118/1958

118/1958

G.P.-S.134917-1955-6-1,000. U.D.J. 219.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

{ APPELLATE ~~Provincial~~ Division.)
{ ~~Provinsiale~~ Afdeling).

Appeal in Civil Case.
Appèl in Siviele Saak.

TOWN COUNCIL OF MUNICIPALITY OF ODENDAALSRUS Appellant,

versus

ODENDAALSRUS GOLD GENERAL INV & EXTENSIONS LTD Respondent.

Appellant's Attorney
Prokureur vir Appellant E.G. Cooper

Respondent's Attorney
Prokureur vir Respondent C. Dewet & Son

Appellant's Advocate
Advokaat vir Appellant H.J. Edeling Q.C. (& M.T. Steyn)

Respondent's Advocate
Advokaat vir Respondent J.P.G. Eksteen

Set down for hearing on
Op die rol geplaas vir verhoor op Friday, 21st Nov., 1958.

(OPD)

~~3.5.6.7.8~~ (B)

Coram: Steyn, Beyers, Malan, de Beer, Cyrus Thompson, JJ.A.

H.J. Edeling, Q.C., & M. Steyn for appellant
Eksteen for respondent

9.45 am. ~~Steyn~~ Edeling heard. C.A.V.
4.30

— Appeal upheld, – judgment altered.

[signature]
Reg. – 8/12/58.

Record

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(Appèlafdeling)

Insake:-

TOWN COUNCIL OF THE MUNICIPALITY OF ODENDAALSRUS — Appellant

en

ODELDAALSRUS GOLD, GENERAL INVESTMENTS AND EXTENSIONS LIMITED. — Respondent

Verhoor deur: Steyn, Beyers, Malan, van Blerk en Ogilvie Thompson AR.A.

Datum van verhoor: 21 November, 1958.

Datum van Lewering: 8 Desember. 1958.

U I T S P R A A K

STEYN AR.A. :- In die Hof a quo het die appellant sonder welslae van die respondent erfbelasting geëis wat uit hoofde van 'n tussentydse waardering van eiendom kragtens Artikel 93 van die Plaaslike-Bestuur-Konsolidasie-Ordonnansie, 1948, gehef is. Genoemde artikel magtig so'n waardering o.a. waar 'n perseel uit die algemene waarderingslys weggelaat is of 'n gebou opgerig is, en bepaal dan, in die ongewysigde vorm wat hier van toepassing is :-

"Binne veertien dae nadat 'n sodanige tussentydse waardering uitgevoer is, dien die Raad op die eienaar of bewoner van die eiendom 'n skriftelike kennisgewing, waarin die bedrag waar-

voor/......

voor die eiendom gewaardeer word, vermeld word en vanaf die datum van sodanige kennisgewing, word die eienaar of bewoner, soos die geval mag wees, aanspreeklik gehou vir betaling van die belastings op sodanige eiendom ooreenkomstig die waardering aldus gemaak; met die verstande dat as die Waarderingshof, by sy eersvolgende vergadering, op appél by hom aangeteken, sodanige waardering verminder, die eienaar of bewoner dan aanspreeklik gehou word vir betaling van belastings alleen op die verminderde waarde en enige belasting wat te veel betaal is, word aan hom deur die Raad terugbetaal. "

Die respondent se verset teen die vordering is gegrond op die bewering dat geen kennisgewing ingevolge die aangehaalde bepaling op hom gedien is nie. Dit blyk dat die appellant 'n gewone brief aan die respondent gerig het en op 1 Desember, 1953, die eerste dag reeds van die voorgeskrewe termyn van veertien dae, op die pos gedoen het, waarin die respondent van die waardering verwittig word. Die respondent betwis ontvangs van die brief en beweer dat dit in elk geval nie vir 'n gediende kennisgewing luidens artikel 93 kan deurgaan nie. Dit blyk verder dat op 1 Maart 1954 die volgende debiet-nota deur die appellant aan die respondent deur die pos gestuur is :

"DEBIT TO: THE MUNICIPALITY OF ODENDAALSRUS.
Farm Kalkkuil.

Rateable from 1/12/53			
Rates for the year: 1953/1954.................	236	6	-
Ground £115000 @ 2d.			
Improvements: £389770 @ 1d.	400	9	-
	£636	15	- "

Die respondent erken dat hy hierdie nota ontvang het. Die appellant gee in bedenking dat, indien dit bevind word dat ontvangs van die brief van 1 Desember 1953 nie bewys is nie en dat dit daarom nie as gedien beskou kan word nie, die debiet-nota wel 'n voldoende kennisgewing ingevolge die wetsvoorskrif sou uitmaak. Die respondent, daarenteen, voer aan dat die nota nóg aan die vereistes van 'n behoorlike gediende kennisgewing, nóg aan die termyn-bepaling voldoen.

Wat die appellant op steun is die afsending deur die pos van 'n gewone ongeregistreerde brief gerig aan die respondent en die ontvangs van die brief deur die respondent. Dit is my geensins duidlik dat bedoelde afsending en ontvangs aan die vereistes van die ongewysigde artikel 93 voldoen nie, d.w.s. dat dit dieselfde betekenis dra as die volgende gewysigde bepaling wat by artikel 21 van Ordonnansie 15 van 1954 ingevoeg is :

"Binne veertien dae na sodanige waardering uitgevoer is, gee die Raad aan die eienaar of bewoner van die eiendom skriftelik kennis van die bedrag waarteen sodanige eiendom gewaardeer is."

Met die oog op die gevolgtrekking waartoe ek geraak het, vind ek dit egter nie nodig om hierdie vraag te beslis nie. Ek sal veronderstel dat afsending van 'n skriftelike kennisgewing

deur/......

deur die pos gepaard met ontvangs daarvan deur die eienaar of bewoner, vir die doeleindes ook van die ongewysigde artikel voldoende diening op die eienaar of bewoner uitmaak en dat ook die bepalings van artikel 8 van die "Interpretatie Wet" 1910, niks daaraan verander nie. Met hierdie veronderstellings sou die appellant, wat die kennisgewing van 1 Desember 1953 betref, kan steun op die vermoede ten gunste van aflewering (Cape Coast Exploration Ltd. v. Scholtz & Anor, 1933 A.D. 56 op bls. 76), maar dan sou ook die weerleggende getuienis van die respondent, ten effekte dat die kennisgewing hom nie bereik het nie, nie oor die hoof gesien kan word nie. Die verhoorregter het daardie getuienis nie verwerp nie en hom nie oor die geloofwaardigheid van die getuies of die indruk wat hul gemaak het, uitgespreek nie. Ek kan niks vind wat beslissend teen die aanname van hierdie getuienis is nie, en indien dit aangeneem word sou dit voldoende wees om die *prima facie* bewys van aflewering te weerlê. Wat die debiet-nota van 1 Maart 1954 betref, sou ek, afgesien nog van die termynbepaling, ~~aarsel~~ nie bereid was nie om dit volgens die hier veronderstelde betekenis van artikel 93, as 'n kennisgewing kragtens daardie artikel te aanvaar. Dat dit die bedrae van die waardasies noem en dat daaruit afgelei kan word, soos die respondent ook inderdaad gedoen het,

dat/......

dat die perseel en geboue op een of ander stadium teen daardie bedrae gewaardeer is, val nie te betwis nie. Dit is egter nie iedere skriftelike verwysing na 'n waardasie wat kan geld vir die kennisgewing wat voorgeskryf word nie. Vir sover die nota die bedrae van die waardasies meld, geskied dit heel terloops, op dieselfde wyse waarop dit na alle waarskynlikheid in alle verdere rekenings ~~wat die bedrae van die waardasies~~ op dieselfde waardasie gegrond, sou gebeur. Dit sou moeilik staande gehou kan word dat elke opeenvolgende debiet-nota wat die bedrae van die waardasies aangee, vir 'n kennisgewing kragtens genoemde artikel aangesien ~~moet~~ kan word. By die afsending van hierdie nota was dit seker allermins die bedoeling om die voorgeskrewe kennisgewing per pos te dien. Die daarvoor bedoelde kennisgewing was drie maande tevore reeds gestuur en luidens die nota self word die verskuldigde bedrag vanaf die datum van daardie kennisgewing bereken. Indien die nota vir so'n kennisgewing moes deurgaan, dan is die beweerde diening kragtens artikel 93 sonder twyfel heeltemal per incuriam bewerkstellig en nie op die doelgerigte wyse wat die artikel skyn te veronderstel nie. So'n prosedure sou kwalik as voldoening aan die ~~formele~~ vereistes van genoemde artikel aanvaar kan word, sonder om die uitvoering van die voorskrifte daarvan op bedenklik losse skroewe te stel. Dit sou daarop neerkom dat

'n/......

'n kennisgewing kragtens artikel 93, met die besonderhede b.v. omtrent meerdere geboue wat, soos hier, daarin vermeld behoort te word, eintlik nooit as sulks gedien hoef te word nie. Dit sou altyd vervang kan word deur 'n blote verwysing na die ronde waardasiebedrag, by wyse van 'n berekenings-item, in die eerste debiet-nota insake erfbelasting wat aan die eienaar of bewoner gestuur word. Daar bestaan by my geen twyfel dat die wetgewer nie kon bedoel het dat die voorskrif in artikel 93 op so'n wyse omseil kan word nie.

Ny my oordeel moet die appél met koste van die hand gewys word.

L C Steyn.

~~Beyers, R.A.~~

~~Van Blerk, R.A.~~

~~Ogilvie Thompson, R.A.~~

Record -

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between :

TOWN COUNCIL OF THE MUNICIPALITY of ODENDAALSRUS ... Appellant

&

ODENDAALSRUS GOLD, GENERAL INVESTMENT AND EXTENSIONS LTD. ... Respondent

CORAM : Steyn, Beyers, Malan, v. Blerk et Ogilvie Thompson JJ.A.

Heard : 21 November 1958. Delivered : 8.12.58

JUDGMENT

MALAN, J.A. :- The appellant instituted proceedings against the respondent in the Orange Free State Provincial Division and claimed payment of assessment rates levied in pursuance of an interim valuation under Ordinance 6 of 1948.

The respondent is the registered owner of the ~~fram~~ farm Kalkkuil No. 153 situate within the boundaries of the Odendaalsrus Municipality and, admittedly, rateable property within the meaning of the Ordinance. The respondent disputed liability on the ground that the appellant failed to serve upon ~~him~~ it a notice in writing stating the amount at which the property had been valued, within the prescribed period of fourteen days after the interim valuation had been made, as required by Section 93. ~~Grobler~~ Potgieter J., upheld this contention and granted judgment for the respondent with costs.

The solution of the problem before us depends primarily upon the proper interpretation of Section 93. The local authority is empowered thereunder to cause to be made at any time after the completion of the general valuation, a valuation of any property omitted from the general valuation roll, as well as of any building erected thereon or improved subsequently. The Section then proceeds :-

> " Within fourteen days after any such interim valuation has been made, the Council shall serve, in writing, upon the owner or occupier of the property, a notice stating the amount at which such property has been valued ; and the owner or occupier, as the case may be, shall as from the date of such notice be held liable for and shall pay the rates on such property in accordance with the valuation so made ; "

I shall at the outset deal with the phrase "Serve notice upon." In my opinion the words, taken by themselves signify no more than that the subject-matter of the notice shall be communicated in writing to the person intended to be affected thereby. As the section contains no express directions or indications to the contrary, any informal mode of communication may be employed. Even personal notification is not essential provided only that the notice reaches the person concerned and effectually conveys to him the information sought to be brought to his knowledge.

A case precisely in point was decided in the Court of Appeal in England (Ex parte Portingell, 1892 1 Q.B. 15). The words which had to be construed were "unless written notice of "an intention to oppose the renewal of such licence has been "served upon the holder."

In the first instance the matter came before the licensing court where objection was taken to the renewal of a licence. The licensee contended that the licensing court had no jurisdiction to entertain such objection because there had been no personal service of notice of intention to oppose the renewal, as required by the Licensing Act.

The facts in regard to the service of notice were that a written notice of intention ~~at~~ to oppose the renewal of the licence had been left on the licensed premises with a boy of fourteen by the party opposing the renewal. The licensee denied that notice had been given to him but he did not call the boy and the magistrates came to the conclusion that the notice had in fact come to his notice in time. The licensee thereupon moved the Divisional Court for an order setting aside their decision but the Court (Matthew and A.L. Smith JJ.) refused to interfere.

The matter was taken to the Court of Appeal and it was contended on behalf of the appellant that upon a proper construction of the provision set out above valid service could only be effected by the person serving the notice putting it in the hands of the person to be served. The Court of Appeal unanimously rejected this contention. Lord Esher, in delivering the opinion of the Court, said :-

> " In the case of Reg. v Deputies of the Freemen of Leicester, which was cited to us, Lord Campbell laid down the rule thus : 'In general, when personal service is required by an Act, it is so said in express words ; but here the words used are 'give or deliver notice in writing unto such deputy,' which have no such force.' We have to say whether we agree with the rule so laid down, and, if so, what its application is to the present case. It appears to me to be a very sensible rule of interpretation. Applying it to the present case, the words here are 'has been served on.' The words in the Act there being interpreted were 'give or deliver unto.' It was argued that there was a substantial difference between the two expressions. I do not think that is so. It seems to me that one is the exact equivalent of the other. Upon this interpretation of the Act personal service in the sense contended for by the applicant was not necessary. "

No particular form of notice is prescribed in the section under consideration and it is satisfied if the notice is in writing and states the amount at which the property has been valued. In my opinion, formal service is advisedly not decreed for the reason, inter alia, that public funds will thereby be needlessly expended. In some instances such service may be wholly unnecessary, in others the cost thereof may be prohibitive and out of all proportion to the benefit accruing to the local authority.

Paraphrased, the section, in my opinion, means that the local authority shall bring to the notice of the taxpayer in writing that his property has been valued at the amount specified, and that as a consequence thereof the taxpayer is held liable for payment of rates from "the date of such notice," namely, from the date on which the notice was brought to his knowledge.

Finally, the question arises whether the provision, that such notice shall be served within fourteen days after the interim valuation has been made, was inserted in order to protect the ratepayer.

On the interpretation that liability begins to run from the date of service of the notice it is difficult to conceive in what manner the placing of a limit upon the time within which notice shall be served might be of benefit to the rate-payer because delay in notification automatically postpones the date from which liability begins to run. The argument that the object of inserting a time limit was to place the ratepayer in a position to prepare his case, at the earliest possible moment, for disputing the quantum of the assessment is hardly convincing.

The provision, prescribing the time limit, is imperative and if the contention is correct that it was designed to protect the ratepayer, strict compliance therewith must be observed and failure to do so will have the effect of rendering the valuation invalid and necessitating a valuation *de novo*.

If such be the true interpretation the restricting of the period within such narrow limits would operate against local authorities with extreme harshness. The interim valuation may involve a large number of properties and difficulty may be experienced in ascertaining the whereabouts of the ratepayers concerned. Some of them may be resident at a considerable distance from the rateable property, even in places not easily accessible ; others again, although ordinarily resident within the jurisdiction of the local authority, may be temporarily absent and service within the period allowed may be impossible. Insurmountable obstacles may be encountered in serving notice upon companies, especially those having registered offices abroad or in some other province of the Union.

There appears to me to be no valid reason why the legislature should empower local authorities to raise revenue and then, in the same section, obstruct them in exacting payment thereof in a manner which, on the face of it, appears to be quite unreasonable and incomprehensible. Considerable latitude is allowed to local authorities in determining the form and the method of service of the notice and the severe limitation of the period within which it may be served is an additional indication that the provision was not designed to benefit the ratepayer.

It is, moreover, not lightly to be presumed that the legislature intended that public funds should be expended upon making valuations which may be rendered nugatory notwithstanding the exercise of the utmost diligence on the part of local authorities in their efforts to give effect to the provisions of the Ordinance.

In considering what was in the contemplation of the legislature in restricting the period of time within such narrow limits it should be borne in mind, as was pointed out above, that the assessment rates are calculated from the date on which the valuation is brought to the notice of the ratepayer. In order to avoid loss of revenue it becomes imperative that there shall be the minimum of delay in notifying the taxpayer. The legislature thus enjoins the local authority to serve notice within the preseribed period in order to ensure that it shall act with the utmost diligence and it ~~attains~~ achieves this object by making the provision imperative. A breach by a local authority of its statutory duty in this respect may ~~thus~~ conceivably, at the instance of interested parties, be visited with legal proceedings. ~~by way of mandamus or even by an action for damages by reason of any direct resultant loss of revenue~~. Such appears to me to be the plain grammatical construction of the section and it follows that failure to serve notice within fourteen days does not invalidate the ~~xxxxxxx~~ interim valuation and that the respondent cannot resist payment on that ground.

The question arises whether on the facts the appellant has established that notice, as required by Section 93, was given, and, if so, from what date it became operative. The declaration contains no allegation that notice was given and it is obvious that without such an averment no cause of action was disclosed. Exception thereto was, however, not taken. The appellant relied upon a letter dated the 1st December, 1953, alternatively, upon an account rendered on the 1st March, 1954, as constituting notice and the case proceeded on that basis without objection. The matter will, therefore, be considered as if the necessary allegations were contained in the declaration.

The evidence for the appellant discloses that on the 1st of December, 1953, immediately upon receipt of the valuation of the property in question from the valuer, a letter, addressed to the respondent and directed to ~~his~~ its post office box number at Johannesburg was despatched. The procedure adopted in writing the letter and posting it at the Odendaalsrus post office was explained in detail and this evidence is not in dispute. The allegation that it reached its destination is, however, vigorously contested.

The first question to be considered is whether the admitted fact that the letter was posted raises the presumption that it reached the respondent. It is contended on behalf of the respondent that in terms of section 8 of the Interpretation Act, 1910, the posting of a letter only raises such a presumption where such letter is sent under registered cover. I am unable to agree with this contention. In my opinion the application of Section 8 is clearly intended to be restricted, ~~xxxx~~ as is, indeed, stated therein in so many words, to cases "where any law authorises or requires any document to be served by post" and ~~that the common law rule remains undisturbed~~ it has no application to the case before us.

The difficulty which arises is whether or not the presumption has ben rebutted by the evidence of the director, Mr. Katz. The latter's evidence is far from satisfactory in several respects but there is no finding by the Judge a quo on his credibility. No application was made by the appellant to have the case referred back for that purpose, with the result that we have not sufficient material at our disposal to enable us to arrive at any definite conclusion on the question whether or not, if the evidence of Mr. Katz is weighed against the presumption raised by the posting of the letter, a balance of probability exists in favour of the appellant.

The appellant fails in his case in so far as it rests upon the letter of the 1st of December.

The account relied upon by the appellant in the alternative is in the following terms :-

" 1 March 1954

Odendaalsrus Gold, Gen. Inv. & Ext. Ltd.
P. O. Box 5364,
JOHANNESBURG.

DEBIT TO : THE MUNICIPALITY OF ODENDAALSRUS.

Farm Kalkkuil.

Rateable from 1/12/53			
Rates for the year : 1953/1954...........	236	6	-
Ground £115000 at 2d.			
Improvements : £389770 at 1d. (Mine improvements)	400	9	-
	£636	15	- "

In order to appreciate this account in its true perspective it is essential to refer to the letter of the 4th of August, 1953, directed by the appellant to the respondent, and admittedly received by the latter.
It reads :

" 4th August, 1953.

The Secretaries,
Oggies,
P. O. Box 5364,
JOHANNESBURG.

Dear Sirs, Valuation of the Farm Kalkkuil, and Improvements.

In terms of Section 97 of Ordinance No. 6 of 1948 the Council is empowered to levy rates on all immovable property within the Municipality and with a view to levying the rates, it has been decided to obtain the valuation of the land of the farm Kalkkuil and all improvements erected thereon by the Freddies Company.

Upon receipt of this interim valuation you as owner of the land and the Freddies Company as the owner and occupier of the improvements will be furnished with the amount at which the property has been valued and shall be liable for and pay the rates on the property in accordance with the valuation.

Mr. J.A. Brown has been appointed and has been granted authority to enter at all reasonable hours in the daytime into and upon the immovable property mentioned above without being liable to any prosecution on account thereof.

A copy of this letter is being forwarded to the local Managers of Freddies North and South.

Yours faithfully,

TOWN CLERK. "

There is a direct and complete link between the account and the letter of the 4th of August even if the letter of the 1st of December, 1953, is wholly disregarded. ~~No~~ ~~reasonable~~ A person with the second paragraph of the former letter before him ~~can come to any other conclusion than that~~

will readily associate it with ~~the account was intended to constitute~~ the notice foreshadowed therein ~~in that letter~~. Its terms are explicit and unequivocal and it sets out specifically the respective amounts at which the land and the improvements have been valued.

The account is clearly a "notice in writing" and as it states the amount at which the property was valued, the requirements of Section 93 have been satisfied. It is, in my opinion, at least ~~not merely~~ a substantial if not ~~but~~ an actual compliance with its terms and the appellant succeeds on this ground apart from other considerations in its ~~his~~ favour.

In addition, the conduct of the respondent's directors Messrs Horwitz and Katz makes it indisputably clear that no other interpretation was at any time placed upon the account. Its receipt was acknowledged in the letter of the 29th of March, 1954, as follows :

"

30 Second Floor
Beresford House,
Main Street
JOHANNESBURG.
29th March 1954.

The Town Clerk,
Odendaalrus Municipality,
P. O. Box 21,
ODENDAALSRUS.

Dear Sir,

RATES FARM KALKKUIL

We have received your Debit Note for rates on Farm Kalkkuil as well as the improvements on the farm Kalkkuil. I must point out that improvements are the property of the Freddies North and South Lease Areas, and I am handing over to them your account for rates in respect of improvements.

" On behalf of this Company as owners of the surface I hereby lodge an objection to the valuation of the land and will be pleased if you will advise me whether a valuation court will sit to hear the objection.

Yours faithfully,
ODENDAALSRUS GOLD, GENERAL INVESTMENTS AND EXTENSIONS LIMITED.
Southern Mining Corporation (Pty) Ltd.
Secretaries.

Per : P. Katz. "

The appellant's reply thereto is contained in a letter dated the 31st March, 1954, in which the respondent was notified that the valuation court would sit during January or February 1955, and that the respondent was invited to lodge objection to the valuation at such sitting. Mr. Horwitz appeared on behalf of the respondent at that sitting and raised various objections but he did not dispute that the account was a proper notice.

If further proof be sought of the attitude of the respondent to the account it is to be found in the evidence both of Mr. Horwitz and Mr. Katz. The cross-examination of the former is recorded as follows :-

" Where did you get that valuation from ?..... From the account dated the 1st March.

You also regarded that account as an intimation of a valuation ?...... Yes.

Not only of the ground ?..... Of the improvements as well.

I mean, you in your capacity as chairman regarded that as an intimation that this ground had been valued at such a price?......... Yes. "

The evidence of the latter is equally clear. The following is an extract from his evidence during cross-examination :-

" Did you regard that" (viz. the account) " as conveying to your mind that the ground had been valued of £115,000 ? ..... Yes.

When was it dated ?..... It was dated the 1st March, 1954.

So then, I can put it like this to you, that when you wrote this letter of the 29th March, 1954, you wrote it on the basis that the ground had been valued at £115,000?...Yes.

And you regarded it too as an intimation to you that the improvements had been valued at a figure therein stated - £389,770?....... Yes.

Your Board of Directors were aware of this account, when it arrived ?..... Yes. "

Finally, Mr. Katz took the account to Freddies immediately upon receipt thereof for consultation because the respondent intended to hold that company liable for payment of the rates levied in respect of the improvements on the property.

Can ~~any~~ proof be clearer ?

The question remains whether the respondent's liability runs as from the 1st March, 1954, as contended by the appellant. There is no evidence of the date on which the account reached the respondent as the first reference to its receipt is contained in the letter of the 29th of March, and there is, moreover, no indication of the time which, in the ordinary course, elapses between the posting of a letter at Odendaalsrus and its delivery at Johannesburg. In all the circumstances it will not be ungenerous to the respondent to fix the interval at one week.

The appeal is upheld with costs and the judgment of the Court below is altered to one of judgment for the appellant with costs in the following amounts :-

(a) £157. 3. 0d. with interest at the rate of 8% per annum from the 8th of April 1954 until date of payment.

(b) £3472. 16. 8d. with interest thereon from the 1st May, 1954, until date of payment.

A Centlivres

Beyers JA
v. Blerk JA.
Ogilvie Thompson JA
} concur.

UITSPRAAK.

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA.
(O.V.S. PROVINSIALE AFDELING.)

THE TOWN COUNCIL OF THE MUNICIPALITY OF ODENDAALSRUS
VERSUS
ODENDAALSRUS GOLD GENERAL INVESTMENTS AND EXTENSIONS LTD.

CORAM:	POTGIETER R.
UITSPRAAK:	POTGIETER R.
VERHOOR OP:	22, 23 & 24 April 1958.

Eiser, die Stadsraad van die Munisipaliteit van Odendaalsrus, vorder in hierdie geding van Verweerder die bedrae van £838-3-4 plus 8% rente vanaf 1 Januarie 1954 tot datum van betaling en £3472-16-8 plus 8% rente vanaf 1 Mei 1958 tot datum van betaling, synde beweerde verskuldigde bedrae ten opsigte van erfbelasting. In sy konklusie van eis beweer eiser dat verweerder die geregistreerde eienaar is van onderafdeling Nr. 2 van die plaas Kalkkuil en dat die gesegde grond tesame met al die verbeterings daarop geleë is binne die munisipaliteit van Odendaalsrus. Ingevolge die magte verleen deur Ordonnansie 6 van 1948, so lui die konklusie van eis, het eiser 'n tussentydse waarderingslys laat opstel vir doeleindes van die heffing van munisipale belasting op die gesegde eiendom. Ingevolge die tussentydse waarderingslys het eiser toe kragtens die magte deur die Ordonnansie verleen die belastings gehef wat te staan kom op die bedrae hierbo genoem.

Verweerder erken in sy verweerskrif meeste van

/die bewerings......

die bewerings in die konklusie van eis, maar berus sy verweer daarop dat hy nie vir die belasting aanspreeklik is nie, aangesien eiser nie voldoen het aan die vereistes neergelê in artikel 93 van die Ordonnansie nie, en meer in besonder aangesien eiser nagelaat het om binne 14 dae na die tussentydse waardering uitgevoer is, 'n skriftelike kennisgewing op verweerder gedien het wat die bedrag waarvoor die eiendom waardeer is, vermeld. In die loop van die saak en uit die argumente van die advokate het dit trouens geblyk die enigste geskilpunt in die saak te wees.

Dit blyk uit die getuienis wat deur eiser aangevoer is dat op 4 Augustus 1953 ene Brown aangestel is as waardeerder met die doel om die gesegde eiendom van verweerder te waardeer. Brown self het nie getuienis gegee nie aangesien hy nie gevind kon word nie, en derhalwe kon dit nie uit die getuienis blyk wanneer presies hy sy waardering voltooi het en sy lys opgestel het nie. Dit blyk egter uit die getuienis van ene Arnold, toendertyd eiser se rekenmeester, dat op 1 Desember 1953 Brown die waarderingslys aan eersgenoemde oorhandig het wat dit op sy beurt op dieselfde dag weer aan van Biljon, die assistent-stadsklerk, oorhandig het nadat 'n opsomming van die waardering in die waarderings-boek ingeskryf is, en Brown dit onderteken het. Van Biljon getuig dat hy toe dadelik die lys deur sy tikster op wasvelle laat tik het en afskrifte daarvan laat afrol het. Terselfdertyd het hy 'n brief aan verweerder se sekretaris in sy eie handskrif geskryf en dit aan die tikster gegee om te tik. 'n Deurslagafskrif van die brief is ingehandig (Bew. F) en lees soos volg:

/1st December, 1953.....

UITSPRAAK.

"1st December, 1953.

W1/1

The Secretaries,
Odendaalsrus Gold General Investments and
Extensions Ltd.,
P.O. Box 5364,
JOHANNESBURG.

Dear Sirs,

Valuation of the farm Kalkkuil and Improvements.

Further to my letter of the 4th August 1953, advising you of my Council's decision to levy rates on the farm Kalkkuil and the improvements thereon, excluding the old town and Extensions 1, 2 and 3, I attach hereto a list showing the valuations placed on the land and the improvements.

My Council's account for the rates owing, will be forwarded under separate cover."

Nadat hierdie brief getik is, is dit deur van Biljon geteken, aan die tikster oorhandig wat dit tesame met die waarderingslys in 'n koevert gesit het, dit toegelak het en aan die bode gegee het. Die bode het seëls by die tesourie verkry, dit, volgens gewoonte, in sy possak gesit en dit op die pos gedoen. Hoewel mej. Kleynhans, die tikster, en Geelbooi, die bode, uit die aard van die saak nie kan onthou dat die besondere brief in 'n koevert geplaas is en op die pos gedoen is nie, getuig hulle wat die gewone prosedure is en dat die prosedure altyd gevolg word. Mnr. Eksteen, het deur middel van kruisverhoor betwis dat die brief ooit in die pos beland het, maar ek kon geen rede hoegenaamd vind om van Biljon, mej. Kleynhans en Geelbooi se

/getuienis......

getuienis dat die gewone prosedure altyd gevolg word in twyfel te trek nie, en ek bevind dat eiser by 'n oorwig van waarskynlikhede bewys het dat die brief sowel as 'n afskrif van die waarderingslys wel in die pos beland het.

Mnr. Katz, sekretaris van verweerder maatskappy, aan wie die brief gerig is, ontken egter dat hy ooit so'n brief of waarderingslys gekry het. So-ook getuig mnr. Horwitz, voorsitter van die direksie, dat hy, aangesien hy bewus was van die vereistes van die Ordonnansie, spesiaal vir so'n kennisgewing in die lêers gesoek het, maar dat hy niks kon vind nie.

Artikel 93 van Ordonnansie 6 van 1948 is in 1954 aansienlik gewysig maar aangesien die beweerde skuldoorsaak ontstaan het in 1953 is die ou artikel nog van toepassing in die huidige geding. Die artikel lees soos volg:

> "93. Ondanks strydende bepalinge in hierdie Ordonnansie vervat, kan die Raad te enige tyd nadat 'n algemene waardering van eiendomme plaasgevind het, die waardering gelas van enige eiendom wat uit die waarderingslys weggelaat is, asmede van enige gebou wat opgerig of verbeter is, of van 'n eiendom wat onderverdeel is, of van gedeeltes van 'n eiendom wat deur verskillende persone bewoon word.
>
> Binne veertien dae nadat 'n sodanige tussentydse waardering uitgevoer is, dien die Raad op die eienaar of bewoner van die eiendom 'n skriftelike kennisgewing, waarin die bedrag waarvoor die eiendom gewaardeer word, vermeld

/word.......

word en vanaf die datum van sodanige kennisgewing, word die eienaar of bewoner, soos die geval mag wees, aanspreeklik gehou vir betaling van die belastings op sodanige eiendom ooreenkomstig die waardering aldus gemaak; met dien verstande dat as die Waarderingshof, by sy eersvolgende vergadering, op appèl by hom aangeteken, sodanige waardering verminder, die eienaar of bewoner dan aanspreeklik gehou word vir betaling van belastings alleen op die verminderde waarde en enige belasting wat te veel betaal is, word aan hom deur die Raad terugbetaal; met dien verstande verder dat waar die eiendom van 'n geregistreerde eienaar gewaardeer was, hetsy tydens 'n gewone hetsy 'n tussentydse waardering, en sodanige eiendom daarna grootliks in waarde verminder het weens brand, vloed, aardbewing of ander ramp of deur die gehele of gedeeltelike vernietiging van die geboue daarop, sodanige eienaar deur middel van 'n brief aan die Stadsklerk gerig, die Raad kan versoek om sy eiendom weer te laat waardeer en die Raad is dan verplig om binne drie weke na ontvangs van sodanige aansoek, die saak te besleg.

As die Raad besluit om die waardering te verminder en die eienaar met sodanige vermindering tevrede is, word hy aanspreeklik gehou vir die betaling van belastings alleen op die verminderde waarde, soos hierin later vermeld word.

Ingeval die eienaar nie met die beslissing van die Raad tevrede is nie, kan hy na die

/Waarderingshof.......

UITSPRAAK.

Waarderingshof tydens sy eersvolgende vergadering appelleer en ingeval genoemde Hof op grond van die voormelde ramp of vernietiging van geboue die herwaardering verminder, word die eienaar of bewoner aanspreeklik gehou vir die betaling van belastings alleen op die verminderde waarde en wel vanaf die datum waarop die ramp of vernietiging plaasgevind het, en enige belastings, wat te veel betaal is, word deur die Raad aan sodanige eienaar of bewoner terugbetaal."

Mnr. Edeling, namens eiser, het in 'n kragtige argument aangevoer dat die woord "dien" - of soos in die Engelse teks uitgedruk "serve" - nie 'n besondere betekenis het nie, en dat dit voldoende is vir eiser om die skriftelike kennisgewing soos in die artikel beoog op die pos te doen en dat sodra dit bewys is, dit nie eers verweerder sal baat om te toon dat hy die kennisgewing nie ontvang het nie. In elk geval, so lui die betoog, bestaan daar 'n presumpsie dat die geadresseerde 'n brief ontvang het sodra die afsender bewys lewer dat dit behoorlik geadresseer was en in die gewone loop van sake op die pos gedoen is, en daar word staatgemaak vir hierdie stelling op die beslissing van Dougan v. Estment, 1910 T.P.D. 998 en Chittenden v. Schoeman, 1905 T.S. 42. Hierdie presumpsie is weerlegbaar maar, betoog Mnr. Edeling, verweerder het weens onbevredigende aspekte in die getuienis van Katz en Horwitz nie daarin geslaag om te bewys dat die brief van 1 Desember 1953 en die bylae nie ontvang is nie.

In die loop van sy argument het mnr. Edeling

/selfs.....

selfs verder gegaan en aan die hand gedoen dat die bepalings van artikel 93 slegs aanwysend is, en dat selfs indien die voorskrifte van die artikel nie nagekom is nie, die heffing van die betrokke belasting nie noodwendig ongeldig is nie. In die alternatief is die argument dat in elk geval die bepaling wat die tydperk van veertien dae voorskryf slegs aanwysend is, en dat die rekening (Bewysstuk "L") bewys is deur verweerder ontvang te gewees het, en dat dit 'n voldoende kennisgewing ingevolge artikel 93 is, en dat hoewel daardie rekening eers baie meer as veertien dae daarna gestuur is, die heffing van belasting nog geldig is.

Die eerste vraag wat ek behandel is op welke wyse die wetgewer bedoel het die skriftelike kennisgewing moet geskied. Klaarblyklik is die bedoeling van die wetgewer dat die kennisgewing moet geskied ten einde 'n datum vas te stel van wanneer die eienaar vir die belastings aanspreeklik gehou moet word. Dit is ongetwyfeld noodsaaklik dat beide die eienaar of bewoner sowel as die munisipaliteit bewus moet wees van die betrokke datum. Indien 'n kennisgewing per pos gestuur word, mag die munisipaliteit weet op watter datum dit gepos is, maar is dit nie bewus wanneer dit deur die eienaar ontvang is nie. Die datum wanneer die kennisgewing gepos word kan nie dien as die datum beoog in die artikel nie, aangesien die eienaar of bewoner nie van daardie datum bewus sal wees nie. Dit is derhalwe die datum waarop die eienaar die kennisgewing ontvang wat ter sake is. Die enigste manier waarop dit tot die munisipaliteit se kennis kan kom wanneer die kennisgewing deur die eienaar of bewoner ontvang is, is deur die kennisgewing persoonlik

/af te lewer.....

af te lewer. Persoonlike aflewering is dus die enigste wyse waarop 'n datum vasgestel kan word waarvan beide die munisipaliteit en die eienaar of bewoner kennis kan dra. Maar selfs die woorde "dien" en "serve" konnoteer myns insiens persoonlike aflewering. Ek vind dat die woord "dien" in die "Afrikaanse Woordeboek" wanneer dit in juridiese taal gebesig word as 'n anglisisme aangegee word maar dat dit in daardie verband die betekenis dra van "besorg", "afgee", "aflewer". Al drie hierdie woorde dui daarop dat die persoon dit in die hande moet kry, en dui op persoonlike aflewering. In "The Oxford English Dictionary" vind ons ook dat die woord "serve" in 'n juridiese sin gebruik, toegepas word by bestelling van prosesstukke. In sy juridiese sin word die woord in die woordeboek as volg bepaal: "To make legal delivery of (a process or writ)". Om prosesstukke te bestel dui steeds op 'n persoonlike aflewering. Waar dit andersins geoorloof word moet verlof verkry word vir vervangde bestelling ("substituted service").

Vir die redes hierbo uiteengesit is ek die mening toegedaan dat artikel 93 persoonlike aflewering beoog.

Die volgende vraag is of die voorskrifte van die artikel gebiedend of slegs aanwysend is. In die eerste plek is die ter sake dienende gedeeltes van die artikel in gebiedende taal ingeklee. Die Engelse teks lui "shall serve in writing" en hoewel die gebiedende "moet" nie in die Afrikaanse teks verskyn nie, blyk dit uit die hele sinsnede dat die taal net so gebiedend is as die wat gebruik word in die Engelse teks. In die saak van <u>Messenger of the Magistrate's Court, Durban v.</u>

/Pillay.......

Pillay, 1952 (3) S.A. 678 op bl. 683 sê van den Heever, R.A.:

> "If a statutory command is couched in such peremptory terms it is a strong indication, in the absence of considerations pointing to another conclusion, that the issuer of the command intended disobedience to be visited with nullity."

In die onderhawige wetsbepaling kan ek niks vind wat dui op slegs 'n aanwysende voorskrif nie. Trouens 'n kennisgewing is 'n sine qua non tot aanspreeklikheid. Alvorens daar nie 'n kennisgewing is nie kan daar nie 'n datum wees van wanneer die eienaar of bewoner aanspreeklik gehou kan word nie. Dat kennisgewing moet geskied, is derhalwe gebiedend. Myns insiens is dit ook gebiedend dat die kennisgewing gedien moet word in die sin soos ek die woord vertolk het want soos ek reeds getoon het is dit die enigste wyse waarop 'n presiese datum van aanspreeklikheid vasgestel kan word.

Dit mag wees dat die tydperk van veertien dae nie gebiedend is nie. 'n Wetsbepaling kan natuurlik gedeeltelik gebiedend en gedeeltelik aanwysend wees. (Sien Pillay se saak (supra) op bl. 684 in fine.) Maar al sou die bepaling aangaande hierdie tydperk aanwysend wees baat dit eiser nog nie. Die rekening is gedateer 1 Maart 1954, maar dit is per pos gestuur en is nie bestel volgens die voorskrif van artikel 93 nie. Ek het reeds aangetoon dat die bepaling wat handel oor die bestelling van die kennisgewing gebiedend is en gevolglik as daar nie aan voldoen is nie, die kennisgewing nietig is en is daar geen datum wat aanspreeklikheid vir

/belasting......

UITSPRAAK.

belasting kan bepaal nie. Daar is geen getuienis wanneer die rekening verweerder bereik het nie, en gevolglik kan geen definitiewe datum bepaal word nie. Hierdie einste feite toon weer waarom dit gebiedend is dat die beoogde kennisgewing persoonlik bestel word want by ontstentenis daarvan kan geen definitiewe datum van aanspreeklikheid bepaal word nie.

Dit is gemene saak dat nog die brief van 1 Desember 1953 met bylae nog die rekening van 1 Maart 1954 persoonlik bestel is.

Uitspraak vir verweerder met koste word bygevolg beveel.

8 Mei 1958.
BLOEMFONTEIN.

(get.) H.J. POTGIETER.