



# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 22 May 2013  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***City of Tshwane Metropolitan Municipality v Mathabathe & another  
(502/12) [2013] ZASCA 60 22 May 2013***

### **Media Statement**

The Supreme Court of Appeal (SCA) today held that section 118(3) of the Local Government: Municipal Systems Act 32 of 2000 does not entitle a municipality to demand an undertaking that an amount in respect of municipal rates and services which has been outstanding for more than two years preceding the application for a certificate in terms of s 118(1), would be paid before it issues the certificate. The second respondent and mortgagee of a certain immovable property, Nedbank, had instructed a conveyancer to attend to the transfer of registration of the property which the first respondent, Mr Mathabathe, had sold to a Mr Lawrence into the latter's name. The conveyancer applied for a clearance certificate in terms of s 118(1) of the Act to the appellant, the City of Tshwane Metropolitan Municipality (the municipality). According to the certificate issued by the municipality the total amount outstanding for municipal rates and services in respect of the property was R162 722.26, of which R151 324.22 (the historical debt) had been outstanding for more than two years prior to the date of application for the certificate. The municipality demanded an undertaking from the conveyancer before it could issue the certificate that the balance then owing to it, which included the historical debt would be paid within 48 hours after registration had been effected. The municipality, upon request by the respondents, refused to exclude the historical debt from the amount payable. The respondents then successfully applied to the North Gauteng High Court, Pretoria for an order directing the municipality to issue the certificate upon payment only of the amount which was outstanding for a period of less than two years preceding the date of application for the certificate. Aggrieved by the order of the high court, the municipality appealed to the SCA.

Before the SCA, the municipality argued that it would lose its rights under section 118(3) if it issued the certificate without an undertaking from the conveyancer that the historical debt would be paid upon registration of transfer of the property. In rejecting this argument, the SCA held that, unlike section 118(1) which is a veto or embargo provision with a time limit, section 118(3), which is a charge upon the property, is a security provision without a time limit. If the historical debt is not paid 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.

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