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THE PRESIDENCY

No. 3744 **27 September 2023**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 06 of 2023: The Land Court Act, 2023

UMONGAMELI

No. 3744 **27 September 2023**

Lesi isaziso sokuthi uMongameli ugunyaze lo mthetho olandelayo futhi wenziwa ukuba utholakale emphakathini jikelele kulo mbhalo:—

Ino 06 kwe 2023: Umthetho Wenkantolo Yezomhlaba, 2023

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 16 September 2023)

ACT

To provide for the establishment of a Land Court and appeals against decisions of the Land Court; to make provision for the administration and judicial functions of the Land Court; to provide for the jurisdiction of the Land Court and Magistrates' Courts for certain land related matters; to provide for mediation procedures; to amend certain laws relating to the adjudication of land matters by other courts; and to provide for matters connected therewith.

PREAMBLE

NOTING THAT section 25 of the Constitution of the Republic of South Africa, 1996, which is enshrined in the Bill of Rights—

- (a) obliges the State to take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis; and
- (b) envisages the State taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination;

AND NOTING THAT section 34 of the Constitution of the Republic of South Africa, 1996, accords everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum;

NOTING FURTHER THAT section 7 of the Constitution of the Republic of South Africa, 1996—

- (a) proclaims that the Bill of Rights is a cornerstone of democracy in South Africa and that it enshrines the rights of all people in the country and affirms the values of human dignity, equality and freedom;
- (b) obliges the State to respect, protect, promote and fulfil the rights in the Bill of Rights;

AND ALSO NOTING THAT section 166(e) of the Constitution of the Republic of South Africa, 1996, recognises courts established in terms of an Act of Parliament with a status similar to either the High Court of South Africa or the Magistrates' Courts;

AND RECOGNISING THAT with the advent of the democratic constitutional dispensation in 1994, South Africa inherited a fragmented, unequal and divisive dispensation relating to all aspects of land, which was derived from our colonial history and further structured to serve the segregation objectives of the apartheid dispensation;

IZINCAZELO EZIBALULEKILE EZIVAMILE:

[] Amagama abhalwe ngombala ogqamile akubakaki abayisikwele atshengisa okukhishwayo eMthethweni osebenzayo.

Amagama adwetshelwe ngomugqa ogqamile atshengisa okufakelwayo eMthethweni osebenzayo.

(English text signed by the President)
(Assented to 16 September 2023)

UMTHETHO

Ukuhlinzekela ukusungulwa kweNkantolo Yezomhlaba kanye nezikhalo maqondana nezinqumo zeNkantolo Yezomhlaba; ukwenza imihlinzeko yokuphatha nemisebenzi yokwahlulela yeNkantolo Yezomhlaba; ukuhlinzekela amandla okuphatha eNkantolo Yezomhlaba kanye Nezinkantolo Zezimantshi ezindabeni ezithile ezimayelana nomhlaba; ukuhlinzekela izinqubo zokulamula; ukuchibiyela imithetho ethile ephathelene nokwahlulelwa kwezindaba zomhlaba ngezinye izinkantolo; kanye nokuhlinzekela izindaba ezihlobene nalokho.

ISENDLALELO

NGOKUQAPHELA UKUTHI isigaba sama-25 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996, esigcinwe kuMqulu Wamalungelo—

- (a) sibophezela uMbuso ukuthi uthathe izinyathelo zomthetho kanye nezinye izinyathelo ezifanele, ngaphansi kwezinsiza ezikhona, ukuze kugququzelwe izimo ezenza izakhamuzi zithole ukufinyelela kumhlaba ngokulinganayo; futhi
- (b) sicabanga ukuthi uMbuso uthathe izinyathelo zomthetho nezinye ukuze uzuze inguquko kwezomhlaba, amanzi kanye nehlobene nalokho, ukuze kulungiswe imiphumela yokucwasa ngokwebala kwesikhathi esedlule;

NANGOKUQAPHELA UKUTHI isigaba sama-34 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996, sinikeza wonke umuntu ilungelo lokuba nanoma yikuphi ukungaboni ngaso linye okungaxazululwa ngokusetshenziswa komthetho ukuthi kunqunywe ekulalelweni kwecala okuvulelekile futhi okungachemile noma, lapho kufanele khona, kunqunywe kwenye inkantolo noma ikomidi elizimele elingachemi noma inkundla;

UKUQHUBEKA UKUQAPHELA UKUTHI isigaba sesi-7 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996—

- (a) simemezela ukuthi uMthethosivivinywa wamaLungelo uyisisekelo sentando yeningi eNingizimu Afrika futhi ugcina amalungelo abo bonke abantu ezweni futhi uqinisekisa amagugu esithunzi somuntu, ukulingana nenkululeko;
- (b) ubophezela uMbuso ukuthi uhloniphe, uvikele, ukhuthaze futhi ufeze amalungelo akuMqulu Wamalungelo;

NANGOKUQAPHELA FUTHI UKUTHI isigaba se-166(e) soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996, samukela izinkantolo ezisungulwe ngokoMthetho wePhalamende ezinesimo esifana neseNkantolo ePhakeme yaseNingizimu Afrika noma iziNkantolo Zezimantshi;

AND SINCE land reform initiatives to address the destructive impact of colonialism and apartheid have not progressed at the desired pace, sometimes giving rise to expensive and protracted litigation, to the detriment of the poorest of the poor and most vulnerable in society;

AND SINCE THEREFORE IT IS necessary that land reform in its entirety be accelerated in a lawful and equitable manner, guided by progressive jurisprudence;

AND SINCE IT IS FURTHERMORE necessary and desirable that there should be specialised, well-resourced, accessible and streamlined adjudication structures in place with the institutional, transformative and social justice wherewithal in land matters, in order to enhance and promote fairness and equity at all stages of the adjudication processes before and during court proceedings.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

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NANGOKUBONA UKUTHI, ekufikeni koMthethosisekelo wentando yeningi ngonyaka we-1994, iNingizimu Afrika yentando yeningi yangena embusweni onophekeko, nokungalimngani futhi ongenalo ubumbano kubantu maqondana nakho konke okuphathelene nezindaba zomhlaba, eyatholwa emlandweni wethu wamakoloni futhi yaphinde yahlelwa ukuze ifeze izinhloso zokuhlukanisa abantu zenkathi yobandlululo;

FUTHI NJENGOBA izinhlelo zokubuyiselwa komhlaba ukuze kubhekwane nomthelela omubi wobukholoni kanye nobandlululo zingakathuthuki ngezinga okufiswa ngalo, ngezinye izikhathi kubangele ukumangalelwa okumba eqolo nokuthatha isikhathi eside, okulimaza abampofu kakhulu nabasengozini enkulu emphakathini;

NGAKHO-KE NJENGOBA KUDINGEKA ukuthi ukubuyiswa komhlaba kuphothulwe kusheshiswe ngendlela esemthethweni nethatha abantu njengabalinganayo kuholwa isayensi yomthetho eqhubekayo;

FUTHI NJENGOBA KUDINGEKA futhi kufiseka ukuthi kube nezinhlaka zokwahlulela ezixile kulo mkhakha, ezinezinsiza ezifanele, ezifinyeleleka kalula nezihlelekile ezinobulungiswa besikhungo, obushintshayo kanye nobulungiswa bezenhlalakahle ezindabeni zomhlaba, ukuze kuthuthukiswe futhi kugququzelwe ukungenzeleli nokulingana kuzo zonke izigaba zezinqubo zokwahlulela ngaphambi nangesikhathi sokuqulwa kwamacala enkantolo.

IPHALAMENDE laseNingizimu Afrika lishaya umthetho kanje:—

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AMAJAJI, IZIKHULU KANYE NABAHLOLI BENKANTOLO

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10. Alukho uhlelo oluzokhishelwa uMengameli wamaJaji, iPhini likaMengameli wamaJaji noma ijaji leNkantolo ngaphandle kwemvume yeNkantolo
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Imithetho, amandla kanye nemisebenzi yeNkantolo ngaphansi kweminye imithetho, ukungenelela, ilungelo lokuvela, ukumelwa ngokwezomthetho, amandla eNkantolo ekuqulweni kwecala, izikhalo nezahlulelo ngokuzenzakalela.

14. Imithetho elawula inqubo yeNkantolo 10
15. Amandla nemisebenzi yeNkantolo ngaphansi kweminye imithetho
16. Ukungenelela ekuthethweni kwamacala aseNkantolo, ilungelo lokuvela kanye nokumelwa ngokwezomthetho
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CHAPTER 1
DEFINITIONS, PURPOSE AND OBJECTS

Definitions

1. In this Act, unless the context indicates otherwise—	
“ claim ” means—	15
(a) any claim for restitution of a right in land lodged with the Commission; or	
(b) any application lodged with the registrar of the Court for the purpose of claiming restitution of a right in land,	
in terms of the Restitution of Land Rights Act;	
“ claimant ” means any person who has lodged a claim in terms of the Restitution of Land Rights Act;	20
“ Commission ” means the Commission on Restitution of Land Rights established by section 4 of the Restitution of Land Rights Act;	
“ Constitution ” means the Constitution of the Republic of South Africa, 1996;	
“ Court ” means the Land Court established by section 3;	25
“ day ” means a day that is not a public holiday, Saturday or Sunday;	
“ dispute ” means a dispute arising from a matter in respect of which the Court has jurisdiction, and includes an alleged dispute;	
“ full court ” means a court consisting of three judges of the Court;	
“ High Court ” means the High Court of South Africa referred to in section 6(1) of the Superior Courts Act;	30
“ Judicial Service Commission ” means the Judicial Service Commission contemplated in section 178 of the Constitution;	
“ Magistrate’s Court ” means any court established in terms of section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);	35
“ Minister ” means the Cabinet member responsible for the administration of justice;	
“ prescribed ” means prescribed by regulation;	
“ President ” means the President of the Republic;	
“ registrar ” means the registrar of the Court contemplated in section 11, and includes the assistant registrar;	40
“ Restitution of Land Rights Act ” means the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);	
“ rules ” means the applicable rules of the Court;	
“ Rules Board ” means the Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985);	45
“ Superior Courts Act ” means the Superior Courts Act, 2013 (Act No. 10 of 2013);	
and	
“ this Act ” includes any regulation.	

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ISAHLUKO 1

IZINCAZELO, INHLOSO KANYE NEZINJONGO

Izincazelo

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okuhlukile—
 “**isimangalo**” kusho— 15
 (a) noma yisiphi isimangalo sokubuyiselwa kwelungelo lomhlaba esifakwe kuKhomishana; noma
 (b) noma yisiphi isicelo esifakwe kunobhala weNkantolo ngenhloso yokucela ukubuyiselwa ilungelo lomhlaba,
 ngokoMthetho Wokubuyiswa Kwamalungelo Omhlaba; 20
 “**umfakisicelo**” kushiwo noma yimuphi umuntu ofake isicelo sokunxeshezela ngokoMthetho Wokubuyiswa Kwamalungelo Omhlaba;
 “**iKhomishana**” kushiwo iKhomishana Yokubuyiselwa Kwamalungelo Omhlaba esungulwe ngokwesigaba se-4 soMthetho Wokubuyiswa Kwamalungelo Omhlaba;
 “**uMthethosisekelo**” kushiwo uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996; 25
 “**Inkantolo**” kushiwo iNkantolo Yezomhlaba esungulwe ngokwesigaba se-3;
 “**usuku**” kushiwo usuku olungelona iholidi lomphakathi, uMgqibelo noma iSonto;
 “**ingxabano**” kushiwo ingxabano esukela odabeni iNkantolo enegunya kulo, futhi kubandakanya nezinsolo zengxabano esolwayo; 30
 “**inkantolo enamajaji aphelele**” kushiwo inkantolo enamajaji amathathu eNkantolo;
 “**iNkantolo Ephakeme**” ichaza iNkantolo Ephakeme yaseNingizimu Afrika okukhulunywe ngayo esigabeni se-6(1) soMthetho Wezinkantolo Ezinkulu;
 “**iKhomishana Yemisebenzi Yobulungiswa**” ichaza iKhomishana Yemisebenzi Yobulungiswa ehlongozwe esigabeni se-178 soMthethosisekelo; 35
 “**INkantolo Yezimantshi**” ichaza noma iyiphi inkantolo esungulwe ngokwesigaba 2 soMthetho Wezinkantolo Zezimantshi, we-1944 (uMthetho 32 we-1944);
 “**uNgqongqoshe**” kushiwo ilungu leKhabhinethi elibhekele ukwenziwa kwezobulungiswa; 40
 “**okunqunyiwe**” kusho okunqunywe umthethonqubo;
 “**uMongameli**” kushiwo uMongameli weRiphabhulikhi;
 “**umbhalisi**” kushiwo umbhalisi Wenkantolo ohlongozwe esigabeni se-11 futhi kubandakanya nomsizi wombhalisi;
 “**uMthetho Wokubuyiswa Kwamalungelo Omhlaba**” kushiwo uMthetho Wokubuyiswa Kwamalungelo Omhlaba, we-1994 (uMthetho 22 we-1994); 45
 “**imithetho**” ichaza imithetho esebenzayo yeNkantolo;
 “**Ibhodi Lemithetho**” lisho Ibhodi Lemithetho Yezinkantolo Zomthetho elisungulwe ngokwesigaba se-2 soMthetho Webhodi Lemithetho Yezinkantolo Zomthetho, we-1985 (uMthetho 107 we-1985); 50
 “**uMthetho Wezinkantolo Eziphakeme**” kushiwo uMthetho Wezinkantolo Eziphakeme, wezi-2013 (uMthetho 10 wezi-2013); futhi
 “**lo Mthetho**” ubandakanya noma yimuphi umthethonqubo.

Purpose and objects of Act

2. (1) The purpose of this Act is to enhance and promote the ideal of access to land on an equitable basis, promote land reform as a means of redressing the results of past discrimination and facilitate land justice.

(2) In fulfilling the purpose of this Act as contemplated in subsection (1), the objects of this Act are to— 5

- (a) establish a Court with jurisdiction to grant any order, appropriate relief or impose any sanction, as provided for in this Act or any other law that confers jurisdiction on the Court;
- (b) establish an appeal process to hear and determine appeals emanating from the judgments and orders of the Court; and 10
- (c) provide for mediation.

CHAPTER 2**ESTABLISHMENT, COMPOSITION, SEAL, SEAT
AND JURISDICTION OF COURT**

15

Establishment of Court

3. (1) The Land Court is hereby established as a court of law and, in relation to matters arising from the application of the Restitution of Land Rights Act or any other legislation expressly providing therefor, as a court of law and equity.

(2) The Court— 20

- (a) is a Superior Court that has the authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a Division of the High Court of South Africa has in terms of the Superior Courts Act in relation to matters under its jurisdiction;
- (b) is a court of record and all hearings in the Court must, except in so far as the Court may in special cases direct otherwise, be conducted in an open court; and 25
- (c) decisions are a matter of public record on the same basis as decisions of a High Court.

Composition of Court

30

4. (1) The Court consists of—

- (a) a Judge President;
- (b) a Deputy Judge President; and
- (c) so many other judges as may be determined in accordance with the prescribed criteria, and approved by the President. 35

(2) A hearing before the Court must be before a single judge, unless the Judge President of the Court decides to the contrary.

Seal of Court

5. (1) The Court, for use as occasion may require, must have an official seal of a design determined by the President by proclamation in the *Gazette*. 40

(2) The registrar of the Court must keep custody of the official seal of the Court.

Seat of Court

6. (1) The seat of the Court is in Johannesburg, but whenever it appears to the Judge President that it is expedient or in the interests of justice to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place. 45

(2) The Court may sit in as many separate courts as the available judges may allow.

Inhloso kanye nezinjongo zoMthetho

2. (1) Inhloso yalo Mthetho ukuthuthukisa kanye nokukhuthaza umgomo wokufinyelela umhlaba ngendlela elinganayo, ukukhuthaza ukubuyiswa komhlaba njengendlela yokulungisa imiphumela yokucwasa okwedlule kanye nokwenza lula ukwenza ubulungiswa bomhlaba. 5

(2) Ekufezeni inhloso yalo Mthetho njengoba kuhlangezwe esigatshaneni soku-(1), izinjongo zalo Mthetho kufanele—

- (a) ukusungula iNkantolo enegunya lokunikeza noma yimuphi umyalelo, ukukhululwa okufanele noma ikhiphe unswinyo, njengoba kuhlinzekwe kulo Mthetho nanoma yimuphi omunye umthetho onikeza amandla eNkantolo; 10
- (b) ukusungula inqubo yezikhalo ukuze kulalelwe futhi kunqunywe izikhazalo ezivela ezahlulelweni nemiyalo yeNkantolo; futhi
- (c) ukuhlinzekela ukulamula.

ISAPHLUKO 2**UKUSUNGULWA, UKWAKHIWA, UPHAWU, ISAKHIWO KANYE
NEGUNYA LENKANTOLO** 15**Ukusungulwa kweNkantolo**

3. (1) Ngakho-ke iNkantolo Yezomhlaba isungulwa njengenkantolo yomthetho futhi, mayelana nezindaba ezivela ekusetshenzisweni koMthetho Wokubuyiswa Kwamalungelo Omhlaba nanoma yimuphi omunye umthetho okubeka ngokucacile lokho, njengenkantolo yomthetho nokulingana. 20

(2) Inkantolo—

- (a) yiNkantolo Enkulu enegunya, amandla kanye nokuma okungokwemvelo maqondana nezindaba ezingaphansi kwegunya layo, elilingana nalolo Phiko LweNkantolo Ephakeme yaseNingizimu Afrika enalo ngokoMthetho Wezinkantolo Ezinkulu maqondana nezindaba ezingaphansi kwegunya layo; 25
- (b) iyinkantolo yerekhodi futhi konke ukuthethwa kwamacala eNkantolo kumele kuqhutshwe enkantolo evulelekile, ngaphandle kwalapho iNkantolo iyalele ngenye indlela emacaleni akhethekile; futhi
- (c) izinqumo ziwudaba oluyirekhodi lomphakathi ngesisekelo esifanayo nezinqumo zeNkantolo Ephakeme. 30

Ukwakhiwa Kwenkantolo

4. (1) INkantolo iqukethe—

- (a) iJaji elinguMongameli;
- (b) iPhini leJaji elinguMongameli; kanye 35
- (c) namanye amajaji amaningi njengoba kungenziwa ngokuhambisana nemibandela enqunyiwe, futhi avunye nguMongameli.

(2) Ukulalelwa phambi kweNkantolo kumele kube phambi kweJaji elilodwa, ngaphandle uma iJaji elinguMongameli weNkantolo linquma ngenye indlela.

Uphawu Lwenkantolo 40

5. (1) INkantolo, ukuze isetshenziswe njengoba isimo singase sidinge, kufanele ibe nesigxivizo esisemthethweni sedizayini enqunywe uMongameli ngesimemezelo kuGazethi.

(2) Umbhalisi Wenkantolo kufanele agcine isigxivizo esisemthethweni seNkantolo.

Isakhiwo Senkantolo 45

6. (1) Isakhiwo seNkantolo siseGoli, kodwa noma nini uma kubonakala kwiJaji elinguMongameli ukuthi kufanelekile noma kusiza ekwenzeni ubulungiswa ukuthi inkantolo ihlale kwenye indawo ukulalela noma iluphi udaba ngaphandle kwalapho isakhiwo senkantolo sikhona, ingahlala lapho kuleyo ndawo.

(2) Inkantolo ingahlala ezinkantolo eziningi ezahlukene ngendlela amajaji akhona angavuma ngayo. 50

Jurisdiction of Court

7. (1) Subject to the Constitution, and except where this Act provides otherwise, the Court and the Magistrate's Court within whose area of jurisdiction the land forming the subject matter before that court is situated, have jurisdiction in respect of all matters that in terms of this Act or in terms of any other law are to be determined by the Court or the Magistrate's Court. 5

(2) The Court has jurisdiction in the area of jurisdiction of each Division of the High Court.

(3) The Minister, after consultation with the Chief Justice for the purposes of adjudicating land disputes, by notice in the *Gazette*— 10

- (a) may define a specific area of jurisdiction of the Court, if the need so arises;
- (b) may increase or reduce the area of jurisdiction of the Court referred to in paragraph (a), when necessary to do so;
- (c) must appoint one or more places within the area of jurisdiction of the Court for the holding of sittings of the Court, other than the seat of each Division of the High Court, to make the Court accessible to the people; and 15
- (d) may withdraw or vary any notice made under this subsection. 15

CHAPTER 3**JUDGES, OFFICERS AND ASSESSORS OF COURT****Appointment of judges of Court** 20

8. (1) The President, acting on the advice of the Judicial Service Commission, must, subject to subsection (4), appoint a Judge President and a Deputy Judge President of the Court.

(2) The Deputy Judge President must act as Judge President of the Court whenever the Judge President is unable to do so for any reason. 25

(3) (a) The President, acting on the advice of the Judicial Service Commission, and the Judge President of the Court may, subject to subsection (4), appoint as many persons as is necessary as judges of the Court, including persons who may have been judges of the High Court at the time they were appointed to the Court.

(b) Any person who was not a judge of the High Court of South Africa or any court of a status similar to the High Court of South Africa at the time of the appointment to the Court does not automatically hold concurrent appointment to the Court and the High Court of South Africa, unless the Judicial Service Commission advises the President that such person must hold concurrent appointment. 30

(4) The Judge President, Deputy Judge President and judges of the Court must— 35

- (a) by reason of their training and experience, have expertise in the field of land rights matters;
- (b) be broadly representative in terms of race and gender; and
- (c) be fit and proper persons who are appropriately qualified.

(5) In case of a vacancy in the office of the Deputy Judge President or a judge of the Court, or if there is sufficient reason for the appointment of an acting judge, the Minister may, after consultation with the Judge President of the Court, in accordance with section 175(2) of the Constitution, appoint an acting judge of the Court for such term as the Minister may determine. 40

Tenure, remuneration and terms and conditions of appointment of judges 45

9. (1) For purposes of this section “judge” includes the Judge President and Deputy Judge President of the Court.

Igunya leNkantolo

7. (1) Ngokuya ngoMthethosisekelo, futhi ngaphandle kwalapho lo Mthetho uhlinzeka ngenye indlela, iNkantolo kanye neNkantolo Yezimantshi endaweni enegunya kuyona okuwukuthi umhlaba okukhulunywa ngawo enkantolo ukuleyo ndawo, zinegunya lokuphatha kuzo zonke izindaba ngokwalo Mthetho noma ngokwanoma yimuphi omunye umthetho kufanele kunqunywe yiNkantolo noma iNkantolo Yezimantshi. 5

(2) INkantolo inegunya endaweni yegunya loPhiko ngalunye Lwenkantolo Ephakeme.

(3) UNGqongqoshe, ngemuva kokubonisana neJaji Eliyinhloko ngenhloso yokwahlulela izingxabano zomhlaba, ngesaziso kwiGazethi— 10

(a) angachaza indawo ethile yegunya leNkantolo, uma kuvela isidingo;

(b) angakhuphula noma anciphise indawo yegunya leNkantolo okukhulunywe ngayo endimeni (a), uma sikhona isidingo sokwenza lokho;

(c) kufanele aqoke indawo eyodwa noma ngaphezulu endaweni engaphansi kwegunya leNkantolo ukuze ukuhlala kweNkantolo kube kuyo, ngaphandle kwesihlalo soPhiko lweNkantolo Ephakeme ngayinye, ukwenza iNkantolo ifinyeleleke kubantu; futhi 15

(d) angahoxisa noma aguqule noma yisiphi isaziso esenziwe ngaphansi kwalesi sigatshana. 20

ISAHLUKO 3**AMAJAJI, IZIKHULU KANYE NABAHLOLI BENKANTOLO****Ukuqokwa kwamajaji eNkantolo**

8. (1) UMongameli, enza ngokweseluleko seKhomishana Yemisebenzi Yobulungiswa, kufanele, ngokwesigatshana sesi-(4), aqoke iJaji elinguMongameli kanye nePhini leJaji elinguMongameli Wenkantolo. 25

(2) IPhini leJaji elinguMongameli kufanele lisebenze njengeJaji elinguMongameli Wenkantolo noma nini lapho iJaji elinguMongameli lingakwazi ukwenza imisebenzi yalo nganoma yisiphi isizathu.

(3) (a) UMongameli, esebenza ngokweseluleko seKhomishana Yemisebenzi Yobulungiswa, kanye neJaji elinguMongameli Wenkantolo, ngokweyame esigatshaneni sesi-(4), bangaqoka noma abaningi kangakanani abantu njengamajaji eNkantolo okuhlanganisa nabantu, okungenzeka ukuthi babengamajaji eNkantolo Ephakeme ngesikhathi beqokwa eNkantolo. 30

(b) Noma yimuphi umuntu obengelona ijaji leNkantolo eNkulu yaseNingizimu Afrika noma inoma iyiphi inkantolo esezingeni elifanayo neNkantolo Ephakeme yaseNingizimu Afrika ngesikhathi sokuqokwa eNkantolo akumenzi lokho ukuthi abambe kanyekanye isikhundla eNkantolo kanye nakwiNkantolo Ephakeme yaseNingizimu Afrika, ngaphandle uma iKhomishana Yemisebenzi Yezobulungiswa iluleka uMongameli ukuthi lowo muntu kumele abambe kanyekanye isikhundla. 40

(4) IJaji elinguMongameli, iPhini leJaji elinguMongameli kanye namajaji eNkantolo kufanele —

(a) ngenxa yokuqeqeshwa kanye nolwazi lwabo, babe nekhono emkhakheni wezindaba zamalungelo omhlaba;

(b) bamelwe ngokubanzi maqondana nobuhlanga nobulili; futhi 45

(c) babe ngabantu abafanelekile nabaqeqeshwe ngokufanele.

(5) Uma kunesikhala esikhundleni sePhini leJaji elinguMongameli noma ijaji leNkantolo, noma uma kunesizathu esanele sokuqokwa kwebamba lejaji, uNgqongqoshe emva kokubonisana neJaji elinguMongameli weNkantolo, ngokuhambisana nomthetho ngokwesigaba se-175(2) soMthethosisekelo, angaqoka ibamba lejaji leNkantolo isikhathi esinganqunywa uNgqongqoshe. 50

Isikhathi sokusebenza, inkokhelo kanye nemigomo nemibandela yokuqokwa kwamajaji

9. (1) Ngokwezinhloso zalesi sigaba “ijaji” lihlanganisa iJaji elinguMongameli kanye nePhini Lejaji Elingumongameli Wenkantolo. 55

(2) A judge of the Court holds office until discharged from active service in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

(3) A judge of the Court may resign as a judge of the Court by giving written notice to the President. 5

(4) Neither the tenure of office nor the remuneration and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges' Remuneration and Conditions of Employment Act, 2001, is affected by that judge's appointment and concurrent tenure of office as a judge of the Court.

(5) Despite the expiry of the period of a judge's appointment as a judge of the Court that judge may continue to perform the functions of a judge of that Court, and must be regarded as such in all respects, only— 10

(a) for the purposes of disposing of any proceedings in which that judge has taken part as a judge of that Court and which are still pending upon the expiry of that judge's appointment or which, having been so disposed of before or after the expiry of that judge's appointment, have been reopened; and 15

(b) for as long as that judge is necessarily engaged in connection with the disposal of the proceedings so pending or reopened.

(6) The provisions of subsections (4) and (5), read with the changes required by the context, apply to acting judges appointed in terms of section 8(5). 20

No process to be issued against Judge President, Deputy Judge President or judge of Court except with consent of Court

10. (1) Except for an application made in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), no civil proceedings by way of summons or notice of motion may be instituted against the Judge President, Deputy Judge President or any other judge of the Court, and no subpoena in respect of civil proceedings may be served on the Judge President, Deputy Judge President or any other judge of the Court, except with the consent of the Judge President of the Court or, in the case of the Judge President of the Court, with the consent of the Chief Justice. 25

(2) Where the issuing of a summons or subpoena against the Judge President, Deputy Judge President or judge to appear in a civil action has been consented to, the date upon which the Judge President, Deputy Judge President or judge must attend court must be determined in consultation with the Judge President or, in the case of the Judge President, with the Chief Justice. 30

Appointment of officers and staff 35

11. (1) (a) Subject to paragraph (b), the Minister must appoint for the Court a court manager, one or more assistant court managers if necessary, a registrar, one or more assistant registrars, if necessary, and other officers and staff whenever they may be required for the administration of justice or the execution of the powers and authorities of the Court. 40

(b) Any appointment by the Minister in terms of paragraph (a) must be made in—

(i) consultation with the Judge President of the Court; and

(ii) accordance with the laws governing the public service.

(c) A court manager is the senior executive officer of the Court, and exercises administrative control over other persons referred to in paragraph (a), and, under the control and direction of the Judge President of the Court, performs such other functions as may be determined by the Secretary-General of the Office of the Chief Justice and the Chief Justice. 45

(2) Whenever by reason of absence or incapacity an official referred to in subsection (1) is unable to carry out the functions of their office, or if their office becomes vacant, the Minister may, after consultation with the Judge President of the Court, authorise any other competent officer in the public service to act in the place of the absent or incapacitated officer during such absence or incapacity, or to act in the vacant office until the vacancy is filled. 50

(2) Ijaji Lenkantolo libamba isikhundla kuze kube liyayeka ukusebenza ngokoMthetho Wemiholo Yamajaji Nezimo Zokuqashwa, wezi-2001 (uMthetho 47 wezi-2001).

(3) Ijaji Lenkantolo lingasula njengejaji Lenkantolo ngokunikeza uMongameli isaziso esibhalwe phansi. 5

(4) Isikhathi sokuba sesikhundleni noma inkokhelo kanye nemigomo nemibandela yokuqokwa esebenza ejajini LeNkantolo Ephakeme ngokoMthetho Wemiholo Nezimo Zokuqashwa Kwamajaji, wezi-2001, akukho nokukodwa kulokhu okuthikamezekayo ekuqokweni kwalelo jaji kanye neminyaka eliyisebenza liyijaji leNkantolo.

(5) Ngaphandle kokuphela kwesikhathi sokuqokwa kwejaji njengejaji leNkantolo lelo jaji lingaqhubeka nokwenza imisebenzi yejaji laleyo Nkantolo, futhi kufanele lithathwe kanjalo ngazo zonke izindlela, kuphela— 10

(a) ngezinhloso zokuchitha noma yikuphi ukuthethwa kwamacala lelo jaji elibambe iqhaza kukho njengejaji laleyo Nkantolo futhi ezisalindile ukuthi kuphele isikhathi salelo jaji noma osekuchithiwe ngaphambi noma ngemuva kokuphela kwesikhathi ijaji ebeliqokelwe sona, kuvulwe kabusha; futhi 15

(b) inqobo nje uma lelo jaji lisabambe iqhaza mayelana nokuchithwa kokuthethwa kwecala elilindile noma elivulwe kabusha.

(6) Imihlinzeko yesigatshana sesi-(4) nesesi-(5), efundwa nezinguquko ezidingwa ingqikithi, isebenza kumajaji angamabamba aqokwe ngokwesigaba se-8(5). 20

Alukho uhlelo oluzokhishelwa iJaji elinguMongameli, iPhini leJaji elinguMongameli noma ijaji leNkantolo ngaphandle kwemvume yeNkantolo

10. (1) Ngaphandle kwesicelo esenziwe ngokoMthetho Wodlame Lwasekhaya, we-1998 (uMthetho 116 we-1998), akukho cala lokumangalela noma ngamasamanisi noma ngesaziso sesiphakamiso elingathathelwa iJaji elinguMongameli, iPhini leJaji elinguMongameli noma elinye ijaji eNkantolo, futhi akukho sicelo sokubizelwa enkantolo mayelana nokuqulwa kwamacala amademeshe esinganikezwa iJaji elinguMongameli, iPhini leJaji elinguMongameli nanoma yiliphi elinye ijaji leNkantolo, ngaphandle kwemvume yeJaji elinguMongameli weNkantolo noma, esimweni seJaji elinguMongameli, kube ngemvume yeJaji eliyinhloko. 25

(2) Lapho ukukhishwa kwesamanisi noma incwadi yokubizela enkantolo iJaji elinguMongameli, iPhini leJaji elinguMongameli noma ijaji elizovela ecaleni sekuvunyelwe ukuthi kube ngosuku lapho iJaji elinguMongameli, iPhini leJaji likaMongameli noma ijaji okufanele beze ngalo enkantolo kufanele kunqunywe ngokubonisana neJaji elinguMongameli noma, esimweni seJaji elinguMongameli, neJaji Eliyinhloko. 30 35

Ukuqokwa kwezikhulu nabasebenzi

11. (1) (a) Ngokuya ngendima (b), uNgqongqoshe kufanele aqokele iNkantolo imenenja yenkantolo, umsizi wemenenja yenkantolo oyedwa noma ngaphezulu uma kunesidingo, umbhalisi, umsizi wombhalisi oyedwa noma ngaphezulu, uma kunesidingo kanye nezinye izikhulu kanye nabasebenzi noma nini lapho bedingeka khona ukuze babhekelele izindaba zobulungiswa noma ukusetshenziswa kwamandla namagunya eNkantolo. 40

(b) Noma yikuphi ukuqokwa nguNgqongqoshe ngokwendima (a) kumele kwenziwe— 45

(i) ngokubonisana neJaji elinguMongameli weNkantolo; futhi

(ii) ngokuhambisana nemithetho elawula abasebenzi bakahulumeni.

(c) Imenenja yenkantolo iyisikhulu esiphezulu seNkantolo, futhi iphatha abanye abantu okukhulunywe ngabo endimeni (a), futhi, ngaphansi kokulawulwa nokuyalela kweJaji elinguMongameli weNkantolo, yenza eminye imisebenzi enganqunywa nguNobhala-Jikelele weHhovisi leJaji Eliyinhloko kanye neJaji Eliyinhloko. 50

(2) Noma nini uma isikhulu esishiwo esigatshaneni (1) singakwazi ukwenza imisebenzi yehhovisi laso, noma uma isikhundla saso sivuleka, uNgqongqoshe, ngemva kokubonisana neJaji elinguMongameli weNkantolo, angagunyaza noma yisiphi esinye isikhulu esinekhono emsebenzini kahulumeni ukuba sibambe esikhundleni sesikhulu esingekho noma esingakwazi ukusebenza ngesikhathi singekho noma singakwazi ukusebenza, noma sibambe isikhundla esingenamuntu kuze kugcwaliswe isikhala. 55

(3) Any person appointed under subsection (1) may hold more than one of the offices mentioned in that subsection, simultaneously.

(4) The Minister may delegate any of the powers vested in the Minister under this section to the Secretary-General of the Office of the Chief Justice.

Appointment of assessors 5

12. (1) The Court may, when adjudicating on any matter in terms of this Act, sit with or without assessors in accordance with the provisions of this section: Provided that not more than two assessors may be appointed in any matter.

(2) The assessors contemplated in subsection (1) must be—

- (a) appointed by the presiding judge in the prescribed manner; and 10
- (b) a person who has skills, experience and knowledge relevant to the work of the Court, irrespective of whether that person has any legal qualifications or not.

(3) No assessor may hear any evidence unless that assessor first takes the prescribed oath or affirmation, administered by the judge.

(4) An assessor who takes an oath or makes an affirmation under subsection (3) is a member of the Court: Provided that— 15

- (a) subject to the provisions of paragraph (b) of this proviso, the decision or finding of the majority of the members of the Court upon any question of fact is the decision or finding of the Court, except when the judge or judges sit with only one assessor, in which case the decision or finding of the judge or judges is, in the case of a difference of opinion between the assessor on the one hand and the judge or judges on the other, the decision or finding of the Court; and 20
- (b) the judge or judges alone decide on any question of law or upon any question whether any matter constitutes a question of law or a question of fact, and the judge or judges may, for this purpose, sit alone. 25

(5) If an assessor dies or, in the opinion of the judge or judges, becomes unable to act as assessor at any time, the judge or judges may direct that the matter—

- (a) be proceeded with before the remaining member or members of the Court; or
- (b) start afresh and, for that purpose, may summon an assessor in the place of the assessor who has died or has become unavailable to act as assessor. 30

(6) An assessor who is not in the full-time employment of the State must receive such remuneration and is entitled to such benefits as may be determined by the Minister, in consultation with the Cabinet member responsible for finance.

CHAPTER 4

COURT PROCEEDINGS 35

Part 1

Institution of proceedings in Court

Institution of proceedings

- 13.** (1) Proceedings under this Act may be instituted by— 40
- (a) the Commission;
 - (b) any person acting in their own interest;
 - (c) any person acting on behalf of another person who cannot act in their own name;
 - (d) any person acting as a member of, or in the interests of, a group or class of persons; 45
 - (e) any person acting in the public interest; or
 - (f) any association acting in the interests of its members.

(3) Noma yimuphi umuntu oqokwe ngaphansi kwesigatshana (1) angabamba ngesikhathi esisodwa amahhovisi angaphezu kwelilodwa kulawa ashiwo kuleso sigatshana.

(4) UNgqongqoshe angadlulisela noma yimaphi amandla anikezwe uNgqongqoshe ngaphansi kwalesi sigaba kuNobhala-Jikelele weHhovisi Lejaji Eliyinhloko. 5

Ukuqokwa kwabahloli

12. (1) INkantolo, lapho yahlulela nganoma yiluphi udaba ngokwalo Mthetho, ingahlala nabahloli noma ngaphandle kwabo ngokuhambisana nemihlinzekelo yalesi sigaba: Kuncike ekutheni akumele kuqokwe abahloli abangaphezu kwababili kunoma yiluphi udaba. 10

(2) Abahloli abahlongozwe esigatshaneni soku-(1) kumele—

(a) baqokwe ijaji elengamele ngendlela enqunyiwe; futhi

(b) kube umuntu onamakhono, isipiliyoni nolwazi olufanele emsebenzini weNkantolo, kungakhathalekile ukuthi lowo muntu uneziqo zomthetho noma cha. 15

(3) Akekho umhloli ongalalela noma yibuphi ubufakazi ngaphandle kokuthi lowo mhloli athathe isifungo kuqala noma isiqinisekiso esinqunyiwe, okulawulwa yijaji.

(4) Umhloli owenza isifungo noma owenza isiqinisekiso ngaphansi kwesigatshana (3) uyilungu leNkantolo: Kuncike—

(a) emihlinzekweni yendima (b) yalesi simiso, isinqumo noma okutholwe yiningi lamalungu eNkantolo kunoma yimuphi umbuzo oyiqiniso kuyisinqumo noma okutholwe yiNkantolo, ngaphandle uma ijaji noma amajaji ehleli nomhloli oyedwa kuphela, lapho isinqumo noma okutholwe yijaji noma amajaji, esimweni sokuhlukana kwemibono phakathi komhloli ngakolunye uhlangothi kanye nejaji noma amajaji ngakolunye, kuyisinqumo noma okutholwe yiNkantolo; futhi 20

(b) ijaji noma amajaji ewodwa anquma nganoma yimuphi umbuzo womthetho noma kunoma yimuphi umbuzo ukuthi ngabe yiluphi udaba oluthinta umthetho noma udaba oluyiqiniso, futhi ijaji noma amajaji, ngokwale nhloso, angahlala wodwa. 25

(5) Uma umhloli eshona noma, ngokubona kwejaji noma amajaji, engakwazi ukusebenza njengomhloli nganoma isiphi isikhathi, ijaji noma amajaji angayalela ukuthi udaba—

(a) kuqhutshekwe nalo ngaphambi kwelungu elisele noma amalungu eNkantolo; noma 30

(b) luqalwe kabusha futhi, ngaleyo nhloso, angabiza umhloli esikhundleni somhloli oshonile noma ongatholakali ukuthi asebenze njengomhloli.

(6) Umhloli ongaqashiwe umbuso ngokugcwele kufanele athole lelo holo futhi unelungelo lokuthola lezo zinzuzo ngendlela anganquma ngayo uNgqongqoshe, ngokubonisana nelungu leKhabhinethi elibhekele ezezimali. 35

ISIAHLUKO 4

IZINQUBO ZENKANTOLO

Ingxenye 1

Ukuqaliswa kwenzinqubo zeNkantolo

Ukuqaliswa kwezinqubo zeNkantolo 45

13. (1) Izinqubo ngaphansi kwalo Mthetho zingasungulwa—

(a) uKhomishana;

(b) noma yimuphi umuntu ozenzela yena;

(c) noma yimuphi umuntu omele omunye umuntu ongakwazi ukwenza egameni lakhe; 50

(d) noma yimuphi umuntu osebenza njengelungu, noma ngokubhekelela, iqembu noma isigaba esithile sabantu;

(e) noma yimuphi umuntu osebenzela umphakathi; noma

(f) nanoma iyiphi inhlangotho esebenza ngokuzuzisa amalungu ayo.

(2) The registrar must, in the manner and within the period provided for in the rules, refer the matter to the Judge President of the Court, who must decide whether the matter—

- (a) is to be heard in Court; or
- (b) should be referred for mediation in terms of section 29 of this Act, which, in the Judge President's opinion, can deal more appropriately with the matter. 5

(3) The Judge President, before making a decision to refer a matter as contemplated in subsection (2), must take all relevant circumstances into consideration, including the following:

- (a) If mediation or arbitration in terms of any legislation took place before the institution of proceedings in the Court and the outcome thereof; 10
- (b) the personal circumstances of the parties;
- (c) the needs of and relief sought by the parties; and
- (d) the nature of the intended proceedings and whether the outcome of the proceedings could facilitate the development of judicial precedent and jurisprudence in this area of the law. 15

(4) The Judge President may delegate any of the powers vested in the Judge President under this section to the Deputy Judge President or any other judge of the Court.

Part 2

Rules, powers and functions of Court under other legislation, intervention, right to appear, legal representation, powers of Court on hearing appeals and judgment by default 20

Rules governing procedure of Court

14. (1) The Rules Board must make rules to regulate the conduct of proceedings of the Court, including— 25

- (a) the circumstances under which opinion and oral evidence may be submitted to the Court;
- (b) the suspension or execution of judgments, orders or sentences of the Court pending applications, or petitions for leave to appeal and the prosecution of appeals; 30
- (c) the manner and circumstances under which a judgment by default contemplated in section 18 of this Act can be given;
- (d) the practice and procedure of the Court in applications in terms of Chapter IIIA of the Restitution of Land Rights Act;
- (e) any of the matters listed in section 6(1)(a) to (s) of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), insofar as they are appropriate to the functioning of the Court; and 35
- (f) generally, any matter which may be necessary or useful to be regulated for the proper despatch and conduct of the functions of the Court.

(2) Notwithstanding anything to the contrary in this Act or in the rules contemplated in subsection (1), the Court may— 40

- (a) at any stage after a claim has been referred to it, refer the claim back to the Commission with directives as to matters which are to be investigated and reported on by the Commission; and
- (b) conduct any part of any proceedings on an informal or inquisitorial basis. 45

(3) The Rules Board must make rules in respect of the form and manner in which a party to an arbitration may apply to the Court to—

- (a) stop the arbitration process and to proceed in the Court;
- (b) vary or set aside a settlement agreement; or
- (c) set aside an arbitration award. 50

(4) The rules contemplated in subsection (1) must facilitate the expeditious handling of disputes and the minimisation of costs involved.

(5) Except as is otherwise provided for in this Act, the provisions of the Superior Courts Act, and of the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa made under the Rules 55

- (2) Umbhalisi kufanele, ngendlela nangesikhathi esishiwo emithethweni adlulisele udaba kwiJaji elinguMongameli Wenkantolo, okufanele linqume ukuthi ngabe udaba—
- (a) kumele lulalelwe eNkantolo; noma
 - (b) kufanele luthunyelwe ukuxazululwa ngokwesigaba sama-29 salo Mthetho, okuwukuthi ngokombono weJaji elinguMongameli, lingabhekana nodaba ngendlela efanele. 5
- (3) Ijaji elinguMongameli, ngaphambi kokwenza isinqumo sokudlulisela udaba njengoba kuhlangozwe esigatshaneni sesi-(2), kufanele acabangele zonke izimo ezifanele, okuhlanganisa nalokhu okulandelayo:
- (a) Uma ukulamula noma ukwahlulela ngokwanoma yimuphi umthetho kwenzeka ngaphambi kwesikhungo sokuqulwa kwecala eNkantolo kanye nomphumela wakho; 10
 - (b) izimo eziyimfihlo zamaqembu;
 - (c) izidingo kanye nokukhululwa okufunwa abathintekayo; futhi
 - (d) uhlobo lokuthethwa kwamacala okuhlosiwe kanye nokuthi umphumela wokuthethwa kwecala ungasiza yini ukuthuthukisa umyalelo wenkantolo ongumhlahlandlela kanye nesayensi yomthetho kule ndawo yomthetho. 15
- (4) Ijaji elinguMongameli lingadlulisela noma yimaphi amandla anikezwe iJaji elinguMongameli ngaphansi kwalesi sigaba kwiPhini leJaji elinguMongameli noma elinye ijaji leNkantolo. 20

Ingxenye 2

Imithetho, amandla kanye nemisebenzi yeNkantolo ngaphansi kweminye imithetho, ukungenelela, ilungelo lokuvela, ukumelwa ngokwezomthetho, amandla enkantolo ekuqulweni kwecala, izikhalo nezahlulelo ngokuzenzakalela

Imithetho elawula inqubo yeNkantolo 25

- 14.** (1) Ibhodi Lemithetho kufanele lenze imithetho yokulawula indlela yokuqulwa kwamacala enkantolo, okuhlanganisa—
- (a) nezimo lapho umbono kanye nobufakazi bomlomo bungaletshwa eNkantolo;
 - (b) ukumiswa noma ukukhishwa kwezahlulelo, imiyalelo noma izigwebo zeNkantolo kusalindwe izicelo, noma izicelo zemvume yokuyovela enkantolo kanye nokushushiswa kwezikhalo; 30
 - (c) indlela nezimo okungenziwa ngaphansi kwazo isahlulelo ngokuzenzakalela esihlongozwe esigabeni se-18 salo Mthetho;
 - (d) umkhuba kanye nenqubo yeNkantolo ekufakweni kwezicelo ngokweSahluko IIIA soMthetho Wokubuyiswa Kwamalungelo Omhlaba; 35
 - (e) noma yiziphi izinto ezibalulwe kwisigaba sesi-6(1)(a) kuya ku-(s) soMthetho Webhodi Lemithetho Yezinkantolo Zomthetho, we-1985 (uMthetho 107 we-1985), ngendlela ezifanele ngayo ukusebenza kwenkantolo; futhi
 - (f) ngokuvamile, noma yiluphi udaba olungase ludingeke noma lube wusizo ukuba lulawulwe ukuze kuthunye futhi kuphathwe ngendlela efanele imisebenzi yeNkantolo. 40
- (2) Naphezu kwanoma yini ephambana nalo Mthetho noma emithethweni ehlongozwe esigatshaneni soku-(1), iNkantolo—
- (a) kunoma isiphi isikhathi ngemva kokuthi isimangalo sesidluliselwe kuyo, ingabuyisela isimangalo kukhomishana neziqondiso mayelana nezindaba okufanele ziphenywe futhi kubikwe ngazo yikhomishana; futhi 45
 - (b) ingaqhuba noma iyiphi ingxenye yanoma yikuphi ukuqulwa kwecala ngendlela engahlelekile noma yokubuza imibuzo.
- (3) Ibhodi Lemithetho kufanele lenze imithetho maqondana nefomu nendlela uhlangothi ekwahlulelweni olungafaka ngayo isicelo eNkantolo— 50
- (a) sokumisa inqubo yokwahlulela nokuqhubeka eNkantolo;
 - (b) sokushintsha noma ukubeka eceleni isivumelwano sokukhokha; noma
 - (c) ukubeka eceleni isahlulelo sokugcina.
- (4) Imithetho ehlongozwe esigatshaneni soku-(1) kufanele yenze kube lula ukusingathwa kwezingxabano ngokushesha kanye nokunciphisa izindleko zaloko. 55
- (5) Ngaphandle njengoba kuhlizekiwe kulo Mthetho, imihlinzeko yoMthetho Wezinkantolo Eziphakeme, kanye nemithetho elawula ukuqhutshwa kwamacala kwezigaba eziningi zezifundazwe nezendawo zeNkantolo Ephakeme yaseNingizimu

Board for Courts of Law Act, 1985, apply with the necessary changes required by the context to the Court—

- (a) in so far as these provisions are not provided for in this Act or the rules; and
- (b) to the extent that they are not inconsistent with this Act.

Powers and functions of Court under other legislation 5

15. The provisions of this Act regulating the procedures, powers and functions of the Court apply, with the necessary changes required by the context, to the performance by the Court of its powers and functions in terms of any other law in respect of which it has jurisdiction, unless such application is excluded expressly or by necessary implication.

Intervention to proceedings before Court, right to appear and legal representation 10

16. (1) Any person or body with legal standing may apply to the Court for leave to intervene as a party to any proceedings before the Court.

(2) The State has the right to intervene as a party to all proceedings before the Court.

(3) Any party appearing before the Court may do so in person or may be represented by a legal practitioner as contemplated in the Legal Practice Act, 2014 (Act No. 28 of 2014), of their own choice and at their own expense. 15

(4) (a) Where a party involved in a matter before the Court is not represented by a legal representative because such party cannot afford to pay for legal representation, and the Court is of the opinion that it would be in the best interests of the party to have legal representation, the Court must refer the matter to Legal Aid South Africa as contemplated in section 2 of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014). 20

(b) Legal Aid South Africa must deal with a matter referred to in paragraph (a) in accordance with section 4(1)(f) of the Legal Aid South Africa Act, 2014, to provide legal representation at State expense, where substantial injustice would otherwise result.

(c) Expenditure in connection with the implementation and application of paragraph (a) must be defrayed from money appropriated by Parliament for this purpose and monies appropriated by Parliament for this purpose constitute earmarked funds on the vote of Legal Aid South Africa, and may not be used for any other purpose. 25

Powers of Court on hearing of appeals

17. (1) Any person who is aggrieved by a judgment or order of a Magistrate's Court may appeal to the Court against that judgment or order in accordance with— 30

- (a) any land related legislation conferring appellate jurisdiction on the Court; and
- (b) the rules contemplated in section 32.

(2) The Court, at the hearing of any appeal in terms of this Act or any law conferring upon it any appellate jurisdiction, has the power— 35

- (a) to receive further evidence;
- (b) to remit the case to the court or other tribunal of first instance for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Court considers necessary; or
- (c) to confirm, amend or set aside the judgment, order or decision which is the subject matter of the appeal and to give any judgment, order or decision which the circumstances may require, 40

unless such law provides otherwise.

Afrika eyenziwe ngaphansi koMthetho Webhodi Lemithetho Yezinkantolo zoMthetho, we-1985, isebenza nezinguquko ezidingekayo ezidingwa yisimo seNkantolo—

- (a) kuze kube imanje njengoba imihlinzeko ingahlinzekiwe kulo Mthetho noma imithetho; futhi
- (b) ngendlela yokuthi ayihambisani nalo Mthetho. 5

Amandla nemisebenzi yeNkantolo ngaphansi kweminye imithetho

15. Imihlinzekelo yalo Mthetho elawula izinqubo, amandla kanye nemisebenzi yeNkantolo iyasebenza, nezinguquko ezidingekayo ezidingwa yisimo, ekusebenzeni kweNkantolo ngamandla nemisebenzi yayo ngokwanoma yimuphi omunye umthetho enegunya kuwo, ngaphandle uma isicelo esinjalo singabandakanyiwe ngokusobala noma ngokwesidingo esicashile. 10

Ukungenelela ekuthethweni kwamacala aseNkantolo, ilungelo lokucela kanye nokumelwa ngokwezomthetho

16. (1) Noma yimuphi umuntu noma umgwamanda osemthethweni ungafaka isicelo eNkantolo ukuze uthole imvume yokungenelela njengengxenywe kunoma yikuphi ukuthethwa kwecala eNkantolo. 15

(2) UMBuso unelungelo lokungenelela njengengxenywe kukho konke ukuthethwa kwamacala eNkantolo.

(3) Noma yiluphi uhlangothi olucela eNkantolo lungakwenza lokho mathupha noma limelwe ummeli njengoba kuhlongozwe kuMthetho Wokusebenza Kwezomthetho, wezi-2014 (uMthetho 28 wezi-2014), ngokuzikhethela kwalo nangezindleko zalo. 20

(4) (a) Lapho uhlangothi oluthintekayo odabeni oluphambi kweNkantolo lungamelwe ummeleli wezomthetho ngenxa yokuthi lolo hlangothi alukwazi ukukhokha izindleko zokumelwa ngokomthetho, futhi iNkantolo inombono wokuthi uhlangothi kuyolusiza ukumelwa ngokomthetho, iNkantolo kufanele idlulisele udaba kwa-*Legal Aid South Africa* njengoba kuhlongozwe esigabeni sesi-2 *Legal Aid South Africa Act, 2014* (uMthetho 39 wezi-2014). 25

(b) I-*Legal Aid South Africa* kumele ibhekane nodaba okukhulunywe ngalo endimeni (a) ngokuhambisana nesigaba 4(1)(f) soMthetho we-*Legal Aid South Africa, 2014*, ukuze ihlinzeke ngokumeleleka kwezomthetho ngezindleko zoMbuso, lapho ukungabi nabulungiswa okukhulu bekungaba umphumela. 30

(c) Izindleko ezisetshenziswayo maqondana nokuqaliswa kanye nokusetshenziswa kwendima (a) kufanele kuhoxiswe emalini eyabiwe yiPhalamende ngale nhloso futhi izimali ezabiwe yiPhalamende ngale nhloso zihlanganisa izimali ezibekelwe ivoti le-*Legal Aid South Africa*, futhi angeke zisetshenziselwe noma iyiphi enye inhloso. 35

Amandla eNkantolo ekulalelweni kwezikhalo

17. (1) Noma yimuphi umuntu onesikhalo ngenxa yesinqumo noma umyalelo weNkantolo Yezimantshi angafaka isikhalo eNkantolo ngokumelene naleso sinqumo noma umyalelo ngokuhambisana—

- (a) nanoma yimuphi umthetho ohlobene nomhlaba onikeza iNkantolo igunya lokuzwa izikhalo zezinkantolo ezingaphansi; kanye 40
- (b) nemithetho ehlongozwe esigabeni sama-32.

(2) INkantolo, lapho kulalelwa noma yisiphi isikhalo ngokwalo mthetho onikeza noma yiliphi igunya lokulalela isikhalo, inamandla—

- (a) okuthola obunye ubufakazi; 45
- (b) okudlulisela icala enkantolo noma kwesinye isigungu sokuqulwa kwecala okokuqala ukuze kuqhutshekwe nokuqulwa kuso, ngaleyo miyalelo maqondana nokuthathwa kobunye ubufakazi noma ngenye indlela iNkantolo ebona kufanele ngayo; noma

(c) okuqinisekisa, ukuchibiyela noma ukubekela eceleni isahlulelo, umyalelo noma isinqumo okuwudaba lwesikhalo kanye nokunikeza noma yisiphi isahlulelo, umyalelo noma isinqumo izimo ezingase zisidinge, ngaphandle uma lowo mthetho uhlinzeka ngenye indlela. 50

Judgment by default

18. A judgment by default may be granted by the Court in the manner and in the circumstances determined in the rules: Provided that the Court must be satisfied that there was proper service of the process by which the case was initiated.

Part 3

5

Witnesses, witness fees and admissibility of evidence**Witnesses**

19. (1) The registrar must, in the form and manner provided for in the rules subpoena a person to appear as a witness in a matter before the Court to give evidence or to produce a book, document, written instrument or any item on request by— 10

- (a) the judge in the matter;
- (b) a person whose rights may be affected by an order that may be made by the Court in those proceedings; or
- (c) the legal practitioner of a person referred to in paragraph (b).

(2) Sections 35(2), (3), (4) and (5) and 36 of the Superior Courts Act, read with such changes as the context may require, apply to a person who has been subpoenaed in terms of subsection (1) or required by the judge to give evidence. 15

(3) A person subpoenaed in terms of subsection (1) and who complied with the subpoena, is entitled to an allowance from State funds as contemplated in section 20.

Witness fees

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20. (1) A witness in any proceedings of the Court and any person who accompanies any such witness on account of the youth or infirmity due to old age or any disability of such witness, must be paid such allowances as may be prescribed in terms of section 37 of the Superior Courts Act.

(2) Notwithstanding anything to the contrary contained in any other law, the Court may order that no allowances or only a portion of the prescribed allowances must be paid to any witness. 25

Admissibility of evidence

21. (1) The Court may, in the case of claims under the Restitution of Land Rights Act admit evidence, including oral evidence, which it considers relevant and cogent to the matter being heard by it, whether or not such evidence would be admissible in any other court of law. 30

(2) Without derogating from the generality of subsection (1), it is competent for any party before the Court to adduce—

- (a) hearsay evidence regarding the circumstances surrounding the dispossession of a land right or rights and the rules governing the allocation and occupation of land within a claimant community at the time of such dispossession; and 35
- (b) expert evidence regarding the historical and anthropological facts relevant to any particular land claim.

(3) The Court must give such weight to any evidence adduced in terms of subsections (1) and (2) as it deems appropriate. 40

(4) Whenever a judgment, order or other record of the Court is required to be proved or inspected or referred to in any manner, a copy of such judgment, order or other record duly certified as such by the registrar of the Court under its seal is *prima facie* evidence thereof without proof of the authenticity of such registrar's signature. 45

Ukwahlulela ngokuzenzakalelayo

18. Isinqumo ngokuzenzakalelayo singanikezwa yiNkantolo ngendlela kanye nasezimweni ezinqunywe emithethweni: Kuncike ekutheni iNkantolo kufanele yaneliseke ngokuthi isevisi yenqubo icala elaqalwa ngayo ukuthi yenziwe ngendlela efanele.

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Ingxenye 3***Ofakazi, izimali zofakazi kanye nokwamukelwa kobufakazi*****Ofakazi**

19. (1) Umbhalisi kumele, ngefomu nangendlela ehlinzekwe emithethweni abizele umuntu ukuba avele njengofakazi odabeni oluphambi kweNkantolo ukuze anikeze ubufakazi noma aveze incwadi, umbhalo, ithuluzi elibhaliwe noma nanoma iyiphi into eceliwe—

(a) umahluleli odabeni;

(b) umuntu amalungelo akhe angase athintwe umyalelo ongenziwa yiNkantolo kuloko kuthethwa kwamacala; noma

(c) ummeli womuntu okukhulunywe ngaye endimeni (b).

(2) Isigaba sama-35(2), (3), (4) kanye no (5), kanye nesama-36 zoMthetho weziNkantolo eziPhakeme, ezifundwa nezinguquko ezidingwa yisimo, zisebenza kumuntu obizelwe ukuvela enkantolo ngokwesigatshana soku-(1) noma kudingwa ijaji ukuthi linikeze ubufakazi.

(3) Umuntu obizwe ukuvela enkantolo ngokwesigatshana soku-(1) futhi owathobela incwadi yokubizelwa enkantolo, unelungelo lokuthola usizo lwezimali zikahulumeni njengoba kuhlongozwe esigabeni sama-20.

Izimali zofakazi

20. (1) Ufakazi kunoma yikuphi ukuthethwa kwecala enkantolo kanye nanoma yimuphi umuntu ophelezela noma yimuphi ufakazi ngenxa yokuba umuntu omusha noma ngenxa yokuguga noma ukukhubazeka kwalowo fakazi, kufanele akhokhelwe lezo zibonelelo ezingahle zinqunywe ngokwesigaba sama-37 soMthetho Wezinkantolo Ezinkulu.

(2) Naphezu kwanoma yini ephambene equkethwe kunoma yimuphi omunye umthetho, iNkantolo inganquma ukuthi kungabikho zibonelelo noma ukuthi kube ingxenye yezibonelelo ezinqunyiwe okufanele zikhokhelwe kunoma yimuphi ufakazi.

Ukwamukelwa kobufakazi

21. (1) INkantolo, ecaleni lezikhalo ezingaphansi koMthetho Wokubuyiswa Kwamalungelo Omhlaba, ingabamukela ubufakazi, okuhlanganisa nobufakazi bomlomo, ebuthatha njengobubalulekile futhi obuhambisana nodaba eludingidayo, kungakhathalekile ukuthi lobo bufakazi bungamukelwa yini kunoma iyiphi enye inkantolo yomthetho.

(2) Ngaphandle kokudelela okujwayelekile kwesigatshana soku-(1), kuvumelekile ukuthi noma yiluphi uhlangothi eNkantolo lwethule—

(a) ubufakazi benzwabathi mayelana nezimo ezihambisana nokuphucwa kwelungelo noma amalungelo omhlaba kanye nemithetho elawula ukwabiwa kanye nokuthathwa komhlaba phakathi komphakathi ofaka izicelo ngesikhathi saloko kuphucwa umhlaba; futhi

(b) ubufakazi bochwepheshe mayelana namaqiniso omlando kanye nesayensi yesintu ehlobene nanoma yisiphi isicelo somhlaba.

(3) INkantolo kufanele inikeze lesi sisindo kunoma yibuphi ubufakazi obethulwe ngokwemibandela yesigatshana soku-(1) neses- (2) njengoba ibona kufanele.

(4) Noma nini lapho isinqumo, umyalelo noma elinye irekhodi leNkantolo kudingeka ukuba kuqinisekiswa noma kuhlolwe noma kudluliswe nganoma iyiphi indlela, ikhophi yaleso sinqumo, umyalelo noma elinye irekhodi eliqinisekiswa kanjalo ngumbhalisi weNkantolo ngaphansi kophawu lwayo kuwubufakazi obusobala balokho ngaphandle kobufakazi bobuqiniso besiginesha yombhalisi onjalo.

Part 4**Processes of Court and Offences****Scope and execution of process of Court**

22. (1) The process of the Court runs throughout the Republic and its sentences, rulings, judgments, writs, summonses, orders, warrants, commands and other processes, excluding a subpoena referred to in section 19 of this Act, must be executed in any area in like manner as if they were processes of a Division of the High Court having jurisdiction in such area. 5

(2) A sheriff or a deputy sheriff of the High Court appointed for the area in which any process is to be served, must execute all sentences, rulings, judgments, writs, summonses, orders, warrants, commands and other processes of the Court directed to them, and any reference in this Act to a sheriff or a deputy sheriff is deemed to be a reference to a sheriff or deputy sheriff of a Division of the High Court acting in terms of this section. 10

(3) A sheriff or deputy sheriff performing their duties in terms of this Act has all the powers and rights and is subject to all the obligations and duties applicable to the execution by such sheriff or deputy sheriff of the process of the Division of the High Court for which they are appointed. 15

(4) The return of a sheriff or a deputy sheriff of what has been done in connection with any process of the Court is *prima facie* evidence of the matters therein stated. 20

(5) A refusal by the sheriff or any deputy sheriff to perform any act which they are, in terms of this Act, empowered or obliged to do, is subject to review by the Court on application *ex parte* or on notice as the circumstances may require.

(6) Any warrant or other process for the execution of a judgment given or order issued against any association of persons, corporate or unincorporated, partnership or firm may be executed by attachment of the property or assets of such association, partnership or firm. 25

Offences relating to execution

23. Any person who commits any conduct referred to in section 46 of the Superior Courts Act, in relation to the execution by a sheriff or deputy sheriff of their duties in terms of this Act, commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year. 30

Part 5**Powers of Court, conferences, Court orders, variation, rescission and costs****Powers of Court** 35

24. (1) Subject to Chapter 8 of the Constitution, the Court has—
- (a) all such powers in relation to matters falling within its jurisdiction as are possessed by a Division of the High Court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of the High Court in relation to any contempt of Court; 40
 - (b) all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts; and
 - (c) the power to decide any issue in terms of any other law, which is not ordinarily within its jurisdiction but is sufficiently connected to a matter within its jurisdiction, if the Court considers it to be in the interests of justice to do so. 45

Ingxenye 4**Izinqubo Zenkantolo Namacala****Ububanzi kanye nokuqaliswa kwenqubo Yenkantolo**

22. (1) Uhlelo lweNkantolo lusebenza kuyo yonke iRiphabhulikhi futhi izigwebo, izinqumo, izahlulelo, izincwadi ezivela enkantolo, amasamanisi, imiyalelo, izincwadi zemvume, imiyalelo kanye nezinye izinqubo, ngaphandle kokubizela enkantolo okukhulunywe ngakho esigabeni se-19 salo Mthetho, kufanele kusetshenziswe kunoma iyiphi indawo ngendlela efanayo njengokungathi kuyizinqubo zoPhiko lweNkantolo Ephakeme enegunya kuleyo ndawo. 5

(2) Usherifu noma isekela likasherifu weNkantolo Ephakeme oqokelwe indawo lapho kuzohanjiswa khona noma iyiphi inqubo, kufanele akhiphe zonke izigwebo, izinqumo, izahlulelo, izincwadi, amasamanisi, imiyalelo, izincwadi zemvume, imiyalelo kanye nezinye izinqubo zeNkantolo eziqondiswe kubo futhi noma iyiphi ireferensi kulo Mthetho kusherifu noma isekela likasherifu kuthathwa njengereferensi kasherifu noma isekela likasherifu woPhiko lweNkantolo Ephakeme esebenza ngokwalesi sigaba. 15

(3) Usherifu noma isekela likasherifu elenza umsebenzi walo ngokwemibandela yalo Mthetho linawo wonke amandla namalungelo futhi lingaphansi kwazo zonke izibopho nemisebenzi ephathelene nokwenziwa yilowo sherifu noma isekela likasherifu wenqubo yoPhiko lweNkantolo Ephakeme abaqokelwe yona. 20

(4) Ubufakazi bukasherifu noma isekela likasherifu ngalokho osekwenziwe mayelana nanoma iyiphi inqubo yeNkantolo kuwubufakazi obusobala bezindaba ezishiwo lapho.

(5) Ukwenqaba kukasherifu noma yinoma yimuphi usekela-sherifu ukwenza noma yisiphi isenzo abagunyazwe noma abaphoqelekile ukuba basenze ngokwalo Mthetho, kuncike ekubuyekweni kweNkantolo ngesicelo sohlangothi olulodwa noma ngesaziso njengoba izimo zingase zidinge. 25

(6) Noma iyiphi incwadi yemvume noma enye inqubo yokukhishwa kwesahlulelo esinikeziwe noma umyalelo okhishwe ngokumelene nanoma iyiphi inhlangothi yabantu, inkampani noma inkampani engekho emthethweni, ibhizinisi elihlanganyelwe noma ifemu ingase isetshenziswe ngokunamathiselwe kwempahla noma izimpahla zaleyo inhlangothi, ibhizinisi elihlanganyelwe noma ifemu. 30

Amacala amaqondana nokuqaliswa

23. Noma yimuphi umuntu owenza noma yikuphi ukuziphatha okukhulunywe ngakho esigabeni sama-46 soMthetho weziNkantolo eziNkulu, maqondana nokwenziwa kwemisebenzi kukasherifu noma isekela likasherifu ngokwalo Mthetho, wenza icala futhi uma etholakala enecala uyohlawuliswa inhlawulo noma ukugqunywa ejele isikhathi esingeqile kunyaka owodwa. 35

Ingxenye 5**Amandla Enkantolo, izingqungquthela, imiyalelo yeNkantolo, ukushintshashintsha, ukuchithwa kanye nezindleko**

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Amandla Enkantolo

24. (1) Ngokuya ngeSahluko sesi-8 soMthethosisekelo, iNkantolo—
- (a) inawo wonke lawo mandla maqondana nezindaba eziwela ngaphansi kwamandla ayo okuphatha njengalawo oPhiko lweNkantolo Ephakeme enegunya lokubusa ezinkantolo zamacala omphakathi endaweni lapho umhlaba okukhulunywa ngawo ukhona, kubandakanya namandla eNkantolo Ephakeme maqondana nanoma yikuphi ukwedelelwa Inkantolo; 45
- (b) inawo wonke amandla asekelayo adingekayo noma ahambisana ngokuzwakalayo ekwenzeni imisebenzi yayo, okuhlanganisa amandla okunikeza imiyalelo lingakapheli icala nesivimbelo; futhi 50
- (c) inamandla okunquma noma yiluphi udaba ngokwanoma yimuphi omunye umthetho, ngokuvamile ongekho ngaphansi kwegunya lawo kodwa oluxhumene ngokwanele nodaba olungaphansi kwamandla ayo, uma iNkantolo ikubheka njengokokubhekelela ubulungiswa ukwenza kanjalo.

(2) (a) The Court, of its own accord or at the request of any party to the proceedings before it, may reserve, for the decision of the Supreme Court of Appeal, any question of law that arises in those proceedings.

(b) A question may be reserved only if it is decisive for the proper adjudication of the dispute. 5

(c) Pending the decision of the Supreme Court of Appeal on any question of law reserved in terms of paragraph (a), the Court may make any interim order.

(3) A judgment of the Court must be handed down as soon as reasonably possible.

(4) To the extent necessary, the Court may refer any suspicion or allegation of corruption in any proceedings before the Court to any relevant authority for investigation. 10

Conferences

25. (1) The Court may at any stage on its own accord or upon the request in writing of either party direct the parties or their representatives to appear before it in chambers for a conference to consider— 15

(a) the simplification of the issues;

(b) the necessity or desirability of amendments to the pleadings;

(c) the possibility of obtaining admissions of fact and of documents with a view to avoiding unnecessary proof;

(d) the limitation of the number of expert witnesses; or 20

(e) such other matters as may aid in the disposal of the action in the most expeditious and least costly manner.

(2) The Court must make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties or their representatives. 25

(3) The order so made by the Court is binding on the parties unless altered at the trial to prevent manifest injustice.

(4) If a party refuses or neglects to appear at the conference the Court may, without derogation from its power to punish for contempt of court, make such order as it considers equitable in the circumstances and upon conclusion of the proceedings may order the party who was so absent to pay such costs as in the opinion of the Court were incurred as a result of the said absence. 30

(5) The Court may, after the holding of such a conference—

(a) issue such orders and directions as to the procedure to be followed before and during the trial as it deems appropriate; and 35

(b) make such order as to the costs of any proceedings under this section as it deems fit.

Court orders

26. (1) The Court may make any appropriate order, including— 40

(a) granting urgent interim relief;

(b) an interdict;

(c) an order directing the performance of any particular act, which order, when implemented, must remedy a wrong and give effect to the primary objects of this Act; 45

(d) a declaratory order;

(e) an award of damages in any circumstances contemplated in this Act;

(f) an order for costs;

(g) making any arbitration award or any settlement agreement an order of the Court; 50

(h) requesting the Commission to conduct an investigation to assist the Court and to submit a report to the Court; and

(i) any other appropriate order which a High Court is competent to make, and which relates to a matter under the jurisdiction of the Court.

- (2) (a) INkantolo, ngokuthanda kwayo noma, ngesicelo sanoma yiluphi uhlangothi ekuthethweni kwamacala aphambi kwayo, ingagodlela, isinqumo seNkantolo Enkulu Yezikhalazo, noma yimuphi umbuzo womthetho ovela ekuthethweni kwalawo macala.
- (b) Umbuzo ungagodlwa kuphela uma uthatha isinqumo sokuhlulela okufanele kwengxabano. 5
- (c) Kusalandwe isinqumo seNkantolo Enkulu Yezikhalazo kunoma yimuphi umbuzo womthetho ogodliwe ngokwendima (a), iNkantolo ingenza noma yimuphi umyalelo wesikhashana.
- (3) Isinqumo seNkantolo kumele sikhishwe ngokushesha okukhulu.
- (4) Ngokwezinga elidingekayo, iNkantolo ingadlulisela noma yiziphi izinsolo zenkohlakalo kunoma yikuphi ukuthethwa kwecala okuseNkantolo kunoma yisiphi isiphathimandla esifanele ukuze siphenywe. 10

Izingqungquthela

25. (1) INkantolo nganoma yisiphi isikhathi ngokuthanda kwayo noma ngesicelo esibhaliwe sanoma yiluphi uhlangothi ingayala abathintekayo noma abameleli babo ukuthi bavele phambi kwayo ukuzoba nengqungquthela yokudingida— 15
- (a) ukwenziwa lula kwezindaba;
- (b) isidingo noma isifiso sokuchitshiyelwa kwezikhalazo;
- (c) ithuba lokuthola ukwamukelwa kweqiniso kanye nemibhalo ngenhloso yokugwema ubufakazi obungadingekile; 20
- (d) umkhawulo wenani lofakazi abangochwepheshe; noma
- (e) nezinye izindaba ezingase zisize ekuchithweni kwesenzo ngendlela eshesha kakhulu nengabizi kakhulu.
- (2) INkantolo kumele yenze umyalelo osho isenzo esithathwe engqungqutheleni, izichibiyelo ezivunyelwe ekuqulweni kwecala, kanye nezivumelwano ezenziwa abathintekayo mayelana nanoma yiziphi izindaba ezicatshangwayo, futhi okubeka umkhawulo wezindaba ukuba ziqulwe kulezo ezingachithwanga ukwamukelwa noma izivumelwano zabathintekayo noma abameleli bazo. 25
- (3) Umyalo onjalo ubophezela abathintekayo ngaphandle kwalapho ushintshiwe ekuqulweni kwecala ukuze kuvinjelwe ukungabi nabulungiswa okusobala. 30
- (4) Uma uhlangothi lwenqaba noma ludembesela ukuvela engqungqutheleni iNkantolo, ngaphandle kokudelela amandla ayo okujezisa ngokwedelela inkantolo, ikhiphe lowo myalelo ewubona ufanelekile ezimweni futhi lapho sekuphuthulwa ukuqulwa kwecala ingayala lolu hlangothi obelungekho ecaleni ukuthi lukhokhe izindleko ngokubona kweNkantolo ezenzeke ngenxa yokungabikhona kwaloko okushiwo. 35
- (5) Ngemva kokubamba ingqungquthela enjena inkantolo—
- (a) ingakhipha leyo miyalelo neziqondiso mayelana nenqubo okufanele ilandelwe ngaphambi nangesikhathi sokuqulwa kwecala njengoba ibona kufanele; futhi 40
- (b) ingenza umyalelo onjalo nezindleko zanoma yikuphi ukuqulwa kwecala ngaphansi kwalesi sigaba ngendlela ebona kufanele ngayo.

Imiyalelo yeNkantolo

26. (1) INkantolo ingenza noma yimuphi umyalelo ofanelekile, okuhlanganisa— 45
- (a) ukunikeza usizo oluphuthumayo lwesikhashana;
- (b) isivimbelo;
- (c) umyalelo oqondisa ukwenziwa kwanoma yisiphi isenzo esithile, lowo myalelo, lapho sewenziwe, okufanele ulungise iphutha futhi ufezekise izinjongo eziyinhloko zalo Mthetho;
- (d) umyalelo wenkantolo ocacile; 50
- (e) ukukhokha izindleko kunoma yiziphi izimo ezihlongozwe kulo Mthetho;
- (f) umyalelo wezindleko;
- (g) ukwenza noma yisiphi isahlulelo noma yisiphi isivumelwano sesinxephezelo umyalelo weNkantolo;
- (h) ukucela iKhomishini ukuthi yenze uphenyo ukuze isize iNkantolo futhi ithumele umbiko eNkantolo; futhi 55
- (i) noma yimuphi omunye umyalelo ofanele iNkantolo Ephakeme enamandla okuwenza, futhi omayelana nodaba olungaphansi kwamandla eNkantolo.

(2) If at any stage after a dispute has been referred to the Court, it becomes apparent that it would advance the finalisation of the case if some or all of the disputes between the parties are referred to mediation, the Court may, if the Judge President did not make an order contemplated in section 13(2)(b) stay the proceedings and refer the dispute to mediation in terms of section 29 of this Act. 5

(3) The Court may in addition to subsection (1) make an order—

- (a) for the restoration of land, a portion of land or any right in land in respect of which the claim or any other claim is made to the claimant or award any land, a portion of or a right in land to the claimant in full or in partial settlement of the claim and, where necessary, the prior acquisition or expropriation of the land, portion of land or right in land: Provided that the claimant is not awarded land, a portion of land or a right in land dispossessed from another claimant or the latter's ascendant, unless—
 - (i) such other claimant is or has been granted restitution of a right in land or has waived the right to restoration of the right in land concerned; or 15
 - (ii) the Court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land;
- (b) for the State to grant the claimant an appropriate right in alternative state-owned land and, where necessary, order the State to designate it; 20
- (c) for the State to pay the claimant compensation; 20
- (d) for the State to include the claimant as a beneficiary of a State support programme for housing or the allocation and development of rural land;
- (e) for the grant to the claimant of any alternative relief;
- (f) to determine conditions which must be fulfilled before a right in land can be restored or granted to a claimant; 25
- (g) if a claimant is required to make any payment before the right in question is restored or granted, to determine the amount to be paid and the manner of payment, including the time for payment;
- (h) if the claimant is a community, to determine the manner in which the rights are to be held or the compensation is to be paid or held; 30
- (i) to give any other directive as to how its orders are to be carried out, including the setting of time limits for the implementation of its orders;
- (j) in respect of compensatory land granted at the time of the dispossession of the land in question;
- (k) to give effect to any agreement between the parties regarding the finalisation of the claim; and 35
- (l) for costs as it deems just, including an order for costs against the State or the Commission.

(4) An order contemplated in subsection (3)(h) must be subject to such conditions as the Court considers necessary to ensure that all the members of the dispossessed community have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of the community to the members of such community. 40

(5) The Court's power to order the restitution of a right in land or to grant a right in alternative state-owned land must include the power to adjust the nature of the right previously held by the claimant, and to determine the form of title under which the right may be held in future. 45

(6) In making any award of land, the Court may direct that the rights of individuals to that land be determined in accordance with the procedures set out in the Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993). 50

(7) An order of the Court has the same force as an order of a court for the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(2) Uma kunoma yisiphi isigaba ngemva kokuba ingxabano isidluliselwe eNkantolo, kuba sobala ukuthi izoqhubezela phambili ukuphothulwa kwecala uma ezinye noma zonke izingxabano phakathi kwezinhlangothi zidluliselwa ekuzazululweni, iNkantolo ingakwazi, uma iJaji elinguMongameli lingazange likhiphe umyalelo ohlongozwe esigabeni se-13(2)(b) amise ukuqhubeka kwecala futhi adlulisele ingxabano kumlamuli ngokwesigaba sama-29 salo Mthetho. 5

(3) INkantolo ngaphezu kwesigatshana soku-(1) ingenza umyalelo—

(a) wokubuyiswa komhlaba, ingxenye yomhlaba noma yiliphi ilungelo kumhlaba lapho isimangalo noma esinye isicelo senziwa kumfakisicelo noma sinikeze noma yimuphi umhlaba, ingxenye noma ilungelo lomhlaba kumfakisicelo ngokugcwele noma ukukhokhelwa ingxenye yesicelo futhi, lapho kunesidingo, ukutholwa noma ukuphucwa komhlaba ngaphambili, ingxenye yomhlaba noma ilungelo lomhlaba: Kuncike ekutheni umfakisicelo akanikezwanga umhlaba, ingxenye yomhlaba noma ilungelo kumhlaba ophucwe omunye umfakisicelo noma okwenyuka kwakamuva, ngaphandle uma— 10 15

(i) lowo omunye umfakisicelo unikezwe noma unikiwe ukubuyiselwa kwelungelo lomhlaba noma uyeke ilungelo lokubuyiselwa kwelungelo lomhlaba othintekayo; noma

(ii) INkantolo yanelisekile ngokuthi kwenziwe izinhlelo ezigculisayo noma zizokwenziwa ukuze kunikezwe lowo mfakisicelo ukubuyiselwa kwelungelo lomhlaba; 20

(b) ukuze uMbuso unikeze umfakisicelo ilungelo elifanele komunye umhlaba wombuso futhi, lapho kunesidingo, uyalele uMbuso ukuba uwuqoke; 25

(c) ukuze uMbuso ukhokhele umfakisicelo isinxephezelo;

(d) ukuze uMbuso ufake umfakisicelo njengomhlomuli wohlelo lukahulumeni lokuxhasa ngezindlu noma ukwabiwa nokuthuthukiswa komhlaba wasemaphandleni; 30

(e) ukuze kusizwe umfakisicelo nganoma iyiphi enye indlela yokukhululwa;

(f) ukunquma imibandela okufanele igcwaliseke ngaphambi kokuba ilungelo lomhlaba libuyiselwe noma linikezwe umfakisicelo; 35

(g) uma kudingeka ukuthi umfakisicelo akhokhe ngaphambi kokuba ilungelo okukhulunywa ngalo libuyiselwe noma linikezwe, ukuze kunqunywe inani okufanele likhokhwe kanye nendlela yokukhokha, kuhlanganisa nesikhathi sokukhokha; 40

(h) uma umfakisicelo kungumphakathi, ukuze inqume indlela amalungelo azophathwa ngayo noma isinxephezelo okufanele sikhokhwe noma sibanjwe;

(i) ukunikeza noma yimuphi omunye umyalelo wokuthi imiyalo yayo kufanele yenziwe kanjani, okuhlanganisa nokubeka imikhawulo yesikhathi sokusetshenziswa kwemiyalo yayo; 45

(j) mayelana nomhlaba oysinxepehelo owanikezwa ngesikhathi kuphucwa umhlaba okukhulunywa ngawo;

(k) ukuqalisa ukusebenza kwanoma yisiphi isivumelwano phakathi kwezinhlangothi mayelana nokuphothulwa kwesimangalo;

(l) ngezindleko njengoba libona kufanelekile, okuhlanganisa umyalelo wezindleko ezibhekiswe kuMbuso noma iKhomishana. 50

(4) Umyalelo ohlongozwe esigatshaneni sesi-(3)(h) kumele uhambisane nemibandela iNkantolo ebona inesidingo ukuze iqinisekise ukuthi wonke amalungu omphakathi owaphucwa umhlaba ayawuthola umhlaba noma isinxephezelo okukhulunywa ngaso, ngendlela enobulungiswa futhi engabandlululi kunoma yimuphi umuntu, kuhlanganisa nesiqashi, futhi okuqinisekisa ukuziphendulela komuntu ophethe umhlaba noma isinxephezelo egameni lomphakathi kumalungu alowo mphakathi. 55

(5) Amandla eNkantolo okuyala ukubuyiselwa kwelungelo lomhlaba noma ukunikeza ilungelo komunye umhlaba wombuso kufanele uhlanganise amandla okulungisa uhlobo lwelungelo elaliphethwe ngumfakisicelo, kanye nokunquma uhlobo lwetayitela ilungelo ingase ibanjwe esikhathini esizayo. 60

(6) Ekwenzeni noma yikuphi ukukhokhwa komhlaba, iNkantolo ingayalela ukuthi amalungelo abantu kulowo mhlaba anqunywe ngokuhambisana nezinqubo ezibekwe kuMthetho Wokwabiwa Nokudluliswa Komhlaba WoMbuso, 1993 (uMthetho 119 we-1993). 65

(7) Umyalelo weNkantolo unamandla afanayo nomyalelo wenkantolo ngezinhloso zoMthetho Wokubhaliswa Kwamatayitela, we-1937 (uMthetho 47 we-1937). 70

(8) Any state-owned land contemplated in the Restitution of Land Rights Act, which is held under a lease or similar arrangement, must be deemed to be in the possession of the State for the purposes of subsection (3)(a): Provided that, if the Court orders the restoration of a right in such land, the lawful occupier thereof is entitled to just and equitable compensation determined either by agreement or by the Court. 5

(9) An interested party who is of the opinion that an order of the Court has not been fully or timeously complied with may make application to the Court for further directives or orders in that regard.

(10) Any direction or ruling made by the Court has the force and effect of an order of the Court. 10

Variation and rescission of orders of Court

27. The Court may, on application of any person affected thereby, or acting of its own accord in cases falling under paragraph (b), and subject to the rules, vary or rescind any judgment or order—

- (a) erroneously sought or erroneously granted in the absence of the person against whom that judgment or order was granted; 15
- (b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;
- (c) which was void from its inception or was obtained by fraud or mistake common to the parties; or 20
- (d) in respect of which no appeal lies.

Costs

28. (1) The Court may make an order for the payment of costs, according to the requirements of the law and fairness.

(2) When deciding whether or not to order the payment of costs, the Court may take into account— 25

- (a) whether the matter referred to the Court ought to have been referred to mediation or arbitration, and, if so, the extra costs incurred in bringing the matter to the Court directly; and
- (b) the conduct of the parties— 30
 - (i) in proceeding with or defending the matter before the Court; and
 - (ii) during the proceedings before the Court.

(3) The Court may order costs against a party to the dispute or against any person who represented that party in those proceedings before the Court.

Part 6

Mediation and settling of matters

Mediation

29. (1) Notwithstanding the provisions of section 13(2)(b) of this Act, if, at any stage during proceedings, but prior to judgment, it becomes evident to the presiding judge that there is any issue which might be resolved through mediation, the presiding judge may make an order— 40

- (a) directing the parties to attempt to settle the issue through a process of mediation; and
- (b) that the proceedings be stayed pending such process.

(2) (a) If the Judge President as contemplated in section 13(2), or the presiding judge in terms of subsection (1), decides that the matter must be referred for mediation, the Judge President or presiding judge must make an order— 45

- (i) directing the registrar to transfer the matter in the manner provided for in the rules to the mediator contemplated in subparagraph (iii);
- (ii) specifying the time, date and the place where such process is to start; and 50

(8) Noma yimuphi umhlaba wombuso ohlongozwe kuMthetho Wokubuyiswa Kwamalungelo Omhlaba, ophethwe ngaphansi kwesivumelwano sokuqashisa noma esifana naso kumele uthathwe njengowoMbuso ngezinhloso zesigatshana zesi-(3)(a): Kuncike ekutheni, uma Inkantolo iyalela ukubuyiselwa kwelungelo kulowo mhlaba, umhlali kuwo osemthethweni unelungelo lesinxephezelo esinobulungiswa nesilinganayo esinqunywa isivumelwano noma iNkantolo. 5

(9) Umuntu onentshisekelo onombono wokuthi umyalelo weNkantolo awulandelwanga ngokugcwele noma ngesikhathi, angenza isicelo eNkantolo ukuze uthole ezinye iziqondiso noma imiyalelo mayelana nalokho.

(10) Noma isiphi isiqondiso noma isinqumo esenziwe yiNkantolo sinamandla nomthelela womyalelo weNkantolo. 10

Ukushintshashintsha nokuchithwa kwemiyalelo yeNkantolo

27. Inkantolo, izenzela ngokuthanda kwayo, noma ngesicelo sanoma yiluphi uhlangothi oluthintekayo emacaleni angena ngaphansi kwendima (b), futhi ngokuncika emithethweni ingashintsha noma ichithe isinqumo, isahlulelo noma umyalelo— 15

- (a) okufunwe ngephutha noma okunikezwe ngephutha kungekho umuntu esasikhishelwe yena isahlulelo noma umyalelo;
- (b) lapho kunokungaqondakali, noma iphutha elisobala noma ukweqiwa, kodwa kuphela ngokwezinga lalokho kungaqondakali, iphutha noma ukweqiwa;
- (c) okwakungekho kusukela ekuqaleni kwayo noma eyatholwa ngokukhwabanisa noma iphutha elivamile kwabathintekayo; noma 20
- (d) okungekho sikhalazo ngakho.

Izindleko

28. (1) INkantolo ingenza umyalelo wokukhokhwa kwezindleko, ngokuhambisana nezidingo zomthetho kanye nokungenzeleli. 25

(2) Lapho inquma ukuthi iwukhiphe noma ingawukhiphi umyalelo wokukhokhwa kwezindleko, iNkantolo ingase icabangele—

- (a) ukuthi ngabe udaba oludluliselwe eNkantolo bekufanele ludluliselwe ekulamuleni noma ekuxazululeni, futhi, uma kunjalo, izindleko ezengeziwe ezitholwe ekuletheni udaba eNkantolo ngqo; kanye 30
- (b) ukuziphatha kwezinhlangothi—
 - (i) ekuqhubeni noma ekuvikeleni udaba oluphambi kweNkantolo; kanye
 - (ii) nangezikhathi kuqhubeka icala eNkantolo.

(3) INkantolo ingakhipha isinqumo ngezindleko ezibhekiswe kothile engxabanweni noma kunoma yimuphi umuntu owayemele lolo hlangothi kulezo zinqubo eziphambi kweNkantolo. 35

Ingxenye 6

Ukulamula nokulungisa izindaba

Ukulamula

29. (1) Ngaphandle kwemihlinzeko yesigaba se-13(2)(b) salo Mthetho, uma, kunoma yisiphi isigaba ngesikhathi sokuqulwa kwecala, kodwa ngaphambi kwesinqumo, kuba sobala ejajini eliphethe ukuthi kukhona noma yiluphi udaba olungaxazululwa ngokulamula, ijaji lingenza umyalelo— 40

(a) wokuyala abathintekayo ukuthi bazame ukuxazulula udaba ngenqubo yokulamula; futhi 45

(b) wokuthi kumiswe ukuqulwa kwalolu daba.

(2) (a) Uma iJaji elinguMongameli njengoba kuhlongozwe esigabeni se-13(2), noma ijaji elengamele ngokwesigatshana soku-(1) linquma ukuthi udaba kumele ludluliselwe ukulanyulwa, iJaji elinguMongameli noma ijaji elengamele kufanele likhiphe umyalelo— 50

- (i) wokuyala umbhalisi ukuthi adlulisele udaba ngendlela ehlinzekwe emithethweni kumxazululi ohlongozwe endinyaneni (iii);
- (ii) wokucacisa isikhathi, usuku kanye nendawo lapho inqubo enjalo izoqala khona; futhi

- (iii) appointing a fit and proper person as mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation, by agreement, appoint another person to mediate the dispute.
- (b) When making an order contemplated in paragraph (a), the Judge President or the presiding judge may attach to the order any comments the Judge President or the presiding judge deems necessary for the attention of the mediator. 5
- (3) The Rules Board must make rules for the—
- (a) appointment of a mediator;
 - (b) procedure for referral of matters to the mediator;
 - (c) process by which mediation is initiated, and the form, content and use of that process; 10
 - (d) joinder of any person having an interest in the dispute in any mediation proceedings;
 - (e) proceedings of mediation;
 - (f) prescribed forms to be used by parties in respect of mediation proceedings; 15
 - (g) right of any party to be represented by any person or category of persons in any mediation proceedings, including the regulation or limitation of the right to be represented in those proceedings;
 - (h) consequences for any party to mediation proceedings for not attending those proceedings; 20
 - (i) qualification for appointment as mediator;
 - (j) fees that are payable for mediation;
 - (k) appointment, powers and functions of a mediator; and
 - (l) issuance of an order at the conclusion of the proceedings. 25
- (4) On receipt of an order referred to in subsection (2), the registrar must transfer the matter and notify the parties to the matter of the transfer in the manner provided for in the rules. 25
- (5) On receipt of a matter, the mediator must deal with the matter expeditiously in terms of their powers and functions as provided for in the rules.
- (6) If— 30
- (a) the parties to the mediation are not able to resolve the matter to the satisfaction of all the parties; or
 - (b) one or more of the parties to the mediation so request,
- the mediator must, in the manner provided for in the rules, refer the matter to the Court for adjudication. 35
- (7) A mediator appointed in terms of subsection (2)(a)(iii) who is not in the full-time service of the State, may be paid such remuneration and allowances as prescribed.
- (8) All discussions taking place and all disclosures and submissions made during the mediation process are privileged, unless the parties agree to the contrary.
- (9) The Court may make the agreement reached between the parties an order of the Court, with or without such technical variations as may be appropriate. 40
- (10) If the Court proposes to make any technical variation to the agreement, it must give the parties to the proceedings in the manner provided for in the rules notice of such intention, and before making such variation, it must receive and consider any comments from the parties. 45

Settling of matters

- 30.** (1) If a matter is settled out of Court, either by means of negotiation or mediation, and the settlement agreement is accepted by all parties involved in the matter, the registrar of the Court must, if the parties agree thereto, submit the settlement agreement to the Court for confirmation or rejection. 50

- (iii) ukuqoka umuntu onamandla nofanele njengomxazululi ukuba abe ngusihlalo womhlangano wokuqala phakathi kwezinhlangothi: Kuncike ekutheni izinhlangothi noma ngasiphi isikhathi phakathi nokulamula, ngesivumelwano, ziqoke omunye umuntu ozolamula ingxabano.
- (b) Lapho lenza umyalo ohlongozwe endimeni (a) iJaji elinguMongameli, noma ijaji elengamele linganamathisela kulowo myalelo noma yikuphi ukuphawula kweJaji elinguMongameli noma ijaji elengamele elikubona kudingekile ukuze kubhekwe umxazululi. 5
- (3) Ibhodi Lemithetho kumele lenze imithetho—
- (a) yokuqokwa komlamuli; 10
- (b) yenqubo yokudluliselwa kwezindaba kumxazululi;
- (c) yenqubo okuqalwa ngayo ukulamula, kanye nesimo, okuqukethwe kanye nokusetshenziswa kwaleyo nqubo;
- (d) yokuhlanganiswa kwanoma yimuphi umuntu onentshisekelo engxabanweni kunoma yiziphi izinyathelo zokulamula ekuthethweni kwamacala ukuze kulanyulwe; 15
- (e) ukuthethwa kwamacala ukuze kulanyulwe;
- (f) amafomu anqunyiwe okufanele asetshenziswe amaqembu mayelana nezinqubo zokulamula;
- (g) ilungelo lanoma yiliphi iqembu lokumelwa yinoma yimuphi umuntu noma isigaba sabantu kunoma yikuphi ukuthethwa kwamacala ukuze kulanyulwe, okuhlanganisa ukulawulwa noma ukuncishiswa kwelungelo lokumelwa kulezo zinqubo; 20
- (h) imiphumela yanoma yiluphi uhlangothi ekuthethweni kwamacala ukuze kuxazululwe ngokungathameli lokho kuqulwa; 25
- (i) izimfanelo zokuqokwa njengomlamuli;
- (j) izimali ezikhokhelwa ukulamula;
- (k) ukuqokwa, amandla nemisebenzi yomlamuli; kanye
- (l) nokukhishwa komyalelo ekupheleni kwecala.
- (4) Lapho ethola umyalelo okukhulunywe ngawo esigatshaneni sesi-(2), umbhalisi kufanele adlulisele udaba futhi azise izinhlangothi ngodaba lokudlulisa ngendlela ehlinzekwe emithethweni. 30
- (5) Lapho ethola udaba, umxazululi, kufanele aludingide lolu daba ngokushesha ngokwamandla nemisebenzi yakhe njengoba kunqunyiwe.
- (6) Uma— 35
- (a) abathintekayo ekulamuleni bengakwazi ukuxazulula udaba ngendlela eculisa bonke abathintekayo; noma
- (b) Oyedwa noma ngaphezulu kwabathintekayo ekulamuleni ngakho isicelo, umxazululi kumele, ngendlela ebekwe emithethweni adlulisele udaba enkantolo ukuze lahlulelwe. 40
- (7) Umxazululi oqokwe ngokwesigatshana sesi-(2)(a)(iii), ongaqashiwe uMbuso ngokugcwele angakhokhelwa lelo holo kanye nezibonelelo njengoba kunqunyiwe.
- (8) Zonke izingxoxo ezenzekayo kanye nakho konke ukudalulwa kanye nezethulo ezenziwe ngesikhathi senqubo yokulamula zinelungelo, ngaphandle uma izinhlangothi zingavumelani nalokho. 45
- (9) INkantolo ingenza isivumelwano esifinyelelwe phakathi kwezinhlangothi kube umyalelo weNkantolo, ngokuhluka kobuchwepheshe noma ngaphandle kwabo njengoba kungadingeka.
- (10) Uma iNkantolo ihlongoza ukwenza noma yikuphi ukuguquguquka kwezobuchwepheshe esivumelwaneni, kufanele inikeze abathintekayo ekuthethweni kwecala ngendlela ehlinzekwe emithethweni isaziso saleyo nhloso, futhi ngaphambi kokwenza lokho kuhluka, kufanele yamukele futhi icubungule noma yikuphi ukuphawula kwabathintekayo. 50

Ukulungisa izindaba

30. (1) Uma udaba luxazululwa ngaphandle kweNkantolo, kungaba ngokuxoxisana noma ngokulamula futhi isivumelwano sokuxazulula ngaleyo ndlela samukelwe yizo zonke izinhlangothi ezithintekayo odabeni, umbhalisi weNkantolo kufanele, uma izinhlangothi zivumelana nalokho, athumele isivumelwano sokuxazulula eNkantolo ukuze siphasiswe noma sinqatshwe. 55

- (2) The Court must consider the settlement agreement and may—
- (a) confirm the settlement agreement and make it an order of the Court; or
 - (b) before deciding the matter, refer the settlement agreement to the parties for reconsideration of any specific issues.

CHAPTER 5

5

APPEALS AGAINST JUDGMENT OR ORDER OF COURT AND OF OTHER COURTS

Appeals against judgment or order of Court

- 31.** (1) Subject to section 15(1) of the Superior Courts Act, the Constitution and any other law— 10
- (a) an appeal against any decision of the Court of first instance lies, upon leave having been granted—
 - (i) if the Court consisted of a single judge, either to the Supreme Court of Appeal or to a full court, depending on the direction issued in terms of section 17(6) of the Superior Courts Act; or 15
 - (ii) if the Court consisted of more than one judge, to the Supreme Court of Appeal; and
 - (b) an appeal against any decision of a full court on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal. 20
- (2) No judge may sit at the hearing of an appeal against a judgment or an order given in a case that was heard before that judge.
- (3) No appeal lies against a judgment or order of the Court except with leave of the Court or, where such leave has been refused, with the leave of the full court and failing that with leave of the Supreme Court of Appeal. 25
- (4) An appeal from a judgment or order of the Court must be heard by a full court in open court.
- (5) The full court or the Supreme Court of Appeal may, in granting leave to appeal, vary any order for costs made by the Court or the full court in refusing leave to appeal.
- (6) The power to grant leave to appeal as contemplated in subsection (3)— 30
- (a) is not limited by reason only of the value of the matter in dispute or the amount claimed or awarded in the suit or by reason only of the fact that the matter in dispute is incapable of being valued in money; and
 - (b) is subject to the provisions of any other law which specifically limits it or specifically grants, limits or excludes any right of appeal. 35
- (7) Leave to appeal may be granted subject to such conditions as the Court, the full court or the Supreme Court of Appeal, as the case may be, considers appropriate, including a condition that the applicant files security for the costs of the appeal.
- (8) The full court may grant leave to appeal on application made to it within 15 days, or such longer period as may on good cause be allowed, after the Court has refused leave to appeal. 40
- (9) (a) An application to the full court in terms of subsection (8) must—
- (i) be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief; and
 - (ii) be addressed to the registrar of the Court and to all other parties in the proceedings before the Court. 45
- (b) The application must be considered by two judges of the Court designated by the Judge President of the Court, and in the case of a difference of opinion, also by the Judge President of the Court or any other judge so designated.

- (2) INkantolo kufanele yamukele isivumelwano sokunxeshezela futhi—
- (a) ingaqinisekisa isivumelwano sokunxeshezela futhi isenze umyalelo weNkantolo; noma
- (b) ngaphambi kokuthatha isinqumo ngodaba, dlulisela isivumelwano sokunxeshezela kwabathintekayo ukuze kucutshungulwe kabusha noma yiziphi izindaba ezithile. 5

ISAPHLUKO 5

IZIKHALO MAQONDANA NESAPHLULELO NOMA UMYALELO WENKANTOLO KANYE NEZINYE IZINKANTOLO

Izikhalo maqondana nesaphulelo noma umyalelo wenkantolo 10

31. (1) Ngokuhambisana nesigaba se-15(1) soMthetho Wezinkantolo Ezinkulu, umthethosisekelo kanye nanoma yimuphi omunye umthetho—
- (a) isikhhalazo sananoma yisiphi isahlulelo seNkantolo ehlezi njengenkantolo yokuqala silele, lapho ikhefu selikhishiwe—
- (i) uma iNkantolo yakhiwe ijaji elilodwa, kungaba yiNkantolo Enkulu Yezikhhalazo noma inkantolo enamajaji aphelele, kuye ngesiqondiso esikhishwe ngokwesigaba se-17(6) soMthetho Wezinkantolo Ezinkulu; noma 15
- (ii) uma iNkantolo inamajaji angaphezu kwelilodwa, eNkantolo Enkulu Yezikhhalazo; futhi 20
- (b) isikhhalo esiphikisana nanoma yisiphi isinqumo senkantolo enamajaji aphelele mayelana nesikhhalazo kuso, silele eNkantolo Enkulu Yezikhhalazo uma sinikezwe ikhefu elikhethekile yiNkantolo Enkulu Yezikhhalazo.
- (2) Alikho ijaji eliyohlala ekulalelweni kwesikhhalazo ngesahlulelo noma umyalelo okhishwe ecaleni elaqulwa phambi kwalelo jaji. 25
- (3) Asikho isikhhalo esincikene nesinqumo noma umyalelo weNkantolo ngaphandle kwemvume yeNkantolo noma, lapho leyo mvume inqatshiwe, ngemvume yenkantolo enamajaji aphelele futhi makwehluleka lokho ngemvume yeNkantolo Enkulu Yezikhhalazo.
- (4) Isikhhalazo esivela esahlulelweni noma emyalelweni weNkantolo kufanele kulalelwe yinkantolo enamajaji aphelele enkantolo evulelekile. 30
- (5) Inkantolo enamajaji aphelele noma iNkantolo Enkulu Yezikhhalazo, lapho inikeza imvume yokukhalaza, iguqule noma yimuphi umyalelo ngezindleko ezenziwe yiNkantolo noma inkantolo enamajaji aphelele ngokwenqaba imvume yokukhalaza.
- (6) Amandla okunikeza imvume yokukhalaza njengoba kuhlangezwe esigatshaneni soku-(1)— 35
- (a) akunqunyelwe kuphela ngesizathu sesisindo sodaba oluphikiswayo noma inani elifunwayo noma elikhishwe ecaleni noma ngesizathu kuphela sokuthi udaba okuphikiswana ngalo alukwazi ukulinganiswa ngemali; futhi
- (b) angaphansi kwemihlinzeko yanoma yimuphi omunye umthetho okubeka umkhawulo ngokuqondile noma onikeza ngokuqondile, umkhawulo noma ongafaki noma yiliphi ilungelo lokukhalaza. 40
- (7) Imvume yokudlulisa icala inganikezwa kuncike ezimweni ezifana neNkantolo, inkantolo enamajaji aphelele noma iNkantolo Enkulu Yezikhhalazo, ngendlela isimo esingaba ngayo, esibona sifanelekile, okuhlanganisa umbandela wokuthi umfakisicelo athumele isibambiso ngezindleko zesikhhalazo. 45
- (8) Inkantolo enamajaji aphelele inganikeza imvume yokufaka isikhhalo esicelweni esifakwe kuyo zingakapheli izinsuku eziyi-15, noma isikhathi eside esingavunyelwa ngesizathu esihle, ngemva kokuba iNkantolo yenqabe imvume yokukhalaza.
- (9) (a) Isicelo esiya enkantolo enamajaji aphelele ngokwesigatshana sesi-(6) kufanele— 50
- (i) balethwe ngesaziso sesiphakamiso esisekelwa yincwadi efungelwe mayelana namaqiniso umfakisicelo athenbele kuwo ukuze athole usizo; futhi
- (ii) ziqondiswe kumbhalisi Wenkantolo kanye nabo bonke abathintekayo ekuthethweni kwamacala eNkantolo. 55
- (b) Isicelo kufanele sicutshungulwe amajaji amabili eNkantolo aqokwe iJaji elinguMongameli Wenkantolo, futhi esimweni lapho kunokuhlukana kwemibono, nayiJaji elinguMongameli Wenkantolo nanoma yiliphi elinye ijaji eliqokiwe.

(c) The judges considering the application may order that the application be argued before them at a time and place appointed, and may, whether or not they have so ordered—

- (i) grant or refuse the application; or
- (ii) refer the application to the full court for consideration, whether upon argument or otherwise, 5

and where an application has been so referred, the full court may thereupon grant or refuse the application.

(d) The decision of the majority of the judges considering the application, or the decision of the full court, as the case may be, to grant or refuse the application, is final. 10

(e) Notice of the date and place fixed for the hearing of the application must be given to the applicant and the respondent by the registrar of the Court.

(10) The full court, on the hearing of any appeal from the Court, has the power to—

- (a) receive further evidence;
- (b) remit the case to the Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as the full court considers necessary; or 15
- (c) confirm, amend or set aside the judgment or order which is the subject of the appeal and to give any judgment or make any order which the circumstances may require. 20

(11) Nothing in this section may be construed as preventing an appeal from a judgment or order of the Court being made directly to the Constitutional Court, if such an appeal is allowed by national legislation and by the rules of the Constitutional Court.

Appeals against judgment or order of other courts

32. The rules must provide for the manner in which appeals must be lodged with the Court, and the processes that the Court must follow in hearing appeals against judgments and orders of other courts. 25

CHAPTER 6

GENERAL PROVISIONS

General provisions applicable to Court 30

33. The provisions of the Superior Courts Act, read with the changes required by the context, apply in respect of any matter not provided for in this Act, to the extent that they are not inconsistent with this Act.

Removal of action or proceedings

34. (1) If any action or proceedings have been instituted in the Court sitting in any area of jurisdiction, and it appears to the Court sitting in that area that such action or proceedings— 35

- (a) should have been instituted in the Court sitting in another area of jurisdiction within the same province; or
- (b) would be more conveniently or more appropriately heard or determined— 40
 - (i) by the Court sitting in another area of jurisdiction within the same province;
 - (ii) at the seat of the Court if the proceedings have been instituted in the Court sitting at another area of jurisdiction within the same province; or
 - (iii) at another area of jurisdiction if the proceedings have been instituted at the seat of the Court within the same province, 45

the Court sitting in that area may, upon application by any party thereto and after hearing all other parties thereto, order such action or proceedings to be removed to the Court sitting at another area of jurisdiction or to the seat of the Court, as the case may be.

- (c) Amajaji acubungula isicelo angase akhiphe umyalelo wokuthi isicelo siphikiswe phambi kwawo ngesikhathi nasendaweni eqokiwe, futhi, noma ngabe bayalile noma cha—
- (i) anikeze noma enqabe isicelo; noma
- (ii) adlulisele isicelo enkantolo enamajaji aphelele ukuze sicutshungulwe, kungaba ngengxabano noma ngenye indlela, futhi lapho isicelo sesidluliselwe kanjalo, inkantolo enamajaji aphelele ingasivumela noma isinqabe isicelo. 5
- (d) Isinqumo seningi lamajaji acubungula isicelo, noma isinqumo senkantolo enamajaji aphelele, ngendlela okungaba ngayo, ukuvuma noma ukwenqaba isicelo, singujuqu. 10
- (e) Isaziso sosuku nendawo emisiwe yokulalelwa kwesicelo kumele sinikezwe umfakisicelo kanye nommangalelwa ngunobhala Wenkantolo.
- (10) Inkantolo enamajaji aphelele, lapho kulalelwa noma yisiphi isikhalo esivela eNkantolo, inamandla— 15
- (a) okwamukela obunye ubufakazi;
- (b) okudlulisela icala eNkantolo ukuze liqhubeke liqulwe, kanye nemiyalelo emayelana nokuthathwa kobunye ubufakazi noma ngenye indlela inkantolo enamajaji aphelele ebona ifanele; noma
- (c) okuqinisekisa, ichibiyele noma ibeke eceleni isahlulelo noma umyalelo okuyisihloko sesikhhalazo futhi ikhiphe noma yisiphi isahlulelo noma yenze noma yimuphi umyalelo izimo ezingawudinga. 20
- (11) Akukho okukulesi sigaba okungahunyushwa njengokuthi kuvimbela isikhhalazo esahlulelweni noma emyalelweni weNkantolo owenziwe ngqo eNkantolo yoMthethosisekelo, uma leso sikhhalazo sivunyelwa ngumthetho kazwelonke kanye nemithetho yeNkantolo yoMthethosisekelo. 25

Izikhalo maqondana nesahlulelo noma umyalelo wezinye izinkantolo

32. Imithetho kumele ihlinzekele indlela izikhalo okufanele zifakwe ngayo eNkantolo, kanye nezinqubo okufanele zilandelwe iNkantolo ekulaleni izikhalo eziphikisana nezahlulelo nemiyalelo yezinye izinkantolo. 30

ISIAHLUKO 6

IMIHLINZEKO EJWAYELEKILE

Imihlinzeko ejwayelekile esebenza eNkantolo

33. Imihlinzeko yoMthetho Wezinkantolo Ezinkulu, efundwa nezinguquko ezidingwa yingqikithi, isebenza maqondana nanoma yiluphi udaba olungahlinzekiwe kulo Mthetho, ngendlela yokuthi ayihambisani nalo Mthetho. 35

Ukususwa kwesinyathelo noma izinqubo

34. (1) Uma kukhona isinyathelo noma izinqubo ezimiswe kwiNkantolo ehlezi kunoma iyiphi indawo yomthetho, bese kuvela eNkantolo ehlezi kuleyo ndawo ukuthi leso sinyathelo noma ukuqulwa kwamacala— 40
- (a) bekufanele kumiswe eNkantolo ehlezi kwenye indawo yomthetho ngaphakathi kwesifundazwe esifanayo; noma
- (b) ingazwakala kancono noma ngokufanele noma inqunywe—
- (i) iNkantolo ehlezi kwenye indawo yomthetho ngaphakathi kwesifundazwe esifanayo; 45
- (ii) esihlalweni seNkantolo uma izinqubo zamiswa eNkantolo ehlezi kwenye indawo yomthetho ngaphakathi kwesifundazwe esifanayo; noma
- (iii) kwenye indawo yomthetho uma izinqubo zike zamiswa esihlalweni seNkantolo kwisifundazwe esifanayo, 50
- INkantolo ehlezi kuleyo ndawo, uma kufakwe isicelo sanoma yiluphi uhlangothi ngalokho nangemva kokuzwa zonke ezinye izihlangothi ngalokho, ingayalela ukuba kuthathwe leso sinyathelo noma izinqubo ukuba kususwe kuyiswe eNkantolo ehlezi kwenye indawo yomthetho noma esihlalweni seNkantolo, kuye ngokuthi yikuphi.

- (2) The provisions of this section apply, with necessary changes required by the context, to the removal of an action or proceedings from—
- (a) the Court to a Division of the High Court; and
 - (b) a Division of the High Court to the Court,
- within the same province. 5
- (3) An order for removal—
- (a) under subsection (1) must be transmitted to the registrar of the Court to which the removal is ordered; and
 - (b) under subsection (2) must be transmitted to the registrar of the Court or the High Court, as the case may be, to which the removal is ordered, 10
- and upon the receipt of such order the Court or the High Court, as the case may be, may hear and determine the action or proceedings in question.

Transitional arrangements

35. (1) (a) Any proceedings arising out of the application of this Act or any other law conferring jurisdiction on the Court, pending in any court other than the Land Claims Court established by section 22 of the Restitution of Land Rights Act, at the commencement of this Act must be continued and concluded in every respect as if this Act had not been passed. 15

(b) Any proceedings arising out of the application of this Act or any other law conferring jurisdiction on the Court, pending in the Land Claims Court, at the commencement of this Act must be continued and concluded in terms of this Act in the Court and, for that purpose— 20

(i) those proceedings are deemed to have been instituted in terms of this Act in the Court; and

(ii) anything done under any provision of any law amended by this Act is deemed to have been done under the corresponding provision of this Act, 25

unless the Court is of the view that this would not be in the interests of justice, in which event the Court must conclude the proceedings in the Court as if this Act had not been passed.

(c) Proceedings for purposes of paragraphs (a) and (b), are deemed to be pending if, 30

at the commencement of this Act—

(i) a civil summons had been issued or an application has been lodged, but judgment or an order has not been given; or

(ii) an accused person had pleaded but judgment or sentence has not been passed. 35

(d) Any proceedings arising out of the application of any law pending in any tribunal or forum at the commencement of this Act must be continued and concluded in every respect as if this Act had not been passed.

(2) (a) Any period of time served by a person as a judge or an acting judge of the Land Claims Court established in terms of section 22 of the Restitution of Land Rights Act, is deemed to have been served by that person, as a judge appointed in terms of section 8 40

of this Act.

(b) A judge of the High Court who, on the date of commencement of this Act, was seconded or appointed as a judge of the Land Claims Court becomes a judge of the Court except where such judge indicates in writing to the Secretary of the Judicial Service Commission, that such judge does not wish to hold a concurrent appointment as a judge 45

of the Court.

(c) Officers and staff of the Land Claims Court who were appointed in terms of section 28I of the Restitution of Land Rights Act before the date of commencement of this Act, become officers and staff of the Court on the same terms and conditions of their appointment in terms of that section: Provided that the terms and conditions applicable 50

to officers and staff who have been appointed on contract basis remain the same at the commencement of this Act.

(3) Any money available from the budget allocation for purposes of section 29(4) of the Restitution of Land Rights Act, before its amendment by this Act, forms part of the budget allocation of Legal Aid South Africa for purposes of giving effect to section 55

16(4) of this Act.

- (2) Imihlinzeko yalesi sigaba isebenza, nezinguquko ezidingwa isimo, ekususeni isinyathelo noma izinqubo—
- (a) iNkantolo kuPhiko LweNkantolo Ephakeme; kanye
- (b) UPhiko Lwenkantolo Ephakeme kwiNkantolo, esifundazweni esifanayo. 5
- (3) Umyalelo wokususwa—
- (a) ngaphansi kwesigatshana soku-(1) kufanele udluliselwe kunobhala weNkantolo okuyalelwe kuyo ukususwa; futhi
- (b) ngaphansi kwesigatshana sesi-(2) kufanele udluliselwe kunobhala weNkantolo noma kwiNkantolo Ephakeme, kuye ngokuthi yikuphi, lapho ukususwa kuyalelwe khona, 10
- futhi ekutholeni lowo myalelo iNkantolo noma iNkantolo Ephakeme, ngendlela okungaba ngayo, ingalalela futhi inqume isinyathelo noma izinqubo okukhulunywa ngazo.

Amalungiselelo esikhashana

35. (1) (a) Noma yiziphi izinqubo ezivela ekusetshenzisweni kwalo Mthetho nanoma yimuphi omunye umthetho onikeza amandla eNkantolo, osalinde kunoma iyiphi inkantolo ngaphandle kweNkantolo Yezimangalo Zomhlaba esungulwe isigaba sama-22 soMthetho Wokubuyiswa Kwamalungelo Omhlaba, ekuqaleni kwalo Mthetho kumele kuqhutshekwe nawo futhi uphethwe ngazo zonke izindlela kube sengathi lo Mthetho awukaphunyelelisa. 15 20
- (b) Noma yikuphi ukuthethwa kwamacala okuvela ekusetshenzisweni kwalo Mthetho nanoma yimuphi omunye umthetho onikeza amandla eNkantolo, osalinde eNkantolo Yezimangalo Zomhlaba, ekuqaleni kwalo Mthetho kufanele kuqhutshekwe nawo futhi kuphethwe ngokwalo Mthetho eNkantolo futhi, ngenxa yaleyo nhloso—
- (i) loko kuthethwa kwamacala kuthathwa njengokuqalwe ngokwalo Mthetho eNkantolo; futhi 25
- (ii) noma yini eyenziwe ngaphansi kwanoma yimuphi umthetho ochitshiyelwe yilo Mthetho kuthathwa ngokuthi yenziwe ngaphansi kwemihlinzeko ehambisana nalo Mthetho, 30
- ngaphandle uma iNkantolo inombono wokuthi lokhu ngeke kubhekelele ezobulungiswa, lapho iNkantolo kufanele iphothule ukuqulwa kwecala eNkantolo kube sengathi lo Mthetho awukaphasiswa.
- (c) Ukuqulwa kwecala ngezinhloso zezigaba (a) kanye no (b) kuthathwa ngokuthi kusalindile uma, ekuqaleni kwalo Mthetho—
- (i) amasamanisi omphakathi akhishiwe noma isicelo sesifakiwe, kodwa isahlulelo noma umyalelo awukakhishwa; noma 35
- (ii) ummangalelwa ulivumile icala kodwa isahlulelo noma isigwebo asikakhishwa.
- (d) Noma yikuphi ukuthethwa kwecala okuvela ekusetshenzisweni kwanoma yimuphi umthetho okusalindile kunoma yiliphi ibhodi lokuxazulula noma inkundla ngesikhathi kuqala lo Mthetho ukusebenza kufanele kuqhutshekwe futhi kuphethwe ngazo zonke izindlela kube sengathi lo Mthetho awukaphunyelelisa. 40
- (2) (a) Noma yisiphi isikhathi esinikezwe umuntu njengejaji noma ibamba lejaji leNkantolo Yezimangalo Zomhlaba esungulwe ngokwesigaba sama-22 soMthetho Wokubuyiswa Komhlaba, sithathwa ngokuthi sinikezwe yilowo muntu, njengejaji eliqokwe ngokwemibandela yesigaba sesi-8 salo Mthetho. 45
- (b) Ijaji leNkantolo Ephakeme okwathi, ngosuku lokuqala kokusebenza kwalo Mthetho, lesekelwa noma laqokwa njengejaji leNkantolo Yezimangalo Zomhlaba liba ijaji leNkantolo ngaphandle kwalapho lelo jaji libhalele uNobhala weKhomishana Yemisebenzi Yobulungiswa, ukuthi lelo jaji alifuni ukuqokwa ngasikhathi sinye njengejaji leNkantolo. 50
- (c) Izikhulu nabasebenzi beNkantolo Yezimangalo Zomhlaba ababekwe ngokwesigaba sama-28I soMthetho Wokubuyiswa Kwamalungelo Omhlaba, ngaphambi kosuku lokuqala ukusebenza kwalo Mthetho, ababe yizikhulu nabasebenzi beNkantolo ngokwemigomo nemibandela efanayo nokuqokwa kwabo ngokwaleso sigaba: Kuncike ekutheni imigomo nemibandela ethinta izikhulu nabasebenzi abaqokiwe ngokwenkontileka ihlala injalo ekuqaleni kokusebenza kwalo mthetho. 55
- (3) Noma iyiphi imali etholakala esabelweni sesabelomali ngokwezinjongo zezigaba sama-29(4) soMthetho Wokubuyiswa Kwamalungelo Omhlaba, ngaphambi kokuchitshiyelwa kwawo yilo Mthetho, iyingxenye yokwabiwa kwesabelomali se-*Legal Aid South Africa* ngenhloso yokuqalisa ukusebenza kwesigaba se-16(4) salo Mthetho. 60

(4) Until the rules contemplated in section 29(3) and the regulations contemplated in section 37(1)(d) have been made, mediators and assessors must be appointed in the manner provided for in the Restitution of Land Rights Act.

(5) The rules published under Government Notice No. R. 300 of 21 February 1997 continue to apply to the Court, with necessary changes required by the context, until the rules contemplated in section 14(1) have been made. 5

Amendment of laws

36. The laws mentioned in the Schedule are amended to the extent indicated in the third column of the Schedule.

Regulations 10

- 37.** (1) The Minister may make regulations regarding—
- (a) the form of the oath or affirmation of a person who has been appointed a judge of the Court and who is not a judge of the High Court;
 - (b) the manner and conditions of appointment for officers of the Court;
 - (c) functions to be performed by officers of the Court; 15
 - (d) manner of appointment of assessors;
 - (e) the form of the oath or affirmation of an assessor;
 - (f) fees and allowances of an assessor not in full time employ of State;
 - (g) legal assistance that Legal Aid South Africa may provide to parties who wish to exercise their right to have a dispute resolved through mediation and any expenditure related thereto; 20
 - (h) any matter required or permitted to be prescribed by regulation under this Act; and
 - (i) any other matter which is necessary to prescribe in order to achieve the objects of this Act. 25

(2) Any regulation under this section which results in State expenditure, must be made with the concurrence of the Cabinet member responsible for finance.

Short title and commencement

38. (1) This Act is called the Land Court Act, 2023, and commences on a date determined by the President by proclamation in the *Gazette*. 30

(2) For purposes of subsection (1) different dates may be proclaimed in respect of different provisions of the Act and the different items of the Schedule to the Act.

(4) Kuze kube kwenziwa imithetho ehlongozwe esigabeni sama-29(3) kanye nemithethonqubo ehlongozwe esigabeni sama-37(1)(d), abalamuli nabahloli kumele baqokwe ngendlela okuhlinzekwe ngayo ngokoMthetho Wokubuyiswa Kwamalungelo Omhlaba.

(5) Imithetho eshicilelwe ngaphansi kweSaziso sikaHulumeni Inombolo R. 300 5 sangomhla zingama-21 kuFebhuwari 1997 iqhubeke nokusebenza enkantolo, nezinguquko ezifanele ezidingwa isimo kuze kube kwenziwa imithetho ehlongozwe esigabeni se-14(1).

Ukuchitshiyelwa kwemithetho

36. Imithetho ebalulwe kwiSheduli iyachitshiyelwa ngokwezinga elikhonjiswe 10 kukholamu yesithathu yeSheduli.

Imithethonqubo

37. (1) UNGqongqoshe angenza imithethonqubo mayelana—
- (a) nohlobo lwesifungo noma isiqinisekiso somuntu oqokwe njengejaji leNkantolo futhi ongelona ijaji leNkantolo Ephakeme; 15
 - (b) indlela nemibandela yokuqokwa kwezikhulu zeNkantolo;
 - (c) imisebenzi okumele yenziwe yizikhulu zeNkantolo;
 - (d) indlela yokuqokwa kwabahloli;
 - (e) uhlobo lwesifungo noma isiqinisekiso somhloli;
 - (f) izimali kanye nezibonelelo zomhloli ongaqashiwe ngokugcwele 20 nguHulumeni;
 - (g) usizo lwezomthetho i-*Legal Aid South Africa* engalunikeza izinhlangothi ezifisa ukusebenzisa ilungelo lazo lokuxazulula ingxabano ngokulamula nanoma yiziphi izindleko ezihlobene nalokho;
 - (h) noma yiluphi udaba oludingekayo noma oluvunyelwe ukuba lunqunywe 25 ngumthethonqubo ngaphansi kwalo Mthetho; futhi
 - (i) nanoma yiluphi olunye udaba oludingekayo ukuze kufezwe izinjongo zalo Mthetho.

(2) Noma yimuphi umthethonqubo ongaphansi kwalesi sigaba oholela ezindlekweni zoMbuso, kufanele wenziwe ngokuvumelana nelungu leKhabhinethi elibhekele 30 ezezimali.

Isihloko esifushane nokuqala ukusebenza

38. (1) Lo Mthetho ubizwa ngokuthi uMthetho Wenkantolo Yezomhlaba, wezi-2023, futhi uqala ngosuku olunqunywe uMongameli ngesimemezelo kwiGazethi.

(2) Ngenhloso yesigatshana soku-(1) izinsuku ezehlukene zingamenyezela 35 maqondana nemihlinzeko ehlukeneyoMthetho kanye nezinto ezehlukene zeSheduli kuMthetho.

SCHEDULE

LAWS AMENDED

(Section 36)

Item No.	No. and year of law	Short title	Extent of repeal or amendment
1.	Act No. 112 of 1991	Upgrading of Land Tenure Rights Act, 1991	<p>1. By the insertion in section 1 before the definition of “Deeds Act” of the following definition: “‘Court’ means the Land Court established by section 3 of the Land Court Act, 2023, or a Magistrate’s Court in whose area of jurisdiction the land in question is situated.”.</p> <p>2. By the substitution in section 20(4) for paragraph (f) of the following paragraph: “(f) on the authority of a warrant issued by a magistrate or a judge of the Land Court having jurisdiction at any reasonable time enter upon such land or any contiguous land.”.</p> <p>3. By the substitution in section 21 for the words preceding paragraph (b) of the following words: “[(1)] Whenever in any [judicial] proceedings before the Court the question arises—”.</p> <p>4. By the substitution in section 24D(6) for paragraph (d) of the following paragraph: “(d) if it is necessary for the purposes of paragraph (a), (b) or (c), at any reasonable time, on the authority of a warrant issued by a magistrate or judge of the Land Court having jurisdiction, enter upon any erf or other land in the area concerned.”.</p> <p>5. By the substitution in subsection 24(D) for subsection (7) of the following subsection: “(7) If any person refuses to answer a question put to him or her under subsection (6)(a) or to deliver or submit anything required under subsection (6)(b), the person acting under subsection (6)(a) or (b) may apply to the [magistrate’s court for the district in which the erf or piece of land in question is situated] Court for an order compelling the former person to answer the question or deliver or submit the thing and the [court] Court may make such order as it deems fair and just under the circumstances, including an order for costs, having regard to the public interest and the right to privacy of the respondent.”.</p> <p>6. By the insertion of the following section after section 24D: “Jurisdiction of Court 24E. The Court has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>
2.	Act No. 126 of 1993	Land Reform: Provision of Land and Assistance Act, 1993	<p>By the insertion of the following section after section 12: “Jurisdiction of Land Court 12A. The Land Court established by section 3 of the Land Court Act, 2023, has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>
3.	Act No. 3KZ of 1994	KwaZulu-Natal Ingonyama Trust Act, 1994	<p>By the insertion of the following section after section 4A: “Jurisdiction of Land Court 4B. The Land Court established by section 3 of the Land Court Act, 2023, has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>

BYLAE

WETTE GEWYSIG

(Artikel 36)

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
1.	Wet No. 112 van 1991	Wet op die Opgradering van Grondbesitregte, 1991	<p>1. Deur in subartikel 1 die volgende omskrywing voor die omskrywing van “Minister” in te voeg: “Hof” die Grondhof ingestel by artikel 3 van die ‘Land Court Act, 2023’, of ‘n Landdroshof in wie se regsgebied die betrokke grond geleë is;”.</p> <p>2. Deur in artikel 20(4) paragraaf (f) deur die volgende paragraaf te vervang: “(f) op gesag van ‘n lasbrief deur ‘n landdros of regter van die Grondhof wat jurisdiksie het, uitgereik te enige redelike tyd die grond of enige aanliggende grond betree.”.</p> <p>3. Deur in artikel 21 die woorde wat paragraaf (b) voorafgaan deur die volgende woorde te vervang: “[(1)] Wanneer by [geregtelike] verrigtinge voor die Hof die vraag ontstaan—”.</p> <p>4. Deur paragraaf (d) in artikel 24D(6) deur die volgende paragraaf te vervang: “(d) indien nodig vir doeleindes van paragraaf (a), (b) of (c) te enige redelike tyd ‘n erf of ander grond in die betrokke gebied op gesag van ‘n lasbrief uitgereik deur ‘n landdros of regter van die Grondhof wat jurisdiksie het, betree.”.</p> <p>5. Deur artikel 24(D) van subartikel (7) deur die volgende subartikel te vervang: “(7) Indien enige persoon weier om ‘n vraag aan hom of haar gestel kragtens subartikel (6)(a) te beantwoord of om iets ingevolge subartikel 6(b) te oorhandig of voor te lê, kan die persoon wat kragtens subartikel (6)(a) of (b) optree by die [landdroshof vir die distrik waarin die betrokke erf of stuk grond geleë is,] Hof aansoek doen om ‘n bevel wat eersgenoemde persoon verplig om die vraag te beantwoord of die ding te oorhandig of voor te lê en die [hof] Hof kan die bevel maak wat [hy] die Hof redelik en regverdig ag onder die omstandighede, met inbegrip van ‘n kostebevel, met inagneming van die openbare belang en die reg op privaatheid van die respondent.”.</p> <p>6. Deur die volgende artikel na artikel 24D in te voeg: “Regsbevoegdheid van Hof 24E. Die Hof het regsbevoegdheid om enige geskil te skik wat uit die toepassing van hierdie Wet voortspruit.”.</p>
2.	Wet No. 126 van 1993	Wet op Grondhervorming: Beskikbaarstelling van Grond en Bystand, 1993	<p>Deur die volgende artikel na artikel 12 in te voeg: “Regsbevoegdheid van Grondhof 12A. Die Grondhof ingestel by artikel 3 van die ‘Land Court Act, 2023’, het regsbevoegdheid om enige geskil te besleg wat uit die toepassing van hierdie Wet voortspruit.”.</p>
3.	Wet No. 3KZ van 1994	Wet op die KwaZulu-Natal Ingonyama Trust, 1994	<p>Deur die volgende artikel na artikel 4A in te voeg: “Regsbevoegdheid van Grondhof 4B. Die Grondhof ingestel by artikel 3 van die ‘Land Court Act, 2023’, het regsbevoegdheid om enige geskil te besleg wat uit die toepassing van hierdie Wet voortspruit.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
4.	Act No. 22 of 1994	Restitution of Land Rights Act, 1994	<p>1. By the substitution in section 1 for the definition of ‘Court’ of the following definition: “‘Court’ means the Land [Claims] Court established by section [22] 3 of the Land Court Act, 2023;”.</p> <p>2. By the deletion in section 1 of the definitions of ‘High Court’ and ‘presiding judge’.</p> <p>3. By the substitution in section 1 for the definition of ‘the rules’ of the following definition: “‘the rules’ means the rules made under [sections] section 16 [and 32] of this Act;”.</p> <p>4. By the substitution in section 11(5) for paragraph (a) of the following paragraph: “(a) If after an order has been made by the Court as contemplated in section [35] 26(3) of the Land Court Act, 2023, or an agreement has been entered into as contemplated in section 14(3) or 42D, it is shown that another claim was lodged in terms of this Act in respect of the land to which the order or agreement relates, any interested party may apply to the Court for the rescission or variation of such order or the setting aside or variation of such agreement.”.</p> <p>5. By the substitution in section 11 for subsection (5A) of the following subsection: “(5A) Where an appeal is pending in respect of an order of the Court contemplated in section [35] 26(3) of the Land Court Act, 2023, an application for the rescission or variation of such order under subsection (5) shall be made to the Constitutional Court or the Supreme Court of Appeal, as the case may be.”.</p> <p>6. By the deletion of Chapter III.</p> <p>7. By the substitution in section 38B(1) for paragraph (a) of the following paragraph: “(a) an order has been made by the Court in terms of section [35] 26(3) of the Land Court Act, 2023, in respect of a right relating to that land; or”.</p>
5.	Act No. 3 of 1996	Land Reform (Labour Tenants) Act, 1996	<p>1. By the substitution in section 1 for the definition of “Court” of the following definition: “‘Court’ means the Land [Claims] Court established by section [22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994)] 3 of the Land Court Act, 2023;”.</p> <p>2. By the substitution in section 1 for the definition of “the rules” of the following definition: “‘the rules’ means rules made [by the President of the Court] under section 14 of the Land Court Act, 2023.”.</p> <p>3. By the substitution in section 2 for subsection (6) of the following subsection: “(6) For the purpose of establishing whether a person is a labour tenant, [a court] the Court shall have regard to the combined effect and substance of all agreements entered into between the person who avers that he or she is a labour tenant and his or her parent or grandparent, and the owner or lessee of the land concerned.”.</p> <p>4. By the deletion of section 13(1).</p> <p>5. By the substitution in section 15A for subsection (1) of the following subsection: “(1) No person shall remove or evict a labour tenant or an associate except on the authority of an order of [a competent court] the Court.”.</p>

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
4.	Wet No. 22 van 1994	Wet op die Herstel van Grondregte, 1994	<p>1. Die omskrywing van 'Hof' in artikel 1 word deur die volgende omskrywing vervang: “‘Hof’ die [Hof vir Grondeise] Grondhof ingestel by artikel [22] 3 van die ‘Land Court Act, 2023’;”.</p> <p>2. Die omskrywings in artikel 1 van “Hoë Hof” en “voorsittende regter” word geskrap.</p> <p>3. Die omskrywing van “die reëls” in artikel 1 word deur die volgende omskrywing vervang: “‘die reëls’ die reëls gemaak kragtens [artikels] artikel 16 [en 32] van hierdie Wet;”.</p> <p>4. Deur in artikel 11(5) paragraaf (a) deur die volgende paragraaf te vervang: “(a) Indien dit, nadat ’n bevel deur die Hof soos in artikel [35] 26(3) van die ‘Land Court Act, 2023’ beoog, gemaak is of ’n ooreenkoms soos beoog in artikel 14 (3) of 42D aangegaan is, aangetoon word dat ’n ander eis ingevolge hierdie Wet ten opsigte van die grond waarop die bevel of ooreenkoms betrekking het, ingedien is, kan enige belanghebbende party by die Hof aansoek doen om die nietigverklaring of wysiging van sodanige bevel of die tersydestelling of wysiging van sodanige ooreenkoms.”.</p> <p>5. Deur in artikel 11 subartikel (5A) deur die volgende subartikel te vervang: “(5A) Waar ’n appèl hangende is ten opsigte van ’n bevel van die Hof in artikel [35] 26(3) van die ‘Land Court Act, 2023’ beoog, moet ’n aansoek om die nietigverklaring of wysiging van sodanige bevel kragtens subartikel (5) by die Konstitusionele Hof of die Hoogste Hof van Appèl, na gelang van die geval, gedoen word.”.</p> <p>6. Hoofstuk III word geskrap.</p> <p>7. Deur in artikel 38B(1) paragraaf (a) deur die volgende paragraaf te vervang: “(a) ’n bevel deur die Hof ingevolge artikel [35] 26(3) van die ‘Land Court Act, 2023’, gemaak is ten opsigte van ’n reg met betrekking tot daardie grond; of”.</p> <p>8. Subartikels (1) en (2) in artikel 20 word geskrap.</p>
5.	Wet No. 3 van 1996	Wet op Grondhervorming (Huurarbeiders)	<p>1. Deur die omskrywing van “Hof” in artikel 1 deur die volgende omskrywing te vervang: “‘Hof’ die [Grondeishof] Grondhof ingestel by [artikel 22 van die [Wet op Herstel van Grondregte, 1994 (Wet No. 22 van 1994)] artikel 3 van die ‘Land Court Act, 2023’;”.</p> <p>2. Deur in artikel 1 die volgende omskrywing in te voeg: “‘die reëls’ reëls [deur die President van die Hof gemaak] kragtens artikel 14 van die ‘Land Court Act, 2023,’ gemaak.”.</p> <p>3. Deur in artikel 2 subartikel (6) deur die volgende subartikel te vervang: “(6) Ten einde vas te stel of ’n persoon ’n huurarbeider is, moet [’n hof] die Grondhof die strekking en wese van alle ooreenkomste aangegaan tussen die persoon wat beweer dat hy of sy ’n huurarbeider is en sy of haar ouer of grootouer, en die eienaar of huurder van die betrokke grond, as ’n geheel in ag neem.”.</p> <p>4. Artikel 13(1) word geskrap.</p> <p>5. Deur in artikel 15A subartikel (1) deur die volgende subartikel te vervang: “(1) Geen persoon mag ’n huurarbeider of ’n geassosieerde anders as op gesag van ’n bevel van [’n bevoegde hof] die Hof verwyder of uitsit nie.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>6. By the substitution in section 18 for subsections (7), (8) and (9) of the following subsections:</p> <p>“(7) If—</p> <p>(a) the owner does not submit proposals in terms of subsection (1); or</p> <p>(b) the applicant rejects a proposal in terms of subsection (4); or</p> <p>(c) the parties reach an agreement but the Director-General is not satisfied that it is reasonable and equitable,</p> <p>the Director-General shall, at the request of any party, refer the application for arbitration or to the Court for adjudication, and inform the other parties that he or she has done so.</p> <p>(8) The parties may, within 30 days of the referral of the application [to the Court] for arbitration, make a joint recommendation to the [Court] Director-General as to who should be appointed as the arbitrator.</p> <p>(9) Any nomination referred to in subsection (8) shall be in writing, signed by all the parties, and submitted to the [President of the Court] Director-General.”.</p> <p>7. By the substitution for section 19 of the following section:</p> <p>“Hearing of application by Court or referral to arbitration</p> <p>(1) On referral of an application by the Director-General, the Judge President of the Court or a judge of the Court nominated by him or her may [direct either that] give such directions as he or she considers appropriate as to the procedure to be followed for the application to be heard by the Court [or that it be referred to arbitration].</p> <p>[2] If the matter is referred to arbitration, the President of the Court or a judge of the Court nominated by him or her, shall appoint an arbitrator to hear the application and may give such directions as he or she considers appropriate as to the procedure to be followed.]</p> <p>(3) The [President of the Court or the judge nominated by him or her] Director-General may appoint as arbitrator [—</p> <p>(a) a person nominated by the parties in terms of section 18 (8); or</p> <p>(b) a person on the panel of arbitrators referred to in section 31;]</p> <p>but shall not be obliged to appoint a person nominated by the parties.”.</p> <p>8. By the substitution in section 20 for subsection (6) of the following subsection:</p> <p>“(6) The arbitrator shall make a determination and submit that determination and a written report to the [Court] Director-General.”.</p> <p>9. By the substitution in section 21 for subsection (1) of the following subsection:</p> <p>“(1) The Director-General shall submit the determination of an arbitrator referred to in section 20(6) to the Court, and the Court may make the determination an order of Court with or without such technical variations as may be appropriate.”.</p>

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
			<p>6. Deur in artikel 18 subartikels (7), (8) en (9) deur die volgende subartikels te vervang:</p> <p>“(7) Indien—</p> <p>(a) die eienaar nie voorstelle ingevolge subartikel (1) voorlê nie; of</p> <p>(b) die applikant ’n voorstel ingevolge subartikel (4) verwerp; of</p> <p>(c) die partye ’n ooreenkoms bereik maar die Direkteur-generaal nie tevrede is dat dit redelik en billik is nie,</p> <p>moet die Direkteur-generaal, op versoek van enige party, die aansoek vir arbitrasie verwys of na die Hof vir beregting, verwys en die ander partye in kennis stel dat hy of sy dit gedoen het.</p> <p>(8) Die partye kan binne 30 dae van die verwysing van die aansoek [na die Hof] vir arbitrasie, ’n gesamentlike aanbeveling aan die [Hof] Direkteur-generaal doen oor wie as arbiter aangestel moet word.</p> <p>(9) Enige nominasie bedoel in subartikel (8) moet skriftelik wees, deur al die partye onderteken, en aan die [President van die Hof] Direkteur-generaal voorgelê word.</p> <p>7. Deur artikel 19 deur die volgende artikel te vervang:</p> <p>“Aanhoor van aansoek deur Hof of verwysing vir arbitrasie</p> <p>(1) By verwysing van ’n aansoek deur die Direkteur-generaal kan die [President] Regter-president van die Hof of ’n regter van die Hof deur hom of haar genomineer, [gelas] sodanige lasgewings gee wat hy of sy gepas ag rakende die prosedure wat gevolg moet word dat die aansoek [of] deur die Hof aangehoor word [of dat dit vir arbitrasie verwys word].</p> <p>[(2) Indien die aansoek vir arbitrasie verwys word, moet die President van die Hof of ’n regter van die Hof deur hom of haar genomineer ’n arbiter aanstel om die aansoek aan te hoor en kan hy of sy die instruksies gee wat hy of sy geskik ag ten opsigte van die prosedure wat gevolg moet word.]</p> <p>(3) Die [President van die Hof of die regter deur hom of haar genomineer] Direkteur-generaal kan—</p> <p>(a) ’n persoon deur die partye ingevolge artikel 18(8) genomineer; of</p> <p>(b) ’n persoon op die paneel van arbiters in artikel 31 bedoel,</p> <p>as arbiter aanstel, maar is nie verplig om ’n persoon wat deur die partye genomineer is, aan te stel nie.”.</p> <p>8. Deur in artikel 20 subartikel (6) deur die volgende subartikel te vervang:</p> <p>“(6) Die arbiter moet skriftelik aan die [Hof] Direkteur-generaal verslag doen en aanbeveel op welke wyse ’n aansoek afgehandel behoort te word.”.</p> <p>9. Deur in artikel 21 subartikel (1) deur die volgende subartikel te vervang:</p> <p>“(1) Die Direkteur-generaal moet die bevinding van ’n arbiter in artikel 20(6) bedoel, aan die Hof voorlê en die Hof kan die bevinding ’n hofbevel maak, met of sonder sodanige tegniese variasies wat gepas mag wees.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>10. By the substitution in section 24 for subsection (2) of the following subsection: “(2) If the applicant fails to make the payment within three calendar months of receipt of the notice referred to in subsection (1), the owner of the affected land may apply to the Court for an order to declare the settlement agreement or previous order of the arbitrator or the Court null and void.”.</p> <p>11. By the substitution in section 24 for subsection (3) of the following subsection: “(3) The Court may, after hearing an application in terms of subsection (2), make such order as it deems just and equitable: Provided that the settlement agreement or previous order made by the arbitrator or the Court shall not be declared null and void unless the owner of the affected land and any other person who has received compensation from the applicant in respect of the affected land has paid or has given security for the payment of the amounts which he or she has received from the applicant and the Minister, respectively.”.</p> <p>12. By the deletion of sections 29 and 30.</p> <p>13. By the substitution for section 32 of the following section: “Powers of review 32. The Court shall have the same powers as the [Supreme] High Court to review an act, omission or decision of any functionary acting in terms of this Act or purporting to act in terms of this Act or of any court in respect of proceedings contemplated in section 13 or of any arbitrator in respect of proceedings taking place before him or her in terms of section 33(3), and shall exercise such powers to the exclusion of the provincial and local divisions of the [Supreme] High Court.”.</p> <p>14. By the substitution in section 33 for subsections (3) and (4) of the following subsections: “(3)The [President of the Court or a judge of the Court nominated by him or her] Director-General may determine that proceedings for the eviction of any person [which have been instituted in or transferred to the Court] shall take place before an arbitrator appointed [by him or her] in terms of section 19(3). (4) If the [President of the Court or a judge of the Court] Director-General makes a determination in terms of subsection (3) the arbitrator so appointed shall have all of the powers of the arbitrator under this Act.”.</p> <p>15. By the substitution for section 35 of the following section: “Effect of order of Court 35. For the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937), an order of the Court shall have the same force as an order of the [Supreme] High Court.”.</p>
6.	Act No. 28 of 1996	Communal Property Associations Act, 1996	<p>1. By the insertion in section 1 before the definition of “Director-General” of the following definition: “‘Court’ means the Land Court established by section 3 of the Land Court Act, 2023, or a Magistrate’s Court in whose area of jurisdiction the land in question is situated;”.</p> <p>2. By the substitution in section 2(1) for paragraph (a) of the following paragraph: “(a) which by order of the Land [Claims]Court is entitled to restitution under the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), where that Court has ordered restitution on condition that an association be formed in accordance with the provisions of this Act;”.</p>

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
			<p>10. Deur in subartikel 24 subartikel (2) deur die volgende subartikel te vervang: “(2) Indien die applikant versuim om binne drie kalendermaande vanaf ontvangs van die kennisgewing in subartikel (1) bedoel, die betaling te maak, kan die eienaar van die geaffekteerde grond by die Hof aansoek doen om ’n bevel dat die skikkingsooreenkoms of vorige bevel van die arbiter of die Hof nietig is.”.</p> <p>11. Deur in artikel 24 subartikel (3) deur die volgende subartikel te vervang: “(3) Die Hof kan, na aanhoor van ’n aansoek ingevolge subartikel (2), ’n bevel maak wat die Hof regverdig en billik ag: Met dien verstande dat die skikkingsooreenkoms of vorige bevel deur die arbiter of die Hof nie nietig verklaar word nie tensy die eienaar van die geaffekteerde grond en enige ander persoon wat vergoeding vanaf die applikant ten opsigte van die geaffekteerde grond ontvang het, aan die applikant en die Minister die bedrae wat hy of sy van hulle onderskeidelik ontvang het, betaal het of sekerheid vir betaling verskaf het.”.</p> <p>12. Artikels 29 en 30 word geskrap.</p> <p>13. Artikel 32 in die Engelse teks word deur die volgende artikel vervang: “Powers of review 32. The Court shall have the same powers as the [Supreme] High Court to review an act, omission or decision of any functionary acting in terms of this Act or purporting to act in terms of this Act or of any court in respect of proceedings contemplated in section 13 or of any arbitrator in respect of proceedings taking place before him or her in terms of section 33(3), and shall exercise such powers to the exclusion of the provincial and local divisions of the [Supreme] High Court.”.</p> <p>14. Subartikels (3) en (4) in artikel 33 word deur die volgende subartikels vervang: “(3) Die [President van die Hof of ’n regter van die Hof deur hom of haar aangewys,] Direkteur-generaal kan bepaal dat verrigtinge [wat by die Hof] vir die uitsetting van enige persoon [ingestel is of oorgeplaas is na die Hof], moet plaasvind voor ’n arbiter [deur hom of haar] wat ingevolge artikel 19(3) aangestel is. (4) Indien die [President van die Hof of ’n regter van die Hof] Direkteur-generaal ’n bepaling ingevolge subartikel (3) doen, het die arbiter aldus aangestel al die bevoegdhede van die Hof vir doeleindes van daardie verrigtinge.”.</p>
6.	Wet No. 28 van 1996	Wet op Verenigings vir Gemeenskaplike Eiendom, 1996	<p>1. Die volgende omskrywing word in artikel 1 voor die omskrywing van “komitee” ingevoeg: “Hof die Grondhof ingestel deur artikel 3 van die <u>Land Court Act, 2023</u>, of ’n Landdroshof in wies regsgebied die betrokke grond geleë is;”.</p> <p>2. Deur artikel 2(1) paragraaf (a) deur die volgende paragraaf te vervang: “(a) wat op las van die [Grondeisehof] Grondhof geregtig is op herstel kragtens die Wet op Herstel van Grondregte, 1994 (Wet No. 22 van 1994), waar daardie Hof herstel gelas het op voorwaarde dat ’n vereniging ooreenkomstig die bepaling van hierdie Wet gestig word;”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>3. By the substitution in section 13 for subsection (1) of the following subsection:</p> <p>“(1) [A division of the Supreme Court or a magistrate’s court] The Land Court or the Magistrate’s Court having jurisdiction in respect of the area in which the property of the association is situated or the area in which the land which may be acquired by a provisional association is situated, may, on application made by the Director-General, an association or provisional association or any member thereof, or any other interested person, place the association or provisional association under the administration of the Director-General or grant a liquidation order in respect of an association or provisional association, where the association or provisional association, because of insolvency or maladministration or for any other cause is unwilling or unable to pay its debts or is unable to meet its obligations, or where it would otherwise be just and equitable in the circumstances.”.</p>
7.	Act No. 31 of 1996	Interim Protection of Informal Land Rights Act, 1996	<p>By the insertion of the following section after section 5:</p> <p>“Jurisdiction of Land Court</p> <p>5A. The Land Court established by section 3 of the Land Court Act, 2023, has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>
8.	Act No. 62 of 1997	Extension of Security of Tenure Act, 1997	<p>1. By the substitution in section 1 for the definition of ‘court’ of the following definition:</p> <p>“‘[court]’ ‘Court’ means [a competent court having jurisdiction in terms of this Act] the Land Court established by section 3 of the Land Court Act, 2023, or a Magistrate’s Court in whose area of jurisdiction the land in question is situated, including a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996);”.</p> <p>2. By the deletion in section 1 of the definition of ‘Land Claims Court’.</p> <p>3. By the substitution in section 8(7) for paragraph (b) of the following paragraph:</p> <p>“(b) the owner or person in charge may institute proceedings in [a court] the Court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.”.</p> <p>4. By the substitution in section 9 for subsection (1) of the following subsection:</p> <p>“(1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of [court] the Court issued under this Act.”;</p> <p>5. By the substitution in section 9(2) for the words preceding paragraph (a) of the following words:</p> <p>“(2) [A court] The Court may make an order for the eviction of an occupier if—”;</p> <p>6. By the substitution in section 9(2) of paragraph (d) for the Proviso of the following Proviso:</p> <p>“Provided that if a notice of application to [a court] the Court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.”.</p>

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
			<p>3. Subartikel (1) in artikel 13 word deur die volgende subartikel vervang:</p> <p>“(1) [n Afdeling van die Hooggeregshof] Die Grondhof of [n] die Landdroshof wat jurisdiksie het ten opsigte van die gebied waarin die eiendom van die vereniging geleë is of die gebied waarin die grond wat deur 'n voorlopige vereniging verkry kan word, geleë is, kan, op aansoek gebring deur die Direkteur-generaal, 'n vereniging of voorlopige vereniging of enige lid daarvan of enige ander belanghebbende persoon, die vereniging of voorlopige vereniging onder die administrasie van die Direkteur-generaal plaas of 'n likwidasiëbevel ten opsigte van die vereniging of voorlopige vereniging uitreik, waar die vereniging of voorlopige vereniging weens insolvensie of wanadministrasie of om enige ander rede onwillig of nie daartoe in staat is nie om sy skulde te vereffen, of nie daartoe in staat is om sy verpligtinge na te kom nie, of waar dit andersins in die omstandighede regverdig en billik sou wees.”.</p>
7.	Wet No. 31 van 1996	Wet op Beskerming van Informele Grondregte, 1996	<p>Die volgende artikel word na artikel 5 ingevoeg:</p> <p>“Regsbevoegdheid van Grondhof</p> <p>5A. Die Grondhof ingestel by artikel 3 van die ‘Land Court Act, 2023’, het regsbevoegdheid om enige geskil te besleg wat uit die toepassing van hierdie Wet voortspruit.”.</p>
8.	Wet No. 62 van 1997	Wet op die Uitbreiding van Sekerheid van Verblyfreg, 1997	<p>1. Die omskrywing van “hof” in artikel 1 word deur die volgende omskrywing vervang:</p> <p>“[‘hof’] ‘Hof’ [n bevoegde hof met jurisdiksie ingevolge hierdie Wet] die Grondhof ingestel by artikel 3 van die ‘Land Court Act, 2023’, of ‘n Landdroshof in wie se regsgebied die betrokke grond geleë is, met inbegrip van ‘n Spesiale Tribunaal kragtens artikel 2 van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996), ingestel;”.</p> <p>2. Die omskrywing van “Grondeishof” in artikel 1 word geskrap’.</p> <p>3. Paragraaf (b) in subartikel 8(7) word deur die volgende paragraaf vervang:</p> <p>“(b) kan die eenaar of persoon in beheer verrigtinge in [n hof] die Hof instel om billike bedinge en voorwaardes van verdere verblyf te bepaal, met inagneming van die inkomste van al die okkuperders in die huishouding.”.</p> <p>4. Subartikel (1) in artikel 9 word deur die volgende subartikel vervang:</p> <p>“(1) Ondanks die bepalings van enige ander wet, kan ‘n okkuperder slegs ingevolge ‘n [hofbevel] bevel van die Hof kragtens hierdie Wet uitgereik, uitgesit word.”.</p> <p>5. Die woorde wat paragraaf (a) in artikel 9(2) voorafgaan word deur die volgende woorde vervang:</p> <p>“(2) [n hof] Die Hof kan ‘n bevel vir die uitsetting van ‘n okkuperder verleen indien—”;</p> <p>6. Die voorbehoudsbepaling in paragraaf (d) in artikel 9(2) word deur die volgende voorbehoudsbepaling vervang:</p> <p>“Met dien verstande dat, indien ‘n kennisgewing van ‘n aansoek aan [n hof] die Hof na beëindiging van die verblyfreg aan die okkuperder, die munisipaliteit en die hoof van die betrokke provinsiale kantoor van die Departement van Landelike Ontwikkeling en Grondhervorming minstens twee maande voor die datum van die aanvang van die aanhoor van die aansoek gegee is, dit geag word dat aan hierdie paragraaf voldoen is.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>7. By the substitution in section 10 for subsection (2) of the following subsection: “(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, [a court] the Court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.”;</p> <p>8. By the substitution in section 10(3) for the words following paragraph (c) of the following words: “[a court] the Court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to—”.</p> <p>9. By the substitution in section 11 for subsections (1) and (2) of the following subsections: “(1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, [a court] the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so. (2) In circumstances other than those contemplated in subsection (1), [a court] the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.”.</p> <p>10. By the substitution in section 12(1) for the words preceding paragraph (a) of the following words: “(1) [A court] The Court that orders the eviction of an occupier shall—”.</p> <p>11. By the substitution in section 12 for subsection (3) of the following subsection: “(3) [A court] The Court may, at the request of the sheriff in question, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal, subject to the conditions determined by the court as to the execution thereof: Provided that the sheriff shall at all times be present during such eviction, demolition or removal.”.</p> <p>12. By the substitution in section 12 for subsection (5) of the following subsection: “(5) [A court] The Court may, on good cause shown, vary any term or condition of an order for eviction made by it.”.</p> <p>13. By the substitution in section 13(1) for the words preceding paragraph (a) of the following words: “(1) If [a court] the Court makes an order for eviction in terms of this Act—”;</p> <p>14. By the substitution in section 13 for subsection (3) of the following subsection: “(3) No order for eviction made in terms of section 10 or 11 may be executed before the owner or person in charge has paid the compensation which is due in terms of subsection (1): Provided that [a court] the Court may grant leave for eviction subject to satisfactory guarantees for such payment.”.</p>

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
			<p>7. Subartikel (2) in artikel 10 word deur die volgende subartikel vervang: “(2) Behoudens die bepalings van subartikel (3), indien geen van die omstandighede in subartikel (1) bedoel van toepassing is nie, kan [’n hof] die Hof ’n bevel vir die uitsetting verleen slegs indien die hof oortuig is dat geskikte alternatiewe akkommodasie vir die betrokke okkuperder beskikbaar is.”;</p> <p>8. Die woorde wat op paragraaf (c) in artikel 10(3) volg, word deur die volgende woorde vervang: “kan [’n hof] die Hof ’n uitsettingsbevel ten opsigte van die okkuperder en enige ander okkuperder wat in dieselfde woning as hy of sy woon en wie se toestemming om daar te woon in die geheel van sy of haar verblyfreg afhanklik is, verleen indien dit regverdig en billik is om dit te doen, met inagneming van—”.</p> <p>9. Deur in artikel 11 subartikels (1) en (2) deur die volgende subartikels te vervang: “(1) Indien die beëindiging van die toestemming op ’n bepaalde of bepaalbare datum ’n uitdruklike, wesenlike en billike bepaling van die toestemming was wat aan ’n okkuperder verleen is om op die betrokke grond te woon, kan [’n hof] die Hof by beëindiging van die toestemming weens tydsverloop ’n bevel verleen vir die uitsetting van enige persoon wat na 4 Februarie 1997 ’n okkuperder van die betrokke grond geword het, indien dit billik en regverdig is om sodanige bevel te verleen. (2) [’n] Die Hof kan in omstandighede anders as dié in subartikel (1) beoog, ’n uitsettingsbevel verleen ten opsigte van enige persoon wat na 4 Februarie 1997 ’n okkuperder geword het indien die hof oortuig is dat dit regverdig en billik is om dit te doen.”.</p> <p>10. Woorde wat paragraaf (a) in artikel 12(1) voorafgaan, word deur die volgende woorde vervang: “(1) [’n] Die Hof wat die uitsetting van ’n okkuperder beveel, moet—”.</p> <p>11. Subartikel (3) in artikel 12 word deur die volgende subartikel vervang: “(3) [’n] Die Hof kan, op versoek van die betrokke balju, ’n persoon magtig om die balju by te staan om ’n bevel vir uitsetting, sloping of verwydering uit te voer onderworpe aan die voorwaardes oor die uitvoering daarvan wat die hof bepaal: Met dien verstande dat die balju te alle tye gedurende sodanige uitsetting, sloping of verwydering teenwoordig moet wees.”.</p> <p>12. Subartikel (5) in artikel 12 word deur die volgende subartikel vervang: “(5) [’n] Die Hof kan, by oorlegging van grondige redes, ’n bepaling of voorwaarde van ’n uitsettingsbevel deur hom verleen, wysig.”.</p> <p>13. Die woorde wat paragraaf (a) in artikel 13(1) voorafgaan word deur die volgende woorde vervang: “(1) Indien [’n hof] die Hof ’n uitsettingsbevel ingevolge hierdie Wet verleen—”.</p> <p>14. Subartikel (3) in artikel 13 word deur die volgende subartikel vervang: “(3) Geen uitsettingsbevel ingevolge artikel 10 of 11 verleen, mag uitgevoer word alvorens die eienaar of persoon in beheer die vergoeding wat ingevolge subartikel (1) verskuldig is, betaal het nie: Met dien verstande dat [’n hof] die Hof toestemming vir uitsetting kan verleen onderhewig aan bevredigende waarborge vir sodanige betaling.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>15. By the substitution in section 14 for subsection (1) of the following subsection: “(1) A person who has been evicted contrary to the provisions of this Act may institute proceedings in [a court] the Court for an order in terms of subsection (3).”;</p> <p>16. By the substitution in section 14(2) for the words following paragraph (b) of the following words: “may institute proceedings in [a court] the Court for an order in terms of subsection (3).”;</p> <p>17. By the substitution in section 13(4) for the words preceding paragraph (a) of the following words: “(4) Where the person contemplated in subsection (2) was evicted in terms of an order of [a court] the Court—”.</p> <p>18. By the deletion in section 17 of subsections (1), (3) and (4).</p> <p>19. By the substitution in section 19 for— (a) subsections (2) and (3) of the following subsections, respectively: “(2) Civil appeals from magistrates’ courts in terms of this Act shall lie to the Land [Claims] Court. (3) Any order for eviction by a magistrate’s court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the <i>Gazette</i>, shall be subject to automatic review by the Land [Claims] Court, which may— (a) confirm such order in whole or in part; (b) set aside such order in whole or in part; (c) substitute such order in whole or in part; or (d) remit the case to the magistrate’s court with directions to deal with any matter in such manner as the Land [Claims] Court may think fit.”; and (b) subsection (5) of the following subsection: “(5) Any order for eviction contemplated in subsection (3) shall be suspended pending the review thereof by the Land [Claims] Court.”.</p> <p>20. By the substitution in section 20 for the heading of the following heading: “Land [Claims] Court”</p> <p>21. By the substitution in section 20 for subsections (1) and (2) of the following subsections: “(1) The [Land Claims] Land Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power to— (a) [to] decide any constitutional matter in relation to this Act; (b) [to] grant interlocutory orders, declaratory orders and interdicts; (c) [to] review an act, omission or decision of any functionary acting or purporting to act in terms of this Act; [and] (d) [to] review an arbitration award in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), in so far as it deals with any matter that may be heard by [a court] the Land Court in terms of this Act;</p>

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
			<p>15. Subartikel (1) in artikel 14 word deur die volgende subartikel vervang: “(1) ’n Persoon wat in stryd met die bepalings van hierdie Wet uitgesit is, kan verrigtinge by [’n hof] die Hof instel vir ’n bevel ingevolge subartikel (3).”;</p> <p>16. Die woorde wat op paragraaf (b) in artikel 14(2) volg, word deur die volgende woorde vervang: “kan verrigtinge by die [hof] Hof vir ’n bevel ingevolge subartikel (3) instel.”;</p> <p>17. Die woorde wat paragraaf (a) in artikel 13(4) voorafgaan, word deur die volgende woorde vervang: “(4) Indien die persoon in subartikel (2) beoog ingevolge ’n [hofbevel] bevel van die Hof uitgesit is—”.</p> <p>18. Subartikels (1), (3) en (4) in artikel 17 word geskrap.</p> <p>19. Deur die vervanging in artikel 19 van— (a) subartikels (2) en (3) van die volgende subartikels, onderskeidelik: “(2) Siviele appelle vanaf landdroshowe ingevolge hierdie Wet word deur die [Grondeishof] Grondhof aangehoor. (3) ’n Uitsettingsbevel deur ’n landdroshof ingevolge hierdie Wet verleen ten opsigte van verrigtinge op of voor ’n datum deur die Minister bepaal en in die <i>Staatskoerant</i> gepubliseer, ingestel, is onderworpe aan outomatiese hersiening van die Grondeishof, welke hof— (a) sodanige bevel in die geheel of gedeeltelik kan bevestig; (b) sodanige bevel in die geheel of gedeeltelik tersyde kan stel; (c) sodanige bevel in die geheel of gedeeltelik kan vervang; of (d) die saak na die landdroshof kan terugverwys tesame met riglyne om met enige aangeleentheid te handel op sodanige wyse as wat die [Grondeishof] Grondhof goeddink.”; en (b) subartikel (5) deur die volgende subartikel: “(5) ’n Uitsettingsbevel in subartikel (3) beoog, word opgeskort hangende die hersiening daarvan deur die [Grondeishof] Grondhof.”.</p> <p>20. Die opskrif van artikel 20 word deur die volgende opskrif vervang: “[Grondeishof] Grondhof”</p> <p>21. Subartikels (1) en (2) in artikel 20 word deur die volgende subartikels vervang: “(1) Die [Grondeishof] Hof het ingevolge hierdie Wet regdeur die Republiek jurisdiksie en het al die bykomende bevoegdhede wat noodsaaklikerwys of redelikerwys verband hou met die verrigting van sy werksaamhede ingevolge hierdie Wet, met inbegrip van die bevoegdheid om— (a) [om] ’n grondwetlike aangeleentheid met betrekking tot hierdie Wet te oorweeg; (b) [om] tussentydse bevels, verklarende bevels en interdikte toe te staan; (c) [om] ’n handeling, late of beslissing van ’n funksionaris wat ingevolge hierdie Wet optree of voorgee om ingevolge hierdie Wet op te tree, te hersien; [en] (d) [om] ’n arbitrasietoekenning ingevolge die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965), in soverre dit handel oor ’n aangeleentheid wat ingevolge hierdie Wet deur [’n hof] die Grondhof aangehoor mag word, te hersien;</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>(e) direct how the orders of the Land Court shall be executed, including the setting of time limits for the implementation of such orders; and</p> <p>(f) make such orders for costs as it deems just.</p> <p>(2) [Subject to sections 17(2) and 19 (1), the Land Claims] The Land Court [shall have] has the powers set out in subsection (1) to the exclusion of any court contemplated in section 166(c), (d) or (e) of the Constitution.”.</p> <p>22. By the amendment of section 20 by—</p> <p>(a) the deletion of subsection (3); and</p> <p>(b) the substitution for subsection (4) of the following subsection:</p> <p>“(4) The [President of the Land Claims Court may] Rules Board for Courts of Law must make rules—</p> <p>(a) to govern the procedure in the Land Claims Court in terms of this Act; and</p> <p>(b) to govern the procedure for the automatic review of orders for eviction in terms of section 19(3).”.</p> <p>23. By the substitution in section 23 for subsection (1) of the following subsection:</p> <p>“(1) No person shall evict an occupier except on the authority of an order of [a competent court] the Court.”.</p> <p>24. By the substitution in section 25 for subsection (1) of the following subsection:</p> <p>“(1) The waiver by an occupier of his or her rights in terms of this Act shall be void, unless it is permitted by this Act or incorporated in an order of [a court] the Court.”;</p> <p>25. By the substitution in section 25 for subsection (2) of the following subsection:</p> <p>“(2) [A court shall] The Court must have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act.”.</p>

Itemno.	No. en jaar van wet	Kort titel	Omvang van herroeping of wysiging
			<p>(e) gelas hoe die bevele van die Grondhof uitgevoer moet word, met inbegrip van die instel van tydsbeperkings vir die instelling van sodanige bevele; en</p> <p>(f) sodanige kostebevele uitreik wat dit billik ag.</p> <p>(2) [Behoudens artikels 17(2) en 19(1) het die Grondeishof] Die Grondhof het die bevoegdhede in subartikel (1) uiteengesit tot uitsluiting van enige hof beoog in artikel 166(c), (d) of (e) van die Grondwet.”.</p> <p>22. Artikel 20 word gewysig deur—</p> <p>(a) subartikel (3) te skrap; en</p> <p>(b) deur subartikel (4) deur die volgende subartikel te vervang:</p> <p>“(4) Die [President van die Grondeishof kan] Reëlsraad vir Geregshowe moet reëls maak[—</p> <p>(a) ten einde die prosedure in die Grondeishof ingevolge hierdie Wet te reël; en</p> <p>(b)] ten einde die prosedure vir die outomatiese hersiening van uitsettingsbevele ingevolge artikel 19(3) te reël.”.</p> <p>23. Subartikel (1) in artikel 23 word deur die volgende subartikel vervang:</p> <p>“(1) Geen persoon mag ’n okkupeerder anders as op gesag van ’n bevel van [’n bevoegde hof] die Hof uitsit nie.”.</p> <p>24. Subartikel (1) in artikel 25 word deur die volgende subartikel vervang:</p> <p>“(1) Die afstanddoening deur ’n okkupeerder van sy of haar regte ingevolge hierdie Wet is nietig tensy dit deur hierdie Wet toegelaat word of in ’n [hofbevel] bevel van die Hof vervat is.”.</p> <p>25. Subartikel (2) in artikel 25 word deur die volgende subartikel vervang:</p> <p>“(2) [’n] Die Hof moet ’n ooreenkoms, vir sover sodanige ooreenkoms poog om enige van die regte van ’n okkupeerder ingevolge hierdie Wet te beperk, in ag neem, maar is nie daaraan gebonde nie.”.</p>

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