



Case No. : 2628/2019

Mangaung Metropolitan Municipality

DELIVERED: 6 DECEMBER 2019

- [1] The applicant seeks an order directing the respondent to restore the provision of the ordinary supply of water to all premises of the applicant and to provide an uninterrupted

supply of water at full capacity to all the premises of the applicant except in circumstances where urgent maintenance requires the disconnection of water supply to the applicant, pending the finalisation of the dispute raised by the applicant pertaining to the property rates charged by the respondent. The application is opposed.

[2] The facts surrounding this application are largely common cause and may conveniently be summarised as follows:

1. The applicant is a University duly established as a Higher Education Institute in terms of the Higher Education Act, 101 of 1997. The respondent is a Metropolitan Municipality duly established in terms of the provisions of s12 of the Local Government: Municipal Structures Act, 117 of 1998. The respondent is a rate payer of the applicant in respect of erf 26454. The applicant fell in arrears with payment of rates in respect of its said property. On the 20th March 2019 the respondent issued a notice calling upon the Applicant to settle its arrears in respect of its rates levied. The notice further indicated that if the arrears were not settled or proper arrangements made, the supply of water to the applicant would be disconnected.
2. On the 27th March 2019 the applicant lodged a dispute on what it called rectification of the valuation of property erf 26454 and the resultant municipal debt of R20 310 455.81 demanded in the letter of the respondent dated the 20th March 2019 mentioned above.

The nub of the attack on the valuation was that the respondent seemed to have valued the University property as a private business and not as a public institution.

3. On the 28th May 2019 the respondent dispatched a further notice similar to the one of the 20th March 2019. The second notice indicated that the arrears stood at R23 828 596.26. An account also sent to the applicant reveal that the respondent levied rates on the property at R87 816.67 per month and such levy was made on the basis that the property rates were charged at the *'business and commercial tariff'*
4. On the 10th June 2019 the applicant, through its attorneys of record lodged a dispute in terms of s102 (2) of the Municipal Systems Act, 32 of 2000 pertaining to the demand of the 10th May 2019. With the said dispute the applicant tendered payment of the amount of R3 000 000.00 in part payment. It is undisputed that this tendered amount was later paid to the respondent. The applicant also sought confirmation that the water supply to the applicant would not be disconnected and further sought to seek confirmation to try and resolve this impasse with the respondent. When no confirmation sought was forthcoming the applicant launched these proceedings.

- [3] In my view, there are essentially two issues for determination in this application, namely:

1. Whether erf 26454 is a rateable property as envisaged in the Municipal Property Rates Act, 6 of 2004 (the Act);
 2. Whether the alleged dispute raised in the letter of the 10th June 2019 by the applicants lodged with the respondent constituted a dispute as contemplated in s102(2) of the Municipal Systems Act which required resolution, failing which disconnection of the services to the applicant would render such disconnection unlawful.
- [4] The aim of the Act is to, inter *alia*, regulate the power of municipalities to impose rates on the properties in their areas.¹ Section 2(3) of the Act empowers a municipality to levy a rate on a property subject to section 229 and other applicable provisions of the Constitution², the Act and the rates policy the municipality had adopted in terms of section 3 of the Act. Such an adopted policy must be consistent with the Act.
- [5] Section 1 of the Act defines property as, follows:
- (a) “*Immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;*”
- [6] Section 102 of the Municipal Systems Act deals with the accounts owed to the municipalities and provides that a municipality may:
- (a) Consolidate any separate accounts of persons liable for payments to the municipality;

¹ See preamble to the Act

² Section 229: deals with the municipal fiscal powers and functions

- (b) Credit a payment by such a person against any account of that person;
- (c) Implement any debt collection and credit control measures provided for in Chapter 9 of the Act in relation to any arrears on any of the accounts of such a person.

- [7] Section 102(2) of the Municipal Systems Act provides that the debt collection and credit control steps envisaged in subsection 1 will not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.
- [8] It is so that the respondent disputed that erf 26454 was ever registered. In spite of the clear intention by the applicant putting in dispute the registration of erf 26454 the respondent failed to deal and to provide evidence of its registration. Mr Rampai attempted to hand albeit at a late stage from the bar proof of such registration but same was vigorously and successfully opposed. He elected not to seek a postponement in order to seek leave to file the said document by way of a supplementary affidavit.
- [9] The respondent is enjoined to levy rates on all rateable property in its area³. It is the contention of the applicants that because the respondents failed to prove that erf 26454 was a registered property, levying rates on it was illegal.

³ See s7 of the Act

[10] The applicant avers that it is the ‘*owner of the property on which the affairs of the Central University of Technology is conducted.*’⁴ The Act defines ‘owner’ in section 1 of the Act as follows:

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“ ‘owner’-

1. In relation to a property referred to in paragraph (a) of the definition of property, means a person in whose name ownership of the property is registered”.

On its own version the applicant is the owner of the property herein in question. It is my considered view that in view of its admission, the respondent is absolved from proving that the said property is a registered property. Ownership refers to a registered property in terms of s1 of the Act. It cannot be viewed otherwise that the property is not rateable. It is not the contention of the applicants that the said property is excluded from the levying of rates in terms of section 17 of the Act. The applicant cannot assert that it is the owner of the property as envisaged in the Act and expect the respondent to prove that such property was a rateable property. It is my finding that erf 26454 is a rateable property as envisaged in section 1 of the Act.

[11] It is not in dispute that the applicant raised a dispute through its attorneys of record on the 10th May 2019. The contention by the respondent is that the dispute raised on the 10th May 2019 was dealt with in March 2019. The essence of the submissions

⁴ See par [48] of the Founding Affidavit

on behalf of the respondents is that this dispute of the 10th May 2019 sought to ventilate the issue which was laid to rest in March 2019. I do not agree with the contention by the respondent.

[12] As alluded above the applicant is a university, an institute of higher learning. The account of the respondent levies the rates on the said institution at the rate called '*business and commercial*'. The courts have recognised that as a general rule higher rates have historically been levied against commercial, industrial and business properties than those classified as residential⁵. There is in my view reason to believe that such recognition of differentiation may be applicable to institutes of learning whose main purpose is not business and commercial. This particular aspect of the dispute was not raised in the March 2019 dispute. It is therefore not correct to assert that the dispute which was raised in May 2019 was laid to rest in March 2019. Anyway the dispute of May could not have been laid to rest in March when effectively it had not been raised.

[13] Section 3 of the Act enjoins the rates policy adopted by the municipalities to treat persons liable for rates equitably. The applicant contends that it must be treated equitably with the University of the Free State as both of them are similarly situated rate payers and both being universities as defined in the Higher Education Act. The contention by the applicant is that on the 27th May 2019 this court in case number 6266/2018 (the UFS case) declared the charging of a business rate

⁵ See *Kalil v Mangaung Municipality* 2014(5) SA 123 par [23]

against the properties of the Free State University as illegal. In the UFS case the court ordered that the municipality to determine separate assessment rates for each of the different property categories (of the university) as determined in the rates policy in accordance with the Act.

[14] It is against this background that the applicant contends that it must be treated in the same way as UFS. Clearly both institutions being situated in similarly rateable arrears and both being institutions of higher learning tempts one to agree with the contention by the applicant that it was not treated equitably. The court which however will be most suited to make that determination will be the court sitting in the review of the decision to impose rates at different tariff rates. This aspect was not dealt with by the respondent in the dispute raised on the 10th May 2019. It was incumbent on the respondent to have dealt with this issue when it was raised in May. The enforcement of its debt collection procedure which included the disconnection of the water supply should have been suspended by the lodging of the dispute in terms of s102 (2) of the Municipal Systems Act. The disconnection or intended disconnection thereof was prima facie unlawful.

[15] The respondent, however, correctly pointed out that the court in the UFS case did not bar the applicant from implementing its debt collection measures. Resolution of the dispute would go a long way towards finalising this impasse. The applicants have always intimated in their papers that they wanted to review the decision of the respondent. In my view the interest of justice

require that the court should grant an order to stay these proceedings pending the institution of a review application in order to resolve this dispute permanently. I accordingly make the following order.

ORDERS

- (a) The final determination of this application is stayed pending the institution of a review application by the applicant.
- (b) The review application is to be instituted within 30 days of this order.
- (c) The costs of this application stand over for later determination.

P.E. MOLITSOANE, J

On behalf of Applicant:

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On behalf of the respondent:

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