



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

**CASE NO: LCC 145/2019**

**Before: Flatela J**

**Heard on: 02 March 2026**

**Delivered on: 11 June 2026**

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
11/06/2026	
DATE	SIGNATURE

In the matter between:

<b>MOHAMMED HASSAN ALLIE</b>	First Applicant
<b>FARIEDA TAPE</b>	Second Applicant
<b>YUSUF ALLIE</b>	Third Applicant
<b>MOHAMMED SEDICK ALLIE</b>	Fourth Applicant
<b>MAGHIA OSMAN</b>	Fifth Applicant
<b>LAYLA BARRON</b>	Sixth Applicant

and

**THE DEPARTMENT OF RURAL DEVELOPMENT**

AND LAND REFORM

First Respondent

GOZYN ALLIE

Second Respondent

THE REGIONAL LAND CLAIMS COMMISSIONER

Third Respondent

CHIEF LAND CLAIMS COMMISSIONER

Fourth Respondent

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**ORDER**

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1. The Respondents' point *in limine* is dismissed.
  2. There is no order as to costs.
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**JUDGMENT ON THE POINT *IN LIMINE***

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**FLATELA J**

**Introduction**

[1] This is an opposed review application. The Applicants seek to review and set aside the decision of the Regional Land Claims Commissioner for the Western Cape to settle the Second Respondent's land restitution claim in respect of erven 1457 and 1458, Hout Bay, Western Cape, commonly known as Green Gables Farm, in favour of the Second Respondent.

[2] The properties were owned by Alishap Allie, the Second Respondent's father, and were dispossessed between 1950 and 1962 as a result of discriminatory laws or practices. Mr Alishap Allie died on 11 February 1960, leaving a Will bequeathing the properties to her senior brother, Gozyn Allie Snr, who later died in 1970 without a Will.

[3] The Applicants are the children of Gozyn Allie Snr, whilst the Respondents are the children of Alishap Allie.

[4] The Respondents oppose the review application and have raised a point *in limine* challenging this Court's jurisdiction to hear it. They argue that the Applicants are

competing claimants who lodged claims for the same properties when the Restitution of Land Rights Amendment Act 15 of 2014 (AA) reopened the filing period for claims from 1 July 2014 to 30 June 2019 (the new-order claims).

[5] The Respondents assert that the Applicants' claims were interdicted in the matter of *Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others* ("LAMOSA 2")<sup>1</sup>, contending that the Land Court lacks jurisdiction under the LAMOSA orders.

[6] The Applicants argue that the review application is not based on the new order claims; rather, it is based on the administrative decisions, reports, and findings made by the Regional Land Claims Commissioner (the Third Respondent), which disregarded the existence of the late Alishap's Will and proceeded to settle the Second Respondent's land claims in relation to erven 1457 and 1458.

[7] It was agreed between the parties that the point in limine would be addressed before the review application was considered.

### **The Parties**

[8] As stated earlier, the Applicants are the children of the late Gozyn Allie (Snr). They are Mohammed Hassan Allie, Farieda Tape, Mogamat Jusuf Allie, Mohammed Sedick Allie, Maghia Osman and Layla Barron. They are of advanced age, with most being pensioners and others semi-retired.

[9] The First Respondent is the Department of Land Reform and Rural Development.

[10] The Second Respondent is Gozyn Allie (Jnr). The Second Respondent also represents his siblings, Fouzia Buffkins, Miriam McLachlan and Igsaan Allie. They are the children of the late Alishap Allie and Asa Allie.

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<sup>1</sup> 2019 (6) SA 568 (CC) (LAMOSA 2).

[11] The Third Respondent is The Regional Land Claims Commissioner, Western Cape and the Fourth Respondent is The Chief Land Claims Commissioner. The First, Third and Fourth Respondents will be referred to as the State Respondents.

### **Common Cause Facts**

[12] On 18 November 1996 and 25 November 1998, Mrs Asa Allie lodged restitution claims in respect of ERF 1458 and ERF 1457, respectively, in terms of section 2(1)(c) of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act).

[13] In 2013, before the Third Respondent accepted the claim, the Applicants located the Will of the late Alishap and subsequently notified the Third Respondent of its existence. They also sought recognition as co-beneficiaries, as descendants of their late father, Gozyn Allie.

[14] In 2014, when the Restitution of Land Rights Amendment Act 15 of 2014 reopened the filing period for claims from 1 July 2014 until 30 June 2019 (the new order claims), the Applicants also lodged a claim in respect of erven 1457 and 1458, Hout Bay, based on interests derived from their late father, Gozyn Allie Sr, under the Will.

[15] In 2016, the Third Respondent accepted the Second Respondent's claims and determined that the claim was a descendant claim under section 2(1)(c). A notice was published in the Government Gazette under section 11. The Office of the Valuator General conducted historical valuations of the properties to determine the compensation payable. The valuations were finalised on 10 March 2019.

[16] During 2000/2021, the Third Respondent formally offered the Second Respondent's family financial compensation for the properties: R1 320 853.33 in respect of ERF 1458 and R7 320 000.00 in respect of ERF 1457. The claim has not been finalised.

[17] The Applicants brought an application to interdict the settlement of the claim. The matter was referred to mediation under section 13 of the Restitution Act. Regrettably, the mediator fell ill for about a year and was unable to conclude the mediation, so the matter remained unresolved.

## Relief Sought

[18] In its amended notice of motion, the Applicants sought relief in the following terms:

- 1.1 To review and set aside the decision by the Regional Land Claims Commissioner, Mr L. M. Maphutha N.O, as duly authorised by the Minister, issued under reference number: A124, on 17 August 2020, under the auspices of the offices of the Commission on Restitution of Land Rights, in terms of which the Regional Land Claims Commissioner made the decision to offer R 1 320 853.33 to the Second Respondent in respect of the property situated at Erf 1458 Hout Bay situated in the Cape Metro, City of Cape Town, Western Cape.
- 1.2 To review and set aside the decision by the Regional Land Claims Commissioner, Mr L. H. Maphutha N.O, as duly authorised by the Minister, issued under reference number: A822, on 17 November 2020, under the auspices of the offices of the Commission on Restitution of Land Rights, in terms of which the Regional Land Claims Commissioner made the decision to offer R 7 320 000.00 to the Second Respondent in respect of the property situated at Erf 1457 Hout Bay situated in the Cape Metro, City of Cape Town, Western Cape.

Relief claimed:

- 2.1 To review and set aside the decision by the Regional Land Claims Commissioner, Mr L. M. Maphutha N.O, as duly authorised by the Minister, issued under reference number: A124, on 17 August 2020, under the auspices of the offices of the Commission on Restitution of Land Rights, in terms of which the Regional Land Claims Commissioner made the decision to offer R 1 320 853.33 to the Second Respondent in respect of the property situated at Erf 1458 Hout Bay situated in the Cape Metro, City of Cape Town, Western Cape.
- 2.2 To remit the matter under reference A124 to the Regional Land Claims Commissioner for an investigation and decision *de novo*.
- 2.3 To review and set aside the decision by the Regional Land Claims Commissioner, Mr L.H. Maphutha N.O, as duly authorised by the Minister, issued under reference number: A822, on 17 November 2020, under the auspices of the offices of the Commission on Restitution of Land Rights, in terms of which the Regional Land Claims Commissioner made the decision to offer R 7 320 000.00 to the Second Respondent in respect of the property situated at Erf 1457 Hout Bay situated in the Cape Metro, City of Cape Town, Western Cape.
- 2.4 To remit the matter under reference number: A822 to the Regional Land Claims Commissioner for an investigation and decision *de novo*

## ***Point in Limine***

### **The Respondents' contention**

[19] Both the State Respondents and the Second Respondent raised similar points *in limine* on jurisdiction. They contend that the decisions the Applicants seek to review are not reviewable.

[20] The Respondents contend that the Applicants did not submit their counterclaims before the statutory cutoff date and that no exceptions apply to their claims. The Respondents aver that the Constitutional Court declared amendments seeking to reopen claims invalid due to insufficient public participation, thereby placing an interdict on new claims lodged between 2014 and 2016.

[21] The Respondents aver that the Applicants, as new claimants, can participate in old claims only if they directly contest the old claimants' right to land restoration in a limited capacity. However, in this case, the Applicants recognise the old claimants' rights but seek to advance their new claims by way of review, which exceeds the permitted scope and is deemed too tenuous for participation.

[22] The Respondents contend that the Applicants have tried various approaches (e.g., filing review applications and raising issues concerning a Will) to challenge old claims indirectly or have their new claims considered, which the Respondents argue constitutes an abuse of process and is prohibited by the *LAMOSAS*<sup>2</sup> and *Amaqamu*<sup>3</sup> rulings.

### **The Applicants' contention**

[23] The Applicants contend that the *LAMOSAS* interdict is not applicable in this case. Even if it were, this Court still has jurisdiction to adjudicate the matter in terms of the decision of the special sitting of this Court, in *Amaqamu*.

[24] The Applicants contend that they are not processing a new land claim, which they lodged in 2014, but rather seeking to review decisions made by the Regional

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<sup>2</sup> *LAMOSAS* 2 above n 1 and *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others* 2016 (5) SA 635 (CC).

<sup>3</sup> *In Re Amaqamu Community Claim (Land Access Movement South Africa and Others as Amici Curiae)* 2017 (3) SA 409 (LCC) (*Amaqamu*).

Land Claims Commissioner not to consider Alishap Allie's Will during the investigation of the Second Respondent's claim.

[25] The Applicants further contend that their claims are "old-order" claims lodged before 1 July 2014, supported by evidence such as early correspondence and a 1944 Will, thereby placing them outside the scope of *LAMOSAS*. Additionally, the Applicants maintain that even if their counterclaim is deemed to be by an "interdicted claimant," the *LAMOSAS 2* order permits their participation in court proceedings to assist the court in determining whether the old claimant has established the case.

**Does this Court have jurisdiction to hear the review application?**

[26] Rule 35 of the Rules of this Court provides for a review of, *inter alia*, any decision of any functionary, The Third Respondent.

**"35. APPLICATIONS FOR REVIEW**

(1) All applications to bring under review any decision or action of—

- (a) an inferior court;
- (b) an arbitrator;
- (c) the Commission;
- (d) the Minister;
- (e) any tribunal or board; or
- (f) any functionary,

must be brought by way of notice of motion based on Form 2 of Schedule 1 to these Rules—

- (i) identifying the decision or action which the Court must review; and
- (ii) calling upon the person or entity whose decision or action is to be reviewed, to dispatch to the Registrar—
  - (aa) the record of the proceedings and all documents relevant to the decision or action sought to be reviewed; and
  - (bb) his or her reasons for the decision or action,

within fifteen days after receipt of the notice of motion, and to notify the applicant that he or she has done so.”

## Discussion

[27] The pleadings are not a model of clarity on the grounds of review, resulting in a disjointed synopsis of the facts. This is regrettable.

[28] The Applicants’ basis for the review application is the Third Respondent’s decision to disregard the Will of the late Alishap Allie during the investigation of the Second Respondent’s claim. It is common cause that the Rule 5 investigation Report was concluded in 2020.

[29] In their answering affidavit, the Third Respondent offers contradictory accounts of whether they considered the Will when investigating the Second Respondent’s claim. Initially, they denied that the Will was presented to them in July 2013. They maintained that their awareness of the Will arose only when the Applicants submitted a new-order application in 2014. They also argued that they refrained from addressing the new-order claim because of the interdict arising from the *LAMOS*A judgment, which prohibited consideration of it.

[30] It is common cause that, between 18 June 2013, well before the enactment of The Restitution of Land Rights Amendment Act 15 of 2014 (AA), the Applicant’s former attorneys sent several letters to the Third Respondent, alerting them to the Will and submitting that the Respondents have an interest in the matter and should be recognised as the co-beneficiaries.

[31] On 1 July 2023, Farieda addressed a letter to Mr Nohule, the Third Respondent’s official. The Third Respondent forwarded the letter to Mrs Buffkins, one of the Second Respondent’s siblings, who responded. It is clear from these facts that the Third Respondent was aware of the Will’s existence before it accepted the Second Respondent’s claim.

[32] The review falls squarely within Rule 35 read with section 7 of the Land Court Act 6 of 2023. For the reasons stated above, the point *in limine* raised by the Respondents is dismissed.

[33] In the results, the following order is made,

1. The Respondents' point *in limine* is dismissed.
2. There is no order as to costs.



**Flatela L**

**Judge of the Land Court**

**Appearances**

**For the Applicants:**

Mr Stan Dewey from

Dewey McLean Levy Inc

**For 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents:**

Advocate P. Magona-Dano

Instructed by State Attorneys,  
Cape Town

**For 2<sup>nd</sup> Respondents (Miriam Mclachlan):**

Mr Henk Smith from Henk  
Smith and Associates

Date of Hearing: 2 March 2026

Date of Judgement: 11 June 2026