



## 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** 29 March 2017  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Nelson Mandela Bay Municipality v Amber Mountain Investments (576/2016) [2017]  
ZASCA 36 (29 March 2017)***

---

#### **MEDIA STATEMENT**

The Supreme Court of Appeal today dismissed an appeal by the Nelson Mandela Bay Municipality, against a judgment of the Eastern Cape Local Division of the High Court, Port Elizabeth. The issue was whether a property owner who sells property is liable for the payment of rates in respect of that property up to the end of a municipality's financial year or only for payment of rates up to the date of transfer of the property.

The respondent, Amber Mountain Investments 3 (Pty) Ltd was the previous owner of immovable property. It sold the property to a different company. Before the property was transferred, on 25 February 2010, the respondent required a rates clearance certificate, in terms of s 118 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act). The municipality's financial year commences on 1 July in a year and ends on 30 June the following year. The municipality required payment of rates until the end of its financial year, being 30 June 2010, prior to it furnishing the rates clearing certificate. It presented the respondent with an account for the sum of R2 281 014,68 in respect of property rates and electricity. The respondent paid the amount, under protest, in order to obtain the certificate. At the time of payment, the respondent's actual indebtedness to the municipality was for the sum of R1 214 482,68.

Aggrieved by this, the respondent, alleging that it had overpaid the municipality the sum of R1 066 532, instituted action against the municipality in the court a quo, claiming repayment of these moneys. The respondent's claim for repayment was based on unjust enrichment.

The court a quo agreed with the respondent, and found that it was only obliged to pay rates on the property until the date of transfer of the property, ie 25 February 2010. It held that as the respondent was no longer the owner of the property, it would be unjust for the municipality to claim rates from the respondent.

In coming to its decision, the SCA was of the view that the answer to the issue raised, lay in the interpretation of various provisions of the Local Government: Municipal Property Rates Act 6 of 2004 (the Rates Act), the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act) and the Local Government: Municipal Finance Management Act 56 of 2003 (the Finance Act). And that these Acts had to be read together – as they formed the basis for the current system of local government.

The SCA held that the relevant provisions of the Rates Act, the Finance Act and the Systems Act read together, reinforced the respondent's view that the municipality was not entitled to withhold the property rates clearance certificate until it had received payment of the property rates for the entire financial year. Such property rates became due *from* the start of the financial year, and not *on* the start of the financial year. It further held that s 118(1) of the Systems Act plainly applied to municipal debts which had become due in the two years *preceding* the date of application for the certificate and did not apply to future municipal debts. The court accordingly dismissed the appeal, in favour of the respondent.

--- ends ---