IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC 108/2019

Before the Honourable Petse AJ
Date of hearing: 02 December 2025
Date of judgment: 05 March 2026

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

05/03/2026 [redacted]
DATE SIGNATURE

In the matter between:

NKUNA TRADITIONAL COUNCIL	Applicant
and	
MINISTER OF RURAL DEVELOPMENT AND LAND REFORM	First Respondent
REGIONAL LAND CLAIMS COMMISSIONER, LIMPOPO	Second Respondent

BERLIN COMMUNAL PROPERTY ASSOCIATION Third Respondent

Summary: Review – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – administrative action taken some 15 years previously – applicant aware of process culminating in administrative action from its inception – review proceedings instituted long after expiry of period of 180 days – no allegations in founding papers of when applicant became aware of administrative action – no condonation sought as required by section 9(1) of PAJA – court precluded from entertaining review in such circumstances – application dismissed.

ORDER

The following order is made:

1. The application is dismissed with no order as to costs.

JUDGMENT

Petse AJ

Introduction

[1] On 30 August 2019 the applicant, Nkuna Traditional Council, brought an application by way of notice of motion against the first, second and third respondents in terms of section 6(1) of the Promotion of Administrative Justice Act.[1] The first respondent is the Minister of Rural Development and Land reform ("the minister"); the second respondent is the Regional Land Claims Commissioner, Limpopo ("the claims commissioner") and the third respondent is the Berlin Communal Property Association ("BCPA"). The third respondent is a Community Property Association established in terms of section 8(3) of the Communal Property Association Act.[2] It was issued with its certificate of registration on 6 August 2004.

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[1] Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[2] Communal Property Association Act 28 of 1996 (Communal Property Association Act).

The facts

[2] In terms of its notice of motion, the relief sought by the applicant was for an order set out below:

1. 'The review of [the] decision of the first and/or second respondent to effect restitution by awarding Portion I, Portion 2, Portion 3 and the Remaining Extent of Farm Berlyn 670 LT (hereinafter referred to as the four land parcels) to the third respondent.
2. Directing that the four parcels of land be transferred to the names of the Government of the Republic of South Africa or the first respondent who shall hold such properties in trust on behalf of the applicant and Nkuna traditional community.'

[3] Only the minister and the claims commissioner are opposing the application whilst the BCPA has not entered the fray choosing, instead, to remain supine.

[4] From the founding affidavit of the applicant, which was deposed to by Mr Ribye Charles Mohlaba, who is allegedly the chairperson of the applicant, certain material facts may be gleaned. On a reading of the founding affidavit the following summary of the facts that are relevant to what follows in this judgment may be extracted. It bears mentioning that these facts are for the most part either common cause or not in serious dispute:

1. The applicant is the Nkuna Traditional Council of Nkuna Royal Palace, Ka-Muhlava in Mopani district, Limpopo. The applicant is a traditional council contemplated in section 1 read with section 8 of the Traditional Leadership and Governance Framework Act 41 of 2003 which is the de facto governing authority of the Nkuna traditional community. Its core mandate is to administer the affairs of the traditional community in accordance with the customs and practices of the traditional community concerned;
2. The applicant seeks to review the decision of the minister, alternatively the claims commissioner to transfer the four parcels

of land in issue in this application allegedly owned by the applicant to the BCPA without its consent or involvement.

3. That in the course of executing its traditional duties, the applicant allocated a residential site to a certain Mr Edmond Baloyi in an area called Tshamahansi which forms part of the Farm Berlyn 670 LT and under its authority who intended to erect a dwelling thereon. However, Mr Baloyi was unable to build the intended dwelling because he was precluded from doing so by a Mr Cromwell Nhemo who claimed that the applicant had no right to allocate residential sites over the land because such land belonged to the BCPA.
4. As a result of this setback, representatives of the applicant made enquiries from the claims commissioner who advised that a group of persons under the auspices of the Berlin Community had lodged a land claim in respect of the four parcels of land which was, after compliance with legal prescripts, subsequently transferred to the BCPA.
5. Not entirely satisfied with the explanation provided by the claims commissioner, the applicant's representatives finally had a meeting on 21 May 2019 with the Chief Director in the claims commissioner's office. At this meeting, they were informed that the Berlin Community land claim was approved and, on 7 October 2008, the transfer of the four parcels of the land inclusive of the Remaining Extent of the farm Berlyn 670 LT to the BCPA was approved. And at the time when the transfer to the BCPA was approved, the land concerned belonged to the National Government.
6. The applicant asserted that it was "materially and adversely affected" by the transfer of the land to the BCPA, hence it sought that the transfer be reviewed and set aside.

[5] In an answering affidavit filed on behalf of both the minister and claims commissioner, deposed to by Mr Lebjane Harry Maphutha who is the Regional Land Claims Commissioner, Limpopo, the material averments contained in the founding

affidavit are denied. For the sake of convenience, I shall hereinafter refer to the minister and claims commissioner collectively as the respondents. Should there be a need to make reference to the third respondent it will be referred to as BCPA as stated above. Upfront, the respondents challenged the applicant's legal standing. The foundation for the challenge was that the applicant: (a) neither lodged a claim for the restitution of the land that is the subject-matter of the review proceedings nor raised any objection to the claim lodged by the individuals who later registered a communal property association under the name 'Berlin Communal Property Association' in terms of the Communal Property Association Act; and (b) the applicant 'never had any interest to the land claimed and...were not party to any claim and the decision' made in relation thereto.

[6] As to the merits of the applicant's case, the respondents asserted that:

1. A certain Mr Patric Mabinda and Mr Joseph Ngobeni lodged separate claims on 29 and 31 December 1988 respectively in respect of the Farm Berlyn 670 LT which were later consolidated into one claim on behalf of the Berlin Community;
2. The two claims were lodged before 31 December 1998 and therefore met the requirements of section 2(1)(c) of the Restitution of Land Rights Act;[3]
3. The claims were lodged as a sequel to the dispossession of the land that the community had occupied 'since time immemorial' and especially from 1963 to 1965;
4. The community was forcefully removed from their land to make way for the establishment of a sisal and citrus program under the auspices of the Department of Agriculture using a development vehicle known as a Parastatal to using the acronym ARAC;
5. Having satisfied themselves that the claims were legitimate, the claims (as consolidated) were published as prescribed by the Restitution Act on 7 November 2003 in Government Notice 3185 of 2003. The notice also invited all interested parties to lodge any objection they might have

[3] Restitution of Land Rights Act 22 of 1994 (the Restitution Act).

in writing within 30 days of the publication of the notice to the claims commissioner, to an address provided in the Government Gazette;

6. Notwithstanding its awareness that individual members of the community had lodged a claim for restitution the applicant did not submit any objection to the claims when the applicant was afforded an opportunity at the very least on two occasions during which it could have done so. Instead, on its own version the applicant assumed that the outcome of the land claims would be otherwise than the restoration of the land to the claimants;
7. In the absence of objection from any party, including the applicant, the claims were settled and approved in the normal course in terms of the Restitution Act;
8. The approval was followed by a conclusion of a settlement agreement in terms of section 14(3) of the Restitution Act that culminated in the registration of the third respondent association after which Portions 1, 2, 3 and the remaining extent of the Farm Berlyn 670 LT were, following the consolidation of the individual claims, jointly transferred by the Department of Rural Development and Land Reform to the third respondent.

[7] It is not without significance that the applicant does not dispute that the claims were published in the Government Gazette number 35667 127 of 7 November 2003 and in Government Notice 3185 also of 2003 in terms of which interested parties were required to file, in writing, whatever objections they might have to the claim within 30 days of the publication of the notice. Curiously, the applicant stated in its replying affidavit that its failure to object to the land claim was not intentional and attributed such failure 'to the 'conduct of the officials of the respondents holding meetings with the community without inviting the traditional leadership.' The applicant went on to aver that: 'Had the officials of the respondents followed the traditional norm and informed Ndhuna Mbhokota and Ndhuna Totwana of the inspection in loco and verification of beneficiaries, they would have informed the applicant of the visit and the applicant would have known of the land claim by the community and would have objected to it or objected to the restitution of the land to the Berlin Community but would rather have supported the qualifying claimants for

payment of monetary compensation.'

[8] It is necessary to pause here and make some observations. First, the assertion by the applicant that the respondents' officials chose to disregard custom and, instead deal with the members of the community directly cannot avail it. The fact of the matter is that the applicant was aware of the lodgement of the two land claims but elected to remain supine, even in the face of the publication of the land claims in the Government Gazette and the invitation to all and sundry who considered that they had an interest in the two land claims to take positive steps in order to safeguard their interests, if any. Thus, on the facts it is beyond question that the applicant was indeed the author of its own misfortune.

Analysis

[9] In paragraph 1 above I alluded to the fact that the review application with which I am concerned was brought in terms of section 6(1) of PAJA. For this reason, it is necessary to advert to section 7(1) of PAJA. Section 7(1) of PAJA reads:

> 'Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date–
> *(a)* subject to subsection (2)*(c)*, on which any proceedings instituted in terms of internal remedies as contemplated in subsection 2*(a)* have been concluded; or
> *(b)* where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.'

[10] From the text of section 7(1), there can be no doubt as to its manifest purpose, namely that a review application in terms of PAJA is required to be instituted without unreasonable delay and, in any event, not later than 180 days after the aggrieved party became aware of the impugned administrative action or 'might reasonably have been expected to have become aware of the action and the reasons' therefor.

[11] Next, there is section 9(1) of PAJA which provides that the 180 day period

may, either by agreement between the parties or absent such agreement, by a court on application, be extended for such a period as the court might deem meet if, in terms of section 9(2) of PAJA, the interests of justice so require. What the interests of justice will require will depend on the peculiar facts of each case, meaning that such an inquiry is fact-based and will be determined on a case by case basis. In *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another*,[4] the Supreme Court of Appeal said the following:

> '...the question whether the interests of justice require the grant of such extension depends on the facts and circumstances of each case: the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof and relevant factors include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the importance of the issue to be raised in the intended proceedings and the prospects of success.' (Footnotes omitted.)[5]

[12] In *Mulaudzi v Old Mutual life Assurance Company (South Africa) Limited*[6] the Court said that in applications for condonation (extension of time in the context of section 9(2) of PAJA), the substantive merits of the principal case may be relevant. The court proceeded to say that in circumstances where the merits are considered to be relevant, they are not necessarily decisive. In *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others*[7] the Court stated that absent an extension 'the court has no authority to entertain the review application.' However, this statement was qualified in *South African National Roads Agency Limited v City of Cape Town*,[8] in which Navsa JA said that this dictum 'cannot be read to signal a clinical excision of the merits of the impugned decision, which must be a critical factor when a court embarks on a consideration of all the circumstances of a case in order to determine whether the interests of justice dictate

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[4] *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another* [2010] 2 All SA 519 (SCA).
[5] Ibid para 54.
[6] *Mulaudzi v Old Mutual Life Insurance Company (South Africa) Limited and Others, National Director of Public Prosecutions and Another v Mulaudzi* [2017] 3 All SA 520 (SCA).
[7] *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others* [2013] 4 All SA 639 (SCA) para 26 (*OUTA*).
[8] *South African National Roads Agency Limited v City of Cape Town* [2016] 4 All SA 332 (SCA) para 81.

that the delay should be condoned.[9]

[13] Nevertheless, it is necessary to emphasise that in this case, as already indicated above, the applicant did not bring any application for the extension of the 180 day period as contemplated in section 9(2) of PAJA. Accordingly, the fate of this appeal hinges entirely on the question whether the applicant's review application was instituted within the 180 day period prescribed in section 7(1) of PAJA. If not, that will be the end of the matter and the application would fall to be dismissed without further ado.

[14] In *OUTA*,[10] the Court held that:,

> '...after the 180 day period the issue of unreasonableness is pre-determined by the legislature; it is unreasonable per se. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters. The decision has been "validated" by the delay.

[15] The rationale for what has come to be known as the delay rule under section 7(1) of PAJA, whose roots are embedded in common law, was reiterated by Brand JA in *Associated Institutions Pension fund and Others v Van Zyl and Others*[11] as follows:

> 'Since PAJA only came into operation on 30 November 2000 the limitation of 180 days in s 7(1) does not apply to these proceedings. The validity of the defence of unreasonable delay must therefore be considered with reference to common law principles. It is a longstanding rule that courts have the power, as part of their inherent jurisdiction to regulate their own proceedings, to refuse a review application if the aggrieved party had been guilty of unreasonable delay in initiating the proceedings.The effect is that, in a sense, delay would 'validate' the invalid administrative action (see eg *Oudekraal*

[9] See also: *Asla Construction (Pty) Limited v Buffalo City Metropolitan Municipality and Another* [2017] ZASCA 23; [2017] 2 All SA 677 (SCA); 2017 (6) SA 360 (SCA) para 12 (*Asla*).
[10] *OUTA* above supra n 7 para 26.
[11] *Associated Institutions Pension Fund and Others v Van Zyl and Others* [2004] 4 All SA 133 (SCA) paras 46-48.

Estates (Pty) Ltd v City of Cape Town and others [2004] 3 All SA 1 (SCA) 10b-d, para 27). The raison d'etre of the rule is said to be twofold. First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Second, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions (see eg *Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) 41).

The scope and content of the rule has been the subject of investigation in two decisions of this court. They are the *Wolgroeiers case and Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie en 'n Ander* 1986 (2) SA 57 (A). As appears from these two cases and the numerous decisions in which they have been followed, application of the rule requires consideration of two questions:

(a) Was there an unreasonable delay?

(b) If so, should the delay in all the circumstances be condoned?

(See Wolgroeiers 39C-D.)

The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case (see eg *Setsokosana* 86G). The investigation into the reasonableness of the delay has nothing to do with the court's discretion. It is an investigation into the facts of the matter in order to determine whether, in all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned (See *Setsokosane* 86E-F).'

[16] In *Gqwetha v Transkei Development Corporation Ltd and Others*,[12] Nugent JA elaborated on this theme and said the following regarding the delay rule:

'Underlying that latter aspect of the rationale is the inherent potential for prejudice, both to the efficient functioning of the public body, and to those who rely upon its decisions, if the validity of its decisions remains uncertain. It is

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[12] *Gqwetha v Transkei Development Corporation Ltd and Others* [2006] 3 All SA 245 para 23 (*Gqwetha*).

for that reason in particular that proof of actual prejudice to the respondent is not a precondition for refusing to entertain review proceedings by reason of undue delay, although the extent to which prejudice has been shown is a relevant consideration that might even be decisive where the delay has been relatively slight...'

[17] What is by now readily apparent from the discussion above is that an application for an extension of the 180 day period in terms of section 9(1) of PAJA contemplates – just like any other application for condonation for that matter – is that the applicant must proffer a reasonable and satisfactory explanation for the delay. This entails that the explanation proffered must not be bereft of particularity and candour and that a full explanation must be proffered not only for the nature and extent of the delay,[13] but also for the entire period covered by the delay. And the explanation proffered for the delay must also be reasonable. It is as well to remember that in considering whether the court should come to the aid of the applicant, the substantive merits of the review application will also be a critical factor in determining whether the interests of justice dictate that the delay should be condoned.[14] But in the present matter, there is, as already mentioned, no application such as is contemplated in section 9(2) of PAJA. Thus, these considerations do not arise in this case.

[18] Where no application for the extension of the 180 day period in terms of section 9(2) has been made – as in this instance – a court has no authority to enter into the substantive merits of a review application brought outside the 180 day period prescribed in section 7(1). In *Mostert NO v Registrar of Pension Funds and Others*[15] it was stated that:

'Section 7(1) of PAJA provides that proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days after the dates specified in

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[13] See, for example *Aurecon South Africa (Pty) Ltd v City of Cape Town* [2015] ZASCA 209; [2016] 1 All SA 313 (SCA); 2016 (2) SA 199 (SCA) para 17. See also: *Van Wyk v Unitas Hospital and Another* [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) para 20 and *eThekwini Municipality v Ingonyama Trust* [2013] ZACC 7; 2013 (5) BCLR 497 (CC); 2014 (3) SA 240 (CC) para 28.
[14] *Asla* supra fn 9.
[15] *Mostert NO v Registrar of Pension Funds and Others* 2018 (2) SA 53 (SCA) para 34.

subsections (a) and (b). In Opposition to Urban Tolling Alliance Brand JA said (para 26):

"At common law application of the undue delay rule required a two stage enquiry. First, whether there was an unreasonable delay and, second, if so, whether the delay should in all the circumstances be condoned... Up to a point, I think, s 7(1) of PAJA requires the same two stage approach. The difference lies, as I see it, in the legislature's determination of a delay exceeding 180 days as per se unreasonable. Before the effluxion of 180 days, the first enquiry in applying s 7(1) is still whether the delay (if any) was unreasonable. But after the 180 day period the issue of unreasonableness is pre-determined by the legislature; it is unreasonable per se. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all."'

[19] It will be recalled that the applicant instituted its review application on 19 August 2019, some 15 years after the impugned administrative action was taken. Therefore, the pertinent question that now arises is: when did the applicant become aware of the administrative action in question or, alternatively, when might the applicant reasonably have been expected to have become aware of such administrative action? On its account, one critical fact which is beyond question, is that the applicant had been aware soon after the lodgement of the land claims for the restitution of Portions 1, 2, 3 and the Farm Berlyn 670 LT since November 2003, ie. some 16 years before the date on which its review proceedings were instituted. It is common ground that notwithstanding such extraordinary lapse of time, there is no application for condonation as contemplated in section 9(1) of PAJA. Nor is there any agreement between the parties extending the 180 day period prescribed by section 7(1)(b) of PAJA.

[20] With the review proceedings having been instituted some 15 years after the impugned administrative action was taken, and in the absence of a condonation application what should now become of this litigation. The pathway to answering this crucial question must be found in section 7(1) itself read with section 9. As already indicated, section 7(1) decrees in unequivocal terms that review proceedings must be instituted without unreasonable delay and, in any event, not later than 180 days

after the date on which the party adversely affected by the administrative action in question became aware of such action and the reasons therefore or might reasonably have been expected to have become aware of the action and the reasons therefor.

[21] I have above already observed that the applicant had all along been aware of the land claims at the very outset when they were lodged with the claims commissioner. Having become aware of the lodgement of the land claims, the applicant, on its own version, consciously took a decision not to object to or contest the land claims in any way whatsoever. The lodgement of the claims was followed by an in-loco inspection of the relevant pieces of land with the claimants and community members. And once the land claims were approved, it was then thought desirable to consolidate the claims, bearing in mind that the claims commissioner was not dealing with competing or inconsistent claims.

[22] The proposed consolidation was also published in a Government Notice in line with statutory prescripts in terms of the Restitution Act. Again, the applicant stood by idly, indifferent to the developments that were unfolding in front of 'its eyes'. What followed thereafter was the establishment of the third respondent in terms of the Communal Property Association Act. Ultimately, the process was concluded when the land that was the subject of the consolidated land claims was transferred to the third respondent. Once more, the applicant was not kept in the dark and the inference is therefore inescapable that just like the Berlin community the applicant kept abreast of the developments that culminated in the transfer and registration of the land in the third respondent's name, ie. BCPA.

[23] Having regard to the extraordinary length of time between the transfer of the land to BCPA and the time when the applicant instituted proceedings for judicial review of the decision to transfer to and register the land in BPCA's name, it was incumbent upon the applicant to seek condonation for its failure to institute its proceedings for judicial review without unreasonable delay. In this regard it is as well to remember that as the applicant instituted the review proceedings some 15 years after the decision was taken the issue of 'unreasonableness of the delay' was pre-

determined by the legislature. The inevitable consequence of this is that this Court 'is only empowered to entertain the review application if the interests of justice dictate that an extension be granted in terms of section 9. And because the applicant has not availed itself of the lifeline provided for in section 9, it follows, on the authority of *OUTA*, that absent an extension of the prescribed period this Court has no authority to entertain the review application at all. Thus, the review application falls to be dismissed. For the sake of completeness, I need only add that the applicant's resort to the doctrine of legality is, in the context of the facts of this case, a red herring invoked by the applicant purely to circumvent the strictures of sections 7 and 9 of PAJA.

[24] That notwithstanding, it must be said that even in the context of a legality review time is still of essence and importance. This entails that legality reviews, too, must be instituted without undue delay. In this regard what Cameron J said in *Merafong City Local Municipality v AngloGold Ashanti Limited*[16] is instructive. The learned Justice said the following:

> 'The rule against delay in instituting review exists for good reason: to curb the potential prejudice that would ensue if the lawfulness of the decision remains uncertain. Protracted delays could give rise to calamitous effects. Not just for those who rely upon the decision but also for the efficient functioning of the decision-making body itself.'[17]

[25] Nevertheless, in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal*[18] the court there said the following:

> 'a court should be slow to allow procedural obstacles to prevent it from looking into a challenge to the lawfulness of an exercise of public power. But that does not mean that the Constitution has dispensed with the basic procedural requirement that review proceedings are to be brought without undue delay or *with a court's discretion to overlook a delay*.'[19] [Emphasis

[16] *Merafong City Local Municipality v AngloGold Ashanti Limited* 2017 (2) SA 211 (CC) (*Merafong*).
[17] Ibid para 73.
[18] *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* 2014 (5) SA 579 (CC).
[19] Ibid para 45.

added.]

[26] But some three years later the Constitutional Court explained that the discretion vesting in a court to overlook a delay in bringing a legality review ought not to be exercised lightly. The Court emphasised:

> 'While a court "should be slow to allow procedural obstacles to prevent it from looking into a challenge to the lawfulness of an exercise of public power", it is equally a feature of the rule of law that undue delay should not be tolerated. Delay can prejudice the respondent, weaken the ability of a court to consider the merits of a review, and undermine the public interest in bringing certainty and finality to administrative action. A court should therefore exhibit vigilance, consideration and propriety before overlooking a late review, reactive or otherwise.[20] [Footnotes omitted.]

[25] Accordingly, this then means that on both fronts, ie. whether under PAJA or by invoking the doctrine of legality, the applicant finds itself at a dead end without any avenue of escape for as long as its inordinate delay in instituting the review remained unexplained. Indeed, the applicant's situation is compounded by the fact that the protracted delay that one encounters in this case endured for some 15 years after the land claim was finalised. And yet the applicant requires that a process which was commenced and completed as long ago as that must be reversed to accommodate a party that elected to stand by idly whilst the process unfolded and ran its course. In the words of Cameron J in *Merafong* the applicant's desired objective would, if it were to materialise, certainly 'give rise to calamitous effects'.

[26] In any event, the vain attempt by the applicant to bring itself within the purview of section 11(6)(a) of the Restitution Act is misguided having regard to the purpose that section 11(6)(a) is designed to serve. Hence section 11(6)(b) in clear terms requires the land claims commissioner to refer the owner (and such other party) to the provisions of subsection 7. And subsection 7, in turn, provides that once a notice in terms of section 11(1) has been published in the Gazette in respect of the land that is the subject of a land claim the owner (and such other party) are prohibited

[20] *Department of Transport and Others v Tasima (Pty) Limited* 2017 (2) SA 622 (CC) para 160.

from doing anything in relation to such land that may either undermine or jeopardise the land claim pertaining to such land.[21] Consequently, far from conferring any rights or benefits on the owner or such other party, if any, section 11(6)(a), on the contrary, imposes certain statutory obligations on the owner and such other party, if any. From this it becomes abundantly clear that the applicant has entirely misconceived the import of section 11(6)(a) of the Restitution Act.

[27] Differently put, the underlying purpose of section 11(6)(a) therefore is to preclude the owner or any other party, where applicable, who is in control of the property to which the land claim pertains from alienating or encumbering such property to the prejudice of the claimant pending the outcome of the land claim concerned. As one can readily appreciate, absent section 11(6)(a) there would indeed remain a distinct possibility that the owner or any other person, where applicable, in pursuit of own personal interests, might well be motivated to alienate or encumber the property in order to defeat the land claim. Hence the need for a statutory provision like section 11(6)(a).

Costs

[28] There is one further matter relating to the costs that remains. At the hearing, counsel for the first and second respondents indicated that the two respondents opposing the application would not insist on costs being awarded in their favour in the event that the application fails. The respondents' stance in this regard is commendable. And as alluded to in paragraph 7.1 above, this application cannot succeed for the reasons as articulated hereinbefore.

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[21] Subsection (7), in relevant part, reads:
'(7) Once a notice has been published in respect of any land–
(a) no person may in an improper manner obstruct the passage of the claim;
(aA) no person may sell, exchange, donate, lease, subdivide or rezone the land in question without having given the regional land commissioner one month's written notice of his or her intention do so, and…'

Order

[29] In the result the following order is made:

1. The application is dismissed with no order as to costs.

[redacted]

X M Petse

Acting Judge of the Land Court

Date of Hearing:	02 December 2025
Date of Judgment:	05 March 2026
Counsel for Applicant:	S Mbhalati
Instructed by	B Shirinda Incorporated, Pretoria c/o Mashaba H Attorneys, Randburg
Counsel for First and Second Respondents	F Ramarano
Instructed by:	State Attorney, Pretoria
Counsel for Third Respondent	No appearance