

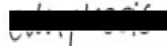


**THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case Number: LCC49/2011B

**Heard: 13 June 2025
Delivered: 17 June 2025**

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 17 June 2025 Signature: 

In the matter between:

MNISI ELVIS

First Applicant

MNISI PHILEMON

Second Applicant

and

REGISTRAR OF DEEDS: PRETORIA

First Respondent

**REGISTRAR OF DEEDS:
MPUMALANGA**

Second Respondent

**MINISTER OF THE DEPARTMENT OF
LAND REFORM AND RURAL
DEVELOPMENT**

Third Respondent

**MEMBER OF EXECUTIVE
COMMITTEE OF THE DEPARTMENT**

Fourth Respondent

**OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT**

**DIRECTOR-GENERAL:
DEPARTMENT OF LAND REFORM
AND RURAL DEVELOPMENT**

Fifth Respondent

**DIRECTOR-GENERAL:
DEPARTMENT OF LAND REFORM
AND RURAL DEVELOPMENT:
MPUMALANGA**

Sixth Respondent

**THE REGIONAL LAND CLAIMS
COMMISSIONER ERMELO
MPUMALANGA**

Seventh Respondent

NEAL FRASER SYMON N.O.

Eight Respondent

**ANDREW MGCINN PROPERTIES
(PTY) LTD**

Ninth Respondent

KOMATI GORGE LODGE (PTY) LTD

Tenth Respondent

**KOMATI GORGE LODGE FLY
FISHING**

Eleventh Respondent

NKAMBULE KUYITI JOSEPH

Twelfth Respondent

ORDER

1. The Department of Land Reform and Rural Development, including the Director-General of the Department, is directed to **finalise the applicants' labour tenant claim**, including conducting any required **Land Rights Enquiry**, within **30 court days** from the date of this order.
2. The First and/or Second Respondent is directed to register a caveat over Portion 5 of Komatidraai 417 JT, restricting transfer, alienation or encumbrance thereof, pending the finalisation of the applicants' labour tenant claim.
3. The Twelfth Respondent is directed to permit the applicants to access Portion 5 of Komatidraai 417 JT for the purpose of grazing, limited to twenty-seven (27) head of cattle, on the portion referred to in the unsigned 2023 grazing arrangement, pending the finalisation of their claim as set out in paragraph 1.

4. There is no order as to costs.

JUDGMENT

DU PLESSIS J

Introduction

[1] The applicants launched this urgent application for interim relief in terms of Part A of an amended notice of motion. In terms of the amended notice of motion, the applicants, Elvis and Philemon Mnisi ("applicants") seek an order directing the Registrar of Deeds to register a caveat to restrict his rights over Portion 5 of the farm Komatidraai 417 JT ("portion 5"), Mpumalanga, which has been awarded to the Twelfth Respondent, Mr Kuyiti Joseph Nkambule ("Mr Nkambule"), under the Land Reform (Labour Tenants) Act¹ ("LTA"). They request this as a temporary measure, pending the main application (Part B), a review application. In addition, they seek temporary grazing rights on Portion 5.

[2] The initial notice of motion sought wide-ranging relief, seeking to interdict the Registrar of Deeds from transferring the property to Mr Nkambule. It also sought orders compelling the Department of Land Reform and Rural Development ("Department"), as well as various officials, to disclose land under their control and to urgently allocate grazing land to the applicants. They further sought to amend or vary a 2022 settlement agreement that awarded land to Mr Nkambule and to compel the Seventh Respondent to disclose all records and documents related to the processing of the applicants' late father's labour tenant claim.

[3] At a case management meeting held on 21 May 2025, it became apparent that the broad scope of the original relief rendered it unsuitable for urgent determination. The Court invited the parties to consider narrowing the relief, a "holding position", to what was strictly necessary to prevent prejudice pending the finalisation of Part B. The parties were encouraged to explore the possibility of interim protective mechanisms, including the placement of a caveat on the title deed of Portion 5. It should also be

¹ 3 of 1996.

noted that the Department has indicated that it is treating this matter with the urgency it deserves and hopes that the issues raised in Part B can be resolved without the need to go to court.

[4] At a follow-up case management meeting on 27 May 2025, the applicants agreed to narrow the scope of Part A. They no longer sought to halt the transfer of the land or restructure the existing settlement agreement. Instead, they confined their urgent relief to what is set out above. Mr Nkambule could not agree to this.

[5] A further case management meeting, where still no agreement could be reached, culminated in the Court issuing a directive and draft order, confirming that the only issue to be determined in Part A would be whether a caveat should be placed on the title deed at the point of transfer of the land to the Mr Nkambule, and if so, what its content should be. Pursuant to that directive, the applicants filed an amended notice of motion limiting the relief sought to the caveat and interim grazing rights.

Background

[6] The applicants are the sons of Simon Fanyana Mnisi, a deceased labour tenant who, they allege, lodged a section 16 application for land acquisition under the LTA in respect of the farm Waterval 424 JT ("Waterval") in Mpumalanga. They contend that this was submitted at the same time as Mr Nkambule's. According to the applicants, this claim was never properly processed by the Department, as their rights were not considered alongside those of Mr Nkambule. While they acknowledge that both claims are technically individual, they point out that all the rights are interlinked, as they were connected to the same owner and the same land, and cannot be considered in isolation.

[7] Between 2011 and 2014, the Mnisi and Nkambule households were relocated from Waterval when the landowners changed the land use to accommodate game, which conflicted with cattle grazing. Although the applicants questioned the validity of the 2011/2012 relocation in their founding affidavit, they did not follow the matter further, and it is not before this Court.

[8] The Nkambule family resisted relocation and was assisted by the Department, ultimately settling on Portion 5, where grazing is permitted. This arrangement was then finalised in a settlement agreement pursuant to a section 18 of the LTA. The Mnisi family remained on the other side of the road, adjacent to the Waterval property, where they were restricted in the number of cattle they could keep. The limited carrying capacity of the land led to overgrazing, resulting in the death of some cattle.

[9] The then-owners attempted to facilitate an agreement in 2023 whereby the applicants would be temporarily allowed to graze their cattle on a small portion adjacent to the entrance of portion 5. The applicants aver there was an oral agreement to this effect, but when it came to signing a document, Mr Nkambule refused. Instead, he instructed the applicants (they aver with the help of the Department) to remove their cattle from his land. It was only when launching an application in the magistrate's court to interdict the eviction of the cattle from the land that they learnt about the settlement agreement. They then started to engage with the Department.

[10] During this engagement, the Department wrote a letter to the applicants (in April 2025). The Department notes that the Mnisi family did not express an interest in pursuing the matter of the livestock or the labour tenancy in court in 2011 when Mr Nkambule did. There is no further clarity on why that was, and I do not wish to draw any inferences or conclusions from this process based on the papers before me. The Department further indicated that it wishes first to finalise the claim of Mr Nkambule before it processes the claim of the Mnisi, as "the owners might want to combine the applications, and this could be prejudicial to the Nkambule family, who have been pursuing this matter since 2011". Not only does this point to the fact that the claims are interlinked, but it also effectively defers the Mnisi claim until Mr Nkambule's is finalised.

[11] Mr Nkambule also denies that they are entitled to the relief sought and maintains their claim relates to the Waterval property. They have no historical or legal rights to Portion 5, as Portion 5 and Waterval are distinct parcels of land. He argues that the two properties are distinct and unrelated for purposes of the present relief. He further points out that he was awarded Portion 5 pursuant to a court-approved settlement agreement under the LTA, to which the applicants were not parties and

which they did not challenge at the time. He suggests that he has become collateral damage in a dispute between the applicants and the State, and he cannot be penalised for alleged administrative failures. He asserts his entitlement to have his land rights respected.

[12] The applicants, however, argue that the different parcels of land cannot be viewed in isolation. They emphasise that all the land parcels originally belonged to the same landowner and that both the Mnisi and Nkambule families were relocated as a result of the owner's business decision to convert the farm to game farming. This relocation had substantive consequences. Mr Nkambule was settled on Portion 5 of Komatidraai, where grazing is permitted, and they were moved to a portion of land on the opposite side of the road, where **grazing is restricted**. As a result, they are unable to sustain their cattle, a central feature of their livelihood and tenure.

[13] The 2023 agreement did not materialise. This complicates matters, as the applicants are left without proper grazing for their cattle, arguably also not due to their fault. The applicants acknowledge that they were not parties to the section 18 settlement agreement. Still, they maintain that their **exclusion from the process leading up to the agreement**, despite their shared labour tenancy and historical relocation, is at the root of the present conflict.

[14] The Department may have expedited the finalisation of Mr Nkambule's claim due to his chosen strategy. However, the main issue is that the Department did not consider or process the applicants' claim alongside Mr Nkambule's during the section 16 process, despite the shared historical connection to the Waterval property and both parties having instituted claims. This is why the applicants seek a review. Based on the available facts, their request appears to have merit.

[15] I disagree with Mr Mathibedi SC's claim that the settlement agreement cannot be reviewed, thus rendering the review application moot. As outlined below, section 18² of the LTA establishes a clear procedure that must be adhered to, culminating in

²18. Resolution of claim by agreement.

(1) An owner of affected land, who informs the Director-General in terms of section 17 (4) that he or she admits that the applicant is a labour tenant may, within one calendar month after the date of such

the signing of a settlement agreement wherein the applicants are acknowledged as labour tenants and awarded land. This process concludes with the Director-General (or delegate) certifying that the agreement is reasonable and equitable. Such certification constitutes administrative action and is, in principle, subject to review.

[16] In the April 2025 letter, the Department gave the undertaking to finalise the application, which includes conducting an Enhanced Land Rights Enquiry and then following the procedure set out in section 17. When asked during argument if I could impose a time limit on this process, Mr Mathibedi SC for the State indicated that 30 court days would suffice.

[17] The court finds itself in an unenviable position. What should have been a moment of triumph and joy for Mr Nkambule, finally receiving redress and secure tenure at the age of 93, is now clouded by the applicants' request to impose a temporary limitation on his rights.

admission, submit to the Director-General proposals as to an equitable means of disposing of the application, including but not limited to the acquisition by the labour tenant of rights in land elsewhere on that farm or in the vicinity, or payment to the labour tenant of compensation in lieu of the acquisition of such land.

(2) The Director-General shall forthwith give notice of any proposal referred to in subsection (1), and a copy thereof, to the applicant.

(3) The Director-General may appoint a mediator to assist the applicant and the owner to discuss any such proposal and to arrive at an agreed resolution of the application.

(4) If an agreed resolution is not reached within one calendar month after receipt by the applicant of notice of the proposal, the applicant may continue with his or her original application: Provided that the applicant shall not be obliged to wait for the expiration of a calendar month if the proposal was submitted to the Director-General later than the period referred to in subsection (1).

(5) No agreement for the settlement of any application shall be of any effect unless the Director-General has certified that he or she is satisfied that it is reasonable and equitable, or unless it is incorporated in an order of the Court in terms of this Act.

(6) The Director-General may submit any agreement certified by him or her in terms of subsection (5), to the Court.

7) If—

(a) the owner does not submit proposals in terms of subsection (1); or

(b) the applicant rejects a proposal in terms of subsection (4); or

(c) the parties reach an agreement but the Director-General is not satisfied that it is reasonable and equitable, the Director-General shall, at the request of any party, refer the application for arbitration or to the Court for adjudication, and inform the other parties that he or she has done so.

(8) The parties may, within 30 days of the referral of the application for arbitration, make a joint recommendation to the Director-General as to who should be appointed as the arbitrator.

(9) Any nomination referred to in subsection (8) shall be in writing, signed by all the parties, and submitted to the Director-General.

[18] It is with this background and understanding that I proceed with the legal analysis

[19]

Legal Framework

[20] The relief sought by the applicants is an **interim interdict** and a **mandamus** compelling the First and/or Second Respondent to register a caveat over Portion 5 of Komatidraai 417 JT, and allowing limited grazing access to that land. The applicable legal test for interim relief is well-established. *Chief Nchabeleng v Chief Phasha*³ sets out the requirements for interim relief:

- ‘(a) that the right which is the subject matter of the main action and which (the applicant) seeks to protect by means of interim relief is clear or, if not clear, is prima facie established though open to some doubt;
- (b) that, if the right is only prima facie established, there is a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right (it is implicit in this requirement that the harm apprehended must be the consequence of an actual or threatened interference with the right referred to in (a);
- (c) that the balance of convenience favours the granting of interim relief; and
- (d) that the applicant has no other remedy.’

Prima facie right (though open to some doubt)

[21] Section 25(6) of the Constitution provides that a person or community whose tenure is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by law, to tenure which is legally secure or comparable redress. The LTA was enacted to give effect to this constitutional obligation as it pertains to labour tenants. The LTA provides a mechanism for labour tenants to secure rights in the land they occupy or use, including ownership. It recognises a specific form of tenure for individuals with historical ties to both occupation and land use. The definition of labour tenants includes activities such as cropping and grazing. In many cases, keeping cattle is closely associated with the identity of a labour tenant, and

³ 1998 (3) SA 578 (LCC) para 6.

grazing concerns are both a practical issue and an aspect of what secure tenure signifies for labour tenants.

[22] The **LTA** provides a statutory mechanism through which persons who qualify as labour tenants or their successors may acquire ownership or otherwise secure land rights. This process begins with an application lodged under **section 16** of the Act, after which the Department is required to investigate the claim and, where appropriate and possible, facilitate a resolution.

[23] According to **section 17**, the Director-General must serve notice of the application on the owner of the affected land. The landowner is then obliged to disclose the presence of all unregistered rights holders on the land, together with supporting documents. The landowner is also entitled, at this stage, to dispute whether the applicant qualifies as a labour tenant. If the applicant's status is not denied, they are presumed to be a labour tenant unless the contrary is proved. If the status is contested, either party may approach the Land Claims Court to resolve the matter. The Director-General remains responsible for further investigation, facilitation, or mediation throughout.

[24] Once the applicant's status has been confirmed, **section 18** provides two possible routes for resolving the claim: resolution by agreement or by court adjudication. Importantly, if settled by agreement, **section 18(5)** stipulates that such agreement has no effect unless the Director-General certifies that it is **reasonable and equitable** or unless the agreement is made an order of the Court. The settlement agreement that forms part of the record in this matter bears the signature of the Deputy Director-General, who signed it in purported compliance with **section 18(5)**.

[25] The applicants allege that the **sections 17 and 18** procedures were followed for Mr Nkambule's application but not for theirs. The record appears to substantiate this observation. This divergent treatment, despite both families having filed claims regarding the same farm (Waterval), undermines the procedural safeguards that the **LTA** is designed to maintain. The applicants' heads refer specifically to the Department's failure to conduct a Land Rights Enquiry and to comply with the required procedural steps (application, processing, response, agreement, referral,

adjudication). There is possible prejudice in this. At the very least, there is a prima facie right.

[26] At its core, the applicants assert a right not to be excluded from the statutory process set out in the LTA and not to have their claim undermined by such exclusions. While no fault lies with Mr Nkambule, who followed the prescribed process and lawfully secured a settlement, the administrative process that led to his award cannot be viewed in isolation. The applicants' and Mr Nkambule's claims arose from the same historical context, yet only one was processed. Claims are individual, but it is interlinked and must be considered as such.

A well-grounded apprehension of irreparable harm if the interim relief is not granted

[27] The result of the disparity in the awarding of the land and the consequences thereof requires a temporary solution that is in the interest of justice. If both families lodged their claims to the same parcel of land involving the same landowner, the outcome of one receiving land with adequate grazing and the other receiving tenure without grazing is a cause for concern. Where the fault for this lies is not for me to decide.

[28] The right of tenure encompasses more than mere occupation. It includes the ability to exercise other land rights, such as grazing. The applicants do not assert historic grazing on Portion 5 but rather highlight the lack of viable grazing rights on the land to which they were relocated. The potential loss of cattle, which consequently affects their security of tenure, constitutes the harm they face if the relief is not granted.

The balance of conveniences favours the granting of interim relief

[29] The caveat sought by the applicants is not intended to strip Mr Nkambule of his land rights or occupation. The relief sought is modest, limited in duration, and aimed at maintaining fairness pending the State's fulfilment of its obligations. It does not affect Mr Nkambule's title but seeks to preserve the integrity of the broader process in which both claims should have been considered.

[30] The applicants do not seek exclusive use or control of Portion 5. They seek grazing for twenty-seven head of cattle in the interim until the Department finalise their application. The relief they request is minimal and interim. This temporary relief does not assign fault to Mr Nkambule. He is not responsible for the applicants' exclusion. The court is only too aware that Mr Nkambule's journey to land justice has been long and hard-earned.

[31] In a constitutional system where property rights are relational rather than absolute, it may sometimes be necessary to impose temporary, proportionate limitations on the enjoyment of those rights to protect the rights of others. This case is an example of such a situation.

[32] For these reasons, the balance of convenience favours the applicants.

No other remedy

[33] The relief sought is not without legal ambiguity. It places a responsibility on Mr Nkambule despite him not being directly responsible for the applicants' harm. In ordinary circumstances, such interference would be unjustifiable. However, this is not ordinary circumstances. The Court is compelled to craft interim relief that protects the applicants' rights to a fair consideration of their claims while minimising disruption to those already realised by Mr Nkambule.

[34] Should the State fail to act within the timelines it has undertaken, particularly the 30 court days set out in this order, the consequences may become more severe, and other remedies may become available. The Constitutional Court, in *President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd*⁴, recognised that **where the State fails to fulfil its constitutional obligations, it may bear the burden of providing compensation or other just and equitable remedies to the persons burdened by this failure**. That prospect is not before this Court now, but it cannot be ignored if the present failure persists.

⁴ 2005 (5) SA 3 (CC).

Conclusion

[35] Section 3(1) of the *Land Court Act*⁵ provides that this Court is both "a court of law and equity." This dual character recognises that disputes under land reform legislation often arise in contexts of historical injustice and systemic failure. Equity empowers the Court to craft relief that is responsive to creating space to address such shortcomings, particularly where rigid legalism **would compound harm and enable the failure to persist.**

[36] The applicants were excluded from a statutory process through no fault of their own. They seek only temporary, proportionate relief that minimally limits Mr Nkumbula's rights, while preserving the fairness and integrity of the broader process. Where both parties are rights-bearers, and the State has failed to act, equity permits the Court to intervene to prevent further injustice and **ensure that the constitutional and statutory framework is allowed to unfold as intended within a defined timeframe.**

[37] This judgment provides an interim situation and should not be read as pre-judging the merits of the applicants' claim. In keeping with the practice of this Court, and mindful that the parties are either state-funded or represented pro bono, **no order as to costs is made.**

Order

[38] The following order is made:

1. The Department of Land Reform and Rural Development, including the Director-General of the Department, is directed to **finalise the applicants' labour tenant claim**, including conducting any required **Land Rights Enquiry**, within **30 court days** from the date of this order.
2. The First and/or Second Respondent is directed to register a caveat over Portion 5 of Komatidraai 417 JT, restricting transfer, alienation or encumbrance thereof, pending the finalisation of the applicants' labour tenant claim.

⁵ 6 of 2023

3. The Twelfth Respondent is directed to permit the applicants to access Portion 5 of Komatidraai 417 JT for the purpose of grazing, limited to twenty-seven (27) head of cattle, on the portion referred to in the unsigned 2023 grazing arrangement, pending the finalisation of their claim as set out in paragraph 1.
4. There is no order as to costs.

~~WJ du Plessis~~

WJ du Plessis
Judge, Land Court

Date of hearing:	13 June 2025
Date of judgment:	17 June 2025
For the applicant:	PG Masango (attorney, acting pro bono).
For the 4 th and 7 th respondent:	TF Mathibedi SC, instructed by the State Attorney
For the 12 th respondent	MC Nkosi, instructed by Legal Aid South Africa, Ermelo legal office