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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2023/049538

(1) REPORTABLE: ~~YES~~/ NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE 20 October 2025

SIGNATURE

In the matter between:

BIR INVESTMENTS (PTY) LIMITED

Applicant

And

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Respondent

JUDGMENT

INTRODUCTION

1. The applicant is the owner of Erf 3[...], B[...] View, Extension 6, situated at 1[...] D[...] Road, B[...] View, Extension 6. This property has a glass manufacturing business operating thereon.

2. The applicant also previously owned Erf 3[...], B[...] View, Extension 6, situated at 1[...] D[...] Road, B[...] View, Extension 6.
3. The respondent supplied electricity to both these properties through three electrical meters with meter numbers ending 566, 582 and 877. These old meters remained on the applicant's 1[...] D[...] Road property until 8 April 2016, but were disconnected earlier than that, on the 23rd of March 2011.
4. The applicant's municipal account in respect of its 1[...] D[...] Road property was closed in August 2012 and the charges that reflected thereon were then transferred to the applicant's municipal account in respect of its 1[...] D[...] Road property.
5. A dispute subsequently arose between the applicant and the respondent on whether the respondent had billed the applicant correctly in two respects, namely, whether the respondent had utilised an incorrect opening balance and secondly, whether the respondent had employed an incorrect tariff. This dispute arose as early as 15 August 2014 and has persisted despite the respondent "*re-billing*" the applicant's account on several occasions that span a period of several years, from 2014 to date.
6. The "*re-billing*" by the respondent gave rise to further disputes relating to the incorrect calibration of meters and/or the failure to connect meters but to nevertheless charge the applicant for consumption of electricity.
7. These disputes have not been resolved despite the invocation of Section 102(2) of the Local Government: Municipal Systems Act, No. 23 of 2000 ("*the Systems Act*").

8. The applicant accordingly sought recourse from the High Court and launched an application in May of 2023 for the following relief:

“1. The respondent is ordered to comply with its statutory obligations and to attend to the following with regard to the various account numbers of the applicant detailed below within 14 days of this Court Order being handed down:

1.1 Account number 5[...]:

1.1.1 The City attends to writing off all electricity consumption charges billed to this account which are older than 3 years as at the date of the handing down of this Order, as same have become prescribed.

1.1.2 Reversing any/all interest and legal fees (or miscellaneous fees where these were charged for legal work done or notices sent out) from the applicant’s account in respect of charges that stand to be reversed from same account;

1.1.3 Furnishing the applicant with an adjusted statement of account showing that the above adjustments have been attended to, with suitable notations appearing on the face of the account such that it is impossible for the applicant to check the accuracy of the reconciliation conducted therein; and

1.2 The City and its subsidiaries do not terminate/restrict or threaten to terminate/restrict the supply of electricity or water to the premises in respect of disputed purported arrears on the municipal account until this dispute has been resolved by the account having been adjusted as aforesaid.”

9. The respondent’s opposition to the application is somewhat curious. It does not offer any substantive defence to the applicant’s complaints relating to incorrect opening balances, incorrect tariffs and the other billing issues raised by the applicant. It in fact admits that there is incorrect billing by it.¹ Instead, the respondent has attacked the formulation of the relief that is sought by the applicant and has argued that such relief should not be granted:

- 9.1. firstly, because it is incompetent;
- 9.2. secondly, because a dispute that has been ringfenced under Section 102 of the Systems Act, results in prescription not commencing to run as the respondent is precluded thereunder from claiming the ringfenced disputed amount;
- 9.3. thirdly, the applicant had failed to make out a case in its founding affidavit insofar as the date on which prescription commenced to run and the amount that is set to have prescribed; and
- 9.4. fourthly the applicant ought to have sought an order reviewing the respondent’s failure to have taken a decision to resolve the disputes because such a failure constitutes administrative action or lack thereof.

10. In Euphorivia (Pty) Limited t/a Galagher Estates v City of

¹ See the respondent’s answering affidavit: pp11-42, para 83.

Johannesburg,² the court stated the following:

“17. In the absence of special circumstances, considerations of policy, practice and fairness require that the City is saddled with the onus of proving the correctness of its meters, the measurements of water consumption and statements of account rendered pursuant thereto. It cannot reasonably be expected from the consumer, having raised a bona fide dispute concerning the services delivered by the City, to pierce the municipal veil in order to prove aspects that fall peculiarly within the knowledge of and are controlled by the City ... It accordingly raised a bona fide dispute as to the City’s billing in regard to the services, and the City bore the onus to prove the correctness thereof.”

11. As this judgment has pointed out earlier, the respondent has failed to do so. Instead, the respondent submitted that it did not know and was therefore unclear as to what the disputes were.

12. In 39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Two Others³ the court lay down the requirements of what a dispute would entail and said the following in this regard:

“1. There must be a dispute in the sense of a consumer on the one hand and the municipality on the other advancing irreconcilable contentions.

2. The dispute must be properly raised which would require at least that it be properly communicated to the appropriate authorities at the municipality and that this be done in accordance with any mechanism and appeal

² [2016] ZAGPPHC 548 (17 June 2016) at paras 10-17.

³ [A judgment of Acting Judge Dodson AJ handed down on 24 March 2023].

procedure provided in terms of Section 95(f) of the Systems Act for the querying of accounts.

The dispute must relate to a specific amount or amounts or a specific term or items on an account or accounts with the colleary that it is insufficient to raise a dispute in general terms.

The consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis of the rate payer's objection to them.

Finally, it must be apparent from the founding affidavit that the foregoing requirements have been met.”

13. Having regard to these requirements, there can be no doubt that a dispute exists and that it was communicated to the respondent and that the respondent knew and appreciated what that dispute was. The applicant had put up enough facts to enable the respondent to identify the disputes and the basis upon which the applicant objected to the billing made by the respondent.⁴
14. It is against this background that I now turn to deal with the applicant's claim that certain amounts had prescribed and that an order to that effect be made.

PRESCRIPTION

15. The electricity charges that are disputed by the applicant are not taxes. They are ordinary debts that extinctively prescribe after 3 years in terms of the Prescription Act, No. 68 of 1969.

⁴ See also: Body Corporate Croftdene Mall v Ethekewini Municipality [2012] 1 ALL SA 1 (SCA).

16. It is common cause that the respondent has not instituted any action to recover any of the amounts disputed by the applicant. It nevertheless contended that none of the disputed amounts had prescribed *inter alia* because:
- 16.1. it was prohibited by the Systems Act to institute action for the recovery of those disputed amounts until a resolution of those disputes had occurred. Consequently, so the argument went, for so long as the dispute remained in extent, the issue of prescription did not arise.
17. This argument was dealt with in Tarica and Another v City of Johannesburg.⁵
18. In that matter, Mahon AJ concluded that the respondent's argument that it was precluded by its internal policies to issue summons on disputed debts was without merit. The learned acting judge held that the Prescription Act applied independently of internal policies or administrative practices of municipalities. Those policies and practices did not, so it was held, have the effect of overriding the Prescription Act.
19. In his judgment for leave to appeal⁶, Mahon AJ was called upon to address a further defence raised by the respondent, namely that in terms of the Systems Act, the respondent was precluded from issuing summons and thus prescription could not have begun to run for so long as the disputes raised by the applicant in that matter had remained unresolved. The learned acting judge concluded that the Systems Act did not have the effect of interrupting prescription.

⁵ Unreported judgement of Mahon AJ handed down on 27 January 2025 [2024] ZAGPGHC 1261 (6 December 2024) and rejected.

⁶ Unreported judgment of Mahon AJ handed down on 25 August 2025.

20. Section 102 of the Systems Act provides that a municipality may undertake a number of steps in relation to its municipal accounts including the implementation of debt collection and credit control measures in relation to any arrears on any municipal account. Subsection (2) however prescribes that subsection (1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.
21. It is this subsection that the respondent argues has the effect of preventing prescription from commencing to run.
22. Section 102 is part of chapter 9 of the Systems Act. That chapter regulates the credit control and debt collection mechanisms that a municipality must implement. Thus for example, section 95 under that chapter imposes an obligation on a municipality to amongst others establish a management system and mechanisms to address the use of services by consumers. It includes the obligation to provide accurate and reliable metering systems and to ensure that consumers receive regular and accurate accounts that indicate the basis for calculating any amounts due.
23. Section 96 in turn imposes an obligation on a municipality to collect all money that is due and payable to it, subject to the remaining provisions of the Systems Act and any other applicable legislation. For that purpose, a municipality is required to adopt, maintain and implement a credit control and debt collection policy. Section 97 in turn regulates what the debt collection policy must provide for.
24. The respondent's debt collection policy which was approved by its Municipal Council on 31 August 2022, contemplates a series of credit control or debt collection mechanisms ranging from the conclusion of

acknowledgement of debts, telephone calls and messages, disconnection of services and ultimately legal action.

25. The municipality's recourse to legal action only arises in terms of its debt collection policy after all other attempts to collect the debt due to it has failed.
26. Insofar as disputes accounts are concerned, its policy provides for a mechanism by which such disputes are to be attended to and resolved but reserves for the consumer the right under section 34 of the Constitution to have such dispute resolved before a court. Significantly, even when a dispute has been raised by a consumer, the policy contemplates that the consumer's query be accompanied by payment at least of the total amount outstanding on the account in dispute. But perhaps more importantly, the policy provides that the respondent's City Manager may suspend any debt collection action pending the outcome of any query or investigation.⁷
27. Thus having regard to the above, the question is whether the provisions of section 102 of the Systems Act read with the respondent's policy have the effect of preventing prescription from running.
28. The policy does not appear to accord with the respondent's interpretation of section 102(2) of the Systems Act. That is because the policy appears to confer a discretion on the City manager to suspend any debt collection which would include the issuance of summons to collect a debt pending the outcome of any query or dispute raised by a consumer. It does not suggest to the contrary, that all debt collection action is as a matter of fact suspended or prohibited in terms of section 102(2) of the Systems Act as now

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See paragraph 16.10 of the Credit Control and Debt Collection Policy.

submitted by the respondent.

29. Neither section 102(2) of the Systems Act nor the respondent's policy prohibit legal action to be taken when a dispute has been raised and not resolved. The section is cast as being inapplicable where there is a dispute rather than stating that no action may be taken by a municipality when there is a dispute. This is not surprising given that the applicability of subsection (1) is limited to a dispute concerning a specific amount claimed by the municipality from the person referred to in that subsection.
30. The section cannot be interpreted as prohibiting the municipality from ever instituting legal action to recover arrear amounts that may have been disputed and which remain unresolved despite the process contemplated by its own policy. That policy it should be recalled, requires such disputes to be attended to within 90 days of the query being lodged. The suggestion thus that the respondent is prevented from instituting action indefinitely for so long as the dispute remains unresolved is commercially insensible and results in an absurd outcome that a municipality is barred from ever claiming amounts which it contends are due to it as a result of a query that a consumer claims has not been resolved.
31. This interpretation is moreover consistent with what Yacoob AJ found in Argent Industrial Investment (Pty) Limited v Ekurhuleni Metropolitan Municipality⁸ to the effect that the respondent may not ignore its constitutional duties (which would include debt collection and thus legal action) indefinitely by sitting back and failing to take the necessary steps to collect that which it claims is due to it.
32. In addition, the respondent conflates when its debt became due with

⁸ An unreported judgment handed down on 13 February 2017 under case number 17808/2016.

when the completion of prescription is delayed in certain circumstances. The debt is due when the relevant services were consumed by the applicant or at least when it received a tax invoice or account claiming the amount due and the date on which such amount had to be paid. At best for the respondent, what section 102(2) of the Systems Act does is to delay the completion of prescription whilst the debt is the subject of a dispute raised by the applicant. But section 13 of the Prescription Act does not contemplate the delaying of prescription as a result of the existence of a dispute contemplated by section 102(2) of the Systems Act.

33. It follows that the Systems Act does not have the effect of either preventing prescription from running or delaying the completion of prescription.
34. The respondent, recognising that this may be the result, then submitted that prescription had in fact been interrupted because the applicant continued to make payment of its monthly accounts thereby admitting liability and thus interrupting prescription as contemplated by section 14 of the Prescription Act. This argument was likewise raised in Tarica and rejected. The payment by the applicant of its monthly accounts does not constitute an admission of liability in respect of amounts that have been disputed by it and which have been ringfenced pursuant to Section 102(2) of the Systems Act. Nor does that accord with what the respondent's policy contemplates in relation to disputed accounts. It falls to reason that this defence too must be rejected.
35. In light of my conclusion that the respondent's submissions that prescription could not have commenced because it had been precluded from instituting action or that the applicant had admitted liability by making monthly payments, are rejected, there can be no

other impediment to the declaratory order sought by the applicant. In this regard, Mahon AJ expressed reservations that by providing for the date to be the date of the order, the respondent may be deprived of raising any further defences to any amounts being claimed between the date of the notice of motion and the date of the order.

36. The applicant has demonstrated that erroneous amounts have been charged by the respondent. The respondent in part, accepts that. The respondent however says that it cannot determine the exact amount which the applicant claims has prescribed. That is a rather curious submission given that the respondent would know what amounts it charged the applicant and what has been disputed in terms of the applicant's founding and replying affidavits.
37. The declaratory order sought by the applicant is that amounts older than 3 years as at the date of this judgment have prescribed. The dates on which the services were rendered and the tax invoices generated by the respondent are known and have been identified by the applicant in its founding affidavit. The earliest query arose in April 2014 relating to the incorrect billing of electricity and tariffs since March 2011. Despite numerous re-bills, the queries remained unresolved. A new meter was installed in April 2021 and according to the applicant, thereafter correctly reflected the electricity consumption by the applicant. The amount that the applicant contends had prescribed at the time of the preparation of the application, was an amount of R8,726,121.00. The respondent did not attempt to dispute this amount or indicate in what respects it may have been incorrect. It is common cause that the respondent has not instituted legal action to recover that amount. It would therefore follow that at the very least, such amount has prescribed and that a declaratory order to that effect should be made. The applicant however contends for a broader declaratory order in order to

overcome the practical difficulty of having to amend its notice of motion every month to keep it up to date with the changing amount that would prescribe each month. The respondent on the other hand contends that the relief sought by the applicant does not identify a specific amount and consequently it would be inappropriate to grant such broad relief.

38. During the course of argument, Mr Sithole who appeared for the respondent, requested a further opportunity to provide further written submissions on whether this court may pare down the relief sought by the applicant. Mr Sithole submitted in this regard, that acting judges (as opposed to permanent judges) had the tendency to enter into the fray and adopt a more sympathetic approach towards consumers thereby presumably misdirecting themselves. I granted Mr Sithole the opportunity to furnish concise submissions after the hearing and consequently also allowed the applicant to respond thereto.
39. Further submissions were received from both Mr Sithole and Mr Paige-Green. They were 12 pages each and certainly not concise. In some respects they contained repetitions of what had already been argued or raised in written submissions before the court. Mr Sithole's supplementary submissions in particular reiterated his oral submission but went further to insinuate that should this court come to the assistance of the applicant, it would result in an exceedance of jurisdiction. Mr Sithole accordingly suggested that this court refer the matter back to the respondent to deal with.
40. There is no justifiable basis for this matter to be referred back to the respondent. The respondent had ample opportunity to address the applicant's queries and dispute. It failed to do so. It would also undermine the respondent's own policy that permits an aggrieved

consumer such as the applicant to ventilate its dispute in a court pursuant to its section 34 Constitutional rights. In any event, little purpose would be served in referring the matter back to the respondent in circumstances where what is now being sought is a declaration that amounts charged by the respondent have prescribed.

41. Mr Sithole's supplementary submissions also referred to further case authorities and urged this court to engage with them in light of the relief sought by the applicant. They were a repetition of all the authorities that had been referred to and considered by Mahon AJ in Tarica *supra* and which the learned acting judge distinguished and found inapposite. This court has similarly engaged with those authorities and endorses the conclusions and the reasons advanced by Mahon AJ in that regard.
42. As pointed out earlier, the applicant is entitled at the very least to a declaratory order that the amount of R8,726,121.00 as at the date of its application, had prescribed. The question is whether or not it would be entitled to a declaratory order that amounts older than 3 years from the date of this order have prescribed. In light of the fact that there is no dispute in relation to those amounts, and that no legal action has been instituted by the respondent, there is no reason why such an order cannot be granted. Such an order would include at the very least, the amount of R8,726,121.00.
43. It would follow upon such a declaratory order that the respondent would have to reverse all interest, legal fees and other miscellaneous fees that were charged by it in respect of account number: 5[...] in respect of those charges that relate to amounts older than 3 years as at the date of this judgment.

44. Likewise, it would follow that the respondent would have to provide the applicant with an adjusted account reflecting the reversal of the amounts that had prescribed and the interest and/or other fees levied in respect thereof.
45. Finally, it would follow from the above findings, that the respondent may not terminate or threaten to terminate/restrict the supply of electricity or water to the applicant's property in respect of account number: 5[...] in relation to the amounts that have been declared to have prescribed.

ORDER

46. In the result, I make the following order:
- 46.1. the electricity consumption charges billed by the respondent on account number 5[...] that are older than 3 years as at the date of this order (inclusive of the amount of R8,726,121.00) have prescribed;
- 46.2. the respondent is ordered, within 14 days of this order, in respect of account number: 5[...] to:
- 46.2.1. write off the electricity consumption charges billed to such account that are older than 3 years as at the date of this order;
- 46.2.2. reverse any and all interest and legal fees or miscellaneous fees on such account in respect of the electricity consumption charges that had been billed and which were older than 3 years as at the date of the handing down of this order;
- 46.2.3. furnish the applicant with an adjusted statement of account reflecting the adjustments to be made in 46.1.1 and 46.1.2 above with suitable notations appearing on the face of the account in order to enable the applicant to check the

accuracy of the reconciliation and adjustment made by the respondent.

- 46.3. the respondent is interdicted from terminating, restricting and/or threatening to terminate or restrict the supply of electricity or water to the applicant's property being Erf 3[...], B[...] View, Extension 6, located at 1[...] D[...] Road, B[...] View, Extension 6 in respect of the amounts that have prescribed and which the respondent has been ordered to write off in terms of prayer 46.1 above.
- 46.4. the respondent is to pay the costs of this application on a party and party scale, scale C.⁹

M A CHOHAN

ACTING JUDGE OF THE GAUTENG LOCAL DIVISION

20 October 2025

DATE OF HEARING:

07 October 2025

DATE OF JUDGMENT:

20 October 2025

⁹ The applicant sought costs on the attorney and client scale principally because of the fact that the dispute had been ongoing since 2014 and despite various attempts made by it, the respondent was uncooperative. There is considerable merit and justification for the scale of costs being sought by the applicant. I have nevertheless, in the exercise of my discretion, considered that it would be fair and reasonable to order costs on the party and party scale but on scale C.

APPEARANCES:

FOR THE APPLICANT:

Adv. T. Paige-Green

Instructed by: HBGSchindlers Attorneys

FOR THE RESPONDENT:

Adv. E. Sithole

Instructed by: Ramushu Mashile Twala Inc.
Attorneys