

Real Estate Law

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SOUTH AFRICA

Non-compliance with servitudes: Lessons from the Great Borehole Incident of 2025



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Non-compliance with servitudes: Lessons from the Great Borehole Incident of 2025

South Africa is facing growing problems with unreliable water and energy services, pushing more people to turn to eco-friendly alternatives such as solar power and boreholes to stay in control of their supply.

However, these efforts could lead to legal issues. A recent example is the Gautrain borehole incident, where drilling activities ostensibly conflicted with existing servitude rights and disrupted infrastructure.

This highlights the growing tension between the need for reliable utilities and the legal limitations that may apply to private solutions.

The Great Borehole Incident of 2025

On 15 February 2025, Gautrain services between Park Station and Rosebank were suspended due to a borehole having been drilled illegally, in contravention of section 40(3) of the Gauteng Transport Infrastructure Act 8 of 2001 (GTIA).

The drilling accidentally penetrated the Gautrain tunnel, allowing water and soil to leak into the tunnel and causing substantial damage.

The incident raised key questions about whether steps should have been taken to prevent the unfortunate event and who is ultimately responsible for the damage.

Borehole drilling procedures in Johannesburg

The City of Johannesburg's Land Use Scheme of 2018 (LUS) is a municipal policy directive which regulates the use and development of land within Johannesburg.

It is established in terms of section 24 of the Spatial Planning and Land Use Management Act 16 of 2013 and incorporates borehole drilling procedures for citizens of Johannesburg and its surrounding areas.

Consent requirement

In terms of clause 14(1)(b) of the LUS, prior written consent from the City of Johannesburg Metropolitan Municipality (Council) is required before any borehole drilling activity can take place on an erf, provided that this condition is not applicable to dolomitic areas as detailed in clause 14(14) of the LUS.

The Council may provide such consent, subject to any conditions it imposes.

Only boreholes required by the Department of Water Affairs and/or the Council for Geoscience may be sunk on erven, sites and/or townships indicated in Table 1 of clause 14 of the LUS.

The application to Council is subject to departmental review, which includes an assessment by the City Engineering Departments and the Environmental Infrastructure Service Department to prevent any detrimental impact on existing infrastructure.

Notification

According to section 41 of the Johannesburg Public Health By-law of 2003, no person may dig a borehole unless (i) it is done so in accordance with any relevant law; and (ii) the Council has been given at least 14 days' written notice of the person's intention to do so.

The notice must state the proposed location and the purpose for which the water is to be used.

Servitude considerations

When drilling a borehole, consideration must be given to the rights of any servitude holder in respect of the property on which the borehole is to be drilled.



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The proposed extension of the Gautrain route

In terms of Government Notice GNR 5904, published in the South African *Government Gazette* Volume 716 No. 52180 on 26 February 2025, the Gauteng Department of Roads and Transport issued a notice of route determination of a railway line in terms of section 6 of the GTIA, and the MEC for Roads and Transport (MEC) gave notice of her intent to determine the route for the Soweto Extension and Cosmo City Junction of the Gauteng Rapid Rail Integrated Network Extensions Project.

In terms of section 19(1) of the GTIA, the MEC may, by notice to the owner, expropriate land or a right in land and cause it to be registered in the name of the province, for the construction or maintenance of any transport infrastructure, or a purpose directly related to the interests of the province in connection therewith.

Once the expansion is implemented and transport servitudes are registered, the risk of another incident like the Great Borehole Incident of 2025 may become exponentially higher.

The current expansion plans therefore serve to increase pressure on the Bombela Operating Company and Gautrain Management Agency (GMA) to prevent the recurrence of similar issues.

Preventative measures

Disclosure of servitudes

Clear and transparent communication is essential to help landowners understand how the registration of a transport servitude or any other expropriation of land rights will affect their personal property rights, as well as their associated legal obligations.

It would be advisable for authorities such as the GMA to implement clear notification processes and keep accurate, up-to-date records of all registered servitudes. This would help to ensure that property owners are aware of any servitudes encumbering their land – especially those underground.

Municipal and provincial co-ordination

Municipal and provincial authorities should co-ordinate to ensure that all necessary approvals are in place and that landowners clearly understand their responsibilities and the risks of drilling boreholes on land burdened with servitudes without following the correct procedures.

Awareness of the offences and penalties applicable to unauthorised drilling

Landowners should also be made aware that drilling a borehole without the proper approval is illegal and can result in fines, jail time or both.

Conclusion

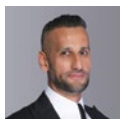
To avoid repeating past mistakes, it is important to raise awareness regarding registered servitudes, underground infrastructure, and the proper approval and notification steps before any drilling takes place.

Muhammad Gattoo and Aphiwe Qata

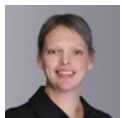


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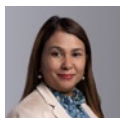
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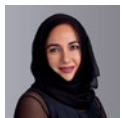
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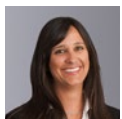
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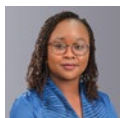
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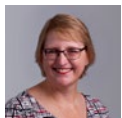
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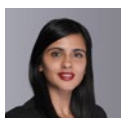
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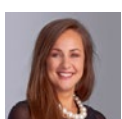
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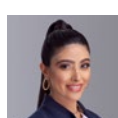
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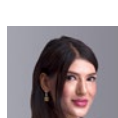
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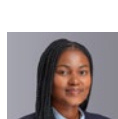
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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