



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Kwalindile Community v King Sabata Dalindyebo Municipality and Others**

**Zimbane Community v King Sabata Dalindyebo Municipality and Others**

**Case CCT 52/12  
CCT 55/12**

**Date of Hearing: 13 November 2012  
Date of Judgment: 28 March 2013**

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### MEDIA SUMMARY

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

This morning the Constitutional Court handed down a judgment upholding an appeal against a decision of the Supreme Court of Appeal and the Land Claims Court (LCC).

The Kwalindile Community and Zimbane Community (applicant communities) lodged claims with the Regional Land Claims Commissioner under the Restitution of Land Rights Act (Act) for the restitution of their land rights. These included claims to restore parts of immovable property described as the Remainder of Erf 912 in the district of Mthatha (Erf 912). The claims of the applicant communities were accepted and investigated by the Land Claims Commissioner, who referred them to LCC for adjudication. The land claims were also supported by the Minister of Land and Agricultural Affairs (Minister). The King Sabata Dalindyebo Municipality (Municipality) is disputing the validity of the claims, and argued before the LCC that the land claims do not have merit because the applicant communities have never lived on the land they are claiming.

The Land Claims Court granted the order sought by the Municipality to immunise the claimed land from restoration (non-restoration order), subject to certain qualifications which the Supreme Court of Appeal later set aside. The Land Claims Court and Supreme Court of Appeal reasoned that restoration would not be in the public interest.

The applicant communities applied to this Court for leave to appeal against the decision of the Supreme Court of Appeal. The Municipality opposed the application. The second and third

respondents opposed the application to the extent that their property rights are affected by the land claims.

In this Court, the question turned on the proper exercise of a court's power under the Act to make a non-restoration order. In a unanimous judgment by Moseneke DCJ, the Court held that the courts below misdirected themselves on the value judgment they were required to make. The Court reasoned that a non-restoration order violates the constitutional right of a claimant to possible restoration. Therefore, any order must be made with enough particularity to ensure that a successful claim is not unduly curtailed. The Court found further that nothing on the facts justifies the conclusion that it is in the public interest for rights on vacant and undeveloped land not to be restored, or that there is substantial public prejudice because vacant and undeveloped land may be restored to the applicant communities when their claim is finally determined.

The Court upheld the appeal and set aside the orders of the Supreme Court of Appeal and the Land Claims Court. It did not uphold the second respondent's appeal because the land on which it had a registered lease was not operative. This is because the land had not been developed. The Court did however find that it would not be in the public interest and would be substantially prejudicial to the public not to order a non-restoration order in respect of land over which the third respondent has a registered long lease and which it has developed. The Court ordered the Municipality to pay the costs of the applicant communities as well as the third respondent's costs in all the courts.