# Onlangse regspraak/Recent case law

## *Maccsand v City of Cape Town, Minister for Water Affairs and Environment, MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province, Minister for Rural Development and Land Reform, and Minister for Mineral Resources* 2012 4 SA 181 (CC)

*Making sense of the interwoven legislative interplay of timelines, hierarchical status, geographical space and governmental spheres in South Africa*

### 1 Introduction

Interpretation of statutes (the juridical understanding or construction of legislation) deals with legal rules and principles used to construct the correct meaning of legislative provisions to be applied in practical situations. Du Plessis (*Re-interpretation of Statutes* (2002) 18) explains as follows:

> [S]tatutory (and constitutional) interpretation is about construing enacted law-texts *with reference to and reliance on other law-texts,* concretising the text to be construed so as to cater for the exigencies of an actual or hypothesised concrete situation (emphasis added).

In other words, statutory interpretation is about making sense of the complete relevant legislative scheme that is applicable to a specific situation. The decision of the Constitutional Court in *Maccsand v City of Cape Town, Minister for Water Affairs and Environment, MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province, Minister for Rural Development and Land Reform, and Minister for Mineral Resources* 2012 4 SA 181 (CC) ("*Maccsand* 3"), as well as the two cases leading up to it (*City of Cape Town v Maccsand (Pty) Ltd* 2010 6 SA 63 (WCC) ("*Maccsand* 1") and *Maccsand (Pty) Ltd v City of Cape Town* 2011 6 SA 633 (SCA) ("*Maccsand* 2")), *inter alia*, deal with the well-known principle in South African law that legislation must be read as a whole. In *S v Looij* (1975 4 SA 703 (RA) 705C-D), the court explained the "wholeness" of legislation as an internal aid to interpretation:

> [T]o determine the purpose of the Legislature, it is necessary to have regard to the Act as a whole and not to focus attention on a single provision to the

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> exclusion of all others. To treat a single provision as decisive … might obviously result in a wholly wrong decision.

This means that the interpreter of legislation (including the Constitution) must consider legislation as a whole. In *Nasionale Vervoerkommissie van Suid-Afrika v Salz Gossow Transport (Edms) Bpk* (1983 4 SA 344 (A)), the court again stated, when interpreting certain provisions, a statute must be studied in its entirety (see in this regard the order of the court in *Ex Parte Van Straten* (unreported case 22678/14) Western Cape Division of the High Court, February 2015, from which it is clear that the judge did not read the Cross-Border Insolvency Act 42 of 2000 as a whole and, in the process, failing to take s 2(2)(a) of the Act into consideration). Du Plessis (*The Interpretation of Statutes* (1986) 127-128) refers to this principle as the "structural wholeness of the enactment", and Devenish (*Interpretation of Statutes* (1992) 101) describes it as follows: "Interpretation should be *ex visceribus actus,* i.e. from the bowels of the Act or, to paraphrase, 'within the four corners of the Act'".

Prior to 1994 and the advent of the new constitutional dispensation, the South African statute-law framework (legislative scheme) was fairly static and easily-determined. The timeline of legislation consisted of a continuous development of legislation from 1806 onwards (see Du Plessis (2002) *supra* 22-24), underpinned by the common-law rule that legislation cannot be abrogated by disuse (*R v Detody* 1926 AD 198), as well as the principle of the sovereignty of parliament. Furthermore, the hierarchical status of legislation was rigidly divided into original legislation (Acts of Parliament, provincial ordinances, as well as Acts emanating from the legislative assemblies of the self-governing territories and the TBVC states) and subordinate or delegated legislation (regulations, proclamations, municipal by-laws and other instruments of subordinate legislation). The geographical spaces in which this legislation operated were also determined according to legislation and the governmental policies of the day, while the three tiers of government (national, provincial and local) were clearly and hierarchically demarcated. However, since 1994 this landscape has changed dramatically. All forms of legislation in the new South Africa now operate as an interwoven system: The horizontal timeline now consists of old-order legislation (defined in item 1 definitions of Schedule 6 of the Constitution of the Republic of South Africa, 1996 ("Constitution") as any legislation enacted before the interim Constitution took effect), and new legislation enacted after 27 April 1994.

The two vertical axes of hierarchical status and tiers of government also changed: The distinction between original and subordinate legislation remains, but the supreme Constitution now occupies the top position in the hierarchical structure, and the rigid distinction between the three tiers of government has been obfuscated by the new system of three spheres of co-operative government. This means that the

seemingly simple exercise of reading legislation "together" is now a more daunting task than before.

## 2 The Facts and Issues

In the *Maccsand* trilogy, the central issue was the interplay (and potential conflict) between three different sets of legislation applicable to mining operations: The Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA"), the National Environment Management Act 107 of 1998 ("NEMA"), and the Land Use Planning Ordinance (Cape) 15 of 1985 ("LUPO") (although the provisions of NEMA are of great importance in the new constitutional order of South Africa, the Act is not directly relevant for purposes of this discussion and is therefore, omitted).

In 2007 the Minister of Mineral Resources granted Maccsand (Pty) Limited (a black empowerment mining company), mining rights in terms of section 23 of the MPRDA in respect of two properties in the Mitchell's Plain area, City of Cape Town. Both properties are located in residential areas, close to two schools, private homes and an informal settlement.

The MPRDA, a new order legislative enactment, empowers the Minister for Mineral Resources to grant mineral rights if certain requirements are met. LUPO, on the other hand, is an old order and thus pre-constitutional provincial ordinance which was still in force in the Western Cape. During 1994, the President of the RSA assigned the administration of LUPO to the provincial government of the Western Cape (GN 115 GG 15813, 1994-06-17). LUPO authorises the making of scheme regulations which determine the use of land in accordance with the applicable zoning of the land. Under LUPO, municipalities are authorised to prepare structure plans for their jurisdictions, which must then be submitted to the provincial government for approval (see s 4 of LUPO). The purpose of structure plans is to lay down guidelines for future spatial development and also to authorise the rezoning of land by a municipality (it should be noted that new legislation has recently been enacted to regulate future spatial development and rezoning activities by municipalities throughout South Africa; see the Spatial Planning and Land Use Management Act 16 of 2013 for further details). When LUPO was still in force, it required that if an owner of land wanted to use the land for a purpose not permitted in terms of the applicable zoning scheme or regulations, he/she had to apply to the relevant municipality for rezoning of the land or for permission for a land-use departure. LUPO further obligated municipalities to enforce compliance with its provisions and to prohibit the use of land for purposes other than those permitted by the zoning scheme (see parr B & A at 190-191) Therefore, in terms of LUPO, mining may only be undertaken on land, within a particular municipal jurisdiction, if the zoning scheme permits it. If it does not, rezoning of the land must be conducted before the commencement of mining operations. However, it must be emphasised that zoning authorisation that permits that land to be used for mining does not license mining nor does it determine mining rights. It merely controls and regulates the use

of land: The MPRDA, on the other hand, governs mining, whilst LUPO only regulates the use of land. Against this background Maccsand obtained a mining permit in terms of the MPRDA in October 2007 and started mining sand on the relevant land in 2008.

In 2009, whilst Maccsand continued with its mining operations, the City of Cape Town, being the registered owner of the land in question, sought an interdict to stop Maccsand's mining activities, because it had not obtained the necessary rezoning permission as required by LUPO. In terms of LUPO and the relevant zoning schemes, the sand dunes which Maccsand started to mine were zoned as public open spaces, and had to be rezoned for it to be used for mining. The City of Cape Town argued that two actions were needed before Maccsand could start with lawful mining activities: Either the zoning scheme would have to be amended to authorise mining on the relevant land or a change would have to be granted from the existing zoning scheme to allow mining to take place on the land in question. The central dispute in this application therefore, was whether a mining permit or mining right granted under the MPRDA exempts the holder from having to obtain authorisation for its mining activities in terms of other legislation which regulate the use of that land, in particular, the provisions of LUPO. Therefore, the question is which legislation should prevail – the MPRDA (national legislation) or LUPO (provincial legislation)? LUPO clearly deals with control and regulation of the use of land: Land must be used for the purpose for which it has been zoned (in other words, zoning schemes as part of municipal planning).

Formally LUPO differs from the MPRDA in at least three respects. First, it is old order legislation, continuing in force subject to amendment or repeal, or invalidation. It may not have a wider impact than it had before the 1993 Constitution took effect, and should continue to be administered by the authorities that administered it when the Constitution took effect (see item 2 of schedule 6 of the Constitution). Second, LUPO was promulgated by the Administrator of the Cape of Good Hope for that province prior to April 1994, and the administration thereof was assigned to the province of the Western Cape in June 1994, as well as to other provinces that formed the erstwhile Cape of Good Hope. Third, in terms of the Constitution, LUPO is provincial legislation (see the definition of provincial legislation in s 239 of the Constitution, and the decision in *Minister of Local Government, Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd* 2014 1 SA 521 (CC) par 26, in which the court confirmed, as a matter of general principle, that old order legislation remains in force until the necessary steps are taken to have it set aside).

A further important consideration is whether the holder of a mining permit in terms of the MPRDA has to obtain environmental authorisations in terms of the NEMA before commencing or continuing with its mining operations. Although a great deal of NEMA has been incorporated into the MPRDA, a further question arose as to whether the MDRPA had the effect of ousting the obligation placed on mining

companies to first obtain environmental authorisations if mining activities involved so-called "listed activities" (by s 24 of NEMA).

Ultimately, the issue at hand is the necessity of reading different legislative provisions (applicable to three different legal regimes) together; namely the administration of land under different spheres of government (the MPRDA and NEMA as national legislation and LUPO as provincial legislation, regulating local government planning; including the horizontal timeline (the MPRDA and NEMA being post-1994 legislation, and LUPO being old-order legislation)).

## 3 The Decision(s)

The court in *Maccsand* 1 granted the interdict. Notwithstanding the fact that both the Minister for Mineral Resources and Maccsand contended that to construe LUPO as applying to land use for mining would be inconsistent with the new constitutional scheme, since the Constitution divides and confers powers on each sphere of government, and mining falls under the exclusive competence of the national government, and that LUPO does not apply to land used for mining. The court rejected the argument and ordered that mining operations must be halted "until and unless" such mining activities were authorised in terms of LUPO, as well as NEMA.

Maccsand and the Minister appealed the interdict to the Supreme Court of Appeal ("SCA"). The appellants argued that land use authority in terms of LUPO is unnecessary where a mining right or permit has been issued in terms of the MPRDA. They also argued, in the event of a conflict between LUPO and the MPRDA, that the latter would prevail as it regulated a functional area that is vested within the national sphere of government. However, the SCA dismissed the appeal against the order which interdicted Maccsand from continuing with its mining operations until the necessary authorisations were obtained under LUPO (*Maccsand* 2). The SCA held that the MPRDA and LUPO direct different areas — mining rights in the case of the MPRDA, and land use in the case of LUPO. There is therefore, no duplication. It further held that the two pieces of legislation operate alongside each other and that a holder of a mining right or permit in terms of the MPRDA cannot proceed to mine unless LUPO permits such mining on the land (see *Maccsand* 3 par B at 194). For as long as the Constitution reserves the functional area of municipal planning as a concurrent national and provincial legislative competence, a holder of a mining permit will also have to comply with LUPO (provincial legislation) in those provinces in which it operates. The SCA also held that it was unnecessary to examine the potential conflict between the MPRDA and NEMA, as Government Notice R386 (promulgated in *Government Gazette* 28753 of 2006-04-21) was repealed in its entirety on 2 August 2010 (by the Environmental Impact Assessment Regulations Listing Notice 1 of 2010, Government Notice R544 promulgated in *Government Gazette* 33306 of 2010-06-18 reg 4).

That meant that items 20 and 12 of the listings were no longer in operation and could not be contravened in future.

Maccsand and the Minister again appealed against this decision to the Constitutional Court. In *Maccsand* 3 the Constitutional Court, as per Jafta J, unanimously dismissed the appeal against the interdict which halted Maccsand's mining operations. The main issue on appeal was again whether a holder of a mining right or permit granted in terms of the MPRDA may exercise those rights only if the zoning scheme in terms of LUPO permits mining on the land. From the outset, the Constitutional Court confirmed that the interface between the MPRDA and LUPO raised issues of great constitutional importance that warranted the appeal to be heard: Mining plays an important role in the national economy of South Africa – and the issue at hand was not confined to the Western Cape province only. As national legislation, the MPRDA applies throughout the country, whereas LUPO applied only in three provinces. Similar provincial laws also applied in other provinces (see the Township Ordinance 9 of 1969 Orange Free State and the Transvaal Planning and Township Ordinance 15 of 1986). The Constitutional Court recognised that there may be tension between the two laws in circumstances where land, on which mining rights were granted under the MPRDA, was not zoned for a particular land use under LUPO. It also recognised that the administration of the two laws fell under different spheres of government, which were under a constitutional obligation to exercise their powers in a manner that does not encroach on the geographical, functional or institutional integrity of each other (see s 41(1)(g) of the Constitution).

On the merits, LUPO existed and was applied long before the MPRDA, and the zoning of the applicable dunes was in place before Maccsand was granted a mining right and permit on such land. The Constitutional Court ruled that the conflict resolution mechanism in sections 146–150 of the Constitution did not apply, as there was no conflict between LUPO and the MPRDA. Each was concerned with a different subject matter – that required the two laws to operate alongside each other and, in this case, mining could not take place until the land in question was appropriately rezoned:

> The fact that in this case mining cannot take place until the land in question is appropriately rezoned is therefore permissible in our constitutional order. It is proper for one sphere of government to take a decision whose implementation may not take place until consent is granted by another sphere, within whose area of jurisdiction the decision is to be executed (par 47).

This decision in *Maccsand* 3 meant, although a mining right must be granted in terms of the MPRDA, that the exercise of such a mining right is subject to the required rezoning of the land in terms of LUPO. Although Maccsand obtained a valid mining licence in terms of the MPRDA, it still had to apply for the rezoning of the land (on which the mining takes place) in terms of LUPO.

## 4 Comments and Analysis

The decision of the Constitutional Court in *Maccsand* 3 highlights and confirms a number of important constitutional issues. Such issues include: The importance of construing legislation together; confirmation of the composition of the South African government under the Constitution and the enhanced status of local government; the importance of co-operative government; and the allocation of functional areas of concurrent and exclusive legislative competencies between the three spheres of government and the interpretation of the Schedules to the Constitution as part of the overall constitutional context.

With reference to the composition and status of local government, *Maccsand* 3 confirms the position that, in the Republic of South Africa, the government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and inter-related (see s 40(1) of the Constitution). The local sphere of government consists of municipalities which are established for the whole territory of the Republic. All municipalities have the right to govern, on their own initiative, the local government affairs of their communities, subject to national and provincial legislation as provided for in the Constitution (see s 151(1) & (3) of the Constitution). Neither national nor provincial government may compromise or impede a municipality's ability or right to exercise its powers or to perform its functions. The status of municipalities, therefore, is constitutionally entrenched and the powers and functions, including matters such as municipal planning – which includes aspects such as the rezoning and sub-division of land within the municipal jurisdiction – are constitutionally protected.

In *Mazibuko v City of Johannesburg* (2010 4 SA 1 (CC)) it was confirmed that local government is recognised as the third sphere of government and that a municipal council is a deliberative body that exercises both legislative and executive functions. This confirmation follows the decision of *In Re: Certification of the amended text of the Constitution of the RSA, 1996* (1997 2 SA 97 (CC)) where the Constitutional Court confirmed that the Constitution has to provide for a framework for local governments powers, functions and structures while the details of the local government system are a matter for legislation (see parr 80-82 at 129 D-H & 130 C-D). Therefore, municipalities are not merely administrative bodies under the control and direction of the higher tiers of government. This important constitutional development was further confirmed in the case of *Fedsure Life Assurance v Greater Johannesburg TMC* (1999 1 SA 374 (CC)) where the Constitutional Court held, albeit under the interim Constitution of 1993, that the new constitutional scheme recognises and provides for three levels of government and that each level derives its powers and functions from the Constitution.

The constitutional status of local government, therefore, is materially different to what it was when Parliament was supreme and the powers and existence of local government depended entirely on superior

legislatures. Although local government powers and functions have to be determined by laws of a competent authority, it did not mean that such powers are delegated and should be regarded as original. Municipal councils are therefore deliberative legislative bodies, whose members are elected and their legislative decisions are influenced by political considerations for which they are politically accountable to the electorate (see *Fedsure supra* parr 35-42 at 393-395).

It is also interesting to note, that although the *Maccsand* trilogy of cases referred to and confirmed the constitutional provisions and obligations of co-operative government, the dispute between the interpretation of the MPRDA and LUPO (which effectively involves all three spheres of government) has not been identified as an inter-governmental dispute and, seemingly, has not been subjected to the peremptory constitutional requirements of chapter 3 of the Constitution.

According to section 40(2) of the Constitution, all spheres of government must observe and adhere to the principles of co-operative government and intergovernmental relations as provided for in section 41 of the Constitution. All spheres of government, including the national government and local government, must, *inter alia*, not assume any power or function except those conferred on them in terms of the Constitution and may also not exercise their powers and perform their functions in a manner that encroaches on the geographical, functional or institutional integrity of government in another sphere. Therefore, it is strange that the legal dispute between the national state department and the City of Cape Town municipality was not subjected to the constitutional requirements of sections 40 and 41 of the Constitution – before the matter was taken to court (see the requirement of s 41(1)(h)(iv) of the Constitution, and note that this issue was not raised in any of the three *Maccsand* decisions, and, therefore, was not *mero motu* dealt with by the courts). In the case of *Premier, Western Cape v President of the RSA* (1999 3 SA 657 (CC)) it was confirmed that the purpose of section 41 of the Constitution was to prevent one sphere of government from using its powers in ways which would undermine those of other spheres of government. National legislation must ensure that it does not encroach on the ability of the lower spheres to carry out the functions entrusted to them by the Constitution (parr 58 C-D at 679, and see also s 151(4) of the Constitution). In *MEC for Health, Kwazulu-Natal v Premier, Kwazulu-Natal* (2002 5 SA 717 (CC)) the court reiterated that the obligations of spheres of government to co-operate with one another must be complied with before an appropriate court is approached for relief (par 12 at 720 I-H). Further in *Uthukela District Municipality v President of the RSA* (2003 1 SA 678 (CC)), it was again confirmed that organs of state must avoid legal proceedings against one another and that the courts are obligated to ensure that this duty is duly performed.

Organs of state must make every reasonable effort to resolve an intergovernmental dispute at a political level and must exhaust all other remedies before approaching a court to resolve the dispute (parr 14-19

at 684 B-D and 685 B-C). Building on this background the Constitutional Court, in 2010, in the landmark decision of *Johannesburg Municipality v Gauteng Development Tribunal* (2010 6 SA 182 (CC)), held that municipal planning is an original constitutional power conferred on municipalities in terms of section 156(1) of the Constitution read with part B of Schedule 4 thereto. The Constitutional Court further confirmed that "planning" in terms of municipal affairs is a term with well-established meaning which includes the control and the regulation of the use of land, the zoning of land and the establishment of townships. The Constitutional Court further confirmed that section 41 of the Constitution confirms the autonomy of each sphere of government and also confirms that one sphere may not assume any power or function of another sphere, except those powers conferred on them in terms of the Constitution. National and provincial spheres thus enjoy concurrent legislative authority over matters in part B of Schedule 4 of the Constitution, neither can, by legislation, give itself the power to exercise executive municipal powers. The granting of applications for rezoning under the Development Facilitation Act 67 of 1995 (similar to powers granted in terms of LUPO), encroaches on the functional area of municipal planning and, therefore, is inconsistent with section 156 read with part B of Schedule 4 of the Constitution and, thus, is invalid (see parr 43-44 at 199-200 and 69-70 at 207 B-D).

Apart from the important aspects mentioned above, *Maccsand* 3 is also important for purposes of constitutional interpretation and giving meaning and substance to the content of Schedules 4 and 5 of the Constitution. Such interpretation is necessary in order to determine which functions are allocated to which sphere of government, and how such functions should be interpreted in order to prevent one sphere encroaching on the powers or functions of another sphere.

In *In Re Certification of the Constitution of the RSA, 1996* (1996 4 SA 744 (CC)) it was held that Constitutional Principle XIX was complied with by the list of exclusive and concurrent powers contained in Schedules 4 and 5 of the Constitution. Consequently, in the matter of *Ex parte President of the RSA: Constitutionality of the Liquor Bill* (2000 1 SA 732 (CC)) it was confirmed that the Constitution determines the relationship between the central and provincial governments. In this regard Schedule 4 functional competencies have to be interpreted as being distinct from the competencies set out in Schedule 5 and must be properly interpreted in order to give them full meaning within their constitutional context. Furthermore, when interpreting the Schedules to the Constitution there was no presumption in favour of either national or provincial legislation. The functional areas had to be purposively interpreted in a manner which would enable national Parliament and provincial legislatures to exercise their respective legislative powers fully and effectively (see *Western Cape Government: In Re DVB Behuising v North West Government* (2001 1 SA 500 (CC) par 17 at 511 E-F)). Further, in the matter of *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v Habitat Council* (2014 4 SA 437 (CC)) it was confirmed that certain

sections of LUPO, which allowed for appeals of municipal land-use decisions to the provincial government, were unconstitutional and invalid. Such provisions were found to be unconstitutional since they took away the authority of municipal planning, including the zoning and subdivision of property, which were powers falling within municipal competence as determined by the Constitution (see parr 13-15 at 445-447).

Finally, the importance of construing legislation "with reference to and reliance on other" legislation has been applied in a number of other cases since 1994. The intra-textual context (wholeness of the same piece of legislation) was illustrated in *Independent Electoral Commission v Langeberg Municipality* (2001 3 SA 925 (CC)) in which the Constitutional Court held that the definition of "organ of state" in section 239 of the Constitution must be read with section 41(3) of the Constitution. Although the Independent Electoral Commission is an organ of state, it is not an organ of state within the national sphere of government for the purposes of the dispute resolution requirements of section 41(3).

In *Mooikloof Estates (Edms) Bpk v Tshwane Metropolitan Municipality* (unreported case no 29998/2013) the court had to apply an extra-textual context (reading different enactments together) and held that section 118 of the Local Government: Municipal Systems Act 32 of 2000 ("Systems Act") had to be read with section 2 of the Local Government: Municipal Property Rates Act 6 of 2004, as well as the Deeds Registries Act 47 of 1937. This meant that the term "property" in section 118 of the Systems Act refers to the individual stand which is to be transported, and not to all the properties that formed part of the original township development.

The formal non-textual amendment (where there are no direct changes to the wording of the principal (initial) legislation, but the "amending" legislation merely describes the extent of the changes in the law with reference to the provisions that will be affected) brought about by the Constitution also forms part of the "reading-legislation-together" enterprise. For example, item 3(2)(b) Schedule 6 of the Constitution provides that a reference in old order legislation to — amongst others — an Administrator must be interpreted as a reference to the Premier of a province, and so on.

The decision in *Maccsand* 3 also means that the occurrence of implied repeal of conflicting legislation (albeit infrequent) might well be relegated to the history books (see in this regard *CDA Boerdery (Edms) Bpk v Nelson Mandela Metropolitan Municipality* (2007 4 SA 276 (SCA)). The conflict-resolution mechanisms created by sections 146-150 of the Constitution and the system of co-operative government between the three spheres of national, provincial and local government heralds a more flexible (but very complicated) system of dealing with conflicting legislation in South Africa. For purposes of this discussion, however, the court in *Maccsand* 3 concluded that no conflict existed in relation to the conflict resolution

mechanisms as set out in sections 146-150 of the Constitution. Accordingly the court concluded (which conclusion is supported by the authors of this case note) that both the MPRDA and LUPO operated alongside each other, and there was no conflict between the two. For purposes of this note, the aforementioned issue merits no further discussion (see *Speaker, National Assembly: In re National Education Policy Bill* (1996 3 SA 289 (CC)) in this regard).

## 5 Conclusion

A major practical problem of interpretation of statutes, including the interpretation of a supreme constitutional enactment, has always been the failure to read the provision in question with reference to the entire legislative scheme at hand. Since the advent of the "new" South Africa, the very practical interpretational problem of reading legislation as a whole has been exacerbated by the intricate interplay between the historical timeline, new and old geographical spaces, the hierarchical status of legislation and the constitutional spheres of co-operative government. If one adds the peremptory application of constitutional values and fundamental rights (s 39(2) of the Constitution) during the process, interpretation of statutes has become much more than the text-based process of "painting by numbers" of years gone by. This reality is eloquently captured in the words of Mahomed J in *S v Makwanyane* (1995 3 SA 391 (CC) par 266 at 489D-F):

> What the Constitutional Court is required to do in order to resolve an issue is to examine the relevant provisions of the Constitution, their text and their context; *the interplay between the different provisions;* legal precedent relevant to the resolution of the problem both in South Africa and abroad; the domestic common law and public international law impacting on its possible solution; factual and historical considerations bearing on the problem; *the significance and meaning of the language used in the relevant provisions;* the content and the sweep of the ethos expressed in the structure of the Constitution; *the balance to be struck between different and sometimes potentially conflicting considerations reflected in its text;* and by a judicious interpretation and assessment of all these factors to determine what the Constitution permits and what it prohibits (emphasis added).

Suddenly the practical, inclusive method of interpretation suggested by Du Plessis (*supra* (2002) 197-274; see also Botha (2012) *Statutory interpretation: an introduction for students* 111-156), is no longer merely a seemingly theoretical academic exercise. The systematic and contextual dimension of this suggested methodology not only emphasises the structural "wholeness" of the legislative scheme but also takes the entire contextual environment into account. In *Minister v Land Affairs v Slamdien* (1999 4 BCLR 413 (LCC) par 17) the court referred to this aspect as follows:

> [H]ave regard to *its context in the sense of the statute as a whole,* the subject matter and broad objects of the statute and the values which underlie it … have regard to its immediate context in the sense of *the particular part of the*

> *statute in which the provision appears or those provisions with which it is interrelated* … (emphasis added).

The decision in *Maccsand* (3) should be a timely warning to drafters, courts, practitioners (and the public) about the complexities of the current South African legal landscape. Practitioners might even rue the fact that they did not take interpretation of statutes more seriously during their studies, and given more attention to the continuing changes to local government law in South Africa since 1994.

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