THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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City of Tshwane v Blom & Others 433/2012 [433/12] 88 ZASCA (31 May 2013)

[1] The Supreme Court of Appeal (SCA) today upheld an appeal by the City of Tshwane (the appellant) against the judgment and orders made by the North Gauteng High Court, Pretoria (High Court). The matter involved a dispute between a ratepayer and the appellant in whose area the property is situated, over the latter's inclusion in its rates policy of a category of the rateable property called 'non permitted use'. The core issue relates to the interpretation and application of sections 8(1) and (2) of the Local Government: Municipal Property Rates Act 6 of 2004 (the Act), in particular whether the municipality is empowered to add to the list of categories of rateable property by creating in its rates policy a 'non-permitted use' category and to impose a higher rate on the property used for non-permitted purpose.

[2] The first respondent occupied the property owned by the second respondent in terms of a lease agreement. This property is situated within the area of jurisdiction of the appellant and is zoned for residential purposes in terms of the appellant's applicable Town Planning Scheme. The first respondent utilised the property for business purposes, which use is thus contrary to the provisions of the appellant's Town Planning Scheme.

In July 2008 the appellant adopted a new rates policy pursuant to s 3 of the Act, which policy introduced a ‘non-permitted use’ category of rateable property. In terms of that rates policy, the appellant categorised the relevant property as a ‘non-permitted use’ property, and levied a higher rate on the property than it levied on properties used for the purpose permitted. As a result, the second respondent was charged a higher rate while simultaneously losing a benefit of a rebate.

[3] The respondents brought an application in the High Court, seeking an order declaring, inter alia, that the Act does not provide for a rating category of 'non-permitted use' or ‘illegal use’, but only the categories provided for in section 8 of the Act and that all levies levied by the appellant on the property which are in excess of levies payable in respect of all other residential properties in Brooklyn should be repaid to the respondents by the appellant. The basis for the application was that the list of categories of rateable property in the Act is exhaustive and does not allow additions.

[4] The High Court held that the appellant was indeed authorised to add to the list of categories of rateable properties, but nevertheless found that the addition of the ‘non-permitted use’ or 'illegal use' category was not competent on the basis that any such additions were required to be of a similar nature to those already included in the Act. Furthermore, the High Court held that the levy for ‘non-permitted use’ amounted to the imposition of a penalty without due process.The appeal is before this Court with the leave of the High Court.

[5] The SCA held that, when the provisions in the relevant section are interpreted using the ordinary rules of grammar and syntax, the context in which they appear and the apparent purpose to which they are directed it was clear that they are wide enough to include 'non-permitted use'. The High Court therefore erred in holding that it was not competent for the appellant to include in its rates policy a 'non-permitted use' category for the purposes of determining applicable rates.

[6] This was so, the SCA concluded, because rates policies entail, by definition, policy choices which lie at the core of municipal autonomy, and as long as the rates policy treats ratepayers equitably and is consistent with the provisions of the Constitution and the Act there can be no basis for questioning the choices the municipality makes with regard to properties that may be differentially rated with respect to different categories of property. The appeal was therefore upheld with costs.