

GENERAL INFORMATION ABOUT THE CASE	
Case URL	<a href="http://www.saflii.org/za/cases/ZACC/2015/25.html">http://www.saflii.org/za/cases/ZACC/2015/25.html</a>
Name of case:	<i>Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority &amp; Others 2015 (6) SA 32 (CC).</i>
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:	The registration and the effect of CPAs as a legal vehicle for land ownership and economic mobility
Justice(s)/Judge(s)	Jafta J  Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J, Theron AJ and Tshiqi AJ
Reference No:	[2015] ZACC 25
Filing No:	CCT 231/14
DESCRIPTION	
Facts:	This case concerned the nature of a vehicle chosen by members of the community of Bakgatla Ba Kgafela Communal Association. The applicant, Bakgatla-Ba-Kgafela Communal Property Association was a temporary association formed by members of the Bakgatla-Ba-Kgafela community made up of 32 villages in North West. The applicant sought to regain ownership of communal land that had been dispossessed of during the apartheid era. To this effect, the Bakgatla-Ba-Kgafela community lodged a

	<p>claim in terms of the Restitution of Land Rights Act which was approved by the Minister of Rural Development and Land Reform in 2016. The communities' view was that the association should be registered in order to possess the land.</p> <p>A dispute arose between the community who preferred an association and the first and second respondent who wanted a trust instead. Consequently, the association could not be registered. Therefore, the third respondents intervened in the matter by proposing a provisional association which would be registered for a period of twelve months whilst the matter was being resolved.</p> <p>The issue, however, was not resolved within the twelve-month period and the association was not registered as a permanent one. As a result, the Minister instituted proceedings and the applicant sought a direction to the fourth respondent to register the association as a permanent one. As such, the Constitutional Court had to decide whether the association was properly registered under the Communal Property Association Act, section 5(4).</p> <p>Having considered the circumstances, the court ordered that in as much as the community association was temporary, the director-general of DLDR must register it and as such, the association exists and should be used to house the communal land.</p>
<p><b>DECISION/JUDGMENT</b></p>	
<p>Decision/Judgment:</p>	<p>In the unanimous judgement delivered by Jafta J, the court considered the purpose of the act according to the Constitution and held that it is to facilitate the process of restoring land to wrongfully dispossessed people in line with section 25(7) of the Constitution. In doing so, the Department of Rural Development and Land Reform (DRDLR), fourth respondent, is mandated with overseeing the application of the Act is to actively support the interests of the community by making information available to them, facilitating the process and doing all that is possible to ensure that the process of restoring the land is carried out.</p>



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The court further stated that one is to approach such matters with a dedicated spirit of land redistribution and found that this had not been the attitude of the Minister who as rather dismissive of the applicant. Ultimately, the court found that once an association qualifies to be registered in terms of section 5(2) of the Act, the director-general of DRDLR must register it and has no discretion to decide not to.

Therefore, the court concluded that the association may have lost right to alienate land but not its legal personality. As such applicants could have their association registered and the Supreme Court's finding was overturned.



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REFERENCES	
Reference(s) to Court Decision	