

# The Land Claims Court – Rules promulgated

THE president of the Land Claims Court, Judge Fikile Bam, has promulgated the Land Claims Court Rules which now regulate proceedings in that court. The rules are set out in Government Notice No 300 of 21 February 1997 which was published in Government Gazette No 17804 on that date. Practitioners doing work in this area of law are encouraged to familiarise themselves with the rules.

Also contained in that Gazette are the rules which the president has made to regulate arbitrations under the Land Reform (Labour Tenants) Act 1996 (Act 3 of 1996). They are set out in Government Notice No 299 of 21 February 1997.

The Land Claims Court Rules include a number of novel features. For example –

- various powers are given to the judges of the court to play a more active role in the management of cases in line with devel-

opments in other jurisdictions, such as Australia;

- far greater use of the pre-trial conference is envisaged to expedite cases and reduce the cost of litigation;
- video-conferencing facilities may be used in appropriate circumstances;
- all process must be accompanied by a standard form in all 11 official languages warning persons on whom it is served of the importance of the documentation and advising them to seek legal advice or the assistance of the nearest Legal Aid office (form 9 – the translations are in the rules);
- the forms are written in plain language to make them more comprehensible to litigants;
- the language used in the rules themselves has been modernised and simplified;

- special procedures have been devised to accommodate the system of investigation and referral by both the Commission on the Restitution of Land Rights and the Director-General of Land Affairs (depending on the type of case);
- the court may override an agreement between the parties to delay the filing of documents and order them to comply with a prescribed time period;
- provision is made for the admission of an *amicus curiae* in appropriate circumstances;
- there are flexible provisions regarding service and service addresses.

It is important for practitioners to note that the rules also apply to pending cases from 21 February 1997 onwards. The Supreme Court rules therefore no longer apply, except where these are expressly incorporated into the Land Claims Court Rules.

## Practice Direction No 1

THE President of the Land Claims Court has issued the following practice direction:

- 1 A presiding judge will be appointed to each case at an early stage and enquiries about the case may be directed to the presiding judge's registrar.
- 2 All judges of the court, including the President, should be addressed as "Judge X" or "Judge Y" and referred to as "Judge X" or "Judge Y". The President may also be referred to as "the President".
- 3 The expression "Your Lordship", "Your Ladyship", "Jus-

stice", "Your Honour", "Your Worship" and similar expressions should not be used.

- 4 In the law reports and other citing of judgments of the court, the President of the court should be referred to as "Bam, P" and the other judges as, for example "Dodson, J".
- 5 Other than the President (or a judge acting as president in his or her absence), the judges of the Land Claims Court enjoy equal seniority and, after the President, there is no order of precedence.
- 6 Legal practitioners appearing

before the court in open court are required to robe, whenever the court is sitting. This does not include pre-trial conferences chaired by a judge.

- 7 Arrangements for the interpretation of evidence or argument should be made with the registrar in terms of the rules of the court well before the hearing of any matter.
- 8 Legal practitioners appearing in the court are only required to introduce themselves to the presiding judge. This should be arranged with the presiding judge's registrar. 