

SOUTH AFRICA / JUDGMENT

Sombinge v Ethekwini Municipality and Others (D10016/2022) [2023] ZAKZDHC 80 (13 October 2023)

[2023] ZAKZDHC 80

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Hlatshwayo AJ

CASE / FILE NUMBER

D10016/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

Case

no: D10016/2022

In

the matter between:

THULANI
RICHARD SOMBINGE
APPLICANT
and
ETHEKWINI
MUNICIPALITY
FIRST RESPONDENT
JAYSON
BHARAT
SECOND RESPONDENT
MALTHIE
RATHINAND BHARAT
THIRD
RESPONDENT
THE
REGISTRAR OF DEEDS
PIETERMARITZBURG
FOURTH RESPONDENT
ORDER
1.

The
application is hereby dismissed.
2.
There is no
order as to costs.

JUDGMENT

Hlatshwayo AJ:

Introduction

- [1] In this matter the applicant seeks an order that the first respondent transfer or consolidate all outstanding debts appearing in the rates account of the second and third respondents (hereafter referred to as ‘the respondents’ unless otherwise stated) in respect of the property described as erf 874 Trenance Manor (‘the property’) onto the respondents’ personal accounts. A further relief sought is that the first respondent be ordered to issue a rates clearance certificate in respect of that property to the applicant free from any incumbrance or historical debt.
- [2] The first respondent did not oppose this application. The respondents did put up an opposition however, on the eleventh hour, the respondents’ attorneys served a notice of withdrawal as attorneys for the said respondents.

Background

- [3] A brief history of the matter is that the applicant and the respondents entered into a purchase and sale agreement in respect of the abovementioned property. The applicant proceeded to effect payment of the purchase price and when the respondents were called to perform their obligation in terms of the agreement and transfer the said property, the applicant alleges they failed to do so.
- [4] This caused the applicant to approach this court seeking an order compelling the respondents to do all things necessary to transfer the said property, failing which the Sheriff of the court is authorised to do so. Despite this order, the respondents failed to attend to the transfer.
- [5] The applicant sought to obtain a rates clearance certificate from the first respondent in order to give effect to the second part of the order allowing the Sheriff to sign transfer documents. The amount outstanding for rates was in the sum of R209 392 and the respondents were not prepared to pay this amount.

- [6] The applicant has now approached this court seeking an order that the first respondent in effect transfer the debt owing by the second and third respondents over the immovable property for their account or into their personal names and then issue a rates clearance certificate free from any encumbrances. The respondents' opposition as expressed in its papers was a fruitless exercise regard being had to the existing court order against them.

The law and findings

- [7] For the relief sought, the applicant relied on s 102(1) of the Local Government: Municipal Systems Act 32 of 2000 ('the Act') which provides as follows:

'A municipality may-

- (a) Consolidate any separate accounts of persons liable for payment to the municipality;
...'

- [8] It was submitted by Mr Bond on behalf of the applicant that this section permits the first respondent to consolidate and transfer the debt of a consumer to other debts and by implication the second and third respondent's debt owing to the municipality for rates in respect of the property in question may be transferred or consolidated to their personal names.

- [9] The applicant also contended that the first respondent has an obligation to recover the debt from the second and third respondents and if necessary, take legal action to recover the debt owed to it. Accordingly, the first respondent will not suffer any financial loss as the second and third respondents would still be indebted to it.

- [10] In addition, the applicant submitted that the failure of the first respondent to recover the debt is prejudicial to the applicant. The first respondent did not oppose the application.

- [11] Perhaps it is important to restate the legal and practical position that when transfer of immovable property is to be effected as envisaged by the applicant, the local municipality must issue a rate clearance certificate upon which a registrar of deeds may rely on to effect that transfer. Section 118(1) of the Act provides that:

'A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate

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- (a) issued by the municipality...in which the property is situated; and
(b) which certifies that all amounts that become 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.'

[12] It is axiomatic from the language used that the condition upon which the said certificate may be issued is when the aforementioned services have been fully paid. This is also clear from the subheading utilised in the Act titled “restraint on transfer of property”. This embargo placed by the legislature is consistent with the objectives of the Act as set out in the preamble which is to ensure financially and economically viable municipalities.

[13] The Supreme Court of Appeal in *City of Tshwane Metropolitan Municipality v Mathabathe and another*[1] had the occasion to consider the purpose and effect of Section 118(1) of the Act. Ponnann JA remarked that:

‘Municipalities are obliged to collect moneys that become payable to them for property rates and taxes and for the provision of municipal services (s 96). They are assisted to fulfil that obligation in two ways: first, they are given security for repayment of the debt in that it is a charge upon the property concerned (s 118(3)); and, second, they are given the capacity to block the transfer of ownership of the property until debts have been paid in certain circumstances.’

It is important to note that the Supreme Court of Appeal also referred to municipalities being given the capacity in terms of s 118(1) to block the transfer of ownership of “the property” until debts due to it have been paid.

[14] The applicant however argued that this court is empowered by s 102(1) of the Act to consolidate and transfer the debt to the personal names of the respondents. The applicant then implored the court to order the first respondent to issue a rates clearance certificate. The contention by the applicant is unsustainable for a number of reasons. Firstly, it is contrary to the express provision of s 118(1) which effectively vetoes a transfer and unambiguously provides that a rates clearance may be issued where the debt is fully paid.

[15] Secondly, nowhere in s 102(1) is there authority for the municipality to “transfer a debt from immovable property to personal name of a consumer”. It allows the municipality the power to credit payments made by a person in respect of any of their accounts to any other account held by that person[2]. The consolidation envisaged in s 102 is to consolidate the accounts in order to advance credit control and ensure effective debt collection in line with the stated objectives of the legislation. Clearly the debt is already in the names of the respondents by virtue of the fact that they are the registered owners of the property but also linked to the immovable property as security in terms of the Act. Thus, the order sought has no practical effect and not sensible.

[16] The interpretation sought by the applicant that consolidation under the circumstances includes transfer of debt from the property and would also include opening another account in the names of the respondents has no merit. It offends the golden rule of interpretation as set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[3] where Wallis JA stated:

‘The “inevitable point of departure is whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of 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 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’.

[17] Again in *City of Cape Town Municipality v Real People Housing (Pty) Ltd*, [4] Nugent JA mentioned the following:

‘I do not think it is necessary to cite authority for the trite proposition that a term cannot be implied in a statute if it would

contradict its express terms.’

I have alluded above the express terms of ss 102 and 118 of the Act. They do not support the interpretation advanced by the applicant nor the purpose for which the provision was promulgated.

[18] This court is not satisfied that the applicant is entitled to the relief sought. The fact that the first respondent is not opposing the application does not assist the applicant. Whilst this court must acknowledge and sympathise with the applicant regarding the frustrations he has endured in seeking to take transfer of the property to no avail, he is however not without options. The first respondent’s failure to collect monies due cannot however be used to support the applicant’s relief which does not comply with the legislation.

[19] Accordingly, the application must fail. In the result I make the following order:

HLATSHWAYO A J

Appearances

Counsel for the appellant: Mr. D. Bond Instructed by: Ivan Yerriah and Company attorneys Email: ivanyerriah@telkomsa 031 507 4766 For the respondents : No appearances Heard on: 03 / 10 / 2023 Delivered on: 13 / 10 / 2023

[1] *City of Tshwane Metropolitan Municipality v Mathabathe and another* 2013 (4) SA 319 (SCA) para 9.

[2] *PA pearson (PTY) LTD v Ethekwini Municipality and others* 2016 (4) SA 218 KZD

[3] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

[4] *City of Cape Town Municipality v Real People Housing (Pty) Ltd* 2010 (5) SA 196 (SCA) para

14.

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Prepared on 12 October 2026 · Esheria