

Managing property properly

New rules you need to know about your water and lights bill

On 13 February 2017, the High Court handed down an important judgment detailing new changes for all South African property owners and their utility bills.

The case dealt with a dispute between industrial group Argent and the Ekurhuleni Municipality. For five and a half years, Argent was charged for its estimated water consumption. Argent duly paid these charges, and during this period, the Ekurhuleni Municipality failed to take actual readings of the water meter.

However, in 2015 Argent received a bill for the difference between its actual usage and estimated consumption amounting to nearly R1.2 million.

Relying on prescription, Argent claimed that they were not liable for discrepancies in the costs, which were older than three years at the time when they finally received the bill – i.e the fact that the municipality had not claimed these older debts until now meant they had fallen away.

According to Cliffe Dekker Hofmeyer's, Fatima Gattoo, the judgement set out the following important precedent and rules for South African utility payers going forward.

What does prescription mean? *The Prescription Act 68 of 1969 says that a debt (for is extinguished after the lapse (passing) of a time period. This differs depending on the type of debt owed, but typically contractual and delictual debts extinguish after 3 years from when prescription starts.*

The debt prescribes after 3 years

If a consumer receives a utility bill citing, for the first time, charges older than three years, they cannot be held liable for such amounts, as the charges have prescribed.

It's not your responsibility

It is not the duty of the consumer to read meters and determine their actual consumption. As a result a consumer will not be considered to have acknowledged a debt when the municipality has failed to provide details.

The municipality has to inform you

The prescription period commences when the municipality should have become aware of all the relevant facts, such as the actual water consumption, which give rise to its claim against the consumer and not only when the municipality read the meter and the invoice was issued. The municipality could have taken an actual reading of the meter at any time. This means that the prescription period commences when the municipality should have taken actual readings and invoiced the consumer.

The municipality can then inform you any time within three years from the start of the prescription period.

The municipality must check your readings

Presiding Judge Yacoob held that the municipality has a duty to carry out such readings and invoice consumers at its convenience but at reasonable intervals.

When there are no readings – an average must be used

Where no records of regular actual readings are available to ascertain how much of a bill for several years has prescribed, the industry standard should be applied: average the consumption out over the months between the two readings and then use that average to calculate the consumer's liability for the remaining period.

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