

# NKUZI TIMES

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## WELCOME

Welcome to the first edition of the Nkuzi Times, a monthly electronic newsletter that aims to share experiences, news and views from the Nkuzi Development Association. The stories will focus on the land reform work that Nkuzi is involved in and opinions from people in the organisation. All staff, Board Members and others in the sector are welcome to contribute.

We hope that the stories captured here are of interest to you. Any feedback and comments would be welcomed.

The Editor

## CONTACTS

For Nkuzi Times comments or contributions: e-mail: [marc@nkuzi.org.za](mailto:marc@nkuzi.org.za)

### Disclaimer:

The views contained in this publication do not necessarily reflect the views of the Nkuzi Development Association, nor is the organisation responsible for the accuracy of information provided.

## NEWS

### **Zim Workers Injured and Assaulted on SA Farms**

Themba and Albert Ndlovu are brothers who came to South Africa from Zimbabwe in 1995. They jumped the border with several other Zimbabweans who were all looking for jobs. The brothers say that they regarded themselves lucky when they were employed by Mr Robert Rotcher, a farmer who ran his business of cutting planks and manufacturing tomato boxes in the Levubu area of the Soutpansberg District.

The employer did not bother to ascertain whether they had work permits or not, although the brothers allege that he knew they had entered the country illegally. He told them that he preferred Zimbabweans because they are "hardworking and not like the South Africans who are always complaining".

The Zimbabwean workers settled into the job and things went reasonably well up to 1999 when they were all earning R30-00 per day. On the 17<sup>th</sup> of December 1999, while they were all on duty, Themba sustained a serious injury to his left hand when he was operating a machine. Themba to this day has lost the use of his hand preventing him from getting other work. Mr Rotcher transported him to a certain private doctor at Louis Trichardt for medical attention from where he was transferred to the Louis Trichardt Hospital and he spent seven days in the hospital recovering. After the incident he was given a salary of R200-00 and nothing was said regarding compensation for the injury.

A further problem the employees say they faced was working from December 2002 to May 2003 without a salary as the employer claimed that he did not have money to pay them. When Nkuzi staff first met Themba, in February 2004, he had been fired and said he was still owed R660-00 from the period when they were not paid.

It is alleged that Albert, the younger brother to Themba, also had two fingers cut off while operating the same machine. Like Themba, the employer took him to the special doctor for medical attention, and gave him no compensation for the injury. The workers further claim that Michael, another illegal Zimbabwean, got his foot cut off by the same machine while on duty.

Another case recently brought to the attention of Nkuzi, involves Peter Madlhome, of the Mwenezi District in Zimbabwe. He jumped the border in May 2004 in search of employment in South Africa. When he arrived at a farm near Doreen Estate, the employer gave him the job of picking tomatoes together with other workers believed to be illegal Zimbabweans.

It is alleged that one Monday morning, the employer was not happy about the manner in which the workers had performed their duties the previous Saturday. He told them that he would not reward them their full wages. Peter Madlhome objected explaining that there were no ripe tomatoes to pick so there was nothing they could do. The farmer had told them never to pick the unripe tomatoes.

Peter claims that the employer responded by assaulting him with fists. During the assault another employee was instructed to hold Peter's hands behind his back. Peter was also thrown to the ground and kicked and jumped on. Amongst other injuries Peter's left arm was broken.

Another farm resident heard of the assault and telephoned for an ambulance that took Peter to the Mussina Hospital where he stayed and received treatment for several days. Peter laid criminal charges against the people who assaulted him after he was encouraged to open a case by some of the staff at the hospital.

Peter has been to the Mussina Magistrates Court several times for the case against the farmer, but the accused has not been present and it appears that the case has been postponed. It is not clear whether an arrest has been made or not. After the case was postponed again Peter was advised to contact Nkuzi for assistance.

Nkuzi is now pursuing these cases with the Department of Labour and the police. Attempts will be made to get workmen's compensation and to initiate civil claims for damages. However it is hard to pursue such cases. The victims remain illegal within South Africa or return to Zimbabwe and are always moving around looking for any work to help them survive. It is hard to find them and there is no certainty that they would still be available when needed if a civil claim is lodged on their behalf. Nkuzi is trying to assist them in getting temporary permits from the Department of Home Affairs so that the cases can at least be followed up.

These cases illustrate the difficulties that some farm workers, especially illegal foreign workers, face. There is little assistance available to such people; even the help from Nkuzi is limited due to this not being the main focus of the organisations work and a shortage of resources to follow up all such cases.

Shirhami Shirinda. Nkuzi, Candidate Attorney

### **A Widow's Land Rights Under Attack**

Selinah Mabaso lives in the village of Matangari with her five children. Her husband passed away in 1998 and since then her in laws, led by her mother in law, have been trying to take over the house and plot where she lived with her husband.

After several appearances in the magistrate's court she was arrested in August 2003 and ordered to leave the place in two weeks. She has carried on staying in the house despite this and other harassment as she has nowhere to go and no money to build a new house. The Commission for Gender Equality referred the case to Nkuzi Development Association in October 2003 when Mabaso was due to appear in court again. On 27<sup>th</sup> November 2003 the matter came before the Thohoyandou Magistrates Court and Mabaso was represented by an Attorney,

Sam Shirinda, from Nkuzi. The matter was thrown out due to a technicality, however in January a new application was made by the in-laws and a "protection order" was issued in terms of the Domestic Violence Act, ordering Mabaso and her five children out of the house. The Nkuzi legal team intervened again and applied, on behalf of Mabaso, to set aside the "protection order" also stopping the eviction until the application could be heard.

After a postponement the matter was heard on the 23<sup>rd</sup> February 2004. Despite arguments from the Nkuzi attorney the Magistrate again confirmed the eviction, still using the Domestic Violence Act. It was argued on behalf of Mabaso that it has not been confirmed through normal estate law proceedings that the property belongs to the in-laws or that they have any rights to that land. There would be strong arguments that Mabaso, as the widow, is the rightful owner of the house and interestingly she is supported in this claim by the traditional leader in Matangari. Further she has tenure rights to the land in terms of the Extension of Security Act (ESTA) and the Interim Protection of Informal Land Rights Act.

An application has now been filed in the Land Claims Court for a review of the decision and the eviction has again been stopped until this application can be heard. A possible complaint against the Magistrate concerned is also being investigated. In addition to the alleged poor handling of the case there are allegations that the Magistrate has a relationship with the family who are trying to evict Mabaso.

It is sad that an important piece of legislation like the Domestic Violence Act that is meant to protect women from abuse is misused in this way to undermine the rights of women and children. There is no logic to the argument that evicting Mabaso could provide protection to the in-laws as they do not even live on that portion of land, they have also not brought any evidence to show that she was a threat to them. Hopefully this kind of abuse will not make it harder for people who really need protection to make use of the Act.

There may be many rural women who never get assistance and loose land rights in similar ways. Mabaso is still on the land, but that is only because she was provided with advice and free legal assistance by Nkuzi. Most rural women cannot afford the time and costs involved in such a case. The case is not yet finalised, but attorneys have already been to court four times in the last six months and have had to make applications not only in the magistrate's court, but also in the Land Claims Court that is situated in Randburg.

The case is interesting in the context of the President of South Africa having signed the Communal Land Rights Act (CLRA) into law in July 2004. The case of Selinah Mabaso highlights the need for stronger and clearer land rights for women living on communal land. During the parliamentary hearings on the CLRA a range of different community groups, NGOs, and chapter 9 institutions,

like the South African Human Rights Commission and the Commission for Gender Equality, raised concerns that the Act would reinforce discrimination against women in rural areas. However following these submissions, indicating the value of participating in the parliamentary processes, a number of changes and additions were made to strengthen the land rights of women. The extent to which the new law will actually provide protection is still a matter of debate and will only really be answered when the law is implemented. However it is clear from the experience of Selinah Mabaso that whatever the law says the extent to which the poor are organised and supported in order to assert their rights will determine the impact, positive or negative, that the law will have.

Marc Wegerif. Nkuzi. Programme Manager: Research and Policy

### **Death Threats in Moletele Land Claim**

The Moletele Community have been trying for more than a decade to get back their land in the Blydepoort area. They first attempted to make claims under the Advisory Commission on Land Allocation established in the early 90s. With the passing of the Restitution of Land Rights Act in 1994 they were quick to lodge a claim in terms of that Act.

Nkuzi has worked with the claimants for more than six years assisting the land claims committee to gather the required information and supporting them in negotiations with the Commission for the Restitution of Land Rights and with land owners and other parties such as the Mpumalanga Parks Board. The Legal Resource Centre (LRC) has provided legal assistance to the claimants and played a leading role in negotiating for the settlement of the claim.

The land claimed includes the 25,000 hectare Blyderivierpoort nature reserve, an internationally recognised conservation area, and two Aventura resorts located in the reserve. It was made clear by government some time ago that the community would not be able to return to the land within the conservation area. Negotiations focussed on finding ways for the land to be returned to the community with the conservation and tourism operations continuing under Parks Board management in terms of an agreement that would also bring financial benefits from the land to the community.

An agreement was reached in 2003 for the return of the land, compensation to be paid to the community for loss of use of the land, and an agreement of lease between the community and the Mpumalanga Parks Board and the resort operators. Despite the agreement having been reached after extensive negotiations involving all parties the Minister of Agriculture and Land Affairs did not sign it. After waiting for a year and no clarity being provided from the Ministry as to why the agreement was not signed the LRC threatened to initiate legal action on behalf of the claimants in order to force the Minister to sign. In response to this the Minister arranged to go and address the community.

On the day of the community meeting the Minister arrived more than three hours late, shortly after the representatives from the Legal Resources Centre had left. According to reports the Minister picked selectively from the agreement basically slamming it as selling out the communities land rights. After this meeting there was confusion within the community and a new initiative to take control of the claim by the traditional authority supported by a Member of Parliament from the area. There have also been attempts to remove the LRC as legal representatives for the community.

In an attempt to bring unity some members of the old land claims committee and the new group that has come to prominence have tried to form a new committee. However there appear to be serious differences between the different parties and tensions remain high within the community. It is alleged that a secret meeting, held in May by some members of the new committee resolved to have four people from the old land claims committee and Joe Shivhambu of Nkuzi killed. Messages have been put out in the community to make it clear that if something of this nature should happen to the people allegedly targeted it is known who the likely suspects are. Shivhambu and the others are taking other extra security precautions and thankfully are still fine.

This situation highlights the risks when so much is at stake in some of the land claims. The intervention of the Minister appears to have been poorly informed and has sparked conflict without offering any alternative way of dealing with the claim. Nkuzi has asked the Minister to intervene again as without her it is going to be difficult to resolve the conflicts. If the drafted agreement is not good enough the Minister needs to make proposals for a solution, she cannot turn her back on a potentially life threatening conflict that she has helped to create.

Marc Wegerif. Nkuzi. Programme Manager: Research and Policy

## **In Brief**

### **CLRA Signed into Law**

The Communal Land Rights Act (Act 11 of 2004) was signed into law on Wednesday 14<sup>th</sup> July 2004. In terms of section 47 of the Act it will take effect "on a date to be determined by the President by proclamation in the *Gazette*". We have no indication at this point on when such a date could be. Nevertheless this should be seen as an historic event, for better or worse the government is proceeding with this piece of legislation that could have a profound impact on the lives of 15 million people living in communal areas around the country.

### **New Addition to Nkuzi Research Team**

Sello Khoza who has worked with Nkuzi for the last years as a Project Officer on the Farm Dweller Programme has moved over to the Research and Policy Programme after being successful in an internal recruitment process. Khoza will

initially work on a research project that Nkuzi is doing with the Human Sciences Research Council looking at "HIV/AIDS, Land Reform and Land-based Livelihoods". He will also assist in some of the other research projects that Nkuzi is involved with. This is an important step in strengthening the capacity of Nkuzi to engage in land reform related research and policy work.

### **Doctorate Student Volunteers at Nkuzi**

Alistair Fraser, a doctorate student from the Ohio State University in the USA, will be assisting voluntarily at the Nkuzi Dzanani office over the next six months. He is in the area doing research for his PhD dissertation that is currently titled 'Geography and the struggle for land: The politics of territoriality in South Africa's land reform'. Nkuzi welcome Fraser's willingness to assist in the organisation and believe this and his research could be of value to land reform in the area.

**OPINION****The SAHRC Economic and Social Rights Report on Land**

The poor quality of the 5<sup>th</sup> Economic and Social Rights Report on Land, released by the Human Rights Commission on the 21<sup>st</sup> June, illustrates the neglect of land reform almost as much as the Report's contents. Sadly it is a poorly written report with numerous errors and too many contradictory and sweeping unsubstantiated statements. This takes away from the value that it could have in contributing to debates on land reform in South Africa and is typical of the low priority given to this essential area of economic and social transformation by government and much of civil society.

The report confirms what all in the land sector and many outside it know too well: "Generally, land reform in South Africa has remained slow, and targets have yet to be met" (pg43). While the simplistic comparison with Zimbabwe in the concluding paragraph is somewhat galling it is imperative that those in positions of power in government and business hear the message that more needs to be done to improve land reform. This is needed not just to "avoid problems in the future" (pg 44), but to address the desperate plight of millions of rural South Africans and to create a South Africa that we can honestly say "belongs to all who live in it"<sup>1</sup>.

The lack of clear and reliable information both on land needs and the impact of implementation of land reform programmes emerges as a major problem area. Such a lack of information must make effective planning and monitoring almost impossible. The Report fails to clarify basic questions about how many land claims have been validated, how many have been settled, how many are left, and how much land has been transferred through the Land Redistribution for Agricultural Development Programme (LRAD). In our experience this confusion emanates from the Department of Land Affairs (DLA) themselves who have often put out confusing and contradictory figures. The Report has if anything added to this confusion.

The Report finds that there is no information available or monitoring of the number of people evicted from farms (pg 36). Without this kind of empirical information on the scale and the nature of evictions the proposed changes to legislation and the various government and non-government programmes addressing the problem cannot be expected to appropriately address the troubling phenomena.

While the numbers are not known evictions do continue both in contravention of the law and through legal processes. The assertions that in terms of the Extension of Security of Tenure Act (ESTA) owners have to find alternative land in order to evict occupiers (pg 24) and that the government farm dweller programme provides alternative land for legally evicted farm dwellers (pg 19) are contradictory and simply not correct. What is correct is that there is a totally

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<sup>1</sup> Preamble - The Constitution of the Republic of South Africa, Act 106 of 1996.

inadequate budget for tenure reform, further “[t]he fact that tenure reform has a low and declining budget makes realisation of tenure rights impossible” (pg 29).

The Report repeatedly refers to the amendments to ESTA and the Land Reform, Labour Tenants, Act (LTA) that are aimed at strengthening the rights of occupiers. It even claims that the “Consolidated ESTA/Labour Tenants Bill...was due to be gazetted by the end of 2003” (pg 24). Rumours of such amendments have been around for years. It is high time that the DLA engage in an open discussion with stakeholders, including farm occupiers and owners, about the type of tenure regime that is required. If there is any such Bill or drafts they must be released as soon as possible as a contribution to this much needed debate.

The poor conditions and the abuse of rights experienced by farm dwellers are further highlighted by other Economic and Social Rights reports such as the ones on education, housing, and the right to water. Despite the vulnerability of farm dwellers the DLA has continued to combine the budget for redistribution and tenure reform with the result that LRAD has consumed the whole budget leaving only crumbs to deal with enforcing the rights of occupiers and the settlement of the thousands of Labour Tenant claims. It is time for an urgent intervention to ensure that millions of farm dwellers start to enjoy the basic economic and social rights promised in the Constitution. The least DLA can do is to have a specific budget allocation for the implementation of tenure reforms that give farm dwellers their own land where they can have secure homes and opportunities for their own production.

The improvements achieved in the settlement of land claims are correctly acknowledged as well as the major challenges that lie ahead. The most pressing issue is the target set by the President for the settlement of all land claims by the end of 2005. A target that at current rates of delivery and with current budgets is totally unrealistic. The success over the last years in settling mostly urban claims with cash compensation should not fool anyone into thinking that thousands of complicated rural claims involving large tracts of land can be resolved in the next eighteen months. If the target stands the government must show they are serious with a budget allocation of at least R10 billion for this year and the rapid expropriation of farms that some owners are not willing to sell at reasonable prices. We would suggest an urgent review of the target and the setting of a more realistic time frame. The target must aim to resolve all outstanding claims as quickly as possible without pushing people to taking cash or compromising the development potential of land returned.

While still struggling to resolve land claims the DLA is now faced with the enormity of implementing the Communal Land Rights Act (CLRA). At stake is the tenure security of 15 million people. Amongst other things the task will involve surveying and titling land for over 2,000 communities and more than 2 million households, assuming that all conflicts over boundaries can be resolved. We wait with interest to see if Cabinet is going to back this process with the billions of Rands it will need.

The Report praises LRAD for beating its target for the hectares to be redistributed in the year under review. However there is no indication of where this alleged target of 81 555 hectares (pg 4) comes from. It is also not mentioned that both that target and the hectares redistributed through LRAD in the year under review are less than 1% of the land that LRAD policy documents promise will be redistributed in 15 years. There is also no indication of the quality of the projects being created through LRAD or probing into who is really benefiting. The report does point out that despite the full expenditure – in some provinces over expenditure – of the budget and the small amount of land redistributed the budget for land redistribution is not only inadequate, but being further reduced (pg 26).

The need for effective post settlement support and the inadequacy of current measures is identified. This applies across all the land reform programmes and will also apply to the CLRA implementation. Thankfully some steps are being taken to address this through the establishment of post-settlement support units in the Commission for the Restitution of Land Rights and the Comprehensive Farmer Support Programme in the Department of Agriculture. However these are new and relatively small initiatives, far more is still needed to ensure that the development potential of land reform is realised.

Despite its weaknesses the Economic and Social Rights Report on Land clearly highlights many of the challenges and shortcomings of the current land reform programme. A concerted effort is needed from government, civil society, and business to ensure that land reform and the required complimentary support measures are implemented to the extent and high standards required. We hope that next year's Report will in quality and content reflect such a renewed commitment to the fulfilment of this most important area of economic and social rights.

Marc Wegerif. Nkuzi. Programme Manager: Research and Policy

### **Response to Farmers Weekly Leader on Expropriation**

It is disappointing that the Editor of the Farmers Weekly appears, from the leader piece – "SURELY, WHAT'S GOOD FOR THE GOOSE, IS GOOD FOR THE GANDER?" - in the 25<sup>th</sup> June issue, to be poorly informed, not least about the South African Constitution. The Constitution treats the Goose and the Gander exactly the same. They both enjoy the same rights and in turn need to accept the implications of the Constitution that they don't like.

It should be no surprise and is certainly not "outrageous" that the Chief Land Claims Commissioner is going to consider previous subsidies when establishing compensation to be paid to land owners who are expropriated. This is required by section 25(3) of the Constitution that says the amount of compensation to be paid should be decided "having regard to all relevant circumstances, including...the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property". This applies whether the

land owner being expropriated is black or white. This is not penalising the owners or trying to do land restitution "on the cheap". It is complying with the Constitution and being prudent with tax payers' money. Why should the state pay a land owner for an asset that was paid for by the state in the first place?

The Supreme Court of Appeal did not rule that the government "should either buy the ground from Duvenhage, or find alternative accommodation". It found that the property rights of the owner and the right to housing of the occupiers had been violated, see case: SCA 187/03. It therefore ordered the state to pay constitutional damages to the owner for the past and continued loss of use of the land. The Court further ordered that the residents can stay on the land until alternative accommodation is made available by the state.

The Minister of Agriculture and Land Affairs is not "contemplating" going to the Constitutional Court, an application for leave to appeal has already been lodged on 18<sup>th</sup> June. The President of the Republic of South Africa is the first applicant and the Minister of Agriculture and Land Affairs is the second applicant. I find this unfortunate as I believe the Supreme Court made an enlightened order that balanced and confirmed the rights of the land owner and the residents and clarified the obligation of the state to protect such rights. However I do not begrudge the President or the Minister the right to make such an appeal. They have a right to do so just as the land owners who are being expropriated have a right to go to the Constitutional Court if they think their constitutional rights are being violated.

Rather than using energy on court cases I would prefer to see the Department of Land Affairs accepting their responsibilities and making land reform work and land owners making land available and assisting land reform beneficiaries. But in South Africa the Geese, the Ganders, and the rest of us are lucky to have a constitution that gives us all rights.

Marc Wegerif. Nkuzi. Programme Manager: Research and Policy

## EVENTS

**Event:** Makhado Land Reform Conference

**Date:** 26-27 August (to be confirmed).

**Venue:** In Makhado

**Details:** Nkuzi is convening this conference of all stakeholders in Makhado to discuss land reform in the area and in particular the integrated plan for land reform that Nkuzi has drawn up. The Minister for Agriculture and Land Affairs is scheduled to address the conference along with other local and national speakers.

**For more information contact:** Tshililo Manenzhe. E-mail: [tshililo@nkuzi.org.za](mailto:tshililo@nkuzi.org.za) Tel: 0159-704 121.