IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 4194/2022

In the matter between:

MATJHABENG LOCAL MUNICIPALITY Applicant

and

JOHANNES HERMANUS VAN DER HEEVER Respondent

Neutral Citation: *Matjhabeng Local Municipality v Van der Heever* (4194/2022) [2025] ZAFSHC 218 (18 July 2025)

Coram: Daffue *et* Opperman JJ

Heard: 14 April 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 18 July 2025 at 15h00.

Summary: 'Self review' based on principle of legality – authority of municipal manager to conclude settlement agreement in terms of debt collection and debt control policy – crucial distinction between reduction of fixed rates in terms of prevailing legislation (rebate) and authority to effect debt management and collection on the fixed rates – case for the applicant to be made in founding affidavit; not heads of argument – manner of litigation and delayed litigation by applicant detrimental to the administration of justice.

ORDER

1 The application is dismissed.

2 The applicant to pay the costs of the application on an attorney and client scale, such costs to include the costs of the employment of two counsel taxed on scale B.

JUDGMENT

Opperman J (Daffue J concurring)

Introduction

[1] The applicant seeks an order[1] declaring a settlement agreement[2] (the agreement) between the Matjhabeng Local Municipality and Various Account Holders/Consumers, unlawful and to be set aside. The core of the application for review lies in the applicant's reliance on s 15 of the Municipal Property Rates Act 6 of 2004 (the MPRA) and its submission that only its council has the power to exempt or grant a rebate or reduction in property rates and that the municipal manager had

[1] The notice of motion dated 1 September 2022 moves for an order that:
'1. It is declared that the decision to enter into the agreement listed as annexure T1 to the notice of motion ("the agreement"), ostensibly concluded on or about 29 July 2021, was and is unlawful;
2. The agreement is reviewed and set aside;
3. The Respondent is ordered to pay the costs of the application, only in the event of opposing the application.'

[2] P14-35, Annexure T1: 'Matjhabeng Local Municipality (Represented by the Municipal Manager) ZK Tindleni and Various Account Holders/Consumers (as more fully set out in Annexure "A" hereto) Represented by Andries Frederick Knoetze, Neumann van Rooyen Attorneys'. (See p14).

no authority to enter into the settlement agreement.[3] Contrary thereto, its counsel submitted in the supplementary heads of argument the following:

'7. The central issue upon which the review turns is this: does the Municipal Property Rates Act, 6 of 2004, alternatively the Municipal Systems Act 3 of 2000 and Matjhabeng Local Municipality: Credit Control and Debt Collection Policy 2020/2021, permit the Municipal Manager to enter into a settlement agreement the effect whereof is to give rate payers a rebate of 40% without the requisite authorisation and delegation from the Municipal Council.'[4]

He incorrectly referred to the Systems Act, the correct description being the Local Government: Municipal Systems Act 32 of 2000. The existence of a Credit Control and Debt Collection Policy of 2020/2021 relied upon will be dealt with in detail hereunder.

The parties and factual background of the case

[2] The identity and legal character of the applicant (herein later referred to as the municipality) is one of a local municipality in terms of the Constitution and the Local Government: Municipal Structures Act 117 of 1998. The respondent is the owner of a farm in the municipal area under the municipality's jurisdiction and liable for the payment of property rates to the municipality in terms of the MPRA.

[3] Although only one respondent, Mr JH Van Der Heever, has been cited in this application, it is apparent from the settlement agreement that numerous other account holders/consumers are parties to the settlement agreement. Although a total of 115 accounts is reflected in annexure A to the settlement agreement, many of the consumers are the holders of more than one account. The legal representatives of the parties have agreed that this application will be dealt with as a 'test case' in the sense

[3] Founding affidavit: paras 9.12, 9.14 & 9.16 on pp 9-11 of the record.

[4] Supplementary heads of argument for applicant filed on 4 April 2025.

that all the other matters will be kept in abeyance. The municipality's case against the other account holders/consumers is apparently based on the same factual basis.[5]

[4] The respondent states in his opposing affidavit that, as a farmer who owns a farm within the municipality's jurisdiction, he was obliged, from a certain date which he cannot call to mind, to pay property rates to the municipality. The municipality never sent any notifications to reflect the rates due for payment. He came to know about the obligation from his legal representative, who, by coincidence, came upon the situation of the rates' liabilities that also involved other farmers. The respondent is clear on the fact that he acknowledges his obligation towards the municipality and has no gripe with it.

[5] It is trite that the municipality was and is compelled to have provided him with regular billing to reflect the amount(s) payable. They failed to do so. He subsequently fell in arrears. The result was that substantial amounts were immediately payable due to the municipality's negligence who failed to have a lawful and effective billing system in place.

[6] It is common cause that there was a valid dispute by the various account holders/consumers (including respondent) who disputed that the rates had been imposed and levied according to a correct tariff.

[7] This caused an unfair conundrum for the farmers and they requested that the parties' legal representatives engage in negotiations to endeavour to agree to accurate and financially manageable payments. It is apparent from para 9.2 of the

[5] Para 6 of the founding affidavit.

founding affidavit that the municipality was aware that a number of ratepayers and farmers in particular lodged disputes regarding their rates and tax tariffs.

[8] The municipality at the time was running debt collection processes instituted by the municipality's legal representatives, Bokwa Attorneys. Said processes were headed by an attorney, one Mr. Jan Gysbert (Bertus) Maritz (Maritz). Maritz had a mandate from the municipality to negotiate and conclude settlement agreements with account holder/consumers, particularly farmers, who owed municipal rates, taxes and/or service charges. This is trite.

[9] The facts proven are that the negotiations were never for any exemptions, reductions or rebates on the fixed taxes. The municipality did not make any case to counter this anywhere in the application. The municipality also got stuck in its choice of litigation by application in terms of rule 6 and not rule 53 of the Uniform Rules of Court and the *Plascon-Evans*-dictum[6] prevails. Section 15[7] of the MPRA fell to

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[6] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (AD) at 634F-635C.

[7] '15. Exemptions, reductions and rebates.—

(1) A municipality may in terms of criteria set out in its rates policy—

(*a*) exempt a specific category of owners of properties, or the owners of a specific category of properties, from payment of a rate levied on their property; or

(*b*) grant to a specific category of owners of properties, or to the owners of a specific category of properties, a rebate on or a reduction in the rates payable in respect of their properties.

(2) When granting in terms of subsection (1) exemptions, rebates or reductions in respect of owners of categories of properties, a municipality may determine such categories in accordance with section 8 (2) and subsection (2A), and when granting exemptions, rebates or reductions in respect of categories of owners of properties, such categories may include—

(*a*) indigent owners;

(*b*) owners dependent on pensions or social grants for their livelihood;

(*c*) owners temporarily without income;

(*d*) owners of property situated within an area affected by

(i) a disaster within the meaning of the Disaster Management Act, 2002 (Act No. 57 of 2002);

or

(ii) any other serious adverse social or economic conditions;

(*e*) owners of residential properties with a market value lower than an amount determined by the municipality; or

(*f*) owners of agricultural properties who are bona fide farmers.

[Sub-s. (2) amended by s. 11 (a) of Act No. 29 of 2014.]

the wayward. Section 16 of the Matjhabeng Local Municipal Council Credit Control and Debt Collection By-Law 1 of 2008[8] (the By-Law) promulgated in the Provincial Gazette of 21 May 2010 came to the fore.

[10] After deliberations between the parties, the municipality offered to accept and enter into a settlement agreement in terms of which the respondent, among others, was obliged to make a payment of 60% of all of the outstanding rates' liabilities as a so-called 'once off'. The attorney, Mr. Knoetze, was mandated on behalf of all of the account holders/consumers, including the respondent, to sign the settlement agreement with the municipality. Maritz similarly signed the settlement agreement and he had the agreement signed by the municipal manager at that time, Z.K. Tindleni. She is now the deponent to the municipality's founding affidavit. Their signatures are evident from the last page of annexure 'T1'.

(2A) In addition to the categories of rateable property determined in terms of section 8 (2), a municipality may, subject to any ratio determined in terms of section 19, for the purposes of granting exemptions, rebates and reductions, determine such property categories based on—
- (*a*) properties used for public service purposes; and
- (*b*) properties to which the provisions of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), apply, or an institution that has been declared to be subject to the Cultural Institutions Act, 1998 (Act No. 119 of 1998).

[Sub-s. (2A) inserted by s. 11 (b) of Act No. 29 of 2014.]

(3) The municipal manager must annually table in the council of the municipality a—
- (*a*) list of all exemptions, rebates and reductions granted by the municipality in terms of subsection (1) during the previous financial year; and
- (*b*) statement reflecting the income for the municipality foregone during the previous financial year by way of—
  - (i) such exemptions, rebates and reductions;
  - (ii) . . .

    [Sub-para. (ii) deleted by s. 11 (c) of Act No. 29 of 2014.]
  - (iii) . . .

    [Sub-para. (iii) deleted by s. 11 (c) of Act No. 29 of 2014.]

(4) Projections regarding revenue to be forgone for a financial year in relation to subsection (3) (b) must be reflected in the municipality's annual budget for that year as—
- (*a*) income on the revenue side; and
- (*b*) expenditure on the expenditure side.

[Sub-s. (4) amended by s. 28 of Act No. 19 of 2008.]'

[8] Provincial Gazette 25 of Friday 21 May 2010; pp 124 to 162 of the bundle indexed and paginated on 16 January 2025.

[11] The application was not launched directly after the settlement agreement was concluded. It only followed when the respondent and other parties endeavoured to claim compliance with the agreement. There was a delay of more than a year before litigation was initiated.

The delay in the bringing of the application

[12] The respondent, *in limine*, contends that this court should refuse the application as being an application for review after an inordinate delay. During oral argument, counsel for the respondent indicated that the court may as well deal with the merits in conjunction with the issue of the delay to comply with the test for reasonableness in delays to bring cases for review to court.

[13] The settlement agreement was concluded on 29 July 2021. The municipality remained silent on the agreement although it ultimately received the respondent and other account holders' payment of the settlement sum. In compliance with the terms of the settlement agreement, the municipality was obliged to reflect a zero balance in respect of the respondent's municipal property rates account as from July 2021, which it failed to do.

[14] The respondent informed the municipality that he would apply for the settlement agreement to be made an order of court in terms of the agreement. This moved the municipality to, unexpectedly, engage in the current application to renounce the settlement. The municipality instituted a self-review application against the respondent under this case number during September 2022. The opposed application was eventually heard on 14 April 2025.

[15] The respondent opposed the application, and the parties filed their respective affidavits. The municipality's former attorney, Maritz, filed and delivered to the parties, a 'supplementary confirmatory affidavit' signed by him on 10 October 2023. By then the municipality had terminated his mandate. The municipality objected to the filing of the supplementary affidavit of Maritz by issuing an application in terms of Uniform Rule 30, seeking an order that the supplementary affidavit be declared irregular. The respondent opposed the application and filed a counter-application for Maritz's affidavit to be allowed. This court dismissed the municipality's application with costs and ordered that the supplementary affidavit of Maritz be allowed in terms of Uniform Rule 6(5)*(e)* as further evidence in the determination of the merits in this (the main) application. The municipality failed to file a supplementary replying affidavit as afforded by the court to deal with the new evidence.

[16] Organs of state, including the municipality, can initiate self-review applications based on the principle of legality. Their actions and decisions are not subject to review under the Promotion of Administrative Justice Act 3 of 2002 (PAJA). The 180-day period for instituting a PAJA review does not apply to legality reviews; these reviews must be initiated within a reasonable time:

'Legality review, on the other hand, has no similar fixed period. This Court in Khumalo endorsed the test enunciated by the Supreme Court of Appeal in Gqwetha for assessing undue delay in bringing a legality review application (Khumalo test). Firstly, it must be determined whether the delay is unreasonable or undue. This is a factual enquiry upon which a value judgment is made, having regard to the circumstances of the matter. Secondly, if the delay is unreasonable, the question becomes whether the Court's discretion should nevertheless be exercised to overlook the delay to entertain the application. The standard to be applied in assessing delay under both PAJA and legality is thus whether the delay was unreasonable. Moreover, in both assessments the proverbial clock starts running from the date that the applicant became aware or reasonably ought to have become aware of the action taken.'[9]

[17] Cameron J explained the importance of an inquiry into the delay by the court hearing the matter, and might I add, a self-review that may impact the rights of numerous account holders/consumers who are parties to the settlement agreement:

'[73] . . . The rule against delay in instituting review exists for good reason: to curb the potential prejudice that would ensue if the lawfulness of the decision remains uncertain. Protracted delays could give rise to calamitous effects. Not just for those who rely upon the decision but also for the efficient functioning of the decision-making body itself. . . .

[74] *In Khumalo, this Court held that state functionaries must act without delay in setting right their own legal missteps. . . .*'[10] (Accentuation added.)

[18] The municipality has indicated that the delay was due to queries raised by the account holders/consumers listed in the settlement agreement regarding the municipality's failure to implement said agreement. Subsequently, the municipality sought legal counsel to initiate the application within a reasonable time.

[19] The municipality's explanation does not address substantial key facts. These are:

a) receiving payment from the various account holders, including the respondent, under the settlement agreement over the period from 26 May 2021 until 1 August 2021;

b) retaining these funds despite knowing the agreement was allegedly unlawful;

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[9] *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited* (CCT91/17) [2019] ZACC 15; 2019 (6) BCLR 661 (CC); 2019 (4) SA 331 (CC) (16 April 2019) paras 48-49.

[10] *Merafong City Local Municipality v AngloGold Ashanti Limited* (CCT106/15) [2016] ZACC 35; 2017 (2) BCLR 182 (CC); 2017 (2) SA 211 (CC) (24 October 2016).

c) failing to reflect zero balances for the settled property rates accounts according to the agreement;

d) the municipality's lack of response to the request for compliance since September 2021; and

e) ignoring further correspondence from September 2021 until the application was filed more than a year later.

[20] The prejudice to the respondent and other parties to the agreement is clear. There has now been a delay since 2021 to deal with and resolve the matter that was anticipated by all signatories to the settlement agreement.

[21] The explanation presented by the municipality does not carry much veracity. As will be shown hereunder, the merits and law that form the basis of the case that they brought to court lack legal accuracy and the prejudice to the administration of justice is obvious. There is also a certain degree of impropriety in law. The municipality did not clearly withdraw from the settlement agreement after the respondent had performed in terms thereof. Instead, the municipality apparently acquiesced by receiving the respondent and other account holders' settlement funds and simply retained same. The municipality requests a review to set aside the decision to receive funds from the respondent as a settlement, but does not offer to refund the amount. The same applies to the other account holders and parties to the agreement. On the one hand the municipality's behaviour is to adhere to the settlement terms. On the other, it applies for it to be reviewed and set aside. A party in litigation cannot adopt two conflicting positions.

[22] Setting aside applications through review must, in the least, also demonstrate a *bona fide* case on the merits which has a prospect of success. This conjures the

legal nature of the settlement agreement and the confusion of the municipality between a rebate and debt collection management.

The nature of the settlement agreement – the legislative framework and the difference in law between debt collection management and rebates

[23] The agreement in question does not concern rebates. The MPRA defines a rebate in s 1 as follows:

'"rebate", in relation to a rate payable on a property, means a discount granted in terms of section 15 on the amount of the rate payable on the property;'

[24] Section 15 is clear on exemptions, reductions and rebates. It is not applicable to a settlement agreement on existing debt. Only the municipality, in this instance the municipal council, may act in terms of s 15.

[25] The distinction between the municipal council's authority to cause exemptions, reductions and rebates in respect of property situated in the municipality's jurisdiction and the authority of the municipal manager to engage in agreements and contracts to manage debt is important. It is not the same. It stands to reason and beyond doubt here that the settlement agreement did not contain any rebate on fixed tax rates.

[26] The oral arguments, documents filed in this application and the law in *casu* show that it is common cause that unlike rebates, settlement agreements aim to resolve existing debts rather than reducing future charges. The future charges and rates remain legislatively compelled and unaffected; the debt is affected. The core differences are that while both rebates on municipal rates and debt management settlements on fixed rates offer financial solutions, their purposes, applications, and

impacts are fundamentally distinct. Rebates aim to reduce future costs for qualifying groups, while debt settlements focus on resolving existing debts. Rebates are usually need-based and require proof of qualification, whereas debt settlements are relevant for individuals with overdue payments. Rebates lessen the financial burden of municipal rates, while debt settlements ensure structured repayment of fixed-rate debts. Rebates apply to rates and services going forward, whereas settlements help clear past financial obligations.

[27] I reiterate; the legislatively authorised entity that may fix rates and taxes and the appropriate authority in law that may legally enter into settlement agreements on debt management is not the same entity in *casu*. Respectively, they are the municipal council and the municipal manager.

The legislative authority of the municipal manager and the authority of the municipal manager to conclude the 60%/40%-agreement

[28] The municipal manager had legal authority to sign and legally formalise the settlement agreement. Section 16 of the By-Law endows a municipal manager with the following authority:

'Full and Final Settlement of an Amount

16 Where an account is not settled in full, any lesser amount tendered to, and accepted by, the municipality shall not be a full and final settlement of such account despite the fact that the payment was tendered, in full and final settlement, unless the municipal manager or the manager of the municipality's authorised agent, expressly accepts it in writing as being in full and final settlement of the account in question.'

[29] The municipal manager had the authority to settle on the 60%/40% concession in terms whereof the various account holders paid the total amount of R2 777 365.92.

The 40% concession amounted to R1 851 577.28.[11] The By-Law in force is silent on any limit to concessions during debt collection and management. The concession is not factually unreasonable, excessive and unconstitutional in the circumstances.

[30] The municipality argued through its counsel at the hearing for the first time that if the municipal manager had the authority to conclude the settlement agreement, she did not have the authority to do it on the 60%/40% basis. They base their argument on the 'Matjhabeng Local Municipality: Credit Control and Debt Collection Policy 2020/2021' that was attached to the municipality's supplementary heads of argument filed on 4 April 2025. It prescribes that only 25% of the outstanding debt may be written off. This was never the municipality's case in either the founding or replying affidavit. This is procedurally illegal. The legal status of the document is unknown to this court.[12]

[31] The municipality's contentions about its policy are simply wrong and untenable. The excerpt from the municipality's delegation policy which it appended, does not support their contentions. Furthermore, the municipality chose not to disclose to the court that the municipality's By-Law provides in s 16 thereof for the municipal manager to accept lesser amounts in full and final settlement of arrear

[11] Para 9.8 of the founding affidavit.

[12] The date of approval and council resolution number is not known to the court. Due consideration was had to the dictum in *City of Tshwane Metropolitan Municipality v Glofurn (Pty) Ltd* (136/2023) [2024] ZASCA 101 (19 June 2024) wherein the Supreme Court of Appeal ruled that:

'[27] I return to the question of law raised by the City before us, being, whether it was competent for the high court to have made a finding that the policy adopted by the City was a nullity. There is no merit in the question of law raised. The high court's comments related to the argument that the policy was unenforceable because it had not been promulgated into a By-law, as required in terms of s 98(1) of the Systems Act. The finding did not relate to the validity of the policy. It was common cause that the City did not adopt a By-law to provide for the 'implementation and enforcement' of its Credit Control Policy and in terms of s 98(1) the policy was consequently unenforceable by operation of law. Glofurn was fully entitled to raise that issue by way of a point of law without assailing the validity of the policy. The principles enunciated in Oudekraal Estates (Pty) Ltd v City of Cape Town and Others (Oudekraal) and MEC for Health, Eastern Cape v Kirland Investments, (Kirkland) namely that administrative decisions remain valid and effectual until set aside by a competent court, can therefore not avail the City. …'

municipal debt, including property rates. During oral argument the municipality's counsel graciously conceded to s 16 and the effect thereof on the case.

[32] It is trite that the municipality made the offer for the settlement agreement. The settlement was unrelated to the valuation roll approval, which occurs every five years along with tariff approvals for rebates, reductions, and exemptions. The council grants these when they approve the municipality's annual budget in May.

[33] The onus is on the municipality to prove the unlawfulness of the agreement. The explanation tendered by Maritz regarding the conclusion of the settlement agreement confirms the municipality's intention to recover debt when it concluded the settlement agreement and the authority of the municipal manager and himself.[13] The *Plascon-Evans*-dictum is the nail in the coffin of the case for the municipality. The case made for the respondent overshadows the unsound and legally unfounded application by the municipality. As such, the settlement agreement is legal. The municipality must be held accountable to that except if it is constitutionally unsound.

[34] The municipality's application is factually and legally unreasonable and illogical. In *Afriforum NPC v Ngwathe Local Municipality and 14 Others*[14] it was noted, based on a 2024-report by the Free State Provincial Office of the South African Human Rights Commission (SAHRC), that the people of the Free State deserve better, and might I add, the people of the Free State deserve better than to be burdened with litigation of this nature and to expect the same people to recompense the costs of the frivolous litigation with their hard earned tax

[13] Page 42, para 17.2, supplementary affidavit of Maritz.
[14] *Afriforum NPC v Ngwathe Local Municipality and 14 Others* (2264/2024) [2025] ZAFSHC 184 (20 June 2025) para 4.

contributions. I am obliged to remind the municipality of its constitutional and other legislative duties.

The legislative duties of the municipality and the sanctity of contracts

[35] The case of *Body Corporate of Willow and Aloe Grove v City of Johannesburg and Another*[15] gives conclusive direction pertaining to the legislative scheme relating to the credit control, collection and dispute resolution processes of municipalities. It, *inter alia*, comprises the Systems Act. It was ruled here that the legislative scheme relating to credit control and dispute resolution in municipalities creates a contractual relationship. I quote from the judgment as it is; it is unnecessary to paraphrase or summarise because it is clear and direct to the point:

'Legislative scheme

[7] According to the Constitution "the objects of local government" are, *inter alia*, "to provide democratic and accountable government for local communities" and "to ensure the provision of services to communities in a sustainable manner."

[8] Obviously, the fulfilment of these objects requires services to be charged for and for the payment of such charges to be regulated. The duty to levy and collect payment is a constitutional imperative.

[9] The Local Government: Municipal Systems Act is enacted for the purposes of providing municipalities with a centralised and consistent approach in relation to the creation and managing of systems for credit control and debt collection.

The Local Government: Municipal Systems Act (the Act)

[10] The preamble to the Act states, *inter alia*, that its purpose is:

"[T]o empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services,

[15] *Body Corporate of Willow and Aloe Grove v City of Johannesburg and Another* (41604/2020 ; 13541/2022) [2023] ZAGPJHC 1451 (11 December 2023).

service delivery agreements and municipal service districts; to provide for credit control and debt collection."

[11] Section 5(1) of the Act provides a broad overview of the rights and duties of the community. It provides that members of the community may submit written or oral recommendations, representations and complaints to the municipality. It provides furthermore that this must be done in terms of the processes and procedures of the legislative scheme which is created in terms of the Act.

[12] In terms of section 5(2) such community members have a concomitant duty when exercising their rights to observe the mechanisms, processes and procedures of the municipality.

[13] *Section 96 of the Act provides that a municipality must collect all money due and payable to it and that for this purpose it is obliged to adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of the Act. To this end it must adopt by-laws.*

[14] Section 95 of the Act provides that a municipality must take reasonable steps to ensure that the consumption by individual users of services is measured *through accurate and verifiable metering systems. It must ensure also that persons liable for payments receive regular and accurate accounts. Such accounts must indicate the basis for calculating the amounts due.*

[15] A municipality is to provide accessible mechanisms for persons to query or verify accounts and metered consumption. *There must be appeal procedures which allow for persons liable for payments to receive prompt redress for inaccurate accounts. There must also be accessible mechanisms for dealing with complaints. It is required of a municipality that it issue prompt replies and corrective action.*

[16] In terms of section 102(1)(c), a municipality may implement any of the debt collection and credit control measures provided for in the Act in relation to any arrears, including the termination of services.

[17] In terms of section 102(2), the municipality may not implement such measures, including termination, where there is "a dispute between the municipality and [its customer] concerning any specific amount claimed by the municipality from that person." (Emphasis added.)

[18] In terms of section 102(1)(a), a municipality may consolidate separate accounts of persons liable for payments to the municipality. In this way arrears may be raised and measures taken across the range of services provided. Put differently, the fact that one is up to date with one's

electricity account but in arrears in respect of charges for other services does not prevent the disconnection of the electricity services.

[19] *Thus, in sum, the Act requires that disputes in relation to specific charges on a municipal account must be dealt with through a co-operative structure which places obligations on both the customer and the municipality and which affords to the customer procedural fairness. This includes an internal appeal mechanism.*

[20] It must be noted that there is no provision for resorting to court for the resolution of disputes in the context of this structure.

[21] As I have said, the Act provides for the creation by municipalities of a more granular credit control and debt collection policy by way of the power and obligation to pass by-laws.' (Accentuation added.)

[36] The core of this case also turns on the doctrine of *pacta sunt servanda*: legal and moral compliance with contracts in the constitutional realm. It was noted in *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others*[16] (*Beadica*) that in our new constitutional era, *pacta sunt servanda* is not the only, nor the most important principle informing the judicial control of contracts. The requirements of public policy are informed by a wide range of constitutional values. A careful balancing exercise is required to determine whether enforcement of the contractual terms would be contrary to public policy in the circumstances. Perceptive restraint by courts is important. Still, when approaching the task of invalidating, or refusing to enforce contractual terms, a court will use the power to invalidate a contract, or not to enforce it sparingly, and only in the clearest of cases.

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[16] *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* (CCT109/19) [2020] ZACC 13; 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) (17 June 2020) paras 87-90.

[37] There is not a constitutionally lawful and just basis in this application to invalidate the agreement; it is not a clear case as required per *Beadica*. The evidence presented and the law directs to this.

The pertinence of s 172 of the Constitution of the Republic of South Africa, 1996 (the Constitution) in casu.

[38] When deciding on constitutional matters, the court may make orders under s 172 to cause a just and equitable outcome. The municipality did not make out a case for the review to be granted. There is not any divergence from public policy or legislation in the agreement.

[39] The basis for constitutionality in the application is, *inter alia*, founded on the argument by the municipality that the agreement 'is of course untenable because the Municipality has literally thousands of other ratepayers (approximately 119 000 ratepayers which is inclusive of still 3 000 farmers who are excluded from this "agreement"), who would most certainly want to be treated in the same way by also demanding a rebate or discount of 40% of their liability towards the Municipality. They would have a legitimate expectation to be treated as such, as precedent would have been created.'[17]

[40] The municipality has a discretion in future agreements and debt management. The agreement with the respondent and the other parties thereto will not force unconstitutional action or harm public interest. The municipality must fulfil its constitutional obligations with integrity and diligence towards the people it serves, as is stated in the By-Law[18] and the law I quoted above.

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[17] Para 9.9 of the founding affidavit.

[18] As published in the *Provincial Gazette* 25 of 21 May 2010.

Conclusion and costs

[41] The delay in the bringing of the review and the manner in which the prevailing law was not regarded when the litigation was embarked upon might be sufficient to dismiss the application. The prejudice to the administration of justice is clear.

[42] There is no doubt that the settlement agreement was concluded in terms of the law and is valid and enforceable. The respondent's argument in their supplementary heads of argument filed on 28 March 2025,[19] namely that the municipality's conduct in failing to disclose some critical provisions of its By-Law, is indicative of the fact that the municipality willingly chose to hide these facts from the court, alternatively that it chose to mislead the court, is convincing. It is of concern to this court.

[43] The allegation above is substantiated by the reality that the very municipal manager that deposed of the founding affidavit, instructed Maritz to resolve the disputes and limit the claims made regarding the incorrect tariff which did not comply with the rate ratio regulations applicable to agricultural property applied by the municipality. The municipal manager possessed delegated authority to enter into a debt settlement agreement. The agreement was concluded within the context of the municipality's By-Law which differs from issues related to rebates on rates.

[44] Crucial is that various farmers could have legally refused to pay due to the municipality's non-compliance with the legal prescripts. The core issue was and remains that if these illegalities became public knowledge, it would seriously impact the enforcement of outstanding debt.

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[19] Paras 52 to 56.

[45] Maritz provided advice to the accounting officer regarding the enforcement of the municipality's claim *via* correspondence before concluding the settlement agreement. Maritz's evidence supports the respondent's averment that the municipality misrepresented facts to this court in several respects, and this averment is supported by the following contentions:

a) firstly, there was a valid dispute by the various account holders/consumers (farmers, including the respondent) because the rates had been imposed and levied according to an incorrect tariff; thus, the levying of rates would have been unlawful and problematic;

b) the municipality's attorney was instructed to negotiate with the farmers regarding their claims and was eventually mandated to settle with them in respect of their arrears per the By-Law which authorises the municipality to compromise and/or grant discounts when settling, thereby granting power to the accounting officer; and

c) the conclusion of the settlement agreement did not involve approval or the setting of a rebate, reduction, or exemption, which are council-reserved matters relating to establishing such rebates, reductions, and exemptions within the municipality's rates policy context.

[46] The reliance on the delegation of powers manual, which solely deals with the power to decide or determine a rebate, reduction or exemption, is misplaced and does not demonstrate that concluding the settlement agreement was unlawful. Debt collection and credit control processes to recover property rates are not illegal, nor do they constitute an unlawful reduction in or rebate of property rates contrary to s 15 of the MPRA.

[47] The terms of the settlement agreement confirmed that the parties never intended to agree on a rebate, but rather to address debt collection:

a) the settlement agreement refers to 'account holders/consumer' and not ratepayers;

b) the recordal confirms that the account holders'/consumers' municipal accounts were in arrears and an agreement was reached to settle these arrears; and

c) the reduction of or rebate in respect of property rates is not mentioned in the settlement agreement.

[48] Arrear rates are included as 'debt' owed to a municipality. Section 118(1) of the Act stipulates that the registrar of deeds cannot register property transfer without a prescribed clearance certificate confirming that municipal service fees, surcharges, property rates, and other municipal debts owed during the two years preceding the application date have been paid in full. Arrear rates are thus included as 'debt' owed to a municipality. This confirms that municipalities are authorised to accept settlements concerning the payment of municipal debt, including property rates.

[49] The above brings me to the costs of the application. Where an unsuccessful litigant has sued an organ of state in the public interest with a view to vindicate a protection afforded by the Constitution, the litigant should not ordinarily be ordered to pay costs. This however is not an inflexible rule. A court may depart from this general rule if it is just and equitable to do so. It may be the case that the unsuccessful litigant is shown to have acted with improper motive or has abused court process, has conducted the case in a vexatious manner, has not properly adhered to the rules

of court, has made sustained unwarranted attacks on other litigants or witnesses or judicial officers concerned or has not pursued the claim in good faith.[20]

[50] This is not a case that promotes a constitutional right or interest. It has been brought under the guise thereof and is a perfect example of how this precious avenue, the right to access to justice in terms of s 34 of the Constitution, can be abused. It has been brought by an organ of state without proper consideration of the law. The behaviour of the municipality must be met with a punitive costs order. It is unfortunate that the taxpayer is most often the victim of such a costs order. I was tempted to order a *de bonis propriis* costs order against the individual persons that brought this application, but this was not addressed in the case.

Order

[51] In the result the following order is made:

1 The application is dismissed.

2 The applicant to pay the costs of the application on an attorney and client scale, such costs to include the costs of the employment of two counsel taxed on scale B.

[redacted]

M Opperman J

I concur

[redacted]

JP Daffue J

[20] *De Lacy and Another v South African Post Office* (CCT 24/10) [2011] ZACC 17; 2011 (9) BCLR 905 (CC) (24 May 2011) paras 115-123.

Appearances

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