

SELLING BODY CORPORATE UNIT FOR R50,000.00 ARREAR LEVY DEBT

SUMMARY OF HIGHT COURT JUDGEMENT: LUCAS EBAI ASHU AND HAZEL ASHU VERSUS BODY CORPORATE OF LONDON PLACE AND OTHERS

Court Information

- **Court:** High Court of South Africa (Western Cape Division, Cape Town)
- **Case No:** 11463/2023
- **Date of Judgment:** 27th March 2025
- **Coram:** Justice J I Cloete

Introduction

The case revolves around the legal question of whether a subrogated debt of R134,225.05, claimed by the Body Corporate of London Place (BC) against the applicants (ex-spouses and registered owners of a sectional title unit), has prescribed under the **Prescription Act**. The applicants seek a declaratory order affirming that the claim has indeed prescribed, while the respondents contend otherwise.

Background

- **Applicants:** Lucas Ebai Ashu (*First Applicant*) and Hazel Ashu (*Second Applicant*) are ex-spouses who own a sectional title unit in Salt River, Cape Town.
- **Respondents:** The Body Corporate of London Place (*First Respondent*), Stilus Underwriting Managers (Pty) Ltd (*Second Respondent*), and One Insurance Underwriting Managers (Pty) Ltd (*Third Respondent*).
- **Issue:** The BC has withheld a levy clearance certificate due to alleged arrear levies, interest, and collection charges primarily incurred between 2011 and 2016.

Procedural History

The application was initially launched on **13 July 2023** and was subject to a postponement agreement leading to a hearing on **20 February 2024**. The applicants' replying affidavit was submitted late, resulting in the refusal of condonation for the delay, and the consequent striking out of certain paragraphs.

Key Legal Issues Addressed

Governing Body of the Body Corporate

A central issue in this case is whether a member of a body corporate (the applicants) qualifies as a member of its governing body for the purposes of **Section 13(1)(e)** of the Prescription Act. **Section 13(1)(e)** delays the completion of prescription if the debtor is a member of the governing body of the creditor, which, in this case, refers to the BC.

Prescription Act

- **Relevant Provisions:**
 - Section 10 - Establishes the general prescription period of three years from when the debt becomes due.
 - Section 11(d) - Specifies the conditions under which a debt is deemed due.
 - Section 13(1)(e) - Delays the completion of prescription under certain conditions, particularly involving the relationship between creditor and debtor.

Findings of the Court

- **Nature of Body Corporate:** The court established that the BC is a juristic person with perpetual succession, capable of suing and being sued. The powers and duties of the BC are managed through elected trustees.
- **Role of Trustees:** The judgment clarified that only trustees, not general members, comprise the governing body of the body corporate. The ruling emphasised that ordinary members do not have the same capacity to influence decisions regarding legal actions against them for arrear levies.
- **Application of Prescription:** The court concurred with the arguments presented that the failure of the BC to take timely action against the applicants for the owed levies resulted in the prescription of the claim. Thus, the debt was deemed to have prescribed.

Judgement and Orders

The court made the following orders:

- The subrogated debt of R134,225.05 claimed by the BC has prescribed as per the provisions of the Prescription Act.
- The BC is precluded from relying on this debt concerning the issuance of a levy clearance certificate.
- The applicants are ordered to pay the costs associated with the application to strike out.

Conclusion

- This judgment serves as a critical assessment of the roles within a body corporate and the implications of the Prescription Act on the collection of levies. The court's ruling affirms that ordinary members of a body corporate cannot be classified as part of the governing body for the purposes of delaying prescription, thus protecting members from undue claims over time.



vdm.law

To learn more about us.

VDM SERVICES

- | | | |
|--|--------------------------------------|--|
| • ALTERNATIVE DISPUTE RESOLUTION | • DECEASED ESTATES, TRUSTS AND WILLS | • NOTARY PUBLIC AND NOTARIAL SERVICES |
| • CIVIL LITIGATION AND DEBT COLLECTION | • DIVORCE AND FAMILY LAW | • PERSONAL INJURY AND PUBLIC LIABILITY |
| • COMMERCIAL LAW | • EMPLOYMENT AND LABOUR LAW | • PROPERTY LAW AND SECTION TITLE |
| • CONVEYANCING AND PROPERTY TRANSFERS | • INSOLVENCY AND LIQUIDATION | • MARRIAGE AND MATRIMONIAL PROPERTY |