

Constitutional Court Case Study: Liebenberg v Bergrivier Municipality

CCT 104/12 [2013] ZACC 16

Case Details

| Aspect | Information |
|------------------|---|
| Case Number | CCT 104/12 |
| Citation | [2013] ZACC 16 |
| Court | Constitutional Court of South Africa |
| Judge | Khampepe J (with concurring opinions) |
| Date of Judgment | 2013 |
| Applicants | Liebenberg and Others |
| Respondent | Bergrivier Municipality |
| Subject Matter | Legality of municipal property rates levying |
| Key Issue | Whether rates levied without proper promulgation in the Provincial Gazette are lawful |

Background

The Liebenberg case concerns the legality of property rates levied by the Bergrivier Municipality for the financial years 2006/2007, 2007/2008, and 2008/2009. The applicants challenged the municipality's claim that it had lawfully imposed these rates, arguing that the rates were not properly promulgated in accordance with the requirements of Section 14(2) of the Local Government: Municipal Property Rates Act, Act 6 of 2004 (the MPRA). The municipality defended its actions by claiming that it had published notices of the relevant rates in local newspapers and therefore had substantially complied with the requirements of Section 14(2) of the Rates Act. The municipality contended that an organ of state need only substantially comply with its statutory obligations regarding the promulgation of taxes in order for the imposition of those taxes to be lawful.

Key Legal Principles Established

1. Strict Promulgation Requirements

The Constitutional Court held that legislative enactments must be duly promulgated by publication in the relevant Gazette in order to have the force of law. This requirement is a matter of both common law and statutory law, and further in terms of the Constitution. The Court stated:

"It is a requirement of both the common law and statute that subordinate legislation, even if it has been validly enacted, is not of binding force and effect in law until it has been promulgated. The requirement is subject to qualification."

2. Rejection of "Substantial Compliance" for Legislative Acts

The Court firmly rejected the municipality's defense of "substantial compliance." Justice Khampepe held that while the doctrine of substantial compliance may apply to administrative acts, it cannot be applied to legislative enactments, particularly those relating to the imposition of taxes.

The Court emphasized:

"In accordance with the jurisprudence set out above, strict compliance with formal promulgation precepts is required and 'substantial compliance' can offer the Municipality no defence. There is, furthermore, no indication in the Rates Act that section 14(2) is merely directory in nature – the requirement it contains is stated in unambiguous and mandatory terms. Publication in a local newspaper was therefore insufficient to discharge the Municipality's obligation to promulgate the rates resolutions by publication in the Provincial Gazette."

3. The Three-Fold Requirements of Section 14

The Court identified that Section 14 of the MPRA imposes three distinct and peremptory requirements:

Subsection (1): Requires that a rate-levying resolution must be "passed by the municipal council with a supporting vote of a majority of its members." This ensures that rating decisions are democratically made by elected representatives.

Subsection (2): Requires that the rates resolution must be promulgated by publication in the Provincial Gazette. This is the constitutive act of legality—promulgation by means of publication in the Gazette gives effect to the rates resolution as a source of law for the relevant period.

Subsection (3): Requires that the municipality must inform the public of its rates obligations for the forthcoming year. This ensures that members of the public are not expected to comply with laws of which they might not ordinarily have knowledge.

4. Discrete and Peremptory Obligations

The Court held that Section 14 clearly imposes discrete and peremptory obligations.

Discharge of one such obligation cannot, on its own, constitute discharge of another. While publication in a local newspaper may suffice to satisfy the requirements of Section 14(3)(b), it certainly cannot discharge the obligation set out in Section 14(2).

5. The Principle of Legality at the Heart of the Constitution

Justice Khampepe emphasized that the principle of legality lies at the heart of South Africa's modern constitutional dispensation. The Court stated:

"Indeed, with the principle of legality lying at the heart of our modern constitutional dispensation, I fail to see how we could or should adopt a less exacting standard for the legality of legislative acts than the standard observed in the Transvaal in 1904 and in the Union in 1922."

6. The Social Contract and Lawful Taxation

The Court grounded its decision in the fundamental principle that taxation goes to the very heart of the social contract between government and its people. The Court held:

"Where the State purports to extract taxes from its citizens – conduct which goes to the very heart of the social contract between a government and its people – that extraction must be done in a lawful manner. Where a local authority purports to impose rates, that imposition must be done in accordance with the constraints that Parliament has imposed. If we are to give cognisance to the fact that the Constitution now empowers municipalities to exercise original legislative powers, we must also accept that municipal authorities may no longer adopt an informal approach to the exercise of their powers."

7. Prohibition on Informal Exercise of Legislative Powers

The Court held that municipalities cannot exercise their original legislative powers in an informal manner. The Court stated:

"Similarly, it cannot be the case that municipalities are empowered to extract taxes pursuant to 'laws' that they devise, when citizens are unable to find those laws anywhere in the statute books. That is wholly inconsistent with a State founded on the principle of legality."

The Court Order

Based on the foregoing analysis, the Constitutional Court upheld the legality challenges against the imposts for the years 2006/2007, 2007/2008, and 2008/2009. The Court declared that because the resolutions in terms of which the municipality purported to levy rates for these years were not duly promulgated by publication in the Provincial Gazette as required by Section 14(2) of the Rates Act, those rates were unlawfully imposed and the municipality has no entitlement thereto.

Advantages and Benefits for South African Communities

1. Constitutional Elevation of Taxpayers' Rights

The Liebenberg case represents the highest level of judicial protection for taxpayers in South Africa. By grounding the decision in the Constitutional principle of legality and the social contract between government and citizens, the Constitutional Court has elevated taxpayers' rights to the constitutional level. This means that challenges to unlawful municipal taxation are not merely technical legal disputes—they are constitutional matters of the highest importance.

2. Definitive Rejection of "Substantial Compliance"

The Constitutional Court's definitive rejection of "substantial compliance" as a defense for municipalities is a watershed moment. This means that municipalities cannot escape accountability by claiming they have "substantially" complied with statutory requirements. The standard is strict compliance, and there are no exceptions.

3. Clear and Unambiguous Legal Standard

The judgment provides a clear and unambiguous legal standard that applies nationwide. All municipalities must understand that:

- Rates must be promulgated in the Provincial Gazette (not local newspapers)
- This is a mandatory, not discretionary, requirement
- There is no doctrine of "substantial compliance" that can excuse non-compliance
- Failure to comply renders the rates unlawful and not due and payable

4. Protection of Democratic Principles

By requiring strict compliance with Section 14(1) (that rates be passed by council with majority support), the Court protects the democratic principle that rate-levying decisions must be made by elected representatives. This prevents municipalities from imposing rates through informal or non-democratic processes.

5. Protection of Public Participation Rights

By requiring strict compliance with Section 14(3) (that the public be informed of rates obligations), the Court protects the public's right to know about and participate in the rate-levying process. This ensures that citizens are not expected to comply with laws they could not reasonably know about.

6. Strengthening of the Rule of Law

The judgment reinforces that no government entity—not even a municipality—is above the law. The principle of legality applies with equal force to municipalities as it does to national and provincial governments. This strengthens the rule of law throughout South Africa.

7. Empowerment of Communities to Challenge Unlawful Taxation

The judgment provides communities with a powerful legal tool to challenge unlawful municipal taxation. The standard is clear: if rates have not been properly promulgated in the Provincial Gazette, they are unlawful and not due and payable. Communities can use this principle to challenge decades of unlawful taxation.

8. Protection of Fundamental Rights

The judgment protects fundamental rights including:

- The right to lawful governance
- The right to know the laws that apply to you
- The right to participate in democratic decision-making
- The right to be protected from arbitrary government action
- The right to have the rule of law applied equally to all

9. Nationwide Applicability

Unlike High Court decisions which apply only in the jurisdiction of that court, Constitutional Court decisions apply nationwide. The Liebenberg judgment therefore provides protection to communities across all nine provinces of South Africa.

10. Precedent for All Future Cases

The Liebenberg judgment establishes binding precedent for all future cases involving municipal rate levying. All lower courts must follow the principles established in this judgment. This means that communities bringing similar challenges in High Courts across the country can rely on the Constitutional Court's authority.

Comparison with Other Landmark Cases

Timeline of Related Cases

| Case | Year | Court | Key Holding |
|------------------------------|------|----------------------|--|
| Liebenberg v Bergrivier | 2013 | Constitutional Court | Strict promulgation in Provincial Gazette required; "substantial compliance" rejected |
| Rademan v Moqhaka | 2013 | Constitutional Court | No obligation to pay for services not rendered; residents have right to withhold payment |
| Koster, Derby, Swartruggens | 2018 | High Court | Unpromulgated rates are unlawful; residents can declare disputes and withhold payment |
| Laingsburg Ratepayers | 2024 | High Court | Confirms Koster principles; rejects "substantial compliance" defense |
| Reddersburg Ratepayers Union | 2024 | High Court | Interdicts municipality from disconnecting services during disputes |

Comparative Analysis

Liebenberg v Bergrivier (Constitutional Court, 2013)

Strengths:

- Highest court in the land
- Binding on all lower courts nationwide
- Grounded in constitutional principle of legality
- Definitive rejection of "substantial compliance"
- Applies to all municipalities in all provinces

Focus:

- Procedural legality of rate-levying
- Requirement for promulgation in Provincial Gazette
- Democratic principles in rate-levying

Limitations:

- Decided in 2013, before the subsequent cases
- Does not address service delivery failures
- Does not address practical enforcement mechanisms

Rademan v Moqhaka (Constitutional Court, 2013)

Strengths:

- Highest court in the land
- Establishes right to withhold payment for unrendered services
- Provides substantive protection for residents

Focus:

- Right to withhold payment for services not rendered
- Relationship between service delivery and payment obligations

Complementary to Liebenberg:

- While Liebenberg addresses procedural legality, Rademan addresses substantive rights
- Together, they provide both procedural and substantive protections

Koster, Derby, Swartruggens (High Court, 2018)

Strengths:

- Applies Liebenberg and Rademan principles in practical context
- Demonstrates that courts will enforce these principles
- Provides template for other communities

Focus:

- Practical application of Liebenberg principles
- Confirmation that unpromulgated rates cannot be enforced

Relationship to Liebenberg:

- Koster is essentially an application of Liebenberg principles
- Koster confirms that Liebenberg is not merely theoretical

Laingsburg Ratepayers (High Court, 2024)

Strengths:

- Recent confirmation of Liebenberg principles
- Rejects municipality's attempt to invoke "substantial compliance"
- Demonstrates consistent judicial support

Focus:

- Confirmation that "substantial compliance" is not a defense
- Application of Liebenberg principles 11 years later

Relationship to Liebenberg:

- Laingsburg explicitly references Liebenberg
- Shows that Liebenberg principles remain firmly established

Reddersburg Ratepayers Union (High Court, 2024)

Strengths:

- Provides proactive protection through interdiction
- Prevents municipalities from retaliating against residents
- Demonstrates practical effectiveness of legal principles

Focus:

- Protection from service disconnection during disputes
- Enforcement mechanism for residents' rights

Relationship to Liebenberg:

- Reddersburg builds on Liebenberg by providing enforcement protection
- Shows how Liebenberg principles can be practically enforced

Synthesis: A Comprehensive Legal Framework

The five cases together create a comprehensive legal framework for municipal accountability:
1.Liebenberg provides the constitutional foundation (strict promulgation required)

- 2.Rademan provides the substantive rights (no payment for unrendered services)
- 3.Koster demonstrates practical application (unpromulgated rates cannot be enforced)
- 4.Laingsburg confirms the principles remain settled law (no "substantial compliance" defense)
- 5.Reddersburg provides enforcement protection (no service disconnection during disputes)

This framework creates multiple layers of protection for communities:

- Constitutional protection (Liebenberg and Rademan at Constitutional Court level)
- Practical confirmation (Koster, Laingsburg, Reddersburg at High Court level)
- Procedural protection (strict promulgation requirements)
- Substantive protection (right to withhold payment for unrendered services)
- Enforcement protection (interdiction against service disconnection)

Strategic Implications for Communities

1. A Solid Legal Foundation

Communities now have a solid legal foundation, grounded in Constitutional Court precedent, to challenge unlawful municipal taxation. The Liebenberg judgment provides the highest level of judicial authority.

2. A Replicable Strategy

Communities can use the Liebenberg principles to challenge municipal rate levying by:

- Researching whether rates were properly promulgated in the Provincial Gazette
- Documenting any failures to comply with Section 14 requirements
- Organizing collectively through ratepayers' associations
- Bringing legal challenges based on the Liebenberg principles

3. A Cascade of Victories

The consistent victories in Liebenberg, Rademan, Koster, Laingsburg, and Reddersburg demonstrate that courts are willing to enforce these principles. This cascade of victories is likely to encourage more communities to bring similar challenges.

4. A Template for Transformation

The Reddersburg case demonstrates how communities can use these legal principles to transform themselves. By declaring disputes and redirecting funds to community service delivery, communities can achieve remarkable results.

Conclusion

The Liebenberg v Bergrivier Municipality case represents a watershed moment in South African municipal law. By grounding the decision in the constitutional principle of legality and the social contract between government and citizens, the Constitutional Court has established that municipalities must strictly comply with statutory procedures for levying rates. There is no doctrine of "substantial compliance" that can excuse non-compliance.

The judgment provides communities across South Africa with a powerful legal tool to challenge unlawful municipal taxation. When combined with the principles established in Rademan, Koster, Laingsburg, and Reddersburg, the Liebenberg judgment creates a comprehensive legal framework for municipal accountability and community empowerment. The advantages for communities are substantial: constitutional protection of their rights, clear legal standards for municipal compliance, protection of democratic principles, strengthening of the rule of law, and practical mechanisms for enforcing their rights. These advantages have been demonstrated in practice through the successful challenges brought by communities in Koster, Laingsburg, and Reddersburg.

As more communities become aware of these legal principles and organize to enforce them, South Africa is witnessing a fundamental shift in the relationship between municipalities and their residents. The days of municipalities acting with impunity in violation of statutory procedures are coming to an end. The rule of law is being strengthened, and communities are being empowered to take control of their own governance and service delivery.

Key Takeaways

| Principle | Significance |
|-----------------------------|--|
| Strict Promulgation | Rates must be promulgated in Provincial Gazette; local newspapers are insufficient |
| No "Substantial Compliance" | Municipalities cannot escape accountability by claiming substantial compliance |
| Constitutional Foundation | Decision grounded in constitutional principle of legality |
| Democratic Principles | Rate-levying must be done by elected representatives with public participation |
| Rule of Law | No government entity, including municipalities, is above the law |
| Community Empowerment | Communities have legal tools to challenge unlawful municipal taxation |
| Nationwide Application | Constitutional Court decision applies to all municipalities in all provinces |
| Binding Precedent | All lower courts must follow Liebenberg principles |

References

- 1.Liebenberg and Others v Bergrivier Municipality and Another (CCT 104/12) [2013] ZACC 16; 2013 (6) SA 549 (CC); 2013 (11) BCLR 1338 (CC) (25 October 2013)
- 2.Local Government: Municipal Property Rates Act, Act 6 of 2004
- 3.Local Government: Municipal Systems Act, Act 32 of 2000
- 4.Constitution of the Republic of South Africa, Act 108 of 1996
- 5.Rademan v Moqhaka Local Municipality and Others (CCT 41/12) [2013] ZACC 11; 2013 (4) SA 225 (CC); 2013 (7) BCLR 791 (CC) (26 April 2013)
- 6.Koster, Derby, Swartruggens Taxpayers' Association v Kgetleng River Local Municipality (M152/2014) [2018] ZANWHC 77 (8 February 2018)
- 7.Laingsburg Ratepayers Association v Laingsburg Local Municipality (11384 of 2023) [2024] ZAWCHC (High Court of South Africa, Western Cape Division)

8.Reddersburg Ratepayers Union v Kopanong Local Municipality (5451/2024) (High Court of South Africa, Free State Division, Bloemfontein) (1 October 2024)