IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 037830/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES/NO

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SIGNATURE DATE

In the matter between:

MAY 62 GENERAL ENTERPRISE (PTY) LTD Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY Respondent

JUDGMENT

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[1] This application relates to the question whether the Tshwane Municipality may include a tampering charge to a clearance certificate in terms of sec 118(1)(b) of the Local Government: Municipal Systems Act, 32 of 2000 (the “Systems Act”).

[2] This matter comes before me as a matter of urgency. The Applicant applies for an order directing the City of Tshwane (the “City”) to issue a clearance certificate in terms of Section 118 of the Municipal Systems Act to the Applicant against payment of an amount of R105 922.46 with regard to arrear rates and taxes pertaining to the property Erf 1147, The Orchards Ext. 11 Township (better known as 90 Ribbon Street). The amount stated is the balance after excluding a R150 000 tampering charge which the City imposed and included in its calculation of the amount due for purposes of obtaining a clearance certificate. The Applicant also seeks costs on an attorney and client scale.

[3] The Applicant bought the aforesaid property at an auction on 24 February 2020 and seeks to take transfer thereof. The Applicant has a purchaser for the property, but the resale is in jeopardy because of the First Respondent’s refusal to issue a clearance certificate until an additional tamper fee of R150 000.00 plus VAT (i.e. R173 317.79) is paid in addition to the amount stated above.

[4] The City of Tshwane contends that the application is not urgent and further contends that the Applicant has an alternative remedy. The risk of vandalism is insufficient to establish urgency as the applicant can take possession of the

property to protect it. The urgency lies elsewhere. The risk of the on sale being lost due to the delay about the amount due for a clearance certificate renders the application sufficiently urgent .

[5] The property was acquired by a financial institution after it foreclosed on its bond. Security guards were on site until the Applicant purchased the property.

[6] The property has a prepaid meter for electricity. The City conducted an inspection of the property in January 2023. The inspection showed that there was an illegal connection that bypassed the prepaid electricity meter. It was ascertained that the last prepaid electricity coupon was purchased some three years ago.

[7] Section 118 reads as follows:

(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.

(1A) 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.

[8] [Sub-s. (1A) amended by s. 19 of Act 19 of 2008 (wef 13 October 2008).]

(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.

[9] Section 118(1) is an embargo on the Registrar of Deeds, requiring a clearance certificate from the municipality as a statutory requirement before transfer may be passed. It creates security for the City in respect of outstanding municipal service charges as listed in subsection118(1)(b) for two years prior to the date of application. It is a statutory method of debt collection by the municipality.

[10] The question to be answered is whether a tampering charge falls within the ambit of “municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties upon the property”. In order to answer this question, it is necessary to analyse the provisions that govern the topic of tampering.

[11] tampering does not sit comfortably, or at all, within the list of permissible items on a sec 118(1) certificate. The City contends that a municipal service is, according to its Debt Collection Policy, whatever items are reflected on a municipal accounts. Statutory interpretation starts with the text of the statute and follows the process set out in the well- known and often cited **Endumeni** case, including the following of a purposive approach. This implies identifying the mischief which the provision seeks to cure and interpreting the provision accordingly.

[12] Tampering is governed by By-law 26 of the Electricity By-laws of the City of Tshwane. The City can disconnect an illegal connection and *“the consumer is liable for all fees and charges levied by the municipality for the disconnection*

and subsequent reconnection in accordance with the approved tariffs." (By-law 26(2)).

[13] If the bypassing results in inaccurate accounts, *"the municipality has the right to rectify the consumer's account and to include circuit breaker, connection and quota charges."* (By-law 26(3)). The City contends that the tamper fee falls under "quota charges". This contention is analysed below with reference to the Tariff Policy of the City.

[14] In terms of the applicable Tariffs Policy, the tamper fee for an illegal connection is R150 000.00 in respect of a single-phase domestic supply. If tampering occurs a second time the tamper fee is R180 000.

[15] It bears noting that the failure by the municipality to ascertain the existence of an illegal connection for three years points to inefficiency on the part of the municipality. While the municipality has the right in terms of Section 118(1) of the Municipal Systems Act to require payment of arrear rates and taxes before issuing a clearance certificate, there was also a duty on the municipality to do everything reasonable to ensure that appropriate debt collections have taken place. If this obligation is not discharged, it would not be possible for the municipality, as it is obliged to, to provide monthly statements of account to owners when appropriate (Mkhontwana v Nelson Mandela Metropolitan Municipality 2005(1) SA 530 (CC) at [62] and [67]).

[16] The question is whether the original owner should bear the results of an illegal connection by paying the tampering fee prior to transfer. The transmissibility of a charge to the new owner was decided in the Constitutional Court, which held that the charge on the property as envisioned by 118(3) of the Systems Act cannot be recovered after transfer, from the new owner. In **Jordaan v Tshwane Municipality** 2017(6) SA 287 (CC) the apex court interpreted the meaning of Section 118(3) of the Municipal Systems Act. Section 118(3) provides that:

> *"(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 property is owing and enjoys preference over any mortgage bond registered against the property."*

[17] Cameron J states the following:

> *"[25] Section 118(3) took effect on 1 March 2001. Against the background of its predecessors, its enactment appeared to signal a radical departure. This is because the provision, though in the same section of the statute, evinces no express link with the embargo in the earlier subsection. This has the consequence, first, as the Supreme Court of Appeal held, that the charge in subsection (3) operates independently of the embargo in subsection (1). This means the charge upon the property has no express retrospective time limit on the debts it covers. The two-year time limit is absent. The charge takes effect in respect of all debts owed*

to the municipality that have not prescribed. This may embrace the total of accumulated municipal debts, including municipal taxes going back 30 years, and other charges for three years.

[26] Second, and pertinent here, delinking the two provisions created the basis for the suggestion, which the municipalities and the Minister have embraced, that the charge survives transfer and, thus, can be enforced against the new owner. This approach must be assessed in the light of the fact that there is no evidence at all that before 1 March 2001 any enactment ever sought to impose on a new owner responsibility for a previous owner's debts. The sole effect of the preceding enactments was to embargo transfer until a municipal debt-payment certificate was provided, and, later, to give municipalities preference, coupled with a charge, over other creditors before transfer. This means that, if the subsection has the meaning the municipalities and the Minister give it, it would have constituted a radical innovation on the South African legal landscape.

[27] The question is, thus, whether the separation of subsection (3) from subsection (1) in section 118 means that the charge 'upon the property' survives transfer so as to burden succeeding owners with the previous owner's historical debts.

…

[42] Were there no Constitution, one would thus conclude, on the wording of section 118(3) alone, that the unregistered charge it creates is enforceable against the property only so long as the original owner holds title. The absence of any requirement that the charge be publicly formalised is a strong interpretative indicator that the limited real right section 118(3) creates is defeasible on transfer of ownership."

[18] With reference to **Mkontwana** the Constitutional Court reiterated that efficient debt recovery processes will enable a municipality to recover all outstanding debts, as a charge against the property, before transfer.

[19] The Constitutional Court found that the imposition on a new owner of municipal property of unprescribed debts without historical limit would constitute an arbitrary deprivation of property (see [74]). The Court therefore granted a declaration in the following terms:

"It is declared that, upon transfer of a property, a new owner is not liable for debts arising before transfer from the charge upon the property under section 118(3) of the Local Government: Municipal Systems Act 32 off 2000."

The City argues that it can however prevent transfer to the new owner if the previous owner did not pay all municipal charges, including the tamper fee. This contention does resonate with the Constitutional Court's reasoning in par [54] of **Jordaan:**

"And the statute does indeed provide a full-plated panoply of mechanisms

enabling efficient debt recovery in the cause of collecting publicly vital revenue. Here the parts of s 118(3) that are uncontested are integral. These are the charge on the property against the existing owner, and the municipality's preference over registered mortgagees. During argument the municipalities conceded, correctly, that the provision enables them to enforce the charge against the existing owner up to the moment of transfer — and to do so above and before any registered mortgagees. And they were constrained to concede, also correctly, where there are unpaid municipal debts, that the charge enables them to slam the legal brake on any impending transfer by obtaining an interdict against transfer."

The import of the above is that, if the new owner wants transfer, he can be forced to pay historical debts of the seller in order to obtain a sec 118(1) certificate. This proposition is consistent with the purpose of sec 118(1). This still does not answer the question whether the tampering fee may be enforced in this way by means of a sec 118(1) certificate prior to transfer.

The City contends that a tamper fee can be charged administratively as a quota charge in terms of Bylaw 26(3). In addition, it can prosecute a wrongdoer for the offence of tampering (Bylaw 62), read with section 112 of the Systems Act). The offence of tampering may result in a fine not exceeding the tariff amount of R150 000 (in the case of a first offence). Where the owner is the wrongdoer, the City's interpretation of the tampering regime is that the owner may be mulcted administratively as well as criminally. This raises the spectre of double dipping. Further, it gives oxygen to the proposition that the City may choose which route

to follow. Inevitably the administrative route is the route of least resistance, which places the criminal prosecution of a person who is burdened administratively with a tampering charge into question. One wonders what the point would be of a prosecution be, if there is an administrative alternative with cheaper costs and higher rewards.

The Applicant contends that the quota charges do not relate to tampering fees and that the only basis for imposition of the tampering fee is as a fine following conviction in criminal proceedings for the offence of tampering.

[20] Offences arising from non-compliance with by-laws may be prosecuted in terms of Section 112 of the Systems Act. It provides for the appointment of a staff member or members of a municipality who is authorised in terms of Section 22 of the National Prosecuting Act, 1998, to conduct prosecutions. Such a person may institute criminal proceedings and conduct prosecutions for contraventions or non-compliance with by-laws.

[21] Fines recovered in respect of offences must be paid into the revenue fund of the municipality (Section 113 of the Systems Act).

[22] A Municipal council must adopt and implement a tariff policy on the levying of fees for municipal services (Section 74 of the Systems Act).

[23] A municipality may levy and recover fees, charges or tariffs in respect of any function or service of the municipality and recover collection charges and interest on any outstanding amount (Section 75(1) of the Systems Act).

[24] A municipality must establish a sound customer management system for purposes of credit control and debt collection (Section 95(a) of the Systems Act).

[25] The municipality must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies (Section 96 of the Systems Act). The credit control and debt collection policy must, amongst others, deal with matters relating to unauthorised consumption of services, theft and damages (Section 97(1)(h)).

[26] The Systems Act defines a “municipal service” as a service that the municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community, irrespective of whether:

(a) Such a service is provided, or to be provided by the municipality through an internal mechanism; and

(b) Fees, charges and tariff levies in terms of such service.

IMPOSING A PENALTY FOT TAMPERING

[27] The Standard Electricity Supply By-laws of the municipality were promulgated in terms of Section 11 and 13 of the Systems Act.

[28] By-law 62(1) creates an offence for *inter alia "any person who tampers with, bypasses, redirects, disturbs, alters, interferes with, vandalises, steals, or purports or attempts to encumber, sell, let, swop or otherwise dispose or alienate any metering equipment, cabling and/or the other assets, equipment or infrastructure forming part of a prepayment meter system, a smart prepayment meter system and/or part of the municipality electricity supply …"*

[29] If found guilty by a Court of law, the offender may be sentenced to a *"fine not exceeding an amount stipulated in the prevailing schedule of charges and fees, determined and published by the municipality from time to time"* (By-law 62(1)).

29.1 In terms of By-law 26(2) the City's remedy in the case of illegal connection is to disconnect, and to charge all fees and charges related to the disconnection and the subsequent reconnection in accordance with approved tariffs.

29.2 The fee for disconnecting domestic bulk supply with effect from 1 July 2022 to 30 June 2023 is the amount of R2 593.24. This is also the

amount for reconnecting the supply (see Tariff Policy C Sundry Services, par 1: Fees for Discontinuing and Reconnecting the Supply).

[30] If the bypassing results in an inaccurate account, the municipality's right to rectify the account in terms of Bylaw 26(3) includes the addition of the cost of the circuit breaker, a connection and quota charges.

30.1 The City argued that the quota charges included the tampering fee of R150 000.00. In the Tariff Schedule: Supply Electricity: Part 2: Demand and Fixed Demand Charges, the concept of additional charges, quota charges and fixed charges are dealt with. An Erf quota is a calculation made in terms of a formula applied to a number of potential dwelling units on an Erf. It bears no relation to the imposition of a tampering fee (see par A. Additional Charges of the Schedule where an "Erf quota" is dealt with in par 1.)

30.2 Quota charges are contained in par 2 of the Schedule. The scale of tariffs for the supply of electricity detailed in Part 1 of the tariff document are based on the costs associated with the provision of the supply to various groups of consumers in the legally connected developed areas within the City of Tshwane electricity supply area. Where the supply needs to be provided to new premises or groups of premises, or where an existing consumer applies for an increased supply, the cost of extending the distribution and reticulation networks within the

municipality must be paid by the developer or consumer as external engineering services.

30.3 The quota charges must cover the capital liabilities incurred or to be incurred by the City of Tshwane in supplying the distribution and/or reticulation network to increase the quota to the premises or group of premises. Contributions are then sought for connections made at specific places against specific tariffs (see par 2.3 of the Schedule).

30.4 The specific instances of quota charges in the Tariff Schedule refer to the application of a calculation based on a prescribed formula, depending on the number of housing units or proposed units. This is not consistent with the application by rote of a fixed penalty for tampering. To call it a fee does not change the punitive nature of its imposition. The mere magnitude of the amount for a single phase domestic property, compared to charges for disconnection, reconnection, cost of circuit breakers etc., enforces this categorisation.

30.5 The quota charges in Bylaw 26(3) must therefore refer to something different. Since the purpose of the provision is to correct an incorrect account, it would refer to a corrective measure, e.g. a calculation proportional to past electricity consumption extrapolated over the duration of the illegal connection or tampering. The date of the last purchase of prepaid electricity would serve as starting point.

[31] From the above it is apparent that quota charges in Bylaw 26(3) do not relate to the imposition of a tampering fee.

[32] Par 1.6 of the Tariff Schedule deals with illegal or unauthorised consumption. It is in a section separate to the sections dealing with fixed charges and prescribed tariffs For first illegal consumption fees, illegal reconnection, first refusal to disconnect, first RIP or first tamper, the following is stated in par 1.6:

"For illegal consumption, illegal reconnection, refusal to disconnect, permanent removal of installation, tampering with the electrical installation or non-compliance with any of the provisions of the Electricity By-laws or Regulations:

1.6.1.1 Single phase domestic supply R150 000,00;

…

1.6.2 Second illegal consumption fee, illegal reconnection, refusal to disconnect, RIP or tamper

…

1.6.2.1 Single phase domestic supply R180 000.00"

[33] The imposition of a tampering fee is not part of the section dealing with specific tariffs for specific services or charges. It is also not part of the provisions related to quota charges.

[34] The imposition of a tampering fee in a prescribed amount of R150 000.00 for a first offence is clearly a penalty. Whilst its purpose is no doubt to recoup, by means of a penalty, a loss arising from illegal electricity consumption, it cannot be viewed as a correction fee. If it were a correction fee, then the period for which the illegal connection was in operation would be a relevant consideration. This is however not a consideration reflected in the Schedule, which prescribes a fixed R150 000.00 tampering fee for a first offence.

[35] The mechanism for imposition of a tampering fee as a penalty ostensibly arises from criminal proceedings for the offences created by Section 62 of By-law 26. On my assessment of the provisions of By-law 26(1), (2) and (3), all of which deal with illegal connections, none of the City's remedies include the imposition of the tampering fee. The amount of R150 000.00 in the Schedule is the upper limit of what a Criminal Court, upon conviction, may impose.

[36] If such a penalty fee were to be imposed without a criminal conviction, as part of an administrative exercise, as the City of Tshwane argued, that would amount to the imposition of a maximum criminal penalty on a property owner, without such person having been charged and convicted in criminal proceedings. The imposition of such a tampering fee would, in such circumstances, be an infringement of the owner's fair trial rights in Section 35 of the Constitution. Further, it would appear that an accused has better prospects of receiving a fine in a lesser amount than an owner on whom the maximum tampering fee is imposed administratively. That appears to be irrational.

[37] If the City could lawfully recoup the maximum tariff for tampering administratively in terms of section 118(1)(b) of the Systems Act, that would remove any incentive for criminal prosecutions. This could lead to a proliferation of illegal connections since there would be no check on such criminal activity. Tenants and illegal occupiers of land would rest assured that the consequences of their illegal connections would be visited on the owner, and in practice, on the purchaser of such property. This is a rule of law consideration in favour of the retention of criminal proceedings as the means of recouping tampering fees.

[38] An interpretation of sec 118(1) that is consistent with the Constitution is to be preferred over an interpretation that has unconstitutional and irrational results. This is the injunction in sec 39(2) of the Constitution.

[39] Such an interpretation is not unduly onerous on the City of Tshwane. It is empowered by sec 112 of the Systems Act to administer criminal justice in respect of all offences consisting of the breach of bylaws, including tampering.

[40] The property had an active supply of electricity but no use could be detected for three years prior to the inspection. It is not unreasonable to expect of the municipality to inspect such properties, particularly where other municipal services and water consumption continue, but no electricity use is detected.

[41] Counsel for the City argued that, since the last electricity coupon had expired, there would be an automatic disconnection of supply from the point of supply. I accept this proposition. It is however the continuation of other services and

water usage, together with regular meter readings, that would enable the municipality to inspect whether there is an illegal connection or not. To find otherwise, would constitute a reward to the municipality for inaction. If it were entitled to add a tampering fee administratively to the amount due in terms of the clearance certificate, it would have no incentive to prosecute while the wiping out of illegal connections is clearly part of the debt control mechanisms which the City is obliged to utilise. The City is therefore not deprived of a remedy for illegal connections.

[42] Counsel for the City referred me to an unreported judgment of **Minnaar NO and Others v Ekurhuleni Metropolitan Municipality** (10716/2013) [2015] ZAGPPHC 342 (22 May 2015). In that matter a property owner challenged a fine of R2 052.00 on his account related to an offence committed by his tenant. The offence was tampering. The property owner contended that the fine could not be foisted onto the owner as he was not found guilty of an offence. Dodson AJ found as follows at para [24]:

"The reference to a 'fee' and not to a penalty is indicative of the municipality seeking to impose a charge and not to impose a penalty. The fact that the amount is inclusive of VAT also points to a fee for a provision of a service rather than the imposition of a penalty."

[43] At para [25] the Court states:

"Further, if regard is had to the amount of R2 052, it is clear that the municipality was seeking to rely on the electricity supply tariffs referred to above, and in particular, item 5 of tariff H. If VAT is added to the amount of R1 800 provided for in item 5, it comes to exactly R2 052."

[44] The Court there found that *"there can be no suggestion that in imposing the tariff, the municipality was acting outside its powers or purporting to impose a criminal penalty."*

[45] At para [31] the Court states the following:

"It is so that in the case of a second or third tampering, provision is made for the doubling or trebling of the fee. These components of the tariff may well contain a punitive component. However, that is not sufficient in my view to render those charges a criminal fine or to render the conduct of the municipality in imposing that tariff unlawful. In any event, and save for the trust's belated challenge to the constitutionality of Section 36(2) of the by-law, no other by-law, tariff, or other administrative action on the part of the municipality was challenged in the proceedings on the basis that it was either unconstitutional or unlawful."

45.1 From the aforesaid it is apparent that the Court in that instance was not dealing with what a municipality may include in a clearance certificate in terms of Section 118(1) of the Municipal Systems Act. It was considering whether an owner could be liable for a charge brought about by conduct of a tenant. There are public policy considerations as

to why that must be so, as the owner selects his tenants and controls their tenancy. The amount concerned was consistent with a charge under the equivalent of Bylaw 26(3). However, that does not address the issue at hand. That renders that matter distinguishable on the facts.

[46] The City included a R150 000.00 tamper fee to the account of the property owner, contending that falls within the ambit of "municipal service charges" defined by the Credit Control and Debt Collection Policy, i.e. *"any and all municipal charges, as the case may be, that reflect on an account apart from the rates and taxes levied in terms of the Municipal Property Rates Act."*

[47] It is doubtful that a policy that flows from a statutory obligation may be used to interpret an empowering statute. That would be akin to utilising national legislation that was promulgated in terms of the constitution to interpret the constitution.

[48] The municipality contends that it may impose a tamper fee on the owner where evidence of tampering is found and may separately prosecute the wrongdoer in terms of By-law 62.

[49] The constitutionality of this proposition is suspect. The tamper fee referred to in the Policy is clearly a penalty for tampering. Since tampering has been criminalised, it is to be dealt with in terms of By-law 62.

[50] The amount of the *"tariff"* for tampering is R150 000.00. Such a large amount is clearly a penalty. Whilst part of the reasons for the size of the penalty is related to reimbursement for losses arising from the theft of electricity, the amount of R150 000.00 is the maximum to which an offender can be sentenced in terms of By-law 62.

[51] The interpretation of Section 118(1) of the Systems Act is a purposive one. In interpreting the section, an interpretation that has unconstitutional consequences is to be avoided. If the tamper fee was a mere tariff, then its inclusion in a clearance certificate would pass constitutional muster. By contrast, if it is a penalty that is imposed in criminal proceedings, and it were to be imposed without such a criminal trial or conviction, that would render the inclusion of such a penalty unconstitutional. Further, the purchaser of immovable property is required to submit a clearance certificate to the Registrar of Deeds before transfer can be taken (Section 92 of the Deeds Registries Act. If a penalty of R150 000.00 were to be included in the clearance figures, that would not only constitute the imposition of a fine without a trial upon the property owner (which would be unconstitutional), but that charge is foisted onto the purchaser of that property. The unconstitutionality would then be compounded.

[52] The argument on behalf of the City is that whatever is on an account and is referred to as a tariff or charge would fall within the definition of a municipal service in terms of its policy. That is however not the question to be answered.

The question is whether a tampering fee, in the context of the by-laws dealing with tampering can be seen as merely a charge or a tariff in the context of Section 118(1).

[53] The effect of the proposition advanced on behalf of the City is that the imposition of R150 000.00 in the clearance certificate would avert the need to institute criminal proceedings for tampering. I asked counsel for the City whether a property owner who is guilty of tampering, could be held liable both in terms of the imposition of a R150 000.00 tampering fee on his municipal account, and be charged for tampering in terms of the by-law. The contention was that both the imposition of the tampering fee, administratively and the imposition of such an amount criminally would be possible. It was contended that the only relevance of the administrative imposition of the tampering fee would be that, if paid, it would be in mitigation of sentence in the criminal proceedings. This is facile. If the City can obtain the tampering fee without a criminal prosecution, the criminal prosecution is unlikely. If the City is entitled to impose a tampering fee administratively, there would be no incentive to prosecute wrongdoers for tampering by charging them criminally. The administrative route would remove the incentive to prosecute for wrongdoing. This would mean that innocent owners could be held liable for tampering by tenants or illegal occupiers of their property. Whilst the offenders are left without facing the consequences of criminal activities, an innocent owner is saddled with the maximum which a Criminal Court may impose upon conviction. This is irrational and unconstitutional.

[54] If the results are unconstitutional, such an interpretation must be avoided.

[55] If the imposition of a tampering fee is categorised as a criminal penalty following conviction, it may be imposed by the City upon wrongdoers, whoever they are. The City is empowered to prosecute such persons and to recover fines for the benefit of the City.

[56] If such prosecutions are rendered unnecessary by imposing the maximum penalty administratively, the whole system of criminal prosecution for tampering would be rendered meaningless.

[57] In the light of the above considerations, I find that the tampering fee is the maximum penalty that may be imposed in criminal proceedings. In the absence of a conviction, such a tampering fee may not be included in a clearance certificate.

[58] I therefore grant an order as follows:

1.The Respondent is directed to issue a certificate in terms of section 118(1) of the Local Government: Municipal Systems Act, 32 of 2000 to the applicant against payment of the amount due in respect of the immovable property Erf 1147, The Orchards Extension 11, also known as 90 Ribbon Street, with the exclusion of the tampering fee of R150 000 plus VAT

2.The respondent is ordered to pay the costs

EC LABUSCHAGNE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Case lines. The date for handing down is deemed to be 12 May 2023.

APPEARANCES

FOR THE APPLICANT:	MR. G DE BEER
FOR THE RESPONDENT:	ADV. M S MANGANYE
HEARD ON:	**09 MAY 2023**
DATE OF JUDGMENT:	12 MAY 2023