



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not Reportable

Case no:795/2024

In the matter between:

THE DOMBO COMMUNITY

FIRST APPELLANT

MARTIN JOHN DOMBO N O

SECOND APPELLANT

RATSHILUMELA JOHN DOMBO N O

THIRD APPELANT

and

TSHAKHUMA COMMUNITY TRUST

FIRST RESPONDENT

**MUKANDANAGLAWO WILBERT MAZIVHANDILA
N O**

SECOND RESPONDENT

REGIONAL LAND CLAIMS COMMISSIONER

THIRD RESPONDENT

CHIEF LAND CLAIMS COMMISSIONER

FOURTH RESPONDENT

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

FIFTH RESPONDENT

Neutral citation: *The Dombo Community and Others v Tshakhuma Community Trust and Others* (795/2024) [2026] ZASCA 118 (11 September 2026)

Coram: GOOSEN, MOLEFE and KEIGHTLEY JJA and ZILWA and MOOKI AJJA

Heard: 13 MAY 2026

Delivered: 11 September 2026

Summary: Administrative law – review – decision of the Regional Land Claims Commission to accept a community land claim and to gazette the claim in relation to land – Whether the decision is lawful – Existence of a prior decision to accept and gazette a community land claim encompassing the latter claim extant and lawful – Purported administrative decision of the Regional Land Claims Commission unlawful.

ORDER

On appeal from: Land Claims Court, Randburg (Ncube J sitting as court of first instance):

The application for leave to appeal is dismissed with costs.

JUDGMENT

Zilwa AJA (Goosen, Molefe and Keightley JJA and Mooki AJA concurring):

Introduction

[1] This matter concerns a claim for restitution of rights in land lodged by a community, under the Restitution of Land Rights Act 22 of 1994 (the Restitution Act). It comes before us in the form of an application for leave to appeal, referred for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 (the Superior Courts Act). Leave is sought to appeal against an order of the Land Claims Court (per Ncube J) which reviewed and set aside a decision of the Regional Land Claims Commission, Limpopo (the RLCC) to accept a claim lodged by the first applicant, the Dombo community.

The facts

[2] On 31 May 1995, Butshiba Daniel Dombo (Dombo) lodged a claim with the Limpopo Regional Land Claims Commission (RLCC) for the restitution of land rights, under the Restitution Act on behalf of the Dombo community (the Dombo claim). The claim was for the restoration of land that was described in the claim form as the 'Luvubu Dandani Ha Dombo Zoutpansberg District.' On 6 January 1998, Paramount Chief Andries Mavhugu Madvizvhandila also lodged a claim for the restitution of land rights with the RLCC, on behalf of the Tshakuma Community. The land under claim included land which encompassed the Dombo claim. The RLCC undertook an investigation of the claims.

[3] Although two separate claims had been lodged, the RLCC did not treat them as competing. Rather, the RLCC investigation established that the Dombo 'community' fell within the Tshakuma community. Prior to accepting the Tshakuma Community claim, the RLCC facilitated discussion between the nominal claimants. This process culminated in an agreement, between representatives of the broader qualifying community that the Tshakuma Community claim encompasses that lodged by Dombo. Thus, a single community claim would be processed as that of the Tshakuma Community. This is the claim that was accepted as compliant, and it was gazetted as required by the Restitution Act. In order to give effect to the restitution of the land under claim the Tshakuma Community Trust (the Trust) was established. The Trustees included Dombo, who had lodged the Dombo 'community claim'. Later other members of the Dombo clan were appointed as trustees.

[4] Restitution of the land under claim proceeded upon this basis. In due course a number of portions of the claimed land were transferred to and registered in the name of the Trust. The Trust proceeded to manage the land on behalf of the broader Tshakuma community.

Background to the litigation

[5] During 2008 allegations arose within the Trust that Trust funds had been misappropriated. This resulted in the removal of trustees who were then drawn from the Dombo clan and their replacement with other representative trustees. The aggrieved trustees pursued a complaint with the RLCC. In doing so they purported to revive a land claim that had previously been lodged with the RLCC.

[6] It is not disputed that the RLCC commenced an investigation into the Dombo community claim. During 2012 Ms Ratshitanga, an official at the RLCC, produced a report in which she recommended that the RLCC accept and approve the Dombo community claim. She also recommended that negotiations be pursued regarding certain portions of land that had already been restored to the Tshakuma Community and registered in the name of the Trust. The RLCC accepted the recommendations. It published the Dombo Community Claim in Government Gazette Number 35831 of 2

November 2012, indicating in such publication that 15 properties in the claim had been ‘erroneously’ restored to and were currently owned by the Tshakuma Community Trust.

[7] It is this latter decision that is the subject of the review application brought on behalf of the Trust. The trustees sought to set aside the decision to accept the Dombo claim as being unlawful in light, inter alia, of the existence of prior administrative decisions of the RLCC to accept the Tshakuma community claim and to restore land under claim to the Trust on behalf of the broader community.

In the Land Claims Court

[8] The Land Claims Court, per Ncube J, concluded that the acceptance, approval and subsequent publication of the Dombo Community claim was indeed unlawful. The court accepted that the RLCC’s administrative action conflicted with its earlier decision to accept the Tshakuma claim, a decision that had not been challenged or set aside. The Land Claims Court granted an order:

- (i) Reviewing and setting aside the decision of the Regional Land Claims Commissioner, Limpopo, to accept and approve the recommendation of Miss Ratshitanga, contained in her report dated 14 September 2012; and
- (ii) Reviewing and setting aside the decision of the Regional Land Claims Commissioner, Limpopo, to cause publication of the Dombo Community Claim in Notice No 899 of 2012, contained in Government Gazette number 35831 of 2 November 2012.

In this Court

[9] On 7 June 2024, the Land Claims Court refused the applicants leave to appeal against its judgment. The application to this Court seeking leave to appeal was referred for oral argument in terms of s 17(2)(d) of the Superior Courts Act.

[10] The central question before us, therefore, is whether there exists a reasonable prospect of success on appeal or whether there is some other compelling reason why leave to appeal should be granted. That question is resolved, as I will indicate

hereunder, upon proper consideration of the lawful consequences of the admitted prior administrative conduct of the RLCC.

[11] The applicants premised the application on what they contended was a settlement agreement purportedly concluded between the Dombo community and the Tshakuma community that did not comply with the mandatory provisions of ss 13 and 14 of the Restitution Act. They suggested that the settlement agreement was not reduced to writing and its terms were unduly vague. It was therefore unlawful, and the RLCC was accordingly at large to consider the Dombo claim as it had.

[12] The applicants accepted that when the Tshakuma Community claim was published in the Gazette it had incorporated what had been presented on behalf of the Dombo clan but not accepted as a separate community claim. They also accepted that the Trust was established to give effect to the claim and that the RLCC had proceeded to secure the land under claim and that restitution had occurred. Each of these processes occurred because of administrative action taken by the RLCC. That administrative action has never been challenged nor set aside. It remains extant.

[13] The respondents contended that ss 13 and 14 of the Restitution Act did not apply. Those provisions concern the resolution of competing claims between communities who are entitled to be recognised as communities in terms of the Restitution Act. In this instance, the Dombo clan was not recognised as a separate community. It formed a component of the Tshakuma community. This latter community qualified as a community, hence the acceptance of its claim as incorporating the land referenced in the Dombo claim. The agreement that had been concluded was between representatives of the same community and addressed how the RLCC should handle the community's claim. The respondents submitted that the RLCC had acted in accordance with the community agreement and had taken numerous consequential administrative actions to effect the restitution of the land to the community. None of these decisions were challenged, and because they remained in effect, the subsequent administrative decision by the RLCC was unlawful.

Evaluation

[14] The concession by the applicants, rightly made by counsel, that the RLCC had taken decisions and exercised its administrative powers upon the basis and in accordance with prior community agreement, is dispositive of the application for Leave to appeal. Even if these decisions were to be considered notionally unlawful for want of compliance with ss 13 and 14 of the Restitution Act, they remain in effect until set aside. Until that occurs, the subsequent purported decision to accept the Dombo claim is unlawful. The RLCC had exercised its administrative authority regarding what was submitted as the Dombo claim. In relation to that claim, as submitted for its consideration, it is *functus officio* (it has fulfilled its function). It therefore could not lawfully take decisions regarding that claim.

[15] In any event, ss 13 and 14 provide for the settlement of competing claims and regulate the way that may occur. The community claimants must, in the first place, meet the qualifying criteria for a community as provided by the Restitution Act. Only if this first requirement is met can the settlement of competing claims to the same land be resolved as envisaged by the sections. In this case, as the common cause facts establish, the RLCC did not consider the Dombo clan as qualifying as a separate community. On the contrary, it accepted that these were claims from within the same community and therefore treated the claim as a single community claim.

[16] Even if it were to be accepted, for the sake of argument, that the RCC's decision to accept a single community claim was wrong as a matter of fact and law; that decision stands and has not been challenged. Nor has it been suggested that the Dombo clan did not freely and voluntarily subsume its claims under the ambit of the Tshakuma Community claim.

[17] It follows from this that the order dismissing the review application is not assailable. There exists no prospect of success on appeal. There are also no compelling reasons why an appeal should be heard. There is no reason why costs should not follow this result.

[18] It is worth noting that the claims process commenced in 1995, about 30 years ago. The administrative decision to accept and process a single community claim was made in 2005. Until the internal dispute arose in the Trust, the Dombo clan had made no complaint about how its claims had been treated. It is regrettable that the RLCC was prepared to enter the fray upon a trust dispute in circumstances where it plainly had no authority.

[19] In the result, the application for leave to appeal is dismissed with costs.

PHS ZILWA
ACTING JUDGE OF APPEAL

Appearances:

For appellant: D Whittington

Instructed by: Bhaya Attorneys Inc., Sandton
Bezuidenhouts Inc., Bloemfontein

For respondent: TE Matumba

Instructed by: Tambani Matumba Attorneys, Makhado
Symington De Kok Attorneys, Bloemfontein.