IN THE LAND CLAIMS COURT OF SOUTH AFRICA

CASE NUMBER : 17/96

In the matter of :

BEUKES AND BEKKER **Claimants**

concerning

THE FARM GROOTTE SPRINGFONTEIN

JUDGMENT

MEER J:

[1] The applications before us were heard on 23 July 1997. We were required to consider the participation of two types of actors in litigation, intervenors with different goals, expectations, interests and foci: the party intervenor and the amicus curiae. The concern of the former, akin to that of a party in an action, is primarily in the outcome of a lawsuit,[1] while the concern of the amicus curiae is primarily in issues of law and policy involved in the litigation.[2] Our law prescribes different criteria for the admission of each of these intervenors to an action. Both Applicants apply for leave to intervene in a claim for the restitution of a right in land in the farm AGrootte Springfontein≅on the Cape West Coast.

Application by the Surplus Peoples Project to be admitted as an amicus curiae in terms of Rule 14(1)(b) of the Land Claims Court Rules

[2] This is an application by the Surplus Peoples Project in terms of Rule 14(1)(b) of the Land Claims Court for an order admitting it as an amicus curiae in Case No 17/96 in which restitution of the farm AGrootte Springfontein≅on the Cape West Coast, 20 kilometres from Cape Town, is claimed. The Applicant is a non-profit, non-government organisation with a

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1 Bryden APublic Interest Intervention in the Courts≅ 66 *Canadian Bar Review* 490 - 499 (1987).

2 Erasmus *Superior Court Practice* (Juta, Cape Town 1994) C4-13.

long track record of involvement in the area of forced removals. In its affidavit the Applicant explains that it has assisted communities to resist forced removals and evictions since the early 1980s and is the author of a comprehensive study of the impact of forced removals. It is presently engaged in assisting several hundred land claimants; it also works in the fields of land reform and rural development.

[3] The Claimants in the restitution application are two sisters of the Awhite≅group who inherited the farm AGrootte Springfontein≅(hereinafter Athe Farm≅) from their late father. They lost ownership of the Farm in 1974 when it was expropriated by the Community Development Board and the area in which it was situated declared to be a Acoloured≅group area. The Claimants were compensated in the sum of R735 135,00 upon expropriation.

[4] In November 1996 the Claimants and the National Housing Board (the successor to the Community Development Board) entered into an agreement for the sale of the Farm to a company known as Springfontein Holdings (Pty) Limited (representing the interests of the Claimants), for the sum of R3 216 900,00. The Claimants have approached the Court under s14(3) of the Restitution of Land Rights Act, 22 of 1994 (hereinafter Athe Act≅), for the Agreement of Sale to be made an order of Court.

[5] The Surplus Peoples Project contends that the Claimants received just and equitable compensation upon expropriation and are therefore not entitled to restitution under the Act. It has applied to be admitted to the case as an amicus curiae to represent the interests of those who suffered racially-motived land dispossessions in the Western Cape without receiving just and equitable compensation. It is the Applicant=s view that it represents more effectively than any other individual or organisation the viewpoint of a large number of claimants in the Western Cape who are not represented at the proceedings and who have a vital interest in the issues.

[6] The admission of an amicus curiae is dealt with in Rule 14 of the Land Claims Court Rules. A person or organisation may be admitted as an amicus curiae either by agreement with the participating parties,[3] or by order of Court upon application.[4] Rule 14(2) prescribes the requirements for an applicant to be admitted as an amicus curiae. It states:

> 14(2) Any application for an order in terms of sub-rule (1) [namely an application to Court for an order to be admitted as an amicus curiae]:
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> (a) must be on notice to all participating parties;
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> (b) must be supported by an affidavit or affidavits -
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> (i) setting forth the interest of the *amicus curiae* in the matter at issue in the case;
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> (ii) identifying the position to be adopted by the *amicus curiae* in the case; and

3 Rule 14(1)(a).

4 Rule 14(1)(b).

(iii) containing a summary of the evidence (if any) to be presented and the submissions to be advanced by the *amicus curiae*, their relevance to any matter at issue and why that evidence and submission will be useful to the Court and be different from those of the other parties.

[7] Viewed against the mandatory requirements of Rule 14(2), the Applicant has adequately complied with 14(2)(a) and 14(2)(b)(i) (it has set forth its interest in the matter at issue); 14(2)(b)(ii) (it has identified the position to be adopted by it in the case), and some of the requirements of 14(2)(b)(iii) (it has provided a cursory summary of its submissions and attempted to explain their relevance and usefulness). The affidavit, however, falls far short of a crucial aspect of 14(2)(b)(iii)Xit does not set out why its submissions will be *different from those of the other parties*.

[8] Indeed, the Applicant=s submission pertains to matters about which the parties bear the onus of satisfying the Court, and which the Court is in any event obliged by statute to consider. Applicant, in elaboration of its submissions, does not point out how these submissions are different from those of the other parties. The summary of submissions advanced by the Applicant raises several questions, namely whether:

1. The Claimants have satisfied the requirements of s 2(1)(a)[5] of the Act;

2. The Claimants are precluded from enforcing a claim for restitution by s 2(1A)[6] of the Act as they received just and equitable compensation upon expropriation;

3. Prescribed statutory procedures have not been complied with in the referral of the claim to the Court.

[9] These are issues which must be considered in the course of any restitution case, for which the expertise and knowledge unique to the Surplus Peoples Project is not a prerequisite, and on which such expertise may well be wasted. The submissions, while relevant and useful, are no different from those of the other parties. Amici are admitted to cases to express a particular point of view and/or to offer special expertise and knowledge, because their submissions are relevant, useful and different from those of the other parties. It is this Adifference≅ (in addition to other aspects) which must be a crucial criterion for them to gain entrance. The amicus is a special intervenor who offers the court something which no other party can.

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5 2(1)(a) he or she is a person or community contemplated in s 121(2) of the Constitution or a direct descendant of such a person;≅

6 2(1A) No person shall be entitled to enforce restitution of a right in land if just and equitable compensation as contemplated in s 123(4) of the Constitution, calculated at the time of any dispossession of such right, was paid in respect of such dispossession.≅

[10] The amicus curiae, as a participating and energetic actor in litigation, representing an interest not already represented by the parties, and wishing to influence the outcome of litigation, only recently made an appearance on the South African legal stage. Rule 9 of the Constitutional Court Rules[7] specifies similar criteria for admission as an amicus curiae as Land Claims Court Rule 14. Prior thereto

> [T]he only substantial definition of amicus appearing in our law reports is the rather old-fashioned one in *Connock=s (SA) Motor Company Limited v Pretorius*, [8] . . . . A[The amicus is] a bystander - someone who is present in Court and not concerned with the matter in hand, who may be counsel or may not.≅ . . . [O]n the rare occasions that the institution is discussed in cases, one is as likely to be told what an amicus is not as to be given a glimpse of what he (or she) is.[9]

[11] Rule 9 of the Constitutional Court Rules provides for an amicus curiae to present written argument, useful and different from those of the other parties, except where leave to present oral argument is granted. Commenting on Constitutional Court Rule 9 in *Fose v Minister of Safety and Security* [10] Ackerman J too recognised as crucial entrance criteria for the admission of amici the relevance, newness and usefulness of their submissions.

> It is clear from the provisions of rule 9 that the underlying principles governing the admission of an amicus in any given case, apart from the fact that it must have an interest in the proceedings, are whether the submissions to be advanced by the amicus are relevant to the proceedings and raise new contentions which may be useful to the Court.[11]

[12] Rule 14 of the Land Claims Court (being a trial court) expands the notion of amicus curiae beyond that of the Constitutional Court, allowing the intervening amicus, if so ordered by the Court, rights also to present evidence and cross-examine witnesses. These are not dissimilar to those of parties, and akin to the Alitigating amicus≅of the United States Federal District Courts.[12]

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7 Rule 9(6) provides as follows : AAn application to be admitted as an amicus curiae shall :

(a) briefly describe the interest of the amicus curiae in the proceedings;

(b) briefly identify the position to be adopted by the amicus curiae in the proceedings;

(c) clearly, succinctly and without unnecessary elaboration, set out the submissions to be advanced by the amicus curiae, their relevance to the proceedings and his/her reasons for believing that the submissions will be useful to the Court and different from those of the other parties.≅

8 1939 TPD 355 at 356 - 357.

9 Murray ALitigating in the Public Interest: Intervention and the Amicus Curiae≅ 10 *SA Journal on Human Rights* 240 at 241-242 (1994) (citing 1939 TPD 355 at 356-357).

10 *Fose v Minister of Safety and Security* CCT 14/96, 5 June 1992, as yet unreported.

11 Ibid at 7.

12 See, e g, *Hoptowit v Ray*, 682 F.2d 1237 at 1260

[13] Both Land Claims Court Rule 14 and Constitutional Court Rule 9 are clearly modelled on US and Canadian practice. *The Oxford Companion to the Supreme Court of the United States* describes an amicus curiae as

> . . . someone not a party to the case but interested in the legal doctrine to be developed there because of the relevance of that doctrine for their own preferred policy or later litigation.[13]

[14] There is remarkable similarity in the baseline requirements for amici in Canada, the United States of America and South Africa, namely, they must show:

(a) An interest.[14]

(b) Submissions that are both relevant to the case at hand and different from those of other participants.[15]

[15] The US Supreme Court has admitted amici liberally, provided they can offer something new or different and useful to the suit. It would serve little purpose to admit an amicus who seeks only to re-affirm what the parties say, for that would be mere repetition,

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(9th Cir. 1982) (upholding the amicus= party-like participation at the trial stage).

13 Hall (ed) *The Oxford Companion to the Supreme Court of the US* (1992) under Aamicus brief,≅ quoted by Murray supra n 9 at 244.

14 Interest≅ is defined extremely loosely. Erasmus, commenting on the amicus curiae in Rule 9 of the Constitutional Court Rule defines the interest of the amicus as

> an interest in the issues of law and policy involved in the matter by way of, for example, a standing commitment to the advancement of a particular point of view in relation to those issues, or a specialised knowledge of the matters in issue.≅

Erasmus *Superior Court Practice*, C4-13.

Similarly an amicus in the US Federal Courts need not show the direct interest necessary for intervention:

> The required interest may be representation of the public interest, pointing out error to the court, or the resolution of similar issues in related suits. Indeed it is rare that a court will find an amicus to lack such a degree of interest as to preclude participation.≅

Lowman AThe Litigating Amicus Curiae: When does the Party Begin after the Friends Leave≅ 41 *American University Law Review* 1243 at 1260, n 101 (1992).

15 US Supreme Court Rule 37.2 and Supreme Court of Canada Rule 18(3). Murray supra n 9 at 256, n 61. Cf Rule 9 of the Constitutional Court Rules and Rule 14 of the Land Claims Court Rules.

contrary to the role of an amicus.[16]

[16] This application by the Surplus Peoples Project for admission as an amicus curiae cannot succeed for the reason stated above - namely that it has failed to advance submissions different to those of the other parties, a crucial requirement for the admission of an amicus curiae under Rule 14(2)(b)(iii). It is perhaps unfortunate that the Applicant=s, given its expertise, did not offer different submissions. The Applicant=s legal representative indicated that the Applicant may wish to renew the application at a later stage.

[17] We made the following order on 23 July 1997:

(a) No order is made on any of the prayers contained in the Applicant=s application.

(b) The Applicant is granted leave to renew the application on notice to the other parties on the same papers, supplemented by such further affidavits as the case may require.

(c) If the application is not renewed by the end of July, any party is given leave to enrol the matter for argument on costs only.

[18] We undertook to give reasons later. My reasons for the order are as stated above.

Application by the Atlantis Reconstruction and Development Forum for leave to intervene in terms of Rule 13 of the Land Claims Court Rules

[19] This is an application in terms of Rule 13 of the Land Claims Court Rules by the Atlantis Reconstruction and Development Forum for leave to intervene as a party also in Case No 17 of 1996.[17]

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16 Much has been said about the important role an amicus curiae can play in a case. AIntervention by an amicus may ensure that the Court considers a wide range of options and is better informed in making social and political choices. Intervention also serves to enhance the legitimacy of the Court=s decision.≅ See Erasmus *Superior Court Practice* C4 - 13 and Murray supra n 9 at 250 - 252. The purpose of the institution of amicus can therefore be described as the facilitation of informed decision making and the democratisation and legitimisation of the judicial process.

A Alitigating *amicus*≅ can also promote judicial efficiency by consolidating similar actions, preventing costly spin-off litigation, and easing research burdens. Lowman supra n 14 at 1271 and 1289. Furthermore, the doctrine promotes fairness by allowing a role early in proceedings to those with legitimate interests which nevertheless cannot meet strict intervention requirements. Ibid at 1257.

Permitting broad participation increases the likelihood of successful resolution, and promotes a high degree of acceptance of the remedy. Ibid at 1289. It can also benefit the court by providing information including fact-gathering and ensuring complete presentation of complex issues. Ibid at 1259, n 94. See also Murray supra n 9 at 250.

17 See supra paras 2 to 4 for a description of the restitution claim.

[20] In his affidavit, the Applicant=s representative stated that the Atlantis Reconstruction and Development Forum is a body Aset up by the Minister of Economic Affairs and RDP≅ and listed various political, educational, religious, sports, cultural, civic, business, social and other entities in the Atlantis area as its members. The Claimants (in the restitution claim) disputed the Applicant=s authority to lodge this application on behalf of its constituent entities. In addition they called upon its representative in terms of Rule 7 of the Land Claims Court Rules to produce proof of his authority to represent the Applicant. As of the date of this hearing, the Applicant=s representative had not produced such proof. It was agreed nonetheless to proceed with a hearing of the application for leave to intervene, and to pursue thereafter if necessary the question of the Applicant=s authority to act as a separate legal entity as well as its representative=s authority.

[21] The Applicant seeks leave to intervene as a party to oppose the claim for restitution by the Claimants. The Applicant has an interest in the future development of the Atlantis area and cites its main objective as being to mobilise the Atlantis community to participate in the reconstruction and development process. It is the Applicant=s view that it is not in the public interest that the Farm be restored to the Claimants who are not part of the historically disadvantaged community, and who allegedly received just and equitable compensation on expropriation.

[22] From various brochures annexed to the application, it emerged that the Applicant was interested in the development of a tourist resort with Malaysian investment on the Cape West Coast. The Applicant did not lay a claim to any right which might be affected by the restoration claim. Instead it confined its application to the concerns of a custodian of the reconstruction and development programme in the Atlantis area. The Applicant=s legal representative stated that the Applicant=s constituency had a legitimate expectation that the area would be developed for its benefit. He referred also to a duty on the part of the local authority to develop the area in a similar vein.

[23] The Claimants in the restitution application denied that the Applicant had any rights or interests in the property, claiming that its developmental interest in the Atlantis area was based purely on economic opportunism for personal benefit, profit and gains.

[24] Rule 13 of the Land Claims Court rules regulates the procedure for an application for leave to intervene as a party. Rule 13(1) sets out the criteria for the granting of such an application, stating:

> Any person whose rights may be affected by the relief claimed in a case and who is not a party in a case may, within a reasonable time after he or she becomes aware of the case, apply to the Court for leave to intervene in the case.

[25] The key provision for this case is that a successful intervenor must be someone Awhose rights may be affected by the relief claimed.≅ The part of the Act for which Rule 13 was promulgated, s 29, describes the intervenor as Aany interested person≅:

> Any interested person, including an organisation, may apply to the Court for leave to intervene as a

party to any proceedings before the Court.[18]

[26] In order for this application to succeed, I am required to find that the Applicant is an Ainterested person≅ as contemplated at s 29 of the Act. Much revolves around the interpretation of the concept, Ainterested person.≅ Two principles guide the Court in interpreting s 29(1) of the Act:

a. The legislature does not intend to alter existing law more than is necessary.[19] This is arguably the most important presumption governing statutory interpretation.[20] AExisting law≅ in this sense means both common law and statutory law.[21] An important corollary of this presumption is that legal terms in a statute must be interpreted in accordance with their common law meaning unless the context indicates the contrary. [22]

b. The provision of the interim Constitution at s 35(3): A[I]n the interpretation of any law and the application and development of the common law and customary law, a court shall have due regard to the spirit, purport and objects of this Chapter.≅[23] Thus

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18 Note that this is the current language of the Act, as amended by the Land Restitution and Reform Laws Amendment Act 78 of 1996. This Act came into force on 20 November 1996, while this matter was pending. The general rule, however, is that procedural amendments like this one are retrospective., while substantive ones are not. Devenish, *Interpretation of Statutes* (Juta, Cape Town 1992) 192 (citing *Curtis v Johannesburg Municipality*, 1906 TS 308, 312 A[a law dealing with procedure] must regulate all such procedure even though the cause of action arose before the date of promulgation and even though the suit may have been then pending.≅).

19 Ibid at 159.

20 [T]his is the most fundamental of all the presumptions since many of the others are merely axiomatic extrapolations of it. . . . The interpretation of a provision of a statute should therefore be in contextual harmony with both the letter and the spirit of the whole body of law (statutory and common).≅ Ibid at 159.

21 [S]tatutes should as far as possible be construed in conformity with the common law rather than against it .. . Alteration to the common law by statute must either expressly say that it is the intention of the legislature to alter the common law, or the inference must be such that we can come to no other conclusion. . . . This presumption is not limited in its scope to the alteration of the common law: it applies to all statutes that are not expressly repealed or amended.≅ Ibid at 160-161.

22 Ibid at 161. Note also: ARegsterme word in die lig van die gemene reg uitgel≅ Steyn, *Die Uitweg van Wette*(Juta, Cape Town 5th ed. 1981) 100.

23 Note that the interim

s 29(1) must be interpreted not only in the light of Aexisting law,≅ but in the light also of the fundamental rights under Chapter 3.

[27] The common law meaning of the term Ainterested person≅can be gleaned from commentaries dealing with the common law right of the courts to permit intervention. The Ainterest≅of the intervenor features prominently in early cases. In *Bitcom v. City Council of Johannesburg and Arenow Behram & Co*,[24] Krause J, quoting from Voet, stated: A. . . a third party may intervene whenever he becomes interested in a cause that is pending.≅[25]

[28] In *Orphan Board v Van Reenen*, an appeal to the Privy Council, Lord Wynford stated:

Constitution applies in this case because the latter was pending in this Court prior to 4 February 1997 when the pre

> The principle of the law of intervention is, that if any third person considers that his interest will be affected by a cause which is pending, he is not bound to leave the care of his interest to either of the litigants, but has a right to intervene . . . .[26]

Henri Viljoen v Awerbuch Bros[27] established the decisive criterion for intervention at common law as a Adirect and substantial interest≅ in the subject matter of the litigation. The court defined Adirect and substantial interst≅ based on previous decisions as

> . . . an interest in the right which is the subject-matter of the litigation and is not merely a financial interest which is only an indirect interest in such litigation.[28]

> It is a legal interest in the subject matter of the litigation that may be prejudicially affected by the judgment of the court.[29]

[29] With the advent of the Supreme Court Act 59 of 1959, Uniform Rule 12 was promulgated to regulate intervention. It states:

> Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all the parties, at any stage of the proceedings, apply for leave to intervene as a plaintiff or defendant. The Court may upon such application, make such order, including any order as to costs and give such directions as to the further procedure in the case as to it may seem meet.

While the phrase Adirect and substantial interest≅ does not form part of the rule, our courts

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24 1931 WLD 273.

25Ibid at 294.

26 12 ER 252 1829 Knapp 83PC.

27 1953 (2) SA 151 (O).

28 Ibid at 169H.

29 *United Watch and Diamond Co (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 (C) at 415H.

have continued to use it as the decisive criterion for intervention. It has thus become settled law that the key test for admission as an intervenor under Uniform Rule 12 is also the Adirect and substantial interest≅requirement at common law as emerges in several judgments on the issue.[30] Uniform Rule 12 has since been incorporated into the Constitutional Court Rules.

[30] As a secondary requirement our courts require that the Applicant seeking leave to intervene makes out a prima facie case or defence and that the application is made seriously and is not frivolous.[31] The court=s discretion[32] in deciding whether or not to grant intervention has occasionally been emphasised as well as considerations of convenience and common sense.[33] It is however the direct and substantial interest or legal interest which remains the decisive criterion.[34]

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30 *Henri Viljoen*, supra n 27 at 169H; *Brauer v Cape Liquor Licensing Board* 1953 (3) SA 752 (C) at 760; *United Watch & Diamond Company (Pty) Ltd v Disa Hotels,* supra n 29 at 416B; *Wynne v Divisional Commissioner of Police* 1973 (2) SA 770 (E) at 775D; *Ex parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Verina (Pty) Ltd* 1993 (2) SA 737 (NmHC) at 741I -742B.

31 *Elliot v Bax: In re Bax v African Life Assurance Society* 1923 WLD 228 at 231; *Ex parte Moosa: In re Hassim v Harrop Allin* 1974 (4) SA 412 (T) at 414C; *Minister of Local Government and Land Tenure v Sizwe Development* 1991 (1) SA 677 (TK) at 678J - 679A; *Ex Parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd,* supra n 30.

32 See *Holzman NO v Knights Engineering and Precision Works* (Pty) Ltd 1979 (2) SA 78 (W) and *Ex Parte Sudurhavid (Pty) Ltd*, supra n 30.

33 *Orphan Board v Van Reenen,* supra n 26; *Vitorakis v Wolf* 1973 SA 928 (W)

34 Compare *SA Vereniging van Munisipale Werknemers v Stadsraad van Pietersburg* 1986 4 SA 776 (T), where an application by the Minister of Constitutional Development and Planning to intervene in a case where a law administered by the Minister had to be

[31] Regard being had to the above, I am of the view that the term Ainterested person≅ at s 29(1) of the Act, interpreted in accordance with its common law meaning, means a person with a Adirect and substantial interest≅or legal interest in the subject matter of the litigation, the decisive criteria for intervention both at common law and under Uniform Rule 12. This meaning of the concept Ainterested person≅ must now be further developed in accordance with the requirements of s 35(3) of the interim Constitution.

[32] Any interpretation of s 29(1) would apply equally to Land Claims Court Rule 13. The phrase A[a]ny person whose rights may be affected≅ in the rule is coextensive with the phrase Aany interested person≅of s 29(1), since the rules merely provide the procedural vehicle for the Act and do not have the power to narrow it. Therefore the criterion for intervention in Rule 13 is equivalent to that of s 29(1).

[33] The wording of Land Claims Court Rule 13 might be considered to lend itself to wider interpretations of the rights specified thereunder (as occurred in the present application), or even narrower interpretations, when compared with those of an intervening party under Uniform Rule 12. I am of the view that it was not intended for the Land Claims Court Rule 13 intervenor to pass an entrance requirement different to that of an intervenor under Uniform Rule 12.[35]

[34] Commentaries on Uniform Rule 12 therefore apply equally to Land Claims Court Rule 13, the entrance criterion for intervening Applicants, under both Rules being the

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interpreted, was refused, although the interpretation was of great importance to the Minister.

35 There is good reason why the Land Claims Court Rules did not merely incorporate Uniform Rule 12, as did the Constitutional Court Rules. Uniform Rule 12 refers only to people entitled to join as plaintiffs or defendants. The ambit of potential intervenors under Land Claims Court Rule 13 goes beyond the categories of plaintiff and defendant, to embrace also a participating party, referred to at Rule 26(1), who need not necessarily be a plaintiff or defendant, but nonetheless has an interest in the matter:

26 (1) A party that -

(a) has initiated a case as described in rule 23;
(b) has filed a notice of appearance in accordance with these rules;
(c) has been granted leave to intervene in a case under rule 13(2);
(d) has intervened in a case under s 29 of the Restitution of Land Rights Act;
(e) has been admitted to the case as an *amicus curiae* under rule 14; or
(f) has participated in arbitration proceedings which led to a determination under the Land Reform (Labour Tenants) Act,

is a participating party.≅

same.[36]

[35] The second principle of interpretation requires me to interpret the s 29(1) of the Act and Rule 13 in the light of the interim Constitution. Section 35(3) requires courts to interpret any law with regard to the spirit, purpose and objects of the fundamental rights under Chapter 3.[37] Doing so, I find that s 22 of the interim Constitution,[38] which guarantees access to courts for all justiciable disputes, is relevant to an interpretation of the Act=s intervention provision. Given that the right of access to courts has been elevated to a fundamental right, it is necessary to reconsider and possibly broaden the concept of Adirect and substantial interest.≅

[36] On the basis of the constitutional principle of statutory interpretation, one could interpret s 29(1) and a Adirect and substantial interest≅ to mean something broader than it has traditionally meant in our law. However, any broad interpretation of the Ainterest≅ required by s 29(1) (in accordance with the constitutional principles of statutory interpretation), and indeed any narrow interpretation in accordance with the common law, must be in the subject matter of the ongoing litigation. In the current application, the Applicant has failed to show either the required interest in the subject matter of the litigation or how its interests would be affected by the relief claimed by the current parties. An expectation that the Atlantis area will be developed for the benefit of the community or a claim to a right in respect thereof does not suffice. The application does not even make specific reference to the property in question in pursuit of its right to intervene. At best, it has displayed a developmental or commercial interest in the Atlantis area. Therefore, whether I interpret the Ainterest≅ of s 29(1) narrowly (according to the common law) or broadly (according to the requirements of the interim Constitution), the present application will fail, because the Applicant has not demonstrated a sufficient relation to the subject matter of the litigation.

[37] The Applicant=s application for leave to intervene in terms of Rule 13 was refused on 23 July 1997. Because of the public interest nature of the litigation, the parties agreed that there should be no cost order. Accordingly, no order was made for costs. We undertook to give reasons later. My reasons are set out above.

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36 It needs to be shown only that the prospective intervenor would be entitled to bring the action independently and that his or her right to relief is dependant on substantially the same questions of fact or law as that of the initial parties to the case for an application for leave to intervene to be successful.≅ Murray supra n 9 at 240.

37 In the interpretation of any law and the application and development of the common law and customary law, a court shall have due regard to the spirit, purport, and objects of this Chapter.≅

38 Every person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum.≅

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JUDGE Y S MEER

I agree

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JUDGE A GILDENHUYS