



ConCourt rules new homeowners not liable for historical debt

29 August 2017 11:00 AM

JOHANNESBURG - The Constitutional Court has ruled that new home owners are not liable for historical debt incurred by previous owners.

Several municipalities including Tshwane, eThekweni and Ekurhuleni had argued that it was lawful for a municipality to attach and sell a recently purchased property in order to pay debt owed to them.

The case was brought by several property owners who opposed this practice.

Historically a property was not allowed to be transferred to a new buyer until a municipal certificate was issued, clearing any debt spanning a two-year period.

However, debts that surpassed the cut off became the liability of the new owner.

At the heart of this appeal was the interpretation of the Municipal Systems Act, which municipalities used to refuse to issue clearance certificates until all debts had been paid.

Justice Edwin Cameron handed down Friday's unanimous judgment.

Cameron says the provision is capable of being interpreted so that the charge does not survive transfer.

MUNICIPALITIES ORDERED TO PAY COSTS OF APPLICATION

The court has also ordered municipalities to pay the costs of the application brought by homeowners.

In a unanimous judgment, Justice Edwin Cameron says the Municipal Systems Act can be interpreted so that the charge does not survive the transfer.

"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 113. The appellants and the appeals and the minister are to pay the applicant costs, including the costs of two counsel."

Written by: Gia Nicolaides

<http://www.702.co.za/articles/270316/concourt-rules-new-homeowners-not-liable-for-historical-debt>

‘Munisipaliteite het hul mag misbruik’

Deur **Hanlie Stadler** 29 Augustus 2017 13:24



Peter Livanos is aansienlik armer en sy gesondheid het die afgelope paar jaar ’n enorme knou gekry.

Maar hy is “baie, baie dankbaar” dat die konstitusionele hof hom vandag gelyk gegee het in die saak wat hy vier jaar lank namens 13 huiseienaars gestry het.

“My maatskappy (New Ventures Capital) het al die koste van die litigasie gedra. Ek het vir alles betaal. Niemand sal weet hoe dankbaar ek nou is nie.”

Die konstitusionele hof het Dinsdag beslis dat nuwe huiseienaars nie verantwoordelik gehou kan word vir historiese skuld van tot 30 jaar gelede wanneer hulle ’n huis koop nie.

Die hof het bevind dat die minister van samewerkende regering en die twee munisipaliteite wat Livanos aangevat het – Tshwane en Ekurhuleni – die regskoste moet betaal, maar slegs vir twee van die vier regslui wat Livanos aangestel het.

Lees ook die volledige hofuitspraak hieronder.

Livanos sê die saak het hom al R13 miljoen gekos, maar hy sou bankrot gewees het indien daar, met koste, téén hom beslis is. Hy sê hy het nou bewys dat munisipaliteite “hul mag misbruik het”.

Wat jy moet weet

Moenie ’n skulderkenning onderteken vir vorige huiseienaars se munisipale skuld nie. Dit is nou onwettig om dit van jou te verwag.

Indien jy wel vorige eienaars se skuld betaal het, kry regshulp om jou geld of ’n deel daarvan te probeer herwin.

Wanneer mense huis koop, kan oordrag van die eiendom in hul naam nie plaasvind voordat die munisipaliteit vir jou ’n klaringsertifikaat gegee het dat daar geen agterstallige skuld is nie. Livanos verduidelik egter dat dié klaringsertifikaat slegs handel oor die vorige twee jaar se skuld.

Die betrokke munisipaliteite het egter ná oordrag die eienaars aangespreek vir die skuld van lank gelede – dus nie die skuld van die vorige eienaar nie, maar van drie, vier eienaars gelede en van tot 30 jaar gelede. Die eienaars se krag of water is afgesny en hulle is gedreig dat hulle hul eiendom sou verloor tensy hulle die agterstallige skuld betaal. Dit het in sommige gevalle R30 000 beloop.

Livanos sê verdere stappe teen die 13 mense is opgeskort hangende vandag se uitspraak.

NIEMAND SAL WEET HOE DANKBAAR EK NOU IS NIE. Peter Livanos van New Ventures Capital

Livanos sê hoewel die uitspraak slegs twee munisipaliteite betrek, sowel as eThekweni, wat as vriend van die hof toegetree het, kry hy daagliks oproepe van oor die hele land heen. Die probleem is dus nie tot net dié drie munisipaliteite beperk nie.

Livanos sê om die waarheid te sê het die Suid-Afrikaanse Vereniging van Plaaslike Regerings (Salga) munisipaliteite aangemoedig om skuld op dié “kreatiewe manier” in te vorder, voer Livanos aan.

Aidan Kenny, eiendoms spesialis en direkteur van Werksmans, verduidelik dat die hof nie art. 118 (3) van die Wet op Munisipale Stelsels ongeldig verklaar nie, maar bloot bepaal het dit nie op nuwe eienaars van toepassing gemaak kan word met betrekking tot vorige eienaars se skuld nie.

Hy beskryf dit as ’n “oorwinning vir eiennaar en finansiële instellings”.

“Dit sal finansiële instellings gemoedsrus gee dat wanneer hulle aan iemand geld leen om eiendom te koop, nóg die eienaar nóg die instelling van hul sekeruriteit (die eiendom) vir die sondes van die vorige eienaar ontnem kan word nie.”

Livanos sê huiskopers wat maar bes gegee het en vorige eienaars se skuld betaal het om te keer dat hul krag en ligte afgesny word, het nou ’n goeie saak dat dié geld terugbetaal moet word.

Kenny sê munisipaliteite sal dadelik die praktyk moet stopsit om nuwe eienaar aanspreeklik te probeer hou.

Nuwe eienaars moet eenvoudig weier om historiese skuld te betaal.

Livanos sê ook hulle moet onder geen omstandighede skulderkennings onderteken vir ander mense se skuld nie.

Livanos moedig mense aan om hom te nader as hulle hulp nodig het. Municipal Debt Services vra geen geld nie, maar wel ’n deel van enige geld wat hulle vir mense invorder of afslag op ou skuld wat hulle beding kry.

<http://www.netwerk24.com/Sake/Eiendomme/munisipaliteite-het-hul-mag-misbruik-20170829>



BIZCOMMUNITY Concourt judgment a big win for real estate

29 AUG 2017 | BY: BERRY EVERITT



Today's ruling by the Constitutional Court means that new homeowners will no longer have to worry about being held liable for historical debt incurred by previous owners, and having their municipal services cut off as a result, or possibly even having their property attached and sold in execution.



The judgment brings to an end a long period of confusion “and no little controversy” since judgment was given in 2013 in the Gauteng High Court case Mathabathe vs Municipality of Tshwane, which concerned the process of obtaining and lodging a municipal clearance certificate.

In terms of Section 118(1) of the Municipal Systems Act, conveyancers are obliged to obtain such clearance certificates before properties can be transferred to new owners, in order to ensure that any rates and utility charges to the local authority by the property seller have been paid up to date.

However, the Act in fact only stipulates that the municipality must issue the certificate if the outstanding debt for the two years immediately preceding the date of sale has been paid in full, and in the above case the court ruled that if there was debt older than that (historical debt), the property could be transferred to the new owner but the seller would remain indebted to the municipality for historical debt.

Charge upon the property

All would have been fine at that point, except for the fact that Section 118(3) of the Act stipulates that all municipal debt (including the historical debt) is actually “a charge upon the property”, rather than on a person – which led the court to also rule that the municipality would therefore have a lien (statutory tacit hypothec) over the property for the payment of the historical debt – and that this lien would not be extinguished when the property was transferred to a new owner.

The effect of this, in legal language, was seemingly that a municipality which wanted to ‘perfect its lien’ could thus attach the property from the new owner and sell it on auction to settle the previous owner’s historical debt. And in fact some municipalities did start trying to use this judgment to try to collect historical debt from new owners. Some even went so far as to refuse to open utility accounts in the name of new owners until they had settled the previous owners’ historical debt.

This has obviously created a major worry and frustration for property buyers, and for the real estate industry as a whole, and the situation was only slightly improved by the 2014 judgment in the case of *PJ Mitchell v City of Tshwane Metropolitan Authority*, when the same court ruled that a municipality’s lien over a property had been extinguished by a sale in execution and that the new owner should be granted a clean title.

In that case, the court did also rule that a municipality cannot refuse to provide services to a new owner on the grounds that there is a historical debt that has not been paid – but it remained to be decided what should happen when a property is not sold in execution but, as is usually the case, in terms of an agreement between buyer and seller.

Unanimous judgment

And this is exactly what today’s ruling by the Constitutional Court makes clear. The unanimous judgment, which was handed down by Justice Edwin Cameron, is that Section 118(3) of the Municipal Systems Act is capable of being interpreted so that the ‘charge upon the property’ does not survive transfer of that property to a new owner.

<http://www.bizcommunity.com/Article/196/364/166683.html>

MUNICIPAL DEBT
SPECIALIST

New homeowners not liable for historical debt

29 AUGUST 2017 - 11:35 CLAUDI MAILOVICH



Picture: SUPPLIED

Tuesday's Constitutional Court judgment declaring new homeowners not liable for historical debt of former owners has helped bring clarity in the property sector.

The ruling clarified an issue that had left municipalities with more questions than answers, Tshwane mayor Solly Msimanga said on Tuesday.

He said the council would study the judgment.

Thirteen applicants had approached the Constitutional Court to confirm the previous finding of the High Court in Pretoria that section 118(3) of the Municipal Systems Act was unconstitutional. Section 118(3) provided that "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".

The 2013 judgment led certain municipalities to take the act to mean new buyers took over historical debt on properties on purchase as the act stipulates only that a clearance certificate can be issued if the outstanding debt is paid in full for the two years preceding the date of sale. The Constitutional Court did

not find it necessary to declare the section invalid, as it was capable of being interpreted so that the charge on the property did not survive the property transfer to the new owner.

The unanimous judgment, penned by Justice Edwin Cameron, said the Bill of Rights prohibited arbitrary deprivation of property, which would happen if debts without historical limit were imposed on a new property owner.

To avoid contravening section 25 of the Constitution, section 118(3) of the Municipal Systems Act must now be interpreted so that the charge it imposes does not survive transfer to a new owner.

The judgment made it clear that all outstanding debts could be recovered as a charge against the property by municipalities before the sale, since there was a provision placing a municipality on notice that a transfer in its jurisdiction was pending.

Cameron said the provision embargoed each and every transfer until the municipality issued a clearance certificate for the last two years' debt. He said that prospective transferors and their attorneys were obliged to notify municipalities of every impending transfer.

The metros of Tshwane and Ekurhuleni and the minister of co-operative governance and traditional affairs were the respondents in the matter and were ordered to pay the applicants costs, including counsel.

The matter came before the high court after the City of Tshwane and the City of Ekurhuleni suspended or refused to contract for the supply of municipal services to the applicants' properties.

The municipalities required these new owners, the applicants in the matter, to pay historical municipal debts.

Berry Everitt, CEO of Chas Everitt International property group, said the ruling meant new homeowners would no longer have to worry about being held liable for the historical debt, or about having their municipal services cut off or even having their property attached and sold in execution as a result of the debt.

Aidan Kenny, director Werksmans Attorneys, said the judgment was a victory for property owners and financial institutions alike.

Kenny said municipalities would immediately have to cease their practice of imposing and trying to collect from new owners historical debt, which they had not collected from the previous owners.

<https://www.businesslive.co.za/bd/national/2017-08-29-when-you-buy-a-property-you-do-not-buy-its-municipal-debt-constitutional-court-rules/>

New property-owners not responsible for historical municipal debt – ConCourt

BY PHATHU LUVHENGU August 29, 2017



The Constitutional Court has ruled that new property owners are not liable for municipal debts incurred by the previous owner

The Constitutional Court has ruled on Tuesday that new property owners are not liable for municipal debt incurred by the previous owner.

Moneyweb reports the ruling gives relief to home and business owners, who have been saddled with years of historical municipal debts and have been denied municipal services until the debt had been paid.

The court has found that upon transfer of a property, a new owner is not liable for an old municipal debt. In a unanimous judgment by Justice Edwin Cameron, the court upheld a ruling by the North Gauteng High Court in November last year.

This case came before the court when the City of Tshwane and Ekurhuleni refused to contract the supply of municipal services to properties which had outstanding debt.

Although the properties had exchanged owners, municipalities demanded that new owners pay the money owed by the previous title owners, arguing that the debt charge carried over upon transfer. The High Court previously ruled that it was unconstitutional and amounted to an arbitrary deprivation of property.

An application at the Constitutional Court was brought by the metropolitan municipalities of Tshwane and Ekurhuleni. Municipalities argued that to properly fulfil their duties, they needed extraordinary debt-collecting measures.

New Ventures Consulting and Services, a municipal debt specialist, which has represented several property owners who have carried the liability for historical debt, was a respondent in the matter. The Banking Association of South Africa, commercial property financier Tuhf and the Ethekewini Metropolitan Municipality joined the matter as friends of the court.

Tshwane, Ekurhuleni and Cooperative Governance Minister Des van Rooyen were ordered to pay costs for the appeal application.

At the centre of this court battle was the interpretation of Section 118 of the Municipal Systems Act. The Court ruled that the respective sections of the Constitution, section 118 (3) can be properly and reasonably interpreted to show that the charge would not survive the transfer.

Judgment: New owners of property are not liable for municipal debts incurred before transfer by previous owners
(Jordaan) [pic.twitter.com/UNNq7RhEgV](https://twitter.com/UNNq7RhEgV)

— Constitutional Court (@ConCourtSA) August 29, 2017

Additional reporting by *Moneyweb*

<http://www.destinyconnect.com/2017/08/29/new-property-owners-not-responsible-historical-municipal-debt-concourt/>

MUNICIPAL DEBT
SPECIALIST

ConCourt rules in favour of new home-owners saddled with municipal debt

BY PHATHU LUVHENGU August 29, 2017



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(Jordaan) pic.twitter.com/UNNq7RhEgV

— Constitutional Court (@ConCourtSA) August 29, 2017

Additional reporting by *Moneyweb*

<http://www.destinyman.com/2017/08/29/concourt-rules-favour-new-home-owners/>

MUNICIPAL DEBT
SPECIALIST



ConCourt finds new homeowners not responsible for historical debt

- SOUTH AFRICA
- Tuesday 29 August 2017 - 11:14am



File: The ConCourt upheld a November 2016 High Court ruling in favour of property owners. Photo: eNCA



JOHANNESBURG - The Constitutional Court on Tuesday ruled that new homeowners cannot be held responsible for historical debt accumulated by previous owners.

The ruling will provide relief to home owners who have been held accountable for historical municipal debt, often stretching as far back as 20 years.

Property owners were denied municipal services until the debts had been paid.

The ConCourt upheld a November 2016 High Court ruling in favour of property owners.

Municipalities including Tshwane, Ekurhuleni and eThekweni brought the application at the ConCourt to appeal that finding.

eNCA

<http://www.enca.com/south-africa/concourt-finds-new-home-owners-not-responsible-for-historic-debt>



CREAMER MEDIA'S
ENGINEERING NEWS

New home owners not liable for historical debt, ConCourt rules



29TH AUGUST 2017

BY: NEWS24WIRE

The Constitutional Court on Tuesday ruled that new home owners are not liable for historical debt taken over from previous owners.

Municipalities such as Tshwane, eThekweni and Ekurhuleni – as well as the cooperative and governance minister – argued against a landmark high court judgment in 2016, which made a similar ruling.

The high court application saw property owners take on Tshwane and Ekurhuleni for cutting municipal services to new home owners who had inherited historical debt.

"The applicants complained that they faced darkness, having no electricity, and many other inhumane conditions because they bought property whose previous owners failed to meet their obligations to the municipality," the court explained in a media briefing.

The municipalities had argued that it was lawful for them to attach and sell a newly purchased property to extract money for debt owed to them.

In a unanimous judgment, the court ruled that the provision in Section 118 (3) of the Local Government: Municipal Systems Act, 2000 is well capable of being interpreted so that the charge does not survive transfer, the court explained.

“The court held that a mere statutory provision ... that a claim for a specified debt is a ‘charge’ upon immovable property does not make that charge transmissible to successors in title of property.

“Public formalisation of the charge is required so as to give notice of its creation to the world.”

The court ruled that, to avoid unjustified arbitrariness in violation of 25(1) of the Bill of Rights, Section 118 (3) must be interpreted so that the charge it imposes does not survive transfer to the new owner.

As such, the ConCourt said it did not need to confirm the high court ruling, but granted the applicants a declaration that the charge does not survive transfer.

The municipalities and the minister were ordered to pay costs. 🇷🇺

EDITED BY: NEWS24WIRE

http://www.engineeringnews.co.za/article/new-home-owners-not-liable-for-historical-debt-concourt-rules-2017-08-29/rep_id:4136

MUNICIPAL DEBT
SPECIALIST

CONCOURT RULES NEW HOMEOWNERS NOT LIABLE FOR HISTORICAL DEBT

Several municipalities including Tshwane, eThekweni and Ekurhuleni argued in the case brought by several property owners.



*Constitutional Court of South Africa. Picture: EWN
Gia Nicolaides | 29 Aug 2017*

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However, debts that surpassed the cut off became the liability of the new owner.

At the heart of this appeal was the interpretation of the Municipal Systems Act, which municipalities used to refuse to issue clearance certificates until all debts had been paid.

Justice Edwin Cameron handed down Friday's unanimous judgment.

Cameron says the provision is capable of being interpreted so that the charge does not survive transfer.

MUNICIPALITIES ORDERED TO PAY COSTS OF APPLICATION

The court has also ordered municipalities to pay the costs of the application brought by homeowners.

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<http://ewn.co.za/2017/08/29/concourt-rules-new-homeowners-not-liable-for-historical-debt>



MUNICIPAL DEBT
SPECIALIST

CONCOURT TO RULE ON HISTORICAL DEBT MATTER

Several municipalities including Tshwane, eThekweni and Ekurhuleni are arguing in the case brought by several property owners.



The Constitutional Court. Picture: Gia Nicolaides/EWN.

Thando Kubheka | 29 Aug 2017

JOHANNESBURG - The Constitutional Court is due to hand down judgment on Tuesday on whether new homeowners should still be liable for historical debt incurred by those before them.

Several municipalities including Tshwane, eThekweni and Ekurhuleni are arguing in the case brought by several property owners.

They're arguing that it is lawful for a municipality to attach and sell a purchaser's property, in order to pay debt owed to them.

The Constitutional Court is reviewing whose responsibility it is to disclose historical municipal debt and whether municipalities have the right of recourse on new buyers.

Last year, the High Court in Pretoria handed down a landmark judgment, ruling that municipalities cannot hold new property owners liable for historical debt.

At the heart of this court battle is the interpretation of Section 118 of the Municipal Systems Act.

The Banking Association of South Africa has also been admitted as a friend of the court to make submissions about how the law in question affects bondholders.

(Edited by Shimoney Regter)

<http://ewn.co.za/2017/08/29/concourt-to-rule-on-historical-debt-matter>

MUNICIPALITIES URGED TO FOLLOW RULES WHEN SETTTLING DEBT WITH PROPERTY OWNERS

The Tshwane, eThekweni and Ekurhuleni municipalities had argued that it was lawful for a municipality to attach and sell a purchaser's property in order to pay outstanding debts.



Picture: Pixabay.com

Gia Nicolaides | 29 Aug 2017

JOHANNESBURG - Municipalities across the country have been urged to follow the correct procedures when settling debt with property owners.

The Constitutional Court has ruled that upon transfer of a property the new homeowner is not liable for debts arising before transfer.

The Tshwane, eThekweni and Ekurhuleni municipalities had argued that it was lawful for a municipality to attach and sell a purchaser's property in order to settle outstanding debt, but the court found this was a misinterpretation of the municipal systems act.

Municipal debt specialist Peter Livanos says new owners were often blackmailed into coughing up.

“The municipality misinterpreted a Mathabatha judgment where they thought they had a God-like power that they could simply transfer the debt to new owners and hold them ransom essentially.”

Livanos says municipalities have to collect debt from the person or entity who incurred the debt and the City of Johannesburg appears to be the only one to follow this rule.

“City of Johannesburg initially followed the approach where they thought they could, but City of Johannesburg have done it perfectly right so if they can do it, I invite the other 277 town municipalities to do it the right way.”

The court ruled on Tuesday that a new homeowner is not liable for debts arising before transfer.

Municipal debt specialist Peter Livanos says he's represented several clients who were essentially blackmailed into paying historical debt.

“Municipalities thought that they could have the powers to look at debt that they previously failed to collect from owners and simply transfer it to new owners and in effect blackmail them by disconnecting their services, such as water and electricity in some circumstances, and even deny them a consumer agreement.”

<http://ewn.co.za/2017/08/29/municipalities-urged-to-follow-rules-when-settling-debt-with-property-owners>



Cape Town – The Constitutional Court on Tuesday ruled that new home owners are not liable for historical debt taken over from previous owners.

Municipalities such as Tshwane, eThekweni and Ekurhuleni – as well as the cooperative and governance minister - argued against a landmark high court judgment in 2016, which made a similar ruling.

The high court application saw property owners take on Tshwane and Ekurhuleni for cutting municipal services to new home owners who had inherited historical debt.

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In a unanimous judgment, the court ruled that the provision in Section 118 (3) of the Local Government: Municipal Systems Act, 2000 is well capable of being interpreted so that the charge does not survive transfer, the court explained.

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The court ruled that, to avoid unjustified arbitrariness in violation of 25(1) of the Bill of Rights, Section 118 (3) must be interpreted so that the charge it imposes does not survive transfer to the new owner.

As such, the ConCourt said it did not need to confirm the high court ruling, but granted the applicants a declaration that the charge does not survive transfer.

The municipalities and the minister were ordered to pay costs.

CALL OUT: Have you ever had to take over the debt of the previous owner on your new home?

Con Court rules in favour of property owners – historical debt is just that, history

29TH AUGUST 2017

12:46 pm

Mariette Steynberg



In March of this year we reported on a David-and-Goliath battle, the so-called historical debt saga between the municipalities of Tshwane and Ekurhuleni and their clients.

In November 2016 the North Gauteng High Court held that these municipalities have been unlawful in their conduct and declared that it is constitutionally invalid for these municipalities to hold the new owner of a property liable for the previous owner's municipal debts on that property – a ruling that was challenged by the affected municipalities.

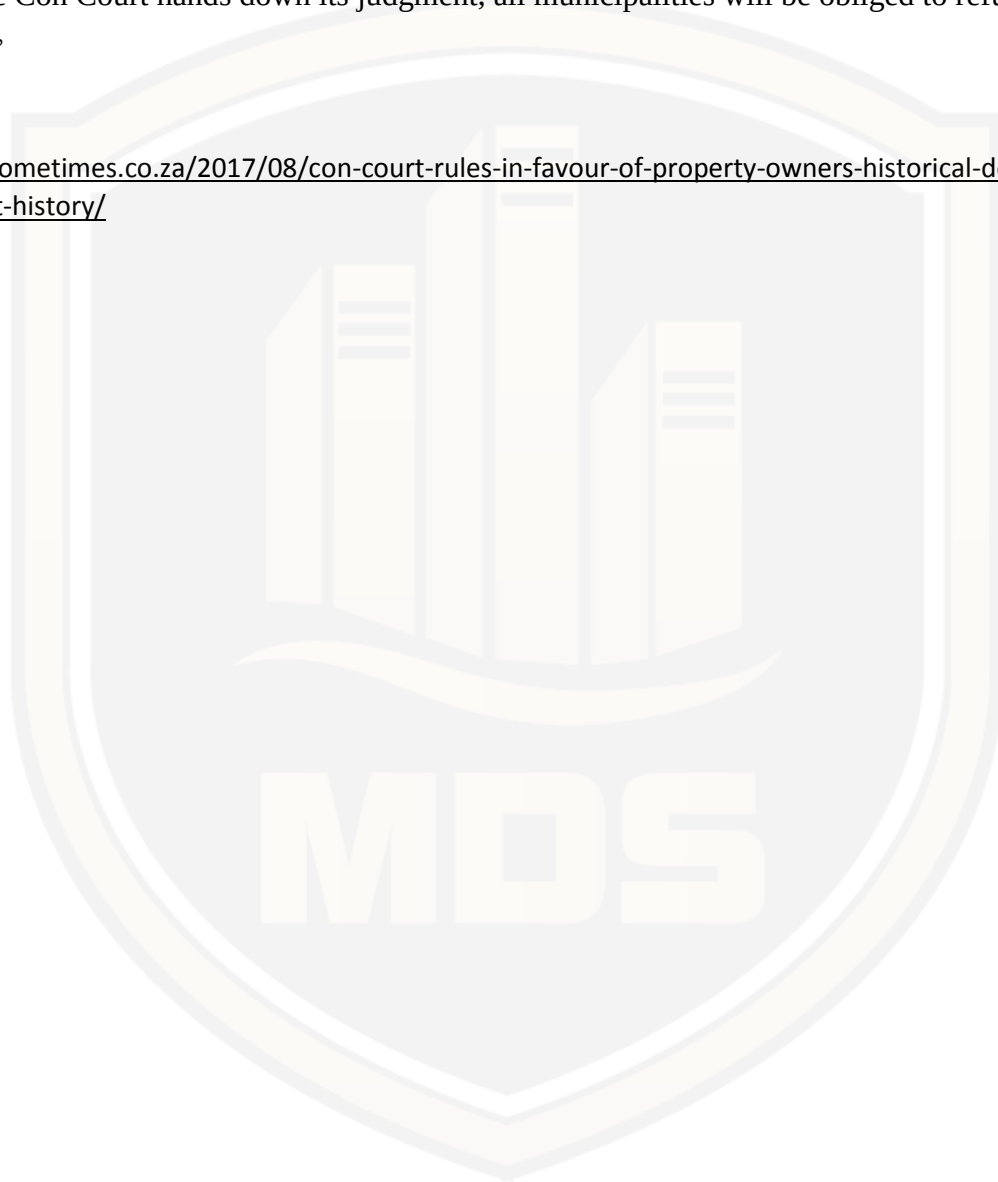
Today the Constitutional Court upheld the findings of November 2016 in its ruling that new homeowners cannot be held responsible for historical debt accumulated by previous owners.

As a homeowner who might have made payment for historical debt that is not yours prior to this ruling, you might be asking “what about my money?”

Peter Livanos, MD of Municipal Debt Specialist, who was one of the first people to approach the courts to enforce the public's rights for the correct interpretation of Section 118 of the

Municipal Systems Act, previously said the following on this matter: “We have no doubt that after the Con Court hands down its judgment, all municipalities will be obliged to refund the public.”

<http://hometimes.co.za/2017/08/con-court-rules-in-favour-of-property-owners-historical-debt-is-just-that-history/>



MUNICIPAL DEBT SPECIALIST



BY LUNGELO SHEZI ON 29TH AUGUST ·

New property owners not liable for previous owner debts, ConCourt rules

The Constitutional Court in Johannesburg has made a landmark ruling that absolves new property owners from being liable for debts incurred by previous owners.

The ruling was made today following an appeal to a ruling made in the Pretoria High Court in the matter between Chantelle Jordaan and a number of other property owners and the Tshwane and Ekurhuleni Municipalities as the main defendants and the eThekweni Municipality and other housing organisations and the Minister of Traditional Affairs and Corporate Governance as friends of the court.

The matter came before the High Court after Tshwane and Ekurhuleni cut off municipal services to the applicants' properties due to debts owed by previous owners before the properties were transferred and demanded the debts be paid.

The applicants are relatively new owners. They complained that they faced darkness, having no electricity, and many other inhumane conditions because they bought property whose previous owners failed to meet their obligations to the municipality—and against whom the municipality failed to enforce its rights in fulfilment of its constitutional obligations.

High Court ruling unconstitutional

The ConCourt's ruling effectively means the High Court's ruling, based on a municipal act, is unconstitutional and sets the precedent for future cases of this kind.

"The High Court found this to be an arbitrary deprivation of property in terms of section 25 of the Constitution. It said that new owners of property are not liable for municipal debts incurred by previous owners. Therefore municipalities may not sell the property in execution to recover the debt or refuse to supply municipal services on account of outstanding historical debts," the ConCourt said.

A crucial step the ConCourt said the defendants missed was that, in their efforts to recur the debts, nothing prevented them from enforcing their claims for historical debts against those who incurred them, namely the previous owners.

“In any event, the Bill of Rights prohibits arbitrary deprivation of property, which would happen if debts without historical limit are imposed on a new owner of municipal property. Therefore, to avoid unjustified arbitrariness in violation of 25(1) of the Bill of Rights, the Court held that section 118(3) must be interpreted so that the charge it imposes does not survive transfer to a new owner,” the ConCourt added.

The defendants and friends of the court were ordered to pay all the costs of the case.

<http://www.htxt.co.za/2017/08/29/new-property-owners-not-liable-for-previous-owner-debts-concourt-rules/>



MUNICIPAL DEBT SPECIALIST

Court victory over historical municipal debt

Property owners who have been forced to pay thousands of rand in historic debt on their newly acquired properties may soon be able to lodge claims to recoup their money.

The Constitutional Court has ruled that the Bill of Rights prohibits arbitrary deprivation of property, which would happen if municipal debts without historical limits were imposed on new owners of a municipal property.

The judges, in a unanimous judgment delivered yesterday, ruled that new owners cannot be held responsible for previous owners' debts.

The ruling, delivered by Judge Edwin Cameron, was hailed as a major victory for property owners, developers, estate agents, conveyancing attorneys and banks.

To avoid unjustified arbitrariness in violation of the Bill of Rights, the court held that section 118 of the Local Government Municipal Systems Act, which states owners are only liable for two years of debt, "must be interpreted so that the charge it imposes does not survive transfer to the new owner", the ruling stipulated.

The court also ruled that should municipalities wish to recover arrears from property owners, they would have to register the arrears against the property title deeds.

It held that section 118 "is well interpreted, so that the charges do not survive the transfer. A mere statutory provision, that a claim for a specified debt is a 'charge' upon immovable property does not make that charge transmissible to successors in title of the property", the court said.

Tshwane and Ekurhuleni municipalities have been trying to hold new owners responsible for debt dating back 30 years.

Property debt specialist Peter Livanos, who, among others, took the case to the Constitutional Court, yesterday said he would be meeting his legal counsel this week to see what steps could be taken by property owners to recoup their money.

Livanos said he had spent about R11 million since 2000 in legal costs. "I had four permanent counsels and was forced to go to court over and over again over the years to get transfer of properties and connection of services, because the municipalities were demanding that this historic debt be paid before transfer could be effected and before connecting services."

Over the years, most municipalities ignored and defied court orders, and he often had to apply for court orders against them, Livanos said.

In a few cases, he had obtained contempt of court orders before the municipalities had complied.

Livanos said he could not quantify the amount of money paid in old debt, but he had been receiving about 30 calls a week from attorneys all over the country.

"I made a promise to them and to myself to get this matter resolved. It has caused a lot of misery and lots of money has been wasted, and I feel vindicated today," he said.

"Recently, however, most municipalities complied because of the pending Constitutional Court case," he said.

Dean Hodgson, the principle agent at Hodgson Properties, said the ruling would allay fears of debt for new buyers.

"In today's tough economic climate, buyers and investors don't have the cash flow to pay for an unknown debt," he said.

It had been unfair in the first place that a municipal clearance certificate did not link rates with the water and electricity bills.

"So getting a rates clearance certificate does not necessarily mean the property does not owe on water and electricity, so the municipality could slam you with this big bill down the line," said Hodgson.

Myles Wakefield, the chief executive of Wakefield Real Estate, said he was delighted with the ruling. "It's untenable that a new buyer should be responsible for the debt of a previous owner. This is a fair, equitable decision, another great one by the Constitutional Court, and the right one for our property market."

Berry Everitt, the chief executive of property group Chas Everitt International, said new home owners would no longer have to worry about having their municipal services cut off, or even having their property attached and sold in execution if they could not pay.

Carol Reynolds, the area principal for Durban Coastal at Pam Golding Properties, said the ruling was much-needed relief from an unreasonable situation.

"Buyers can now rest assured that they will not become embroiled in debt that is not of their making," she said.

The Msunduzi municipality said it was aware of the judgment and was obliged to comply with it.

When asked to comment on the implications of the judgment on the city in terms of the collection of historical debt, eThekweni Municipality spokesperson Tozi Mthethwa said: "The Constitutional Court did not rule that Section 118(3) of the Local Government: Municipal Systems Act, 2000 is constitutionally invalid. The court ruled that the debt will not pass onto the successor in title."

She also said the judgment didn't impact on the eThekweni collection processes, adding that it provided clarity to strengthen the process.

"eThekweni Municipality adheres to the guidelines set by the credit control and debt collection policy and by-law and will continue to collect outstanding debt as permitted," said Mthethwa.

Anna Cox,
Additional reporting by Bheki Mbanjwa and Nosipho Mngoma
The Mercury

Posted at 08:15AM Aug 30, 2017 by Editor in Residential |

http://www.iolproperty.co.za/roller/news/entry/court_victory_over_historical_municipal

MUNICIPAL DEBT
SPECIALIST

**IOL**

Property owners not liable for 'inherited' debt: ConCourt

GAUTENG / 29 AUGUST 2017, 1:13PM / ANNA COX



Constitutional Court File picture: Tiro Ramatlhatse

Johannesburg - In what has been hailed as a major victory for property owners, developers, estate agents and conveyancers, the Constitutional Court this morning ruled that new property owners cannot be held liable for previous owners' debts.

The municipalities of Tshwane and Ekurhuleni have both, over the past few years, been claiming old debts for services from new owners despite the fact that the new owners had been given clearance certificates in terms of Section 118 stating that their accounts were up-to-date.

Section 118, however, only makes provision for two years of arrears. The municipalities were claiming that new owners could be held liable for old owners' debts from up to 30 years previously.

This morning Justice Edwin Cameron delivered the unanimous judgment that confirmed a Pretoria High Court ruling which found this to be constitutionally invalid.

Cameron said the judges found that arrear charges do not survive transfer.

He said that public formalisation of the arrears was required, for example, by registration in the Deeds Registry "so as to give notice of its creation to the world."

"Section 118 does not require this public formalisation process."

He added that Section 118 of the Bill of Rights must be interpreted so that the charge it imposes does not survive transfer to the new owners.

Municipal debt specialist, Peter Livanos, who has been fighting this for years, and who has invested almost R11 million in legal fees, says he was delighted at the outcome.

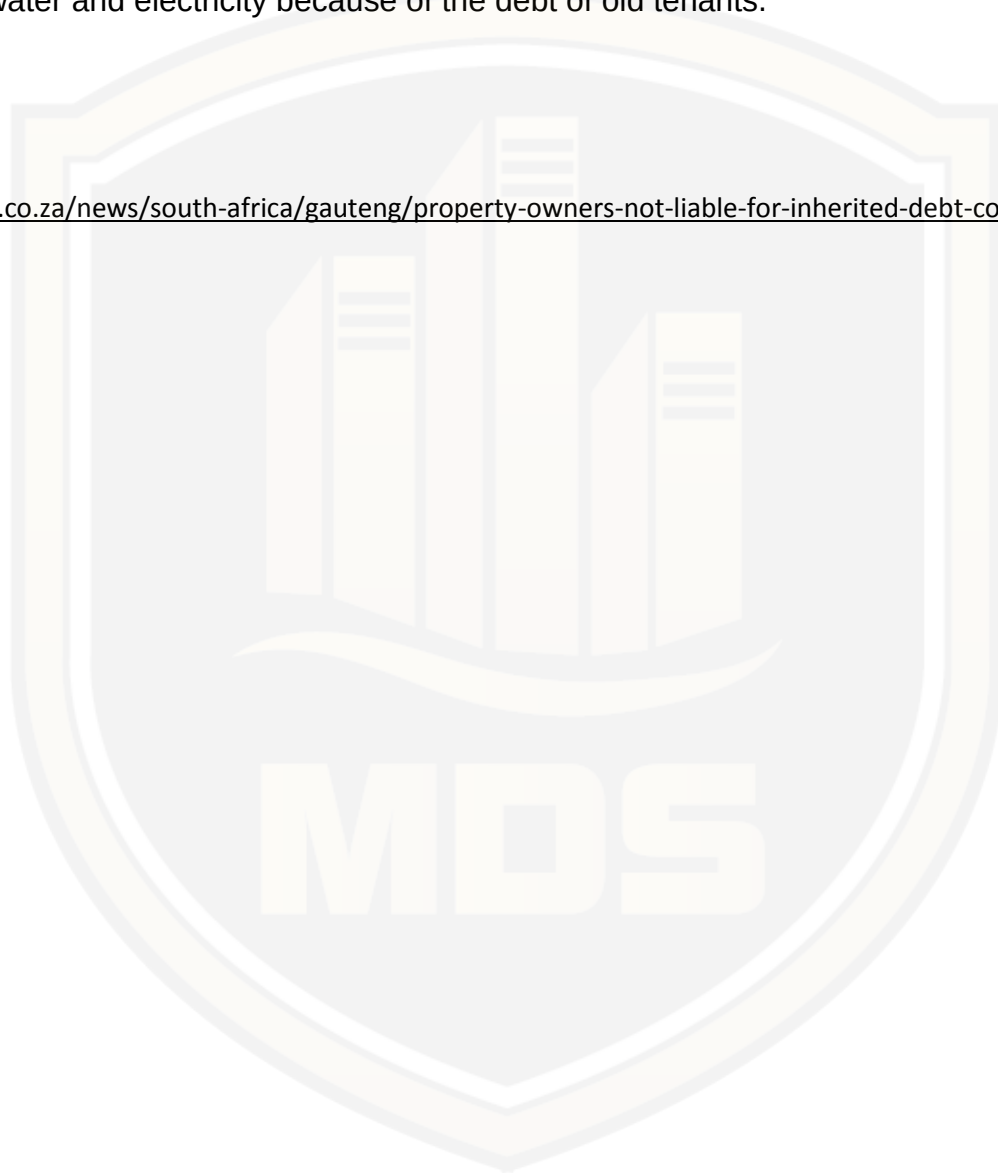
“It is a great victory for all,” he said.

Attorney Chantelle Gladwin, who was part of the case, also said she was delighted.

She personally, became involved when the Ekurhuleni municipality refused to provide her new tenants with water and electricity because of the debt of old tenants.

The Star

<https://www.iol.co.za/news/south-africa/gauteng/property-owners-not-liable-for-inherited-debt-concourt-10987233>



MUNICIPAL DEBT
SPECIALIST

Msimanga says ConCourt ruling provides clarity

Updated Aug. 29, 2017, 5:37 p.m. | By **Jacaranda FM News**

The Constitutional Court has ruled that new homeowners are not responsible for historic municipal debt.



Tshwane mayor Solly Msimanga has welcomed the ruling.

He says the ConCourt's decision provides essential clarity on what has often been a bone of contention.

The matter was brought by municipalities, including Tshwane, Ekurhuleni and eThekweni.

The ConCourt upheld a November 2016 High Court ruling in favour of new property owners.

Property owners had been denied municipal services until the debts had been paid.

This ruling will provide much relief to new homeowners who have been held accountable for municipal debt, dating as far back as 20 years.

The applicants complained they were left in the dark without electricity as the previous owners failed to pay for their municipal services.

However, the municipalities were adamant the new owners were responsible for the historical municipal debt. In both the 2016 High Court case as well as this one - the Minister of Cooperative Governance and Traditional Affairs presented arguments in support of the municipalities.

The court has now ordered that the municipalities and the minister pay the legal costs of the applications and the two counsel.

<https://www.jacarandafm.com/news/news/msimanga-says-concourt-ruling-provides-clarity/>

New homeowners not responsible for historical municipal debt

Updated Aug. 29, 2017, 12:16 p.m. | By **Laila Majiet**

New homeowners cannot be held liable for debt accumulated by previous owners.



That's according to a Constitutional Court ruling on Tuesday.

The matter was brought by municipalities, including Tshwane, Ekurhuleni and eThekweni.

The ConCourt upheld a November 2016 High Court ruling in favour of new property owners.

Property owners had been denied municipal services until the debts had been paid.

Am I liable for previous homeowner's municipal debt?

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Loading ad

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<https://www.jacarandafm.com/news/news/new-homeowners-not-responsible-historical-municipal-debt/>

ConCourt rules on new owners' historical debt

Matthew le Cordeur 29 Aug 2017 12:18



The Constitutional Court has ruled on the case of historical debt inherited by new owners. (Ra'eesa Pather)

FacebookEmail

The Constitutional Court on Tuesday ruled that new home owners are not liable for historical debt taken over from previous owners.

Municipalities such as Tshwane, eThekweni and Ekurhuleni — as well as the cooperative and governance minister — argued against a landmark high court judgment in 2016, which made a similar ruling.

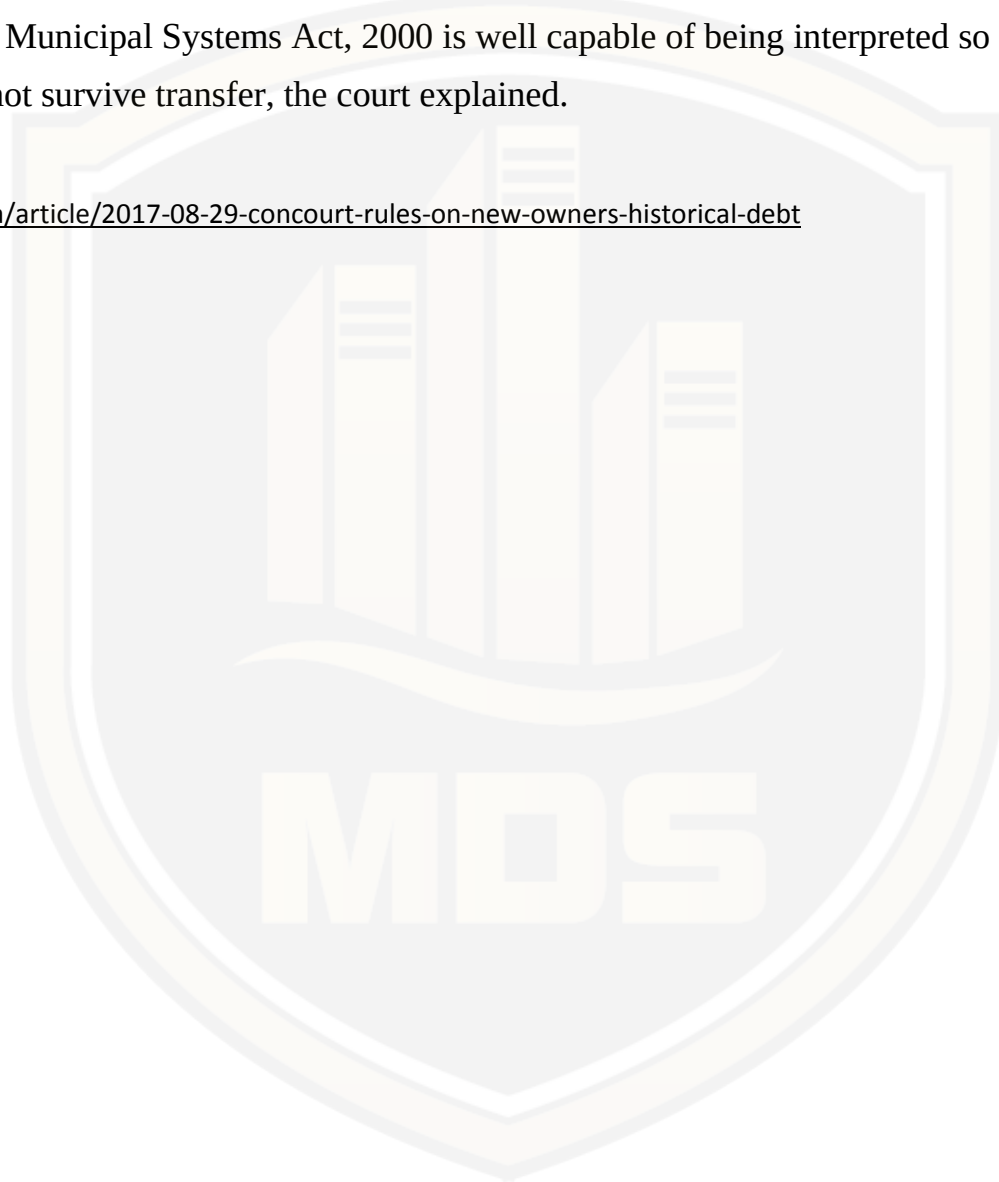
The high court application saw property owners take on Tshwane and Ekurhuleni for cutting municipal services to new home owners who had inherited historical debt.

“The applicants complained that they faced darkness, having no electricity and many other inhumane conditions because they bought property whose previous owners failed to meet their obligations to the municipality,” the court explained in a media briefing.

The municipalities had argued that it was lawful for them to attach and sell a newly purchased property to extract money for debt owed to them.

In a unanimous judgment, the court ruled that the provision in Section 118 (3) of the Local Government: Municipal Systems Act, 2000 is well capable of being interpreted so that the charge does not survive transfer, the court explained.

<https://mg.co.za/article/2017-08-29-concourt-rules-on-new-owners-historical-debt>



MUNICIPAL DEBT
SPECIALIST

Nuwe huiseienaars nie aanspreeklik vir vorige skuld

29 Augustus 2017

Esté Meyer Jansen



Die konstitusionele hof het Dinsdag beslis dat historiese munisipale skuld op 'n eiendom nie na nuwe huiseienaars oorgedra kan word nie.

Verskeie munisipaliteite het tot onlangs nog nuwe huiseienaars munisipale dienste geweier alvorens hulle uitstaande skuld van tot en met 20 jaar op rekenings vir water, elektrisiteit en erfbelasting vereffen is.

Die konstitusionele hof het egter nou eenparig beslis dat 'n nuwe huiseienaar nie vir historiese munisipale skuld aanspreeklik gehou mag word nie. Dié hof het in sy beslissing die hooggeregshof van Pretoria se bevinding in November 2016 bekragtig wat gesê het dié skuld is steeds die verantwoordelikheid van die eiendom se vorige eienaar, wat nie vir die dienste betaal het nie.

Die saak oor historiese munisipale skuld het in die hof gedraai nadat die Tshwane- en Ekurhuleni-munisipaliteit dienste opgeskort of geweier het aan eiendomme met agterstallige rekeninge, al is van die eiendomme onlangs verkoop. Die munisipaliteite het aangevoer dat die skuld oorgedra kan word na die nuwe eienaar en moet as deel van 'n soort oordragkoste gesien word. Die munisipaliteite het 'n gedeelte van die wet op munisipale stelsels gebruik om hulle optrede te regverdig.

Die uitspraak van die Pretoriase hooggeregshof het hierdie optrede ongrondwetlik bevind en verder gesê die munisipaliteite het gefaal in hulle verpligtinge om die skuld in te vorder, daarom kan hulle nie die nuwe eienaar dwing om die skuld te betaal nie.

Die munisipaliteite het die uitspraak in die konstitusionele hof betwis. Hulle het aangevoer dat hulle, in 'n poging om hul verpligting om dienste te behoorlik te lewer na te kom, nodig het om buitengewone skuldinvorderingsmaatreëls in te stel. Daarom moet uitstaande skuld op eiendom as deel van die oordrag tussen die ou en nuwe eienaars gesien word.

Des van Rooyen, minister van samewerkende regering, het die munisipaliteite se argument gesteun.

Die konstitusionele hof het egter in sy uitspraak beslis dat die Wet op Munisipale Stelsels behoorlik en redelik geïnterpreteer kan word om aan te toon dat die historiese skuld nie die oordrag van eiendom tussen eienaars oorleef nie.

Cilliers Brink, burgemeesterskomiteelid vir korporatiewe en gedeelde dienste in die Tshwane-metro, het die hof se beslissing verwelkom.

“Die uitspraak gee nou duidelikheid oor twee belangrike kwessies. Eerstens kan nuwe eienaars nie aanspreeklik gehou word vir historiese munisipale skuld wat op sodanige eiendomme aangegaan is nie. Tweedens kan hierdie beginsel gehandhaaf word sonder om artikel 118 (3) van die Wet op munisipale stelsels ongrondwetlik te verklaar.”

Volgens Brink het die aanvanklike beslissing van die hooggeregshof dié artikel van die munisipale wet ongrondwetlik verklaar omdat dit munisipaliteite toegelaat het om historiese skuld van ’n nuwe eenaar te eis.

“Hierdie ongeldigheidsverklaring het munisipaliteite met meer vrae as antwoorde gelaat en dit was dus nodig om klarigheid van die konstitusionele hof te verkry. Die hof het bevind dit was onnodig om die wet ongeldig te verklaar en het die aantal maniere waarop ’n munisipaliteit pro-aktief sy bydraes kan insamel om sy finansiële welstand te beskerm, bevestig.

“Ons sal die beslissing binne die volgende dag of twee bestudeer om te verseker dat die DA-geleide administrasie in Pretoria die hof se bevinding inwerking kan stel,” het Brink bygevoeg.

Tshwane, Ekurhuleni en die minister van samewerkende regering moet die regskoste vir die saak betaal.

<http://maroelamedia.co.za/nuus/sa-nuus/nuwe-huiseienaars-nie-aanspreeklik-vir-vorige-skuld/>

MUNICIPAL DEBT
SPECIALIST

New property owners not liable for old debt, court rules

Constitutional Court maintains an early ruling by the High Court in Pretoria.

Ray Mahlaka / 29 August 2017 10:47



The precedent-setting ruling gives relief to home and business owners, who have been saddled with years of historical municipal debt – dating back to 20 years – and have been denied municipal services until the debt had been paid. Picture: Shutterstock

Municipalities cannot hold a new property owner liable for a previous owner's historical municipal debt, the Constitutional Court ruled on Tuesday.

The precedent-setting ruling gives relief to home and business owners, who have been saddled with years of historical municipal debt – dating back to 20 years – and have been denied municipal services until the debt had been paid. The outstanding debt includes water, electricity, rates and taxes charges associated with a property.

In a ruling majority written by Justice Edwin Cameron, the court found that upon transfer of a property, a new owner is not liable for old municipal debt. The court upheld a ruling by the high court in Pretoria in November last year – mainly the part stipulating that the liability of the old municipal debt rests with the previous owner.

Metropolitan municipalities of Tshwane and Ekurhuleni brought an application at the Constitutional Court to appeal the Pretoria High Court ruling.

Municipal debt specialist New Ventures Consulting and Services, which has represented several property owners who have carried the liability for the historical debt, was a respondent in the

matter. The Banking Association of South Africa (Basa), commercial property financier Tuhf and the Ethekewini Metropolitan Municipality joined the matter as friends of the court.

In a statement released on Tuesday evening, Basa MD Cas Coovadia welcomed the ruling: “The judgment reinforces property rights in the country and goes some way to boosting confidence in our economy.”

The metropolitan municipalities of Tshwane, Ekurhuleni and Cooperative Governance and Traditional Affairs Minister Des van Rooyen were ordered to pay costs for the appeal application.

Giving municipalities the power to claim historic debt has implications for the banking industry.

In theory, municipalities would be the first to claim the debt from the proceeds of a property sale, which could result in banks not getting their money back. This would happen when the municipal debt and the amount owed to the bank is larger than the value achieved from the property sale.

Historically, a property was not allowed to be transferred to a new buyer until a municipal certificate that cleared debt spanning over two years was issued under section 118 (1) of the Municipal Systems Act.

However, debts that surpassed the two-year cut off became the liability of the new owner. If the owner failed to pay the debt, the municipality was then permitted to attach and sell the property to settle the debt.

At the heart of the appeal is the interpretation of section 118 (1) and (3) of the act. The act includes a security provision for historical debt to be incurred by the new owner, which municipalities used in their refusal to issue a clearance certificate during the sale of a property until all debts had been paid. This section of the act was declared unconstitutional by Judge Dawie Fourie at the High Court as it unjustifiably limited the property rights of new owners under the Constitution.

In its judgement, the court assessed common law factors that could impact on how section 118 (3) of the Municipal Systems Act can be interpreted in line with the Bill of Rights. Cameron said the sections of the act must be interpreted so that historical debt is not transferred to the new owner.

It is on this basis that the court ruled that the section 118 (3) is “well capable of being interpreted” so that the historical debt is not transferred to a new owner of the property. The court did not confirm the ruling by the High Court that sections of the act were unconstitutional and invalid, as Cameron said the sections can be “properly and reasonably” interpreted without Constitutional objection.

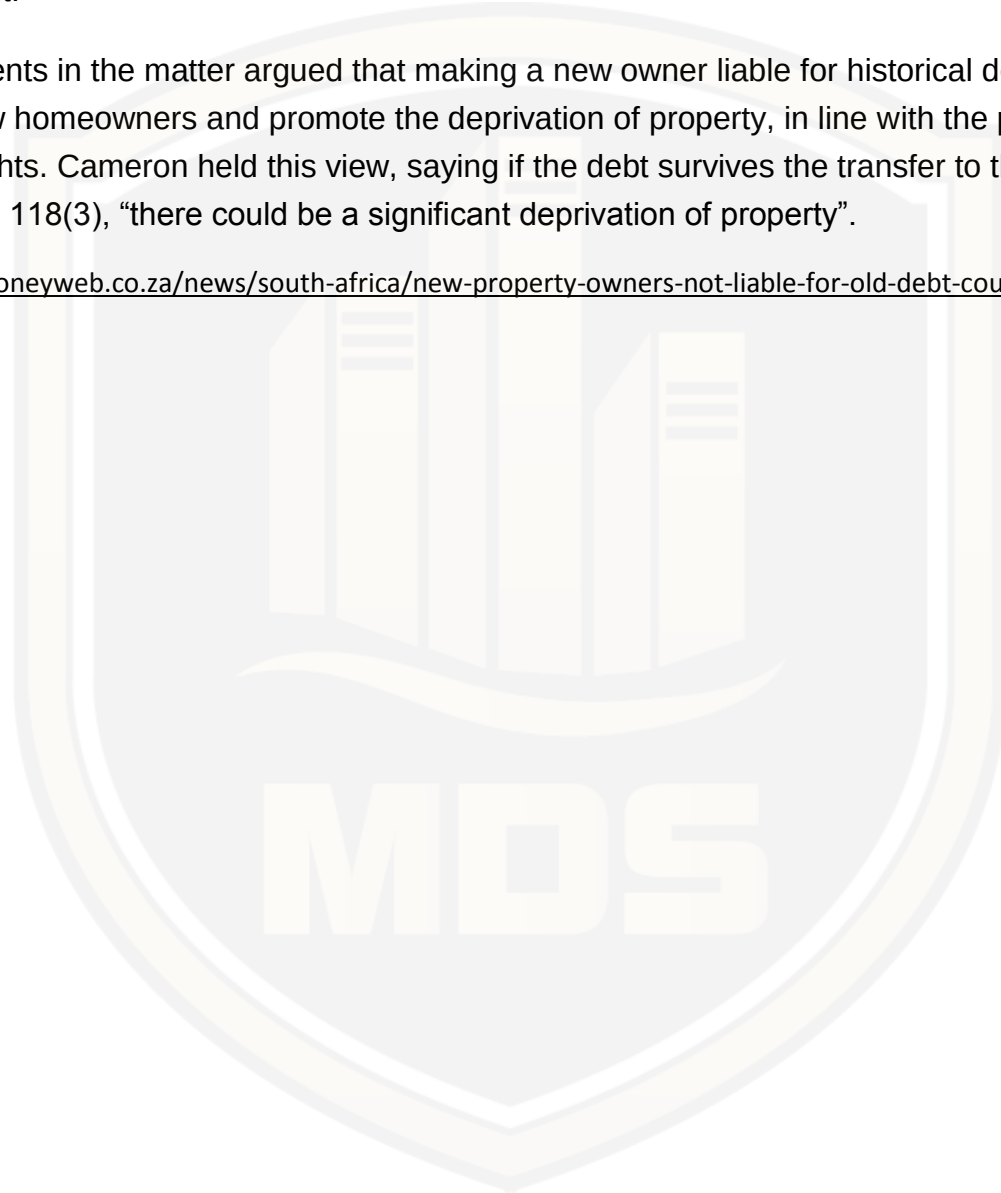
Section 118 doesn’t require a formal registration of the property’s historical municipal debt with the Deeds Registry office when it’s about to be transferred to a new owner.

“What is notable about section 118(3) is that the legislature did not require that the charge [historical debt] be either registered or noted on the register of deeds. Textually, there is no

indication that the right given to municipalities has a third-party effect [to a new owner]... It [historical debt] stands alone, isolated and unsupported, without foundation or undergirding and with no express words carrying any suggestion that it [historical debt] is transmissible,” he said in the judgement.

The respondents in the matter argued that making a new owner liable for historical debt could prejudice new homeowners and promote the deprivation of property, in line with the prescripts of the Bill of Rights. Cameron held this view, saying if the debt survives the transfer to the new owner under section 118(3), “there could be a significant deprivation of property”.

<https://www.moneyweb.co.za/news/south-africa/new-property-owners-not-liable-for-old-debt-court-rules/>



MUNICIPAL DEBT
SPECIALIST

Radio

ConCourt ruling on historical debt gives relief to new property owners

New owners cannot be saddled with a previous owners' municipal debt, explains Peter Livanos on today's ruling.

Nastassia Arendse / 29 August 2017 19:05



Picture: Moneyweb

NASTASSIA ARENDSE: Earlier today the Constitutional Court ruled that municipalities cannot hold a new property owner liable for a previous owner's historical municipal debt. For more on what this ruling means I'm joined by Peter Livanos, who is a municipal debt specialist at New Ventures Consulting and Services. Peter, thanks so much for your time.

PETER LIVANOS: My absolute pleasure. Thank you for having me.

NASTASSIA ARENDSE: Let's start off with your interpretation of this ruling. And, if you can also touch on this, how did you get involved in this particular case?

PETER LIVANOS: With pleasure. Basically what happens is when a property gets transferred, one of the first things that a conveyancing attorney applies to a municipality for is a document called "clearance figures" in order to obtain a clearance certificate.

Now, unfortunately there's a massive, massive problem in the industry – that people think that when you get a clearance certificate all your debts have been paid in full. In fact, that's the bare

minimum that needs to be done in order to transfer a property. In fact, if you pay for only the last two years' debt, your transfer attorney will give you a clearance certificate. Now this is where the whole fight is. The debt older than two years is called "historical debt". This is where our fight has basically come from.

What my firm specialises in is the analysing of municipal accounts, especially at the transfer process stage. Our claim to fame is that we've done over 12 000 successful cases to date, and we've saved almost a billion rand over the last 12/13 years, saving ratepayers' money when transferring your properties.

So these customers came to me and they said, "Listen, we've got these large exorbitant municipal arrears". We analysed the municipalities' accounts using our proven system, which has stood up to over 12 000 matters before, we sorted all of these customers' debts out and the properties were transferred.

Then in 2013 the *City of Tshwane vs Mathabathe* judgment came out, which caused absolute havoc in the industry. The municipalities all of a sudden looked at this judgment and said, ooh, we've got god-like powers to transfer this historical debt to an innocent owner. But the judgment didn't say that. I think that was a misinterpretation that was placed on the judgment.

Then what happened is the municipalities unilaterally started disconnecting services to my clients' properties, they denied them consumers' agreements and in many instances they forced them under duress to sign acknowledgements of debt. So these people were in a way blackmailed. That is, if they didn't comply with the municipalities' demands they simply were in the dark.

So these customers ran back to us and said, "Please can you guys help us?" We said absolutely, because we have a standard indemnity that we issue to all of our clients that if I act on a matter for you, I will at my own expense cover the cost and I will fight this to the last degree – which we did in these court cases.

We are not a big, massive corporation or a big corporate. We are a family-run business, and this has cost me and my family in excess of R12/13 million, and we've footed the bill all on our own, and we fought this all on our own. A lot of media institutions, newspapers and radio stations are kind of giving a false story out there; they are giving an impression that a bunch of property owners got together and ganged up against the municipality. No, that's not the case. We did it all on our own, and we did it all for our customers at our own expense.

Three and a half years later I'm so glad that the judgment came out today. In fact, it was a unanimous 11-judge decision. All the judges stood behind us and said what the municipality was wrong, it was unlawful, and they didn't even have to consider the constitutional aspects because the municipality simply misinterpreted our legislation.

NASTASSIA ARENDSE: Peter, we'll have to leave it there, but kudos to you and your team for definitely taking this on. Congratulations again.

PETER LIVANOS: Thank you very much.

<https://www.moneyweb.co.za/moneyweb-radio/concourt-judgment-on-historical-property-debt/>



MUNICIPAL DEBT
SPECIALIST

ConCourt property debt judgment provides clarity - Msimanga

2017-08-29 17:52

Nation Nyoka, News24

Johannesburg – The Constitutional Court judgment on property owners inheriting debt from previous owners has provided much-needed clarity for municipalities, Tshwane mayor Solly Msimanga said on Tuesday.

He would study the court's ruling and provide a more comprehensive response, he said in Braamfontein, where DA leader Mmusi Maimane was tabling a jobs plan for cities under the party's control.

The court ruled that new property owners cannot be held liable for the municipal debt of previous homeowners, contrary to what the Ekurhuleni, Tshwane, and Ethekewini municipalities had argued.

The DA took control of the Johannesburg, Tshwane and Nelson Mandela Bay metros after the local government elections in August 2016. It has run Cape Town since 2006.

Maimane said the party wanted to boost investor confidence and gain business confidence. This would be coupled with a plan to reduce red tape, eradicate laws that made it difficult to trade, and cut down the costs of doing business.

There would be infrastructure development to create more jobs, he said, citing the City of Cape Town as an example where this had happened.

Johannesburg mayor Herman Mashaba and Msimanga said they were dealing with the corruption-riddled legacy of the previous ANC administration. As a result, he said they should not be judged too harshly because the budget they were working with was put in place just two months before the DA came into power.

“For the first nine months of the first year, we had to manage their [ANC] budget based on vanity projects, based on corruption, based on mismanagement,” Mashaba said.

He was responding to a question about the ANC in the Johannesburg region grading him an H for his first 100 days in office, in its report card last week. Overall, the DA in Johannesburg got a 20% mark.

All mayors agreed to eliminate corruption in their cities to make them attractive to business.

Maimane said the DA could not invest in systems that consumed taxpayers' money for corrupt purposes and that only benefit some individuals. He said cases had been opened against city officials for corruption allegedly committed when the ANC was in charge. Mashaba previously said the city was investigating 1920 cases of corruption.

<http://www.news24.com/SouthAfrica/News/concourt-property-debt-judgment-provides-clarity-msimanga-20170829>



CONCOURT JUDGMENT A BIG WIN FOR REAL ESTATE, SAYS EVERITT

AUGUST 29, 2017



Today's ruling by the Constitutional Court means that new home owners will no longer have to worry about being held liable for historical debt incurred by previous owners, and having their municipal services cut off as a result, or possibly even having their property attached and sold in execution.

So says Berry Everitt, CEO of the Chas Everitt International property group, who notes that the judgment brings to an end a long period of confusion "and no little controversy" since judgment was given in 2013 in the Gauteng High Court case *Mathabathe vs Municipality of Tshwane*, which concerned the process of obtaining and lodging a municipal clearance certificate.

"In terms of Section 118(1) of the Municipal Systems Act, conveyancers are obliged to obtain such clearance certificates before properties can be transferred to new owners, in order to ensure that any rates and utility charges to the local authority by the property seller have been paid up to date.

"However, the Act in fact only stipulates that the municipality must issue the certificate if the outstanding debt for the two years immediately preceding the date of sale has been paid in full, and in the above case the court ruled that if there was debt older than that (historical debt), the property could be transferred to the new owner but the seller would remain indebted to the municipality for historical debt."

All would have been fine at that point, he says, except for the fact that Section 118(3) of the Act stipulates that all municipal debt (including the historical debt) is actually "a charge upon the property", rather than on a person – which led the court to also rule that the municipality would therefore have a lien (statutory tacit hypothec) over the property for the payment of the historical debt – and that this lien would not be extinguished when the property was transferred to a new owner.

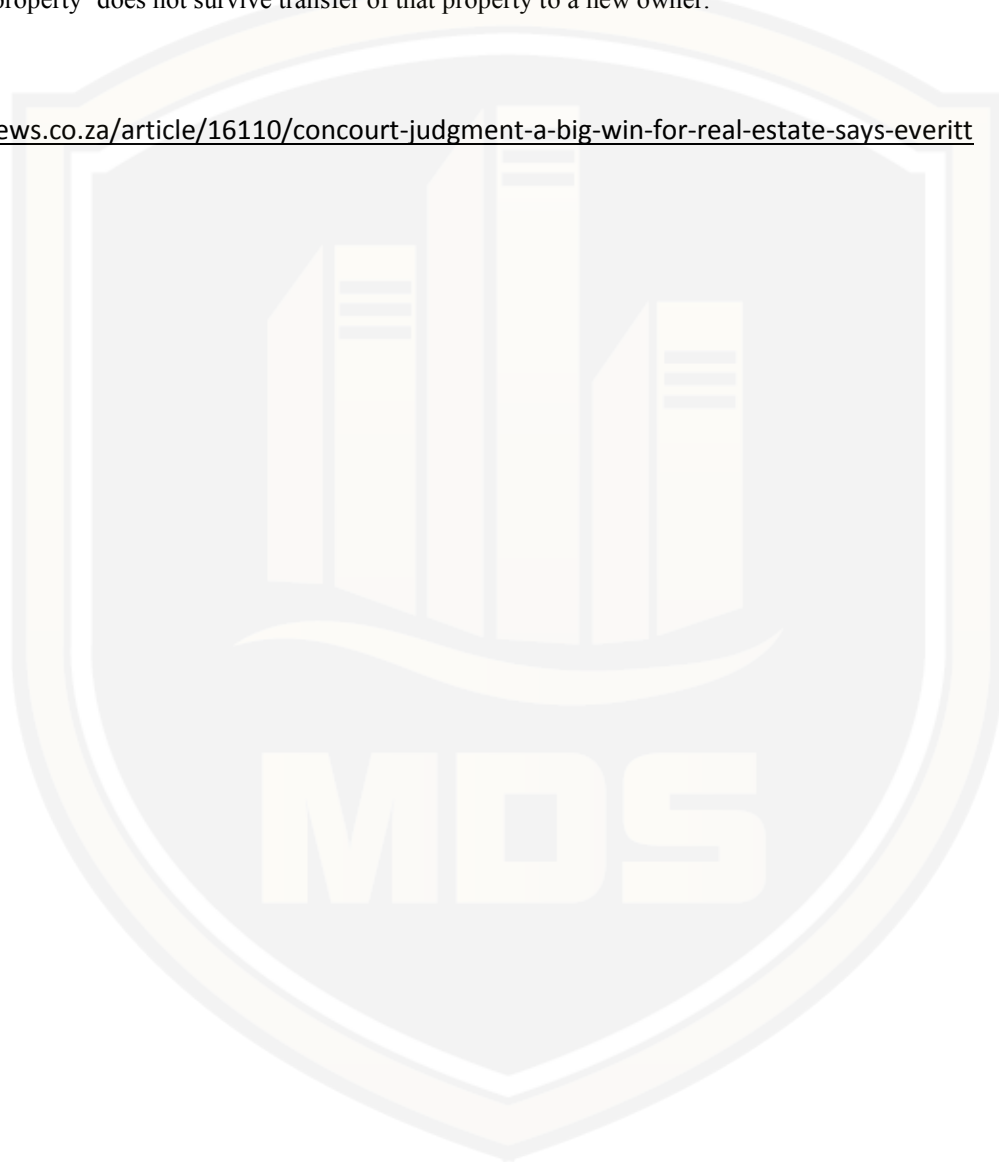
"The effect of this, in legal language, was seemingly that a municipality which wanted to 'perfect its lien' could thus attach the property from the new owner and sell it on auction to settle the previous owner's historical debt. And in fact some municipalities did start trying to use this judgment to try to collect historical debt from new owners. Some even went so far as to refuse to open utility accounts in the name of new owners until they had settled the previous owners' historical debt."

Everitt says this has obviously created a major worry and frustration for property buyers, and for the real estate industry as a whole, and that the situation was only slightly improved by the 2014 judgment in the case of *PJ Mitchell v City of Tshwane Metropolitan Authority*, when the same court ruled that a municipality's lien over a property had been extinguished by a sale in execution and that the new owner should be granted a clean title.

“In that case, the court did also rule that a municipality cannot refuse to provide services to a new owner on the grounds that there is an historical debt that has not been paid – but it remained to be decided what should happen when a property is not sold in execution but, as is usually the case, in terms of an agreement between buyer and seller.

“And this is exactly what today’s ruling by the Constitutional Court makes clear. The unanimous judgment, which was handed down by Justice Edwin Cameron, is that Section 118(3) of the Municipal Systems Act is capable of being interpreted so that the ‘charge upon the property’ does not survive transfer of that property to a new owner.”

<https://www.rnews.co.za/article/16110/concourt-judgment-a-big-win-for-real-estate-says-everitt>



MUNICIPAL DEBT SPECIALIST

Concourt rules new homeowners not liable for debts of previous owners

Ray Mahlaka



Constitutional Court justices. Picture: Tracy Lee Stark

The highest court in SA has found against municipalities for wanting to make people cough up for debts that aren't theirs.

Municipalities cannot hold a new property owner liable for a previous owner's historical municipal debt, the Constitutional Court ruled on Tuesday.

The precedent-setting ruling gives relief to home and business owners, who have been saddled with years of historical municipal debt – dating back to 20 years – and have been denied municipal services until the debt had been paid. The outstanding debt includes water, electricity, rates and taxes charges associated with a property.

In a ruling majority written by Justice Edwin Cameron, the court found that upon transfer of a property, a new owner is not liable for old municipal debt. The court upheld a ruling by the high court in Pretoria in November last year – mainly the part stipulating that the liability of the old municipal debt rests with the previous owner.

Metropolitan municipalities of Tshwane and Ekurhuleni brought an application at the Constitutional Court to appeal the Pretoria High Court ruling.

Municipal debt specialist New Ventures Consulting and Services, which has represented several property owners who have carried the liability for the historical debt, was a respondent in the matter. The Banking Association of South Africa, commercial property financier Tuhf and the Ethekewini Metropolitan Municipality joined the matter as friends of the court.

The metropolitan municipalities of Tshwane, Ekurhuleni and Cooperative Governance and Traditional Affairs Minister Des van Rooyen were ordered to pay costs for the appeal application.

Giving municipalities the power to claim historic debt has implications for the banking industry.

In theory, municipalities would be the first to claim the debt from the proceeds of a property sale, which could result in banks not getting their money back. This would happen when the municipal debt and the amount owed to the bank is larger than the value achieved from the property sale.

Historically, a property was not allowed to be transferred to a new buyer until a municipal certificate that cleared debt spanning over two years was issued under section 118 (1) of the Municipal Systems Act.

However, debts that surpassed the two-year cut off became the liability of the new owner. If the owner failed to pay the debt, the municipality was then permitted to attach and sell the property to settle the debt.

At the heart of the appeal is the interpretation of section 118 (1) and (3) of the act. The act includes a security provision for historical debt to be incurred by the new owner, which municipalities used in their refusal to issue a clearance certificate during the sale of a property until all debts had been paid. This section of the act was declared unconstitutional by Judge Dawie Fourie at the High Court as it unjustifiably limited the property rights of new owners under the Constitution.

In its judgement, the court assessed common law factors that could impact on how section 118 (3) of the Municipal Systems Act can be interpreted in line with the Bill of Rights. Cameron said the sections of the Act must be interpreted so that historical debt is not transferred to the new owner.

It is on this basis that the court ruled that the section 118 (3) is “well capable of being interpreted ” so that the historical debt is not transferred to a new owner of the property. The court did not confirm the ruling by the High Court that sections of the Act were unconstitutional and invalid, as Cameron said the sections can be “properly and reasonably” interpreted without Constitutional objection.

Section 118 doesn’t require a formal registration of the property’s historical municipal debt with the Deeds Registry office when it’s about to be transferred to a new owner.

“What is notable about section 118(3) is that the legislature did not require that the charge [historical debt] be either registered or noted on the register of deeds. Textually, there is no indication that the right given to municipalities has a third-party effect [to a new owner]... It [historical debt] stands alone, isolated and unsupported, without foundation or undergirding and with no express words carrying any suggestion that it [historical debt] is transmissible,” he said in the judgement.

The respondents in the matter argued that making a new owner liable for historical debt could prejudice new homeowners and promote the deprivation of property, in line with the prescripts of the Bill of Rights. Cameron held this view, saying if the debt survives the transfer to the new owner under section 118(3), “there could be a significant deprivation of property”.

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<https://citizen.co.za/news/south-africa/1631149/concourt-rules-new-homeowners-not-liaible-for-debts-of-previous-owners/>

ConCourt rules on property debt

August 29, 2017



UNLAWFUL: The ConCourt ruled that homeowners cannot be held liable for historical municipal debts. Picture: Supplied

A CONSTITUTIONAL Court ruling re-affirming that new property owners should not be liable for the municipal debt of previous owners has implications for municipalities countrywide.

The court yesterday upheld a North Gauteng High Court ruling that expecting new owners to pay for other people's debts was unlawful. Several municipalities including Tshwane, eThekweni and Ekurhuleni had argued that it was lawful for a municipality to attach and sell a recently purchased property in order to pay debt owed to them.

The matter came before the high court after the city of Tshwane and Ekurhuleni municipalities suspended, or refused to contract for the supply of municipal services to the applicants' properties on the basis that the applicants, who are relatively recent transferees

of municipal properties, owe for municipal services rendered to these properties before

transfer. In other words, the municipalities required new owners to pay historical municipal debts.

The applicants complained that they faced darkness, having no electricity and many other inhumane conditions because they bought property whose previous owners failed to meet their obligations to the municipality and against whom the municipality failed to enforce its rights in fulfilment of its constitutional obligations.

The municipalities contended that the provision was constitutionally sound. In a unanimous judgment, ConCourt led by justice Edwin Cameron, pointed out that the state had conceded that there was nothing stopping municipalities from pursuing monies owed from debtors whether they were still the owners of the property in question or not.

“Therefore municipalities may not sell the property in execution to recover the debt or refuse to supply municipal services on account of outstanding historical debts,” Cameron said.

The case was brought by several property owners who opposed this practice, individuals and corporations owning, or acting on behalf of owners of property in Tshwane and Ekurhuleni after their municipality in question suspended services or refused to conclude consumer services agreement for municipal services until the historical debts relating to the property had been cleared .

At the heart of this court battle was the interpretation of Section 118 of the Municipal Systems Act.

NONDMISO ZWANE

<http://www.thenewage.co.za/concourt-rules-on-property-debt/>

New property owners not responsible for settling municipal debt of previous owners – Concourt

By
Tiso Blackstar Group
August 29, 2017

New property owners are not responsible for settling municipal debt accumulated by previous owners, the Constitutional Court held on Tuesday.

The Constitutional Court declared that upon transfer of a property, a new owner is not liable for previous debts under section 118(3) of the Local Government: Municipal Systems Act.



However, the court refused to confirm an order made by the High Court in Pretoria last year that the section was constitutionally invalid.

The section provides that an amount due for municipal services rendered on any property is a charge upon that property and enjoys preference over any mortgage bond registered against the property.

Individuals in Ekurhuleni and Tshwane municipalities had challenged the validity of section 118(3) in the High Court. They claimed these municipalities invoked the provision against them and refused to supply municipal services or to issue clearance certificates until historical debts had been cleared.

In a unanimous judgment written by Justice Edwin Cameron, the court said section 118(3) must be interpreted so that the charge it imposes did not survive transfer to a new owner.

He said if the charge in section 118(3) survived transfer, there could be a significant deprivation of property.

Cameron said the previous owner was as a property owner responsible for the debts incurred on the property.

"The charge served to enforce the debts for which the previous owner was responsible," Cameron said.

by Ernest Mabuza-TimesLIVE

<https://www.therep.co.za/2017/08/29/new-property-owners-not-responsible-settling-municipal-debt-previous-owners-concourt/>

MUNICIPAL DEBT
SPECIALIST

ConCourt rules homeowners shouldn't pay off debts of previous occupants

Common sense prevails in ConCourt

By Tom Head -

August 29, 2017



Image Credits:

Justice for the logical thinker was declared in ConCourt today, as it was ruled new property owners will no longer be held responsible for the municipal debts of previous tenants.

The judgement boiled down to the fact that the High Court have found taking on the last occupants' debt is simply 'unlawful'. The Constitutional Court agreed, and moved to quash the retrospective collection measures.

What are Municipal Debts?

The debts in question are ones owed to local authority – so taxes on electricity and water that hadn't been paid were being unfairly heaped on new owners of properties.

This also includes refuse and sewerage debts, and when they went unpaid, the service to those properties were also cut off and created unbearable living conditions.

How did ConCourt make their decision?

- In a media briefing released by the Court, they listed the issues that had forced residents to live in 'inhumane' conditions:

"The applicants complained that they faced darkness, having no electricity, and many other inhumane conditions because they bought property whose previous owners failed to meet their obligations to the municipality."

- The Tshwane, eThekweni and Ekurhuleni municipalities all argued they had the right to impose the debt onto other residents, and claim they acted within the boundaries of the law to chase the money they were owed:

"[They argued] For municipalities to properly fulfill their constitutional duties of service delivery, they need extra-ordinary debt-collecting measures: This meant burdening new owners with the responsibility of historical debt"

ConCourt ignored the defence's claims that the enforced debt was for the greater good, and unanimously ruled that any outstanding payments should not survive the transfers of homeowners.

Common sense wins this round.

<https://www.thesouthafrican.com/concourt-rule-new-homeowners-should-not-pay-the-debts-of-previous-owners/>

ConCourt rules on property owners' inherited debt

29 August 2017 - 11:28 BY ERNEST MABUZA



Constitutional Court declares that upon transfer of a property, a new owner is not liable for previous debts under section 118(3).

Image: Thinkstock Images.

New property owners are not responsible for settling municipal debt accumulated by previous owners, the Constitutional Court held on Tuesday.

The Constitutional Court declared that upon transfer of a property, a new owner is not liable for previous debts under section 118(3) of the Local Government: Municipal Systems Act.

However, the court refused to confirm an order made by the High Court in Pretoria last year that the section was constitutionally invalid.

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Individuals in Ekurhuleni and Tshwane municipalities had challenged the validity of section 118(3) in the High Court. They claimed these municipalities invoked the provision against them and refused to supply municipal services or to issue clearance certificates until historical debts had been cleared.

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He said if the charge in section 118(3) survived transfer, there could be a significant deprivation of property.

Cameron said the previous owner was as a property owner responsible for the debts incurred on the property.

"The charge served to enforce the debts for which the previous owner was responsible," Cameron said.

<https://www.timeslive.co.za/news/consumer-live/2017-08-29-concourt-rules-on-property-owners-inherited-debt/>

Historical municipal debt judgment good news for new owners, lending institutions

29 August 2017 - 15:31

BY ERNEST MABUZA

All outstanding debt should be recovered, as a charge against the property, before transfer.

All outstanding debt should be recovered, as a charge against the property, before transfer.

Municipalities have to aggressively collect historical municipal debt before the transfer of a property to a new owner takes place.

This is the view of municipal debt specialist New Ventures Consulting and Services, following a Constitutional Court judgment on Tuesday.

The court held that new property owners are not responsible for settling historical municipal debt accumulated by previous owners.

The case dealt with the interpretation to be given to Section 118 (3) of the Local Government: Municipal Systems Act.

This section provides that an amount due for municipal services rendered on any property is a charge upon that property and enjoys preference over any mortgage bond registered against the property.

Joburg couple paid previous owner's R206,000 municipal debt

A Johannesburg couple forked out over R206,000 for a debt that was not theirs.

A number of new property owners complained that they were being denied services because municipalities insisted on historical debt being paid by the new owners before a clearance certificate could be issued.

The question before the Constitutional Court was whether this meant that, when a new owner takes transfer of the property, the property remains burdened with the debts a previous owner accumulated.

The City of Tshwane and the City of Ekurhuleni contended that section 118(3) was constitutionally sound and made a new owner responsible for historical debts

The Constitutional Court did not agree.

New Ventures Consulting managing director Peter Livanos said the judgment meant new property owners should not have been burdened with having to deal with the historical debt left by the previous owner.

The court said a municipality had a duty to develop a culture of payment, disconnect the supply of electricity and water in appropriate circumstances and take appropriate steps to collect amounts due

“They should not have to worry about previous debts. The judgment means municipalities should do their jobs of recovering municipal debts,” Livanos said.

In its judgment, the Constitutional Court said historical debts existed only because the municipalities had not recovered them.

The court said a municipality had a duty to develop a culture of payment, disconnect the supply of electricity and water in appropriate circumstances and take appropriate steps to collect amounts due.

The court said the Act placed municipalities on notice that a transfer within their jurisdictions was pending.

“This gives the municipality the full power, and full opportunity to enforce the charge against the existing owner for all recoverable debt, even beyond the last two years,” Justice Edwin Cameron said in a unanimous judgment.

He said in this way, all outstanding debt could be recovered, as a charge against the property, before transfer.

“Neat. This power does not improve with age.”

The Banking Association South Africa (BASA), which has 32 member banks, welcomed the judgment.

BASA managing director Cas Coovadia said Tuesday’s ruling brought increased confidence in the property market as new owners would come in without worrying about the historical debts.

“Banks can do the lending on the basis that a new owner would not be liable for the payment of historical debt before a property can be transferred,” Coovadia said.

Tshwane welcomes judgment which stops it from collecting old debt from new owners

The City of Tshwane welcomed the judgment of the Constitutional Court in the matter involving the settlement of historical municipal debt before a ...

Coovadia said the judgment meant municipalities must go after those who owed the municipal rates and not the new owners, who did not have anything to do with the debt.

Aidan Kenny, director and property specialist at Werksmans Attorneys, said the ruling was a victory for property owners and financial institutions alike.

He said the judgment would provide financial institutions with peace of mind, when lending funds for the purchase of property, knowing that neither the owner nor the financial institutions could be deprived of their security for the sins of the previous owner.

Kenny said municipalities would immediately have to desist with the practices of imposing and trying to collect historical debt, which they omitted to collect from a previous owner, from the new owner.

- TimesLIVE

<https://www.timeslive.co.za/sunday-times/business/2017-08-29-historical-municipal-debt-judgment-good-news-for-new-owners-lending-institutions/>

MUNICIPAL DEBT
SPECIALIST

Tshwane welcomes judgment which stops it from collecting old debt from new owners

29 August 2017 - 15:22 BY ERNEST MABUZA



New property owners cannot be held liable for historical municipal debts incurred on such properties.

The City of Tshwane welcomed the judgment of the Constitutional Court in the matter involving the settlement of historical municipal debt before a transfer to a new property owner can take place.

The court on Tuesday declared that upon transfer of a property, a new owner is not liable for debts arising before the transfer.

Before the judgment, Tshwane and Ekurhuleni municipalities refused to effect the transfer of property to new owners until the historical municipal debt had been paid.

The high court in Pretoria found in November that section 118 (3) of the Local Government: Municipal Systems Act was constitutionally invalid to the effect that it transferred to new owners municipal debts incurred before the transfer.

Tshwane, together with Ekurhuleni, appealed to the Constitutional Court against the high court order.

Cilliers Brink, MMC for Corporate and Shared Services in Tshwane, said the Constitutional Court judgment gave clarity on two crucial issues.

“First, new property owners cannot be held liable for historical municipal debts incurred on such properties.

“Second, this principle can be upheld without declaring section 118(3) of the Municipal Systems Act unconstitutional,” Brink said.

Brink said the City would be studying the judgment in the next day or two, and explain how the city would give effect to the court’s judgment.

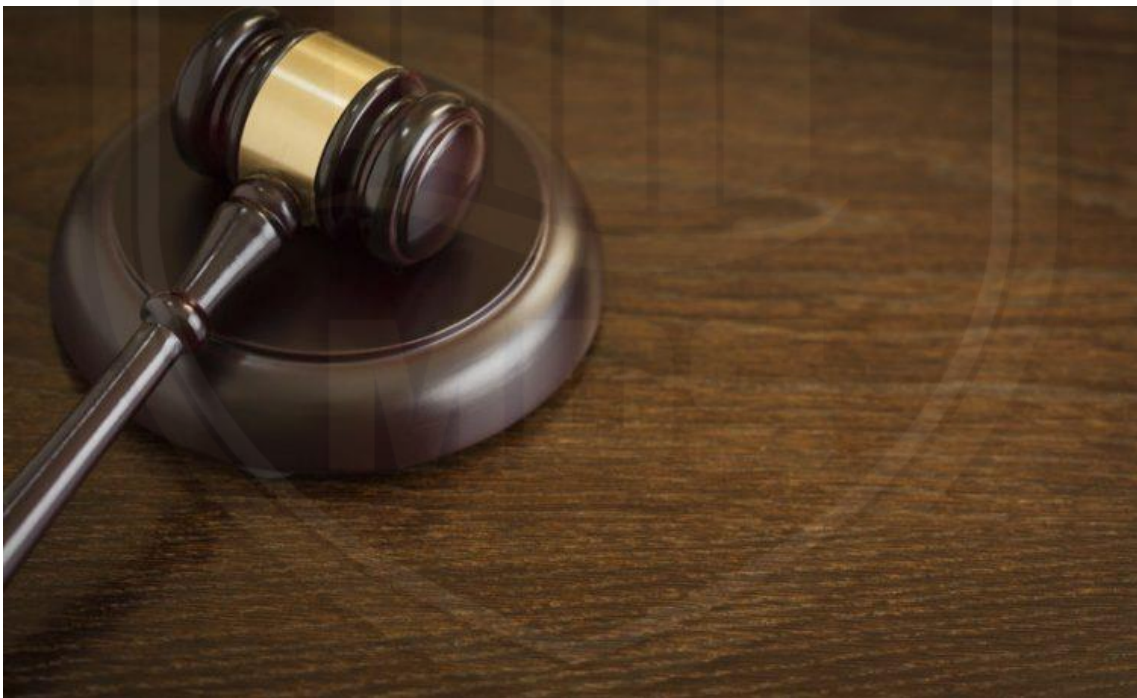
- *TimesLIVE*

<https://www.timeslive.co.za/sunday-times/business/2017-08-29-tshwane-welcomes-judgment-which-stops-it-from-collecting-old-debt-from-new-owners/>

MUNICIPAL DEBT
SPECIALIST

New homeowners not liable for previous owners' municipal debt – ConCourt

August 30, 2017



Copyright: feverpitched / 123RF Stock Photo

The Constitutional Court judgment on property owners inheriting debt from previous owners has provided much-needed clarity for municipalities, Tshwane mayor Solly Msimanga said on Tuesday.

He would study the court's ruling and provide a more comprehensive response, he said in Braamfontein, where DA leader Mmusi Maimane was tabling a jobs plan for cities under the party's control.

The court ruled that new property owners cannot be held liable for the municipal debt of previous homeowners, contrary to what the Ekurhuleni, Tshwane, and Ethekwini municipalities had argued.

The DA took control of the Johannesburg, Tshwane and Nelson Mandela Bay metros after the local government elections in August 2016. It has run Cape Town since 2006.

Maimane said the party wanted to boost investor confidence and gain business confidence. This would be coupled with a plan to reduce red tape, eradicate laws that made it difficult to trade, and cut down the costs of doing business.

There would be infrastructure development to create more jobs, he said, citing the City of Cape Town as an example where this had happened.

‘Dealing with corruption-riddled legacy of previous ANC administration’

Johannesburg mayor Herman Mashaba and Msimanga said they were dealing with the corruption-riddled legacy of the previous ANC administration. As a result, he said they should not be judged too harshly because the budget they were working with was put in place just two months before the DA came into power.

“For the first nine months of the first year, we had to manage their [ANC] budget based on vanity projects, based on corruption, based on mismanagement,” Mashaba said.

He was responding to a question about the ANC in the Johannesburg region grading him an H for his first 100 days in office, in its report card last week. Overall, the DA in Johannesburg achieved a 20% mark.

All mayors agreed to eliminate corruption in their cities to make them attractive to business.

Maimane said the DA could not invest in systems that consumed taxpayers’ money for corrupt purposes and that only benefit some individuals. He said cases had been opened against city officials for corruption allegedly committed when the ANC was in charge. Mashaba previously said the city was investigating 1920 cases of corruption.

Author: News24.com

<https://www.all4women.co.za/1215287/news/south-african-news/new-home-owners-not-liable-previous-owners-municipal-debt-concourt>

MUNICIPAL DEBT
SPECIALIST

RELIEF FOR BUYERS

New homeowners not liable for historical debt

Claudi Mailovich
Political Writer

Tuesday's Constitutional Court judgment declaring new homeowners not liable for historical debt of former owners has helped bring clarity in the property sector.

The ruling clarified an issue that had left municipalities with more questions than answers, Tshwane mayor Solly Msima-nge said on Tuesday.

He said the council would study the judgment.

Thirteen applicants had approached the Constitutional Court to confirm the previous finding of the High Court in Pretoria that section 118(3) of the Municipal Systems Act was unconstitutional. Section 118(3) provided that "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".

The 2013 judgment led certain municipalities to take the act to mean new buyers took over historical debt on properties on purchase as the act stipulates only that a clearance certificate can be issued if the outstanding debt is paid in full for the two

years preceding the date of sale. The Constitutional Court did not find it necessary to declare the section invalid, as it was capable of being interpreted so that the charge on the property did not survive the property transfer to the new owner.

The unanimous judgment, penned by Justice Edwin Cameron, said the Bill of Rights prohibited arbitrary deprivation of property, which would happen if debts without historical limit were imposed on a new property owner.

To avoid contravening section 25 of the Constitution, section 118(3) of the Municipal Systems Act must now be interpreted so that the charge it imposes does not survive transfer to a new owner.

The judgment made it clear that all outstanding debts could be recovered as a charge against the property by municipalities before the sale, since there was a provision placing a municipality on notice that a transfer in its jurisdiction was pending.

Cameron said the provision embargoed each and every transfer until the municipality issued a clearance certificate for the last two years' debt. He said that prospective transferors and their attorneys were obliged to notify municipalities of every impending transfer.

The metros of Tshwane and

2013
the year of
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Ekurhuleni and the minister of co-operative governance and traditional affairs were the respondents in the matter and were ordered to pay the applicants costs, including counsel.

The matter came before the high court after the City of Tshwane and the City of Ekurhuleni suspended or refused to contract for the supply of municipal services to the applicants' properties.

The municipalities required these new owners, the applicants in the matter, to pay historical municipal debts.

Berry Everitt, CEO of Chas Everitt International property group, said the ruling meant new homeowners would no longer have to worry about being held liable for the historical debt, or about having their municipal services cut off or even having their property attached and sold in execution as a result of the debt.

Aidan Kenny, director Werksmans Attorneys, said the judgment was a victory for property owners and financial institutions alike.

Kenny said municipalities would immediately have to cease their practice of imposing and trying to collect from new owners historical debt, which they had not collected from the previous owners.

mailovichc@businesslive.co.za

MUNICIPAL DEBT SPECIALIST

New homeowners not liable for historical debt

29 AUGUST 2017 - 11:35 CLAUDI MAILOVICH



Picture: SUPPLIED

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<https://www.businesslive.co.za/bd/national/2017-08-29-when-you-buy-a-property-you-do-not-buy-its-municipal-debt-constitutional-court-rules/>

MUNICIPAL DEBT
SPECIALIST

BusinessTech New property owners are not liable for historical debt, court rules

Staff Writer29 August 2017



Subscribe

The Constitutional Court of South Africa has ruled that new home owners are not liable for the municipal debt incurred before transfer by previous owners.

The Court handed down judgement on Tuesday (28 August), confirming an order by the North Gauteng High Court to the same effect.

The case came before the courts after the City of Tshwane and Ekurhuleni had suspended or refused to contract the supply of municipal services to properties that had outstanding historical debt.

Despite the properties in question having recently exchanged owners, the municipalities demanded that the new owners pay up the money owed by the previous title owners, arguing that the debt charge carried over upon transfer.

According to the High Court ruling on the matter, however, this was unconstitutional and amounted to “arbitrary deprivation of property”, with the court saying that municipalities failed in their obligations to collect the debt, and could not force new owners to pay debt incurred by the previous owners.

The municipalities challenged the ruling in the Constitutional Court.

They argued that, to properly fulfill their duties of service delivery, they needed extra-ordinary debt collecting measures (ie, to get new owners to pay old debts). The charge of historic debt should be seen as part of the transfer between old and new owners, they said.

This argument was supported by the minister of cooperative governance and traditional affairs.

However, the municipalities also admitted that there was nothing stopping them from enforcing their claims against the previous owners of a property who incurred the debts – and that they had the power to interdict the transfer of a property until the debt was paid.

Thus, there was a fundamental failure in their own obligations to collect the debt.

In a unanimous judgement, the Constitutional Court ruled that the respective sections of the Constitution – s118(3) – can be properly and reasonably interpreted to show that the charge would not survive transfer.

“That a claim for a specified debt is a ‘charge’ upon immovable property does not make that charge transmissible to successors in title of the property,” the Court said.

“Public formalisation of the charge is required – e.g. registration in the Deeds Registry – so as to give notice of its creation to the world.”

The Constitution does not require this public formalisation process, it said, and even if it did, it would create arbitrary deprivation of property, which is prohibited by the Bill of Rights (s25(1)).

For clarity, the Court granted a declaration stating that the debt charge does not survive transfer, and ordered the municipalities and the minister to pay costs.

<https://businesstech.co.za/news/finance/195176/new-property-owners-are-not-liable-for-historical-debt-court-rules/>

MUNICIPAL DEBT
SPECIALIST

Property owners set to recoup historic debt

Anna Cox

PROPERTY owners who have been forced to pay thousands of rand in historic debt on their newly acquired properties may soon be able to lodge claims to recoup their money.

Property debt specialist Peter Livanos, who among others took the case to the Constitutional Court, yesterday said he would be meeting his legal counsel this week to see what steps could be taken by property owners to recoup their money.

Livanos said he had spent about R11 million in legal costs since 2000.

"I had four counsels on a permanent basis and was forced to go to court over and over again over the years to get transfer of properties and connection of services because the municipalities were demanding that this historic debt be paid before transfer could be effected and before connecting services," he said.

Over the years, most municipalities ignored and defied court orders and he often had to apply for court orders against them, Livanos said.

In a few cases, he had obtained contempt of court orders before the municipalities had complied.

Livanos said he could not quantify the amount of money paid over in old debt, but said he had been receiving about 30 calls a week from attorneys all over the country.

"Recently, however, most municipalities complied because of the pending Constitutional Court case," he said, adding that he had been consumed by the desire to see justice for his clients.

"I made a promise to them and to myself to get this matter resolved. It has caused a lot of misery, and lots of money has been wasted, but I feel vindicated today," he said.

The court ruled that the Bill of Rights prohibits arbitrary deprivation of property, which would happen if municipal debts without historical limits

'It has caused a lot of misery, and lots of money has been wasted'

are imposed on new owners of a municipal property.

The judges, in a unanimous judgment delivered yesterday, ruled that new owners cannot be held responsible for previous owners' debts.

The ruling delivered by Justice Edwin Cameron was hailed as a major victory for property owners, developers, estate agents, conveyancing attorneys and banks.

To avoid unjustified arbitrariness in violation of the Bill of Rights, the court held that Section 118 of the Local Government Municipal Systems Act, which states owners are only liable for two years of debt, "must be interpreted so that the charge it imposes does not survive transfer to the new owner", the ruling stipulated.

The court also ruled that if municipalities wish to recover arrears from property owners, they would have to register the arrears against the property title deeds.

It held that Section 118 "is well interpreted, so that the charges do not survive the transfer".

"A mere statutory provision, that a claim for a specified debt is a 'charge' upon immovable property, does not make that charge transmissible to successors in title of the property," the court said.

Tshwane and Ekurhuleni municipalities have been trying to hold new owners responsible for old debt dating back 30 years.

In January, in a shock move, the Supreme Court of Appeal ruled that new property owners could be held liable for historic debts dating back 30 years.

ConCourt ruling positive for new homeowners

Updated Aug. 30, 2017, 4:25 p.m. | By **Steve Bhengu**

The CEO of one of the leading real estate companies in South Africa says the ConCourt ruling on historical municipal debt is a positive move that will protect new homeowners from unwarranted financial burdens.



Pixabay.com

The Constitutional Court yesterday upheld a high court ruling that new homeowners cannot be held liable for the unsettled municipal debt of previous owners.

Several homeowners launched the high court bid - which was challenged by the Tshwane and Ekurhuleni municipalities.

Richard Gray of Harcourts says it was too easy for municipalities to pass the debt onto new owners.

"I think it was a very convenient way of municipalities collecting funds when they were failing to do so themselves. It was quite easy because they could just make it the next persons problem. I am sure a lot of businesses out there would love to be able to do that, but it just doesn't work. It was really just a convenient way and maybe a bit of a low blow to the consumer to think that they could collect money on behalf of the municipality," he said.

<https://www.ecr.co.za/news/news/concourt-ruling-positive-new-homeowners/>

Herald ME Property buyers off hook for old debts

August 30, 2017 Devon Koen

Constitutional Court judgment on liability for historical accounts a relief for many

New property owners can breathe a sigh of relief after the Constitutional Court ruled yesterday that they are not liable for settling historical debt incurred by the previous owners.

The Nelson Mandela Bay Municipality is owed tens of millions of rands in historical debt.

Before the judgment, the Tshwane and Ekurhuleni municipalities refused to effect the transfer of properties to new owners until the historical municipal debt had been paid.

Yesterday's ruling came too late for a Johannesburg couple who had forked out more than R200 000 for a debt that was not theirs.

Several private homeowners had also instituted proceedings against the two municipalities, arguing that they should not inherit the debts of previous homeowners.

New Ventures Consulting managing director Peter Livanos said the judgment meant new property owners should not have been burdened with having to deal with the historical debt left by the previous owners.

"The judgment means municipalities should do their job of recovering municipal debts," he said.

In its judgment, the Constitutional Court said historical debts existed only because the municipalities had not recovered them.

The court said a municipality had a duty to develop a culture of payment, disconnect the electricity and water supply in appropriate circumstances, and take appropriate steps to collect amounts due.

It said the act placed municipalities on notice that a transfer within their jurisdictions was pending.

"This gives the municipality the full power and full opportunity to enforce the charge against the existing owner for all recoverable debt, even beyond the last two years," Justice Edwin Cameron said in a unanimous judgment.

He said in this way all outstanding debt could be recovered, as a charge against the property, before transfer.

Property owners in the Bay have generally been able to sort things out satisfactorily with the municipality in the rare instances in which they have received letters of demand for debt incurred by the previous owners.

Thandiwe Msizi-Mbebe, 28, and her husband, Mcebisi, 32, were hit with a R14 000 summons after buying a property in Despatch in October.

"We received letters from a firm of attorneys, demanding we pay the previous owner's account," she said.

"We refused to pay until it was explained to us why we were liable."

After receiving numerous letters demanding that the amount be settled, and being sent from pillar to post, Msizi-Mbebe was finally helped after approaching the municipality's customer care centre in Walmer in Port Elizabeth.

She was told that the previous owners of the property were responsible for payment of the account.

"We then wrote to the attorneys' office and suddenly they changed their tune, paid the account and told us we were not liable," she said.

David Kimberley, 38, was issued with a summons demanding he pay R19 000 in outstanding debt after buying a property in Buffelsfontein Road, Port Elizabeth, four years ago.

“I received a letter from the municipality which made us aware there was debt on the property, but [did not stress] we had to pay it,” he said.

“I took the matter to the transfer attorney, who said it was fine to ignore it. Two years later, I received a letter from an attorney stating there was an amount due, with interest. “It added up to about R25 000.” Following numerous phone calls and letters of demand, Kimberley contacted the municipality and “some other people” and has not been contacted again.

“They [the municipality] sent me a screenshot of the account, but it wasn’t even my name [on it].”

Harcourt Summerton property manager Vaughn Clarke said the court ruling meant the onus was on the municipality to recover the historical debt from the previous owner.

“Historical debt should be investigated before a rates clearance certificate is issued [and] the onus is on the municipality to dig for this,” he said.

Estate agent Louw Lochner said in his 11 years of experience he had never been in a situation where a new property owner had been forced to pay historical or inherited debt.

“It makes no sense. Sometimes there are additional costs involved in rates clearance, but this is dealt with between attorneys and clients.”

Estate agent Adri Pretorius, who has been selling properties in Port Elizabeth for the past 14 years, said it was common practice to ensure that no debt would fall onto the new owners once a transfer was cleared.

“We have had cases where rates were in arrears and the new owners had to pay [after negotiations],” she said, adding that there was a special clause in contracts stating new owners would not be held liable for this.

Attorney Kuban Chetty said all outstanding debts should be covered by the previous owner.

“If the new owner does pay the outstanding historical debt, there can be civil recourse . . . against the municipality and previous owner.”

The municipality’s political head for budget and treasury, Retief Odendaal, said the municipality would never force new property owners to pay money owed by the previous owners.

“Attorneys would have to work out what is historical debt [and] property owners would be advised to pay all historical debt before transfer could take place.”

Odendaal said the municipality was owed “tens of millions” in historical debt through unpaid municipal bills, and that the municipal debtors book stood at R2.5-billion overall.

“It is highly unlikely that [the debt] will be written off, [but] the reality is that sometimes some of it has to be written off,” he said.

Municipal spokesman Mthubanzi Mniki said new owners had never been held liable for the previous owner’s debt.

“Normally, all outstanding debt is recovered from the owner when rates clearance is given in terms of Section 118.”

He said it was recommended the buyer ensure a clause be inserted in the sales agreement to the effect that all historical debt by the seller should be settled at the time of rates clearance.

<http://www.heraldlive.co.za/news/2017/08/30/property-buyers-off-hook-old-debts/>



IOL Inherited debt ruling a victory for property owners

SOUTH AFRICA / 30 AUGUST 2017, 08:18AM

ANNA COX, BHEKI MBANJWA AND NOSIPHO MNGOMA



Peter Livanos, a property debt specialist who has spent 15 years fighting municipalities over historic debt, celebrates after the Constitutional Court ruled in his favour. Picture: Nokuthula Mbatha / ANA

Johannesburg/Durban - Property owners who have been forced to pay thousands of rand in historic debt on their newly acquired properties may soon be able to lodge claims to recoup their money.

The Constitutional Court has ruled that the Bill of Rights prohibits arbitrary deprivation of property, which would happen if municipal debts without historical limits were imposed on new owners of a municipal property.

The judges, in a unanimous judgment delivered on Tuesday, ruled that new owners cannot be held responsible for previous owners' debts.

The ruling, delivered by Judge Edwin Cameron, was hailed as a major victory for property owners, developers, estate agents, conveyancing attorneys and banks.

To avoid unjustified arbitrariness in violation of the Bill of Rights, the court held that section 118 of the Local Government Municipal Systems Act, which states owners are only liable for two years of debt, "must be interpreted so that the charge it imposes does not survive transfer to the new owner", the ruling stipulated.

The court also ruled that should municipalities wish to recover arrears from property owners, they would have to register the arrears against the property title deeds.

It held that section 118 “is well interpreted, so that the charges do not survive the transfer. A mere statutory provision, that a claim for a specified debt is a ‘charge’ upon immovable property does not make that charge transmissible to successors in title of the property”, the court said.

Tshwane and Ekurhuleni municipalities have been trying to hold new owners responsible for debt dating back 30years.

Property debt specialist Peter Livanos, who, among others, took the case to the Constitutional Court, on Tuesday said he would be meeting his legal counsel this week to see what steps could be taken by property owners to recoup their money.

Court orders

Livanos said he had spent about R11million since 2000 in legal costs. “I had four permanent counsels and was forced to go to court over and over again over the years to get transfer of properties and connection of services, because the municipalities were demanding that this historic debt be paid before transfer could be effected and before connecting services.”

Over the years, most municipalities ignored and defied court orders, and he often had to apply for court orders against them, Livanos said.

In a few cases, he had obtained contempt of court orders before the municipalities had complied.

Livanos said he could not quantify the amount of money paid in old debt, but he had been receiving about 30 calls a week from attorneys all over the country.

“I made a promise to them and to myself to get this matter resolved. It has caused a lot of misery and lots of money has been wasted, and I feel vindicated today,” he said.

“Recently, however, most municipalities complied because of the pending Constitutional Court case,” he said.

Dean Hodgson, the principle agent at Hodgson Properties, said the ruling would allay fears of debt for new buyers.

“In today’s tough economic climate, buyers and investors don’t have the cash flow to pay for an unknown debt,” he said.

It had been unfair in the first place that a municipal clearance certificate did not link rates with the water and electricity bills.

“So getting a rates clearance certificate does not necessarily mean the property does not owe on water and electricity, so the municipality could slam you with this big bill down the line,” said Hodgson.

Myles Wakefield, the chief executive of Wakefield Real Estate, said he was delighted with the ruling. “It’s untenable that a new buyer should be responsible for the debt of a previous owner. This is a fair, equitable decision, another great one by the Constitutional Court, and the right one for our property market.”

Berry Everitt, the chief executive of property group Chas Everitt International, said new home owners would no longer have to worry about having their municipal services cut off, or even having their property attached and sold in execution if they could not pay.

Carol Reynolds, the area principal for Durban Coastal at Pam Golding Properties, said the ruling was much-needed relief from an unreasonable situation.

“Buyers can now rest assured that they will not become embroiled in debt that is not of their making,” she said.

The Msunduzi municipality said it was aware of the judgment and was obliged to comply with it.

When asked to comment on the implications of the judgment on the city in terms of the collection of historical debt, EThekweni Municipality spokesperson Tozi Mthethwa said: “The Constitutional Court did not rule that Section 118(3) of the Local Government: Municipal Systems Act, 2000 is constitutionally invalid. The court ruled that the debt will not pass onto the successor in title.”

She also said the judgment didn’t impact on the eThekweni collection processes, adding that it provided clarity to strengthen the process.

“EThekweni Municipality adheres to the guidelines set by the credit control and debt collection policy and by-law and will continue to collect outstanding debt as permitted,” said Mthethwa.

Independent Media

<https://www.iol.co.za/news/south-africa/inherited-debt-ruling-a-victory-for-property-owners-10998295>

MUNICIPAL DEBT
SPECIALIST

**IOL**

Property owners set to recoup historic debt

NEWS / 30 AUGUST 2017, 01:34AM / ANNA COX



File Image: IOL

Property owners who have been forced to pay thousands of rand in historic debt on their newly acquired properties may soon be able to lodge claims to recoup their money.

Property debt specialist Peter Livanos, who among others took the case to the Constitutional Court, yesterday said he would be meeting his legal counsel this week to see what steps could be taken by property owners to recoup their money.

Livanos said he had spent about R11million in legal costs since 2000.

“I had four counsels on a permanent basis and was forced to go to court over and over again over the years to get transfer of properties and connection of services because the municipalities were demanding that this historic debt be paid before transfer could be effected and before connecting services,” he said.

Over the years, most municipalities ignored and defied court orders and he often had to apply for court orders against them, Livanos said.

In a few cases, he had obtained contempt of court orders before the municipalities had complied.

Livanos said he could not quantify the amount of money paid over in old debt, but said he had been receiving about 30 calls a week from attorneys all over the country.

“Recently, however, most municipalities complied because of the pending Constitutional Court case,” he said, adding that he had been consumed by the desire to see justice for his clients.

“I made a promise to them and to myself to get this matter resolved. It has caused a lot of misery, and lots of money has been wasted, but I feel vindicated today,” he said.

The court ruled that the Bill of Rights prohibits arbitrary deprivation of property, which would happen if municipal debts without historical limits are imposed on new owners of a municipal property.

The judges, in a unanimous judgment delivered yesterday, ruled that new owners cannot be held responsible for previous owners' debts.

The ruling delivered by Justice Edwin Cameron was hailed as a major victory for property owners, developers, estate agents, conveyancing attorneys and banks.

To avoid unjustified arbitrariness in violation of the Bill of Rights, the court held that Section 118 of the Local Government Municipal Systems Act, which states owners are only liable for two years of debt, “must be interpreted so that the charge it imposes does not survive transfer to the new owner”, the ruling stipulated.

The court also ruled that if municipalities wish to recover arrears from property owners, they would have to register the arrears against the property title deeds.

It held that Section 118 “is well interpreted, so that the charges do not survive the transfer”.

“A mere statutory provision, that a claim for a specified debt is a ‘charge’ upon immovable property, does not make that charge transmissible to successors in title of the property,” the court said.

Tshwane and Ekurhuleni municipalities have been trying to hold new owners responsible for old debt dating back 30 years.

In January, in a shock move, the Supreme Court of Appeal ruled that new property owners could be held liable for historic debts dating back 30 years.

<https://www.iol.co.za/capetimes/news/property-owners-set-to-recoup-historic-debt-10995004>

MUNICIPAL DEBT
SPECIALIST

30 Aug 2017

New property owners no longer liable for historical municipal debt

A recent ruling by the Constitutional Court means that new homeowners will no longer have to worry about being held liable for historical debt incurred by previous owners, and having their municipal services cut off as a result, or possibly even having their property attached and sold in execution.



New homeowners will no longer have to worry about being held liable for historical debt incurred by previous owners, and having their municipal services cut off as a result, or possibly even having their property attached and sold in execution.

This is according to Berry Everitt, CEO of the Chas Everitt International property group, who says the judgment brings to an end a long period of confusion “and no little controversy” since judgment was given in 2013 in the Gauteng High Court case Mathabathe vs Municipality of Tshwane, which concerned the process of obtaining and lodging a municipal clearance certificate.

“In terms of Section 118(1) of the Municipal Systems Act, conveyancers are obliged to obtain such clearance certificates before properties can be transferred to new owners in order to ensure that any rates and utility charges to the local authority by the property seller have been paid up to date,” says Everitt.

“However, the Act in fact only stipulates that the municipality must issue the certificate if the outstanding debt for the two years immediately preceding the date of sale has been paid in full, and in the above case the court ruled that if there was debt older than that (historical debt), the property could be transferred to the new owner, but the seller would remain indebted to the municipality for historical debt.”

All would have been fine at that point, he says, except for the fact that Section 118(3) of the Act stipulates that all municipal debt, including the historical debt, is actually “a charge upon the property”, rather than on a person, which led the court to also rule that the municipality would therefore have a lien (statutory tacit hypothec) over the property for the

payment of the historical debt, and that this lien would not be extinguished when the property was transferred to a new owner.

“The effect of this, in legal language, was seemingly that a municipality which wanted to ‘perfect its lien’ could thus attach the property from the new owner and sell it on auction to settle the previous owner’s historical debt,” says Everitt.

“And in fact, some municipalities did start trying to use this judgment to try to collect historical debt from new owners. Some even went so far as to refuse to open utility accounts in the name of new owners until they had settled the previous owners’ historical debt.”

Everitt says this has obviously created a major worry and frustration for property buyers, and for the real estate industry as a whole, and that the situation was only slightly improved by the 2014 judgment in the case of PJ Mitchell v City of Tshwane Metropolitan Authority, when the same court ruled that a municipality’s lien over a property had been extinguished by a sale in execution and that the new owner should be granted a clean title.

“In that case, the court did also rule that a municipality cannot refuse to provide services to a new owner on the grounds that there is an historical debt that has not been paid - but it remained to be decided what should happen when a property is not sold in execution but, as is usually the case, in terms of an agreement between buyer and seller,” says Everitt.

“And this is exactly what today’s ruling by the Constitutional Court makes clear. The unanimous judgment, which was handed down by Justice Edwin Cameron, is that Section 118(3) of the Municipal Systems Act is capable of being interpreted so that the ‘charge upon the property’ does not survive transfer of that property to a new owner.”

<https://www.property24.com/articles/new-property-owners-no-longer-liaable-for-historical-municipal-debt/26342>

MUNICIPAL DEBT
SPECIALIST

Joburg and Tshwane mayors yet to calculate costs of historical debt ruling

By Naledi Shange | Aug 30, 2017

It is unclear whether municipalities in the City of Tshwane and Johannesburg would be prepared to pay back funds paid by home owners towards previous home owners' debt.



This after the Constitutional Court upheld an order that new owners should not be inheriting the municipal debt of their predecessors.

Addressing a press conference in Johannesburg shortly after the ruling was delivered, Tshwane mayor Solly Msimanga said they were yet to study the order and pave a way forward.

The Constitutional Court declared that upon transfer of a property, a new owner is not liable for previous debts under section 118(3) of the Local Government: Municipal Systems Act.

Homeowner's nightmare: We paid previous owner's R206,000 municipal debt

“For once, we now have a clarity on the matter. That is very clear and it was never clear before,” said Msimanga.

One Johannesburg couple on Tuesday told TimesLIVE that they were forced to pay R206,000 of an erroneous municipal account dating back to 2010.

The couple said they had since been sent from pillar to post, trying to recoup the funds.

<http://www.sowetanlive.co.za/news/2017/08/30/joburg-and-tshwane-mayors-yet-to-calculate-costs-of-historical-debt-ruling>

MUNICIPAL DEBT
SPECIALIST

ConCourt ruling a big boost for housing market

Yadhana Jadoo



Picture: Thinkstock

The court ruled that the new owners of a house can't be held accountable for historical debt.

Estate agents are rejoicing over the Constitutional Court's unanimous ruling that homeowners are not liable to pay historical debt incurred by previous titleholders.

But municipalities are bracing for a slew of claims for money already paid over.

In a triumphant win for the property market, yesterday's judgment upheld a High Court in Pretoria ruling of the same nature and further declared section 118(3) of the Local Government: Municipal Systems Act, 2000 constitutionally invalid.

Under this section, it provides an amount due for municipal services rendered on any property is a charge upon that property and enjoys preference over any mortgage bond registered against the property.

"The matter came before the high court after the City of Tshwane and Ekurhuleni municipalities suspended, or refused to contract for, the supply of municipal services to the applicants' properties," according to the court summary.

“The municipalities required these new owners to pay historical municipal debts. The applicants complained that they faced darkness, having no electricity, and many other inhumane conditions because they bought property whose previous owners failed to meet their obligations to the municipality – and against whom the municipality failed to enforce its rights in fulfilment of its constitutional obligations.”

Institute of Estate Agents of South Africa vice-president Edgar Blomeyer endorsed the ruling and cited the utter unfairness of the previous situation facing some homeowners.

“Now, the court ruling will make life easier. There is fear of previous debts. Now, they don’t have to be concerned about outstanding rates or accounts they may have to pay before a property is transferred.

“There are processes in terms of previous debts by owners but councils now need to deal with the previous owners.”

Blomeyer added that the judgment was a huge relief for estate agents and positive for the property market.

“It bodes well for the buyer. The buyer will also now know the rates and taxes will have to be kept up to date.”

According to Municipal Debt Specialists’ Peter Livanos, a number of people countrywide have been paying historical debt. While those in question were entitled to their money back – even though they may have paid under protest – it will be a difficult task, he said.

“It is going to be a process to get it back by way of court action. If you paid under protest it will make it easier and court action may occur.

“If, say, I paid R100 000 to a municipality and it’s now declared unlawful, they aren’t just going to give the money back unless a court forces them to.”

Each case will have to be taken to court, Livanos said, adding that his legal team would look at possible class action in this case. The solution for those who paid under duress, without protest, was also not established, he said.

“If people paid not under protest, or were blackmailed into paying, the next step is how do we get their money back?

“We will have to take to it to court and ask the direction of the court – the average layman wouldn’t know they have to pay under protest.”

City of Tshwane MMC for corporate and shared services Cilliers Brink said it was “very important to study the judgment” as it also had implications on how the municipality “better collects debt” and “waits for transfer of a property for proper credit control”.

“The judgment is sound but it does have implications for municipalities. In Tshwane we inherited a terrible situation and we have to collect every rand for services. We will announce what comes next.” –

<https://citizen.co.za/news/south-africa/1632237/concourt-ruling-a-big-boost-for-house-buyers/>

New homeowners not liable for old owners' unpaid bills

30 August 2017 - 06:11

BY ERNEST MABUZA AND NALEDI SHANGE

A number of new property owners had complained that they were being denied services because municipalities insisted on historical debt being paid by the new owners before a clearance certificate would be issued. File photo.



Image: Gallo Images/iStockphoto

The Constitutional Court has saved new homeowners from being held liable for the debts of their predecessors on the property.

In a unanimous judgment, the court ruled on Tuesday that municipalities can no longer saddle new homeowners with rates, water or electricity bills left by previous owners.

A number of new property owners had complained that they were being denied services because municipalities insisted on historical debt being paid by the new owners before a clearance certificate would be issued.

The question before the Constitutional Court was whether the law stipulates that when a new owner takes transfer of a property it remains burdened with the debts of the previous owner.

Bad news for house prices

Homeowners should not be too hasty to sell just yet. Seven months into 2017, it was becoming increasingly likely that this year would be the second ...

BUSINESS 1 month ago

The City of Tshwane and the City of Ekurhuleni contended that the Local Government: Municipal Systems Act, which the court was asked to examine, was constitutionally sound and made a new owner responsible for historical debt.

But the Constitutional Court did not agree, saying this section of the law was unconstitutional. Historical debts existed only because municipalities had failed to recover them.

The court said a municipality had a duty to develop a culture of payment and had the right to disconnect electricity and water supplies in appropriate circumstances, and to take steps to collect amounts in arrears.

Judge Edwin Cameron, who wrote the judgment, said the municipalities had "a full-plated panoply of mechanisms enabling efficient debt recovery in the cause of collecting publicly vital revenue". He said that when there is unpaid debt municipalities had the power to "slam the legal brake on any impending transfer by obtaining an interdict against transfer".

More single women than single men becoming homeowners

South Africa is seeing a shift in the ratio of homebuyers between single women and single men. John Loos, household and property sector strategist at ...

NEWS 6 months ago

The judgment follows an earlier one by the Pretoria High Court in November that transfer of historical municipal debt to a new owner was constitutionally invalid.

However, that judgment came too late for Johannesburg couple Noleen Pauls and her husband Gavin Andrews. They paid over R206,000 to settle a debt that was not theirs.

"When we sold our house several months ago we went through the whole transfer process because we needed to get a rate-clearance certificate. We then discovered the previous owner of the house had an outstanding water account for R206,000," said Pauls.

She said the outstanding bill was clearly an error but they were unaware of it until they tried to sell.

The judgment means municipalities should do their job of recovering debt

They had a buyer for their house and were planning to use the proceeds to pay for another property.

"So, eventually we paid the R206,000 and since then we have been going through numerous processes with the City of Johannesburg to try to get it back," she said.

Peter Livanos, managing director of municipal debt specialist New Ventures, welcomed the judgment.

New Venture funded the litigation after complaints by clients who had been forced by municipalities to pay debts predating their taking transfer of their property.

Livanos said his company had been dealing with this case since 2002 and had assisted hundreds of people financially crippled by debt that was not their own.

"They should not have to worry about previous debts. The judgment means municipalities should do their job of recovering debt," Livanos said.

The Banking Association of SA's managing director, Cas Coovadia, said Tuesday's ruling brought increased confidence to prospective property buyers.

<https://www.timeslive.co.za/news/consumer-live/2017-08-30-new-homeowners-not-liable-for-old-owners-unpaid-bills/>

MUNICIPAL DEBT
SPECIALIST

Homeowner's nightmare: We paid previous owner's R206,000 municipal debt

August 29, 2017 Naledi Shange

A Johannesburg couple forked out over R206,000 for a debt that was not theirs.

The Constitutional Court on Tuesday ordered that new home owners cannot be liable for historical municipal debt. But that ruling came too late for Noleen Pauls and her husband Gavin Andrews.

“When we sold our house several months ago, we went through the whole transfer process as we needed to get a rate clearance certificate. We then discovered that the previous owner of the house had an outstanding water account for R206,000,” said Pauls.

“One could obviously see that this was mistake as the reading was just for one day,” she said.

Pauls and her husband had bought the house in 2010 but the erroneous account was dated May 2012 and was not in their name but the previous owner's name.

“[The previous owner's] May 2012 account was sent to her and no notice of debt was ever passed on to me until the rate clearance figures revealed it,” Andrews said.

The couple was sent from pillar to post as they queried the account, hoping to get it quashed.

“But no one could correct it. We went to see some consultants and even lawyers,” said Pauls.

The couple had already secured a buyer for their house and were planning on using those funds to pay for another property they had bought.

“So eventually we paid the R206,000 and since then, we have been going through numerous processes with the City of Johannesburg to try and get the money back,” Pauls said.

On Tuesday however, the Constitutional Court made an order which essentially means the couple were never meant to have been liable for the debt to begin with.

The order read: “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 of 2000.”

Several private homeowners had instituted proceedings against Ekurhuleni and Tshwane municipalities, arguing they should not inherit debts of previous homeowners.

Despite this groundbreaking ruling, Pauls was sceptical about ever getting their money back.

“We don't think we will ever get it back. I don't think that there are systems in place to ensure that happens... I think the CoJ (City of Joburg) is incapable of doing that,” Pauls said.

And seemingly, a never-ending cycle is in the works.

“The property sale was registered in the new owner's name on [June 29] and they have now opened their own account. I have not closed mine as I am waiting for this issue to be resolved,” said Andrews.

– TimesLIVE

<http://www.heraldlive.co.za/news/2017/08/29/homeowners-nightmare-paid-previous-owners-r206000-municipal-debt/>



IOl Council targets property transfers

DAILY NEWS / 31 AUGUST 2017, 2:00PM / CHRIS NDALISO



Picture: Facebook

Durban - The eThekweni Municipality has set its sights on interdicting property transfers before they are processed to recover outstanding rates and services debt by property sellers, the city's executive committee heard on Wednesday.

This follows Tuesday's Constitutional Court (Concourt) ruling that property buyers were not liable for debt incurred by previous owners.

Addressing the committee, Malusi Mhlongo, the city's deputy head of legal services, said the ruling did not prevent the city from recovering debt from the consumer.

"We still have the right to interdict transfers before they are processed. Now that we don't have security, we will interdict transfers.

"If a sold property has an outstanding bill, we will then approach conveyancers to say the seller still owes the city for outstanding rates and services.

"At the moment we can't say much because we are still studying the ruling," he said.

Mhlongo said transfers had not been previously interdicted and new owners took responsibility for outstanding debts.

Krish Kumar, deputy city manager of finance, raised a concern about the judgment, saying it would impact on the city's revenue.

He said the long time taken by court processes would frustrate the process of recovering what was owed to the city.

Charlene Nolte-Joubert, director of Henkes Nolte-Joubert Attorneys, said historically a property was not allowed to be transferred to a new buyer until a municipal certificate was issued, clearing any debt spanning a two-year period.

However, debts that surpassed the cut-off became the liability of the new owner.

She said in a conveyancing transaction they looked at various issues to be able to lodge at the Deeds Office.

“One of these is the rates clearance certificate which is submitted to the city.

“The municipality then states how much is in arrears by the seller. The problem is that when looking at arrears on a property, municipalities only look into the past two years, and if they later realise there were arrears beyond those two years, they claim this from the new owner,” she said.

Richard Grey, Harcourts Africa chief executive officer, said it would be interesting to see the municipality’s plan in action.

“I don’t see the practicality of this plan because interdicts include time and costs. They (eThekweni) should rather focus on not allowing homeowners getting into so much debt in the first place.

“They should put effective measures in place to ensure that bills are collected,” Grey said.

DA committee member Heinz de Boer said there needed to be an element of debt collection.

“We’ve got people running illegal businesses. Some are running drug dens and the city can’t even interdict those people, yet the city wants to interdict people for owing rates and taxes.

“You must be mindful of the fact that this will impact on property values,” De Boer said.

<https://www.iol.co.za/dailynews/council-targets-property-transfers-11019365>

MUNICIPAL DEBT
SPECIALIST

Ruling on municipal debts is a slam-dunk win

31 August 2017 - 06:26 BY THE TIMES EDITORIAL



Gavel. File photo. - File photo.

Image: Thinkstock

South Africans can celebrate the crowning of a new people's hero following Tuesday's Constitutional Court judgment declaring that new homeowners are not responsible for the municipal debts of previous owners.

Peter Livanos, managing director of municipal debt specialist New Ventures, says he has spent R11-million on legal costs since 2000 - when the law he opposed was promulgated - and had been driven by a desire to see justice for his clients.

"I made a promise to them and to myself to get this matter resolved. It has caused a lot of misery, and lots of money has been wasted, but I feel vindicated," he said.

Livanos is now bracing himself for the sequel to the judgment: hundreds, perhaps thousands, of claims for compensation from homeowners who have been forced to pay other people's debts in an unlawful manner. The businessman deserves to get rich in taking on what should be slam-dunk cases.

Municipalities, most of which have been making hay while the sun shines with an interpretation of the law that always seemed illogical to reasonable people, will be nervously totting up the extent of their potential liabilities, but there is little pleasure in recording this: ratepayers will foot the bill in the end.

Another consequence of the ConCourt ruling should be more broadly welcomed. With the scrapping of an unjust way of collecting old debts, municipalities will be forced to pay more attention to stopping debts building up in the first place.

As Justice Edwin Cameron noted in his judgment, they have a range of options, including cutting off water and electricity supplies and preventing the transfer of a property until debts are settled.

The consequence of the judgment should, therefore, be better-run local government and a fairer society.

<https://www.timeslive.co.za/ideas/2017-08-31-ruling-on-municipal-debts-is-a-slam-dunk-win/>