

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 14012/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 21 /07/2025

SIGNATURE

In the matter between:

KENNETH ROBERT WILLIAM HARRISON

APPLICANT

And

**THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time of hand-down is deemed to be at 10:00 on 21 July 2025

JUDGMENT

Phahlamohlaka AJ

Introduction

[1] The applicant initially sought a declarator requesting the court to order that the property rates, levied by the respondent for the financial years 2006/2007, 2007/2008

and 2008/2009 were levied unlawfully, given that the levying thereof did not comply with the relevant provisions of the *Local Government: Municipal Property Rates Act, Act 6 of 2004* (“the Municipal Property Rates Act”), and that those rates and taxes were therefore not due and payable to the respondent. However, after the respondent filed an answering affidavit the applicant amended its notice of motion only in respect of the time frames, seeking a declaratory order only in respect of the period 2008/2009. The application is opposed.

Background facts

[2] Prior to May 2021 the applicant was the owner of the immovable property, namely *Erf 1[...] Q[...] Extension 4, (Pretoria), Registration Division J.R, Gauteng*, situate at *1[...] R[...] Street, Queenswood, Pretoria, Gauteng* (“the property”). The property was sold to one Lourens Johan Steyn and was registered in the name of Steyn on or about 20 May 2021.

[3] As the owner of the property the applicant had an obligation and was liable for payment of property rates, taxes and levies to the respondent. The respondent levied and charged property rates in respect of the property to the applicant’s municipal account for 2006/2007, 2007/2008, 2008/2009 financial years.

[4] The applicant avers that during October 2021, after he sold the property, and after diligent search of the relevant *Provincial Gazette*, he became aware of the fact that the respondent had levied and charged the property rates for the financial years mentioned in paragraph 3 above in noncompliance with the relevant provisions of the Act in that the respondent failed to promulgate a resolution levying rates in the *Provincial Gazette* in terms of section 14(2) of the Act.

[5] The applicant concedes that there are no statutory provisions in terms of which the respondent can *ex post facto* remedy the non-compliance with the compelling provisions of the Act, hence the prayer for a declaratory order that the property rates

levied by the respondent were levied unlawfully in that the levying thereof did not comply with the relevant provisions of the Act, , and that those rates and taxes were therefore not due and payable to the respondent.

[6] According to the notice of motion the applicant seeks an order in the following terms:

6.1 A declaratory order that the property rates, levied by the respondent for the 2008/2009 financial year, were levied unlawfully, in that the levying thereof did not comply with the relevant provisions of the *Local Government: Municipal Property Rates Act, Act 6 of 2004*, and that those rates and taxes were therefore not due and payable to the Respondent.

[7] The application is premised on the constitutional principle of legality, and the applicant is not suing for any damages.

Issues for determination

[8] The issues to be determined are whether the respondent levied property rates for the 2008/2009 financial year unlawfully and in non-compliance with the provisions of section 14(2) of the *Local Government: Municipal Property Rates Act, Act 6 of 2004*.

[9] Further, the court has to determine whether the applicant has satisfied the requirements for a declarator.

The legal position

[10] The jurisdiction to grant a declarator is currently governed by section 21(1)(c) of the *Superior Courts Act, 10 of 2013* which provides as follows:

“A Division has jurisdiction over all person’s resident or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognizance, and has the power-
...(c) in its discretion, and at the instance of any interested person, to inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon determination..”

[11] Section 14 of the Municipal Property Rates Act provides that:

“(1) A rate is levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members.

(2) (a) A resolution levying rates in a municipality must be annually promulgated, within 60 days of the date of the resolution, by publishing the resolution in the Provincial Gazette...”

[12] Section 229 (1)(a) of the Constitution provides that:

“Subject to subsections (2), (3) and (4) a municipality may impose-

(a) Rates on property and surcharges on fees for services provided by or on behalf of the municipality.

[13] Section 90(2) of the Municipal Property Rates Act provides that:

“Any Rates Policy adopted before the commencement of the Municipal Property Rates Act remains in force until the date on which the first valuation roll prepared in terms of the Municipal Property Rates Act takes effect.

Discussion

[14] This matter turns on a very crisp issue, namely whether the respondent levied property rates for the 2008/2009 financial year unlawfully and whether the

respondent in levying the 2008/2009 property rates failed to comply with the provisions of section 14(2) of the Municipal Property Rates Act.

[15] It is common cause that after the respondent filed its answering affidavit the applicant amended its notice of motion and made certain concessions. In making those concessions the applicant said the following¹:

“Without necessarily admitting or agreeing in all respects with the respondent’s interpretation of the legislation referred to in the opposing affidavit, I take note of the relevant legislation referred to on behalf of the respondent. In the light of the various transitional provisions, I need to concede that the respondent may have lawfully levied property rates in terms of the transitional provisions for the 200/2007 and 2007/2008 financial years”

[16] However, the applicant still persists with the contention that the respondent levied the property rates for the 2008/2009 financial years unlawfully. In that regard the applicant continues to say the following²:

“On the respondent’s own version, however, the respondent published its first valuation roll in terms of the Local Government: Municipal Property Rates Act, act 6 of 2004, in February 2008 and it became effective on 1 July 2008. After the coming into effect of the first valuation roll published in terms of the Act, the respondent was bound by the provisions of the and could no longer rely on the transitional provisions for the levying of property rates.

[17] It was argued on behalf of the respondent that because the application is based on the constitutional principle of legality, the applicant must prove that he has an interest in the matter. The respondent contends that the applicant’s interest in the property ceased upon its sale on or about 20 May 2021. The applicant denied this,

¹ Caseline page 006-4, Replying Affidavit para 3

² Caseline page 006-5, Replying Affidavit para 4

asserting that he retains a legitimate interest in the lawfulness and validity of the rates paid to the respondent for the period in question.

[18] The applicant submitted that he is not suing for damages but asserts that the only relief he seeks is a declaratory order. In fact, it is common cause between the parties that the applicant attempted to sue the respondent for damages but withdrew the action. It is therefore not clear what the purpose and/or effect of the order would be should the applicant succeed.

Requirements for declaratory order

[19] The following are the requirements for granting of a declaratory order:

19.1 The court must be satisfied that the applicant has an interest in an existing, future or contingent right or obligation;

19.2 Once the court is so satisfied, it must consider whether or not the order should be granted.

[20] In *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another*³ Corbett J said the following:

“It is generally accepted that what is required is a legal interest in the subject matter of the action which could be prejudicially affected by the judgment of the court.”

[21] In *Asmal v Asmal & Others*⁴ the court held as follows:

³ 1972(4) SA 409 (C) at 415

⁴ 1991(4) SA 262 NPD at 265 G-H

“A declarator requires some legitimate interest in the subject matter. Section 19(1) (a) (ii) of the Supreme Court Act 59 of 1959 provides that a declarator may be sought in respect of any existing, future or contingent right.

[22] In my view, the applicant’s interest in the property ceased when the property was transferred to the new owner. Even if I were to find that the property rates were levied unlawfully, that would not prejudice the applicant in any way.

[23] Furthermore, I agree with the respondent that the order sought by the applicant will be of no force and effect. It is true that in his replying affidavit the applicant introduced a new case that the respondent ought to have had strict compliance with the statute. In *Liebenberg N.O and Others v Bergrivier Municipality*⁵ the Constitutional Court said the following:

‘Therefore, a failure by a municipality to comply with relevant statutory provisions does not necessarily lead to the actions under scrutiny being rendered invalid. The question is whether there has been substantial compliance, taking into account the relevant statutory provisions in particular and the legislative scheme as a whole.’

[24] The applicant’s interest in the property ceased when the property was transferred to the new owner, and therefore, the applicant could not prove that he has an interest in an existing future or contingent right or obligation. Consequently, I am of the considered view that the order sought by the applicant ought not to be granted.

Conclusion

[25] In my view, the applicant failed to make out a case that the respondent failed to comply with the provisions of section 14(2) of the Act. The applicant could not even

⁵ (CCT 104/12) [2013 ZACC 16 ; 2013(5) SA 246 (CC); 2013(8) BCLR 862 (CC) (6 June 2013) at para [26]

present any facts to substantiate his contention that the respondent ought not to have levied the rates for the impugned period.

[26] Furthermore, there are no statutory provisions in terms of which the respondent can ex post facto remedy the noncompliance with the compelling provisions of the Act. For the aforesaid reasons, the application should fail.

[27] It is trite that the award of costs is within the discretion of the court. However, it is an accepted principle of our law that costs should follow the results, effectively meaning that the successful party should therefore be awarded costs. I find no reason why the principle should not be applicable in this case.

Order

[28] In the result I make the following order:

The application is dismissed with costs including costs of Counsel to be taxed on scale B.

KF PHAHLAMOHLAKA
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Appearances

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Date of judgment: 21 July 2025

Date judgment reserved: 29 April 2025