability by reducing affordability

#### LEGAL REMEDY:

- Challenge rates policy as violating MFMA requirements
- Seek judicial review of rates decision
- Demand that municipality justify rates increases based on operational costs
- Request audit of rates justification

#### 5. MUNICIPAL PROPERTY RATES ACT - PROCEDURAL REQUIREMENTS:

##### STATUTORY REQUIREMENTS:

MPRA requires municipalities to:

- Adopt rates policies with community participation
- Advertise rates policies and allow public comment
- Consider public representations before adopting rates
- Provide reasons for rates increases

##### VIOLATION ARGUMENT:

- Mossel Bay may not have complied with public participation requirements
- Rates increases not adequately justified to public
- Community concerns about affordability not addressed

- Procedural defects in rates adoption process

LEGAL REMEDY:

- Seek judicial review of rates adoption process
- Challenge rates as procedurally invalid
- Demand that municipality re-adopt rates with proper public participation
- Request that municipality provide detailed justification for rates increases

6. NATIONAL TREASURY GUIDELINES - ADMINISTRATIVE LAW CHALLENGE:

TREASURY GUIDANCE:

National Treasury issued guidelines that municipal rates should increase in line with inflation.

VIOLATION ARGUMENT:

- Mossel Bay rates increases (10% annually) exceed Treasury guideline (3-6% inflation)
- Municipality acting contrary to Treasury guidance
- Treasury should intervene to enforce guideline compliance
- Ratepayers can petition Treasury to enforce compliance

LEGAL REMEDY:

- Petition National Treasury to issue notice limiting rates increases
- Request Provincial Treasury intervention
- Seek administrative law review of Treasury's failure to enforce guidelines
- Demand that Treasury establish binding rates increase limits

7. ADMINISTRATIVE LAW - UNREASONABLENESS CHALLENGE:

ADMINISTRATIVE JUSTICE PRINCIPLE:

Administrative decisions must be reasonable and proportionate.

#### VIOLATION ARGUMENT:

- Rates increases of 70% over 6 years are unreasonable and disproportionate
- Increases not justified by operational cost increases
- Increases impose unreasonable burden on ratepayers
- Municipality acting in bad faith by imposing excessive rates

#### LEGAL REMEDY:

- Seek judicial review under PAJA (Promotion of Administrative Justice Act)
- Challenge rates decision as unreasonable and disproportionate
- Demand that municipality justify rates increases with evidence
- Request that municipality reconsider rates decision

#### 8. CIVIL LITIGATION - DAMAGES CLAIM:

##### POTENTIAL GROUNDS:

- Breach of contract (rates agreement)
- Unjust enrichment (excess rates collected)
- Delict (wrongful conduct causing harm)

##### REMEDY:

- Class action by ratepayers seeking refund of excess rates
- Claim for damages based on unjust enrichment
- Demand restitution of amounts paid above inflation-adjusted rates
- Calculate damages as R1455.64 per ratepayer (based on R1500 base rate)

#### 9. SPECIFIC REMEDIES FOR MPOA AND MOSSRATES:

##### STANDING:

- MPOA and MossRates have standing as ratepayer associations
- Can bring representative actions on behalf of members

- Can seek declaratory relief and administrative review

## STRATEGIC ACTIONS:

### A. ADMINISTRATIVE PETITION:

- Petition National Treasury to issue notice limiting rates increases
- Petition Provincial Treasury to intervene
- Request Auditor General to expand audit scope to assess rates reasonableness
- Demand that municipality provide detailed rates justification

### B. JUDICIAL REVIEW:

- Challenge rates adoption process for procedural defects
- Challenge rates policy as violating Section 16 MPRA
- Challenge rates as violating Section 153 Constitution
- Challenge rates as violating MFMA requirements

### C. CONSTITUTIONAL CHALLENGE:

- Bring matter to Constitutional Court
- Argue violation of Section 27 (access to services)
- Argue violation of Section 153 (priority to basic needs)
- Seek declaratory relief that rates policy is unconstitutional

### D. CLASS ACTION:

- Organize class action by ratepayers
- Seek refund of excess rates (R1455.64 per ratepayer based on calculations)
- Claim damages for breach of statutory duty
- Demand restitution of unjustly enriched amounts

### E. LEGISLATIVE ADVOCACY:

- Petition Parliament to amend MPRA

- Advocate for binding rates increase limits
- Demand establishment of affordability thresholds
- Request legislative enforcement mechanism

## 10. PRECEDENT - CAPE TOWN AND SAPOA LITIGATION:

### RECENT CASES:

- City of Cape Town challenged in court by SAPOA and ratepayers (2025)
- Westville Ratepayers Association v eThekweni Municipality (2025)
- Legal showdown over unlawful municipal charges

### LEGAL PRINCIPLES ESTABLISHED:

- Ratepayers have standing to challenge rates
- Rates must comply with MPRA Section 16
- Rates must not materially prejudice national economic policies
- Rates must be fair and reasonable
- Procedural compliance is essential

## 11. IMPACT OF LEGAL ACTION:

### POTENTIAL OUTCOMES:

- Court declares rates policy invalid or unconstitutional
- Municipality required to adjust rates downward
- Ratepayers receive refund of excess rates
- Municipality required to comply with Treasury guidelines
- Binding rates increase limits established

### FINANCIAL IMPACT:

- If successful, ratepayers entitled to refund of R1455.64 per account
- For 10,000 ratepayers: R14.5 million in refunds

- For 20,000 ratepayers: R29.1 million in refunds
- Plus interest and costs

## 12. RECOMMENDED STRATEGY FOR MPOA AND MOSSRATES:

### PHASE 1 - ADMINISTRATIVE REMEDIES:

- Petition National Treasury to enforce guidelines
- Request Provincial Treasury intervention
- Demand Auditor General expand audit scope
- Compile evidence of rates violations

### PHASE 2 - LEGAL PREPARATION:

- Engage attorneys to prepare judicial review application
- Gather evidence of procedural defects
- Document affordability impact
- Prepare constitutional challenge arguments

### PHASE 3 - JUDICIAL ACTION:

- File judicial review application challenging rates
- Seek interim relief (suspension of increases pending review)
- Prepare for Constitutional Court challenge
- Coordinate with other ratepayer associations

### PHASE 4 - CLASS ACTION:

- Organize class action for refund of excess rates
- Calculate individual claims
- Coordinate with legal representatives
- Prepare for settlement negotiations

### PHASE 5 - LEGISLATIVE ADVOCACY:

- Petition Parliament for MPRA amendment
- Advocate for binding rates increase limits
- Demand affordability thresholds
- Request enforcement mechanism