

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

CASE NO: 2024-007135

- (1) REPORTABLE: YES / ~~NO~~
 - (2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
 - (3) REVISED.
- 3 November 2025**

In the matter between:

TRGK INVESTMENTS (PTY) LIMITED

Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 3 November 2025.

J U D G M E N T

LIEBENBERG AJ:

INTRODUCTION

- [1] This is yet another chapter in the tumultuous relationship between the applicant and the respondent. The applicant is the registered owner of immovable property within the area of jurisdiction of the respondent, the City of Johannesburg Metropolitan Municipality (“the CoJ”). The applicant holds an account with the CoJ in respect of rates, taxes and other imposts, as well as the costs of water and electricity consumption. Similar to so many other customers of the CoJ, the applicant has had endless challenges in receiving accurate and proper accounts from the CoJ.
- [2] The source of the applicant’s discontent is five different invoices raised by the CoJ during the period May to July 2017, when the latter purported to reverse all previous charges in respect of the applicant’s property and re-bill the applicant for the period December 2012 to July 2017 and demanding payment of R 4 136 356.65. This amount is in respect of property rates, charges for consumption of water and electricity, and interest. These particular invoices gave rise to a dispute being declared by the applicant during or about August 2017.
- [3] When, during July 2018, the water supply to the applicant’s property was disconnected, the applicant’s representative sent an email to the CoJ, confirming the existence of the unresolved dispute and the bases for the

dispute. The applicant received no reply to its email, nor was the dispute resolved.

[4] Despite the existing dispute, the CoJ disconnected electricity supply to the applicant's property during August 2019. As a result of this disconnection, the applicant launched a bifurcated application out of this Court. Part A thereof, being for urgent relief, was heard on 3 September 2019, and resulted in the reconnection of services.

[5] Part B of that application was postponed, and, after failed attempts to reach middle ground, was enrolled for hearing by the applicant. The matter eventually came before Wright J who granted an order on 11 May 2021 ("the Wright order"). The Wright order provided *inter alia*:

1. The Respondent is ordered to apply the business and commercial category in its valuation roll 2013 in levying property rates against [the applicant's property] for the period 1 July 2015 to 20 June 2018.
2. The Respondent is ordered to apply the business and commercial category in its valuation roll 2018 in levying property rates against [the applicant's property] for the period 1 July 2018 to implementation of replacement valuation roll pertaining to the property.
3. The Respondent is directed to deliver a duly vouched and accurate account ("the revised account") in respect of Municipal Services (municipal account number ...) to [the applicant's property] to the Applicant within 10 (Ten) days from date of this order.
4. The Applicant shall lodge any objections to the revised account in writing within 5 (Five) days from the date of delivery if [sic] the revised account;
5. The Respondent shall deliver its response to the Applicant's objections to the revised account within 5 (Five) days from the date of delivery of the Applicant's objections.

...

[6] By November 2021, the CoJ corrected its accounts in relation to the property rates and interest of those amounts previously levied incorrectly. In relation to municipal services, the CoJ did not deliver the revised account within 10 days or any time thereafter.

[7] Consequently, the applicant launched a contempt of court application, and obtained, on 7 June 2022 on an unopposed basis, an order granted by Twala J in the following terms:

1. The First Respondent [the CoJ] is in contempt of paragraph 3 the Court Order granted by the Honourable Judge Wright on 11 May 2021, under case number 30248/2018 in the above Honourable Court; in that it failed and/or refused to deliver a duly vouched and accurate account in respect of Municipal Services (municipal account number ...) to [the applicant's property] the Applicant within 10 (Ten) days from the date of the order granted on 11 May 2021;
2. The Respondents [the CoJ and the Municipal Manager] are directed to forthwith provide a duly vouched and accurate account in respect of Municipal Services (municipal account number ...), to [the applicant's property] by:
 - 2.1. Reversing all interest charges levied on municipal account number [...];
 - 2.2. Accurately re-billing the water and sanitation charges from 7 September 2012 to date and providing proof of same in relation to municipal account number [...]; and
 - 2.3. Accurately re-billing electricity charges from 1 December 2012 to date and providing proof of same in relation to municipal account number [...];
 - 2.4. Providing the applicant with source documents relating to the re-billing of the account.
3. If the Court order granted by the Honourable Justice Wright on 11 May 2021, under case number 30248/2019 is not fully complied with within

10 (ten) calendar days, the [City] will be fined the sum of R 25 000.00 (Twenty-Five Thousand Rand) per day until the Court Order has been complied with: ...

[underlining added]

("the Twala order")

[8] On 25 August 2022 Twala J varied paragraph 3 of his order by the deletion of the underlined portion reflected above.

[9] Attempts to reach agreement, including convening a meeting between the parties and their legal representatives came to naught, until 22 September 2023 when the CoJ's former attorneys provided part of the vouched account referred to in both the Wright and Twala orders.

[10] This application was launched on 25 January 2024 for an order in the following terms:

1. Declaring that all unpaid electrical charges, water charges and interest and/or penalties on such charges levied by the respondent in respect of the [the applicant's property] situated at [...] ("the property") on account number [...] ("the account") for the period prior to 30 April 2017, have become prescribed in terms of the Prescription Act, Act 68 of 1969 ("the Prescription Act");
2. Directing the respondent to reverse all unpaid electrical charges, water charges and interest and/or penalties on such charges levied by the respondent on the account in respect of the property for the period prior to 30 April 2017.

[11] The present application was marred by several delays caused by the CoJ's failure to adhere to the Rules of Court and the practice directives of this Division. It was some 18 months after this application was launched that it was heard on the opposed motion roll.

CONDONATION

[12] At the hearing, the first order of business was the CoJ's interlocutory application for condonation for the late filing of its answering affidavit, which the applicant opposed. Having heard argument, this Court dismissed the interlocutory application, intimating that reasons will follow, and the Court directed that the matter is to be argued on the founding affidavit only. These are the reasons for the order so granted.

[13] The CoJ's non-compliance with the Rules of Court must be gauged against the following uncontroverted facts:

- a. The present application was served on the CoJ's representatives by the sheriff of the court on 31 January 2024.
- b. Out of courtesy, the applicant's attorneys directed an email to Mr Louw of the CoJ's then-attorneys of record ("*M & R*") on 21 February 2024 confirming that M & R had been invited to CourtOnline and affording the CoJ time until 8 March 2024 to file its answering affidavit.
- c. In his email of 26 February 2024, Mr Louw advised that M & R it did not have instruction from the CoJ regarding this application and would advise the in-house legal advisors of the matter. M & R requested a copy of the application via email. The applicant's attorneys obliged the next day.
- d. When no word was received from the CoJ or M & R, the applicant caused the matter to be enrolled in the unopposed motion court roll of 13 June 2024.

- e. On 15 May 2024, Ms Kagiso of Ncube Inc telephoned the applicant's attorneys regarding the matter. On the same day, the CoJ's notice of intention to oppose the application was delivered, that is some four months after service of the application on the CoJ.
- f. On Thursday 6 June 2024, being a day after the answering affidavit was due for service, the CoJ's attorneys requested a copy of annexure "PS10" to the founding affidavit, notwithstanding the entire application with all the annexures thereto having been uploaded on CourtOnline, and it previously having been emailed to M & R. Nonetheless, the applicant's attorneys dispatched a copy of the annexure on Monday, 10 June 2024.
- g. In the face of the CoJ's opposition, the application was removed from the unopposed motion roll of 13 June 2024.
- h. Still, the CoJ's answering affidavit was not delivered.
- i. By notice served on 4 September 2024, the application was again enrolled on the unopposed motion roll for 16 September 2024.
- j. Just after 8:00 on the morning of 16 September 2024, the CoJ's attorney dispatched an unsigned version of the answering affidavit.
- k. It was only at 9:50 on the morning of 16 September 2024, and unbeknownst to the applicant's counsel and the Court, that the CoJ's answering affidavit together with an application for condonation, was served.
- l. There was no appearance for the CoJ at hearing on 16 September 2024, and the Court granted the order sought. By all accounts, the presiding

judge insisted on an affidavit from the CoJ's attorneys to explain the late filing of the answering affidavit and the non-appearance in his Court at 10:00 on 16 September 2024. Such an affidavit was filed on 17 September 2024.

m. Subsequently, and by agreement between the parties, the order of 16 September 2024 was recalled on 18 September 2024, and replaced with an order removing the application for the unopposed roll.

[14] Rule 27 of the Uniform Rules of Court deals with the extension of time periods, the removal of bar and condonation. Both subrules (1) and (3) require that 'good cause' be shown. The subrules afford a court a wide discretion which must be exercised in the interests of justice.¹ Condonation is not merely for the asking. A party seeking condonation must make out a case entitling it to a court's indulgence. This includes showing sufficient cause and providing a full and reasonable explanation for the non-compliance with the rules or a court's directions.²

[15] Litigants cannot disregard the court rules with impunity.³ When a litigant realises that it had not complied with the rules, it must make application for condonation without delay, otherwise it will have to explain, not only the reasons for the non-compliance, but also the reasons for the delay in seeking condonation.⁴

¹ *Grootboom v National Prosecuting Authority and another* 2014 (2) SA 68 (CC) at para 22 ("Grootboom").

² *Grootboom* above at para 23.

³ See *eThekweni Municipality v Ingonyama Trust* 2013 (5) BCLR 497 (CC) ([2013] ZACC 7); *Grootboom* above at para 37.

⁴ *Mulaudzi v Old Mutual Life Assurance Co (South Africa) Ltd and Others* 2017 (6) SA 90 (SCA) at [26]

[16] In exercising its discretion, a court must consider weighty factors including the degree of non-compliance, the explanation for such non-compliance, the importance of the matter, and defaulting party's prospects of success on the merits.⁵ It is not a mechanical process, but one involving the balancing of more often than not, competing factors.⁶ For non-compliance with court rules prejudices not only other litigants involved but also the administration of justice.⁷

[17] The CoJ served its answering affidavit incorporating its application for condonation some nine months after service of the application, and four months after delivery of its intention to defend. The explanation proffered for this delay is tenuous and lacklustre at best. Given the paucity of the allegations in support of the application for condonation, the full extent thereof is quoted below:

78. As indicated above, the Municipality is an organ of state and it is entrusted with the critical obligation towards the residents of its jurisdiction.

79. The Municipality and its representatives appreciate the need to comply with the rule of this honourable court.

80. Further to the above, the relief sought in the present application is of great importance and that the Municipality contents [sic] that it is would not serve the interest of justice if the applicant's application was to proceed with on an unopposed basis.

81. As indicated above, upon receipt of the applicant's application, which on its own is voluminous and deals with the historical meters and issues

⁵ See *Ferris and another v FirstRand Bank Ltd* 2014 (3) SA 39 (CC) para 10; *Federated Employers Fire & General Insurance Company Limited & another v McKenzie* 1969 (3) SA 360 (A) at 362F-G; *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and others* [2013] 2 All SA 251 (SCA) para 11.

⁶ See *Valor IT v Premier, North West Province and Others* 2021 (1) SA 42 (SCA) at para 38.

⁷ *Grootboom* above at paras 32 – 34.

which goes as far back as 2012 and to this extent the Municipality's representatives deemed it appreciate [sic] in order to avoid litigation to inter alia:

- 81.1 consult with the Municipality representatives from different relevant departments which include the billing and the CoJ power officials;
- 81.2 invite and meet with the applicant and its representatives in order to explain the factual basis of the account which happened between the parties.
- 82. The parties and their representative met and discussed the issue of the meters and it was appreciated by the applicant and its representatives that there is incorrect billing on any of the invoices submitted.
- 83. The point of law to be debated in this application is very critical in that the applicant does not seek any remedial prayer against the alleged incorrect billing, in fact, the applicant accepts that it is liable to the Municipality but claims that the outstanding amount has prescribed.
- 84. I am advised that it would be in the interest of justice for this honourable court to permit the filing of this affidavit and also consider the contents and evidence attached to it.
- 85. The relief sought in the notice of motion are serious and if granted they will have divesting and adverse impact on the Municipality's endeavour to collect revenue and this will negatively affect the service delivery.
- 86. I therefore plead that in the interest of justice this affidavit stands to be admitted.
- 87. I am further advised that the interest of justice and fairness would not be served in the event where the applicant's application is heard in absence of the Municipality's affidavit and that the applicant would not be prejudiced by the granting of the condonation for many reasons, such as, that the applicant continues to enjoy the services and the granting of the condonation would not change the status or the position of the applicant.
- 88. In addition to the above, it is worth mentioning that the current Municipality's representatives came in as a result of the former attorneys failure to oppose the present application and they took every possible step to provide this Court with the facts and evidence in

opposing the drastic relief sought by the Applicant in its notice of motion.

89. I therefore plead for the condonation to be granted as fully set out in the notice of motion.

[18] The CoJ made no attempt to explain, fully or otherwise, the reasons for its non-compliance with the Rules of Court and proffered no basis upon which this Court could find that the excuse proffered is reasonable in the circumstances.

- a. It gives no details of the date of alleged meetings held with “*Municipality representatives*”.
- b. There is no indication of the alleged meeting between the parties and their representatives. This must be gauged against the facts proffered by the applicant, not only in its answering affidavit to the condonation application, but the founding affidavit in the main application, that the only such meeting between the parties occurred prior to the institution of this application.
- c. There is also no explanation for the contradictory allegations in paragraph 88 of the affidavit (quoted above) and the contents of M & R’s letter of 26 February 2024 recording that M & R did not have any instructions from the CoJ regarding the present application.

[19] The uncontroverted facts referred to above together with the paucity of the explanatory facts the CoJ proffered accentuate the perception that the CoJ acted with impunity in utter disdain for the Rules of Court.

[20] As to the CoJ’s defence to the relief sought, the answering affidavit is replete with extensive quotations from legislation, its own bylaws and various judgments but scant on factual allegations to gainsay the applicant’s allegations

of the CoJ's disregard of the rights of its consumer, the applicant, and orders of this Court. In sum, the answering affidavit did not lay a factual foundation for the CoJ's supposed defence.

[21] To add insult to injury, the CoJ's contempt of Court, its rules, and its practice directives extended to its failure to file its heads of argument timeously. This is demonstrated by the following facts:

- a. On 12 August 2025, the applicant sought and obtained an order compelling the CoJ to deliver its practice note, heads of argument, list of authorities and chronology within five days from service of the order.
- b. Under cover of an email dated 12 August 2025, the applicant's attorneys dispatched a copy of the (unsigned) order granted that day. The duly signed and uploaded order was served via email on 29 August 2025.
- c. It was only at 21:34 on Thursday, 4 September 2025 at the CoJ's heads of argument were uploaded onto the electronic case file. Needless to say, the CoJ's representatives did not cooperate in facilitating the compilation of joint practice note, as mandated by the practice directives of this Court.

[22] During argument, Mr Sithole, who appeared for the CoJ, repeatedly called for condonation to be granted as the matter is of "*great importance*" to his client, and to do so in the interests of justice.

[23] A prayer for condonation to be granted on the basis of the interests of justice cannot and does not exist in a vacuum. The interests of justice involves balancing the rights, responsibilities, and interests of both parties as well as the administration of justice. The ultimate determination is case-dependant, and

requires due regard being had to all relevant facts and circumstances of the particular case. Nonetheless it remains incumbent on the CoJ to make out a proper case for the indulgence it seeks.

[24] Had the CoJ regarded the matter so important, one would have expected it to take all reasonable steps timeously to obtain a proper ventilation of the issues. This, the CoJ did not do. Accordingly, the application for condonation was refused. Further, there is no cogent reason why costs in respect of the interlocutory application should not follow the result.

THE APPLICANT'S CASE

The impugned invoices

[25] The applicant's query was aimed at rates, taxes, and water and electricity consumption charges raised in five different, jumbled and unintelligible invoices dispatched during the period May to July 2017. These objectionable invoices are:

- a. In respect of May 2017, the invoice dated 25 May 2027 reflecting an amount of R 28 537.65 due and payable on 25 May 2017. Yet, it includes to debits in respect of property rates dating back to November 2013, in an aggregate of R 1 506 590.36. In respect of water and sanitation, over a reading period of 1 707 days, between 7 September 2012 and 10 May 2017, the CoJ raised debits and passed credits in an aggregate of R 4 513 319.27. Additionally, cleaning levies and surcharges were raised, resulting in "*Current Charges*" of R 6 130 081.57

- b. The invoice dated 20 June 2017, for June 2017, reflecting a payment of R 31 680.05, and recording the amount due as -R 3 467 650.12. The invoice includes five different credits having been passed in respect of electricity consumption, with no reference to the period of such consumption, together with a credit in respect of VAT.
- c. The invoice dated 22 June 2017, but in respect of March 2017, depicts an amount of R 3 654 040.89 as due for payment on 22 June 2017. The invoices related only electricity consumption charges, based on estimated readings over a period of 1 553 days between 1 December 2012 and 2 May 2017, and a 2% surcharge on business charges, resulting in “*Current Charges*” of R 7 361 219.85
- d. The invoice dated 1 July 2017, also for June 2017, depicts an amount of R 4 136 356.65 as due for payment on 17 July 2017. The invoice reflects an amount of R 3 705 295.59 as being 30 days past due date. It details only electricity consumption charges, based on partly actual, partly estimated readings over a reading period of 92 days between 3 March and 2 June 2017, and a 2% surcharge on business charges, resulting in “*Current Charges*” the amounting to R 426 461.38.
- e. The invoice dated 6 July 2017, for July 2017, shows “*Current Charges*” which include property rates, water and sanitation charges, a city cleaning levy, and a 2% surcharge on business services, amounting to R 97 774.54. Yet, the amount outstanding is R 4 233 823.21 which was payable on 21 July 2017.

[26] Faced with these different invoices the applicant, with the assistance of an agent, lodged a dispute with the CoJ and received a reference number. At the time, the CoJ was threatening the applicant with disconnecting its water and electricity supply and attempted to force the applicant to provide the CoJ with an acknowledgement of debt. Refusing to provide such a document, the applicant made two payments of R 351 997.56, without prejudice and in good faith, one on 28 October 2017 and the second on 20 December 2017. These payments were made to the hope of preventing continued threats of disconnection. In addition to these two payments, the applicant continued to make payments monthly in amounts equal to the “*Current Charges*” reflected on the CoJ’s subsequent invoices.

[27] The bases for the applicant’s dispute include that:

- a. The applicant had paid in full the invoices previously dispatched by the CoJ, because those invoices correctly reflected that a part of the applicant’s property was vacant, and another portion had been used for warehousing.
- b. Subsequently, the portions of the property have been used as part of the manufacturing business, rendering the “back charge” and recalculation of the estimated consumption charges on the previously unused portions incorrect.
- c. The charges recalculated between 2012 and 2016 have become prescribed.
- d. The additional payments made by the applicant were made as a gesture of good intent which had not been reciprocated by the CoJ.
- e. Despite several reports of a leaking water meter, it was yet to be repaired.

f. The applicant was yet to received calculations or explanations to its query.

The 2019 application

[28] The CoJ dragged its proverbial feet in resolving the dispute, and despite the existing dispute, either threatened to or in fact disconnected municipal services to the applicant's property. This led to the applicant launching a bifurcated application in August 2019 under case number 30248/2019. Part A thereof was heard in the urgent court on 2 September 2019, and the CoJ was ordered to reconnect electricity supply to the applicant's property.

[29] In a letter dated 30 September 2019, M & R recorded the CoJ's proposal for the parties to resolve the matter amicably by convening a meeting, once the CoJ had obtained the necessary documentation. The proposed meeting was eventually convened on 11 March 2020, but no settlement could be reached. Accordingly, the applicant caused Part B of the application to be set down for hearing on 24 March 2020. Because of correspondence from M & R, conveying the CoJ's wish to resolve the dispute amicably and its continued attempts to obtain necessary documentation, the matter was removed from the roll.

[30] Then the COVID-19 pandemic and resultant national lockdown struck. By November 2021, the CoJ still had not reacted to correspondence from the applicant's attorneys. Accordingly, Part B was enrolled from hearing on 11 May 2021 when the Wright order was granted. The Wright order addressed both property rates to be raised in accordance with the correct category on the relevant valuation rolls, as well as the delivery of a revised account in respect of municipal services.

The contempt application

[31] Ostensibly, the Wright order galvanised the CoJ into adjusting the property rates levied on the applicant's property, in accordance with the correct valuation rolls, and only in November 2021 passing a credit in respect of interest charged on the incorrect property rates. Yet, despite numerous demands to comply with the Wright order, the CoJ failed to deliver duly vouched and accurate accounts.

[32] The CoJ's failure gave rise to the Twala order of 7 June 2022, in terms whereof the CoJ was convicted of contempt of court, sentenced to payment of a fine, and again directed delivery of an accurate account with specific reference to the items in dispute and the relevant time period, including by reversing all interest charges, accurately re-billing the water and sanitation charges from 7 September 2012, the electricity charges from 1 December 2012, and providing the applicant source documents. Pertinently, the Twala order was granted on an unopposed basis.

[33] It was only some 15 months after the Twala order, and under cover of M & R's letter dated 22 September 2023, that the CoJ provided the source documents related to the re-billing of the applicant's electricity account as per the May 2017 invoice. The source documents included:

- a. A commissioning sheet dated 26 May 2016, confirming the installation of a new electricity meter at the applicant's property. Apparently, the new meter was necessitated by the fact that the previous meter had not been registering all the consumption because the "CT ratio" had not been programmed accurately.

- b. A spreadsheet containing the data used to re-bill the account, based on readings obtained from the old meter before it was reprogrammed and after it was reprogrammed with the correct “CT ratio”.
- c. The spreadsheet also reflected that the applicant was underbilled between 30 April 2014 and 30 April 2017, and it reflected the CoJ’s actual reading sheet prior to re-programming of the electricity meter and the new reading sheet used to re-bill the applicant.

[34] In respect of the applicant’s query regarding its water consumption, M & R relayed their instructions that Joburg Water had attended at the applicant’s property and advised that the applicant must apply for a new water connection through the City’s revenue department. M & R undertook to elaborate further on the CoJ’s findings upon receipt of its site inspection report.

[35] The letter concluded “...*the query on your client's electricity account is deemed to be resolved in terms of Section 11(5) of the CoJ’s Credit Control and Debt Collection Bylaw and therefore, the amounts due is payable within a period of 21 days.*”

[36] This application followed in January 2024.

THE LEGISLATIVE FRAMEWORK IN RESPECT THE COJ AND ITS CONSUMERS

[37] The CoJ is a municipality established in terms of the Constitution and derives its powers to impose fees, charges, rates and other municipal taxes from section 229(1)(a) of the Constitution.

The Municipal Systems Act

- [38] The Local Government: Municipal System's Act⁸ ("*the Systems Act*") envisages a number of different policies which a municipality, such as the CoJ, must adopt and implement, including by the adoption of bylaws.
- [39] Part 1 of Chapter 8 (being sections 74 to 75A) of the Systems Act caters for the adoption and implementation of a tariff policy on the levying of fees for municipal services,⁹ which policy must comply with the provisions of the System's Act, and for the adoption of bylaws to give effect to such tariff policy and to enforce such policy.
- [40] Chapter 9 (comprising section 95 to 104) of the Systems Act regulates credit control and debt collection measures by a municipality.
- [41] By virtue of section 95, in relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must within its financial and administrative capacity *inter alia*:

(c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;

(d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;

⁸ Act 32 of 2000.

⁹ "*Municipal service*" being defined in section 1 as "a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether - (a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and (b) fees, charges or tariffs are levied in respect of such a service or not".

(e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;

(f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;

(g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;

(h) provide mechanisms to monitor the response time and efficiency in complying with paragraph (g) ...

[underlining added]

[42] Section 96 mandates a municipality to collect all money that is due and payable to it, subject to the Systems Act and any other applicable legislation. For this purpose, it must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies, and which complies with the provisions of the Act. The contents of a municipality's credit control and debt collection policy are prescribed in section 97 of the Act. Such policy must provide for debt collection procedures and mechanisms,¹⁰ interest on arrears, where appropriate,¹¹ extensions of time for payment of accounts,¹² and the termination of services or the restriction of the provision of services when payments are in arrears.¹³

[43] Section 102 of the Systems Act, dealing with accounts, stipulates:

(1) A municipality may-

...

¹⁰ Section 97(1)(b).

¹¹ Section 97(1)(e).

¹² Section 97(1)(f).

¹³ Section 97(1)(g).

(c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

(2) 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.

[44] In *Body Corporate of Croftdene Mall v eThekweni Municipality*¹⁴ the Supreme Court of Appeal held that section 102(2) of the Systems Act requires that the dispute must relate to a specific amount claimed by the municipality. Thus, when raising a dispute, a customer, such as the applicant, is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the customer's objection thereto. If an item is properly identified and a dispute properly raised, then debt collection and credit control measures cannot be implemented in relation to that item. But such measures could be implemented in respect of the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.

[45] Ultimately, the Systems Act requires that disputes in relation to specific charges on a municipal account must be dealt with through a co-operative structure which places obligations on both the customer and the municipality. It affords the customer procedural fairness, which includes an internal appeal mechanism provided for in section 62.¹⁵

The CoJ's relevant Bylaws

¹⁴ 2012 (4) SA 169 (SCA) at para 22.

¹⁵ *Body Corporate of Willow and Aloe Grove v City of Johannesburg and Another* [2023] ZAGPJHC 1451 (11 December 2023) at para 19 ("*Willow and Aloe Grove*").

[46] To ascertain whether the applicant's complaints fall within the ambit of section 102(2), it is necessary to investigate the provisions of the CoJ's Bylaws.

[47] Even prior to the promulgation of the Systems Act, the CoJ had adopted various Bylaws also in relation to credit control and debt collections, electricity, and water services, which Bylaws have been amended from time to time. As the applicant's dispute with the CoJ arose during or about July/August 2017, the applicable Bylaws are:

- a. The Credit Control and Debt Collection Bylaws of 2004 (*"the Credit Control Bylaws"*);
- b. The Greater Johannesburg Metropolitan Electricity Bylaws of 1999 (*"the Electricity Bylaws"*); and
- c. The Water Services Bylaws of 2003 (*"the Water Bylaws"*).

The Credit Control Bylaws

[48] Chapter 3 of the Credit Control Bylaws regulates matters of account administration.

[49] In terms of section 10, which deals with account administration, the CoJ must endeavour to ensure *inter alia* accurate metering of consumption at fixed intervals with the minimum delay; accurate and up-to-date information in accounts; accurate monthly accounts with the application of the appropriate and correct prescribed fees, rates and other related amounts due and payable; and the timely dispatch of accounts.

[50] Section 11 pertains to queries and complaints in respect of accounts, and provides *inter alia* that:

- (3) If a query or complaint contemplated in subsection (1), is lodged –
 - (a) before the due date for payment specified in the account concerned, an amount at least equal to the average amount that was due and payable in respect of rates or the municipal service concerned, as specified in the accounts for the preceding three months which are not in dispute, must be paid by the customer concerned before or on such due date; or
 - (b) after the due date for payment specified in the account concerned, such query or complaint must if the full amount in dispute has not been paid, be accompanied by at least the amount contemplated in paragraph (a); and
 - (c) before or after the due date for payment specified in the account concerned, the customer concerned must pay the full amount of any account, insofar as it relates to rates or the municipal service concerned, rendered in respect of a subsequent period, before or on the due date for payment specified in such account, except insofar as that account may incorporate the amount in dispute.
- 11(4) An authorised official must register the query or complaint and provide the customer with a reference number.
- 11(5) The Council must –
 - (a) investigate or cause the query or complaint to be investigated within 14 days, or as soon as possible after the query or complaint was received; and
 - (b) inform the customer, in writing, of its decision as soon as possible after conclusion of the investigation, instructing that any amount found to be due and payable must, subject to the provisions of section 21, be paid within 21 days from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of subsection (6) or section 12.

[underlining added]

- [51] By virtue of section 12(1), a customer may lodge an appeal against the decision made in terms of section 11(5)(b) by giving written notice of the appeal and reasons to the chief executive officer of the service provider concerned, within 21 days of the date of notification of the decision.
- [52] Section 14 affords the CoJ methods, in addition to normal civil legal processes, to secure payment of any arrears. These methods include the termination or restriction of municipal services.
- [53] By virtue of section 20(2), the CoJ is entitled to levy interest on overdue accounts.

The Electricity Bylaws

- [54] Section 9 of the Electricity Bylaws deal with accounts, and provide *inter alia* that:

(2) The council may, during any meter reading period, render to the consumers a provisional account in respect of any part of such period which part shall as close as practically possible be a period of thirty days and the amount of which account shall be determined as provided in subsection (4) and shall as soon as possible after the meter reading at the end of such period render to the consumer an account based on the actual measured consumption and demand during that period, giving credit to the consumer for any sum paid by him on a provisional account as aforesaid.

...

(4) The amount of a provisional account referred to in subsection (2) shall be determined by the council by reference to such previous consumption on the same premises as would in its opinion constitute a reasonable guide to the quantity of electricity consumed over the period covered by the provisional account: Provided that where there has been no such previous consumption, the council shall determine the amount

of the said account by reference to such consumption on other similar premises which, in its opinion, affords reasonable guidance.

(5) A consumer's decision to dispute an account shall not entitle him to defer payment beyond the due date stipulated in the account.

...

(7) When it appears that a consumer has not been charged or incorrectly charged for electricity due to the application of an incorrect charge or on any other grounds other than inaccuracy of a meter, the council shall conduct such investigations, enquiries and tests as it deems necessary and shall, if satisfied that the consumer should have been charged or has been incorrectly charged, adjust the account according: Provided that no such adjustment shall be made in respect of a period in excess of 6 months prior to the date on which the incorrect charge was observed or the council was notified of such incorrect charge by the consumer. Where such consumer is found to have been correctly charged, the consumer shall be charged the cost of conducting such investigations, enquiries and tests.

[underlining added]

[55] Matters concerning the reading of meters are stipulated in section 10, and the testing of meters are dealt with in section 12.

[56] Section 14(1) allows the CoJ to disconnect the supply of electricity, without notice, where any charges due are in arrears.

The Water Bylaws

[57] Sections 8 and 9 of the Water Bylaws contain provisions relating to payment for water services at the prescribed fee for the particular water services provided, and for the rendering of accounts, as well as the adjustment of accounts in the event of a meter being defective.

[58] Those sections dealing relating to queries and complaints about water accounts were deleted by the Credit Control Bylaws of 2004.

THE PRESCRIPTION ACT, 68 OF 1969

[59] The applicant's case is not premised on the provisions of the CoJ's Bylaws. The relief it seeks is squarely founded on the provisions of the Prescription Act, which is pertinently referred to in the Notice of Motion and in its founding affidavit and addressed in its heads of argument.

[60] Because prescription raises questions of both fact and law, an applicant must properly raise it in its founding affidavit and traverse the factual substratum of its claim of prescription.¹⁶

[61] Accordingly, in motion proceedings, it necessitates the applicant, who bears the onus, to properly raise prescription in its founding affidavit, setting out the requisite evidence in support of its claim. If it is patent that the period of prescription has lapsed, the applicant will have a complete defence to CoJ's claims. Yet should the CoJ raise interruption of prescription or a delay in the completion thereof, it bears the onus of proof on this score.¹⁷

[62] The parties are agreed that different periods of prescription apply to the different categories of charges levied by a municipality:¹⁸

¹⁶ *Njongi v MEC, Department of Welfare, Eastern Cape* 2008 (4) SA 237 (CC) at para 36 and the authorities quoted in fn 47.

¹⁷ *ABSA Bank Bpk v De Villiers* 2001 (1) SA 481 (SCA).

¹⁸ Section 10, 11 and 12 of the Prescription Act; *Jordaan and Others v Tshwane Metropolitan Municipality and Others* 2017 (6) SA 287 (CC) para 25; *City of Johannesburg v Scholtz* 2010 (1) SA 316 (W); *Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality* 2017 (3) SA 146 (GJ); *Buttertum Property Letting (Pty) Ltd v Dihlabeng Local Municipality* [2016] 4 All SA 895 (FB) para 39; *AMA Casa Props 129 (Pty) Ltd v The CoJ of Johannesburg and Others* (32217/2019) [2021] ZAGPJHC 661 (9 November 2021).

- a. In respect of property rates, sewer and refuse charges, being a type of tax, a 30-year period applies.
- b. In respect of water, electricity and gas consumption charges, a three-year period of prescription applies.

[63] The running of prescription commences when the “*debt*” is due.¹⁹ The correct approach to be taken in determining when a “debt is due” remains as enunciated in *Farocean Marine (Pty) Ltd v Minister of Trade and Industry* as follows:²⁰

Prescription commences to run “as soon as the debt is due” (s 12(1)). Although the “date on which a debt arises usually coincides with the date on which it becomes due” this need not always be the case. The question is thus when the debt the respondent seeks to recover arose and when it became due. A money debt is “due” when there is a “liquidated monetary obligation presently claimable by the creditor for which an action could presently be brought against the debtor. Stated differently, the debt must be one in respect of which the debtor is under an obligation to pay immediately.

[64] According to section 9 of the Credit Control Bylaws, the final date for payment must be contained in the accounts rendered by the CoJ to its customers.

[65] Thus, *prima facie*, the CoJ’s claims in respect of water consumption charges of R 4 513 319.75 for the “reading period” 7 September 2012 to 10 May 2017, reflected in its invoice dated 25 May 2017, which was due for payment on 25 May 2017 prescribed at midnight on 24 May 2020.

¹⁹ Section 12(1) of the Prescription Act.

²⁰ 2007 (2) SA (SCA) 334 at para 12. See also *Nature’s Choice Farms (Pty) Ltd v Ekurhuleni Metropolitan Municipality* [2020] 3 All SA 57 (SCA) at para 41 (“*Nature’s Choice*”).

[66] Similarly, at face value the claim of R 7 221 745.47 in respect of electricity consumption charges for the reading period 1 December 2012 to 2 March 2016, reflected in the invoice dated 22 June 2017, being the same date for payment, prescribed at midnight on 21 June 2020.

THE APPLICANT'S SUBMISSIONS

[67] Relying on *Nature's Choice*,²¹ the applicant argued that prescription of the CoJ's claim commenced running when the CoJ gained knowledge of the erroneous readings on the meters, in May 2016, when it tested and installed a new meter, or, at the latest when it issued its invoice dated 24 May 2017 seeking immediate payment from the applicant.

[68] In *Nature's Choice Farms (Pty) Ltd v Ekurhuleni Metropolitan Municipality*²² the plaintiff sought a declarator that it was not indebted to the municipality for water usage, contending that the claim had become prescribed and unenforceable, not relying on the Prescription Act, but based on provisions in the municipality's schedules of tariffs for water,²³ which form part of the broader legislative framework under the Systems Act and has the force of a bylaw.²⁴ Although the facts in the present matter are markedly distinguishable from those in *Nature's Choice*, the Supreme Court of Appeal restated and reconfirmed the approach enunciated in *Farocean Marine* for determining when a debt is due.²⁵

[69] In relation to any alleged interruption of prescription, the applicant submitted that the two payments it made in the second half of 2017 did not constitute an

²¹ *Id.*

²² *Nature's Choice* Footnote 17 above.

²³ *Id.* at paras 20-21.

²⁴ *Id.* at para 28.

²⁵ *Id.* at para 41.

acknowledgement of indebtedness as envisaged by section 14(1) of the Prescription Act, as holistically viewed and in its proper contents, those payments were never intended to be an acknowledgement of indebtedness.²⁶ But even if those payments were taken to have interrupted prescription, then by December 2020, being three years later, the CoJ's claims in respect of the consumption charges would have prescribed.²⁷

[70] In response to any suggestion that the applicant's continued payments of the monthly "*Current Charges*" reflected on the CoJ's invoices, it was submitted that such payments were made pursuant to the Bylaws, which oblige a customer to pay "*the full amount of any account, insofar as it relates to rates or the municipal service concerned, rendered in respect of a subsequent period, before or on the due date for payment specified in such account, except insofar as that account may incorporate the amount in dispute.*" Accordingly, so the argument went, the applicant's payments cannot be allocated at the CoJ's will to the "oldest debt", as these payments were made with the clear intention that they are made only in respect of the "*Current Charges*" and not the disputed amounts.

[71] In paragraphs 71 to 79 of its heads of argument, the applicant addressed any reliance the CoJ may place on section 102(2) of the Systems Act as constituting a prohibition against the CoJ collecting any amount which the application has disputed. The applicant also submitted that section 13 of the

²⁶ *Petzer v Radford (Pty) Ltd* [1953] 4 All SA 311 (N); *Madibeng Local Municipality v Public Investment Corporation Ltd* (955/2019) [2020] ZASCA 157 (30 November 2020) para [28]; *Investec Bank Ltd v Erf 436 Elandspoort (Pty) Ltd and Others* 2021 (1) SA 28 (SCA).

²⁷ In terms of section 14(2) of the Prescription Act.

Prescription Act, regulating the delay in completion of prescription in certain circumstances, does not apply to the matter at hand.

[72] During argument, Mr Du Plessis SC, for the applicant, contended that section 102(2) of the Systems Act found no application to his client's case, as the dispute it raised did not concern a "*specific amount*". Also, it was submitted that the provisions of the section relate to enforcement mechanisms only, whereas prescription does not fall within the ambit of the section.

THE COJ'S SUBMISSIONS

[73] Condonation for the late filing of the answering affidavit having been refused, the CoJ's arguments in both its heads of argument and at the hearing, were confined to the case made out in the founding affidavit, and points of law arising therefrom.

[74] The CoJ argued that the declaratory order sought would have the effect of:

- a. Setting aside the Twala order alternatively constitute a contradiction of that order, which obliges the CoJ to reverse and to rebill the applicant "*from 2012 to date*".
- b. Undermining the principle of law that a single judge cannot rule on the same issue ruled on by another judge. For as long as the Twala order remains extant, it must be complied with, and this Court cannot interfere with the procedure of the resolution of the dispute between the parties; and
- c. Undermining the binding nature of the section 102 of the Systems Act, and by the Bylaws and policies enacted by the CoJ. Contending that the

applicant's dispute raised in 2017 remains unresolved, it was argued that the applicant seeks an order to avoid paying the amount due and payable to the CoJ for services consumed, by having such amount declared to have prescribed.

- d. This Court acting outside its jurisdiction and going against judgments of this Division and others. Relying in *Willow and Aloe Grove*,²⁸ the CoJ argued that until such time that it had concluded its processes in resolving the dispute between the parties, this Court has no power to interfere.

[75] It was also contended that the declaratory relief sought seeks to ignore the Twala order and intends to do away with the obligations entrusted to the CoJ to rebill the account.

[76] In part [G] of its heads of argument, the CoJ, and with reference to *City of Tshwane Metropolitan Municipality v Glofurn (Pty) Ltd*,²⁹ argued that it was precluded by section 102(2) of the Systems Act from implementing its debt collection and credit control measures, including the institution of legal proceedings, for as long as the dispute remained unresolved.

SUPPLEMENTARY SUBMISSIONS

[77] As the intersection between section 102(2) of the Systems Act and section 13(1) of the Prescription Act constitutes a point of law which is apparent from the founding affidavit, this “*court is not only entitled, but is in fact also obliged, mero motu, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect*

²⁸ *Id.*

²⁹ [2024] ZASCA 101 (19 June 2024). Also see *City of Johannesburg Metropolitan Municipality v Mir-Air Prop (Pty) Ltd* [2024] ZAGPJHC 977 (1 October 2024).

*application of the law. That would infringe the principle of legality.”*³⁰

Accordingly, the Court pertinently raised during argument, with both with Mr Du Plessis and Mr Sithole, the question whether section 102(2) of the Systems Act constituted a “*superior force including any law*” as contemplated in section 13(1)(a) of the Prescription Act, which would delay the completion of prescription pending resolution of the dispute raised by the applicant.

[78] At the hearing, Mr Du Plessis restated the submission that the applicant’s case that the charges had become prescribed, does not fall within the ambit of the section 102(2).

[79] Similarly, Mr Sithole persisted with the argument contained in his heads of argument, that the dispute raised by the applicant in 2017 was yet to be resolved; and the M & R’s letter of 22 September 2023 did not amount to a final resolution of the dispute. The Court’s cynical enquiry about how long the CoJ’s investigation was still to last, was met by obfuscation and avoidance.

[80] Additionally, the CoJ submitted, without reference to any authorities, that because the dispute is yet to be resolved, the amount is not “*due*”, and it is only once a debt is claimable that prescription commences running.

[81] Not entirely satisfied, I requested both counsel to prepare supplementary submissions on the interplay between section 102(2) of the Systems Act and section 13(1)(a) of the Prescription Act. Both parties’ further submissions were received and considered.

³⁰ *Cusa v Tao Ying Metal Industries and Others* 2009 (2) SA 204 (CC) at para 68.

The applicant's further submissions

[82] In its supplementary submissions the applicant contended that, for a finding that section 102(2) of the Systems Act is applicable, there had to be a finding on the facts that there was a dispute between the applicant and the respondent concerning a specific amount claimed by the CoJ, which would prevent the CoJ in law from issuing a summons to interrupt the running of prescription and that the debt has therefore not become prescribed.

- a. Firstly, relying on *Tarica and another v City of Johannesburg Metropolitan Municipality*³¹ and with reference to *Croftdene*,³² it was contended that the applicant's "dispute" did not meet the criteria of the existence of a dispute.
- b. Secondly, it was submitted that the CoJ's continued threats to and disconnection of the municipal services to the applicant's property after 2017 evidenced that the CoJ never considered there to be a dispute for purposes of section 102(2). These disconnections and threats resulted in the applications launched by the applicant to protect its interests.
- c. Thirdly, whilst maintaining its position that section 102(2) finds no application, it was argued, relying on *Tarica*, that the provisions of section 102(2) do not constitute an impediment as envisaged by section 13(1)(a) of the Prescription Act. It was also submitted that, in so far as the Systems Act makes not reference to the Prescription Act, the former does not influence the latter.

³¹ 2025 JDR 0410 (GJ).

³² *Id.*

d. In the final instance, the applicant contended that section 13 of the Prescription Act envisages a type of impediment that makes it objectively impossible for the creditor to take steps to interrupt prescription.

[83] In the alternative, the applicant argued that, on the respondent's version *ex facie* the letter of M & R dated 22 September 2023, the dispute had been resolved with dispatch of the letter. Although the applicant still did not agree with the calculations set out in the letter, this did not amount to the existence of a "dispute" for purposes of section 102(2). Consequently, the alleged impediment ceased to exist on 22 September 2023, and the running of prescription was completed on 23 September 2024.

The CoJ's further submissions

[84] The CoJ's supplementary submissions were couched in belligerent and disrespectful language, with unnecessary veiled threats against this Court, whom it accused of making out a case for the applicant and raising the provisions of section 13 (1) of the Prescription Act *mero motu*, thereby seeking to decide the matter on facts not pleaded by the applicant. These accusations are without factual foundation, as reference had been made to both section 102(2) of the Systems Act as well as section 13(1) of the Prescription Act in the heads of argument filed by the parties.

[85] The CoJ contended that, on a proper reading of the founding affidavit, the applicant did not accept that the dispute had been resolved by 22 September 2023, "*but the Court appears to accept that the dispute between the parties was resolved ... in order to invoke the provisions of section 13 (1) of the*

Prescription Act.” This being so, the applicant was obliged to invoke the internal appeal process provided for in section 12 of the Credit Control Bylaws.

ANALYSIS

[86] Respectfully, I disagree with the reasoning of Mahon AJ in *Tarica* in respect of the interplay between the Prescription Act and the Systems Act, and the effect of section 102(2) on prescription.

[87] Mahon AJ held³³ that the CoJ’s Credit Control and Debt Collection Policy³⁴ did not prevent the CoJ from issuing summons on disputed debts. Undoubtedly correct, he held that “[t]he legislative framework is clear that prescription operates independently of internal policies or administration practices of municipalities.” However, I differ from him when he held that “while the City may choose to adopt procedures for managing disputes through its Credit Control and Debt Collection Policy, these procedures do not have the effect of overriding or suspending the statutory requirements of the Prescription Act.”

[88] By virtue of section 16(1) of the Prescription Act, the provisions of Chapter III of thereof, dealing with the prescription of debts, apply to any debt arising of the commencement of the Act, save in so far as they are inconsistent with the provisions of any Act of Parliament which prescribes a specified period within which a claim is to be made or an action is to be instituted in respect of a debt or imposes conditions on the institution of an action for the recovery of a debt. Thus, in so far as the Systems Act contains no provisions relative to

³³ *Tarica* above at paras 76 to 78.

³⁴ It is not evident from the judgment whether the Court referred to the 2005 or 2022 Credit Control Policy.

prescription, the provisions of Chapter III of the Prescription Act are relevant to the issues for determination.

[89] The CoJ's Credit Control Bylaws and 2022 Credit Control and Debt Collection Policy are subservient to the provisions of the Systems Act. Although the Systems Act does not define what "debt collection mechanisms" entail, on a purposive interpretation of the phrase, I am satisfied that such mechanisms include normal civil legal proceedings.

[90] I am satisfied that each of the CoJ's invoices dated 22 June 2017 and 1 July 2017 reflect a liquidated amount, each of which, in accordance with the Credit Control Bylaws, was due for payment by the applicant on the date stipulated in each of the invoices, being 22 June and 17 July 2017 respectively. Therefore, prescription commenced running on these dates for payment.

[91] As the invoices related to both property rates and taxes and consumptions charges, different periods of prescription were applicable.

[92] On the evidence presented, it is manifest that the dispute raised by the applicant in July/August 2017 related to all the amounts in respect of property rates and taxes, the amounts levied in respect of estimated electricity consumption, the amounts in respect of water consumption, as well as the interest charges debited. The impugned items were adequately and properly identified as were the applicant's objections thereto, thereby enabling the CoJ to ascertain the disputed items and the reasons for the dispute, as is required by the provisions of section 102(2) and held in *Croftdene*.

[93] Thus, pending resolution of the dispute, the CoJ was legally barred from implementing its credit control and debt collections processes, including disconnecting services and/or instituting legal action, whether in respect of the property rates and taxes or the consumption charges. It also became incumbent on the CoJ to provide redress to the applicant promptly and efficiently, as mandated by the *inter alia* section 95(g) of Systems Act, and the provisions of its own Bylaws.

[94] It is because the CoJ implemented debt collections measures in the form of the termination of services, in contravention of section 102(2) that litigation was instituted, and the Wright order was granted.

[95] The amounts erroneously levied in respect of property rates having been corrected, what remained were the disputes related to the water and electricity consumption charges. These remaining issues formed part of the existing dispute and were the subject matter of the Twala order. For as long as these issues remained unsolved, the legal impediment created by section 102(2) endured, and the CoJ remained impeded from adopting any debt collecting measures, including the service of process. Had the CoJ issued process to recover the alleged debt, pending resolution of the dispute, its claims may very well have been met by a plea in abatement or similar objection.³⁵

[96] It has been held that the word “impediment” used in section 13(1)(i) “*should not been taken too literally or interpreted as meaning an absolute bar to the institution of legal proceedings...*” but rather that it “*covers a wide spectrum of situations ranging from those in which it would not be possible in law for the*

³⁵ As in *Glofurn* and *Mir-Air Prop* above.

*creditor to sue to those in which it might be difficult or awkward, but not impossible, to sue. In short, the impediments range from the absolute to the relative.”*³⁶

[97] I am satisfied that the legal impediment created by section 102(2) of the Systems Act constitutes a “*superior force including any law*” as envisaged by section 13(1)(a) of the Prescription Act, which prevented the CoJ from interrupting the running of prescription by the service of process claiming payment from the applicant.³⁷ On the face of it, the impediment thus created is absolute, but I express no finding on this score.

[98] The CoJ’s argument that the Twala order mandated the applicant to invoke an internal appeal, effectively giving rise to a “new” cause of action the applicant had to invoke, is not supported by a proper interpretation of either the Wright order or Twala order. Both orders were aimed at directing the CoJ to perform its obligations imposed by the Systems Act and its own Bylaws. These obligations include those created by:

- a. Section 95 of the Systems Act to render accurate accounts to consumers, to allow consumers to receive prompt redress for inaccurate accounts, and to provide prompt replies and corrective action to dissatisfied consumers; and
- b. Section 11(5) of the Credit Control Bylaws mandating the CoJ to investigate a customer’s query or complaint within 14 days or as soon as possible after

³⁶ *ABP 4×4 Motor Dealers (Pty) Ltd v IGI Insurance Co Ltd* [1999] 3 All SA 405 (A); 1999 (3) SA 924 (SCA) at para 11.

³⁷ By virtue of section 15(1) of the Prescription Act “[t]he running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt.”

the query or complaint was received; and to inform the customer of its decision as soon as possible after conclusion of the investigation.

- c. Section 9(7) of the Electricity Bylaws, which disallows the CoJ from making adjustments to its accounts in respect of incorrect electricity charges in respect of a period in excess of 6 months prior to the date on which the CoJ observed the incorrect charge.³⁸

[99] In this, the CoJ spectacularly failed its obligations.

[100] It was only under cover of the letter of 22 September 2023 that the CoJ complied, in part, with the Twala order. The letter recorded the basis for the rebilling of electricity consumption charges in July 2017 and the CoJ's finding that no mistakes had been made at the time. The CoJ made it clear that it regarded the dispute in respect of electricity consumption charges as having been resolved and demanded payment of the amount due.

[101] Accordingly, it does not behove the CoJ to contend that the dispute in relation to the electricity consumption charges remained unresolved in the face of the contents of the letter from its then-attorneys. I am satisfied that the CoJ's demand for payment of the amount due in respect of the electricity consumption charges did not create a new "debt" but heralded the end of the impediment created by the provisions of section 102(2) of the Systems Act, in

³⁸ In this regard, the CoJ must be taken to have observed the incorrect charge when it installed a new electricity meter at the applicant's property in May 2016.

so far as the applicant appeared to have acquiesced with the information provided.³⁹

[102] The “debt” in respect of electricity consumption charges became due at the latest 17 July 2017, on which date prescription commenced running. The dispute raised by the applicant did not suspension or interruption of prescription but it had the effect of delaying the completion of prescription. Accordingly, and by virtue of section 13(1)(a) of the Prescription Act, the CoJ’s claim for electricity consumption charges prescribed one year after the disputes was resolved, being at midnight on 22 September 2024.

[103] By contrast, the letter of 22 September 2023 noted that the dispute in relation to the water consumption charges remained unresolved and the impediment created by section 102(2) of the Systems Act persists. As unsatisfactory as it may be, for as long as the dispute remains unresolved, the CoJ cannot lawfully invoke any debt collection or credit control measures in respect of these charges.

[104] Ultimately, the applicant is entitled to the declaratory order it seeks but only in respect of electricity consumption charges, interest and/or penalties on such charges.

COSTS

[105] Although only partially successful, given the CoJ’s contemptuous and persistent disregard of its obligations in terms of the Systems Act and its own Bylaws,

³⁹ The applicant did not invoke its right to lodge an appeal within 21 days from the date of the decision recorded in the letter of 22 September 2023, as it was entitled to do by virtue of the Credit Control Bylaws.

there is no reasonable basis to deprive the applicant its costs. A punitive order is also appropriate in the circumstances.

[106] Although only Mr Du Plessis appeared for the applicant at the hearing, he and a junior counsel authored both the heads of argument and the further submissions. The issues for determination involved novel legal aspects, not previously the subject of any authorities the parties or this Court could find. As such, the costs of two counsel, where so employed, are allowed.

ORDER

[107] In the result, the following order is made:

1. The interlocutory application for condonation for the late filing of the respondent's answering affidavit is dismissed.
2. It is declared that all unpaid electrical charges and interest and/or penalties on such electrical charges levied by the respondent in respect of the Remaining Extent of Erf 8[...], K[...] Township situated at 2[...] T[...] Road, K[...] ("*the property*") on account number 5[...] ("*the account*") for the period prior to 30 April 2017, have become prescribed in terms of the Prescription Act, 68 of 1969.
3. The respondent is directed to reverse all unpaid electrical charges and interest and/or penalties on such electrical charges levied by the respondent on the account in respect of the property for the period prior to 30 April 2017.

4. The respondent to pay the costs of the interlocutory application for condonation as well as the main application, on a scale as between attorney and client including the costs of two counsel where so employed.

SARITA LIEBENBERG
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing:	8 September 2025
Date of Judgment:	3 November 2025
For the Applicant:	Adv D T v R Du Plessis SC and WA De Beer Instructed by Ellis Coll Attorneys.
For the Respondent:	Adv E N Sithole Instructed by Ncube Inc.