IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable / Reportable

Case No: 6418/2024

In the matter between:

DONOVAN THEODORE MAJIEDT NO **FIRST APPLICANT**

RATHOGWA MASALA RAMUEDZISI NO **SECOND APPLICANT**

[In their respective capacities as the appointed
Liquidators of PRO-SPES PROPERTIES (PTY) LTD
Registration number: 2004/034512/07/07
(Master's reference: B63/2023)]

And

MANGAUNG METROPOLITAN MUNICIPALITY **FIRST RESPONDENT**

THE MUNICIPALITY MANAGER:
MANGAUNG METROPOLITAN MUNICIPALITY **SECOND RESPONDENT**

MASTER OF THE HIGH COURT,
FREE STATE, BLOEMFONTEIN **THIRD RESPONDENT**

Neutral citation: *Majiedt NO and Another v Mangaung Metropolitan Municipality and Others* (6418/2024) [2025] ZAFSHC 219 (18 July 2025)

Coram: Daniso J

Heard: 6 March 2025

Delivered: This judgment was delivered by email to the parties and release to SAFLII. It shall be deemed to have been delivered at 14h00 on 18 July 2025

Summary: Civil procedure – application to compel provision of information from municipality – unmeritorious defences raised to the application – counter-application claim for payment of outstanding rates and taxes – counter-application not properly made out before court.

ORDER

1 The first and second respondents are ordered to provide the applicants' legal representative with full and itemised particulars of all amounts in respect of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that became due during the two years preceding the date of the granting of this order, in connection with a unit consisting of:

(a) Section number 1, as shown and more fully described on sectional title plan number SS175/2017 in the scheme known as Pro-Spes huis in respect of the land and building or buildings situated at BLOEMFONTEIN MANGAUNG METROPOLITAN MUNICIPALITY of which section the floorplan according to the said sectional plan is 155 (one hundred and fifty-five) square meters in extent; and
(b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan. Held by Deed of Transfer number ST 14305/2017 and better known as 1 Pro-Spes huis, 58 Victoria Road, Willows, Bloemfontein (the property).

2 The first and second respondents are ordered to provide the applicant's legal representatives with the clearance figures referred to in paragraph 1 above within 5 (five) court days of service of this order.

3 The first and second respondents are ordered to issue a clearance certificate in terms of section 118(1) of the Local Government: Municipal Systems Act 32 of 2000 within 5 (five) court days from the date on which the applicants have effected payment to the first and second respondent specifically in respect of the clearance figures in respect of the property.

4 Leave is granted to the applicants to approach the court on the same papers duly amplified, if necessary, for ancillary and/or alternative relief in the event the first and second respondent fail to comply with this order.

5 The first and second respondent shall pay the costs of this application including the costs of counsel on scale C.

6 The first and second respondents' counter application is dismissed with costs which shall include the costs of counsel on scale C.

JUDGMENT

Daniso J

[1] The applicants, as co-liquidators in the liquidated estate of the company Pro-Spes Properties (Pty) Ltd (Pro-Spes), seek an order in terms of s 118 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act) to compel the first respondent to provide the applicants' legal representatives with full and itemised clearance figures of all the amounts in respect of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that became due during the two years preceding the date of institution of these proceedings and its municipal manager, the second respondent to issue the clearance certificate upon payment of the clearance figures in respect of the property registered in the name of Pro-Spes known as 1 Pro-Spes Huis, 58 Victoria Road, Willows, Bloemfontein. The property situated within the duly established first respondent's jurisdiction.

[2] The application is directed against the first and second respondents (the respondents). The third respondent (the Master) is cited merely on the basis of the legal interest it may have in outcome of these proceedings accordingly, no substantive relief is sought against the Master.

[3] The background facts of this matter are generally common cause: Pursuant to the Master's appointment on 6 September 2023, the applicants sold Pros-Spes's property to an entity known as Kgoabeng Investment Holdings (Pty) Ltd on 23 August 2024 or 10 September 2024 for a purchase price of R650 000. In order to effect the transfer of the property to the purchaser, on 13 May 2024, the applicants' appointed conveyancer Mr SJ Le Roux (Mr Le Roux) applied to the respondents for the issuing of rates clearance figures for the purposes of obtaining a clearance certificate as contemplated in s118(1) of the Systems Act.

[4] On 23 August 2024, Mr Le Roux was provided with a document titled 'Attorneys report',[1] reflecting rates and clearance figures totalling an amount R323 386.36 comprising of interest in the amount of R11 449.24, assessment rates R12 018.68; refuse R1 794.20; sewerage R2 533.08; arrears R265 306.80; and, tenant R30 284.36.

[5] It is the applicants' case that, the rates clearance figures provided by the respondents include a substantial arrear amount of R265 306.80 and this is despite the fact that the property's accounts for previous months averaged R5 636.03 per month,[2] therefore, if the arrear amount of R265 306.80 is divided by the monthly average of R5 636.03, the arrears would represent municipal debts which accrued over a period of more than three years and, in terms of s118(1)*(b)* of the Systems Act, the respondents are prohibited from including historical amounts older than two years preceding the date of the application for rates clearance figures. Furthermore, the allocated rates account for Pro-Spes's property is 1[…], in the provided rates clearance figures tenant charges

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[1] Annexure "FA7" of the applicants' founding affidavit.

[2] Annexure "FA8" is the property's statement for the month ending February 2024.

under a different rates account number 1[…] have also been added. It is not known how this account is linked to Pro-Spes's property.

[6] The applicants submit that their request and a demand for particulars of how these amounts are computed and confirmation that the amounts accrued during the two-year period preceding the application for rates clearance figures have been ignored.[3] The result is that, the liquidated estate and its creditors are prejudiced as the transfer cannot be effected. The applicants as the sellers of the property also stand to be held liable by the purchaser on the basis of breach resulting from the failure to effect the transfer.

[7] The applicants argue that the respondents' conduct, as an organ of state, must be deprecated. They have essentially forced the applicants to litigate at the expense of the taxpayers' funds which ought to serve the public. They must according be mulcted with a cost order which shall include the costs of counsel on scale C.

[8] On the other side, in addition to opposing the application on the merits, the respondents have also raised a counter-application seeking an order essentially for payment of the outstanding rates and taxes.

[9] It is the respondents' case that the application is premature as it is based on invalid rates clearance figures which lapsed on 22 September 2024. Furthermore, the applicants should have applied for 'new' rates clearance figures and moved for the delivery and debatement of the account before approaching the court. The respondents aver that, notwithstanding the applicants' failure to do so, the requested information was furnished to the applicants as per Annexure "MAN2" which is a copy of a detailed summary of the municipal service fees, surcharges on fees, property rates, other municipal taxes, levies and duties including water charges in relation to the property. On these grounds, the respondents contend that the application must be dismissed with costs.

[10] The respondents further contend that there is no merit to the applicants' complaint that the rates clearance figures must represent municipal debts which only accrued over a period of two years prior to the date preceding the date of their application for the clearance figures as this matter involves the transfer of an immovable property of a liquidated estate. In terms of s 118(2) of the Systems Act, read with s 89 of the Insolvency Act 24 of 1936 (the Insolvency Act), the two-year period contemplated in s 118(1) of the Systems Act is extended from two years preceding the date of the application for the clearance figures to two years prior to the date of liquidation up to and including the date of transfer. In this matter, that period is about four years when regard is had that Pros-Spes was finally wound up on 6 September 2023.[4]

[11] In the respondents' replying affidavit, it is averred that, in so far as the applicants contend that the period for which the clearance figures are calculated is incorrect, then in the alternative the total amount due as clearance figures is the amount of R118 391.02 for the period June 2022 to May 2024. Based on all these reasons, the application must be dismissed with costs on a scale as between attorney and client scale including counsel's fees on scale C as it constitutes an abuse of process.

[12] Having regard to the facts of this matter, I hold that the respondents have raised unmeritorious defences to the applicants' application. It is indisputable that prior to launching these proceedings correspondences were transmitted to the respondents before the application was launched on 27 August 2024 and 28 October 2024 respectively, requesting details pertaining to the computation of the rates clearance figures. The requests were disacknowledged and it is on that basis that the applicants sought the court's intervention. Accordingly, the submission that the application was prematurely instituted is unsound.

[13] Section 118(1), (2) and (3) of the Systems Act provides thus:

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[4] According to the Master's certificate of appointment of liquidators (Annexure "FA1") Pro-Spes was liquidated on 22 June 2023.

'(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate —

(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) In the case of the transfer of property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act 24 of 1936).

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge.'

[14] In terms of s 89(1) and (5) of the Insolvency Act, for the purpose of transferring an immovable property of a liquidated estate, the clearance certificate required is the tax clearance certificate which includes the amounts payable periodically in respect of the ownership of that property to the State, a provincial administration or a body corporate *viz*: property rates, levies and property taxes.

[15] Section 118 provides for a distinction between the payment of rates clearance charges for a two-year period preceding the date of application for the certificate in terms of subsection (1) and for the payment of property taxes two years immediately preceding the date of the liquidation and from that date to the date of the transfer of the property.[5]

[16] The municipal debts incurred prior the two-year period are a charge on the property which is not to be taken into account for the purposes of the rates clearance certificate.[6] It was also pointed put in *City of Johannesburg v Kaplan NO and Another*

[5] Subsection (3) read with s 89 of the Insolvency Act 24 of 1936.

[6] *Jordaan and Others v Tshwane Metropolitan Municipality and Others; City of Tshwane Metropolitan Municipality v New Ventures Consulting and Services (Pty) Limited and Others; Ekurhuleni Metropolitan Municipality v Livanos and Others* [2017] ZACC 31; 2017 (6) SA 287 (CC); 2017 (11) BCLR 1370 (CC)

(*Kaplan*) that notwithstanding the longer period referred to in s 89, liability for payment of a tax as defined in s 89(5) to a municipality in order to obtain a certificate in terms of s 118(1) in respect of immovable property falling in an insolvent or liquidated estate, is limited to the period mentioned in s 118(1), the two-year time limit.

[17] Annexure "MAN2" does not assist the respondents. This nine-page document appears to be journal reflecting balances of R324 291 and R381 485.52 spanning over a period of about 20 years from the year 2005 to 2025. It does not end there; the document also refers to a different account number 1002548462 which differs from the rates account number 1[…] allocated to Pro-Spes's property and in reply to the applicants' averments another amount of R118 391.02 is proffered as the rates clearance figures.

[18] I have come to the conclusion that the discrepancies in the rates clearance figures provided to the applicants warrant the delivery of full and itemised particulars of all the amounts in respect of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that became due during the two-year preceding the date of application for the rates clearance figures. This issue is accordingly determined in favour of the applicants.

[19] Turning to the counter-application, the first respondent is cited as the applicant. The applicants, as first and second respondents, the second respondent as third respondent, the Master as fourth respondent and First Rand Bank Ltd (FNB) as fifth respondent. The terms of the order sought are the following:

1. That the forms, service and time periods (*if applicable*) provided for in the rules of the above honourable Court, be dispensed with and the non-compliance with the rules of service and form (if any) be condoned;

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para 25 confirming the conclusions in *City of Johannesburg v Kaplan NO and Another* [2006] ZASCA 39; 2006 (5) SA 10 (SCA); 68 SATC 286 (*Kaplan*) para 13.

2. That FIRST RAND BANK LTD be joined as fifth respondent to the proceedings and application as they may have direct and/or substantial interest in the relied moved for by the applicant herein;

3. Declaring that the amounts due by PRO-SPES PROPERTIES (PTY) LTD (*in liquidation*) to the Mangaung Metropolitan Municipality (the applicant herein) in respect of the property known and described as:

(a) the unit consisting of Section number 1, as shown and more fully describes on sectional title plan number SS175/2017 in the scheme known as Pro-Spes huis in respect of the land and building or buildings situated at BLOEMFONTEIN MANGAUNG METROPOLITAN MUNICIPALITY of which section the floorplan according to the said sectional plan is 155 (ONE HUNDRED AND FIFTY-FIVE) square meters; and

(b) An undivided share in the common property in the sectional title scheme allocated to the specific unit in accordance with the participation quota as indicated and recorded in the said sectional plan held in terms of Deed of Transfer number ST14305/2017 and better known as 1 PRO-SPES HUIS, 58 Victoria road, Willows, Bloemfontein (hereinafter "Unit 1 of PRO-SPES HOUSE") in respect of municipal debts which are taxes within the meaning of section 89(5) of the Insolvency Act 24 of 1936, are a charge upon the property and enjoys preference in the distribution of the proceeds of the sale of the property over the fifth respondent's mortgage bond registered over the property for a period of two (2) years prior to the date of the liquidation of PRO-SPES PROPERTIES (PTY) LTD (in liquidation) and from that date until the date of transfer of the property;

4. Declaring that the claims of the applicant against PRO-SPES PROPERTIES (PTY) LTD (*in liquidation*) in respect of Unit 1 of PRO-SPES HOUSE, fall to be paid to the applicant by the first and second respondent in satisfaction of a claim secured by the property as contemplated in section 95 (1) of the Insolvency Act 24 of 1936;

5. Declaring that, to the extent that any of the Applicant's claims do not fall within the meaning of 'tax' in section 89(5) of the Insolvency Act, 24 of 1936, the amounts of such claims:

(i) are a charge against the property and enjoy preference over the mortgage bond registered against the property in favour of the Fifth Respondent;

(ii) are not subject to the terms of section 89(4) of the Insolvency Act, 24 of 1936; and

(iii) fail to be paid by the First -and Second Respondent in satisfaction of a claim secured by the property as contemplated by section 95 of the Insolvency Act, 24 of 1936;

6. Declaring that PRO-SPES PROPERTIES (PTY) LTD (*in liquidation*) is liable to pay the sum of R 324 291-00 (THREE HUNDRED TWENTY-FOUR THOUSAND TWO HUNDRED AND NINETY-ONE RAND) due by PRO-SPES PROPERTIES (PTY) LTD (*in liquidation*) to the applicant as clearance figures in terms of section 118(1) & 118(2) of Local Government: Municipal Systems Act, 32 of 2000 in respect of Unit 1 of PROS-SPES HOUSE;

7. Declaring that PRO-SPES PROPERTIES (PTY) LTD (*in liquidation*) is liable to pay the sum of R 381 485-52 (THREE HUNDRED EIGHTY ONE THOUSAND FOUR HUNDRED AND EIGHTY FIVE RAND AND FIFTY TWO CENTS) due by PRO-SPES PROPERTY LTD (*in liquidation*) to the Applicant in respect of municipal debts which are taxes within the meaning of Section 89(5) of the Insolvency Act, 24 of 1936 but not included in the clearance figures supplied in terms of section 118(1) & (2) of the Local Government : Municipal Systems Act, 32 of 2000 in respect of Unit 1 of PRO- SPES HOUSE;

8. That the First- and Second Respondents' pay the costs of the application, such costs to include costs of counsel on scale "C" as envisaged in the Uniform Rule of Court 67A, alternatively, the First- and Second Respondent with any other Respondent who may oppose the present application, to pay the costs of this application, the one to pay, the other to be absolved, such costs to include costs of counsel on scale "C" as envisaged in in Uniform Rule 67A.'

[20] At the hearing of this matter, only the relief sought in prayer 3, 4, 5, 6 and 8 was proceeded with. For convenience's sake, the parties are referred to as in the main application.

[21] In short, the counter-application is opposed on the grounds that the application is improper and constitutes abuse of process in that, the claims referred to by the respondents do not fall within the meaning 'tax' as contemplated in s 89(5) of the Insolvency Act, and the declaratory orders sought by the first respondent would result in incompetent orders as the issues raised therein have already been determined in

Kaplan.[7] The first respondent is also not entitled to any payment from the liquidated estate without having proved its claim at the meeting of creditors to the satisfaction of the presiding officer.

[22] I am in agreement with the applicants' contentions regarding the ineffectuality of the declaratory orders sought by the first respondent, they are well-founded in *Kaplan.* It is also common cause that the first respondent has not proved its claim against Pro-Spes' insolvent estate as provided for in s 40-44 of the Insolvency Act. As correctly pointed out by counsel for the applicants, the first respondent is not entitled to bypass the mechanisms of the Insolvency Act and pursue its claim on the basis of a counter-application.

[23] The amount claimed by the first respondent has also not been properly computed. In the counter-application's prayer 6, the amount claimed as clearance figures in terms of s 118(1) and (2) is the amount of R324 291. Then in the replying affidavit and in argument, the amount is scaled down to an amount of R118 391.02. I am thus not persuaded that the first respondent has made out a case for the relief sought it seeks in the counter-application.

Costs

[24] As regards the issue of costs, there is no reason why the costs should not follow the result. I am not persuaded by the applicants' contention that the respondents' conduct is so reprehensible to warrant a punitive cost order.

Order

[25] In the circumstances, I make the following order:

1 The first and second respondents are ordered to provide the applicants' legal representative with full and itemised particulars of all amounts in respect of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and

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[7] *Kaplan* para 33.

duties that became due during the two years preceding the date of the granting of this order, in connection with a unit consisting of:

(a) Section number 1, as shown and more fully described on sectional title plan number SS175/2017 in the scheme known as Pro-Spes huis in respect of the land and building or buildings situated at BLOEMFONTEIN MANGAUNG METROPOLITAN MUNICIPALITY of which section the floorplan according to the said sectional plan is 155 (one hundred and fifty-five) square meters in extent; and

(b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan. Held by Deed of Transfer number ST 14305/2017 and better known as 1 Pro-Spes huis, 58 Victoria Road, Willows, Bloemfontein (the property).

2 The first and second respondents are ordered to provide the applicant's legal representatives with the clearance figures referred to in paragraph 1 above within 5 (five) court days of service of this order.

3 The first and second respondents are ordered to issue a clearance certificate in terms of section 118(1) of the Local Government: Municipal Systems Act 32 of 2000 within 5 (five) court days from the date on which the applicants have effected payment to the first and second respondent specifically in respect of the clearance figures in respect of the property.

4 Leave is granted to the applicants to approach the court on the same papers duly amplified if necessary, for ancillary and/or alternative relief in the event the first and second respondent fail to comply with this order.

5 The first and second respondent shall pay the costs of this application including the costs of counsel on scale C.

6 The first and second respondents' counter application is dismissed with costs which shall include the costs of counsel on scale C.

DANISO J

Appearances

For the applicants: S Tsangarakis

Instructed by: Symington de Kok

	Bloemfontein
For the first and second respondents:	C Snyman
Instructed by:	Raynard & Associates Inc
	Bloemfontein.