



IN THE LAND COURT OF SOUTH AFRICA

CASE NO: LCC 22/2007

Before: Honourable Ncube J

Heard on: 29 April 2025

Delivered on: 14 October 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED: YES/NO	
14/10/2025 DATE	 SIGNATURE

In the matter between:

GCUMISA LAND CLAIMS COMMITTEE

PLAINTIFF

and

**MIDLANDS NORTH LAND RESEARCH GROUP
OF AFFECTED LANDOWNERS**

1ST DEFENDANT

RUPERT HEINZ FORTMANN N.O.

2ND DEFENDANT

**MARGIT SIEGRID FORTMANN N.O.
HERBERT HELMUT SCHULZ N.O.**

**3RD DEFENDANT
4TH DEFENDANT**

WERNER PAUL SEELE

5TH DEFENDANT

FRIEDA EMILIE WALTRAUT KOCH	6 TH DEFENDANT
EDUARD WILHELM SCHULZ	7 TH DEFENDANT
HELENE EDELTRAUT SCHRÖDER N.O.	8 TH DEFENDANT
BRAIN LAMBERT KURZ N.O.	9 TH DEFENDANT
HILLERMAN BROTHERS PROPERTIES (PTY) LTD	10 TH DEFENDANT
PETER JOHN DESMOND SMITH	11 TH DEFENDANT
RUDI HERMAN KAISER N.O.	12 TH DEFENDANT
WILLEM WOUTER FOURIE N.O.	13 TH DEFENDANT
BARRY GRUGER N.O.	14 TH DEFENDANT
MARK ANDREW KLIPP	15 TH DEFENDANT
WERNER ERNST ERICH SCHRÖDER N.O.	16 TH DEFENDANT
RODNEY JAMES HORNER WHITLEY N.O.	17 TH DEFENDANT
REINHOLD HEINRICH GUSTAV SCHRÖDER N.O.	18 TH DEFENDANT
CORNELIA HEIDI WORTMANN N.O.	19 TH DEFENDANT
ANELLE OLGA MARX N.O.	20 TH DEFENDANT
ROLF GOTTFRIED THEODOR RENCKEN N.O.	21 ST DEFENDANT
IVAN STEVEN COLENBRANDER N.O.	22 ND DEFENDANT

CONCERNING FARMS:

Portion 7 of the farm lot 10 No 1845, Remainder of the farm Lot 13A No 1401, Remainder of Portion 9 of the farm Lot 15 No 1896, Remainder of Portion 1 of the farm 50 No 1865, Portion 50 No 1865, Portion 5 of the farm Kleine Waterval No 955, Remainder of the farm Windy Hill No 15135, Portion 7 of the farm Jaag Baan No 1117, The farm Botfield No 16572, Portion 13 of the farm Killiekrankie No 2000, The farm Honey Glen No 16123, The farm cooling No 15042, The farm waterfall No 14695, Remainder of the farm No 987, Portion 19 of the farm Waterval No 987, Portion 2 of the farm Uitvlugt No 1875, Portion 1 of the farm Uitvlugt No 1875, Portion 25 of the farm Dalton No 2366, Portion 26 of the farm Dalton No 2366, Remainder of the farm Fawn leas No 14691, Remainder of Portion 1 of the farm Fawn Leas 14691,

Remainder of Portion 1 of the farm Boiling Fountain No 1307, Remainder of Portion 9 of the farm Boiling fountain No 1307, Portion 23 of the farm Boiling Fountain No 1307, Remainder of Portion 25 of the farm Boiling Fountain No 1307, Portion 27 of the farm Boiling Fountain No 1307, Portion 31 of the farm Boiling Fountain No 1307.

ORDER

1. It is declared that the Plaintiff is not a community as defined in the Restitution of Land Rights Act, No. 22 of 1994.
2. The Plaintiff's claim for Restitution of rights in land is dismissed.
3. The issue of costs will stand over, to be argued on a date to be arranged with the Registrar.

JUDGMENT

NCUBE J

Introduction

[1] This judgment is concerned with the following issues of law in terms of Rule 57 (1) (c) of Land Claims Court Rules:

- (a) Whether the claim was lodged prior to 31 December 1998 as required in terms of Section 2 (1) (e) of the Restitution of Land Rights Act ("the Act") 22 of 1994.
- (b) Whether the claim form (in the absence of an attached list of farm names) constitutes a claim form.

- (c) Whether there is any evidence that Sappi's land or any land owned by the land owners represented by Cox and Partners and described in the gazette notice, was identified in the claim form or is subject to the claim.
- (d) Whether the claimant community as defined in section 1 as referred to in section 2(1)(d) of the Act had or lost rights in land derived from rules determining access to land held in common.

[2] On 03 December 2024 at the close of the State Defendants' case, the Landowner Defendants motivated for the separation of issues as mentioned earlier in this judgment. There was no opposition from the Claimant State Defendants and Sappi's legal representatives. I, on the same day granted an order that the above-mentioned issues be argued separately from the main trial

Was the claim lodged prior to 31 December 1998?

[3] Section 2 of the Act deals with "**Entitlement to restitution**" and it provides:

"(1) A person shall be entitled to restitution of a right in land if:-

- (a) *he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices.*
- (b) *it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of racially discriminatory laws or practices; or*
- (c) *he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who-*
 - (i) *is a direct descendant of a person referred to in paragraph (a)*
 - (ii) *has lodged a claim for the restitution of a right in land; or*

- (d) *it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of racially discriminatory laws or practices; and*
- (e) *the claim for such a restitution is lodged not later than 31 December 1998*¹.

Therefore, for a person or, community to be entitled to restitution of a right in land, it is important that the claim be lodged by no later than 31 December 1998. The date of

¹ My own emphasis

31 December 1998 is of utmost importance as it is a statutory requirement that the claim should be lodged by no later than that date.

[4] In this case, the date of the lodgement of the claim is not clear. The date stamp on the claim form is obliterated. A faxed copy of the claim form is attached as annexure "A" to the referral report. It appears that the claim form was faxed together with other documents as the copy of the claim form itself starts at page 6 of the documents, meaning there were other five pages which were sent together with the claim form. We do not know which other documents were faxed with the claim form. The State Defendants called a witness Karrin Parkes ("*Miss Parkes*") to testify about the date on which the claim was lodged. Miss Parkes could not tell the court the exact date of the lodgement of the claim. She stated that the date and month are not clear from the date stamp. The year "*looks like 1998*", she said. When cross examined by Mr. Khoza, attorney for the claimants, whether the claim was lodged before the cut-off date, Miss Parkes concluded that she cannot say the claim was lodged before 31 December 1998. As it is now, there is no evidence that the claim was lodged on or before 31 December 1998.

Whether a Claim Form (in the absence of an attached list of farm names) Constitutes a claim form.

[5] Attached to the referral report, is a faxed copy of the claim form. Paragraph 1 of the claim form requires the description of the property claimed. Paragraph 1.1. of the claim form provides that if the land claimed is rural land, the portion, name, number and the description of the farm must be indicated. The claimed land is described in the claim form as follows:

"RURAL AREA-NEW HANDOVER DISTRICT. SEE ATTACHED LIST OF FARM NAMES." There is no list of farm names attached to the claim form. Section 10 of the Restitution of Land Rights Act² ("the act") deals with the lodgement of claims and it provides:

- (i) "*Any person who or the representative of any community which is entitled to claim restitution of a right in land, may lodge such claim which shall include a description of the land in question*³. the nature of the right in land of which he or she or such

² Act 22 of 1994

³ My own emphasis

community was dispossessed and the nature of the right or equitable redress being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16."

The provisions of section 10 (1) with regard to the description of the claimed land, are peremptory and cannot be ignored. In *Makhuva-Mathebula Community v Regional Land Claims Commissioner Limpopo and Another*⁴, the court held that the claim form is the primary source of information that is required in order to gazette the claim. The description of the land claimed in the claim form, is a mandatory statutory requirement and failure to comply with it, as in the present case, will invalidate the claim.

[6] Since the land claimed is not described in the claim form with the reference to the farm names, it is not clear where the Regional Land Claims Commissioner ("RLCC") got the names and numbers of the farms which he/she published in the Government Gazette. The RLCC is not empowered to include in the Government Gazette the land which is not claimed and not properly described by the claimant in the claim form. In *Torlaget and Another v The Minister of Agriculture, Land Reform and Rural Development and Others*⁵ Meer AJP as she then was, said:

"..... No provision in the Act empowered the third Respondent to include land that had not been claimed and to refer such land to the court in terms of section 14 (1). The decision to include further properties is moreover not rationally connected to the information that was before the RLCC".

[7] Claiming someone's land as yours, is a serious matter. The claim must strictly comply with the requirements of the Act. Publication of land in the Government Gazette as a claimed land has serious consequences for the owner as he can no longer deal with the claimed land as he pleases and without the consent of the RLCC. Reference to the claimed land as "*Rural Area – New Hanover District*" is not the proper description of the claimed land which is required in terms of the Act. As this Court held (per Geldenhuys J) in *Minnaar NO v Regional Land Claims Commissioner – Mpumalanga and Others*,⁶ the publication of farms not claimed is not rationally

⁴ (1106/2018) [2019] ZASCA 157 (28 November 2019)

⁵ [2022] ZALCC & para 33

⁶ (LCC 42/06) [2006] ZALCC12 (8 December 2006)

justifiable and should be set aside. The same holds good for publication of land which is not properly described in terms of the Act.

Whether there is any evidence that SAPPI Land or any land owned by the land owners represented by Cox and Partners and described in the gazette notice was identified in the claim form or is subject to the claim.

[8] As Mentioned earlier in this judgment the faxed claim form refers to the “*attached list of farm names*”. There is no list attached to the claim form. Basically, farm names and numbers of such farms are missing. In the absence of the list of farm names, there is no evidence that any land described in the gazette notice was identified in the claim form. In fact it is not clear to me where the RLCC obtained the names and numbers from.

[9] Even the witnesses who testified *viva voce* could not explain where the RLCC obtained the farm names from. During *inspection in loco*, witnesses pointed at certain farms which were not even on the gazette and consequently not claimed. Funukwazi Raphael Mbhele (“*Mr Mbhele*”) only testified with regard to one specific farm. He testified that his grandfather was removed from the place called “*Chithiphalishi*” which later came to be known as “*Khizolo*” presently known as Kieliekrankie. The problem is that even this farm is not described in the claim form.

[10] Muziwamadoda Ganet Gcumisa (“*Mr Gcumisa*”) testified that his grandfather narrated a story to him that his family left the place, which is today known as Louis, because they were abused by whites who placed a restriction on the number of livestock which the family was entitled to keep. The name of the farm “*Louis*” also does not appear on the claim form. Ms Dumazile Lucy Nxusa (“*Ms Nxusa*”) testified with regard to Windy Hill which is owned by Sappi. She testified that her grandmother Mamchunu told her, that they were evicted by whites from the place then known as *Esiphethwini Senyaninga River*, presently known as Windy Hill Farm. The name Windy Hill, likewise, does not appear on the claim form as one of the claimed properties.

Whether the claimant community as defined in section 1 as referred to in section 2(1) (d) of the Restitution of Land Rights Act, had or lost rights in land derived from shared rules determining access to land held in common.

[11] In an attempt to answer the above question, the starting point of exercise should be section 2 of the Act which provides for entitlement to Restitution. It states:

"1. A person shall be entitled to restitution of a right in land if-

(a)

(b)

(c)

(d) it is a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; and

(e) the claim for such restitution is lodged not later than 31 December 1998".

Section 1 (iv) of the Act defines a community as follows:

Community "means any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group and includes part of any such group". Section 1(x) of the Act defines a right in land as "any right in land, whether registered or unregistered". To succeed in their claim for a restitution of rights in land, the claimants had to prove that a community existed and that such community lost a right in land after 19 June 1913.

[12] The evidence falls short of proving that claimants were a community and that they lost rights in land after 1913.

In *re-Kranspoort Community*⁷. Dodson J said:

"The use of the present tense suggests that there must be a community (or part of a community) which exists at the time when the claim is submitted and decided. At the same time it must be a community or a part of a community which, at some point in the past (after 19 June 1913) existed and was subjected to a racial dispossession of land rights."

In the same context, in *Elambini Community*⁸ Meer AJP as she then was, expressed herself in the following terms:

⁷ *Kranspoort Community: Re Farm Kranspoort* 48 LS (LCC26/98) [1999 ZALCC67, 2000(2) SA 124 (LCC) Para 34 (10 December 1999)

⁸ *Elambini Community and Others v Minister of Rural Development and Land Reform and Others* (LCC88/2012)[2018] ZALCC 11 (30 May 2018)

"Thus it is settled law that for a community litigant to succeed in a restitution claim it must prove that it existed as a community after 19 June 1913, that it derived its possession and use of the land from common rules, and that it existed as the same community at the time that the claim was lodged. If at the time of dispossession, the possession and use of the land did not derive from common rules but were supplanted by labour tenancy rules, the rights in land were not held by a community at the time of dispossession."

[13] In *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (PTY) Ltd*⁹ Moseneke DCJ said:

"The acid test remains whether the members of the Popela Community derived their possession and use of the land from common rules in 1969. The answer must be in the negative."

[14] What transpired from the testimony of witnesses is that there was no dispossession which occurred after 1913. If there was any dispossession at all, it must have happened far before 1913. In fact, what transpired from evidence is that by 1913 there was no community which derived its right in land from shared rules determining access to land held in common by such community or group of persons. Certain families moved away from where they were staying just because they found it difficult to comply with rules introduced by different farm owners. Most of the time, misunderstanding was over the number of livestock to be kept by farm dwellers. Farm dwellers refused to reduce the number of livestock which they could keep on the farm in accordance with the rules introduced by individual farmers, rules regulating conditions of staying on their farms.

[15] Mr Mqiniseni Protas Zuma ("Mr Zuma") testified on behalf of the commission. He was previously employed by the office of the RLCC as a project officer and researcher. He testified that he consulted the archives in Pietermaritzburg, Pretoria and Cape Town and obtained aerial photographs from Cape Town. He did not obtain information that there were people who were removed from where the claimants alleged to have been removed from. In cross examination, Mr. Zuma stated:

⁹ 2007(6) SA 199(CC) Para 45

"I did explain previously that as I went to the archives, I did not find anything that states there were people of the Gcumisa who were actually removed from this place."

Mr. Zuma further testified that he could not find any evidence which indicated that Gcumisa lost any rights in land in the area subject to the claim.

Dumisani Phillip Mbiba (" Mr Mbiba") testified. He is employed by Shakeshem as a researcher. He was called by the RLCC as a witness. He conducted a research in this case. He testified that in his research he focused on the archives and the internet. From his research, Mr. Mbiba discovered that private farms at the area claimed by Gcumisa, were established as far back as 1850's and it transpired that there were people of Swayimane who were resident on the private farms like the farm of Mr. Ackerman.

Mr. Mbiba conceded in cross examination that there are documents to prove that prior to 1845 the claimed land had already been allocated to white farmers by the Voortrekker Government as far back as 1841 and therefore, it was apparent that the Gcumisas never occupied the claimed land.

From the joint minutes compiled by Mr. Mbiba and Dr. Whelan it transpires that these two experts are *ad idem* that Gcumisa was not a community as envisaged in the Act. These experts also agreed that the properties published by the RLCC as being properties being claimed, were in fact all in freehold title, having been granted between 1850 to 1890 and that these properties had been actively farmed by 1913.

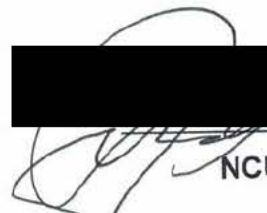
From all the evidence tendered, it is crystal clear that the claimants failed dismally to prove that there was a community which was dispossessed of its rights in land after 1913 due to discriminatory laws or practices. There is also no evidence that the claim was lodged before the 31st of December 1998 and lodged on a valid claim form in respect of properly described properties. Therefore, the claim stands to be dismissed.

Order

[16] In the circumstances I make the following order:

1. It is declared that the Plaintiff is not a community as defined in the Restitution of Land Rights Act, No. 22 of 1994.

2. The plaintiff's claim for Restitution of Rights in Land is dismissed.
3. The issue of costs will stand over, to be argued on a date to be arranged with the Registrar.



NCUBE MT
Judge
Land Court of South Africa

APPEARANCES:

For the Applicant: Mr. Khoza
Legal Aid Empangeni

For 2nd to 49th : Adv M.G. Roberts SC
Adv E. Roberts

Instructed by: Cox and Partners Vryheid

For 50 to 53 Defendants: Adv R. Chaudree SC
Adv Gumede

Instructed by: State Attorney Durban

For SAPPI: Adv G. Goddard SC
Instructed by: Shepstone and Wylie Attorneys Umhlanga