

SOUTH AFRICA / JUDGMENT

ERF 1[...] Barbeque Downs (Pty) Limited v City of Johannesburg (2022/7898) [2025] ZAGPJHC 594 (6 June 2025) [2025] ZAGPJHC 594

COURT

South Gauteng High Court, Johannesburg

BEFORE

A J D'Oliveira

CASE / FILE NUMBER

2022/7898

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FLYNOTES:

MUNICIPALITY

– Billing – Water
account – Prescription
– Demonstrated a consistent history of disputing accounts –
Correspondence with municipal officials
– Complaint to
ombudsman – References to specific query numbers –
Argument that policy permitted allocation
of payments to oldest
debts rejected – Statutory Act overrode policy –
Validly disputed accounts – Barred
municipality from

applying payments to disputed debts – Debt had prescribed –
Local Government: Municipal Systems Act 32 of 2000, s 102(2).

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

LOCAL DIVISION, JOHANNESBURG)

Case No. 2022/7898

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)
REVISED.
DATE: 6 June 2025

In the matter between: ERF
1[...] BARBEQUE DOWNS (PTY)
LIMITED
Applicant
and
CITY
OF JOHANNESBURG
Respondent

JUDGMENT

D'OLIVEIRA AJ:

Introduction

1 The Applicant applies for an order declaring that the amount of R192 887.35 claimed by the Respondent in respect of service charges for the provision of water in June 2014 and July 2015 has prescribed, and for its account with the Respondent to be corrected accordingly.

2 The application was launched on 11 March 2024.

3 It was preceded by two applications which were brought by the Applicant under the same case number.

4 The first was an urgent application launched on 3 March 2022 to interdict the Respondent from discontinuing the water supply to the Applicant's property pending the resolution of the complaints lodged by the Applicant in respect of its water accounts

for July 2014 and June 2015.

5 This resulted in the granting of an order by His Lordship Mr Justice Adams on 15 March 2022 as follows:

"1. The respondent be and is hereby interdicted and restrained from discontinuing or restricting the water supply to the applicant's property situate at 5[...] F[...] C[...], B[...] D[...] Extension 5, K[...];

2. ...

3. [The respondent shall] present accurate accounts for the period July 2014 and June 2015 to the applicant in accordance with the provisions of section 95 of the Municipal Systems Act 32 of 2000 within a period of 30 days from the date of service of this Order upon the Municipal Manager, City of Johannesburg; and

4. Finalise its investigation into the disputed amounts charged for the aforesaid period within a period of 30 days from date of service of this Order and present to the applicant its report, supported by the report of its expert(s) who conducted the investigation;

5. The respondent is to debate the said account with the applicant within a period of 10 ... days from the date upon which it presents the outcome of its investigation to the applicant.”

6 The second application was a contempt application launched by the Applicant on 29 August 2023 when the Respondent failed to comply with the above order.

7 On 31 August 2023, and by agreement between the Applicant and the Respondent, His Lordship Mr Justice Manoim granted the following

orders:

“2. The First Respondent is to flag the account nos: 5[...] until the subject of this matter has been resolved by way of either a court order, alternatively, a settlement agreement between the parties, which is to be made an order of court.

3. The First Respondent undertakes to write-off the debt that has prescribed; if any, and to furnish the Applicant with a revised account (‘the revised account’), reflecting the write-off.

4. The First Respondent is to debate the revised account with the Applicant on or before 16 October 2023....”

8 The Applicant launched the current application on 11 March 2024 when, according to the founding affidavit, the Applicant and the Respondent were unable to

resolve the dispute between them concerning the accounts.

9 As is indicated above, there are two disputed accounts. The first is the July 2014 water account in the amount of R45 038.67.

The second is the June 2015 water account in the amount of R147 848.68. I shall refer to these as “the water accounts”.

Merits

10 The Applicant claims that the Respondent’s claims for payment of the water accounts have prescribed. The Respondent denies this claim.

11 The Applicant submits that the water accounts are debts that prescribe within three years in terms of section 11(d) of Prescription Act 68 of 1968. It says that the Respondent was obliged to collect such debts within that period.

12 The Applicant relies on section 102 of the Local Government: Municipal Systems Act 32 of 2000 (“the Systems Act”). Section 102 provides:

“102 Accounts

- (1) A municipality may –
 - (a) consolidate any separate accounts for persons liable for payments to the municipality;
 - (b) credit a payment by such person against any account of that person; and
 - (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.”

13 The Applicant submits that section 102(2) applies. It acknowledges that the Respondent may ordinarily be entitled to prevent prescription of old debts by allocating payments made by a consumer to such debts, but submits that it was prevented from doing so in this instance by section 102(2) of the Systems Act.

14 The Applicant submits that the water accounts have prescribed in this instance because the Applicant has, since 2014 and 2015 respectively, queried and disputed the water accounts.

15 The Respondent claims that sections 7.2 and 10.10 of the City of Johannesburg Municipality Credit Control and Debt Collection Policy of 2022 (“the Policy”) have prevented the disputed amounts from prescribing.

16 Clause 7.2 of the Policy provides:

“The amount due and payable by the City’s consumer constitutes a consolidated debt, and as such any payment by the customer, that is less than, the full amount may be allocated to the consolidated debt in an order determined by the City.”

17 Clause 10.10 of the Policy provides:

“Payment received in respect of any customer’s debt and/or consolidated debt will be allocated in accordance with the following priority order:

10.10.1. oldest outstanding debt, settled first irrespective of the date of payment,

10.10.2. followed by administrative cost,

10.10.3. sundries,

10.10.4. interest, and

10.10.5. lastly current outstanding debt.”

18 The Respondent submits that the payments made by the Applicant for water charges up to the present date have been applied to settle the oldest outstanding debts, which included the water accounts, in terms of the Policy. The Respondent submits that the water accounts have accordingly been paid, and that the outstanding balance on the accounts relate to current or non-prescribed debt.

19 In the alternative, the Respondent submits that clauses 7.2 and 10.10 of the Policy should be read with section 14(1) of the Prescription Act. The Respondent submits that payments made by a consumer towards the consumer's water account, even payments that the consumer intends to make in respect of current charges, constitute acknowledgments of debt in respect of all charges aggregated in a consumer's water account. The Respondent submits, accordingly, what when the Applicant made any payments into its account, it acknowledged its indebtedness for the water accounts, thus delaying the running of prescription.

20 In my view, the application turns on whether section 102(2) of the Systems Act applies to the water accounts. Being legislation specifically enacted by the Legislature to regulate the treatment of payments made on municipal accounts, it overrides the Policy and the operation of section 14(1) of the Prescription Act in the manner contended for by the Respondent.

21 Accordingly, if section 102(2) applies, the Respondent was not permitted to allocate payments by the Applicant made in respect of current charges to the water accounts. If it doesn't, the Respondent was entitled to allocate payments to the oldest amounts outstanding, with the result that the July 2014 and June 2015 accounts would have been paid and the amount of R192 887.35 owing on the account would be owing in respect of aggregated new or non-prescribed debt.

22 For section 102(2) to operate, there must be "a dispute between the municipality and a person ... concerning [a] specific amount claimed by the municipality from that person".

23 In this regard, the SCA, in *Body Corporate Croftdene Mall v Ethekwini Municipality*,^[1] held:

*"[21] Neither the Systems Act nor the Policy defines the term 'dispute'. Some of the definitions ascribed to it include 'controversy, disagreement, difference of opinion' etc.⁸ This court had occasion to interpret the word in *Frank R Thorold (Pty) Ltd v Estate Late Beit*⁹ and said that a mere claim by one party that something is or ought to have been the position does not amount to a dispute: there must exist two or more parties who are in controversy with each other in the sense that they are advancing irreconcilable contentions.*

[22] It is, in my view, of importance that subsection 102(2) of the Systems Act requires that the dispute must relate to a 'specific amount' claimed by the municipality. Quite obviously, its objective must be to prevent a

ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer 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 ratepayer's

objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented in regard to that item because of the provisions of the subsection. But the measures could be implemented in regard to 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.

[23] Whether a dispute has been properly raised must be a factual enquiry requiring determination on a case-by-case basis. It is clear from clause 22.3 of the Policy referred to above that the dispute must be raised before the municipality has implemented the enforcement measures at its disposal.”

24 The question then is whether the Applicant queried and disputed its indebtedness in respect of the water accounts.

25 On the facts before the Court, that question must be answered in the affirmative.

26 These facts are contained in the founding affidavit in this application, as well as the founding affidavit in the urgent application which is referred to in such affidavit.

27 The Applicant plainly queried the July 2014 account immediately, since, on 13 August 2014, a certain Mnguni Ntombikayise employed at the Respondent wrote to the Applicant stating:

“The technical team claims there is no visible leakage from meters. In this case I suggest you test the meters by closing all water supply in the property and check if the meter is running to detect if there is any internal leaks in the property and/or apply for a test meter with COJ as to the visible eye the meter is not faulty but the consumption has increased dramatically from the less 2Kl the day you consumed.”

28 The Applicant then sets out how it engaged with officials of the Respondent on an ongoing basis thereafter. The names of officials are provided and examples of the correspondence exchanged between 2014 and 2020 are attached. The Applicant also provides the latest query reference number in respect of its queries of the water accounts, being Ref. No. 8004399879. The Respondent failed to dispute such query by producing its records, despite being in a position to do so. And the Applicant also relates how, on 31 August 2017, the Applicant submitted a complaint to the Ombudsman in respect of the water accounts, and attaches correspondence as evidence of the fact that such complaint was submitted.

29 In view of this evidence, the bald denial of the Respondent’s deponent in the answering affidavit that the water accounts were disputed is simply not credible.

30 The Respondent had a second string to its bow. It claimed that the parties had met on 5 October 2023 and that the issue of prescription had been canvassed “in full and explanation was given to the applicant why the amount [had] not prescribed”. The Respondent said that the issues between the parties had been resolved at the meeting (including the issue of prescription) and that a “notice of compliance” to this effect “was issued by the applicant”. In other words, the Respondent’s deponent suggested that the parties had agreed that the disputed amounts had not prescribed.

31 But these averments by the Respondent's deponent are plainly false.

32 The "notice of compliance" was not a document prepared by the Applicant, but by the Respondent. The "notice of compliance" was a form of report prepared and ostensibly filed with the Court on the extent to which the parties had complied with the agreed court order granted in the contempt application. It was signed by the Respondent's attorney.

33 The compliance notice itself, recorded not that the parties had reached agreement and resolved the issues between them concerning prescription, but that they could not agree or resolve those issues. The relevant portion reads as follows:

"Compliance with the order/s:

Order 3, order dated 31 August 2023: prescription

...

9. At the meeting held on 05 October 2023 (10h00-11h00), the parties canvassed the issue of prescription and could not reach a resolution on the claims."

34 The content of the compliance notice is consistent with the contemporaneous handwritten minutes of the meeting attached to the founding affidavit. These were prepared by Mtungwa Khumalo, an attorney at Fluxmans Incorporated, whose confirmatory affidavit was also attached to the founding affidavit.

35 The relevant portion of the handwritten minutes reads as follows:

"Rika:

Debt has prescribed – COJ hasn't pursued collecting the debt as client has disputed the amount since inception (2014) – therefore in 2023 – client's debt to COJ has prescribed.

L. Moeyane: Disagree that debt has prescribed.

Gabu: There has been 'disconnection notices' sent to client to interrupt prescription. Last notice sent on 19/3/2019.

Rika: Disconnection notice isn't sufficient to interrupt prescription.

J. Levitz: Since there is no resolution on this matter – better to let court decide.

Lucky: Will take instruction on whether COJ will issue summons."

36 The version of the Respondent's deponent therefore cannot be accepted.

37 In the circumstances and for all of the above reasons, I find that section 102(2) of the Systems Act operated in this instance and that the water accounts have prescribed.

38 For the sake of clarity, because of the above findings, the general proposition that consumer payments towards a municipal account constitute acknowledgments of liability in respect of old debts is not a proposition that requires determination. That question

is not reached in this judgment. It is left open.

Costs

39 The manner in which the Respondent's deponent has sought to contrive a defence brings me to the question of costs. The Applicant seeks an order for punitive costs. It says that it is justified by the manner in which the Respondent has dealt with the matter, delayed the application by the late filing of its answering affidavit, filed its heads of argument late, and defended the application in this dilatory manner in circumstances where it had no real basis to oppose the relief sought.

40 The Respondent's counsel submitted that the Respondent's conduct was justified by its constitutional duty to collect amounts owed to it. He said that, because the City of Johannesburg had no reference numbers for the Applicant's queries, it was bound to oppose the application and seek to enforce the debt. While it may be correct that the Respondent must fulfil its

constitutional duty to collect amounts owed to it by consumers, it is not permitted to oppose or frustrate the claims of consumers when it has no basis in law or fact for doing so. Besides the fact that the Applicant provided a reference number in its founding affidavit and again at the meeting of 5 October 2023 (recorded in the minute), the track record of communications over some seven years showed clearly that the Respondent had no basis in this instance to oppose the Applicant's current claim.

41 The Respondent's opposition falls into the category of opposition so lacking in merit that it is a waste of the Court's time. The Applicant should not have to bear the cost of this unnecessary and avoidable litigation.

Order

42 In the circumstances, the following order is made:

42.1 It is declared that the amount of R192 887.35 claimed by the Respondent in respect of service charges for the provision of water in June 2014 and July 2015 has prescribed.

42.2 The Respondent is directed to amend its financial records in respect of the property located at 55 Forssman Close, Barbeque Downs

Extension 5, Kyalami, so as to reduce the balance owing thereon by the amount of R192 887.35.

42.3 The Respondent is ordered to pay the costs of this application on the scale as between attorney and own client.

A J D'OLIVEIRA

Acting Judge of the High Court

HEARD ON: 2 June 2025

DECIDED ON: 6 June 2025

For the Applicants: J M Heher

Instructed by Fluxmans Incorporated

For the Respondent R A Ramuhala

Instructed by Madhlopa & Thenga Inc

[1] 2012

(4) SA 169 (SCA)

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