

GENERAL INFORMATION ABOUT THE CASE	
Case URL	http://www.saflii.org/za/cases/ZACC/2010/10.html
Name of the case	Tongoane and Others v National Minister for Agriculture and Land Affairs and Others
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:	Struck down Communal Land Rights Act
Justice(s)/Judge(s)	Ngcobo CJ [Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Mogoeng J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concur]
Reference No:	2010 (6) SA 214 (CC)
Filing No:	CCT 100/09
DESCRIPTION	
Facts:	This case concerned the Communal Land Rights Act, 2004 (CLARA), which was enacted to give effect to section 25(6) of the Constitution (which required Parliament to enact legislation to provide legally secure tenure or comparable redress to people or communities whose land tenure is insecure due to past racist policies).

	<p>The applicants in this case – each of whom represent a community that occupied land to which CLARA applies – challenged the validity of CLARA on both procedural and substantive grounds in the High Court. This challenge was successful, and CLARA was declared invalid.</p> <p>The applicants then sought a confirmation of this declaration of invalidity from the Constitutional Court. Motivating this application was the concern that CLARA undermined (rather than strengthened) security of tenure.</p> <p>In the Constitutional Court, three issues arose: whether CLARA was enacted by the proper procedure; whether its enactment complied with Parliament’s constitutional obligation to facilitate public involvement; and whether the substance of CLARA undermined (rather than provided) legally secure tenure. The court found that CLARA was not enacted by the proper procedure; and this failing rendered the Act invalid in its entirety. CLARA was thus struck down on this basis alone, and the other two issues were not considered.</p>
<p>DECISION/JUDGEMENT</p>	
<p>Decision/Judgement:</p>	<p>The court’s decision turned on whether the proper procedure was followed in CLARA’s enactment. Different procedures apply depending on whether a bill is tagged in terms of section 75 or 76 of the Constitution. The court held that the proper test to be applied in deciding how a bill should be tagged was the” substantial measure” test, which asks whether the provisions of the bill fall in substantial measure within a functional area listed in schedule 4. The functional areas relevant to this case were customary law and traditional leadership.</p> <p>The court found that, because CLARA dealt with communal land which was historically regulated by customary law; and because CLARA both introduced a system of land administration committees and allowed traditional councils to assume the powers and duties of these committees, provisions of the bill did indeed fall within the relevant function areas. The bill was thus incorrectly tagged and so enacted by the incorrect procedure - one which did not give due weight to the voices of the provinces. This procedural failure rendered CLARA unconstitutional in its entirety.</p>

REFERENCES	
Reference(s) to other court decision	<ul style="list-style-type: none">- Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill (CCT12/99) [1999] ZACC- Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others (CCT27/95) [1995] ZACC- Doctors for Life International v Speaker of the National Assembly and Others (CCT12/05) [2006] ZACC