**REPUBLIC OF SOUTH AFRICA**

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

**CASE NO: 2023-044543**

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

[redacted]
**SIGNATURE** **DATE** 27 January 2025

In the matter between:

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|---|---|
| **ANTHEA VERITY TARICA** | First Applicant |
| **KATHERINE ANNE GASCOIGNE N.O.** | Second Applicant |
| and | |
| **CITY OF JOHANNESBURG METROPOLITAN MUNICIAPLITY** | Respondent |

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**JUDGMENT**

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*This revised judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 27 January 2025.*

MAHON AJ:

[1] In May 2023 the applicants launched urgent proceedings against the respondent for an order for the reconnection of electricity services to the first applicant's property and an interim interdict preventing the respondent from disconnecting or terminating any further services pending the finalisation of this matter.

[2] The urgent matter became moot as the applicants were reconnected and the matter was then transferred to the opposed motion roll after the respondent proceeded to serve its answering affidavit, as well as a counterapplication.

[3] What remains for determination is the applicants' entitlement to the relief sought under Part B of the notice of motion, and a determination of the counter-application launched by the respondent.

[4] The respondent sought condonation for the late filing of its answering affidavit and counterapplication. This was initially opposed by the applicants. However, at the commencement of the hearing, the applicants indicated that they no longer opposed the respondent's application for condonation and nothing further need be said on that score.

[5] The applicants now seek an order that the respondent take "*… any and/or all necessary actions…"* to ensure that adjustments are made to an account in

respect of services provided by the respondent. The adjustments are said to include the following:

[5.1] An account is to be opened in the name of the first applicant and all charges from 5 May 2021 to date are to be transferred to such new account;

[5.2] any prescribed amounts (in relation to electricity and water charges) on municipal account number 402834221 (being all amounts older than three years as at date of judgment, which are disputed, have not been paid, summonsed for and/or where no acknowledgment of indebtedness has been made) are to be written off.

[6] As I indicated to the parties during the hearing, I have some difficulties with the formulation of the relief which is sought by the applicant, inasmuch as it seeks to effect charges which are three years older than date of judgment. If the date of judgment is used as a reference point, then, at least notionally, the order could affect charges in respect of which the respondent has not yet had an opportunity to raise an answer to the question of prescription.

[7] What is clear, however, is that what the applicants seek is an order directing the respondent to open an account in the name of the first applicant and to transfer all charges from the account which was held in the name of the first applicant's late husband to the first applicant's newly established account. What the applicant then seeks is an order directing the respondent to write off any amounts which are demonstrated to have become extinguished through prescription as at the date of the notice of motion. The respondent has not

suggested, in respect of these charges, that the running of prescription was interrupted through the issue of a summons, an acknowledgement of debt, or on any other basis. It does, however, dispute that the debts have prescribed, a topic which I deal with more fully below.

[8] The respondent counter-applies for the following order:

[8.1] That the first applicant be ordered and directed to attend to the First City of Johannesburg Metropolitan Municipality's offices upon the service of this Counter Application within 5 days and complete all the necessary documents and pay the necessary amounts as they may be required in order to open a consumer account in her name.

[8.2] Granting a declaratory order to the effect that the services consumed under the late first applicant's Husband (Mr Jacques Tarica) under the consumer account numbers: 402834221 be declared to be services consumed by the first applicant and that the first applicant is liable to the amounts under the aforesaid accounts.

[8.3] Alternative to the above, the charges or the amounts for the consumed services under the account numbers 402834221 be paid by the First and second applicants jointly and severally one paying the other to be absolved.

[9] At its core, the case concerns the management of a municipal service account for a residential property, allegations of billing irregularities, and the respondent's decision to disconnect services due to non-payment. The dispute has unfolded against a backdrop of contested charges, allegations of

administrative failures, and disagreements over legal entitlements to payment and service provision.

[10] The applicants assert that the municipal account for the property, registered in the name of the deceased, has been improperly managed by the respondent. They contend that the account was erroneously opened in the deceased's name and that the respondent continued billing on this account following his death in 2021 without rectifying the associated errors. These errors include allegations of overbilling, reliance on faulty or removed meters, and the continued accrual of charges for services that were either disputed or allegedly not rendered. The applicants claim that these issues were raised with the respondent as far back as 2014, but despite repeated efforts to resolve the disputes, the errors remain unaddressed. Furthermore, the applicants maintain that certain charges have become prescribed and are thus unenforceable.

[11] The first applicant, who resides on the property, has also criticised the respondent's failure to open a new municipal account in her name despite her attempts to regularise the situation. The applicants argue that the respondent's decision to disconnect services in May 2023, without adequately addressing the disputes, was unlawful. In response to the disconnection, the applicants sought urgent relief to restore services and prevent further terminations. They now seek a court order directing the respondent to open a new account and to rectify the alleged billing inaccuracies, and a finding that certain charges are unenforceable due to prescription.

[12] The respondent, on the other hand, argues that the applicants have failed to fulfil their payment obligations since 2015, despite consuming municipal services such as electricity and water. It asserts that the disconnection of electricity services in May 2023 was a necessary enforcement measure in light of the applicants' substantial arrears. The respondent contends that the applicants have not adequately substantiated their claims of overbilling or shown that any charges are subject to prescription. It maintains that the applicants are attempting to evade their financial responsibilities by raising disputes that are either unfounded or improperly framed.

[13] Additionally, the respondent asserts that the first applicant bears the responsibility of regularising the municipal account following her husband's passing. It claims that she failed to take appropriate steps to open a new account in her name and that any delays or administrative shortcomings on its part do not absolve her of this obligation. The respondent further seeks to recover its costs and has counter-applied for an order compelling the first applicant to open the account in accordance with its requirements.

[14] The central issues in this case revolve around the proper administration of the municipal account, the validity of the applicants' disputes regarding billing, and the extent to which the principle of prescription applies to the contested charges.

**BACKGROUND**

[15] The first applicant acquired the immovable property described as Erf 314 Malanshof Extension 5, located at 20 Kasper Street, Malanshof Extension 5, Randburg ("the property"), with transfer of ownership registered on 17 February

2004. At or around the time of the transfer, the municipal account associated with the property was erroneously opened in the name of the first applicant's late husband, Mr Jacques Tarica, under account number 402834221. Although the parties blame each other for this error, nothing turns on this.

[16] The respondent continued to bill Mr Tarica on this account even after his passing.

[17] The first applicant, who has resided on the property since its acquisition, remained in occupation following the death of her husband on 5 May 2021.

[18] In December 2014, the first applicant raised a formal dispute with the City after discovering that the municipal account reflected erroneous charges. These inaccuracies were attributed to faulty or non-existent electricity and water meters associated with the property. In particular, queries were lodged concerning electricity meters with meter numbers 90800, 340231, and 338624 ("the old meters"), which had been removed from the property in or around June or July 2014. Additionally, the applicant disputed water consumption charges based on a malfunctioning water meter with meter number CPRK5909, which was subsequently removed and replaced with a new water meter, numbered 30037045.

[19] The applicants‘ complain that, despite these issues being brought to the respondent’s attention, the inaccuracies persisted, resulting in continued disputes and unresolved grievances.

[20] Between July 2015 and August 2017, the respondent failed to issue any invoices for electricity usage on the municipal account. This lapse was brought

to the respondent's attention on 29 June 2015 and again on 21 April 2017. To address the omission, the respondent issued a "rebill" in September 2017. However, this rebill purported to account for electricity consumption between 1 May 2014 and 2 June 2017 by relying on data from the old meters that had been removed in 2014.

[21] The rebill imposed a charge of R234,099.39 for electricity over the stated period, equating to an average monthly charge of R5,852.48. The applicants assert that this amount was manifestly excessive in light of the household's typical usage. The invoice for September 2017 reveals that the majority of the electricity charges were applied to a single month, August 2017, which seemingly inflated the average consumption. Moreover, the respondent's total meter readings indicated that 151,321.000 kWh of electricity should have been charged, yet the rebill incorrectly reflected 186,370.000 kWh, a discrepancy of 35,000 kWh in excess of the actual readings.

[22] This overbilling was promptly disputed, and a meeting was convened on 23 October 2017 between the late Mr Tarica, his legal representative, and a representative of the respondent.

[23] The respondent failed to address or rectify the errors in the account. After Mr Tarica's death, notice of the estate's insolvency was served on the respondent on 14 October 2022, yet the respondent failed to lodge any claim against the estate.

[24] Subsequent to Mr Tarica's initial queries, the respondent failed to resolve the discrepancies on the account. Additional queries were lodged on 30 August

2021. Thereafter, on 18 October 2021, the first applicant delivered a letter of demand to the respondent in terms of section 16.2 of the City's Credit Control and Debt Collection Policy, with receipt acknowledged on 19 October 2021. A further letter of appeal, pursuant to section 16.5 of the same policy, was delivered to the respondent on 19 November 2021.

[25] Despite these formal communications, the disputes remain unresolved. For its part, the respondent continued to threaten the applicants with termination of municipal services. On 5 May 2023, the respondent proceeded to terminate the applicants' electricity supply, necessitating urgent legal intervention under Part A of this application. The services were subsequently restored, rendering Part A of the application moot. The matter was initially set down but was not finalised, with the respondent serving its counterapplication and answering affidavit only on 23 August 2023.

**THE APPLICANTS' CONTENTIONS**

[26] The applicants' submissions in this matter focus on a series of disputes surrounding the administration of their municipal account by the respondent. Central to their case is the assertion that the account, which was erroneously opened in the name of the first applicant's late husband, has been plagued by irregularities and inaccuracies. The applicants contend that these issues, raised as early as 2014, remain unresolved and continue to prejudice them as consumers of municipal services.

[27] The applicants argue that the respondent has failed in its duty to ensure accurate and transparent billing. They highlight several examples of this failure,

including charges based on faulty and removed meters and an allegedly inflated rebill issued in 2017. This rebill encompassed the period from May 2014 to June 2017, but it relied on readings from meters that were no longer installed at the property. The resultant charges, they argue, were unreasonably high for a residential property, amounting to an average monthly electricity cost well beyond what was plausible for the applicants' usage. Despite bringing these discrepancies to the respondent's attention, the applicants assert that the respondent has not rectified them, leaving the account riddled with errors.

[28] A key aspect of the applicants' submissions concerns the prescription of charges. They argue that the respondent's claims for certain amounts are barred under the Prescription Act 68 of 1969, which limits the recovery of debts to a three-year period. The applicants contend that the respondent's failure to initiate legal proceedings to recover arrears within this period renders these debts unenforceable. They further maintain that the mere issuance of invoices or billing statements by the respondent does not interrupt the running of prescription. Moreover, they assert that their formal dispute over these charges, as provided for under section 102(2) of the Municipal Systems Act 32 of 2000, precludes the respondent from enforcing or reallocating payments towards disputed amounts.

[29] If the applicants' contentions in regard to the question of prescription are correct then the question of whether the first applicant was jointly or severally liable with the deceased for the historical charges on the deceased's account, need not be resolved. In addition, it is not necessary for me to resolve the disputes relating to the inaccuracies on the account. If the charges levied by the respondent were

in relation to debts which have become prescribed, then the first applicant would not be liable for those debts even if the respondent's contentions in regard to her joint and several liability and the accuracy of the billing were accepted as correct.

[30] The applicants also criticise the procedural conduct of the respondent, alleging significant irregularities in its handling of the account and its approach to resolving the dispute. The disconnection, they contend, was unlawful and undertaken without compliance with the applicable by-laws and constitutional requirements. This issue, too, does not need to be resolved for purposes of the relief which is currently sought.

[31] Further, the applicants emphasise their right to have the account rectified and properly administered. They seek an order compelling the respondent to open a new account in the first applicant's name and to rectify the alleged billing errors. This includes removing prescribed charges and ensuring that future billing is based on accurate readings and properly calibrated meters. Despite repeated attempts by the first applicant to open a new account, they assert that the respondent has failed to facilitate this process, compounding the administrative failures that underpin their case.

[32] The applicants also argue that the respondent's defence is inadequate. They contend that the respondent's reliance on general denials and its assertion of the applicants' liability for services consumed, fail to address the specific issues of overbilling, prescription, and procedural non-compliance. Furthermore, they criticise the respondent's counterapplication, which seeks to compel the first

applicant to open a new account, as redundant given that this relief has already been sought by the applicants themselves.

[33] Finally, the applicants highlight the prejudice they have suffered due to the respondent's inaction and procedural failures. They assert that the respondent's refusal to resolve the dispute has forced them into protracted litigation, placing both financial and emotional burdens upon them. They argue that the respondent's conduct has undermined their rights as consumers and has necessitated judicial intervention to ensure lawful and fair administration of the municipal account.

**THE RESPONDENT'S CASE**

[34] The respondent maintains that the applicants have failed to meet their financial obligations for municipal services consumed over several years and asserts that its actions, including the disconnection of electricity services in May 2023, were lawful and justified. The respondent's submissions are rooted in its statutory and contractual rights to recover charges for services rendered, as well as its interpretation of the applicants' conduct and claims.

[35] At the heart of the respondent's case is the assertion that the applicants have not paid for municipal services consumed at the property since 2015, despite being beneficiaries of such services. It argues that the applicants' failure to settle these substantial arrears undermines their claim to the relief sought. The respondent emphasises that the first applicant, as the current resident of the property, was aware of her obligation to regularise the municipal account following the death of her husband in 2021. It submits that the first applicant's

inaction in this regard is a significant contributing factor to the current state of the account.

[36] The respondent also disputes the applicants' claims of overbilling and irregularities, maintaining that the charges reflected on the municipal account are accurate and valid. It argues that the applicants have not provided sufficient evidence to substantiate their allegations of erroneous billing or to demonstrate that the disputed charges are based on faulty meters or other inaccuracies. Moreover, the respondent asserts that it has acted in accordance with its by-laws and policies, which include measures to address billing disputes and recover outstanding amounts.

[37] On the issue of prescription, the respondent takes a firm stance, contending that the applicants have not made out a valid case to show that any charges have prescribed. It submits that the applicants bear the burden of proving that specific amounts fall outside the prescription period and that they have failed to discharge this burden. The respondent also argues that the applicants' conduct, including partial payments and ongoing disputes, indicates an acknowledgment of the debt, which would interrupt the running of prescription. Furthermore, it challenges the application of section 102(2) of the Municipal Systems Act to the circumstances of this case, asserting that the applicants' disputes have not been properly raised or communicated.

[38] The respondent defends its decision to disconnect the applicants' electricity supply, arguing that this action was necessary and proportionate in light of the applicants' prolonged non-payment. It submits that disconnection is an

enforcement mechanism provided for under municipal legislation and policies, which allows municipalities to recover revenue for services rendered. The respondent denies that the disconnection was unlawful or procedurally unfair, asserting that it followed due process in implementing this measure.

[39] In response to the applicants' claim for an order to compel the opening of a new account, the respondent asserts that the first applicant has not demonstrated a willingness to comply with the necessary requirements to facilitate such a process. It argues that the responsibility for regularising the account, including the opening of a new account in the first applicant's name, lies squarely with her. The respondent contends that it has provided the necessary mechanisms for this process and that any delays are attributable to the first applicant's inaction.

[40] The respondent's submissions further challenge the applicants' reliance on alleged procedural irregularities. It asserts that any perceived delays or administrative shortcomings do not absolve the applicants of their responsibility to pay for services consumed. It maintains that its actions are consistent with its mandate to deliver municipal services in a financially sustainable manner, which includes enforcing payment from all consumers.

[41] In its counterapplication, the respondent seeks relief to compel the first applicant to attend to its offices and complete the necessary formalities for opening a new municipal account. It argues that this step is essential for resolving the current dispute and ensuring accurate billing going forward. The respondent also seeks costs, contending that the applicants' conduct and the

procedural history of the matter have necessitated its legal defence and counterapplication.

[42] In conclusion, the respondent frames its actions as lawful and reasonable, grounded in its statutory authority and the applicants' obligations as consumers. It rejects the applicants' claims of overbilling, maintaining that the applicants have not made out a case for the relief sought. Instead, it positions itself as having acted in accordance with the law, with its enforcement measures directed at ensuring compliance and the recovery of unpaid charges. The respondent's case rests on its interpretation of the applicants' conduct as evasive and on its legal entitlement to pursue arrears and regularise the municipal account.

**FURTHER SUBMISSIONS AFTER THE HEARING**

[43] Subsequent to the hearing, both parties were invited by this court to provide further written submissions on issues that arose from correspondence circulated after the hearing. These submissions which were received on 30 September 2024 and 2 October 2024 respectively, have been duly considered in preparing this judgment. The respondent submitted additional heads of argument seeking to introduce further legal authorities and arguments, while the applicants responded, raising procedural objections and addressing the substance of the respondent's new contentions.

[44] The respondent, in its supplementary heads of argument, sought to rely on additional legal authorities to bolster its position. It argued that the Constitutional Court decision in *Mkontwana v Nelson Mandela Metropolitan Municipality 2005*

*(1) SA 530 (CC)* confirmed the validity of provisions that render property owners jointly and severally liable for municipal service charges. The respondent emphasised that these principles apply even where the property owner did not personally consume the services but benefited from them through the occupation of the premises.

[45] The respondent further referred to the Supreme Court of Appeal's judgment in *P A Pearson (Pty) Ltd v eThekwini Municipality 2017 (6) SA 82 (SCA)*, which upheld a municipality's right to recover outstanding amounts from property owners, despite the account being held in the name of another party. It contended that these authorities supported its position that the first applicant, as the property owner, cannot evade liability for municipal debts associated with the property.

[46] Additionally, the respondent sought to introduce findings from a recent judgment of Crutchfield J (the name of which was unfortunately not provided), which, it claimed, affirmed the necessity for parties to exhaust internal remedies, such as approaching the municipal ombudsman, before seeking judicial intervention. The respondent also relied on its credit control and debt collection policy, which it argued permitted it to act as it did in recovering outstanding debts. The respondent maintained that the applicants failed to substantiate their claims of prescription or procedural unfairness and insisted that its counterapplication to compel the first applicant to formalise her account was both necessary and appropriate.

[47] In response, the applicants challenged the admissibility of the respondent's further submissions, asserting that they were improperly raised and amounted to an ambush. They argued that the respondent should have included these materials in its initial heads of argument, as allowing such submissions at this stage disrupted procedural fairness and deprived the applicants of a fair opportunity to address them in oral argument.

[48] On substance, the applicants contended that the respondent's reliance on *Mkontwana* and related cases was misplaced. They distinguished the factual and legal issues in *Mkontwana* from those at hand, noting that the Constitutional Court's findings there primarily concerned joint liability in instances where property had been sold, which was not the case here. The applicants also challenged the respondent's interpretation of other judgments, asserting that they had limited relevance to the question of whether the charges in dispute had prescribed or whether the respondent's procedural conduct had been lawful.

[49] The applicants reiterated their claims of procedural impropriety on the part of the respondent, highlighting its failure to issue the requisite statutory notices or properly address disputes raised in terms of section 102 of the Municipal Systems Act. They further argued that any attempt to introduce new evidence or authorities at this stage should be disregarded unless condonation was granted, which they opposed on the grounds of prejudice and procedural fairness.

**ANALYSIS**

[50] It is a well-established principle in our law, and indeed a constitutional obligation, that municipalities such as the respondent are required to provide municipal services to residents, including the applicants, in exchange for reasonable fees, charges, or tariffs levied for such services. This obligation is underscored by the principle of fairness and accountability in municipal governance.

[51] There is no obligation on a resident, customer or ratepayer to pay the municipality for a service that has not been rendered (*Rademan v Moqhaka Municipality 2013 (7) BCLR 791 (CC) at para 42)*.

[52] In the present matter, the municipal account remained in the name of the first applicant's late husband. Accordingly, he, and subsequently his estate, would have borne liability for charges for services rendered up to the date of his death. The respondent points out that the first applicant is jointly and severally liable for this debt but, of course, this does not impact upon the question of prescription.

[53] The respondent bears the burden of proving the accuracy of the charges levied on the account. Section 95 of the Municipal Systems Act imposes specific obligations on municipalities regarding the charging of municipal services. In particular, municipalities must:

[53.1] Take reasonable steps to ensure that service consumption is measured through accurate and verifiable metering systems;

[53.2] Provide regular and accurate accounts to individuals liable for payment, indicating the basis for calculating the amounts due;

[53.3] Establish accessible mechanisms for querying or verifying accounts and metered consumption, coupled with appeal procedures allowing for prompt redress of inaccuracies; and

[53.4] Implement accessible mechanisms for addressing complaints, ensuring prompt responses and corrective action by the municipality.

[54] Despite nearly a decade of attempts by the applicants to resolve the persistent inaccuracies in their municipal account, the respondent has continued to issue erroneous bills. The applicants have repeatedly identified these flaws, yet the respondent has failed to rectify them, necessitating this application.

[55] It is evident from the constitutional and statutory framework that the applicants possess a clear right to municipal services, which are provided reciprocally against reasonable and lawful payment. This includes the respondent's duty to investigate and respond to any legitimate queries raised by the applicants, as well as to bill them accurately and transparently. The respondent is only entitled to recover amounts that are lawfully due for actual consumption, and not for estimated or fictitious charges based on data from removed or faulty meters. Accurate billing, underpinned by proper metering systems, is fundamental to the respondent's obligations.

[56] The respondent bears the onus of proving the accuracy of the consumption charges it levies. This entails demonstrating that the billed consumption is based on verifiable and actual readings from meters that were correctly installed and remain operational at the property. In this case, the respondent has failed to discharge this burden.

[57] In *Euphorbia (Pty) Ltd t/a Gallagher Estates v City of Johannesburg [2016] ZAGPPHC 548 (17 June 2016) from [10] to [17]*, the court held that:

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

[58] The applicants first raised a formal dispute regarding the inaccuracies in their municipal account in December 2014. From this point onwards, section 102(2) of the Municipal Systems Act became operative, prohibiting the respondent from allocating payments to the disputed charges. Despite this statutory safeguard, the respondent has failed to address the dispute adequately, perpetuating the billing inaccuracies and acting contrary to its obligations.

[59] In September 2017, the respondent undertook a rebilling of the municipal account for the period between May 2014 and June 2017. This rebill reflected an average monthly electricity expense of approximately R5,852.48, an amount which the applicants contend to be strikingly high given the occupants of the property consisted of an elderly couple and their son.

[60] The respondent also attributed an extraordinarily high consumption of 186,370.00 kWh to a single month, August 2017. This figure is implausible for residential use. Instead of distributing this anomalously high figure over the 37-month billing period to establish a reasonable average, the respondent concentrated the entire amount in one month. This bloated reading elevated the account into the highest tariff bracket for that month, thereby inflating the charges even further.

[61] The improbability of the respondent's calculations is underscored by its own data, which records a total electricity consumption of 151,321.000 kWh over the entire 36-month period. Yet, for August 2017 alone, the respondent attributed 186,370.000 kWh to the property—exceeding the total consumption for three years by some 35,000.00 kWh. This discrepancy is mathematically indefensible.

[62] In response to the arrear charges, the applicants made a payment of R384,266.80 on 12 May 2023 to settle “non-prescribed” amounts and bring the account as up to date as possible based on the first applicant’s perceived actual usage. This payment was in respect of amount incurred subsequent to the deceased’s death. The first applicant has continued to pay monthly charges that are not in dispute, demonstrating good faith and a commitment to meeting her financial obligations.

[63] The judgment in *Body Corporate Croftdene Mall v eThekwini Municipality [2012] 1 All SA 1 (SCA)* emphasises that for a dispute to be valid, it must exist prior to the implementation of credit control measures and must be properly

raised, with the specific facts of each case considered. The applicants submit that their disputes with the respondent meet these criteria, as the inaccuracies in the account were flagged and formally raised well before any enforcement actions were undertaken.

[64] The requirements for a valid dispute have been further clarified in the case of *39 van der Merwe Street Hillbrow (Case No. 23/7784) handed down on 24 March 2023* where Acting Judge Dodson, drawing on the principles established in the *Croftdene* judgment, outlined the following criteria:

[64.1] *"There must be a dispute, in the sense of a consumer, on the one hand, and the municipality on the other, advancing irreconcilable contentions;*

[64.2] *The dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts;*

[64.3] *The dispute must relate to a specific amount or amounts or a specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms;*

[64.4] *The consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis of the ratepayer's objection to them;*

[64.5] *It must be apparent from the founding affidavit that the foregoing requirements have been satisfied."*

[65] These principles underscore the need for precision, transparency, and procedural compliance when disputes over municipal accounts are raised. They serve to ensure that the municipality is adequately informed and positioned to address the issues in contention.

[66] The applicants have satisfied all the requirements outlined for raising a valid dispute under Section 102 of the Municipal Systems Act. Accordingly, a legitimate and ongoing dispute exists concerning the municipal account.

[67] The applicants and the respondent remain in fundamental disagreement regarding the accuracy of the electricity account. The dispute culminated in a letter of appeal submitted on 19 November 2021 under the respondent's internal procedures.

[68] The dispute specifically pertains to the incorrect installation and removal dates of electricity meters, erroneous charges, and the inclusion of prescribed amounts. While the precise figures in contention have varied over time, they are clearly detailed in the founding affidavit and form the basis of the applicants' objections.

[69] The applicants have consistently presented the relevant facts to the respondent, beginning in December 2014 and continuing through the present application. These submissions have provided the respondent with ample opportunity to consider and address the disputes.

[70] The necessary factual and procedural elements establishing the dispute are evident from the founding affidavit submitted in this matter.

[71] Through these actions, the applicants raised the dispute, leaving no doubt that the requirements for a valid dispute under Section 102 have been met.

[72] To require a consumer to identify an exact disputed amount may impose an undue burden, particularly when such information often lies exclusively within the municipality's knowledge. Consequently, the respondent cannot rely on the first applicant's demonstration of good faith—through her consistent payments of undisputed amounts—to argue that no valid dispute exists. The applicants have adhered to their obligation not to withhold all payments, and it is evident from the invoices provided that the first applicant has regularly paid the current undisputed monthly charges, albeit under protest.

[73] The contended requirement to specify an exact disputed amount is unduly literal and impractical, as consumers may not always have the ability to precisely quantify disputed amounts when the necessary information resides within the municipality's control. Such a standard would unfairly preclude consumers from lodging valid disputes, especially when amounts may vary monthly, thereby creating an unworkable situation where disputes would need to be re-lodged every billing cycle.

[74] Instead, a dispute should be considered valid if it is reasonably ascertainable and sufficiently specific, even if couched in broader terms. While this does not permit vague or insubstantial complaints to be classified as disputes, an overly rigid or legalistic approach would not be appropriate. In *Sienaert Prop CC v City*

*of Johannesburg Metropolitan Municipality & Another (2021/31566) [2021] ZAGPJHC 490 (23 September 2021)*, it was held that a genuine dispute of fact is sufficient to constitute a valid dispute, as customers cannot reasonably be expected to have full knowledge of the municipality's internal workings.

**PRESCRIPTION**

[75] Given the existence of a dispute, and the operation of section 102 of the Municipal Systems Act, the respondent is prohibited from allocating payments to the oldest amounts first. This triggers the application of prescription, which is governed by the Prescription Act No. 68 of 1969. A typical debt, unless specified otherwise in legislation, prescribes after three years from the date the debt becomes due. In this case, charges for electricity services constitute a standard debt under the Act. The respondent, as the prescription creditor, bears the onus to institute legal proceedings before the completion of the prescription period. Once a debt prescribes, it is extinguished and becomes legally unenforceable.

[76] The respondent's argument that the City's policy precludes it from issuing summons on disputed debts, thereby preventing the debts from prescribing, is without merit. A closer examination of the applicable legal principles and the provisions of the policy reveals that this contention is legally unsustainable.

[77] Prescription is governed by the Prescription Act 68 of 1969, which stipulates that debts prescribe three years after they become due, unless interrupted by acknowledgment or the initiation of legal proceedings. The legislative framework is clear that prescription operates independently of internal policies or administrative practices of municipalities. Consequently, 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.

[78] The City's policy, as outlined in Section 16.10, allows for the suspension of certain credit control actions, such as disconnections, during the resolution of disputes. This is an administrative safeguard intended to protect customers from punitive measures while their disputes are adjudicated. However, this suspension does not extend to the interruption of prescription. The right to suspend credit control measures is an internal administrative remedy and does not equate to the legal interruption of a debt's prescriptive period. The statutory framework for prescription continues to apply irrespective of the City's internal mechanisms for dispute resolution.

[79] The argument that the City's inability or unwillingness to issue summons on disputed debts prevents prescription from running also disregards the respondent's statutory obligation to take reasonable steps to recover debts. Failure to act on disputed debts in a timely manner cannot be used to indefinitely delay prescription. The running of prescription cannot be halted by a creditor's inaction. A municipality's decision not to pursue disputed debts through legal action does not pause or negate the statutory operation of prescription.

[80] Furthermore, the respondent's argument overlooks the accountability that municipalities bear for the proper management of debts. Even if the policy prohibits the issuance of summons during the resolution of disputes, this does not absolve the respondent from taking appropriate steps to preserve its claims

within the prescriptive period. The Prescription Act allows creditors to initiate legal proceedings to interrupt prescription, and the respondent's failure to do so reflects a procedural choice rather than a legal impediment.

[81] In conclusion, the respondent's reliance on the policy to argue that prescription cannot apply to disputed debts is legally flawed. The Prescription Act governs the operation of prescription, and the respondent's administrative practices do not alter or suspend its application. While the policy may provide administrative mechanisms for managing disputes, these mechanisms do not have the force of law to delay or interrupt prescription. The City's failure to act on disputed debts within the prescriptive period is a reflection of its own inaction and does not negate the applicants' reliance on the Prescription Act.

[82] Additionally, the right to request the reconsideration of a municipal account is not subject to prescription. A municipal account, along with the right to receive it, arises from section 95 of the Municipal Systems Act. This statutory provision creates a legislative right, rather than a "debt" in the conventional sense, when a payee seeks rectification of an account. A "debt," in its ordinary meaning, refers to something owed, due, or a service to be rendered.

[83] In this matter, the applicants are not seeking to enforce a debt but are instead requesting the rectification of an account. While the account itself may technically qualify as a "debt" in terms of the reasoning in *Makate v Vodacom (Pty) Ltd 2016 (4) SA 121 (CC)*, the relief sought by the applicants is distinguishable. The applicants' claim pertains to inaccuracies in the information

contained within the account, which requires correction—a matter over which the applicants have no control.

[84] The *Makate* decision addressed this distinction, stating:

*"[92] However, in present circumstances it is not necessary to determine the exact meaning of 'debt' as envisaged in section 10. This is because the claim we are concerned with falls beyond the scope of the word as determined in cases like Escom, which held that a debt is an obligation to pay money, deliver goods or render services. Here the applicant did not ask to enforce any of these obligations. … [93] To the extent that Desai went beyond what was said in Escom, it was decided in error. There is nothing in Escom that remotely suggests that 'debt' includes every obligation to do or refrain from doing something apart from payment or delivery. It follows that the trial Court attached an incorrect meaning to the word 'debt.' A debt contemplated in section 10 of the Prescription Act does not cover the present claim. Therefore, the section does not apply to the present claim, which did not prescribe."*

[85] The applicants are not equipped to ascertain the correctness of the respondent's invoices, as they lack access to the internal workings and calculations underpinning the respondent's billing system. While the applicants may raise a dispute and allege inaccuracies, the respondent bears the burden of proving the accuracy of its invoices.

[86] Should the applicants contest the billing, the respondent must substantiate its claims of accuracy through a proper rectification process. This process must incorporate all necessary adjustments, as the applicants lack the information

required to verify the respondent's meter readings, calculations, and internal systems that generate the invoices. It is only through such rectification that the respondent can discharge its onus and address the applicants' concerns adequately.

[87] The rectification of the municipal account involves far more than a simple recalculation of a debt. It requires a comprehensive consideration of multiple factors, including the applicable service or tariff, whether accurate meter readings were taken, whether the meters in question were functioning properly or correctly calibrated, and whether the appropriate tariff was applied to the readings. This complexity goes beyond a mere mathematical adjustment and necessitates a detailed evaluation by the City.

[88] The responsibility for this rectification rests with the respondent, as the applicants lack access to the full range of information necessary to verify the account. The respondent must accurately account to the applicants, and the applicants' request for reconsideration of the account cannot prescribe, akin to the principle that a claim for rectification itself does not prescribe. This is because such a claim does not create any new obligation but seeks to correct an existing account.

[89] In this matter, the respondent's rebilling has produced an account that requires rectification not only through proof of various adjustments but also through a holistic reassessment of the inaccuracies. This is not a simple mathematical exercise, nor can the respondent rely on prescription to escape its obligation to correct these errors.

[90] The commencement of the prescription period in this context must be tied to either the date of consumption or, at the latest, the date when the monthly account was rendered. The respondent cannot invoke its own failure to take the necessary steps or to issue accurate bills as a basis to evade the operation of prescription.

[91] Since December 2014, the amounts in dispute have remained unresolved, while the first applicant has consistently paid all non-disputed and non-prescribed charges for which she is responsible. Any electricity charges older than three years from the date of the notice of motion have prescribed and must be written off. The respondent, therefore, has no legal entitlement to claim such amounts, and they must be removed from the account.

[92] The applicants' notice of motion provides for the writing off of all charges associated with municipal account number 402834221 that are older than three years as of the date of judgment. However, the papers do not account for charges incurred after the date of the notice of motion and this date must therefore be the appropriate reference point.

[93] It has also been established that an acknowledgment of liability, limited solely to undisputed amounts, does not constitute an interruption of prescription. For prescription to be interrupted, an acknowledgment must unequivocally admit both the existence of the debt and the debtor's liability for the disputed amounts. A partial acknowledgment, especially one that excludes certain amounts under dispute, does not satisfy this requirement.

[94] The respondent's assertion that the first applicant's monthly payments constitute an acknowledgment of liability and an interruption of prescription is unfounded. As discussed earlier, payments made towards undisputed amounts cannot be construed as an admission of liability for the entire account. The first applicant has consistently paid non-disputed amounts, but this does not equate to an interruption of prescription for charges that are contested.

[95] As a result, all electricity charges from May 2014 that have prescribed must be written off, with any remaining amounts transferred to a new municipal account in the name of the first applicant.

[96] The applicants do not seek to evade their lawful obligations or derive any undue advantage. Their sole intention is to pay the amounts lawfully and accurately owed to the respondent, free from the fear of unjust service terminations.

[97] The respondent bears a statutory duty to accurately account to its customers for service charges. Customers have the right to request such accounts and, where necessary, to compel the City to render accurate and transparent billing.

[98] In *Friedshelf 837 (Pty) Ltd v City of Johannesburg Metropolitan Municipality & Others [2015] JOL 31044 (GJ)* the court criticised municipalities for failing to conduct thorough investigations into billing disputes and instead resorting to threats of service termination. The judgment held that the failure to perform these duties, or to complete investigations in a conscientious manner, is inconsistent with acceptable standards under municipal by-laws. Municipalities owe consumers a duty to resolve queries diligently, rather than adopting a disinterested or cursory approach.

[99] Similarly, in *Canton Trading 95 (Pty) Ltd and Others v Buffalo City Metropolitan Municipality [2014] ZALCJHB 260 (10 July 2014)*, it was confirmed that municipalities have a statutory obligation to account to ratepayers and service consumers. Consumers may demand accounts and, if necessary, compel municipalities to provide them.

[100] The applicants, having exhausted the City's internal remedies over nearly a decade without resolution, had no alternative but to bring this application. The rebill undertaken by the City in September 2017 only exacerbated the pre-existing issues, further compounding the inaccuracies and unresolved disputes.

[101] The contention that municipalities possess expertise while courts do not should not diminish the authority of the judiciary in matters such as this. The applicants in this case have provided evidence to demonstrate deficiencies in the respondent's billing processes and the applicability of prescription. The Court, as the ultimate arbiter, is fully equipped to address these issues and render an informed decision.

[102] The respondent's failures are the reason that disputes of this nature come before the Court. Referring the matter back to the very institution responsible for creating the problem, as suggested by the respondent, is neither a viable solution nor in the interests of justice. Such an approach would only perpetuate the cycle of administrative inefficiency, leading to further delays and frustration for all parties involved.

[103] Turning to the respondent's counterapplication, the respondent seeks the following orders:

[103.1] That the first applicant attend the respondent's offices to open a municipal account;

[103.2] That the services consumed by the deceased be transferred to the first applicant's newly opened account;

[103.3] Alternatively, that the applicants be held jointly and severally liable for the payment of those amounts; and

[103.4] That costs be awarded against the first applicant on a punitive scale.

[104] With respect to the first prayer, the first applicant has indicated that she has made numerous attempts to open a municipal account, but the respondent has consistently refused to assist her.

[105] The respondent must assist the first applicant in opening a new account, as it is legally required to do.

[106] Considering the respondent's second and third prayers, these claims are inextricably linked to the argument on prescription discussed above. The charges in question have prescribed, and the respondent is therefore barred from pursuing them. The applicants have already pointed out that the respondent should have initiated legal proceedings long ago by issuing summons or lodging a claim against the deceased's estate through the second applicant. Yet, the respondent failed to take either course of action.

[107] As to the matter of costs, I see no reason why the costs should not follow the result. In my view, a punitive costs order is not warranted and the complexity and importance of the matter warrants the application of scale B.

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

1. The respondent is directed to open an account in the name of the first applicant, in respect of the property described as Erf 314 Malanshof Extension 5, located at 20 Kasper Street, Malanshof Extension 5, Randburg ("the property"), and the applicants and the respondent are directed to co-operate with one another in order to facilitate the opening of such account;

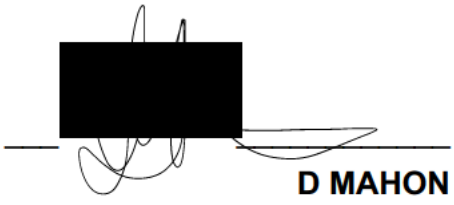
2. All debits and credits in respect of charges levied by the respondent in relation to the property from 5 May 2021 to date are to be transferred to such new account;

3. It is declared that all unpaid debts in respect of amounts charged by the respondent in respect of the property, which became due on or before 4 May 2020, have become extinguished by prescription.

4. The respondent is directed to rectify the municipal account/s in relation to the property by ensuring that the amounts referred to in 3 above are reflected as no longer owing.

5. The respondent's counterapplication is dismissed with costs on scale B.

6. The respondent is ordered to pay the costs of the applicants' application, on scale B.



**D MAHON**

Acting Judge of the High Court
Johannesburg

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| Date of hearing: | 22 August 2024 |
| Supplementary submissions received: | 30 September 2024 and 2 October 2024 |
| Date of judgment: | 6 December 2024 |
| Date of Revised Judgment: | 27 January 2025 |

**APPEARANCES**:

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|---|---|
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| For the Respondent: | Adv E Sithole |
| Instructed by: | Madhlopa & Thenga Inc. |