MUNICIPAL CLEARANCE CERTIFICATES – MAY THE AMOUNT CLAIMED INCLUDE INTEREST ON ARREARS?

Moatshi v City of Tshwane Metropolitan Municipality (45183/2018) [2024] ZAGPPHC 331 (11 April 2024)

This judgment investigated whether section 118(1) of the Local Government: Municipal Systems Act allows a municipality to include interest on overdue amounts when it determines the amount payable for purposes of issuing a clearance certificate in a property transfer. The wording of the section does not speak of interest, but – as the municipality argued here – it is mandated by the Constitution to collect debts to ensure its optimal functioning.

The judgment can be viewed [here.](#)

FACTS

The dispute in the present matter arose when Mr Moatshi purchased a property from an insolvent estate in February 2015. Application was made in terms of section 118(1) of the Local Government: Municipal Systems Act, 32 of 2000 ('**the Act**') to the City of Tshwane Metropolitan Municipality ('**the City**') for a clearance certificate in order to effect registration of transfer of ownership.

In response, he received two certificates claiming payment of respectively some R215K and R658K. The City subsequently issued further certificates with amounts claimed being vastly different and excessive. (By way of example, the following amounts were indicated to be payable by the City in terms of section 118(1) of the Act: On 7 March 2017 - R669 592.34; on 30 March 2017 - R174 885.42, on 13 August 2019 - R1 039 502.44, and on 2 September 2020 - R240 636.47.)

On investigation, it became apparent that the City charged both single and compound interest on all outstanding amounts which accumulated within the two years preceding the date of application for the certificate.

Moatshi brought the present application for an order that the City was not entitled to claim interest on the charges specified in section 118 of the Act, in respect of which a clearance certificate was requested.

Legislative framework

Section 118(1) of the Act stipulates as follows:

"118 Restraint of transfer of property

(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate-

(a) issued by the municipality or municipalities in which that property is situated; and

(b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid."

Arguments

The question before the court was whether section 118(1)(b) of the Act allows for interest to be added to the charges listed in section 118(a) and, if so, who is responsible for the payment of such interest.

Moatshi argued that section 118(1) of the Act only provides for the inclusion of "municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties" levied in the relevant period in determining the amount required for the issuance of a clearance certificate, and that it does not provide for a municipality to charge and include interest thereon. To put it differently, the Act only provides for a municipality to include, in the section 118 certificate calculation, all monthly municipal charges which fell due in the two years preceding the application for the certificate, exclusive of interest which might otherwise become due and payable as per the municipality's credit control and debt collection policy.

The City argued to the contrary - that the words "amounts due" in section 118(1) had to be read with sections 96 and 97 of the Act (*discussed in the judgment summary below*), and with the City of Tshwane Metropolitan Municipality Credit Control and Debt Collection Policy the latter which allows for the charging of interest in respect of outstanding debts.

This interpretation was fortified by the fact that the Constitutional Court has held that "the purpose of section 118(1) is to furnish a form of security to municipalities for the payment of amounts due…The purpose is important, laudable and has the potential to encourage regular payments of consumption charges and thereby to contribute to the effective discharge by municipalities of their constitutionally mandated functions."

HELD

- Section 118(1) of the Act prohibits the transfer of property until such time as a certificate is issued by a municipality, certifying that all municipal debts due in connection with the property during the two years preceding the date of application for the certificate, have been fully paid. A municipality is hereby given the right to embargo the transfer of property situated in its area of jurisdiction, until such time as it certifies that arrear municipal charges - as contemplated in section 118(1) of the Act - have been paid. In this way, it is said that section 118(1) serves as a form of security for municipalities for the repayment of debts.
- In the present matter, the point of departure has to be the interpretation of the language used in section 118(1) of the Act, read in context and having regard to the purpose of the provision and the background to the preparation and production of the Act. Both the context and the language must be considered.
- In this regard:
    - If the dictionary meaning of the words "municipal service fees", "surcharges on fees", "property rates" and other "municipal taxes", "levies" and "duties" ("the municipal charges") are referred to, it is apparent that interest is nowhere included in the description of the meaning of these words.
    - Furthermore, the description of the charges mentioned in section 118(1) of the Act is derived from section 229(1) of the Constitution which stipulates that "…a municipality may impose – (a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and (b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value added tax, general sales tax or customs duty." As enabling provision, section 229(1) of the Constitution also contains no reference to interest, and no authorisation to recover same is found.
    - In addition, the legislator elected not to add the word "interest" to the municipal charges listed in section 118(1) of the Act - a list which can otherwise be described as a *numerus clausus* (a limited, closed list) of the municipal charges to be included in the calculation of money to be paid for purposes of issuance of the clearance certificate. On this basis, it justifies a conclusion that the legislator exercised its discretion to exclude interest in the said section.
- Definitions contained in other relevant legislation also militates against a finding that section 118 permits the charging of interest. By way of example, the definition of property rates, can be established from sections 2 and 3 of the Municipal Property Rates Act, 6 of 2004. It is stated that a municipality may levy a rate on a property in its area as per its rates policy. No stipulations addressing the recovery of interest can be found in this legislation.
- The Act does allow interest to be charged in the event of a municipality having complied with the requirements of section 75A (2) - (4) of the Act. This is followed by section 96 of the Act in terms of which

a municipality is obligated to collect all money due and payable to it "subject to this act and any other applicable legislation" for purpose of which it is compulsory to adopt, maintain and implement a credit control and debt collection policy. Section 97 further regulates the contents of the policy and it provides, inter alia, that the policy must provide for "(e) interest on arrears, where appropriate".

- Considering these sections, it follows that there is no stipulation to be found in the Act affording the municipalities *carte blanche* to levy interest as it deems fit: It is clear that interest can certainly not be claimed from a consumer unless the municipalities have complied with sections 75A(2)-(4) and 97(1)(e) of the Act.
- Having regard to the above, the conclusion has to be that municipalities are not prohibited to charge interest on arrear accounts in general. Accounts however can only be said to have fallen into arrears when firstly consumption has occurred by the user (who stands in a contractual relationship with the municipality); secondly a statement has been rendered by a municipality demanding payment; and thirdly the account remains unpaid by the due date so set in the statement. Once these three occurrences have taken place, coupled with the enabling legislation, interest may be levied.
- In the present matter, however, the purchaser was not a consumer of the services; he had no contractual relationship with the municipality, neither was he rendered with a statement demanding payment nor has failed to settle the account by due date. He cannot therefore be in default, allowing any interest to accrue.

CONCLUSION

The City is prohibited from charging interest on any arrear municipal account prior to issuing the section 118(1)(b) certificate.