Municipal Revenue Management Through Case

Simon Shokane

CIGFARO
Chartered Institute of
Government Finance, Audit & Risk Officers

Mkontwana v Nelson Mandela Metro 118(1) Con 2004

CIGFARO
Chartered Institute of
Government Finance, Audit & Risk Officers

- Case Summary: Property owners challenged liability linked to municipal debts.(Owner tenant relation)
- Owners argued they should not be burdened with debts not directly incurred by them.
- Judgment: Court confirmed strong municipal debt recovery powers within legislative limits.
- Principle: Revenue collection is essential for municipal sustainability.

The judgment concludes that the consumption charge is connected both to the property and to the owner even if the owner is not the occupier. There is sufficient reason for the deprivation because the purpose is compelling and because it is not unreasonable, in all the circumstances to expect the owner to take the risk if the occupier did not pay. The judgment also holds that all municipalities had to provide owners with copies of electricity and water accounts sent to occupiers if the owners requested these in writing.

BOE Bank v City of Tshwane SCA 118(3) 2005

CIGFARO
Chartered Institute of
Government Finance, Audit & Risk Officers

- Case Summary: Dispute over municipal clearance certificates during property transfers.
- Parties challenged municipal rights to require debt settlement before transfer.
- Judgment: Court supported municipal rights under Section 118.
- Principle: Municipal debts enjoy statutory protection during transfers.

(4) The SCA did not agree with either of these arguments. Consequently the judgment of the Pretoria High Court, that the historical debt ranked prior to the bank's mortgage bonds at the execution sale, was upheld and the appeal dismissed with costs.

City of Johannesburg v Kaplan NO SCA 2006

CIGFARO
Chartered Institute of
Government Finance, Audit & Risk Officers

- Case Summary: Municipal claims in insolvent estates.
- Dispute regarding ranking of municipal claims.
- Judgment: Court recognized protections afforded to municipal claims.
- Principle: Municipal revenue must be protected in insolvency matters.

In the result the municipality was substantially successful and the bondholder was ordered to pay the costs of the proceedings in the Johannesburg High Court and on appeal.

City of Tshwane v Mathabathe 118(3) SCA 2013

- Case Summary: The City of Tshwane refused to issue a rates clearance certificate unless the conveyancer undertook to pay historical municipal debt
- Arguments: The municipality argued that it could require an undertaking protect its rights under section 118(3)
- Judgment: The SCA held that the municipality could not demand such an undertaking but for two years preceding the clearance application under section 118(1).
- Section 118(1) limits the debt that must be paid for a clearance certificate to the preceding two years, while section 118(3) creates a separate security right over the property for historical debt, which survives transfer and may be enforced through legal process.

and an appropriate court order is obtained, the SCA held, the municipality, which enjoys preference over any mortgage bond registered against the property, may sell the property in execution and apply the proceeds to payment of the debt. Therefore the municipality was not entitled, in addition to the security it enjoyed, to seek the undertaking it sought from the conveyancer. Consequently, the SCA dismissed the municipality's appeal with costs.

City of Tshwane v Mitchell SCA 2015

- Case Summary:
  Mitchell bought property at a sale in execution and disputed liability for historical municipal debt owed by previous owners.
- Arguments:
  The municipality argued that section 118(3) created a charge over the property that survived transfer and secured historical debt.
- Judgment:
  The SCA upheld the municipality’s appeal and held that the section 118(3) charge survived transfer, but it did not decide that the new owner was personally liable for the old owner’s debt.
- Section 118(3) was interpreted by the SCA as a security right over the property.

Accordingly, he held, the security created by the subsection does not survive a sale in execution, rather it is the proceeds of sale that secures the payment of outstanding municipal debts, and the municipality must be paid in full before any mortgagee is paid its debts, provided that they have not become prescribed, He further held that if it had been intended that the security created by s 118(3) should continue to exist even beyond its sale in execution, the legislature would have used precise

Jordaan v Tshwane & Ekurhuleni 2016

- Case Summary
- Purchasers of properties challenged municipalities that refused to provide services or open accounts unless historical debts incurred by previous owners were paid.
- Arguments
- Applicants argued that new owners cannot be held liable for debts incurred by previous owners, while municipalities argued that section 118(3) created a charge over the property that survived transfer.
- Judgment
- The court ruled that section 118(3) was unconstitutional to the extent that it allowed historical municipal debt to burden a new owner who was not the debtor, and municipalities could not refuse services on that basis.
- A new property owner does not become liable for historical municipal debts of previous owners merely because ownership of the property has transferred.

The provisions of section 118(3) of the Local Government:Municipal Systems Act No 32 of 2000 are declared to be constitutionally invalid to the extent only that the security provision "a charge upon the property" survives transfer of ownership into the name of a new or subsequent owner who is not a debtor of the municipality with regard to municipal debts incurred prior to such transfer;

Jaftha v Schoeman sale in Execut vs constitution

- Case Summary: Sale in execution of residential property.
- Arguments: Constitutional rights implications were raised.
- Judgment: Court required safeguards before people lose their homes.
- Principle: Revenue recovery must respect constitutional rights.
- Lessons: Exhaust lawful recovery options before execution.

Mkhize vs Umvoti NB

The failure to provide judicial oversight over sales in execution against immovable property of judgment debtors in **section 66(1)(a)** of the **Magistrates' Courts Act 32 of 1944** is declared to be unconstitutional and invalid.

[7] The plaintiff and his late wife, who were married in community of property, owned the immovable property which is the subject of the a
for R25 000. It was vacant land at that time but they built a house on it although they did not complete it. The plaintiff's wife passed away
heir of her estate. The plaintiff never resided in the house but lived in another house also owned by him. He also owned other properties.

Nobumba NO v Nelson Mandela Bay

CIGFARO
Chartered Institute of
Government Finance, Audit & Risk Officers

- Case Summary
- Municipality sued for unpaid rates and service charges, but the magistrate refused judgment because the municipality had not complied with the National Credit Act.
- Arguments
- Municipality argued that rates are statutory taxes, not credit agreements, while the respondent argued that the **National Credit Act** applied to the debt recovery process.
- Judgment
- The court ruled that the National Credit Act does not apply to municipal rates and set aside the magistrate's decision.
- Principle
- Municipal rates arise from legislation, not a credit agreement, therefore recovery of rates is not subject to the National Credit Act.
- Lesson for Municipalities
- Municipalities may recover unpaid rates without first complying with National Credit Act procedures.

magistrate hearing the matter, struck the matter from the roll on the basis that the National Credit Act 34 of 2005 applied and had not been

Leon Joseph and Others v City of Johannesburg

- Case Summary
- Tenants challenged the disconnection of electricity to their building after the landlord failed to pay municipal accounts. The case concerned whether tenants were entitled to notice before disconnection.
- Arguments
- The tenants argued that the disconnection violated their rights and that they should have been given notice and an opportunity to be heard. The municipality argued that it only had a contractual relationship with the landlord.
- Judgment
- The Constitutional Court ruled that affected tenants were entitled to procedural fairness before electricity could be disconnected. The municipality had to provide notice and an opportunity to make representations. And reasonable is 14 days ruled:

Argent v Ekurhuleni

- Case Summary
- Ekurhuleni Municipality issued a large water bill in 2015 based on a meter that had not been read since 2009. Argent challenged the charges older than three years, arguing that the debt had prescribed.
- Arguments
- Argent argued that water charges older than three years were **prescribed** and no longer recoverable. The municipality argued that prescription only started when the actual meter reading and billing occurred.
- Judgment
- The court ruled in favour of Argent and held that charges older than three years had prescribed. Ekurhuleni was ordered to recalculate the account excluding the prescribed debt.
- Principle
- A municipality cannot avoid prescription by failing to read meters or delaying billing. Service charges older than three years may become legally unenforceable if not billed and recovered timeously.

Thank You!

CIGFARO
Chartered Institute of
Government Finance, Audit & Risk Officers

www.cigfaro.co.za