

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO.: 2998/2018

Date heard: 26-08-2022

Date delivered: 16-09-2022

Reportable: Yes/No

Circulate to Judges: Yes/No

Circulate to Magistrates: Yes/No

In the matter between:

W M J Wellen – Griqua Paramount Chief/King	1st Applicant
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Bucklands Community Development Trust No IT 94/97	2nd Applicant
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Qouanoep black Empowerment and Traditional community development Trust IT 153/2007	3rd Applicant
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And

The Government of the Republic of South Africa	1st Respondent
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Minister of Rural Development and Land Reform	2nd Respondent
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Chief Land Claims Commissioner:	3rd Respondent
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National Office of the Commission on the Restitution

Of Land Rights

Regional Land Claims Commissioner:

4th Respondent

**Provincial Office Head of the Commission on the
Restitution of Land Rights**

5th Respondent

**National Minister of Rural Development
And Land Reform**

6th Respondent

**National Director of Rural Development
And Land Reform**

7th Respondent

**Provincial Director of Rural Development
And Land Reform**

8th Respondent

National Minister of Water & Sanitation

9th Respondent

National Director of Water & Sanitation

10th Respondent

Provincial Director of Water & Sanitation

11th Respondent

National Minister of Minerals & Energy

12 Respondent

National Director Minerals & Energy

13th Respondent

Provincial Director of Minerals & Energy

14th Respondent

Provincial Director: Deed Office

15th Respondent

Bucklands Community Property Association

16th Responent

British Consulate on behalf of the British Government

17th Respondent

Legal Aid South Africa

18th Respondent

CORAM: WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. This application is in terms of a directive issued by the judicial case management judge, Erasmus AJ as 12 April 2022 and which reads, *inter alia*, as follows;

“1. In terms of Rule 33 (4) of the Uniform Rules of court, it is directed that prayers 39, 40 and 41 of the application under case number 2998/2018, pertaining to the legal representation of the applicants in the Land Claims Court of South Africa, be adjudicated separately from the other relief sought.”

2. The relief sought in the above mentioned prayers, as translated into English by Ms Sieberhagen for the respondents, and which in my view is an accurate translation reads as follows:

“39. Applicant requests that the First to Eight Respondents be ordered by the High Court to provide legal aid to the Applicants in terms of the provisions of section 29(4) of the Restitution of Land Act as amended, in order to finalise the Land Claim W215 and W220, which has been outstanding since 1 April 1997.

40. Applicant requests that the First to Eighth Respondents be ordered by the High Court to provide legal aid to the Applicants in terms of the provisions of section 29(4) of the Restitution of Land Act as amended in order to finalise Land claim W215 and W220, which has been outstanding since 1 April 1997 and that the Applicants’ legal team with whom they have

consulted on nine occasions since August 2018 to August 2019 be authorised by the High Court to provide legal assistance to Applicants for a fair representation in the Land Claims Court, Randburg, Johannesburg and/or the High Court, Northern Cape Division, Kimberley and/or in the International Court in The Hague.

41. Legal aid must be provided to the First to Third Applicants, so that the Third Applicant may make sure that the 17th Respondent's human rights abuse during 1876 to 1879 will be called to account for restitution, please My Lady/My Lord High Court."

3. Mr W M J Wellen, the 1st applicant, appeared in person and represented the 2nd and 3rd applicants as well i.e. the Buckland Community Development Trust and the Qouanoep Black Empowerment and Traditional Community Development Trust respectively. These trusts were established in the interests of the communities of which Mr Wellen is the Griqua paramount chief/king to acquire the rights in the land.

4. A brief background to this application, as I understand it is necessary.

4.1 During 1997 the applicants submitted a land restitution claim to the Commission in Restitution on Land Rights relating to 21 farms.

4.2 Subsequently 9 farms were for transferred to the community in terms of a settlement reached in the Land Claims Court under case number LCC 48/2006 during 2008.

4.3 The restitution of the remaining 12 farms, currently in private ownership, is in dispute and must be determined by the Land Claims Court.

4.4 Already in 2005 and after the 9 farms mentioned in 4.2 above had been authorised for transfer, the applicants' legal team appointed by the Legal Aid Board at the behest of the 3rd Respondent, the Chief Land Claims Commissioner, withdrew from the matter in the hopes apparently that the issue of the remaining 12 farms could be settled out of court.

4.5 Since then the applicants have been without formal legal representation, the attitude of the 3rd respondent having been that the land claim could be settled through negotiation. To date nothing has come of it.

4.6 Mr Wellen informs that it is only after this application was launched that the State Attorney, on behalf of the respondents registered the land claim relating to the remaining farms in the Land Claims Court under case number LCC 86/2020.

5. The applicants' papers abound with expressions of frustration at the delay in the finalisation of their land restitution claims. Hence, according to Mr Wellen, their approach to this court on the basis of it having the jurisdiction to determine not only the applicants right to restitution of the land but also, what is pertinent *in casu*, their right to legal representation in pursuit of their claims. This court's jurisdiction is founded, so the argument goes, in the fact that the farms in question are situated within the Northern Cape, which is also where the unlawful dispossession took place, therefore on the same basis as this Court would severally have jurisdiction in civil proceedings.

6. The Land Claims Court's jurisdiction to determine the right to restitution of land and issues incidental thereto however ousts the High Court's civil jurisdiction and this is obvious from s22 of the Act, the relevant portions which read as follows:

"22. Land Claims Court.- (1) There shall be a court of law to be known as the Land Claims Court which shall have the power, to the exclusion of any court contemplated in section 166 (c), (d) or (e) of the Constitution-

(a) to determine a right to restitution of any right in land in accordance with this Act;

(b)

(c)

(cA)

(cB)

(cC)

(cD)

(cE)

(d)

(2) *Subject to Chapter 8 of the Constitution, the Court shall have jurisdiction throughout the Republic and shall have –*

(a) all such powers in relation to matter falling within its jurisdiction as are possessed by a High Court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of a High Court in relation to any contempt of the Court;

(b)

(c) the power to decide any issue either in terms of this Act or in terms of any other law, which is not ordinarily within its jurisdiction but is incidental to an issue within its jurisdiction, if the Court considers it to be in the interest of justice to do so.”

7. Chapter 8 of the Constitution relates to Courts and Administration of Justice and s166 (c) thereof, referred to in s 22(1) of the Act above refers to *“the High Court of South Africa, and any High Court of Appeal that may be established by an Act of Parliament to hear appeals from any court of a status similar to the High Court of South Africa.”*

8. In my view it is clear from the above that the Land Claims Court has exclusive jurisdiction in matters pertaining to the restitution of rights in land and certain instances those issues incidental thereto.

9. Furthermore s 29(4) of the Act, which provisions the applicants are well aware of as is evident from prayers 39 and 40 of the Notice of Motion, states the following in relation to legal representation in the Land Claims Court:

“29. (4)Where a party can not afford to pay for legal representation itself, the Chief Land Claims Commissioner may take steps to arrange legal representation for such party, either through the State legal aid system or, if necessary, at the expense of the Commission.”

10. In the event the applicants are not satisfied with the decision by the 3rd respondent relating to legal representation as provided for under s29(4), the Act provides under s36 for the review of such a decision. S36 reads as follows:

*“36 **Review of decisions of Commission.** – (1) Any party aggrieved by any act or decision of the Minister, Commission or any functionary acting or purportedly acting in terms of this Act may apply to have such act or decision reviewed by the Court.”*

11. Under s1 of the Act the definition of “Court” is held to mean “*the Land Claims Court*”. Any application to review the decision/s of any of the Land Claims Commission officials should therefore be brought before the Land Claims Court.

12. Mr. Wellen argued that not all the relief sought in the application relate to the restitution of land rights and that legal representation is required for issues that fall within the jurisdiction of this Court.

13. I am aware of the fact that Mr. Wellen had unsuccessfully applied to Legal Aid South Africa for legal representation in this application in the High Court and that an appeal of that decision has also been unsuccessful. The directive issued by Erasmus AJ and which follows upon a judicial case management meeting with the parties provides only for the determination of the issue of legal representation in the Land Claims Court. I am confirmed in this application before me to that directive.

14. That being said, the relief sought by the applicants in prayers 39, 40 and 41 of the application cannot be granted due to this court lacking the jurisdiction to deal therewith.

15. As far as the costs are concerned, Ms Sieberhagen has argued that costs should follow the result.

16. It has however transpired during the course of this argument that Mr Wellen appears to have laboured under the impression (1) that the High Court has territorial jurisdiction to hear the matter and (2) that the High Court has the power and jurisdiction to regulate the processes of the Lands Claims Court and its officials. I do not get the impression that there was any *mala fides* on the part of the applicants in bringing the application for the specific relief *in casu* in this Court, but merely that the applicants specifically, Mr Wellen as a layperson, was misguided in this respect. I am not of the view, in the circumstances of this matter, which is of great importance and affects vulnerable and previously disadvantaged communities, think that the applicants should be made to bear the costs of this application.

In the result the following order is made.

a) The applicants' application in respect of the relief claimed in terms of prayers 39, 40 and 41 is dismissed.

b) There is no order as to costs.

c) The application is referred back to the Judicial Case Management Judge for further directions relating to the remainder of the relief sought by the applicants in the application.

d) Paragraph 2 of the Court order dated 29 October 2021 remains in force.

C C Williams

For Applicants: Mr W J M Wellen (In person)

Respondents: Adv A S Sieberhagen
Office of the State Attorney