

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

LAND COURT BILL

[B 11—2021]

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 11A—2021]

ISBN 978-1-4850-0805-7

No. of copies printed 150

AMENDMENTS AGREED TO

LAND COURT BILL [B 11—2021]

CLAUSE 1

1. On page 5, in lines 27 and 28, to delete “in terms of the Restitution of Land Rights Act”.
2. On page 5, after line 30, to insert “in terms of the Restitution of Land Rights Act”.
3. On page 5, in line 31, after “claim” to insert “in terms of the Restitution of Land Rights Act”.
4. On page 5, after the definition of “**Court**” to insert the following definition:

“**day**” means a day that is not a public holiday, Saturday or Sunday;”.
5. On page 5, after the definition of “**dispute**”, to insert the following definition:

“**full court**” means a court consisting of three judges of the Court;”.
6. On page 5, in line 42, to delete the definition of “**Land Court of Appeal**”, and to insert the following definition:

“**Magistrate’s Court**” means any court established in terms of section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);”.
7. On page 5, in line 50, after “Court” to delete “or the Land Court of Appeal”.

CLAUSE 2

1. On page 6, in line 13, to delete “a Land Court of Appeal”, and after “establish”, to insert “an appeal process”.
2. On page 6, in line 15, after the word “for” to delete all the words and to replace with “mediation”.

CLAUSE 3

1. On page 6, in line 20, after “and” to insert the following:

“, in relation to matters arising from the application of the Restitution of Land Rights Act or any other legislation expressly providing therefor, as a court of law and”.
2. On page 6, in line 22, to delete “High” and to replace with “Superior”.

CLAUSE 7

1. On page 7, in line 2, to delete “and section 42 of this Act”.
2. On page 7, in line 3, to delete “has exclusive”, and to replace with the following:

“and the Magistrate’s Court within whose area of jurisdiction the land forming the subject matter before that court is situated, have concurrent”.
3. On page 7, in line 4, to delete “elsewhere”.

CLAUSE 8

1. On page 7, in line 27, after “Court”, to insert the following:

“, who may have been judges of the High Court at the time they were appointed to the Court”.
2. On page 7, from line 29, to delete everything from “(a)” up to and including “Court;” in line 31.
3. On page 7, in line 32, to delete “(b)”, and to replace with “(a)”.
4. On page 7, in line 33, to delete “and”.
5. On page 7, in line 34, to delete “(c)”, and to replace with “(b)”.
6. On page 7, in line 34, after “gender”, to insert “; and”.
7. On page 7, after line 34, to insert the following:

“(c)be fit and proper persons who are appropriately qualified.”.

CLAUSE 9

1. On page 7, in line 46, to delete “who is also a judge of the High Court”.

CLAUSE 11

1. On page 8, in line 36, to delete “his or her” where the words appear, and to replace with “their”.
2. On page 8, in line 43, to delete “him or her”, and to replace with “the Minister”.

CLAUSE 12

1. On page 8, in line 51, to delete “he or she”, and to replace with “that assessor”.
2. On page 9, in line 12, to delete “he or she”, and to replace with “that assessor”.

CLAUSE 13

1. On page 9, in line 21, to delete “his or her”, and to replace with “their”.
2. On page 9, in line 22, to delete “his or her”, and to replace with “their”.
3. On page 9, in lines 28 and 29, to delete all the words from “(2)” up to and including “so”.
4. On page 9, from line 30, to delete all the words from “(3)” up to and including “matter” in line 39, and to replace with the following:

“(2) The registrar must, in the manner and within the period provided for in the rules, refer the matter to the Judge President of the Court, who must decide whether the matter—

 - (a) is to be heard in Court; or
 - (b) should be referred for mediation in terms of section 29 of this Act,

which, in the Judge President’s opinion, can deal more appropriately with the matter.”.
5. On page 9, in line 40, to delete “(4)”, and to replace with “(3)”.
6. On page 9, in line 41, to delete “(3)(a)”, and to replace with “(2)”.
7. On page 9, in line 50, to delete “(5)”, and to replace with “(4)”.
8. On page 9, in line 50, to delete “him or her”, and to replace with “the Judge President”.

CLAUSE 14

1. On page 10, in lines 8 and 9, to delete “and published by Government Notice R. 48 of 12 January 1965, as amended,”.
2. On page 10, in line 17, to delete “made”, and to replace with “given”.
3. On page 10, in line 20, to delete all the words from “and”, up to and including “Act”, in line 21.
4. On page 10, after line 24 to insert the following:

“(3) The Rules Board for Courts of Law must make rules in respect of the form and manner in which a party to an arbitration may apply to the Court to—

 - (a) stop the arbitration process and to proceed in the Court;
 - (b) vary or set aside a settlement agreement; or
 - (c) set aside an arbitration award.”.
 5. On page 10, in line 25, to delete “(3)”, and to replace with “(4)”.

CLAUSE 16

1. On page 10, in line 33, to delete “interested person, including an organisation,”, and to replace with “person or body with legal standing”.
2. On page 10, in line 38, to delete “his or her” where the words appear, and to replace with “their”.

CLAUSE 17

1. On page 10, in line 52, after “17.”, to insert the following:
 - “(1) Any person who is aggrieved by a judgment or order of a Magistrate’s Court may appeal to the Court against that judgment or order in accordance with—
 - (a) any land related legislation conferring appellate jurisdiction on the Court; and
 - (b) the rules contemplated in section 32.”.
2. On page 10, in line 52, before “The”, to insert “(2)”.
3. On page 10, in line 52, after “in terms of”, to insert “this Act or”.
4. On page 11, in lines 1 and 2, to delete “or to an arbitrator,”.

PART 3

1. On page 11, in line 13, to delete “,examination by interrogatories”.

CLAUSE 19

1. On page 11, in line 15, to delete “prescribed manner, and on the prescribed”.
2. On page 11, in line 15, after “form”, to insert “and manner provided for in the rules”.

CLAUSE 20

1. On page 11, in line 29, after “infirmity”, to insert “due to old age or any disability”.
2. On page 11, in lines 30 and 31, to delete “42 of the Supreme Court Act, 1959 (Act No. 59 of 1959)”, and to replace with “37 of the Superior Courts Act”.

CLAUSE 21

1. Clause rejected.

CLAUSE 22

1. On page 12, in line 25, to delete “22.”, and to replace with “21.”.
2. On page 12, in line 25, after “may”, to insert “, in the case of claims under the Restitution of Land Rights Act”.

CLAUSE 23

1. On page 12, in line 44, to delete “23.”, and to replace with “22.”.
2. On page 12, in line 47, to delete “the Provincial”, and to replace with “a”.
3. On page 12, in line 52, to delete “him or her”, and to replace with “them”.
4. On page 12, in line 53, to delete “the Provincial”, and to replace with “a”.

5. On page 12, in line 55, to delete “his or her”, and to replace with “them”.
6. On page 13, in line 1, to delete “Provincial”.
7. On page 13, in line 2, to delete “he or she is”, and to replace with “they are”.
8. On page 13, in line 5, to delete “he or she is”, and to replace with “they are”.

CLAUSE 24

1. On page 13, in line 13, to delete “**24.**”, and to replace with “**23.**”.
2. On page 13, in line 14, to delete “his or her”, and to replace with “their”.

PART 5

1. On page 13, in line 18, to delete “referral for investigation by referee, pre-trial conference”, and to replace with “conferences”.

CLAUSE 25

1. On page 13, in line 21, to delete “**25.**”, and to replace with “**24.**”.
2. On page 13, in line 25, to delete the second “the”.
3. On page 13, in line 33, to delete “Land”, and to replace with “Supreme”.
4. On page 13, in line 37, to delete “Land”, and to replace with “Supreme”.
5. On page 13, after line 39, to insert the following:

“(4) To the extent necessary, the Court may refer any suspicion or allegation of corruption in any proceedings before the Court to any relevant authority for investigation.”.

CLAUSE 26

1. Clause rejected.

CLAUSE 27

1. Clause rejected and replaced with the following clause:

“Conferences

25. (1) The Court may at any stage on its own accord or upon the request in writing of either party direct the parties or their representatives to appear before it in chambers for a conference to consider—

- (a) the simplification of the issues;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of fact and of documents with a view to avoiding unnecessary proof;
- (d) the limitation of the number of expert witnesses; or
- (e) such other matters as may aid in the disposal of the action in the most expeditious and least costly manner.

(2) The Court must make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties or their representatives.

(3) The order so made by the Court is binding on the parties unless altered at the trial to prevent manifest injustice.

(4) If a party refuses or neglects to appear at the conference the Court may, without derogation from its power to punish for contempt of court, make such order as it considers equitable in the circumstances and upon conclusion of the proceedings may order the party who was so absent to pay such costs as in the opinion of the Court were incurred as a result of the said absence.

(5) The Court may make such order as to the costs of any proceedings under this section as it deems fit.”.

CLAUSE 28

1. On page 14, in line 47, to delete “**28.**”, and to replace with “**26.**”.
2. On page 14, in line 48, to delete “the grant”, and to replace with “granting”.
3. On page 14, in line 56, to delete “make”, and to replace with “making”.
4. On page 14, in line 57, to delete “and”.
5. On page 14, in line 58, to delete “request”, and to replace with “requesting”.
6. On page 14, in line 59, after the word “Court.”, to insert “; and”.
7. On page 14, after line 59, to insert the following:

“(i) any other appropriate order which a High Court is competent to make, and which relates to a matter under the jurisdiction of the Court.”.
8. On page 15, in line 2, to delete “the dispute ought to have been”, and to replace with the following:

“it would advance the finalisation of the case if some or all of the disputes between the parties are”.
9. On page 15, in line 2, to delete “or arbitration”.
10. On page 15, in line 3, to delete “13(3)(a)”, and to replace with “13(2)(b)”.
11. On page 15, in line 4, to delete “or arbitration”.
12. On page 15, in lines 4 and 5, to delete “sections 31 and 32”, and to replace with “section 29”.
13. On page 15, in line 11, to delete “must not be”, and to replace with “is not”.
14. On page 15, in line 15, to delete “his or her”, and to replace with “the”.
15. On page 15, in line 32, to delete “or”, and to replace with “to”.
16. On page 15, in line 42, to delete “must”.

17. On page 15, in line 51, to delete “must”.
18. On page 15, in line 57, to delete “(1)(a)”, and to replace with “(3)(a)”.

CLAUSE 29

1. On page 16, in line 2, to delete “**29.**”, and to replace with “**27.**”.
2. On page 16, in lines 2 and 3, to delete all the words from “The” up to and including “may”, and to replace with the following:

“The Court may, on application of any affected party, or in cases falling under paragraph (b) acting of its own accord,”.

CLAUSE 30

1. On page 16, in line 10, to delete “**30.**”, and to replace with “**28.**”.

PART 6

1. On page 16, in line 23, to delete “, arbitration”.

CLAUSE 31

1. On page 16, in line 25, to delete “**31.**”, and to replace with “**29.**”.
2. On page 16, in line 25, to delete “13(3)(a)(i)”, and to replace with “13(2)(b)”.
3. On page 16, in line 26, to delete “Court”, and to replace with “presiding judge”.
4. On page 16, in line 27, to delete “Court”, and to replace with “presiding judge”.
5. On page 16, in line 32, to delete “13(3)(a)(i)”, and to replace with “13(2)”.
6. On page 16, in 32, to delete “Court”, and to replace with “presiding judge”.
7. On page 16, in lines 33 and 34, to delete “he or she or the Court”, and to replace with “the Judge President or presiding judge”.
8. On page 16, in line 35, to delete “prescribed”.
9. On page 16, in line 35, after “manner”, to insert “provided for in the rules”.
10. On page 16, in line 42, to delete “Court”, and to replace with “presiding judge”.
11. On page 16, in line 42, to delete “he or she or the Court”, and to replace with “the Judge President or the presiding judge”.
12. On page 16, after line 43, to insert the following:

(3) The Rules Board must make rules for the—
 (a) appointment of a mediator;

- (b) procedure for referral of matters to the mediator;
 - (c) process by which mediation is initiated, and the form, content and use of that process;
 - (d) joinder of any person having an interest in the dispute in any mediation proceedings;
 - (e) proceedings of mediation;
 - (f) prescribed forms to be used by parties in respect of mediation proceedings;
 - (g) right of any party to be represented by any person or category of persons in any mediation proceedings, including the regulation or limitation of the right to be represented in those proceedings;
 - (h) consequences for any party to mediation proceedings for not attending those proceedings;
 - (i) qualification for appointment as mediator;
 - (j) fees that are payable for mediation;
 - (k) appointment, powers and functions of a mediator; and
 - (l) issuance of an order at the conclusion of the proceedings.”.
13. On page 16, in line 44, to delete “(3)” and to replace with “(4)”.
 14. On page 16, in line 45, to delete “prescribed”.
 15. On page 16, in line 45, after “manner”, to insert “provided for in the rules”.
 16. On page 16, in line 47, to delete “his or her”, and to replace with “they”.
 17. On page 16, in line 47, to delete “prescribed”, and to replace with “provided for in the rules”.
 18. On page 16, in line 48, to delete “(5)”, and to replace with “(6)”.
 19. On page 16, in line 52, to delete “prescribed”.
 20. On page 16, in line 52, after “manner”, to insert “provided for in the rules”.
 21. On page 16, in line 54, to delete “(6)”, and to replace with “(7)”.
 22. On page 17, in line 1, to delete “(7)”, and to replace with “(8)”.
 23. On page 17, in line 3, to delete “(8)”, and to replace with “(9)”.
 24. On page 17, in line 5, to delete “(9)”, and to replace with “(10)”.
 25. On page 17, in line 6, to delete “prescribed”.
 26. On page 17, in line 6, after “manner”, to insert “provided for in the rules”.
 27. On page 17, in lines 9 to 11, delete all the words from “(10)” up to and including “Act.”.

CLAUSE 32

1. Clause rejected.

CLAUSE 33

1. On page 18, in line 2, to delete “**33.**”, and to replace with “**30.**”
2. On page 18, in line 2, after “negotiation”, to insert “or”.

3. On page 18, in lines 2 and 3, after “mediation”, to delete “or arbitration”.
4. On page 18, in line 4, after “must”, to insert “, if the parties agree thereto,”.
5. On page 18, in line 7, after “Court;”, to insert “or”.
6. On page 18, in line 9, to delete all the words from “; or” up to and including “Court”, in line 11.

CHAPTER 5

1. Chapter rejected and replaced with the following Chapter:

“CHAPTER 5

APPEALS AGAINST JUDGMENT OR ORDER OF COURT

Appeals against judgment or order of Court

31. (1) Subject to section 15(1) of the Superior Courts Act, the Constitution and any other law—

- (a) an appeal against any decision of the Court of first instance lies, upon leave having been granted—
 - (i) if the Court consisted of a single judge, either to the Supreme Court of Appeal or to a full court, depending on the direction issued in terms of section 17(6) of the Superior Courts Act; or
 - (ii) if the Court consisted of more than one judge, to the Supreme Court of Appeal; and
- (b) an appeal against any decision of a full court on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal.

(2) No judge may sit at the hearing of an appeal against a judgment or an order given in a case that was heard before that judge.

Appeals against judgment or order of Court

32. (1) No appeal lies against a judgment or order of the Court except with leave of the Court or, where such leave has been refused, with the leave of the full court and failing that with leave of the Supreme Court of Appeal.

(2) An appeal from a judgment or order of the Court must be heard by a full court in open court.

(3) The full court or the Supreme Court of Appeal may, in granting leave to appeal, vary any order for costs made by the Court or the full court in refusing leave to appeal.

(4) The power to grant leave to appeal as contemplated in subsection (1)—

- (a) is not limited by reason only of the value of the matter in dispute or the amount claimed or awarded in the suit or by reason only of the fact that the matter in dispute is incapable of being valued in money; and
- (b) is subject to the provisions of any other law which specifically limits it or specifically grants, limits or excludes any right of appeal.

(5) Leave to appeal may be granted subject to such conditions as the Court, the full court or the Supreme Court of Appeal, as the case may be, considers appropriate, including a condition that the applicant files security for the costs of the appeal.

(6) The full court may grant leave to appeal on application made to it within 15 days, or such longer period as may on good cause be allowed, after the Court has refused leave to appeal.

(7) (a) An application to the full court in terms of subsection (6) must—

- (i) be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief; and
- (ii) be addressed to the registrar of the Court and to all other parties in the proceedings before the Court.

(b) The application must be considered by two judges of the Court designated by the Judge President of the Court, and in the case of a difference of opinion, also by the Judge President of the Court or any other judge so designated.

(c) The judges considering the application may order that the application be argued before them at a time and place appointed, and may, whether or not they have so ordered—

- (i) grant or refuse the application; or
- (ii) refer the application to the full court for consideration, whether upon argument or otherwise,

and where an application has been so referred, the full court may thereupon grant or refuse the application.

(d) The decision of the majority of the judges considering the application, or the decision of the full court, as the case may be, to grant or refuse the application, is final.

(e) Notice of the date and place fixed for the hearing of the application must be given to the applicant and the respondent by the registrar of the Court.

(8) The full court, on the hearing of any appeal from the Court, has the power to—

- (a) receive further evidence;
- (b) remit the case to the Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as the full court considers necessary; or
- (c) confirm, amend or set aside the judgment or order which is the subject of the appeal and to give any judgment or make any order which the circumstances may require.

(9) Nothing in this section may be construed as preventing an appeal from a judgment or order of the Court being made directly to the Constitutional Court, if such an appeal is allowed by national legislation and by the rules of the Constitutional Court.”.

CLAUSE 49

1. On page 21, in line 46, to delete “courts established by Act”, and to replace with “Court”.
2. On page 21, in line 47, to delete “49.”, and to replace with “33.”.
3. On page 21, in line 48, to delete “relation to the Court and the Land Court of Appeal”, and to replace with “respect of any matter not provided for in this Act”.

CLAUSE 50

1. Clause rejected.

CLAUSE 51

1. On page 22, in line 6, to delete “51.”, and to replace with “34.”.

2. On page 22, in line 22, to delete “of subsection (1)”.
3. On page 22, in line 24, after “issued”, to insert “or an application has been lodged,”.
4. On page 22, in line 24, after “judgment”, to insert “or an order”.
5. On page 22, in line 24, to delete “passed”, and to replace with “given”.
6. On page 22, in line 29, after “(2)”, to insert “(a)”.
7. On page 22, after line 32, to insert the following:

“(b) A judge of the High Court who, on the date of commencement of this Act, was seconded or appointed as a judge of the Land Claims Court becomes a judge of the Court except where such judge indicates in writing to the Secretary of the Judicial Service Commission, that such judge does not wish to hold a concurrent appointment as a judge of the Court.”.

CLAUSE 52

1. On page 22, in line 38, to delete “52.”, and to replace with “35.”.

CLAUSE 53

1. Clause rejected and replaced with the following clause:

“Regulations

- 36.** (1) The Minister may make regulations regarding—
- (a) the form of the oath or affirmation of a person who has been appointed a judge of the Court and who is not a judge of the High Court;
 - (b) the manner and conditions of appointment for officers of the Court;
 - (c) functions to be performed by officers of the Court;
 - (d) manner of appointment of assessors;
 - (e) the form of the oath or affirmation of an assessor;
 - (f) fees and allowances of an assessor not in full time employ of State;
 - (g) legal assistance that Legal Aid South Africa may provide to parties who wish to exercise their right to have a dispute resolved through mediation and any expenditure related thereto;
 - (h) any matter required or permitted to be prescribed by regulation under this Act; and
 - (i) any other matter which is necessary to prescribe in order to achieve the objects of this Act.
- (2) Any regulation under this section which results in State expenditure, must be made with the concurrence of the Cabinet member responsible for finance.”.

CLAUSE 54

1. On page 23, in line 40, to delete “54.”, and to replace with “37.”
2. On page 23, in line 40, to delete “2021”, and to replace with “2022”.

SCHEDULE TO BILL

1. Schedule rejected and replaced with the following Schedule:

SCHEDULE

LAWS AMENDED

(Section 35)

Item No.	No. and year of law	Short title	Extent of repeal or amendment
1.	Act No. 112 of 1991	Upgrading of Land Tenure Rights Act, 1991	<p>1. The insertion in section 1 before the definition of “Deeds Act” of the following definition: “Court” means the Land Court established by section 3 of the Land Court Act, 2022 or a Magistrate’s Court in whose area of jurisdiction the land in question is situated;”.</p> <p>2. The substitution in section 21 for the words preceding paragraph (b) of the following words: “(1) Whenever in any [judicial] proceedings before the Court the question arises—”.</p> <p>3. The substitution in subsection 24(D) for subsection (7) of the following subsection: “(7) If any person refuses to answer a question put to him or her under subsection (6)(a) or to deliver or submit anything required under subsection (6)(b), the person acting under subsection (6)(a) or (b) may apply to the [magistrate’s court for the district in which the erf or piece of land in question is situated] Court for an order compelling the former person to answer the question or deliver or submit the thing and the [court] Court may make such order as it deems fair and just under the circumstances, including an order for costs, having regard to the public interest and the right to privacy of the respondent.”.</p> <p>4. The insertion of the following section after section 24D: “Jurisdiction of Court 24E. The Court has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>
2.	Act No. 126 of 1993	Land Reform: Provision of Land and Assistance Act, 1993	<p>The insertion of the following section after section 12: “Jurisdiction of Land Court 12A. The Land Court established by section 3 of the Land Court Act, 2022, has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>
3.	Act No. 3KZ of 1994	KwaZulu-Natal Ingonyama Trust Act, 1994	<p>The insertion of the following section after section 4A: “Jurisdiction of Land Court 4B. The Land Court established by section 3 of the Land Court Act, 2022, has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>
4.	Act No. 22 of 1994	Restitution of Land Rights Act, 1994	<p>1. The substitution in section 1 for the definition of “Court” of the following definition: ““Court” means the Land [Claims] Court established by section [22] 3 of the Land Court Act, 2022;”.</p> <p>2. The deletion in section 1 of the definitions of “High Court” and “presiding judge”.</p> <p>3. The substitution in section 1 for the definition of “the rules” of the following definition: ““the rules” means the rules made under [sections] section 16 [and 32] of this Act;”.</p> <p>4. The deletion of Chapter 3.</p> <p>5. The substitution in section 38B(1) for paragraph (a) of the following paragraph: “(a) an order has been made by the Court in terms of section [35] 26(3) of the Land Court Act, 2022, in respect of a right relating to that land; or”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
5.	Act No. 3 of 1996	Land Reform (Labour Tenants) Act, 1996	<p>1. The substitution in section 1 for the definition of “Court” of the following definition: “‘Court’ means the Land [Claims] Court established by section [22 of the Restitution of Land Rights Act, 1994 (Act 22 of 1994)] 3 of the Land Court Act, 2022.”.</p> <p>2. The substitution in section 1 for the definition of “the rules” of the following definition: “‘the rules’ means rules made [by the President of the Court] under section 14 of the Land Court Act, 2022.”.</p> <p>3. The substitution in section 2 for subsection (6) of the following subsection: “(6) For the purpose of establishing whether a person is a labour tenant, [a court] the Court shall have regard to the combined effect and substance of all agreements entered into between the person who avers that he or she is a labour tenant and his or her parent or grandparent, and the owner or lessee of the land concerned.”.</p> <p>4. The deletion of section 13.</p> <p>5. The substitution in section 15A for subsection (1) of the following subsection: “(1) No person shall remove or evict a labour tenant or an associate except on the authority of an order of [a competent court] the Court.”.</p> <p>6. The substitution in section 18 for subsections (7), (8) and (9) of the following subsections: “(7) If— (a) the owner does not submit proposals in terms of subsection (1); or (b) the applicant rejects a proposal in terms of subsection (4); or (c) the parties reach an agreement but the Director-General is not satisfied that it is reasonable and equitable, the Director-General shall, at the request of any party, refer the application for arbitration or to the Court for adjudication, and inform the other parties that he or she has done so. (8) The parties may, within 30 days of the referral of the application [to the Court] for arbitration, make a joint recommendation to the [Court] Director-General as to who should be appointed as the arbitrator. (9) Any nomination referred to in subsection (8) shall be in writing, signed by all the parties, and submitted to the [President of the Court] Director-General.”.</p> <p>7. The substitution for section 19 of the following section: “Hearing of application by Court or referral to arbitration 19. (1) On referral of an application by the Director-General, the Judge President of the Court or a judge of the Court nominated by him or her may [direct either that] give such directions as he or she considers appropriate as to the procedure to be followed for the application be heard by the Court [or that it be referred to arbitration]. [(2) If the matter is referred to arbitration, the President of the Court or a judge of the Court nominated by him or her, shall appoint an arbitrator to hear the application and may give such directions as he or she considers appropriate as to the procedure to be followed.] (3) The [President of the Court or the judge nominated by him or her] Director-General may appoint as arbitrator [— (a)] a person nominated by the parties in terms of section 18 (8); or (b) a person on the panel of arbitrators referred to in section 31;] but shall not be obliged to appoint a person nominated by the parties.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>8. The deletion in section 20 of subsections (1) and (2).</p> <p>9. The substitution in section 20(3) for the words preceding paragraph (a) of the following words: “(3) Notwithstanding anything to the contrary in this Act [or in the rules referred to in subsection (1)], the arbitrator may—”.</p> <p>10. The substitution in section 20 for subsection (6) of the following subsection: “(6) The arbitrator shall make a determination and submit that determination and a written report to the [Court] Director-General.”.</p> <p>11. The substitution in section 21 for subsection (1) of the following subsection: “(1) <u>The Director-General shall submit the determination of an arbitrator referred to in section 20(6) to the Court, and the Court may make the determination an order of Court with or without such technical variations as may be appropriate.</u>”.</p> <p>12. The substitution in section 24 for subsection (2) of the following subsection: “(2) If the applicant fails to make the payment within three calendar months of receipt of the notice referred to in subsection (1), the owner of the affected land may apply to the Court for an order to declare the settlement agreement or previous order of the arbitrator or the Court null and void.”.</p> <p>13. The substitution in section 24 for subsection (3) of the following subsection: “(3) The Court may, after hearing an application in terms of subsection (2), make such order as it deems just and equitable: <u>Provided that the settlement agreement or previous order made by the arbitrator or the Court shall not be declared null and void unless the owner of the affected land and any other person who has received compensation from the applicant in respect of the affected land has paid or has given security for the payment of the amounts which he or she has received from the applicant and the Minister, respectively.</u>”.</p> <p>14. The deletion of sections 29, 30 and 31.</p> <p>15. The substitution for section 32 of the following section: “Powers of review 32. The Court shall have the same powers as the [Supreme] High Court to review an act, omission or decision of any functionary acting in terms of this Act or purporting to act in terms of this Act or of any court in respect of proceedings contemplated in section 13 or of any arbitrator in respect of proceedings taking place before him or her in terms of section 33(3), and shall exercise such powers to the exclusion of the provincial and local divisions of the [Supreme] High Court.”.</p> <p>16. The substitution in section 33 for subsections (3) and (4) of the following subsections: “(3)The [President of the Court or a judge of the Court nominated by him or her] Director-General may determine that proceedings for the eviction of any person [which have been instituted in or transferred to the Court] shall take place before an arbitrator appointed [by him or her] in terms of section 19(3). (4) If the [President of the Court or a judge of the Court] Director-General makes a determination in terms of subsection (3) the arbitrator so appointed shall have all of the powers of the arbitrator under this Act.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>17. The substitution for section 35 of the following section:</p> <p>“Effect of order of Court</p> <p>35. For the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937), an order of the Court shall have the same force as an order of the [Supreme] High Court.”.</p>
6.	Act No. 28 of 1996	Communal Property Associations Act, 1996	<p>1. The insertion in section 1 before the definition of “Director-General” of the following definition:</p> <p>“‘Court’ means the Land Court established by section 3 of the Land Court Act, 2022, or a Magistrate’s Court in whose area of jurisdiction the land in question is situated;”.</p> <p>2. The substitution in section 2(1) for paragraph (a) of the following paragraph:</p> <p>“(a) which by order of the Land [Claims]Court is entitled to restitution under the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), where that Court has ordered restitution on condition that an association be formed in accordance with the provisions of this Act;”.</p> <p>3. The substitution in section 13 for subsection (1) of the following subsection:</p> <p>“(1) [A division of the Supreme Court or a magistrate’s court] The Land Court or the Magistrate’s Court having jurisdiction in respect of the area in which the property of the association is situated or the area in which the land which may be acquired by a provisional association is situated, may, on application made by the Director-General, an association or provisional association or any member thereof, or any other interested person, place the association or provisional association under the administration of the Director-General or grant a liquidation order in respect of an association or provisional association, where the association or provisional association, because of insolvency or maladministration or for any other cause is unwilling or unable to pay its debts or is unable to meet its obligations, or where it would otherwise be just and equitable in the circumstances.”.</p>
7.	Act No. 31 of 1996	Interim Protection of Informal Land Rights Act, 1996	<p>The insertion of the following section after section 5:</p> <p>“Jurisdiction of Land Court</p> <p>5A. The Land Court established by section 3 of the Land Court Act, 2022, has jurisdiction to resolve any dispute arising from the application of this Act.”.</p>
8.	Act No. 62 of 1997	Extension of Security of Tenure Act, 1997	<p>1. The substitution in section 1 for the definition of ‘court’ of the following definition:</p> <p>“[‘court’] ‘Court’ means [a competent court having jurisdiction in terms of this Act] the Land Court established by section 3 of the Land Court Act, 2022, or a Magistrate’s Court in whose area of jurisdiction the land in question is situated, including a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996);”.</p> <p>2. The deletion in section 1 of the definition of ‘Land Claims Court’.</p> <p>3. The substitution in section 8(7) for paragraph (b) of the following paragraph:</p> <p>“(b) the owner or person in charge may institute proceedings in [a court] the Court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.”.</p> <p>4. The substitution in section 9 for subsection (1) of the following subsection:</p> <p>“(1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of [court] the Court issued under this Act.”;</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>5. The substitution in section 9(2) for the words preceding paragraph (a) of the following words: “(2) [A court] The Court may make an order for the eviction of an occupier if—”;</p> <p>6. The substitution in section 9(2) of paragraph (d) for the Proviso of the following Proviso: “Provided that if a notice of application to [a court] the Court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.”.</p> <p>7. The substitution in section 10 for subsection (2) of the following subsection: “(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, [a court] the Court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.”;</p> <p>8. The substitution in section 10(3) for the words following paragraph (c) of the following words: “[a court] the Court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to—”.</p> <p>9. The substitution in section 11 for subsections (1) and (2) of the following subsections: “(1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, [a court] the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so. (2) In circumstances other than those contemplated in subsection (1), [a court] the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.”.</p> <p>10. The substitution in section 12(1) for the words preceding paragraph (a) of the following words: “(1) [A court] The Court that orders the eviction of an occupier shall—”.</p> <p>11. The substitution in section 12 for subsection (3) of the following subsection: “(3) [A court] The Court may, at the request of the sheriff in question, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal, subject to the conditions determined by the court as to the execution thereof: Provided that the sheriff shall at all times be present during such eviction, demolition or removal.”.</p> <p>12. The substitution in section 12 for subsection (5) of the following subsection: “(5) [A court] The Court may, on good cause shown, vary any term or condition of an order for eviction made by it.”.</p> <p>13. The substitution in section 13(1) for the words preceding paragraph (a) of the following words: “(1) If [a court] the Court makes an order for eviction in terms of this Act—”;</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>14. The substitution in section 13 for subsection (3) of the following subsection: “(3) No order for eviction made in terms of section 10 or 11 may be executed before the owner or person in charge has paid the compensation which is due in terms of subsection (1): Provided that [a court] the Court may grant leave for eviction subject to satisfactory guarantees for such payment.”.</p> <p>15. The substitution in section 14 for subsection (1) of the following subsection: “(1) A person who has been evicted contrary to the provisions of this Act may institute proceedings in [a court] the Court for an order in terms of subsection (3).”;</p> <p>16. The substitution in section 14(2) for the words following paragraph (b) of the following words: “may institute proceedings in [a court] the Court for an order in terms of subsection (3).”;</p> <p>17. The substitution in section 13(4) for the words preceding paragraph (a) of the following words: “(4) Where the person contemplated in subsection (2) was evicted in terms of an order of [a court] the Court—”.</p> <p>18. The deletion in section 17 of subsections (1), (3) and (4).</p> <p>19. The deletion of section 19.</p> <p>20. The substitution in section 20 for the heading of the following heading: “Land [Claims] Court”</p> <p>21. The substitution in section 20 for subsections (1) and (2) of the following subsections: “(1) The [Land Claims] Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power to— (a) [to] decide any constitutional matter in relation to this Act; (b) [to] grant interlocutory orders, declaratory orders and interdicts; (c) [to] review an act, omission or decision of any functionary acting or purporting to act in terms of this Act; [and] (d) [to] review an arbitration award in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), in so far as it deals with any matter that may be heard by [a court] the Court in terms of this Act; (e) direct how the orders of the Court shall be executed, including the setting of time limits for the implementation of such orders; and (f) make such orders for costs as it deems just. (2) [Subject to sections 17(2) and 19 (1), the Land Claims] The Court shall have the powers set out in subsection (1) to the exclusion of any court contemplated in section 166(c), (d) or (e) of the Constitution.”.</p> <p>22. The deletion in section 20 of subsections (3) and (4).</p> <p>23. The substitution in section 23 for subsection (1) of the following subsection: “(1) No person shall evict an occupier except on the authority of an order of [a competent court] the Court.”.</p> <p>24. The substitution in section 25 for subsection (1) of the following subsection: “(1) The waiver by an occupier of his or her rights in terms of this Act shall be void, unless it is permitted by this Act or incorporated in an order of [a court] the Court.”;</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>25. The substitution in section 25 for subsection (2) of the following subsection: “(2) [A court shall] The Court must have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act.”.</p>
9.	Act No. 19 of 1998	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998	<p>1. The substitution in section 1 for the definition of ‘court’ of the following definition: “[‘court’] ‘Court’ means [any division of the High] the Land Court established by section 3 of the Land Court Act, 2022, or the [magistrate’s court] Magistrate’s Court in whose area of jurisdiction the land in question is situated;”.</p> <p>2. The substitution in section 4— (a) for subsections (3) and (4) of the following subsections: “(3) Subject to the provisions of subsection (2), the procedure for the serving of notices and filing of papers is as prescribed by the rules of the [court in question] Court. (4) Subject to the provisions of subsection (2), if [a court] the Court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the [court] Court, service must be effected in the manner directed by the [court] Court: Provided that the [court] Court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case.”; (b) for subsections (6) and (7) of the following subsections: “(6) If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, [a court] the Court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women. (7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, [a court] the Court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”; and (c) for subsection (11) of the following subsection: “(11) [A court] The Court may, at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to conditions determined by the [court] Court: Provided that the sheriff must at all times be present during such eviction, demolition or removal.”.</p> <p>3. The substitution in section 8 for subsection (1) of the following subsection: “(1) No person may evict an unlawful occupier except on the authority of an order of [a competent court] the Court.”.</p> <p>4. The deletion of section 9.</p>

LONG TITLE

1. On page 2, in the first line, to delete “a Land Court of Appeal”, and to replace with “appeals against decisions of the Land Court”.
2. On page 2, in the third line, to delete “and Land Court of Appeal; to make provision for budgetary matters”.
3. On page 2, in the fourth line, to delete “exclusive”, and to replace with “concurrent”.
4. On page 2, in the fourth line, after “and”, to insert “Magistrates’ Courts”.
5. On page 2, in the fourth line, to delete “Land Court of Appeal”.
6. On page 2, in the fifth line, after “certain”, to insert “land related”.
7. On page 2, in the fifth line, to delete “and arbitration”.

PREAMBLE

1. On page 2, after the sixteenth line, to insert the following:

“AND NOTING THAT section 34 of the Constitution of the Republic of South Africa, 1996, accords everyone 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;”.
2. On page 2, in the seventeenth line, to delete “that”, and to replace with **“THAT”**.
3. On page 2, in the twenty seventh line, to delete “that,”, and to replace with **“THAT”**.

ARRANGEMENT OF SECTIONS

1. “Arrangement of sections” rejected and replaced with the following “Arrangement of sections”:

“ARRANGEMENT OF SECTIONS*Sections***CHAPTER 1****DEFINITIONS, PURPOSE AND OBJECTS**

1. Definitions
2. Purpose and objects of Act

CHAPTER 2**ESTABLISHMENT, COMPOSITION, SEAL,
SEAT AND JURISDICTION OF COURT**

3. Establishment of Court
4. Composition of Court
5. Seal of Court
6. Seat of Court
7. Jurisdiction of Court

CHAPTER 3**JUDGES, OFFICERS AND ASSESSORS OF COURT**

8. Appointment of judges of Court
9. Tenure, remuneration and terms and conditions of appointment of judges
10. No process to be issued against Judge President, Deputy Judge President or judge of Court except with consent of Court
11. Appointment of officers and staff
12. Appointment of assessors

CHAPTER 4**COURT PROCEEDINGS***Part 1**Institution of proceedings in Court*

13. Institution of proceedings

*Part 2**Rules, powers and functions of Court under other legislation, intervention, right to appear, legal representation, appeals and judgment by default*

14. Rules governing procedure of Court
15. Powers and functions of Court under other legislation
16. Intervention to proceedings before Court, right to appear and legal representation
17. Powers of Court on hearing of appeals
18. Judgment by default

*Part 3**Witnesses and admissibility of evidence*

19. Witnesses
20. Witness fees
21. Admissibility of evidence

*Part 4**Processes of Court and Offences*

22. Scope and execution of process of Court
23. Offences relating to execution

*Part 5**Powers of Court, conferences, Court orders, variation, rescission and costs*

24. Powers of Court
25. Conferences
26. Court orders
27. Variation and rescission of orders of Court
28. Costs

*Part 6**Mediation and settling of matters*

29. Mediation
30. Settling of matters

CHAPTER 5

**APPEALS AGAINST JUDGMENT OR ORDER OF
COURT AND OF OTHER COURTS**

- 31. Appeals against judgment or order of Court
- 32. Appeals against judgment or order of other courts

CHAPTER 6

GENERAL PROVISIONS

- 33. General provisions applicable to Court
- 34. Transitional arrangements
- 35. Amendment of laws
- 36. Regulations
- 37. Short title and commencement

SCHEDULE

Laws amended”.

Printed by Creda Communications

ISBN 978-1-4850-0805-7