

# Real Estate Law

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## In this issue

### SOUTH AFRICA

- Categorisation of property by municipalities of developer stock vacant land
- Title deeds are meant to be kept safe, *"not for inspiring young pilots"*

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REAL ESTATE LAW  
ALERT

## Categorisation of property by municipalities of developer stock vacant land



In the recent case of *City of Tshwane Metropolitan Municipality and Others v Copperleaf Country Estate (Pty) Ltd and Another* (245/2023) [2024] ZASCA 69 (3 May 2024), the Supreme Court of Appeal (SCA) upheld a judgment granted by the Gauteng Division of the High Court, Pretoria, concerning the City of Tshwane Metropolitan Municipality's (City) supplementary valuation rolls for 2010–2011 and 2013–2017. The cross appeal filed by Copperleaf Country Estate (Pty) Ltd (Copperleaf), challenged the incorrect categorisation of its properties as “vacant land” rather than “business/commercial”.

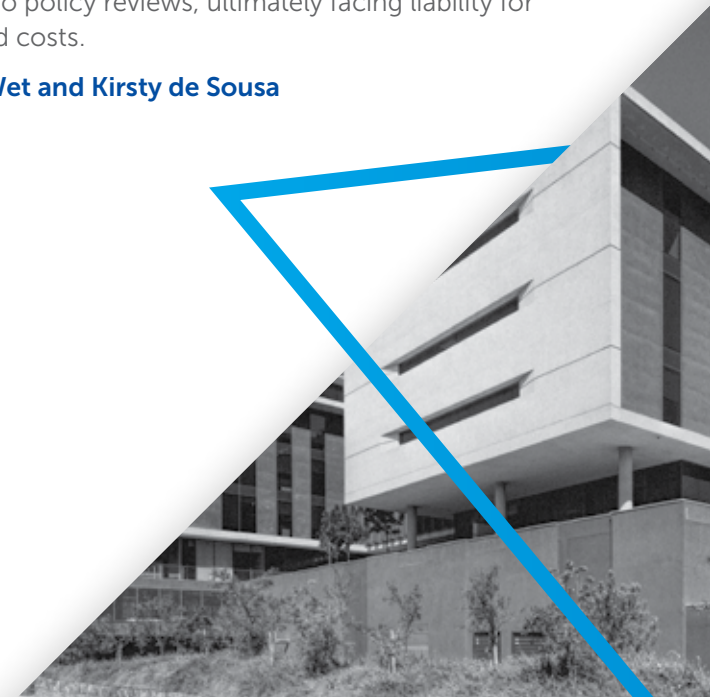
Copperleaf, the first respondent in the appeal and the first appellant in the cross appeal, owned two portions of property, both initially classified as business/commercial as these properties were in the process of being established as townships. However, a change in the City's rates policies and subsequent interpretation thereof, resulted in one portion being re-categorised as “vacant land” due to a substitution of the holding title deed for a Certificate of Registered Title (CRT). This re-categorisation by the City led to the City declaring the property ratable as “vacant land” which effectively led to Copperleaf being charged increased rates and taxes by the City as the property was no longer categorised as business/commercial, which had a lower rate.

The City submitted during argument before the SCA that the substitution of title deed with the issuance of the CRT altered the legal status of the property, excluding it from the business/commercial category. The SCA, however, found this argument untenable, ruling that the property still formed part of the developer's stock and should be categorised as business/commercial.

The SCA dismissed the appeal and granted a cross-appeal by Copperleaf, and further directed the City to adjust the supplementary valuation rolls to reflect the property as business/commercial. Additionally, the City was ordered to reimburse Copperleaf for the overpaid rates resulting from the incorrect categorisation.

This decision highlights the critical significance of accurately interpreting municipal policies when assessing property rates. Incorrect interpretation can inevitably result in litigation, as municipalities may be compelled to undergo policy reviews, ultimately facing liability for associated costs.

**Alex de Wet and Kirsty de Sousa**



## Title deeds are meant to be kept safe, "not for inspiring young pilots"

When you receive your original title deed or notarial deed, especially after making a cash payment without financing through a mortgage bond, you often hear the advice, "Please take care of these documents and keep them safe." Replacing them can be costly and may cause delays when selling a property or leasehold rights, or securing financing.

Regulation 68 of the Deeds Registries Act 47 of 1937 (Regulations) is of paramount importance in circumstances where original deeds or mortgage bonds are misplaced, damaged or unserviceable (when one or more page is missing), as the various Deeds Offices mandate the submission of original deeds for property transactions.

### **Lost title deeds, notarial deeds and mortgage bonds: An enhancement to the lost deed procedure**

If the conveyancing attorneys attending to the transfer of your property or leasehold rights have asked you for your original deed, and despite searching your home from top to bottom you cannot find it, when you notify the conveyancing attorneys, they will advise you that the next step to is to apply for a certified copy of the deed in terms of Regulation 68(1) of the Act.

Regulation 68(1) of the Act deals with lost deeds and reads as follows:

*"If any deed conferring title to land or any interest therein or any real right, or any registered lease or sublease or registered cession thereof or any mortgage or notarial bond, is lost or destroyed and a copy is required for any purpose other than one of those mentioned in either of the last two preceding regulations, the registered holder thereof or [their] duly authorised agent may make written application for such copy, which application shall be accompanied by an affidavit describing the deed and stating that it has not been pledged and it is not being detained by any one as security for debt or otherwise, but that it has been actually lost or destroyed and cannot be found though diligent search has been made therefor, and further setting forth where possible the circumstances under which it was lost or destroyed."*

Prior to the 2019 amendments to Regulation 68 of the Act, applying for a lost deed was rather simple, in that the landowner was only required to complete an application and affidavit in terms of Regulation 68(1) and have it lodged and registered in the relevant Deeds Office. Regrettably, the simplicity and ease of the procedure made it susceptible to fraudulent transactions, and certified copies of lost deeds were being applied for by and issued to people purporting to be the registered landowners, hence the introduction and implementation of the 2019 amendments to Regulations 68(1) and 68(11) of the Act.



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The 2019 amendments to Regulation 68(1) and Regulation 68(11) made the respective procedures of obtaining certified copies of deeds, and cancellations of mortgage bonds, more onerous. In addition to the requirement of a written application accompanied by an affidavit, the following requirements were additionally included: (i) ensuring that a notary public attests to the application; (ii) newspaper publications of notices; and (iii) a [two-week] deeds inspection period in which interested parties may object to the issuance. Find more information on the 2019 amendments in our alert [“Beware of Lost Title Deeds”](#).

Post-amendment, Regulation 68(1E) provides the following:

*“(a) Before the issuing of a certified copy of any deed conferring title to land or any interest therein or any real right, or any registered lease or sub-lease or registered cession thereof or any mortgage or notarial bond under this regulation, the applicant shall publish, substantially in the prescribed form, a notification of intention to apply for such certified copy in an issue of a newspaper circulating in the **[area] administrative district** in which the land is situated and in the case of a notarial bond in an issue of one or more newspapers circulating in the area of every deeds registry in which such notarial bond is registered.”*

Post-amendment Regulation 68(11B) provides the following:

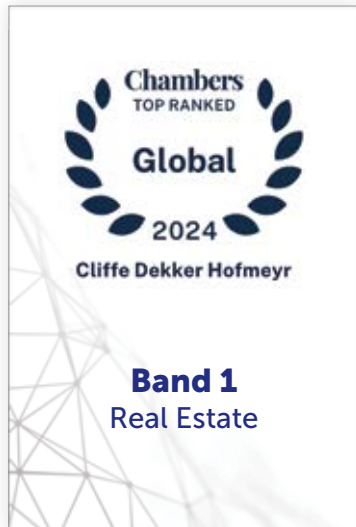
*“(a) The registered holder of a mortgage or notarial bond, or his or her duly authorised agent, who desires to procure cancellation of such bond which has been lost, destroyed, or became incomplete or unserviceable and of which the registry duplicates have also been lost, destroyed, or became incomplete or unserviceable, must at own expense publish (in the prescribed form) notice of intention to apply for the cancellation of the registration of such bond, in an issue of a newspaper circulating in the [area] administrative district in which the mortgaged land is situated, and in the case of a notarial bond in an issue of one or more newspapers circulating in the area of every deeds registry in which such notarial bond is registered.”*

The Chief Registrar’s Circular No. 2 of 2022 (Circular) has addressed some of the difficulties faced in fulfilling the requirements set out in Regulation 68(1E) and Regulation 68(11B). The Circular acknowledges the difficulty in defining the “**area**” for publication purposes; whereby a notice of intention to apply (for a certified copy of a deed or for cancellation of a mortgage or notarial bond) had to be published in a newspaper circulating in the area where the property is situated.



## Title deeds are meant to be kept safe, “not for inspiring young pilots”

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In a move aimed at simplifying the process and addressing practical challenges faced by applicants, especially in rural areas without circulating newspapers, the requirement has been made less burdensome. In terms of the Circular, a notification must be published in a newspaper circulating in the **administrative district** where the property is situated, not the area. The Chief Registrar decided, with the support of the Regulation Board, to widen the ambit of this requirement with immediate effect, making it easier for applicants to fulfill the aforementioned regulatory requirements.

It is now sufficient to provide proof of publication in a newspaper circulating in the **administrative district** where the land is situated and in instances for a lost title deed or notarial deed where lost mortgage bonds are being cancelled, no advertisement is required for the cancellation, unless the Deeds Office copy or records have been lost or not microfilmed onto their system (then the two-week inspection period will also be applicable). Further, the applications submitted to the Deeds Office in terms of section 68(1) and 68(11) are not required to be attested by a notary public.

### What is an incomplete (unserviceable) deed?

An unserviceable deed is a deed where a few pages are missing from the original deed, where pages of the deed could have been torn and thus some paragraphs are missing or where the deed has been damaged due to water, etc., rendering the deed, or a few paragraphs thereof, illegible.

Regulation 68(8) of the Act deals with unserviceable deeds and reads as follows:

*“If any deed referred to in sub-regulation (1) hereof or any registered lease or sub-lease or registered cession thereof or any mortgage or notarial bond has for any reason become unserviceable, it shall be competent for the Registrar to issue a certified copy thereof to serve in place of the original on written application being made to [them] by the owner or the legal holder or the duly authorised agent of such owner or holder; provided that the original deed shall be lodged with such application.”*

Therefore, in terms of Regulation 68(8) of the Act, in the application for a replacement certified copy of a deed to be issued by the Deeds Office, no notification of intention to apply for such certified copy in an issue of a newspaper circulating in the administrative district (area) in which the land is situated is required, nor is the two-week inspection period required.

### What happens when the Deeds Office does not have a copy of the lost deed on their system to issue a certified copy replacement?

Section 38 of the Act discusses this and advises as to the procedure, which will be discussed in a follow up article.

For lost and unserviceable deeds in Waterfall City, the procedure is slightly different, and parties will need to contact their conveyancer to advise as to the process.

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