



Residents of Phiri, in Soweto, have won a landmark victory in their dispute with the City of Johannesburg over water rights
PHOTOGRAPH: DALE MCKINLEY

City council's township water-meter plans get flushed by high court judge

BY MAUREEN ISAACSON

A historic judgment has consigned prepaid water meters to the dustbin of history. It has also highlighted the attitude of the City of Johannesburg to the plight of the majority of poor, uneducated, sick and HIV/Aids-ravaged residents of Phiri township, Soweto.

The Johannesburg High Court has declared prepaid water meters unlawful and unconstitutional. Five poor residents of Phiri, who have been in dispute with the city for the past four years on behalf of themselves and their community, have won the battle for their constitutional right to free water. The application was heard over three days in December.

Judge MP Tsoka ordered the City of Johannesburg to provide a full

range of water-delivery options. The limitation of free basic water to the present 6 kilolitres per household per month was set aside by the court, and the City of Johannesburg and Johannesburg Water were ordered to supply Phiri residents with 50 litres per person per day.

Judge Tsoka said: "Twenty-five litres per person per day is insufficient for the residents of Phiri. ... to expect the applicants to restrict their water usage, to compromise their health, by limiting the number of toilet flushes in order to save water, is to deny them the rights to health and to lead a dignified lifestyle."

He found that the consultation leading to the adoption of prepaid meters was inadequate and was "more of a publicity stunt than a consultation".

Tsoka said that it was the obligation of the city "to ensure that every

person had both physical and economic access to water".

He said that the introduction of the prepaid meters was procedurally unfair. The judgment said that the by-laws, "other than as a penalty, do not authorise the installation of prepayment meters".

The judge said that in "established democracies, prepaid water meters are illegal as they violate the procedural requirement of fairness by cutting off or discontinuing the supply of water without notice and representation.

The policies ostensibly adopted to alleviate the plight of the poor in Phiri "appear irrational and unreasonable as they are inflexible".

The underlying objective of the policies is to encourage the installation of prepayment meters, which are unlawful. Also, the policies are discriminatory because they differ-

entiate between the allowances of those who live in historically poor black areas and historically richer white areas, said the judge.

While some residents in the previously privileged areas are entitled to water on credit, as well as the free allocation of 6 kilolitres per household per month, the Phiri residents are expected to pay for water before it is used. This contravenes the right to equality laid out in the constitution.

Tsoka said the argument that the poor Phiri residents would be otherwise unable to use water and that the system was "good for them" was patronising. He reminded the court that discrimination based on colour was unlawful.

"Bad payers cannot be described in terms of colour or geographical areas. Bad debt is a human problem, not a racial problem," he said.

Moreover, the system of prepaid meters discriminated unfairly against women, he said. The majority of poor black households, such as those of the Phiri applicants, were headed by women. One of the Phiri applicants had to walk 30km to fetch water.

To deny the applicants the right to water would perpetuate the decades-long poverty, deprivation, want and undignified existence of the recent past.

Dale McKinley, a spokesman for the Coalition Against Water Privatisation, said: "The city has egg on its face and is saddled with a R320 million loan for prepaid meters that it now can't install.

"If the city had followed the writ of the law in implementing its water services, consulted the community and listened to the voices of protest, this would not be the case."

S. INOY (4 MAY 2008)