

GENERAL INFORMATION ABOUT THE CASE	
Case URL	<a href="http://www.saflii.org/za/cases/ZACC/2016/22.html">http://www.saflii.org/za/cases/ZACC/2016/22.html</a>
Name of Case:	Land Access Movement of South Africa & Others v Chairperson of the National Council of Provinces & Others (LAMOSA 1)
Court name:	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:	Post 1998 Land Claims applications status
Justice(s)/Judge(s)	Madlanga J  Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Mhlantla J, Nkabinde J and Zondo J
Reference No:	[2016] ZACC 22
Filing No:	CCT40/15
DESCRIPTION	
Facts:	The civil society organisation Land Access Movement of South Africa (LAMOSA) was the Applicants in this matter. They brought an application challenging the constitutionality of the now repealed Amendment Act which opened more land claims from 1998 to 2014. The basis was that it would prejudice claimants who filed their claims by 31 December 1998 but whose claims remained

	<p>unresolved. Secondly, the Applicants averred that section 6(1)(g) was vague, and thus failed to protect adequately the interests of existing claimants.</p> <p>The section required the Commission to “ensure that priority is given” to claims lodged by the 31 December 1998 deadline, however, it did not set out the consequences of applying same. This was primarily due to competing claims as new claimants would be free to claim against land that has already been claimed or awarded to existing claimants.</p> <p>Furthermore, the applicant argued that the Commission lacked capacity and many claims still sought finalisation and that Parliament failed to satisfy its obligations to ensure public participation.</p> <p>The court then interdicted land claims from 2014-2016 and found that the public participation procedure in approving the Amendment Act was not constitutionally valid.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>The Court held that the re-opening of the land claims process is of paramount importance and public interest. Reasonable public participation in the legislative process that resulted in the enactment of the Amendment Act was crucial. On this basis the NCOP’s public participation process was unreasonable and failed to comply with the envisaged procedure.</p> <p>The Court held further that failure by one of the Houses of Parliament to comply with a constitutional obligation amounts to failure by Parliament as a whole. It was thus unnecessary to consider the alternative prayer for a declaration of invalidity of section 6(1)(g) of the amended Restitution Act in respect of which the applicants sought direct access.</p> <p>In light of the above, the Court ordered that Parliament had failed to satisfy its obligation to facilitate public involvement in accordance with section 72(1)(a) of the Constitution; the Restitution of Land Rights Amendment Act 15 of 2014 is declared invalid from the date of judgment; and the Commission on Restitution of Land Rights is interdicted from processing in any manner whatsoever land claims lodged from 1 July 2014.</p> <p>The Restitution of Land Rights Amendment Act was therefore declared invalid due to an unconstitutional public participation process by the National Council of Provinces.</p>



*Land Access Movement of South Africa v  
Chairperson of National Council of Provinces*

REFERENCES	
Reference(s) to other court decision	