REPORTABLE

Case Number : 399 / 2000

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

In the matter between

WEENEN TRANSITIONAL LOCAL COUNCIL **Appellant**

and

S J VAN DYK **Respondent**

Composition of the Court :	**Hefer AP, Howie, Olivier, Farlam and Brand JJA**
Date of hearing :	**4 March 2002**
Date of delivery :	**14 March 2002**

SUMMARY

Local authority - Ordinance requiring four notices before rates become due and payable - failure to comply.

J U D G M E N T

OLIVIER J A

[1] This appeal has its origin in an action instituted in the Weenen Magistrate's Court by the appellant, a local council, against the respondent, a property owner within the appellant's area of jurisdiction and thus a ratepayer, for the payment of rates in respect of the properties owned by the respondent, allegedly due and payable on 30 January 1996. The only defence relevant to the appeal raised by the respondent was that the amounts claimed were not due and payable because the appellant had not complied with the provisions of s 166 of the Natal Local Authorities Ordinance, 1974 ("the Ordinance"). This defence was upheld by the magistrate and, on appeal to the Natal Provincial Division, also by that Court. The latter decision is reported in 2000 (3) SA 435 (N). Leave to appeal to

this Court was granted by the Natal Provincial Division.

[2] It is common cause that the powers and duties of the appellant and the rights and obligations of the respondent as ratepayer relevant to the issues now under consideration are to be found in the Ordinance, properly interpreted.

[3] The appellant is empowered by ss 148, 149 and 150 to assess and levy, once in every financial year, upon all the immovable property within the borough, a general rate, a water rate and a sewerage rate. The financial year ends on 30 June in every year.

[4] The procedure for collecting the assessed rates is laid down in ss 105 and 166 of the Ordinance. Section 105 (1) obliges the appellant ('Every council shall …') by no later than 30 June of a given financial year, to frame estimates of its revenue and expenditure for the following financial year and to assess the general rate, water rate

and sewerage rate payable by the owner of immovable property in the borough.

[5] The next step to be taken by the appellant is then laid down in s 105 (1A) which provides that, as soon as possible after the estimates have been framed and the rates assessed as required by s 105 (1)

> ' … the council shall publish in a newspaper [published in the Province and circulating in the area under the jurisdiction of the appellant - see s (1) (1)] a notice containing an abstract of such estimates and stating -
>
> (a) the amounts at which such rates have been assessed, and
>
> (b) that such estimates will be available for inspection at the municipal office for a period specified in such notice but not being less than seven days after the publication of the said notice.'

[6] The next step is then laid down in s 166. It reads as follows :

'The general rate, water rate and sewerage rate shall be assessed in accordance with section 105 (1) in respect of every financial year and, after the expiration of the period contemplated by section 105 (1A), the council shall publish in a newspaper a notice once a week for two consecutive weeks at intervals of not less than five days specifying the amounts at which such rates have been so assessed **and the final date in such financial year for the payment thereof**.' (My emphasis)

[7] Section 167 (1) then provides that

'The rates in respect of any financial year shall become due and payable one month after the first publication of the notice contemplated by section 166, and shall be paid on or before the final date for their payment as set forth in such notice …'

[8] Then follows s 172 (2), which provides as follows

'After the first publication of the notification referred to in section 167 [i.e. the first publication of the notice required by s 166], the collector [I e the Town Treasurer - see s 172 (1)] shall give notice to the

> owner of every rateable property, which notice shall state the amount of rates owing in respect thereof and the final date for payment and shall set out the number and description of the property and the value thereof as shown in the valuation roll.'

[9] Failure by a ratepayer to pay the assessed rates after the final date for their payment attracts a penalty of 18% *per annum* - see s 171.

[10] An analysis of the scheme of assessing, levying and collecting rates, as sketched above, shows that the appellant was obliged to issue four notices before it could claim payment of the rates :

(a) **a notice in terms of s 105 (1A)** which must state the amounts at which the rates have been assessed and allowing at least seven days after the date of the said publication for inspection of the estimates and assessment; and

(b) **two notices in terms of s 166**

(i) the first of which must be given after the expiry of the period of seven days mentioned in (a) above;

(ii) the second notice must be published not less than five days later, but in the week following upon the publication of the first s 166 notice;

(iii) both of which must specify the amounts at which the rates have been assessed and

(iv) both of which must specify the final date for the payment thereof. By virtue of the provisions of s 167 (1) the rates become due and payable one month after the first publication of the s 166 notice.

(c) **a notice to each ratepayer in terms of s 172 (2)** given after the publication of the first notice in terms of s 166, stating the amount of rates payable by that ratepayer and the final date for payment.

[11] In the present case the appellant caused to be published only one notice, dated 23 June 1995, which read as follows:

WEENEN TRANSITIONAL COUNCIL

NOTICE

It is hereby notified in terms of Section 105 of the Local Autnorities Ordinance, Natal (Ordinance 25 of 1974) that Estimates for the1995/96 Financial year have been adopted by the Town Council and an extract thereof is set out hereun-

der.

	Expenditure	Income
Rates and General Services	**R1 319 418**	**R1 222 027**
Estimated Deficit	**R 97 391**	
Total	**R1 222 027**	**R1 222 027**
Water Service	**R 91 570**	**R 189 974**
Estimated Surplus	**R 98 304**	
Total	**R1 411 901**	**R1 411 901**

A general rate of 1,7687 cents in the Rand on Agricultural Land Valuation and 8.05 on Residential and Commercial Valuations has been assessed

The final date for payment of these rates has been fixed as the 30 January 1996.

The Estimates will lie open for inspection at the office of the Town Clerk for a period of seven days from the date of Publication hereof.

Published at Weenen this 23th day of June 1995.

A Botes
Chief Executive /
Town Clerk

[12] The crux of the appeal lies in the respondent's allegation, unambiguously raised in the magistrates' court and in the court *a quo*, that there had not been any compliance with the provisions of s 166 in that

(a) The published notice itself expressly states that it is being given in terms of s 105. No mention of s 166 having been made, it cannot be interpreted as a partial compliance with the requirements of s 166.

(b) Section 166 contemplates two notices, the first of which can only be published after the seven day period envisaged by s 105 (1A). The appellant alleges that the first publication in terms of s 166 was given simultaneously with the publication of the s 105 (1A) publication, more exactly in the sentence included in the published notice reading

> **'The final date for payment of these rates has been fixed as the 30th January 1996.'**

The respondent avers that if compliance with the first notice in terms of s 166 was intended, then such notice was premature and invalid.

(c) Section 166 requires two notices, at least five days apart. Even if it is assumed that a first notice had validly been given in the published notice, there was no publication of a second s 166 notice. This was common cause.

[13] It seems to me that the correct approach to the objection that the appellant had failed to comply with the requirements of s 166 of the Ordinance is to follow a commonsense approach by asking the question whether the steps taken by the local authority were effective to bring about the exigibility of the claim measured against the intention of the legislature as ascertained from the language, scope and purpose of the enactment as a whole and the statutory requirement in particular (see *Nkisimane and Others v Santam Insurance Co Ltd* 1978 (2) SA 430 (A) at 434 A - B). Legalistic debates as to whether the enactment is peremptory (imperative, absolute, mandatory, a categorical imperative) or merely directory; whether 'shall' should be read as 'may'; whether strict as opposed to substantial compliance is required; whether delegated legislation dealing with formal requirements are of legislative or administrative

nature, *etc* may be interesting, but seldom essential to the outcome of a real case before the courts. They tell us what the outcome of the court's interpretation of the particular enactment is; they cannot tell us how to interpret. These debates have *a posteriori*, not *a priori* significance. The approach described above, identified as ' ... a trend in interpretation away from the strict legalistic to the substantive' by Van Dijkhorst J in *Ex parte Mothuloe (Law Society Transvaal, Intervening)* 1996 (4) SA 1131 (T) at 1138 D - E, seems to be the correct one and does away with debates of secondary importance only.

[14] It seems to be clear that the object of s 105 (1A) was to inform all the ratepayers in the particular borough of the council's **estimates** of its income and expenditure for the next financial year, and of the amount of the assessed rates. The estimates are to be made

available for inspection at the municipal office for a period of at least seven days after the publication of the notice. There can be no doubt, as the court *a quo* rightly concluded, that where, upon inspection of the estimates, ratepayers should discover that the matters required by s 105 (2) to (6) to be taken into account in arriving at the estimates have not properly been accounted for or that provision was made in the estimates for expenditure which is not authorised by the Ordinance, they would be entitled to approach a court for relief by way of interdict or mandamus. I am also of the view that in appropriate cases the council's decision as regard estimates and assessments can be taken on review. The object of the notice required by s 105 (1A) is clearly not to place the ratepayer *in mora* or to demand payment, but to afford an opportunity to object to the estimates and assessment.

[15] On the other hand, s 166 envisages a stage where the period mentioned in s 105 (1A) [*i e* at least seven days after the publication of the notice envisaged thereby] has elapsed. It requires specification of the amounts at which the rates have been assessed and of the final date for payment thereof. Clearly, s 166 serves a purpose other than that of s 105 (1A). It prepares the way for collection of the amounts payable, and it fixes a date of *mora*. The rates become **due and payable** after the date of publication of the first s 166 notice and that notice also fixes the **final** date of payment (see s 167 (1). The purpose of the second publication of the notice required by s 166 is obviously to ensure maximum publicity.

[16] While one might have been able to debate the necessity and importance of the second notice required by s 166 if there had been due compliance in respect of the first notice, the question in the

matter before us is whether there was a valid first notice. In my view, the answer must be no. The published notice purports, in its own terms, to be a s 105 (1A) notice. It does not now lie in the mouth of the council to say that it is a s 166 notice. If it was in truth intended to be a s 166 notice, it was given prematurely. It overlaps the period during which the estimates and assessment were lying for inspection. And, finally, it was not followed up by the second notice required by s 166. The fact that a notice to individual ratepayers is required by s 172 (2) cannot detract from the necessity of the notifications required by s 166 - on the contrary, it emphasises the legislature's concern to ensure that ratepayers are properly and optimally informed of their obligations. In any event, compliance with s 172 (2) had also not been proved.

[17] In the result, I am of the view that there was no compliance with the requirements of s 166 in the present matter. The amounts claimed by the appellant were not due and payable when the action was instituted. The claim was consequently rightly dismissed.

In the result, the appeal is dismissed with costs.

OLIVIER JA

CONCURRING :

HEFER AP
HOWIE JA
FARLAM JA
BRAND JA