REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 111881/2025

(1) REPORTABLE: NO
(2) OF INTERREST TO OTHER JUDGES: NO
(3) REVISED: YES

17 SEPTEMBER 2026 E Rautenbach.
DATE SIGNATURE

In the matter between:

SAKELIGA NPC	First Applicant
TRANSVAAL AGRICULTURAL UNION OF SOUTH AFRICA	Second Applicant
CT VAN DER MERWE BOERDERY (PTY) LTD	Third Applicant
TWYFEL NIE PLASE (PTY) LTD	Fourth Applicant
BLOUBERG SITRUS (PTY) LTD	Fifth Applicant
PONTDRIF CITRUS (PTY) LTD	Sixth Applicant
CORFUSCORE (PTY) LTD	Seventh Applicant
MOSIMA BELEGGINGS (PTY) LTD	Eighth Applicant

and

MINISTER OF WATER AND SANITATION	First Respondent

DIRECTOR-GENERAL DEPARTMENT OF WATER AND SANITATION	Second Respondent
DEPARTMENT OF WATER AND SANITATION	Third Respondent

JUDGMENT

RAUBENHEIMER, AJ

Introduction

[1] The applicants brought an application for the following relief:

a. That water use charges in terms of the National Water Act 36 of 1998 in respect of water utilised for commercial irrigation and/or other commercial purposes by private individuals or entities are subject to a three-year prescription period in terms of Section 11(d) of the Prescription Act 68 of 1969.
b. That a three-year prescription period would be applicable in respect of the accounts for water use of the third to eighth respondents.
c. That the Respondents be ordered to provide the Applicants' attorneys with complete itemised statements, together with all relevant invoices, in respect of all the accounts mentioned in prayer 2, covering all amounts claimed to be owed, within 60 calendar days from the date of this order.

The parties

[2] The first applicant is Sakeliga NPC, a non-profit company duly incorporated in terms of the relevant legislation of the Republic of South Africa. It is a business interest organisation that promotes free markets and prosperity, and creates a favourable environment for the effective and efficient conducting of business in the interest of its members.

[3] The second applicant is the Transvaal Agricultural Union of South Africa, a voluntary association whose members are commercial farmers across the Republic of South Africa.

[4] The third to eighth respondents are all commercial irrigation farmers who cultivate crops, fruits and vegetables utilising water in terms of licences or existing lawful uses in terms of the National Water Act (NWA).[1]

The first respondent is the Minister of Water and Sanitation, the Minister in the Cabinet responsible for the said department. The second respondent is the Director-General of the Department of Water and Sanitation. The third respondent is the Department of Water and Sanitation.

The applicant's case

[5] Although the NWA came into force on 1 October 1998, some applicants' water uses derive from lawful uses under the previous Act, the Water Act (Old Act).[2] Although repealed, section 98 of the NWA keeps Water Boards and Irrigation Boards in operation for a limited period, during which they retain the same powers they had under the Old Act.

[6] The Old Act clearly distinguished "rates" and "charges." A "rate" could be imposed despite the water user concerned not actually receiving the relevant public water. For a charge to be raised, the water must actually be supplied or distributed.

[7] The water uses of the third to the eighth applicants do not fall under the control of the Water Board or Irrigation Board functioning under the transitional provisions of the NWA.

[8] The NWA refers to "water use charge". The purpose of the current application is to determine whether water use charges in terms of the NWA are subject to the normal prescription periods prescribed in the Prescription Act.[3]

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[1] Act 36 of 1998
[2] Act 54 of 1956
[3] Act 68 of 1969

[9] The NWA authorises the Minister to determine a pricing strategy for charges of any water use within the framework of existing relevant government policy, in concurrence with the Minister of Finance.[4]

[10] The NWA further provides that the nature of a charge in terms of the Act does not amount to a tax, levy or duty[5]. The effect is that water use charges in terms of the NWA are similar in nature to a charge in terms of the Old Act.

[11] Payments claimed in respect of water use charges are often more than three years old. This is exacerbated by the third respondent's failure to provide clear and accurate invoices and statements. The statements merely show a balance claimed to be due and owing and contain no reference to the underlying invoice. There is consequently no way to determine the actual use over a specific period of time or the rates used to determine the cost of the use as required by section 59(1) of the NWA, which provides that water use charges may only be raised in respect of water actually used. The first respondent has a regulatory power to require that the use of water from a source should be monitored, measured and recorded in terms of section 26 of the NWA.

[12] The relevant prescription period for water use charges in terms of section 11(d) of the Prescription Act is three years.

[13] The third respondent is attempting to collect an outstanding debt from the third to the eighth respondents by using debt collection agencies and attorneys. Included in this debt are debts that originated more than three years ago. However, the third respondent has not issued any summons for the outstanding debt. The third to the eighth respondents are thus deprived of the opportunity to raise prescription as a plea to the claim.

[14] The applicants argue that there is a clear dispute as to whether the applicable water use charges are prescribed.

[15] Due to the approach of the respondents, the applicants contend that the legal position in respect of the outstanding debt needs to be clarified. This legal uncertainty

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[4] Section 56 of the National Water Act.
[5] Section 57(5) of the National Water Act.

makes planning, budgeting, and operating the farming operations uncertain and volatile.

The case for the respondents

[16] The respondents contend that the applicants are not entitled to declaratory relief as their application does not meet the requirements for such relief. The basis for this contention is that the applicants failed to present factual averments supporting the exercise of discretion in favour of granting the declaratory relief. The relief sought is thus in the abstract.

[17] The respondents, furthermore, contend that there is no dispute between the parties and, in the absence of a dispute, the court is precluded from exercising its discretion in favour of granting the declaratory relief. As long as the third respondent has not issued summons against the third to eighth respondents to collect the debt, no live dispute exists between the parties.

[18] According to the respondents, the applicants would gain no tangible or justifiable advantage if the declaratory relief were granted. Whether a debt has prescribed depends on the facts of the case, and no facts on which it can be determined whether the debt has prescribed have been placed before the court.

[19] Based on the lack of a proper factual basis, the granting of declaratory relief will not clarify the legal position or the rights of the applicants.

[20] The respondents contend that, pertaining to the provision of invoices and statements in respect of water use, the applicants did not provide a factual or legal basis for the provision of such invoices or statements. The respondents further contend that the court is not to involve itself in the administrative functions of the third respondent.

Discussion

[21] Granting declaratory relief is a discretionary judicial act governed by the Superior Courts Act.[6]

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[6] Act 10 of 2013

[22] Section 21(1)(c) of the Superior Courts Act states that a High Court, has the power:

> "in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination."

[23] When embarking on an assessment of whether a court should exercise its discretion in favour of granting declaratory relief, it embarks on a two-stage enquiry.[7] The first stage is a factual enquiry and the second stage is the exercise of a judicial discretion.[8]

[24] In the first stage, the jurisdictional stage, the court has to determine whether the applicant is an "interested person" in the subject matter of the litigation in that they must have a direct (tangible and justifiable)[9] right in the litigation, not a mere academic or abstract interest.[10]

[25] Such person must have an interest in respect of an existing, future or contingent right or obligation.

[26] When the jurisdictional requirements have been met, the subsequent step involves the court determining whether the case is suitable for granting declaratory relief.[11] To reach this conclusion, the court will consider the following factors: utility, finality, alternative remedies, and public policy.

[27] In respect of utility, the court must determine whether the relief will provide a tangible advantage or settle a real dispute between the parties.[12]

[28] The finality element will be satisfied if the granting of the declaratory relief will be binding on the parties.[13]

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[7] *Durban City Council v Association of Building Societies* 1942 AD 27.
[8] *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (4) SA 389 (SCA).
[9] *Queen Sibongile Winnifred Zulu v Queen Buhle Mathe and Others* (1062/2022) [2024] ZASCA 22.
[10] *JT Publishing (Pty) Ltd and Another v Minister of Safety & Security and Others 1996 (12) BCLR 1599* at para 15. See also Cilliers AC, Loots C, and Nel, HC "Herbstein and Van Winsen: The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa" (2009) Juta Vol 2 page 1434.
[11] *Pasiya and Others v Lithemba Mining (Pty) Ltd and Others* [2024] 1 All SA 626 (SCA).
[12] Above n9. See also *Adelson v Associated Game Industries* (Pty) Ltd 1974 (4) SA 427 (C).
[13] *Muller v The Master* 1991 (2) SA 118 (N).

[29] If alternative remedies are available, the court will not exercise its discretion in favour of granting declaratory relief.[14]

[30] If granting the relief would be contrary to the public interest or have a detrimental effect on the administration of justice, the court will not grant it.[15]

[31] The third respondent is subject to the Public Finance Management Act[16], Treasury Regulations, the NWA and the Pricing Strategy for Raw Water Use Charges.

[32] The NWA deals with financial provisions in chapter 5. It provides for the establishment of a pricing strategy for charges for any water use.[17] The strategy may, inter alia, differentiate between categories of water use and different water users.[18] It may also provide for charges to be paid directly by consumers. [19]

[33] Such a strategy has indeed been published on a number of occasions, notably in 2007[20], 2024[21] and 2025[22].

[34] The 2007 and 2025 strategies deal extensively with the revenue and receipts cycle. Each requires invoices to be generated and provided to the debtors on a six-monthly basis.[23]

[35] An invoice is the mechanism used to provide certainty in respect of the exact amount of the debt and the grounds of the claim.[24] It records a transaction, claims payment, identifies the parties, the nature of the goods or services supplied and the price.[25]

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[14] See *NAPTOSA and Others v Minister of Education, Western Cape, and Others 2001 (2) SA 112 (C)* 123I-J, *Standard Bank of SA Ltd v Terblanche and Others* 1998 (4) SA 118 (SCA) 135E-G.
[15] Above n10 at para 15. *Competition Commission of South Africa v Standard Bank of South Africa Limited [2020] ZACC 2 par 93. Minister of Finance v Oakbay Investments (Pty) Ltd* 2018 (3) SA 515 (GP) at para 61.
[16] Act 1 of 1999.
[17] Section 56 of the National Water Act.
[18] Section 56(3)(a)(ii) &(iii) of the National Water Act.
[19] Section 65(3)(b) (ii) of the National Water Act.
[20] Establishment of a Pricing Strategy for Water Use Charges in terms of Section 56(1) of the National Water Act. GG 29697 of 2007
[21] Revised Pricing Strategy for Raw Water Use Charges in terms of Section 56(1) of the National Water Act. GG 4992 of 2024
[22] Revised Pricing Strategy for Raw Water Use Charges GG 50852 of 2025.
[23] 2007: par6.3.6, 6.4.4, 7.1.6.2. 2025 par 1.11, 2024
[24] *Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd* 1998 (1) SA 811 (SCA).
[25] *Singh v Commissioner, South African Revenue Service* 2003 (4) SA 520 (SCA)

[36] Treasury Regulations requires all the transactions of an entity must be supported authentic and verifiable source documents[26]. Invoices are regarded as primary evidentiary records for purposes of the Regulations.

Application

[37] The respondents do not raise any objection against the applicants as interested persons and have placed no facts before the court to the effect that the applicants do not meet the criteria in respect of the first phase of the enquiry.

[38] The court likewise have not found any basis on which to conclude that the applicants have not met the requirements of the first phase of the enquiry.

[39] The granting of the declaratory relief will not settle a real dispute between the parties. No summons has yet been issued. The complaint that the respondents are using harassment to extract payment from the applicants does not amount to a real dispute between the parties. In this regard, the applicants have an alternative remedy under the Protection of Harassment Act.[27]

[40] The question in respect of the possible prescription of at least some of the debt will only arise when summons is issued, and the applicants raise prescription as a special plea. To consider the issue of prescription at a stage when summons has not yet been issued and the cause of action has not yet been completed is premature and would amount to an academic or hypothetical exercise.

[41] The respondents are obliged to provide the applicants with sufficient information to allow them to confirm the accuracy of the water use charges.[28]

[42] The information contained in the notification of indebtedness must be of such a nature that it provides the applicants with information they can use to determine the water usage, the rates used to determine the usage, the period of measurement of the usage, and any other charges[29].

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[26] Treasury Regulations in terms of the Public Finance Management Act 1 of 1999 G 27388 of 2005 at para 17.1.1, G29644 of 2007, G 37042 of 2013.
[27] Act 17 of 2011.
[28] *Walele v City of Cape Town and Others* 2008 (6) SA 129 (CC)
[29] *Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality* [2017] ZAGPJHC 42.

Conclusion

[43] The applicants have not satisfied the requirements for the granting of declaratory relief and are consequently not entitled to such relief.

[44] The respondents are obliged to provide the applicants with sufficient information in the notice of indebtedness for the applicants to verify the indebtedness.

Order

[45] As a result, the court makes the following order:

1. The application for declaratory relief is dismissed

2. The second and third respondents are ordered to provide the third to eighth applicants with complete itemised statements, together with all relevant invoices, in respect of all the accounts mentioned in prayer 2 dealing with all amounts claimed to be owed, within 60 (sixty) calendar days from the date of this order.

3. Each party shall pay their own costs.



RAUBENHEIMER AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

For the Plaintiff:	Adv J.G.C Hamman SC
Instructed by:	KWV Inc Attorneys Inc

For the Respondent:	Adv H Mpshe
	Adv N Baloyi
Instructed by:	State Attorney
Date of Hearing:	11 August 2026
Date of Judgement:	17 September 2026