

**FIRST NATIONAL BANK OF SOUTH AFRICA v THE LAND AND
AGRICULTURAL BANK OF SOUTH AFRICA & OTHERS**

CCT 15/00

**HENRY NIEL SHEARD v LAND AGRICULTURAL BANK OF SOUTH AFRICA &
ANOTHER**

CCT 7/00

Explanatory Note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

These two cases concern the invalidity of sections 34(3)(b) to (7), (9) and (10) and 55(2)(b) to (d) of the Land Bank Act 13 of 1944. These provisions authorise the Land Bank to attach and sell a debtor's property in execution without recourse to a court of law. In case CCT 15/00 the Orange Free State High Court declared all of these provisions inconsistent with section 34 of the Constitution, which provides for the right of access to court. In case 7/00 the Eastern Cape High Court declared section 55 unconstitutional on the same grounds. The High Court orders were referred to the Constitutional Court for confirmation in terms of section 172 (2) of the Constitution.

The President of this Court directed that the two matters be heard together. The Land Bank conceded that the provisions were indeed unconstitutional but asked that its position in respect of loans made in the past under section 35 be safeguarded.

The Constitutional Court confirmed both orders. Justice Mokgoro, writing on behalf of a unanimous court, endorsed the conclusion of the High Courts that the right given to the Land Bank by sections 34 and 55 of the Act violated section 34 of the Constitution. Relying on an earlier judgment of the Court, *Lesapo v North West Agricultural Bank*, she held that such a violation could not be justified on the basis of the Land Bank's interest in saving time and money through bypassing the courts. The impugned provisions were therefore declared to be unconstitutional.

The Land Bank accepted the immediate invalidity of section 55 but asked that the invalidation of section 34 be suspended. The Court found that sections 34(3)(b) and 34(5) gave the Land Bank statutory security where it had no contractual security and that an immediate removal of such security would prejudice the Bank. This could hamper the Land Bank in its important public function of providing accessible financial services to emerging farmers.

The Court accordingly concluded that the order of invalidity should be suspended for two years in relation to section 34 but that the Land Bank should in the interim be prohibited from conducting any attachments or sales in execution in the absence of court orders.