



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 19 October 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Minister of Agriculture, Land Reform and Rural Development and Others v Ndumo (obo Emdwebu Community) (Case no 577/2022) [2023] ZASCA 136 (19 October 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with no order as to costs an appeal against the decision of the Land Claims Court, Randburg (the LCC).

The respondent, Mr Bongani Cyprian Ndumo (Mr Ndumo), acting as chairperson of the Emdwebu Community, sought an order against the Land Claims Commission (the Commission) in the LCC, compelling the appellants to finalise what he referred to as 'a community claim' for restitution of land rights, in terms of the Restitution of Land Rights Act 22 of 1994 (the Act). Mr Ndumo and the community had accepted monetary compensation, within 14 days of the granting of the order'. The LCC granted the order.

The Commission, aggrieved by the decision of the LCC, successfully applied for leave to appeal. In granting the Commission leave to appeal to this Court, the LCC formulated the grounds of appeal, limiting the issue on appeal as follows:

'Whether the second and fourth respondents (the Commission) with their actions granted condonation to receive the claim form as a community claim and whether they by law could do so.'

The Commission contended that when the memorandum recommending settlement and payment was being prepared for submission to the LCC in terms of s 42D, it was subjected to an audit by the Legal Unit and Quality Assurance (Legal Unit). The audit revealed that the information on the claim form lodged by Mr Ndumo in 1998, did not make any reference to the claim being lodged as 'a community claim on behalf of the Emdwebu Community'. Mr Ndumo was then informed through a letter from the Chief Commissioner that there was an oversight regarding the conversion of his individual family claim to a community claim. The Chief Commissioner further explained that, by law he was bound to the form that was originally submitted by Mr Ndumo and was not authorised to substitute one claim for another or expand on the claim form.

The SCA held that Mr Ndumo completed a claim form on 31 December 1998, claiming the restitution of land rights belonging to his late father, Nokhenke Ndumo. Furthermore, it found that some questions in the claim form were not responded to, and that he (Mr Ndumo) only mentioned 'Emdwebu' in item 1.1 of the form in response to the request for location or description of the property he claimed for. The SCA could not find any reference at all to the 'Emdwebu Community' in the claim form. Section 10(3) of the Act explicitly provided: 'if a claim was lodged on behalf of a community the basis on which it was contended that the person submitting the form represented such community, shall be declared in full'. Additionally, in response to item 4 of the claim form, Mr Ndumo stated that he was acting in his capacity as a 'Descendant (son) of the Late Nokhenke Ndumo', significantly, not as a representative of the 'Emdwebu Community'. The Court further found that on the face of it, Mr Ndumo's claim for restitution of land rights, apart from not providing a clearer description of the location of his late father's farm, was lodged as a family claim in the prescribed manner. In *Minaar N.O v Regional Land Claims*

Commissioner, Mpumalanga (LCC 42/2006) [2006] ZALCC 12 (8 December 2006) (*Minaar*), the LCC in that matter held that it was not permissible to condone a conversion of a claim. The SCA concluded that the facts of this case resembled those of *Minaar*, and therefore that the LCC erred in its findings that at the time Mr Ndumo lodged the claim in 1998, he in fact intended it to be a community claim. The SCA also held that the LCC should have considered Mr Ndumo's affidavit of 2013, which conveyed that the idea to include the community only came to him in 2013. Therefore, the Regional Land Claims Commissioner's (RLCC) decision to accept and gazette the Ndumo family claim as a community claim was not authorised by the Act. That was so because there was no rational connection between the contradictory information made available to the RLCC, and the administrative act he performed in terms of s 11(1) of the Act. Thus, on the facts of this case, the conversion of a family claim to a community claim after the cut-off date, could not have been effected through condonation in terms of s 11(2). The appeal must therefore succeed, with no order as to costs.

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