

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

1 October 2012

STATUS: Immediate

***JJ Liebenberg NO v Bergrivier Municipality (737/11) [2012] ZASCA 153 (1 October 2012)***

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

The Supreme Court of Appeal today dismissed an appeal against a decision of the Western Cape High Court, Cape Town, which had held that rates had been validly imposed by the Bergrivier Municipality on the owners of rural properties in two financial years (2002/2003 and 2004/2005). But it upheld the cross appeal of the Municipality against the orders of the high court that rates imposed in subsequent years, until the 2008/2009 financial year, had been unlawfully imposed. The SCA ordered the farm owners to pay the amounts owed by them to the Municipality, together with all costs incurred in the litigation that the Municipality had had to embark upon to recover the arrear rates.

Rates were imposed on rural land in South Africa for the first time when the Local Government Transition Act of 1993 brought all land in the country under the jurisdiction of municipal councils. When the Bergrivier Municipality imposed levies and rates under that Act in 2001/2002, and in subsequent years, the farm owners refused to pay them on the basis that there had not been compliance with the Transition Act. The complaints were all of a technical nature.

The Transition Act, which empowered the levying of rates, and regulated the manner of imposition, was replaced over a number of years with four statutes which together now regulate local government. The farm owners argued that once the Local Government: Municipal Property Rates Act of 2004 came into operation (on 2 July 2005), the rating provision of the Transition Act ceased to apply and that the Municipality was obliged to follow the procedures laid down in that Act, which included promulgation in a provincial gazette.

Transitional provisions in the Rates Act, as well as in the Local Government: Municipal Finance Act (which came into operation in July 2004), had, however, kept alive the provision of the Transition Act enabling the levying of rates until 2011. The Municipality

had acted in terms of that provision, and complied with the procedures laid down in the Finance Act, in the years after 2005. The farm owners' complaints that the requirements of the Rates Act had not been met, and that there were minor flaws in the publication of rates resolutions and draft budgets, were held by the SCA to be unfounded.

The Municipality had acted under the provisions of the Transition Act, and then later the Finance Act, in levying rates and had complied with the requirements of the legislation in the years in issue. The appeal by the farm owners was thus dismissed, but the cross appeal by the Municipality upheld.

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