THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Uniqon Wonings (Pty) Ltd v City of Tshwane Metropolitan Municipality (20789/2014) [2014] ZASCA 182 (30 November 2015)

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Uniqon Wonings.

This is an appeal from the Gauteng Division of the High Court, Pretoria (Fabricius J.)

The primary question to be determined in this appeal is whether a municipality was obliged, in terms of s 10G(7)(*a*)(i) of the Local Government Transition Act 209 of 1993 (the Transition Act), to determine property rates annually and whether such rates automatically lapsed at the end of the financial year during which it was levied.

The appellant, Uniqon Wonings (Pty) Ltd, a property developer, bought and developed farmland into a residential estate, Six Fountains Residential Estate. The respondent is the City of Tshwane Metropolitan Municipality, a Metropolitan Municipality created in terms of the Local Government: Municipal Structures Act 117 of 1998 (Structures Act). The residential estate is situated within the jurisdiction of what used to be the Kungwini Local Municipality (Kungwini) which has since been disestablished and and incorporated into the City of Tshwane Metropolitan Municipality.

Prior to the comprehensive restructuring of Local Government, the Bronberg area did not form part of the area of jurisdiction of any municipality and the owners of property in this area were not required to pay property rates. Kungwini commenced with the preparation of a valuation roll which was applicable from July 2002 in terms of s 10G(6) of the Transition Act. The valuation process and roll was finalised during February 2003. The first time that Kungwini levied property rates in the Bronberg area was pursuant to Local Authority Notice 4/2003 dated 19 February 2003 (the notice). The notice was not linked to a financial year and did not have any specified end time frame of operation. In terms of the notice, assessment rate tariffs of 0,02 cents per rand value as per the valuation roll were levied from 1 April 2003. The notice was given in terms of s 10G(7) of the Transition Act read with s 26(2) of the Local Authorities Rating Ordinance 11 of 1977 (the Ordinance). The notice was not challenged or set aside by a court. Kungwini published various other notices which, save for the one next mentioned, are not relevant to this dispute. On 28 July 2004, it published a notice in terms of which the assessment tariff was increased to 0,054 cents in the rand for the Bronberg area.

This court confirmed an order of the provincial division *Kungwini Local Municipality & another* v *Silver Lakes Homeowners Association & others* (T) (unreported case no 3908/2005 (29 June 2006)), which held that the increase in property rates for Kungwini's 2004/2005 financial year to 0,054 cents in the rand was invalid.

The appellant instituted action against the respondent, in which it claimed repayment of R788 282 paid to the respondent in respect of property rates for the 2004/2005 financial year, on the basis that such payment was not owing and was made without lawful cause. It alleged that the increased property rates were set aside and no effective rate was payable for the 2004/2005 financial year.

The SCA stated that during the transition, the source of a municipality's rating power was s 10G of the Transition Act. Both this court and the Constitutional Court have confirmed that a municipality's power to levy rates was 'derived from and exercised' in terms of section 10G(7), which was national legislation, as envisaged by section 229(2)(b) of the Constitution. A municipality's delegated rating power was replaced by original and constitutionally entrenched rating power as reflected in the Transitional Act.

The court held that a municipality had a 'self-standing' or 'freestanding' rate-levying competence which meant that it could levy property rates in terms of the provisions of s 10G(7) without reliance on or reference to the Ordinance. Unlike s 10G(6), which required that municipalities perform valuations 'subject to any other law', the exercise of rating power under s 10G(7) was not 'subject to

any other law'. Old order or pre-constitutional legislation continued in force subject to amendment or repeal and consistency with the Constitution. Resort was had to the old order Provincial Ordinances when necessary and in respect of matters not covered by the Transition Act.

Court further held that a municipality is not obliged to apply both national (the Transition Act) and provincial legislation (the Ordinance). Unless specifically provided by legislation, or if there is a lacuna in the Transition Act, a municipality is not required to have regard to the Ordinance. In the circumstances, Kungwini, when exercising its rating power under s 10G(7), was not obliged to comply with the provisions of the Ordinance.

The court found that although municipalities were entitled, in terms of s 10G(7), to fix property rates separately for each financial year (which happened in many instances), s 10G(7) did not oblige municipalities to do so and did not provide that any property rates which had been levied during a specific financial year automatically lapsed at the end of such financial year.