Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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Kungwini Local Municipality v Silver Lakes Home Owners Association & Jan Roelof Boot

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Kungwini Local Municipality (the Municipality) and a cross-appeal by the Silver Lakes Home Owners Association (Silver Lakes) against a decision of the Pretoria High Court. That Court had held that the Municipality, in increasing the property rates for the 2004/2005 financial year in respect of the Bronberg area, had not complied with the applicable legislation (section 10G(7) of the Local Government Transition Act 209 of 1993 (LGTA) and had thus not exercised its powers in a lawful manner.

On 29 June 2004, the Municipality adopted a resolution to the effect that the assessment rate tariff for properties in its Bronberg area be increased from R0.02 per rand value of the relevant property to R0.054 per rand value for the 2004/2005 financial year. In terms of the resolution as adopted, the percentage tariff increase for the Bronberg area would be 145.45 % for the 2004/2005 financial year – this was a mistake as the actual percentage increase was 170%. On 28 July 2004, the Municipality published a notice setting out what had been resolved by it and giving the local community 35 days to lodge objections. The increased rates were reflected on the accounts of the residents of the Bronberg area from 1 August 2004.

Silver Lakes, an association of residents in the Bronberg area, argued that the resolution was invalid in that the objections lodged prior to the adoption of the resolution had not been properly considered. The Pretoria High Court rejected this argument and the SCA agreed with that court. The SCA held that section 10G(7) of the LGTA did not require the formal consideration of objections and submissions before the resolution was taken. The principle of public participation was given effect to by the express provision made in the section for the lodging and consideration of objections after the publication of the resolution in the subsequent notice prescribed by section 10G(7)(c). Silver Lakes' cross appeal was therefore dismissed.

Silver Lakes also argued that the notice of 28 July did not comply with the provisions of s 10G(7)(c) in that (amongst other things) it did not state the date on which the increased property rates would come into operation; the notice incorrectly reflected the percentage rate increase as being 145.45% instead of 170%; and the increase in

the rates came into operation before the expiry of the period during which the residents were invited to lodge objections.

The majority of the SCA (three judges out of five concurring) held that a reading of the notice made it quite clear that it related to the budget for the 2004/2005 financial year and that the rates determined thus also related to that financial year. As the financial year of all municipalities is from 1 July each year to 30 June of the next year, notice was given that the increase in the rates would come into operation on 1 July 2004. The fact that the increased rates were claimed by the Municipality only from 1 August 2004 could not detract from the fact that according to the notice the newly determined rates were for the 2004/2005 financial year. The notice was therefore not invalid on that ground.

The SCA was, however, unanimous in its conclusion that the notice did not comply with section 10G(7)(c) in that, to the general body of ratepayers, it would have conveyed two contradictory approvals for the Bronberg area, namely an approval of a rate of R0.054 per rand value and also an approval of a rate of R0.049 (a 145.45% increase). Ratepayers thus would not have known what rates they had to pay, probably the most important object of the prescribed notice. The notice was thus invalid on that ground. The SCA agreed with the High Court in this regard and the appeal by the Municipality was dismissed.

ends …….