



THE FINAL CHAPTER ON SEC 118(1) AND SEC 118(3) OF THE MUNICIPAL SYSTEMS ACT 2000

1) The Issue

Local Authorities relied on Sec 118(3) of the Municipal Systems Act 2000 (MSA) as part of their debt collecting process.

The view was that all historical debt outstanding as rates and taxes and other charges which remained outstanding and did not prescribe after payment of payments in terms of Sec 118(1) of MSA remained a charge against the property even after transfer of the property into the new owner's name.

In practice, it meant that all buyers of property whether on sheriffs auction or not, were liable for the debt to Local Authorities incurred by previous owners. Even worse, the debt was secured by a charge which causes the Local Authority to have a secured claim ranking above that the Bondholder.

2) The Constitutional Court Judgment

The Constitutional Court addressed this issue in *Chantell Jordaan and Others v City of Tswane Metropolitan Municipality and Others*, Case no: CCT383/16. The Constitutional Court handed down judgment on these issues end August 2017.

The essence of the Judgment is:

1. The Local Authority is entitled to use Sec 118(1) of MSA as part of their debt collecting process to insist that all outstanding debt for a period of two years preceding the transfer can be recovered before transfer is given. Sheriffs will recognise this process as it is generally referred to as a clearance certificate to be issued by the Local Authority before transfer. This requirement remains the same as prior to the judgment.



The most important effect of the judgment refers to future application of Sec 118(3) MSA.

The Constitutional Court found that the charge against a fixed property for municipal service fees, surcharges on fees, property rates and other municipal taxes and levies and duties cannot survive transfer of the property. The new owner of the property, as a result is no longer liable for any historic debt prior to him becoming the owner.

3) How does this Judgment effect sales in execution of fixed property?

The Judgment does not affect the auction of immovable property by sheriffs and no amendment to the Conditions of Sale is required. Sheriffs are also cautioned to ensure the Conditions of Sale do not contain a suspensive condition such as “purchaser is liable for payment of historical Municipal debt in terms on Section 118(3).

Sheriffs can now announce at the sale in execution:

1. Potential buyers are liable to pay all amounts required by the Municipal for issue of a clearance certificate in terms of Sec 118(1) of the MSA. (Money required to issue a clearance certificate is for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties levied two years preceding the date of application for the certificate).
2. Potential buyers cannot be held liable for any historical debt apart from the debt referred to above. (In contrast before the judgment the new owner was liable for all historical debt of the judgment debtor).
3. The Local Authority can, before transfer of the property sold in execution into the buyer's name, legally enforce its charge for historical debt. In practice the Local Authority will summons and take judgment or obtain an order for payment of all outstanding debt. When the Local Authority has attached an immovable property it can sell the property in execution in

which case the Local Authority will have a claim preferent to that of the bondholder.

4. A problem may occur when a Local Authority file a writ for payment of money due with the sheriff prior to transfer to the buyer. Will it mean that the charge is perfected and the Local Authority thereby acquires a preferent claim? The safe option would be to issue interpleader summons should the Local Authority claim to have a preferent claim.

Sheriffs should further comply with Uniform Rule 46(14)(b) to open another avenue where parties can object to the proposed plan of distribution of the proceeds.

* * * *

Report compiled by Mr HPJ van Nieuwenhuizen, sheriff Witbank and member of the legal committee of the South African Sheriff Society

