

GENERAL INFORMATION ABOUT THE CASE	
Case URL	https://lrc.org.za/wp-content/uploads/pdf/LCC133.2012-Judgment-05072016-Signed.pdf http://www.saflii.org/za/cases/ZALCC/2002/14.pdf
Name of case:	<i>Msindo Phillemon Msiza v Johannes Uys and three others</i>
Court name:	Land Claims Court
Type of court:	<input type="checkbox"/> Constitutional Court <input type="checkbox"/> Supreme Court of Appeal <input type="checkbox"/> High Court <input checked="" type="checkbox"/> Other
Issue:	Calculation of just and equitable compensation
Justice(s)/Judge(s)	Ngcukaitobi AJ
Reference No:	LCC133/2012
Filing No:	
DESCRIPTION	
Facts:	<p>The parties to the matter sought to rely on market value alone to determine what constitutes just and equitable compensation however, it was clarified that an equitable balance between the public interest and the interests of those affected must be considered instead.</p> <p>The court was mandated to determine the amount to be awarded in line with section 23 of the Land Reform (Labour Tenants) Act 3 of 1996 (“the Act”). The Act dictates that an owner of affected land “<i>shall be entitled to just and equitable compensation as prescribed by the Constitution</i>”. Since there was no agreement as to the amount of compensation to be paid, this court was required to determine the amount by the process of arbitration.</p>



	<p>Section 23(1) of the Constitution demands just and equitable compensation for an expropriation. Given that South Africa has such a long history of land dispossession, land restitution is imperative.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>The court found that the third and fourth respondents were aware that the affected portion of land was being used by the applicant and his family especially for cow grazing. The third and fourth respondents on the other hand never used the land. On this point, the applicant was favoured by the law.</p> <p>Since the first respondent had acquired the land through the colonialist agenda, basing the compensation amount on market value alone would mean that they get to benefit twice and this is unethical. The Constitution is meant as a balancing weight to the market value aspect.</p> <p>Ultimately, even though market value is the most tangible form of calculating the compensation amount, it is but one consideration to be made. Justice and equitability are the starting point instead.</p> <p>It is also important to note that the funds used for compensation come from the public purse and are mean for a legal purpose to compensate and not to reimburse.</p> <p>The court started off by determining the market value then balance this using the other factors on the list of considerations to ensure justice and equitability in a two-stage process.</p>

REFERENCES	
Reference(s) to other court decision	Msiza v Director-General, Department of Land Affairs, and Others, case number LCC39/01