



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: D3020/2025

In the matter between:

ETHEKWINI MUNICIPALITY

APPLICANT

and

JODACHE OWEN PERUMAL

FIRST RESPONDENT

FIRSTRAND BANK LTD

SECOND RESPONDENT

GLOVER KANNIEAPPAN INC

THIRD RESPONDENT

THE SHERIFF, INANDA 1

FOURTH RESPONDENT

SHASHIE KUNTHIKUMAR

FIFTH RESPONDENT

REGISTRAR OF DEEDS, PIETERMARITZBURG

SIXTH RESPONDENT

ORDER

In the result, I make the following order:

1. The rule *nisi* dated 18 March 2025 is confirmed.
2. Upon payment of the historical debt, the applicant is directed to advise the sixth respondent in writing that the historical debt has

been paid, whereafter, the sixth respondent is directed to remove the interdict from the property records.

3. The second respondent is directed to pay the costs of this application at scale A of the high court tariff.

JUDGMENT

Nicholson AJ

[1] The genesis of this matter rests in a series of email communications exchanged between the applicant, and the third and fourth respondents, on 12 and 13 March 2025. In these exchanges, the applicant sought to address and resolve the issue of an outstanding historical debt, owed by the first respondent to the applicant, to avoid litigation to perfect a statutory hypothec, as contemplated in s 118(3) of the Local Government: Municipal Systems Act 32 of 2000 (“the Act”).

[2] The relevant provisions of s 118 of the Act provides:

'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-

- (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.

(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)...

[3] It is apparent that ss 118(1) and 118(3) of the Act establish key mechanisms that empower municipalities to recover outstanding debts related to municipal charges on properties. These debts typically include service fees, surcharges, and property rates, all of which are tied directly to the property within the municipality's jurisdiction. Section 118(1) comes into effect when a property is sold. It stipulates that the registrar of deeds cannot register the transfer of property to a new owner unless the municipality issues a prescribed certificate. This certificate serves as confirmation from the municipality that all municipal charges incurred in connection with the property during the two years preceding the application for the certificate have been fully paid. The result is that the municipality is able to secure payment of recent municipal debts before any transfer of ownership takes place. Section 118(3) provides municipalities with a preferential right regarding debts older than two years, commonly referred to as 'historical debt'. Specifically, it gives the municipality preference over any mortgage bond registered against the property for these older debts.

[4] The email exchange disclosed a dispute regarding the interpretation of s 118(3) of the Act. The applicant asserted that s 118(3) establishes a statutory hypothec over the property, thereby permitting the municipality to secure outstanding debts against the property itself. Conversely, the respondents argued that any historic debt associated with the property is recoverable exclusively from the first respondent and does not give rise to a statutory hypothec. However, they concede that it does grant the municipality preferential status as a creditor under Uniform rules 46(14)(b)(i) and (ii). Additionally, they contend that the first respondent is responsible for the historical debt.

[5] In order to avoid the need to invoke and perfect its statutory hypothec against the property prior to the transfer of ownership, the applicant requested that the second respondent settle the outstanding municipal debt using the funds currently held by the fifth respondent. Additionally, should the second respondent fail to agree to pay the historical debt from these funds, the applicant indicated its intention to initiate urgent legal proceedings, exercise its statutory hypothec to secure the outstanding amount, and pursue recovery of associated legal costs from the respondents.

Factual background

[6] On 26 January 2023, a money judgment was granted in favour of the second respondent against the first respondent, accompanied by an order declaring the latter's immovable property specially executable.

[7] On 8 March 2024, the Sheriff (the fourth respondent herein) conducted a public auction and sold the immovable property to the fifth respondent for R222 500. In accordance with s 118(1) of the Act, the third respondent applied to the eThekweni Municipality ('the applicant' or 'the municipality') seeking a rates clearance certificate.

[8] Upon notification of an outstanding amount of R63 318,¹ the third respondent effected payment on 20 February 2025. Subsequently, on 11 March 2025, the applicant issued the rates clearance certificate for the property, thereby enabling the third respondent to proceed with transferring the property into the name of the fifth respondent.

History of application

[9] On 17 March 2025, the applicant brought an urgent application, giving less than one day's notice to the parties concerned. The main relief sought in this application was an interdict aimed at preventing and restraining

¹ Founding affidavit, page 15, para 26.4; the applicant's attorney's report at page 62. At paragraph 27 of the founding affidavit, the applicant appears to confuse the historical debt of R83 618.57, which is due in terms of s 118(3) with the clearance debt in terms of s 118(1).

the transfer of the immovable property to the fifth respondent. The applicant requested that this interdict remain operative until such time as the outstanding historical debt, owed by the first respondent and quantified at R83 618.57, was settled.

[10] In the alternative, the applicant sought an order interdicting and restraining the release of the proceeds from the sale of the property to the second and/or third respondent. This alternative relief was likewise sought to remain in force pending the final determination of proceedings to be instituted by the applicant for the recovery of the historical debt from the first respondent.

[11] On 18 March 2025, the Honourable Justice Chithi considered the matter and, following submissions from the parties, issued an interim order that included the following terms:

‘1.1. That the fourth respondent is authorised to release the proceeds of the sale in execution of the immovable property which is fully described at paragraph 2.1 at the notice of motion in the application under Case No. D3020/2025, save for the sum of R83 618.57, which amount shall be retained by the fourth respondent pending the determination of an action to be instituted by the applicant for the recovery of the historical debt which the applicant allege is owing to it.

1.2. The Applicant is directed to institute an action for the recovery of the historical debt within 15 days of the granting of this order.

1.3. In the event of the Applicant failing to comply with paragraph 1.2 of this order, this order shall lapse and be of no force and effect.’

[12] The order further reserved the determination of costs, instructed the parties to submit heads of argument by 1 April 2025, and authorised the parties to seek a preferential allocation on the opposed roll from the Senior Civil Judge following the delivery of their respective heads of argument.

[13] Both the interim order and the final order is opposed by the second and third respondents only. In the circumstances, for convenience, I refer to them as 'the respondents' herein.

[14] When this matter served before me, it appeared common cause that, pursuant to paragraph 1.2 of the Chiti J order, the municipality initiated legal proceedings against the first respondent for the recovery of the historical debt.

Issues for determination

[15] During the hearing, Mr *Rodel*, who appeared for the respondents, agreed that the rule ought to be confirmed and identified costs as the main outstanding issue. Mr *Broster*, counsel for the applicant, argued that all cost-related concerns were moot following the granting of the order, and further submitted that if the case had not been urgent, it would have been struck from the roll. Given that an order had already been granted and the case had moved to the opposed roll, he asserts that the normal rule relating to costs should apply; which is, the unsuccessful party pay the successful party's costs.

[16] Mr *Broster* also correctly asserted that the costs order should follow scale A of the high court tariff. However, Mr *Rodel* continues to advocate for costs on scale C but has also suggested that either no costs should be awarded or that each party should bear their own costs.

[17] While the parties agree that the rule *nisi* issued by Chiti J should be confirmed, the respondents assert that, although the sole matter currently before the court is the issue of costs, a determination on costs requires the merits of the application to be addressed. Since I neither have a rescission application before me, nor am I sitting as an appellate court, the merits for the granting of the interim order, which is essentially an anti-dissipation order, are not relevant to my current considerations.

[18] The difference between an interim and a final interdict lies in the evidentiary standard required to establish rights. In the case of an interim interdict, the applicant must demonstrate a prima facie right, even if subject to some doubt. Conversely, a final interdict requires the applicant to prove a clear right. Furthermore, when seeking an interim interdict, it is necessary to show that the balance of convenience supports its issuance; this is not a consideration for a final interdict. In both instances, however, the absence of any adequate alternative remedy must be established.²

[19] In the circumstances, the crisp issues before me are, first, whether the applicant possesses a clear right, and second, whether there is an absence of any alternative remedy.

Clear right

[20] The applicant asserts a statutory hypothec granted in terms of s 118 of the Act.³ The applicant's position regarding the interdict is that the historical debt is owed to the municipality and is secured pursuant to s 118(3) of the Act, which creates a 'statutory hypothec'.

[21] To substantiate the historical debt, the applicant puts up as annexures to the founding affidavit:

- (a) a detailed reconciliation of the monthly account for the property in the name of the first respondent together with a confirmatory affidavit; and
- (b) metro bills dated 18 December 2024 and 18 January 2025 to the affidavit, reflecting arrears of R135 412.39 and R136 337.38, respectively.

[22] I pause to mention that the first respondent, despite being served with the papers, has not disputed the debt.

² *Setlogelo v Setlogelo*, 1914 AD 221; *Safcor Forwarding (Johannesburg) (Pty) Ltd v National Transport Commission* 1982 (3) SA 654 (A) at 674H-675A.

³ Founding affidavit, page 14, para 18.

[23] The wording of s 118(3) of the Act is unambiguous; it provides preference to the municipality for historical debt and it establishes a statutory hypothec over the property. This interpretation is supported by the decision in *City of Tshwane Metropolitan Municipality v Mathabathe and Another*,⁴ where the Supreme Court of Appeal (“SCA”) further clarified the distinction between the various subsections of s 118. The SCA confirmed that, unlike subsec (1), which serves as an embargo provision, subsec (3) functions as a security provision.

[24] In *City of Tshwane*,⁵ the SCA further held that municipalities are required to collect payments due for property rates, taxes, and municipal services. They have two main forms of support for this responsibility: firstly, a security interest is placed on the relevant property to guarantee repayment of debts (s 118(3)); secondly, municipalities have the authority to prevent transfer of property ownership until certain debts are paid (s 118(1)). Section 118 therefore features both an embargo provision with a time limit (s 118(1)) and a security provision without a time limit; thereby offering municipalities two distinct remedies. While both aim to secure payment for qualifying municipal claims, they do so through different approaches.

[25] In *Jordaan*, the Constitutional Court confirmed that municipalities have several mechanisms to recover debts for services and rates, including s 118(3), which establishes a statutory hypothec on the property associated with the incurred debt. This hypothec takes preference over mortgage bonds but seizes upon transfer. Municipalities can enforce this hypothec against current owners, with their claims taking precedence over mortgage holders, until the property is transferred. If debts remain unpaid, a municipality can obtain a court order to stop the property's transfer until payment is received.

⁴ *City of Tshwane Metropolitan Municipality v Mathabathe and Another* [2017] ZACC 31; 2017 (6) SA 287 (CC) (*Jordaan*) para 55.

⁵ *City of Tshwane* para 9.

[26] In the circumstances, it is evident that the applicant possesses a statutory hypothec in respect of the historical debt attached to the property, which will lapse upon transfer of the property. Therefore, the applicant has a clear right.

Apprehension of harm

[27] It is evident that the respondents' interpretation of s 118 of the Act is incorrect. The text of s 118 and authorities cited demonstrate that s 118(3) establishes a statutory hypothec in favour of the municipality for historical municipal debts attached to the property.

[28] This hypothec grants the municipality preferential status over bond holders and persists until the transfer of the property, at which point it lapses. Accordingly, it is evident that without approaching the court, the municipality would suffer harm.

Alternate satisfactory remedy

[29] The alternate remedy must be either satisfactory or suitable to the circumstances. In *Drilltec (Proprietary) Limited v E and M Tshwragano Joint Venture (Proprietary) Limited and Another*⁶ the court phrased this requirement as the applicant 'must prove the absence of similar protection by any other remedy ordinarily obtainable'.

[30] In opposition to the application, the first respondent takes three points *in limine* as follows:

- (a) urgency is self-created;
- (b) an alternative remedy to the interdict is available pursuant to rule 46(14)(b);

⁶ *Drilltec (Proprietary) Limited v E and M Tshwragano Joint Venture (Proprietary) Limited and Another* [2023] ZANWHC 220 para 23.

(c) several alternative remedies would have been available to the applicant had it complied with s 96 of the Act, which mandates that municipalities adopt, maintain, and implement a credit control and debt policy aligned with their rates and tariff policies and in accordance with the provisions of the Act. In this context, the respondents identify seven options available to the applicant as follows:⁷

- ‘17.1. to terminate or restrict the provision of the municipal service in terms of By-Law 19;
- 17.2. to allocate the whole or a portion of any payment of an account, or the whole or a portion of a plea – payments for future accounts as payment for arrear municipal service fees or rates;
- 17.3. to withhold the issuing of rates or revenue clearance certificate until all amounts due in connection with the property concerned for municipal service fees, surcharges on fees, rates and other municipal taxes, levies and duties for the period contemplated in paragraph 118(1)(b) of the Systems Act having been fully paid;
- 17.4. to unilaterally disconnect the supply of electricity supplied by way of an electricity dispenser to any premises, or refuse to supply any person with any card or token for the operation of an electricity dispenser;
- 17.5. refuse to register new customers for services in the premises until the previous debt is paid;
- 17.6. to list the defaulting person with the credit bureau; and/or
- 17.7. to hand the defaulting person over to a debt collector or an attorney for collection.’

[31] The applicant asserts that it complied with its debt collection policy by implementing measures such as disconnecting electricity, restricting the property's water supply, and issuing monthly utility bills to the first respondent.

[32] The debt collection measures identified by the respondents under s 96 of the Act refer to actions previously available to the applicant. At this point, however, these measures do not offer the municipality any viable

⁷ Answering affidavit, page 87. Also see the respondents' heads of argument, para 10.

means to recover the first respondent's outstanding historical debt. Given the current circumstances, these remedies are neither suitable nor sufficient, particularly as the applicant holds a statutory hypothec and there are funds presently held by the fourth respondent that are available to satisfy this hypothec.

[33] As such, it cannot be said that these alternative measures constitute an adequate remedy for the purposes of an interdict. This is especially so considering that the statutory hypothec will lapse upon the transfer of the property,⁸ rendering these remedies ineffective for the recovery of the historical debt.

[34] The respondents contend that the Municipality could have deferred the initiation of these proceedings and instead relied on the process outlined in rule 46(14)(b), because the statutory preference would take precedence over that of the bondholder.⁹ However, this argument is untenable. Once the rule 46(14)(b) process is set in motion, the property will have already been transferred to the new owner. As a direct consequence of this transfer, the applicant's statutory hypothec will be extinguished, thereby eliminating the legal basis for the applicant's preferential claim. Accordingly, the applicant cannot rely on post-transfer remedies to recover its debt, and any delay in initiating proceedings risks the loss of its security over the property.

[35] Furthermore, it is a well-established principle that a party is entitled to select the form of relief it seeks and should not have a particular remedy imposed upon it by its opponent.¹⁰ In this matter, the applicant has elected to assert its rights under the statutory hypothec, and this decision ought to be respected.

No urgency, alternatively urgency is self-created

⁸ *Jordaan* paras 64-68.

⁹ Answering affidavit, pages 84-86, paras 4-13.

¹⁰ *Baloyi v Public Protector and Others* 2022(3) SA 321(CC) at paras 40 and 42

[36] In support of urgency, the applicant asserts that a rates clearance certificate was issued to the third respondent on 11 March 2025¹¹ which would allow the transfer of the property into the name of the fifth respondent. The statutory hypothec which is in terms of s 118(3) of the Act would cease after transfer and the applicant does not have any realistic hope of the recovery of the debt should that happen.

[37] The respondents' heads of argument further dispute the existence of any genuine urgency in the present application, arguing that any alleged urgency is self-created for the following reasons:

- (a) The urgent court did not grant the main relief sought in the notice of motion.
- (b) The outstanding debt has been in existence for more than two years, yet the applicant approaches the court on an urgent basis without offering any explanation for the delay in doing so.
- (c) The applicant has failed to comply with its own debt collection policy prior to launching these proceedings.
- (d) The applicant has not asserted that the first respondent lacks sufficient moveable or immovable assets to satisfy the debt in question.
- (e) The applicant has not addressed possible defences that may be available to the first respondent, such as prescription.
- (f) Despite having been notified some time ago about the action being taken by the second respondent to have the property declared specially executable, the applicant has delayed and now brings the application at the last possible moment.

[38] For the reasons detailed below, none of these reasons impede urgency. Nonetheless, for the sake of thoroughness, it is necessary to address the respondents' assertion regarding the order issued by the urgent court. Their claim that the order granted by Chithi J differed from relief sought by the applicant is unfounded. A careful review of the notice of motion

¹¹ It must be borne in mind that the application was filed on 1 April 2025.

confirms that the rule *nisi* granted precisely aligns with the alternative relief requested therein.¹² I am not aware of any statute or legal precedent indicating that the granting of an alternative order as requested constitutes a bar to costs. In relation to the merits of urgency, the respondents, in their heads of argument, raise several contentions disputing the applicant's justification for bringing the matter on an urgent basis:

(a) The respondents argue that the application itself was unnecessary. They contend that, as a preferential creditor in terms of rule 46(14)(b), the applicant already enjoys a statutory preference. Accordingly, the respondents submit that there was no need for the applicant to approach the court for relief, as its rights could have been protected under the established rules governing preferential creditors.

(b) The respondents further assert that the applicant had not taken any steps to perfect the hypothec upon which it now relies, until the institution of the present application. This omission, they argue, undermines the assertion of urgency, as the applicant did not act to secure its alleged preference at an earlier stage.

(c) The respondents maintain that the applicant has not adequately established a case in respect of the historical debt. As a result, they argue, the applicant does not possess a clear right to the relief now sought. The respondents point out that the applicant could instead have lodged a claim with the fourth respondent for payment of its debt, which would have constituted a more appropriate course of action under the circumstances.

[39] Upon careful evaluation of the arguments advanced by the respondents regarding the applicability of rule 46, it has already been determined that their submissions lack merit, when considering the respondents' interpretation of s 118(3) was found to be incorrect. Given this finding, it is unnecessary to engage in further deliberation on this issue. The question of whether rule 46 provides an alternative remedy, or whether it affects the applicant's entitlement to relief, has been resolved by a proper

¹² Prayers 2.2 and 2.3 of the notice of motion, at page 5 of the indexed papers.

interpretation of rule 118(3). Accordingly, the respondents' point in this regard requires no additional consideration.

[40] The statutory hypothec in question serves merely as security for a potential claim, with its full effect and enforceability only realised upon the granting of a court order. In these proceedings, the respondents, who were not aware of the underlying debt, have opposed both the perfection of the hypothec and the granting of the main relief sought by the applicant. This opposition has effectively compelled the applicant to approach the court solely for an order perfecting the hypothec, rather than for the principal relief initially contemplated.

[41] Despite their opposition to the payment of the historical debt on the ground that it was not proved, the respondents, without raising any objection, accepted the figures presented in the rates assessment report for the purposes of complying with s 118(1) of the Act. Notably, these figures were confirmed in the founding affidavit by the same individual who also confirmed the existence and amount of the historical debt.

[42] The respondents did not challenge these figures, presumably because accepting them served their interests within the current proceedings. The lack of dispute regarding the rates assessment, especially when the confirmation affidavit and the first respondent's municipal bill were provided by the applicant, undermines the respondents' contention that the historical debt was not properly established.

[43] In the circumstances, there is no merit to the respondents' argument that the historical debt was unproven. The applicant has furnished sufficient evidence by submitting the first respondent's municipal bill alongside a supporting affidavit confirming the relevant figures. In the absence of any challenge by the first respondent to these documents, it is reasonable to conclude that the historical debt is adequately proven. Accordingly, had I

been called to do so, I would have granted the money judgment against the first respondent.

[44] It is important to note that none of the issues mentioned above, such as the delay in bringing the application, the applicant's failure to comply with its own debt collection policy, the absence of evidence regarding the respondent's assets, or the potential defences available to the first respondent, were raised in the email exchange that preceded this urgent application. For the sake of context and to ensure a clear understanding of the sequence of events that led to the initiation of these proceedings, it is necessary to provide the complete content of the email exchange.

[45] On 12 March 2025, at 10.34 am, Mr Siyabulela Mfingwana ("Mr Mfingwana"), the Deputy Head: Litigation for eThekweni Municipality, addressed an email to the third respondents as follows:

'Dear Ms Maturi Naidoo

The above matter refers.

We confirm to date a telecon between the writer and yourself wherein the writer advised as follows, that:

1. The rates clearance certificate has now been issued as demanded.
2. The municipality has given yourselves as well as the purchaser an opportunity to settle the Section 118(3) debt, but such efforts have been unsuccessful.
3. The only available option for the municipality would be to interdict the transfer and seek costs from yourselves as the transferring attorneys who are or should be able to advise the purchaser of the ramifications. The municipality has tried its best endeavours to avoid instituting a High Court application by adequately advising you of its remedies derived from the constitutional case of Chantelle Jordaan vs City of Tshwane and has successfully referred you to paragraphs 54 to 56.
4. Such Court application would reluctantly be instituted since the disputed Section 18(3) monies are minimum and with the municipality open to a discussion seeing that this is a sale in execution. However, all these endeavours were rejected.

We confirm the lengthy discussion the writer had with yourself wherein the writer advised that the municipality would seek costs from yourselves and the purchaser as you have now demanded to be issued with the clearance certificate, due to the risk of losing the security the municipality over the property. We confirm advising this type of application will not be the first of its kind.

We also confirm your advice that you had not lodged at the deeds office yet, however, it is common cause you can lodge any time and get the property transferred. Unless we hear from you by no later than the end of business on Thursday, 13 March 2025, we have no option but to instruct our attorneys to launch an urgent application to protect the municipality's rights.'

[46] On the same date at 3.33 pm, Ms Maturi Naidoo, representing the third respondent, responded to Mr Mfingwana as follows:

'Dear Siyabulela,

Your email below refers.

We note of paragraph 54 to 56 in the matter of Chantelle Jordaan and Others vs City of Tshwane Metropolitan Municipality and Others, Case No: CCT383/16 and respectfully advise that the municipality's interpretation is misplaced. You will note, with specific reference to paragraph 54 of the above judgment that Section 118(3) of the Local Government: Municipal Systems Act 32 of 2000 ("MSA") are charges on the property which are levied against the existing owner.

As discussed telephonically, due to the nature of the transfer being a sale in execution, the execution creditor nor the purchaser are the owners of the property and as such, are not liable for settlement of the Section 118(3) figures as requested. As a law firm, we have done our due diligence by informing the municipality of the pending transfer and thus have complied with the judgment.

We will nonetheless inform the purchaser of the below correspondence and proceed with the transfer unless instructed otherwise.

Trusting you find the above in order.

Kind regards,

Glover Kannieappan Inc.'

[47] On 13 March 2025, at 8.42 am, Mr Mfingwana replied to Ms Naidoo with the following response:

‘Thank you for your response. It seems you are employing a literal interpretation which of course leads to absurdity in the current situation. Nevertheless, we are left with no option but to go ahead with an urgent application to protect the municipality’s interests by interdicting the transfer and seeking costs as we have done all that we could to avert this step.

Regards

Siyabulela Mfingwana’.

[48] On the same day at 9.25 am, Lue Kannieappan, on behalf of the third respondent, replied to Mr Mfingwana as follows:

‘WITH PREJUDICE

Dear Sir

Thank you for your email below.

The email is transmitted with prejudice and will be used to fend off any misconceived attempt to threaten our firm with a cost order. We have no attempt to debate the law or to litigate by correspondence. However, it will be useful to set out that a literal interpretation is the first rule to be adopted in interpretation. The rule states that clauses should be interpreted in their original meanings without any substitutions or addition of words during the interpretation process. Having said that an owner, through a literal or purpose approach is still an owner. This is the important point of departure.

Be that as it may, it is regrettable that the municipality has taken this point without having itself tried to litigate against the owner to recover its debt and has the appetite now to proceed with litigation. It is curious that the municipality decides to interdict the transfer having received the only payment.

We look forward to receiving this application in due course.

Kind regards.

Lue Kannieappan.’

[49] For purposes of comparison, I refer to the specific language used in paragraphs 54 and 55 of *Jordaan*, as well as the text of s 118(3), both of which are cited within the referenced email exchange.

[50] Section 118(3) of the Act reads:

‘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.*’ (My emphasis.)

[51] *Jordaan* reads:

[54] And the statute does indeed provide a full-plated panoply of mechanisms enabling efficient debt recovery in the cause of collecting publicly vital revenue. Here the parts of s 118(3) that are uncontested are integral. These are the charge on the property against the existing owner, and the municipality's preference over registered mortgagees. During argument the municipalities conceded, correctly, that the provision enables them to enforce the charge against the existing owner up to the moment of transfer - and to do so above and before any registered mortgagees. *And they were constrained to concede, also correctly, where there are unpaid municipal debts, that the charge enables them to slam the legal brake on any impending transfer by obtaining an interdict against transfer.*

[55] Add this: s 118(1) places municipalities on notice that a transfer within their jurisdiction is pending. Because the provision embargoes each and every transfer until the municipality issues a clearance certificate for the last two years' debt, prospective transferors and their attorneys are obliged to notify municipalities of every impending transfer. Doing so is indeed indispensable and invariable. *This gives the municipality full power, and full opportunity, to enforce the charge against the existing owner for all recoverable debt, even beyond the last two years.* (Footnote omitted.) (My emphasis.)

[52] An analysis of s118(3) and paragraphs 54 and 55 of *Jordaan* indicates that while the property owner remains liable for debts for municipal services associated with the property, a transfer of the property cannot proceed until any arrears from the previous two years are settled because the prescribed certificate required for transfer will not be issued. Debts older than two years (referred to as historical debt) do not prevent a transfer unless the municipality enforces its statutory hypothec over the property and withholds transfer until these outstanding amounts are paid.

[53] Despite the applicant having directed the respondents to the pertinent paragraphs of *Jordaan*, the respondents maintained its position that the first respondent remains liable for the historical debt; and therefore, should be the subject of the demand. This stance was adopted without due consideration of the fact that, pursuant to s 118(3) of the Act, the applicant holds a statutory hypothec over the property. Once this hypothec is perfected, it will prevent the transfer of the property to the fifth respondent.

[54] It is apparent that this matter was brought before the court due to the respondents' misinterpretation of s 118 and the *Jordaan* decision, as evidenced by the email exchange. Prior to initiating legal proceedings, the municipality endeavoured to resolve the matter amicably; accordingly, the application was filed after the respondents declined to settle the outstanding debt or provide an undertaking that the property would not be transferred. In the circumstances, there is no basis to criticize the municipality for bringing this application on an urgent basis.

[55] Mr *Rodel*, both in his appearance before me and in his heads of argument, asserts that if a costs order had not been sought against them, they would not have opposed this application. Mr *Broster* rightly highlights that the answering affidavit does not merely contest the costs order; rather, it challenges several allegations contained within the founding affidavit as well as the interpretation of s 118 of the Act. Furthermore, the answering affidavit raises additional disputes beyond those expressed in the exchange of emails. Mr *Rodel*'s position also overlooks the fact that the applicant initiated these proceedings due to the respondents' failure to provide an undertaking to proceed with the property transfer.

[56] Although the third respondent was cited in these proceedings, their inclusion was not warranted. Despite their interpretation being incorrect, they remain 'creatures of instruction', without a personal interest in the matter.

[57] It is, however, unfortunate that this issue required the court's attention on an already overburdened court roll, particularly as both an urgent and preferent opposed; thereby taking precedence over other matters with greater merit, especially when the issues are straightforward and have previously been addressed by the Constitutional Court.

[58] I get the impression due to the language used, in both the answering affidavit and the email exchanges, that the third respondent may have approached the situation with considerable emotion, which led to the incorrect interpretation regarding the relevant paragraphs of *Jordaan* and the content of s 118 of the Act. Nevertheless, the third respondent does not have a direct interest in this matter. Accordingly, it would be inappropriate to award costs against them, as such an order would constitute a *de bonis propriis* order, without sufficient grounds for doing so.

Order

[59] In the result, I make the following order:

1. The rule *nisi* dated 18 March 2025 is confirmed.
2. Upon payment of the historical debt, the applicant is directed to advise the sixth respondent in writing that the historical debt has been paid, whereafter, the sixth respondent is directed to remove the interdict from the property records.
3. The second respondent is directed to pay the costs of this application at scale A of the high court tariff.

NICHOLSON AJ

Case information

Date of hearing: 21 October 2025

Handed down: 27 November 2025

Counsel for the applicant: Advocate Broster / Advocate Menzi Mtshali

Instructed by: Mkhize Miya Inc
Suite 2, Moor House
137 Jan Hofmeyr Road
Westville
KwaZulu-Natal

Counsel for the second
and third respondents: Advocate CLL Rodel

Instructed by: Glover Kannieappan Incorporated
Office 1 A, Stadium Building
Lion Match Office Park
892 Umgeni Road
Durban