



CONSTITUTIONAL COURT OF SOUTH AFRICA

Jacobus Johannes Liebenberg NO and Others v Bergrivier Municipality (Minister for Local Government and Environmental Affairs and Development Planning, Western Cape intervening)

**Case No: CCT 104/12
Date of judgment: 6 June 2013**

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.

Today, the Constitutional Court handed down a judgment in a matter concerning the validity of certain municipal levies and rates imposed by the respondent, the Bergrivier Municipality (Municipality), over a period of 8 years.

From 2001, the applicants, rural landowners within the Municipality's area of jurisdiction, failed to pay certain levies and property rates imposed by the Municipality since 2001. When the Municipality sought to enforce payment of the levies and rates in the Magistrate's Court, the applicants disputed the validity and lawfulness of the charges. The parties agreed that the Municipality would seek a declaratory order from the High Court regarding the validity of the imposts.

The Western Cape High Court, Cape Town (High Court) found in favour of the applicants' challenge to the validity of the imposts for all the relevant years, except for the rates imposed in the 2003/2004, 2004/2005 and 2005/2006 financial years. On appeal, the Supreme Court of Appeal overturned the High Court decision and dismissed all of the applicants' challenges. It held that the levies and rates had been validly imposed.

In the Constitutional Court, the applicants argued that the Municipality incorrectly relied on provisions of the Local Government Transition Act (Transition Act) in imposing property rates for some of the years in question. They contended that the rates for those years could only have been lawfully imposed in terms of the Local Government: Municipal Property Rates Act (Rates Act) because section 10G(7) of the Transition Act had already been repealed by the Local Government: Municipal Finance Management Act (Finance Act). In addition, the applicants argued that the Municipality had not complied with various statutory

requirements, such as notice procedures and promulgations requirements. The Minister of Local Government, Environmental Affairs and Development Planning, Western Cape was admitted by the Court as an intervening party.

In a judgment penned by Mhlantla AJ, and concurred in by Mogoeng CJ, Moseneke DCJ, Froneman J, Nkabinde J, Skweyiya J and Zondo J, the majority of the Court granted leave to appeal and dismissed the appeal. Emphasising the importance of taking into account the relationship between the various statutory enactments that have sought to restructure local government, the majority held that the Municipality had properly imposed the rates in terms of section 10G(7) of the Transition Act for the 2006/2007 to 2008/2009 financial years. In respect of the challenges to the other years, the majority held that the Municipality had substantially complied with the relevant statutory requirements.

In a dissenting judgment Jafta J would have upheld the appeal on the basis that section 10G(7) had been repealed before the Rates Act came into force and therefore that section 10G could not have empowered the Municipality to impose rates between 2004 and 2009. Regarding the rates imposed for the 2002/2003 financial year, he held that because the Municipality had failed to give notice of two amendments to the rates, the rates imposed were invalid.

Khampepe J wrote a separate judgment in which she agreed with Mhlantla AJ that the challenges to the imposts for the years 2004/5 and 2005/6 should fail, but agreed with Jafta J that the 2002/2003 rates were invalidly imposed because the Municipality had failed to issue notices inviting public participation in relation to the imposition of those rates. Khampepe J held further that because the rates for the years 2006/2007 to 2008/2009 were not promulgated by publication in the Provincial Gazette, those rates were invalidly imposed.