



## 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:** 11 June 2025

**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***

*Kwadukuza Municipality v Consolidated Aone Trade and Invest 6 (Pty) Ltd [in Liquidation] and Others*  
(1273/2023) [2025] ZASCA 86 (11 June 2025)

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Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, an appeal against an order of the KwaZulu-Natal Division of the High Court, Durban (the high court).

On 19 September 2013, Consolidated Aone Trade and Invest 6 (Pty) Ltd (CATI 6), who was the owner of Ballito Bay Mall, was placed under provisional liquidation and was finally wound up on 20 March 2015. CATI 6 sought to sell its properties and required a rates clearance certificate under s 118(1) of the Local Government: Municipal Systems Act 32 of 2000 (MSA). The Kwa-Dukuza Municipality (the municipality) demanded payment for historical municipal rates and service charges that extended beyond the two-year period provided for in the MSA. CATI 6 paid these amounts under protest for the sole purpose of obtaining the rates clearance certificate, despite a prior consent order directing the municipality to provide a statement limited to the two-year debt period. CATI 6 subsequently sought to recover the overpaid amounts on the basis that the municipality had no legal right to claim debts older than two years. The high court agreed and ordered in favour of CATI 6. The appeal was with the leave of the high court.

The issues before the SCA were thus firstly, whether the municipality was entitled to demand payment for historical debts beyond the two-year limitation period provided for in terms s 118(1) of the MSA, and secondly, whether payments made under protest constituted a settlement of a prescribed debt in terms of s 10(3) of the Prescription Act 68 of 1969 (Prescription Act), thereby making them irrecoverable.

The SCA held that s 118(1) of the MSA clearly restricts municipalities to recovering only those debts that fall within the two-year period preceding the application for a rates clearance certificate, as confirmed in previous cases like *Nelson Mandela Bay Municipality v Amber Mountain Investments 3 (Pty) Ltd*. The municipality's demand for historic debts was unlawful, as the provision was designed to protect property owners from being compelled to pay prescribed or time-barred amounts. Additionally, the SCA rejected the municipality's reliance on s 10(3) of the Prescription Act, which deals with the settlement of prescribed debts. In addition to finding that payments made under protest do not constitute an acknowledgment of debt and instead preserves the right to reclaim undue amounts, the SCA found that the municipality had waived the rights which it may have had under s 10(3) of the Prescription Act when it agreed to the consent order. Since CATI 6 had paid under protest to secure the rates clearance certificate, it was entitled to a refund. The SCA accordingly dismissed the municipality's appeal with costs and upheld the high court's order directing the municipality to refund the overpaid amounts to CATI 6.

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