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**IN THE NORTH GAUTENG HIGH COURT, PRETORIA**  
**(REPUBLIC OF SOUTH AFRICA)**

CASE NO. 13167/2013

Date: 15 AUGUST 2014

In the matter between:

**TD MOHLOBULI**

**FIRST APPLICANT**

**KEITH ELWYN LUTCHIMA N.O.**

**SECOND APPLICANT**

**and**

**MOGALE CITY MUNICIPALITY**

**RESPONDENT**

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**JUDGMENT**

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**BREDENKAMP AJ:**

- [1] In this matter, the respondents seek an order compelling the respondents to furnish the first applicants with a clearance certificate in terms of Section 118 (1) (b) of the Local Government: Municipal System Act 32 of 2000( As Amended) within 10 (Ten) days of this order. A cost order that the Respondent to pay the costs of this application is also sought.
- [2] The second applicant being the trustee of the insolvent Estate, was joined as such by way of a court order granted of 16 August 2013.
- [3] It is common cause that first applicant purchased portion 0 of Erf [...] W[...] P[...], Johannesburg known as 51 T[...] street W[...] P[...], Johannesburg on 12 July 2012 out of an insolvent estate. First applicant's attorneys requested clearance figures from the respondent on 31 October 2012 and it was provided on 31 October 2012. In terms of the figures provided first applicant has to pay the amount of R19033.17 to the respondent. Payment was effected.
- [4] It appears from the clearance certificate dated 31 October 2012, that the amount of R19033.17, comprises municipal service fees, property rates and other municipal taxes, levies and duty's during the 2 years preceding the date

of application. However the respondents also requested an additional payment of R7856.06 which, as it describes it in the certificate, amounts to historical debt in respect of the period which preceded the aforesaid 2 years.

- [5] Respondents refuses the issue the necessary clearance certificate until the total amount of R 26889.23 is paid.
  
- [6] Section 118(1) and 118(2) of the local Government Municipal Systems Act 32 of 2000 (As Amended) states that a Registrar of Deeds may not register the transfer of property unless a clearance certificate is issued which certifies that all amounts that became due in connection with that property for Municipal services fee, property rates and taxes etc. during the two years preceding the date of application for the certificate, have fully been paid. These sections also state that in the case of the transfer of property of trustee of insolvent estate, its provisions are subjective to section 89 of the Insolvency Act 24 of 1936.
  
- [7] The Law applicable to the facts *in casu* was succinctly set out in the matter of ***City of Johannesburg vs Caplin N.O. and Another 2006(5) SA 10 SCA at p 27.*** According to this paragraph; "No property may be transferred unless the clearance certificate certifies full of Municipal debts that have become due during a period of 2(two) years before the date of application for the certificate (i) (ii) the preference accorded by section 118(3) in favour of the Municipality

over that of a holder of a mortgage bond is limited to claims which fell during the period laid down in section 89(1) i.e. two years prior to the date of sequestration or liquidation up to the date of transfer.

- [8] The “historical debts” of R7856.06 *in casu*, falls outside the relevant period of 2 years.
- [9] The Respondent is obligated to furnish first and second applicant with a clearance certificate, as the amount of R19033.17 has been paid.
- [10] As the applicant is successful with its application it follows that it also entitled to its costs.
- [11] In the view of the above, the attached draft order marked “X” and signed by myself, is made order of court.

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**BREDENKAMP IM  
ACTING JUDGE OF THE HIGH COURT.**