



THE 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: 09 July 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

City of Johannesburg Metropolitan Municipality v Zibi and Another (234/2020) [2021] ZASCA 97 (09 July 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the order of the Gauteng Division of the High Court, Johannesburg (the high court).

The issue before the SCA was whether a municipality is entitled to levy a rate in the form of a penalty on residential property for illegal or unauthorised use, without first changing the category of the property on its valuation roll or supplementary roll, from 'residential' to 'illegal or unauthorised' use.

The respondents, Mr and Mrs Zibi, took transfer of erf 671 Auckland Park 1 (the property) in their names on 24 June 2013. In addition to residing in the property with their two minor children, the respondents aver that from January 2015 they started renting out 2 bedrooms to students and young professionals, thus using the property as a commune, a commercial concern. It is common cause that no authorisation was first sought and obtained from the municipality for such use. As a result, since October 2015, the municipality levied rates on the respondents' property, in accordance with the category of 'illegal' or 'unauthorised' use of the property despite the fact that the zoning category of the property remained 'Residential 1' on the municipality's 2013 and 2018 valuation rolls.

The SCA held that the imposition of a higher tariff regarding rates payable on residential property, which was used for a purpose other than its authorised purpose does not require a re-categorisation. The penalty or higher tariff the municipality validly imposed in respect of the respondents' property, only sought to address the current situation to the extent and for the duration of the illegal land use in operation. The SCA held further that the high court failed to appreciate the unreasonable administrative burden that would be placed on the municipality if a supplementary valuation roll had to be published in respect of every unlawful use of a property. The SCA therefore upheld the appeal.

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