

CIRCULAR TO SAACPP MEMBERS

MUNICIPAL BY-LAWS ON SPATIAL PLANNING AND LAND USE MANAGEMENT MATTERS ONGOING LEGAL PROCEEDINGS AND INTERVENTIONS

PRIOR COURT ORDERS

Members may recall that certain prior judgments of the High Court and the Supreme Court of Appeal, pertaining to the Govan Mbeki Local Municipality Spatial Planning and Land Use Management By-law, 2016 and the Emalahleni Municipal By-law on Spatial Planning and Land Use Management, 2016 had declared certain sections of such by-laws to be invalid.

The relevant sections of the aforesaid by-laws provided for so-called clearances to be issued by the responsible municipality prior to the Registrar of Deeds being placed in a position to register the transfer of a so-called "land unit". The by-laws prohibit such a municipality from issuing the requisite certificate for transfer unless the owner furnishes certain proof to the municipality including but not limited to:

- proof of payment of any contravention penalty imposed upon the owner; and
- proof that the land use of and buildings constructed on the land unit comply with the requirements of the relevant land use scheme

As reported previously, the aforesaid provisions played havoc with pending transfers of farm portions in the Mpumalanga Province, where historic farm buildings and agricultural structures and land use categories were ostensibly found to be non-compliant when compared to the provisions of the relevant land use schemes. This was challenged and resulted in the orders of the High Court and the Supreme Court of Appeal alluded to above.

APPEAL TO CONSTITUTIONAL COURT

It is now common knowledge that, following the 17 June 2022 Judgment by the Supreme Court of Appeal in dismissing the appeals by the participating municipalities, the relevant municipalities have opted to appeal against such judgment and the matter is now on its way to the Constitutional Court.

ENTER THE CITY OF CAPE TOWN

In the interim the matter has taken an interesting turn in that the City of Cape Town Metropolitan Municipality has applied to intervene in the matter in terms of Constitutional Court Rule 8, alternatively to be admitted as an *curiae* in terms of Rule 10.



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NORTH REGION

The submissions made by the City of Cape Town pertain largely to the issue of claiming a contravention penalty which it may have levied in regard to the use and development of land within its jurisdiction before issuing the required clearance. Whilst this aspect alone appears to be relatively simple, the submissions made touch on the interpretation of constitutional issues and the area of authority of a municipality, the right to prepare and adopt and implement different types of by-laws and related considerations. The City of Cape Town contends that the court judgments alluded to above are wrong in regard to the aforesaid aspects.

When the matter ultimately serves before the Constitutional Court, the relevant constitutional aspects will again be aired and, depending on the ultimate judgment, may impact on the manner in which municipal by-laws regulate such matters in future.

Members will be informed of any further developments of interest.

References: In the Constitutional Court of South Africa

CC Case Number: CCT 189/22

SCA Case Numbers: 334/2021 (Govan Mbeki)

337/2021 (Emalahleni)

Aquo Case Numbers: 2607/2019 (Mbombela)

1909/2020 (Middelburg)

CC Case Number: CCT 191/22

Per: SAACPP North Region