

## ***Supervision of Local Government*, by Mbuzeni Johnson Mathenjwa**

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Mbuzeni Mathenjwa's book is excellent and well researched and makes a significant contribution to the literature on local government, which has become an increasingly important aspect of governance in South Africa. Inter alia, he carefully and thoroughly researches and examines a number of provincial interventions in the sphere of local government in order to determine whether the actual practice of supervision corresponds to the legal framework for the supervision of local government. He considers a certain number of case studies to determine whether or not certain general trends could be identified from the actual practice of the respective provincial governments. The majority of his case studies are taken from the province of KwaZulu-Natal. So, for instance, he examined provincial interventions in the KwaZulu-Natal municipalities of Utrecht, Imbabazane, AbaQulusi, uMhlabuyalingana, uMgungundlovu and Umvoti. But he also includes a consideration of provincial interventions in the municipalities of Langeberg and Overberg in the Western Cape and the municipality of Mnquma in the Eastern Cape (at 182–214).

From his detailed examination and analysis of the interventions in the cases referred to above, Mathenjwa determined that the exercise of power in certain provinces indicates a misunderstanding by provincial governments of their role and their powers in relation to local government. There appears to be an unfortunate tendency in which provincial governments disrespect the constitutional autonomy of local government, which is no longer merely the third level in a hierarchical arrangement but a sphere of government in a co-ordinate, co-operative and unique system, as provided for in Chapter 7 of the Constitution of 1996. In this regard, section 151 of the Constitution, which deals with

the status of municipalities, declares that: ‘The national or a provincial government may not compromise or impede a municipality’s ability to exercise its powers or perform its functions.’

His careful study of the cases set out above illustrates that party-political considerations very often blighted provincial interventions and that this unfortunate tendency was manifestly evident where the province was governed by a different political party from that in power in the municipality concerned. He therefore argues cogently that the failure of provincial governments to comprehend and apply the appropriate legal requirements when making interventions in local government requires the attention of the national government.

Furthermore, he points out that one of the ‘most vexing challenges in the supervision of local government concerns the impact of party politics’. Indeed, he explains that it ‘plays a major role in the supervisory relationship between provincial government and local government, as several court cases [have shown]’ (at 242).

His book is a powerful critique of the unsatisfactory supervision of local government by both the national and the provincial spheres of government. Much of this is elaborated on in his concluding chapter, where he correctly explains (at 239) that

[t]he evolution of local government from being a creation of ordinary statute to being a creation of a supreme Constitution brought with it major changes to the status and autonomy of local government in the Republic of South Africa.

This means that local government is indeed a ‘full partner in government’ (at 239). And as he correctly points out, this status is facilitated by ‘the principle of subsidiarity’.

In his concluding chapter he sets out eight important issues that need to be taken note of. In this regard, he states (at 240) that

[t]he status of local government is further entrenched by the allocation of original legislative powers to local government which are no longer delegated to it by other spheres of government.

This has been endorsed by the Constitutional Court in its judgment in *Fedsure Life Assurance (Ltd) v Greater Johannesburg Transitional Metropolitan Council* 1998 (1) SA 374 (CC).

As the author explains (at 240), the 1996 Constitution creates three spheres of government of different but ‘equal value’ under the Constitution. This requires that they should ‘interact as equals’ and that they must ‘respect one another’s autonomy’.

Unfortunately, the case studies indicate that the plot has been metaphorically lost by provincial government in the three provinces that feature in his case studies.

Accordingly, Mathenjwa emphasises that provincial governments must not encroach on the autonomy of municipalities, but they do have a constitutional duty to support them (at 241). However, he points out that in ‘several cases the practice of supervising municipalities demonstrates that provincial governments are eager to police and punish municipalities when they are actually in need of support’ (at 241).

What is actually required is a greater constitutional and political maturity on the part of provincial governments, since, as he is at pains to point out, ‘[t]he supervision of local government is sometimes conducted without proper reflection’ (at 241).

Mathenjwa’s study is enriched by his comparative overview of intervention in other countries, such as the United Kingdom, the United States, the Federal Republic of Germany, Nigeria, Uganda and Kenya (at 51–60).

Correctly, he opines that ‘local government forms the foundation of a strong and stable democratic system ... Local government is therefore essential for good governance in South Africa’ (at 242). These are indeed almost prophetic words and this book should therefore be carefully read and inwardly digested both by all the relevant role-players in the three spheres of government and by other interested persons. The book should also prove to be an invaluable resource for legal practitioners and all those officials concerned with local government issues in the three spheres of government. It will be an equally valuable resource for academics and students of local government in South Africa, and indeed in other countries too.

The author has made a laudable contribution to the public-law jurisprudence relating to local government, for which he deserves recognition and acknowledgement. His writing is clear, polished and eloquent, without being verbose, and the material is presented in an engaging manner. There is a comprehensive table of contents, an index, a bibliography and a table of cases, and I could find virtually no typographical errors in it. For all of this, he and the publisher deserve congratulation, both for the text’s scholarship and for a book that makes a substantial contribution to public law. It has been a singular privilege and pleasure to have read and to have been asked to write a review of this superb publication.