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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case Number: 028806/24

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date 28/08/2026

Signature

In the matter between:

MD MALULEKE LEASING (PTY) LTD

Applicant

and

**THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Respondent

JUDGEMENT

MOLOPA-SETOSA J

Introduction

[1] The applicant has launched an application for an order in the following terms:

- “1. That it is declared that the amount of R792.045.81 paid by the applicant, under protest, to the respondent on 4 October 2023 was never due and payable to the respondent.*
- 2. That The respondent be ordered to pay the applicant the amount of R792 045.81 together with interest they a tempore mora (i.e. in terms of the Prescribed Rate of Interest Act), being at the rate of 11.25% calculated from 5 October 2024 until the date of final payment.*
- 3. That the first respondent be ordered to pay the applicant’s costs on an attorney and client scale.*

The application is opposed by the Municipality

[2] The respondent sought condonation for the late filing of its answering affidavit. Further, the Municipality had raised a point in limine of non-joinder of the Municipal Manager, which was initially opposed by the applicant. However, at the commencement of the hearing, these fell by the wayside as condonation was not opposed, therefore granted; and the Municipality did not pursue the non-joinder point in limine raised, thus nothing further need be said on that score.

Background

[3] On 17 July 2013, the applicant bought property described as Erf 1[...], Z[...], Extension 16 Township measuring 6027square meters in extent and held by a deed of transfer T11924/2014 (“the property”), for an amount of R14 000 250, from the respondent (“Municipality”) [this amount- R14 000 250- is said to be inclusive for the sale of Erf 1[...]⁶ as well]. This application is confined to Erf 1[...]⁵ aforesaid.

[4] The property was registered in the name of the applicant on 21 February 2014. The applicant became the owner of the property since then, as reflected in the Deeds Registration Property report, Annexure ‘FA3’ to the applicant’s founding affidavit.

[5] On 24 July 2023, the applicant and Park In Property (Pty) Ltd (“Park In”) entered into an agreement for the sale of the property, for an amount of R10 000 000.00, (“the agreement”).

[6] In terms of the sale agreement between the applicant and Park In an additional amount of R500 000.00 was to be paid by Park In to the applicant for ‘services rendered’.

[7] Clauses 5 and 7 of the agreement provide that Park In, [as the purchaser], ‘shall be liable for payment of all rates and taxes...in respect of the property’...; [my underlining]. I deal with this aspect below.

[8] A clearance certificate, as envisaged in section 118 of the Local Government: Municipal Systems Act, Act 32 of 2000 (“the Systems Act”) was

required. Thus, in August 2023 the applicant requested a clearance certificate from the Municipality for purposes of transferring the property from the applicant to Park In. Section 118 aforesaid provides as follows:

“118. 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.

See *City of Johannesburg v Kaplan and Another* 2006 (5) SA 10 (SCA) at para 26; where the Supreme Court of Appeal stated:

“No property may be transferred unless a clearance certificate is produced to the registrar of deeds that certifies full payment of all Municipal debts as described in section 118(1) which have become due during a period of two years before the date of application for the certificate.”

It is not in dispute that at the time of requiring a clearance certificate for Erf 1[...] in 2023, the applicant had never paid rates and taxes since acquisition/registration of the property into its name in February 2014.

[9] On 7 August 2023 the transferring attorney applied to the Municipality for clearance figures; i.e. an amount payable to the Municipality for rates and taxes, to obtain a clearance certificate, which would be submitted to the registrar of deeds to effect transfer of the property to the new owners, as required by the law. At this stage the applicant was not aware of an error in the Municipality's internal system erroneously reflecting the Municipality as the owner

[10] On the same day, 7 August The transferring attorney was provided with the figures by the Municipality, to wit R2 503 884.83, calculated on the property's market value of R4 900 000.00.

[11] The applicant avers that after receipt of the clearance figures **[in August 2023]**, and on further enquiries **[still in August 2023]**, it discovered that the 'valuation roll' reflected the Municipality as the 'owner' of the property, relying on annexure FA6 to the founding affidavit. That therefore due to the Municipality's internal system not reflecting the applicant's name as the registered owner, it is not liable for the levies imposed on the property. It (applicant), after becoming aware of the error of an internal document in August 2023, and after it had on its own accord requested clearance figures through its own transferring attorneys on 7 August 2023, claims not to be liable for rates and taxes *'as the Municipality is reflected as the owner on the valuation roll'*, referring to annexure FA6.

[12] The respondent disputes that annexure FA6 formed part of the valuation roll. Further, that valuation rolls are published in the newspapers and are Government gazetted. It (respondent) further states that the Municipality's system had not been updated to reflect the applicant's name as the owner; but that that does not detract from the fact that the applicant was the registered owner of the property since 21 February 2014, as reflected in the deeds registration report, annexure FA3.

[13] Of importance is that even in the answering affidavit to the urgent application previously launched by the applicant in September 2023 when it [applicant] sought, amongst others, an order to compel the Municipality to issue a clearance certificate, when the applicant raised this same issue that the Municipality is reflected as the owner in the document marked FA6, the Municipality stated that

“...This does not mean that the property is owned by the first respondent [referring to the Municipality].”

[14] So, at all material times hereto, since February 2014, the applicant was the registered owner of the property in question herein and was liable for payment of the rates and taxes in respect of the property, as required by the law. In fact, as owner of the property, it subsequently sold the property to Park In; and in the deed of sale, it is pertinently mentioned at clauses 5 and 7 that the purchaser [Park In], would be liable to pay, amongst others, rates and taxes once transfer had been effected. The same applied to the applicant; once it acquired ownership of the property, it became liable for payment of the rates and taxes in respect of the property.

[15] Apparently, annexure FA6 is not even available to the public; it is an internal document available only to the employees of the Municipality. It boggles one's mind how the applicant got hold of this internal document meant for the employees of the respondent!

[16] The Municipal Property Rates Act 6 of 2004 (the Property Rates Act”), which all property owners are governed by, provides that all property owners are liable for the payment of property rates.

[17] Section 27 of the Property Rates Act provides as follows:

Accounts to be furnished

27. (1) *a municipality must furnish each person liable for the payment of a rate with a written account specifying –*

- (a) the amount due for rates payable;*
- (b) the date on or before which the amount is payable;*
- (c) how the amount was calculated;*
- (d) the market value of the property;*
- (e) if the property is subject to any compulsory facing in discount in terms of section 21, the amount of the discount; and*

(f) *if the property is subject to any additional rate in terms of section 22, the amount due for additional rates.*

(2) *A person is liable for payment of a rate whether or not that person has received a written account in terms of subsection 1. If a person has not received a written account, that person must make the necessary enquiries from the municipality.*

(own emphasis)

[18] On 4 October 2023, the applicant paid an amount of R792 045.81 towards rates and taxes to the Municipality for purposes of obtaining the clearance certificate aforesaid [which amount represented 2 years arrears for rates and taxes in respect of the property]. Applicant contends that the money was paid under duress/protest since it wanted to ensure transfer of the property to Park In, so as to avoid cancellation of the sale between the parties. That therefore the Municipality must pay back the money as it was not lawfully entitled to receipt of the claimed amount of the money paid by the applicant to the respondent, since the respondent, it alleges, never in terms of the applicable legislation, obtained the right levy rates against the applicant. It contends that the property was never valued, since the Municipality was reflected as the owner on annexure FA6.

The applicant was reflected as owner of the property in the Deeds Registry, and on the Municipal account.

[19] The Municipality denies this allegation, stating that annexure FA6 did not form part of the valuation roll. Further that the fact that the Municipality's name

still reflected as ‘owner’ on FA6, did not mean that the Municipality was the owner of the property; it had not been updated to reflect the applicant’s name.

[20] According to the Municipality, valuation rolls are published in the newspapers and Government Gazetted. It is for the property owners to keep abreast of property related concerns, including values of their properties.

[21] In *City of Tshwane Metropolitan Municipality v Lombardi Development (Pty) Ltd and others* [2018] 3 All SA 605 (SCA), it was stated that:

“The valuation roll must contain the market value of the property. Section 49 (1) requires the municipal valuer to submit the certified valuation roll to the municipal manager, who must then publish a notice stating that the roll is open for public inspection for a period stated in the notice, and inviting any person who wishes to lodge an objection to do so in the prescribed manner within the stated period. The section sets out the manner in which such notice must be disseminated. A valuation roll takes effect from the start of the financial year following completion of the public inspection period required by section 49 and remains valid for that financial year or for one or more subsequent financial years as the municipality may decide but in total not for more than four financial years. A municipality must cause a supplementary valuation roll to be prepared in respect of any ratable property which has come to be included in the municipality after the last general valuation.”

[22] The Municipality contends that the property has been evaluated since 2002; this cannot be disputed by the applicant.

[23] The fact that the Municipality still appeared as the owner on its internal document does not mean that the property was owned by the Municipality, it simply had not been updated to reflect the applicant's name. As already indicated, this internal document is said to not have been available to anyone other than those in the employ of the city; and the Municipality states that it is concerning how the applicant gained access to it.

[24] It is so that the deeds registry office and the applicant's municipal account showed the applicant as the registered owner of the property since 21 February 2014, therefore the applicant cannot be heard to be saying that the since the Internal system of the Municipality reflect the Municipality as the owner of the property, therefore the property is not ratable and/or could not have been valued correctly while still reflecting the Municipality as the owner.

[25] For all intents and purposes, the applicant was the owner of the property, and consequently, the applicant is liable for its property rates since 21 February 2014. The applicant cannot belatedly, in August 2023, after not having paid rates and taxes since 2014 when it took ownership of the property, seek to shun its responsibility, as actual owner, to pay rates and taxes for the property, which is vacant land classified as commercial.

[26] In *Nelson Mandela Bay Municipality v Amber Mountain Investments 3 (Pty) limited* [2017] JOL 37611 (SCA) it was held:

“levying of rates is an integral part of a municipalities annual budgetary process. The approval of the budget must go hand in hand with the determination of rates, as the revenue from rates is essential to fund the budgeted expenditure. It was for that reason that the property rate is

determined for each financial year. It is only once the rate is determined that the municipality can estimate its income for the financial year and prepare its budget in accordance with that projected income”.

[27] It is not in dispute that at the time of requiring a clearance certificate for Erf 1[...] in August 2023, the applicant had, for over nine (9) years, never paid any amount of money to the respondent for rates and taxes in respect of the property since acquisition/registration of the property in its name in February 2014. The applicant does not even deal with, nor deny the respondent’s allegation that since registration in February 2014, and as at the time this application was launched in 2023 it never paid a cent towards rates and taxes [for over nine (9) years]. In October 2023 it paid R792 045.81 because it desperately required issuance of the clearance certificate to save its business transaction with Park In.

[28] As at 7 August 2023, the applicant owed the Municipality R2 503 884.83. According to the Municipality, the applicant still owes it R1 855 765.18.

[29] No basis is set out by the applicant for saying that the property could not have been valued correctly. This Court has been referred to the pleadings filed during the urgent application in September 2023, copies of which are attached to the parties’ current application. At paragraph 5.11 of the founding affidavit in the urgent application aforesaid, the deponent to the founding affidavit states the following:

“5.11 Accordingly a certificate should be issued by the first respondent (referring to the Municipality) confirming that all amounts are paid up...”

[30] It is absurd to suggest illegality; more so on a State entity! How can anyone, under oath, suggest that the Municipality should lie and say that money has been paid when it has not been paid? This encourages acts of criminality [perjury, misrepresentation, defrauding the public purse]; and this would be contrary to the intention of section 118(1) of the Systems Act.

[31] In *City of Cape Town v Real People Housing (Pty) Ltd* 2010 (5) SA 196 (SCA) *Nugent JA pointed out that municipalities are obliged by the system act in terms of section 96 and 97 to collect money payable to them for services and property rights. They are required, to that end, to implement a credit control and debt collection policy and to adopt bylaws to give effect to the policy and its implementation and enforcement.*

The purpose of section 118(1) and (3), he said, is to assist municipalities in two ways:

“First, they are given security for repayment of the debt, and that it is a charge upon the property concerned [section 118(3)]. And secondly, municipalities are given the capacity to block the transfer of ownership of property until debts have been paid in certain circumstances. That is the effect of the provisions of S118 (1)...”

[32] The Municipality gave a market value of R4 900 000.00 in August 2023. The property was sold to Park In by the applicant for R10 000 000.00 in June 2023. There is no merit in the applicant’s assertion that the respondent should not have sought payment for the clearance certificate. As already indicated, in terms of section 118(1) the Municipality is bound to require payment for rates and taxes owed, prior to issuing a clearance certificate. The applicant paid just a

fraction of what it owed the Municipality, having regard to the fact that it had never paid a cent to the Municipality for rates and taxes for 9 years in respect of the property since it acquired ownership of the property in 2014.

[33] Surely it cannot be expected that the Municipality should place **R0.00** payment on the clearance certificate, nor maybe expect the Municipality to pay for the clearance certificate!! Otherwise on applicant's version how and who is supposed to pay for the clearance certificate, when the applicant owes the Municipality about R1.8 million rands for rates and taxes?

[34] The property was sold by the Municipality to the applicant in 2013 for about R14 million. To dispute the market value of R4 900 000 almost 10 years later, on a property which the applicant self was selling for R10M in 2023, hiding behind an alleged valuation roll, which happened to be an internal document of the Municipality, which was simply not updated, was just absurd. It was very clear on all facts, and on applicant's own version, that it is the applicant that was the registered owner of the property in question, and the technical approach adopted by the applicant not to pay its arrears for rates and taxes is merely a ploy to avoid paying the rates and taxes. There is no constitutional right to be protected in this regard.

[35] On the issue of the applicant not paying for rates and taxes throughout its ownership of the property, for a period of over 9 years, the irony is that on the deed of sale between the applicant and Park In, as already mentioned, at clauses 5 and 7, one of the conditions is that the purchaser shall pay rates and taxes; yet applicant was not paying rates and taxes; and still takes issue with having paid for the clearance certificate and seeks reimbursement of monies paid towards the

issuance of the clearance certificate. This cannot be; the applicant seeks to prejudice the public purse; and this cannot be in the interest of justice.

[36] The payment that is alleged to have been made under duress; is prescribed by law and therefore needs to be complied with by the registered owner.

[37] The applicant paid the bare minimum towards its outstanding account to retrieve a rates clearance certificate; and instead of settling the entire outstanding account once transfer took place, the applicant issued this application to reverse the amount already paid. This demonstrates complete *mala fides* on the part of the applicant.

[38] The applicant avers that the respondent is unjustly enriched, basing it upon the *condictio indebitii*, but fails to make out a case for such. The *condictio indebitii* does not apply. Payment of R792 045.81 made by the applicant was not made by mistake. The applicant owed the Municipality and still owes the Municipality a lot of money. The amount paid was towards arrear rates and taxes undisputably owed by the applicant, for the applicant to obtain a clearance certificate, as required by law/section 118 of the Systems Act.

[39] The applicant contends that the Municipality will be unjustifiably enriched by the money it paid towards outstanding rates and taxes. This cannot be correct. It is in fact the applicant who will be unjustifiably enriched if this Court were to grant the order sought, as it purchased the property from the City and as it has not paid levies towards the property during its nine years as registered owner, only claiming after nine years that the Municipality did not value the property correctly;

[40] The applicant claims that it never received any notification of the valuation roll. The Municipality contends that there are no records of the applicant making any queries in regard to its earlier levies account, even with the knowledge that it is the registered owner; further, that there are no records of any objections by the applicant in terms of section 50 of the Municipality Property Rates Act No. 6 of 2004.

[41] On the facts here, no case has been made out for the declarator sought by the applicant; nor has any case been made out for the return of the money paid by the applicant to obtain the clearance certificate. The applicant actually owes the Municipality a lot of money and seeks to raise technical points to shun its responsibility to pay for rates and taxes it owed to the Municipality as required by the law. Also, a person and/or an entity cannot be a registered owner of property then not take the responsibility of paying rates and taxed in respect of the property.

[42] On the facts, the applicant cannot be said to have made out a case for the order sought.

In the result an order is made in the following terms:

1. The application is dismissed with costs.

L M MOLOPA – SETHOSA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCE:**For the Plaintiffs****: Adv J C VILOEN****Instructed by****: JAQUES CLASSEN INCORPORATED****For the Respondent****: Adv A NADASEN****Instructed by****: MOTSOENENG BILL ATTORNEYS**