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Cape Town's Additional Fixed Charges for Cleaning, Water, and Sewerage Declared Unlawful: The Precedent Which it Sets

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INTRODUCTION

On 30 April 2026, the Western Cape High Court handed down a landmark judgment in *South African Property Owners' Association v City of Cape Town (Good Party Intervening)* 9103018/2025; 139023/2023) [2026] ZAWCHC 197. The Court declared three additional charges imposed by the City of Cape Town (**"the City"**) on its ratepayers (a city-wide cleaning charge, a fixed water charge, and a fixed sewerage charge) unlawful and invalid. In two applications brought by the South African Property Owners' Association (SAPOA) and AfriForum NPC, the Applicants challenged the City's decision to calculate these charges based on property value bands rather than actual consumption of services.

The Court found that the charges were inconsistent with the Constitution, national legislation, and the City's own Tariff By-law. The charges have been set aside with effect from 30 June 2026, meaning the City must find a lawful alternative before its next financial year commences. This ruling has immediate consequences for every residential property owner in Cape Town and sends a clear signal to other municipalities across South Africa pursuing comparable approaches.

BACKGROUND

If you own a home or commercial property in Cape Town, you have likely noticed three additional line items on your municipal bill since July 2025: a "city-wide cleaning charge," a "fixed water charge," and a "fixed sewerage charge." These were not linked to how much water you use or how much rubbish your household generates. Instead, they were determined solely by the value of your property. A property worth R3 million paid one amount; a property worth R7 million paid significantly more, regardless of whether the occupants used a single drop of water or left their taps running all day. Many ratepayers felt this was fundamentally unfair, and more than 14 000 comments were submitted when the draft budget was published in March 2025.

The ruling is not just a Cape Town story. Mangaung Metro in the Free State introduced waste removal charges linked to property value in its upcoming financial year, and the reasoning in this judgment raises serious questions about the legality of that approach as well. Any municipality in South Africa contemplating a similar model will need to take heed.

CAPE TOWN'S REVENUE CRISIS

To contextualise the City's introduction of these charges, one must consider the severe drought that gripped Cape Town between 2015 and 2018. As residents invested in boreholes, rainwater tanks, and grey water systems, municipal water consumption fell to almost half of 2015 levels. This had a disastrous effect on the City's finances: the less water residents use, the less revenue the City collects. Sewerage charges were particularly hard hit, as residents continued using the sewerage system while consuming less municipal water (in the City all consumers sewer charges are based on the water consumption, as such, if you consume less municipal water, the City collects less for sewerage as well).

CAPE TOWN'S FISCAL RESTRUCTURING STRATEGY

In 2018, the City wrote to COGTA proposing legislative amendments to restructure its funding model, but none of the proposed amendments occurred. Instead, the City adopted a water tariff with fixed and consumption-based components. In June 2025, the City went further: its 2025/2026 budget introduced the three contested charges, all calculated against property value bands. The city-wide cleaning charge had previously been funded from rates. According to the City, these charges were necessary to guarantee revenue certainty and cross-subsidise lower-income areas.

UNDERSTANDING MUNICIPAL FINANCES

To make sense of this judgment, it helps to understand the different types of charges a municipality can lawfully impose on residents, and why it matters which category a charge falls into.

Taxes:

In the municipal context, a "tax" is a compulsory payment to government with no direct benefit to the payer. If the primary purpose of a charge is simply to raise revenue, rather than to pay for a specific service rendered to the person being billed, then it is, in substance, a tax. Municipalities are not freely entitled to impose any tax they wish. Under the Constitution, they may only impose taxes that are authorised by national legislation.

Property rates:

Property rates are the most familiar form of municipal revenue. They are calculated as a "rate in the Rand" based on the market value of your property. For example, if the rate is 0.5 cents per Rand of property value, a property valued at R2 million would pay R10 000 per year in rates. The key feature of a property rate is that it is directly linked to the value of the property itself, and this is the only type of charge that the law permits to be calculated in this way.

The classification of a charge as a "property rate" triggers strict procedural requirements under the Local Government: Municipal Property Rates Act 6 of 2004 (**"the Rates Act"**): the municipality must adopt a formal rates policy, advertise it for public comment, and pass by-laws to give it legal effect. There is also a VAT consequence: rates are zero-rated for VAT purposes, meaning no VAT is charged on them. The City's three charges did not follow any of these procedures, and VAT was charged on them, which is one reason the Court concluded they could not lawfully be classified as property rates.

Tariffs and fees for services:

A "tariff" or "fee for services" is a charge levied in exchange for a specific municipal service rendered. Classic examples of tariffs and fees for services are water charges calculated per kilolitre consumed, or your electricity charges calculated per kilowatt-hour used. The Local Government: Municipal Systems Act 32 of 200 (**"the Systems Act"**) requires that these charges generally be in proportion to actual use and that they reflect the real cost of providing the service.

Surcharges:

A "surcharge" is an additional amount added on top of an existing base tariff for a service, often to fund infrastructure or other costs associated with rendering a certain service. Surcharges must be provided for in the municipality's tariff policy and are subject to annual review.

Sundry tariffs:

Sundry tariffs are commonly once-off, fixed Rand-amount fees charged for specific ad hoc services (e.g., new water or electricity connections).

LEGISLATIVE FRAMEWORK GOVERNING MUNICIPAL CHARGES

The Constitution:

Section 229(1)(a) of the Constitution permits a municipality to impose "rates on property" and "surcharges on fees for services." If authorised by national legislation, it may also impose other taxes, levies and duties. Section 229(2) provides that these fiscal powers may be regulated by national legislation.

The Local Government: Municipal Property Rates Act 6 of 2004 ("the Rates Act"):

The Rates Act governs how municipalities levy property rates. Before imposing a rate, a municipality must adopt a rates policy (section 3), advertise it for public comment, and pass by-laws (section 6). A rate must be calculated as "an amount in the Rand on the market value of the property" (section 11). The City did not follow any of these procedures for its three charges, which is one reason the Court concluded they could not lawfully be classified as property rates.

The Local Government: Municipal Systems Act 32 of 2000 ("the Systems Act")

Section 4 allows a municipality to finance its affairs by "charging fees for services" and "imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties."

Section 74(1) requires that a municipal council "must adopt and implement a tariff policy on the levying of fees for municipal services." In other words, before charging residents for services, the municipality must have a policy in place.

Section 74(2) prescribes the mandatory minimum principles for municipal tariff policies, including: that users must be treated equitably; charges should generally be proportionate to use; lower-income households must have access to basic services through subsidised tariffs; and tariffs must reflect the costs reasonably associated with rendering the service.

Section 75 requires the municipality to adopt by-laws to give effect to its tariff policy. By-laws may differentiate between categories of users, but such differentiation may not amount to unfair discrimination.

Section 75A permits a municipality to levy fees, charges or tariffs for any function or service by council resolution. The City argued this gave it unconstrained power, but the Court held that section 75A must be read together with sections 74 and 75, not in isolation.

The Water Services Act 108 of 1997

Section 10(4) of the Water Services Act prohibits tariffs that are "substantially different from any prescribed norms and standards," which include the City's own

Water Services Development Plan. Regulations under the Act do not permit differentiation between users on the basis of property value.

Cape Town's own By-laws and Policies:
The City's 2007 Tariff By-law requires that its tariff policy reflect section 74(2) of the Systems Act and provides that the City may not impose tariffs other than in terms of a valid tariff policy. The City's Tariff Policy states that the city-wide cleaning tariff is rooted in the "polluter pays" principle.

WHY LINKING CHARGES TO PROPERTY VALUE BANDS IS PROBLEMATIC

The Court held that by calculating the charges with reference to property value bands, the City "moved into the realm of property rates yet adopted an approach which fell outside the method for determining such rates." In other words, the City was borrowing the logic of property rates (charging more to owners of more valuable properties) without following any of the rules that apply to property rates. In other words: they emulated property rates, but they were not lawful rates; they were labelled as service charges, but they bore no relationship to consumption.

WHY THE CHARGES CANNOT QUALIFY AS PROPERTY RATES

The Court identified several reasons the charges could not be treated as lawful rates on property. The City did not adopt a rates policy for these charges, did not invite public comment on such a policy, and did not pass by-laws. Furthermore, VAT was charged on the amounts, and the VAT Act expressly exempts only rates from VAT. These factors confirmed that the charges did not meet the legal requirements of a property rate.

WHY THE CHARGES FAILED THE MINIMUM PRESCRIBED PRINCIPLES IN SECTION 74(2) OF THE SYSTEMS ACT

The charges were fixed amounts determined from property value bands, bearing no relationship to actual consumption. A person who used very little water paid the same as a neighbour in the same band who used far more. The Court held that users were not treated equitably and the charges were not "generally in proportion to their use of that service" as required by section 74(2)(b). The Court emphasised that section 74(2) sets out mandatory minimum requirements, not factors to be balanced at the City's discretion.

WHY THE CHARGES ARE INCONSISTENT WITH THE WATER SERVICES ACT

The fixed water and sewerage charges deviated from the City's own Water Services Development Plan, which does not provide for water tariffs based on property value and requires that fixed and volume-based charges be reflective of actual cost. Regulations 4(1) and 4(2) under the Act also do not permit differentiation between consumers on the basis of property value. The City attempted to argue that the Water Services Act falls outside the "suite of local government legislation," a contention the Court dismissed outright, noting that the powers of local government are "subject to all law."

WHY THE CLEANING CHARGE FAILED THE "POLLUTER PAYS" PRINCIPLE:

The City's own Tariff Policy states that its city-wide cleaning tariff is rooted in the "polluter pays" principle: those who generate waste should pay for its management. But the cleaning charge, as imposed, bore no relationship to how much a property contributed to pollution or waste generation. It was a flat amount per property value band, directed at funding city-wide services. A household that meticulously recycled and produced minimal waste paid the same as a household that did not. The Court held that the charge "stands in contrast to and does not comply with" the polluter pays principle enshrined in the City's own policy.

WHY THE "SUNDRY TARIFF" AND "SURCHARGE" ARGUMENTS FAILED

The City argued its charges were "sundry tariffs" or "surcharges." The Court rejected both arguments. As explained above, sundry tariffs are once-off fees (e.g., for connections), not recurring monthly charges. A surcharge must be in addition to a base tariff, but there was no base tariff for cleaning, and the water and sewerage charges were entirely separate from existing consumption-based tariffs.

THE CITY'S CONSTITUTIONAL COUNTER-APPLICATION

The City launched conditional counter-applications, asking the Court to declare sections 74(2) and 75A of the Systems Act unconstitutional on the basis that they impermissibly restrict municipalities from imposing fixed tariffs calculated by reference to property value bands. The City argued that if these provisions prevent such charges, they violate municipalities' constitutional obligations to provide services and realise socio-economic rights.

The Court rejected the counter-applications. It found the challenge procedurally deficient and held that, on the merits, section 75A does not limit the City's right to charge fees; it simply requires compliance with tariff principles in section 74(2). The Court noted that the City's constitutional obligations can be achieved through other lawful means, such as consumption-based tariffs, increased property rates, or cross-subsidisation of lower-income households.

THE COURT'S FINAL ORDER

The three charges, for city-wide cleaning, water, and sewerage, were declared unlawful and invalid insofar as they are inconsistent with the Constitution, national legislation, and the City's Tariff By-law.

The charges were set aside with effect from **30 June 2026**, giving the City two months from the date of judgment to prepare an alternative, and the City's counter-applications were dismissed.

Importantly, the ruling is prospective: it does not require the City to refund amounts already collected since July 2025. The charges remain in place until 30 June 2026. However, if the City lodges an appeal, the operation of the order may be suspended while that appeal is pending.

WHAT THE JUDGMENT MEANS FOR CAPE TOWN RATEPAYERS

For residents, the immediate practical effect is that from 1 July 2026, these three charges should no longer appear on your monthly council invoices, unless the City appeals and obtains a suspension of the Court's order. The City has reportedly indicated that it is studying the judgment and weighing its options, which may include an appeal to a higher court. It has also signalled its intention to assess how the ruling could affect ratepayers across different income brackets.

The judgment comes at a critical juncture, as the City is in the process of finalising its 2026/27 draft budget, which was understood to have been prepared on the same basis as the charges the Court has now struck down. The City will likely need to go back to the drawing board and find alternative, lawful mechanisms to raise the revenue it says it needs, potentially through increased rates, consumption-based tariffs, or a combination of lawful funding sources.

BROADER SIGNIFICANCE FOR SOUTH AFRICAN MUNICIPALITIES

The ruling sends a powerful message to all South African municipalities: fiscal powers are not unlimited and must be exercised within the bounds of the law. When you are billed for a municipal service like water, sewerage, or cleaning, the amount you pay should generally be linked to how much of that service you actually use. Municipalities may not bypass this principle simply by labeling a charge differently or attaching it to property values.

The Court acknowledged municipalities' constitutional duties to expand services and provide for lower-income communities but noted that the law already provides mechanisms to achieve this: tariff policies may subsidise lower-income households, cross-subsidise from other sources, and differentiate between users, provided such differentiation is lawful.

In the words of SAPOA's CEO Neil Gopal after the ruling: "SAPO urges other municipalities in the country to heed this judgment, and to carefully consider any new tariffs or charges that it may wish to implement." AfriForum's Jurie Ferreira echoed the point: "This ruling confirms that tariff structures must be transparent, rational and legally justifiable. Any attempt by municipalities to generate revenue through arbitrary or indirect measures falls squarely outside the framework of the law."

CONCLUSION

The High Court's ruling is a significant reaffirmation of the rule of law in municipal finance. The City faced a genuine problem in its revenue model, but the method chosen was impermissible: stand-alone charges calculated against property value bands, untethered from consumption, without following the procedures required for property rates.

The judgment confirms that rates may be used to fund services, consumption-based tariffs remain lawful, lower-income households may be subsidised, and differentiation between users is permissible if it complies with the Systems Act and does not amount to unfair discrimination.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis, and you should consult an attorney before taking any action contemplated herein.

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