

SOUTH AFRICA / JUDGMENT

Moatshi v City of Tshwane Metropolitan Municipality (45183/2018) [2024]

ZAGPPHC 331 (11 April 2024)

[2024] ZAGPPHC 331

COURT

North Gauteng High Court, Pretoria

BEFORE

Collis

CASE / FILE NUMBER

45183/2018

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FLYNOTES:

MUNICIPALITY – Rates clearance certificate – Interest on arrears – Whether interest is chargeable for purposes of issuing clearance certificate – Interest may only be charged once demand has been made and there has been failure to pay as stipulated in terms of demand – Any demand may only be made upon municipality having rendered services and services having been utilized by consumer – Defendant prohibited from charging interest on any arrear municipal account prior to issuing clearance certificate – Local Government: Municipal Systems Act 32 of 2000, s 118(1).

IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1. Reportable : No
2. Of Interest To Other
Judges : No
3. Revised
11 April 2024
CASE NUMBER: 45183/2018

In the matter between:

-

TSHIAMO TSHEPISO

MOATSHI

Plaintiff

And

CITY OF TSHWANE

METROPOLITAN MUNICIPALITY Defendant

This judgment is issued

by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email.

The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 11 April 2024

JUDGMENT

COLLIS J

INTRODUCTION

- [1] These proceedings involve the interpretation of section 118(1) of the Local Government: Municipal Systems Act, 32 of 2000 (“the Act”). In particular, whether interest is chargeable for purposes of issuing a section 118 (1) certificate. The industry has adopted and refers to this certificate as a “clearance certificate”.
- [2] At the commencement of the proceedings the parties by agreement applied for a separation in terms of rule 33(4) of the Uniform Rules of Court for this Court to determine the preliminary point on the interpretation of section 118(1) of the Local Government: Municipal Systems Act, 32 of 2000 (“the Act), from the remainder of the dispute between the parties.
- [3] The parties further agreed that upon this Court making such a determination that a declaratory order should be made by this Court and once made for the remainder of the issues to be determined at a later stage.

BACKGROUND

- [4] The issues between the plaintiff and the defendant arose after the plaintiff purchased a property, namely erf 2200 Soshanguve F (“the property”), from the insolvent estate of the owner of the property, Amos Lusenga Lusenga, on 20 February 2015. Thereafter, the plaintiff applied for a section 118(1) certificate in order to obtain transfer of the property.
- [5] In response he received two certificates in December 2015, the defendant claiming payment respectively for the amounts of R215 773.37 and R658

638.64 (Bundle 019:1, p. 470 and 474).

[6] In these certificates the value of the property is indicated to be R310 000.00.

[7] Defendant subsequently issued further certificates, the amounts claimed for payment therein being so vastly different and excessive, which gave rise to the present dispute. By way of example, the following amounts were indicated to be payable by the defendant in terms of section 118(1) of the Act:

7.1 On 7 March 2017 R669 592.34 (see: 019:1, p. 483)

7.2 On 30 March 2017 R174 885.42 (see: 019:1, P. 465)

7.3 On 13 August 2019 R1 039 502.44 (see: 019:1, p. 462)

7.4 On 2 September 2020 R240 636.47 (see: 019:4, p.596).

[8] From the invoice dated 8 January 2019 the “balance brought forward” can be seen to have been R937 583.70 on 7 December 2018 (see: 019:2,

p. 493).To put this in perspective: the total of the municipal charges claimed for payment by the defendant in December 2018 amounted to R1 386.35 while interest in the amount of R7 575.10 was added (see: 019:2, p. 494). It is the plaintiff’s contention that the amounts claimed, compared to the amount of monthly municipal charges, justifies the manifest conclusion that interest must have been taken into consideration when calculating the amounts claimed to be payable in terms of section 118(1) of the Act.

[9] From the invoices it can further be seen that the market value of the property was increased by the defendant on 6 July 2020 to R1 475 000.00 (Bundle 019:2, p. 530).

[10] On perusal thereof it is also apparent that the owner of the property is indicated to be “Lusenga Martha Matladi (heir)”. From the extract of the records of the Deed Office, Pretoria it can be seen that the property was registered into the names of Amos Lusenga Lusenga and Lusenga Martha Matladi on 29 November 1995 (Bundle 019:1,

p. 478).

ISSUES TO BE DETERMINED

[11] The first question this Court was called upon to adjudicate herein was whether section 118(1) (b) of the Act provides for interest to be added to the amount reflected in the certificate to be issued and, if so, who is responsible for the payment of such interest.

[12] In the alternative, if it is found that the defendant is entitled to add interest to the amount reflected in the said certificate, how should this interest be calculated:

12.1 Should it be calculated with the inclusion of interest levied before the two year period commenced or should it only be levied upon those municipal charges which became due but remain unpaid in the two years preceding the date of application for the certificate; and

12.2 Is the defendant entitled to charge interest on any interest which remained unpaid?

LEGISLATIVE FRAMEWORK

[13] Section 118(1) of the Act stipulates as follows:

“A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration office of a prescribed certificate-

- (a) which certifies that all amounts due to 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”

RESTRAINT ON TRANSFER OF PROPERTY

[14] Section 118(1) of the Act thus prohibits the transfer of property until such time as a certificate was issued by the municipality, certifying that all municipal debts due in connection with the property during the two years preceding the date of application for the certificate “have been fully paid”.

[15] Differently put, the municipality is thus given the right to embargo the transfer of property situated in its area of jurisdiction, until such time as it certifies that arrear municipal charges, as contemplated in section 118(1) of the Act, have been paid after which transfer of the property can be effected.

[16] This embargo has been entrenched in our legal system since 1848, albeit on different terms.
[1]

[17] The purpose of section 118(1) of the Act was said to be a form of security furnished to municipalities for the repayment of debts. In terms hereof municipalities are given the ability to prevent the transfer of ownership of a property until the debts, as stipulated in the Act, were paid.[2]

[18] Counsel on behalf of the plaintiff had argued, that section 118(1) of the Act adversely affects a landowner’s ability to freely deal with his/her property, their ability to transfer the immovable property is limited and the registrar of deeds will not be authorized to transfer ownership thereof until such time as the municipality has issued a certificate, certifying that all outstanding debts were paid for the two years which preceded the date for application of the certificate.

[19] This so it was argued on behalf of the plaintiff constitutes a deprivation of property as contemplated in section 25(1) of the Constitution of the Republic of South Africa, 108 of 1996 (“the Constitution”).

THE PLAINTIFF’S POINTS OF ARGUMENTS

- [20] In essence the plaintiff took the view that on proper interpretation of section 118(1) of the Act it only provides for the inclusion of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties levied in the relevant period, to be included in the section 118 certificate.
- [21] It was argued that the section does not provide for a municipality to charge and include interest therein. To put it differently, the Act only provides for a municipality to include in the section 118 certificate all monthly municipal charges which fell due in the two years preceding the application for the certificate, exclusive of interest which might otherwise become due and payable as per the municipality's credit control and debt collection policy.

THE DEFENDANTS' POINTS OF ARGUMENT

- [22] The defendant however contends that it is empowered by the Local Government Systems Act, to charge interest on unpaid municipal account, and that all "amounts due" as envisaged in section 118(1) read with sections 96 and 97 of the Act, and the City of Tshwane Metropolitan Municipality Credit Control and Debt Collection Policy include interest.
- [23] On behalf of the municipality it was argued that the interpretation of section 118(1)(b) must be broad to incorporate all factors. That a sensible meaning be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the section.
- [24] Counsel further argued that the interpretation preferred by the plaintiff will upset trite principles of our law, including the principle of appropriation of payment, and the principle established in the Cohen case.
- [25] In addition the argument was advanced that the defendant issued the certificate and included in the amount indicated therein amounts which are due and payable in terms of section 118(1) of the Act, all monthly municipal charges levied in the two years preceding the date of application for the certificate.
- [26] It was further submitted that section 118(1) of the Act also permits for the defendant to add interest thereto and that it indeed had added interest to the amount reflected in the section 118 certificate.
- [27] The interest added was calculated and charged in respect of the following outstanding amounts:

27.1 The total outstanding balance which, according to their records (the correctness of which remains disputed) became due and payable prior to the commencement of the two-year period as envisaged in section 118(1) of the Act. This outstanding balance being inclusive of all municipal charges reflected on the monthly invoices issued in respect of the property and which remained unpaid together with single and compound interest added thereto; and

27.2 Interest levied on all amounts which became due and payable within the relevant two years' period preceding the application, of which payment remained outstanding. This interest having been calculated as from date upon which the respective monthly municipal charges became due. The defendant thereafter proceeded to charge interest on the unpaid interest. Defendant thus charges single and compound interest on all outstanding amounts which accumulated within the two years preceding the date of application for the certificate.

[28] Ultimately, counsel for the defendant had argued, that the purpose of section 118 (1) was closely discussed in the Constitutional Court judgment of *Mkontwana v Nelson Mandela Metropolitan Municipality*[3]. The Court therein held as follows:

"The purpose of section 118(1) is to furnish a form of security to municipalities for the payment of amounts due in respect of the consumption of water and electricity for the payment of amounts due in respect of the consumption of water and electricity (consumption

charges).

The ultimate effect of the law is that the property in connection with which the consumption charges have been incurred provides security for the payment of that consumption charge. In this sense the law burdens the owners of the property. Municipalities are obliged to provide water and electricity to the residents in their area as a matter of public duty. It is therefore important that the possibility that municipal debt remains unpaid be reduced by all legitimate means. Section 118(1) is concerned amongst other things, with the question whether the municipality or the owner of the property should bear the risk when non-owner occupiers who are obliged make these payments in the first instance failed to do so. In more specific terms therefore, the purpose of the provision is to place this risk on the owner. The purpose is important, laudable and has the potential to encourage regular payments of consumption charges and thereby to contribute to the effective discharge by municipalities of their constitutionally mandated functions. It also has the potential to encourage owners of property to discharge their civic responsibility by doing what they can to ensure that money payable to a government organ for the delivery of services is timeously paid..."

AUTHORITIES ON INTERPRETATION

[29] In *Natal Joint Municipal Pension Fund v Endumeni Municipality* the SCA laid down the correct legal approach to interpretation to be the following:

"Over the last century there have been significant development in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The present state of the law can be expressed as follow: Interpretation is the process of attributing meaning to words used in a language be it in legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances

attendant upon its coming to existence. Whatever the nature of the document consideration must be given to the language used in the light of the ordinary rules or grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible known for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against the temptation to substitute what they regard as reasonable, sensible or businesslike results for words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation...”

[30] Linton v Corser[4] in obiter dictum, it was emphasized by Centlivres, CJ that:

“interest is today the “life-blood of finance” and under modern conditions a debtor who is tardy in the due payment of a monetary obligation will almost invariably deprive his creditor of the productive use of the money and thereby cause him loss”.

[31] On interpretation counsel for the plaintiff had argued, that the point of departure in a process of interpretation will be the language used in section 118(1) of the Act, read in context and having regard to the purpose of the provision and the background to the preparation and production of the Act. Both the context and the language will hence be considered, neither being the predominant aspect.

[32] Thus, so it was argued by counsel for the plaintiff that it will be required of a Court, in the first instance, to attribute meaning to the words used in section 118(1) and the context of the Act. Therefore, this Court will be required, by way of interpretation, to establish whether the words used in section 118(1)(b) of the Act, “municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties” (“the municipal charges”), should be broadened to also include interest.

[33] Furthermore, that the description of the charges mentioned in section 118(1) of the Act was derived, from section 229(1) of the Constitution which stipulates as follows:

“Subject to subsections (2), (3) and (4), a municipality may impose –

- (a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and
- (b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value added tax, general sales tax or customs duty”

[34] Therefore, counsel had argued that section 229(1) of the Constitution is the enabling prescript, empowering the defendant to claim payment of these charges. Herein no reference is made to interest and no authorisation to recover same is found.

[35] In addition counsel for the plaintiff submitted that this Court should have regard to the dictionary definitions of the charges listed in section 118(1)(b) of the Act and as per the Collins online dictionary the following definitions are noteworthy:

35.1 “Rate” is the amount of money that is charged for goods or services. It is also defined to be the rate of taxation or the rate of interest, expressed as a percentage of the amount earned, gained as profit or borrowed;

35.2 “Fee” an amount of money paid to a person or organisation for a particular job or service provided;

35.3 “Levy” a sum of money that you have to pay, for example, as a tax to the government;

35.4 “Duty” a tax you pay to the government on goods that you buy;

35.5 “Service” something that the public needs, such as transport, communications facilities, hospitals or energy supplies, which is provided in a planned and organised way by the government or an official body;

35.6 “Surcharge” an extra payment of money in addition to the usual payment for something. It is added for a specific reason for example by a company because costs have risen or by a government as a tax.

[36] On the basis of the above definitions counsel contended that the ordinary meaning attributed to these municipal charges listed it is evident that interest was not included. The legislator did not exercise its discretion to confer on the defendant the right to claim payment of interest for purposes of section 118(1); none of the municipal charges listed can be interpreted to mean or include or refer to interest.

[37] Moreover, the legislator elected not to add one word, “interest”, to the municipal charges listed in section 118(1) of the Act; a list which can otherwise be described as a numerus clausus of the municipal charges to be included in the certificate. On this basis counsel concluded that it justifies a conclusion that the legislator specifically exercised its discretion to exclude interest in the said section.

[38] The above submission made by counsel this Court is in agreement with. If interest is specifically excluded in section 118, it cannot merely be read into the section without any qualification.

[39] The following definitions contained in the relevant legislation further militates against a finding that section 118 permits the charging of interest.

[40] By way of example, the definition of property rates, can be established from sections 2 and 3 of the Municipal Property Rates Act, 6 of 2004. It is stated that a municipality may levy a rate on a property in its area as per its rates policy. No stipulations addressing the recovery of interest can be found in this legislation.

[41] In order to regulate the duty of municipalities to recover the said municipal charges, the Local Government: Municipal Fiscal Powers and Functions Act, 12 of 2007 (“the Fiscal Act”) was promulgated. Herein:

41.1 “municipal service” was defined to be any of the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution, together with any other function assigned to a municipality in terms of the Act; interest is not included in these schedules;

41.2 a “municipal surcharge” was defined to mean a charge in excess of the municipal base tariff a municipality may impose on fees for municipal services rendered by or on behalf of a municipality; and

41.3 “municipal tax” was defined to be a tax, levy or duty a municipality may impose in terms of section 229(1)(b) of the Constitution. Although municipalities have been nominated as the collecting agent for municipal taxes within their areas, as per section 7 of the Fiscal Act, no provision is made for the recovery of interest.

Account means[5]

41.4 “a municipal account for services rendered, claim submitted and contractual obligation to the Municipality, and for assessment rates or any other tax levied by the Municipality. If such an account is not paid by the due date indicated on a statement, it will be regarded as being in arrears. If no due date is indicated on an account, it will be in arrears if not paid within 30 days after submission and the account shall reflect the name of the person liable for payment of the account, the market value of the property to which the account relates, the amount owing to the Municipality, the manner in which the amount due for property rates was calculated and the due date for payment of the amount, which amount shall include but is not limited to-

(a)

(g) Interest on amounts in arrears.) [own emphasis]

[42] If one in addition has regard to the Local Government: Municipal Systems Act (as referred to above as “the Act”) one finds “municipal service” to be defined as follows in section 1 thereof:

“... a service that a municipality in terms of its powers and functions provides to or for the benefit of the local community....”

[43] The issue of interest is however pertinently addressed in section 75A of the Act which reads as follows:

“General power to levy and recover fees, charges and tariffs

(1) a municipality may –

(a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and

(b) recover collection charges and interest on any outstanding amount.

(2) The fees, charges or tariffs refer to in subsection (1) are levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members”.

[44] Subsections

(3) and (4) proceed to prescribe the process to be followed by the municipality for purposes of invoking the right to collect interest. To put it differently, interest can only be charged in the event of a municipality having complied with the requirements of section 75A (2)

- (4) of the Act.

[45] This is followed by section 96 in terms of which a municipality is obligated to collect all money due and payable to it “subject to this act and any other applicable legislation” for purpose of which it is compulsory to adopt, maintain and implement a credit control and debt collection policy (“the policy”).

[46] Section 97 further regulates the contents of the policy and it provides, inter alia, that the policy must provide for:

“(e) interest on arrears, where appropriate”.

[47] Having regard to the above counsel had submitted, it is thus evident that in terms of the Act interest cannot be levied without more; the right to enable municipalities to claim interest must be established within the parameters of section 75A(2)

- (4) of the Act and same will only be chargeable “when appropriate”, as per section 97(1)(e) of the Act.

[48] Considering the sections quoted above, it follows that there is no stipulation to be found in the Act affording the municipalities carte blanche to levy interest as it deems fit and from the sections so quoted it is clear that interest can certainly not be claimed from a consumer unless the municipalities have complied with the provisions of section 75A(2)-(4) and section 97(1)(e) of the Act.

[49] On interpretation, the defendant had advanced the following arguments:

49.1 Firstly, the purpose of section 118(1) is paramount to the interpretation of section 118(1)(b). It is a factor that cannot be ignored. The purpose is important, laudable and has the potential to encourage regular payments of consumption charges and thereby to contribute to the effective discharge by municipalities of their constitutionally mandated functions.

49.2 To enable municipalities to administer and provide services effectively in a sustainable manner, as mandated by the Constitution it has to collect payment from users of such services timeously and promptly. Municipalities supply water and electricity to consumers in their area subject to the payment of a consumption charge.[6]

49.3 Relying on the decision *Municipality v Cohen's Trustee*[7] the defendant had argued that it would be apposite that one examines the municipal legislation(s), associated legislation(s) and municipal council adopted policies that deal with recovery of debts for municipal services rendered, with the intent to establish whether municipalities are empowered to charge arrear interest on unpaid

accounts.

[50] Having regard to what has been alluded to above, this Court is of the view, that municipalities are not prohibited to charge interest on arrear accounts in general. Accounts however can only be said to have fallen into arrears when firstly consumption has occurred by the user (who stands in a contractual relationship with the municipality), secondly a statement has been rendered by a municipality demanding payment and thirdly the account remains unpaid by the due date so set in the statement.

[51] Only once these three occurrences have taken place coupled with the enabling legislation can interest then be levied as it is only by then that a consumer/user would be in default. To the matter at hand, the plaintiff before Court, was not a consumer of the services; he had no contractual relationship with the municipality neither was he rendered with a statement demanding payment and has he failed to settle the account by due date as set out in the statement. This begs the question on what basis can it then be said that he is in default and then becomes liable for interest on an outstanding account/statement which he had failed to pay?

[52] The next question to be answered is whether it can be said to be appropriate to levy interest in circumstances where the Act only provides for interest in particular circumstances, subject to certain prerequisites, whilst the legislator elected to exclude interest from the operation of section 118(1) of the Act?

[53] This Court concludes that the answer to this question must be in the negative. This I say so for the following reasons:

53.1 As mentioned, interest may only be charged once a demand has been made and there has been a failure to pay as stipulated in terms of that demand;

53.2 any demand may only be made upon a municipality having rendered the services, and services having been utilized by the consumer.

[54] The next question which begs for an answer will be, what proviso would the legislator have included had it intended interest to be added to the list of municipal charges applicable for purposes of section 118(1) of the Act. The simple and short answer here would be, that if the legislator intended that any charges listed in section 118(1) to include interest on such charges, nothing prevented the legislator at the time to expressly include interest in the section. Absent such inclusion, it must follow that a court would be prohibited to read into the section the inclusion of interest as if it was so intended by the legislator.

- [55] The above question gives rise to the further question namely can this Court now broaden the list of municipal charges in section 118(1) of the Act to include the unconditional recovery of interest whilst the legislator failed to do so? Should this Court not similarly consider as to what qualification should be attached to the recovery of such interest.
- [56] It is for the above reasons that this Court conclude that it would be impermissible for a Court to read into section 118(1) the provision of “interest”. If indeed it was the intention of the legislator to include interest in the section, the legislator was at liberty to pass legislation and to particularized it in that fashion. This the legislator has failed to do, and given this omission a Court cannot simply encroach upon the domain of another arm of government.
- [57] There is another further point for consideration, namely that a municipality is duty bound to collect outstanding debts expeditiously and that such duty is imposed on them by the legislator. Would the legislator have provided for the instance in which the municipality neglected their duty for years on end and folded its arms and only when a property is in the process of being transferred then for such outstanding municipal services to be collected from the new owner. Here too the section itself foresaw the inherent prejudice to any new owner to pay for any historical outstanding municipal services and deemed it necessary that any new owner would only be liable for such services for a limited period being the preceding two years. This must be so as not to discourage new owners from purchasing properties where the historical debt is
- unaffordable and sometimes insurmountable.
- [58] As mentioned the defendant relied heavily on the judgment *City of Johannesburg v Cohen’s Trustees* 1909 TS 811. In this matter the trustees of the insolvent estate of Cohen tendered payment of the capital amount sought by the municipality for purposes of the clearance certificate but submitted that the municipality was not entitled to seek payment of interest in addition. The clearance certificate was not issued in terms of section 118(1) of the Act but in terms of section 26 of the Local Authorities Rating Ordinance, 43 of 1903 (“the ordinance”).
- [59] Premised on a principle of the common law, the general rule that no creditor can be compelled to accept payment of only a portion of the debt due to him, the Court found that a creditor is not obligated to receive payment of a part of a debt owed to him. In light hereof the Court found that the municipality was not compelled to issue a clearance certificate premised on a tender of only a portion of the outstanding debt, no creditor being obliged to receive payment of the principal debt without interest.
- [60] Therefore on an interpretation of the ordinance the Court further found that interest can be levied in terms thereof and premised on this found had found that the municipal charges and the interest which accrued constituted one debt. As a result, the Court found that the municipality acted within its right not to issue the clearance certificate absent payment of interest.

[61] What is of significant though in this matter is the fact that great reliance was placed by the Court upon the legislation attendant upon the certificate and the right permitted to the municipality for the recovery of interest. Section 21 of the ordinance stipulated as follows:

“In case any rates imposed under the provisions of this Ordinance shall remain unpaid after the date fixed by the Local Authority for payment thereof interest upon such rates shall be chargeable and recoverable

by the Local Authority at the rate of one per cent. for every month or portion of a month for which the rate remains unpaid reckoned from the date upon which the rates shall have been fixed to become due and payable”.

[62] The issue of the clearance certificate was addressed as follows in section 26 of the ordinance:

“No transfer or cession of any ratable property shall be passed before any Registrar of Deeds or Registrar of Mining Rights or other

Government official until a receipt or certificate signed by the Town Clerk or other person authorised by the Council shall be produced to such official for payment of the rates imposed on such property”.

[63] In relation to the above matter counsel for the plaintiff had argued that the municipality was in terms of the ordinance afforded carte blanche to levy interest whenever the circumstances permitted it; no procedural requirement was imposed nor was “appropriateness” a prerequisite, as opposed to the conditions in the Act. It is on this basis that counsel submitted that this is the first ground on which this matter is to be distinguished from the matter before the Court.

[64] Secondly this judgement was given in the pre- Constitutional area. In 1909. This is of importance by reason of the fact that it has been found that section 118(1) of the Act constitutes a deprivation of land as contemplated in section 25 of the Constitution. Differently put, if a new owner is unable to settle the arrear municipal account in order for the issuing of the section 118(1)(b) certificate, such prospective owner would be unable to effect transfer of the property onto his name. It is for this reason that any prospective new owner should be informed what amount will constitute the outstanding municipal account and whether such amount will be inclusive of interest or not. Absent a legal basis for the inclusion of interest it cannot be said that in a Constitutional dispensation which we find ourself in, that prospective owners’ rights in terms of section 25 will not be trampled upon.

[65] It has been for long a principal of our law that statutes that intrude upon established rights ought to be strictly construed. Here the matter *Dadoo Ltd v Krugersdorp Municipal Council*, 1920 AD 530 at 552 comes to mind wherein the following was found:

“It is a wholesome rule of our law which requires a strict construction to be placed upon statutory provisions which interfere with

elementary rights. And it should be applied not only in interpreting a doubtful phrase but in ascertaining the intent of the law as a whole”.

[66] As in the matter of Real People Housing[8] and in the present constitutional order a wide construction of a statute, that already intrudes upon protected constitutional rights, is not warranted if the section is open to a construction that intrudes to a more limited extent upon those affected rights. It is for this reason that the application of section 118(1) of the Act should not be broadened to include interest.

[67] This Court having concluded that the defendant herein is prohibited from charging interest on any arrear municipal account prior to issuing the section 118(1)(b) certificate, it therefore becomes superfluous to express an opinion on the other questions this Court was called upon to determine given the above finding.

ORDER

[68] In terms of Rule 33(4) the preliminary point on the interpretation of section 118(1) of the Act is separated from the remainder of the trial.

[69] It is declared that the certificate contemplated in section 118(1) of the Local Government Municipal Systems Act, 32 of 2000 (“the Act”) must be issued once all amounts due in connection with the property, as annunciated in section 118(1)(b) of the Act, have been paid, notwithstanding that interest on such amounts (if any) has not been paid;

[70] Nothing in the declaration, in paragraph 69 above, shall absolve the owner of the property and/or any other party who failed to make payment of the amounts, as annunciated in section 118(1)(b) of the Act and due in connection with that property, from being liable for the payment of interest levied on such outstanding amounts, if appropriate;

[71] Defendant to pay the costs, including costs of two counsel of which one being senior counsel.

[72] The remainder of the trial is postponed sine die.

C. COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES

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Instructed By:

MACHOBANE KRIEL INC

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Instructed By:

MOTSOENENG BILL ATTORNEYS

INCORPORATED ("MBA" INC)

Date of Hearing:

07 December 2022

Date of Judgment:

11 April 2024

[1] Jordaan & Others v City of Tshwane Metropolitan Municipality & Others 2017 (6) SA 287 CC para 15-17

[2] City of Cape Town v Real People Housing 2010 (5) SA 196 SCA, paras. 1 and 2.

[3] Mkontwana V Nelson Mandela Metropolitan Municipality and Bissett V Buffalo City Municipality & Bissett v Buffalo City Municipality;

Transfer Rights Action Campaign & Others V Members of the Executive Council Local Government & Housing, Gauteng &

Others 2005 (1) SA 530 (CC).

[4] 1952

(3) SA 685 (AD) para 695

[5] Section 1 of the policy definitions.

[6] Section 152(2) of the Constitution provides that a municipality must strive, within its financial and administrative capacity, to achieve the objects set out in section 152(1) of the Constitution. 109 Section 156(2) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer. 108 Section 164 of the Constitution, further prescribes that any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation

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[7] Johannesburg Municipality v Cohen's Trustee 1909 TS 811.

[8] 2010

(5) SA 196 (SCA).

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