



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.

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