SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 20 November 2015

STATUS Immediate

City of Tshwane v Uniqon **Wonings [2015] ZASCA 162**

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Supreme Court of Appeal today upheld in part and dismissed in part an appeal brought by the City of Tshwane against a decision of the Gauteng Division of the High Court that held that when the owner of township property wishes to transfer an erf to a purchaser, it need not pay outstanding rates in respect of the erf in order to obtain a clearance certificate. Section 118(1) of the Local Government: Municipal Systems Act 32 of 2000 provides that the Registrar of Deeds may not register transfer of property unless a certificate (known as a clearance certificate) is issued by the municipality where the property is situate. The owner of property to be transferred must apply to the municipality for a certificate that all amounts that became due in connection with the property for municipal service fees and property rates and other municipal taxes, amongst others, in the two-year period preceding the date of application, have been paid.

Uniqon, as a township owner, had applied for clearance certificates in connection with three erven that it had sold. It tendered to the City what it had calculated was owing in connection with each erf. The City refused to issue the certificates applied for until the rates on the entire township, still owned by the township owner, were paid. Uniqon brought an urgent application for an order that the certificates be issued against tender of the amounts it

considered were owing. The City opposed the application on the basis that it could levy rates only on that which was on the valuation roll, which was the remainder of the township after other erven had been transferred.

The court below, following a decision in the same Division, held that until an erf is transferred by a township owner it does not exist as a separate entity and is thus not rateable. The SCA held, however, that this view ignored generally accepted rating principles and the clear wording of s 118(1) of the Systems Act.

This court held that the City is obliged to determine a pro rata share of the rates due in respect of the township as a whole, and for the township owner to make payment of that pro rata amount in order to comply with the requirements for obtaining a clearance certificate in connection with the property to be transferred.