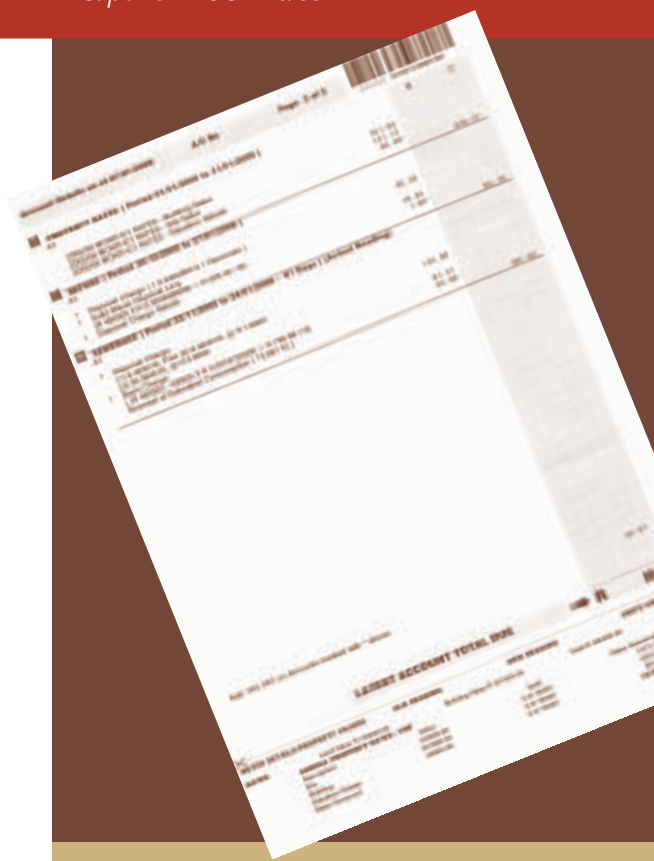
Sewerage charges

BASED ON PROPERTY VALUE AND USAGE

From the COURTS

Rates Action Group v City of Cape Town SCA 16/05

At the end of 2005, the Supreme Court of Appeal made a ruling on the question of whether sewerage charges should be based on the value of a property or on the amount of water used. The matter had been brought by the Rates Action Group (RAG) against a High Court judgment, which ruled that the City of Cape Town (the City) was permitted to impose property rates for services in addition to general property rates, in conjunction with a tariff based on water usage.



Background

Following its establishment in 2000, the City created a general valuation roll that incorporated all the properties falling within its jurisdiction. The revaluation impacted, among others, on the charges for sewerage and refuse removal because these charges were based in part on the ratable value of property from 2000. Then, for the first time in 2002, the City determined a uniform method of charging for sewerage and refuse removal. At the end of that year, following a study to obtain advice on how to recover costs of services, while at the same time subsidizing households where the occupants could not afford the costs, the City imposed new sewerage and refuse removal charges for 2003/2004.

The sewerage service charges had two elements: first, a range of consumption charges based on estimated water costs but capped at 28 kl per month in the case of single residential properties and second, an element based on the value of the property in question but not capped. This change from the 2002/2003 flat rate of R38 per property (subject to a value-based rebate) culminated in an increase in that particular component

key points

Municipalities may impose:

- charges based on powers conferred by both the LGTA and the Systems Act;
- property rates for services in addition to general property rates;
- property rates for services, even though they impact more severely on certain groupings which may be racially based; and
- a property value-based charge as one element, in addition to a consumption-based charge.

of the sewerage charge, particularly in respect of all properties with a ratable value of R128,509,80 or higher.

The refuse removal charges were based on two elements as well – there was a range of consumer charges together with a charge based on the property value and this was not capped in the case of residential properties. (It is worth noting that, despite the High Court judgment, the City decided when approving the 2004/2005 budget to cap the property valuation component of the charges in respect of residential properties.)

The Systems Act does not oblige a municipality to charge for services in accordance with a tariff, but it does entitle it to do so.

Issue

These changes, in particular the removal of the cap and the increased sewerage charge rate, were challenged by RAG in the High Court. RAG argued that all charges for services must be made in terms of section 75A of the Municipal Systems Act, which empowers municipalities to levy and recover fees, charges and tariffs. RAG contended that a tariff must be in place and that before such a tariff is adopted there must be a tariff policy and by-laws must be promulgated. When the City imposed the sewerage service and refuse removal charges, there was neither a policy adopted nor were by-laws passed. Thus, the imposition of charges based on the value of the property rather than the use by the City, was conduct not permitted in terms of the Municipal Systems Act. Section 74(2)(d) of the Systems Act requires that the amount paid for services by a user should "generally be in proportion" to their use and section 74(2)(d) which requires that tariffs must reflect the costs "reasonably associated" with rendering the service.

Decision

The High Court held that although section 75A does not appear to empower the City to impose a property rate, the Local Government Transition Act, 1993 (LGTA) does. The High Court held that there was nothing in the Constitution or legislation stopping the City from using the LGTA to impose a property rate as one element of the charge.

The Supreme Court of Appeal upheld this decision and said that the Systems Act does not oblige a municipality to charge for services in accordance with a tariff. The Systems Act simply entitles it to do, so provided that a tariff policy has been adopted and by-laws promulgated. The appeal was accordingly dismissed.

In addition, RAG argued in the High Court that the charges amounted to unfair discrimination in that ratepayers who have more expensive properties are mainly those who live in the former 'white' suburbs and are predominantly white. Thus, the charges have a disparate impact on white ratepayers amounting to unfair discrimination in terms of the Constitution.

The High Court responded to this argument by stating that there was nothing untoward about this as income tax is based on the same principle of impacting more harshly on those that earn more. The rationale for discrimination was thus to assist the City in transforming society by eliminating vast disparities caused by past racial discrimination. The High Court concluded that this did not amount to unfair discrimination and hence was constitutional. RAG did not appeal against this aspect of the decision in the Supreme Court of Appeal.

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