

PUBLIC NOTICE: INVALIDITY OF THE SECTION 86 SPLUMA CERTIFICATE

The Constitutional Court, on 19 November 2024, ruled that Section 86 of the Emalahleni Spatial Planning and Land Use Management By-Law, 2016, is invalid and unconstitutional.

Prior to the above ruling, the municipality used the issuing of a Section 86 certificate, to certify that a property that is to be transferred and registered at the Deeds Office, is complying to all relevant legislation and municipal by-laws. This protected prospective buyers against purchasing properties that are not fully complying to relevant legislation.

In the absence of this regulating tool, the onus of ensuring that a property complies with applicable legislation relies on the owner and all prospective buyers.

It must be noted that the Constitutional Court ruling did not affect any of the following legislation which must be adhered to, namely:

1. With the exception of Section 86, all the other provisions of the Emalahleni Spatial Planning and Land Use Management By-Law, 2016, remain in force;
2. The Emalahleni Land Use Management Scheme, 2020;
3. The National Building Regulations and Building Standards Act, Act 103 of 1977, (as amended) and the National Building Regulation; and
4. Any other legislation and relevant municipal by-laws.

The municipality do have enforcement powers to ensure that all properties remains compliant to the provisions of the said legislation and can therefore, inter alia criminally prosecute transgressors, issue fines to contraveners, obtain orders for demolishing of unauthorized structures, etc.

It must furthermore be noted that the obligations of a current owner is transferred to the successor in title (any new owner), and that includes any existing illegal activities or structures related to the property. It is therefore imperative that a prospective buyer ensures that the seller (current owner) confirms compliance of the property to all legislation to avoid being held responsible for illegal activities and structures after the property is transferred into his/her name.