

# HeraldME Property buyers off hook for old debts

August 30, 2017 Devon Koen

## **Constitutional Court judgment on liability for historical accounts a relief for many**

New property owners can breathe a sigh of relief after the Constitutional Court ruled yesterday that they are not liable for settling historical debt incurred by the previous owners.

The Nelson Mandela Bay Municipality is owed tens of millions of rands in historical debt.

Before the judgment, the Tshwane and Ekurhuleni municipalities refused to effect the transfer of properties to new owners until the historical municipal debt had been paid.

Yesterday's ruling came too late for a Johannesburg couple who had forked out more than R200 000 for a debt that was not theirs.

Several private homeowners had also instituted proceedings against the two municipalities, arguing that they should not inherit the debts of previous homeowners.

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 owners.

"The judgment means municipalities should do their job of recovering municipal debts," he 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 electricity and water supply in appropriate circumstances, and take appropriate steps to collect amounts due.

It 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.

Property owners in the Bay have generally been able to sort things out satisfactorily with the municipality in the rare instances in which they have received letters of demand for debt incurred by the previous owners.

Thandiwe Msizi-Mbebe, 28, and her husband, Mcebisi, 32, were hit with a R14 000 summons after buying a property in Despatch in October.

"We received letters from a firm of attorneys, demanding we pay the previous owner's account," she said.

"We refused to pay until it was explained to us why we were liable."

After receiving numerous letters demanding that the amount be settled, and being sent from pillar to post, Msizi-Mbebe was finally helped after approaching the municipality's customer care centre in Walmer in Port Elizabeth.

She was told that the previous owners of the property were responsible for payment of the account.

"We then wrote to the attorneys' office and suddenly they changed their tune, paid the account and told us we were not liable," she said.

David Kimberley, 38, was issued with a summons demanding he pay R19 000 in outstanding debt after buying a property in Buffelsfontein Road, Port Elizabeth, four years ago.

“I received a letter from the municipality which made us aware there was debt on the property, but [did not stress] we had to pay it,” he said.

“I took the matter to the transfer attorney, who said it was fine to ignore it. Two years later, I received a letter from an attorney stating there was an amount due, with interest. “It added up to about R25 000.” Following numerous phone calls and letters of demand, Kimberley contacted the municipality and “some other people” and has not been contacted again.

“They [the municipality] sent me a screenshot of the account, but it wasn’t even my name [on it].”

Harcourt Summerton property manager Vaughn Clarke said the court ruling meant the onus was on the municipality to recover the historical debt from the previous owner.

“Historical debt should be investigated before a rates clearance certificate is issued [and] the onus is on the municipality to dig for this,” he said.

Estate agent Louw Lochner said in his 11 years of experience he had never been in a situation where a new property owner had been forced to pay historical or inherited debt.

“It makes no sense. Sometimes there are additional costs involved in rates clearance, but this is dealt with between attorneys and clients.”

Estate agent Adri Pretorius, who has been selling properties in Port Elizabeth for the past 14 years, said it was common practice to ensure that no debt would fall onto the new owners once a transfer was cleared.

“We have had cases where rates were in arrears and the new owners had to pay [after negotiations],” she said, adding that there was a special clause in contracts stating new owners would not be held liable for this.

Attorney Kuban Chetty said all outstanding debts should be covered by the previous owner.

“If the new owner does pay the outstanding historical debt, there can be civil recourse . . . against the municipality and previous owner.”

The municipality’s political head for budget and treasury, Retief Odendaal, said the municipality would never force new property owners to pay money owed by the previous owners.

“Attorneys would have to work out what is historical debt [and] property owners would be advised to pay all historical debt before transfer could take place.”

Odendaal said the municipality was owed “tens of millions” in historical debt through unpaid municipal bills, and that the municipal debtors book stood at R2.5-billion overall.

“It is highly unlikely that [the debt] will be written off, [but] the reality is that sometimes some of it has to be written off,” he said.

Municipal spokesman Mthubanzi Mniki said new owners had never been held liable for the previous owner’s debt.

“Normally, all outstanding debt is recovered from the owner when rates clearance is given in terms of Section 118.”

He said it was recommended the buyer ensure a clause be inserted in the sales agreement to the effect that all historical debt by the seller should be settled at the time of rates clearance.

<http://www.heraldlive.co.za/news/2017/08/30/property-buyers-off-hook-old-debts/>