THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 14 March 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The Thaba Chweu Rural Forum & Others v The Thaba Chweu Local Municipality and others [2023] ZASCA 25

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Mpumalanga Division of the High Court, Mbombela (high court). The order of the high court was set aside and substituted with one declaring the rates notices published in the Mpumalanga Provincial Gazette for the 2009 to 2018 financial years, in terms of the Local Government: Municipal Property Rates Act 6 of 2004 (Rates Act), as unlawful and invalid to the extent that it relates to arable or pastoral farming. The Thaba Chweu Local Municipality (first respondent) was prohibited from recovering from the appellants amounts greater than the legally permissible limit as calculated in terms of the Rates Act and was also required to credit the accounts of members from whom amounts in excess were recovered.

This matter revolved around the lawfulness and validity of municipal rates imposed on farms by the first respondent. Agricultural rates have been levied on the appellants since 2009 in terms of s 8 of the Rates Act and were subject to conditions set out in the Regulations to the Rates Act, namely that the effective rate applicable to farms could not exceed 25% of the rate applicable to residential properties. However, the applicants were, each financial year in question, levied excessive rates pertaining to inflated property valuations in excess of the prescribed 25%. The appellants sought an order declaring that the conduct of the first respondent was unlawful and should have been set aside. The respondents, however, held that, if the court were to set the impugned property rates aside, it would prejudice the first respondent. Subsequently, the high court only ordered that that the appellants comply with the prescripts applicable to local government in the future. Upon appeal to the full bench, the high court found that the first respondent's conduct was indeed unlawful and invalid. However, the invalid conduct was not set aside and, as with the court a quo, the full court declined to set the invalid conduct aside on account of the delay by the appellants to institute proceedings.

Upon appeal, this Court was requested to review the decision not to set the invalid conduct aside. This Court held that the subject of delay in instituting proceedings became complex as the matter revolved around the principle of legality to which there was no statutorily prescribed period within which a party may institute a review challenge. To this end, the SCA found that the respondents, being the local sphere of government, performed vital services to the general public of South Africa. As public servant, the respondents repeatedly and blatantly flouted the applicable legal provisions with regards to the Rates Act and repeatedly contravened the law from 2009 to 2017, regardless of any objection or questioning emanating from the appellants. Furthermore, the Court also found that the language used in the various legislative instruments was unambiguous, which left no room for any legislative uncertainty. The conclusion was, therefore, that the respondents simply failed to clearly implement the letter of the law and flouted the principle of legality and sought to profit from amounts unlawfully levied.

In the result the SCA upheld the appeal and ordered that the first respondent was prohibited from recovering from the appellants amounts greater than the legally permissible limit as calculated in terms of the Rates Act and was also required to credit the accounts of members from whom amounts in excess were recovered.

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