



SAKELIGA
SELFSTANDIGE SAKEGEMEENSKAP

23 July 2021

TO: THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL
SERVICES

ATTENTION: Mr. V Ramaano

DELIVERED:

By email: Landcourt@parliament.gov.za

Dear Sirs / Madams

COMMENT ON THE LAND COURT BILL [B11 – 2021]

Sakeliga has taken note of the publication of the land court bill. We restrict our comment to clause 22 of the Bill. The clause deals with the admission of evidence. The envisioned court is empowered to admit evidence, including oral evidence.

- Clause 22(2) notes that it is competent for any party before the court to adduce on grounds of "hearsay evidence" surrounding issues of dispossession. Moreover, expert evidence is also admissible to the court.
- The Bill circumvents the normal admissibility requirements for the admission of hearsay evidence, as stipulated by section 3 of the Law of Evidence Amendment Act, 1988.
- There is no apparent reason why the normal rules surrounding the admission of hearsay evidence should not apply in land claim cases. Providing for deviating rules surrounding hearsay in the Land Court Bill, to the effect that hearsay evidence can be admitted without recourse to the requirements that would normally render hearsay evidence non-admissible, puts the defending landowner in a precarious position.
- In terms of the Bill, it is expected of the landowner to put up a possibly costly defence in court against a claim based on hearsay evidence that has not been properly tested by the court, as the case would have been in any other civil proceeding.
- We caution that such a legal treatment may subvert standing legal tradition and result in unequal treatment under the law.
- Unequal treatment would occur when the defendant owner of the land is required to prove his or her lawful possession beyond a balance of probability, but claimants are allowed to bring claims with a less rigorous burden of proof requirement.
- It is paramount to a sound constitutional order that both claimants and defendants enjoy equal protection and equal safeguards under law.



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- Issues of ownership are important and safeguards to private ownership rights are necessary for economic stability, investment, and development.
- Certainly, steps taken toward the restoration of those who have been dispossessed is understandable. However, an undue burden of legal proceedings or threats to private property should not fall on those in lawful possession of property. At the very least, an appropriate *prima facie* burden of proof must be applied to claims and claimants that seek to institute claims.

Recommendation:

- Sakeliga recommends that clauses 22(2) and 22(3) be amended with strengthened safeguards provisions to allow for early dismissal of cases where a claimant is unable to present *prima facie* evidence of past ownership of an acceptable standard.
- The provisions of the bill that allow for the admissibility hearsay evidence need to be strengthened in order to require that hearsay evidence is properly tested before being admitted to the court in proceedings of land claims.
- The clauses should be redrafted to afford equal protection under law for both claimants and owners of property alike.

We hereby also indicate our interest in making verbal representations on the bill.

Yours faithfully,

Gerhard van Onselen
Senior Analyst: Sakeliga

