

ConCourt rules on property owners' inherited debt

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

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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.