**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Reportable**

Case No: 1106/2018

In the matter between:

**MAKHUVA-MATHEBULA COMMUNITY** **APPELLANT**

and

**REGIONAL LAND CLAIMS COMMISSIONER, LIMPOPO** **FIRST RESPONDENT**

**CHIEF LAND CLAIMS COMMISSIONER** **SECOND RESPONDENT**

**Neutral citation:** *Makhuva-Mathebula Community v Regional Land Claims Commissioner, Limpopo & another* (1106/2018) [2019] ZASCA 157 (28 November 2019)

**Coram**: Navsa, Ponnan, Swain, Zondi and Plasket JJA

**Heard**: 13 November 2019

**Delivered:** 28 November 2019

**Summary:** Restitution of Land Rights Act 22 of 1994 – claim for restitution of land rights – review of Regional Land Claims Commissioner's decision to publish claim as described in claim form – applicant alleging claim depicted in map attached to claim form – no reviewable irregularity established.

## ORDER

**On appeal from:** Land Claims Court (Ncube AJ sitting as court of first instance).

The appeal is dismissed.

## JUDGMENT

**Plasket JA (Navsa, Ponnan, Swain and Zondi JJA concurring)**

[1] Section 25(7) of the Constitution provides that persons or communities who were 'dispossessed of property after 13 June 1913 as a result of past racially discriminatory laws or practices' are entitled, 'to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress'. The Act of Parliament referred to is the Restitution of Land Rights Act 22 of 1994 (the Restitution Act).[1] It provides, inter alia, for the administrative machinery and processes for land claims contemplated by s 25(7) of the Constitution.

[2] The appellant, the Makhuva-Mathebula Community (the community), lodged a land claim in terms of the Restitution Act with the first respondent, the Regional Land Claims Commissioner, Limpopo (the RLCC), who later published the claim in the

[1] The Restitution Act was required to be enacted by s 121 of the interim Constitution of 1993, which set the parameters for land restitution. It provided:
'(1) An Act of Parliament shall provide for matters relating to the restitution of land rights, as envisaged in this section and in sections 122 and 123.
(2) A person or a community shall be entitled to claim restitution of a right in land from the state if –
(*a*) such person or community was dispossessed of such right at any time after a date to be fixed by the Act referred to in subsection (1); and
(*b*) such dispossession was effected under or for the purposes of furthering the object of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) [of the interim Constitution], had that section been in operation at the time of the dispossession.
(3) The date fixed by virtue of subsection 2(*a*) shall not be a date earlier than 19 June 1913.'

*Government Gazette* (the *Gazette*). The community was of the view that the claim that was published did not correspond to the claim that it made. It took the RLCC's decision to publish the claim on review. The Land Claims Court dismissed that application. It also dismissed an application for leave to appeal, but leave was granted by this court on petition.

**The legislation**

[3] In order to fulfil its mandate of providing for the restitution of land rights or the granting of equitable other redress in the circumstances contemplated by s 25(7) of the Constitution, the Restitution Act created an administrative body, the Commission on Restitution of Land Rights (the Commission).[2] It is headed by the Chief Land Claims Commissioner, and regional offices are run by regional land claims commissioners.[3]

[4] The general functions of the Commission are set out in s 6 of the Restitution Act. Those functions include: receiving and acknowledging receipt of claims; the taking of reasonable steps to ensure that claimants are assisted in the preparation and submission of their claims; advising claimants of the progress of their claims; and investigating the merits of claims that have been submitted.[4]

[5] Section 2(1) and (2) of the Restitution Act set out the parameters of claims for restitution. It provides:

'(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

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[2] Section 4(1). See generally, *Mahlangu NO v Minister of Land Affairs & others* 2005 (1) SA 451 (SCA) paras 1-5. See too Budlender, Latsky and Roux *Juta's New Land Law* at 3A-24 to 3A-25.

[3] Section 4(3).

[4] Section 6(1).

*(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 30 June 2019.'

(2) No person shall be entitled to restitution of a right in land if –

(*a*) just and equitable compensation as contemplated in section 25(3) of the Constitution; or

(*b*) any other consideration which is just and equitable,

calculated at the time of any dispossession of such right, was received in respect of such dispossession.'

[6] Section 10 deals with the lodgment of claims. Its first three subsections provide:

'(1) 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 land in question, the nature of the right in land of which he, 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.

(2) The Commission shall make claim forms available at all its offices.

(3) If a claim is lodged on behalf of a community the basis on which it is contended that the person submitting the form represents such community, shall be declared in full and any appropriate resolution or document supporting such contention shall accompany the form at the time of lodgement: Provided that the regional land claims commissioner having jurisdiction in respect of the land in question may permit such resolution or document to be lodged at a later stage.'

[7] It is evident from s 10(1) that a claim must be lodged on a form prescribed for that purpose. Section 16 empowers the Chief Land Claims Commissioner to make rules regarding, inter alia, 'any matter which, in terms of this Chapter, is required or permitted to be prescribed'.[5] Rule 2(1)(*a*) of the Rules Regarding Procedure of Land Claims[6] provides that a claimant 'shall lodge a claim in writing on a duly completed claim form, as prescribed by the Commission in terms of section 10 of the Act, substantially in the form of Annexure A, together with such additional documents as are relevant to substantiate the claim, with the regional office of the Commission

[5] Section 16(1)(*a*).

[6] Promulgated in Government Notice R703, *Government Gazette* 16407 of 12 May 1995.

having jurisdiction over the land in respect of which such claim is instituted'. The claim in this case was lodged on a claim form as envisaged by Annexure A to the rules.

[8] Once a claim has been lodged, the relevant RLCC must satisfy himself or herself of three things – that the claim was lodged in the prescribed manner, that it is not precluded by s 2 and that it is not frivolous or vexatious. Once he or she is satisfied that these requirements have been met, he or she is then required to cause notice of the claim to be published in the *Gazette* as well as in 'the media circulating nationally and in the relevant province'. He or she is also required to 'take steps to make it known in the district in which the land in question is situated'.[7]

[9] In terms of s 12, the Commission has the power to investigate claims. At the end of an investigation, a RLCC may refer a claim to the Land Claims Court, a superior specialized court created by s 22 of the Restitution Act.

[10] Section 36 of the Restitution Act vests review jurisdiction in the Land Claims Court. It provides:

'(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.

(2) The Court shall exercise all of the Supreme Court's powers of review with regard to such matters, to the exclusion of the provincial and local divisions thereof.'

**The background**

[11] On 19 December 1997, Mr Fifteen John Makhuva, the chairperson of the Royal Council of Makhuva, lodged a land claim with the RLCC on an unsigned and undated claim form. He did so on behalf of the community.

[12] In the appropriate place in the claim form, Mr Makhuva identified the land that was claimed as being 'Letaba Rest Camp, Lulekani, Zebra, Gemog, Pompet, all under

[7] Section 11(1).

the District of Phalaborwa'.[8] In addition, the name of Quagga was written onto the claim form in what appears to be a different hand to that of the person who completed the claim form.

[13] In paragraph 9 of the claim form, which bears the heading 'Any other information you would like to bring to the commission's attention', Mr Makhuva referred to two annexures. They were an affidavit signed by him, but which does not appear to have been commissioned, and what was described as a 'map of the area being claimed'. In fact, two maps were attached.[9]

[14] In the affidavit, Mr Makhuva said:

'The places presently called Majeje, Lulekani, Zebra, Gemog, Pompey and Letaba Rest Camp were under the Makhuva Indunas of the likes of Xakamani, Nkundleni, Malopani and Hoyihoyi.'

[15] In paragraph 11 of the claim form, the community's contact address was given as care of Conrad Kruger Attorneys. It can thus be accepted that it was represented by attorneys when the claim was lodged. It can also be accepted from the annexures to the founding papers in the review application in particular, to which I shall refer below, that although its attorneys may have changed from time to time over the 22 years that the claim has meandered through the RLCC's bureaucratic maze, the community has always been legally represented.

[16] Receipt of the claim was acknowledged by the RLCC on 21 April 1998. In the letter acknowledging receipt of the claim, the land that was the subject of the claim was confirmed as being 'Letaba Rest Camp LU, Quagga 21, Zebra 19, Genoeg 15 and Pompey 16 LU'.

[17] Annexures to the founding papers indicate that some communication took place between attorneys acting for the community and the RLCC during the period between

[8] The correct name for the property named as Gemog is Genoeg and the correct name for the property named as Pompet is Pompey.

[9] The names of properties can at least be made out on the first map, albeit with some difficulty. They cannot be made out on the second, different, map. In the founding affidavit in the review application, however, it is said that the RLCC ought to have 'determined the geographical borders of the land claim by reference to this map, or should have ascertained how this map fits into the actual land claim of the Applicant community'.

the lodging of the claim and the first publication of the claim on 8 June 2007. As the review was not brought in terms of rule 53 of the uniform rules, one must assume that the community has attached to its founding papers everything that it considered relevant as a record of the decision. As rule 53 is primarily intended to assist applicants to bring review proceedings, the community's option not to use rule 53 in order to obtain a full and complete record and reasons was taken at its own risk.[10]

[18] On 14 July 2000 and 21 July 2000 a claim to land inside the Kruger National Park, lodged by four Ba-Phalaborwa tribes, was published in the *Gazette*. The properties claimed included Letaba Ranch. In a letter dated 21 September 2000, the community's attorney requested the RLCC to amend the notice that he had published, in terms of s 14A(4) of the Restitution Act, 'to include our clients as parties with a vested interest'. Attached to the letter was a report compiled by an anthropologist concerning Letaba Ranch and Genoeg and the Makhuva tribe's connection to these properties.

[19] The attorney did not state in the letter that the community had claimed Letaba Ranch. Strangely, she also said nothing about the community having claimed Genoeg. Attached to the letter was a document, also dated 21 September 2000, signed by the same attorney and headed 'LODGEMENT OF CLAIM'. With reference to the claim lodged by the community on 19 December 1997, she stated that two 'technical errors' had been made in the claim form: the 'reference to Letaba Rest Camp was meant to read Letaba Ranch and the reference to Gemog should have read Genoeg'. She asked that these errors be overlooked and that the community be included 'as an interested party in the claims process'.

[20] In the following month, however, the same attorney, in answer to a number of questions posed by an attorney acting for the Ba-Phalaborwa tribes confirmed that 'our clients are in fact claiming Letaba Rest Camp'.

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[10] See *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A) at 660D-661J; *SACCAWU & others v President, Industrial Tribunal & others* 2001 (2) SA 277 (SCA) para 7; *Liberty Life Association of Africa v Kachelhoffer NO & others* 2001 (3) SA 1094 (C) at 1114E-1115A.

[21] In a letter dated 9 January 2007, the community's attorney wrote to the RLCC to clarify aspects of its claim. First, the attorney said that Letaba Ranch had not been claimed and that this had been an error. Genoeg had, however, been claimed. The attorney tried, unconvincingly, it must be said, to persuade the RLCC that because Genoeg had been claimed, and it was part of Letaba Ranch, that constituted a claim to Letaba Ranch. Secondly, the attorney stated that it could be seen from the claim form that Lulekani had been claimed, and that what was claimed was the whole Lulekani district, which included Letaba Ranch. The attorney appears to have been on firmer ground in this respect.

[22] Prior to this, it had not been clear to the RLCC whether the community had claimed the township of Lulekani or the entire district of that name. In the *Gazette* dated 8 June 2007, notice of the claim in respect of Genoeg, Letaba Rest Camp, Pompey and Zebra was published. Lulekani was left out because the extent of the claim to Lulekani still had to be investigated by the RLCC. Why the claim to Quagga was not published has not been explained.

[23] When the RLCC completed his investigation into what precisely made up the Lulekani district, notice of this part of the claim was published in the *Gazette* on 22 May 2015. The land that made up this district included Letaba Ranch. The claim to Quagga was published at this stage. The result was that by 22 May 2015, the claim to all of the land referred to in paragraph 1.1 of the claim form had been published. (This publication occurred about 18 months after the review application had been launched.)

**The review application**

[24] By notice of motion dated 30 September 2013, the community initiated an application in which it sought a declarator that the publication of its claim in the *Gazette* of 8 June 2007 was incomplete; an order reviewing the decision of the RLCC 'to publish only those portions of the Applicant's restitution claim as set out in the aforesaid Gazette, and ordering the First Respondent to publish an additional amended Gazette containing all cadastral portions of the farms listed in Annexure "A" hereto, as well as the unsurveyed state land referred to herein'. The costs of the application were also sought.

[25] Annexure A to the notice of motion contains a list of 48 properties as well as land described as '[c]ertain un-proclaimed areas of the Kruger National Park, between the Olifants and Letaba Rivers' and Letaba Ranch.

[26] It is apparent that the land listed in annexure A is far more extensive than that claimed in paragraph 1.1 of the claim form. The basis of the community's case is that its claim is embodied in the map attached to the claim form, and not in paragraph 1.1 of the claim form – and that what it claims is every property depicted on the map.

[27] The community's case appears, largely, to be embodied in paragraph 14 of the founding affidavit deposed to by Mr Mishack Mathebula. It reads:

'From a proper reading of the land claim form, it is respectfully clear that the community claimed the area which they regarded as their traditional lands over which they held indigenous title. In short, this is the unsurveyed state land within the Kruger National Park situated between the confluence of the Olifants River and the Letaba River as well as the surveyed farms to the West of the Kruger National Park which continues up to a line that traverses more or less North to South as indicated on a map which I annex hereto as Annexure "MM4". The surveyed farms are those listed in Annexure "A" to the Notice of Motion.'

Annexure 'MM4' is a third map, different to the two maps attached to the land claim form. It is illegible, for the most part. It is impossible to make out the names of individual properties.

[28] In addition, the community's complaint is that it appeared from the publication in the *Gazette* of 8 June 2007 that the RLCC, in considering the publication of the claim, 'simply looked at paragraph 1.1 of the Land Claim Form and to nothing else', but even then omitted Quagga from the publication. From a reading of the 'claim form and its annexures as a whole', the community alleged, it was clear that the RLCC 'did not properly apply his mind to determining the exact extent of the applicant's land claim' and he 'obviously did not investigate the rest of the claim form, nor its annexures'. It was also contended that the 'determination of the area of the claim by reference only to paragraph 1.1 of the land claim form was clearly an error and should be set aside and corrected'.

[29] Ms Kholofelo Peace Machete, a project co-ordinator in the office of the RLCC, deposed to the answering affidavit. She set out details of the RLCC's engagement with the community's legal representatives over the years, and explained the process that eventually led to the publication of the claim to the various components of the Lulekani district, including Letaba Ranch. She attached a copy of the publication of this aspect of the claim. From this, it appears that the claim to Quagga was also published.

[30] The crux of the RLCC's case is encapsulated in the last four paragraphs of the answering affidavit. I quote them in full:

'29 It is becoming apparent that the Applicant wants to lay more claims on land which it did not claim in its claim form. The claim form is unambiguous as to what the Makhuva-Mathebula Community is laying claim to. The land on which they are laying claim is Letaba Rest Camp, Lulekani, Zebra, Genoeg and Pompey.

30 The land in respect of which the Makhuva-Mathebula Community has made claims has been gazetted in 2007 and 2015.

31 The Makhuva-Mathebula community are seeking to make more claims using the back door in circumstances where it has not lodged land claims as required by the Restitution of Land Rights Act. The Makhuva-Mathebula Community seem to be adding more land as and when it suits them. For example the letter of 5 June 2015 is a clear example that they would keep on claiming more land than is contained in their land claim.

32 The process of claiming land has been reopened and they are welcome to lodge new claims. However their claim in terms of the claim form of 1998 does not extend to the additional land that they seek to add in the letter of 5 June 2015 and the memorandum of the late Ms Durkje Gilfillan.'

## The issues

### *Delay*

[31] The taking of the impugned decision by the RLCC was an administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000 (the PAJA).[11] That

[11] See the PAJA, s 1 for the definition of administrative action. See too *Gamevest (Pty) Ltd v Regional Land Claims Commissioner, Northern Province and Mpumalanga & others* 2003 (1) SA 373 (SCA) paras 10-12; *Dukuduku Community v Regional Land Claims Commissioner, KwaZulu-Natal & another* 2006 (3) SA 508 (LCC) paras 8-9.

being so, the community had no choice but to bring the review in terms of the PAJA.[12] Section 7(1) required it to do so without undue delay and within 180 days of becoming aware of the decision. A failure to apply timeously may be condoned in two circumstances – either by agreement between the parties or by the court granting an application for condonation.[13]

[32] In this case, the community launched its application on 30 September 2013 to review a decision of the RLCC that was published on 8 June 2007, more than six years before. The papers contain no mention of the PAJA at all, and no application for condonation for the long delay has been made.

[33] One must assume that the RLCC was aware of the PAJA's application and of its provisions. He was, at all material times, legally represented. In these circumstances, and from his failure to raise the delay, I am prepared to find that he has agreed tacitly to condone the delay in terms of s 9(1) of the PAJA. The court below accordingly had jurisdiction to hear the review.

***The merits of the review***

[34] An applicant for review is required to identify the grounds of review upon which he or she relies. This is necessary because the onus lies on an applicant to establish a reviewable irregularity and to enable the decision-maker to defend his or her decision.

[35] It is important to bear in mind the distinction between review and appeal. Wade and Forsyth explain the difference as follows:[14]

'The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it

[12] *Minister of Health & another NO v New Clicks South Africa (Pty) Ltd & others (Treatment Action Campaign & another as amici curiae)* [2005] ZACC 14; 2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC) paras 95-97.
[13] The PAJA, s 9(1).
[14] Wade and Forsyth *Administrative Law* (10 ed) at 28-29.

within the limits of the powers granted? On an appeal the question is “right or wrong”? On review, the question is “lawful or unlawful”?

[36] In the founding papers in this matter, the jurisdictional basis for the review – the PAJA – is not referred to, and not one of the grounds of review listed in the PAJA is mentioned. It is so that the community makes a broad and unspecific assertion that the RLCC did not apply his mind properly. It also alleged that he made an error. From a reading of the founding affidavit as a whole, it appears that the community has approached the matter more as an appeal against the RLCC’s decision to publish only the properties listed in paragraph 1.1 of the claim form, rather than as a review of that decision.

[37] It is sometimes said, not entirely accurately, that in the case of review, the court’s focus is on the decision-making process, rather than on the decision itself.[15] Essentially, a court will consider whether the decision was lawful, in the sense that the administrator who took it was properly authorized to take it,[16] whether he or she acted in a procedurally fair manner[17] and whether he or she acted reasonably by not abusing his or her discretion.[18]

[38] In this case, it seems to me that the lawfulness of the RLCC’s decision is not in issue: he was authorized to take the decision to publish the claim and did so. Likewise, the rules of procedural fairness do not appear to have been violated by him. By suggesting that he failed to apply his mind properly, the community, it seems to me, asserts that he acted unreasonably by abusing his discretion in some way.

[39] I say this because a failure to apply the mind is not a discrete ground of review but a ‘general rubric which refers not only to abdications of discretion but also to all forms of abuse of discretion . . .’.[19] In *Northwest Townships (Pty) Ltd v Administrator,*

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[15] The *effect* of the decision may be the primary focus in review when, for instance, it produces absurd results, or has harsh or unjust consequences and is thus disproportional. See for example, *Medirite (Pty) Ltd v South African Pharmacy Council* [2015] ZASCA 27 paras 20-22.
[16] The PAJA, ss 6(2)(*a*)(i) and (ii), s 6(2)(*b*), s 6(2)(*d*) and s 6(2)(*f*)(i).
[17] The PAJA, s 6(2)(*a*)(iii) and s 6(2)(*c*) read with ss 3 and 4.
[18] The PAJA, s 6(2)(*e*), s 6(2)(*f*)(ii) and s 6(2)(*h*).
[19] Baxter *Administrative Law* at 476-477.

*Transvaal & others*,[20] Colman J explained that the term 'has been held, in English and South African cases, to include capriciousness, a failure, on the part of the person enjoined to make the decision, to appreciate the nature and limits of the discretion to be exercised, a failure to direct his thoughts to the relevant data or the relevant principles, reliance on irrelevant considerations, an arbitrary approach, and an application of wrong principles'. All of these grounds have been codified in s 6(2) of the PAJA (although not necessarily in the terms expressed by Colman J).

[40] In *Pharmaceutical Manufacturers Association of SA & another: in re ex parte President of the Republic of South Africa & others*,[21] Chaskalson P held that more was required of those exercising public power than that they act in good faith and apply their minds.[22] In addition, the rule of law requires them to act rationally.[23] Irrationality is a ground of review listed in s 6(2)(*f*)(ii) of the PAJA.

[41] I turn now to the facts in order to determine whether the community has established that when the RLCC decided to publish the claim on 8 June 2007, he failed to apply his mind. (For purposes of this analysis, I disregard the RLCC's failure to publish the claims to Lulekani, which was still being investigated, and to Quagga, which appears to have been an omission which was later rectified.)

[42] The RLCC had before him a claim form prescribed by the legislation that had been completed by Mr Makhuva, a person who was legally represented. Paragraph 1 of the claim form required Mr Makhuva to indicate whether the land that he claimed was rural or urban land and then paragraph 1.1 provided:

'If it is rural land, the portion(s), name(s) and number(s) of the farm and district in which it is situated.'

Mr Makhuva responded to this by listing the names of six properties, namely Letaba Rest Camp, Lulekani, Zebra, Genoeg, Pompey and Quagga.

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[20] *Northwest Townships (Pty) Ltd v Administrator, Transvaal & others* 1975 (4) SA 1 (T) at 8F-G. See too *Johannesburg Stock Exchange v Witwatersrand Nigel Ltd & another* 1988 (3) SA 132 (A) at 152A-E.

[21] *Pharmaceutical Manufacturers Association of SA & another: in re ex parte President of the Republic of South Africa & others* [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC).

[22] Para 83.

[23] Para 85.

[43] In addition to naming the properties, he also stated that the land was not urban land and that it had been acquired by 'Government Department: Provincial Affairs and Environmental Affairs' in 1921. In response to the question in paragraph 2.2 of the claim form, which asked about the amount of compensation paid he indicated that this was not applicable both in relation to the properties and improvements. In answer to the question in paragraph 2.3 as to whether any land or housing had been allocated as compensation, he again indicated that this was not applicable. Mr Makhuva thus completed paragraphs 1 and 2 of the claim form in full. He identified in it the land that the community claimed and furnished other details concerning that land.

[44] In paragraph 6 of the claim form, Mr Makhuva set out the basis for the claim by stating:

'Our ruins, graves and other ancestral [beliefs] are attached to these places and we need arable land for our Community. The main reason is that the land is belonging to the Mathebula Tribal Authority and the generation of today want to utilize the area economical[ly] for the benefit of the nation at all.'

When Mr Makhuva referred to 'these places' that could only have been a reference to the places listed in paragraph 1.1.

[45] In paragraph 7, headed 'other evidence to substantiate your claim', he stated:

'Please find the attached affidavit of the chairperson of the Mathebula Royal Council.'

And then, in paragraph 9, headed 'Any other information you would like to bring to the commission's attention', he referred again to the affidavit and the 'map of the area being claimed'.

[46] At this stage then, the RLCC had before him a claim form that was clear as to the land that was claimed, stated expressly in the appropriate part of the claim form. The documents that were attached were other evidence to substantiate the claim (in paragraph 7 of the claim form) and other information that Mr Makhuva wished to bring to the attention of the Commission (in paragraph 9 of the claim form). He gave no hint that the map, the relevance of which was not explained, was in fact the claim – with the consequence that what was stated in paragraph 1.1 was not the claim, and was to be ignored. Without being told that the community had opted to make their claim in this utterly bizarre, irrational and non-sensical way, the RLCC would have had no way

of knowing that, in considering the land claimed to have been that mentioned expressly in paragraph 1.1, he was barking up the wrong tree. Added to this is the fact that no explanation has ever been given by anyone as to why, if the claim was made for more than what was listed in paragraph 1.1 of the claim form, the additional land was not listed in that paragraph.

[47] Furthermore, during the period from the lodging of the claim until its partial publication on 8 June 2007, there was also no suggestion from the community's legal representatives, in their dealings with the RLCC, that the claim was not that contained in paragraph 1.1 of the claim form but every property that appears on the first map. Instead, the legal representatives spoke of 'technical errors' in paragraph 1.1 of the claim form and their confusion concerning Letaba Ranch and Letaba Rest Camp.

[48] By the time that the RLCC took the impugned decision, he had a claim form that was clear and unambiguous and which claimed a set of listed properties, as well as the make weight of a map which ostensibly showed the area in which those properties lay. The community's legal representatives, in their dealings with him, never told him that the map and not paragraph 1.1 of the claim form embodied the claim. He had no way of knowing, or of ascertaining, that the map and not paragraph 1.1 of the claim form embodied the claim, if indeed that was the bona fide belief of the community. In not arriving, somehow, at this illogical and irrational outcome, the RLCC cannot be faulted.

[49] I am of the view that in publishing the claim on the face value understanding that the properties claimed were those listed in paragraph 1.1 of the claim form, the RLCC applied his mind in accordance with the behests of the Restitution Act and acted rationally in so doing. That being so, the community failed to establish a ground of review upon which the decision under challenge could have been set aside. It follows that the Land Claims Court dismissed the community's application correctly, and this appeal cannot succeed. The RLCC did not seek costs.

**Order**

[50] The appeal is dismissed.

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**C Plasket**

**Judge of Appeal**

Appearances:

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|---|---|
| For the Appellant: | A de Vos SC |
| | Instructed by: |
| | Gilfillan Du Plessis Inc, Pretoria |
| | Webbers, Bloemfontein |
| For the First and Second Respondents: | T Seneke |
| | Instructed by: |
| | The State Attorney, Pretoria |
| | The State Attorney, Bloemfontein |