

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No. 11384/2023

In the matter between:

LAINGSBURG RATEPAYERS' ASSOCIATION

Applicant

and

LAINGSBURG LOCAL MUNICIPALITY

Respondent

Date of Hearing: 6 August 2024

Date of Judgment: 8 August 2024

JUDGMENT

SIEVERS AJ

INTRODUCTION

1. The applicant is a non-profitable voluntary association established on 16 February 2021, whose members are all taxpaying residents within the geographical jurisdiction of the Laingsburg Local Municipality (*the Municipality*).
2. Acting in the interests of its members, the applicant seeks a declaratory order declaring that the property rates levied by the respondent for the financial years from 2010/2011 to 2013/2014 were unlawfully levied due to non-compliance

with the relevant portions of the Local Government: Municipal Property Rates Act, Act 6 of 2004 (*'the Act'*).

3. The Municipality filed a succinct answering affidavit deposed to by its Municipal Manager, in which it denied that the levying of rates by the Municipality had at any stage been unlawful and requested that the application be dismissed with costs.
4. The Municipality further raised two points *in limine*. The first point being that the proceedings brought by the applicant were not properly authorised and that the applicant lacked locus standi. Secondly, the respondent *in limine* alleged that the non-compliance with the relevant provisions of the Act upon which the applicant seeks to have the levying of rates declared unlawful, amounts to a 'debt' as contemplated in Chapter 12 of the Prescription Act, 68 of 1969, which would accordingly prescribe three years after such 'debt' is due, in terms of sections 11 and 12 thereof.
5. Prior to the hearing, the Municipality abandoned the first point *in limine* relating to the alleged lack of authority and locus standi of the applicant.

THE LEGISLATIVE FRAMEWORK

6. Chapter 13 of the Constitution of the Republic of South Africa 1996 deals with finance.
7. In the said Chapter, s 229(1)(a) provides that a municipality may impose rates on property and surcharges on fees for services provided by or on behalf of the municipality. Section 229(2)(b) provides that the power of the municipality to

impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties may be regulated by national legislation.

8. The envisaged national legislation applicable in the present matter is the Local Government: Municipal Property Rates Act, 6 of 2004 (*the Act*). The Preamble to the Act records that the purpose thereof is inter alia to regulate the power of a municipality to impose rates on property.

9. Section 2 of the Act confers the power to levy a rate on property in the area of the municipality and s 2(3) provides that:

‘(3) A municipality must exercise its power to levy a rate on property subject to -
(a) section 229 and any other applicable provisions of the Constitution;
(b) the provisions of this Act; and
(c) the rates policy it must adopt in terms of section 3.’

10. Section 12 of the Act provides that when levying rates, a municipality must levy the rate for a financial year. A rate lapses at the end of the financial year for which it was levied.

11. Section 14 of the Act provides as follows:

‘14 Promulgation of resolutions levying rates

- (1) A rate is levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members.
- (2) (a) A resolution levying rates in a municipality must be annually promulgated, within 60 days of the date of the resolution, by publishing the resolution in the *Provincial Gazette*.’

12. Section 14 further prescribes in s 2(b) what the resolution must contain and s 14(3) requires that the resolution be conspicuously displayed for a period of at least 30 days at the municipality's head and satellite offices and libraries, and if it has a website, made available on such website. It further requires that the municipal manager must without delay advertise a notice in the media 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 on the website if there is one available to it.

PRESCRIPTION

13. The Prescription Act No. 68 of 1969 provides in Chapter III for the prescription of debts. The term '*debt*' is not defined in the Prescription Act and the interpretation of this term has been dealt with in numerous judgments.

14. In ***Electricity Supply Commission v Stewarts and Lloyds of South Africa (Pty) Ltd***¹ the Court stated as follows:

'Section 16(1) of the Prescription Act 68 of 1969 provides that chapter III thereof (which deals with the prescription of debts) applies to "*any debt arising after the commencement of this Act*". Such date of commencement was 1 December 1970.

¹ 1981 (3) SA 340 (A) at 344 F.

In terms of s 11(d) of the said Prescription Act, the period of prescription in respect of a debt is three years. It was common cause in this Court that a debt is -

“that which is owed or due; anything (as money, goods or services) which one person is under obligation to pay or render to another”.

15. Thereafter in ***Desai NO v Desai and Others***² the Court held that:

‘The term “*debt*” is not defined in the Act, but in the context of s 10(1) it has a wide and general meaning and includes an obligation to do something or refrain from doing something.’

16. In ***Makate v Vodacom Limited***³ Jafta J, who wrote the majority judgment, held that:

‘[32] The second main issue is whether the applicant’s claim had prescribed. The determination of this issue involves the proper interpretation of s 10(1) of the Prescription Act read with ss 11(d), 12(1) and 12(3). If it is true that the application of those provisions limited the applicant’s right of access to court, then their interpretation must accord with s 39(2) of the Constitution. This interpretive approach will in turn require us to reassess the construction that was assigned to the Prescription Act under the era of the supremacy of Parliament because now the Constitution is the supreme law. All laws, including the common law of interpretation, derive their validity from the Constitution.’

‘[92] However, in present circumstances it is not necessary to determine the exact meaning of “*debt*” as envisaged in s 10. This is because the claim we are concerned with falls beyond the scope of the word as determined in cases like *Escom*, which held that a debt is an obligation to pay money, deliver goods or render services.

² 1996 (1) SA 141 (A) at 146 I.

³ 2016 (4) SA 121 (CC).

Here the applicant did not ask to enforce any of these obligations. Instead, he requested an order forcing Vodacom to commence negotiations with him for determining compensation for the profitable use of his idea.

[93] To the extent that *Desai* went beyond what was said in *Escom* it was decided in error. There is nothing in *Escom* that remotely suggests that “*debt*” includes every obligation to do something or refrain from doing something, apart from payment or delivery.’

17. In ***Off-Beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Limited and Others***⁴ Mhlantla J writing for the majority held as follows:

[47] After the SCA's judgment, this court handed down its decision in *Makate*. In sum, *Makate* held that the broad interpretation of “*debt*” in *Desai* was inconsistent with earlier decisions that gave the term a narrow definition.

[48] I am satisfied that in interpreting the meaning of “*debt*”, *Makate* functionally overturned the broad test adopted in *Desai* to the extent that it went beyond the narrow test in *Escom*.’

18. The Constitutional Court then applied the narrow test to the applicant's claim in terms of section 252 of the Companies Act 61 of 1973 and held that the claim did not constitute a ‘*debt*’.
19. The application of the now settled meaning of ‘*debt*’ to the present application

⁴ 2017(5) SA 9 (CC).

clearly establishes that the declarator sought herein is not a debt as contemplated in Chapter 12 of the Prescription Act, 68 of 1969.

APPLICATION NOT BROUGHT WITHIN A REASONABLE TIME

20. Despite the point not having been raised in its answering affidavit, the respondent in its heads of argument submitted that the applicant had unreasonably delayed in bringing the application, that it would not be in the interest of justice to grant condonation for such delay and accordingly that the application should be dismissed for that reason alone.
21. It is a settled principle that an application for review in terms of the common law and constitutional principle of legality, such as the present matter, must be brought within a reasonable time. This involves a two-stage enquiry: first, whether any delay in bringing the application was reasonable, and if it was unreasonable, the second enquiry comes into play, namely whether the reasonable delay may be overlooked, and condonation granted.⁵
22. In the present matter, the applicant was established on 16 February 2021. It records in its founding affidavit that during late 2022, pursuant to its objectives as set out in its constitution, the applicant embarked on intensive research into compliance by the Municipality with legislation relevant to the levying of property rates. In its answering affidavit, the Municipality advised that it bore no

⁵ *Valor IT CC v Premier, North West Province and Others* 2021 (1) SA 42 (SCA) at paras 27 and 28.

knowledge of the content of the paragraph in question. It raised no complaint regarding the timing of this research.

23. It a note on main submissions in oral argument handed up at the hearing, the respondent submitted that the delay was unreasonable as there was no explanation as to why an investigation was only conducted eight years after the rates were due and another eight months lapsed thereafter before filing the application.
24. In this regard it is to be noted that the applicant was only established in 2021, the year before the investigation into compliance was launched. Furthermore, I am not satisfied that the lapsing of eight months before the filing of the application constitutes unreasonable delay. I am accordingly satisfied that the application was brought within a reasonable time.

THE MERITS

25. It is common cause that the rates resolutions were not promulgated in terms of s 14(2) of the Municipal Property Rates Act for the financial years 2010/11 – 2013/14.
26. In ***Beaufort-Wes Landelike Belastingbetalersvereniging v Beaufort-Wes Municipality***⁶ Le Grange J dealt with a matter in which the municipality had not complied with the provisions of s 14(2) of the Act, as the resolution of the Municipal Council levying the rates in respect of the 2010/2011 and 2011/2012

⁶ (20650/11) [2012] ZAWCHC 175 (11 October 2012).

financial years had not been promulgated by publication of the resolutions in the Provincial Gazette.⁷

27. Le Grange J held at paragraph [54]:

'[54] In the present instance, the Rates Act is the source of the power to levy rates. In my view it is necessary for the Municipality to satisfy the requirements of the Rates Act in order to set a rate and levy it. Promulgation is therefore necessary for the rates to have been validly imposed.'

28. The said Judge further held (in paragraph [58]) that only amounts of rates levied in respect of a period subsequent to the date of promulgation should be recoverable.

29. In its heads of argument, the respondent refers to ***Liebenberg NO and Others v Bergrivier Municipality***⁸ in submitting that it has been held authoritatively by the Constitutional Court that a failure by a municipality to comply with statutory relevant provisions does not necessarily lead to the actions under scrutiny being rendered invalid, the question being whether there has been substantial compliance taking into account the relevant statutory provisions in particular and the legislative scheme as a whole.

30. The problem for the respondent in this regard is, however, that the papers in the present matter do not reflect any compliance whatsoever by the Municipality in respect of the provisions of ss 14(2) and 14(3) of the Act, let alone substantial compliance.

⁷ Paragraph [13].

⁸ 2013 (5) SA 246 (CC) at paragraph 26.

31. In a minority judgment in **Bergrivier** Khampepe J held (in paragraphs 160 to 163) that section 14 of the Act clearly imposes, in peremptory terms, distinct requirements for the proper promulgation of rates and strict compliance with each of the requirements is required.
32. In **Koster, Berby Swartruggens Taxpayers' Association v Kgetleng River Local Municipality**⁹ Kgoele J referred to the judgment of Khampepe J in **Bergrivier** and held (at paragraph [57]):
- {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.'
33. He held further that the authority of a municipality to impose rates is the exercise of an original legislative power and legislative acts depends for their legal efficacy on due promulgation.
34. The respondent lastly submitted that the Court should in terms of s 172 of the Constitution make an order that is just and equitable by limiting the retrospective effect of the declarator.
35. In this regard it is to be noted that the respondent has failed to place any relevant facts before the Court for the exercise of the Court's power in this regard. The papers do not reflect whether these rates have been paid, what the quantum of the rates affected would be or what a just and equitable order would be. The Court is accordingly unable to accede to this request.

⁹ [2018] ZANWHC 77 (8 February 2018).

CONCLUSION

36. In the light of the foregoing, the applicant has made out a proper case for the relief sought and it is accordingly ordered that:

1. It is declared that the property rates levied by the respondent for the financial years from 2010/2011 to 2013/2014 were unlawfully levied due to non-compliance with the relevant provisions of the Local Government: Municipal Property Rates Act, 6 of 2004 (*the Act*), in that for the said financial years the respondent failed to promulgate resolutions levying rates in terms of section 14(2) of the Act.
2. The respondent shall pay the applicant's costs on Scale B in terms of Uniform Rule 67A.



SIEVERS AJ

Judge of the High Court