



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

**CASE NO: LCC 124/2023**

**Before:** DU PLESSIS AJ  
**Heard on:** 17 June 2026  
**Delivered on:** 9 September 2026

- (1) REPORTABLE: Yes ☐ / No ☒  
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒  
(3) REVISED: Yes ☒ / No ☐

Date: 09 September 2026

In the matter between:

**XAMAVUNGA LAND CLAIMANTS**

Applicants

and

**MINISTER OF AGRICULTURE  
AND LAND REFORM**

First Respondent

**REGIONAL LAND CLAIMS**

**COMMISSIONER: LIMPOPO PROVINCE**

Second Respondent

|                                          |                        |
|------------------------------------------|------------------------|
| <b>MASWANGANYI TRADITIONAL COMMUNITY</b> | Third Respondent       |
| <b>XHINDHANIDHAZI COMMUNITY</b>          | Fourth Respondent      |
| <b>HLANEKI TRADITIONAL COMMUNITY</b>     | Fifth Respondent       |
| <b>MABUNDA MB</b>                        | Sixth Respondent       |
| <b>MABUNDA MC</b>                        | Seventh Respondent     |
| <b>MABUNDA ME</b>                        | Eighth Respondent      |
| <b>MABUNDA HD</b>                        | Ninth Respondent       |
| <b>MNAVHA FF</b>                         | Tenth Respondent       |
| <b>MTHOMBENI KR</b>                      | Eleventh Respondent    |
| <b>MTHOMBENI MG</b>                      | Twelfth Respondent     |
| <b>MTHOMBENI ML</b>                      | Thirteenth Respondent  |
| <b>RATHLONGO MW</b>                      | Fourteenth Respondent  |
| <b>ZITHA HL</b>                          | Fifteenth Respondent   |
| <b>ZITHA MC</b>                          | Sixteenth Respondent   |
| <b>ZITHA WJ</b>                          | Seventeenth Respondent |
| <b>ZITHA MS</b>                          | Eighteenth Respondent  |
| <b>ZITHA MJ</b>                          | Nineteenth Respondent  |
| <b>MABUNDA TRIBE</b>                     | Twentieth Respondent   |

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## ORDER

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1. The application is dismissed.
2. There is no order as to costs.

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## JUDGMENT

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**DU PLESSIS AJ**

### **Introduction**

[1] This is an application in terms of section 36(1) of the Restitution of Land Rights Act<sup>1</sup> (“the Restitution Act”) for the review of alleged decisions of the second respondent, the Regional Land Claims Commissioner for Limpopo (“the RLCC”). The applicant seeks to set aside an alleged decision to merge a Xamavunga community competing claim with the Maswanganyi community claim; to review the Gazette notice of 19 July 2002; and to compel the RLCC to investigate and gazette a Xamavunga claim separately.

[2] The application was launched in 2023. The impugned merger is alleged to have occurred in July 2002. The applicant thus seeks condonation under section 9(1)(b) of the Promotion of Administrative Justice Act<sup>2</sup> (“PAJA”) for a delay of approximately 23 years.

[3] The record is a factual maze of various claims relating to the same property. For that reason, it is important to distinguish the different claims and claimant groups in the record. On the record, there is evidence of a Maswanganyi community claim, separate claims by the Xhindhandhazi and Hlaneki communities, several individual claims, and a claim by the “Mabunda tribe” (as per the papers). The applicant submits that there was an additional, separate community claim, namely that of the Xamavunga community, which the State denies.

[4] The State submits that the Commission’s records do not show any claim filed by a separate entity called Xamavunga Land Claimants. It also states that no Xamavunga community claim was recognised during the recent administration of

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<sup>1</sup> 22 of 1994.

<sup>2</sup> 3 of 2000.

these claims. Furthermore, the applicant has not demonstrated that any individual claim was filed by or on behalf of the Xamavunga community. This issue is central to the review and must be addressed first.

*The relief sought, and the facts relied upon*

[5] The notice of motion seeks a declaration that the RLCC's decision to merge "the competing claim filed by the Xamavunga Land Claimants as a community claim" with the Maswanganyi claim is invalid. It also seeks an order directing the separate publication of the Xamavunga competing claim in the Gazette. For this relief to succeed, the following facts must be set out and proven:

- a. The applicant must establish that a community claim exists which was
  - i. lodged under the Restitution Act by or on behalf of a Xamavunga community;
  - ii. distinct from the Maswanganyi community claim and the identified individual claims;
  - iii. the subject of the alleged decision to merge.

[6] A court cannot review a merger of a community claim unless the existence and identity of that claim are established.

[7] The founding affidavit does not maintain a consistent stance on the issue. It first describes the Xamavunga Land Claimants as "part of the Maswanganyi community" for section 2(1)(d), then later claims they have a separate, conflicting community claim. It also states that it seeks to promote the rights of members who submitted both "community and individual claims." These are different grounds for relief, and the evidence must clarify which one is being relied on.

*Statutory framework*

[8] A "community" under the Restitution Act is a group whose rights in land derive from shared rules determining access to land held in common by that group, including

part of such a group.<sup>3</sup> Section 2(1)(d) permits restitution to a community or part of a community dispossessed of a right in land after 19 June 1913 through past racially discriminatory laws or practices, provided the other statutory conditions are met.

[9] The Constitutional Court in *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd*<sup>4</sup> confirmed that the relevant inquiry is whether the group derived access to or possession of land from shared rules. The claimant group must have a sense of identity and cohesion linking it to the original rights-holders at the time of dispossession.

[10] Section 10 regulates lodgment. Where a representative lodges on behalf of a community, the basis of representation must be declared fully, and an appropriate resolution or supporting document should accompany the claim form, subject to the RLCC's power to permit later filing. Section 11 governs publication after a claim has been lodged. The statutory duties of assistance, investigation, and publication apply to a claim that can be clearly identified as having been filed.

[11] The point is not that every community claimant must produce a formal resolution before being assisted. *Hlaneki v Commission on Restitution of Land Rights*<sup>5</sup> held that a document showing a person acting on behalf of a community, by virtue of the powers and jurisdiction that person has over the community, is sufficient. *Hlaneki*, however, involved an actual claim form, a known date of lodgment, supporting documents, an identifiable representative, and a formal decision rejecting the claim. In this case, the applicant did not establish that a community claim was lodged at all.

[12] A community claim is not established merely because a number of persons who may have been individually dispossessed, or who may have lodged individual claims, later identify themselves as a community. The community must itself have existed at the time of dispossession, have derived its rights in land from shared rules determining access to land held in common, and have lodged a claim in that capacity through an

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<sup>3</sup> Section 1.

<sup>4</sup> [2007] ZACC 12 para 35.

<sup>5</sup> [2005] ZALCC 6 para 8.

identified representative. Individual claims cannot subsequently be converted into a community claim by resolution or otherwise.<sup>6</sup>

*On the facts*

[13] The record identifies the Maswanganyi Traditional Community as the claimant in claim number KRP 10554. The July 2002 Gazette states that Mr Basema Willie Maswanganyi lodged the claim on behalf of the Maswanganyi Community.

[14] The record also identifies Xhindhandhazi as a competing community claimant. Its claim was subsequently separately researched and is identified in the amended Gazette under claim KRP 12206. The record also separately identifies Hlaneki, which lodged a documented claim on 28 December 1998, later the subject of the Hlaneki judgment referred to above and is identified in the amended Gazette as claim KRP 11494.

[15] The founding affidavit further identifies respondents 6 to 19 as individual claimants. The applicant relies on an Individual Competing Claims Research Report addressing those claims. The “Mabunda Tribe” (sic) is pleaded as another community claimant, with its claim said to have been merged.

[16] The record does not identify a Xamavunga claim form, claim number, lodgement receipt, acceptance record, Gazette entry, or recent Commission decision regarding such a claim. It provides no facts as to who allegedly lodged the community claim, where it was lodged, and on whose behalf. The applicant’s subsequent family lists, committee resolutions, and confirmatory documents may reveal a current organisation of individuals identifying as Xamavunga. However, these do not prove the existence of a separately lodged community claim.

[17] Furthermore, the applicant relies on the July 2002 Gazette as the decision on the merger. The Gazette states that a number of claims were initially lodged by *individuals* on behalf of the Maswanganyi Community; that the claimants adopted a

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<sup>6</sup> *SAPPI Southern Africa Ltd and Another v Regional Land Claims Commissioner Mpumalanga and Others: In re: Ngodwana Community and/or group of individuals v SAPPI Southern Africa Limited* [2022] ZALCC 22 para 5.

resolution to consolidate the claims into one under the name Maswanganyi Community Land Claim KRP 10554; and that they elected a committee to represent the Maswanganyi Community.

[18] The Gazette therefore states that *individual* claims associated with the Maswanganyi community were combined into KRP 10554. It does not name Xamavunga. It does not identify a Xamavunga community claim, a Xamavunga representative, a Xamavunga claim number, or a decision to merge Xamavunga with Maswanganyi.

[19] The applicant's argument conflates two issues. The first, that claims were grouped under KRP 10554, is supported by the Gazette. However, the second, that there was a separate Xamavunga community claim among those, is unsupported. This is because proving such a claim requires evidence connecting Xamavunga or its claimants to the claims mentioned in the Gazette, which is not established on the papers before the court.

[20] The applicant's description of itself in the founding affidavit as part of Maswanganyi may be consistent with the Gazette's reference to individual claims lodged on behalf of the Maswanganyi Community. However, it does not establish that Xamavunga was a separate claimant community.

[21] The applicant also relies on the minutes of a community meeting held on 18 December 2002. The minutes record that the RLCC considered it preferable that "the two land claims" be merged. Maswanganyi indicated readiness to merge. Xhindhandhazi indicated it was not prepared to merge, as it did not think that benefits would be equally shared.

[22] The minutes further record a proposal that, if a merger occurred, a new committee would represent "both groups", and that a neutral name would be proposed by both groups. The two groups are plainly Maswanganyi and Xhindhandhazi. Xamavunga is not named as a community claimant, an objector, an attendee, or a claim under consideration.

[23] The applicant asks the Court to infer that Xamavunga was also opposed to the merger. However, its founding affidavit acknowledges that the minutes and research reports do not expressly identify Xamavunga as one of the claimants who opposed the merger. The minutes show that Xhindhandhazi objected. They do not show that Xamavunga had a separate claim and objected to the merger.

[24] The 2023 Individual Competing Claims Research Report indicates that claims were merged without a formal resolution and that a form is missing. It focuses on individual claims and notes that “these individuals’ land claims” were combined into KRP 10554 without a formal resolution because they claimed the same property.

[25] The report further records that sixteen individual claimants were located and investigated, and that one individual claim form was missing and lacked sufficient information to trace the claimant. The report may indicate an unresolved individual claim. It does not identify the missing form as a Xamavunga community claim form. It does not identify the missing individual as a Xamavunga claimant. It does not identify which of the individual claimants, if any, lodged claims on behalf of a Xamavunga community.

[26] The existence of a missing individual form does not prove a missing community claim. Nor can the fact that individual claims were consolidated be taken as proof that a distinct Xamavunga community claim was consolidated.

[27] The State accepts that the historical administration involved competing and overlapping claims. It accepts that Maswanganyi, Xhindhandhazi, Hlaneki, and individual claimants made claims. It does not deny that individual claims were combined or that record-keeping was imperfect. It answers that none of those facts establishes a separate Xamavunga community claim.

[28] As said, and to reiterate: The applicant has not produced the alleged Xamavunga community claim form, a record of lodgement, a claim reference, an acknowledgement by the RLCC, or a recent decision referring to a Xamavunga claim. It has also not identified an individual claim form which it can link to the Xamavunga community and to the alleged merger.

[29] The applicant is correct that the Commission should not benefit from poor record-keeping if a claimant can prove that a claim was filed and then lost while in the Commission's custody. However, convincing evidence must establish that this initial fact is true. Mentioning a single missing individual claim form in the report does not prove that a Xamavunga community claim existed. The Court cannot convert a general concern about incomplete records into evidence of a community claim.

[30] The applicant's material establishes, at most, that persons now associated with Xamavunga say they were dispossessed; that they regard themselves as a group; that some may have been individual claimants; and that they seek separation from the Maswanganyi process. It does not establish that a distinct Xamavunga community claim was lodged by the cut-off date or that such a claim was the subject of an RLCC merger decision.

[31] The review grounds therefore do not arise in relation to the pleaded Xamavunga claim. The absence of Xamavunga's consent or resolution cannot establish procedural unfairness unless the applicant first proves that Xamavunga was a claimant affected by the merger. The absence of certification under section 14(3) cannot establish the prior existence of a Xamavunga agreement or claim. A section 6(2)(g) omission cannot be found where no lodged Xamavunga community claim has been established to trigger the relevant statutory duty.

[32] This conclusion does not mean that no person linked to Xamavunga filed a claim, nor does it imply that the Commission's handling of each claim was lawful. It is not a finding that the history of dispossession is false. Rather, it simply states that the applicant has not proven the specific community claim or the particular merger of that claim that underpin this application.

### *Condonation*

[33] Considering the conclusion reached above, it is unnecessary to decide the respondents' further objection based on the approximately 23-year delay and the applicant's request for condonation under section 9 of PAJA. The review fails because the applicant has not established the factual premise on which its review grounds and claimed relief depend.

## Costs

[34] Although the application cannot succeed, it concerns an asserted restitution claim and arises against a background of overlapping community and individual claims, incomplete historical records, and a missing individual claim form. In these circumstances, the interests of justice do not warrant a costs order against the applicant. As is custom in this court, there will be no order as to costs.

  
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**WJ DU PLESSIS**

Acting Judge

Land Court

## **APPEARANCES:**

For the applicant: L Gumbi

Instructed by: NKA Mathebula Attorneys Inc

For the respondent: GI Mothibi

Instructed by: The state attorney, Polokwane