

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2023-044543

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO


SIGNATURE

DATE 25 August 2025

In the matter between:

ANTHEA VERITY TARICA

First Applicant

KATHERINE ANNE GASCOIGNE N.O.

Second Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 25 August 2025.

MAHON AJ:

INTRODUCTION

- [1] This is an application by the respondent in the main proceedings, the City of Johannesburg Metropolitan Municipality, for leave to appeal against the judgments I handed down on 6 December 2024 and the revised judgment delivered on 27 January 2025. The revision of the judgment was effected as a result of a patent error in the order forming part of the initial judgment, under the circumstances described more fully below. The subsequent revision was effected under Rule 42(1)(b), to correct a patent error in the order.
- [2] I shall refer to the applicant in the application for leave to appeal as “the City” and to the respondents in the application for leave to appeal as “Ms Tarica”.
- [3] The City seeks leave to appeal to the Full Bench of this Division, alternatively to the Supreme Court of Appeal.
- [4] The underlying proceedings concerned Ms Tarica’s challenge to the accuracy and administration of a municipal services account relating to the first applicant’s residential property, together with the City’s counterapplication seeking to compel her to regularise the account in her own name and to accept liability for the arrears. After hearing the matter on 22 August 2024 and considering further written submissions, I delivered judgment on 6 December 2024. That judgment granted Ms Tarica relief substantially as sought, dismissed

the counterapplication with costs, and declared that all unpaid debts in respect of the property which became due on or before “4 May 2018” had prescribed.

- [5] Shortly after the judgment was handed down, on 9 December 2024 Ms Tarica’s attorneys addressed correspondence to the Registrar. In that letter, they drew attention to an apparent inconsistency between the reasoning in the judgment and the terms of the order. Specifically, they pointed out that in paragraphs 91 and 92 of the judgment, reference was made to the three-year prescription period running from the date of the notice of motion, which had been issued in May 2023. On that approach, debts that became due before May 2020 (and not May 2018 as stated in the order) would have been extinguished by prescription. They therefore suggested that the reference in the order to May 2018 was a typographical error and requested that the order be corrected to reflect the date consistent with the reasoning in the judgment.
- [6] The City’s attorneys were copied on the aforesaid correspondence and, despite the lapse of more than a month, had provided no submissions in response to Ms Tarica’s identification of what obviously constituted a patent error in the order granted.
- [7] Having considered the contents of that correspondence, and being satisfied that the date appearing in the order was indeed inconsistent with the reasoning set out in the body of the judgment and with the terms of the notice of motion, I regarded the error as one susceptible of correction. Accordingly, on 27 January 2025, I issued a revised judgment in which the order was amended to substitute the date “4 May 2020” for “4 May 2018.”

- [8] It is against both the original and the revised judgments that the City now seeks leave to appeal, contending that I erred both in my substantive findings and in revisiting the order after it had been handed down.

SUMMARY OF GROUNDS OF APPEAL

- [9] The City advances a series of grounds upon which it contends that there are reasonable prospects of success on appeal:-

[9.1] It argues that by issuing the revised judgment of 27 January 2025, this Court impermissibly revisited its own final judgment. The City maintains that I was functus officio, and that the correction was made mero motu, without a substantive application and without affording it an opportunity to be heard. It further contends that in varying the order without prior notice, the Court acted unfairly, contrary to constitutional authority which emphasises the need for affected parties to be heard before a judgment is varied.

[9.2] The City also maintains that the order directing it to rectify the municipal account lacks the clarity and precision required of a court order. It submits that the order improperly places the onus on the municipality to identify and remove prescribed charges, contrary to the principle that the party alleging prescription bears the onus of proving it. In addition, the City argues that the Court erred in failing to hold the first applicant jointly and severally liable for historical municipal debts associated with the property, notwithstanding that the account was in her late husband's name.

[9.3] The final ground of appeal concerns the finding that Ms Tarica had properly raised a valid dispute under section 102 of the Local Government: Municipal Systems Act, Act 32 of 2000, which barred the City from allocating payments to disputed amounts. The City submits that the dispute was not properly constituted and that this Court erred in treating it as valid. It also contends that the dispute involved administrative decisions of the municipality which were reviewable rather than justiciable in motion proceedings, and that this Court lacked jurisdiction to declare debts prescribed without directing Ms Tarica to exhaust internal remedies first.

SUBMISSIONS AND DEBATE DURING THE HEARING

[10] At the hearing of the application for leave to appeal, the City's counsel, Mr Sithole, submitted that the principal error lay in my revision of the order. He argued that Ms Tarica had sought relief pegged to the date of judgment, whereas I had substituted a different reference point, namely three years prior to the notice of motion. On his submission, this was a case where the Court had stepped into the shoes of Ms Tarica, recast her case, and thereby acted outside of its powers. He emphasised that prescription is a matter that must be raised and proved by the party who relies on it, and that it was not competent for the Court to "choose a different cause of action" for Ms Tarica.

[11] In the course of debate, I put to him that if Ms Tarica had contended that all debts over a five-year period had prescribed, and it was shown that only three years had in fact prescribed, there was no difficulty in granting relief for the three

years proved. Mr Sithole accepted that this was the essence of Ms Tarica's case but maintained that the date ultimately chosen in the order—initially 4 May 2018 and then revised to 4 May 2020—was not derived from the pleadings, and that this reflected an impermissible judicial amendment of the case. He also argued that the revised judgment created an unexplained “gap” between May 2020 and May 2021 which, he contended, left the order uncertain and incoherent.

[12] A further submission advanced on behalf of the City was that the order was incapable of implementation because it did not identify with sufficient precision which amounts had prescribed. Mr Sithole argued that the municipality issues consolidated monthly accounts, and that without Ms Tarica specifying in rands and cents which charges had prescribed, the City was left to “guess” what was to be written off. I engaged with counsel on this point, observing that on a plain reading of the order, all charges reflected as due prior to the reference date would be removed, which was capable of determination from the City's own invoices. Mr Sithole nevertheless maintained that the order left uncertainty and was thus unenforceable. The Court does not require the respondents to state rands-and-cents line items in the order; that is an implementation task for the City.

[13] On the issue of section 102 of the Municipal Systems Act, Mr Sithole contended that Ms Tarica had not properly raised a dispute, and that in any event, the raising of a dispute precluded the municipality from instituting proceedings to recover the debt, with the effect that prescription could not run while the dispute remained unresolved. I queried with him whether section 102 did more than

suspend the City's entitlement to implement credit control measures such as disconnections, and whether it in fact prevented the City from issuing summons. Counsel insisted that it did, and that this consequence meant that prescription could not run during the pendency of a dispute. I expressed difficulty with that submission, noting that the Prescription Act 68 of 1969 governs when prescription commences and runs, and that nothing in the Systems Act expressly suspends or interrupts prescription.

[14] Mr Paige-Green, who appeared for Ms Tarica, advanced a somewhat different emphasis. He conceded that the reference to 4 May 2018 in the original order was plainly a patent error, not supported by the reasoning in the judgment. He confirmed that Ms Tarica's attorneys had written to draw attention to the error and that the letter had been copied to the City. He confirmed that the City did not dispute having received the letter. He conceded, however, that even the corrected date of 4 May 2020 might not align perfectly with the date of the notice of motion, which was 12 May 2023. In his submission, this discrepancy was negligible, and indeed operated in the City's favour, giving it a margin of eight days. He nevertheless accepted that the correction was competently made under Rule 42 as the correction of a patent error.

[15] In relation to the allegation of vagueness, Mr Paige-Green submitted that the order must be read in its entirety. He argued that paragraph 3 of the order, declaring all debts older than three years to have prescribed, provided the necessary context, and that paragraph 4, directing rectification of the account, simply gave effect to that finding. On this approach, he submitted, the order was clear and enforceable. He also dealt with the onus point, submitting that Ms

Tarica had discharged her onus by identifying the relevant period, and that the City, being the custodian of its own records, was best placed to implement the order.

- [16] On the issue of joint liability, it was accepted in argument that I had not made a finding, and had expressly stated that it was unnecessary to do so given the conclusion on prescription. Counsel for the City nevertheless maintained that this left the matter inadequately determined. I observed that the finding on prescription rendered the issue of joint liability moot, whether the debtor was the first applicant, her late husband, or both.
- [17] Finally, considerable debate took place concerning the effect of a section 102 dispute on the running of prescription. I put to counsel that the Prescription Act governs when debts prescribe, and that the Systems Act, properly construed, does not carve out exceptions to prescription but only regulates the exercise of debt-collection measures. Mr Paige-Green submitted that even if the lodging of a dispute were to preclude the City from certain enforcement steps, it did not interrupt prescription. He argued that the City could not postpone prescription indefinitely by failing to resolve disputes, and that the responsibility lay with the City to manage its processes so as to issue summons in time, before any debts prescribed. Mr Sithole pressed the contrary view, relying on authorities which he said suggested that the lodging of a dispute “ring-fences” the debt and precludes any claim until resolution.
- [18] In reply, Ms Tarica’s counsel submitted that the grounds relied upon were without merit, that the correspondence correcting the date was properly copied

to the City which chose not to respond, and that the issues of vagueness, onus, and section 102 had been settled by prior authority. He argued that the application raised no novel point and that another court would not reasonably come to a different conclusion.

ANALYSIS OF GROUNDS OF APPEAL

The functus officio point

[19] The City's primary contention is that by revisiting my original order of 6 December 2024, I acted when I was already functus officio. It submits that I impermissibly varied the order of my own accord, without a formal application, and without affording the City an opportunity to be heard.

[20] This characterisation does not withstand scrutiny. Shortly after judgment was handed down, Ms Tarica's attorneys wrote to the Registrar on 9 December 2024, drawing attention to an inconsistency between the reasoning in the body of the judgment and the terms of the order. Specifically, they noted that the order referred to "4 May 2018" as the cut-off date for prescription, whereas the judgment itself (at paragraphs 91 and 92) made plain that the correct reference point was three years prior to the notice of motion, namely May 2020.

[21] That letter was copied to the City, which was thus aware of the point and in a position to make submissions had it wished to do so. It elected not to respond. In those circumstances, the correction did not amount to a reopening of the merits, but rather a clarification of a patent error so that the order accurately reflected the reasoning and relief already granted. Rule 42 of the Uniform Rules of Court expressly empowers a court to correct such errors.

- [22] On the merits, the judgment made clear that using “date of judgment” could notionally capture amounts the City had not yet had a fair opportunity to address. The reasoning therefore adopted the date of service of the notice of motion as the appropriate reference point. That is what paragraph 92 says, and it is what the parties debated at the hearing. Nothing advanced in the leave application dislodges that rationale.
- [23] The first revision corrected the month and year (from May 2018 to May 2020) but retained the “4th” day of the month.
- [24] That happened because Ms Tarica’s letter identified the patent error only at the level of the month and year; it did not address the day within the month. My initial Rule 42 correction accordingly confined itself to what was put up.
- [25] However, the ratio of the judgment makes plain that the day “4” was equally out of step with the judgment’s reasoning. It was common cause that the notice of motion was served on 12 May 2023. What is not in dispute is that “4 May 2020” does not reflect the ratio.
- [26] Because the persistence of “4” arose from the same initial slip, it too is a patent error attributable to the court and correctable *mero motu* under Rule 42(1)(b). The correction does not alter the reasoning; it gives effect to it. At the hearing, even the City’s counsel acknowledged that, on my stated approach, the correct alignment would be with the date of service of the notice of motion in May 2023.
- [27] It follows that the order should be amended again, this time to align the day with the notice-of-motion reference point fixed by the judgment. For clarity, and consistently with the hearing debate, the operative cut-off date is to be

calculated with reference to 12 May 2023, yielding an “on or before May 2020” date that matches that reference point. This is a textual alignment to the ratio, not a new conclusion on prescription.

Procedural fairness in the correction

- [28] The City further contends that the process was unfair, emphasising that parties should have notice before an order is varied. That submission ignores the fact that the City did have notice: it was copied on the very correspondence that identified the error and proposed the correction. Nothing prevented it from placing submissions before the Court, but it chose silence. The correction in these circumstances was therefore neither unilateral nor procedurally unfair.
- [29] Moreover, the City’s contention overlooks Rule 42(1)(b), which permits a court, *mero motu*, to “rescind or vary an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission.” That is the narrow power I exercised. The reasoning in the body of the judgment fixed the prescription reference point at the date of the notice of motion; the stray reference in the order to “May 2018” was plainly inconsistent with that reasoning and thus a patent error susceptible to correction.
- [30] The City relies on a Constitutional Court decision (referenced as R[...] v R[...] [2023] ZACC 5) to suggest that unilateral variation is impermissible.
- [31] That submission misses the point. The authority concerned the impermissibility of altering a final order to change its substance absent a recognised basis.

[32] Here, the revision did not change the substance or reasoning; it aligned the text of the order with the judgment's expressly stated reference point for prescription—the date of service of the notice of motion. That is precisely the type of “patent error or omission” Rule 42 allows a court to correct, and only “to the extent” of the error.

Clarity and enforceability of the order

[33] Another ground is that the order directing the City to rectify the municipal account lacks clarity and is unenforceable. I do not accept this. The order required the City to remove from the account all charges that had prescribed as at 4 May 2020. Leaving aside the patent error in regard to the day of the month, that is a readily identifiable category of charges: any amounts that became due before that date. The City's own records enable it to identify which amounts fall within that category. The fact that some calculation is required does not render the order vague or incapable of implementation.

Onus in relation to prescription

[34] The City submits that the order improperly shifted the onus of proof in relation to prescription. That argument misconceives the judgment. Ms Tarica had already discharged her burden by showing, with reference to the billing history and the date of the notice of motion, that debts older than three years had prescribed. Once that conclusion was reached, the order necessarily required the City to implement the result in its accounts. That was not a reversal of the onus; it was a practical direction flowing from the finding on prescription.

- [35] The reference to ‘amounts charged’ directs attention to invoiced line items dated before the cut-off. Thus, minor cycle-day issues do not affect months prior to the cut-off and are resolved administratively.

Liability of the property owner

- [36] The City argues that I erred in not holding the first applicant jointly and severally liable for historical debts associated with the property, even though the account was in her late husband’s name. This ground ignores the decisive finding that such historical debts had prescribed and were therefore unenforceable. Once that conclusion was reached, the question of joint liability for those amounts was moot. The first applicant was held liable for charges arising after her husband’s death, and she was directed to regularise an account in her own name, but the extinguished debts could not be revived through reliance on joint liability principles.

Existence of a valid dispute under section 102 of the Systems Act

- [37] The City challenges the finding that Ms Tarica had declared a valid dispute under section 102 of the Municipal Systems Act. It contends that no valid dispute was raised, and that this Court erred in treating the correspondence and complaints as such.
- [38] That contention is not supported by the facts. Ms Tarica had raised formal disputes as early as 2014, reiterated them repeatedly, and pursued the internal mechanisms under the City’s own credit control policy, including a letter of demand and a letter of appeal. Those steps plainly constituted a properly raised and specific dispute. The law is clear that once a bona fide dispute exists, the municipality is precluded from allocating payments to the disputed charges.

Jurisdiction and internal remedies

[39] The City also seeks to recast the matter as one of administrative law, arguing that Ms Tarica's complaints ought to have been pursued through review proceedings or internal remedies such as the Ombudsman, and that this Court lacked jurisdiction to make the orders it did.

[40] That argument was considered and rejected. The relief sought and granted was the enforcement of statutory rights under the Prescription Act and the Systems Act, not the review of an administrative decision. Courts are plainly competent to declare debts prescribed and to compel municipalities to render accurate accounts.

SCOPE OF THE CORRECTION: MONTH VERSUS DAY OF THE MONTH

[41] The first revision corrected the month and year in the prescription cut-off, aligning the order with the judgment's reasoning by substituting May 2020 for May 2018. It did not alter the day of the month, which remained as in the original slip. That outcome reflects the fact that Ms Tarica's correspondence drew attention to the error at the level of month and year only; the ensuing revision therefore addressed precisely what was raised.

[42] Although the revised judgment substituted "May 2020" for "May 2018", it left intact the "4th" day of the month. That residual day was not the product of reasoning but part of the same patent slip: the applicants' letter identified only the month/year error, and my first correction was confined accordingly. It is now apparent that the day likewise fails to reflect the ratio, which fixes the cut-off by reference to three years prior to the date of service of the notice of motion. In

terms of Rule 42(1)(b), the order therefore stands to be further corrected, *mero motu* and only to that extent, by aligning the day to that reference point; this textual alignment occasions no prejudice, does not revisit the merits, and the order below gives effect to it and makes no other change.

- [43] For avoidance of doubt, the order will be amended to align the day with the actual date of service of the notice of motion (which is common cause), so that the cut-off reads “on or before [the date three years prior to the date of service of the notice of motion] in May 2020”. This textual alignment gives effect to the judgment’s stated approach; it does not supply new reasoning, and it does not afford any ground for leave to appeal.

SUBSEQUENT AUTHORITIES PROVIDED BY THE CITY

- [44] During the hearing, Mr Sithole indicated that he intended to upload additional authorities onto Caselines, which, so it was submitted, would demonstrate the merits of the City’s case for leave to appeal.

- [45] On 29 May 2025, the City uploaded the following further authorities:

- [45.1] **Body Corporate Croftdene Mall v eThekweni Municipality** (603/2010) [2011] ZASCA 188 (10 October 2011);
- [45.2] **City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and Others** 2024 JDR 1616 (SCA) (18 April 2024, case no 1346/2022);
- [45.3] **MEC for Education, Gauteng Province, and Others v Governing Body, Rivonia Primary School and Others** 2013 (6) SA 582 (CC);

- [45.4] **39 Van Der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Another** 2023 JDR 3278 (GJ);
- [45.5] **Mwelase Korffie (Pty) Ltd v Free State Development Corporation** (FB, case no 5020/2022, 11 April 2025);
- [45.6] **Barstow v City of Johannesburg** (GJ, case no 534/2020, 7 July 2023); and
- [45.7] **Euphorbia (Pty) Ltd t/a Gallagher Estates v City of Johannesburg** (Gauteng Local Division, Johannesburg, case no A5052/2015, 17 June 2016).
- [46] These judgments do not alter the analysis or the result. **Croftdene, Vresthena** and **39 Van Der Merwe** concern credit-control measures (disconnection and reconnection) and say nothing about the running of prescription or the power in Rule 42(1)(b) to correct a patent error. **Rivonia Primary** is an administrative-law decision on fairness in a different statutory setting. **Barstow** and **Euphorbia** address billing accuracy and onus, and are consistent with an order requiring the City to correct an account by reference to objective data in its own records. **Mwelase Korffie** restates orthodox prescription principles in a contractual context and is entirely consonant with fixing the cut-off by reference to the date of institution.
- [47] None of these authorities bears on the two points that dispose of this application: the three-year cut-off measured from the notice-of-motion date, and this Court's narrow competence to correct a patent error *mero motu* so as to align the order with its reasons.

[48] Having considered these judgments, I am of the view that they do not take the matter any further.

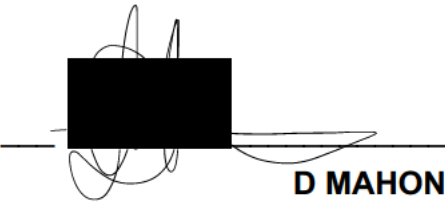
CONCLUSION

[49] Having considered the City's written grounds together with the oral submissions and the record, I am not persuaded that any of the issues raised meet the threshold in section 17(1)(a) of the Superior Courts Act. The challenged variation corrected a patent slip and did not revisit the merits; the City had notice of the proposed correction and elected not to engage; the order is clear and capable of implementation; the judgment did not reverse the onus; the question of historical joint liability was rendered moot by prescription; section 102 of the Municipal Systems Act does not suspend or interrupt prescription; and the relief granted lay squarely within this Court's jurisdiction. The assertion of "novelty" does not, without more, constitute a compelling reason to grant leave. There are no reasonable prospects that another court would reach a different conclusion.

[50] One residual matter concerns the day of the month reflected in the revised order. It is apparent that the retention of the "day" was part of the same original patent error that the revision corrected at the level of month and year. Consistently with Rule 42(1)(b), the Court may correct such an error mero motu and, as this further adjustment merely aligns the text of the order with the ratio (prescription calculated from the date of the notice of motion), it occasions no prejudice and does not alter the reasoning. Costs should follow the result.

[51] For these reasons, the following order is made:

1. The City's application for leave to appeal against the judgments dated 6 December 2024 and 27 January 2025 is dismissed with costs, on scale B.
2. In terms of Rule 42(1)(b), paragraph 3 of the order contained in the revised judgment dated 27 January 2025 is corrected *mero motu* by substituting "12 May 2020" for "4 May 2020", so as to align the prescription cut-off with the date three years prior to the date of service of the notice of motion. Save as aforesaid, the balance of the orders remains unchanged.



D MAHON
Acting Judge of the High Court
Johannesburg

Date of hearing: 23 May 2025
Further authorities received: 29 May 2025
Date of judgment: 25 August 2025

APPEARANCES:

For the City: Adv E Sithole
Instructed by: Madhlopa & Thenga Inc.

For Ms Tarica: Adv T Paige-Green
Instructed by: HBG Schindlers Attorneys