

## **The Land Court Act No.6 of 2023: Explainer**

The Land Court Act No.6 of 2023 (hereafter referred to as the Act) is the legislative foundation for establishing South Africa's Land Court. Following a three-year process in Parliament, the Act came into effect on April 5, 2024.

The Act establishes the Land Court (hereafter referred to as the Court) and outlines procedures for appealing decisions made by the Court. This permanent court replaces the Land Claims Court. It is established in response to the need to accelerate land reform lawfully and equitably, guided by an interpretation of the law that embodies the revolutionary values of the Constitution. All interested parties have the right to access its proceedings, observe case resolutions, and obtain relevant court documents.

Understanding how the Land Court operates necessitates an examination of its key features as outlined in the Act. These include the Court's jurisdiction, adjudicatory processes, and its powers.

### **Seat and Composition: Sections 3, 4 & 6**

*Who hears cases in the Land Court? Where is the Court located?*

The Court, located in Johannesburg, is made up of a Judge President, a Deputy President, and as many other judges as may be determined and approved by the President of South Africa. These presiding officers are appointed based on their training, experience, and expertise in the field of land rights, with attention to ensuring diverse representation in terms of race and gender.

Cases brought before the Court are to be heard before a single judge who may hear the matter with an assessor with skills and experience relevant to the work of the Court. Assessors have specific expertise and usually help the judge to make a decision. Additionally, the Act states that if it appears to the Judge President that it is expedient or in the interest of justice to do so, the Court may sit elsewhere.

## **Jurisdiction and Powers: Sections 7, 17 & 24**

*Which types of land matters can the Court deal with?*

The Act introduces amendments<sup>1</sup> to five laws to include a provision that directs the resolution of all disputes arising from these laws strictly to the Land Court. The amended Acts include the;

- a. Interim Protection of Informal Land Rights Act, 1996;
- b. Land Reform: Provision of Land and Assistance Act, 1993;
- c. Kwa-Zulu Natal Ingonyama Trust Act, 1994;
- d. Land Reform: Labour Tenants Act, 1996;
- e. Restitution of Land Rights Act, 1994 (Restitution Act).

Amendments have also been made to three additional acts: the Upgrading of Land Tenure Rights Act, 1991; the Communal Property Associations Act, 1996; and the Extension of Security of Tenure Act, 1997. These amendments allow for disputes falling within their scope to be heard by Magistrate Courts, provided that the land which is the subject of the dispute falls within the jurisdiction<sup>2</sup> of such Magistrate Courts. The Land Court can also be a court of first instance in matters arising from these three legislations. Appeals against decisions made by these Magistrate Courts can be lodged in the Land Court.

*What happens if parties are unhappy with a decision of the Land Court?*

Appeals<sup>3</sup> against decisions made by the Court must be heard before a full Court (three judges) after leave to appeal has been granted. If the matter was heard before three judges in the Land Court, leave to appeal<sup>4</sup> to the Supreme Court of Appeal may be sought from the Land Court or the Supreme Court of Appeal. An appeal against a judgment of the Court may also be made directly to the Constitutional Court.

---

<sup>1</sup> Change or additions made to existing laws

<sup>2</sup> The authority or power of the Court to hear the matter.

<sup>3</sup> A process whereby the order of the judge or magistrate can be overturned if one can prove that the said judge made an error in fact or law.

<sup>4</sup> Requesting permission from the court that first heard the matter to ask another court to hear the matter. Applicants whose matters began at the magistrate court have an automatic right of appeal at the Land Court.

*What powers does the Land Court have?*

The Land Court possess similar powers to the division of the High Court for all matters falling within its jurisdiction. These powers encompass various actions, such as:

- i. issuing appropriate orders,
- ii. referring certain matters to mediation,
- iii. directing the restoration of land,
- iv. awarding compensation by the state to claimants,
- v. if the claimant is a community, determining the manner in which rights are to be held or the compensation is to be paid or held,
- vi. determining the form of title under which rights may be held in future,
- vii. and, where necessary, mandating land acquisition or expropriation.

**Proceedings of the Court Section 14 & 21**

*Will the court have special rules?*

The Act directs the Rules Board to establish rules governing the proceedings of the Court. These rules are separate from the land court regulations which have recently been published for comment.<sup>5</sup> The rules are designed to expedite dispute resolution and minimise expenses. They will specify, among other things, the circumstances under which written and oral evidence can be presented to the Court, as well as the conditions for default judgments.

If these rules are not yet in place, the provisions of the Superior Courts Act 10 of 2013 and the rules governing proceedings in various provincial and local divisions of the High Court will apply. However, adjustments may be necessary to accommodate the unique context of the Land Court.

*What types of evidence will the Court be able to accept?*

The establishment of the Court necessitates flexibility in rules, especially regarding the admissibility of oral evidence in addition to written documents. For example, individuals lodging disputes under the Interim Protection of Informal Land Rights Act, such as

---

<sup>5</sup> The Draft Land Court Regulations, 2024 only speak to the appointment of officers of the Court, the provision of legal assistance and forms of oath or affirmation of a person appointed as a judge of the Court and who is not a judge of the High Court.

descendants, successors, or family members, may only have access to oral evidence (hearsay evidence<sup>6</sup>) about their family history to support their claims. Applying strict rules of evidence without flexibility could potentially hinder customary land rights holders from effectively protecting their land rights. Therefore, the Court must consider such circumstances and allow for flexibility in its rules to ensure fair access to justice for all parties involved.

Although the Act relaxes the strict rules of admissibility of oral evidence, it does so solely for claims under the Restitution Act. The Act also contemplates the possibility of admission of hearsay evidence about the following matters

- a) the circumstances surrounding the dispossession of a land right and
- b) the rules governing the allocation and occupation of land within a claimant community at the time of dispossession.

Additionally, the Act allows for the introduction of expert evidence regarding the historical and anthropological facts relevant to the dispute before the court.

### **Intervention to proceedings before the Land Court and Legal representation Section 16**

#### *Who can bring cases before the Land Court?*

The Act introduces a shift in the criteria for intervening in cases as compared to the Land Claims Court. While the Land Claims Court allowed any “interested person”, including an “organisation” to seek leave to intervene, the Land Court requires the intervening party to demonstrate “legal standing” when applying for leave to intervene. This change suggests a higher threshold for intervention, as legal standing typically entails direct or substantial interest in the matter at hand.

“Interest” is established based on a number of factors including the broader public interest. Public interest organisations have often been parties to cases heard by the Land Claims Court, with their interventions being allowed to recognise the broader public interest they aim to safeguard. The shift in wording to “legal standing” in the Land Court Act raises questions about the rationale behind this change. Clarity on this matter is expected to emerge from the rules to

---

<sup>6</sup> Hearsay evidence refers to the evidence tendered by a person who did not personally witness with his or her eyes/senses, but heard from someone else.

be established, which will likely provide further guidance on the criteria for intervention and the interpretation of "legal standing" within the context of the Land Court.

*Are legal representatives part of the Court's proceedings?*

Under the Land Court Act, parties can represent themselves or choose a legal practitioner at their own expense. However, if a party cannot afford legal representation, the Act introduces a two-step process before legal representation may be provided.

The Court first assesses whether it is in the best interest of the party to have legal representation. If so, the matter is referred to Legal Aid South Africa. Subsequently, Legal Aid South Africa assesses whether the absence of legal representation would result in substantial injustice before deciding to provide legal assistance.

The Land Court Act does not provide a specific definition for what constitutes "substantial injustice". Furthermore, it does not outline specific circumstances where it may not be in the best interest of a party to receive legal representation. Additionally, the Act is not clear on the level of expertise and training Legal Aid lawyers need to have in the field of land rights.

## **Conclusion**

In conclusion, the Land Court Act No. 6 of 2023 marks a significant milestone in South Africa's legal landscape, establishing the Land Court with a mandate to address disputes related to land rights. It provides a framework for the Court's jurisdiction, composition, powers, and procedural aspects. Notably, the Court's establishment represents a shift to an approach that emphasises equitable and lawful land reform guided by constitutional principles. Key provisions include the Court's jurisdiction over specified land-related disputes, its composition of qualified judges, and provisions for legal representation. However, certain aspects, such as rules governing oral evidence and intervention criteria, raise questions about practical implementation and potential impacts on access to justice. As the Land Court begins its operations, ongoing scrutiny and refinement may be necessary to ensure its effectiveness in advancing land rights and equitable dispute resolution.