

GENERAL INFORMATION ABOUT THE CASE	
Case URL	<a href="https://lrc.org.za/wp-content/uploads/pdf/Supreme-Court-of-Appeal-Judgment.pdf">https://lrc.org.za/wp-content/uploads/pdf/Supreme-Court-of-Appeal-Judgment.pdf</a>
Name of case:	<i>Uys N.O and Another v Msiza and Others</i>
Court name:	Supreme Court of Appeal of South Africa
Type of court:	<input type="checkbox"/> Constitutional Court <input checked="" type="checkbox"/> Supreme Court of Appeal <input type="checkbox"/> High Court <input type="checkbox"/> Other
Issue:	Calculation of restitution
Justice(s)/Judge(s)	Lamont AJA  Concurring Navsa ADP, Cachalia and Seriti JJA and Tsoka AJA
Reference No:	2018 (3) SA 440 (SCA)
Filing No:	1222/2016
DESCRIPTION	
Facts:	<p>In this case, the first and second appellants are the trustees of the Trust which owns the property that is the subject of this dispute. It is situated in the district of Middelburg, Mpumalanga province (Rondebosch). The owner of the property is the Dee Cee Trust (the Trust) and the labour tenant, who was awarded the property, is Mr Msindo Phillemon Msiza (Mr Msiza), the first respondent.</p> <p>The extent of the land awarded to Mr Msiza by the Land Claims Court (LCC) was a portion of Rondebosch, 45.8522 hectares in extent (the land). The Msiza family has continuously occupied the land since 1936. Mr Msiza's grandfather was recognised as a tenant who had the right to grow crops,</p>

	<p>graze cattle and reside on the land in consideration for labour. The arrangement was set out in a contract concluded under s 4(1) of The Native Service Contract Act 24 of 1932. The family exercised those rights on the land.</p> <p>On 5 November 1996 Mr Msiza’s father lodged a claim for an area of land situated on Rondebosch to be awarded to him as a labour tenant in terms of Chapter 3 of the Act. The LCC, Johannesburg, awarded compensation to the Trust, in which the appellants are the Trustees, for property awarded to the first respondent, Mr Msiza, and his family.</p> <p>The Trust’s complaint is that the LCC determined the compensation on the basis that the property was zoned for agricultural use instead of having regard to its developmental potential. And it then compounded the error by arbitrarily reducing the market value of the property because it was awarded to a labour tenant.</p> <p>The LCC was hesitant to apply the two-stage approach but did so and accepted the market value of R1.8-million. It then proceeded to consider compensation which would be just and equitable. It determined that an amount of R300 000 should be deducted from the market value.</p>
<p><b>DECISION/JUDGMENT</b></p>	
<p>Decision/Judgment:</p>	<p>This is an appeal from the Land Claims Court (the LCC) (Ngcukaitobi AJ and Canca AJ) against the amount of compensation it determined was due to the owner of a portion of a property expropriated pursuant to successful claim by labour tenant under s 23 (1) of Land Reform (Labour Tenants) Act 3 of 1996.</p> <p>The primary issue between the parties in the matter related to the market value of the land in question and whether such land had residential development potential or whether it was agricultural land as the respective valuations differed substantially in worth.</p> <p>After weighing up all the prevailing circumstances and factors relating to the land, the SCA held that the Constitution set the factors constituting the just and equitable compensation to the landowner for land. The SCA dealt with the LCC’s decision to deduct R300 000 from the market value R1.8-million it had determined on that basis of what it termed a ‘disproportionate chasm’ between the amount paid by the</p>

Trust and the market value it sought to claim, the SCA held that there was in fact no disproportionality in this regard as the value of the land had escalated over time. As such ordered that the amount payable is R1.9-million

The SCA stated that section 25(3) sets out a number of factors to be considered. Because it is usually the one factor capable of objective determination, market value is the convenient starting point for the assessment of what constitutes just and equitable compensation in any case, and then the other factors are considered to arrive at a final determination.

This approach, the court emphasised, must be applied with care to ensure that all the factors set out in s 25(3) are given equal weight. The factors set out in s 25(3) makes justice and equity paramount in the calculation of compensation; market value on its own is but a component of the set.

In considering these circumstances, the SCA held that there was no evidence that the fiscus is unable to pay R1.8-million for the land. In fact, it accepted that the valuation was appropriate. Furthermore, there was no evidence that the State is unable to meet claims of this nature. On the contrary it found that this was the amount the State was willing to pay.

The SCA held that there were thus no facts justifying the deduction of the amount of R300 000. The LCC arbitrarily decided on this amount with no rational foundation. The amount was accordingly unfounded and cannot stand. A just and equitable determination for the land is R1.8-million.

REFERENCES	
Reference(s) to other court decision	Du Toit V Minister of Transport 2006 (1) SA 297 (CC).