



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

CASE NO: LCC 117/2012 C

Before the Honourable Flatela J

Date of Hearing: 19 November 2024

Date of Judgment: 21 July 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
21/07/2025 DATE	 SIGNATURE

In the matter between:

JOHN DOUGLAS MICHAU N.O.

First Applicant

PHILANI ONEMUS JAFTA N.O.

Second Applicant

AUBREY BONGANI ZENZELE NGCOBO N.O.

Third Applicant

and

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

First Respondent

**THE REGIONAL LAND CLAIMS COMMISSIONER:
KWAZULU-NATAL**

Second Respondent

THE MALANGANE COMMUNITY

Third Respondent

and

HENDRIK JACOBUS MARTHINUS JANSE VAN RENSBURG

Intervening Party

ORDER

The following order is made:

1. The Application is dismissed.
 2. There is no order as to costs.
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JUDGMENT

FLATELA J

Introduction

[1] The applicants, who are the liquidators of Hollandia Landgoed CC (in liquidation), seek several declaratory orders, as well as a review and setting aside of the Regional Land Claims Commissioner - Kwa-Zulu Natal's decision to degazette the claim lodged on behalf of the Malangane Community (the Third Respondent). The RLCC published a notice of withdrawal of the claim lodged on the applicant's property following a settlement agreement reached in accordance with Section 42D of the Restitution of Land Rights Act 22 of 1994, between the Malangane Trust and the Minister of Rural Development and Land Reform. The settlement agreement has not been set aside.

[2] Following the settlement agreement reached between the Minister of Rural Development and Land Reform and the Malangane Trust on behalf of the community, the Third Respondent withdrew its claim against the Applicants' properties. On 29 April 2022, the RLCC issued a notice in the Government Gazette in accordance with section 11A (3) of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act), officially withdrawing the inclusion of the Applicants' properties from Government Gazette No 26724, published on 3 September 2004. As a result, the Applicants seek the following relief:

1. A declaratory order that the Malangane Community is entitled to the Restitution of a right in land in the form of restoration in terms of Section 2(1) of the Restitution of Land Rights Act No 22 of 1994 ("the Restitution Act") in respect of the following properties:
 - 1.1. The farm Hollandia No 384 has an extent of 1918,0792 hectares.
 - 1.2. Portion 7 of the Farm Oudewerf No 426 measuring 430,5887 hectares
2. A declaratory order that the Malangane Community is a Community as defined in Section 1 (iv) of the Restitution Act.
3. A declaratory order that an agreement had been concluded with the First Respondent, duly represented by the Second Respondent, alternatively, the Second Respondent with delegated power in terms of Section 42D (3) of the Restitution Act, to acquire the farm Hollandia, the farm Oudewerf and the farm Zoekmy for restoration thereof to the Malangane Community.
4. Alternatively, to paragraph 3 above, a declaratory order that a legitimate expectation existed induced by RLCC and/or senior officials in the office of the Regional Land Claims Commissioner, KwaZulu-Natal, that it would acquire the immovable properties referred to in paragraph 3 above for the restoration to the Malangane Community.
5. A declaratory order that the Second Respondent acted within his powers in accordance with the Restitution Act to refer the immovable properties referred to in paragraph 3 above for the determination of the just and equitable compensation to be paid to the liquidators of Hollandia Landgoed CC (in liquidation) to the Land Claims Court.
6. A declaratory order that the order granted by Spilg J on 21 October 2020 to the effect that just and equitable compensation be determined in respect of the immovable properties referred to in paragraph 3 above be determined by the Land Claims Court has been validly granted and has not been rescinded.
7. That an order be granted that the decision by the RLCC to publish in the Government Gazette No 46288 of 29 April 2022 in terms of Section 11A (3) of the Restitution Act to withdraw from Government Gazette No 26724

of 3 September 2004, in respect of the immovable properties Hollandia and Oudewerf, be reviewed and set aside.

8. That the Second Respondent be ordered and directed to cause a notice to be published in the Government Gazette withdrawing the notice in Government Gazette No 46288 of 29 April 2022.
9. That the First and Second Respondents be ordered jointly and severally to pay the Applicants' costs on the scale of attorney and client, such to include the costs of two counsel.

[3] Only the State Respondents oppose the application. The Third Respondent did not participate in these proceedings, despite being served with the application.

The Parties

[4] The First Applicant is John Douglas Michau N.O., an adult male attorney and duly appointed liquidator of Hollandia Landgoed CC (in liquidation), which was wound up by order of the KwaZulu-Natal High Court on 1 December 2010. The Second Applicant is Philani Onemus Jafta N.O., a duly appointed co-liquidator of Hollandia Landgoed CC (in liquidation), and the Third Applicant is Aubrey Bongani Zenzele Ngcobo N.O., a duly appointed co-liquidator of Hollandia Landgoed CC (in liquidation).

[5] The First Respondent is the Minister of Rural Development and Land Reform (the Minister), the responsible Minister mentioned in the Act, whose role in this case will become clear as the facts unfold. The Second Respondent is the Regional Land Claims Commissioner, KwaZulu-Natal. I will refer to the First and Second Respondents as the State Respondents

[6] The Third Respondent is the Malangane Community, a claimant community as envisaged by the provisions of the Restitution Act.

[7] The intervening party is Hendrick Jacobus Marthinus Janse Van Rensburg. Mr Van Rensburg was the sole member of Hollandia Landgoed CC (in liquidation) and its creditor.

Factual Background

[8] The facts are largely undisputed. On 11 December 1998, Inkosi Thamsanqa Hugh Madonsela lodged a land claim on behalf of the Third Respondent. The claim concerned several properties located in Zululand, KwaZulu-Natal, known as Hoedberg no. 555, Success no. 296, Onverwacht no. 322, Nooitgedacht no. 567, Vuursteen no. 242, Hollandia no. 384, Langerwacht no. 410, Dewaard no. 188, Tweefontein no. 554, Uitzicht no. 349, Oudwerf no. 426, Noittheizen no. 55, and Engekbrechtshoop no. 53.

[9] Hollandia Landgoed CC (in liquidation) owns the properties known as Hollandia, Portion 7 of the Farm Oudewerf, and Portion 1 of the Farm Zoekmy 207, covering 525.1198 hectares, collectively referred to as the Hollandia Farms. Portion 1 of the Farm Zoekmy was not claimed but is part of the agricultural unit associated with Hollandia properties.

[10] It is common cause that the claim was accepted as *prima facie* valid by the Second Respondent. A notice was published in Government Gazette No. 26724 dated 3 September 2004 and in Government Gazette No. 27018 dated 3 December 2004.

[11] After publication, the Second Respondent engaged in several negotiations with various landowners regarding the acquisition of their land for the purpose of restoring it to the Third Respondent. The RLCC made numerous offers to the Applicants to acquire Hollandia no.384 and the Farm Oudewerf.

[12] In April 2007, the State Respondents made an offer to purchase Farm Hollandia No. 384, measuring 1,918.0792 hectares, and Portion 7 of Farm Oudewerf No. 426, measuring 430.5887 hectares, for R5,100,000, which was rejected.

[13] Hollandia Landgoed CC (in liquidation) was wound up in 2010, with the winding-up completed on 1 December 2016 (Hollandia). On 12 November 2014, a revised offer of R6,100,000 was made and conditionally accepted by the liquidators. Before finalising the transaction, the Applicants informed the Second Respondent that they would no longer accept the offer. The basis for repudiating the offer was the Applicants'

discovery that the properties were undervalued compared to other properties in the same area subject to land claims.

[14] Protracted negotiations took place between the Applicants and the Second Respondent. Additional valuations of the properties were obtained. On 30 January 2017, the RLCC made a further offer of R6,574,400.00. The Applicants rejected all the offers.

[15] Disputes arose concerning the compensation, and in 2017, the matter of just and equitable compensation was referred to this Court in terms of sections 14(1) and (b) and 14(3) of the Restitution Act for determination.

[16] On 30 October 2019, Mr Van Rensburg brought an interlocutory application seeking leave to intervene in case LCC 117/201B. He also sought an order interdicting the liquidators from signing a sale agreement concerning the farms of Hollandia, pending the determination of just and equitable compensation under section 25(3) of the Constitution, read with 21(b) of the Restitution Act, as well as an order that just and equitable compensation for the properties of Hollandia farms by the state be determined by the Land Claims Court in accordance with section 22(1)(b) of the Restitution Act and the cost order.

[17] On 21 October 2020, Spilg J granted an order allowing Mr Van Rensburg to intervene. Additionally, an order was issued prohibiting the Applicants from signing a sale agreement concerning the farms of Hollandia, along with an order that just and equitable compensation be determined for the properties acquired by the State under section 42A and section 22(1)(b) of the Restitution Act.

[18] The Minister of Rural Development and Land Reform also engaged in settlement negotiations with the Third Respondent. On 19 March 2022, the Minister and the Malangane Community Trust reached a settlement agreement regarding the claim lodged by the Third Respondent. This agreement was made under Section 42D of the Restitution of Land Rights Act, resolving the land restitution claim in question.

[19] In paragraph 11 of the settlement agreement, it is recorded that:

“The claimants agree to withdraw claims on land that has not been restored or will be restored. As a result of the withdrawal of the claim to certain properties, the Regional Land Claims Commissioner shall, within 60 days of this agreement, publish a notice in terms of 11(A)(3) of the Act, withdrawing all the properties not acquired by the state in terms of the Claimant Community’s claim.”

[20] According to the settlement agreement, the claimants agreed to withdraw their land claims on properties that had not been restored. The applicants' properties were among those that the State did not acquire. It was further agreed that, upon the signature of the settlement agreement by all parties, the claim shall be regarded as fully and finally settled. The settlement agreement was signed by the parties on 19 March 2022.

[21] As a result of this withdrawal of the land claim affecting various properties, the RLCC published a notice in the Gazette in terms of section 11A of the Restitution Act, calling for representations regarding the withdrawal of all properties not acquired by the State under the claimant’s claim. The notice invited representations within 30 days to be made, showing cause why the properties should not be withdrawn. The Applicants submitted their representations, albeit after the 30 days.

[22] On 29 April 2022, the RLCC published a notice in the Government Gazette in terms of section 11A (3) of the Restitution Act, withdrawing the Applicants’ properties from Government Gazette No 26724 of 3 September 2004. The Second Respondent states that it considered the Applicants’ representations before a decision was made to withdraw their properties from the claim.

[23] The Applicants, aggrieved by the degazetting, launched these proceedings seeking certain declaratory relief and a review of the RLCC's decision to publish a notice in accordance with section 11A (3) of the Restitution Act, which withdrew the properties from Government Gazette No. 26724 of 3 September 2004.

[24] The Applicant argues that the decision to de-gazette is legally flawed because the Commissioner is *functus officio* after referring the issue of compensation to the court for determination. The Applicants contend that the First Respondent has already

acquired Hollandia Farms, and a valid agreement exists regarding the acquisition of the Applicants' properties. The only outstanding matter is the determination of compensation, which is currently pending before the Court. Furthermore, the Applicants argue that the Second Respondent consented to the order issued by Spilg J on 28 September 2021, which referred the issue of compensation to the Court for determination. Therefore, the Applicants believe this referral constitutes a valid and enforceable order, and no application has been made to rescind it. As a result, the Applicants conclude that the RLCC is *functus officio*.

[25] Secondly, the Applicants argue that the First and Second Respondents were biased or could reasonably be suspected of bias regarding the Hollandia properties. They claim that other properties, which had been referred to the Court for "quantum" determination, were acquired by the State and had already been transferred to the Claimant Community. The Applicants also state that since making an initial offer to the liquidators on 20 April 2007, the RLCC has engaged in the selective acquisition of land and assets worth over R70 million. They assert that this contradicts the RLCC's original claim that the purpose of degazetting the applicants' properties was to provide overcompensation.

[26] Thirdly, the Applicants argue that a reasonable inference can be made that the exclusion of the Hollandia properties is driven by the perceived spitefulness of Mr. Ndlovu, a representative of the RLCC, who had been threatening the Applicants with degazetting following the disagreement with the intervening party, which had brought an interlocutory application to interdict the Applicants from completing the sale agreement of their properties. The Applicants assert that the attempt to de-gazette these properties is unlawful and should be reviewed and set aside.

[27] Fourthly, the Applicants dispute that the Claimant Community had abandoned their claim against their properties. The Applicants state that the primary jurisdictional fact contained in section 11A (2) of the Restitution Act is that there must be an investigation before the withdrawal of the publication. The Applicants contend that the claim of the Third Respondent is not under investigation. The Applicants state that the State Respondents are not the final arbiters on what is equitable compensation, and the issue has been referred to this Court for determination.

Issues

[28] The following issues arise in this matter:

- a. Whether an agreement had been concluded to the effect that the State would acquire the Hollandia farms in terms of section 42A of the Restitution Act.
- b. Whether the RLCC is *functus officio* and is not entitled to de-gazette the Hollandia properties.

[29] In the paragraphs that follow, I address the applicants' submissions.

The Applicant's submissions

[30] The Applicants contend that a formal agreement was concluded for the State to acquire the Hollandia farms under section 42A of the Restitution Act, with only the determination of just and equitable compensation pending. They support this claim with offers made to the liquidators by Mr. Ndlovu, acting on behalf of the RLCC, based on valuations from RLCC-appointed valuers. Mr. Ndlovu also confirmed in an affidavit that a binding agreement for the acquisition of the property was established.

[31] The Applicants argue that the referral to the Court is pursuant to section 14(3A) of the Restitution Act rather than section 14(1). They contend that section 14(3A) relates to the referral of, among other matters, the determination of just and equitable compensation following an agreement on how the claim should be settled. Consequently, the RLCC is *functus officio* and, given its powers, is not authorised to de-gazette the Hollandia properties or to withdraw from the acquisition of the properties.

On the withdrawal of the claim

[32] The Applicants deny that the claimants have withdrawn their claim to the Hollandia properties. The Applicant argues that during the pre-trial conferences on 24 February 2021, 26 February 2021, and 16 July 2021, there was no mention of any

abandonment, waiver, or settlement of the claim. Furthermore, at the pre-trial conference on 16 July 2021, no statement was made regarding overcompensation for the properties of other owners to be de-gazetted.

[33] Furthermore, the Applicants assert that the affidavit deposed to by Mr Ndlovu on 14 November 2021 does not mention any abandonment or agreement. Additionally, Mr Jiyane, in a letter dated 10 March 2022, stated that consideration would be given to abandoning the claim if they acquired livestock, even if it was difficult to do so. There is no evidence that the Community has abandoned the claim.

[34] The Applicants assert that as early as 17 March 2020, Mr. Ndlovu indicated that the Regional Land Claims Commission (RLCC) was no longer interested in acquiring the Hollandia properties on behalf of the Malangane Community. This statement encompasses all three properties of Hollandia Landgoed CC, which is currently in liquidation. He further communicated the RLCC's intention to withdraw these properties from the referral notice pursuant to section 14(3) of the relevant legislation. Despite this pronouncement, properties valued in the millions of rand were acquired, as detailed earlier.

[35] The Applicants assert that Mr Ndlovu's statement indicates he believes the RLCC has the right to withdraw a claim at any time.

[36] In the paragraphs that follow, I address the Respondents' responses to the Applicants' allegations.

The Respondents' submission

[37] In relation to the Applicants' assertions regarding a binding agreement for the acquisition of the Hollandia farms as stipulated under section 42A, the State Respondents argue that no legally binding sale agreement was ever finalised between the State and the Applicants. They maintain that multiple offers for the sale of the Applicants' properties were made, each of which was rejected. Furthermore, although

the Applicants conditionally accepted the final offer, they ultimately withdrew from the transaction.

[38] The State Respondents argue that their position is further supported by the intervening party's application for leave to intervene, which led to a court order preventing the Applicants from signing the sale agreement and stopping the State Respondents from finalising any sale agreement with the liquidators. Consequently, the claims that the Respondents have acquired the properties are unfounded. I concur with the State Respondents' assertion: there is no agreement between the parties to acquire the Applicants' properties.

[39] In addressing the claim that the RLCC has become *functus officio* regarding the degazetting of the Hollandia properties, the State Respondents argue that the RLCC has effectively carried out its constitutional duties by retracting the properties from the Government Gazette. This action arises from the fact that the Third Respondent has abandoned their claim.

[40] The Respondents assert that section 11A authorises them to withdraw a claim on the land if the claimant no longer has a right to it, and that the claim is barred by the provisions of section 2 of the Restitution Act. The Respondents maintain that there is no longer a claim on the farms Hollandia and Portion 7 of the farm Oudwerf; therefore, the Second Respondent has acted within the powers granted to him under the Restitution Act.

[41] The Second Respondent contends that it rightly issued a notice to de-gazette the claim. The Respondents contend that they only withdrew the claim in respect of the farms Hollandia and Oudwerf when the Third Respondent confirmed the abandonment of their right to land over the farms. This was done by the Third Respondent's legal representative on 10 March 2022.

[42] The Respondents also argue that the review will impact two other settled cases involving the Hlonyane and Gluckstadt communities, where land has already been restored. They state that further investigation revealed an overlap and/or conflicting claims on the farms of Onverwacht and Nooitgedacht. If these properties are not

withdrawn, they could be subject to claims that might prejudice the competing claimants, landowners, the Second Respondent, and the Third Respondent. The Third Respondent, along with the competing claimants, will need to confront claims they may have waived or abandoned. Additionally, the First and Second Respondents will continue to oversee a land claim that the community is no longer pursuing. The State has a crucial role in ensuring land claims are resolved swiftly and fairly.

[43] The Applicants initially had several declaratory orders in their notice of motion; however, in their subsequent heads of argument, both the Applicants and the intervening party focused on the review aspect. It is important to note that the declaratory orders have not been withdrawn. Therefore, I will address these matters first.

The Legal Principles Governing Declaratory Orders in the Land Court

[44] The functions of the Land Court were previously outlined in the repealed Chapter III of the Restitution of Land Rights Act. This chapter has since been replaced by the Land Court Act 6 of 2023. Under section 26 of the Land Court Act, the Court is authorised to issue declaratory orders, among other jurisdictions and powers conferred.

[45] The declaratory orders sought by the Applicants relate to specific functions of the Land Claims Commissioners as outlined in the Restitution Act. The relief sought and the facts supporting the relief are inadequate.

[46] In *Transvaal Agricultural Union v The Minister of Agriculture and Land Affairs*¹ Geldenhuys J, dealing with the discretionary powers of the court to grant declaratory orders, stated that:

‘The Court would not readily grant a declaratory order where there is no real dispute on the question of law at issue in the case, or where the legal position is clearly set out in the applicable statute. It would also be reluctant to grant a declaratory order that is not specific to a particular set of facts.’

¹ *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs and Others* (LCC33/01) [2002].

[47] The legal position is set out in the Restitution Act, and it is not desirable to grant these orders.

Grounds for review

[48] The Applicants argue that an attempt by the RLCC to utilise Section 11A(2) of the Restitution Act and subsequently Section 11A(3) to publish in the Government Gazette that the two Hollandia farms were withdrawn from the Gazette constitutes an administrative decision by an organ of State, which can be set aside and reviewed under the provisions of the Administrative Justice Act 3 of 2000 ("PAJA") in that:

- i. The decision to withdraw the properties constitutes an illegality because it does not conform to the jurisdictional requirements outlined in section 11A (2) of the Restitution Act.
- ii. The RLCC does not contend that section 11(1), read with section 2(1), of the Restitution Act has not been fully enforced.

[49] The Applicants contend that the notice to de-gazette the properties falls foul of the provisions of section 11A (2) of the Restitution Act for the following reasons:

1. The notice in terms of section 11A (2) makes no reference to the nature and purpose of the proposed degazetting as required by section 3(4) of PAJA.;
2. An error of law materially influenced the action to de-gazette, if regard is had to section 6(2)(d) of PAJA in that it clearly misinterpreted section 11A (2) of the Restitution Act and/or ignored it, namely, to utilise it for another purpose, namely alleged overcompensation, or an alleged abandonment of the claim by the Community.
3. Section 11A (2) of the Restitution Act, if read in context and if regard is had to text and purpose thereof, only finds application if after the publication in the Government Gazette, facts came to the attendance of the RLCC during further investigations, which provides evidence that the claim should never have been published in the Government Gazette inter alia by virtue of the fact

that it is frivolous or vexatious;

4. The averment by the RLCC that there is overcompensation does not entitle it to de-gazette the publications in the Government Gazette. It may only be resorted to if authorised by the empowering provision, if regard is had to section 6(2)(e)(i) of PAJA. There exists no provision empowering the RLCC to do so, and consequently, it constitutes an illegality.
5. The resorting to section 11A (2) of the Restitution Act is an action that was taken arbitrarily if regard is had to section 6(2)(e)(vi) of PAJA and irrationally if regard is had to section 6(2)(f)(ii) of PAJA by virtue of the following:
 - 5.1. The preamble to the Restitution Act provides for the restitution of rights in land to persons or communities dispossessed of such rights. The constitution similarly provides for the restitution of property having been dispossessed.
 - 5.2. The RLCC's decision to exclude certain properties from restoration does not properly reflect the provisions of the Constitution and the Restitution Act.
 - 5.3. The purpose for which the action has been taken, namely possible overcompensation is not rational, if regard is had to the fact that many properties subject to the claim and many not claimed had been restored to the Community (the facts would be dealt with hereinafter) and excluding the Hollandia properties, even after it has been contended that the restoration of the Hollandia properties would constitute overcompensation.
 - 5.4. The RLCC has admitted that the power to determine the feasibility of restoration, which includes overcompensation, is a power of this Court in terms of section 33(cA) of the

Restitution Act. The RLCC has attempted to unlawfully usurp the power of the Court, which it does not have, which in itself constitutes an illegality.

- 5.5. The power to de-gazette in terms of Section 11 A (3) of the Restitution Act is not a power the RLCC could utilise to de-gazette a claim based on overcompensation.

[50] The Applicants submit that the exercise of public power by public functionaries is subject to the principle of legality. An administrative decision must be rationally related to the purpose for which the power was given. The Applicants Allege that the power to de-gazette, in this case, is not connected to its intended purpose.

[51] The Applicants contend that the Referral constitutes a decision which is valid and enforceable, and the RLCC cannot simply ignore it or act contrary to it. This decision was final, and the RLCC is functus officio. Relying on *Manok Family Trust v Blue Horizon Investments*², where the court held that once a decision has been made in terms of Section 11(4) of the Restitution Act, such decision cannot be reversed as the Restitution Act contains no provision that empowers the RLCC to reverse a decision. There is no provision in the Restitution Act allowing the RLCC to ignore the decision to refer the claim to court.

[52] The Applicant contends that once a decision is made to refer a claim to the Court in terms of Section 14(3A) of the Restitution Act, such a decision is not capable of being reversed or ignored³ By the RLCC until set aside by a Court of law.⁴ It is further apparent that the Referral Report refers to offers to be made to landowners to acquire 12 properties for the Third Respondent in certain agreed amounts.⁵

² *The Manok Family Trust v Blue Horizon Investments 10 (Pty) Ltd* (220/13) [2014] ZASCA 92 (13 June 2014)

³ *Municipal Manager Qaukeni Local Municipality v F V General Trading CC* 2010 (1) SA 356 (SCA) para 23

⁴ Oudekraal *supra* para 26; Manok *supra*

⁵ Volume 5, pp 516 - 518

[53] Relying on *Oudekraal Oudekraal Estates*⁶ Where the following was said:

‘...Until the administrator's approval (and thus also the consequences of the approval) is set aside by a Court in proceedings for judicial review, it exists in fact and has legal consequences that cannot simply be overlooked. The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.’⁷

[54] I deem it imperative first to discuss the statutory framework governing the Restitution of Land Rights insofar as it affects private landowners whose properties are the subject to land restitution, the role of the Minister in the process to be followed regarding claims for land rights restitution, and then I will address the factual basis upon which the Applicants rely for the relief they seek.

The Legal Framework

The Constitution of the Republic of South Africa, 1996

[55] Section 25(7) of the Constitution provides that:

‘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, to restitution of that property or equitable redress.’

[56] The Restitution Act was enacted to give effect to section 25(7) of the Constitution regarding the restitution of land rights to individuals or communities that were dispossessed of their land as a result of racially discriminatory laws or practices.

⁶ *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA).

⁷ *Ibid* para 26.

The Restitution of Land Rights Act 22 of 1994

[57] The Restitution Act provides various role players through which the constitutional right of restitution is to be realised. They are the Commission on Restitution of Land Rights, the First Respondent, and the Land Court, the Second Respondent. The Second Respondent is part of the Commission on Restitution of Land Rights.

[58] Section 2 of the Restitution Act outlines the criteria for entitlement to restitution. It entitles a person or community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws and practices to seek restitution of that right.

[59] Section 6 of the Restitution of Land Rights Act outlines the general functions of the Commission on Restitution of Land Rights. The Claim for restitution is directed to the Regional Land Claims Commissioner, who is enjoined to, among other things, investigate the merits of the claim, decide on a *prima facie* as to whether the provisions of section 2 do not preclude it, and whether it is not frivolous or vexatious. Once the Commission on Restitution of Land Rights has accepted the claim, the claim will be published in the Gazette. It is then investigated further and either mediated with the view to settling or referred to the Land Claims Court for adjudication.

[60] Section 11(1) of the Restitution Act provides:

'11. Procedure after lodgement of claim

(1) If the regional land claims commissioner having jurisdiction is satisfied that—

- (a) The claim has been lodged in the prescribed manner.
- (b) the claim is not precluded by the provisions of section 2. and
- (c) the claim is not frivolous or vexatious.

he or she shall cause notice of the claim to be published in the *Gazette* and in the media circulating nationally and in the relevant province and

shall take steps to make it known in the district in which the land in question is situated.'

[61] Section 11A (2) and (3) of the Restitution Act states that:

'11A. Withdrawal or amendment of notice of claim

- (2) Where during the investigation of a claim by the Commission, the regional land claims commissioner having jurisdiction has reason to believe that any of the criteria set out in paragraphs (a), (b) and (c) of section 11(1) have not been met, he or she shall publish in the Gazette and send by registered post to—
- (a) the claimant.
 - (b) the owner; and
 - (c) where applicable, a person who has made representations in terms of subsection (1) and any other party, who to his or her knowledge, may have an interest in the claim,

a notice stating that at the expiry of the period mentioned in the notice, the notice of the claim published in terms of that section will be withdrawn unless cause to the contrary has been shown to his or her satisfaction.

- (3) At the expiry of the period contemplated in subsection (2), the regional land claims commissioner shall, unless cause to the contrary has been shown to his or her satisfaction, withdraw the notice of claim and—
- (a) advise the persons mentioned in that subsection by notice sent by registered post.
 - (b) cause notice of his or her decision to be published in the Gazette; and
 - (c) take other steps to make his or her decision known in the district in which the land in question is situated.

Section 36 of the Restitution Act

[62] Section 36 of the Restitution Act provides as follows:

"Reviews of decisions of Commission

- (1) *Any party aggrieved by any act or decision of the Minister, Commission or any functionary acting or purportedly acting in terms of this Act may apply to have such act or decision reviewed by the Court.*
- (2) *The Court shall exercise all of the High Court's powers of review with regard to such matters to the exclusion of the provincial and local divisions thereof".*

Discussion

[63] It is trite that the land claim is against the State, not against the landowners. The landowners are the interested parties in the land claim. Once the Applicant has satisfied the requirements of section 2, the State must comply with the restitution provisions outlined in section 42D. Section 42D provides one of the mechanisms for resolving land claims. It authorises the Minister, when satisfied that a claimant is eligible for restitution under section 2 and that the claim has been prima facie accepted as valid, to enter into an agreement with interested parties regarding the allocation of land or part of it, the payment of compensation, or both, along with any relevant terms and conditions.

[64] It is clear from the Restitution Act that once a claimant has established a proper basis to claim restitution in the form of restoration, the State is obliged to acquire that land through agreement with interested parties.

[65] In this case, the State has successfully negotiated a settlement agreement with the Claimants to resolve the claim. The parties entered into a settlement agreement, which resolved the claim. The Settlement agreement states that:

"SETTLEMENT AGREEMENT

Between

Minister of agriculture, land reform and rural development

and

Commission on Restitution of Land Rights

and

Malanga Community Trust NO. IT 385/ 2016(N)

The settlement of Malangane Community Land Claim in terms of section 42D of the Restitution of Land Rights Act, 1994"

[66] The settlement agreement is based on the provisions of section 42D(1)(b) of the Act. It outlines the terms under which the Third Respondent's claim will be fully and finally settled, addressing the claimants' community claim over the disputed land.

[67] Clause 10 of the agreement states:

"The parties hereby confirm that this agreement as well as previous approved section 35 submissions, shall constitute full and final settlement of the Claimants' community claim over the Claimed land in terms of the Act."

[68] In addition, Clause 11 of the settlement agreement states:

"The Claimants agree to withdraw claims on land that has not been restored or will be restored. As a result of the withdrawal of the claim to certain properties, The Regional Land Claims Commissioner shall, within 60 days of this agreement, publish a notice in terms of Section 11A(3) of the Act, withdrawing all the properties not acquired by the State in terms of the Claimants' community claim."

[69] The practical outcome of this settlement is that the parties have resolved their dispute. There is no longer any *lis* between them.

[70] The Applicants and the intervening party contend that the decision made by the Second Respondent constitutes a legal error. The Second Respondent possesses the authority to both gazette and de-gazette claims, actions which are integral to the investigation process. The gazetting occurs when the Second Respondent confirms that specific criteria are satisfied. Conversely, the Second Respondent may de-gazette claims if those criteria are deemed unmet. In this context, the claims associated with the farms Hollandia and Oudwerf have been abandoned or withdrawn, resulting in the effective absence of any legal rights to the land.

[71] An error of law takes place when an official makes a wrong, incorrect or mistaken interpretation of a legislative provision. The Applicants' submissions are that the Second Respondent wrongly misinterpreted section 11A (2). The purpose of section 11A (2) is not to notify parties that the RLCC has reason to believe that any of the criteria set out in paragraphs (a), (b) and (c) of section 11 (1) have not been met.

[72] Again, there is no evidence to substantiate the claim that the decision to de-gazette was made in error, wrongly or incorrectly.

[73] The Applicants refer to section 6(2)(e)(i) of PAJA and argue that the decision to de-gazette was based on overcompensation; therefore, section 11A cannot be applied. These allegations were disputed by the Respondents, who stated that the properties were withdrawn following the settlement of the claim between the parties.

[74] Following the resolution of the claim, the Regional Land Claims Commission (RLCC) commenced proceedings to de-gazette the properties that the Third Respondent had abandoned. I am of the considered view that at the time of the publication announcing the withdrawal of the properties in Government Gazette No. 46288 on 29 April 2022, the Second Respondent was not *functus officio*. This action was initiated after a settlement agreement was reached between the First Respondent and Malangane Trust, representing the community regarding the land claim, effectively concluding the matter. The agreement reached between the Minister of Rural Development and the Malangane Trust remains intact and has not been annulled. Consequently, the dispute among the parties has been resolved.

[75] In the premises, I order as follows:

1. The application is dismissed.
2. There is no order as to costs.





Flatela L
Judge of the Land Court

Date of Hearing: 19 November 2024

Date of Judgment: 21 July 2025

Counsel for Applicants: Roberts SC

Instructed by: Stowell & Co

Attorney for the intervening Party: ABT Van Der Merwe

Instructed by: Cox & Partners

Counsel for the State Respondents: Choudree SC & Adv P Naidu

Instructed by: The State Attorney, KwaZulu-Natal, Durban