



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

CASE NO: LCC195/2021B

Before: Bishop AJ
Heard on: 4 August 2025
Delivered on: 29 October 2025

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

Date: 29 October 2025

Signature: 

In the matter between:

**HLOMELA LAND CLAIMS – MALAMULELE
STEERING COMMITTEE**

First Applicant

MABASA SAMUEL MUKWACHANI

Second Applicant

CHAUKE HASANI MOURICE

Third Applicant

XANISEKA NELLY MANGANYI

Fourth Applicant

MZAMANI RICHARD MABASA

Fifth Applicant

MAGEZI AMOS CHAUKE
and

Sixth Applicant

**CHIEF LAND CLAIMS COMMISSIONER: COMMISSION
ON RESTITUTION OF LAND RIGHTS**

First Respondent

**REGIONAL LAND CLAIMS COMMISSIONER, LIMPOPO
PROVINCE**

Second Respondent

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

Third Respondent

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM Fourth Respondent

ORDER

1. The Respondents' failure to fulfil their obligations under the settlement agreement concluded with the Hlomela Community in terms of section 42D of the Restitution of Land Rights Act 22 of 1994 (**the s 42D Agreement**) is declared unconstitutional and invalid.
2. The Respondents are directed to comply with all their obligations under the s 42D Agreement diligently and without delay, and in accordance with this order.
3. The Court shall retain supervision of the matter until it determines that the Respondents have discharged all their obligations under the s 42D Agreement.
4. The Respondents shall, within one month of the date of this order, file an affidavit setting out the current status of its forensic investigation into its non-compliance with the s 42D Agreement (**the forensic report**), what steps

still need to be taken to complete it, and the estimated date by which it will be completed.

5. The Court shall determine the date by which the forensic report shall be completed.
6. Within one month of the completion of the forensic report, the Respondents shall file a copy of the report and a detailed workplan setting out the steps that will be taken to comply with their obligations under the s 42D Agreement (**the workplan**).
7. The Applicants shall be entitled, within one month, to file a response to the workplan.
8. The Court shall consider reject, approve or amend the workplan and, if necessary, issue further directions in order to secure an approved workplan.
9. The Respondents shall, every six months after the Court approves the workplan, file a report on affidavit detailing their progress. The Applicants shall be entitled, within one month, to comment on each report.
10. The parties shall be entitled to approach the Court, on notice to the other parties, for an amendment of this order, or for additional relief.
11. The Court shall be entitled, after hearing argument from the parties, to amend this order, or to grant additional relief.
12. The Respondents shall pay 50% of the Applicants' costs, including the costs of two counsel where employed.

JUDGMENT

BISHOP, AJ

[1] Our Constitution is founded on righting the wrongs of the past. One of the deepest and unresolved wrongs is the forced removal of Black people from their land. The Constitution promises those who lost the land the right to restitution of the land or, at least, equitable redress.

[2] But as Cameron J pointed out in *Mwelase*, “delays in processing land claims have debilitated land reform.”¹ In *Mwelase*, it was the failure of the Department of Rural Development and Land Reform to process labour tenant claims. In this case it is the failure of the Commission on Restitution of Land Rights (**the Commission**) and the other Respondents to implement a settlement agreement settling a restitution claim.

[3] The Applicants are the victims of that failure. I set out the history of that failure in my earlier judgment in a related rescission application.² Here is the short version.

[4] The Xitsonga-speaking members of the Hlomela Community people were removed from their land in 1969 in terms of the Bantu Authorities Act 68 of 1951 and forced to relocate to the Gazankulu “homeland”. The Community applied timeously for restitution in terms of the Restitution of Land Rights Act 22 of 1994 (**Restitution Act**).

¹ *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another* [2019] ZACC 30; 2019 (11) BCLR 1358 (CC); 2019 (6) SA 597 (CC) at para 1.

² *Chief Land Claims Commissioner Commission on Restitution of Land Rights and Others v Hlomela Land Claims Malamulele Steering Committee and Other* [2025] ZALCC 23 at paras 2-6.

[5] In 2004, the Community's restitution claim was settled in terms of s 42D of the Restitution Act. The settlement agreement provided for the state to improve the Community's conditions where they now live. That included providing electricity, a community office, a clinic, and approximately 240 "RDP type of houses" on the land the claimants now occupy.

[6] By 2012, the Respondents had provided electricity, built a community office, and constructed a clinic. But they had not built the houses they had promised the community. In a letter sent to the Community in 2012, the Chief Land Claims Commissioner explained: "Unfortunately, the fourth project, which is housing development, has experienced major challenges whereby two of three Contractors who were appointed to build houses failed to complete the houses." The Commissioner promised action – a status report, a plan for "remedial action", and monthly progress reports.

[7] Yet in 2014, no concrete progress had been made. The Community complained to the Public Protector who concluded that "the Department has failed to comply with the terms of the land claims settlement agreement". The Public Protector's intervention ended with another detailed plan for completing the project. The Regional Land Claims Commissioner: Limpopo (**RLCC**) was required to produce a progress report within a month identifying the status of the various houses. The RLCC would then "conduct a forensic engineering structural integrity assessment" and a "geo-technical investigation". A list of beneficiaries would be identified and verified. Funding would be secured and the Department of Cooperative Government Human Settlement and Traditional Affairs would be responsible for "delivery/rectification/completion of the houses".

[8] The first step – a task team report – was eventually produced in 2016. It reached the following depressing findings. 91 houses were “not plastered, no window glasses, poor flooring slab, no roofing and shaky walls”. 30 houses were in a similar state but had been improved by claimants. 31 houses were in a similar condition plus roofs – but “there are gaps between the walls and the roof, poor quality roofing tiles, and the houses are leaking.” Six claimants had improved houses in that state. 25 houses had been completed by owners. 30 houses had not been built at all. Eleven houses were completed but were leaking. Three houses “cannot be traced” (it is difficult to know what that means, but presumably it means they were not built). One house had been sold and demolished.

[9] In the kind of understatement one often reads in this type of document, the task team concludes that “it is apparent that the affected claimants did not derive value from the project.” That is certainly one way of putting it. The report notes that the service providers “were fully paid even though the project was unfinished”. How that happened is not explained.

[10] In order to remedy the problem, the task team identified that more money is needed. There will need to be an expert “to quantify the costs” so that the RLCC can “request the necessary funds from the Department”. As the RLCC explained:

budget has to be allocated to the Commission to redo the project. It is not a simple process. There are government rules and procedures that must be satisfied, including the Auditor-General's requirements, before the refinancing can be approved. This is so because the State financed the project initially. Lots of money was spent on the project; only to discover years later that something was not done right. Now therefore, the project must be redone, which means the refinancing from National Treasury to the Department. It is a process that can not happen overnight.

[11] At this point, one would think that the Respondents had recognized their failure, but were at least taking some steps to remedy the problem. But since 2016, no concrete steps have been taken to complete the project. The “refinancing” has not occurred. More importantly, no dilapidated house has been repaired, and no unbuilt house has been built.

[12] In the answering affidavit the Respondents claim that the task team’s report is evidence that “contrary to the applicants’ allegations that the Commission is doing absolutely nothing about the housing project, there is a lot of administrative work going on within the Department to realise the finalization of the project.” But the task team completed its work nine years ago – four years after the Commissioner promised to complete the project.

[13] The next active step seems to have occurred five years later in 2021 when the Commission sent officials to Hlomela “to re-assess the status of the housing project, this time with a view to verify the statuses of the beneficiaries”. This attempt led to the current litigation which has taken an unnecessarily tortuous procedural path.

[14] Following the 2021 visit, the Hlomela Community complained about a decision they believed the Commission had taken to provide financial compensation to some, but not all, of those who had not received the houses promised by the s 42D settlement agreement. The Commission denies that it ever took such a decision.

[15] The Hlomela Community sought to interdict the implementation of that supposed decision, and then to review and set it aside. The Commission blames that litigation – which I describe below and ultimately led to this application – for the failure to take any further tangible steps to implement the s 42D agreement.

[16] The interdict was granted unopposed. So too was the review; but only because the review application was not properly served on the Commission and it was unaware of it. This Court granted an order reviewing and setting aside the Commission's supposed decision on 29 August 2022. That prompted the Commission to bring a rescission application which the Applicants opposed. That rescission application only came before me on 26 May 2025. I granted the rescission on 30 May 2025.

[17] I granted the rescission because the review application had not been served on the Respondents. The Respondents also argued for rescission on the basis that the Commission had not taken a decision to compensate or not compensate any of the beneficiaries. Despite expressing skepticism that the Commission had taken any decision about compensation, I did not decide the issue as it would pre-empt the determination of the review.

[18] As part of my order following the rescission, I provided for an expedited timetable to determine the Applicants' review which, after the rescission, now had to be decided. The timetable required the Commission to file a notice stating whether it had taken the decision which was subject to challenge, and permitted the Applicants to supplement their founding affidavit.

[19] The Commission duly filed a notice stating that it had not taken any decision about compensating beneficiaries.

[20] The Applicants did not continue their attack on the decision that, plainly, did not exist. Nor did they abandon their application. Instead they used the opportunity to supplement their founding affidavit to also file a new notice of motion. In the new notice of motion they seek three heads of relief – two reviews and substitution relief.

[20.1] First, they seek to review and set aside “the conduct of the [Respondents] in failing to comply with the terms of the section [42D] settlement agreement, finalise the developmental restitution agreement and/or remedy the improper housing project they have conducted for the Hlomela Community.”

[20.2] Second, they seek the reviewing and setting aside of the “failure of [the Respondents] to make a decision regarding the financial compensation to the Hlomela Community following their failure to complete the housing project.”

[20.3] Third, they ask for substitution orders to compel the Respondents to:

[20.3.1] Comply with the s 42D agreement, “finalise the developmental restitution agreement and/or remedy the improper housing project they have conducted for the Hlomela Community”; and

[20.3.2] Financially compensate those “members of the community who were frustrated by the failure of the developmental projects who built their own houses and/or completed the houses using their own resources”.

[21] The Respondents objected to the Applicants seeking this new relief on two procedural grounds. First, that it was not open to the Applicants to use the opportunity to supplement their review of the non-existent decision to compensate to launch an entirely new application reviewing the failure to implement and the decision *not* to compensate. They argued this constituted an irregular step. Second, they contend it

is not competent to review and set aside “conduct”. And the only decision the Respondents have ever taken is to conclude the s 42D settlement agreement.

[22] I must mention the latest step the Respondents have taken. They have commissioned a “forensic investigation”. Exactly what the forensic investigation will investigate is unclear – is it looking at why the project failed, or what needs to be done to refinance it so that the project can finally be completed? But the outsourcing process was due to be complete at the end of August 2025. The parties agreed that the forensic investigation was a necessary first step towards implementation.

[23] As I discuss in more detail below, there is some merit to the Respondents’ procedural objections. If this was a different court, and this was a dispute where only commercial interests were at stake, I would be tempted to reject the application on the basis that it was not properly brought.

[24] But this is not that type of case. It is a case about fundamental constitutional rights, and inexcusable state failure. It is a case that cries out for a pragmatic remedy that will ensure that the Hlomela Community receives what was promised to them as soon as possible.

[25] There is no dispute that the original attempt to build the houses required by the s 42D settlement agreement failed miserably. While the Commission has taken steps over the years to attempt to remedy that failure, these have been manifestly inadequate. Reports have been prepared, but the Respondents have still not complied with the s 42D agreement. While the Respondents acknowledge they must implement the agreement, and continue to take some steps to do so, there is no prospect that houses will be repaired or built any time soon.

[26] At the hearing, I put it to Adv Toma, who appeared on behalf of the Respondents that, while I appreciated his clients' procedural objections, there was no answer to the underlying complaint – the failure to implement the s 42D agreement. I suggested that it would not serve either of the parties' interests to resolve the dispute on procedural grounds because it would not resolve what actually brought the Hlomela Community to court. I asked if the Respondents would object to a structural order that would oblige the Respondents to take steps to implement the s 42D agreement, and allow the Court to supervise that process.

[27] Adv Toma took instructions and indicated that his clients would support that type of order. Adv Malatji, who acted for the Applicants, also said his client would support that form of order. This agreement was welcome. The Court appreciates the willingness of both parties – and particularly the Respondents – to embrace a remedy designed to ensure the rapid implementation of the s 42D agreement.

[28] I asked the parties to discuss the issues and propose the form of a structural order. I also asked them to identify what issues remained in dispute between them.

[29] The parties filed a joint practice note in which they agreed on the form of the structural order the Court should grant. They proposed the following:

1. *The respondents are ordered and directed to file the first report on the appointment and progress of the forensic investigation within 3 months from the end of August 2025. The report will provide the period within which the forensic investigation shall be completed and finalised.*
2. *Upon the filing of the foretated first report, the Respondent shall file bi-annual reports detailing the progress made and steps taken, as well as*

the steps to be taken, towards the completion of the housing project. Within its supervisory powers, the Honourable Court may prescribe specific dates and time periods within which certain steps should be taken and be completed.

3. *After the completion and finalisation of the forensic investigation, the Respondents must provide a detailed workplan that indicates the necessary steps that the respondents will take to remedy the Hlomela RDP situation.*
4. *That the respondents will send a report to the Honourable Court every 6 months until the completion of the Hlomela RDP situation*

[30] The parties did not, however, agree on the merits of the application, or on the question of costs, which they asked this Court to decide.

[31] As a result, the Court needs to decide the following issues:

[31.1] Should the Court decide the Applicants' review?

[31.2] Should this Court grant a structural interdict and, if so, in what form?

[31.3] Who should pay the costs of the application?

The Review Application

[32] The Respondents' two procedural objections – that there was no right to amend the notice of motion, and that there was no reviewable decision – are not without merit.

[33] This application began as a review of a decision to pay compensation to some members of the Community and not others. When it became apparent there was no

such decision, the Applicants converted the application into one reviewing the respondents' conduct in not implementing the s 42D agreement, and the failure to decide on whether to award financial compensation. Was it open to them to do so?

[34] The order allowing them to supplement their founding affidavit read simply: "The applicants in the review application may, by 23 June 2025, supplement their founding affidavit if they wish to do so." It did not permit them to amend their notice of motion. The purpose was not to allow an entirely new review, but to supplement the grounds for the review as it had been framed. It was always open to the Applicants to seek to amend their notice of motion according to the ordinary rules, or to bring a new review of whatever decisions they wished to challenge. But the order did not entitle them to morph their existing review – with a built-in expedited timetable – into a new case.

[35] Whether the Respondents had taken another decision, and whether it is possible to review conduct is a difficult question. Normally reviews relate to decisions. The definition of "administrative action" in the Promotion of Administrative Justice Act 3 of 2000 requires a "decision" or a "failure to take a decision". But s 172(1)(a) of the Constitution requires that, when they decide a constitutional matter, courts "must declare that any law or conduct that is inconsistent with the Constitution is invalid".

[36] Often there will be little difference between an organ of state's decision and its conduct. The conduct will manifest its decision to act or not to act, or its failure to decide whether to act or not. In the context of failure, I am not sure there is much to distinguish a failure to act from a failure to decide. Drawing a stark line between the two may create more confusion than clarity.

[37] Yet inherent in the idea of a "decision" is something that has, in the language of PAJA, "direct, external legal effect". If conduct does not have that type of effect,

what is the point of reviewing and setting it aside? The conduct may have an impact, but because of its practical consequences, not its legal ones. In those cases, is a review the proper remedy? Case law too suggests that there must be some form of decision and finality.³

[38] I prefer not to resolve either of the preliminary issues. I do not believe the parties will be served by a decision on those grounds that might then preclude me from granting the supervisory relief they have agreed to. Fortunately, it is not necessary to resolve either the review itself, or the Respondents' procedural objections. I say so for two reasons.

[39] In the first place, while framed as a review, the relief the Applicants really want is the proper implementation of the s 42D agreement. The first "review" is of the Respondents' "conduct ... in failing to comply with the terms of the" s 42D agreement. That is why they seek an order "compelling the said respondents to comply with the terms of the section [42D] settlement agreement".

[40] While it is framed as review of conduct and substitution relief, it is, in truth, an interdict to enforce the Applicants' rights under the agreement. For the Applicants, the reviews are a means to an end, not an end in themselves. But the reviews are not necessary to reach that end; it is possible to simply direct the Respondents to meet their obligations under the s 42D agreement.

[41] Second, the parties agree on the substantive remedy – a structural interdict. That remedy responds to the substantive reason that brought the Applicants to Court – the Respondents' failure to implement. If the Respondents had objected to that

³ See, for example, *Bhugwan v JSE Ltd* 2010 (3) SA 335 (GSJ) at para 10.

remedy, it would have been necessary to consider whether it was a competent remedy flowing from the relief sought, and whether the Respondents were prejudiced by the way in which the Applicants had brought their case.

[42] But in light of the agreement, the only purpose of determining the procedural objections or the merits of the review would be to assign responsibility for costs. I believe that costs are best decided on a different basis that takes account of the difficulties in the way the Applicants brought their case.

[43] In these unusual circumstances, a decision on the review applications would not aid the parties. It would only unnecessarily complicate the relationship and make it more difficult for the parties to move forward. I prefer, instead, to focus on the justification for, and form of, the structural relief.

Structural Relief

[44] The premise for the structural relief is that, since 2004, the Respondents have failed to implement the s 42D agreement. They have admitted their failure since 2012. Despite various further investigations and promises, no actual action has been taken in the 13 years since then to comply. The reasons for their non-compliance seem to be multi-faceted. There is no unwillingness; the Respondents rightly accept they have failed to comply with their obligations and must make good. The primary delay seems to be in securing the financing. But that issue was identified in 2016, and there is no adequate explanation for why, nine years later, the financing has not been found.

[45] This is a constitutional violation. The Restitution Act was enacted to give effect to the right in s 25(7) of the Constitution to restitution of land or equitable redress.

Where the government agrees to provide equitable redress, but does not do so for more than 20 years, it has failed to fulfil not only its obligations under the Restitution Act and the s 42D agreement, but also its constitutional obligations.

[46] That triggers this Court's powers under s 172(1) of the Constitution. This Court is entitled to grant relief not sought in the notice of motion.⁴ In this case, where there is no objection to the grant of supervisory relief, the fact that it was not specifically sought is no obstacle to this Court granting it.

[47] This Court's duty is to grant a remedy that will "address the real dispute between the parties by requiring them to take steps aimed at making their conduct to be consistent with the Constitution."⁵ As the parties' agreement indicates, a supervisory order does just that. But it is worth explaining briefly why supervisory relief is appropriate.

[48] The goal of supervisory relief is not to punish parties, but to resolve difficult problems. Supervision is appropriate when a court cannot finalise the dispute between the parties with a once-off order, and where the ordinary mechanisms of enforcement are unlikely to be effective.⁶ It is a pragmatic approach to the joint resolution of difficult problems. "An order of supervision is a judicial commitment to work together with other

⁴ *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) at para 211.

⁵ *Ibid.* See also *Head of Department: Mpumalanga Department of Education v Hoërskool Ermelo* [2009] ZACC 32; 2010 (2) SA 415 (CC); 2010 (3) BCLR 177 (CC) at para 97 ("This ample and flexible remedial jurisdiction in constitutional disputes permits a court to forge an order that would place substance above mere form by identifying the actual underlying dispute between the parties and by requiring the parties to take steps directed at resolving the dispute in a manner consistent with constitutional requirements.")

⁶ *Meadow Glen Home Owners Association and Others v City of Tshwane Metropolitan Municipality and Another* [2014] ZASCA 209; [2015] 1 All SA 299 (SCA); 2015 (2) SA 413 (SCA) at para 35.

branches to resolve a constitutional infringement, or realise a constitutional commitment.”⁷

[49] Supervision is necessary here because the Respondents accept that they have failed to implement the s 42D agreement, accept that they remain obliged to do so, but have taken no meaningful steps to fulfil their obligations. In light of that longstanding non-compliance, a simple order to meet those obligations is unlikely to succeed. Whatever the underlying reason for the non-compliance it is unlikely to vanish merely because the Court orders the Respondents to do what they already know they must do.

[50] As the Supreme Court of Appeal has explained, when faced with crafting orders to implement constitutional rights, “courts must also consider how they are to deal with failures to implement orders; the inevitable struggle to find adequate resources; inadequate or incompetent staffing and other administrative issues; problems of implementation not foreseen by the parties’ lawyers in formulating the order and the myriad other issues that may arise with orders the operation and implementation of which will occur over a substantial period of time in a fluid situation.”⁸

[51] An unsupervised interdict will likely just result in more litigation; either applications for contempt, applications for variation, or new applications for additional relief. A supervisory order recognizes that the difficulties that have delayed implementation up to now are likely to persist, and that ongoing judicial intervention will likely be needed to navigate through those difficult waters. For example, if the

⁷ *Sechaba Protection Services CC (Pty) Ltd and Others v Passenger Rail Agency of SA Ltd and Others* [2023] ZAWCHC 280 at para 99.

⁸ *Meadow Glen* (n 6) at para 35.

difficulty is obtaining budget from National Treasury, this Court can join National Treasury and require it to explain why it has not provided a budget to meet the State's clear commitment. The need to report regularly to the Court on its progress will also, hopefully, place pressure on the Respondents to prioritise the Hlomela Community and ensure that they meet their obligations as soon as possible.

[52] What is needed is a supervisory order that establishes a detailed plan for implementation, requires them to regularly report on their progress, and provides a mechanism to resolve difficulties as and when they arise without the need for contempt proceedings or fresh litigation.

[53] That brings me to the form the structural order should take. I have no difficulty with the general structure of the parties' proposal. As I see it, it envisages three steps:

[53.1] The finalization of the forensic investigation. The parties accept that this needs to be completed in order to enable the Respondents to take the next steps to actually build or repair the houses.

[53.2] Once the forensic investigation is complete, the Respondents must file "a detailed workplan that indicates the necessary steps that the respondents will take to remedy the Hlomela RDP situation". This is generally the correct next step. The responsible government agent must develop its own plan for the implementation – the Court's role is to check that the plan is adequate, and then to hold the government to its plan.

[53.3] The third stage is ongoing monitoring of the implementation of the plan. That will occur through six-monthly reports. I may have preferred more regular reports – every three or four months. But I prefer not to interfere

with the parties' agreement on this issue; they are best placed to balance the need for reporting and the burden that imposes.

[54] While I intend to keep that basic structure, it is necessary to make a few changes:

[54.1] The structure of supervision needs to be linked to an order that the Respondents implement the s 42D agreement. I have considered precisely how that order should be framed. The Court cannot, at this stage, order that the agreement be implemented immediately or by a defined date; I do not have enough information to know what is possible. But the order must also recognize the urgency with which the Respondents must act. Implementation cannot be left to linger indefinitely. I have settled on the phrase "diligently and without delay" because that is the standard set in s 237 of the Constitution.⁹ While the term lacks legal precision, it conveys the core message – this must be done as soon as reasonably possible.

[54.2] There needs to be a date for the finalization of the forensic report. That cannot be left hanging. I do not know how long the Respondents reasonably require for that. So the first step is for them to commit to a date by which it will be finalised.

⁹ Section 237 of the Constitution reads: "All constitutional obligations must be performed diligently and without delay." I had thought about using the term "with all deliberate speed". This was the term used by the United States Supreme Court in ordering the desegregation of schools. See *Brown v Board of Education of Topeka* 349 US 294 (1955). I think s 237 seeks to convey the same idea – government must act as swiftly as reasonably possible, and with a real sense of urgency.

[54.3] The Respondents' workplan needs to be subject to comment by the Applicants and approval by the Court. The workplan may be inadequate or fail to appreciate the urgency that is required.

[54.4] There needs to be an opportunity for the Applicants to comment on the Respondents' bi-annual reports.

[54.5] There needs to be a right for the parties to approach the Court for further directions, or for the Court to mero motu require the parties to take additional steps.

Costs

[55] Neither party has achieved exactly what they set out for. I hope they will all conclude that they have achieved something better. The question is who should pay when there is no real winner or loser.

[56] The Applicants argue that the structural order is, in effect, an order to compel which is "encapsulated" in their amended papers. The Respondents' position is that each party should pay its own costs because the structural order is a "logical position encouraged by the Court within its mediatory powers" and does not constitute success.

[57] In my view, the Applicants have been substantially successful. Their error was in framing their relief as a review, rather than simply as an order to compel. But – as I have explained – the heart of their case was clear. Nonetheless, if they had framed their case properly, it may have reduced or even avoided the disputes between the parties. The Respondents may – as they did after the hearing – have consented to an

order that required them to implement the s 42D agreement (with or without supervision).

[58] In these circumstances, an order that the Respondents should pay 50% of the Applicants' costs seems just. It recognizes the Applicants' success on the real issue in dispute, but also that they took the wrong route to enforce those rights.

Conclusion and Order

[59] This order must be a turning point for the Hlomela Community. It represents a fresh promise from the Respondents and the Court to work together to ensure that their houses are built or repaired as soon as possible. It must be implemented with a sense of urgency – “diligently and without delay”. I have no doubt that, together, that can be achieved.

[60] I make the following order:

1. The Respondents' failure to fulfil their obligations under the settlement agreement concluded with the Hlomela Community in terms of section 42D of the Restitution of Land Rights Act 22 of 1994 (**the s 42D Agreement**) is declared unconstitutional and invalid.
2. The Respondents are directed to comply with all their obligations under the s 42D Agreement diligently and without delay, and in accordance with this order.

3. The Court shall retain supervision of the matter until it determines that the Respondents have discharged all their obligations under the s 42D Agreement.
4. The Respondents shall, within one month of the date of this order, file an affidavit setting out the current status of its forensic investigation into its non-compliance with the s 42D Agreement (**the forensic report**), what steps still need to be taken to complete it, and the estimated date by which it will be completed.
5. The Court shall determine the date by which the forensic report shall be completed.
6. Within one month of the completion of the forensic report, the Respondents shall file a copy of the report and a detailed workplan setting out the steps that will be taken to comply with their obligations under the s 42D Agreement (**the workplan**).
7. The Applicants shall be entitled, within one month, to file a response to the workplan.
8. The Court shall consider reject, approve or amend the workplan and, if necessary, issue further directions in order to secure an approved workplan.
9. The Respondents shall, every six months after the Court approves the workplan, file a report on affidavit detailing their progress. The Applicants shall be entitled, within one month, to comment on each report.

10. The parties shall be entitled to approach the Court, on notice to the other parties, for an amendment of this order, or for additional relief.
11. The Court shall be entitled, after hearing argument from the parties, to amend this order, or to grant additional relief.
12. The Respondents shall pay 50% of the Applicants' costs, including the costs of two counsel where employed.



M BISHOP
Acting Judge
Land Court

APPEARANCES:

For the Applicant:	Adv C Malatji
Instructed by:	GA Maluleke Attorneys
For the Respondent:	Adv K Toma
Instructed by:	State Attorney, Polokwane