**IN THE HIGH COURT OF SOUTH AFRICA**
**(WESTERN CAPE DIVISION, CAPE TOWN)**

**Case No: 19098/2018**

In the matter between:

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| **HOMO SAPIENS, NEGRO, ETHIOPIAN, SEMITE, ISRAELITE PEOPLE OF SOUTH AFRICA** | **First Applicant** |
| **MS SABINA VALERIE CLARISSE** | **Second Applicant** |
| **and** | |
| **PRESIDENT OF SOUTH AFRICA** | **First Respondent** |
| **NATIONAL TREASURY** | **Second Respondent** |
| **SOUTH AFRICAN REVENUE SERVICES** | **Third Respondent** |

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**JUDGMENT DELIVERED: 06 DECEMBER 2019**

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**SALDANHA J:**

[1] During the course of the hearing of the application the attention of the court was repeatedly drawn, by members of the applicants present in court, to the coat of arms and its inscription, carved in wood, that is mounted on the wall of the court behind the seat of the judge. The inscription in the indigenous languages of the Khoi, and that of the San and the Ixam people, reads: *"!ke e: Ixarra IIke*", that literally translates to *"diverse people unite."* These words are derived from the Preamble to the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution,")

that proclaims that the people of this country "[*b*]*elieve that South Africa belongs to all who live in it, united in our diversity.*"

One of the great hallmarks of the South African democracy, is that Section 15(1) of the Constitution provides that "[e]veryone has the right to freedom of conscience, religion, thought, belief and opinion**.**" These rights are enhanced by the provisions of Section 16, which provides that:

> "(1) Everyone has the right to freedom of expression, which includes –
>
> (a)…
>
> (b) freedom to receive or impart information or ideas; …"

These rights were not in contention in the matter. The applicants have, however, in accordance with the right of access to courts enshrined in the Constitution under Section 34,[1] fully exercised and boldly asserted these rights in the application.

[2] The first applicants, The Homo Sapiens, Negro, Ethiopian, Semite, Israelite People of South Africa, were represented in person by the second applicant, Ms Sabina Valerie Clarisse. She emphatically eschewed the use of legal representation in both the drafting of the application and in argument. Counsel for the first respondent, Ms. R. Nyman, informed the court that when the application was set down for hearing by the Judge President, she undertook at his behest to obtain *pro bono* legal representation for the applicants. The applicants promptly rejected the offer and elected to represent themselves.

[1] "**Access to courts**
Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

[3] In the initial Notice of Motion filed by the applicants in October 2018, they sought "…*direct access to the Honourable Court, to claim our Cest Q Vie trust rights-in person, "In Propia" persona "in his or her own person" which includes all of our Homo Sapiens, Negro, Ethiopian, Semite, Israelite people of South Africa , offspring, children and the next generation of Homo Sapiens, Negroe, Ethiopians, Semite, Israelite People of South Africa"* from the South African government (also referred to as the South African Corporation).

[4] They further sought a declaratory order that "*the claimant and all Homo Sapiens, Negroe, Ethiopians, Semites, Israelite People of South Africa, respectively, collective and individual rights to its ancestral, language, resources and rights in accordance be protected and return to the rightful land owners who were dispossessed on the same grounds of Aboriginal Title as was granted in the matter of* **Alexkor Ltd and Another v The Richtersveld Community and Others** 2004(5) SA 460 CC,(sic)."

[5] At the commencement of the hearing, Ms. Clarisse placed on record that the applicants did not recognize the Constitution of the Republic of South Africa, and the courts of law established in terms of the Constitution. On behalf of the all the applicants she requested that the court sit and consider the application in terms of *"common law"*. In response, the court advised the applicants that in terms of the Constitution, the judicial authority of the Republic is vested in the courts and that judicial officers are appointed in terms of the Constitution.[2] The court was therefore

[2] "165. **Judicial Authority.-**(1) The judicial authority of the Republic is vested in the courts.
(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
(3) No person or organ of state may interfere with the functioning of the courts.

unable to exercise any judicial function other than in terms of the Constitution and from which it obtained its judicial authority. The applicants explained that the basis for the position they adopted was that they, the indigenous people of South Africa, had been excluded from the negotiations at CODESA.[3] The theme of political exclusion of the applicants resounded throughout the affidavits in the application, and in the oral argument presented on their behalf.

At the outset, I should state that the application raises profound and persistent historical questions regarding the socio-political identity of the indigenous peoples of South Africa, complex issues of identity, exclusion and recognition, and that of the most brutal dispossession of land over many centuries. In my view, courts and the law may not always be the most ideal, nor the most appropriate, means of resolving such complex historical issues.

[6] Despite their jurisdictional dilemma, the applicants persisted in their claims before the court. Notwithstanding the views expressed by the applicants about the legitimacy of the Constitution of the Republic of South Africa, section 8(3) provides for the development of the common law. It reads:

> *"When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court-*
>
> *(a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and*

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(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
(5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.
(6) ..."

[3] The negotiations held between the various political parties to settle the terms of the constitutional dispensation for a future democratic South Africa and the processes that subsequently led to the adoption of the Constitution.

*(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36 (1)."*

The Constitution makes provision for the restitution of rights in land, in Section 25(7), which provides:

*"A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress."*

In compliance with the provision, Parliament enacted the Restitution of Land Right Act, 22 of 1994 ("the Restitution Act").

In Chapter 12 of the Constitution, that deals with Traditional Leaders, section 211(3) provides that:

*"The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law."*

The Constitution importantly provides, in section 39, that:

*"(1) When interpreting the Bill of Rights, a court, tribunal or forum-*

*(a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;*

*(b) must consider international law; and*

*(c) may consider foreign law."*

It therefore remained the responsibility of the court to hear the application brought by the applicants, and to consider and determine whether they had established a basis,

both on the evidence and in law, for the relief sought. More significantly, they had themselves elected to bring their claims before a court of law.

[7] The central demand made by the applicants was a declaration by the court "*for the return to the rightful landowners who were dispossessed on the same grounds of Aboriginal Title as was granted in the"* **Richtersveld** decision of the Constitutional Court.

The applicants brought their claim by motion proceedings, whereas the claim by the **Richtersveld** community was brought by action. Extensive evidence was lead in the **Richtersveld** matter, on the history of the use and occupation of the subject land, the indigenous laws and customs of the claimants and their eventual dispossession of the land. The oral history of lay witnesses was supported by expert evidence of historians, anthropologists and field based research. Extensive references were made to archival records and maps, and so too of articles of reputed authors on the subjects; all of which were entered into evidence.

The claimants in the **Richtersveld** matter in the court of first instance, the Land Claims Court (LCC),[4]asserted their claim to "rights in land"[5] in terms of the Restitution Act and in the alternative to *"a right based on aboriginal title allowing them the exclusive beneficial occupation and use of the subject land, or the right to use the subject land for certain specified purposes."* At paragraph 6 of the judgment it is recorded that*:*

[4] 2001 (3) SA 1293 (LCC)

[5] "'right in land' means any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question".

*"In their statement of claim in this Court the plaintiffs asserted that the Richtersveld people held title to the subject land and that such title was not at any time prior to 19 June 1913 lawfully extinguished or diminished. They submit that this title falls within the definition of right in land' as contained in the Restitution of Land Rights Act. I will refer to this Act as 'the Restitution Act'. In terms of the definition 'right in land' includes:*

> *'any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question'.*

*Their right in land is alleged to be:*

*(a) ownership; alternatively*

*(b) a right based on aboriginal title allowing them the exclusive beneficial occupation and use of the subject land, or the right to use the subject land for certain specified purposes; alternatively*

*(c) 'a right in land' over the subject land acquired through their beneficial occupation thereof for a period longer than 10 years prior to their eventual dispossession.*

*The plaintiffs alleged that they were dispossessed of their rights in land by legislative and executive State action after 19 June 1913 as a result of racially discriminatory laws and practices. They aver that they did not receive any compensation at all in respect of the dispossession, alternatively that they did not receive just and equitable compensation. They claim restitution of their rights in land under the Restitution Act." (Footnotes omitted.)*

A right in land based on Aboriginal title is described in an article by Bennet and Powell[6]as follows:

*"Aboriginal title (or native title as it is also called) is a right in land, one vesting in a community that occupied the land at the time of colonisation. Once such*

[6] "*Aboriginal Title in South Africa Revisited" (1999) 15 South African Journal on Human Rights at 449.*

*a title is established, the claimants may vindicate their land or, if it has been expropriated without adequate reimbursement, claim compensation."*

The LCC pointed out that the doctrine of aboriginal title has been established and developed in various countries such The United States, Canada[7] Australia[8] and New Zealand. In the landmark decision of **Mabo v Queensland** Judge Brennan summarized the common law of Australia, with reference to aboriginal title, as follows:

> *"1. The Crown's acquisition of sovereignty over the several parts of Australia cannot be challenged in an Australian municipal Court.*
> *2. On acquisition of sovereignty over a particular part of Australia, the Crown acquired a radical title to the land in that part.*
> *3. Native title to land survived the Crown's acquisition of sovereignty and radical title. The rights and privileges conferred by native title were unaffected by the Crown's acquisition of radical title but the acquisition of sovereignty exposed native title to extinguishment by a valid exercise of sovereign power inconsistent with the continued right to enjoy native title.*
> *4. Where the Crown has validly alienated land by granting an interest that is wholly or partially inconsistent with a continuing right to enjoy native title, native title is extinguished to the extent of the inconsistency. Thus native title has been extinguished by grants of estates of freehold or of leases but not necessarily by the grant of lesser interests (e.g., authorities to prospect for minerals)."*

The LCC expressed its misgivings of a right based on aboriginal title in South Africa, calling it *"dubious"* in para 46, as it was uncertain as to whether the doctrine formed part our law, and if it did, what the scope and contents thereof were. The Court was further not aware of any reported case on the recognition of the doctrine in South

[7] *Calder v Attorney-General of British Columbia [1973] 34 DLR (3d) 145 (further page references are to the DLR version); Delgamuukw v British Columbia [1997] 3 SCR 1010.*
[8] *Mabo and Others v Queensland (No. 2) (1992) 175 CLR 1.*

Africa. The Court was also uncertain as to, if it did form part of our law, whether it had survived the actions of the government in the context of the land having been made over to others[9].

The LCC, at paragraph 47, states:

> *"It has been established by judicial decisions in other Anglo-American legal systems that colonisation as such did not destroy indigenous rights to land[10]. The powerful arguments of principle and equity contained in these decisions may well enjoin South African courts of competent jurisdiction to adopt a similar stance. The realisation of the right to aboriginal title which indigenous people might have had in respect of land prior to colonisation and the procedures to achieve such realisation, as it developed in other countries, differ from the statutory remedies provided by the Restitution Act for the redressing of wrongs caused by apartheid. The Restitution Act is of limited compass. Bennett and Powell point this out in their article 'Aboriginal Title in South African Revisited':*
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> > *'It is understandable that, while South Africa's new political dispensation presented an obvious opportunity for redressing past wrongs, the focus fell on eradicating the most immediate injustice: apartheid. Hence, provisions in the interim Constitution for restoring land were aimed at people dispossessed under racially discriminatory laws. In furtherance of those provisions, a Restitution of Land Rights Act 22 of 1994 was passed in November 1994 enabling any such dispossessed person or community to apply to a land claims commission for return of their land. The subsequent restitution programme has unfolded in terms of this Act.*
> >
> > *Many deserving candidates fail to qualify under the Act because statutory claims were limited in two ways. Claimants must have lost*

[9] Footnoted by Court: "Compare the Mabo decision (n 90 above); Calder, above n 89 at 192-193; Fejo and Another on behalf of the Larrakia People v Northern Territory of Australia and Another (1998) 156 ALR 721 (HCA) at 736."

[10] Bennett & Powell*: Aboriginal Title in South Africa Revisited* (above n 6) at 451:
"It is, of course, true that the legal foundations for aboriginal title will vary, for the right was realised differently in different legal systems. Nevertheless, it is possible to identify a consistently held legal principle: colonisation did not destroy indigenous rights to land."

*their land as the result of a racist law and they must have been dispossessed after 19 June 1913. This date was chosen because of its association with the apartheid regime. 1913 was the year in which the first of the so-called 'pillars of apartheid' was passed, the Native Land Act 27 of 1913, which laid the foundation for systematical racial segregation in South Africa.*

*For those who cannot meet the requirements of the Restitution of Land Rights Act, aboriginal title – although still judicially untested in this country – will provide an alternative common – law ground of action.'"*

Inasmuch as a claim for aboriginal title falls outside the prescripts of the Restitution Act, the LCC found that it, *"a creature of statute"* in term of the Act, did not have the power to develop the common law, as opposed to the High Courts, the Supreme Court of Appeal and the Constitutional Court, as envisaged in section 8(3) of the Constitution (referred to above.)

[8] When the claim of the Richtersveld community came before the Supreme Court of Appeal,[11] on account of the claimants having failed to persuade the LCC that the dispossession of the subject land was the result of past racially discriminatory laws or practices in terms of Section 2(1) of the Restitution Act, the appellants again raised, as one of the alternative grounds, that the right in the subject land was based on aboriginal title and enjoined the appeal court to so develop the common law. The SCA, as did the LCC, considered, in brief, the doctrine and its development in the jurisdictions referred to in the court *a quo*. In concluding its comment on the viability of the doctrine in South African law, the Court, at paragraphs 42 and 43, remarked:

[11] *2003 (6) SA 104 (SCA)*

"*As was pointed out by L.A. Hoq 'Land Restitution and the Doctrine of Aboriginal Title: Richtersveld Community v Alexkor Ltd and Another' (2002) 18 SAJHR 421 at 435, an article commenting upon the judgment of the LCC, several commentators have addressed the hazards associated with recognising aboriginal title in South Africa. Some have expressed the view that the very reason for the 1913 cut-off date in the Act, and the fact that the date of dispossession was not extended back to the time of colonial annexation, was to eliminate claims based on aboriginal title. See, for example, J T Roux 'The Restitution of Land Rights Act' in Budlender, Latsky and Roux Juta's New Land Law (1998) 3A - 16. Other writers, such as Bennett and Powell in 'Aboriginal Title in South Africa Revisited' (op cit at 450-1) and Reilly 'The Australian Experience of Aboriginal Title: Lessons for South Africa' (2000) 16 SAJHR 512 at 528, have expressed the contrary view, namely that aboriginal title can be a legitimate and workable part of South African law.*

*All the aspects of the doctrine do not fit comfortably into our common law. For instance, the idea that the State or Crown possesses radical title to all land may have its origin in English feudal law and may be foreign to our law. In view of my conclusion that a customary law interest, for which the Act expressly provides, has been established in the present case, it is not necessary to pursue the matter any further and it becomes unnecessary to decide whether the doctrine forms part of our common law or whether our common law should be developed to recognise aboriginal rights. This conclusion also obviates any resolution of the question whether the LCC is entitled to 'develop' the common law, an issue dealt with at some length in its judgment (at paras [49]-[53]).*"

[9] The appeal to the Constitutional Court by Alexkor Ltd, on account of the SCA having overturned the finding by the LCC that the dispossession was in fact in terms of racially based practices, did not require of that court to pronounce on the viability

of the doctrine of Aboriginal title in our law, nor was it required develop the common law. The question therefore remains to be decided. In my view, of particular significance in the future development of the doctrine is the position adopted by the Constitutional Court on the application of customary law when dealing with the Richtersveld claim, where, at paras 50 to 54, it stated:

> *"The nature and the content of the rights that the Richtersveld Community held in the subject land prior to annexation must be determined by reference to indigenous law. That is the law which governed its land rights. Those rights cannot be determined by reference to common law. The Privy Council has held, and we agree, that a dispute between indigenous people as to the right to occupy a piece of land has to be determined according to indigenous law 'without importing English conceptions of property law'.*
>
> *While in the past indigenous law was seen through the common-law lens, it must now be seen as an integral part of our law. Like all law it depends for its ultimate force and validity on the Constitution… The courts are obliged by section 211(3) of the Constitution to apply customary law when it is applicable, subject to the Constitution and any legislation that deals with customary law. In doing so the courts must have regard to the spirit, purport and objects of the Bill of Rights. Our Constitution*
>
> > *'… does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill (of Rights)'.*
>
> *It is clear, therefore, that the Constitution acknowledges the originality and distinctiveness of indigenous law as an independent source of norms with the legal system. At the same time the Constitution, while giving force to indigenous law, makes it clear that such law is subject to the Constitution and has to be interpreted in the light of its values. Furthermore, like the common law, indigenous law is subject to any legislation, consistent with the Constitution, that specifically deals with it. In the result, indigenous law feeds*

*into, nourishes, fuses with and becomes part of the amalgam of South African law.*

*In 1988, the Law of Evidence Amendment Act provided for the first time that all the courts of the land were authorised to take judicial notice of indigenous law. Such law may be established by adducing evidence. It is important to note that indigenous law is not a fixed body of formally classified and easily ascertainable rules. By its very nature it evolves as the people who live by its norms change their patterns of life. As this Court point out in the Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996:*

> *'The [Constitutional Assembly] cannot be constitutionally faulted for leaving the complicated, varied and ever-developing specifics of how… customary law should develop and be interpreted, to future social evolution, legislative deliberation and judicial interpretation.'*

*In applying indigenous law, it is important to bear in mind that, unlike common law, indigenous law is not written. It is a system of law that was known to the community, practiced and passed on from generation to generation. It is a system of law that has its own values and norms. Throughout its history it has evolved and developed to meet the changing needs of the community. And it will continue to evolve within the context of its values and norms consistently with the Constitution.*

*Without attempting to be exhaustive, we would add that indigenous law may be established by reference to writers on indigenous law and other authorities and sources, and may include the evidence of witnesses if necessary. However, caution must be exercised when dealing with textbooks and old authorities because of the tendency to view indigenous law through the prism of legal conceptions that are foreign to it. In the course of establishing indigenous law, courts may also be confronted with conflicting views on what indigenous law on a subject provides. It is not necessary for the purposes of*

*this judgment to decide how such conflicts are to be resolved." (Footnotes omitted.)*

[10] The decision of the Constitutional Court has also been the subject of much debate, and there are conflicting views as to whether the Court had in fact recognised the doctrine of Aboriginal title in South African law. See in this regard the article by Karin Lehmann, *Aboriginal Title, Indigenous Rights and the Right to Culture* 2004 SAJHR 86, that is of the view that both the Land Claims Court and the Supreme Court of Appeal, expressed reservations about the doctrine in South Africa, and that the South African constitutional framework makes the situation substantially different to that in Canada and Australia, the Constitutional Court likewise did not endorse the doctrine. She contends though that the Constitutional Court does, however, adopt a language and approach similar to that used in the Canadian and Australian Aboriginal Jurisprudence. She also raises important questions around the definition of indigenous communities. She herself appears to be sceptical of the doctrine in South Africa, and comments that it would not be restitutionary, as opposed to claims under the Restitution Act. Daniel Huizenga, in an article *Articulations of Aboriginal Title, Indigenous Rights and Living Customary Law in South Africa*, Social and Legal Studies 2018 Vol. 27 (1) 3-24, notes the shift by the Constitutional Court in a focus from Aboriginal title to that of indigenous law. See also *Infogalactic: The Planetary Knowledge Core,* on the page titled *Aboriginal title*,[12] which suggests that the Constitutional Court in fact recognised Aboriginal title in the **Richtersveld** matter.

[12] https://infogalactic.com/info/Aboriginal_title

[11] More recently, Madlanga J in the matter of **Daniels v Scribante and Another** 2017 (4) SA 314 (CC), provided the searing context to the dispossession of land as having been central to colonialism and apartheid. He states: *"It first took place through the barrel of the gun and 'trickery'.*[13] *This commenced as soon as white settlement began, with the Khoi and San people being the first victims.*[14] *This was followed by 'an array of laws' dating from the early days of colonisation."* The court deals in trenchant terms with the devastating effect of the Native Land Act of 1913, which statutorily codified and confirmed the dispossession of land of the indigenous people by the colonial settlers, since the earliest times of the arrival of the Portuguese along the coast of Southern Africa through to the colonial conquests by the Dutch and the British.

I raise this decision by the Constitutional Court, albeit not directly relevant to the question of Aboriginal Title, but more so that it graphically demonstrates the role of the Court when confronted with the legacies of dispossession of land in South Africa and the philosophical approach adopted by the Courts in the protection of the rights afforded to claimants, in that matter to a occupier Ms Yolanda Daniels under the Extension of Security and Tenure Act No. 62 of 1997. Of particular significance in that matter was the concurring judgments of Froneman J and Cameron J, who were both moved by the *"shame"* that they felt by the manner in which Ms Daniels was treated by a white farm owner. Froneman J remarks stridently about the plight of black farmworkers (collectively) and the historical abuse suffered by them at the

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[13] These words have been attributed to an old man, Mr Petros Nkosi, speaking at a community meeting in the then Eastern Transvaal. Madlanga J found the reference in Rugege: "*Land Reform in South Africa: An Overview*" (2004) 32 International Journal of Legal Information 283 at 286.

[14] Lephakga*: "The Significance of Justice for True Reconciliation on the Land Question in the Present-Day South Africa",* Master of Theology thesis, University of South Africa, 2012, at 32.

hands of white farm owners, while poor whites were the targeted beneficiaries of affirmative action under apartheid. He noted the inconsistency in their benevolence for all vulnerable persons, which he regarded as nothing less than shameful. Cameron J, while concurring in the sentiments expressed by both Madlanga J and Froneman J, recorded his hesitation about the recordal of history by judges, of which he remarked that it was neither their primary competence and no more than their *"subjective and one sided views"*. He nonetheless concurred in the judgments of both Madlanga J and Froneman J, as he regarded the judgments as contributing to *"vital work at an important time in our country - at a time of angry rhetoric and intransigent attitudes, whose perils exceed those of history and the frailties of its telling"*. In context, the caution raised by Cameron J related to an application for direct access that the Constitutional Court had been confronted with, which an organisation styled the *"Indigenous First Nation Advocacy of South Africa (IFNASA)"* had lodged.[15] There the applicants claimed to speak on behalf of *"our communities also known as Boesman, Khoikhoi or the collective labels KhoiSan (so-labelled coloureds)"*. The demands included the *"affirmation as an indigenous first nation; the restoration of their land rights' the repeal of the Traditional and Khoisan Leadership Bill, 2015 and the end of racism 'against the Indigenous First Nation' in the context of Blacks but Africans in Particular'"* and in what they termed the context of government's *"decadent past fabricated identities."*

[12] On 16 November 2016 the Constitutional Court dismissed that application. It found that it was not in in the interest of justice to hear it at that stage, as the Traditional and Khoisan Leadership Bill was pending before Parliament, and that the

[15] See Williams v President of South Africa filed on 23 September 2016 under case number CCT 229/16

applicants had failed to demonstrate that they had no effective remedy if the legislation was enacted. Cameron J makes the point with reference to the context that some of the very issues his colleagues (Madlanga J and Froneman J) wrote about, may yet come before the Courts. That application, he remarked, was but one such example and that it invited obvious caution, not only judicially, but also for what the Constitutional Court was yet to decide, and more generally about the perils of writing history.

[13] Cameron J's comments, with remarkable prescience, in part foreshadowed this application.[16]

The application.

[14] In support of their claims the applicants relied on a number of random historical texts, documents, papal bulls, biblical extracts, opinions, maps, diagrams, sketches, photographs and downloads from the internet, none of which, in my view, contributed to the coherence of their claims.

[15] The three respondents filed a notice of intention to oppose the application. An answering affidavit was only filed on behalf of the first respondent, by the Director-General and Secretary to Cabinet employed in the Presidency. The President himself subsequently deposed to a confirmatory affidavit. No answering affidavits were filed by either the second or third respondents. Ms Nyman placed on record that she appeared only on behalf of the first respondent. In response to questions from the Court, she informed that despite requests made by the state attorney, no

[16] The applicants in this matter did not seek to challenge the Traditional and Khoisan Leadership Bill (as it then was).

instructions were received from the second and third respondents. The applicants, however, had not placed second and third respondents on notice to file their answering affidavits by way of a chamber book application.[17] I will revert to the position of the second and third respondents later in the judgment, inasmuch as Ms Clarisse contended that on legal advice obtained by the applicants after the adjournment of the proceedings on the first day, the applicants were *"immediately"* entitled to judgment by default against the second and third respondents.

[16] The very description and composition of the first applicant was challenged by the first respondent. In its founding affidavit the applicants described themselves as the indigenous people of South Africa, the "First Nation", the "Homo Sapiens, Negro, Ethiopians, Semite, Israelite people of South Africa", and did so in response to descriptions in papal bulls decreed by various ancient popes, in the annexations by the British Crown and the Royal Charter of Discovery. The first respondent contended that, contrary to the use of the word Homo Sapiens (Latin), all modern human beings belong to the species Homo Sapiens. The term "Negro" referred to black people, who make up the majority of the South African population, and Ethiopians are native inhabitants of Ethiopia, an independent country in Africa. The first respondent also denied the existence of Semite or Israelite cultural groups that are indigenous to South Africa. The first applicant, in reply, repeated that the group it constitutes are "Homo Sapiens" and relied on various documents, biblical texts, and papal bulls in defining the terms, and that of Israelites and Semites, and likewise defended the description of the term "Negro" and claimed that "Ethiopians" refers to all of the people of the continent originally named Ethiopia. The applicants also

[17] Needless to say they would not have been aware of the need to do so, given that they were not legally represented.

rejected the labelling of Homo Sapiens, Negros, Ethiopians, Semites and Israelites as *"amorphous"* and added that they were discriminated against in job opportunities through the *"BEE legislation and the employment equity policies of the South African Corporation*."

[17] In response to the founding affidavit that had been signed by three people - Ms Clarisse, a Mr Arthur Martin and Ms Beverley Martin - the first respondent filed a notice of exception in terms of Rule 23, on the grounds that the applicant had failed to plead facts necessary to sustain their claims. The first respondent also challenged the validly of the founding affidavit, which had been deposed to by three different people, and claimed that the applicants had failed to annex and properly cross reference the various documents they referred to in the founding affidavit. The first respondent subsequently abandoned the exception, while the applicants removed the two *"deponents"*, Mr. Arthur Martin and Ms. Beverly Martin, when filing their replying affidavits, to which they attached a plethora of documents.

[18] The grounds of the exception raised by the first respondent was that our law did not recognise *"Aboriginal Title",* and that the applicants had failed to plead facts necessary to support a justiciable claim based on the decision of the Constitutional Court in the **Richtersveld** matter. The first respondent claimed that the applicants had failed to plead;

(a) The existence of a clearly defined community residing historically in a geographical area, analogous to that of the Richtersveld Community;

(b) The occupation of and possession of land by the community through indigenous title *("indigenous law ownership")* and

(c) The dispossession of the land as a result of racial discrimination in terms of the Restitution of Land Rights Act no 22 of 1994.

Despite the formal withdrawal of the exception, these grounds remained central to the first respondent's opposition to the applicants' claims, on which the first respondent further elaborated in the answering affidavit.

[19] The applicants filed an initial reply to the first respondents answering affidavit. They responded to the points raised in *limine* by the first respondent, that the applicants had failed to annex all the documents referred to in the founding affidavit as was required by law. The applicants also responded to the defenses raised by the first respondent, in particular that *"Aboriginal Title"* is not recognised in South African law, and the other claims made by the applicants in the founding affidavit.

[20] In the replying affidavit the applicants state under a heading: "*Remedy or order requested from the court*":

*"(a) Cestui Que Vie trust funds ("Cest Que Vie trust" of 1666) of R10 million dollars each and every person of Homo Sapiens, Negroe, Ethiopian, Semite, Israelite, so called coloured people of South Africa/Ethiopia descendent, be released and given to the above-mentioned applicants and their offspring, family, children and next generation of all Homo Sapiens, Negroe, Ethiopian, Semite, Israelite, so called coloured people of South Africa by the South African Corporation (South African Government) with immediate effect.*

*(b) That no South African Corporation tax laws or any other South African Corporation laws (South African Government Corporation under (IK #:*

*932419) who is sold on the stock market as a Corporation, has no rights or without the permission of "Homo Sapiens, Negro, Ethiopian, Semite, Israelite people of South Africa or will be applicable to "Homo Sapiens, Negro, Ethiopian, Semite, Israelite people of South Africa or any of their descendants forthwith. Also with the legitimacy of all presidents with the Western countries, the illegal takeover of our country.*

*(c) That no South African Reserve Bank (SARB) or South African Revenue Service (SARS) or South African National Defends Forces (SANDF), or South African Police Services (SAPS) or any other private or public Corporation have any jurisdiction or enforce any of their illegitimate laws towards Homo Sapiens, Negro, Ethiopian, Semite, Israelite and so called derogatory coloured people of South Africa.*

*(d) A declaratory order that the claimant and all Homo Sapiens, Negro, Ethiopian, Semite, Israelite and so called derogatory coloured people of South Africa, respectively, collective and individual rights to restore all its ancestral, language, resources and rights in accordance be protected and return to the rightful land-owners who were dispossessed on the same grounds.*

*(e) We as the Homo Sapiens, Negro, Ethiopian, Semite, Israelite so called coloured people of South Africa still don't have self-determination rights, which is cultural genocide and keeping us hostage as autonomous indigenous peoples.*

*(f) We claim all tax monies which was deducted through manipulated laws binding us to the illegal system to be reimbursed and no further*

*deductions to be unlawfully deducted from Homo Sapiens, Negro, Ethiopian, Semite, Israelite and so called derogatory coloured people of South Africa.*

*(g) We claim the right as autonomous indigenous, self-governing and refuse to be governed by any such foreign illegal laws which was forced through time of conception by these foreigners who forcefully used military power and laws to keep us hostage and steal our lands, mineral resources, history, culture, language and identity.*

*(h) We as a collective will self determine (sic) and we want all derogatory labelling scrapped that is keeping us hostage.*

*(i) Such further and order remedy as the Honourable Court (Western Cape High Court, Cape Town) deems just.*

*(j) That no order of costs is made."*

[21] The applicants, shortly thereafter, filed *a "Supplementary Replying Affidavit",* in which they again responded to the first respondent's answering affidavit. The applicants also claimed that they did not rely solely on "*Aboriginal Title*" as the basis for their relief, and claimed that it was also based on what they referred to as a "fact" that *"former President Mandela was not within his rights to sell or negotiate the sale of the land of autonomous indigenous people of South Africa"*. They make the bizarre claim that the late former President had been killed in 1985 and was thereafter substituted by what they termed the "*imposter."* In support of such claims they attached a series of articles, eccentric commentaries and photographs that they claimed supported their contention.

[22] The first respondent did not file any further affidavits in response to the new claims made, and the relief sought, by the applicants in both the replying affidavit and the supplementary replying affidavit. Counsel for the first respondent submitted in argument that the new allegations and claims made in the replying affidavits by the applicants should not be admitted by the court, as none of the new claims were made in the founding affidavit as required by law. The first respondent also sought that the supplementary replying affidavit not be admitted, inasmuch as the applicants were confined to no more than a single replying affidavit in response to the answering affidavit. The first respondent referred to the provisions of Rule 6(5)(e) of the Uniform Rules of Court[18] and to the decision of **James Brown & Hamer (Pty) Ltd (Previously Named Gilbert Hamer & Co Ltd) v Simmons, NO** 1963 (4) SA 656 (A), at 660 E-H, where the Court set out the principles regarding the admission or rejection of additional affidavits:

> *"It is in the interests of the administration of justice that the wellknown and well established general rules regarding the number of sets and the proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must always be rigidly applied: some flexibility, controlled by the presiding Judge exercising his discretion in relation to the facts of the case before him, must necessarily also be permitted."*

In **Hano Trading CC v JR 209 Investments (Pty) Ltd and Another** 2013 (1) SA 161 (SCA), at para 11, the Court held that when exercising its discretion, the reason for filing further affidavits is the primary consideration to be taken into account:

> *"Rule 6(5)(e) establishes clearly that the filing of further affidavits is only permitted with the indulgence of the court. A court, as arbiter, has the sole*

[18] "Within 10 days of the service upon the respondent of the affidavit and documents referred to in sub-paragraph (ii) of paragraph (d) of subrule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits."

*discretion whether to allow the affidavits or not. A court will only exercise its discretion in this regard where there is good reason for doing so."*

[23] Moreover, the applicants sought to raise new relief and the grounds therefore in their replying affidavits. The remarks of Diemont JA in the matter of **Director of Hospital Services v Mistry** 1979 (1) 626 (A), at 635 H, remain appropriate, where he states:

*"When, as in this case, the proceedings are launched by way of notice of motion, it is to the founding affidavit which a Judge will look to determine what the complaint is. As was pointed out by KRAUSE J in Pountas' Trustee v Lahanas 1924 WLD 67 at 68 and as has been said in many other cases:*

*'…an applicant must stand or fall by his petition and the facts alleged therein and that, although sometimes it is permissible to supplement the allegation contained in the petition, still the main foundation of the application is the allegation of facts stated therein, because those are the facts which the respondent is called upon either to affirm or deny'.*

*Since it is clear that the applicant stands or falls by his petition and the facts therein alleged,*

*'it is not permissible to make out new grounds for the application in the replying affidavit'*

*(per VAN WINSEN J in SA Railways Recreation Club and Another v Gordonia Liquor Licensing Board 1953 (3) SA 256 (C) at 260.)"*

[24] The first respondent also raised the fact that the applicants had not cross-referenced the plethora of documents attached to the replying affidavits, which they pointed out constituted nothing more than a "*bundle of documents*" containing photographs, diagrams, newspaper articles, opinion pieces, research papers and articles of unknown and unacknowledged authors, documents some of which, the first respondent pointed out, included statements of anti-sematic hate speech and holocaust denial. Some of the documents were also replete in conspiracy theories

and so too were the applicants in their further affidavits generally dismissive of land claims by other indigenous peoples in South Africa, who they referred to as *"Nguni settlers"* and lumped them together with European colonialists as intruders.

[25] First respondent pointed out that in the matter of **Executive Officer, Financial Services Board v Dynamic Wealth Ltd and Others** 2012 (1) SA 453 (SCA), Wallis JA held that annexures should be properly cross-referenced and conclusions and facts drawn from the annexure should be made in the affidavit. The applicants, they claimed, had simply not done so. Moreover the applicants sought to rely on views and opinions expressed by unknown and unacknowledged authors and often not in proper context or properly motivated.

[26] In their replying affidavits, the applicants sought to excuse the state and the manner in which they had filed both their founding papers and replying papers, on the basis that they were acting in person, without legal advice or assistance, and that only after it had been pointed out in the answering affidavit by the first respondent did they attempt to bring the application in line with the rules. In fairness to the applicants as lay persons, and in an attempt to better appreciate their claims, the court literally ploughed through the plethora of annexures to the applicants' affidavits. None of it, in my view, detracted from the central attack to the application made by the first respondent in the answering affidavit, nor to the patent weakness in both the formulation and presentation of the applicants' various claims.

[27] The applicants have, as already pointed out, raised important, sensitive and complex claims about what may be referred to as the marginalisation of South

Africa's indigenous peoples and their recognition in the new South Africa. The manner in which the applicants have sought to assert such claims in this application, and the demands they make of the state, has, in my view, not helped their cause. The applicants disavow the Constitution, yet it is the very Constitution that gives recognition to indigenous peoples, which in turn created the very basis for the decision in the **Richtersveld** matter, that recognised the existence of the indigenous laws and customs of the Richtersveld people and that enabled the restitution of their land and mineral rights. More importantly it is the very provisions of the Constitution (most of which have already been referred to above) that the applicants would have to rely on to persuade a Court to develop the common law or apply customary law, in the recognition of the doctrine of Aboriginal title in South African law.

[28] Moreover the Constitution provides, in Section 6, for a process through a Pan South African Language Board for the promotion and the creation of conditions for the development and the use of indigenous languages. In this regard Section 6(2) records the "*historically diminished use and status of the indigenous languages of our people"* and enjoins the state to take practical and positive measures to elevate that status and to advance the use of these languages. In Section 6(5)(a) provision is made for the establishment of the Pan South African Language Board through legislation which must *"promote, and create conditions for, the development and use of (i) all official languages; (ii) the Khoi, Nama and San languages; and (iii) sign language…"*

[29] To the extent that the applicants seek self-determination, Section 235 of the Constitution provides that *"*[*t*]*he Right of the South African people as a whole to self-*

*determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation."*

[30] It was apparent to the Court from the content of the affidavits, and all of the documents annexed by the applicants, and during argument of the application, that they made no reference to these important provisions of the Constitution, nor placed any reliance on these very provisions that were pertinently related, in a significant part to the relief they sought. Indeed, it was apparent to the Court that had the applicants availed themselves of legal representation (that was offered to them), or for that matter credible expert opinion and informed assistance (albeit from lay persons), they may have been able to have better conceptualised and framed a proper action in factually establishing a breach (if any) on the part of the first respondent, or by any of the relevant organs of state, in respect of their obligations under the Constitution or under any other law, including indigenous laws and customs relevant to their claims. The applicants were, by way of an example, unable to demonstrate that the first respondent, or any other state department, had failed to carry out the obligations created in Section 6 of the Constitution, or that the applicants had advocated, in vain, for legislation to be put in place in terms of Section 235 of the Constitution in response to their claims.

[31] In my view, it is not necessary to deal with each and every claim made by the applicants in the various affidavits filed by them. I will confine myself to the central tenant of their claims and that of the first respondent's opposition.

[32] In the founding affidavit the applicants state their rejection of the "*South African Corporation Laws",* which they claim to be null and void against the Homo Sapiens, Negro, Ethiopian, Semite, and Israelite people of South Africa. They claim to have Aboriginal rights and Aboriginal title, which is *"superior to their(sic) rights contained in the Constitution or that of the South African Corporation."* At this point I might indicate that the applicants claimed that, based on various document, articles and internet searches, the South African state was incorporated under the company laws of the United State of America. The applicants' sought, amongst others, the de-registration of the *"corporation".*

[33] In response, the first respondent disputed the applicants' claims and stated that in terms of Section 2 of the Constitution the *"Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."* The first respondent claimed that South African law did not recognize *"Aboriginal Title".* In my view the question as to whether South African law, as it has developed over the years, and both in international law and with the growing Anglo-American jurisprudence, recognised the doctrine of Aboriginal title remains open and undecided at present.

South Africa also adopted on the 13 September 2007, the United Nations Declaration on the Rights of Indigenous Peoples. Both the LCC and the SCA in their respective judgements in the **Richtersveld** matter made reference to the work of the authors TW Bennet and CH Powell, who make the argument for recognition in their article *"Aboriginal Title in South Africa Revisited",* and TW Bennet in *"Redistribution of Land and the Doctrine of Aboriginal Title in South Africa."* See also the various

articles referred to in paragraph 10 (above) Authors very usefully refer to what they regard as one of the main areas of development of the doctrine, being the requirements and methods of proving the title, and contend that the onus rests on the applicant who asserts the title to prove it, the occupation of the land in issue at the time of colonisation, and the existence of traditional laws, or as the Constitutional Court in the **Richtersveld** matter held in respect of the Section 2(1) claim, an established system of customary law.[19]

[34] The applicants in this matter have not in any coherent manner met any of these requirements (to the extent that they may be applicable when developing the common law or in applying customary law), and have simply asserted their claim of Aboriginal title to the land in South Africa as that accorded to the community of the **Richtersveld** in the decision of the Constitutional Court.

The applicants claim "*the land"* and generally referred to it as all of South Africa and *"Southern Africa",* and its resources, on the basis of *"Aboriginal Title.*" In their Heads of Argument they described the area claimed as the subject land as being the Western, Northern, Southern and Eastern Cape.

[35] In the Heads of Argument filed by the applicants they also refer to *"Aboriginal Title",* as akin to that which they claim was awarded by the Australian Courts in matters relating to claims by the Aboriginal people of that country. The applicants also relied on the various decisions of the Canadian Supreme Court. The applicants

[19] See article by Kent McNeil: *The Onus of Proof of Aboriginal Title*, Osgoode Hall Law Journal Vol.37, Number 4 (1999), 775-803; and by Maria Morellato, Q.C. and Mandell Pinder: *Aboriginal Title and Rights: Foundational Principles and Recent Developments*, Annual Review of Civil Litigation 2008, June 19 2009 Ottawa, Ontario

contend that such decisions form part of international customary law and that our Courts and the government are obliged to recognise such precedent.

[36] In my view, several issues arise out of some of the contentions raised by the applicants. The South African Constitution recognises, in Section 6, the very existence of indigenous languages, albeit in diminished use and status, and therefore by implication recognises the existence of indigenous peoples of South Africa. The applicants, notwithstanding the description used by them as *"Homo Sapiens, Negros, Ethiopian, Semite, Israelite people of South Africa",* are entitled to a claim of the proper recognition of their heritage as indigenous people, if so properly identified and established. The composition of the first applicant, again as described in the Heads of Argument, encompassed all of the 6,5 million so called *"coloured"* people of South Africa, who in reality are situated all over South Africa. The *"coloured"* people of South Africa are moreover not a homogeneous group and in recent years some have asserted their identity and heritage through membership of various indigenous tribes under traditional leaders (see Sapignoli and Hitchcock, Indigenous Peoples in Southern Africa, The Round Table, 2013, vol. 102, No 4, 355-356.)

[37] In these proceedings the applicants simply asserted a lineage and heritage to the indigenous people of South Africa, as opposed to the claimants in the **Richtersveld** matter, where the indigenous heritage, rules and customs of the community were the subject of disputed evidence, expert testimony, historical and anthropological research and an eventual finding by the various Courts that they had in fact established their indigenous laws and customs through evidence. The

applicants have not in these proceedings tendered the necessary evidence to describe who they are as indigenous claimants, with indigenous laws and customs, as the basis for their claims. Moreover, the applicants have not produced evidence, or made out a case based on the Constitution, to a claim of *"Aboriginal Title"* that entitles them to the compensation they claim, the *"land"* and the relief that was obtained in the Australian and Anglo-American context.

The applicants have also sought recourse to the notion of a "*Cest Q Vie Trust"* as the repository and the rationale for the financial compensation that they seek against the South African government. I find that claim, as pleaded, incomprehensible, foreign and devoid of any merit in the South African context.

[38] The applicants had also in the course of argument raised their complaint about Section 25 of the Constitution, which provides for restitution of land rights as a result of the dispossession of land after 1913. This criticism of the Constitutional provisions is shared by several other indigenous communities in South Africa. They all claim that the dispossession of their land by settler colonists occurred in the many centuries that preceded 1913. The applicants make no proper challenge against the provisions of Section 25 of the Constitution, as being inconsistent with their rights as indigenous people who were dispossessed before 1913. Moreover, that is not a claim made in the applicants' initial Notice of Motion, to which the respondents were required to answer. In the **Richtersveld** matter the Constitutional Court found that the Richtersveld communities had established that their possession and rights to the contested piece of land had not been extinguished prior to annexation by the British, nor prior to 1913, and that their dispossession had only occurred after the 1920's,

through Proclamations made under the Precious Stones Act 44 of 1927. This decision must be understood in its legal context, and does not detract from the historical and political claims made by indigenous people of the dispossession of their land under colonialism through, at times, violent conquest, subterfuge and chicanery by the early settlers.

[39] The first respondent, moreover, contended that the fatal difference between the **Richtersveld** matter and the applicants' case, was that the former had brought their claim in the Land Claims Court in terms of Section 2(1) of the Restitution Act[20] In these proceedings the applicants bring their claim to land in the High Court, inasmuch as they base their claim on Aboriginal title, and sought the application of the *"common law"*. Their claims are also not confined to land and, in my view, they were probably correct in engaging the High Court on their claims (mindful that the Appeal Courts in the **Richtersveld** matter had not determined the question of jurisdiction raised by the LCC in developing the common law).

[40] During the course of argument the Court pointed out to the applicants that the Richtersveld community had brought their claim by way of action proceedings, and had tendered extensive evidence of their claims to the land in dispute by virtue of custom and usage.[21] Expert evidence of an anthropological nature had also been tendered on behalf of the community, which was unsuccessfully challenged by Alexkor. Moreover, the Richtersveld community had the benefit of a dedicated legal

[21] I must declare that I had previously been employed at the Legal Resource Centre. The LRC represented the Richtersveld community in their restitution claim in the Courts. I was not directly involved in the matter, but had on various occasions interacted with the community as clients. They were represented over many years, and eventually in Court, by a dedicated teams of lawyers renowned for their expertise in marshalling both the legal argument and anthropological resources in the handling of the complex historical and social issues in the matter.

team that had assisted them over many years with their claim. The Richtersveld community were resilient and pursued their claim with exceptional commitment and fortitude which was indicative of their survival and endurance over many decades. In the light of the experience gained in litigating the Richtersveld claim, and the lessons learnt from working with the community, the Legal Resource Centre produced a hand booklet *"Customary Law and the Protection of Community Rights to Resources"* (2014), where, in lay terms and accessible language, it sought to explain what customary law is, and how it can be used by indigenous communities and human rights activists to advocate for a change in power dynamics in such communities through the assertion of customary law. The booklet also explains what is meant by the doctrine of Aboriginal title, the lesson learnt from decisions of the Court in both Australia and Canada (**Mabo** and **Delgamuukw** supra respectively), and indicates that the Constitutional Court was of the view that the situation in South Africa differed from that in other jurisdictions, and had dealt with the claim in terms of the constitutionally provided restitution framework and process. It also deals very usefully with customary law in international law and, besides referring to the African Charter on Human and Peoples Rights, also explains that the African Commission on Human and People's Rights has begun to engage with claims of land tenure and the provision of Guidelines.

[41] In response Ms Clarrisse sought that the matter be postponed, in order for them to confer with the Richtersveld community, so as to better inform their own application before this Court. Counsel for the first respondent initially opposed the request for the postponement of the matter, but at the end of the day's proceedings the Court gave the applicants the option of either conferring with the Richtersveld

community and seeking legal advice, or that the Court should proceed to hand down a judgment on the basis of the case made out by the applicants and the opposition by first respondent. They were given the opportunity to consider the option overnight amongst themselves.

On the following day they informed the Court that they did not wish to confer with the Richtersveld community, or seek any legal advice, and that the Court should proceed to hand down judgment.

[42] I should point out that in argument Ms Clarisse, on behalf of the applicants, referred extensively to a Practice Note filed by her on 14 October 2019. The Note comprised a sum of 24 pages and contained an equal amount of paragraphs. It also cited an additional six respondents, none of who had initially been cited in the application, nor on who the application had been served.

[41] In paragraph 24 of the Practice Note the applicants set out an inordinate list of the relief they sought, in the following terms[22]:

> *"(1) Abolishment of Coloured race classification;*
>
> *(2) Cestui Que Vie trust funds of $10 million for each and every* ***DESCENDANT Aboriginal and Indigenous man and woman*** *listed in the court case, 19098/2018 and all the descendants of Aboriginal nations ±8,9*

[22] I set out the relief sought in the Practice Note to demonstrate the manner in which the applicants litigated their claims and because Ms Clarissa requested the court to sign a "Settlement" document based on the relief contained in the Practise Note. She also required counsel for the first respondent to sign the document. Needless to say the court declined to do so and so too did the legal representatives of the first respondent.

*million people, so called Coloured people, under point 6 [23], et sequence above;*

*(3) SA Corporation and SA Government is dissolved and deregistered as per the Companies Act;*

*(4) No form of any taxes to be given as outlined in this Practice note, under point 13. And 17. Above;[24]]*

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[23] This is with reference to the specific paragraph in the Practice Note: "6. **CESTUI QUE VIE TRUST FUNDS OF $10 MILLION FOR EACH AND EVERY DESCENDANT Aboriginal and Indigenous man and woman** listed in the court case, 19098/2018 and all the descendants of Aboriginal nations of ± 8,9 million people, so called Coloured people. The Republic of South Africa is a privately owned Corporation, SA Corporation under CIK#:0000932419, registered on the US Securities Exchange Commission (USSEC) and so is Parliament of South Africa, also registered as a Privately owned Corporation according to the "Manta" an official company verification site registered in the United State of America. Within the USSEC, on behalf of the SA Corporation the Republic of South Africa, i.e. the Minister of Finance grants himself a Power of Attorney to enter a "Dept Securities" of amounts to $3000,000,000 keeping the South African taxpayer responsible for repayment to this Securities by means of increasing the fuel price and extensive taxes. The Minister of Finance together with the President of South Africa and the South African Reserve Bank Governor knows very well that these monies never makes it to South Africa, instead it flows into offshore banks mostly registered in London."

"The Chief State Law Advisor to the Republic of South Africa (RSA) also plays an active part of creating the necessary Power of Attorney at times for example Minister of Finance uses the South African Reserve Bank Governor (4th Respondent) to create such a Power of Attorney and that without the notice and attention of the State President (1st Respondent of the RSA and this happened since 1995 to date in 2019."

""Ven Fin" is a private company of Mr. Anton Rupert as Chairman and is incorporated into the RSA, meaning that "Venfin" is a partner of the State and its businesses and companies will remain untouched. Secondly under "Venfin" is a number of other companies, for example, Remgro, … And the list goes on. This is massive scale fraud and corruption from the highest authority and high treason by all these individuals and must be dealt with in terms of the Companies Act, even the Hawks and State Security is under question."

"The South African Reserve Bank 2010 amendment that was in fact Gazetted and printed before the State President could have signed such a bill into law."

**"Aboriginal and Indigenous people are thus shareholders** of the SA Corporation and SA Government established in 1994, Union of South Africa established in 1910, Queen of England British Colony Crown Corporation and lands annexed established in 1795 and V.O.C (Dutch East Indian Company) Corporation established in 1652, without the prior approval, knowledge and written consent Aboriginal and Indigenous people of South Africa and Southern Africa. This has been proven in the Opening Statements (Applicant's Heads of Arguments document, laid before the court, **Aboriginal and Indigenous people being Shareholders and rightfully eligible to their Cestui Que Vie trust funds held in trust by the SA Corporation** (through their birth certificates and identification documents (ID's) has been covered comprehensively and extensively under the Applicant's Heads or Argument (cross-referenced to closing arguments), under: various paragraphs referred to in their papers…"

*(5) Full disclosure and release of the Accord or Codesa signed agreement (kept secret) as under point 5.[25] Above;*

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[24] "13. We request that the **Honourable court upholds to enforce the companies act fully as is duty bound to do so, as the court in point 19. above**, all Aboriginal and Indigenous people including their descendants henceforth and forever, **do not have any dealings with the bogus, fraudulent, illegitimate and illegal SA Corporation and SA Government or any of any of their Corporations within the SA Corporations at National, Provincial and Local Government level and that** no illegal *taxes of any form be paid by any Aboriginal and Indigenous people including their descendants to the SA Corporation and SA Government or any of their Corporations such as:*

a. Rates and Taxes, any accounts for Water, Electricity, Sanitation, Refuse, Sewerage, Fines by the SA Corporation or any news forms of income to be collected;
b. Drivers license or renewals and permits by the SA Corporation;
c. Income tax such as P.A.Y.E, UIF etc. by the SA Corporation;
d. Capital Gains Tax by the SA Corporation;
e. Customs Duty Tax by the SA Corporation;
f. Excise Duty Tax by the SA Corporation;
g. Environmental Levy Tax by the SA Corporation;
h. Fuel and Road Acc levy tax by the SA Corporation;
i. Trade Remedies Tax by the SA Corporation;
j. Transfer Duty tax by the SA Corporation;
k. Estate Duty Tax by the SA Corporation;
l. Toll gate fees or E toll tax by the SA Corporation;
    a) Parking tickets of any kind by National, Provincial or Local Government;
    b) Television licences or any form of licences or renewals payable by any Corporation.

m. This also includes any bank fees, charges, bank loans (home, car or personal)

**No form or any taxes of any further tax legislation or amendments preceeding and going forward**, will not be paid by any Aboriginal and Indigenous people including their descendants to the SA Corporation and SA Government forever.

17. Other taxes to be exempted forever and not to be paid by any Aboriginal and Indigenous people of South Africa, includes Air passenger tax, donations tax, dividend tax, mineral and petroleum resource royalty tax, skills development levy tax, securities transfer tax, International oil pollution coup fund shipping contribution act tax as pointed out in point 20. above. No Corporation or any Corporation trading within South Africa or Southern Africa has any right as a bogus and fraudulent entity or company, to levy or charge any fee or taxes to any Aboriginal and Indigenous person going forward and forever shall not charge any fee or tax, and is guilty of a serious offence if done so and shall be taken to court to claim damages or any wrongly arrest or any claim against these Corporations should the descendants of the Aboriginal person or accused Aboriginal person be locked up in jail, be killed or harmed as a result of this illegal action taken against the Aboriginal person. "

[25] 5. "The SA **CORPORATION MUST BE DEREGISTED BY THE HONOURABLE COURT as an illegal and illegitimate, fraudulent entity and company**, just as the Dutch East Indian Company or V.O.C. was established and formed as a Corporation in 1657 without the Aboriginal and Indigenous people (the only Indigenous peoples of South Africa and Southern Africa (free, prior approval, written consent and knowledge or written permission. The SA Corporation and SA Government (Constitution of the Republic of 1996), Union of South Africa of 1910, Queen of England British Colony Crown Corporation and lands annexed in 1795 and V.O.C (Dutch East Indian Company of 1657) Corporation dispossessed and illegally sold all Aboriginal ancestral lands and all other resources within South Africa and Southern Africa **borders or boundaries of the 9 Provinces** which included mineral, land and sea resources without any approval obtained from the Aboriginal and Indigenous people, **HOMO SAPIENS, NEGRO, ETHIOPIAN, SEMITE AND ISRAELITE PEOPLE OF SOUTH AFRICA.** These Corporations handed over the fraudulent, illegal, bogus transactions from the Dutch East Indian Company in 1652, to the Queen of England British Colony Crown Corporation and lands annexed in 1795, and then illegally and fraudulent again handed over to Union of South Africa in 1910 and then again illegal and fraudulently handed over the company (Aboriginal land and all its wealth and resources without free, prior approval and written knowledge from Aboriginal and Indigenous people) to the SA Corporation or Republic of South Africa, in 1994 in terms of the Constitution of South Africa.

Here is proof of **extracts of the Union of South Africa handing over in 1994 to the SA Corporation, or Republic of South Africa in terms of the Constitution of South Africa adopted in 1996, (Bogus,**

(6) ***The Court to set out Article Section 25 (Sunset Clause or Accord agreement signed on 23 April 1994 by State President F.W. De Klerk) and clause 2 (all minerals found belong to the State)*** *of the Constitution of South Africa; setting aside the* ***Glen Gray Act 25 of 1894 and British Constitution encoded*** *by the British Queen Her Majesty Crown lands in 1795 or 1847 (TerrasNullis – No man's land) and* ***Section/Article 25 of the Constitution*** *of the bogus, fraudulent and fictitious SA Corporation and SA Government, the Republic of South Africa or* ***any fictitious laws, proclamations, act, papal bulls from the Pope*** *(Vatican High treason, fraud and corruption charges of all individuals mentioned and who formed the SA Corporation from 1995 to 2019;*

(7) ***The Secession (sic) of the Aboriginal and Indigenous people from the bogus, fraudulent and fictitious South African Corporation and Republic of South Africa*** *including any Corporation or Company formed under the SA Corporation or SA Government having no powers or authority over Sovereign rights and customary laws of Aboriginal and Indigenous people of South Africa and Southern Africa, forever*

(8) *Genocide instituted against all individuals mentioned and who formed the SA Corporation from 1995 to 2019 and as covered above;*

(9) *All officials who took the oath of office like the State President did – for example:*

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**fraudulent and illegal agreements) signed by imposters** of the Aboriginal people's ancestral lands without their prior approval, knowledge and written consent."

(1) *The court to uphold that all State Presidents and all others listed under below 1) to 12), to be* ***found guilty of gross dishonesty, gross violation of Sovereign rights and Aboriginal title of Aboriginal and Indigenous people of South Africa and Southern Africa****, for purposefully excluding them from the Constitution of South Africa/National Party and Constitution of the Republic of South Africa, in that they purposefully and wilfully lied, fraudulent, through bogus and fictitious means, taking the solemn oath, and are Constitutional delinquents:*

***OATHS AND SOLEMN AFFIRMATIONS***

*Oath or solemn affirmation of President and Acting President 1. The President or Acting President, before the Chief Justice, or another judge designated by the Chief Justice, must swear/affirm as follows: In the presence of every one assembled here, and in full realisation of the high calling I assume as President/Acting President of the Republic of South Africa, I, A. B. swear/solemnly affirm that*

*I will be faithful to the Republic of South Africa, and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always-*

***promote all that will advance the Republic****, and oppose all that may harm it;*

*protect and promote* ***the rights of all South Africans****;*

**discharge my duties with all my strength and talents to the best of my knowledge and ability and met to the, dictates of my conscience;*

*****do justice to all****; and*

**devote myself to the well-being of the Republic ad* ***all of its*** *people. (In the case of an oath So help me God.)*

*Under schedule 2 of General provisions (page 231)* ***oaths and solemn affirmations made by the individuals*** *below are also to be found guilty, includes all:*

*(1) Presidents (current and previous still alive paid under the SA Corporation);*

*(2) Deputy Presidents, Ministers and Deputy Ministers, National Assembly, Permanent delegates to the National Council of Provinces and all members of all the Provincial Legislatures;*

*(3) Premiers, Acting Premiers, all members of Provincial Legislatures;*

*(4) MEC's, Acting MEC's and all members of Provincial Legislatures;*

*(5) MMC's; Acting MMC's and all members (councilors) of Local Legislatures across all 287 municipalities;*

*(6)* ***All Judicial officers (each judge, chief judge, magistrate), chief justice, deputy chief justice across the 9 Provinces and all judicial SA Corporation/SA Government*** *judiciary formed under the bogus, fraudulent and fictitious SA Corporation;*

*(7)* ***Any person appointed to the office of the Chief Justice, Judicial officers and acting judicial officers other than judges*** *who are sworn or affirmed in by the SA Corporation;*

*(8) All political parties, politicians sworn or affirmed and registered as political parties of South Africa under the SA Corporation and under the Constitution;*

*(9) All laws, acts, legislation, policies, procedures, taxes, accounts billed enacted since 1652 to date 24 September 2019 (and beyond forever) under the SA Corporation or SA Government are thus, null, void, fake, bogus, illegal, fraudulent and not applicable to the Aboriginal and Indigenous people of South Africa and Southern Africa for our Sovereign rights and Aboriginal rights have been grossly violated as a people without the free, prior approval and informed or consent (FPIC) by Aboriginal and Indigenous people of South Africa and Southern Africa;*

*(10) This includes any loans owed, accounts, interest etc. charged by Banking Institutions under the SA Corporation and Constitution of SA, all these fees, interest, loans owing must be abolished and written off for all Aboriginal and Indigenous people of South Africa (forever) without the free, prior approval and informed or consent (FPIC) by Aboriginal and Indigenous people of South Africa and Southern Africa;*

*(11) All ancestral lands (Aboriginal Title) or wealth (mineral, land, sea, etc.) held in trust or under Section 25 (Property) of the Constitution must be returned to the owners of South Africa, Aboriginal and Indigenous people, including those held by all Multi-nationals, all Corporations (local and international), all Companies trading within South Africa, British Queen Crown lands, All European, Asian or African countries, the Pope (Vatican), all Mining and all Diamond Companies, all*

*Churches, the list is endless* ***and does not exclude any Corporation within or outside the SA Corporation (locally and internationally) and all funders of the SA Corporation for Local and National elections (voting). These laws, acts, Proclamations, policies, etc. were done against our Sovereign rights and Aboriginal Title*** *without the free, prior approval and informed or consent (FPIC) by Aboriginal and Indigenous people of South Africa and Southern Africa;*

*(12) Other constitutional institutions 20. (1) In this section "constitutional institutions" means- (a) the Public Protector; (b) the South African Human Rights Commission; (c) the Commission on Gender Equality; (d) the Auditor-General; (e) the South African Reserve Bank (f) the Financial and Fiscal Commission; (g) the Judicial Service Commission; or (h) the Pan South African Language Board. (2) A constitutional institution established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a commission member, a member of the board of Reserve Bank or the Pan South African Language Board, the Public Protector or the Auditor-General when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office, subject to (a) any amendment or repeal of that legislation; and (b) consistency with the new Constitution, (3) Sections 199 (1), 200 (1), (3) and (5) to (11) and 201 to 206 of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution. (4) The members of the Judicial Service Commission referred to in section 105 (1) of the previous Constitution cease to be*

*members of the Commission when the members referred to in section 178 (1) (i) of the new Constitution are appointed;*

*All these individuals and organisations listed (people leading these organisation) must be criminally charged for genocide, breaching Aboriginal and Indigenous people's Sovereign rights and Aboriginal Title since 1652 to date and must be locked up in jail, forever."*

[42] Such is the nature of the applicants' claims and conduct in the litigation that with the filing of new affidavits and documents, in this instance a Practice Note, they simply sought to expand on the relief that they initially sought from the Court. The first respondent did not respond to the claims made in the Practice Note, nor to that in the Heads of Argument (filed only after Ms Nyman had filed the first respondent's) and in which they included a *"Statement of Case*", wherein the applicants again restated their claims and elaborated on the relief sought. In my view the first respondent was both wise and correct in not responding with any further documents. Counsel for the respondent emphasized though, in argument, that insofar as the applicants claimed that the term *"coloured"* was discriminatory, offensive and insulting to the applicants, that they were at liberty to bring such claims in the Equality Court.[26]

[43] As already indicated it is most unfortunate that the applicants sought to frame their claims in the manner in which they did in these proceedings. They have

[26] There are different and contested views about the use of the designation "coloured". See *Social Identities in the New South Africa: After Apartheid (Vol 1)*, edited by Abebe Zegeye, Kwela Books; *What`s in the name Coloured`?* by Denis-Constant Martin, Social Identities, Vol. 4, Number 3 (1998); and the work of Dr. RR Richards *Bastaards or Humans: The unspoken heritage of Coloured people*, *Origin/Identity/Culture & Challenges Volume 1*, Indaba Publishing California, USA 2017. See also, Indigenous People in Southern Africa by Maria Sapignoli and Robert k. Hitchcock, The Roundtable, 2013,Vol.102, No.4. 355-365 which provides useful statistics on San, Khoekhoe or Griqua in Southern Africa.

moreover created unrealistic expectations of financial compensation (in US dollars) amongst the people who they claim to represent, and who find emotive resonance with the claims of marginalisation and the perceived disregard by state institutions in the transformative programs of affirmative action, through the implementation of BBBEE policies and Employment Equity legislation.

[44] I am left with no option in law but to dismiss the application. Such dismissal must not be construed as a failure to appreciate the legitimate claims of marginalisation and the dispossession of the land of indigenous people of South Africa, and moreover the destruction of the culture and heritage of indigenous communities, over many centuries, by the diabolical ventures of settler colonialists, and subsequently through the evil of machinations of apartheid.

[45] After having heard the submissions on behalf of the applicants and the first respondent, the Court invited any of the members of the first applicant present to address the Court if they so wished. A number of them did. They raised both their individual and collective plight of marginalisation, a failure by the government to recognise them as an indigenous people, the rampant crime and its causes in predominantly *"coloured"* communities, the high unemployment rate and lack of opportunities afforded to them by application of BBBEE policies in employment practices, the humiliation suffered by them when referred to as *"coloured",* the failure of government departments to recognise their indigenous status in statistical and other official forms and a number of other issues and complaints. Of particular significance was a group in traditional attire who addressed the Court, with much pride, in their indigenous tongue and, although not translated in full by them,

impressed with their emotive pleas for the proper recognition of their language and culture.

[46] As indicated, the applicants sought default judgment against the second and third respondent on the basis that they had not filed any opposing affidavits. It is incumbent on a Court to only grant judgment in favour of an applicant where a case has been made out against a respondent, even in default of having filed any opposing affidavit. Inasmuch as the applicants failed to establish any basis for the relief against the first respondent, they have equally failed to do so against the remaining two respondents, and the application for default judgment against them is likewise dismissed.

[47] I am mindful that the applicants appeared in person before this Court and given the nature of the issues raised by them, I am not inclined to make an adverse order of costs against either the first or second applicant. It would moreover be neigh impossible to identify who of the first applicant would be liable for such costs and it would equally be unfair to impose such a burden on the second applicant. In not making a cost order against the applicants I do not condone some of the gratuitous comments made by them, as already referred to. I do no more than express the Court's displeasure of such remarks.

[48] The applicants have, despite the position adopted by them at the commencement of the proceedings, fully exercised their right of access to the Court as provided for in the Constitution. In my view it is the very Constitution that they so reject, that is their strongest weapon against their marginalisation and for the claims

that they make against the state. For that reason I provide, as part of this judgement, a complimentary copy of the Constitution to the second applicant[27] and inform all the members of the first applicant that the Constitution is freely available at the GCIS offices at Parliament, and if not, the Chief Registrar of the Court will provide copies of Chapters One and Two of the Constitution (the founding provisions and the Bill of Rights) and the provisions of Section 135 to any of them.

[49] Words that should resonate with the applicants are those profoundly stated by Sachs J in the milestone decision of **Port Elizabeth Municipality v Various Occupiers** 2005 (1) SA 217 (CC), where he remarked, at para 37:

> *"The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole the constitutional order." (Footnote omitted.)*

In this regard Mokgoro J, in the celebrated decision of **S v Makwanyane and Another** 1995 (3) SA 391 (CC), in which the death penalty was found by the Constitutional Court to be unconstitutional, explained the concept of **ubuntu** as follows in para 308:

> *"Generally, ubuntu translates as 'humaneness'. In its most fundamental sense it translates as personhood and 'morality'. Metaphorically, it expresses itself in umuntu ngumuntu ngabantu, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation. In South*

[27] When, during the course of the proceedings, reference was made to particular sections of the Constitution, it was apparent that Ms Clarisse did not have a copy of it with her in Court. Ms. Nyman very kindly shared her copy of the Constitution with her.

*Africa ubuntu has become a notion with particular resonance in the building of a democracy." (Footnote omitted.)*

[50] In conclusion, I can do no more than with respect, repeat the profound and resonating words, in the proud heritage of the indigenous language of the Khoi and San people of South Africa, in the proclamation: *"!Ike e: Ixarra !Ike".*

[42] In the result the following order is made:

(1) The application is dismissed, with no order as to costs.

**V C Saldanha**

**Judge of the High Court**