IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

The City of Cape Town and the Minister of Provincial and Local Government
v Anita Marie Robertson and Guy Trevor Robertson

CCT 19/04

Decided on 29 November 2004

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This is an appeal which concerns the validity of a provisional valuation roll of property in the area of jurisdiction of the City of Cape Town. The appellants in this Court are the City of Cape Town and the Minister of Provincial and Local Government.

In June 2002, Anita Marie Robertson and Guy Trevor Robertson, a couple living in Camps Bay, Cape Town approached the Cape High Court for an order restraining the City from charging property rates based on the provisional property valuations roll which the City opened for inspection and objection on 21 May 2002.

As part of the process aimed at transforming racially determined local government into one democratically determined, the Cape Metropolitan Area embarked on a process which eventually integrated sixty local authorities into a single municipality, now known as the City of Cape Town. Before then, local municipalities had each conducted their property valuations for rates based on different valuation rolls, some more than twenty years old. However, this produced discrepancies between rates values and the actual values of properties. Moreover, uniform property rates increases led to a perception in some quarters of an unfair and discriminatory distribution of the property rates burden. Shortly after its establishment in December 2000, the City compiled a metropolitan wide provisional valuation roll of properties for the 2002/2003 municipal financial year in terms of the Property Valuation Ordinance (Cape) of 1993 (the Ordinance). The property valuations reflected on the roll were used to calculate rates levied against the affected properties. This decision was opposed by some individual rate payers, such as the Robertsons, and associations of ratepayers as it had far reaching financial implications for many property owners.

Before the High Court, the validity of the provisional valuation roll was challenged on three grounds. First, that the Ordinance is not a law in force and therefore the City could not rely on it for levying rates. Second, that in any case, the City could not impose rates because it was not a local authority as described by the Ordinance. And third, that there was no other law empowering the City to charge property rates based on a provisional valuation roll.

After the start of the High Court application, the City and the Minister sought and parliament passed an amendment to the law governing local governments. The relevant amendments are contained in section 21 of the Amendment Act. In response, the Robertsons amended their application to include a challenge to its constitutional validity on the grounds that before their passage by parliament, the consultative procedures required by sections 154(2) and 229(5) of the Constitution had not been complied with.

The High Court, upheld the claim of the Robertsons. It further declared section 21 of the Amendment Act invalid on the grounds that its terms should have been published for public

comment in draft form before it was tabled in parliament in accordance with section 154(2) of the Constitution; and that there had been no formal request from parliament to the Financial and Fiscal Commission to consider the draft of section 21 of the Amendment Act in accordance with section 229(5) of the Constitution.

This Court unanimously holds that the appeal should succeed and that the orders of the High Court should be set aside.

Moseneke J writing for a unanimous Court finds that the Local Government: Municipal Structures Act 117 of 1998 (Structures Act) taken together with the Ordinance authorise the City to value property and to recover property rates within its area of jurisdiction. He holds that despite the powers of municipalities being subject to definition and regulation by a "competent authority", this does not mean that the powers exercised by local government are "delegated" powers. Rather, local government exercises "original" powers entrenched in the Constitution.

The approach that a municipality has no power to act if not authorised by a statute, is a relic of our pre-1994 past and is no longer permissible under our constitutional supremacy. In the past, parliament was sovereign and municipalities were creatures of statute, enjoying only delegated or subordinate legislative powers derived exclusively from ordinances or Acts of Parliament. The Constitution has moved away from a hierarchical division of governmental power. A municipality under the Constitution is no longer a mere creature of statute. The Constitution has ushered in a new vision of government in which the sphere of local government is interdependent, inviolable and possesses the constitutional latitude with which to define and express its unique character subject to constraints permissible under our Constitution.

The Constitution itself, and in particular sections 229(1) and (2) thereof authorise municipalities to impose property rates.

Moseneke J declined to consider the constitutionality of section 21 of the Amendment Act as the decision would not have any practical value. Moreover, the facts are obscure and the issues are complex and far-reaching. They relate to the procedural validity of legislation. In any event, even if the challenge is decided in favour of the respondents, the decision would not alter the outcome of this case, vindicate the right of any party or resolve a matter of wider public importance.

The order of constitutional invalidity made by the High Court is not confirmed.