

New homeowners not liable for old owners' unpaid bills

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A number of new property owners had complained that they were being denied services because municipalities insisted on historical debt being paid by the new owners before a clearance certificate would be issued. File photo.



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The Constitutional Court has saved new homeowners from being held liable for the debts of their predecessors on the property.

In a unanimous judgment, the court ruled on Tuesday that municipalities can no longer saddle new homeowners with rates, water or electricity bills left by previous owners.

A number of new property owners had complained that they were being denied services because municipalities insisted on historical debt being paid by the new owners before a clearance certificate would be issued.

The question before the Constitutional Court was whether the law stipulates that when a new owner takes transfer of a property it remains burdened with the debts of the previous owner.

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The City of Tshwane and the City of Ekurhuleni contended that the Local Government: Municipal Systems Act, which the court was asked to examine, was constitutionally sound and made a new owner responsible for historical debt.

But the Constitutional Court did not agree, saying this section of the law was unconstitutional. Historical debts existed only because municipalities had failed to recover them.

The court said a municipality had a duty to develop a culture of payment and had the right to disconnect electricity and water supplies in appropriate circumstances, and to take steps to collect amounts in arrears.

Judge Edwin Cameron, who wrote the judgment, said the municipalities had "a full-plated panoply of mechanisms enabling efficient debt recovery in the cause of collecting publicly vital revenue". He said that when there is unpaid debt municipalities had the power to "slam the legal brake on any impending transfer by obtaining an interdict against transfer".

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The judgment follows an earlier one by the Pretoria High Court in November that transfer of historical municipal debt to a new owner was constitutionally invalid.

However, that judgment came too late for Johannesburg couple Noleen Pauls and her husband Gavin Andrews. They paid over R206,000 to settle a debt that was not theirs.

"When we sold our house several months ago we went through the whole transfer process because we needed to get a rate-clearance certificate. We then discovered the previous owner of the house had an outstanding water account for R206,000," said Pauls.

She said the outstanding bill was clearly an error but they were unaware of it until they tried to sell.

The judgment means municipalities should do their job of recovering debt

They had a buyer for their house and were planning to use the proceeds to pay for another property.

"So, eventually we paid the R206,000 and since then we have been going through numerous processes with the City of Johannesburg to try to get it back," she said.

Peter Livanos, managing director of municipal debt specialist New Ventures, welcomed the judgment.

New Venture funded the litigation after complaints by clients who had been forced by municipalities to pay debts predating their taking transfer of their property.

Livanos said his company had been dealing with this case since 2002 and had assisted hundreds of people financially crippled by debt that was not their own.

"They should not have to worry about previous debts. The judgment means municipalities should do their job of recovering debt," Livanos said.

The Banking Association of SA's managing director, Cas Coovadia, said Tuesday's ruling brought increased confidence to prospective property buyers.

<https://www.timeslive.co.za/news/consumer-live/2017-08-30-new-homeowners-not-liable-for-old-owners-unpaid-bills/>