

BusinessDay New homeowners not liable for historical debt

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Tuesday's Constitutional Court judgment declaring new homeowners not liable for historical debt of former owners has helped bring clarity in the property sector.

The ruling clarified an issue that had left municipalities with more questions than answers, Tshwane mayor Solly Msimanga said on Tuesday.

He said the council would study the judgment.

Thirteen applicants had approached the Constitutional Court to confirm the previous finding of the High Court in Pretoria that section 118(3) of the Municipal Systems Act was unconstitutional. Section 118(3) provided that "an amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property".

The 2013 judgment led certain municipalities to take the act to mean new buyers took over historical debt on properties on purchase as the act stipulates only that a clearance certificate can be issued if the outstanding debt is paid in full for the two years preceding the date of sale. The Constitutional Court did not find it necessary to declare the section invalid, as it was capable of being interpreted so that the charge on the property did not survive the property transfer to the new owner.

The unanimous judgment, penned by Justice Edwin Cameron, said the Bill of Rights prohibited arbitrary deprivation of property, which would happen if debts without historical limit were imposed on a new property owner.

To avoid contravening section 25 of the Constitution, section 118(3) of the Municipal Systems Act must now be interpreted so that the charge it imposes does not survive transfer to a new owner.

The judgment made it clear that all outstanding debts could be recovered as a charge against the property by municipalities before the sale, since there was a provision placing a municipality on notice that a transfer in its jurisdiction was pending.

Cameron said the provision embargoed each and every transfer until the municipality issued a clearance certificate for the last two years' debt. He said that prospective transferors and their attorneys were obliged to notify municipalities of every impending transfer.

The metros of Tshwane and Ekurhuleni and the minister of co-operative governance and traditional affairs were the respondents in the matter and were ordered to pay the applicants costs, including counsel.

The matter came before the high court after the City of Tshwane and the City of Ekurhuleni suspended or refused to contract for the supply of municipal services to the applicants' properties.

The municipalities required these new owners, the applicants in the matter, to pay historical municipal debts.

Berry Everitt, CEO of Chas Everitt International property group, said the ruling meant new homeowners would no longer have to worry about being held liable for the historical debt, or about having their municipal services cut off or even having their property attached and sold in execution as a result of the debt.

Aidan Kenny, director Werksmans Attorneys, said the judgment was a victory for property owners and financial institutions alike.

Kenny said municipalities would immediately have to cease their practice of imposing and trying to collect from new owners historical debt, which they had not collected from the previous owners.

<https://www.businesslive.co.za/bd/national/2017-08-29-when-you-buy-a-property-you-do-not-buy-its-municipal-debt-constitutional-court-rules/>