

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

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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.

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