

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **DURBAN** on 26, 27 September 2001  
before **Meer, Gildenhuys AJJ** and **Hugo** (Assessor)

**CASE NUMBER: LCC 44/98**

Decided on: 15 November 2001

In the case between:

**EBRAHIM ESSOP KARA**

Claimant

**concerning:**

**THE PROPERTIES FORMERLY KNOWN AS THE FARM CATO MANOR NO 812**

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## JUDGMENT

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**MEER AJ:**

### Introduction

[1] This judgment considers the question of standing in a claim for restitution of a right in land in terms of the Restitution of Land Rights Act,<sup>1</sup> (“the Act”). A claim for restitution under the Act was lodged by the claimant, Ebrahim Essop Kara<sup>2</sup> with the Regional Land Claims Commissioner for KwaZulu-Natal (“the Commissioner”). The claim was thereafter referred by the Commissioner to this Court.<sup>3</sup> The claim relates to portions of Sub 993 of Lot 76 of Cato Manor (“the subject properties”) in Durban. The subject properties form one of several parcels of land in an area commonly known as Ridgeview

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1 Act 22 of 1994, as amended.

2 Note that the claim form refers to him only as “Ebrahim Kara.”

3 The claim was referred in terms of section 14(1)(d) of the Act.

Quarry,<sup>4</sup> in respect of which many claims for the restitution of land rights have been referred to this Court.

[2] The statutory requirements for a restitution claim which are relevant to this judgment, are set out at section 2(1) of the Act as follows:

“(1) A person shall be entitled to restitution of a right in land if -

- (a) he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (b) it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (c) he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who -
  - (i) is a direct descendant of a person referred to in paragraph (a); and
  - (ii) has lodged a claim for the restitution of a right in land; or
- (d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; and
- (e) the claim for such restitution is lodged not later than 31 December 1998.”

[3] The claimant seeks actual restoration<sup>5</sup> of the subject properties on the basis that there was a dispossession as a result of a past racially discriminatory law, the Group Areas Act.<sup>6</sup>

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4 On account of the quarrying that takes place there.

5 As opposed to equitable redress. Section 1 of the Act defines the applicable terms as follows:

“‘restitution of a right in land’ means -

- (a) the restoration of a right in land; or
- (b) equitable redress;

‘restoration of a right in land’ means the return of a right in land or portion of land dispossessed after 19 June 1913 as a result of past racially discriminatory laws or practices;

‘equitable redress’ means any equitable redress, other than the restoration of a right in land, arising from the dispossession of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices, including-

- (a) the granting of an appropriate right in alternative state-owned land;
- (b) the payment of compensation;”

6 Act 77 of 1957.

[4] It is common cause that the subject properties were transferred under duress out of the estate of the late Essop Kara to the Community Development Board in 1968. The claimant, Ebrahim Essop Kara, is the son of the late Essop Kara. He lodged the claim with the Commissioner and indicated on the claim form that he acted on behalf of the estate late Essop Kara and purported to do so in his capacity as heir of the estate.<sup>7</sup> When so doing, he apparently assumed that he was permitted as heir to act on behalf of the estate. Subsequently, in his response to the Commissioner's referral report, Ebrahim Kara (together with other co-heirs) claimed a right to restitution in their capacities merely as heirs and not also on behalf of the estate. Thereafter, given that it was the estate, as opposed to Essop Kara himself that was allegedly dispossessed, the standing of Ebrahim Kara to bring the claim in his capacity as heir came to be questioned by the parties and by the Court *mero motu*.<sup>8</sup> It was agreed by the parties that the Court would determine in a preliminary hearing whether the claimant, as indicated in the response to the referral report, has standing under section 2(1) of the Act. During the course of the preliminary hearing to determine the claimant's standing, an application was brought to substitute Ebrahim Kara, the present claimant in his capacity as heir with new claimants, being the three executors appointed to administer the joint estate of the late Essop Kara and Marjan Kara.<sup>9</sup> In the alternative the substitution of the present claimant by the three executors in the estate of only the late Essop Kara, together with the substitution of certain descendants of the late Marjan Kara, was sought.

[5] This judgment accordingly considers firstly whether Ebrahim Kara and the other heirs, in their capacity as heirs, have standing to claim restitution. It then goes on to consider the substitution application. Finally it determines whether the claim was lodged timeously, that is not later than 31 December 1998, in accordance with section 2(1)(e) of the Act.

#### Factual background to the claim

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7 Claim form, page 50 to the pleadings.

8 It was questioned by the Commissioner in her referral report at para 9.1, page 44 of the pleadings, by the other interested parties and also by the Court *mero motu* at various pre-trial conferences, in particular at the conference of 30 January 2001. The Court *mero motu* raises issues under its inquisitorial powers by virtue of section 32(3)(b) of the Act.

9 See para [10] below. Marjan Kara is the surviving spouse of Essop Kara, to whom he was married in community of property, hence the reference to joint estate. See para [12] to [14] below.

[6] The subject properties were registered in the name of Essop Kara, the father of the claimant. Essop Kara was married to Marjan Kara, the claimants' mother, by Islamic rites in January 1927. Their marriage was registered in terms of section 2(1) of the Indians' Relief Act<sup>10</sup> on 27 November 1933. By so registering the marriage, and not registering an ante- or postnuptial contract excluding the community of property, Essop and Marjan Kara became married to each other in community of property in accordance with South African law.<sup>11</sup> Essop Kara died on 17 April 1947. At the time of his death, Essop Kara was the registered owner of the subject properties. Upon his death they formed part of the estate of the late Essop Kara. The will of Essop Kara appointed his surviving spouse, Marjan Kara and his son, Ahmed Essop Kara as executors. The latter two persons are since deceased.

[7] Proclamation 152 of 6 June 1958, issued under the 1950 Group Areas Act,<sup>12</sup> declared Cato Manor, in which the subject properties were situated, to be an area for occupation by members of the

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10 Act 22 of 1914, repealed by the General Law Amendment Act, 57 of 1975. Section 2(1) of the 1914 Act reads:

“If any Indian male and Indian female upon a joint application to any magistrate or marriage officer (whether appointed under this Act or any other law), satisfy such officer -

- (a) that there exists between them a union recognized as a marriage under the tenets of an Indian religion which they profess; and
- (b) that there does not exist between either of them and any other person a union so recognized as a marriage or any other union recognized in law as a marriage; and
- (c) that each of them is desirous that the union should be regarded as a valid and binding marriage in law,

such officer shall, upon being furnished with particulars as to the full name, residence, place of birth, and age of each party and such further particulars as are prescribed by regulations made under this section, register such union in manner so prescribed, as a marriage between those parties. Notwithstanding that by the tenets of the religion which the parties profess, polygamous unions are approved or recognized, the said union shall, by the fact of registration, become, as from the date when it was contracted, a valid and binding marriage between the parties, and all the incidents shall follow therefrom which follow from any other union recognized in law as a valid and binding marriage, and the marriage shall be deemed to have taken place at the place where the union was, prior to the registration, contracted.”

Note, Essop Kara had previously been married to Lutchmee Kara by Islamic rites, but she was deceased at the time of the registration of his marriage to Marjan Kara. Section 2(1)(b) of the above Act therefore did not operate against the registration of his marriage to Marjan.

11 Support for the contention that such marriages are in community of property can be found in *Ex parte Kadodia and Another* 1965 (3) SA 385 (N) at 387G; *Ex parte Motala and Another* 1961 (3) SA 459 (N) at 460C-F; *Fatima v Cornell NO* 1960 (4) SA 659 (N) at 662B.

12 Act 41 of 1950.

white group only. The subject properties consequently became “affected”<sup>13</sup> and the heirs of the late Essop Kara were prohibited from acquiring transfer thereof.<sup>14</sup> The executors of the estate late Essop Kara (of which Marjan Kara was a co-executor) were compelled to sell the subject properties (including Marjan Kara’s undivided half share therein) to the Community Development Board. They were transferred out of the joint estate to the Board on 9 February 1968.<sup>15</sup> At that stage the estate had not yet been wound up.<sup>16</sup> Marjan Kara died on 13 June 1968, some four months after the transfer of the subject property.

#### Standing of Ebrahim Kara as claimant

[8] It is trite law that it is the executor of a deceased estate, and not any heir thereto, that has *locus standi* to liquidate and distribute the estate.<sup>17</sup> It follows that where a deceased estate has been dispossessed of a right in land, it is the executor who is entitled to prosecute the restitution claim and

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13 “[A]ffected property” is defined in the Group Areas Development Act, 69 of 1955 as any immovable property situated *inter alia* -

“(b) in any area defined in a proclamation under paragraph (b) of sub-section (1) of section *three* of the principal [1950 Group Areas] Act and owned or occupied by a person who is not a member of the group specified in the proclamation, or owned by a company wherein a controlling interest is held or deemed to be held by or on behalf or in the interest of a person who is not a member of the group specified in the proclamation.”

14 The prohibition against the transfer was in terms of sections 24(1) and 24(3) of the 1957 Group Areas Act.

15 Deed of Transfer 2146/1968, pages 98-108 to the pleadings. Marjan Kara transferred the subject property in her capacity as co-executor as well as in her individual capacity as surviving spouse of a marriage in community of property.

16 Presumably because the will of Essop Kara specified that his executors “shall stand possessed of the residue of my estate until such time as my youngest son shall have attained the age of twenty-one (21) years”.

17 See section 13 of the Administration of Estates Act, 66 of 1965 and Corbett et al *Law of Succession in South Africa* (Juta, Cape Town 1980) at 6, 595.

not the heirs. That principle has been acknowledged in several decisions of this Court.<sup>18</sup> Ebrahim Kara in his capacity as heir, acting for himself and the other heirs, accordingly has no *locus standi* to prosecute a claim for the restitution of rights in land in respect of the subject property.

### Substitution application

[9] Once it became apparent to the claimant that only the executor of the deceased estate had standing to prosecute the restitution claim, an application was made to the Master of the High Court, Natal Provincial Division for the appointment of new executors to the estates of Essop and Marjan Kara, which had been wound up some time ago. Accordingly on 10 January 2000 letters of executorship were issued appointing Ebrahim Kara, Moosa Essop Kara and Mohamed Hoosen Ismail Kara (“the three executors”) to be executors of the estate of the late Essop Kara.<sup>19</sup> The first mentioned two executors are the sons of the late Essop Kara, whilst the last mentioned is his grandson. On the same date, the same three persons were also appointed to be executors of the estate of the late Marjan Kara.<sup>20</sup>

[10] After the three executors were appointed, an application was brought in terms of rule 15(4) of the Land Claims Court rules to substitute as claimants:

- “a.) the executors in the joint estate of the late Essop Kara and Marjan, being Ebrahim Essop Kara, Moosa Essop Kara, and Mohamed Hoosen Ismail Kara jointly,
- b.) Alternatively to (a) the said Ebrahim Essop Kara, Moosa Essop Kara and Mohammed Hoosen Ismail Kara in their capacities as joint executors in the estate of the late Essop Kara and the descendants of the late Marjan whose names are set out in paragraphs 1, 2 and 3 of the Schedule hereto.”

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18 For the entitlement of an executor to claim restitution of rights in land in terms of the Act where a deceased estate was dispossessed, see the following cases of this Court: *Former Highlands Residents concerning area formerly known as the Highlands*, Pretoria 2000 (1) SA 489 (LCC) at para [12]-[18]; *Jacobs v Department of Land Affairs, In re Erf 38*, LCC 120/99, 28 February 2000, [2000] JOL 6204 (LCC), Internet web site <http://www.law.wits.ac.za/lcc/2000/12099sum.html> at para [20]-[33]; *Department of Land Affairs v Witz, Re Grassy Park*, LCC 152/98, 12 October 2000, Internet web site <http://www.law.wits.ac.za/lcc/2000/15298sum.html> at para [23].

19 Page 596 to the pleadings.

20 Page 597 to the pleadings.

The schedule referred to in the above application contains the names of a number of descendants.

[11] A consideration of the legal nature of a deceased estate and the circumstances under which it becomes dispossessed of a right in land, is pertinent to the substitution application. A deceased estate is an entity which has been aptly described by Coetzee J in *Clarkson NO v Gelb and Others*<sup>21</sup> as follows:

“A deceased estate is an aggregate of assets and liabilities. It has no legal personality and, when referring to it as an entity, one must be careful not to imply or understand thereby that one is dealing with anything like a *persona*. The executor is vested with its administration and he alone has the power to deal with this totality of rights and obligations. He is not merely a *procurator* or agent. His primary duty is to obtain possession of the assets of the deceased, to realise them as far as may be necessary, to make payment of debts and expenses, to frame a liquidation and distribution account and thereafter to effect a distribution to the heirs and legatees. Heirs and legatees can claim whatever is due to them only after confirmation of the liquidation and distribution account (in terms of s 35 (12) of the [Administration of Estates] Act) according to its tenor.

C P Joubert in *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 1967 at 299 says that an executor in the common law is a

‘bewindvoerder of bewindhebber net soos die kurator bewindvoerder of bewindhebber is van die bates van die persoon wat onder kuratele staan, en net soos die voog bewindvoerder of bewindhebber is van sy pupil se bates.’

This analogy between executor and curator or tutor is sound.’<sup>22</sup>

[12] At the time of the alleged dispossession, the executors of the estate of the late Essop Kara were vested with the administration of the joint estate. The estate was a single entity, not yet divided, and the surviving spouse had not yet received her share. When the right in land was allegedly dispossessed, it formed part of the aggregate of assets and liabilities under the administration of the executors. The executors were obliged, upon winding up the estate, to distribute one half of the balance to Marjan Kara and the other half to the heirs of Essop Kara. The alleged dispossession occurred before such distribution. For purposes of the Act, it must be seen as a dispossession from a deceased estate, falling under paragraph (b) of section 2(1) of the Act. The fact that only one spouse was deceased at the time

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21 1981 (1) SA 288 (W).

22 Above n 21 at 293C-F.

and that the survivor had a right upon distribution to half of the net assets of the estate, does not detract from this.

[13] It is true that if a dispossession occurs during the period of administration of a joint estate, the survivor thereby loses her right of joint ownership in the dispossessed assets.<sup>23</sup> In that sense the survivor is dispossessed of such right. However, ownership of the subject properties is in my view not the criterion for determining to which of the various categories of claimants as set out in section 2(1) of the Act, the right to claim restitution belongs. The term “deceased estate dispossessed of a right in land” in section 2(1)(b) of the Act, relates to a right in land under the control of an executor. The question of where the *dominium* of the assets in an estate resides from date of death up to date of transfer or delivery of the assets to the persons entitled thereto, has been moot for many years.<sup>24</sup> I do not believe that the location of the *dominium* of the estate assets was intended to determine whether such assets formed part of the estate at the time of dispossession, in order to give ground for a restitution claim in respect of those assets by the estate. Such an approach would run contrary to the juristic nature of a deceased estate.

[14] I conclude that the subject properties in this case formed part of the joint estate of the late Essop Kara and his surviving spouse, Marjan. The assistant Master testified at the hearing that, in the case of a joint estate of spouses married in community of property, letters of executorship are issued only in the name of the deceased spouse. Thereafter the executor is required by law to take control of and administer the entire joint estate.<sup>25</sup> The estates of Essop and Marjan Kara remained a single entity until it was divided and distributed at the end of the administration process. The fact that only one of the spouses was dead at the time of the alleged dispossession does not, in my view, remove the entity from

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23 The weight of legal authority favors the view that the survivor remains the owner of an undivided half share in the assets of the joint estate, but has no control over such assets during the administration by the executor. See *Klerk NO v Registrar of Deeds* 1950 (1) SA 81 (T) at 85, confirmed on appeal at 1950 (1) SA 626 (T); *Milne NO v Singh NO and Others* 1960 (3) SA 441 (N); *Costain and Partners v Godden NO and Another* 1960 (4) SA 456 (SR); *York and Co (Pvt) Ltd v Brnic and Another* 1962 (1) SA 56 (SR).

24 See Erasmus and De Waal, “Wills and Succession”, Joubert ed *The Law of South Africa*, Vol 31 (Butterworths, Durban 1988) at para 118.

25 Cronjé et al “Marriage” in Joubert (ed) *Law of South Africa* 1st Reissue, Vol 16 (Butterworths, Durban 1998) at para 84 and para 235.

the connotation of “deceased estate”, as the term is used in the Act. The executor controlled that entity, irrespective of who owned it. If the estate, after distribution of its other assets, finds a new asset (such as one emanating from a restitution claim), such new asset must come under the control of the executors, to be distributed according to law. If the executors are dead, new executors must be appointed. It follows from the above that the correct claimants in this case are the three executors (in their capacity as such) who are charged with the administration of the joint estate of the late Essop Kara and the late Marjan Kara.

Was the claim for restitution lodged not later than 31 December 1998 in accordance with section 2(1)(e) of the Act?

[15] A claim form together with a supportive memorandum was lodged with the Regional Land Claims Commissioner before the cut-off date of 31 December 1998. The relevant section of the land claim form dealing with the identity of the claimant states as follows:

- “3      **Full particulars of person who lost the right in land:**  
 -       Name/Community/Trust.....*Est Essop Kara*  
 -       ID Number of individual claimant.....*N/A*  
 -       Male/Female (delete which is not applicable)
- 4      **Full particulars of applicant, if not the person who lost the right in land:**  
 Name/Community/Trust.....*Estate Essop Kara*  
 Male/Female (delete which is not applicable)  
 If you are acting on behalf of a community/trust, please give your:  
 -       Name .....*Ebrahim Kara*  
 -       ID Number.....*3310135111052*  
 -       *Male*  
 -       In what capacity are you acting? .....*As heir*
- 5      **Do you know about any other family member that may have an Interest or claim on the land?**  
 5.1    If so please give details.....*M. Kara, A.E Kara, I.E Kara, E.E Kara, M.E Kara, Hawa Vanker, Ayesha Peer.*”

[16] From the claim form it is clear that both the person who lost the right in land (paragraph 3) and the applicant for restitution (paragraph 4) is stated to be “Estate Essop Kara”. In that form Ebrahim Kara purported to claim on behalf of the estate in his capacity as heir. In the supporting memorandum and in the claimants’ response to the Commissioner’s referral report, however, Ebrahim Kara and his

co-heirs purport to claim simply in their capacity as heirs. Although this may conflict with the claim form, I do believe that it invalidates the claim form.

[17] When the claim was lodged with the Commissioner in terms of section 10 of the Act, there was no executor in place who could act for the deceased estate. The above gives rise to the question whether an heir can validly lodge a restitution claim on behalf of a deceased estate. The cut-off date for lodging claims has passed. If the claim as lodged on 25 May 1995 was not properly lodged, it might well be that section 2(1)(e) of the Act had not been complied with. Ordinarily it would be the executor of a dispossessed estate that is entitled to lodge a restitution claim. There are, however, examples in our law of instances where heirs were permitted to act for the benefit of deceased estates. In *Cumes v Estate Cumes and Others*<sup>26</sup> Steyn J recognised that right when holding as follows:

“If an heir or other interested person maintains that an executor should take steps for the recovery of assets in an estate, then his proper remedy - if such action be not instituted - is either to move the Court for the removal of the executor for breach of duty or to take such action himself and to cite the executor as a nominal defendant.”

In *Angath v Mothari NO and others*<sup>27</sup> Caney AJ held that an heir is entitled to recover assets from an executor through litigation for the benefit of a deceased estate. James J followed the same approach in *Lockhat's Estate v North British & Mercantile Insurance Co Ltd*.<sup>28</sup> It was also referred to in *Clark v Barnacle NO and Others*.<sup>29</sup> However, the Appellate division, *per* Kotze AJA in *Du Toit v Vermeulen*,<sup>30</sup> pointed to practical difficulties which might be encountered if heirs are allowed to litigate for the benefit of a deceased estate, and stated that in due course the rule in the *Cumes* case may have to be revisited. Although the rule in the *Cumes* case was criticised and not followed in a number of

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26 1950 (2) SA 15 (C) at 21.

27 1954 (4) SA 285 (N) at 288-289.

28 1959 (1) SA 24 (D).

29 1958 (3) SA 41 (SR).

30 1972 (3) SA 848 (A) at 856E-F.

provincial division decisions,<sup>31</sup> it has to my knowledge never been decisively rejected by the Supreme Court of Appeal.

[18] In lodging the claim on behalf of the estate, Ebrahim Kara was not attempting to liquidate or distribute the estate.<sup>32</sup> It can be said that he was attempting to “ease the path of the executors”.<sup>33</sup> He filed a claim form on behalf of the joint estate, at a time when there was no executor in office. His action in so doing had the effect of protecting the estate’s right to claim restitution by ensuring that the threshold requirement of section 2(1)(e) of the Act was complied with. In my view the lodging of the claim cannot be regarded as a nullity, leaving the requirements of section 2(1)(e) of the Act unfulfilled.

[19] It is moreover in keeping with the purposive approach adopted by this Court<sup>34</sup> that a generous as opposed to a legalistic stance be adhered to in determining whether the claim was properly and timeously lodged in the circumstances of this case. This is especially apt where a constitutional right is at stake, as is the case here.<sup>35</sup> In this regard it is significant that in *Maponya v Minister of Police and Another*<sup>36</sup> preference was given to a robust and practical approach<sup>37</sup> (as opposed to a legalistic one)

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31 See *Segal and Another v Segal and Others* 1976 (2) SA 531 (C) at 534D-535E; *Nyati v Minister of Bantu Administration and Others* 1978 (3) SA 224 (E) at 226A-227B; *Asmal v Asmal and Others* 1991 (4) SA 262 (N) at 265B-F; *Pentz v Gross and Others* 1996 (2) SA 518 (C) at 523D-H.

32 Only an executor may liquidate or distribute an estate. See section 13(1) of the Administration of Estates Act, read with the definition of “executor” contained in section 1 of that Act.

33 See *Asmal* above n 31 at 265G.

34 *Minister of Land Affairs and Another v Slamdien and Others* [1999] 1 All SA 608 (LCC) at para [12]-[29]; *Jacobs v Department of Land Affairs In re UAP*, LCC 3/98, 28 February 2000, [2000] JOL 6203 (LCC) Internet web site address <http://www.law.wits.ac.za/lcc/2000/398sum.html> at para [39]; *Dulabh and Another v Department of Land Affairs* 1997 (4) SA 1108 (LCC); [1997] 3 All SA 635 (LCC) at para [46]-[61] and the authorities referred to in para [35] thereof; *Former Highlands Residents concerning area formerly known as the Highlands, Pretoria In re Sonny and Others v Department of Land Affairs* 2000 (2) SA 351 (LCC); [2000] 1 All SA 157 (LCC) at para [12]; *Highlands* above n 18 at para [9].

35 The constitutional right to restitution is contained at section 25(7) of the Constitution of the Republic of South Africa, Act 108 of 1996. Chaskalson P held in *Makwanyane and Another* 1995 (3) SA 391 (CC); 1995 (2) SACR 1 (CC); 1995 (6) BCLR 665 (CC) at para [10] that where constitutional principles are at stake legislation must be “construed in a way which secures for individuals the full measure of its protection.”

36 1983 (2) SA 616 (T).

37 *Maponya* above n 36 at 620C. See also the cases listed in footnote 15 of Saner, *Prescription in South African Law*, issue 6 (Butterworths, Durban 1996) at 5-7.

in the interpretation of section 2(1)(a) of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act.<sup>38</sup> I believe the same approach must be adopted when construing section 10(1) of the Restitution of Land Rights Act,<sup>39</sup> which contains the details to be specified when lodging a claim. The purpose of lodging a claim (as required by section 10 of the Act) is to alert the Commissioner to the claim and to enable it to be processed. The claim form, as lodged in this matter is, I believe, adequate for that purpose. The Commissioner does not contend that the claim form is defective, and none of the other interested parties objected to a finding that the requirements of section 2(1)(e) of the Act were fulfilled. I therefore conclude that section 2(1)(e) has been complied with.

### Order

[20] An order is accordingly granted in the following terms:

- (1) It is declared that the alleged dispossession of rights in land in respect of portions of Sub 993 of Lot 76 Cato Manor occurred from the joint estate of the late Essop Kara and Marjan Kara, as envisaged in section 2(1)(b) of the Restitution of Land Rights Act 22 of 1994.
- (2) Ebrahim Essop Kara, Moosa Essop Kara and Mohammed Hoosen Ismail Kara are hereby substituted as claimants in the claim for restitution of the aforementioned rights in land, in their capacities as joint executors charged with the administration of the estates of the late Essop Kara and Marjan Kara.

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38 Act 94 of 1970. Section 2(1)(a) requires prior notification of a claim against a local authority as precondition for a right of action against that local authority.

39 Section 10(1) of the Act states:

“Any person who or the representative of any community which is entitled to claim restitution of a right in land, may lodge such claim which shall include a description of the right in question, the nature of the right in land of which he, or she or such community was dispossessed and the nature of the right or equitable redress being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16.”

- (3) It is declared that the claim for restitution of rights in land in respect of the portions of Sub 993 of Lot 76 Cato Manor was properly lodged as required under section 2(1)(e) of the Restitution of Land Rights Act 22 of 1994.

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**ACTING JUDGE Y S MEER**

I agree

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**ACTING JUDGE A GILDENHUYS**

I agree

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**G HUGO (ASSESSOR)**

For the claimant:

*Adv M Pillemer SC instructed by Chennels Albertyn and Tanner, Durban.*

For the Department of Land Affairs:

*Adv H K Naidu, SC and Adv G H Vanker instructed by the State Attorney, Durban.*