



***IMPLICATIONS OF THE CONSTITUTIONAL COURT JUDGMENT ON THE
RESTITUTION OF LAND RIGHTS AMENDMENT ACT ON THE OPERATIONS OF
THE COMMISSION***

7 September 2016

INTRODUCTION

- On 31 August 2016 the Portfolio Committee was briefed by Parliament Legal Services on the Constitutional Court Judgment on the Restitution of Land Rights Amendment Act, 2014 and its implications on the legislative process.
- This presentation discusses the implications of the judgment on the operations of the Commission.
- The details relating to the background, the parties, the issues that were before the Court are omitted from the presentation as they have already been discussed.



THE ORDER OF THE CONSTITUTIONAL COURT 1/2

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1. It is declared that Parliament failed to satisfy its obligation to facilitate public involvement in accordance with section 72(1)(a) of the Constitution.
2. The Restitution of Land Rights Amendment Act 15 of 2014 is declared invalid.
3. The declaration of invalidity in paragraph 2 takes effect from the date of this judgment.
4. Pending the re-enactment by Parliament of an Act re-opening the period of lodgement of land claims envisaged in section 25(7) of the Constitution, the Commission on Restitution of Land Rights, represented in these proceedings by the Chief Land Claims Commissioner (Commission), is interdicted from processing in any manner whatsoever land claims lodged from 1 July 2014.



THE ORDER OF THE CONSTITUTIONAL COURT 2/2

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5. The interdict in paragraph 4 does not apply to the receipt and acknowledgement of receipt of land claims in terms of section (6)(1)(a) of the Restitution of Land Rights Act, 1994
6. Should the processing, including referral to the Land Claims Court, of all land claims lodged by 31 December 1998 be finalised before the re-enactment of the Act referred to in paragraph 4 above, the Commission may process land claims lodged from 1 July 2014.
7. In the event that Parliament does not re-enact the Act envisaged in paragraph 4 within 24 months from the date of this order, the Chief Land Claims Commissioner must, and any other party to this application or person with a direct and substantial interest in this order may, apply to this Court within two months after that period has elapsed for an appropriate order on the processing of land claims lodged from 1 July 2014.
8. The National Council of Provinces must pay the applicants' costs, including costs of two counsel.



IMPLICATIONS OF THE ORDER 1/6

- The immediate effect of the order is that (subject to the important qualifications set out below) from 28 July 2016 the Restitution of Land Rights Act, 1994 must be read as though the Amendment Act was never enacted.
- At a practical level, this means that (again subject to the qualifications set out below) the version of the Restitution Act that now guides the Commission is the version that existed immediately prior to the enactment of the Amendment Act.



IMPLICATIONS OF THE ORDER 2/6

- Potential claimants who had not lodged claims by 27 July 2016 may no longer do so. For them, the claims lodgement deadline of 31 December 1998 has been reinstated.
- The critical qualification to the order relate to new order claims that had already been lodged prior to 27 July 2016 (“already pending new order claims”).
- Already pending new order claims are protected (validly lodged) and remain claims for the purposes of the Restitution Act.



IMPLICATIONS OF THE ORDER 3/6

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- The Commission is entitled to receive and acknowledge receipt of any already pending new order claims that had already been lodged by 27 July 2016 but had not yet been acknowledged by 27 July 2016.
- The Commission is interdicted “from processing in any manner whatsoever” already pending new order claims unless:
 - Parliament enacts new legislation reopening the lodgement of claims; or
 - The Commission finalises claims lodged by 31 December 1998 in the entire country to the point of referral to the Minister or the Land Claims Court



IMPLICATIONS OF THE ORDER 4/6

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- Even if a provincial office of the Commission manages to process through to referral to the Minister or the Land Claims Court all of the old order claims in its province, it may not start processing the pending new order claims in its province until all of the other provincial offices of the Commission have completed their work.
- There is one Commission, and it is the Commission as a whole that is interdicted in the manner aforesaid.



IMPLICATIONS OF THE ORDER 5/6

- If Parliament does not re-enact legislation re-opening lodgement of claims by 27 July 2018, the Chief Land Claims Commissioner is required to approach the Constitutional Court for directions on how the Commission is to process the already pending new order claims.
- The order does not expressly deal with the powers of the Land Claims Court in relation to the pending new order claims.



IMPLICATIONS OF THE ORDER 6/6

- In the Amaqamu and Emakhasaneni court case that will be heard on 19 to 23 September 2016 the Land Claims Court will determine:
 - The status of new order competing claims in light of the Judgment
 - The effect of the Judgment on the adjudication of pending land claims lodged by 31 December 1998 in cases where competing land restitution claims have been lodged on 1 July 2014

LOGISTICAL AND ADMINISTRATIVE MATTERS

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- The Commission shall shift the resources that were meant for the lodgement of claims to the research and settlement of claims
- All claims lodged by 31 December 1998 shall be researched by 31 March 2017.
- The Commission shall prepare for settlement all claims lodged by 31 December 1998, in the next 24 months.



OUTSTANDING CLAIMS AS AT 31 MARCH 2016

Province	PHASE TWO	PHASE THREE	PHASE FOUR	Outstanding as at 31 March 2016
	Screening and Categorisation (Research)	Determination of Qualification in terms of Section 2 of the Restitution Act	Negotiations	
Eastern Cape	266	0	551	817
Free State		2	4	6
Gauteng	131	8	104	243
KwaZulu Natal	514	141	1365	2020
Limpopo		64	524	588
Mpumalanga	1409	65	1022	2496
Northern Cape		0	94	94
North West		0	87	87
Western Cape	443	0	625	1068
Total	2763	280	4376	7419

REDEPLOYMENT OF LODGMENT STAFF 1/2

- The 99 lodgement staff members.
- They shall be re-deployed, and where necessary reskilled. Consultation processes in this regard are pending.
- Initially the staff shall finalise the following Information Management Tasks:
 - Capturing and uploading of all supporting documents to the lodgement system;
 - Capturing manually lodged claims; and
 - Indexing and transfer of claims and files to the Provincial Office where the claimed land is located.

REDEPLOYMENT OF LODGMENT STAFF 2/2

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OFFICE	TOTAL STAFF	LODGEMENT STAFF
OCLCC	83	0
Eastern Cape	70	10
Free State	33	7
Northern Cape	36	10
KwaZulu-Natal	117	18
Western Cape	68	5
North West	72	21
Limpopo	92	7
Mpumalanga	115	21
Gauteng	65	10
TOTAL	751	99



LODGEMENT OFFICES

- Of the 14 lodgement offices that were in place 10 were existing offices of the Commission. 4 were opened specifically for re-opening: Mowbray, Vryheid, Vryburg, Queenstown.
- The offices are kept open so as to inform potential claimants who had not lodged claims by 27 July 2016 that they may no longer do so. For them, the claims lodgement deadline of 31 December 1998 has been reinstated.
- The Mobile lodgement offices have been grounded. Discussions are taking place to sub-let them.



COMMUNICATION IMPLICATIONS

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- The Commission Communication Strategy has been reviewed:
 - Communicate the implications of the Judgment
 - Inform new order claimants about the implications of the Judgment on their claims
 - Re-assure old order claimants that their claims are prioritised
- All adverts, banners, pull-up or other visual communication, pamphlets and manuals have been withdrawn.
- Commission Staff has been instructed not to wear (in public) any apparel that calls upon people to Lodge Claims.



PROGRESS REPORT ON LODGED CLAIMS 1/2

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- The Chief Land Claims Commissioner directed, in terms of section 16 of the Restitution Act, that claims be lodged electronically.
- Where the lodgement system was not available (power cuts, and other technical faults, etc.) the manual lodgement of claims was permitted.
- Claims could be lodged in any of the 14 lodgement offices or 6 mobile lodgement offices.



PROGRESS REPORT ON LODGED CLAIMS 2/2

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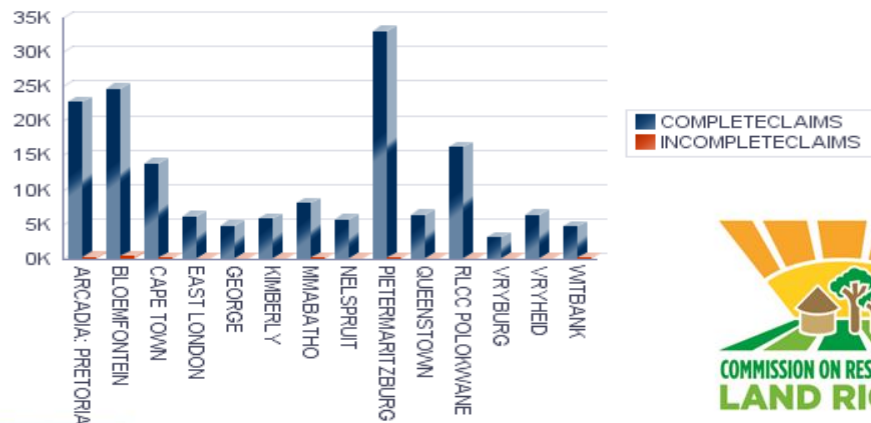
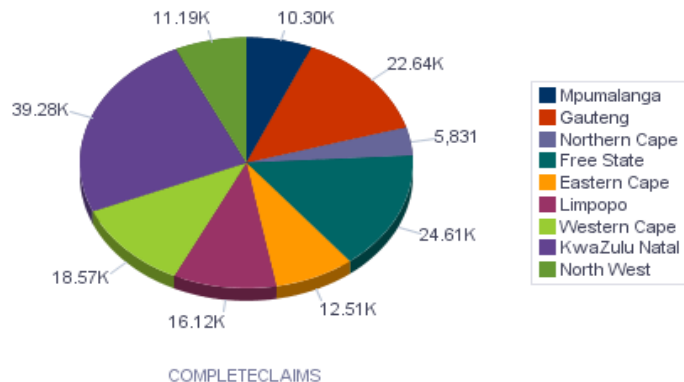
- Some people wrote letters, and posted affidavits intending to lodge claims.
- Such letters and affidavits – where received not later than 27 July 2016 - are, in law, deemed to be lodgement (but not in prescribed manner).
- The Commission is empowered to condone the manner in which a claim is lodged.
- Manually lodged claims and those not lodged in the prescribed manner are still being captured into the lodgement system.



AUDITED STATISTICAL INFORMATION AS AT 13 JULY 2016

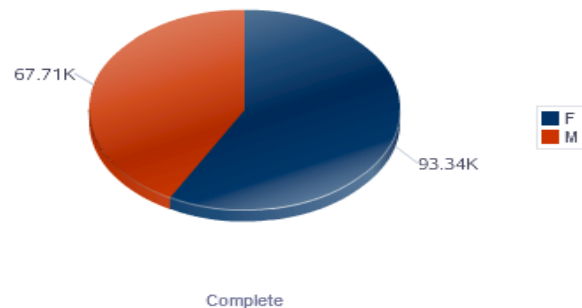
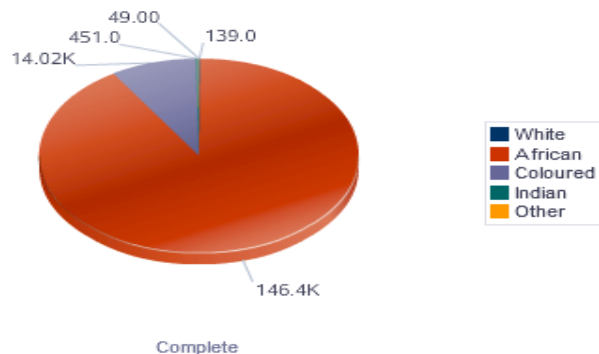
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Province	Lodgement Office	Total
Mpumalanga		10297.0
	WITBANK	4664.0
	NELSPRUIT	5633.0
Gauteng		22641.0
	ARCADIA: PRETORIA	22641.0
Northern Cape		5831.0
	KIMBERLY	5831.0
Free State		24613.0
	BLOEMFONTEIN	24613.0
Eastern Cape		12508.0
	EAST LONDON	6107.0
	QUEENSTOWN	6401.0
Limpopo		16121.0
	RLCC POLOKWANE	16121.0
Western Cape		18574.0
	GEORGE	4737.0
	CAPE TOWN	13837.0
KwaZulu Natal		39280.0
	VRYHEID	6325.0
	PIETERMARITZBURG	32955.0
North West		11187.0
	MMABATHO	8062.0
	VRYBURG	3125.0
Total		161052.0



AUDITED AT 13 JULY 2016: RACE AND GENDER

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	F	M	Total
White	56.0	83.0	139.0
African	84451.0	61946.0	146397.0
Coloured	8664.0	5352.0	14016.0
Indian	153.0	298.0	451.0
Other	15.0	34.0	49.0
Total	93339.0	67713.0	161052.0

LODGED AS AT 13 JULY 2016, INCOMPLETE INFORMATION

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Province	Lodgement Office	Incomplete
Mpumalanga		160.0
	WITBANK	126.0
	NELSPRUIT	34.0
Gauteng		282.0
	ARCADIA: PRETORIA	282.0
Northern Cape		95.0
	KIMBERLY	95.0
Free State		428.0
	BLOEMFONTEIN	428.0
Eastern Cape		134.0
	EAST LONDON	67.0
	QUEENSTOWN	67.0
Limpopo		115.0
	RLCC POLOKWANE	115.0
Western Cape		232.0
	GEORGE	42.0
	CAPE TOWN	190.0
KwaZulu Natal		222.0
	VRYHEID	58.0
	PIETERMARITZBURG	164.0
North West		174.0
	MMABATHO	130.0
	VRYBURG	44.0
Total		1842.0



STATISTICS (AUDIT PENDING)

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Province	Lodgement Office	Complete	Incomplete	Total
Mpumalanga		10542.0	160.0	10702
	WITBANK	4891.0	126.0	5017
	NELSPRUIT	5651.0	34.0	5685
Gauteng		23073.0	282.0	23355
	ARCADIA: PRETORIA	23073.0	282.0	23355
Northern Cape		6220.0	95.0	6315
	KIMBERLY	6220.0	95.0	6315
Free State		24854.0	428.0	25282
	BLOEMFONTEIN	24854.0	428.0	25282
Eastern Cape		12876.0	134.0	13010
	EAST LONDON	6389.0	67.0	6456
	QUEENSTOWN	6487.0	67.0	6554
Limpopo		16855.0	115.0	16970
	RLCC POLOKWANE	16855.0	115.0	16970
Western Cape		18676.0	232.0	18908
	GEORGE	4769.0	42.0	4811
	CAPE TOWN	13907.0	190.0	14097
KwaZulu Natal		40027.0	222.0	40249
	VRYHEID	6427.0	58.0	6485
	PIETERMARITZBURG	33600.0	164.0	33764
North West		11595.0	174.0	11769
	MMABATHO	8358.0	130.0	8488
	VRYBURG	3237.0	44.0	3281
Total		164718.0	1842.0	166560



STATISTICS (AUDIT PENDING)

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Claim Type	Alternative remedies	Financial compensation	Restoration of alternative land	Restoration of original land	Total
Estate	4.0	309.0	11.0	21.0	345.0
Direct Descendant	707.0	101482.0	885.0	4411.0	107485.0
Community Representative	121.0	3706.0	78.0	964.0	4869.0
Originally Dispossessed Person	344.0	49559.0	501.0	1615.0	52019.0
Total	1176.0	155056.0	1475.0	7011.0	164718.0

Thank You

