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Court Victory for Property Owners as Illegal Water Connection "Fines" by Joburg Water Set Aside in Court as Unlawful

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15 May 2025

COURT VICTORY FOR PROPERTY OWNERS

On 9 May 2025 Judge Wilson handed down judgment in the matter of *Waterfall Country Estate (Pty) Ltd and others v City of Johannesburg Metropolitan Municipality and others*[1]. In this judgment Judge Wilson set aside and declared unlawful several "compliance notices" which were sent by the municipality to property owners, because the notices did not comply with the legislation that the municipality allegedly issued the notices in terms of.

A further consequence of the setting aside of these notices is that over R 10 million rand in "fines" or "penalty charges" levied to the property owners by the municipality were also set aside by the court. The municipality attempted to justify the notices and millions in "fines" as having been lawfully levied in terms of the Water Services By-laws, but the Judge disagreed and found them all unlawful and therefore invalid.

The municipality was ordered to reverse these "fines" within 30 days of the judgment being handed down.

THE UNLAWFUL NOTICES

In 2018 and 2019 the municipality served "compliance notices" on four property owners in Waterfall, citing criminal activities committed by the property owners for "illegal connections" and "meter tampering". These notices were supposed to warn the owners that if they did not remedy the alleged unlawful water connections at the properties, they could be prosecuted in terms of the water by-laws.

However, after the notices were served, the municipality never gave any of the property owners any chance to remedy the problems (namely the alleged illegal meter connections) at the properties. The municipality just levied millions in fines to their municipal accounts.

The municipality also levied these fines before the prosecution had even been finalized.

The property owners raised various different legal bases upon which the notices were unlawful, including:

1. They did not give the property owners any opportunity to remedy the problem, which the law required them to do;
2. They were issued before the prosecution had been successful, which is not in compliance with the legislation;
3. The charges that were raised (the "fines") in connection with these notices were not correctly calculated in terms of the law as it existed at the time;
4. Even if the "fines" were once lawful, they had prescribed by the time that the court papers were issued; and
5. The notices and "fines" did not comply with the Promotion of Administration of Justice Act, which requires a municipality to give a customer notice if they are going to take material adverse action against the customer and afford the customer an opportunity to make representations – namely to hear out the customer's side of the story – before deciding whether to take that adverse action or not.

NO HARM CAUSED BY THE "ILLEGAL CONNECTIONS"

The meters that were installed actually came from the municipality and so were not "illegal meters". However, the connection of these meters to the municipality's pipeline (the installation) was illegal because it was done without the municipality's consent. These municipal meters came from the municipality's stores, complied with municipality specifications and were stolen from there by an employee of the municipality and installed at the properties.

The meter irregularities were discovered shortly after it occurred and the municipality "regularized" the meters (meaning that they accepted them and registered them on their municipal systems).

There were no additional costs incurred by or suffered by the municipality in regularising these meters. This case was thus not about the municipality trying to recover costs it had expended in fixing anything illegal done by Waterfall – because there were no such costs incurred.

NO POWER IN LAW TO ISSUE PENALTY CHARGES OR "FINES"

Judge Wilson analysed the municipality's argument that it was entitled to issue these types of charges in terms of section 111 (or section 114) of the Water Services By-law. He held that no such power existed, because section 111 refers to a "compliance notice" that gives the customer a chance to remedy the wrong, before a penalty is imposed – and this opportunity was never afforded to the property owners in question. The municipality could only have imposed fines if it gave the customer a chance to comply and it re-inspected the property to ascertain that compliance had not been forthcoming after the expiry of the deadline (which never happened in this case).

T*he property owners in Waterfall's case were judged as guilty by the municipality before the municipality had even given them any chance to fix the wrong, or make representations relating to why they should not be held liable for the penalty charges*.

In addition, Judge Wilson found that because in this case there were no remedial steps that needed to be taken to regularize the meters, no charges for "fines" for a failure to take such remedial steps could ever have been lawful.

The court also held that the By-laws under which the "fines" were purportedly authorized did not contain a list of charges itself which set out the amounts of the "fines". The By-laws did not authorize the municipality charging amounts set out in other pieces of legislation or policy (namely the City's tariffs). Therefore, the amounts charged (as set out in the tariffs) were not lawfully charged because they were not contained in the By-laws themselves. For this reason, not a single cent charged was lawful – every cent of "fines" was *ultra vires* and needed to be set aside.

CONDUCT OF THE MUNICIPALITY IN THIS DISPUTE

The Judge dismissed an urgent application filed by the municipality the day before hearing to permit the municipality to file additional information to "flesh out" its answering papers. This was opposed by the property owners and denied by the court on the basis that it would be extremely prejudicial for the municipality to try to change its case after it had seen all of the papers of the property owners, and because it would be unfair to postpone the matter to allow the municipality to "flesh out its case" when it could not point to any material that it wanted to include to "flesh out its case".

The court also remarked on the municipality's attempt to postpone the hearing because the property owners had not mediated beforehand in terms of the Court's recent Mediation Protocol. The court proceedings started in 2023, whereas the Mediation Protocol only kicked in in 2025, so the mediation requirement was not in effect when the case began. In addition, the Judge did not believe that the case was seriously capable of mediation because the municipality had essentially ignored the property owner's requests/demands to resolve the dispute for such a long time – especially considering that the property owners had gone to lengths to exhaust their internal remedies before approaching court.

CONCLUSION

Municipalities and their officials are not at liberty to penalise or take whatever action they deem fit against customers simply to punish them for perceived unlawful conduct, or to raise charges against a customer just because the municipality officials want to raise revenue for the municipality. All charges levied by a municipality must be levied within the confines of the laws that authorize the municipality to charge its customers.

The legal framework within which municipal charges are raised is complex, and sometimes the type of charge in question can be difficult to formulate and understand within this legal framework – but this cannot detract from the basic principle of the rule of law, which is that municipalities must act within their legal powers and not *ultra vires*, or outside of them. Any municipal action (in the form of a charge unlawfully raised) which is *ultra vires* – meaning beyond or outside of the powers afforded to the municipality by law – is unlawful and liable to be set aside by a court.

A copy of the judgment can be obtained by emailing the Public Law Department at HBGS: public@hbgschindlers.com. It is also available on SAFLII at https://www.saflii.org/za/cases/ZAGPJHC/2025/437.html.

[1]*Case number 2023-060881, South Gauteng High Court, unreported judgment.*

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