

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Application No. LA129/2003

In the matter between:

CHRISTIAAN HENDRIK BOSHOFF

Applicant

and

NKETOANA MUNICIPALITY

Respondent

CORAM:

MALHERBE J.P. *et* HATTINGH J

HEARD ON:

21 MAY 2004

JUDGMENT BY:

MALHERBE J.P.

DELIVERED ON:

7 JUNE 2004

This is an application by the above respondent for leave to appeal against a judgment by this Court dated 11 December 2003 in Application No. 1935/2003 (the main application). The grounds upon which leave is sought, appear from the notice of the present application dated 18 December 2003 and need not be repeated.

Prayer 1 of the main application sought an order declaring the imposition

of rates by respondent on the farms of applicant *ultra vires* and unlawful. Such an order was granted in those wide terms. The first submission by Mr Kemp on behalf of respondent is that the order

“has the appearance and effect of a continuing order that the imposition of rates on farm property is beyond the powers of respondent. Such relief does not flow logically or rationally from the defects in the process of levying rates in respect of the 2002/2003 financial year on which the applicant finally relied”

Counsel on both sides were *ad idem* that the main application dealt solely with the 2002/2003 financial year and that a small amendment to prayer 1 can be effected by agreement to put the matter beyond doubt. In any event, Mr Kemp conceded correctly that if this was the only ground upon which he relied, he would not be entitled to leave.

His main argument was that the Court erred in holding that section 93(9) of Act 117 of 1998 was not applicable to the facts of this case. His reliance upon this section in the main application was to counter a submission on behalf of applicant that the valuation roll which respondent used to levy the rates in question had not yet been finalised and could, therefore, not have been used as basis for the rates. We have

dealt with this argument in our previous judgment and remain unconvinced that it has merit. In any event, it was never respondent's case on the papers that the valuation roll that it used was a "provisional" roll in the sense that it had not yet been finalised. During argument counsel for applicant handed up copies of Local Government Provincial Ordinances in Gauteng and the Eastern Cape from which it appears that special provision had been made for provisional valuation rolls to be prepared by local authorities. We were told that the provinces of Mpumalanga, North West and Limpopo had followed Gauteng's example and that Western Cape and Northern Cape in turn copied Eastern Cape's example. It appears, therefore, that the term "provisional valuation roll" does not merely mean a valuation roll that has not yet been finalised as submitted on behalf of respondent.

No new arguments were advanced in support of the application for leave to appeal. Having reconsidered all the arguments we are not convinced that respondent has reasonable prospects of success on appeal.

Both parties made use of the services of 2 counsel.

The application is dismissed with costs, including the costs consequent upon the employment of 2 counsel.

J.P. MALHERBE J.P.

I CONCUR

G.A. HATTINGH J

On behalf of Applicant:

Adv. A.F. Jordaan SC
and Adv. B. Knoetze
instructed by
Naudes
Bloemfontein

On behalf of Respondent:

Adv. K.J. Kemp SC
and Adv. C.A. Nel
instructed by
Honey Attorneys
Bloemfontein

/scd