

GENERAL INFORMATION ABOUT THE CASE	
Case URL	<a href="http://www.saflii.org/za/cases/ZACC/2019/10.html">http://www.saflii.org/za/cases/ZACC/2019/10.html</a>
Name of Case:	Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others (LAMOSA 2)
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:	Extension of interdict on land claims following LAMOSA 1
Justice(s)/Judge(s)	Mhlantla J  Mogoeng CJ, Basson AJ, Cameron J, Dlodlo AJ, Froneman J, Goliath AJ, Khampepe J, Petse AJ and Theron J concurring
Reference No:	[2016] ZACC 22
Filing No:	CCT40/15
DESCRIPTION	
Facts:	This matter continues from the <i>Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others</i> (CCT40/15) [2016] ZACC 22 (28 July 2016) (LAMOSA 1), in which the Restitution of Land Rights Amendment Act 15 of 2014 was declared invalid. The Constitutional court in gave parliament 24 months to enact a new Amendment Act within that period. Parliament failed to do so. Furthermore, the Court also ordered that if Parliament failed to meet the aforementioned deadline, the Chief Land Claims Commissioner must apply to the Constitutional Court

	<p>within two months after the 24 months elapsed for an appropriate order on the processing of land claims lodged between 1 July 2014 and 28 July 2016 (interdicted claims).</p> <p>In this case, the Speaker of the National Assembly and Chairperson of the National Council of Provinces made an application to the Constitutional court for an extension of an interdict issued by the Constitutional Court in LAMOSAS 1 against the processing of any interdicted land claims. The extension was sought in order to enable Parliament to finalise the process of enacting a new Amendment Act. Parliament argued. It argued further that it has already taken reasonable steps towards the expeditious processing of the Bill.</p> <p>The first to sixth respondents, opposed the application. Instead, they sought the court to deal with the processing of the interdicted claims. They proposed that old claims should be prioritised over interdicted claims.</p>
<p><b>DECISION/JUDGMENT</b></p>	
<p>Decision/Judgment:</p>	<p>The Constitutional Court noted that it has wide discretionary powers pursuant to the Constitution and is required to make a just and equitable order.</p> <p>The Court noted that Parliament had delayed in bringing the application before the Court and the explanations offered for its inaction were insufficient. Parliament had failed to show that there were exceptional circumstances justifying the order for extension sought and, further, it had failed to show that a new Amendment Act would be enacted, and with the necessary public participation processes, by 29 March 2019 which was a date proposed by Parliament.</p> <p>The Court granted the alternative proposed by LAMOSAS and other respondents. The Court held that the alternative relief creates a default position for regulating the old claims and interdicted claims and allows the Commission to consider the interdicted claims. This limits the prejudice outlined by the Communities as the processing of claims will, in theory, be faster. Further, the Court held that the alternative relief represents compromise, in that the Court provides relief pursuant to LAMOSAS 1 and determines the process regarding the prioritisation of claims. It has the effect of being flexible and</p>



*Speaker of the National Assembly v Land Access Movement  
of South Africa*

	<p>equitable by allowing Parliament to depart from this position by passing new legislation in respect of the prioritisation.</p> <p>The court therefore ordered that the Commission should process old claims (lodged before 31 December 1998) as a matter of priority.</p>
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



REFERENCES	
Reference(s) to other court decision:	Sibiya v Director of Public Prosecutions, Johannesburg High Court [2006] ZACC 22; 2006 (2) BCLR 293 (CC) Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development [2013] ZACC 35; 2014 (1) SACR 327 (CC); 2013 (12) BCLR 1429 (CC)