



## Setting tariffs – the duty to consult

*Stellenbosch Ratepayers' Association v Stellenbosch Municipality* [2009] JOL 24616 (WCC)

The introduction of new rates tariffs by a municipality is rarely ever greeted without public debate – or, in some instances, even conflict. In this case, the Stellenbosch Ratepayers' Association applied for the invalidation of a rate tariff which had been introduced by the municipality.

The association alleged that the municipality had failed to adopt a draft resolution on the proposed rates and taxes at the tabling of the draft budget as required by section 17(3)(a)(ii) of the Municipal Finance Management Act (MFMA). They argued that the municipality had failed to advertise and invite representations on a draft resolution on the proposed rates and taxes on its website and in public libraries, as required by section 22 of the MFMA and section 21A of the Municipal Systems Act. Furthermore, the municipality had failed to advertise the adopted tariff in the media and newspapers of general circulation as per section 75A(3)(b) of the Systems Act. It had also failed to comply with public participation requirements in terms of sections 22 and 23 of the MFMA.

While admitting that no separate document existed containing the draft resolution, the municipality contended that the draft resolution had been tabled together with the draft budget. Notice had been given that the budget was available online, at municipal offices and at libraries. Conceding that the new tariffs had not been indicated as a precise amount in the rand, the municipality argued that the minutes of the council's meetings indicated that there would be a percentage increase in the rate tariffs for the proposed 2009/10 budget. The municipality added that a notice had also been published in a newspaper of general circulation in the Stellenbosch area. Furthermore, the municipality had received more than 1 540 comments from the public, all of which were considered prior to the adoption of the new tariff. The adoption of the new rate tariffs was advertised in the *Provincial Gazette*, the media, the municipal website and public libraries.

In view of these steps, the Court ruled that the municipality had substantially complied with the statutory requirements related to public consultation. The Court, however, chastised the municipality for failing to use a clear format in advertising the draft resolution.

## Can the municipality's assets be attached?

*O R Tambo District Municipality v Nyobole* (1667/08) [2009] ZAECMHC 3

The O R Tambo District Municipality case dealt with the recurring question of whether municipalities are organs of state as defined in the State Liability Act. This has a direct bearing on whether they are protected against execution or attachment processes issued against them. This case followed hard on the heels of an earlier case involving both Mr Nyobole and the municipality. In that case, Mr Nyobole successfully obtained an

interdict from the High Court against the municipality preventing it from disconnecting his water supply because of an outstanding debt of R14 089. The Court, while ordering Mr Nyobole to pay the municipality his outstanding debt, also ordered the municipality to cover the costs of the application.

The legal adviser of the municipality advised Mr Nyobole in a letter that the amounts that the two parties owed each other would therefore be set off against each other. Mr Nyobole, however, obtained a warrant of execution against the

municipality and had a municipal vehicle attached to pay for the costs of the application. Following the attachment, the municipality launched an application requesting, among other things, an order of stay against the warrant of execution. Its application was based on section 3 of the State Liability Act (Act 20 of 1957), which states that no execution or attachment or any other similar process shall be issued against the state. The municipality maintained that as it was an organ of state, the State Liability Act protected its goods against attachment. Furthermore, the municipality maintained that the amount claimed by Mr Nyobole had been set off against the debt that he owed the municipality.

Referring to the decision in *Mateis v Ngwathe Plaaslike Munisipaliteit en Andere* 2003 (4) SA 361 (SCA), in which it was held that the term 'state' as mentioned in the State Liability Act refers only to the national and provincial governments, the Court ruled that the municipality did not have any protection under the Act. Nonetheless, maintaining that what the two parties owed each other had been mutually set off, the Court revoked the warrant of execution against the municipality's car.

**(For more on the new State Liability Bill see 'Should a creditor be able to attach a municipality's assets? The new State Liability Bill', *LGB 11(3) August 2009*, pages 13–15.)**

## Community participation in budgeting

*Deetlefs du Toit and Others vs Drakenstein Municipality and Others* Case No. 12271/2009 (WC)

Public involvement in key municipal decisions is the cornerstone of local democracy. In this case, the applicants sought to set aside the approval of the annual budget by the Drakenstein municipal council. The main ground on which they based their case was two conflicting advertisements published by the Drakenstein municipality in a local newspaper. The advertisements purportedly failed to convey a true picture of the proposed increase in municipal rates. A new valuation process adopted by the municipality had the effect of increasing rates in certain cases.

The applicants argued that every public body had an obligation to provide timely and accurate information in the exercise of their administrative functions under section 195(1)(g) of the Constitution. They argued that although the power to impose rates was derived from section 229(1) of the Constitution, the process of municipal budget approval had to comply with section 22 of the MFMA and Chapter 4 of the Systems Act. The Constitution, MFMA and Systems Act all

stipulate that public engagement must take place before the approval of a municipal budget.

The Drakenstein Municipality argued, however, that in view of the new valuation process adopted by the municipality, it was reasonably foreseeable that the rate increases would exceed 7.5% in certain circumstances. Furthermore, they argued that public involvement as required by legislation had preceded the approval of the municipal budget.

The court held that whenever a municipality exercised legislative power, it had to be bound by the principle of legality: that is to say, the power to make laws has to be exercised within the parameters of the Constitution and has to follow a procedure defined under the law. Drakenstein's advertisement to solicit views from the public on a budget proposal was sufficient publicity in terms of the law. Mere defects in an advertisement could not justify setting aside the entire budget.

The court held that the public had been given adequate time to express views on the draft budget and the application was accordingly dismissed. Nonetheless, the decision demonstrates the importance attached to the public's input in municipal financial matters.



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