



IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

Case number: **LCC147/08 and LCC:05/14**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED. YES
31 July 2026	
 SIGNATURE	

In the matter between:

KWALINDILE COMMUNITY

1st Plaintiff

ZIMBANE COMMUNITY

2nd Plaintiff

and

**REGIONAL LAND CLAIMS COMMISSIONER
EASTERN CAPE**

Participating party

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

1st Defendant

KING SABATA DALINDYEBO MUNICIPALITY

2nd Defendant

WINDSOR ALLIANCE (PTY) LTD

3rd Defendant

ALLIANCE PROPERTY GROUP (PTY) LTD

4th Defendant

CAPE GANNET PROPERTIES 118 (PTY) LTD

5th Defendant

PROUD HERITAGE PROPERTIES 119 (PTY) LTD

6th Defendant

JUDGMENT

INTRODUCTION

The Land Claims

1. In 2008 the Regional Land Claims Commissioner ("*the RLCC*") acting in terms of s 14(1) of the Restitution of Land Rights Act no 22 of 1994 ("*the Act*") referred the land claim lodged by the Kwalindile Community to the court. The RLCC is cited as the participating party in these proceedings.
2. Some six years later, in 2014, the RLCC also referred the land claim lodged by the Zimbane Community to the court.
3. It is crucial to appreciate that both claims were lodged for and behalf of a community, not an individual or a family.

The claim was therefore made by a community or part of a community in terms of s 2(1)(d) of the Act; not by a person, descendant of a person or a deceased estate under the other subsections to s 2(1).

This is of particular relevance to the Zimbane land claim

4. It is also of crucial importance to bear in mind that a land claim can only be brought by a community (or part of a community) provided;
 - 4.1. it was dispossessed of a right in land after 19 June 1913;
 - 4.2. such dispossession was as a result of past racially discriminatory laws or practices; and that
 - 4.3. its claim was lodged not later than 31 December 1998 (the 30 June 2019 extended deadline has been effectively declared invalid).
5. Although it is common cause that both claims were lodged by 31 December 1998, the landowners dispute that some areas now claimed formed part of the land identified in the claim that was lodged. They also dispute that there was an acquisition or a dispossession or that, if there was a dispossession, it was as a result of racially discriminatory laws or practices.

6. Furthermore they dispute that at any relevant time to the claims, either plaintiff constituted a community or part of a community in the sense recognized by the Restitution Act¹, namely;

“any group of persons whose rights are derived from shared rules determining access to land held in common by such group and includes part of any such group”

7. The two referrals were consolidated for purposes of determination because part of the land claimed by the Kwalindile overlaps with that claimed by the Zimbane. This is the portion of the land identified as erf 912, Mthatha². For this purpose the Kwalindile became cited as the first plaintiff and the Zimbane as the second plaintiff.³
8. The majority of the land claimed falls within an area of central Mthatha which has either been earmarked for development or where development has already occurred.
9. At this stage the court is asked only to consider the validity of the land claims, not whether it is feasible to grant restoration as opposed to other forms of restitution if the claims are valid.
10. It should however be noted at this stage that the Kwalindile accept that it may be feasible to restore only the undeveloped portions of land to which they may be found to have a valid claim and that they would accept financial compensation to the extent that restoration is not feasible. Zimbane hold substantially a similar position.

THE LANDS CLAIMED

11. The land claimed by both plaintiffs concerns erf 912, Mthatha which is known as the commonage, albeit that they do not claim the same extent of that erf. Both plaintiffs initially claimed an entitlement to full rights of restoration to the commonage.
12. It was only in 1923 that the area known as the commonage became registered as erf 912. This occurred when ownership of the commonage became vested in the city of

¹ Restitution of Land Rights Act 22 of 1994 (“the Act”)

² In 2004 Umtata changed its name to Mthatha.

³ Unless the context indicates otherwise, Kwalindile or the Kwalindile, and Zimbane or the Zimbane refer to the first and second plaintiffs as cited. The question of whether either of them has a valid land claim as a community in respect of erf 912 or Thornhill no 8 is an issue before the court. As appears later, in the case of the Zimbane the issue is whether it was only certain individuals who had enjoyed an entitlement to graze cattle on erf 912 in their own right or whether the Zimbane Community itself held grazing rights on erf 912

Mthatha by the Governor General. The successors in title to the land is the second defendant, the King Sabata Dalindyebo Municipality (*“the municipality”*).

13. In addition the Kwalindile claimed land commonly known as the Trust Farms. There is no dispute that the lands identified in official documents produced in about 1963 which dealt with where the Kwalindile were being removed to constituted Trust Farms. However Thornhill no 8 was not identified in the documents as forming part of the Trust Farms and the municipality, Cape Gannett Properties 118 (Pty) Ltd and Proud Heritage Properties 119 (Pty) Ltd (who are the fifth and sixth defendants) dispute Kwalindile’s contention that it did.

COMPOSITION OF THE COURT

14. The court sat with the Reverend Stimela as the assessor. The decision on the merits of the case is the unanimous decision of the court⁴. The decision regarding the other issues identified in the next section is that of the presiding judge alone.

THE OTHER ISSUES

15. The main issues regarding the validity of the two land claims have already been mentioned.
16. In addition the Minister of Rural Development and Land Reform (who is the first defendant) supported by the RLCC brought two applications which require determination. I deal with each in turn as they concern purely legal issues falling for exclusive determination by the trial judge.

⁴ In terms of s 28 (3) of the Act as it applied when the case commenced, an assessor shall assist the Court at a contested hearing of a land claim but not in respect of any hearing where the only matters in dispute are questions of law, nor at any interlocutory or preliminary hearing or pretrial proceeding unless the Court decides otherwise. This section was subsequently amended in April 2024

Application to debar the municipality from participation and reconsideration of an ancillary ruling

17. The one application was brought against the municipality, which is the and owner of land in respect of which the major portion of the land claims relates. This application was an objection to the municipality withdrawing its withdrawal of opposition to the claims by way of notice on 12 December 2019. The relief sought was that the Municipality be debarred from participating in the trial on the merits.
18. This application was brought pursuant to Carelse J (at the time) directing at a pretrial conference held on 5 February 2020 that such an application be brought and that it would be heard shortly before the trial, which at that stage was due to commence on 1 April 2020. This was necessitated because at that stage Mr. Notshe, who represented the Minister and the RLCC, had only mentioned that his clients wished to object to such withdrawal.
19. However, in response to counsel contending that once an application was launched the court should give its decision on such an application before the trial proceeded, Carelse J at the conference on 5 February 2020 directed that judgment would only be handed down at the same time as judgment on the merits of the claim.
20. The application was brought in March 2021. On 24 March 2021 and after the current judge had been allocated the matter for purposes of proceeding to trial, both the Minister and the RLCC requested that Carelse J's ruling be reconsidered so that a decision would be handed down before the trial commenced. I ruled that Carelse J's ruling would not be changed because any party who may be dissatisfied with the decision could appeal and this would delay the determination of the merits in a case that had been referred to the court more than a decade earlier. This was the same reasons which motivated Carelse J's ruling. It may also be added that as time progressed lay witnesses who would testify to the oral history surrounding the land claims were attaining advanced ages and aside from their longevity, recollections may fade as a greater length of time passed by.
21. The application for reconsideration of the ruling reserving a decision on the application objecting to the withdrawal of the withdrawal until judgment is delivered on the merits of the claims was refused. The reasons were the same as before. The claim of prejudice to the Minister because the department had already made payment to the Zimbane as part of the equitable redress for dispossession of their rights in land of some R49.5 million pursuant to the municipality negotiating an agreed settlement can be safely rejected. That payment was made in respect of another piece of land claimed by the Zimbane which did not concern the municipality.

22. In amplification; the agreement to pay roughly R49.5 million covered an area known as Zimbane location, not erf 912. That claim was published under a different Gazette notice to the one gazetted for erf 912. Furthermore, it did not concern municipal land and therefore the municipality was not a party to that settlement or the negotiations which preceded it.
23. Another ground advanced by the Minister and supported by the RLCC was that as a consequence of the municipality withdrawing, the Minister failed to make provisions for the legal costs of a lengthy trial; this included not only the legal fees of the Minister but also of both the plaintiffs which were being ultimately born by the State through its other organs. However by June 2019 it was evident that the municipality's attempt to negotiate a settlement, which had prompted the withdrawal of its opposition and to speed up the process, had reached an impasse and was aborted.
24. Once a negotiated settlement had proved impossible to achieve, the municipality persisted with its initial position that the claims lacked merit and consistently confirmed this position from the time they were required to deliver their responses to the referral report and throughout subsequent pretrial conferences. The Minister could therefore not have been under any misapprehension about the need to budget in successive years from at least the financial year beginning 2020 for the legal costs of protracted litigation in respect of the claim. On the other hand the prejudice to the municipality by the time the reconsideration application was brought was manifest. Costs had already been incurred in engaging experts in several fields relevant to assessing the validity of the land claims, extensive inspections in loco had been conducted and approximately eight weeks of proceedings had already taken place with many experts called by both plaintiffs already having testified. The municipality made it clear that any adverse order at that stage with reference to its continued participation would inevitably trigger an application for leave to appeal.
25. The explanation for the municipality withdrawing its opposition to the claim demonstrates that it was not for the purposes of admitting the claim but to enable the process to speed up and facilitate a negotiated settlement at that stage. The test would be the same as for the waiver of a right- there must be a clear and unequivocal intention to abandon a right. That is clearly not the case. This court considers the explanation satisfactory and it has not been effectively gainsaid

26. Moreover, it would be difficult, without more, for this court to go behind the Constitutional Court finding involving the same parties in respect of the same land claim (or at least a vital portion of it) that the municipality was opposing the land claim.⁵
27. The appropriate order, including that of costs appears at the end of the judgment.

The application challenging the *locus* of Cape Gannett and Proud Heritage Properties

28. The Minister and the RLCC also brought an application challenging the *locus* of Cape Gannet and Proud Heritage from challenging the land claims. I will proceed to refer to them as the third parties.
29. The Minister and the RLCC face formidable hurdles in now challenging the third parties' right to participate.
30. Firstly, in January 2018 both defendants brought an application to be joined in the proceedings. Despite being served with the application, neither the Minister nor the RLCC opposed the joinder. On the contrary they both stated that they shall "*not oppose the relief ... and shall abide by the decision of the above Honourable Court*"
31. Unlike the situation of the municipality withdrawing its opposition, the Minister and the RLCC did not offer an acceptable explanation, let alone any explanation, for their decision to allow the joinder if the court was so minded.
32. Secondly, the contention advanced by Mr. Notshe in support of the application, is unsupported by the ordinary rules of an entitlement to participate in court proceedings where one's interests may be prejudicially affected, where s 34 of the Constitution protects a party's right to have a dispute that can be resolved by the application of law to be adjudicated by a court and where the Restitution Act does not expressly or by necessary implication take away such a right. Certainly section 11(6) cannot do so.
33. Section 11(6) provides that:

"Immediately after publishing the notice referred to in subsection (1), the regional land claims commissioner shall by notice in writing

⁵ In *Kwalindile Community v King Sabata Dalindyebo Municipality* 2013 (6) SA 193 (CC) the Constitutional Court stated at paras 14 and 16 that "*The municipality has strenuously resisted the claim of the Kwalindile community and has asserted that the claim has no merit in relation to the remainder of erf 912*" and "*The municipality insists that the Zimbane community area has never formed part of the town of Mthatha.*"

(a) advise the owner of the land in question and any other party which, in his or her opinion, might have an interest in the claim of the

publication of the notice; and

(b) refer the owner and such other party to the provisions of subsection (7)."

34. This section does no more than facilitate notice, but does not confer on the RLCC the right to determine who may or may not have an interest. That is a matter for the court to decide on basic principles of whether the ultimate decision may prejudicially affect the interests of any person, not just an owners rights. If it were otherwise then the Act would have said so. It does not. On the contrary s 11 relieved the RLCC of the obligation to notify everyone who may be potentially prejudiced even if the RLCC is unaware of the existence of any real right or personal right other than registered rights of ownership reflected in the deeds office. The legislature implicitly expects that ordinarily the registered owner (who must be notified) would inform any other interested party.
35. As a matter of law it is inconceivable that anyone who has an acknowledged real right in the land in question does not have *locus* to contest a land claim. In the present case Cape Gannet enjoys the real right of a long term lease which has been duly registered at the Deeds Office.
36. In the case of Proud Heritage, it has a contractual right to develop approximately 12.4 hectares of erf 912. Although it may not enjoy a real right, it certainly has an interest in preserving its commercial rights to exploit the land in question from the consequences of a land claim which would expunge such interest. In terms of s 34 of the Constitution and ordinary principles of joinder, it cannot be deprived of its right to be heard on the issues of the validity of a land claim which may prejudicially affect its interests.
37. The appropriate order, including that of costs appears at the end of the judgment.

THE KWALINDILE CLAIM

38. The Kwalindile claim areas of land within Mthatha which were historically known as the "*Trust Farms*". This was effectively set out in their claim form. They however had not, in their claim form specifically identified another piece of land which was in fact gazetted in terms of s 11 of the Act as land which the Kwalindile were claiming. This is a portion of erf 912 identified in the s 11 Gazette Notice as the "*Remainder of Erf 912*". ⁶

⁶ In respect of the remainder of erf 912, see Government Notice 642 of 25 May 2007 (GG 29918)

39. According to the Kwalindile, the Trust Farms comprise;

Glendon Farm 26

Signal Hill no 12

Annandale no 20

Nooitgedaacht no 18

Bedford Farm no 15,

Lyndale Farm no 25

Thornhill no 8 ⁷

40. The municipality and the third parties dispute that Thornhill formed part of the Trust Farms.

41. Turning to erf 912: Since its establishment, erf 912 has been known as the Commonage. As its nomenclature suggests, erf 912 was an area of land provided for communal grazing.

42. Whether it had previously been land used other than for communal purposes is one of the issues to be determined in relation to the Zimbane claim but not in respect of the Kwalindile.

This is because the Kwalindile do not claim to have been original occupiers of any of the land. The Kwalindile aver that they had been given the land as part of their resettlement by the apartheid government when they were forcibly removed from Gqogqorha to make way for a forestry plantation. They had been moved to Lyndale but at some stage the area allocated was inadequate and they claim that they were allowed to graze their cattle on erf 912. Their forced removal from Gqogqorha to Mthatha took place in 1963.

43. The first set of issues is whether the Kwalindile ever claimed erf 912 or Thornhill and if so what rights in land they were dispossessed of.

⁷ In respect of the Trust Farms, see Government Gazette Notice 574 of 15 June 2017 (GG 40919)

The Claim Form, the Overlay and Upliftment propositions

44. The first port of call in respect of any land claim is the claim form. In the present case the claim form claimed only the land which constituted the Trust farms to the exclusion of Thornhill. It was also contended that the community was dispossessed of grazing rights.
45. The Commission considered and investigated the claim. The product of its investigation was the Maycon Report of Prof Mayende. It should be noted at this stage that Prof Mayende was called by the Kwalindile to testify as an expert on their behalf.
46. The Maycon Report, which was accepted by the RLCC, and formed the basis of Kwalindile's response to the referral (by relying on it) contended for two propositions vital for the validity of the Kwalindile claim;
 - 46.1. The first was that the 1963 Planning Report which identified the Trust farms that had been allocated to the Kwalindile when overlaid to the map of the area at the time confirms that it included the portion of erf 912 and Thornhill
 - 46.2. Despite accepting that the Kwalindile only enjoyed shared and regulated (essentially through municipal bye-laws) grazing rights on the commonage, they should be entitled to upgrade their rights through the restitution process to one of full ownership.
47. Each proposition is flawed.
48. As to the first: Through cross-examination of Prof Mayende, Mr Grobler for the municipality conclusively demonstrated that there was no overlay of the land described in the 1963 Planning Report with the map of erf 912 or for that matter Thornhill⁸. The municipality called its own expert who demonstrated that there was no overlay. He was not seriously challenged by Mr Magigaba for the Kwalindile.
49. In regard to the second proposition, I believe Mr Coetzee for the third parties had an effective answer. He placed reliance on the binding Supreme Court of Appeal decision of *Macassar Land Claims Committee v Maccsand CC and another* [2017] 2 All SA 17 (SCA) at para 9 where Walis JA stated that;

"Where restoration of a right in land is claimed, that requires return of the right of which the claimant was dispossessed. In other words, the claimants are to be

⁸ This was by reference to, firstly the land surveyor's meeting of experts held on 6 October 2021 between Messrs Netshivhangoni, Kirchoff and Joubert where it was agreed that the 1963 planning map (regarding the Kwalindile's removal did not overlap with erf 912. It certainly did not overlap with Thornhill no 8. Secondly, there is no document which reflects that Thornhill no 8 was allocated to the Kwalindile. All the documentary evidence points the other way.

restored to the position they would have been in had there not been dispossessed of their right"

50. The effect is that the legislature does not entitle an "*upgrading of rights*" through the Restitution Act.⁹

Other findings

51. The municipality and the third parties contend that the Kwalindile failed to demonstrate that they were a community as defined by the Restitution Act.
52. We do not agree with that proposition. The starting point is not how their shared rules may have been intruded upon or curtailed by apartheid legislation. That would be counter-intuitive to the Restitution Act and undermine the objects of s 25 of the Constitution.
53. The starting point is the moment the Kwalindile were settled as a group by the apartheid government on land in Mthatha by reason of forced removal. The day prior to that, logic dictates that they were a community enjoying shared rules. The day after they were forcibly resettled in Mthatha and logic dictates that they did not lose their identity as a community. In short they were removed from one area and resettled in Mthatha *en masse* as the Kwalindile precisely because they were a community recognised by the law of the day as such. The documents dealing with their removal say as much.
54. If it happened that they were allowed to graze cattle under strict conditions on the land they were allocated or any other land it does not mean that they no longer were a community, or that they were a community for some purposes but not for others. The Restitution Act cannot be interpreted that way. They would continue to share values which may have been restricted in one way or another, but among themselves they maintained shared rules within the limitations of external forces. We therefore find that whatever their endeavours were when they were relocated to Mthatha, and however their activities were restricted, there was no evidence to demonstrate that the shared rules with which they came to Mthatha were lost or abandoned; only at best curtailed for certain purposes or in respect of certain endeavours or enterprises.

⁹ The only situation where this may arise is not under the ordinary referral process, but where the Minister proceeds under s 42E of the Act.

55. Accordingly, if they were allowed to graze on erf 912 under particular restrictions there is no evidence that this diminishes, as between them *inter se*, their continued respect of shared rules as a community.
56. However, the high water mark of the evidence led by the Kwalindile was that although they were relocated in 1963 on the Trust Farms, due to a drought in 1968 and the resultant reduction of available grazing and, they were permitted to extend their grazing onto the commonage.¹⁰
57. However their evidence was also to the effect that certain cattle were marked with paint to designate that the owner could graze on the commonage while those not permitted to graze on the commonage would have their cattle impounded.¹¹
58. A further factor was the state of the perimeter fencing around erf 912 and the inaccessibility of Thornhill to their cattle from the Trust farms, also due to the fencing that was constructed.¹²
59. In all the circumstances, at best there was an accommodation during the drought to enable extended grazing onto the commonage which of itself may have provided a grazing route to Thornhill. However at best that was a temporary accommodation during that specific drought period in 1968.¹³
60. Accordingly this court cannot find that the Kwalindile had any right over erf 912 or Thornhill even if the claim can be limited to the right to graze, whether exclusive or non-exclusive.
61. Finally, the court appreciated that the Kwalindile were forcibly removed. If they have a claim, it would relate to a forced removal in 1963 without adequate alternative or fertile land being provided (possibly even by reference to comparative carrying capacities). Whether their claim form can be extended to cover that, is not an issue before us,

¹⁰ Mr Mabelandile Kolwane. He was a witness for the first plaintiff. Mr Kolwane said that grazing only commenced on the commonage during the drought of 1968 with the permission of Mr Strachan, who appeared to be an official from the National Department of Agriculture, not anyone from the municipality. It will be recalled that the municipality had acquired full ownership of the commonage already by 1923, over 40 years earlier.

¹¹ This included cattle of the Kwalindile according to the testimony of Mr Maradebe Adkins who was also a witness for the first plaintiff. Mr Luvuyo Njemla's testimony refers to the early 1980s. This is a much later period to that dealt with by either Kolwane or Adkins and cannot assist because the rights asserted are claimed to be rights exercised in 1963 and not subject to cattle being paint branded or being impounded

¹² The municipal regulations in operation in 1963 only permitted owners or occupiers of land of a particular value to graze on the commonage. This was also subject to the number of cattle permitted to graze, subject to the payment of a fee and the requirement of branding. See for instance Provincial Gazette Notice 8 of 11 January 1952

¹³ See Mr Kolwane's evidence *supra*

although *prima facie* it appears that if properly supported and regard being had to relative sizes or possibly carrying capacity, a claim may lie for the provision of adequate alternate land or land with similar carrying capacity for grazing as compensation for their removal from arable land in Gqogqorha.¹⁴

62. The consequences of these findings are that the Kwalindile;

62.1. Have a valid claim to the Trust Farms but that Thornhill no 8 does not form part of them

62.2. Do not have a valid land claim to any portion of erf 912 or to Thornhill no 8

THE ZIMBANE CLAIM

63. The Zimbane claim was for a portion of erf 912

64. Unlike the Kwalindile who relied on an entitlement to upgrade their rights from non-exclusive grazing rights to ownership the Zimbane initially contended that they enjoyed rights of full ownership over erf 912

65. The major issue concerning the Zimbane claim is whether the claim is made on behalf of a community or whether the evidence shows no more than that individuals were entitled in their personal right only to graze cattle on erf 912 and whether there was any evidence of habitation. If that is not the case, then the other issues are whether there was a community, of which the Zimbane formed a part, which at some stage were dispossessed of land, if so whether that occurred before or after 1913 and if before 1913 whether it has sufficient relevance for the purposes of meeting the legislative requirement in terms of the Act of dispossession occurring after 1913 as a result of past racially discriminatory laws or practices. If the outcome of these issues is not in favour of the Zimbane community then it will be unnecessary to consider any of the other issues raised by the municipality or the third parties.

66. Whether one proceeds by having regard to the rights affected being those of a community as defined by the Act (as claimed by the second plaintiff) as opposed to individuals or individual families, or by having regard to whether any rights were lost

¹⁴ See the evidence of Mrs Adkins regarding the much smaller size of land the Kwalindile were removed to and inadequate provision of accommodation.

through dispossession which can be traced back to racially discriminatory laws or practices, the outcome will be the same. .

DID THE ZIMBANE COMMUNITY ENJOY ANY RIGHTS IN ERF 912 ON OR AFTER 18 JUNE 1913

67. The evidence clearly demonstrates that as at 18 June 1913 the use of the commonage was highly regulated through the implementation of bye-laws.¹⁵
68. Effectively only persons holding property within Mthatha could access the commonage, and even so their cattle would have to be marked and they were obliged to pay a fee for grazing. There were exceptions in the cases of special permission. This was the case of Mr Mda, who was appointed as of the commonage gatekeeper. He was provided with a residence on the commonage, but once again that was by reason of the individuals own situation, not because he or she was part of a community as contemplated by the Act.
69. The evidence before the court was that these bye laws were in force on 18 June 1913 and beyond. The Zimbane's case is based on their being a community exercising rights in land as a community in 1913 and before that. Unlike the Kwalindile, they do not contend that they acquired rights, whether by way of leave or licence, after 1913. Accordingly any argument based on the state of affairs regarding the enforcement or non-enforcement of the bye laws (which it is common cause were always in place regulating access to the commonage) is not a consideration in the case of the second plaintiff. The fact that there have been subsequent land invasions is therefore irrelevant.
70. Even if the Zimbane were to demonstrate a subsequent failure to enforce the bye laws, it does not affect whether or not they were , as a community, exercising rights on the commonage. Even if it could be said that they had gained unlawful entry onto the commonage after 1913, then it was not pursuant to exercising any lawful right, unless it could be said that they were re-asserting an historic right which predated 1913 and

¹⁵ Bye-laws regulating the restricted use of the commonage were traced back uninterruptedly to the Municipal Act of 1882 pursuant to which Proclamation 192 of October 1882 was published. It vested control of the commonage in the town council. By 1883 bye laws were published regulating the use of the commonage for grazing effectively to persons who had a title deed to land within the town or those who obtained special permission, subject to the imposition of a fine to those not entitled to graze their animals. These bye laws were enforced by commonage or borough rangers, and a fence erected in 1897 as evidenced from the municipal records produced. They included Reports, Council Minutes, cashbook entries (reflecting details of the payment of fees, rentals and fines) and lists of private landowners in the town itself which included individual members from the Zimbane

which could be considered as falling within the purview of the Act by reason of a valid causal connection as contemplated by the Act.¹⁶

71. Since the Zimbane community never had shared rights to erf 912 in 1913 they could not have been disposed of anything when the commonage was surveyed and transferred by the Union Government to the municipality in 1923, which is the date on which Prof Peires in his testimony contended dispossession took place. Furthermore he could not show either in his expert report or in his testimony that anything had *de facto* changed on the ground or by reference to rights exercised by the Zimbane Community in 1923 by reason of that transfer.
72. It is perhaps appropriate to say something about the manner in which the second plaintiff pleaded its case and the versions it put to the first plaintiff's witnesses.
73. The Zimbane claimed in their amended response to the RLCC referral that they had registered and unregistered rights to residential occupation, grazing, collection of wood, the rights to tender and plough fields and the rights to bury their dead. It was also contended that they had "*lived on the land for a number of years*" before being dispossessed¹⁷. In its amended response the Zimbane sought restoration of the undeveloped portions of the remainder of erf 912.
74. Even during the cross examination of Kwalindile's expert (Prof Mayende), the version put by Zimbane was that there were settlements of people living together as a group with lots of houses. In this context it was also put that the aerial photographs will demonstrate this quantity of houses on the commonage. However we are satisfied that the aerial photographs do not demonstrate this.
75. Furthermore the lay witnesses called by Zimbane failed to establish a link between the individual rights they claimed to have enjoyed and that such rights were shared rights of the community¹⁸. This is not a minor issue. Individual or family rights are those physically enjoyed over a defined area, whether it be the perimeters of a residence, a cropping field or a grazing area and whether by way of an exclusive or non-exclusive right. By contrast the rights of a community are enjoyed over areas of land which are not necessarily permanently or even temporarily physically occupied, but rather over which control is exercised or simply respected. In short, while individual or family ownership generally envisages actual use and occupation of a specific location, communal ownership

¹⁶ See generally *Department of Land Affairs & Others v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12

¹⁷ Zimbane's Ammended Response, para 8

¹⁸ They were Mrs Vatiswa Bam-Mugwanya, Mr Magqabi Mbiko, Ms Tumeka Mda and Mr Lendela Saphepha

envisages a circumference of influence, whether it be through political power or otherwise.

76. The evidence of the individuals who testified regarding their historic association with the land failed to go beyond the history of his or her individual family, let alone make out a sufficient case for the existence of the individual exercise of any right, however tenuous, being by reason of the existence of a shared communal right.¹⁹
77. Mr Mbiko, called by the second plaintiff, sought to deal with the presence of graves on the commonage. However his evidence was only that his aunt who suffered from a mental illness had disappeared and was buried at the place where she was found- not that the place she was found was recognised as an ancestral burial ground of the community or even his own family.
78. Indeed under cross examination he was asked about the location of the family graves and it was clear that the location of his aunt's grave had no relevance to the location of their family graves. This was reinforced by the joint experts minute of 7 October 2021 which recorded their agreement that the Mbiko family graves are located outside erf 912. The expert report of Halket and Hart relied on by the Zimbane can only be as good as the source material on which it relied. The source was Mbiko and his testimony undermines the foundation of their report in this regard.
79. At best Mbiko's testimony is unreliable. He also claimed to recall that in about 1956 there were stone walled kraals, grain bins and some agriculture which was taking place on the eastern slopes of erf 912. He asserted that he had personally seen them. However the aerial photographs of 1938, 1952 and even in 1958 do not evidence any such structures. This was the common consensus of the experts. Halkett in his testimony could provide no explanation, let alone a logical one (which is a requirement for the acceptance of expert opinion²⁰) as to how features that were claimed to be there in 1956 had all disappeared within two years (when the 1958 aerial photographs were taken), particularly as no evidence was presented by any witness as to what event may have caused this.

¹⁹ Mr Mda has already been mentioned as having been given special permission to occupy and graze his cattle on the commonage because of his appointment as gatekeeper. The respect only for individual rights on the commonage and the enforcement of restrictions in respect of any individual who did not comply with the Bye laws which affected the commonage is evident also in respect of the individual Bam family members

²⁰ See *Africa Cash and Carry (Pty) Ltd v Commissioner; SARS* [2020] 1 All SA 1 at para 71. See generally *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) at paras 22, 28 and 29.

80. The report of Halkett and Hart referred to another grave. It was of an unknown woman. This was located within the fenced off area of the Ministerial complex and could not be accessed during the inspection. However there was no evidence to link her to the Zimbane community.
81. A third grave was identified by Ms Thumeka Mda. She testified that her father informed her of the grave. She claimed that it was the only visible mound in the area. However at the inspection it was noted that there were many similar mounds and Mr Krige accepted that none of the other mounds was claimed to be a grave. Accordingly, even if the mound pointed out by Mda was not a topographic feature but a grave, it was isolated and because of the dearth of other evidence cannot establish the existence of a community occupying the area based on shared rights.
82. Finally on this aspect, it is necessary to say something about the calling of an oral historian by the Zimbane as an expert.
83. It is trite that a person who does not test the statement presented by another is not an expert. While an expert is required to identify the facts presented by another, the purpose of doing so is either to assume it to be correct and proceed to provide an opinion based on that assumption, or to use his or her forensic skill, experience and knowledge to test the statement.
84. The oral historian in the present case, Ms Cornell, did no more than ask the persons with whom she spoke to relate their story of the history as they understood it. At no stage did she attempt to test the veracity of the statements, engage in any interrogation or triangulate the statements provided with any external historical data.
85. The fact that Ms Cornell may be highly skilled in getting people to narrate their experiences or pass on their understanding of events, customs, traditions and so forth cannot elevate her recording or even a distillation of what they said into expert testimony of the events themselves.
86. Ms Cornell's report and evidence does not qualify as expert testimony as to the veracity of the statements attributed to others however accurate or comprehensive the note may be. It remains the statement of a person who may or may not be called as a witness and at best can be used as a statement against interest but for all other purposes remains

inadmissible unless it falls under one of the statutory or common law exceptions to the hearsay evidence rule.²¹

87. There are two further difficulties in accepted the evidence sought to be led by Ms Cornel on the basis that she is tendering expert testimony. The one is that it is not the best evidence, nor one sanctioned by the rules of court where a party is concerned that testimony may be lost because the witness may die due to age or ill health prior to the case being heard. Mr Coetzee referred to the provisions of the Uniform Rules of Court which at least secure adequate observance in cases of this nature of the right of a party to test the testimony sought to be presented by another even though it is not done in a court room before a judge.
88. Uniform Rules 38(3) and (5) provide that a court may on application order evidence to be taken of a witness before a commissioner of the court and in such event the evidence must be adduced through oral examination in the presence of the other party (or parties) and legal representatives who can then cross examine, unless the court orders otherwise²². Since the Land Court Rules are silent on this aspect, these provisions of the Uniform Rules apply (see rule 28(2) of the Land Court Rules). This is a salutary provision which should be complied with so as to preserve the fair trial rights of the other parties which the Constitution guarantees. A deviation from this right, in a manner other than that provided for under Uniform rule 38(3) and (5), will presumably have to pass scrutiny under the limitation provisions of s 36 of the Constitution.
89. In the present case the process applied by Cornell to obtain the testimony from witnesses for the second plaintiff was highly prejudicial to the rights of others. Three of the four interviews she conducted were in the boardroom of the second plaintiff's attorney and her brief was not to furnish an opinion but rather to gather and record information from the persons she was to interview in an untested manner. This of itself

²¹ The fact that she is not an expert does not mean that the content of Mbiko's statement or those who did testify does not have value to the extent that they did present evidence before the court and were cross-examined. The complaint regarding the oral historian is not that there is no place for the collection and preservation of ancestral history and its value in court proceedings (see *Salem Party Club v Salem Community* 2018(3) SA 1 (CC) per Cameron J at para 64. Rather it is the way in which it is gathered and the weight to be placed on it. Mr Grobler's cross-examination demonstrated the pitfalls of mute introduction

²² Rule 38

(3) A court may, on application on notice in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial before a commissioner of the court, and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems meet, and in particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.

(5) Unless the Court ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before the commissioner in terms of an order granted under subrule (3), shall be adduced upon oral examination in the presence of the parties, their advocates or attorneys, and the witness concerned may be subject to cross-examination and re-examination.

falls short of the requirements for the admission of expert testimony into the pool of evidence which a court is entitled to weigh.

DID THE ZIMBANE COMMUNITY AT ANY STAGE EXERCISE RIGHTS IN ERF 912

90. Possibly because the second plaintiff appreciated that it could not demonstrate enjoying communal rights in erf 912 as at 19 June 1913, it sought to go back a century and a half to alter the course of history and challenge a document titled "*Deed of Transfer*". The impugned document at face value was signed on 1 August 1882 and recorded the sale (by cession and transfer) between the Paramount Chief of the Thembu, N'Gangelizwe, and the Chief Magistrate of the Territory of Thembuland, HG Elliott²³. In its terms they agreed to enable an existing white settlement, described as the European Settlement Umtata, to be acquired by the Government of the Cape of Good Hope for £1 200 on the land where they had established themselves and on which they had already been given rights of residence by N'Gangelizwe. The boundaries of the land sold were described and included the area which came to be known as the commonage (i.e. now erf 912).
91. It should be added that the Zimbane claim lineage as a community, or as a former part of the Thembu community. This is vigorously disputed by the municipality and the third parties. In view of our findings on the issues identified earlier, it is unnecessary to deal with that.
92. The Deed of Transfer is attached as an appendix to the judgment.
93. The second plaintiff contends that the transfer of the commonage was *ultra vires*. To this end it relies primarily on the evidence of Prof Peires.
94. The validity of the agreement is challenged by reference to;
 - 94.1. Its title
 - 94.2. The right or authority of the Paramount Chief to enter into such an agreement on behalf of his people
 - 94.3. The authority of Elliott to conclude the agreement on behalf of the Cape Government for the purchase of the land in question or to issue the deed of transfer (i.e. on the assumption that the Deed of Transfer was a title deed).

²³ The signatures of N'Gangelizwe and his witnesses, being his three councillors, M'bande, Msenge and Bida, were effected in the presence of Resident Magistrate AH Stanford

- 94.4. The agreement was concluded under duress or coercion by a colonial power
95. In our view the position taken by Prof Peires and that of the second plaintiff is fundamentally flawed for two reasons.
96. The first is that irrespective of the nomenclature given to the document, its substance is an agreement for the outright cession of clearly identified land at an agreed price concluded by two persons who purported to be empowered to do so. Today we would speak of a treaty between leaders on behalf of their nations or people to acquire land of another²⁴. Nonetheless the nature of the transaction remains an outright cession of land. Accordingly it is incorrect to regard the document as equivalent to a title deed for the sale of land to or by a private citizen.
97. It would also be wrong to require at that time for the land to be registered in the Deeds Registry of the Cape. Land owned by government did not have to be registered. One is dealing with the absolute cession of political power and control. Indeed the acquisition of title by the individual settlers was itself a process requiring survey, demarcation and registration of title.²⁵
98. Mr Grobler for the municipality referred the court to the ways in which International law recognises the lawful acquisition of territory by one State from or another. They are by way of cession, annexation, occupation, prescription and accretion²⁶. The deed of transfer in its terms therefore is by international norms recognised as a legally valid means of acquiring territory. Its consequence is to confer sovereignty over the territory in question to the cessionary power.
99. The second is that Prof Peires has seen the transaction through the prism of colonial oppression rather than opportunity and realpolitik which it cannot be said would have played out any differently by reference to race. The agreement concluded between N'Gangelizwe and Elliott arose in the following circumstances.
- 99.1. At the time of the agreement, N'Gangelizwe had allowed European settlers leave to settle in an area to which the commonage relates. The settlers were

²⁴ Alaska was purchased from the Russian Empire by the United States of America under a document titled a Treaty. So too the document under which China ceded Hong Kong island to the British. However the document signed by the United Kingdom returning Hong Kong to China was identified as a Joint Declaration

²⁵ After the cession of the European Settlement, steps were taken to investigate and regularise the grants given by N'Gangelizwe to the settlers which culminated in obtaining registered title in the form of a perpetual quitrent. The process commenced in 1882 and was finalised in 1878

²⁶ Prof Johan Dugard: *International Law: A South African Perspective* especially at p121 fn 55, pp 122 to 123 and 124. See generally Jennings and Watts: *Oppenheim's International Law* (9th ed) vol 1 p 543 and 679

allowed to build houses, shops, a church, public hall and other permanent structures as well as engage in trades. They already were a community in their own right albeit that they did not have registered title, only an entitlement to remain there.

- 99.2. Prof Peires set out the circumstances of N'Gangelizwe and his people prior to the agreement. They can be summarised as follows: N'Gangelizwe's actions in the brutal treatment of his wife²⁷, who was the daughter of Gcaleka King Sarhili, and subsequently killing her female attendant occasioned two separate wars between the amaGcaleka and the AbaThembu²⁸. In both wars the AbaThembu were heavily defeated. N'Gangelizwe fearing for his life sought refuge at the local Methodist missionary, under Peter Hargreaves, and invoked him to procure colonial protection for himself and his people.
100. It therefore would be incorrect to categorize the circumstances under which the agreement was concluded as one of colonial oppression rather than the AbaThembu people entering into a treaty with the colonial government which effectively gave political power over the European settlement to the British and in exchange for which payment was made.
101. Mr. Grobler referred to many instances where territory was sold between nations aside from the sale by Russia of Alaska to the United States. He referred to the sale of the Caroline islands by Spain to Germany in 1899 and the sale in 1916 by Denmark of Saint Thomas, Saint John and Saint Croix in the West Indies to the United States.
102. Since the second plaintiff cannot demonstrate that the agreement was concluded under duress through colonial oppression, it is unnecessary to consider the recognition given by international law to the acquisition of territory by annexation or occupation through conquest and its implications in the context of the Restitution Act and its application.
103. That leaves the issue of authority of the signatories to the agreement.
104. In respect of N'Gangelizwe, he signed the agreement in the presence of three of the AbaThembu counsellors. Furthermore the historical records produced show that the agreement was not the product of a sudden impulse but had been in the offing for some time²⁹. This is particularly evident from the official Minutes of evidence taken in October

²⁷ N'Gangelizwe's wife, Nomkafulo Novili was the daughter of the Paramount Chief of the Xhosa. She fled her husband and returned to her father after N'Gangelizwe had brutally assaulted and maimed her

²⁸ The first was in September 1872. The second was later in 1874.

²⁹ Already in November 1875 the Thembu chiefs discussed the cession of land to the Crown.

and November 1881 (extracted from the so called Blue Book). It reflects that N'Gangelizwe sat with his counsellors and there is nothing to suggest that they did not discuss events with their people before proceeding to the next step in the process which culminated in the August 1882 agreement.

105. Furthermore the terms of the agreement were respected and implemented. Prof Peires referred to a minute where discontent had been expressed but it is evident from his cross examination by Mr Grobler of the content relied on that it did not refer to the situation in Mthatha.³⁰
106. As for Elliott's authority to represent the Cape Colony, the historic records demonstrate a line of authorisation from the Governor to him, the official minutes which show the build up to the consummation of the agreement, even to the recognition of the payment of the 1200 pounds. Of course there is then the implementation of the agreement not only by reference to the payment of that amount but also the implementation of the terms of the agreement which saw effective title being given to the residents.³¹
107. We are satisfied therefore that the August 1882 agreement cannot be attacked. This makes it unnecessary to consider the argument raised by Mr Grobler dealing with the concessions made by Prof Peires regarding the "*ultra vires*" period he in fact relied on³². It also becomes unnecessary to consider the possibly more complex legal question of how far back one can apply the *ultra vires* principles in relation to the consummation or execution of a document that had been acted on as if it was valid without express statutory intervention. In the present case the court is satisfied that the agreement was concluded in circumstances that did not amount to oppression, that it was properly executed by the parties and even if there were any flaws, its terms were fully implemented and respected by the respective nations which the signatories represented.

³⁰ See the Memorandum from Stanford, the magistrate of Umtata to a Colonial Secretary. Mr Krige referred in all to three formal protests. None can be understood to support Prof Peires' position. The court prefers the expert testimony of Prof Darius which triangulates with the volume of documentation procured from that period and is consistent with them when considered individually and as a narrative of events as a whole.

³¹ Para 144 of Mr Krige's first set of heads of argument of June 2024 concedes Elliot's authority, albeit by confirmation after Proclamation 13 of 1882

³² Aside from the concessions made in response to Mr Grobler's questions, the Professor's responses on critical issues appeared speculative and did not withstand analytical scrutiny.

COSTS

108. Both the second defendant and the third parties seek costs against the Minister and the RLCC
109. The Minister had supported the contentions advanced with regard to the validity of the land claims and actively engaged in pursuing that position. There can therefore be no quarrel with regard to the cost order sought in that regard.
110. The RLCC stands on a somewhat different footing. Case law confirms that the RLCC as a participating party performs a neutral function within the scheme of the act.
111. The difficulty facing the RLCC is that it is represented by the same legal team which represents the Minister. While it may be possible for the RLCC to utilise the same legal representatives as a litigating party (a position on which I personally express no opinion), this may at some stage in the proceedings jeopardise its standing of neutrality.
112. It therefore appears that, if the RLCC is to utilise the same legal representatives as another organ of state, it must constantly monitor the situation to assess whether it is indeed maintaining a position of neutrality.
113. In the present case, the RLCC made common cause with the applications and position adopted by the Minister.
114. This also places the legal teams in a difficult position because they are obliged to represent the best interests of their clients, and where the Minister becomes an active litigant this affects the ability of the RLCC to remain neutral.
115. The record shows that the RLCC did not remain neutral but actively engaged and supported the Minister in not only the two interlocutory applications but persisting with positions that despite the content of reports that came through at a relatively early stage, and despite the plaintiff's not utilising experts whose reports had not favored the extent of their claims, failed to reconsider their position and appoint their own legal team.
116. In these circumstances the municipality and the third parties are entitled to seek costs also against the RLCC. This applies also to the interlocutory applications in respect of which the RLCC made common ground with the Minister in bringing the applications

APPRECIATION

117. We express our appreciation to the first plaintiff's counsel, Mr Magigaga, and his attorney for continuing to represent their client despite not being covered for fees or

disbursements for much of the trial³³. This judgment has distilled what we believe are integral elements to the plaintiffs' cases, the outcome of which obviates the need to engage on any of the other aspects of the case or to deal with the quality of evidence provided by each of the experts³⁴. Accordingly this judgment cannot do justice to the enormous body of work produced and research undertaken by the legal representatives, and particularly by Messrs Krige, Grobler, Coetzee and their legal teams. The court is indebted to them for the invaluable assistance provided.

ORDER

The following order is made:

1. *The interlocutory applications brought by the first defendant and the participating party against the second 5th and 6th defendants are dismissed with costs*
2. *The first plaintiff has a valid land claim to the Trust Farms being:*
 - 2.1. *Glendon Farm 26*
 - 2.2. *Signal Hill no 12*
 - 2.3. *Annandale no 20*
 - 2.4. *Nooitgedaacht no 18*
 - 2.5. *Bedford Farm no 15,*
 - 2.6. *Lyndale Farm no 25*
3. *The first plaintiff does not have a valid land claim to Thornhill no 8 or to any portion of Erf 912 Mthatha*
4. *The second plaintiff does not have a valid land claim to any portion of Erf 912 Mthatha*
5. *The second defendant and the fifth and sixth defendants are entitled to costs against the first defendant and the participating party jointly and severally, the one paying the other to be absolved, including the costs of engaging senior and junior counsel where applicable.*

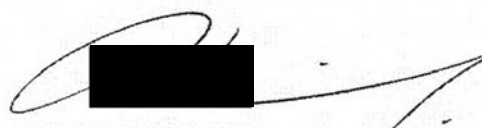
³³ The reasons for this appear from *M Magigaba Inc Attorneys and another v Legal Aid South Africa and others* [2024] ZALCC 9.

³⁴ We reserve comment on the quality of testimony by the various experts. Beyond what has been expressed, having regard to the basis upon which our decision has been reached, it appears to be unnecessary to say more at this stage

6. *In respect of the second and fifth and sixth defendants their costs shall include;*
 - 6.1. *The employment of two counsel (where engaged) and an attorney in respect of all trial dates, which order is to operate jointly and severally with any previous cost orders secured against the first plaintiff*
 - 6.2. *the cost of two counsel (where engaged) and an attorney for attending all pretrial conferences, the costs incurred in respect of consultations with representatives of their clients, and the costs in respect of consultations with the experts listed below and the witnesses who testified, including all travelling expenses and costs in respect of travelling time*
 - 6.3. *the cost of attending to inspections in loco by two counsel (where engaged) and an attorney, including costs in respect of travelling time and travelling expenses*
 - 6.4. *the travelling and reasonable and necessary accommodation expenses of the witnesses called by the aforesaid defendants and expert witnesses to attend the trial of the matter*
7. *In addition, in respect of the second defendant such costs shall furthermore include:*
 - 7.1. *All costs of drafting maps and the obtaining of all aerial photographs in the making of copies thereof for the trial*
 - 7.2. *All costs incurred by the second defendant's attorney in preparation, indexing and pagination of all bundles of documents, maps and photographs, transcripts of court proceedings and making copies thereof as well as indexing and pagination of the court bundles and files (inclusive of lever arch files), the latter costs and expenses of which were the responsibility of the plaintiffs' attorneys*
 - 7.3. *the qualifying fees and expenses of the following expert witnesses, such to include the costs of the inspections in loco conducted by them, the consultations by them with the second defendant to obtain relevant information to compile their reports, the drafting of the reports and the consultation time with second defendant's two counsel (where engaged) and attorney and the attendance fees for the trial:*
 - 7.3.1. *Francois Joubert in respect of both plaintiffs' claims*
 - 7.3.2. *Hennie Schoeman in respect of both plaintiffs' claims*

7.3.3. *Prof. Peter Delius in respect of only the second plaintiff's claim*

8. *In addition, in respect of the fifth and sixth defendants such costs shall furthermore include the qualifying fees and expenses of Mr Kirchoff as an expert witnesses, such to include the costs of the inspections in loco conducted by him, the consultations by him with the fifth and sixth defendants to obtain relevant information to compile his report, the drafting of the report and the consultation time with their counsel and attorney;*
9. *To the extent that Uniform Rule 67A applies (by reason of Land Court Rule 28 (2)) at any stage to the costs, then such costs shall be on scale C as provided for in Uniform Rule 69(12)*



SPILG, J


Rev M STEMELA, Assessor

APPENDIX

DEED OF TRANSFER OF 1 AUGUST 1882

BETWEEN

THE PARAMOUNT CHIEF OF THE THEMBA

AND

THE GOVERNMENT OF THE CAPE OF GOOD HOPE

No 48

DEED OF TRANSFER

Know all men to whom it may concern

THAT N'GANGELIZWE, the paramount Chief of the Temba Tribe, being at the time advised and assisted by his councillors M'bande, Msenge, and Bida, appeared before me

Arthur Henry Bell Stanford, Resident Magistrate of the District of Umtata, in the territory of Tembuland, and declared that he had truly and legally sold, and that he did by these presents cede and transfer in full and free property to and on behalf of Henry George Elliot, C.M.G., Chief Magistrate of the Territory of Tembuland, he, the said Henry George Elliot, acting for and on behalf of the said Government of the Cape of Good Hope, by the instructions and advice of the said Government, a certain portion of ground situate in the territory of Tembuland above said, and heretofore known as the European settlement Umtata, the boundary lines of which extends from the Lutshaba Drift due west to the point of the ridge above the place known as Ncanda's kraal, thence westerly to a small vley, thence in a straight line to the summit of a grassy knoll on a dividing ridge between the Cicira and Ncise streams, crossed by the waggon road leading to the Tabase, thence along the ridge aforesaid to the point where the north eastern branch of the Tuvee stream rises, thence down to the Tuvee stream aforesaid to its junction of the Cicira River, thence up that river to the junction of the Qweque stream, from thence up that stream to the point where the main waggon road from Clarkebury and Umtata crosses it, thence along the said waggon road to the first ravine east of the Qweque Mission Station, up this ravine to the summit of a high hill overlooking the Zimbana Valley, from this hill in a straight line across to the ridge north of Zimbana River, down this ridge to the source of the Tyumbu Stream, down this stream to its junction with the Umtata River, thence up that river to the Sutshaba Drift as aforesaid.

Wherefore, the appearer, the said N'Gangelizwe, advised and assisted by his councillors as aforesaid, renouncing all the right and title he heretofore had to the premises on behalf of as aforesaid did in consequence also acknowledged to the entirely dispossessed of and disentitled to the same, and that, by virtue of these presents, the said Henry George Elliot, Chief Magistrate of the Territory of Tembuland, acting for on and on behalf of the Government of the Colony of the Cape of Good Hope as aforesaid, now

is and henceforth shall be entitled thereto, moreover promising to the free and warrant the property this sold and transferred, as also to clear it from all encumbrances and hypothecations according to the laws respecting the purchase ad sale of landed property, save and except only that the rights and privileges now enjoyed by the Europeans residing within the boundary of the "European settlement of Umtata" as aforesaid, and to who the appearer, the said N'Gangelizwe, as Paramount Chief of the Tembu tribe had formerly granted leave to settle, and who are at present paying to the Government of the Cape of Good Hope licences for holdings — to be respected and maintained as heretofore, and finally acknowledging to be satisfactorily paid the whole of the purchase money amounting to a sum of one thousand two hundred pounds sterling (1 ,200/.)

In witness whereof, I, the said Arthur Henry Bell Stanford, together with the appearer, the said N'Gangelizwe, advised and assisted by his councillors as aforesaid have subscribed to these presents.

This done and executed at the office of the Resident Magistrate of Umtata,

Tembuland, Cape of Good Hope, on the first day of the month of August in the year of our Lord, one thousand eight hundred and eighty-two

(Signed) N'GANGWELIZE,

His X mark

In my presence

(Signed)

AH Stanford

Resident Magistrate,

Umtata, Tembuland,

As witnesses

Their

(Signed) MBANDE X

MSENGE X

BIDA X

marks

Councillors

(Signed) ARCH. T. KINTHERS

JW HEATHCOTE, J.P.

GEO. HOUSLEY

DATE OF JUDGMENT:

31 July 2026

FOR FIRST PLAINTIFF:

Adv MT Magigaba

M Magigaba Inc

FOR SECOND PLAINTIFF:

Adv LJ Krige

Adv A Bodlani SC

Chris Bodlani Attorneys

FOR PARTICIPATING PARTY AND

FIRST DEFENDANT:

Adv V Notshe SC

Adv X Goci SC

MT Mlola Attorneys Inc

FOR SECOND DEFENDANT:

Adv GL Grobler SC

Adv AM Da Silva SC

Sakhela Inc

FOR FIFTH AND SIXTH DEFENDANTS:

Adv JP Coetzee SC

Darryl Ackerman Attorneys