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DUTY TO COLLECT MUNICIPAL SYSTEMS ACT



- s118 Provide Security of collection responsibility of municipalities
- Not new A municipality-
 - Old Transvaal Ordinance
 - 17 of 1939 - s10(2)
 - Not from Roman Dutch Law
 - From English Law



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SECTION 118



118. Restraint on transfer of property

(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate-

(a) issued by the municipality or municipalities in which that property is situated; and

(b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.



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SECTION 118

A prescribed certificate issued by a municipality in terms of subsection (1) is valid for a period of 60 days from the date it has been issued.

(2) In the case of the transfer of property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act 24 of 1936).

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.



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TIMELINE ON COURT RULINGS

- 2004
 - Mkontwana vs NMMM CCT57/03
- 2005
 - BOE Bank Ltd vs City of Tshwane MM SCA
- 2006
 - CoJ vs Kaplan NO SCA
- 2013
 - Steve Tshwete LM vs FEDBOND SCA
- 2013
 - City Tshwane MM vs Mathabathe SCA
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 - Uniqon Wonings (PTY) LTD vs Tshwane SCA
- 2015
 - City Tshwane MM vs Mitchell SCA
- 2016
 - Chantelle Jordaan vs Tshwane CCT




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JUDGES ARE.....

- Referee of the game




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MKONTWANA VS NMMM CCT57/03



- Tested Constitutionality of
 - s118(1) and (3) against s25(1) of Constitution
 - Whether owners of property could be held jointly and severally liable with the occupier for the consumption of services
- Court decision
 - Not to consider Constitutionality of s118(3)
 - Facts before the court.



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MKONTWANA VS NMMM CCT57/03



- Escalated debt
- Owners not Aware
- Was the Municipality negligent in the collection process
- Instances of illegal connections
- Should the owner have taken more steps to ensure that the occupier paid for services
- there is a dispute about the extent of the municipality's tardiness in the execution of its debt collection responsibilities.

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MKONTWANA VS NMMM CCT57/03



- Outcome in Case
 - Cannot interpret s118(1) narrowly to only include owners
 - S118(1) doesn't create deprivation of property
 - Owner is responsible for debt
 - the purpose of section 118(1) is to furnish a form of security
 - supply of electricity and water to a property ordinarily **increases its value**; the consumption of electricity and water enhances its use and enjoyment.

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MKONTWANA VS NMMM CCT57/03



- Outcome in Case
 - a municipality cannot sit by and allow consumption charges to escalate regardless
 - Possibility of Delictual Claim
 - What if there is illegal connections and Theft?
 - There no basis to suggest that it would be unreasonable for the owner to bear the risk
 - The relationship between the owner, the property and the consumption charge remains sufficiently close to expect the owner to take the risk



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IMPACT IN RECENT CASES



- SCA found in City of Tshwane Metropolitan Municipality v PJ Mitchell
 - s 118(1) as an embargo provision with a time limit
 - s 118(3) a security provision without a time limit and statutory hypothec
 - The debt accrued on a Municipal Account is secured by a single hypothec which ranks above all mortgage bonds over the property
 - s 118(3), are made subject to s 89 of the Insolvency Act 24 of 1936
 - No distinction can therefore be drawn between property sold either at a sale in execution or in a private sale



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JORDAAN & OTHERS VS TSHWANE 2017



- Impact

- Charges does not survive transfer
- S118(3) is Constitutional
- Order of court is required, the property may be sold in execution to pay debt
- by-pass at least some debt collection enforcement procedures
- The word "Charge" render property special executable
 - Interdict sale
- No need to register right
- debts accumulate does not amount to a deprivation of property



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OTHER COURT JUDGEMENTS



- Insolvent sale in execution
 - 2005
 - BOE Bank Ltd vs City of Tshwane MM SCA
 - 2006
 - CoJ vs Kaplan NO SCA
 - 2013
 - Steve Tshwete LM vs FEDBOND SCA
- Court Outcome
 - 2 Year is payable for RCC
 - Period to 2 year prior to Insolvency (Preferent)
 - Any debt older concurrent creditor
- Other considerations
 - Sale private treaty price lower than market value? (25%)
 - Interdict sale



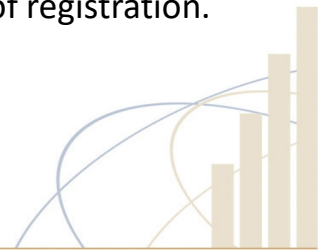
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OTHER COURT JUDGEMENTS



- Normal Sale
 - 2013
 - City Tshwane MM vs Mathabathe SCA
- This Case discuss nature of security
- Demand 2 year certificate
- Municipality demand payment other debt on date of registration.
- Outcome
 - Issue RCC for 2yr
 - Claim guarantee for excess amount
 - Non Payment – Interdict sale



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OTHER COURT JUDGEMENTS



- s118(1) and s118(3)
 - Two remedies
 - Security and Hypothec
 - Veto embargo on transfer
- Any amount due for municipal debts
 - Not prescribed is collectable
- Uniqon Wonings (PTY) LTD vs Tshwane 2014
 - Parent property debt to be collected pro –rata in a new development



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PRACTICAL IMPLEMENTATION



- Keep owner responsible for debt on property
- Cancel agreements of occupiers where accounts are in arrears and transfer debt to owners account
- Issue RCC assessment report for full period
 - If Conveyance demand 2 years assess 2 years
 - Demand irrevocable guarantee on date of transfer for remainder
 - Endorse RCC and inform conveyancer and purchaser off outstanding by letter
- If not paid, interdict the sale and declare property specially executable – Sale agreement

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PRACTICAL IMPLEMENTATION



- Verify the following:
 - Building plans
 - Property Value
 - Tampering with services
 - Backdate charges where applicable
 - Obtain final distribution account from Attorney
 - Transfer receipts here applicable
- Assess property debt
- Don't accept "Letter of undertaking" – Conveyancer
- On transfer – Name Change in billing system verify debt

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THE BEGINNING



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