

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

Staff Writer29 August 2017



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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.

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