

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

CASE NO: LC52/00

In the matter between:

POPELA COMMUNITY

Appellant

(Claimant in the Court

*quo*)

and

DEPARTMENT OF LAND AFFAIRS

First Respondent

GOEDGELEGEN TROPICAL FRUITS (PTY) LTD Second Respondent

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

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**BE PLEASED TO TAKE NOTICE THAT** the abovementioned Applicant intends to make application to the above Honourable Court, on a date to be set by the Judge who will

be hearing the application, for leave to appeal to the Supreme Court of Appeal against the whole of the order made by Gildenhuis J on 3 June 2005.

**BE PLEASED TO TAKE NOTICE FURTHER THAT** the findings of facts and law appealed against as also the grounds on which the leave to appeal is sought, are set out below.

1. It is respectfully submitted that the Court *a quo* erred in not finding that the dispossession of the ploughing and grazing rights was a dispossession from a community or from part of a community.
2. In this regard, it is respectfully submitted that the Court *a quo* furthermore erred:
  - 2.1 in not finding that although each individual had a labour tenancy relationship and had to work on the farm, the relationship in turn owed its existence to the fact that each individual belonged to a community or was part of a community;

- 2.2 in coming to the conclusion that the individuals did not form part of a community because Altenroxel as land owner showed the individuals which lands they may plough as it is immaterial whether the rules determining access to land were determined by the farm owner or the community through a leader or induna.
3. It is respectfully submitted that the Court *a quo* erred in not finding that at all material times the community had in fact regarded one of their number as a leader of the community.
4. Furthermore, it is respectfully submitted that the Court *a quo* erred in not finding that the evidence supported the contention that the individuals held their rights because they were part of a coercive community.
5. It is respectfully submitted that the Court *a quo* erred in finding that the evidence did not establish the existence of a community of labour tenants.

6. It is respectfully submitted that the Court *a quo* erred in not finding that community as claimant established all the requirements to succeed in its claim *in casu*.
  
7. It is respectfully submitted that the Court *a quo* erred in not finding that the labour tenancy system on Boomplaas was terminated in consequence, alternatively in anticipation of racially discriminatory law or practice.
  
8. It is respectfully submitted that the Court *a quo* over-emphasised the relevance of any specific knowledge of the racially discriminatory legislation in question by the owner of the property at the material time, more particularly as the land owner in question admitted that he was aware of the Governmental policy of establishing homelands which was racially driven to geographically separate blacks from whites.

9. It is respectfully submitted that the Court *a quo* erred in not taking cognisance of the fact that there was already in existence racially discriminatory law and practice or that the land owners could not be unaware of the fact that they occupied the land and made decisions in respect thereof in terms of racially discriminatory laws and practices..
10. It is respectfully submitted that the Court *a quo* erred in finding that there was no causal link between the racially discriminatory laws and/or practices relating to labour tenancy and the termination of the Appellant's ploughing and grazing rights.
11. It is respectfully submitted that the Court *a quo* failed to give sufficient weight to the fact that apartheid laws and politics at the time dictated that blacks were to be housed or bottled in so-called homelands so as to provide cheap labour and that the availability of such cheap labour or alternative labour directly affected the conduct of the owners *in casu* and provided great impetus to the demise of the labour tenancy system.

12. It is respectfully submitted that the Court *a quo* erred in giving relevance or weight to the fact that the owner of the land claimed to be apolitical in as much as every fabric of the society was imbued with the apartheid system and the owner of the land who owned and occupied land in terms thereof could not be heard to be ignorant thereof.
13. It is respectfully submitted that the Court *a quo* erred in the finding that the community did not exist as also the finding that the dispossession was not as a result of past racially discriminatory law or practice.
14. It is respectfully submitted that the Court *a quo* did not attach the correct past racially discriminatory practice in this particular matter.
15. It is respectfully submitted that the Court *a quo* failed to give weight or sufficient weight to the evidence that since 1960 even before the legislation concerning the

various means by which labour tenancy could be dealt with including to abolish it came into existence, the farm owners were asked for their input on the labour situation and that this legislation was crafted after consultation with the farm owners.

16. It is respectfully submitted that the Court *a quo* erred in not finding that the facially motivated and Government supported strategy or practice to end the occupation of white owned farms by blacks or black labour tenants permeated every decision by white farmers including the white land owner *in casu* to abolish the labour tenancy system on his farm.

17. It is respectfully submitted that the Court *a quo* erred in that:

17.1 It failed to find that even though the land owner in question alleged that his decision to abolish the labour tenancy system was a business decision, such business decision would not have been made

if no or no alternative cheap labour was available because of racially discriminatory laws and practices, more particularly by virtue of the bottling up of the black people in the so-called homelands.

17.2 Even though the land owner declared that he made the change on his own volition it does not distract from the fact that such change was made in the context of the existence of racially discriminatory laws and practices which would give efficacy to such decisions.

17.3 To accept the *ipse dixit* of every individual that he did not act in terms of racially based laws and practices but did the same thing because of his own volition or because of some reason such as a business reason result in a complete frustration of the objects of the Restitution Act which is aimed at redressing the heinous consequences of past racially based laws. In this regard it is respectfully submitted that the Court *a quo* should have had

regard to whether objectively the racially based laws and practices in question were the root cause of the dispossession.

18. It is respectfully submitted that the Court *a quo* erred in not according sufficient weight to the fact that the land owner in question conceded that a reason for changing the system was that other farmers in the area were doing it. On this score, it is submitted that the Court *a quo* was not alive to the fact that this occurred during the material period precisely because of the Government's enquiry in this regard, its legislation based on what farmers wanted and in furtherance of racially discriminatory laws and practices.

DATED at JOHANNESBURG on this the 27<sup>th</sup> day of JUNE 2005.

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G G MASHIMBYE  
Attorneys for Appellant  
Nkuzi Development Assoc.  
Land Rights Legal Unit

105 Schoeman Street  
PIETERSBURG NORTH  
Tel: (051) 297-6972/3/4  
Fax: (051) 297-6975  
C/o The Legal Resources  
Centre  
18 Pritchard Street  
401 Elizabeth House  
JOHANNESBURG  
Tel: (011) 836-9831  
Fax: (011) 836-8680  
Ref: D Gilfillan

TO: THE REGISTRAR OF THE  
LAND CLAIMS COURT  
Trust Bank Centre  
Randburg Mall  
Cnr Hill Street and Kent Avenue  
RANDBURG

AND TO: THE STATE ATTORNEY  
Attorney for First Respondent  
10<sup>th</sup> Floor, North State Building  
95 Market Street  
Cnr Kruis and Market Streets  
JOHANNESBURG

Received copy hereof on this the  
day of JUNE 2005.

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For: Attorney for First Respondent

AND TO: STEYTLER NEL & PARTNERS  
Attorneys for Second Respondent

C/o A D SNYMAN  
1<sup>st</sup> Floor, Pioneer Centre  
52 Landdros Maré Street  
PIETERSBURG

Received copy hereof on this the  
day of JUNE 2005.

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For:      Attorney      for      Second

Respondent