

Prescription of Municipal Debts and Section 102(2) of the Systems Act: Clarifying a Municipal Misconception

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INTRODUCTION

A prevalent contention in municipal billing disputes is whether a dispute declared prevents a municipality from interrupting the running of extinctive prescription of disputed charges. The Johannesburg High Court was seized with this contention in the recent judgement in *BIR Investments (Pty) Ltd v City of Johannesburg Metropolitan Municipality* (2023/049538) [2025] ZAGPJHC 1050 (20 October 2025). The central question before the Court was whether Section 102(2) of the Local Government: Municipal Systems Act 32 of 2000 ("the Systems Act") prevents the running of extinctive prescription.

The Court decisively held that it does not. Municipalities cannot rely on Section 102(2) to avoid the consequences of failing to institute legal proceedings timeously. Instead, one must look to the municipality's own Credit Control and Debt Collection Policy, as mandated by the Systems Act, to determine whether and when action may be taken to recover debts.

This article explores the background to the dispute, the principles of prescription, and the Court's reasoning in reaffirming that internal processes cannot override the Prescription Act 68 of 1969 ("Prescription Act").

CASE BACKGROUND

The Applicant, BIR Investments (Pty) Ltd, operated a glass manufacturing business on a property in Bramley View, Johannesburg. It had long-standing disputes with the City of Johannesburg Metropolitan Municipality ("the City") over the correctness of its electricity billing, primarily regarding the application of incorrect opening balances, and that it charged for uninstalled or incorrectly calibrated meters.

Despite the Applicant raising these issues as early as 2014, the City failed to resolve these disputes.

Importantly, the City conceded that incorrect billing had occurred but argued that the Court should not grant the relief sought because, among other things, prescription had not begun to run.

The City's argument rested primarily on Section 102(2) of the Systems Act, which it said barred it from instituting legal action while a billing dispute remained unresolved, thereby "suspending" the running of prescription.

The Applicant, in turn, argued that the disputed electricity charges were ordinary debts subject to a three-year prescription period under the Prescription Act 68 of 1969, and that the City's failure to act within that period meant those charges had become prescribed.

PRESCRIPTION IN THE CONTEXT OF MUNICIPAL BILLING

Prescription is a well-established principle of law that promotes legal certainty. In terms of the Prescription Act, most debts - such as municipal service charges - prescribe after three years unless interrupted or delayed in terms of Sections 13 or 14 of the Prescription Act.

Municipal charges for services like water and electricity are not taxes; they are quasi-contractual or statutory debts. Once the services are rendered and invoiced, the consumer's obligation to pay arises, and prescription begins to run from that date unless effectively interrupted.

For prescription to be interrupted under Section 14 of the Prescription Act, there must be an express or tacit acknowledgement of liability by the debtor. Payments made under protest or while disputing liability do not qualify as an acknowledgement of liability. Similarly, Section 13 provides for limited instances where prescription is delayed (such as where a debtor is a minor or non-compos mentis), but it does not include a situation where a dispute exists between a consumer and a municipality.

Therefore, unless the municipality institutes legal proceedings within three years of the debt becoming due, the debt becomes prescribed, and the consumer is no longer legally obligated to pay it.

SECTION 102(2) OF THE SYSTEMS ACT: PURPOSE AND LIMITS

Section 102 of the Systems Act authorises municipalities to consolidate consumer accounts, credit payments against debts, and implement debt collection and credit control measures.

Subsection (2) provides an exception:

“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.”

Municipalities have come to interpret this to mean that they are legally barred from taking any action to recover a debt while a dispute remains unresolved, and that, as a result, the running of prescription cannot commence or continue to run during this period.

The Court in *BIR Investments* rejected this interpretation. Acting Judge Chohan held that Section 102(2) merely renders Subsection (1) inapplicable where a dispute exists; it does not prohibit a municipality from instituting legal action or have the effect of suspending or interrupting prescription.

The Section's true purpose is to prevent municipalities from exercising coercive credit control measures (such as disconnections of municipal services, such as water and electricity) to pressure consumers into paying disputed amounts. The purpose of Subsection (2) was not to shield municipalities from their duty of protecting their financial interests.

WHY SECTION 102(2) DOES NOT PREVENT PRESCRIPTION

The Court emphasised that Section 102(2) forms part of Chapter 9 of the Systems Act, which deals with Credit Control and Debt Collection. Its operation is administrative rather than substantive; it regulates how municipalities should manage accounts and disputes, not the legal enforceability of debts.

In assessing whether Section 102(2) could delay or prevent the running of prescription, the Court considered several key points:

1. **The Systems Act must be read in conjunction with a municipality's Credit Control and Debt Collection Policy**, which is required by Section 96 of the Act. The City's policy provides that the City Manager

may, at their discretion, suspend debt collection pending the outcome of a dispute. Importantly, this is a discretionary administrative measure, not a statutory prohibition.

2. **The policy itself does not suspend legal action automatically.** It envisages that disputes be resolved within 90 days and even allows the consumer to refer the matter to court under Section 34 of the Constitution if unresolved.
3. **Reading Section 102(2) as suspending prescription leads to absurd results.** It would mean that municipalities could indefinitely avoid collecting debts simply by allowing disputes to linger unresolved, contrary to their constitutional and statutory duty to collect money owed to them.

The Court accordingly held that **neither Section 102(2) of the Systems Act nor the municipality's policy prevents prescription from running or delays its completion.**

CREDIT CONTROL, DEBT COLLECTION, AND THE MUNICIPALITY'S OBLIGATIONS

Section 96 of the Systems Act obliges municipalities to **collect all money due and payable to them**, subject to other applicable laws. This duty is reinforced by the requirement in Section 96 for municipalities to adopt and implement a **credit control and debt collection policy**.

In the City of Johannesburg's Credit Control and Debt Collection Policy (approved on 31 August 2022), various mechanisms are provided for, including acknowledgements of debt, payment arrangements, and ultimately, legal action. Legal action is envisaged only after other attempts to collect have failed, but it **is not excluded merely because a dispute exists**.

By choosing not to act while a dispute remained unresolved for over a decade, the City failed in its duty under Section 96. The Court found that **municipalities cannot sit idle** under the guise of Section 102(2). They must actively manage disputes and, where appropriate, institute proceedings before prescription extinguishes their claim.

KEY JUDICIAL ENDORSEMENTS

In reaching its conclusion, the Court endorsed several earlier authorities that clarified the limits of Section 102(2):

- ***Tarica and Another v City of Johannesburg (Mahon AJ, 2025)*** - Held that internal policies or the Systems Act do not override the Prescription Act; prescription runs independently of administrative mechanisms.

- **Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality (2017)** - Confirmed that municipalities cannot ignore their constitutional duties to collect debts indefinitely by relying on unresolved disputes.

The Court also referenced *Euphorbia (Pty) Ltd t/a Gallagher Estates v City of Johannesburg* (2016) and *39 Van der Merwe Street Hillbrow CC v City of Johannesburg* (2023) to reaffirm that once a consumer properly raises a *bona fide* dispute, the onus rests on the municipality to prove the correctness of its billing.

THE OUTCOME

The Court in *BIR Investments* granted a **declaratory order** that all electricity charges billed by the City to BIR Investments and which are older than three years as at the date of judgement had become prescribed.

CONCLUSION

The *BIR Investments* judgement provides clarity on the functioning of Section 102(2) of the Municipal Systems Act and whether the existence of a dispute with a municipality prohibits the municipality from securing its debts. In brief, it confirms that:

- **Prescription runs independently** of Section 102(2) disputes;
- **Municipalities cannot rely on Section 102(2)** to justify inaction or to suspend the running of prescription; and
- **Consumers remain protected** from coercive collection tactics while disputes are unresolved, but municipalities must still act within the legal time limits to enforce claims.

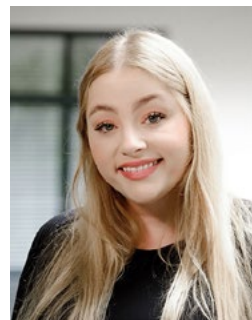
This decision not only protects consumers from indefinite billing uncertainty but also promotes accountability and proper governance in municipal finance management. Municipalities are reminded that **prescription is a statutory mechanism, not policy discretion**, and that allowing disputes to fester can be costly, both legally and financially.

ABOUT THE CASE AND OUR FIRM'S ROLE

HBGSchindlers Attorneys and Notaries acted on behalf of the successful applicant, BIR Investments (Pty) Ltd. This judgement represents an important victory for ratepayers and property owners in clarifying that Section 102(2) of the Systems Act does not suspend the running of prescription. The case reinforces the principle that municipalities must act lawfully and timeously in managing their billing and debt recovery processes.

The Court has subsequently re-affirmed the findings in the *BIR Investments* judgement when it wholly relied on it in the judgement of *Diluculo Properties (Pty) Limited v City of Johannesburg and Others* (2023/10531) [2025] ZAGPJHC 1106 (3 November 2025). In the *Diluculo* judgement it was confirmed that "[T]he Court correctly found in BIR Investments that Section 102(2) of the Systems Act does not have the effect of either preventing prescription from running or delaying the completion of prescription."

Our firm continues to lead in municipal law and billing dispute litigation, protecting clients from unlawful billing practices and ensuring that municipalities comply with their statutory and constitutional obligations.



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