

Case Study: Koster, Derby, and Swartruggens Taxpayers Association v Municipality

A Landmark Victory for Municipal Accountability in South Africa

Case Number: M152-2014

Court: High Court of South Africa

Judge: A M Kgoele

Date of Hearing: February 8, 2018

Date of Judgment: 2018

Applicant: Koster, Derby, and Swartruggens Taxpayers Association

Respondent: Municipality (Van Rooyen Tlhapi Wessels Inc)

Executive Summary

The Koster, Derby, and Swartruggens Taxpayers Case represents a significant victory for communities in their struggle against unlawful municipal taxation. The High Court declared that property rates and taxes levied by the municipality for the financial years 2010/2011, 2011/2012, 2012/2013, and 2013/2014 were unlawfully levied in violation of the Local Government: Municipal Property Rates Act, Act 6 of 2004 (MPRA). This case builds directly on the principles established in the Rademan judgment and demonstrates the practical application of those principles in protecting community rights.

Case Background

The Dispute

The Koster, Derby, and Swartruggens Taxpayers Association brought an application against the municipality, challenging the legality of property rates and taxes levied on accounts of the association's members for four consecutive financial years: 2010/2011, 2011/2012, 2012/2013, and 2013/2014. The applicant contended that these rates and taxes were levied in contravention of the MPRA and therefore were not due and payable to the municipality.

The Core Issues

The case centered on the municipality's failure to comply with critical procedural requirements mandated by the MPRA, specifically:

1. Failure to Publish Valuation Rolls Timeously: The municipality failed to publish the valuation roll within the prescribed 21-day period required by Section 49(1) of the MPRA.
2. Denial of Public Participation Rights: By failing to publish the valuation roll in time, the municipality denied ratepayers their constitutional right to participate in the preparation of the valuation roll as required by Section 49 of the Act.

3. Improper Promulgation of Rates: The municipality failed to properly promulgate resolutions levying rates in accordance with Section 14 of the MPRA.
4. Failure to Comply with Procedural Requirements: The municipality did not comply with the mandatory publication and notification requirements specified in Sections 14(2) and 14(3) of the MPRA.

Legal Analysis and Court Findings

The Valuation Roll Defect (2010/2011 Financial Year)

The court found that the municipality's valuation roll for the 2010/2011 financial year was published only in March 2011, more than nine months after the implementation date of July 1, 2010. According to Section 32(1)(a) of the MPRA, a valuation roll takes effect from the start of the financial year following completion of the public inspection period required by Section 49.

Court's Finding: Since the valuation roll was not published prior to July 1, 2010, it could not legally take effect on that date. Therefore, the municipality had no valid basis for levying rates based on this valuation roll for the 2010/2011 financial year. The rates levied were unlawful.

The municipality attempted to rely on a purported condonation letter dated March 12, 2014, from the Member of the Executive Council (MEC) for Local Government. However, the court found this letter to be insufficient because:

- It was dated four years after the non-compliance occurred
- It did not specifically address the non-compliance with Section 49(1)
- It amounted to inadmissible hearsay
- The MEC lacked authority to condone non-compliance with procedural requirements that go to the root of constitutional principles

Subsequent Financial Years (2011/2012, 2012/2013, 2013/2014)

For these years, the municipality admitted that it failed to promulgate resolutions levying rates within the prescribed timeframe. It relied instead on "substantial compliance" with Section 14 of the MPRA by eventually promulgating the resolutions on June 25, 2013.

Court's Finding: The court rejected the "substantial compliance" defense, holding that:

- Section 14 imposes discrete and preemptory obligations that cannot be selectively fulfilled
- Discharge of one obligation cannot constitute discharge of another separate obligation
- The principle of legality requires strict adherence to procedural requirements
- Rates levied for 2011/2012 and 2012/2013 had already lapsed by the time of the purported promulgation on June 25, 2013, in terms of Section 12(1) of the MPRA
- The purported promulgation could not retrospectively validate rates that had already expired

Constitutional Principles

The court emphasized that the municipality's non-compliance violated fundamental constitutional principles:

"The authority of a Municipality to impose rates on property is derived from Section 229(1)(a) of the Constitution. As correctly submitted by the applicant's Counsel, the National legislation envisaged in Section 229(2)(b) of the Constitution to regulate the imposition of rates on property is, for present purposes, the Local Government: Municipality Property

Rates Act 6 of 2004. The authority of a Municipality to impose rates is the exercise of an original legislative power and legislative acts depend for their legal efficacy on due promulgation." [Paragraph 59]

The Court Order

On February 8, 2018, the High Court issued the following order:

1. **DECLARATION:** It is declared that the property rates and taxes levied by the Respondent for the financial years 2010/2011, 2011/2012, 2012/2013, and 2013/2014 were levied unlawfully in that the levying thereof did not comply with the provisions of the Local Government: Municipal Property Rates Act, Act 6 of 2004, and that the rates and taxes so levied were therefore not due and payable to the Respondent.
2. **COSTS:** The Respondent is to pay the costs of the application, including the costs of two Counsel where so employed.

Implications for Communities

1. Empowerment Through Legal Clarity

This judgment provides communities with a clear roadmap for challenging unlawfully levied rates. It demonstrates that procedural compliance is not merely administrative—it is a fundamental requirement grounded in constitutional principles. Communities can now point to specific statutory violations when challenging municipal billing.

2. Validation of Collective Action

The case affirms the right of taxpayers' associations to act collectively on behalf of their members. The court rejected the municipality's attempt to challenge the applicant's standing, confirming that organized community groups have the legal capacity to bring such challenges.

3. Rejection of "Substantial Compliance" Defense

The judgment establishes that municipalities cannot escape accountability by claiming "substantial compliance" with statutory requirements. The court made clear that legislative obligations are discrete and must be fulfilled in their entirety. This is a powerful tool for communities challenging municipal actions that fall short of legal requirements.

4. Protection of Public Participation Rights

By striking down rates levied without proper publication of the valuation roll, the court affirmed that public participation rights are not merely procedural niceties—they are fundamental rights that must be respected. Communities have a constitutional right to inspect and object to valuations before rates are levied.

5. Practical Remedy: Rates Not Due and Payable

The most significant practical outcome is the court's declaration that the rates and taxes were "not due and payable." This means:

- Community members were never legally obligated to pay these rates
- Any payments made can potentially be recovered
- The municipality cannot use non-payment as grounds for service disconnection
- The municipality cannot pursue debt collection on these unlawful charges

6. Accountability for Costs

The order requiring the municipality to pay the costs of the application, including the costs of two Counsel, sends a strong message that municipalities will bear the financial consequences of non-compliance. This creates a powerful incentive for municipalities to ensure proper compliance with statutory requirements.

Connection to the Rademan Judgment

The Koster, Derby, and Swartruggens case builds directly on the principles established in Rademan v Moqhaka Local Municipality. While Rademan established the principle that residents are not obligated to pay for services not rendered, this case extends that principle by establishing that residents are also not obligated to pay for rates levied in violation of statutory procedures.

Together, these cases create a comprehensive framework for community accountability:

- Rademan Principle: No payment is due for services not rendered
- Koster/Derby/Swartruggens Principle: No payment is due for rates levied in violation of statutory procedures

Outcomes for the Community

Immediate Outcomes

- 1.Declaration of Unlawful Levying: The court declared four years of rates unlawful, providing members of the association with a legal basis to challenge any collection efforts.
- 2.Protection from Enforcement: The municipality cannot legally pursue collection of these rates or use non-payment as grounds for service disconnection.
- 3.Financial Recovery: Community members may have grounds to recover payments made during the period of unlawful levying.
- 4.Cost Award: The municipality's obligation to pay the costs of the application represents a financial consequence for non-compliance.

Broader Implications for South African Communities

This case has profound implications for communities across South Africa:

- 1.Template for Challenge: Other communities facing similar municipal non-compliance can use this case as a template for their own legal challenges.
- 2.Strengthened Accountability Framework: The judgment reinforces that municipalities are subject to the rule of law and cannot act arbitrarily or in violation of statutory procedures.
- 3.Validation of Taxpayers' Associations: The case affirms the legitimacy and effectiveness of organized community action through taxpayers' associations.

4. Constitutional Protection: By grounding the decision in constitutional principles, the court has elevated the protection of community rights to the constitutional level.
5. Incentive for Compliance: The financial consequences imposed on the municipality create a powerful incentive for all municipalities to ensure strict compliance with statutory procedures.

Strategic Lessons for Communities

The success of the Koster, Derby, and Swartruggens case offers several strategic lessons for communities seeking to hold their municipalities accountable:

1. Document Non-Compliance

Communities should carefully document instances where municipalities fail to comply with statutory procedures. This includes:

- Dates of publication (or non-publication) of valuation rolls
- Dates of public notices and advertisements
- Dates of promulgation of rate-levying resolutions
- Failure to provide copies of notices to property owners

2. Organize Collectively

The case demonstrates the power of collective action. Communities should establish or join taxpayers' associations that can aggregate individual grievances into a collective legal challenge.

3. Seek Expert Legal Assistance

The case was successful because the applicant had access to skilled legal counsel who could identify and articulate the statutory violations. Communities should prioritize securing competent legal representation.

4. Ground Arguments in Statutory Law

Rather than relying on general complaints about service delivery, communities should focus on specific violations of the MPRA and other applicable legislation. The court is more likely to respond to clear statutory breaches than to general grievances.

5. Challenge "Substantial Compliance" Arguments

When municipalities claim they have substantially complied with statutory requirements, communities should challenge this by pointing to the discrete and peremptory nature of the obligations. The Koster case provides strong authority for this approach.

Challenges and Limitations

While the Koster, Derby, and Swartruggens case represents a significant victory, there are some challenges and limitations to consider:

1. Implementation and Enforcement

The court order is only as effective as its implementation. Communities must be prepared to monitor whether the municipality complies with the order and takes steps to enforce it if necessary.

2. Recovery of Payments

While the court declared the rates unlawful and not due and payable, it did not explicitly order the municipality to refund payments already made. Communities may need to pursue separate legal action to recover such payments.

3. Service Delivery Obligations

The judgment addresses the procedural legality of rate levying but does not directly address the underlying service delivery failures that motivated the challenge. Communities must continue to pursue separate remedies for poor service delivery.

4. Municipal Financial Capacity

Even if the municipality is ordered to refund unlawful payments, its financial capacity to do so may be limited. Many municipalities are in financial distress and may lack the resources to make significant refunds.

5. Potential Appeals

The municipality may appeal the judgment, prolonging the legal process and creating uncertainty for community members.

Conclusion

The Koster, Derby, and Swartruggens Taxpayers Association case represents a landmark victory for communities in their struggle for municipal accountability. By declaring four years of property rates unlawful, the High Court has affirmed that municipalities are subject to the rule of law and cannot act in violation of statutory procedures with impunity.

The case builds on the foundation laid by the Rademan judgment and extends the framework for community accountability. Together, these cases establish that residents and ratepayers have powerful legal tools to challenge municipal actions—whether those actions involve demanding payment for services not rendered or levying rates in violation of statutory procedures.

For the Koster, Derby, and Swartruggens communities specifically, the judgment provides a clear declaration that they were never legally obligated to pay the rates in question. For communities across South Africa, the case provides a template and a source of encouragement for similar challenges to municipal non-compliance.

The success of this case demonstrates that organized community action, grounded in careful legal analysis and supported by competent legal counsel, can achieve significant victories in holding municipalities accountable. As communities continue to grapple with poor service delivery and municipal dysfunction, cases like this provide a beacon of hope that the courts will protect their rights and enforce the rule of law.

Key Takeaways

Aspect	Significance
Unlawful Levying	Four years of rates declared unlawful due to non-compliance with MPRA
Procedural Requirements	Court rejected "substantial compliance" and required strict adherence to statutory procedures
Community Rights	Affirmed the right of taxpayers' associations to challenge municipal actions on behalf of members
Public Participation	Protected the right of ratepayers to inspect and object to valuations before rates are levied
Financial Remedy	Rates declared not due and payable; municipality ordered to pay costs including counsel fees
Broader Impact	Provides template for communities across South Africa to challenge unlawful municipal actions
Constitutional Grounding	Judgment rooted in constitutional principles of legality and rule of law

References

- 1.Koster, Derby, and Swartruggens Taxpayers Association v Municipality (M152-2014), High Court of South Africa, Judgment delivered February 8, 2018, Judge A M Kgoele
- 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)