

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024-096791

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

31 August 2026

DATE

[Redacted Signature]

SIGNATURE

In the matter between:

GRAHAM DOUGLAS THOMPSON

Applicant

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Respondent

JUDGMENT

VETTER, AJ

A. INTRODUCTION

- [1] The applicant owned an immovable property in Johannesburg until it was transferred on 17 March 2023. A water services account with the respondent, the City of Johannesburg Metropolitan Municipality, stood in his name. He says that the City billed him inaccurately over many years and went on billing him after transfer. The City says that it has since reconciled and closed the account, leaving a credit of R 19 391.39 due to him. I refer to the parties as the applicant and the City.
- [2] The applicant seeks job cards, a blanket write-off of prescribed charges, a rebill from May 2021 using his own meter readings, consequential reversals, an explanation of a March 2014 opening balance, closure of the account, and attorney and client costs.¹
- [3] For the reasons that follow, the principal relief is refused. The applicant has not proved the calculation on which it rests, and it is not for this court to take over the City's accounting. But the City has never determined a dispute which the applicant raised in April 2022, and it has not explained the invoices raised after transfer or what has become of the credit it says it owes him. I condone the late answering affidavit, receive the material delivered in reply and refuse the substantive prayers. I order the City to procure a determination of the appeal which the applicant lodged under clause 16.5.1 of its own Policy on 19 October 2023.

B. THE ISSUES

- [4] Four questions arise, and they fall to be answered in that order:
- a. first, should the City's answering affidavit be received, and if it is, what weight does it carry?

¹ Notice of motion, CaseLines 01-2 to 01-3.

- b. second, does a live dispute survive the transfer of the property, the closure of the account and the credit balance, and if it does, what is its compass?
- c. third, is the applicant entitled to the rebill, prescription and consequential relief he seeks? If he is not, is narrower relief competent under the prayer for further or alternative relief?
- d. fourth, what costs order follows?

C. SHOULD THE LATE MATERIAL BE RECEIVED?

- [5] The answering affidavit was delivered approximately 99 court days out of time. The City says that counsel was unavailable and that it needed time to investigate and to obtain records. It gives no real facts or chronology. The applicant is right that the explanation is deficient. Condonation is not to be had for the asking and a party seeking it must show sufficient cause by a full and reasonable explanation, good enough to excuse the default.²
- [6] The enquiry nevertheless remains what the interests of justice require. Two considerations are decisive. The affidavit contains the account closure and credit material on which both parties now rely, and to which the applicant has replied at length. And refusing condonation would not produce finality; it would oblige me to decide the application without the City's account of the very state of affairs which shapes the relief. In a materially similar application against the City, Fisher J granted condonation because a refusal would serve only to protract the matter further.³
- [7] I condone the late delivery. The deficiency in the explanation is not excused; it bears on costs.
- [8] That is not the end of it, because a document may be received and still be worth little. The deponent, Ms Nkosi, is a legal adviser. She does not claim personal

² *Grootboom v National Prosecuting Authority* [2013] ZACC 37; 2014 (2) SA 68 (CC) at para 23.

³ *Body Corporate of Willow and Aloe Grove v City of Johannesburg* (41604/2020; 13541/2022) [2023] ZAGPJHC 1451 (11 December 2023) (*Willow and Aloe Grove*) at para 52.

knowledge of the metering, the billing or the reconciliation at this property, and no official who has such knowledge has confirmed her account. In *Millu*, Sutherland DJP held that a legal adviser can never be more than a conduit, and that the practice shields from accountability the anonymous officials who compose the accounts. Affidavits of this kind should come from those who administer the accounts.⁴ In *Ordicode*, Wilson J held on the same footing that the City's answer raised no genuine dispute about the accuracy of the account.⁵ I need not go that far. Ms Nkosi's technical assertions carry little weight, and the order I make rests on none of them.

- [9] The applicant challenged the commissioning of the answering affidavit in argument, the commissioner not having completed the date and place of attestation. The point was not taken on the papers, so the City had no opportunity to cure or explain the defect. Nothing suggests that the oath was not administered. A requirement of that kind is directory, and substance is not to be sacrificed to form on a point raised for the first time from the bar.⁶ I make nothing of it.
- [10] The *curriculum vitae* of Ms Gohl and her calculation were omitted from the founding papers and delivered with the reply, the confirmatory affidavit following later. The City did not object when the point arose. They are received. Their reception decides nothing about whether the calculation is right, whether Ms Gohl vouches for its method, or whether its inputs are proved.

D. IS THERE A LIVE DISPUTE, AND WHAT IS ITS COMPASS?

- [11] The City's standing and mootness point cannot succeed as it is advanced. The applicant held the account and owned the property while the disputed charges accrued, and he remained liable to the City for them. A person in that position

⁴ *Millu v City of Johannesburg Metropolitan Municipality* (25039/2021) [2024] ZAGPJHC 419 (18 March 2024) (*Millu*) at para 45. See also *Hlabangana v City of Johannesburg Metropolitan Municipality* (2024/047995) [2026] ZAGPJHC 841 (22 July 2026) (*Hlabangana*) at paras 36 to 39.

⁵ *Ordicode (Pty) Ltd v City of Johannesburg* (2023-077080) [2025] ZAGPJHC 865 (9 September 2025) (*Ordicode*) at paras 12 to 13.

⁶ Compare *Hlabangana* above n 4 at paras 74 to 78, where a comparable objection to authentication, raised for the first time in heads of argument, was rejected.

has a direct and substantial interest in the correctness of the account, and transfer does not divest him of it.⁷ The City's own case puts the matter beyond argument because it says the account closed with a credit due to him. A creditor of the City for a sum the City has not explained is not a person without an interest.

[12] It does not follow that every historical complaint is fit for adjudication. The applicant's narrative begins in 2013 with the replacement of the first meter and a rebill in July 2013, followed by further rebills in March and June 2014. He asks for relief which would require the City to revisit that whole history but identifies no presently enforceable demand arising from those entries and puts up no proved accounting basis on which they could be reconstructed. The City for its part says that it keeps no records older than three years and can no longer locate the meters, the officials or the documents. That is no answer to a dispute properly raised, and the City cannot improve its position by its own failure to keep records. It does bear on what an order requiring reconstruction more than a decade later could realistically achieve. So does the applicant's own delay. He complained from 2013, challenged a quantified invoice in April 2022, appealed in October 2023 and issued this application in August 2024, and he offers no reason why final relief compelling a reconstruction from 2013 should be granted now.

[13] The statutory protection in section 102(2) of the Local Government: Municipal Systems Act 32 of 2000 is itself confined. It disapplies the debt collection powers in section 102(1) only where there is a dispute "concerning any specific amount claimed by the municipality". A dispute in that sense requires two parties advancing irreconcilable contentions; a claim by one of them that something ought to have been the position is not one. In *Croftdene Mall*, Maya JA held that the object of the requirement is to prevent a ratepayer from delaying payment by disputing in general terms. The ratepayer must furnish facts adequate to enable the municipality to identify the disputed item and the

⁷ *Webster and Others NNO v City of Johannesburg Metropolitan Municipality* (2021/26601) [2025] ZAGPJHC 383 (7 April 2025) (*Webster*) at paras 52 to 54.

basis of the objection. Whether a dispute has been properly raised is a factual enquiry, case by case.⁸

- [14] The clearest quantified dispute is the letter of 20 April 2022. It disputes R 88 259.50 in invoice 600002132534 of 22 March 2022, on three stated grounds. The City did not read the water meter for 66 months; it billed on estimates rather than on the readings he supplied monthly over that period; and its recalculation from December 2015 ignores prescription. It is expressly lodged in terms of section 102 of the Systems Act. That is a specific amount, in a specific invoice, on stated grounds, and the March 2022 rebill to which it relates covers a defined period, 2 December 2015 to 6 May 2022.
- [15] The City's response of 27 September 2022 did not determine that complaint. It is a response, and I do not treat it as silence. But it said only that the water query had been escalated to "the specialist", who had confirmed the billings and invoices to be correct, and that the City had no evidence requiring a change. It identified no records, no method and no reasons. The applicant replied the same day, rejecting the conclusion and asking for the specialist's contact details. Neither the specialist nor any report of his has ever been identified. In *Glofurn* the Supreme Court of Appeal held that a response of exactly that character could not be final. It did not address the consumer's right of appeal, nothing suggested that the City had investigated as it was obliged to do, and the position of the official who answered went unexplained.⁹ A municipality must engage efficiently and intelligently with a complaint and give a written decision which has cogency and is directed to the dispute at hand.¹⁰ Asserting that the account is correct is not such a decision.
- [16] The April 2022 dispute has therefore never been determined. The live dispute is confined to the March 2022 invoice and rebill, the 66-month complaint, the

⁸ *Body Corporate Croftdene Mall v eThekweni Municipality* (603/2010) [2011] ZASCA 188; [2012] 1 All SA 1 (SCA); 2012 (4) SA 169 (SCA) at paras 21 to 23, applying *Frank R Thorold (Pty) Ltd v Estate Late Beit* [1996] ZASCA 79; 1996 (4) SA 705 (A) at 708I-709A.

⁹ *City of Tshwane Metropolitan Municipality v Glofurn (Pty) Ltd* (136/2023) [2024] ZASCA 101 (19 June 2024) at paras 20 to 22 and 24.

¹⁰ *Willow and Aloe Grove* above n 3 at paras 82 to 83.

invoices raised in April and May 2023 after transfer, and the credit. As to the credit, the City is right that the account marked COJ2 records the entries which arithmetically produce R 19 391.39, among them a payment of R 10 871.33 and a released deposit of R 3 400. What it does not show is how the disputed March 2022 rebill was treated in reaching that figure. Nor does it show why the October 2024 account put up in reply bears a different invoice number, or whether the credit has been paid, retained, transferred or applied. The earlier history matters only so far as the March 2014 opening balance was carried into the March 2022 rebill. It is not a warrant for an audit of every entry since 2013.

E. WHAT RELIEF IS COMPETENT?

[17] I take the final relief first. The Gohl calculation is not a proved basis for a rebill. It puts overbilling at R 211 985.33 across 81 months but allocates nothing by invoice, meter, period or charge type. The confirmatory affidavit confirms the founding affidavit, to which the calculation was not attached; it does not confirm the calculation, its inputs or its method. In *Douglas*, schedules of just that kind were struck out as inadmissible hearsay, their author not having confirmed the figures.¹¹ I do not strike this material out, since the City did not ask me to. But it proves nothing. The applicant's heads go further still, contending that after deducting the credit an amount of R 192 593.94 stands to be credited to him. That is a quantified money claim and it appears in no prayer. A prayer for further or alternative relief does not license a court to grant a claim of that size, first formulated in argument, which the City has had no chance to meet on affidavit.

[18] The line is drawn in *Ordicode*. Wilson J held that had the applicant recalculated its own liability according to the applicable tariffs and asked for a declarator in that amount, he would probably have granted it, unless the underlying facts were disputed. What he had no power to do was to step into the City's shoes and direct it to rebuild an account on principles of calculation devised by the

¹¹ *Douglas and Another v City of Johannesburg and Others* (2021/36955) [2023] ZAGPJHC 1263 (6 November 2023) (*Douglas*) at paras 83 to 84.

consumer.¹² The prayer that the City rebill on the applicant's own readings falls on the wrong side of that line, and the Gohl calculation is neither tariff based nor undisputed. The 66-month complaint is in the same position. A municipality may in defined circumstances bill on estimates, and a court cannot direct it to strip estimated charges out merely because the consumer supplied readings of his own. It must be shown that the estimates were not permitted, or that they had no rational basis.¹³ The applicant alleges neither.

[19] The prescription relief is premature. There is a genuine divergence in this Division on whether a claim to reverse charges is a debt. In *Douglas* it was held that it is, because a reversal reduces indebtedness or produces a credit and so amounts in substance to a claim for money. In *Tarica* it was held that a request to rectify an account is not a debt, even though a monetary consequence may follow.¹⁴ I do not resolve that divergence, and this is not the case in which to try. No ledger is before me identifying the disputed debits, their due dates, the appropriation of payments or the derivation of the credit, and the City says the account is already in credit. Until the April 2022 dispute is determined it is impossible to know what debt, if any, survives for a prescription enquiry. A declaration now would be abstract and almost certainly too wide. The applicant is not shut out and prescription remains open to him against any debit the City maintains after the determination.

[20] What, then, may be ordered? The answer is supplied by the instrument under which the applicant proceeded. Clause 16 of the City's Credit Control and Debt Collection Policy provides a graduated process. A customer who disputes an entry lodges a query under clause 16.1, and if it is not resolved within 30 days he may declare a written dispute under clause 16.2. Clause 16.4 obliges the City to investigate the query or the dispute and to advise the customer of the result, adjusting the account if the query is found to have been correct. Clause

¹² *Ordicode* above n 5 at paras 10 to 11.

¹³ *Ordicode* above n 5 at para 11.

¹⁴ *Douglas* above n 11 at paras 63 to 64 and 72; and *Tarica and Another v City of Johannesburg Metropolitan Municipality* (2023-044543) [2024] ZAGPJHC 1261 (9 December 2024) (*Tarica*) at paras 82 to 84. In *Webster* above n 7 at paras 59 to 61, *Douglas* was distinguished on the footing that the relief there amounted to a claim for payment by the municipality.

16.5.1 then provides for an appeal to the City Manager, in terms of section 62 of the Systems Act, against “the decision made or failure to make a decision”. That right arises 90 days after the query was logged or the dispute declared, if the matter remains unresolved.¹⁵

[21] The applicant worked that machinery and the City did not. He logged a clause 16.1 query on 13 June 2023 and declared a clause 16.2 dispute in August 2023. The founding affidavit and the complaint itself date that step 15 August; the appeal records it as 17 August, and the annexure said to evidence it is on its face a letter written for another client. Nothing turns on two days. He appealed under clause 16.5.1 on 19 October 2023, more than 90 days after the query was logged, so the appeal was competently lodged. It matters not, for that purpose, whether the City’s silence is a decision or a failure to decide because clause 16.5.1 provides for an appeal against either. The City Manager has never answered it.

[22] An order requiring that appeal to be determined is squarely within the court’s power, and it is the only substantive relief within it. *Webster* was an appeal lodged under the same clause 16.5 against the same silence. Mitchell AJ ordered the City to procure that its City Manager consider the appeal, confirm, vary or revoke it, decide within a reasonable period and notify the applicant in writing. The City was then to deliver an adjusted statement of account, with notations and explanations sufficient for the applicant to check that the decision had been correctly incorporated.¹⁶ I make an order in substantially that form.

[23] The reason for that limit is threefold. The municipality has the officials, the systems and the expertise to determine such disputes, and the court does not. To order the City to rectify the account, or to prescribe how, would be an impermissible incursion into the parties’ contract. And it would interfere with decisions which are the City’s to take. But a court may order that the internal

¹⁵ City of Johannesburg Credit Control and Debt Collection Policy Review: June 2022, approved August 2022, clauses 16.1, 16.2, 16.4 and 16.5.1. The terms of those clauses are set out in the founding affidavit at paras 44.3.3, 44.3.4 and 44.3.6, CaseLines 02-19 to 02-20, and are not disputed by the City. The same clause 16.5 route was the subject of *Webster* above n 7 at paras 3 to 4 and 14 to 15.

¹⁶ *Webster* above n 7, order paras A(a) and A(b).

machinery be employed.¹⁷ I should say why I do not take the other course open on the authorities. In *Tarica* the court declined to remit, holding that referring a matter back to the institution which created the problem is neither viable nor in the interests of justice, and decided the dispute itself. In *Hlabangana* the court made a staged order for the production of records, an itemised calculation and the reversal of prescribed charges.¹⁸ In each of those matters the operative question was prescription, which is a question of law that a court must decide. Here it is the correctness of a metered account across a rebill period, which is technical, evidential and, in the first instance, for the City.

- [24] The order is not a remittal of something never put to the City. The appeal of 19 October 2023 asks the City for the job cards for all three meters, for a reversal and rebill, for prescribed charges to be written off and for an explanation of the March 2014 opening balance. That is, in substance, what the notice of motion asks this court to grant. The applicant has already demanded of the City the very relief he seeks here and has had no answer. Nor does the order reach beyond the appeal. The invoices raised after transfer are themselves complained of in it, and the credit is a later event which the City introduced and which a determination cannot sensibly leave unexplained. The order does not require the City to recreate records it does not have, to accept the applicant's readings, to reverse any charge, or to find that anything has prescribed. It requires a decision, reasons, and a statement of account the applicant can check. The prayer for job cards is refused as free-standing relief, but its substance is met by paragraph 7 of the order.

F. COSTS

- [25] Each party sought costs on the attorney and client scale, the City alternatively on scale C. Neither is entitled to a punitive order. The applicant has failed in his principal relief and has pressed a case far broader than his record supports. The City has been late, has produced no reasoned determination in three years,

¹⁷ *Willow and Aloe Grove* above n 3 at paras 92 to 93, 95 and 96, and order, para 2.

¹⁸ *Tarica* above n 14 at paras 101 to 102 and 108; and *Hlabangana* above n 4 at para 83.

and cannot explain a credit it says it owes. Neither has behaved in a way that is vexatious or an abuse.

[26] The applicant has nonetheless obtained limited but real relief, and he has obtained it because the City did not do what its own Policy required. In *Willow and Aloe Grove*, the applicant's approach was flawed, and its principal relief was refused. Costs were nevertheless awarded against the City, because it had failed to adhere to its own processes and the applicant had achieved some success in compelling it to do so.¹⁹ The same result follows here.

[27] The application raised a substantial historical account record, a statutory dispute of some complexity, and a question about the proper limits of a court order against a municipality. Costs on the party and party scale, with counsel on scale B, are appropriate.

G. ORDER

[28] I make the following order:

1. The late delivery of the respondent's answering affidavit is condoned.
2. The *curriculum vitae* of Ms Maike Gohl, the calculation marked RA1.2 and the confirmatory affidavit marked RA1.3 are received. Their reception is not a finding that the calculation, its inputs or its methodology is correct.
3. Prayers 2, 3, 4, 6 and 7 of the notice of motion are dismissed. Prayers 1 and 5 are refused as free-standing relief and are addressed only to the extent provided in paragraphs 5 and 7 below.
4. The respondent is directed to procure that its City Manager determines, in terms of clause 16.5.1 of the City of Johannesburg Credit Control and Debt Collection Policy Review: June 2022 read with section 62 of the Local Government: Municipal Systems Act 32 of 2000, the appeal dated 19 October 2023 lodged by the applicant in respect of account number

¹⁹ *Willow and Aloe Grove* above n 3 at paras 107 to 109.

440761870, and informs the applicant in writing of the decision, within 60 calendar days of the date of this order.

5. The decision must deal with —
 - (a) the applicant's statutory dispute of 20 April 2022 under section 102(2) of the Systems Act, concerning the amount of R 88 259.50 in invoice 600002132534 of 22 March 2022, including his complaint that the rebill of March 2022, covering the period 2 December 2015 to 6 May 2022, was based on estimates rather than on the readings he supplied;
 - (b) the invoices raised in April and May 2023, after transfer of the property on 17 March 2023;
 - (c) the March 2014 opening balance, only to the extent that it was carried into the rebill of March 2022; and
 - (d) the derivation of the credit of R 19 391.39, how the disputed rebill of March 2022 has been treated in arriving at it, the relationship between the account marked COJ2 and the October 2024 account marked RA3, and whether the credit has been paid, retained, transferred or applied.
6. The City Manager may obtain such technical and accounting assistance as is required, from officials with knowledge of the property, its meters and its account, and from Johannesburg Water or any other relevant service provider; but the respondent remains responsible for compliance with this order. The decision must identify the records relied on, including meter readings, job cards and account entries. Where a record relied on is unavailable, the decision must say which record is unavailable, what was done to find it, and what effect its absence has on the decision.
7. Within 14 calendar days of the decision the respondent must deliver to the applicant —

- (a) the written reasons for the decision;
 - (b) the records relied on in making it; and
 - (c) an adjusted statement of account, with notations and explanations sufficient to make it intelligibly clear why each adjustment was made and how the amount owing to or by the applicant has been arrived at.
8. The respondent is to pay the applicant's costs of the application, including the costs of counsel, on scale B.



VETTER AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicant: Mr T Paige-Green
Instructed by: HBGSchindlers Attorneys & Notaries

For the Respondent: Mr E N Sithole
Instructed by: Mdlulwa Khuhlu Attorneys

Date of hearing: 26 August 2026

Date of judgment: 31 August 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on CaseLines and SAFLII. The date for the handing down is deemed 31 August 2026.