

## **Long Term ESTA Occupier Arrested For Trespassing**

The Trespass Act, Act 6 of 1959, was amended by the Extension of Security of Tenure Act (ESTA), Act 62 of 1997, to the effect that a person who is entitled to be on land in terms of ESTA shall be deemed to have lawful reason to enter and be upon such land. In other words they cannot be trespassing as they have a right to be there as they live there.

Mr France Moatshe, who is mentally unstable, started staying and working on the farm Slegpadfontein around 30km from Lephalale in 1984. He was staying with his mother and Siblings. The farm owner was and is still Mr Hennie Engelbrecht.

Around 1989 the family moved to Seleka Village. Sadly during 1991 France's mother was brutally murdered by a group of people who suspected her of practicing witchcraft. Engelbrecht then told the family they could move back to the farm and bury their mother on the farm. They buried their mother on the farm and have stayed there since then.

All these years France was working for Engelbrecht together with his brother and maternal uncle. On or about 2003 France became mentally ill and as a result could not continue working. He is now receiving a government grant and is staying with his uncle, brother, sister and their children on the farm. Engelbrecht now wants to evict France from the farm because he is no longer working for him.

On 2<sup>nd</sup> February 2005 Engelbrecht laid a charge of trespassing against France. France was arrested and granted bail the following day. On the day France was arrested his uncle John Laka was present. John tried to explain to the arresting officer that France lives on the farm and is mentally ill, but the officer would not listen and ended up charging John with obstruction of Justice.

On 18<sup>th</sup> February I went to Lephalale Magistrate's Court to defend France in the case of trespassing opened against him. Charges were put to him and we pleaded not guilty. The state called their only witness, the farm owner. Engelbrecht testified that he did not allow France to live on the farm and alleged that he does not know France at all. Under cross-examination he agreed that he used to see France on the farm before the date he laid charges. I put it to him that France had been staying on the farm from 1984 to 1989 and from 1991 until he was arrested. Engelbrecht ended up agreeing, however he alleged

that France is troublesome and he said that is why he wants him out of the farm.

After cross-examination the state closed its case and I applied for acquittal in terms of section 174 of the Criminal procedure Act, citing amongst other things the Trespass Act as amended, the application was granted. While France was thankfully acquitted and is now free to go back to his home on the farm it is unfortunate that the police, prosecutors and even some magistrates are unaware of or unwilling to use the amendments contained in section 1A of the Trespass Act. Farmers still try to use the Trespass Act to evict lawful occupiers and some of the authorities continue arresting and prosecuting such occupiers for trespassing. In a case like this they would probably have succeeded if France had not got assistance from his uncle and Nkuzi.

As to John Laka's case the matter was set down for trial on 21<sup>st</sup> February 2005. A charge of defeating or obstructing the ends of justice was put to him; we tendered a not guilty plea. The state called the arresting officer who testified to the effect that Mr Laka closed the rear door of the police van so that France could not be put in the van. The policeman also alleged that Laka told him that if he arrests France he must also arrest him, so he did. After cross-examination the State closed its case and I called Laka to testify. Laka stated that he told the arresting officer that France is not mentally stable and therefore he must accompany him to the police station. The state cross-examined him, but he stuck to his story. It was therefore the word of the state witness against that of our client. The court found Laka not guilty and discharged him. I realized from Laka's actions that indeed blood is thicker than water. The family is still staying on the farm.

Nandu Malumbete. Nkuzi. Attorney