



## 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:** 16 May 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*City of Tshwane Metropolitan Municipality v Malvigenix NPC t/a Wecanwin and Others* (90/2023) [2024] ZASCA 76 (16 May 2024)

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Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs including costs of two counsel. The appeal emanated from the Gauteng Division of the High Court, Pretoria (the high court) where that court granted a judgment and orders against the City of Tshwane Metropolitan Municipality (the City) from an application lodged by an entity known as Malvigenix NPC t/a Wecanwin and 17 other applicants (Wecanwin), who are the current and former property owners (ratepayers) of Lombardy Estate and Health Spa (the Lombardy Estate) which is a privately owned housing development, situated within the jurisdiction of the City.

The genesis of the dispute between the City and Wecanwin has to be traced back to an application instituted in 2016 by the Lombardy Development (Pty) Ltd and 13 of the property owners, in the high court, resulting in the matter of *Lombardy Development (Pty) Ltd and 13 Others v The City of Tshwane Metropolitan Municipality (Lombardy)*. The 13 applicants in Lombardy and the 17 members of Wecanwin in the present appeal, were and some still are, property owners and ratepayers in Lombardy Estate. Both cases deal with the declaration of invalidity and setting aside of the impugned valuation rolls, with the consequence that the categorization of the property for purposes of imposition of rates had been reversed in *Lombardy*, a decision confirmed by the SCA on appeal, in the *City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others (City of Tshwane)*. The present appeal by the City, had its foundation in, and was a sequel to *Lombardy* and *City of Tshwane*.

In 2012, the City, acting in terms of the Rates Act 6 of 2004 (the Rates Act), published a supplementary valuation roll, which was followed by a general valuation roll in 2013 (the valuation rolls). The valuation rolls were promulgated for the City's newly incorporated geographic area, which previously fell under the disestablished Kungwini Local Municipality (Kungwini). In terms of the valuation rolls, the City categorised the properties in Lombardy Estate as vacant. These properties were previously categorised by Kungwini as 'residential'. The rate charged on vacant properties attracted far much greater revenue for the City than those categorised as residential. Consequently, the ratepayers received invoices from the City, reflecting massive increases in their liability for imposed rates, to as much as 700% of what they originally paid under Kungwini.

The Lombardy Development (Pty) Ltd and 13 property owners in Lombardy Estate, instituted review proceedings in the high court, wherein they sought a declaration of invalidity and the setting aside of

the City's valuation rolls in terms of which the City had unlawfully categorised their properties as vacant. The unlawfulness of the categorisation was as a result of the City failing to comply with the public consultation process provided for in s 49 of the Rates Act, when setting up the valuation rolls. On 31 May 2016, the high court declared invalid and set aside the impugned valuation rolls, in terms of which the properties were categorised as vacant.

Following the success in *Lombardy*, Wecanwin and its members demanded from the City that they be placed in the same position as the applicants in *Lombardy* concerning the relief granted in paragraph four of the orders which implied a claim for a refund of the overcharged amounts of the rates paid. The City declined to do so, on the grounds that paragraph four read with paragraphs seven and nine of *Lombardy*, in the City's view, concerned only the applicants that were before the high court in that application.

In 2017, Wecanwin approached the high court, seeking a declaratory order that the City's refusal to comply with the high court's judgment and orders, read with the *City of Tshwane* judgment, was unlawful. In support of this relief, Wecanwin contended that since the judgment by Tuchten J in *Lombardy*, was accepted by the SCA as one *in rem*, it applied to all affected properties in Lombardy Estate. Consequently, the declaration of the valuation rolls as invalid, reverses the categorisation of the properties from 'vacant' to 'residential'. The invalidation of the valuation rolls implies that the categorisation of the properties by Kungwini as residential is revived. The City, in response, contended, in essence, that it is bound by the *Oudekraal* principle that an unlawful act can produce legally effective consequences, is constitutionally sustainable, and indeed necessary.

The issue before the SCA thus turned on whether it was necessary for Wecanwin to institute review proceedings for the relief they sought. In addressing the issue, the SCA reasoned that the City's contentions to be unmeritorious and misplaced because:

- (a) The City, in the present appeal, inexplicably misconstrued or ignored paragraphs 28 and 29 of the SCA judgment, where this Court stated unequivocally that the *Lombardy* judgment was one *in rem*. *Lombardy*, therefore, adjudicated a complaint against the categorisation of the properties in Lombardy Estate as vacant. The high court in *Lombardy* had, in paragraphs two and three of its orders, declared invalid and had set aside the categorisation in the valuation rolls of the properties as vacant. Those orders concerned all affected properties in Lombardy Estate, including those of Wecanwin members;
- (b) By contending that Wecanwin needed to institute review proceedings to declare invalid and set aside the imposed rates, the City advanced an untenable contention as it would be impractical to institute review proceedings to have the valuation rolls declared invalid and set aside again; and
- (c) The City has a misconceived notion of its duty and role as a sphere of local government. Despite being a constitutional structure, the City supinely assumed that the duty to correct its unlawful conduct lay with those adversely affected by that conduct. The duty to correct the invalidation of the unlawful conduct and its consequence rested with the City and not with the Lombardy Estate ratepayers; and (d) The Property Rates Act requires a municipality in its rates policy to ensure that all rate payers are treated equitably.

In the result, the SCA dismissed the appeal with costs including those of two counsel.

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