

GENERAL INFORMATION ABOUT THE CASE	
Case URL	http://www.saflii.org/za/cases/ZACC/2003/18.html
Name of Case:	Alexkor Ltd v Richtersveld Community
Court:	Constitutional Court
Type of court:	<input checked="" type="checkbox"/> Constitutional Court <input type="checkbox"/> Supreme Court of Appeal <input type="checkbox"/> High Court <input type="checkbox"/> Other
Issue:	Customary rights enable land ownership rights
Justice(s)/Judge(s):	Chaskalson CJ, Langa DCJ, Ackermann J, Goldstone J, Madala J, Mokgoro J, Ngcobo J, O'Regan J, Sachs J, Yacoob J
Reference No.	2004 (5) SA 460 (CC)
Filing No.	CCT 19/03
DESCRIPTION	
Facts:	<p>This case involved an application by the Richtersveld Community of the Northern Cape for the restoration of their ownership rights in a narrow strip of land. The community had occupied this land for centuries. In 1847, the land was annexed by the British empire. In 1926, diamonds were discovered on the land. After this discovery, the community was dispossessed of their land through a series of legislative and executive steps. They therefore sought to have their ownership rights (as well as their entitlement to the exclusive beneficial use and occupation of the land) restored, as per section 2(1) of the Restitution of Land Rights Act, 1994.</p>

	<p>This section – enacted to give expression to section 25(7) of the Constitution - entitled communities to the restoration of land rights if certain conditions were met, such as if the community held a right in the land, and if they were dispossessed as a result of racially discriminatory laws or practices.</p> <p>The community was able to prove that they had a customary law ownership right in both the land and the minerals it contained; that this right was not extinguished by the British Crown’s annexation of the land in 1847; that they were dispossessed through a series of executive and legislative steps after diamonds were found in 1926; and that this dispossession was the result of past discriminatory practices, as customary law ownership was not recognised.</p> <p>The community was thus entitled to the restoration of their ownership rights in both the land and its minerals, and to the exclusive beneficial use and occupation thereof.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>The key question here concerned the nature of the community’s rights to the land prior to the 1847 annexation. The court found that this question must be answered by reference to applicable customary law from that time – in this case, Nama law. The court determined this by reference to the history and land-use of the community.</p> <p>In terms of Nama law, land was communally owned by the community, and community members had a right to reasonably use and occupy it. Non-members were required to seek permission from the community before making use of the land. Evidence further established that the community had a history of prospecting in minerals in the area.</p> <p>The court held that, as customary law is now an integral part of South African law (in terms of section 39(3) of the Constitution), this form of communal ownership was constitutionally recognised.</p> <p>The community therefore had an ownership right in customary law in both the land and its minerals; and was therefore entitled to the restoration of these rights in terms of the Restitution of Land Rights Act, 1994.</p>

REFERENCES	
Reference(s) to other court decisions	N/A