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OBTAINING A CLEARANCE CERTIFICATE?

In the case of Glencore (Pty) Ltd and Others v Steve Tshwete Local Municipality and Others certain mining companies in Mpumalanga wanted to transfer properties into their names for mining purposes. However, the prerequisite of a SPLUMA certificate was adopted in the municipal by-laws as well as in the deeds office, which entailed that the transferor first has to obtain such a certificate before they can obtain a clearance certificate.

The Registrar of Deeds, Mpumalanga, requires a certificate in terms of their Spluma bylaws in order to approve a transfer and the failure to provide such certificate lead to the rejection of the said transfer.

The mining companies sought relief from the court by arguing that the municipality does not have the necessary legislative competence to issue this prerequisite and that it can only be imposed by national legislation. In response the court found that national competence with regard to deeds registration is not a municipal function and municipalities are not allowed to stipulate requirements for property registrations. The court further found that these regulations are unconstitutional, insofar that they are inconsistent with section 25 and 156 of the Constitution. It was also found to be in conflict with section 118 of the Municipal Systems Act. Thus, the court ruled that municipalities' do not have the necessary powers to implement such rules. This judgment still has to be confirmed by the Constitutional Court, and until such time, certificates in terms of SPLUMA is still a requirement for property transfers in Mpumalanga.