



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others**

**CCT 40/15**

**Date of hearing: 16 February 2016**

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#### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Tuesday 16 February 2016 at 10h00, the Constitutional Court will hear an application engaging the Court's exclusive jurisdiction, alternatively for direct access, concerning the constitutional validity of the Restitution of Land Rights Amendment Act 15 of 2014 (Amendment Act), which amended the Restitution of Land Rights Act 22 of 1994 (Restitution Act). The Restitution Act was passed to address evictions, forced removals and prior racially-based dispossession of land. It established a system which allowed affected people to claim either restoration of the land or equitable redress, and provided that all claims must be lodged by 31 December 1998.

In 2011 the Department of Rural Development and Land Reform (Department) carried out a national workshop evaluating the impact of the Restitution Act. Several difficulties were highlighted and one of the remedial actions suggested was to re-open the claims process. The Department prepared a draft Restitution of Land Rights Amendment Bill (Bill) providing for the re-opening of claims, which was passed by the National Assembly (NA) in 2014. The Bill was then referred to the National Council of Provinces (NCOP), and, subsequently in March 2014, to the Provincial Legislatures (PLs). The PLs were required by the NCOP to advertise and hold public hearings, invite and consider all oral and written submissions from members of the public and provide negotiating mandates. By the end of March 2014, all but one of the PLs had approved the Bill. The NCOP passed the Bill in the same month, the

President assented to the Bill on 30 June 2014 and it was duly enacted into law as the Amendment Act.

The first three applicants, the Land Access Movement of South Africa, Association for Rural Advancement and Nkuzi Development Association, are organisations with interests in land rights and agrarian reform. The remaining three applicants are communal property associations. The applicants challenge the constitutionality of the Amendment Act on two grounds. They submit that the NCOP and PLs respectively breached sections 72(1)(a) and 118(1)(a) of the Constitution by failing to adequately “facilitate public involvement” in the passing of the Bill that preceded the Amendment Act. Alternatively, they submit that section 6(1)(g) of the amended Restitution Act, which requires the Commission on Restitution of Land Rights to “ensure that priority is given” to existing restitution claims, is incurably vague. It is in respect of the alternative challenge that the applicants seek direct access.

The first to tenth respondents, the NA, NCOP and eight PLs, oppose the challenge of the applicants solely on the first ground. They argue that the public participation facilitated by the NCOP and PLs prior to passing the Bill was constitutionally sufficient through, amongst other things, public hearings conducted by the PLs. On this basis, the first to tenth respondents submit that there was no breach of sections 72(1)(a) and 118(1)(a) of the Constitution.

The eleventh respondent, the Speaker of the Western Cape PL, submits that it acted reasonably within the context of the timeline imposed by the NCOP. In its view, the NCOP timeline was outside its sphere of control; therefore it does not bear the burden of demonstrating that the NCOP acted reasonably and could not compel the NCOP to comply with its own standing practices. The respondent can merely show that it acted reasonably within the scope of what it was empowered to do in the context of the facts and circumstances within its control.

The twelfth to fourteenth respondents, the President, the Chief Land Claims Commissioner and the Minister of Rural Development and Land Reform, oppose the alternative challenge. They argue that section 6(1)(g) is clear in the context of the amended Restitution Act if interpreted purposively. Alternatively, they contend that if section 6(1)(g) is vague, the imprecision is constitutionally permissible in line with this Court’s jurisprudence, and thus direct access on this point should not be granted.

The fifteenth to eighteenth respondents, the Matabane Community, the Maphari Community, the Mlungisi and Ezibeleni Disadvantaged Groups and the Lady Selborne Concerned Group, limit their arguments to the alternative challenge. They submit that direct access would not be in the interests of justice, as this Court should have the benefit of the views of the Land Claims Court given the public importance of this matter. They further submit that section 6(1)(g) of the amended Restitution Act is procedural in nature and thus not susceptible to the applicants’ alternate challenge. Finally, they submit that section 6(1)(g) does not limit the right in section 25(7) of the Constitution to claim restitution for prior racially-based dispossession of land.