

# Victory for property owners receiving exorbitant and delayed utility bills

By Nicholas Gangiah and Fatima Gattoo

22 Feb 2017

On 13 February 2017, in the Gauteng Local Division of the High Court, Judge S Yacoob handed down an important judgment which many property owners will consider a much-needed victory. The decision grants relief to property owners who have received exorbitant utility bills after a number of years.



© Carolyn Franks – [123RF.com](http://123RF.com)

Facts of the case: For approximately five and a half years, Argent was charged for their estimated water consumption. Argent duly paid these charges. During this period the Ekurhuleni Municipality failed to take actual readings of the water meter. In 2015, Argent received a bill for the difference between its actual usage and estimated consumption amounting to R1,152,666.98. 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.

The municipality challenged this argument on the following grounds:

- that the excess water charges, older than three years had not prescribed because the prescription period only commenced when the client was billed by the municipality; and
- the fact that the consumer regularly made monthly payments, based on their estimated consumption, amounts to an acknowledgement of its debt and as such it interrupts the prescription period.

The municipality lost on both of these points.

Precedent set by this judgment:

- 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.
- Where a consumer has made regular monthly payments based on their estimated consumption, their monthly payments do not interrupt the prescription of the actual water consumption.
- It is not the duty of the consumer to read meters and determine their actual consumption. A consumer will not be considered to have acknowledged a debt of which they do not know the particulars. In other words, a consumer cannot acknowledge a debt when the creditor withholds particular and necessary details of the debt or when only the creditor has the ability to quantify the debt and fails to do so.
- 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. Judge Yacoob held that the municipality has a duty to carry out such readings and invoice consumers at its convenience but at reasonable intervals.
- 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.

## ABOUT THE AUTHOR

Nicholas Gangiah and Fatima Gattoo, Cliffe Dekker Hofmeyr

For more, visit: <https://www.bizcommunity.com>