IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: M152/2014

In the matter between:

KOSTER, DERBY, SWARTRUGGENS TAX PAYERS ASSOCIATION **Applicant**

AND

KGETLENG REIVER LOCAL MUNICIPALITY **Respondent**

CIVIL MATTER

KGOELE J

DATE OF HEARING	**:**	**8 FEBRUARY 2018**
DATE OF JUDGMENT	**:**	**8 FEBRUARY 2018**
DATE REASONS REQUESTED	**:**	**17 APRIL 2018**
DATE REASONS HANDED	**:**	**12 JULY 2018**
COUNSEL FOR APPLICANT	**:**	**Adv. M D Du Preez (SC)**
		(With Him Adv J J Greeff)
COUNSEL FOR RESPONDENT	**:**	**NO APPEARANCE**

REASONS FOR JUDGMENT

[1] The applicant applied for an order declaring that the property rates and taxes levied by the respondent, a local Municipality, 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 relevant legislation and further that, those rates and taxes were therefore not due and payable to the respondent.

[2] The applicant is a non-profitable voluntary Association and legal entity in terms of its Constitution, existing regardless to changes in its membership and management.

[3] The factual background to this matter is that the respondent has been levying property rates and taxes to accounts of members of the applicant within the respondent's area of jurisdiction for the financial years 2010/2011, 2011/2012, 2012/2013 and 2013/2014. The respondent is demanding payment of the property rates and taxes, according to the applicant, unlawfully levied in the financial years referred to above, from members of the applicant.

[4] The application was heard on the 8th February 2018 in the absence of the respondent and the following Order was made:-

"1. THAT: 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. THAT: The Respondent is to pay the costs of the application, including cost of two Counsel where so employed."

[5] The respondent wrote a letter which was received on the 17 April 2018 wherein it requested reasons for the above mentioned Order and the reasons follow hereunder:-

Order in the absence of the respondent

[6] The initial hearing of this application appeared before **Hendricks J**, and the respondent opposed the application and raised four points *in limine:-*

6.1 The alleged non-compliance by the applicant with the provisions of the Institution of Legal Proceedings against Certain Organs of State Act, Act 40 of 2002;

6.2 The applicant's failure to identify its individual members;

6.3 The non-joinder of the Provincial Member of the Executive Council; and

6.4 The alleged non-compliance by the applicant with the provisions of the Promotion of Administrative Justice Act, Act 3 of 2000 **(PAJA).**

[7] Hendricks J ruled in favour of the respondent on three of the aforementioned points *in limine*, except for the alleged failure of the applicant to identify its individual members, which was dismissed with costs, without hearing the merits of the application.

[8] Leave to appeal was granted to the applicant by Hendricks J and the applicant in our matter succeeded on Appeal before a Full Court of this Division on all three points *in limine* initially found against it. The Order that was granted on the 8th February 2018 stems from the merits of the matter which were adjudicated by this Court.

[9] As already indicated above, the respondent did not appear on the 8th of February 2018 when the merits were heard by this Court and it was also not represented by any legal representative although the respondent's papers including the heads of arguments were filed.

[10] Advocate Du Preez SC appearing with him Advocate Greef on behalf of the applicants, made submissions to persuade the Court to proceed in the absence of

the respondent. In substantiating the fact that the respondent is just buying time and not serious about finalizing the matter, Advocate Du Preez SC provided the Court with the following time line:-

14 April 2014 : Application filed and served
(Opposed by Respondent)

04 June 2015 : Application heard by Hendricks J
(Points *in limine* only)

02 July 2015: Judgment – Hendricks J
(Respondent's point *in limine* upheld
and application dismissed with costs)

23 July 2015 : Applicant filed application for Leave to Appeal (Opposed by Respondent)

29 January 2016 : Application for Leave to Appeal heard by Hendricks J

04 February 2016 : Judgment – Hendricks J (Leave to Appeal granted)

03 June 2016 : Appeal heard by Landman J, Gura J, and Gutta J

17 June 2016 : Judgment – Landman J , Gura J, and Gutta JJ concurring (Appeal upheld with costs and matter postponed *sine die* for hearing of the merits of the application)

29 June 2017 : Notice of Set Down for 14 September 2017 served on Respondent

14 September 2017: - Respondent's Counsel not present at Court;

- Postponement requested in the absence of a formal application;
- Postponement granted, with punitive cost order against respondent;
- Date arranged with Registrar and matter postponed to 08 February 2018.

06 February 2018: Respondent's attorneys file Notice of Withdrawal as attorneys of record.

[11] In addition to the above, Advocate Du Preez SC submitted that on the same day, the 6th of February 2018, the applicant's attorneys wrote a letter to the respondent wherein they indicated that they hold an instruction to proceed with the application on the 8th and will move for an Order in terms of their notice of motion inclusive of a cost Order. This letter was apparently received and signed for by one J du Bruyn, on behalf of the Acting Municipal Manager on the same day. Advocate

Du Preez SC handed in proof of service to this Court. The applicant indicated that they did not receive any reply from the respondent.

[12] Advocate Du Preez SC submitted further that their silence is an indication of a delaying tactic, and he referred this Court to the following cases in support of the fact that their conduct cannot be condoned by this Court.

- **Take and Save Trading CC and Others v Standard Bank of SA Ltd 2004 (4) SA 1 (SCA);**

- **S v Basson 2007 (3) SA 582 (CC);**

- **Lekolwane and Another v Minister of Justice and Constitutional Development 2007 (3) BCLR 282 (CC).**

[13] Taking into consideration the fact that the matter was old, the fact that on the 14th September 2017, the matter was postponed due to the non-availability of the respondent's Counsel to argue the matter despite that he had filed heads of argument by then, coupled with the fact that since the matter was postponed on the 14th September 2017 the respondent's attorney did not indicate that he did not receive instructions from the respondent at all and that they intend postponing the matter once again, and lastly, the fact that since they received the letter dated 6th February 2016 from the applicant's attorney on the same date, they kept quite without the odersity of even sending anyone to represent them, I came to the conclusion that the matter should in the interest of justice proceed in their absence. There was before me no further cogent reasons to once more postpone the matter.

MERITS

[14] The applicant's Counsel submitted that the applicant's case is founded on the Constitutional principle of legality. He maintained that several decisions of the Supreme Court of Appeal and the Constitutional Court in the last decade has

accepted that when a Municipality levies rates, it must comply with the provisions of the statutes that governs its powers and duties.

[15] As a basis for the above submission, he submitted that the authority of a Municipality to impose *inter alia*, rates on property is derived from Section 229(1)(a) of the Constitution of the Republic of South Africa . 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 Act**"). 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. Legislative enactments must be duly promulgated by publication in the relevant Gazette in order to have the force of law. The said exercise of the authority is not administrative in nature. He referred the Court to the following cases in support of these prepositions:-

- **Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1999 (1) SA 374 (CC) at par 26, 27, 38 and 45 ("Fedsure");**

- **Liebenberg N.O and Others v Bergrivier Municipality 2013 (5) SA 246 CC at 271 F-G (par 92) and 272 (par 96) p280 E-F: para 127 (*Jafta, J*); p288 A-B (para 148) and p291 D-F (para 158) (*Khampepe J*)**

[16] It appears from the papers that it is common cause between the parties that the respondent derives its powers and duties to levy property rates from the Act, which was enacted on 11 May 2004 and commenced on 2 July 2005. The Act states clearly that its object is to:-
"regulate the power of the Municipality to impose rated on property."
The preamble confirms:
"(1) that there is a need to provide local government with access to "sufficient and buoyant source of revenue necessary to fulfill its developmental responsibilities"; (2) that income "from property rates is a critical source of revenue for the municipalities to achieve their constitutional objectives", and (3) that "it is essential that

municipalities exercise their power to impose rates within a statutory framework that not only enhances certainty, uniformity and simplicity across the nation but also take into account historical imbalances and the rates burden on the poor, …"

[17] The applicant's main case is that the respondent caused a valuation roll to be prepared in terms of Section 30(1) of the Act during the 2009/2010 financial year. Property rates and taxes levied by the respondent during the financial year 2010/2011, 2011/2012, 2012/2013 and 2013/2014 were based on the aforementioned valuation roll. The respondent promulgated a resolution, by which the property rates for financial year 2010/2011 was approved, by publishing it in a Provincial Gazette, Extraordinary No. 8792, dated 15th June 2010.

[18] The applicant's contention is that the valuation roll referred to above was not published in terms of the Act prior to the implementation thereof. The availability for inspection of the said valuation roll was only published in a local newspaper, nine (9) months after the implementation thereof, in March 2011. Copies of the notice and publication thereof were attached by the applicants and were marked ANNEXURE "C1" AND "C2". On 02 July 2012 the applicant indicated in their papers that a letter was addressed to the Municipal Manager of the respondent, inquiring about the promulgation of property rates from 2005 to 2013.

[19] The applicant indicated further that they received a responding letter to their inquiry on 6 July 2012, informing them that the rates promulgated in the Provincial Gazette, dated 15 June 2010, will be applicable until 2013 in terms of a Council Resolution of the 30 May 2012. Accordingly, applicant contends, the respondent did not promulgate resolutions levying rates for the financial year 2010/2011, 2011/2012, 2012/2013 or 2013/2014. Further that, when imposing rates and levies a Municipality must comply with the statues that govern their powers and duties.

[20] In as far as the Financial Year 2010/2011, the applicant's Counsel contends that the valuation roll referred to above was adopted by the respondent during the 2009/2010 financial year and took effect, in terms of Section 32(1) of the Act on 01 July 2010 for the 2010/2011 financial year. Section 49 of the Act requires public notice of the valuation roll by the respondent within 21 days of receipt of the roll in a

prescribed manner. He maintained that the respondent did not comply with the provision of Section 49 in that it:-

20.1 did not publish a notice within 21 days of receipt of the roll in the Provincial Gazette: and/or

20.2 did not publish a notice within 21 days of receipt of the roll in the media; and/or

20.3 did not disseminate the substance of the notice to the community in terms of Chapter 4 of the Local Government: Municipal System Act, Act 32 of 2000; and/or

20.4 did not serve a copy of the notice, together with an extract of the valuation roll, on every owner of property listed in the valuation roll.

[21] In the light of the aforementioned non-compliance by the respondent with the provisions of Section 49 of the Act, the applicant's Counsel argued that, members of the applicant were not afforded the opportunity to inspect and object to the valuation roll in terms of Section 50 of the Act. He submitted that the respondent's aforementioned non-compliance with the provisions of the Act constitutes severe infringements of members of the applicant's rights in terms of the Act and further that, the property rates and taxes levied by the respondent for the 2010/2011 financial year were levied unlawfully.

[22] In as far as the financial years 2011/2012, 2012/2013 and 2013/2014 is concerned, the applicants' Counsel contends that Section 12(1) of the Act provides that a Municipality must levy a rate for a financial year and that a rate lapses at the end of a financial year for which it was levied. Rates levied by the respondent for the 2010/2011 financial year, lapsed on 30 June 2011. He maintained that Section 14(1) of the Act provides that a rate is levied by a Municipality by resolution passed by the Municipal Council with a supporting vote of a majority of its members. Furthermore that, Section 14(2) of the Act provides that a resolution levying rates must be promulgated by publishing the resolution in the Provincial Gazette.

[23] In expanding on this argument he submitted that Section 14(3) of the Act provides that whenever a Municipality passes a resolution levying a rate, the Municipal Manager must without delay:-

23.1 conspicuously display such resolution for a period of at least 30 days; and

23.2 advertises in the media a notice pertaining to the said resolution.

[24] Pertaining to the financial years 2011/2012, 2012/2013 and 2013/2014, the applicant's Counsel submitted that the respondent did not comply with the provisions of Section 14(2) and Section 14(3) of the Act in that it:-

24.1 did not promulgate a resolution levying rates by publishing the resolution in the Provincial Gazette;

24.2 did not conspicuously display the resolution for a period of at least 30 days;

24.3 did not advertise in the media a notice pertaining to the resolution.

[25] He argued that the respondent's non-compliance with the aforementioned compelling provisions of the Act renders the property rates and taxes levied by the respondent for the financial years 2011/2012, 2012/2013 and 2013/2014 unlawful and invalid. He added that there are no statutory provisions in terms of which the respondent can *ex post facto* remedy the aforementioned non-compliance with the compelling provision of the Act.

[26] In his heads of argument which Advocate Du Preez SC appearing on behalf of the applicants basically confirmed in Court, he explained the non-compliance in detailed terms and submitted that, in summarizing and applying the law to the facts of this case, what happened is that the respondent caused a valuation roll to be prepared in terms of Section 30(1) of the Act during the 2009/2010 financial year, on which property rates and taxes were based by the respondent for the 2010/2011, 2011/2012, 2012/2013 and 2013/2014 financial years. In terms of Section 32(1) (a)

of the Act a valuation roll takes effect from the start of a financial year following completion of the public inspection period required by Section 49 of the Act.

[27] He referred to Chapter 6 of the Act which deals with "VALUATION ROLLS" and submitted that Section 49 of the Act provides for the publication of the certified valuation roll for public notice by the Municipality. Section 50 provides for the inspection of the valuation roll by "any person" and the lodging of objections to the valuation roll. Section 51 provides for the processing of objections. Section 52 provides for the compulsory review of decisions of the Municipal valuer. Section 53 provides for the notification of the outcome of objections and the furnishing of reasons for the decisions of the valuer. Section 54 provides for Appeals. According to him, the purpose of all this is that property owners and other rate payers, if not property owners, should be well informed of the value of the properties which are subject to rating by the Municipality. He argued that this is in line with the Constitutional requirements of public participation and transparency and due and proper decision making. After all, he argued that the value of the properties is the basis for the rating thereof.

[28] Furthermore that, the importance of the aforementioned public inspection and public participation period is emphasized by the provisions of Section 32(1)(a), in terms of which the valuation roll will only take effect in the financial year following completion of the public inspection period.

[29] He added that in terms of Section 31(1) of the Act a valuation must be performed on a date, not more than 12 months before the start of a financial year in which the valuation rolls is to be first implemented. He also emphasized Section 80(2) of Act provides that non-compliance with Section 31 and 32 of the Act which cannot be condoned.

[30] As indicated earlier, the respondent filed its papers including the heads of argument, and this Court took them into consideration in the analysis of the matter and arriving at the Order it granted. From its own papers it appears that it is common cause that the respondent did not publish or advertise the valuation roll prepared in terms of Section 30 of the Act during the 2009/2010 financial year in

terms of Section 49 of the Act, for public participation, prior to the implementation thereof on 1 July 2010 for the 2010/2011 financial year. This presupposes that the respondent denied its ratepayers the right to participate in the preparation of the valuation roll. The respondent promulgated a resolution, in terms of which property rates based on the valuation roll for the financial year 2010/2011, were approved, by publishing it in the Provincial Gazette, Extraordinary No. 8792, on 15 June 2010.

[31] In addition, the respondent in March 2011, and purportedly in terms of Section 49 of the Act, published a notice of the availability of the valuation roll for public inspection in a local newspaper. This occurred more than 9 months after the purported implementation of the valuation roll as correctly submitted to by the applicant's Counsel.

The valuation roll therefore did not take effect in terms of Section 32(1) of the Act, prior to the respondent levying property rates based thereon for the 2010/2011 financial year.

[32] The respondent furthermore in its answering affidavit admits its failure to publish the valuation roll within the period of 21 days provided in Section 49(1) and admits only publishing it during March 2011. The respondent relies for its late compliance with the provisions of Section 49(1) on a purported condonation by the Member of the Executive Council for Local Government (**"the MEC"**). The condonation is according to the respondent contained in a letter dated 12 March 2014.

[33] The applicant's submission on these contention is that the respondent's reliance on this letter for its late compliance with the provision of Section 49(1), is futile and is not supported by the letter because:-

33.1 The letter is dated 12 March 2014 and was apparently in answer to a letter from the Acting Municipal Manager of the respondent dated 28 January 2014 (the respondent did not disclose the content of the said letter of 28 January 2014);

33.2 The valuation roll on which rates were levied by the respondent for the financial years 2010/2011, 2011/2012, 2012/2013 and 2013/2014 was published by the respondent during March 2011;

33.3 The letter purports to condone, in terms of Section 34(b) of the Act, the late submission, on 28 February 2014, of a certified valuation roll to the Municipal Manager;

33.4 No reference whatsoever is made in the letter to condonation of non-compliance with the provisions of Section 49(1) of the Act, and in any event the letter amounts to inadmissible hearsay.

[34] I fully agree with the above submission by the applicant's Counsel. It is clear that as far as 2010/2011 financial years is concerned, the respondents failed to comply with the provisions of Section 49(1) of the Act in that it failed to, within 21 days or at all:-

34.1 publish a notice in the Provincial Gazette in terms of Section 49(1)(a)(i) and (ii);

34.2 publish a notice once a week for two consecutive weeks, in the public media in terms of Section 49(1)(a)(i) and (ii);

34.3 disseminate the substance of the notice to the local community in terms of Chapter 4 of the Municipal Systems Act in terms of Section 49(1)(b);

34.4 serve, by ordinary mail or in terms of Section 115 of the Municipal System Act, on every owner of property listed in the valuation roll, a copy of the notice and extract of the valuation roll in terms of Section 49(1)(c);

34.5 levied rates in the absence of a valuation roll that had taken effect in terms of Section 32(1);

34.6 failed to allow public inspection of and objections to the valuation roll in terms of Section 30.

[35] It is furthermore clear reading from the Act that none of the aforementioned non-compliance were, or can at this stage be, condoned by the MEC. The purported letter of condonation cannot also, based on the reasons submitted by the applicant assist the respondent. I therefore conclude that the property rates levied by the respondent for the 2010/2011 financial year were levied unlawfully due to non-compliance with the provisions of the Act.

[36] As correctly submitted by the applicant's Counsel, the promulgation of resolution levying rates is regulated by Section 14 of the Act which provides for a resolution passed by the Municipal Council with a supporting vote of a majority of its members to levy rates, the compulsory promulgation of the resolution by its publication in the Provincial Gazette and that, once a resolution is passed by the Municipality in terms of 14(1) the Municipal Manager is compelled to, without delay, conspicuously display the resolution for a period of at least 30 days in certain prescribed ways, advertise in the media a notice stating that a resolution levying a rate on property has been passed by the Council, and that the resolution is available at the Municipality's head and satellite offices and libraries for public inspection during office hours and lastly, if the Municipality has an official website, on the website.

[37] Section 12(1) of the Act provides that a Municipality must levy the rate for a financial year and that a rate lapses at the end of the financial year for which it was levied. I further agree with the submission that the rates levied for the 2010/2011 financial year lapsed on 30 June 2011.

[38] In its answering affidavit the respondent admitted that it failed to promulgate resolutions levying rates for the 2011/2012, 2012/2013 and 2013,2014 financial years in terms of Section 14(2) of the Act and relies on a substantial compliance with the provisions of Section 14 of the Act by "eventually" promulgating the resolutions in the Provincial Gazette on 25 June 2013.

[39] The purported promulgation of the resolutions for the 2011/2012, 2012/2013 and 2013/2014 financial year by the respondent on 25 June 2013 cannot retrospectively rectify the unlawfulness of the property rates levied for the said years because *inter alia*:-

39.1 Legislation does not apply retrospectively;

39.2 Rates levied for the 2011/2012 and 2012/2013 financial years had lapsed in terms of Section 12(1) prior to the purported promulgation thereof by the respondent on 25 June 2013 and cannot be revived by the purported promulgation;

39.3 The purported notice was apparently signed by Mr S Ngwenya, the Acting Municipal Manager of the respondent then, whose period of appointment had according to the papers of the applicant, expired on 30 April 2013 in terms of Section 54A of the Local Government Municipal System Act, Act 32 of 2000.

[40] In respect of the financial years 2011/2012, 2012/2013 and 2013/2014, I fully agree with the submission by the applicant's Counsel that the respondent failed to comply with the provisions of Section 49(1) in that it failed to, within 21 days or at all:-

- Publish a notice in the Provincial Gazette in terms of Section 49(1)(a)(i) and (ii);

- Publish a notice, once a week for two consecutive weeks, in the public media in terms of Section 49(1)(a)(i) and (ii);

- Disseminate the substance of the notice to the local community in terms of Chapter 4 of the Municipal Systems Act in terms of Section 49(1)(b);

- Serve, by ordinary mail or in terms of Section 115 of the Municipal System Act, or every owner of property listed in the valuation roll, a copy of the notice and extract of the valuation toll in terms of Section 49(1)(c).

[41] Further that, the respondent failed to comply with the provisions of Section 14(2) in that it:-

- Failed to promulgate a resolution levying rates for the 2011/2012 and 2012/2013 financial years prior to the levying of such rates;

- Published a notice purporting to promulgate resolutions for the levying of rates for the 2011/2012, 2012/2013 and 2013/2014 financial years on 25 June 2013.

[42] The submission by the applicant's Counsel that the respondent also failed to comply with the provisions of Section 14(3) in that it:-

- Failed to conspicuously display the resolution for a period of at least 30 days in terms of Section 14(3)(a);

- Failed to advertise in the media a notice pertaining to the resolution in terms of Section 14(3)(b).

is likewise meritorious. My reasoning is that, save for the purported reliance on the condonation by the MEC for its late compliance with the provisions of Section 49, (which letter does not avail the respondent, as mentioned above), the respondent offered no other explanation for its non-compliance with the provisions of Section 49. Apart from the purported reliance on substantial compliance with Section 14 of the Act, the respondent likewise provided no other reason for its non-compliance.

[43] In their heads of argument the respondent raised another Point *in limine* to the effect that the applicant must still show that it is an interested person in the sense as required under the applicable principles in respect of seeking a declaration. Further that, it has not been stated in any of the founding affidavit and/or replying affidavit that any of the applicant's members are indeed persons who are held liable to pay any rates or taxes complained of. As a result, the respondent contends, that the applicant has not made out a case for the relief in a declaratory nature sought herein because the Court's discretion whether to issue a declaration or not, arises when the

Court is satisfied that the claimant is an interested person and there is an existing, future or contingent right or obligation.

[44] I fully agree with Advocate Du Preez SC appearing on behalf of the applicant that this is another delaying tactic deployed from the side of the respondent. I am saying this because whilst the respondent is raising this issue in paragraph 13 of their heads, the respondent on the same breath in the same paragraph indicates that the issue of joinder as well as *locus standi* has been resolved earlier, which fact is true. This issue cannot therefore be revisited in the merits of this application albeit in a reformulated format the respondent wants to couch it, because it was dealt with by the previous Courts. What makes matters worse is that this reformulated issue emerged for the first time in their Heads. Nothing was said in their answering affidavit.

[45] The respondent is furthermore not telling the truth that the applicant did not state in their papers that any of the applicant's members are indeed persons who are held liable to pay any rates or taxes. Paragraph 4 of the founding affidavit of the applicant is clear and is couched as follows:-
"*the respondent has been levying property rates and taxes <u>to accounts of members of the applicant within the respondent's area of jurisdiction</u> for the financial year 2010/2011-2011/2012, 2012/2013 and 2013/2014."* **[Emphasis added]**

[46] It is abundantly clear that this *point in limine* was from the onset clearly ill-conceived and seek to attempt to afford the respondent an unjustified second bite of the cherry.

[47] I fully agree with the submissions made by Advocate Du Preez SC that the respondent did not comply in full with the legislative principles governing it as the evaluation roll was not published prior to the implementation thereof. In terms of Section 32(1)(a) of the Act, a valuation roll takes effect from the start of a financial year following completion of the public inspection period required by Section 49. The respondent's aforementioned valuation roll was only published in March 2011. It could therefore not be implemented on 1 July 2010 for the 2010/2011 financial year, therefore there is no compliance by the respondent.

[48] I furthermore agree with Advocate Du Preez SC that section 30 cannot be viewed in isolation and ought be read with Section 31 and 32, which make provision for the date of valuation, commencement and period allowed prior to 1 July 2010 of the valuation roll did not take effect on 1 July 2010 in terms of Section 32(1)(a) of the Act.

[49] Therefore, as submitted by Advocate Du Preez SC, pertaining to the rates and taxes levied for the year 2010/2011 financial year, those taxes and rates were levied unlawfully because the respondent:-

(a) failed to publish information pertaining to the valuation roll in terms of Section 49;

(b) failed to allow inspection of and objections to the valuation roll in terms of Section 50;

(c) failed to comply with Section 31(1) and 32(1) of the Act.

[50] To summarize, I therefore conclude that in light of the aforementioned non-compliance by the respondent with their own legislation, members of the applicant were not afforded the opportunity to inspect and object to the valuation roll in terms of Section 50 of the Act, and that therefore constitutes severe infringements of their rights in terms of the Act.

[51] Section 32 cannot be complied with in the absence of compliance with Section 49. Non-compliance with Section 32 as indicated above and as it is common cause between the parties cannot be condoned by the MEC.

[52] The alleged approval of an application for condonation by the MEC for late submission of the Certified Valuation Roll attached to the respondent's answering affidavit as Annexure "A2" refers to approval in terms of Section 34(b) of the Act and it is for late submission of the valuation roll on 28 February 2014. But of importance is that the letter does not refer to the non-compliance complained about in this application which clearly cannot be condoned by the MEC. The document is not proof of condonation of any of the non-compliance relied upon by the applicant and the respondent's reliance thereon appears to be a mystery. Whatever condonation

is purportedly granted by the document attached cannot be construed as non-compliance with Section 32 or condonation with Section 49 of the Act.

[53] The respondent admitted that it failed to promulgate resolutions levying rates for the 2011/2012, 2012/2013 and 2013/2014 financial years in terms of Section 14(2) of the Act and it relies on a substantial compliance with the provisions of Section 14 of the Act by "eventually" promulgating the resolutions in the Provincial Gazette on 25 June 2013.

[54] As indicated earlier, Section 12(1) of the Act provides that a Municipality must levy the rate for a financial year and that a rate lapses at the end of the financial year for which it was levied. The rates levied for the 2010/2011 financial year lapsed on 30 June 2011.

[55] The provisions of Section 14(2) and 14(3) are peremptory and the reliance of "substantial compliance" is of no avail to the respondent.

See: **Bergrivier *supra* at paras 160 to 163 (p292 A – 293 C);**

[56] Section 14 imposes discrete and peremptory obligations. Discharge of one such obligation cannot, on its own, constitute the discharge of another. See: **Bergrivier *supra* at Paras 160 to 162 (p292 G – 293 A)**

[57] One cannot escape to conclude that the principle of legality was not satisfied due to the respondent's non-compliance with the provisions of the Act and that the property rates and taxes levied by the respondent, during the financial years in question, were levied unlawfully and the levying thereof was therefore invalid.

[58] In their Heads which were not even signed by their legal Counsel, reliance is placed by the respondent on the fact that non-compliance with relevant statutory provisions does not necessarily lead to the actions under scrutiny being rendered invalid. They submitted that the question is whether there has been substantial compliance, taking into account the relevant statutory provisions in particular and the legislative scheme as a whole and quoted several authorities.

[59] Unfortunately the non-compliance of the complaints relied by the applicant goes to the root of the Constitutional principles of our Country. The authority of a Municipality to impose *inter alia*, 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.

[60] As already indicated above, non-compliance constitutes severe infringements of the right of the members of the applicant not only in terms of the Act, but in terms of the Constitution also, and are furthermore not only administrative failures. I do not agree that there was even substantial compliance with the Act in *casu*.

[61] These are the reasons why I was satisfied that the applicant succeeded in making a case for the prayers sought in the notice of motion.

A M KGOELE
JUDGE OF THE HIGH COURT.

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