

# Ruling on rates liability of newly subdivided land

The June 2015 case of EM and EM Engineering v KwaDukuza Municipality and Others concerned the liability for rates over newly subdivided land.

 By Dylan Bradford 6 Nov 2015



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The property owner and developer EM and EM Engineering (developer) registered a general plan, which subdivided its property (the mother property) into 91 subdivisions.

A dispute arose between the developer and the KwaDukuza Municipality when the developer applied for a rates clearance certificate from the Municipality in order to transfer two subdivisions from the mother property to a third party.

The developer, through its interpretation of section 118(1) of the Local Government: Municipal Systems Act, contended that the rates clearance certificate is required only in respect of the two subdivisions of the mother property being transferred.

The Municipality was of the view that on the basis that the two subdivisions still formed part of the mother property, the rates and charges payable before a rates clearance certificate can be issued are those rates and charges relevant to the mother property as a whole.

The developer submitted that if the Municipality's view was adopted, all rates and charges due in respect of the mother property must be paid on each occasion before any transfer of any individual subdivision was allowed.

## The court when considering arguments from the developer and Municipality held that:

1. There had been no change of ownership by the creation of subdivisions through the registration of the general plan over the mother property.
2. Future transfers of the subdivisions from the mother property would be recorded in the Deeds Office in a dedicated register. Until such time that the subdivisions have been transferred to a new owner or a certificate of registered title has been issued in respect of the subdivisions, the subdivisions will be held by the same title deed as the Mother Property.
3. Section 118(1) of the Act prohibits the registration of transfer of property without the production of a rates clearance certificate with regard to "that property"; and
4. The reference to "that property" in section 118(1) of the Act refers to the subdivision concerned and not the mother property which has, by virtue of the registration of the general plan.

Therefore, the court held that a rates clearance certificate need only be issued in respect of the subdivision/s being transferred and not the mother property as a whole.

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