



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

CASE NO: LCC127/2023

Before: The Honourable Mabasa AJ

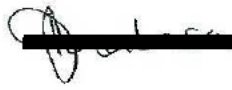
Heard on: 20 – 23, 26, 28 May 2025

Reserved: 6 August 2025

Delivered on: 6 November 2025

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

Date: 06 November 2025

Signature: 

In the matter between:

MATLOU FRANS NKGOENG & 579 OTHERS

Applicants

and

**THE REGIONAL LAND CLAIMS
COMMISSIONER, LIMPOPO PROVINCE**

First Respondent

**COMMISSION ON RESTITUTION OF
LAND RIGHTS**

Second Respondent

ORDER

1. The land claim lodged by Mr Matlou Frans Nkgoeng was lodged on behalf of Matlou Frans Nkgoeng and 579 members of the Ga-Matlala community.
 2. The matter is remitted to the Commission on Restitution of Land Rights for further investigation.
 3. There is no order as to costs.
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JUDGMENT

MABASA AJ

Introduction

[1] Social engineering under the apartheid regime took many pernicious forms. "Betterment schemes" were one such mechanism; where its name contradicts its true intent.¹ Inadvertently, it gave rise to this matter where the core dispute is whether the land claim instituted by the Applicants under the Restitution of Land Rights Act 22 of 1994 ("Restitution Act") is an individual claim, or a community claim on behalf of members of the Ga-Matlala community on a farm Matlalas location 591 LS, Capricorn district of Limpopo.

Parties

[2] The Applicants are Matlou Frans Nkgoeng ("Mr Nkgoeng") and 579 others who are members of the Ga-Matlala community.

¹Betterment schemes were introduced with the passage of the Land Act in 1936 under the guise of soil conservation; it resulted in widespread stock culling, reducing the amount of cultivation and grazing land rural homesteads had at their disposal, and regrouping the homesteads into symmetrical grids. (S Zondi, 'Peasant struggles of the 1950's: gaMatlala and Zeerust' in *The Road to Democracy* p147-149).

[3] The First Respondent is the Regional Land Claims Commissioner ("RLCC"). The Second Respondent is the Commission on Restitution of Land Rights ("Commission").² I refer to them collectively as the Respondents. The Third Respondent is Kgoshigadi Matlala.

Background

[4] It is common cause that Mr Nkgoeng instituted a land claim on 30 December 1998. It is also common cause that the history of dispossession and forced removals in the area is well known, recorded and accepted.³

[5] What is in dispute is whether the land claim was lodged by Mr Nkgoeng in his individual capacity as the original dispossessed individual (ODI) only, or also on behalf of members of the Ga- Matlala community who were similarly affected by the forced removals.

[6] The Applicants' case is that their claim was always intended as a community claim. Although Mr Nkgoeng's personal details appear on the claim form, the language used ("we") and the description of multiple villages demonstrate collective intent.

[7] They argue that the RLCC acted unlawfully by first treating the claim as a community claim, then unilaterally redefining it as an individual claim without proper reasons or notification, breaching sections 6(1)(c) and 11(4) of the Restitution Act.

[8] The Respondents' case is that Mr Nkgoeng's claim was lodged in his personal capacity on 30 December 1998 and not as a community claim. They argue that the claim was processed, investigated and gazetted in 2018 as an individual claim. The Respondents reject the Applicants' later affidavits (submitted a decade after lodgement) as an impermissible attempt to convert an individual claim into a community claim. They further aver that the Matlala Tribal Authority lodged its own community claim in 1998, which was investigated and approved.

² During oral evidence the witnesses refer to them interchangeably as the "Commission" or the "Department".

³ Supra note 1.

[9] The matter came before the Court as a review application in terms of section 36(1) the Restitution Act (now repealed) read together with Rule 35 of the Land Claims Court rules (the Rules). Mr Nkgoeng sought to review the decision of the RLCC to offer an amount of R321 146.00 to him as final compensation in his individual capacity to the exclusion of all the other applicants.

[10] As a result of the disputes of fact it was agreed that the matter would proceed on oral evidence to determine the core factual dispute only. I presided over the hearing which took place from 20 to 23 May 2025, and 26 to 28 May 2025 in the Polokwane High Court. Three witnesses gave evidence for the Applicants and three for the Respondents.

Issue

[11] The only issue for determination is whether the land claim by Mr Nkgoeng was lodged in his individual capacity only, or also on behalf members of the Ga- Matlala community.

The facts

[12] Mr Nkgoeng testified that during the 1980's, he lived in Nkgoeng village also known as Ga-Matlala. He no longer resides there because the communities were forcefully removed due to the implementation of the Native Trust and Land Act of 1913⁴. This happened under the watch of the local chief at the time, BK Matlala. Their properties were burned and many items destroyed. Mr Nkgoeng described in detail the loss he suffered, stating that everything he owned was burned or otherwise destroyed. He further testified that cattle were also lost due to the conduct of the Lebowa Police. Bulldozers arrived to demolish buildings. It was a tragic incident, extremely traumatic and continues to affect him to this day as he cannot 'get it out of

⁴ This legislation introduced "Betterment Schemes" and together with the Bantu Authorities Act of 1951 sought to transform the traditional system of leadership by turning chiefs into government agents, providing them with greater administrative powers, bribing them with material gifts and money and thereby pitting them against their subjects.

his mind'. He testified that some members of the community even lost their lives during this forced removal.

[13] He further testified that this tragedy was not isolated to Ga-Matlala; many other villages suffered similar fates. He named the villages such as Maditiane, Manamela, Phelule, Phofu, Dibeng, Simaneng, Selolo, Mpane, Mditlane, Gonaschool, Mawai, Burat, Puele, Khorotia, Saaiplaas, Juno, Goedgevonden, Qwibi, Mameletabele, Pinkie and Mualeng and some he may have forgotten.

[14] The dispossession was executed under the authority of the then-chief, BK Matlala. When asked by his counsel, Mr Manale, whether the current chief, Kgoshigadi Matlala, was related to BK Matlala, he responded that he was unsure. He believed she had married into the family and had children with BK Matlala. It was the same chieftaincy.

[15] Mr Nkgoeng stated that he submitted a land claim, albeit long after the events took place. In 1998, community members were informed that those who had lost land or property could lodge claims. He was not officially approached but learned of the process through informal channels. He submitted his land claim form on 30 December 1998 in Gauteng without assistance from anyone connected to the Respondents. He completed the form using his own knowledge and in his own handwriting.

[16] He clarified that his use of the term "we" on the claim form referred to the community, not himself as an individual. He indicated that the people from the same villages he previously mentioned had also suffered during the forced removals.

[17] Mr Nkgoeng stated that he secretly informed two or three community members about the land claim and asked them to spread the word, since gatherings were prohibited by the chief. He emphasised the climate of fear that existed at the time; anyone wronged by the chief could not report the matter or meet publicly. As a result, all communication about the land claim had to happen secretly.

[18] Mr Nkgoeng testified that he received a response from the Commission in July 2008, ten years after submitting the land claim. He then met with officials from the Commission, including Mr Maruping Selepe and Ms SD Masia, in September 2008 in Moratapelo village. The purpose of this meeting was to verify that he was the person who submitted the claim and to review documentation, including his Identity Document number. At this meeting he confirmed that he was claiming on behalf of the community, not just for himself. "because whatever happened to me, happened to the community. I was not the only victim".⁵ The officials agreed to prepare affidavits to that effect.

[19] He signed the affidavit, prepared by the officials, on 1 September 2008 at the Matlala police station in Vlakfontein village. In this affidavit he confirmed that he lodged a claim on behalf of the community. He clarified that he did not write the affidavit himself; it was drafted by the officials from the Commission. He was accompanied by Mr Maruping and Ms Masia and was given a copy of the affidavit.

[20] Mr Nkgoeng further testified that the officials told him everyone who was affected should prepare affidavits detailing their personal experiences of the forced removals. He confirmed that community members completed and submitted these affidavits; three to four boxes in total. However, the community were not given copies, nor instructed to retain any. The affidavits were collected monthly by the officials.

[21] He recalled a subsequent meeting in October 2008 at a local shop in his village, initiated by senior officials from the Commission including Mr Tele Maphoto, Mr Nkatinga and Mr David Sello, amongst others. The purpose was to hear from the broader Matlala community, and many people attended. After that meeting, Mr Maphoto informed him that a second claim had been submitted by another group (referred to as the "Kgoshigadi side") and that the two claims would be merged. Although this concerned him, he chose to remain quiet.

[22] Mr Nkgoeng described how officials from the RLCC returned to the area to conduct what was called a "survey," though it was more accurately an *inspection in loco* to gather evidence. A community meeting was held on 5 May 2009 with people

⁵ Court Transcript dated 20 May 2025 p9.

residing in" R28" villages, led by Ms Rifa Sithaka and Mr Lucas Modika, where the community members were asked to provide affidavits and accompany the officials to former homesteads, graveyards, and ruins. Surveying equipment was used, and pictures were taken by unidentified individuals. A videographer was hired by the community to record the entire process, funded by contributions from members. This video, later submitted as Exhibit G, was intended to serve as evidence of the inspection, and to demonstrate that the land was once occupied.

[23] Mr Nkgoeng emphasised that not all community members participated in the inspection due to the challenging terrain. He accompanied the RLCC officials to multiple villages, and showed them ruins and graveyards.

[24] Mr Nkgoeng stated that the RLCC officials instructed him on how to complete affidavits, including detailing where individuals were moved from and where they reside now. He received a sample affidavit from Mr Modika to use as a template. After the inspection, the RLCC officials were supposed to return to collect affidavits.

[25] In 2010, names of the affected individuals were submitted to a lawyer representing the claimants. Mr Nkgoeng signed a power of attorney on 27 May 2009. Some later affidavits were submitted through this lawyer. Still, no copies of prior affidavits were returned to claimants.

The settlement offers

[26] Mr Nkgoeng testified that he received some correspondence from the RLCC, including letters dated 23 April 2009 and 8 March 2009. These letters were not addressed to him personally but referred to the Ga-Matlala land claim, signifying that it was a community claim.

[27] In contrast, when offers were made to settle the claim, they were addressed to him individually. He received two offers; one on 6 March 2019 and another on 14 October 2020. He rejected both, stating that he could not accept them as they failed to acknowledge the communal nature of the suffering and the claim. When asked whether the offers indicated his claim was valid, he responded affirmatively, but

stressed that he was not the only one who suffered. He wanted the court to assist the entire community.

[28] He concluded his testimony by emphasising the traumatic nature of the removals and the danger of challenging traditional authorities at the time. The secrecy of his actions was necessary for his safety and that of others. He reiterated that at the time of dispossession, people could not lay criminal charges against the chief, as retaliation was severe. He had to lodge his claim secretly and far from home to avoid persecution. Community meetings were prohibited.

[29] Under cross-examination, Mr Nkgoeng confirmed that he originated from a village that shares his surname. He also acknowledged that a headman was present at the time he lodged the claim, but to his knowledge, no claim was lodged on behalf of the village by that headman. When asked whether he knew about the claim by Kgoshigadi Matlala, he responded that he did not know. He acknowledged the jurisdiction of Kgoshigadi BK Matlala.

[30] He testified that his land claim was lodged in Gauteng (where he was living at the time in Tembisa) without any assistance. The claim was later transferred to Limpopo, the region with jurisdiction. Mr Nkgoeng confirmed that his claim was submitted in 1998, before the legal cut-off date, and that the RLCC in Limpopo conducted a full investigation, which included a site inspection by the RLCC's officials.

[31] Mr Ngobese (counsel for the commission) put it to Mr Nkgoeng that the Department of Land Affairs ("the Department") had surveyed a portion of land (approximately three hectares), which was believed to be his claimed land. He disagreed and clarified that his claim was for a larger portion of land that surrounded the surveyed area and was meant to benefit all members of the community affected by the forced removals, not just himself.

[32] He was referred to a survey conducted on 24 April 2018, attended by survey technician Mr K Baloyi and Ms Rifa Sithaka. Mr Nkgoeng stated that this was not the first visit by officials to the area.

[33] Mr Ngobese compared the claim form in possession of the Department with the version provided that Mr Nkgoeng provided to his attorney. Mr Nkgoeng acknowledged that the Department's version bore an official stamp, while the attorney's copy did not. He stated that he received the unstamped version around 2011–2012 from Ms Rifa Sithaka, who asked him to review it at home. Upon inspection, he found that the information differed from the version he had previously completed and received from Ms SD Masia and Mr SE Maruping on 1 September 2008, which did have an official stamp.

[34] Mr Nkgoeng expressed concern about the discrepancy and claimed he had never before seen the version given to him by Ms Rifa Sithaka. He filed written complaints regarding the differences in the claim form but never received any response from the RLCC officials.

[35] Mr Nkgoeng testified that the claim form he originally submitted was complete and accurate and included reference to the community. However, the claim form currently in the Department's possession omitted this information. In particular, paragraph 2.3 on page 2 and paragraph 9 on page 4, were completed in his version, but the contents of these paragraphs were blank in the Department's version.

[36] He stated that he used the term "we" in his form intentionally, to indicate that the claim was made on behalf of the community. He claimed the omission of the community reference was not his doing and may have been part of an effort to undermine the community claim. He reiterated that the RLCC officials never informed him that they were processing the claim as an individual claim rather than a community claim.

[37] When asked by Mr Ngobese why there was no formal community resolution authorising him to lodge a claim on their behalf, Mr Nkgoeng explained that at the time, community meetings were prohibited by the chief, and those who tried to gather risked severe consequences, including arrest. He stated people were ill-treated by the chief who would rather kill him than accept his claim. Thus, word about the claim was spread informally.

[38] He acknowledged that supporting affidavits were only submitted in 2009, well after the 1998 cut-off date. However, he explained that these affidavits were requested by the RLCC officials after the original claim had already been submitted. He maintained that the affidavits were submitted in compliance with their instructions and should not disqualify the claim.

[39] Mr Nkgoeng disputed allegations that he had claimed the land solely for himself or for financial gain. He specifically denied telling officials that compensation offered to him was too little or that he had demanded a new house. He stated that any offer made should have included the community, as they had all suffered.

[40] He claimed he was misled by officials into signing forms under the impression that they were for listing community beneficiaries. These forms, he said, were written in English, a language he struggled with, and he signed them believing they were in support of the community, not just himself.

[41] Mr Nkgoeng further stated that since 2011 he had consistently submitted complaints about discrepancies in the documentation and misrepresentation of his claim. Despite having his complaints officially stamped, he never received any feedback or resolution. He also informed parliamentary offices in 2012 and was promised assistance that never materialised.

[42] He strongly objected to any attempt to consolidate his claim with that of the Matlala Tribal Authority, asserting that the Tribal Authority was responsible for the community's suffering. He testified that he was chased away by the Tribal Authority when he tried to discuss his claim with them and that he was later ostracised for his efforts to represent the community independently.

[43] The consolidation of the claims was presented to him by officials like Mr David Sello and Mr Tele Maphoto, but he never agreed to it, fearing that his claim would be subsumed or lost entirely under a broader claim by the Tribal Authority.

[44] During re-examination, Mr Nkgoeng confirmed that when he met with Ms SD Masia and Mr SE Maruping in 2008, he informed them that his claim was on behalf of the community, not an individual claim. They were satisfied with this explanation and assisted him in preparing an affidavit at a police station.

[45] He reiterated that officials instructed him in 2008 to collect and submit community affidavits, and that at no point were these affidavits rejected on the basis of timing.

[46] He was shown a claim form by the Respondents, which bore his handwriting but had altered content; specifically scratched-out phrases and missing paragraphs. He maintained that the altered version was not the same as the form he had originally submitted.

[47] Mr Nkgoeng concluded by stating that he only had a Form 3 (Standard 8) level of education and had completed the forms without any legal or official assistance. He believed that officials used him as a “stepping stone” or intermediary while disregarding the community’s needs.

[48] He insisted that his claim was always intended to be a claim on behalf of the community and that discrepancies in documentation, misinformation, and exclusion of community references were either due to “tampering” or miscommunication by officials.

Witnesses for the Applicants

Mrs Raisibe Agnes Monyebodi

[49] Mrs Monyebodi testified that she also lived in Nkgoeng village under Chief BK Matlala in 1980 but relocated to Mamphulo after the traumatic forced removals, during which homes and property were burned by people sent by the chief. She confirmed that the dispossession and removals in the area are well documented, but the issue is whether she personally lodged a land claim.

[50] She explained that Mr. Nkgoeng obtained a claim form in Gauteng shortly before the deadline for lodging claims expired, and he informed the dispersed community by word of mouth, as formal meetings were impossible due to fear of arrest. She later submitted an affidavit, though uncertain about the date, and confirmed it bore her late husband's surname. Affidavits were collected from affected villages without acknowledgment by RLCC officials. These officials later searched for "Frans" as the claimant, initially confusing his name, and after clarification he met them. She confirmed Mr Nkgoeng lodged the claim on behalf of the community but no written mandate or resolution was given because members were scattered.

[51] When confronted during cross examination with the issue of a mandate or resolution she stated that she did not understand the legal terminology as she was not literate. She emphasised the community's continued fear of gatherings even after democracy, that she did not personally submit a claim form before 1998, instead affidavits, including hers, were submitted in 2009 at the RLCC's instruction. She said the community never received feedback on the claim and asked the court to consider the damages and hardship suffered as they had to rebuild their lives after the forced removals.

Mr Mashato Stephen Selolo

[52] Mr Selolo testified that he was a member of the community forcibly removed from their land. At the time, he resided in a village located within the greater Ga-Matlala area. He recalled the names of neighbouring villages affected by the same removals. He estimated the distance between his village and the village of Mr Nkgoeng to be approximately 30 to 35 kilometers.

[53] He testified that following the forced removals and dispossession, Mr. Nkgoeng secretly began engaging with members of the community. He encouraged people to spread the word about the land claim process. Due to fear of arrest and intimidation by police and soldiers, public meetings were not permitted. Instead, members of the community communicated in secret, whispering to each other and meeting informally

to avoid detection. Mr Nkgoeng specifically instructed him to pass along the message in this manner.

[54] He further stated that during this period, many people were beaten and arrested by the police. Others suffered further loss when their properties were burned by unidentified groups. Despite these challenges, the community collectively agreed that Mr Nkgoeng should proceed with lodging a land claim on their behalf. He was unaware of any community members who opposed this course of action.

[55] Mr Selolo testified that he personally prepared and submitted an affidavit documenting the damages he and his family suffered, including loss of property and animals, as a result of the forced removals. He explained that this occurred a long time ago, and while he could not recall every detail, he remembered the key aspects. He believed that this affidavit was submitted around May 2009, following instructions from Mr Nkgoeng who told him and others to submit affidavits to the officials from Land Affairs. However, he could not recall the names of any specific officials.

[56] He stated that no acknowledgment or receipt of the affidavits was provided, nor did the community receive any communication or updates about the claim. To this day, he has no knowledge of the status of the land claim. He expressed surprise at being called to testify and appealed to the court to assist the affected community in receiving reparations for the losses they suffered during the forced removals.

[57] Under cross-examination, Mr Selolo confirmed that he was part of the community that was forcibly removed. He agreed that he was 17 years old at the time of the removals, and the household referenced in his affidavit belonged to his parents, who are now deceased.

[58] When asked by Mr Ngobese why he had not mentioned Mr Nkgoeng's village among the list of affected areas, he explained that he listed all the villages he could remember. He acknowledged that his reference to the 30–35 km distance between his village and Mr Nkgoeng's village was only an estimate.

[59] He was referred to his previously signed statement, where he confirmed that he and his immediate family were dispossessed and removed from Koelstam village. He explained that during apartheid, the broader area was referred to as "R28," which encompassed multiple villages, including his own.

[60] Mr Ngobese put to it to him that he never personally lodged or submitted a formal land claim to the First and Second Respondents. He responded that the forms were completed, but he did not know what happened to them afterward. He maintained that the forms were filled in before 31 December 1998. When asked about documentation submitted in May 2009, he clarified that those were affidavits prepared in support of the claim, but they were never processed by the Respondents.

[61] He confirmed that other villagers also submitted affidavits around the same time. However, he admitted that there was no written resolution or document giving Mr Nkgoeng formal authority to lodge the claim on behalf of all the community members.

[62] During re-examination, he reiterated that "R28" was a term used to describe a collection of villages within the Matlala region, including his own. He confirmed that, to his knowledge, no officials from the Commission ever visited the community to advise them of their right to lodge a claim. He stated emphatically that if it were not for Mr Nkgoeng they would not have known that they were entitled to lodge land claims at all.

Witnesses for the Respondents

Mr Tele Maphoto

[63] Mr Maphoto is the Chief Director in the office of the RLCC in Limpopo. During his testimony he provided detailed explanation about the procedure adopted by the RLCC when investigating a land claim.

[64] He testified that the Commission is mandated under the Restitution Act to investigate and process land claims, determining whether they are lodged by

individuals, families, or communities, and whether they fall within the statutory cut-off of 31 December 1998. Claims go through operational, legal, and quality review processes before approval.

[65] According to his evidence, Mr Nkgoeng, lodged a family claim. Mr Nkgoeng later objected to the processing of the claim and rejected the offer that was made to him, requesting a higher amount and inclusion of additional families.

[66] At a meeting held on 1 July 2020 between Mr Nkgoeng and the RLCC officials, it was explained that the claim form reflected a family claim and that it could not be converted into a community claim.

[67] A second revised settlement offer was presented to Mr Nkgoeng in December 2020 after adjusting the offer in line with inflation, but Mr Nkgoeng again refused, asking for benefits not provided under Restitution Act.

[68] Mr Maphoto stated that the claim underwent full verification, including compiling a family tree and confirming descendants of Mr Nkgoeng as the ODI. It was approved as a family claim in compliance with legal requirements. He stated that the Commission cannot alter the classification of a claim post-submission.

[69] During cross examination he was challenged by Mr Manale with the conduct of the officials in requesting affidavits which he conceded may have been a mistake.

[70] He stated that the claim arose as a result of "Betterment Schemes" and it was recommended that it be merged with the claim of Chief Matlala. This is trust land which cannot be restored. The claim lodged by the Chief is for upgraded tenure.

Mrs Makgati Lorraine Mosebedi

[71] Mrs Mosebedi is employed as the Manager responsible for management of records and ledgers in the offices of the RLCC, as well as managing statistics since 8 August 2003 . She gave evidence about the integrity of the systems and explained that the RLCC uses an Electronic Document Management System (EDMS) to store

scanned claim-file records alongside the physical file. She can retrieve documents by claimant name or reference number.

[72] During examination-in-chief, she explained that the issue of Mr Nkgoeng's claim form only came to her attention this year (2025) when Ms Iris Mulaudzi, a legal official came to her with a request for the original claim form. It was then discovered that they only had a copy of the claim form in their possession. The original claim form could not be located.

[73] When asked to compare the two versions of the land claim form and identify the differences, she stated that the EDMS version bears the Commission date stamp, as all lodged claims do, and this version was admitted as Exhibit "O." She testified that EDMS file content corresponds with the physical registry file. Public access is not allowed, but she demonstrated the system for legal practitioners and previously provided the same claim form to Ms Mulaudzi. Only herself and registry clerks have EDMS access; attorneys must request specific documents, which the staff print or copy from the physical file in their presence. Physical files are not released from registry.

[74] Under cross-examination, she confirmed the Mr Nkgoeng's claim form was uploaded to EDMS in 2011, She conceded that she could not know what happened to the claim form before the upload. Scanning and uploading were done by an external service provider, and she could not confirm who compiled the physical file before scanning nor could she know whether any "tampering" to the claim form had occurred. If the document was tampered with it would be scanned "as is".

Ms Rifa Sithaka

[75] Ms Sithaka is a Project Co-ordinator with the Limpopo office of the RLCC, employed since April 2009. She investigates and finalises land claims, including the claim of Mr Nkgoeng, which was allocated to her when she joined the RLCC.

[76] She described the investigation process which she conducted. After the investigation, she prepared an affidavit for Mr Nkgoeng , ensuring he understood and signed it.

[77] She produced two research reports: the first in April 2009 which recommended further investigation. It considered but did not consolidate Mr Nkgoeng's claim with the Bokone ba Ga-Matlala claim as they arose from different circumstances. Also, the claim of Mr Nkgoeng was for restitution and the claim of the Kgoshi was for tenure upgrade. The second report (2017/2018) recommended acceptance of Mr Nkgoeng's claim as an ODI and was approved by the Chief Director.

[78] She also conducted a site inspection with Mr Nkgoeng, photographed graves, and participated in a formal survey (sometime during April 2018) confirming approximately 2 hectares of land linked to Mr Nkgoeng within Matlala's Location farm. Mr Nkgoeng's claim was subsequently gazetted for 2.2917 hectares. Verification was done and confirmed one household and three beneficiaries (his descendants) through a signed family tree.

[79] She stated that Mr Nkgoeng opted for financial compensation, and accordingly, an offer was prepared and approved by the RLCC. Mr Nkgoeng rejected the offer, thus leaving the matter unresolved. Ms Sithaka testified that the documentation and verification were satisfactory and supported the making of the offer.

[80] During cross examination Mr Manale put it to her that the provisions of section 10 of the Restitution Act allows that further documents may be submitted later, and that these affidavits were submitted in support of the land claim. Her response was that the affidavits did not mean the claim was for the community. It cannot change the land claim form,

[81] According to her evidence individuals who were dispossessed as a result of betterment schemes qualify for restitution, This is why she recommend acceptance of the claim in her second report.

Evaluation of the oral evidence

[82] It is clear from the evidence given by all the witnesses that there are two irreconcilable versions on the central issue. The correct approach to the evaluation of mutually destructive versions was stated in *National Employers' General Insurance v Jagers*⁶ as follows:

'It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where then onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case anymore that they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true, and that the defendant's version is false.'

[83] In the case of *Stellenbosch Farmers Winery Group Ltd and Another v Martell & Cie SA and Others*⁷ the Court laid down the framework to weigh (a) the credibility of each witness, (b) the reliability of their evidence, and (c) the inherent probabilities of their versions in the light of all the evidence. Credibility depends on candour, consistency, and demeanour; reliability is measured against objective facts, documents, and the probabilities of the case.

⁶1984 (4) SA 437 E at 440E-441A.

⁷ 2003 (1) SA 11 (SCA) (*Stellenbosch*).

[84] Guided by this legal framework I evaluate the evidence of all the factual witnesses on credibility, reliability, and probabilities.

Assessment of the Applicants' factual witnesses

[85] **Mr Nkgoeng** presented as an elderly man with white hair who walked with the assistance of a stick. His advanced age and frailty were evident. He was not very literate and had limited proficiency in English, requiring the assistance of an interpreter in the proceedings.

[86] His demeanour was respectful but insistent. He often sought to explain matters at length rather than confining himself to short answers. The Court formed the view that this insistence was not evasive but arose from a genuine desire to ensure that his account was fully understood.

[87] He remained adamant and consistent on the central aspects of his testimony. While he occasionally displayed confusion about dates and sequences of official interactions, his consistency on the core issues, together with his detailed account of interactions with named officials, supported the reliability of his evidence. I therefore find that Mr Nkgoeng is a credible witness.

[88] **Mrs Monyebedi** is also an elderly woman who candidly acknowledged her illiteracy and lack of understanding of legal concepts such as "mandate" and "resolution." She was not proficient in English, and her testimony was conveyed through an interpreter. Her demeanour was steady and sincere. She did not attempt to embellish or exaggerate her account. She was willing to concede uncertainty, particularly regarding dates, while remaining firm on the essence of her evidence.

[89] She admitted she had not personally lodged a claim form before the 31 December 1998 deadline but was unwavering that Mr Nkgoeng had acted for the community and that no one objected to inclusion under his claim. Her evidence was marked by frank admissions of ignorance on technical matters but also by clarity and

consistency on the material facts. I accept that her illiteracy and limited recall on dates were genuine, and not contrived.

[90] **Mr Selolo** is a younger member of the community. He was 17 years old at the time of the removals. His demeanour in court reflected this relative youthfulness when compared to the older witnesses.

[91] He gave his evidence in a straightforward and candid fashion. He was measured in his responses and did not appear evasive. Where his memory failed him, such as in estimating distances between villages or recalling precise dates of affidavit submission, he readily acknowledged those limitations. This frankness enhanced, rather than diminished, the credibility of his testimony.

Assessment of the Respondents' witnesses

[92] **Mr Maphoto** presented as a professional of evident education occupying a senior role within the RLCC. His demeanour was confident and composed throughout his testimony. He expressed himself clearly and demonstrated a strong command of both the legal framework and the administrative processes governing restitution claims.

[93] He answered questions directly, often supplementing them with detailed explanations of procedure, hierarchy, and statutory obligations. His testimony reflected familiarity with the systems under his oversight and conveyed an air of authority consistent with his senior position.

[94] On the core issues, his evidence was consistent and firmly anchored in the statutory framework. He repeatedly emphasised that the claim by Mr Nkgoeng had been submitted as a family claim and could not lawfully be converted into a community claim post-submission. He supported this with reference to the verification process, multi-layered reviews, and the principle of safeguarding the integrity of the restitution process.

[95] **Mrs Mosebedi** was composed with a calm demeanour. She explained technical matters clearly, demonstrating both familiarity with the RLCC's systems and a practical understanding of procedures in her office.

[96] In her evidence-in-chief, she gave a structured explanation of the EDMS, its relationship with the physical registry files, and the procedures for accessing and providing documents. She spoke confidently about access restrictions, stamping practices, and the integrity of daily operations. Under cross-examination, she conceded fairly when limits to her knowledge were exposed. She acknowledged that Mr Nkgoeng's claim form had only been uploaded to EDMS in 2011, and candidly admitted that she could not account for what occurred to the claim form before that date. She confirmed that uploading was performed by an external service provider and that she was not involved in compiling the physical file. These concessions were given openly, without defensiveness.

[97] **Ms Sithaka** was soft spoken, insecure and came across as defensive. Her demeanour under questioning was at times evasive and guarded. She did not answer certain questions directly and often gave the impression of withholding information. Her manner suggested a reluctance to engage fully with issues that reflected poorly on the RLCC handling of the claim.

[98] The overall impression created was of a witness who was not entirely frank with the Court. Her evidence, while detailed on administrative processes, carried the sense of a person concealing weaknesses in the RLCC investigation. As such, her demeanour detracted from her credibility and raised questions about the reliability of her testimony.

Findings on the probabilities

[99] The dispute turns on the nature and validity of the land claim lodged by Mr Nkgoeng. To resolve this, the Court must analyse several factual questions that flow logically from the main issue: first, the authenticity of the competing versions of the claim form; second, the scope of the claim and whether Mr. Nkgoeng acted with a

mandate from the community; third, the status of affidavits collected years after the cut-off date; fourth, the relationship between Mr Nkgoeng's claim and the parallel claim lodged by Kgoshigadi Matlala on behalf of the Bokone ba Ga- Matlala tribe; and finally, the credibility and reliability of the factual witnesses.

Authenticity of the claim forms

[100] Mr Nkgoeng gave clear, consistent testimony that the claim form he received back from the Commission had been altered; specifically, that paragraph 2.3 on page 2 and paragraph 9 on page 4, which appeared in his version, were missing from the Department's version. His evidence on this point was not seriously challenged under cross-examination.

[101] By contrast, none of the Respondents' witnesses could account for the whereabouts of the original claim form. The Commission could only produce a stamped copy. No witness could explain when, how, or why the deletions occurred. This unexplained absence of the original document detracts from the reliability of the Respondents' version.

[102] The critical question is: which version of the claim form is the one actually lodged on 30 December 1998?

[103] On the probabilities, the version produced by Mr Nkgoeng must be preferred. The Commission, as the custodian of lodged claims, bears responsibility for keeping the original. Its failure to produce the original form means there is no documentary basis to contradict Mr Nkgoeng's testimony. The absence of a plausible explanation for the missing paragraphs supports the inference that his version reflects the true content of the lodged claim.

[104] Even if one considers the possibility of later alterations or additions, the Commission's inability to produce the original claim form prevents the court from determining when any changes occurred. In accordance with the decision in *Stellenbosch*, the court must weigh the inherent probabilities: it is more probable that

Mr Nkgoeng's copy, which contains the disputed paragraphs, represents the form he lodged, than that he fabricated those portions.

[105] The credibility of Mr Nkgoeng, the unreliability of the Respondents' account (due to the missing original claim form), and the inherent probabilities all converge in favour of his version. The only logical inference the court can draw on a balance of probabilities is that Mr Nkgoeng's version is correct and that the deletions on the Department's copy occurred after lodgment. Consequently, I accept his version as the authentic claim form lodged on 30 December 1998.

Nature and scope of the claim

[106] Mr Nkgoeng testified that the land claim was always intended as a community claim, so the question arises; was there a valid mandate or authorisation from the community?

[107] The witnesses for the Applicants testified, without contradiction, about the pervasive climate of fear that existed at the time. It was impossible for the community to hold meetings or gatherings. This made it equally impossible to obtain any kind of resolution or mandate to act on behalf of the community.

[108] Chief Matlala had strictly prohibited gatherings, and persons who disobeyed him were met with violent reprisals, some even lost their lives. Under these oppressive conditions, open collective decision-making could not occur.

[109] In response to this reality, Mr Nkgoeng acted discreetly. He informed a few trusted individuals and relied on word-of-mouth communication to spread knowledge of the claim. This was not a matter of choice or convenience but the only safe and viable method of informing the community.

[110] It is a trite principle of our law that the law does not compel a person to do the impossible.⁸ Where strict compliance with a statutory requirement is objectively impossible, the court is entitled to accept substantial compliance, or even excuse non-compliance, provided the purpose of the requirement has been met as far as reasonably possible.

[111] The uncontested evidence shows that community members were informed (albeit secretly), and there was no dissent or objection to Mr Nkgoeng acting on their behalf,

[112] On the Applicants' version: the risk of death or punishment for holding meetings was real and credible, word-of-mouth communication was used as the only safe channel to inform community members about the land claim.

[113] On the Respondents' version, by contrast, there is no plausible explanation as to why a resolution could have been practically obtained under such conditions. Their evidence does not rebut the Applicants' claim that a formal mandate was impossible. The most probable and logical inference, therefore, is that the absence of a written resolution was the direct result of coercive and dangerous circumstances, not of negligence or disregard for the Restitution Act's requirements.

Supporting affidavits

[114] What weight, if any, should be given to affidavits collected in 2008–2009, long after the statutory cut-off date? Do those affidavits merely support an existing valid claim, or do they amount to impermissible late claims?

[115] Section 2 of the Restitution Act sets a cut-off date of 31 December 1998 for the lodgement of claims. The purpose of this provision is to identify all claims within a finite period so that they can be processed and finalised. It does not prohibit the submission of supporting evidence after the cut-off date.

⁸ Also translated in certain authorities as "the law does not compel the performance of the impossible" see *S v Woniwe* [2004] ZAWCHC 14 para 22.

[116] Mr Nkgoeng acknowledged candidly that the supporting affidavits were submitted only in 2008, well after the cut-off date. However, he explained that the original claim form had already been duly lodged on 30 December 1998. The supporting affidavits were requested by the RLCC officials during their verification process. The affidavits were provided to comply with the Commission's instructions, not to create a new claim.

[117] This evidence was not challenged. The Respondents led no evidence suggesting that the affidavits were intended to constitute fresh or separate claims. The Respondents' contention that the affidavits were "late claims" conflates the Restitution Act of lodging a claim with the process of supplementing evidence. The distinction is legally significant: lodgement fixes the claimant's right as at the date of submission, whereas supplementary affidavits are merely evidentiary tools that support and clarify the original claim.

[118] To hold otherwise would defeat the purpose of the investigative process under the Restitution Act, which expressly contemplates further enquiries, verification, and the gathering of additional information by the Commission after lodgement.

[119] In this regard, the probabilities favour the Applicants' version. It is inherently improbable that a claimant would wait ten years to lodge a new claim outside the cut-off period when he had already secured the lodgement of a valid claim. The more probable inference is that the affidavits were a responsive compliance with official directions aimed at strengthening and verifying the already-lodged claim.

[120] In my view, the supporting affidavits cannot in law or logic be treated as "late claims." They were evidence in support of a timely claim lodged before the statutory deadline.

Competing claim by Kgoshigadi Matlala

[121] Here the question is whether Mr Nkgoeng's land claim should be treated as one and the same as the claim lodged by Kgoshigadi Matlala on behalf of the Bokone ba Ga-Matlala tribe, or whether the two rest on distinct legal and factual bases.

[122] The Respondents argue that the claims should have been consolidated. The Applicants contend that they are fundamentally separate, aimed at addressing different forms of harm, and must be adjudicated independently.

[123] Mr Nkgoeng's claim was brought on behalf of a group of community members who suffered forced removals, burning of homesteads, destruction of fields, and loss of burial grounds as a result of the implementation of Betterment Schemes. The evidence demonstrates that his claim is grounded in historical dispossession and suffering, not merely tenure rights.

[124] By contrast, the Kgoshigadi's claim is brought in a representative capacity for the Bokone ba Ga-Matlala tribe. The focus of that claim, as appears from its formulation, is the tribal or chieftaincy claim for land traditionally occupied by the tribe and the possible upgrade of tenure. The relief sought under that claim concerns the recognition and restoration of the tribe's traditional landholdings under the authority of the chieftaincy.

[125] The two claims rest on different legal bases. They also serve different constituencies: Mr Nkgoeng represents affected households and families. The Kgoshigadi represents the tribal authority and its collective governance interests.

[126] If the claims were consolidated without careful distinction, there is a real risk that the personal redress for affected communities would be subordinated to tribal authority interests, and remedial purpose of the Restitution Act would be frustrated by granting restoration to a structure that historically presided over, or even facilitated the removals in question.

[127] I am of the view that the two claims are separate. One addresses historical injustice and dispossession under apartheid, the other addresses recognition of tribal tenure. Consolidating them would ignore these distinct bases and may result in conflict of interest rather than resolution. The two claims are distinct in law and fact. They should not be conflated or merged.

[128] Each should be investigated and adjudicated on its own merits, ensuring that the rights of dispossessed communities are not subsumed under a broader chieftaincy claim that does not necessarily reflect their lived experience.

The statutory framework

[129] The point of departure in restitution matters is section 25(7) of the Constitution which entitles restitution to individuals or communities dispossessed after 19 June 1913 due to discriminatory laws.⁹ This section birthed the Restitution Act.

[130] Section 2(1) of the Restitution Act defines entitlement to restitution.¹⁰ It states that person is entitled to enforce restitution of a right in land if he or she is a person or community contemplated in the Constitution and lodges a claim within the statutory period. Section 2 ties entitlement to the 19 June 1913 cut-off date and emphasises that both individuals and communities may claim.

[131] The functions of the Commission are set out in section 6 of the Restitution Act. The Commission must receive and acknowledge claims, assist claimants in preparing

⁹ Section 25 (7) of the Constitution of the Republic of South Africa Act, 1996:

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 an Act of Parliament, either to restitution of that property or to equitable redress.

¹⁰ Section 2(1) of the Restitution of Land Rights Act 22 of 1994: Entitlement to restitution:

(1) A person shall be entitled to enforce restitution of a right in land if—

(a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person;

(b) the claim is precluded by section 121 (4) of the Constitution; and

(c) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the *Gazette*.

(d) it is a community or part of 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 30 June 2019.

claims, and *advise claimants of the progress of their claims at regular intervals*. This provision imposes a positive duty of communication and assistance.

[132] The procedure to be followed in lodging claims is set out in section 10 which states that any person or a representative of a community may lodge a claim using the prescribed form. When a claim is lodged on behalf of a community, the Restitution Act requires that the basis of representation be fully declared and that an appropriate resolution or supporting document accompany the form. It contains a proviso:

Section 10(3)-If a claim is lodged on behalf of a community the basis on which it is contended that the person submitting the form represents such community, shall be declared in full and any appropriate resolution or document supporting such contention shall accompany the form at the time of lodgement: *Provided that the regional land claims commissioner having jurisdiction in respect of the land in question may permit such resolution or document to be lodged at a later stage.* (my emphasis)

[133] The procedure after lodgement is described in section 11 and states that once a claim is lodged, the RLCC must publish a notice of the claim, if the claim meets certain criteria. If the criteria are not met, the commissioner must advise the claimant accordingly and provide reasons. The commissioner may not dismiss a claim for frivolity without informing the claimant.

[134] The investigatory powers of the Commission are set out in section 12 which states that the Commission may conduct investigations and require information; these powers must be exercised fairly and within the bounds of the Restitution Act. The Commission's Rules (especially Rules 3 and 5) supplement the Restitution Act by specifying the form of claims, verification of community resolutions and publication procedures.

Discussion

[135] In deciding whether the claim is individual or communal, this Court must interpret the claim form, statutes and affidavits having regard to principles of interpretation.

[136] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹¹ the SCA emphasised that interpretation is “not a purely literal exercise” but one that considers language, context and purpose: a document must be construed against the factual matrix known to the parties. The court held that the ordinary grammatical meaning of words should prevail unless there is latent ambiguity. This principle requires the court to read the land claim form holistically and purposively.

[137] Section 2(1) of the Restitution Act entitles a person or community to claim restitution if they qualify under the Constitution and lodge a claim within the statutory period. Mr Nkgoeng lodged his claim by 30 December 1998, within the cut-off period. The question is whether he did so as a “person” under section 2(1)(a) or as a “community” under section 2(1)(d). The Restitution Act defines “community” broadly to include any group whose rights derive from shared rules.

[138] The Respondents argue that this claim clearly falls under section 2(1)(a); meaning individual dispossession. They further argue that section 10(3) requires express authority if lodging a claim for a community, which in this case was absent.

[139] The difficulty with this argument is that Respondents treat the affidavits submitted after the cut off date as *per se* irrelevant, in other words it cannot be processed or entertained, on the basis that these affidavits would amount to a prohibited “conversion.” of the land claim .

[140] In my view that is too absolute. Section 10(3) contains a provision allowing the resolution or document supporting representational authority to be lodged “at a later stage.” The Respondents’ arguments collapsed on two distinct points: (i) changing the *type* of claim (conversion) and (ii) supplying missing *authority* evidence for a claim that was always meant to be communal.

[141] By treating *any* late material as an impermissible conversion, they risk conflating (i) and (ii), and brings about the section 10(3) provision into near-

¹¹ 2012 (4) SA 593 (SCA) para 18 (*Endumeni*).

redundancy. It begs the question: if late authority can never be relied on, when does the provision ever bite?

[142] The “late affidavits” are dismissed without grappling with the Commission’s own conduct. It is undisputed that the officials engaged with Mr Nkgoeng, verified, conducted inspections, and advanced the process which culminated in a verification list signed in 2018. The Commission itself solicited or received information post-lodgement (as it is empowered to do).

[143] The Commission ordered community meetings and collected affidavits after lodgement, which suggests it implicitly permitted late proof of authority. The affidavits and resolutions submitted in 2008–2009 could therefore satisfy s 10(3). It would be inconsistent with Restitution Act’s remedial purpose to ignore these documents solely because they were not attached to the original form.

[144] The Respondents further argue that no objections were received after the 2018 Gazette; therefore, the classification stands. But a claimant’s failure to object to a notice is not a waiver of review rights under section 36 of the Restitution Act¹² or under PAJA¹³; nor is it conclusive proof that the gazetted classification was correct. The Gazette is a *step*, not a merits determination of the claim’s category or scope. Over reliance on this fact risks a formalist interpretation.

[145] Section 6 of Restitution Act obliges the Commission to assist claimants and to “advise claimants of the progress of their claims at regular intervals”. Section 11(4) requires the RLCC, when rejecting a claim, to advise the claimant of the decision and give reasons. In this case, the Commission accepted the claim as a community claim at first: it convened community meetings, took affidavits and inspected the land. Later, without explanation, it treated the claim as individual and gazetted it as such. The

¹²The Restitution of Land Rights Act 22 of 1994-Review of decisions of Commission- Section 36-(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.[subsection (1) substituted by section 21 of Act 78 of 1996](2)The Court shall exercise all of the Supreme Court’s powers of review with regard to such matters, to the exclusion of the provincial and local divisions thereof

¹³ Promotion of Administration of Justice Act 3 of 2000

Applicants were not informed of the change and were denied reasons. This failure contravenes the statutory duty of candour and procedural fairness.

[146] The Respondents rely on *Minaar NO v Regional Land Claims Commissioner for Mpumalanga and Others*¹⁴ for support that you cannot condone a *conversion* of a land claim after the cut-off date, and that subjective intention cannot expand a claim. This case is distinguishable because the evidence shows the 1998 claim form suggested a wider community group and the Commission acted as if authority could be regularised later (per s 10(3) proviso).

[147] In *Farjas (Pty) Ltd v Regional Land Claims Commissioner*¹⁵, Dodson J held that the RLCC may decide only whether a claim is *arguable*. If arguable, the claim must be referred to the Land Claims Court for adjudication; the commissioner cannot decide the merits or re-characterise a claim. The court emphasised that fairness requires the commissioner to assist claimants and to act within statutory bounds.

[148] The Court in *Mahlangu Family v Minister of Rural Development and Land Reform and Another*¹⁶ confirmed that Commission has no power to convert claims from community to individual or vice-versa; only the Court can determine the nature of a claim after hearing evidence. The Commission must treat the claimant's declared intention with deference unless there is clear fraud.

[149] Collectively, these cases underline that the Commission's investigative steps are preparatory and do not constitute administrative decisions subject to review. Only the decision to accept or reject a claim (for example, by publishing a notice or advising the claimant that the claim is invalid) is reviewable under the PAJA.

[150] The *Endumeni*¹⁷ approach requires that documents be interpreted holistically, considering language, context and purpose. The ordinary meaning of the claim form

¹⁴ *Minaar NO v Regional Land Claims Commissioner for Mpumalanga and Others* (LCC42/06) [2006] ZALCC 12

¹⁵ *Farjas (Pty) Ltd v Regional Land Claims Commissioner, KwaZulu-Natal* (1998 (2) SA 100 (LCC).

¹⁶ *Mahlangu Family v Minister of Rural Development and Land Reform and Another* (LCC 48/2011) [2014] ZALCC 10.

¹⁷ *Endumeni* supra n10 para 18.

lodged by Mr Nkgoeng must therefore be read in light of his references to "we," the land description as the "R28" covering multiple villages, and the violent history of community dispossession. A literal reading that focuses only on the presence of his personal details would ignore the broader context and the purpose of the restitution regime.

[151] Evidence was led that supported the fact that the land was occupied by the affected community members and supported that the claim falls within section 2(1)(d) rather than section 2(1)(a). These facts suggest that Mr Nkgoeng's claim was intended and pursued as a community claim. The evidence of community involvement and the Commission's own conduct support a finding that the requirements of section 10(3) were substantially met and that the claim falls under section 2(1)(d). The Commission's later decision to classify it as individual claim without giving reasons breached its duties under ss 6 and 11 and exceeded its statutory powers.

Conclusion

[152] The suffering that was inflicted upon this community was as a direct result of "Betterment Schemes" introduced by the apartheid government in collusion with the local Chief. This was conceded by the Respondents.

[153] Mr Nkgoeng's claim form described land occupied by multiple villages and used collective language ("we"), suggesting an assertion of community dispossession rather than that of an individual. Subsequent affidavits and community meetings confirmed that the claim related to members of the Ga-Matlala community.

[154] During apartheid, "Betterment Schemes" were a series of state-mandated programs aimed at consolidating, controlling, and restructuring rural areas, first known as the "reserves" and later designated as "homelands" or "bantustans". Despite being presented as initiatives for agricultural development and environmental conservation, these schemes were a tool for entrenching the apartheid system of racial segregation and economic exploitation. The effects on African communities were devastating, causing significant social, economic, and political upheaval that contributed to the growth of landlessness, poverty, and dependence on the migrant labour system.

[155] African communities were forcibly resettled into demarcated residential areas. The new settlements were smaller, and people were forced to demolish their homes and rebuild them in a centralised location. The systematic uprooting of people caused immense trauma and destroyed pre-existing social structures and land-use systems. With their traditional livelihoods destroyed, many people became landless and were forced to seek wage labour in white-owned farms or mines. This created a large, captive pool of cheap labour for the white minority economy. This trapped African families in a cycle of poverty and dependence on low wages from the urban and mining sectors.

[156] The legal framework governing this dispute requires a purposive approach to give effect to the constitutional right of the community to equitable redress. Thus, treating the claim as a purely individual claim appears to undermine the constitutional objective of restoring communal rights and delivering restorative justice.

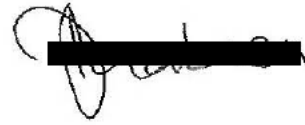
[157] Applying these principles, I find that the land claim that was lodged by Mr Nkgoeng was also on behalf of members of the Ga- Matlala community.

[158] With regard to the issue of costs there was no argument from the Applicants in this regard and I make no order, as it is the usual practice of this Court.

Order

[159] The following order is made:

1. The land claim lodged by Mr Matlou Frans Nkgoeng was lodged on behalf of Matlou Frans Nkgoeng and 579 members of the Ga-Matlala community.
2. The matter is referred back to the Commission on Restitution of Land Rights for further investigation.
3. There is no order as to costs.



MABASA D
Acting Judge
Land Court

APPEARANCES:

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