IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case number: 6381/2017

In the matter between:

GENIUNE MOTORS CC Applicant

and

F & J FAMILIE TRUST 1st Respondent

MR DOEPIE BENADE 2nd Respondent

MESSERS BEZUIDENHOUTS 3rd Respondent

THE PRESIDENT OF THE LAW SOCIETY OF

THE FREE STATE 4th Respondent

HEARD ON: 07 JUNE 2018

JUDGMENT BY: MATHEBULA, J

DELIVERED ON: 20 SEPTEMBER 2018

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[1] The applicant (in reconvention) and the respondent (in reconvention) concluded a written sales agreement on 4 September 2013 pertaining to the sale of Portion 1 of Erf 1652 Bloemfontein measuring 182 m² for the sum of R420 000.00. As provided in the agreement, on payment of the sum of R200 000.00, the applicant took control and occupation of the property on 17 September 2013. It was expressly provided in the agreement that the applicant was liable for payment of all rates and taxes as well as levies to the local authority for any period after taking occupation of the property. It appears that the transferring attorneys have been unable to obtain the Rates Clearance Certificate because of incorrect information kept by inter alia Centlec and Mangaung Metropolitan Municipality(MMM). Various disputes arose between the parties leading to this application and counter application. It is the latter application that is before me for adjudication. Mr Gilliland appeared for F & J Familie Trust (applicant in reconvention) and Mr Groenewald for Geniune Motors CC(respondent in reconvention).

[2] The applicant seek an order compelling the respondent to provide the applicant with a clearance certificate. The respondent is opposing the application and seek an order that it should be dismissed with costs.

[3] The question to be answered is whether the proposed sub-division can be transferred to the applicant against payment of rates, taxes and levies limited to the two (2) year period provided for in section 118 of the Municipal System Act 32 of 2000 in respect of that proposed sub-division only as opposed to whether they are payable limited to the same period in respect of the whole of the remainder from which the proposed subdivision has to be cut off.

[4] Mr. Gilliland makes a point in his submission that the question to be considered are inter alia when does a prime piece of land become a property for the purposes of rates and taxes, what is the intention of the Legislature in the provisions of section 118 of the Municipal System Act 32 of 2000, and whether the proposed subdivision can be transferred for payment of that subdivision as opposed to the whole. He makes the point that it was not the case of the applicant seeking the court to extend its authority in this matter. He submitted that sales agreement does not specify as to how the rates and taxes must be paid and subsequently issued. However, it was always implied or tacit intention of the parties at all times and contemplated by them that the obligation to pay was on the owner/seller of the property.

[5] Therefore, it could not be argued that the applicant was requesting the court to go beyond the contractual obligations of the parties. In addition, this matter was distinguishable in that the proposed

subdivision was not yet a property and a clearance certificate cannot be issued in respect of it. This is the position simply because it is not a property on the property register held and maintained by the Registrar of Deeds. The result is that without it being declared a property, no transfer can take place.

[6] He contended that there is plenty of scope allowing the court to exercise the necessary authority. Apart from the implied or tacit terms of the Sales Agreement, Section 24 of the Municipal Rates Act 6 of 2004 placed the obligation on the owner to pay the rates, taxes and levies. In this matter, the respondent was the main reason why that has not been settled. He referred to the document marked "AA61" that will show in detail what is due and payable. In the event that there is a dispute, this could be resolved easily by applying the provisions of the relevant Acts, regulations and by-laws. There was a small chance that the respondent will be overcharged because the rates and taxes have been owing since 2005.

[7] Mr Groenewald approached his oral submissions by stating that there are three (3) issues to be considered in this matter. First, the authority of the court to grant the relief sought by the applicant. Secondly the proper interpretation of section 118 of the Municipal Systems Act 32 of 2000. Thirdly, whether the applicant has complied with all the requirements of an interdict.

[8] He relied on and quoted the judgment of the Supreme Court of Appeal in **Morar NO v Akoo**[1]. In the judgement Wallis JA emphasized that "the court is merely enforcing the contractual obligations of the partners themselves".[2] On that occasion the court reiterated that once the court it is asked to go beyond that, it must identify a source of its power to do so. He argued that the applicant was seeking an order for its attorneys viz Bezuidenhouts to calculate the appropriate amount of rates, taxes and levies. They are not authorized to do that in terms all the Municipal Systems Act. He questioned the basis upon which this court can order that Bezuidenhouts calculate the amount due and payable based on wrong figures.

[9] The second point he raised related to the interpretation of the words "the property" as contained in section 118 (1) of the Municipal Systems Act. He found support for his submission from the decided matter of **Tshwane City v Uniqon Wonings (Pty) Ltd** by the Supreme Court of Appeal.[3] There the court held that the correct construction of section 118 (1) of the aforementioned Act is that a clearance certificate must be applied for in connection with the property the owner wished to transfer. This means that the owner is

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[1] **2011 (6) SA 311 (SCA)**
[2] **See footnote 1 par 19**
[3] **2016 (2) SA 247 (SCA) at 255 para 21-23**

under no obligation to pay all the amounts due in respect of an entire township when applying for a clearance certificate in respect of an erf sold and to be transferred. He submitted that although this matter is factually distinguishable from the matter on hand, the same principles are applicable.

[10] Lastly he submitted that the applicant was seeking an interdict. This was admitted that much by the counsel for the applicant. He argued that the applicant has not satisfied one of the requirements of an interdict namely a clear right. The respondent has over period disputed the charges levied for rates and taxes relating to the property. Wrong meter members were allocated and registered to the wrong properties. The valuation was equally incorrect. In clear simple terms, the billing system was inaccurate. Attempts to remedy the situation did not yield any positive results. The conclusion is that the respondent does not want to pay that which is not owed. As a result the respondent cannot be compelled to pay that which is disputed.

[11] He pointed out that there is an alternative remedy available to the applicant. The transferring attorneys simply has to direct an application for clearance figures to Centlec and MMM. He stated that the amount alleged to be owed included interest of which its calculation is unknown. This in essence is an unliquidated amount

and cannot be enforced in the proceedings of this nature. He emphasised that the transferring attorneys were not (and no suggestion was made in the papers) experts in the calculation of the rates and taxes. In conclusion, he submitted that the application must be dismissed with costs.

[12] The competency of the collection of rates and taxes relating to property is governed by the Municipal Systems Act 32 of 2000. Pertinently section 118 (1) provides as follows:-

> **"118. Restraint on transfer of property.**
>
> **(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate;**
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> **(*a*) issued by the municipality or municipalities in which that property is situated; and**
> **(*b*) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.**
>
> **(1A) A prescribed certificate issued by a municipality in terms of subsection (1) is valid for a period of 60 days from the date it has been issued.**
>
> **(2) ……..**
>
> **(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.**
>
> **(4) ……..**
> **(5) ……..”**

[13] In **City of Cape Town v Real People Housing** the court held that a municipality has as an obligation to issue clearance certificate for a property when all amounts that became due in connection with that property during the two(2) years preceding the date of the application for the certificate have been fully paid.[4]

[14] The correct interpretation of the phrase "*in connection with that property*" was considered in **Tshwane City v Uniqon Wonings** matter.[5] The court held that it is self-evident that it refers to the property that is to be transferred. Undoubtedly it cannot refer to the remaining extent which is not to be transferred. In an eloquent manner Lewis JA writing for the court said that "**this means that it is necessary to determine the state of outstanding rates and other charges due in connection with the erf to be transferred, and that must be paid before a clearance certificate can be issued**."

[15] The court went on to state that the issue is not whether an erf has been separated out. What is important is whether it has an independent existence for the purpose of obtaining a clearance certificate. In this matter, the property concerned has that independent existence and a clearance certificate pertaining to it can be obtained leaving aside the remainder of Erf 1652.

[16] It is so that the facts *in casu* are distinguishable from those in the Tshwane City matter. However, the principles are the same and I see no reason why they are not applicable. I agree with counsel for the respondent on this point.

[17] The last aspect is whether the applicant has met the requirements of a final interdict. I beg to differ that those have been met. The transferring attorneys must shoulder the responsibility to forward the

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[4] **2010 (5) SA 196 (SCA) paras 13 - 14**

[5] **See footnote 2 para 21**

proper applications to Centlec and MMM. It will not be just and equitable to compel the respondent to pay the debt which has been disputed from time immemorial. It is the function of the attorneys to follow the proper procedures to ensure that the authorities comply with the obligations. That is to issue the clearance certificate on receiving the correct information. In conclusion this counter application ought to fail.

[18] It is a legal principle in our law that costs follow the result and a successful party is entitled to costs. This issue was argued by counsel on both sides that a costs order must follow the event. I do not intend to depart from the principle and in the exercise of my discretion it will be proper to award costs to the successful party.

[19] For all of these reasons, the following order is therefore made:-

19.1. The counter application is dismissed with costs.

MATHEBULA, J

On behalf of Plaintiff:	Adv. J. Gilliland
Instructed by:	Bezuidenhouts Inc.
	Bloemfontein
On behalf of Defendant:	Adv. W. Groenewald

Instructed by: Symington & De Kok
Bloemfontein

/roosthuizen