THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case no: 518/09

In the matter between

NOKENG TSA TAEMANE LOCAL MUNICIPALITY **Appellant**

and

DINOKENG PROPERTY OWNERS ASSOCIATION **First Respondent**

MINISTER OF FINANCE: NATIONAL GOVENMENT **Second Respondent**

MEC FOR FINANCE: PROVINCIAL GOVERNMENT, GAUTENG **Third Respondent**

MEC FOR LOCAL GOVERNMENT, PROVINCIAL GOVERNMENT, GAUTENG **Fourth Respondent**

Neutral citation: ***Nokeng Tsa Taemane Local Municipality v Dinokeng Property Owners Association*** **(518/09) [2010] ZASCA 128 (30 September 2010)**

Coram: Harms DP, Heher, Bosielo, Shongwe and Tshiqi JJA

Heard: **27 August 2010**

Delivered: **30 September 2010**

Summary: Local Municipality – Authority of local municipality to levy property rates – whether local municipality complied with the relevant statutes – Effect of s 10G(7) of the Local Government Transition Act 209 of 1993 on the validity of the council's resolutions to levy and recover taxes in respect of immovable property falling within its jurisdiction.

ORDER

On appeal from: North Gauteng High Court (Pretoria), (Webster J sitting as a court of first instance):

1. The appeal is upheld with costs, including the costs of two counsel.
2. The order of the court below is set aside and replaced with the following: 'The application is dismissed with costs."

JUDGMENT

BOSIELO JA (HARMS DP, HEHER, SHONGWE and TSHIQI JJA concurring):

INTRODUCTION

[1] This appeal concerns the validity of the operating and capital budgets, which included assessment rate tariffs for properties within the municipal area, of the appellant, the Nokeng Tsa Taemane Local Municipality, for two financial years, namely 2003/2004 and 2004/2005 respectively. Their validity depends on the

provisions of the Constitution and the terms of s 10G(7) of the Local Government Transition Act 209 of 1993 (LGTA). The Act (but not the section) was repealed by s 179(1) of the Local Government: Municipal Finance Management Act 56 of 2003.

[2] The municipality is a local authority established in accordance with the Local Government: Municipal Structures Act 117 of 1998. The area of jurisdiction of the municipality includes various communities, amongst which are urban areas such as Rayton and Cullinan, rural residential areas such as Roodeplaat, agricultural land and conservancies, and traditionally Black townships like Refilwe.

[3] The first respondent, the Dinokeng Property Owners Association, is a voluntary association representing landowners and residents within the municipality's municipal boundaries. (Second, third and fourth respondents did not participate in the appeal proceedings and nothing need be said about them.) The association was formed on 12 May 2005, long after the 2003/2004 financial year and a month or so before the end of the 2004/2005 year.

[4] Notwithstanding opposition against the implementation of the assessment rate tariffs, the municipality proceeded to implement them. Aggrieved long after the event by the municipality's conduct, the association approached the North Gauteng High Court on notice of motion dated 16 November 2005 for an order

declaring the assessment tariffs approved by the municipality null and void and for setting them aside, together with related ancillary relief. The delay from the assessment of the tariffs until the launch of the application was approximately 29 months in respect of the 2003/2004 financial year (which was implemented with effect from 1 July 2003) and approximately 17 months for the 2004/2005 financial year (which was implemented with effect from 7 July 2004). The association sought to justify the delay because it allegedly had serious problems in collating the relevant information and in particular in obtaining the evidence of their expert Professor de la Rey (which was in any event irrelevant). This may be one reason why the association did not rely on the provisions of the Promotion of Administrative Justice Act 3 of 2000.

[5] On 18 March 2009 the court below (Webster J) granted the declaratory orders sought by the association. The municipality is appealing against that order with the leave of the court below.

THE STATUTORY REGIME APPLICABLE

[6] Section 229(1)(a) of the Constitution provides that a municipality may impose rates on property and surcharges on fees for services provided by or on behalf of the municipality. The function belongs to the municipal council and it may not delegate the approval of budgets or the imposition of rates and other taxes, levies and duties (s 160(2)). The power to impose rates and the like is subject to s 229(2)(a), which states, inter alia, that the power may not be exercised in a way that materially and unreasonably prejudices national economic policies.

[7] It would appear that if a municipality has delegated its power to impose rates, its conduct might be declared invalid in terms of s 172(1)(a) of the Constitution. See *Islamic Unity Convention v Independent Broadcasting Authority* 2002 (4) SA 294 (CC) paras 10-11; *City of Cape Town v Robertson* 2005 (2) SA 323 (CC). But that is not the end of the matter. A court is still duty bound to exercise its discretion by making an order that is just and equitable and it may limit the retrospective effect of the declaration of invalidity (s 172(1)(b).)

[8] The obligation of a municipality not materially and unreasonably to prejudice national economic policies by its rates is juridically of the same kind as two other provisions on which the association relied, namely s 152(1)(c) and s 195(1)(b). The first provides that an object of local government is to promote social and economic development and the second deals with the basic value of public administration which requires that the efficient, economic and effective use of resources must be promoted. These provisions are, as submitted by the municipality, not justiciable by courts. (I should note that counsel for the association did not suggest otherwise during argument.) The same view was expressed by this court (per Cameron JA) who echoed the misgivings of Froneman J in (*CDA Boerdery (Edms) Bpk v Nelson Mandela Metropolitan Municipality* 2007 (4) SA 276 (SCA) paras 45-46). These provisions concern political and inter-governmental issues, evidently specialist areas involving policy issues and a consideration of a host of other issues in respect whereof the court does not have the necessary expertise. It would be wrong for the courts to usurp the powers of municipalities and determine rates and taxes for them. The best course for a court

is to show judicial deference to the decisions taken by democratically elected municipal councils.

[9] In *Doctors for Life International v Speaker of the National Assembly & others* 2006 (6) SA 416 (CC) Ngcobo J stated in this regard that (at para 37):

'Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the judiciary should not interfere in the other branches of government unless to do so is mandated by the Constitution.'

[10] In view of this conclusion it will be unnecessary to revert to the contention on behalf of the association that the new tariffs offended s 229(2)(a) of the Constitution in that they unreasonably prejudiced national economic policies.

[11] The procedure a municipality must follow in imposing property rates was set out in s 10G(7) of the LGTA. It provided that the levying of property rates on immovable property in the area of jurisdiction of a municipality must be by way of a council resolution and in determining property rates a municipality may differentiate between different categories of users or property on such grounds as it may deem reasonable. (The provisions concerning the levying of rates in relation to services are not germane to this case.)

[12] After such a resolution has been passed,

'the chief executive officer of the municipality shall forthwith cause to be conspicuously displayed at a place installed for this purpose at the offices of the municipality as well as at such

other places within the area of jurisdiction of the municipality as may be determined by the chief executive officer, a notice stating–

(i) the general purport of the resolution;

(ii) the date on which the determination or amendment shall come into operation;

(iii) the date on which the notice is first displayed; and

(iv) that any person who desires to object to such determination or amendment shall do so in writing within 14 days after the date on which the notice is first displayed.

(Section 10G(7)(c).)

[13] Where an objection is lodged within the 14 day period

'the municipality shall consider every objection and may amend or withdraw the determination . . ..'

(Section 10G(7)(d).)

[14] It is important to mention that the mere failure to comply with one or other administrative provision does not mean that the whole procedure is necessarily void. It depends in the first instance on whether the Act contemplated that the relevant failure should be visited with nullity and in the second instance on its materiality (see in general *Nkisimane v Santam Insurance Co Ltd* 1978 (2) SA 430 (A) 433H-434E). To nullify the revenue stream of a local authority merely because of an administrative hiccup appears to me to be so drastic a result that it is unlikely that the Legislature could have intended it. Furthermore, declaratory orders are also discretionary.

[15] To illustrate the problem: In terms of s 152(1) of the Constitution, provision of services to communities in an effective and sustainable manner remains one of the fundamental objectives of every local government. Undoubtedly this is a constitutional mandate. It is a known fact that rates and taxes are important sources of revenue for municipalities which enable municipalities to meet their obligations to the communities they serve. Self-evidently any refusal by ratepayers to pay their rates and taxes is likely to have grave consequences for any municipality. The assessment of rates for 2003/2004 was approved and implemented on 1 July 2003 whilst that for 2004/2005 was implemented on 7 July 2004. The municipality required these monies to meet its budgetary requirements. The application to have them set aside was only launched on 16 November 2005. This has had the effect of suspending the implementation of the resolutions. This impasse is still continuing. There is no doubt herein that the delay herein is so inordinate that, irrespective or the merits, it would be impractical to reverse the entire process. Manifestly, the effect of such a reversal would be disastrous for the municipality. Suffice to state that it is in the interests of justice that people who intend to impugn decisions taken by municipalities should do so as expeditiously as possible to avoid any possible disruption of the provision of essential services. See *Gqwetha v Transkei Development Corporation Ltd* 2006 (2) SA 603 (SCA) at 612E-J.

ATTACK ON THE RESOLUTIONS

[16] The assessment rate tariffs that were to apply to households were, in terms of both resolutions, described with reference to two categories. The first was for ‘urban areas and surrounding properties’ at one rate and the other, at a lower rate,

for ‘rural areas (previously known as Pienaarsrivier, Elandsrivier, and Roodeplaat respectively).’

[17] It was submitted on behalf of the association that the use of the phrase ‘surrounding properties’ made the notices vague and thereby void because ratepayers would have been unable to determine the areas referred to in the notices. There is no merit in the submission. All properties within the municipal area of jurisdiction are subject to property rates. This means that all properties within the municipality have to fall within one or other of the two classes. ‘Surrounding properties’ must, accordingly refer to those properties that are not urban or rural (as defined).

THE ATTACK ON THE NOTICES: THE OBJECTION PERIOD

[18] On 28 May 2003, the municipality issued a notice, giving notice in terms of s 10G(7)(c) of the LGTA that its council had resolved on 26 May 2003 to adopt the operating and capital budget for the 2003/2004 financial year and further that tariffs determined in the same budget would be implemented with effect from 1 July 2003. As its terms are in issue, I deem it necessary to reproduce the notice hereunder–

‘LOCAL AUTHORITY NOTICE NOKENG TSA TAEMANE LOCAL MUNICIPALITY

NOTICE OF APPROVAL OF THE BUDGET AND TARIFF AMENDMENTS

Notice is hereby given in terms of the provisions of Section 10G(7)(c) of the Local Government Transition Act, Second Amendment Act, 1996, read with Section 75A of the Municipal Systems Act, 2000 (Act 32 of 2000) that on 26 May 2003, Council resolved to adopt the Operating and

Capital budget for the 2003/2004 financial year, and that the tariffs determined in the budget will be implemented with effect from 1 July 2003.
The said Council resolution is available for inspection at the Council offices in Rayton, Refilwe, Roodeplaat, Onverwacht and the library in De Wagensdrift, during normal office hours, 08:00 to 16:15 from Monday to Friday.
Any person who desires to object to the determination should do so in writing within 14 days of the date hereof. Objections are to be addressed to the Municipal Manager, P O Box 204 Rayton 1001.

A J BOSHOFF: MUNICIPAL MANAGER'

[19] On 8 June 2004, the municipality issued a similarly worded notice in relation to the 2004/2005 financial year, save for the date of the resolution, which was 7 June 2004, and the date for implementation, which was 7 July 2004.

[20] It is not in dispute that the two notices were conspicuously displayed on the dates and at the places mentioned in the notices as required by s 10G(7)(c) of LGTA. The complaint set out in the founding affidavit related to the fact that the municipality had published the notices in a number of newspapers without having stated the date on which the objection period commenced. In other words, the dates from which the 14 days for objections were supposed to run did not appear in the advertisements. This complaint can be disposed of summarily. The association's case was built on non-compliance of the provisions of the Act but the Act does not require newspaper advertisements. To the extent that the association might have sought to rely on the fact that members of the public might have been misled, there is no evidence that anyone was prejudiced by the omission in the advertisements.

In any event, the association did not event exist when the advertisements were published.

ATTACK ON THE NOTICES: THE GENERAL PURPORT

[21] The second attack on the notices was that they were flawed because they did not set out the 'general purport' of the resolutions as required by s 10G(7)(c)(i). It was submitted that they should have given clear, full and specific details of the resolutions and their nature and effect, and that it was not sufficient to have stated simply that the budget had been adopted and that it contained the new property rates and to invite the public to inspect the detail at the municipality's offices.

[22] It is clear that the section does not require details of the resolution and assessment to be published. Contrary to the submission by the association that the notice must set out, amongst others, the rates, areas affected, rebates applicable and the real and true effect of the increases of the rates, I hold the view that this does not accord with the ordinary grammatical meaning of the phrase 'general purport.'

[23] It is true that there is some uncertainty regarding the meaning of this phrase. The definition in *Webster's New Twentieth Century Abridged Dictionary* (2 ed) is apposite. Webster defines the noun "purport" to also mean 'concerned with the main or overall features; lacking details, not specific; as if these are the general characteristics' and 'vague; not precise; as, he spoke in general terms.' And 'general', according to the *Concise Oxford English Dictionary* (10 ed revised) also means 'involving only the main features or element and disregarding exceptions; overall.'

[24] The adjective 'general' qualifies the noun 'purport.' The conjunction was not accidental but deliberately intended to make clear that specific details are not required. In this case the requirement was satisfied because interested parties were advised that the resolutions were available for inspection. This accords with what Alexander J stated about this phrase in *Rampersad v Tongaat Town Board* 1990(4) SA 32 (D) at 37G:

'…. "general purport" then involves an intimation that what follows broadly covers a specific topic. If I may expand the notion it would be tantamount to the Board having to say this: We are not providing you with all the details in this Notice but they relate to a rezoning of the La Mercy Township….'

The learned judge proceeded (at 37I-J) to elucidate in terms pertinent to the notices with which this case is concerned:

'I think the point is made because the section specifically adopts the more practical course of directing inquiries to the Town Offices. In this sense the actual mechanics of the proposed scheme, if I may so describe it, are not to be specified in the Notice, but can be scrutinised at close range elsewhere. The section thus interpreted would support the meaning advanced by the applicants: Let the Notice give us some indication that we are the ones affected by the proposals and then it is up to us to take a closer look at them.'

[25] This interpretation is sound, practical and accords with common sense and logic. It follows that the association's submission that the two notices were defective in that they did not contain sufficient details to adequately inform ratepayers of what they were about is without merit.

THE FAILURE TO CONSIDER OBJECTIONS

[26] The association also argued that members of the public had registered objections against the determination of the tariffs but that the municipal council had failed to consider them as required by s 10G(7)(d)(ii) of the LGTA.

[27] It is clear from various letters written by other interested parties that there was some serious discontent with the new tariffs fixed by the municipality to a point where the municipality was threatened with a boycott by ratepayers. An acrimonious dispute ensued between the municipality and the association. Notwithstanding this impasse the municipality proceeded to implement the tariffs. Confronted by ratepayers who withheld their payments, the municipality threatened legal action.

[28] In analysing this matter, Webster J found that 'the only issue of relevance is whether the adjudication, if indeed there was one, by the executive committee on the merits, or otherwise of the objections lodged and received by the association was adequate in the circumstances.' The learned judge found that that the record showed that the objections were 'noted' by the executive committee and not considered by the council. This was, first, in conflict with the clear prohibition embodied in s 160(2) of the Constitution against a municipal council delegating this function, and second, 'noting' the objections implied that the objections had not been considered. Based on this the learned judge concluded that 'the failure to address such objections constitutes a fundamental violation of the rights of the applicants' and that 'the applicant has succeeded in proving that the approval of the levying of rates for 2003/2004 year was patently flawed and therefore lacked legal

validity to enable association to levy taxes in accordance with the provisions of the budget.'

[29] Concerning the assessment for 2004/2005 financial year, Webster J found that objections lodged with the municipality were never considered, not even by the executive committee. Relying on *Kungwini Local Municipality v Silver Lakes Homeowners Association* 2008 (6) SA 187 (SCA) para 36, he found that there was no compliance, strict or substantial, with the relevant statutory provisions. Accordingly he granted the relief sought by the association.

[30] Mr Sutherland for the municipality confined his submissions in this court to a two-pronged attack against the judgment of the court below. Firstly, he submitted that the alleged objections lodged did not qualify as 'objections' contemplated by s 10G(7)(c)(iv). He contended that for an objection to qualify as an objection in terms of this section, it had to be lodged in writing within 14 days after the date on which the notice was first published. He submitted that none of the objections relied upon had been lodged within the stipulated 14-day period. Concerning the objections lodged in respect of the 2004/2005 assessment, he contended that all the letters received by the municipality contained complaints as opposed to objections. Furthermore, he pointed out that all the letters pre-dated the relevant resolution and were sent before the publication of the second notice on 7 June 2003, hence they did not meet the requirements of s 10G (7) (c) (iv) which required lodging within 14 days from the date of publication of the notice. These

submissions were factually correct and the association's counsel had no answer to them.

[31] Counsel's second argument was that the allegation that the objections lodged were considered not by the council but by the executive committee contrary to s 10G(7)(d)(ii) was never part of the association's case. It was raised for the first time in the association's replying affidavit in an oblique manner without having applied for condonation to raise it. This is in conflict with well-established procedures in motion proceedings (*Director of Hospital Services v Mistry* 1979 (1) SA 626 (A)). It would moreover be unfair to consider this point, more so that the municipality never had an opportunity to deal with it. In any event, the presumption *omnia praesumuntur rite esse acta* requires of a court to assume in the absence of evidence to the contrary that the correct procedures were followed.

CONCLUSION

[32] It is clear that the relationship of the municipality and the association is frosty. Sadly the record reveals a disruptive and obstructive attitude by the association. The association used every conceivable legal stratagem to avoid the legal obligations to pay rates and taxes. By its conduct it has involved the municipality in a long drawn out and expensive litigation. It is trite that municipalities are assigned the difficult task to govern and administer their own areas. Importantly municipalities have a constitutional mandate to spend their resources in an efficient and cost effective manner for the benefit of their communities and in promoting social and economic development. It is inexcusable

that municipalities should be forced to waste their scarce resources in defending frivolous and spurious claims in our courts instead of using same to provide essential services to the ratepayers and thereby improving the lives of the people. Despite the submissions to the contrary by the association's counsel there is no reason why costs should not follow the result.

[33] The following order is made:

1 The appeal is upheld with costs, including the costs of two counsel.

2 The order of the court below is set aside and replaced with the following: 'The application is dismissed with costs."

L O Bosielo
Judge of Appeal

APPEARANCES:

For Appellant:	R Sutherland SC G I Hulley Instructed by: Maserumule Inc.: Johannesburg Honey Attorneys: Bloemfontein
For Respondent:	R du Plessis SC WJ Botha Instructed by: Grutter & Grobbelaar: Pretoria Bezuidenhouts Inc.: Bloemfontein