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

**Before:** Brenner, AJ

**Heard on:** 16 April 2026

**Delivered on:** 4 June 2026

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|-----|---|
| (1) | REPORTABLE: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>                     |
| (2) | OF INTEREST TO OTHER<br>JUDGES: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/> |
| (3) | REVISED: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>                        |

Date: 4 June 2026

**CASE NUMBER: LANC 01/2025**

In the matter between

**NYIKO TONIA SHIPALANA AND THE 37 OTHERS  
LISTED IN ANNEXURE A**

**FIRST APPLICANT**

**MIKATEKO PORTIA MARINGA  
AND 25 OTHERS LISTED IN ANNEXURE B**

**SECOND APPLICANT**

and

**MINISTER OF THE DEPARTMENT OF RURAL  
DEVELOPMENT AND LAND REFORM**

**FIRST RESPONDENT**

**THE DEPARTMENT OF RURAL DEVELOPMENT  
AND LAND REFORM**

**SECOND RESPONDENT**

**COMMISSION ON RESTITUTION OF LAND RIGHTS**

**THIRD RESPONDENT**

**CHIEF LAND CLAIMS COMMISSIONER**

**FOURTH RESPONDENT**

**REGIONAL LAND CLAIMS COMMISSIONER**

**FIFTH RESPONDENT**

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**ORDER**

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The following order is granted:

1. It is declared that the terms of the settlement agreement executed between the parties on 15 April 2026 at Pretoria are made an order of Court (“the settlement agreement”).
2. It is declared that the individual members of the 41 applicant households whose names are listed on annexure C to the settlement agreement are entitled to compensation in lieu of restitution of land under the Restitution of Land Act, 22 of 1994 (“the members”).
3. It is declared that the following consideration due to the members is to be paid by the Minister of Rural Development and Land Reform (“the Minister”), namely:
  - a. the capital sum of R21 431 848,00 (twenty one million four hundred and thirty one thousand eight hundred and forty eight rand; (“the capital sum”) plus
  - b. mora interest on the amount in paragraph 3a above at the rate of 11,25% per annum from 7 January 2025 to date of payment (“the interest”).
4. It is directed that the total amount payable (“the consideration”) in terms of this order shall be paid by the Minister within 60 (sixty) court days from the date of this order, directly into the trust account of Baloyi Ntsako Attorneys Incorporated (“BNA”), the account details being set out below:

Account holder: Baloyi Ntsako Attorneys Inc

Bank: First National Bank

Account number: 6[...]

Branch: The Boulders code 2[...]

Ref: B[...].

5. It is directed that the Minister is to pay the costs of this application, including the costs of senior counsel, on the scale as between party and party.
6. Upon receipt of the consideration, BNA is to invest the full amount in an interest-bearing account in terms of section 86(4) of the Legal Practice Act, subject to the applicants' consent.
7. It is directed that BNA is to tax its legal costs against the Minister in one bill, on the premise that the taxed amount shall be payable pro rata in respect of every applicant/household, and to deduct same from the legal fees payable to BNA by every applicant/household.
8. It is directed that BNA is to tax its attorney and own client costs in one bill, at a fair and reasonable hourly rate, on the premise that the taxed amount shall be payable pro rata in respect of every individual applicant/household, incurred for every applicant/household which executed a contingency fee agreement.
9. BNA is granted the right to double, in other words, claim 100 percent over and above its taxed attorney and own client bill, or to claim 15 percent of the capital sum payable for the applicant/household, (with VAT included in the 15 percent), whichever amount is the lesser, less the taxed costs paid by the Minister.
10. Hereafter, the amounts payable to BNA and to the applicant/households shall be calculated in a schedule by BNA, to which the following documents are attached:
  - a. the contingency fee agreement in respect of every one of the 41 applicant/households;

- b. proof of payment by the Minister to BNA;
  - c. the taxed bill of costs against the Minister;
  - d. BNA's attorney and own client taxed bill of costs.
11. This schedule and documents shall be delivered to the Registrar of this Court for onward transmission to a Presiding Officer of this Court for prior scrutiny and approval.
12. Hereafter, upon receipt of written approval by this Court, the balance of the consideration, plus accrued interest, shall be paid by BNA to the members of the applicant/household within 20 (twenty) court days from the date of delivery of such written approval to BNA from this Court.

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## JUDGMENT

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### **BRENNER AJ**

[1] This was an application for review by members of the Xihahale community under section 3A of the Promotion of Administrative Justice Act 3 of 2000, alternatively, a common law review, to set aside a decision by the first respondent, the Minister of Rural Development and Land Reform ("the Minister"), rejecting the applicants' claims for compensation under s42C of the Restitution of Land Rights Act, 22 of 1994 ("the Restitution Act").

[2] The second to fifth respondents are the Department of Rural Development and Land Reform, the Commission on Restitution of Land Rights, the Chief Land Claims Commissioner and the Regional Land Claims Commissioner respectively. They opposed the application.

[3] The context in which the application arose has a bearing on the issues of mora interest and the scale of costs, dealt with below.

[4] Circa 2008/2009, the applicants had lodged restitution claims under s2 of the Restitution Act pertaining to land at Fram Beaufort 32 LT, Soutpansberg, Limpopo Province, apparently acquired in 1944.

[5] In August 2023, they became concerned about the fate of their claims and engaged Baloyi Ntsako Attorneys Incorporated (“BNA”), to investigate matters.

[6] A supporting affidavit from Eddy Xihahela, Chairperson of the Committee of Elders for the Xihahela land claim, confirmed that the Committee had consistently advocated for the inclusion of the excluded claimants and he firmly believed that they were entitled to compensation.

[7] It transpired that the Commission on Restitution of Land Rights, Limpopo Province, had determined on 4 November 2024 that all relevant claims had been recognized. A letter dated 27 June 2024 from the Commission to Mr Shipalana, the first applicant, noted a finding that an investigation had concluded that his household did not qualify as claimants who were dispossessed within the Xihahela land claim.

[8] BNA wrote to the Commission on 19 September 2024 to identify excluded claimants and asked for written reasons for their exclusion. The reply, dated 26 September 2024, stated it had conducted verification with the help of the Xihahela Community of Elders who had indicated that BNA’s clients were not dispossessed of a right in land with the Xihahela people on the Farm Beaufort 32LT. The Commission asked the excluded members for information pertinent to their dispossession of the land and suggested a meeting.

[9] A letter dated 4 October 2024 from BNA provided a spreadsheet of the required information and the offer of a meeting with the Commission was accepted.

[10] A letter dated 4 November 2024 from the Commission to BNA advised that Phase 1 of the Xihahela land claim was settled for 180 households and phase 2 was settled for 2 households. The Commission stated that it was still unable to verify and include the applicants in the verification list of the Xihahela land claim.

[11] On 5 November 2024, BNA again asked for a meeting. Written reasons for the decision to process 182 households to the exclusion of the applicants were requested by BNA on 6 December 2024. There was no response to this letter, albeit that in prior correspondence, in a letter dated 26 September 2024, the Commission had said the Elders contested that the claimants were not dispossessed of the land.

[12] On 8 November 2024, the Commission proposed a date and venue to meet. But this letter was written to Mr Shipalana and not to his legal representative, BNA.

[13] Arising from the unfortunate toing and froing, BNA felt it was left with no option but to prepare a review application which was issued on 7 January 2025.

[14] Answering affidavits and a replying affidavit were served. Case management meetings occurred on 24 July 2025, 19 September 2025, 25 February 2026, and 17 March 2026, and were then enrolled for argument on 16 April 2026.

[15] In parallel with the application, mediation occurred on 15 September 2025 and a new verification process took place. Ultimately, the merits and quantum of the claims, and costs, in principle, but not the scale, were settled for 41 out of 64 applicants and the terms of a written settlement agreement executed on 15 April 2026 were made an order of court on 16 April 2026.

[16] In argument, it was confirmed for the respondents that the Minister has identified and verified every member of 41 out of 62 claimant households, which number 451 beneficiaries. This was accepted by the applicants' attorneys, BNA. The Minister is in a position to pay the compensation without delay.

[17] However, the residual issues still to be adjudicated are:

- a. whether the capital sum awarded to the applicants attracts mora interest;
- b. whether the full consideration payable by the Minister should be paid directly to the applicants, the respondents contending they are prohibited from paying any party other than the claimants, or instead,

whether to the credit of the trust account of Baloyi Ntsako Attorneys Incorporated (“BNA”), who had acted under contingency fee agreements with them;

c. the scale of costs payable to the applicants by the Minister.

[18] The applicants contend that, because other households were verified and recognized as legitimate claimants on 4 November 2024, mora interest should be paid to claimants who were unfairly excluded from recognition. It is unclear when the originally acknowledged 180 households executed their settlement agreement with the Department, and whether the agreement provided for a deadline date within which payment was to be made.

[19] From argument, it appeared that not all of the originally acknowledged 180 households have received compensation to date. In principle, mora interest ought to be paid because of the patently unfair exclusion of the 41 households initially omitted from recognition. Extracurial attempts were made by BNA to resolve the claims, to no avail.

[20] Consequences and accountability should flow from this conduct. I have resolved to impose mora interest from the date of issue of the application on 7 January 2025, when the interest rate under the Prescribed Rate of Interest Act, 55 of 1975 was 11,25 percent per annum.

[21] Concerning the payment modality, the judgment of Ms Justices Mabasa, AJ and Jacobs, AJ in *Mafumo Valoyi and 19 others v the Minister of Rural Development and Land Reform and five others case LCC 135/2024* is pertinent as there are similar facts which are germane to the enquiry. The Court embarks on a useful and comprehensive expose of the legal position.

[22] In *Valoyi*, the respondents argued that the compensation should be paid directly to the claimants despite the existence of a contingency fee agreement between them and the same attorneys in this case, namely, BNA, which required the proceeds to be remitted to the trust account of the attorneys. The respondents in

*Valoyi* averred that they were prohibited by Statutes and Regulations from paying the attorneys.

[23] They relied on provisions of the Restitution Act, the Public Finance Management Act, 1 of 1999 (“the PFMA”), and Treasury Regulations issued in April 2001 to support this argument.

[24] The same argument was raised in the instant case with which I am dealing. I have had the benefit of examining the statutes, the PFMA and the Treasury Regulations. In none of these documents is there a prohibition against the payment of restitution compensation to the claimants’ attorneys.

[25] The PFMA and Treasury Regulations have as their main purpose internal checks and balances within their departments, accounting methodologies to protect and manage finances, and accountability mechanisms for any failure to do so.

[26] Reference is made in *Valoyi* to the seminal cases of *Mwelase and Others v Director-General for the Department of Rural Development and Land reform and Another* 2019(6) SA 597 (CC), and *Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others* 2019 (6) SA 568 (CC).

[27] At paras 21 and 22 of the *Valoyi* judgment, on the subject of the respondents’ concerns with payment to intermediaries, such as attorneys, the following is said:

“21. The PFMA and Treasury Regulations are relevant because the dispute involves public funds earmarked for compensation. The spending of public money requires internal controls, authorization and accountability. They regulate expenditure approval and processing, not just as an answer to the Applicants’ case, but as part of the legal framework for any payment order.

22. It is against that constitutional and statutory background that the jurisprudence developed in the landmark cases of *Mwelase* and *LAMOSASA* is important. It provides guidance on how this Court can exercise its remedial powers when bureaucratic administration has stalled, delayed, or rendered land rights relief ineffective.”

[28] And at para 27, on the subject of the respondents' failure to take note of controls over the duties of legal practitioners read with the Legal Practice Act, 28 of 2014, ("the LPA"), read with Rule 54 of the Rules of this Act:

"27. Their argument against payment into the legal representatives' trust account also fails to grapple with the fact that trust accounts are heavily regulated and audited. The Respondents' objection to this mechanism of payment as an inherently unlawful private detour is somewhat simplistic. A trust account is not just a private purse; it is a legally supervised fiduciary vehicle. No convincing submissions were advanced as to why it cannot be used in the context of a judicially supervised restitution framework."

[29] While the Court in *Valoyi* did not consider it necessary to resolve the issue of the contingency fee agreement between BNA and their clients, as it considered its application capable of resolution without pronouncement on it, in this case, I respectfully believe it to be germane to the overall disputes, albeit that it is collateral to same, and albeit that the respondents are not parties to the contingency fee agreement and are plainly not bound by it.

[30] In the case of *Welverdiend Community v Minister of Rural Development and Land Reform and three defendants LCC 75/2009*, the Court, per Yacoob, J, found the agreement relevant and examined it to ensure compliance with the Contingency Fee Act 66 of 1997, ("the CFA"), so as to protect the claimants and ensure they were not out of pocket more than was necessary. An appropriate order was made as to the costs claimable by the contingency fee attorneys, with the express condition that legal fees as a whole would not exceed 25% of the total award of compensation.

[31] I concur with the approach in *Welverdiend*. A fair and equitable balancing act is required as between attorney and client where a contingency fee is involved. This type of relationship appears to be becoming more and more common in land claims. Claimants who have been poorly represented or abandoned by their former attorneys or are ineligible for legal aid, for whatever reason, are constitutionally entitled to access to justice. Representation by an attorney on this basis constitutes the chance for securing the relief to which many are entitled.

[32] Securing the services of a competent attorney acquainted with land court matters who is willing to act on risk subject to a contingency fee agreement constitutes access to justice. It accords certain financially compromised, vulnerable and, in some instances, illiterate sectors of our society the opportunity to bring their land claims to court when otherwise they may not have such an opportunity.

[33] In *Fred de Bod v the Road Accident Fund 2026(2) SA 549 (GP)*, the full bench clarified that VAT must be included within the 25 percent cap. It also explained the rationale behind contingency fee agreements at para 23 ;

“23...It (the CFA) was not enacted to provide legal practitioners with a financially preferential method of determining their fees over and above normal fees but rather to facilitate access to court for those who would otherwise not have been able to do so.”

[34] An attorney who assumes the risk of no fees if unsuccessful but fees if successful with the case should be entitled to a fair and just reward on a successful outcome. His legal right to payment for services capably rendered and for achieving a positive and satisfactory settlement or judgment for his client must be recognized and supported. However, he cannot be permitted to overreach or to contravene the strict provisions of the CFA or the LPA. Judicial oversight in this regard would protect both the client and the attorney who achieved a successful outcome through professional services.

[35] Judicial oversight in the interests of justice occurred in both *Welverdiend* and *Valoyi*. In *Welverdiend*, the contingency fee agreement was addressed in terms, to ensure that the attorneys did not charge fees in excess of the prescribed 25 percent of capital payable. In *Valoyi*, the court went further in imposing a duty on the claimants’ attorney to report back to court on the administration of the monies entrusted to them, thereby ensuring the fair and proper enforcement of its order.

[36] The Land Court is a court of law and equity in restitution matters, or in any other legislation expressly providing therefor, as adumbrated in s 3(1) of the Land Court Act, 6 of 2023 (“the LCA”). Part of the preamble to the LCA pertinently states:

“**AND SINCE** land reform initiatives to address the destructive impact of colonialism and apartheid have not progressed at the desired pace, sometimes giving rise to expensive and

protracted litigation, to the detriment of the poorest of the poor and most vulnerable in society.

**AND SINCE THEREFORE IT IS** necessary that land reform in its entirety be accelerated in a lawful and equitable manner, guided by progressive jurisprudence;

**AND SINCE IT IS FURTHERMORE** necessary and desirable that there should be specialized, well-resourced, accessible and streamlined adjudication structures in place with the institutional, transformative and social justice wherewithal in land matters, in order to enhance and promote fairness and equity at all stages of the adjudication processes before and during court proceedings.”

[37] An assurance was given at the hearing that all successful applicants, represented by an authorized member of every household, had executed contingency fee agreements.

[38] One of such agreements was handed in to court. On examination, most of the necessary clauses required by the CFA are contained in the document. Significantly, the cap is agreed at a lesser 15 percent, not 25 percent. Clause 6.3 draws the attention of the client to the fact that any query, complaint or concern about the attorney may be directed to the Legal Practice Council.

[39] Clause 5.1 expressly authorizes the payment of compensation directly to BNA. Judicial notice is taken of the fact that this is a standard clause in contingency fee agreements. The principle of *pacta sunt servanda*, whilst not cast in stone, both at common law and against our constitutional background, remains extant as a starting point in the approach to contractual relations between parties.

[40] There are deficiencies in the agreement, however, namely:

- a. the normal, fair and reasonable fee of BNA is not disclosed; instead, in clause 4, the client agrees to pay BNA a “fixed fee” of 15 percent of the “total compensation amount”, this when total compensation may include mora interest and the agreed 15 percent should only be calculated on the capital sum;

- b. alerting the client to the fact that the client may withdraw from the agreement within fourteen days after signature, cured, however, by clause 10 of the BNA agreement, which permits the client to terminate the agreement at any time; if terminated and compensation is paid after this, BNA shall be entitled to claim its success fee, while termination before successful resolution attracts no fee.

[41] Against the factual context, this case does not warrant a declaration that BNA's contingency fee agreement should be declared invalid and unenforceable.

[42] This is a case in which it is appropriate to tweak the agreement in the best interests of the applicants and their attorneys. This will result in a just and efficient outcome. It will accord protection to the attorneys who achieved the settlement after acting on risk and it will redound to the benefit of their clients. This approach encourages the execution of contingency fee agreements with competent attorneys which comply with the CFA for land claimants, and which, in the result, afford access to the courts. It will support one of the most disempowered sectors of society to pursue their land claims as efficiently and expeditiously as possible.

[43] In *Mwelase* at para 65, the Constitutional Court stated that systemic delays in land restitution matters require robust judicial intervention.

[44] In *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* 2020 (5) SA 247 (CC), at para 71:

“... The impact of the Constitution on the enforcement of contractual terms through the determination of public policy is profound. A careful balancing act is required to determine whether a contractual term, or its enforcement, would be contrary to public policy.”

[45] Also at para 71, quoting from the Barkhuizen SCA decision, the *Beadica* judgment proceeds to confirm that the Constitution requires the courts to

“...employ the Constitution and its values to achieve a balance that strikes down the unacceptable excesses of ‘freedom of contract’, while seeking to permit individuals the dignity and autonomy of regulating their own lives.”

[46] Finally, at para 76:

“... The development of new doctrines must also be capable of finding certain, generalized application beyond the particular factual matrix of the case in which a court is called upon to develop the common law. While abstract values provide a normative basis for the development of new doctrines, prudent and disciplined reasoning is required to ensure certainty of the law.”

[47] In the instant case, the robust but prudent, reasonable and practical intervention of this Court involves a fair amendment to the agreement, to require taxation of BNA’s normal attorney and own client fees within the definition in clause 1 of the CFA, and the comparison of double those fees with the agreed cap of 15 percent. The Taxing Master has the expertise to determine a fair and reasonable hourly rate for BNA.

[48] It also involves the investment of the monies pending the taxations, for the benefit of the applicants, and finally, subsequent judicial oversight over the implementation of fair and equitable compensation to the applicants, conjunctively with the payment of monies earned by the attorneys whose efforts achieved successful settlement. The judicial oversight is not intended to cast any aspersions on the professional reputation of BNA, whose integrity was neither assailed nor impeached.

[49] It is these attorneys who commendably assume the mandate in cases where the risk is a risk not readily assumed, namely, one of no fee for an unsuccessful outcome, despite services rendered, and these are often extensive and time-consuming.

[50] The final question is one of costs. The Land Court deals with social and constitutionally entrenched legislation. Legal costs are only justifiable if conduct

during litigation is deemed vexatious, unreasonable, frivolous or an abuse of the process of Court.

[51] There is no evidence of any wilful or mala fide exclusion of the 41 households in this case. There is no warrant for a special award of costs. The principle of costs has been conceded by the respondents. An award of party and party costs including the costs of senior counsel is fair.

[52] The following order is granted:

1. It is declared that the terms of the settlement agreement executed between the parties on 15 April 2026 at Pretoria are made an order of Court (“the settlement agreement”).
2. It is declared that the individual members of the 41 applicant households whose names are listed on annexure C to the settlement agreement are entitled to compensation in lieu of restitution of land under the Restitution of Land Act, 22 of 1994 (“the members”).
3. It is declared that the following consideration due to the members is to be paid by the Minister of Rural Development and Land Reform (“the Minister”), namely:
  - a. the capital sum of R21 431 848,00 (twenty one million four hundred and thirty one thousand eight hundred and forty eight rand; (“the capital sum”) plus
  - b. mora interest on the amount in paragraph 3a above at the rate of 11,25% per annum from 7 January 2025 to date of payment (“the interest”).
4. It is directed that the total amount payable (“the consideration”) in terms of this order shall be paid by the Minister within 60 (sixty) court days from the date of this order, directly into the trust account of Baloyi Ntsako Attorneys Incorporated (“BNA”), the account details being set out below:

Account holder: Baloyi Ntsako Attorneys Inc

Bank: First National Bank

Account number: 6[...]

Branch: The Boulders code 2[...]

Ref: B[...].

5. It is directed that the Minister is to pay the costs of this application, including the costs of senior counsel, on the scale as between party and party.
6. Upon receipt of the consideration, BNA is to invest the full amount in an interest-bearing account in terms of section 86(4) of the Legal Practice Act, subject to the applicants' consent.
7. It is directed that BNA is to tax its legal costs against the Minister in one bill, on the premise that the taxed amount shall be payable pro rata in respect of every applicant/household, and to deduct same from the legal fees payable to BNA by every applicant/household.
8. It is directed that BNA is to tax its attorney and own client costs in one bill, at a fair and reasonable hourly rate, on the premise that the taxed amount shall be payable pro rata in respect of every individual applicant/household, incurred for every applicant/household which executed a contingency fee agreement.
9. BNA is granted the right to double, in other words, claim 100 percent over and above its taxed attorney and own client bill, or to claim 15 percent of the capital sum payable for the applicant/household, (with VAT included in the 15 percent), whichever amount is the lesser, less the taxed costs paid by the Minister.
10. Hereafter, the amounts payable to BNA and to the applicant/households shall be calculated in a schedule by BNA, to which the following documents are attached:
  - a. the contingency fee agreement in respect of every one of the 41 applicant/households;

- b. proof of payment by the Minister to BNA;
- c. the taxed bill of costs against the Minister;
- d. BNA's attorney and own client taxed bill of costs.

11. This schedule and documents shall be delivered to the Registrar of this Court for onward transmission to a Presiding Officer of this Court for prior scrutiny and approval.

12. Hereafter, upon receipt of written approval by this Court, the balance of the consideration, plus accrued interest, shall be paid by BNA to the members of the applicant/household within 20 (twenty) court days from the date of delivery of such written approval to BNA from this Court.

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**TD BRENNER**

Acting Judge, Land Court

**APPEARANCES:**

For the Applicant: Adv Reg Willis SC

Instructed by: Baloyi Ntsako Attorneys Inc

For the First to Fifth Respondents: Adv Vivian Rikhotso

Instructed by: The State Attorney, Polokwane