



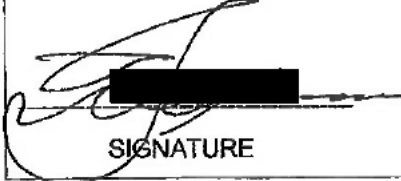
IN THE LAND COURT OF SOUTH AFRICA RANDBURG

CASE NO: LCC 30/2021

Before: Honourable Ncube J

Head on: 22 October 2024

Delivered on: 21 February 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED: YES/NO	
 SIGNATURE	<u>21/02/2025</u> DATE

In the matter between

NXAMALALA TRIBE

Applicant

and

CHIEF LAND CLAIMS COMMISSIONER

1st Respondent

REGIONAL LAND CLAIMS COMMISSIONER

2nd Respondent

THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORMED

3rd Respondent

VARIOUS LAND OWNERS

4th Respondent

IN RE:

NXAMALALA TRIBE

CLAIMANTS

CONCERNING VARIOUS FARMS IN UMGUNGUNDLOVU DISTRICT

ORDER

In the result, I make the following order

1. The application for condonation is granted.
2. The points *in limine* raised by the respondents are dismissed
3. The period of 180 days mentioned in section 7 (1) of PAJA is, in terms of section 9 (1) (b), extended to 07 November 2022
4. The decision of the Second Respondent made by Ms TA Shange on 17 May 2005 issuing the certificate of non compliance in terms of section 2 (a) (b) and (c) of the Restitution of Land Rights Act 22 of 1994 as amended, certifying that the Applicant's claim did not comply with the minimum requirements of the Act, is declared unlawful and invalid.
5. The decision of the Second Respondent taken on 17 May 2005 rejecting the Land Claim lodged by Inkosi Sikhulwa Alson Zuma is reviewed and set aside.
6. The matter is remitted to the Regional Land Claims Commissioner KZN for a re – consideration based on the reports by the JL Dube Institute and the report compiled by Babhekile Mpisana dated 15 January 2016.

7. The decision taken by the Second Respondent on the strength of the report compiled by Babhekile Mpisane dated 15 January 2016 in terms of which the Second Respondent accepted the applicant's Land Claim as valid, is declared lawful and valid.
8. The decision by the Regional Land Claims Commissioner KZN to issue Notice in Government Gazette No 39823 of 18 March 2016 is declared lawful and valid.
9. It is declared that the matter which has been referred to this court for adjudication in terms of section 14 of the Restitution of Land Rights Act will only deal with those parties whose claims have not been settled by way of financial compensation.
10. There is no order as to costs

JUDGEMENT

NCUBE J

Introduction

[1] This is opposed application for a review. The Applicant seeks the following orders:

- (a) Condonation for the late filing of the review application.
- (b) The order declaring the decision of the Second Respondent Ms TA Shange on 17 May 2005 to issue a certificate of non – compliance in terms of section 2 (a) (b) and (c) of the Restitution of Land Rights Act ¹ (The Restitution Act”) certifying that the claim lodged by the Inkosi Sikhohwana Alson Zuma did not comply with the minimum requirements, is invalid.
- (c) The order reviewing and setting aside the decision of the Second Respondent

¹ Act 22 of 1994.

made on 17 May 2005 to the effect that the Applicant's land claim was not a valid claim.

- (d) The order condoning the Second Respondent's conduct of re-opening and investigating the claimants' claim after issuing a certificate of non-compliance on 17 May 2005.
- (e) An order declaring that the decision by the Second Respondent on the strength of the report by Babhekile Mpisane dated 15 January 2016 in terms of which the Second Respondent accepted the Applicant's claim as valid was lawful and valid.
- (f) An order declaring that the decision of the Second Respondent to issue a Notice in Gazette No 39823 of 18 March 2016 was lawful and valid.
- (g) An order reviewing and setting aside the decision of the First Respondent to refuse to sign the necessary documents to process and pay compensation to the Applicants' members.
- (h) An order directing the First Respondent to forthwith sign the necessary documents and to process and pay the applicable compensation to the verified and approved members of the Applicant.
- (i) An order declaring that the matter that has been referred to court will deal only with those parties whose claims have not been settled in terms of the compensation referred to in the foregoing paragraph.

Parties

[2] The Applicant is the Nxamalala Tribe (*"the claimant"*). The First Respondent is the Chief Land Claims Commissioner (*"the CLCC"*). The Second Respondent is the Regional Land Claims Commissioner (*"the RLCC"*) KZN. The Third Respondent is the Minister of Rural Development and Land Reform (*"the Minister"*). The Fourth Respondent is the various land owners concerned.

Factual Background

[3] On 11 August 1998, the Inkosi of the Nxamalala Tribe lodged a claim with the RLCC for the restitution of rights in land. The claim was for the restitution of land rights in respect of certain portions of certain farms located in Howick in the District of Lions River. The RLCC investigated the claim and on 17 May 2005, she came to the decision that the claim did not meet the minimum requirements in terms of section 2 (a) (b) and (c) of the Restitution Act as the claim was not a restitution but a Tribal Jurisdiction claim. Consequent to that decision, the RLCC issued a certificate of non – compliance effectively declaring that the claim did not meet the minimum requirements for acceptance. The claim was thus rejected. This was followed by the withdrawal of the notice of the claim in the government gazette dated 24 June 2005. This decision is referred to by the parties as “*the first decision*”. The first decision was taken as a result of representations by various land owners whose properties were affected by the claim.

[4] After the first decision and withdrawal of the Notice of Publication by the RLCC, Inkosi Zuma wrote a letter to the RLCC on behalf of the Tribe dated 10 September 2005 objecting to the characterisation of their claim as a jurisdiction claim. Based on the objection by Inkosi Zuma, the RLCC appointed the JL Dube Institute of the University of Kwazulu -Natal to conduct a further investigation on the claim. The JL Dube Institute recommended to the RLCC to accept the Nxamalala claim as valid. The RLCC accepted the claim and published it in the Government Gazette dated 18 March 2016. This decision is referred to by the parties as (“*the Second decision*”).

[5] Having accepted and published the Nxamalala claim, the RLCC, in 2016, started the process of financial compensation as the claimants opted for financial compensation as the form of just and equitable redress. However, as a result of objections and representations received from land owners following upon the publication of the claim, the RLCC took a decision to stop the process of financial compensation. The parties refer to this decision “as *the third decision*”. The third decision was taken in 2020 when the RLCC met with the applicant and conveyed to them that no financial compensation was going to be paid as the CLCC refused to sign the compensation documents. The applicant therefore, seeks to review both the 2005 and 2020 decisions. Before I deal with the merits of this review, I must first deal with the points *in limine* raised by the Respondents.

- [6] The first point *in limine* deals with the application for condonation. Respondents contend that the review application is out of time. However the Applicant has applied for condonation which I now deal with.

Condonation

- [7] The Applicant brought this review under the Promotion of Administrative Justice Act² ("PAJA"). Section 7(1) of PAJA requires a judicial review to be brought without unreasonable delay and not later than 180 days after the person concerned become aware of the administrative action. Section 9 (1) of PAJA provides for the extension of 180 days period either by agreement between the parties or by court on application by person or the administrator concerned. The court may grant the application when the interests of justice so require. It is common cause that this review application was brought outside the period stipulated in Section 7(1) of PAJA. The court may grant the extension of the period in term of Section 9(2), if the court is satisfied that the explanation given for the delay is reasonable.
- [8] The Applicant has given the explanation for the delay. The first reason is that when the certificate of non – compliance was issued, the Applicant was never informed about it. That certificate was issued in 2005 but the claimants were never informed about it. Apart from the fact that the claimants were not informed about non compliance, the Applicant was also not legally represented at the time and did not know what to do. The second reason is that the person who assisted the Nxamalala Tribe to lodge a claim passed away in 2012, seven years after the 2005 decision and was not immediately replaced until 2014 when the substitution was found to pursue the claim. The third reason is that the report by the JL Dube Institute which recommended to the RLCC that the Nxamalala Tribe claim should be accepted, was finalised in December 2015. The Rule 5 Report by Babhekile Mpisane was completed and submitted on 15 January 2016. The RLCC commenced with the process of financial compensation and the claimants thought the matter had been resolved as the 17 May 2005 decision was never raised again.

² Act 3 of 2000

[9] The matter went up to the First Respondent ("the CLCC") who refused to sign the documents authorising financial compensation, raising a query of whether the RLCC was not *functus officio* after the 17 May 2005 decision. The Applicant avers that it was at a meeting held on 01 August 2022 where people were informed for the first time that the CLCC had a problem with their claim.

[10] As a general rule the following are the requirements for the granting of the condonation application.

(a) the degree of lateness

(b) the reasons for the delay

(c) the prospects of success.

(d) any other factor including prejudice which the other party may suffer.

[11] In **Grootboom v National Prosecuting Authority**³ the Constitutional Court held:

"Factors which usually weigh with this court in considering an application for condonation include the degree of non – compliance, the explanation therefore, the importance of the case, a respondent's interest in the finality of the judgement of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice"

In the above case the Constitutional Court was re affirming the principles enunciated in **Melane v Santam Insurance Co. Ltd**⁴. Where it was held:

³ 2014 (2) SA 68 (CC) Para 23

⁴ 1962 (4) SA 531 (A) at 532 C - E

"It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make up a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non – compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default"

- [12] The factors to be considered in an application for condonation were re – affirmed by Ponnann JA in **Mulaudzi v Old Mutual Life Assurance Company (SA) Limited**⁵ with more emphasis on the requirement of the prospects of success where he said:

"In applications of this sort the prospects of success are in general an important, although not decisive, consideration. As was stated in Rennie v Kamby Farms (Pty) Ltd, it is advisable, where an application for condonation is made, that the application should set forth briefly and succinctly such essential information as may enable the court to assess an applicant's prospects of successIt has been pointed out that the court is bound to make an assessment of an applicant's prospects of success as one of the factors relevant to the exercise of its discretion, unless the cumulative effect of the other relevant factors in the case is such as to render the application for condonation obviously unworthy of consideration"

In my view, the Applicant in this case has good prospects of success, a factor which will definitely count in the Applicant's favour.

- [13] In the recent years, the courts have also introduced the concept of the interest of justice as one of the factors to be taken into consideration in the determination of the application for condonation. In **Van Wyk v Unitas Hospital & Another** (open Democratic Advice Centre as Amicus Curiae)⁶ the court held:

⁵ 2017 (6) SA 90 (SCA)

⁶ 2008 (2) SA 472 (CC) at Para 20

"This Court has held that the standard for considering an application for condonation is the interest of justice. Whether it is in the interest of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success"

[14] In *Casu*, there is no evidence to show that the delay was caused by the Applicant. By their very nature, investigations of land restitution claims take long to be finalized. In this matter, the claim was lodged on 31 July 1998 but the decision was made on 17 May 2005 which is seven years later. The matter was re opened and investigated by the JL Dube Institute. The final report by the JL Dube Institute is dated 04 July 2016 which is 11 years from the date of the decision in 2005. It took the state another 3 years to prepare and submit a section 42 D report to the Minister to approve payment of financial compensation. Mr Mbili, the Chief Director Restitution Support Unit signed the recommendation on 13 - 09 - 2019. The decision of the CLCC was only communicated to the Claimants at a meeting in August 2022. The claimants were justified in waiting for the payment of their financial compensation which had been promised to them.

[15] It is therefore in the interest of justice to condone the late filing of this review application. The matter is important in the sense that the claimants intend enforcing their constitutional right which is entrenched in section 33 (1) of the Constitution⁷ which guarantees everyone a right to administrative action that is valid, reasonable and procedurally fair. This right is given effect to in PAJA. In addition, in terms of section 25 (7) of the Constitution, a person or community dispossessed of property after 19 June 1913, as a result of past racially discriminatory laws or practices is entitled to the extent provided by the Act of Parliament, either to restitution of that

⁷ Act 108 of 1996

property or to equitable redress. I would therefore grant the application for condonation.

[16] The other points *in limine* should not detain me for a long time. The second point *in limine* raised by the respondents is that the review application under PAJA is brought out of time as it should have been brought within 180 days from the date the Applicant became aware of the decision sought to be reviewed and set aside. I have already found that the interest of justice demands that the lateness of this application be condoned. Further, PAJA allows the extension of the 180 days' period by court on the application by a person or by the administrator⁸. In terms of section 9 (2) the court may grant an application for the extension of the 180 days' period if the interests of justice so require. I have already found that in the circumstances of this case, it is in the interest of justice to condone the delay and extend the period.

[17] The third point *in limine* concerns the lack of authority of Momelezi Zuma ("Mr Zuma") to bring this review application on behalf of the Applicant. Mr Zuma for his authority to bring this application, relies on his letter of appointment. The letter of appointment is annexed to the papers as "AL". The Respondents' contention is that annexure "AL" does not specifically authorise Mr Zuma to bring this application but the letter states:

"Mr Momelezi Zuma to represent Nxamalala people who were removed from the farms"

In my view, it is important to read Mr Zuma's appointment letter in its context. The Respondents in their objection have only considered the second paragraph which comprises of only one sentence. The letter has two paragraphs. Paragraph one contains four sentences. The letter is from the Nxamalala Traditional Council and it is signed by Inkosi ES Zuma. For the sake of completeness and to understand the letter in its context, it is important to look at the letter in its entirety.

[18] Mr Zuma's appointment letter reads:

⁸ Section 9 (1) (b) of PAJA

Heading: 'APPOINTMENT LETTER OF NXAMALALA CLAN REPRESENTATIVES'

"Nxamalala clan lived in and around what is presently known as Hilton College. Inkosi Lugaju of Matomela had another kraal at Cedara and another one at Ndinini kwa Gqishi. Nxamalala tribe were forcefully removed by the Native land Act of 1913. Mr SA Zuma lodged the claim on behalf of the Nxamalala Tribe on the 31 July 1998 and he passed away in 2012. There after his passing we appointed Mr Momelezi Zuma to represent Nxamalala people who were removed from the farms"

[19] If one reads the above appointment letter, it immediately becomes clear that the idea was for Mr Zuma to step into the shoes of Mr SA Zuma who had lodged the claim and subsequently passed away in 2012. There is no indication that the traditional council was assisted in drafting the letter by a legally trained person who knew how to prepare a letter of authority to commence court proceedings. This letter is sufficient authority for Mr Zuma to pursue the Nxamalala land claim and sign the necessary documents. The letter is dated 18 February 2014 and the notice of motion commencing the application is dated 17 November 2022. In any event, on the 18 January 2024, the committee ratified all legal actions taken to bring this application to court.

[20] The last point *in limine* is one of *Lis Pendens*. In my view, this point is misplaced. The Respondents contend that the Applicant may not bring this review application because there are pending objections from the land owners which have not been resolved. First of all, in the pre – trial conference we had, land owners' legal representative advised that the land owners have no interest in this review application and that they will not attend future conferences dealing with the review application. Secondly, the RLCC has failed to resolve the issues involved, including objections by the land owners and has referred the matter to this court for adjudication. At the pre – trial conference, of 14 March 2023, it was agreed that the restitution claim will be put in abeyance pending the outcome of this review application. This point *in limine* has no merit.

[21] I turn now to look at the merits of the review application, starting with the 17 May 2005 decision. The CLCC declined to authorise payment of compensation to the claimants. The reason for the decline the CLCC was of the view that the RLCC was not competent to re open the claim for further investigation after having declined it. The CLCC is adamant that after the rejection of the claim as being not compliant, the RLCC was then *functus officio*. The enquiry should not be directed to whether the RLCC was *functus officio* or not. The enquiry should be directed to the reason for the rejection of the claim by the RLCC as being not compliant with the statute. Inkosi Sikhulwane Zuma submitted three land claim forms to the office of the RLCC on 31 July 1998. The three claims were consolidated into one claim by the RLCC. All claims were lodged by Sikhulwane on behalf of the Nxamalala Tribal Authority.

[22] The first claim form refers to Groot Valley 941 originally known as "kwa Gqishi". The same form also referred to Ashley 947 also originally known as "Kwa Gqishi". The second claim form refers to a claim for Riet Vallie no 1043 – Howick known as "Cedarha". The third and the last claim form is for two farms which are Lot 50 No 2589 (originally known as part of Imbubu". The second farm is Riet Spruit 899 ("originally known as part of Cedarha"). There is a fourth claim form lodged by Mziwenhlanhla Maxwell Ngubane. This is a competing claim in respect of "Mount Ashley Farm." That claim form is irrelevant for purposes of this application and no further reference will be made to it. It is important to note that on the first claim form and adjacent to the RLCC's date stamp, on the left, the following writing appears

"TO VERIFY AS TO WHETHER THIS IS NOT JURISDICTION CLAIM!!!:
FURTHER ARCHIVAL RESEACH".

[23] The claim was published in Government Gazette No 24116 dated 06 December 2002. The Government Gazette identifies 64 properties as being claimed. Out of 64, 8 properties are owned by the Republic of South Africa and 3 by Ingonyama Trust. The rest of properties are owned by individual land owners. The record reflects that on 20 September 2002, one Mdunjana Mahlangu prepared a validation report for the RLCC. Paragraph 7 requires information with regards to the nature of the claim. In paragraph 7.1 Mdunjana ticked the box which indicates that what was being claimed was

"jurisdiction". No reason was given why the claim was characterised as being a jurisdiction claim. Paragraph 8 requires an answer to the following question

"WERE PEOPLE REMOVED / DISPOSSESSED"

There are two boxes to tick, one for "Yes" and the other one for "No". Mdunjana ticked the "No" box indicating that people were not removed or dispossessed.

[24] On the same validation form, paragraph 9 requires the description of properties from which people were removed. The following properties are mentioned as being properties from which people were removed:

"Ashely 947. Grootvalley 941; Rietspruit 899; Rietvallei 1043 and lot 50 No. 2859 in Lions River District, Kwazulu Natal – these properties were also known (sic) with tribal names (ward)s as Muntoqotho, Inguga, Cedarha, Umbubu, Mashingeni, Dulela, Inqabeni and Gqishi".

Paragraph 10 requires the date on which people were removed. Mdunjana wrote "since from 1914" It is immediately clear to any observant person that Mdunjana's validation form contradicts itself. Paragraph 10 contradicts paragraphs 7, 8, and 9. Paragraph 12 requires comments. Mdunjana commented:

"The Inkosi Nxamalala is Claiming Tribal Jurisdiction not racial removals in terms Restitution Criteria, thus the claim is non compliant"

Paragraph 12, therefore, contradicts paragraphs 9 and 10. Paragraph 13 of the validation form requires identification of legislation in terms of which people were removed. Mdunjana commented as follows:

"It is a jurisdiction claim *because the Inkosi Nxamalala indicates that people were removed in the area that was known (sic) as Nxamalala Tribal Authority since 1914*"⁹

For the first time in paragraph 13 we get the reason why this claim is characterised as being a jurisdiction claim. The term "jurisdiction claim" is not defined. Mdunjana says it is a jurisdiction claim because Inkosi indicated on the form that people were removed from the area of Nxamalala Tribal Authority. Does that indication justify the characterization of the claim as being a 'jurisdiction' claim?

[25] On paragraph 15 of the validation form it is indicated that the claim is non – compliant and it is dismissed and the following comment is made:

"On the basis of the above researched information, this claim is frivolous and vexatious and is hereby not accepted as meeting the minimum criteria for validity"

According to the validation report the finding that the claim is frivolous and Vexatious is based on the researched information. The source of that researched information is not disclosed.

[26] The validation report was then "*checked and passed*" by a certain Mr Walter Silaule and signed off by the RLCC Ms TA Shange indicating at the same time that the claim is not accepted as a valid claim. The claim was therefore rejected because, according to Mdunjana it was a frivolous and vexatious claim since the Inkosi was claiming tribal jurisdiction, since he indicated on the claim form that people were removed from the area of the Nxamalala Tribal Authority. In law a frivolous and vexatious litigation, is litigation which is brought without sufficient grounds for winning but brought purely to cause annoyance to the defendant¹⁰

⁹ My own emphasis

¹⁰ See definition in the Shorter Oxford English Dictionary 3rd Edition

[27] For the obvious reasons the RLCC's decision taken on 17 May 2005, cannot be allowed to stand. The decision was irrational and cannot stand. An administrative decision must be rational¹¹. In **PG Group Ltd and Others v National Energy Regulator of South Africa and Another**¹² Leach JA said:

"It is a fundamental requirement of law that an administrative decision must be rational. This is entrenched in Section 6 (2) (f) (ii) of PAJA which provides for an administrative action being reviewable if it is not rationally connected inter alia, to the purpose for which it was taken, the purpose of the empowering provision, or the reasons given for it by the functionary who took it. Administrative action is also reviewable under 6 (2) (h) of PAJA if it is one that a reasonable decision maker could not reach - see *Bato Star Fishing v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) para 44".

[28] An Irrational decision is the decision which is shockingly bad and defies logic to the extent that no sensible person who had applied his/her mind correctly to the question to be decided could have arrived at that decision. To test the reasonableness of the decision or conduct, the court must ask itself whether an ordinary person in the same circumstances would have had the same belief or acted in the same way. Substantive irrational or unreasonable decision or conduct offends the principle of legality which is an incident of the rule of law. Taking into account irrelevant considerations in the decision – making process also offends against the legality principle¹³.

[29] In this case, the RLCC took a decision based on a poor, contradictory and senseless validation report prepared by Mdunjana. Other officials like Mr Slaule and the RLCC herself simply rubber – stamped the report without actually checking it for correctness. Had they properly applied their minds to the validation report, Mr Slaule and Ms Shange would have discovered that the report was self contradictory and did not make sense.

¹¹ Sec 6 (2) (f) (ii) of PAJA

¹² 2018 (5) SA 150 (SGA) Para 40

¹³ See *Democratic Alliance v President of the RSA* 2013 (1) SA 248 (CC)

[30] The Applicant contends further that the RLCC refused the claim based on the Surveyor General's report. This is denied by Mr Ndlovu who deposed to an answering affidavit on behalf of the Respondents. According to Mr Ndlovu, the only reason why the RLCC rejected the claim as non compliant was that Inkosi Nxamalala was claiming tribal jurisdiction. I have dealt with that issue earlier in this judgement and have rejected it. Inkosi Nxamalala was not claiming tribal jurisdiction but racial removals. It is true that the Surveyor General, through Mr RW Birkett submitted a report to the RLCC indicating that Portions 1, 4, 5 and 10 of the farm Groot vallei No 941 were not part of the claim. Indeed it would have been sad if the RLCC could reject the claim on the basis of the Surveyor General's Report since that report did not deal with all the farms which were claimed by the Applicant.

Was the RLCC *Functus Officio*?

[31] The Respondents contend that the RLCC, after rejecting the claim as being non – compliant, was then *functus officio* and could not re-open the case, as she could not review herself. The Applicant on the other hand submits that by re-opening the case, the RLCC was self correcting herself. The doctrine of *functus officio* postulates a situation where an official who has performed a function or discharged the duty allocated to him has no further status in that matter. Decisions of officials are deemed to be final and binding once they are made. They cannot, once made, be revoked by the decision maker. Indeed the RLCC had taken the decision to reject the claim as being non compliant albeit based on the wrong validation report. She was thus *functus officio*.

[32] However, the fact that after making the decision, the RLCC was *functus officio*, does not necessarily mean that whatever action followed thereafter had no legal consequences. The presumption *Omnia Praesumuntur rite esse acta* is recognised in our law. It is an evidential presumption of validity. In terms of this presumption, unlawful administrative act is capable of producing legally valid consequences¹⁴. Therefore, although the RLCC was *functus*

¹⁴ Oudekraal Estate(Pty) limited v City of Cape Town and others 2016(6) SA 222 SCA at para

officio after taking the decision to reject the claim, the appointment of the JL Dube Institute, was and it remains valid. The report produced by the JL Dube Institute, is valid and the RLCC can act on it.

[33] The remaining aspect, is the refusal by the CLCC to sign the papers authorising payment of financial compensation to beneficiaries. Before payment can be made to the beneficiaries, the claim must first be approved. The applicant should have asked for the review of the failure to approve the claim, not the refusal to sign the documents pertaining to payment of compensation. The CLCC was within her right to refuse to authorise financial compensation in respect of unapproved claim.

Remedy

[34] What remains is the appropriate relief in the circumstances of this case. The starting point of exercise is section 8(1) of PAJA which provides:

“ The court or tribunal in proceedings for judicial review in terms of section 6(1) may grant any order that is just and equitable, including orders-----

- a) directing the administrator
 - (i) to give reasons; or
 - (ii) to act in the manner the court or tribunal requires;
- b)
- c) setting aside the administrative action and---
 - (i) remitting the matter for reconsideration by the administrator, with or without directions; or
 - (ii) in exceptional cases-----
 - (aa)
 - (bb)
- d)
- e)
- f) as to costs”

[35] The matter has taken long. However, in my view, the interest of justice demands that the matter be remitted to the RLCC for reconsideration, based on the report and findings of

the JL Dube Institute. Despite the fact that RLCC was *functus officio*, the appointment and the report by the JL Dube Institute remain valid in terms of the presumption referred to earlier in this judgement.

Costs

[35] What remains is the question of costs. The general practice in this court is not to award costs unless there are exceptional circumstances which warrant an award of costs. I have not been shown any exceptional circumstances which would otherwise persuade me to make a costs order against any of the parties participating in these proceedings.

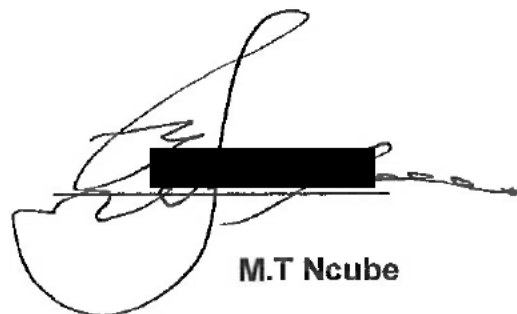
Order

[36] In the result, I make the following order:

1. The application for condonation is granted.
2. The points *in limine* raised by the respondents are dismissed.
3. The period of 180 days mentioned in Section 7(1) of PAJA is, in terms of Section 9(1)(b) extended to 07 November 2022.
4. The decision of the Second Respondent made by Ms TA Shange on 17 May 2005 issuing the certificate of non compliance in terms of section 2(a)(b) and (c) of the Restitution of Land Rights Act 22 of 1994 as amended, certifying that the Applicant's claim did not comply with the minimum requirements of the Act, is declared unlawful and invalid.
5. The decision of the Second Respondent taken on 17 May 2005 rejecting the land claim lodged by Inkosi Sikholwa Alson Zuma is reviewed and set aside.
6. The matter is remitted to the Regional Land Claims Commissioner KZN for a re-consideration based on the reports by the JL Dube Institute and the report compiled by Babhekile Mpisana dated 15 January 2016.
7. The decision taken by the Second Respondent on the strength of the report compiled by Babhekile Mpisana dated 15 January 2016 in terms of which the

Second Respondent accepted the Applicant's land claim as valid is declared lawful and valid.

8. The decision by the Regional Land Claims Commissioner KZN to issue Notice in Government Gazette No 39823 of 18 March 2016 is declared lawful and valid.
9. It is declared that the matter which has been referred to this court for adjudication in terms of section 14 of the Restitution Act, will only deal with those parties whose claims have not been settled by way of financial compensation.
10. There is no order as to costs.

A handwritten signature in black ink, appearing to be 'M.T Ncube', is written over a solid black rectangular redaction box. The signature is fluid and cursive.

JUDGE OF THE LAND COURT

OF SOUTH AFRICA

Date of hearing: 22 October 2024

Date of judgment: 21 February 2025

Appearances:

For Plaintiffs: Adv S. Ntshangana

Instructed by: Siza Inc Attorneys
22 Oxford Road
Widermere

Durban

For 1, 2 and 3 Respondents : Adv S. Sibeko

Instructed by :State Attorney
Durban