



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Neutral citation: *Randburg Management District v West Dunes Properties* (451/2013) [2015] ZASCA 135 (30 September 2015)

The Supreme Court of Appeal today delivered a judgment dealing with the legality of levies imposed under the Gauteng City Improvement Districts Act 12 of 1997 (the CID Act) which provides for the imposition of levies on rateable immovable properties situated within a city improvement district.

The first respondent is the owner of two immovable properties situated within the municipal area of Johannesburg and what is known as the Randburg City Improvement District, the latter having purportedly being established under the provisions of the CID Act in 2004. It was thereafter managed by the appellant, the Randburg Management District.

The appellant instituted action for levies imposed on the first respondent in respect of its immovable properties under the provisions of the CID Act. Its claim related to various periods from 2005 to 2011. The matter came before the Johannesburg High Court which had concluded that the appellant had not proved that the Randburg CID had been properly formed in compliance with ss 2 and 4 of the CID Act, that the imposition of levies under the CID Act from 2004 onwards was valid, that the decisions of the appellant from 11 September 2008 to increase levies were ultra vires its powers and invalid. Pursuant to these findings, the appellant's claims were dismissed. The appellant then appealed to the Supreme Court of Appeal.

The appeal was today dismissed. In doing so, it found that the high-water mark of the appellant's case was that the Randburg CID had been approved by a mayoral committee and not by a municipal council, that the delegation by the municipal council to the mayoral committee was not lawful by reason of the provisions of the Local Government: Municipal Structures Act 117 of 1998 as read with s 160(2)(c) of the Constitution. In reaching this conclusion it dismissed arguments that the municipality had only collected levies under the CID Act and did not impose them and that CID levies were in any event not 'levies' as envisaged by s 160(2)(c) of the Constitution. Consequently the court held that the Randburg CID had never been

validly established, that its claims for levies were therefore unenforceable and that the claim of the appellant had been correctly dismissed by the court a quo.

Although on this basis alone, the appeal had to be dismissed, the court found further that the levies offended s 229(1) of the Constitution which provides that a municipality may only impose levies if authorised by national legislation, and that the CID Act was provincial and not national legislation. Moreover, the entire scheme envisaged by the CID Act is for the city improvement district to be established for a period of no more than three years. That period had elapsed without a fresh CID plan having been approved or the original CID plan having been amended. And instead of the municipality determining the CID levies, the appellant had thereafter merely done so without there being any statutory or constitutional authority for it to do so. On this further basis most of the levies claimed were not recoverable as they had been determined by the appellant without lawful authority to do so.

Finally the court observed that it had assumed that the CID Act was valid. But in the light of the provisions of s 229 of the Constitution and the directive therein contained, that levies can only be imposed or authorised by national legislation, it expressed its grave reservations as to whether the CID Act, being provincial legislation under which a municipality imposes levies on immovable property, could pass constitutional muster. However as the necessary interested parties had not been joined and the issue not properly ventilated either in the papers or in argument, the court felt it would be inappropriate to deal any further with the issue.

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