

SOUTH AFRICA / JUDGMENT

Vusi Jiyane Eiendomme (Pty) Ltd v Govan Mbeki Local Municipality (3826/2020)

[2024] ZAMPMHC 46 (28 August 2024)

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COURT

Middelburg High Court, Mpumalanga

BEFORE

Langa

CASE / FILE NUMBER

3826/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION (MIDDELBURG LOCAL SEAT)

CASE

NO: 3826/2020

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED

: NO

28/8/2024

In

the matter between: VUSI
 JIYANE EIENDOMME (PTY) LTD
 PLAINTIFF/RESPONDENT
 AND
 THE GOVAN MBEKI
 LOCAL MUNICIPALITY
 DEFENDANT/EXCIPIENT

JUDGMENT

CORAM: LANGA J

Introduction and Concise Facts

- [1] This is an action for the rendering of statement of account and the debatement. The Plaintiff is Vusi Jiyane Eiendomme (Pty) Ltd, a company with registration number 1994/003104/07 with registered address at Suite 3[...], 3rd F[...] M[...] Building, S[...], Mpumalanga. The Defendant is the Govan Mbeki Local Municipality, a municipality with legal capacity established in terms of section 12(1) of the Local Government Structures Act 117 of 1998 with its head office situated at Secunda, Mpumalanga.
- [2] The Plaintiff instituted action against the Defendant claiming inter alia the following relief:
- 2.1. that the Defendant be ordered to render to the Plaintiff “a full account” supported by “all necessary source documents and/or vouchers” in respect of the Plaintiff’s immovable property;
- 2.2. that the abovementioned account be debated;
- 2.3. ancillary relief after the account has been debated.
- [3] The Plaintiff is the registered owner of an immovable property, to wit, Erf 5[...] situated at Kinross Extension 17, within the Defendant’s municipal boundaries. It is common cause that the parties have a long history of litigation in relation to the municipal accounts relating to the Plaintiff’s properties. The Plaintiff alleges in the particulars of claim that the Defendant has been intentionally, alternatively, negligently, charging the Plaintiff for municipal expenses, rates and taxes, electricity consumption and other related costs in relation to property which the Plaintiff is not legally liable for.
- [4] It further seems to be common cause that at some point around 2005, the Plaintiff installed pre-paid meters in all the units in the disputed property. Further, in about 2020 it lodged a formal dispute in terms of section 102 of the Local Government Municipal Systems Act 32 of 2000 (“Systems Act”) which dispute is still pending.

- [5] It is further common cause that around November 2021 the Defendant terminated electricity supply to the property which prompted the Plaintiff to bring an urgent application for the restoration of electricity. The matter was subsequently settled on 27 November 2021 when the Defendant agreed to restore the power supply to the property. The Plaintiff then subsequently instituted this action, ostensibly to avoid further electricity termination as the dispute is apparently still ongoing.
- [6] In support of the relief claimed, the Plaintiff alleges inter alia in paragraph 6 of the Particulars of Claim that the Defendant is obligated in terms of section 73(2)(a) and 95 of the Systems Act to account to it. Further, in paragraph 11 of the particulars of claim the Plaintiff avers that it “is in the interest of justice and important for the parties to enter into a debate so that the correct quantification of the abovementioned charges can be determined by court”.
- [7] In response to this action the Defendant excepted to the Plaintiff’s Particulars of Claim on the basis that it lacks the averments necessary to sustain a cause of action for the relief sought by the Plaintiff. The essence of the Defendant’s case is that the Plaintiff is not entitled to the relief it seeks and basically relies on the judgment of the Supreme Court of Appeal in *Moila v The City of Tshwane Metropolitan Municipality* 2017 JDR 0532 (SCA), (“Moila”).
- [8] Based on this case, the Defendant contends that the right to debate an account is not coextensive with the right to receive an account and that there is therefore no obligation on the Defendant to provide any statement of account and to enter a debatement thereof. The Defendant argues further that contrary to the Plaintiff’s averments, sections 73(2)(a), 95(f) and (g) of the Systems Act (or any other statutory provision) do not, either expressly or by implication, impose an obligation on the Defendant to render a full account supported by all necessary source documents and/or vouchers and to enter a debatement of the said account.
- [9] The Defendant further contends that the Interest of justice and importance also do not constitute a basis upon which the Plaintiff would become entitled to a debatement of accounts. The Defendant further contends that as there exists no fiduciary relationship between the parties, the Plaintiff is not entitled to the debatement. Lastly, the Defendant argues that the Plaintiff’s Particulars of Claim lack the averments necessary to sustain a cause of action.
- [10] On the other hand, the Plaintiff contends that the *Moila* judgment relied on by the Plaintiff is not applicable in this matter as in that case the plaintiff had not lodged a dispute in terms of section 102 of the Systems Act and further did not refer to the provisions of the Systems Act in its Particulars of Claim. The Plaintiff contends therefore that as it has lodged a dispute in terms section 102 of the Systems Act, it has therefore exercised all its remedies in terms of section 95 of the Systems Act read with the Credit Control and Debt Collection Policy of the Defendant.

Issue to be decided

- [11] It is common cause between the parties that the issue to be decided in this exception is whether the Plaintiff is entitled to claim the rendering of a statement of account and debatement thereof and whether the claim by the Plaintiff is excipiable.

Applicable Statutory Provisions

- [12] Section 95 states as follows:

“Customer care and management

In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity-

- (a) establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and where applicable, a service provider;
- (b) establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider regarding the quality of the services and the performance of the service provider;
- (c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;
- (d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;
- (e) ensure that persons liable for payment, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
- (f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- (g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
- (h) provide mechanisms to monitor the response time and efficiency in complying with paragraph (g); and
- (i) provide accessible pay points and other mechanisms for settling accounts or for making pre-payments for services.”

Discussion

- [13] It is now settled law that in order to succeed in a claim for delivery and debatement of an account, the person seeking such an order must establish that a fiduciary relationship existed between the parties; or that there was a contractual agreement between the parties; or that there is a statutory obligation on the other party to deliver and debate the account. *ABSA Bank Bpk v Janse van Rensburg* 2002 (3) SA 701 (SCA).

Whether the Plaintiff has made the necessary allegations in the Particulars of Claim'

- [14] On a procedural point, the Defendant argued that the Plaintiff's Particulars of Claim lack the averments necessary to sustain a cause of action. It is common cause that in the Particulars (paragraphs 5 and 6), the Plaintiff refers to sections 73 and 95 of the Systems Act which it ostensibly relies on. In paragraph 9.1 the Plaintiff alleges that notwithstanding the demands, the Defendant failed to provide mechanisms to monitor the response and efficiency in complying with its obligations in respect of the formal dispute declared. In paragraph 10 the Plaintiff states that despite the attempts to engage the Defendant on the amounts payable, the Defendant continues to impose the charges which it labels as erroneous. The Plaintiff further avers in paragraph 11 that it is in the interest of justice and important for the parties to enter into a debate. Further, the relief sought by the Plaintiff is that the Defendant be ordered to render to the Plaintiff a full account supported by "all necessary source documents and/or vouchers" in respect of the Plaintiff's immovable property and that the account be debated.
- [15] Considering the above, I am satisfied that although the Defendant contends that the Particulars of Claim do not allege facts to support the cause of action, I am however of the view that reading the pleading as a whole, the Plaintiff has alleged the minimum facts necessary to sustain the cause of action. The Plaintiff has not only alleged that the Respondent is duty bound to render a statement of account and the debatement thereof, but it has also made reference to the provisions of the System Act as stated above. The Defendant's argument recognises this fact. I am therefore satisfied that the Defendant is aware of the case to meet. In the result I find that the Particulars of Claim cannot be dismissed on this ground.

Statement and debatement of municipal account

- [16] I now turn to the main ground of the exception on the merits. As stated above, the Defendant's ground of exception on the merits is that based on Moila, Plaintiff's Particulars of Claim lacks the averments necessary to sustain a cause of action for the relief sought. In the light of this argument, it is necessary to closely examine this judgment.

- [17] It is common cause that like in the present case, Moila claimed that the municipality incorrectly charged him for accounts for utility services that were not due and payable by him but by the previous registered owner of the property. Moila then instituted an action against the municipality seeking an order that the municipality should render an account together with substantiating documents reflecting the correct charges and further be ordered to debate the account.
- [18] After the High Court dismissed Moila's action, he appealed to the Supreme Court of Appeal. In the Supreme Court of Appeal, Moila contended that subsections 95(f) and (g) of the Systems Act created, by necessary implication, a right to a debate of the account. The Supreme Court of Appeal rejected the contention and referred to the principles enunciated in the ABSA Bank Bpk matter, *supra*. It held that Moila did not meet the requirements for an order against the municipality to debate an account because he did not show *inter alia* that there existed a fiduciary relationship between him and the municipality; that there existed a contractual agreement between him and the municipality or that a statutory provision created such an obligation.
- [19] It further pointed out that section 95(f) is for the benefit of persons liable for the payment of accounts for municipal services to receive prompt redress in the case of inaccurate accounts and not for the debatement thereof. It further held that section 95(g) entitles the consumer to prompt response in respect of complaints and to receive corrective action concerning the account but not a debatement thereof. In essence the court held that Moila did not meet the requirements stated in the ABSA Bank Bpk-case.
- [20] The Plaintiff challenges the Defendant's reliance on Moila and contends that the facts of the present matter are distinguishable from those in Moila. For instance, the Plaintiff argues in this respect that the plaintiff in Moila had not lodged a dispute in terms of sections 102 of the Systems Act whereas in *casu* the Plaintiff has lodged a dispute. The Plaintiff argues further that unlike in the present case, the plaintiff in Moila did not refer to the relevant provisions of the Systems Act in its particulars of claim, but only referred thereto in argument. The Plaintiff further relies on paragraph 12 of Moila where the court stated the following:
- "[12] The Court a quo usefully referred to those provisions of sections 95(f) and (g) of the LGMS, which provide for accessible mechanisms respectfully to "query or verify accounts", "appeal procedures" and "dealing with complaints", together with "corrective action". Much that could be in dispute is governed by Municipal By-laws. As that court noted, the deceased would not have been without equitable remedies if he had wished to resort to them. His remedy would have been to avow of his rights under section 95 of the LGMS."*

- [21] Based on the above, the Plaintiff argues that Moila did not put a blanket bar to statement and debatement and that it is relying on a statutory duty placed on the Defendant by section 95 of the Systems Act. The Plaintiff argues further that it has exhausted all remedies in terms of section 102 and accordingly relies on section 73 and 95 for the statement and debatement. In addition, the Plaintiff argues that any event, article 16 of the Credit control and Debt Collection Policy dated 26 May 2016 also specifically allows for the contestation of accounts.
- [22] It is common cause that in the present matter the dispute stems from the Defendant's alleged intentional or negligent charging of the Plaintiff for municipal expenses, rates and taxes, electricity consumption and other related costs. It is apparent from the Plaintiff complaint that it has been provided with the accounts envisaged in section 95(e) which it disputes. This is confirmed by the fact that the Plaintiff has declared a formal dispute in relation to these accounts which it alleges are incorrect. Nowhere in the papers does the Plaintiff allege that it was not provided with the accounts envisaged in section 95(e). The Plaintiff has in fact followed the correct process by declaring a dispute when it received the said accounts. What it should have done is to exhaust the process which it confirms has not yet been finalised. The Plaintiff therefore cannot rely on section 95(e) in circumstances where it has already been provided with the accounts.
- [23] Regarding the reliance by the Plaintiff on the Credit Control and Debt Collection Policy dated 26 May 2016, (the Policy), this too is misplaced. While the Policy provides that accounts can be contested, it however also provides for a mechanism to do so. Delivery of a statement and debatement is not one of them. The Plaintiff therefore cannot rely on this Policy to enforce debatement of account.
- [24] In conclusion, it is clear that while section 95 creates duties for the municipalities, it also provides remedies for the consumers. It grants the Plaintiff the right to inter alia receive accounts and to have prompt redress in the case of inaccurate accounts. Section 95(f) and (g) further requires the Defendant to provide accessible mechanisms to query or verify accounts and appeals procedures to promptly deal with inaccurate accounts. The section however does not provide for the delivery and debatement of a statement or account in relation to the levying of rates and other taxes by a municipality.
- [25] In my understanding, the reliance by the Plaintiff on paragraph [12] of Moila constitutes misinterpretation of the paragraph. While the court correctly pointed out that 95 provides for accessible mechanisms to inter alia query or verify accounts as well as appeal procedures, it however also stated that it does not provide for the right to debatement. The Plaintiff is accordingly wrong in its assertion that Moila is not applicable to the facts of this case.
- [26] It is evident that while section 95 gives the Plaintiff the right to receive an account, it however does not grant the Plaintiff the right to the debatement of the account. This right to receive the account is accordingly not coextensive with the right to the debatement as contended by the Plaintiff. In any event, the Plaintiff has already resorted to section 95 by

lodging a dispute in terms of section 95(f) read with section 102 of the Systems Act. Consequently, the reliance by the Plaintiff on section 95 for the debatement of account cannot be sustained as the section does not, expressly or impliedly, confer to the Plaintiff any right to the debatement of account.

Conclusion

[27] Consequently I conclude that the Plaintiff is not entitled to the relief sought on the basis of section 95. Likewise, the Plaintiffs contention that the relief sought must be granted as it is important and in the interest of justice also stands to fail. Furthermore, it is clear that the relationship between the parties is that of debtor and creditor which does not fall within a fiduciary relationship. Lastly no contractual obligation on the Defendant to provide the account and debatement thereof has been established. In the light of the above, the Defendant has made out a case for the exception and setting aside of the Plaintiff's Particulars of Claim.

Order

[28] In the result I make the following order:

1. The exception is upheld and the Plaintiff's Particulars of Claim is struck out;

The Plaintiff is ordered to pay the costs of the exception.

MBG LANGA

JUDGE OF THE HIGH COURT

Appearances:

For the Applicants: Advocate Adv J van der Merwe Instructed by: Couzyn Hertzog & Horak
For the Respondent: Advocate D Swart Instructed by: Cronje de Waal-Skhosana Inc. Date heard: 23 July 2024 Date delivered: 28 August 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 28 August 2024 at 12h00.

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Prepared on 10 October 2026 · Esheria