RICHTERSVELD COMMUNITY v ALEXKOR LTD & ANOTHER [2004] 3 All SA 244 (LCC)

Importance	This is a very important case in situations where prospecting or mining rights are granted in respect of land that is subject to a land claim. The jurisprudence that has developed around the issue of the Richtersveld confirms that dispossession of land includes dispossession of rights to the mineral resources of the land, and that restitution in terms of the Restitution of Land Rights Act 22 of 1994 can thus encompass restitution of the rights to minerals. The importance of this particular case is that it confirms that the Land Claims Court, in making an order for restitution of land and/or equitable redress, is entitled to make an order compelling the defendant to (a) compensate the land claimant for environmental damage done to the land; and/or (b) repair environmental damage done to the land. (The Land Claims Court was not asked to determine whether these particular orders were appropriate in the case at hand, the issue turned purely on the competence of the Court to make such orders.) Arguably, these powers could extend to holders of prospecting and mining rights in the current regime who cause environmental damage to land in the course of their operations that is subject of an as yet unsettled land claim.
Parties	**Plaintiff:** Richtersveld Community **First Defendant:** Alexkor Ltd **Second Defendant:** Government of South Africa
Facts	The plaintiffs claimed they were dispossessed of a narrow strip of diamondiferous land alongside the Western Coast of the Northern Cape, an area known as the Richtersveld. The dispossession occurred after diamonds were discovered, whereafter mining rights were granted to Alexkor Ltd, a state-owned diamond-mining company. The plaintiffs subsequently sought restitution of the land in terms of the Restitution of Land Rights. When the matter first came before the courts a separation of issues was ordered. In the first round of adjudication, the restitution claim was dismissed (Richtersveld Community and others v Alexkor Ltd and another [2001] 4 All SA 563 (2001 (3) SA 1293) (LCC)). The Supreme Court of Appeal, however, overturned the ruling and held that the plaintiff had a customary law interest in the subject land, including a right to the mineral resources of the land (Richtersveld Community and others v Alexkor Ltd and another 2003 (6) BCLR 583 (2003 (6) SA 104) (SCA)). The Constitutional Court confirmed the finding of the Supreme Court of Appeal, ordering that the community was entitled to restitution of ownership of the land, including its minerals and precious stones, and to the exclusive beneficial use and occupation thereof (*Alexkor Ltd & another v Richtersveld Community & others* 2003 (12) BCLR 1301 (CC)).
Relief sought	Before the present court, the plaintiffs sought three things: (a) restitution of ownership of the mineral rights in, and exclusive

	beneficial use and occupation of the land; (b) compensation for the diminution in the values of its rights in the land as a result of the defendant's extraction of minerals from it; and (c) an order directing the defendants to repair the environmental damage to the land and to award compensation for environmental damage not capable of repair.
Legal Issues & Judgment	The court held that in terms of the Restitution of Land Rights Act a community is entitled to restitution of a right in land if it was dispossessed of such right after 19 June 1913 as a result of past racially discriminatory laws and practices. The Act provides for relief to be awarded in various forms and, contrary to the contention of the defendant, it was held that the court need not choose between restoration on the one hand and equitable redress on the other. The court then proceeded to consider whether it was competent to order for the repair of or compensation for environmental damage. ***Issue 1:*** Is the Land Claims Court competent to order compensation for environmental damage to the subject land? ***Judgment:*** In line with the jurisprudence of the Land Claims Court (see *Baphiring Community v Uys and others,* unreported, case number 64/1998 (LCC); *Dulabh and another v Department of Land Affairs* [1997] 3 All SA 635 (1997 (4) SA 1108) (LCC); and *Hermanus v Department of Land Affairs* [2000] 4 All SA 499 (2001 (1) SA 1030) (LCC)) it was clear that an award of compensation should compensate the claimant in full, so as to put the claimant in the same position, insofar as this was possible in monetary terms, in the same position as if the land had not been taken. Compensation must provide not only for the value of the land taken, but also for other damages, loss or expenses directly attributed to the dispossession of the land (para 34). If the court orders restoration of all or part of land, and if it decides that the defendants have caused damage to the land, it may decide additionally to award compensation to allow for the damage (ibid). The Land Claims Court was accordingly competent to order, in addition to restoration of the land, that compensation be paid for the reduction in the value of the land caused by environmental degradation (ibid).
	Issue 2: Is the Land Claims Court competent to order the repair of environmental damage to subject land? ***Judgment:*** Having regard to three sub-sections of s 35 of the Restitution of Land Rights Act, the court found that the Land Claims Court was competent to order, in an appropriate case, that the State repair environmental damage to the land insofar as it was feasible to do so, and to pay compensation for it insofar as it was not (para 37). Section 35(1)(a) of the Act, firstly, includes the power to order the State to restore the land in the condition it was taken at the time of dispossession. For example, the court was expressly empowered to order the State to acquire the land if it is in the hands of a third party, by expropriation if necessary. There appeared to be no reason why the

	court was not also competent to order the State to return the land in its erstwhile condition by repairing the environmental damage done to it (para 35). Secondly, s 35(2)(a) empowered the court to 'determine conditions which must be fulfilled before a right in land can be restored or granted to a claimant'. There was no reason why the Land Claims Court could not also make it a condition of restoration that the State must first repair any damage to the land (para 36). Finally, s 35(1)(e) empowered the court to grant 'any alternative relief'. The court held that the legislature had left this concept undefined so as to confer the widest possible discretion on the court to devise an appropriate remedy for achieving the purposes of the Restitution of Land Rights Act in the circumstances of a particular case (para 37).
Outcome	On the issue of the defendant's liability for repair of or compensation for environmental damage to the Richtersveld, the plaintiffs succeeded.
Obiter	None.