

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.