

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-072183

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
10 March 2026.	
DATE	SIGNATURE

In the matter between:

JAY MOTHOBİ INCORPORATED

Applicant

and

MIDVAAL LOCAL MUNICIPALITY

Respondent

JUDGMENT

CRUTCHFIELD J

- [1] The applicant, Jay Mothobi Incorporated, claims payment of R171 187.10 together with costs. The respondent, Midvaal Local Municipality, opposes the application.
- [2] The applicant is a commercial law firm incorporating a conveyancing department. The applicant's case is that one of its employees in the

- conveyancing department ("the conveyancing secretary"), mistakenly overpaid the respondent.
- [3] The respondent is the local municipality tasked with issuing so called "rates clearance figures" and certificates necessary to obtain the transfer of an immovable property.
 - [4] The applicant alleges that it incurred a loss pursuant to a mistake by the conveyancing secretary who overpaid the respondent in error, repayment of which is sought by the applicant in this application.
 - [5] The applicant, acted in pursuit of its mandate from the seller of the relevant immovable property, the liquidator of a company referred to as Mystic Blue Trading ("the seller"), for the transfer of the latter's property to a purchaser referred to as Stoncor Group ("Stoncor").
 - [6] The applicant, on 18 March 2024, requested rates clearance figures in terms of s 118(1) of the Municipal Systems Act, 32 of 2000 ("the Act").
 - [7] The respondent on 5 April 2024 or thereabouts, provided the requested rates figures and distinguished in its email between the amount due for the preceding two years and the historical amount owed to the municipality in respect of the property.
 - [8] The amount owing to the respondent in respect of the rates clearance figures for the preceding two years, counting from April 2024 backwards, was R632 279.30. The respondent did not provide any evidence in support of its averment.
 - [9] The conveyancing secretary however mistakenly paid the sum of R832 279.30, resulting in an erroneous overpayment of R200 000.00 to the respondent.
 - [10] The applicant duly requested a refund of the overpayment of R200 000.00, only to receive R28 812.90 from the respondent, resulting in a deficit of R171 187.10 claimed in this application from the respondent.
 - [11] The applicant alleges that the sum of R171 187.10 is due, owing and payable by the respondent to the applicant.

- [12] On 18 April 2024, the conveyancing secretary dispatched email correspondence to one Tsoaeli of the respondent, informing the respondent of the overpayment and requesting a refund of the sum overpaid.
- [13] The respondent, on 3 May 2024, replied and advised that the respondent would only refund the amount of R37 457.00 to the applicant.
- [14] The respondent contends that in order for a rates clearance certificate to be issued, the seller of the property is liable for the full outstanding indebtedness, including debts owed on the property for the preceding two years as well as those debts older than the two year period referred to in s118(1) of the Act.
- [15] The respondent alleges that the property rates in terms of s118(1) of the Act in respect of the preceding two years amount to R632 279.30. Furthermore, the respondent alleges that the debts extending on the property beyond the preceding two year period, being the historical debt on the property, are R264 869.98. The total debt on the property is thus an amount of R897 144.28.
- [16] The respondent contends further that in order for a certificate of balance to be issued and regard being had to clause 24 of the conditions of sale, the full amount of R897 144.28, outstanding as at 5 April 2024, had to be paid in order for the issue of a clearance certificate and for the purchaser to take transfer of the property.
- [17] The conditions of sale are between the purchaser, the seller and the auctioneer. The respondent is not a party to the conditions of sale and cannot rely thereupon. In addition, the seller's obligation in terms of clause 24.1 of the conditions of sale, to pay all rates and taxes and levies in terms of s118(1) of the Act and to supply a clearance certificate to effect registration of transfer, is an obligation owed to the purchaser and can only be enforced by the purchaser against the seller. The respondent's remedies do not arise in terms of the conditions of sale.

- [18] Furthermore, the respondent's stance was disposed of effectively in *City of Tshwane Metropolitan Municipality v Mathabathe*¹, in which the SCA dismissed the municipality's argument, holding that whilst the municipality was obliged to collect monies that became payable to it, it was obliged to issue a clearance certificate if payment in respect of the preceding two years prior to date of the application for the rates clearance figures, was paid.
- [19] The municipality may not demand payment of all debts, including the historical debts on the property, in order to issue a certificate.²
- [20] The conveyancing secretary made an error. The respondent should not be entitled to benefit from an error such as that occurred in this matter.
- [21] The respondent sought condonation for the late delivery of the answering affidavit. The delay was not intentional. There is no reason not to grant condonation.
- [22] The applicant omitted to claim interest on the outstanding debt in the notice of motion. The applicant's claim is liquidated and the applicant made demand on the respondent by way of correspondence served by the sheriff on 24 May 2024. The demand served to place the respondent in *mora* and interest runs accordingly from 24 May 2024.
- [23] The costs of the application will follow the order on the merits. The respondent will pay the costs of the application. Scale B is justified in that both parties used counsel and the respondent should not have sought to take advantage of the applicant's error.
- [24] In the circumstances, I grant the following order:
1. The respondent's late delivery of the answering affidavit is condoned.
 2. The respondent is ordered to repay R171 187.10 to the applicant.

¹ *City of Tshwane Metropolitan Municipality v Mathabathe* 2013 (4) SA 319 (SCA) ("Mathabathe").

² *Mathabathe* id at para [9] and [12].

3. The respondent is ordered to pay interest a *tempore morae* to the applicant on the amount of R171 187.10 to the applicant from 24 May 2024 to date of final payment both dates inclusive.
4. The respondent is ordered to pay costs of the application including the costs of counsel on scale B.


CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Appellants:

Mr N Alli instructed by Jay Mothobi Inc
Attorneys.

For the Defendant:

Mr W F Wannenburg instructed by
Blignaut Neerahoo Attorneys.

Date of the hearing:

5 August 2025.

Date of the judgment:

10 March 2026.