

LAWYERS FOR HUMAN RIGHTS

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RAHUBE

V

RAHUBE

LANDMARK JUDGEMENT

Rahube v Rahube and Others was a landmark judgement in which the Constitutional Court issued an order that protected women's land rights, the court held that section 2(1) of the Upgrading of Land Tenure Rights Act (ULTRA) violated the right to equality which is enshrined in section 9 of The Constitution.

LHR

Ms Rahube approached the court, after she was evicted by her brother, alleging that she had been deprived of ownership her house through apartheid laws as well as section 2(1) of ULTRA.

In 1987 her brother was nominated by the family to hold the house's occupancy certificate (only a man could be issued a certificate of occupation). In 1988 Mr. Rahube was then issued a Deed of Grant in his name. When the ULTRA was enacted, the rights that her brother had been subsequently converted into ownership rights, he became the owner of the house and was issued a title deed.



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The issue Ms. Rahube raised was that ULTRA provided for the conversion of land rights into rights of ownership but did not consider competing claims or the fact that land rights were designated through a system and legislation that discriminated against black women and thus violated her right, and the rights of other black women, to equality based on gender and sex.

This case was heard in the High Court which found the provisions in the ULTRA unconstitutional in so far as it converted rights to ownership in a manner that violated women's rights.

The Constitutional Court found that the result of the provisions was contrary to the intention of the legislature, in that by relying on the legal position created during apartheid when the ability to own land tenure rights was restricted to men. The legislature had failed to create legislation that could rectify discrimination of the past by depriving black women of the opportunity to claim and become owners of land which undermined the legitimate purpose for which the law was promulgated.

The Constitutional Court confirmed the order of invalidity made by the High Court and made its order retrospective in nature so that it provided relief to all women from the 27th of April 1994.

However, this order did not extend to:

- Property that was transferred to third parties in good faith
- Inheritance by third parties in terms of finalized estates
- The upgrade of a land right to ownership by a woman acting in good faith





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“In June 2020 the amendments to ULTRA were promulgated. The act still allows for the upgrading of land tenure rights to ownership rights for:

- **Anyone who is a holder of a land tenure right must apply to the Minister of Rural Development and Land Reform to convert that right into ownership**
- **Any land tenure rights to land that is registered in a township register that was already opened at the commencement of the upgrading of land tenure rights act 1991 would automatically be converted to ownership**
- **Any right to land that was registered in a township register after the commencement of the act shall be converted to ownership**
- **Any rights to surveyed land not forming parts of a township should be converted to ownership**

The amendments included further requirements that serve as safeguards:

- **The minister should publish a notice in the gazette which informs all interested people about the application for conversion**
- **This notice should give all interested people**
- **An opportunity to object to the conversion**
- **Time frames to object to the conversion**
- **After receipt of the application the minister should institute an inquiry to determine the facts and make a decision”**

CONTACT FOR HELP!

If any assistance is needed and you fall into the above category then approach our office-

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