Does the municipality lose its rights to recover debts after a transfer has been registered?

All of the cases dealing with the municipality rights in terms of Section 118 thus far, has focused on the provisions of Section 118 (1) of the Local Government Municipal Systems Act 32 of 2000, which relates to the issuing of a clearance certificate once debts in respect of two years preceding the date of application for the certificate have been settled.

In the case of City of Tshwane Metropolitan Municipality v Mathabathe reported in the May 2013 law reports, the Supreme Court of Appeal once again confirmed that a municipality is compelled to issue clearance figures relating to services in respect of the property for the two year period prior to such application. All historical debts older than two years cannot be claimed from the Seller of the property nor demanded from him as a prerequisite to issuing the clearance figures.

What then happens to the debts which are older than two years? Does the municipality lose its rights in terms of Section 118 (3) of the Municipal Systems Act if it issued a clearance certificate in respect of the preceding two years? This question was addressed in the present case.

The provisions of Section 118 (3) provides the municipality with security for repayment of a debt over the property in that it places a charge upon the property in connection with the amount which is owing and such charge enjoys preference over any mortgage bond registered against the property. It is therefore clear that any amounts over and above the two year figure issued for purposes of a clearance certificate in terms of section 118(1) can be recovered in terms of section 118(3) (provided that they have not prescribed). The practical implication is that the municipality, after issuing the two year figure, can still take steps against the owner of the property to recover debts older than 2 years. In effect this right of the municipality places a veto or embargo on the property and conveyancers should advise the parties to a transaction that even though a clearance certificate has been issued regarding the preceding two years debts,

that the remaining debt remains a charge against the property and the municipality could still recover that portion of the debt from the person who is the owner at the time which it is claimed.

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