

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG****CASE NO: 00016/2018**

In the matter between:

MOGALE LOCAL MUNICIPALITY

Applicant

and

YYY TRADING CC

Respondent

SUMMARY

[1] Mogale Municipality (municipality) appealed against the judgment and order of the

Magistrate's Court. The Municipality was ordered to pay back to the respondent an amount of R 71 182.34 paid "under protest". The respondent paid this amount to procure a release of a rates clearance certificate to enable the transfer of the property to a new purchaser.

[2] The respondent had held the property since 2006. There had been two successive

owners prior to the acquisition since 1997. It contended the amount was a historic debt due by the previous owner *ex facie* the rates clearance certificate. It disputed the water consumption on account that it had a bore hole on its property. It was common cause that the respondent had not opened a consumption account after the transfer of the property to it. It was a further common cause that other than rates charges, there was no water consumption account issued to it since its occupation.

[3] The Municipality contended the respondent was not charged for water consumption

services because the previous owner's account had a credit balance. The water consumption charge was raised from the previous owner's account until 2010. In accounting for the amount raised, it claimed that previous debit balances were handed over for the collection of the debt. There had been a restriction of water supply on the property, and it had subsequently installed a new water meter. It complained the court a quo based its finding on the accuracy of the meter reading when this was not the respondent's case.

[4] In addition to the factual argument, the Municipality argued that the respondent had

an onus to prove that the debt was historic. It grounded this argument on the fact that the respondent's claim before the court a quo was quintessentially a *condictio*

indebiti. It argued that previous decisions were distinguishable on factual ground.

[5] After considering the totality of the evidence before the court a quo, whether the municipality correctly attributed the water consumption charges, as well as the Municipality's obligations in terms of Section 95 of the Municipal System's Act to provide regular and accurate accounts with clear indication of the basis of liability, the court, supporting this court's decision in *Euphoria (PTY) LTD v Gallegher Estates v City of Johannesburg*

In dismissing the appeal, the court

Held that:

- On the facts of the case, the dispute about the functioning of the meter was relevant but ancillary to the Municipality's obligations under Section 95 of the Municipal System's Act to provide regular and accurate accounts with a clear indication of the basis of liability;
- An analysis of the accounts presented by the Municipality as well as its water business consumption account did not support its claim ;
- The payment by the respondent was not in error. *Justus error* is integral to the claim under *condictio indebit*;
- The application of this Roman Dutch Law principle in the context of the Municipality's obligations is an untenable misconstruction of its primary obligations;

- An application in this context would subvert the onus the municipality bears in the context of its constitutional and administrative law duty.