

NKUZI TIMES

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We wish you all a very enjoyable festive season and a great 2005

Nkuzi will be closed for a well deserved rest from 15th Dec until the 4th of Jan
Some staff will be on standby to deal with urgent matters and can be contacted on
072-159 4073 or 083-432 8326

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NEWS**Illegally Evicted Woman Restored To Her Home**

Salome Mabitwa is a 23 year old woman residing with her one year old baby on the farm Morganson near Bela-Bela in Limpopo Province. The owner of the farm is Dannie Posthumus who presently resides somewhere in Pretoria.

Salome's father, Solomon Mabitwa, started working and residing on the farm around 1979. Salome was born on the farm when Catherine Posthumus (Dannie's Mother) was still the owner. Solomon, his wife Maggie and their six children all stayed on the farm. The other five children moved out to start their own families when they became adults.

After the death of Catherine Posthumus, Dannie took over the farm. At the time there were only three people left living on the farm, Solomon, Maggie and Salome who is the last born.

Around 2001 Solomon got sick and while he was still sick his wife left with another man. Salome took care of him until he died in July 2003 and was buried on the farm.

After Solomon's death Dannie instructed Salome to leave the farm. In November 2003 she was given 12 months notice, as required in terms of the Extension of Security of Tenure Act (ESTA), to vacate the farm by the 13th November 2004. However she did not vacate the farm since she had nowhere to go. On the 26th November 2004 Dannie broke down the doors to her house and took all her belongings and dumped them on the road outside the farm. Salome contacted us at the Nkuzi Legal Team on the 1st December 2004 and I went to investigate the case on the 2nd December 2004. Her belongings were still by the road and she and her baby had nowhere to stay.

I decided to take them back to the farm and instituted a legal action against Dannie. On the 9th December 2004 I went to the Magistrates Court in Bela-Bela and moved an urgent application for restoration of tenure rights. The main argument was that Dannie had no court order for the eviction and the eviction was therefore illegal. An interim order was granted restoring Salome to the house and ordering Dannie to repair the damage to the house and other property.

The return date for confirmation of the interim order is the 26th January 2005 where Dannie will have the opportunity to argue his case in Court if he wishes to. We will continue to represent Salome and are more than ready to meet Dannie in Court and argue for the restoration order to be made permanent.

Nandu Malumbete. Nkuzi. Attorney

Farm Dwellers March For Freedom

On 19th November 2004 over 400 farm dwellers marched to the Bronkhorstspuit Police Station and the Kungwini Local Municipality. The purpose of the march was to highlight the plight of people living on farms. The march in Bronkhorstspuit was organized by the Nkuzi team in Gauteng Province as part of the National "Free the Farm Dweller Campaign" that is being coordinated by the National Land Committee (NLC).

The marchers are all living on farms in the area. They have little access to services most not even having clean water. There are also many of them who have opened cases at the police station after suffering harassment and assault allegedly by land owners and the vigilant group Mapogo-A-Mathamaga. They are frustrated as there have been no arrests or progress in the investigation of these cases.

As the march went from the Bronkhorstspuit sports complex to the police station the placards and slogans carried the message of the marchers loudly and clearly. Farm Dwellers need development, land, services and security. They should no longer be treated as modern day slaves they should enjoy their full rights as any other citizen. The march was vibrant with farm dwellers, accustomed to subservience on the farms, enjoying the opportunity to march in the streets and voice their concerns.

Memorandums were handed to the police and officials at the Municipality before the group disbursed peacefully. Amongst other demands were calls for the police to stop harassing farm dwellers; cases opened by farm dwellers to be reinvestigated; the inclusion of farm dwellers issues in the Integrated Development Plans (IDPS); an audit of land owned by the Municipality; and ward councillors in the rural parts of the municipality to report back to their constituency that are mainly farm dwellers.

Since the march the Municipality has agreed to establish a task team to look into the concerns raised and have invited Nkuzi to send a delegate to be part of the team. A response is still awaited from the Police. The farm dwellers remain willing to march again or take other peaceful actions to try and ensure they are not forgotten.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research

People's Assembly: Celebrations Go On, But Land Problems Remain

The People's Assembly took place at Parliament from the 10th to the 11th of October 2004. Preparations were done in all 9 provinces of South Africa. During the actual sitting of the People's Assembly in Cape Town on the 11th of October provincial legislatures were connected through a satellite link. The project was an initiative of the National Parliament that developed the concept and organized it in order to celebrate ten years of constitutional democracy in South Africa.

There were four main sectors that participated during the process at both provincial legislatures and the People's Assembly. The represented sectors were youth, disabled, women and land reform beneficiaries. Each province sent four delegates, one per sector, to the People's Assembly nationally. From the

provincial delegates only one per sector was chosen to speak in the Assembly and they were given ten minutes each to make their presentation. I was nominated from the provincial level in Gauteng to represent land reform beneficiaries at the national event. I was further privileged to be asked to speak on land matters in the People's Assembly.

In my input I mentioned the frustrations around the slow pace of the Land Restitution process, noting that most of the claims settled so far have been settled with financial compensation while most of those that are outstanding involve the transfer of Land. I also raised the frustrations experienced by farm dwellers despite progressive pieces of legislation like the Extension of Security of Tenure Act 62 of 1997 and the Land Reform Labour Tenant Act 3 of 1996. Farm dwellers in particular continue to have their basic rights and dignity infringed upon with impunity and experience gross exploitation. They are seemingly at the periphery of all development initiatives, they are not prioritized in integrated development plans and hence do not receive any benefits.

There was a positive response to the input and delegates spoken to later confirmed their agreement with the concerns raised. There was particular support for the land restitution problems raised from many of the delegates who were land claimants.

The People's Assembly for me was meant to appease those who have been crying foul during 10 years of democracy. Democracy means nothing for many landless rural South Africans as they do not enjoy the rights outlined in the Constitution. These rights remain 'pie in the sky' for the millions of land hungry South Africans.

The government says much about the constitution and its greatness, but what a paradox it is when the very same government has to be taken to court to force it to fulfil its constitutional obligations. The Modderklip matter is a case in point where the Supreme Court of Appeal ordered that the government must provide alternative accommodation before people can be evicted and has to compensate the land owner for the loss of use of his land. But now the Department of Land Affairs has appealed to the Constitutional Court (case CCT 20/04) in an attempt to avoid fulfilling its constitutional mandate to over 40,000 occupiers and the land owner.

Parliament and Provincial Legislatures must do more to ensure that the relevant government departments, like the Department of Land Affairs, fulfil their mandates and deliver in terms of constitutional obligations. If this does not happen the People's Assembly process will have been celebrating a Utopia far removed from the reality of South Africa.

AMANDLA

Siphiwe Ngomane. Nkuzi. Programme Manager: Farm Dweller Programme

Farmer Respects The Law Despite Sangoma's Advice

On the 10th of December 2004 the Nkuzi office in Elim received a call from a Levubu farmer who asked for legal advice in a matter wherein employees identified "thieves" through the assistance of a Sangoma.

According to the employees the employer ordered them to sort out the theft problem that had taken place on the farm over a period of time. The employees also find themselves duty bound to assist the employer, as they felt threatened when the employer told them that if they do not come with a solution, he would deduct money from all employees to recover the value of the property lost through theft.

Due to the above threat, employees held a meeting to discuss the issue and it was resolved that the services of a Sangoma be utilized to identify the persons responsible for the theft on the farm. They also agreed to a condition that any person whom the Sangoma points as the one responsible was to be dismissed from work with immediate effect.

As we all know that farm workers are the most exploited and that they live from hand to mouth the employer decided to withdraw his own R2,000 from an ATM and gave them the money to pay the cost of the Sangoma. They were also provided with the farm truck to travel to the Sangoma's place. The R2,000 was given on condition that it would later be deducted from each employee's monthly salary.

The Sangoma was invited to the farm to identify the thieves and during the process he implicated two employees who are husband and wife.

The farmer had already promised the employees that the person to be pointed out by the Sangoma would be dismissed and therefore he approached the Nkuzi Legal Unit to find out how to handle the situation. He was advised that the use of a Sangoma would be regarded by the CCMA and Labour Court as hearsay evidence and therefore inadmissible. It was pointed out that it will be difficult for the employer to justify the dismissal as he had no other evidence against the workers. The farmer therefore requested the Nkuzi Legal Unit to come to the farm to explain to the workers the legal consequences of dismissing an employee without 'real' evidence to support the allegations.

When it was explained to them the employees seemed to have understood the legal consequences of their agreement, but they said that they now had an attitude towards the workers pointed out by the Sangoma and would not be able to continue working with them. They therefore resolved that it would be better if the employer transfers the couple to work on his other farm.

Shirhami Shirinda. Nkuzi. Candidate Attorney

CLRA Is Debated In Limpopo

Over the last months Nkuzi in collaboration with the Open Society Foundation organized a series of workshops on the Communal Land Rights Act (CLRA). The CLRA was signed into law by the President on the 12th July 2004, but it will only come into effect on a date still to be prescribed. The CLRA is bound to have a profound impact on the approximately 15million people living on communal land around the country as it will change the legal status of their rights to the land upon which they live and work. What remains a question is whether this impact is going to be beneficial or disastrous, especially for the poor with around 70% of the affected population living below the poverty line. There may also be changes to the Act resulting from Constitutional Court challenges that are being planned by some organisations.

Starting from the 29th Oct up to the 3rd of December the Open Society Foundation and Nkuzi ran a series of workshops to inform people about the Act and its possible implications. The organizations believe that people need to be as well informed as possible in order to be able to engage in the debates themselves and prepare for the pending implementation of the Act. Three district workshops were run the first in Jane Furse followed by one in Makhado on the 5th November and another in Namakgale on the 12th November. These were attended by over two hundred and fifty people from communities in each area. Two provincial workshops were also organized for NGOs and relevant government departments.

During the same months the Traditional Affairs section in the Premiers office in Limpopo and the Department of Land Affairs (DLA) ran workshops in each District to inform traditional leaders about the Act. Some of these workshops were attended by hundreds of traditional leaders keen to find out more about their role in land administration.

On the 17th November Timbila and Interfund organized a workshop on the CLRA in Polokwane. The workshop was attended by over seventy people from civil society organizations and was addressed by Marc Wegerif of Nkuzi with respondents from the Congress of Traditional Leaders of South Africa, the Council of Churches and the Landless Peoples Movement.

There has been a strong interest in the workshops with people clearly realizing the significance of this new law. There were sharply divided opinions on the role that should be played by traditional leaders and many other areas of concern including the definition of community, the risk of conflicts over boundaries and uncertainty about how the Act will affect development and service delivery. The overlap with the Traditional Leadership and Governance Framework Act (TLGFA) became clear and Nkuzi also explained to people the implications of that Act and pending provincial legislation that has to be passed in terms of the TLGFA. A number of community members raised questions about the implications of the CLRA for mineral rights issues. In response to this Nkuzi provided copies of the Minerals and Petroleum Resources Act and got a person from the Department of Minerals and Energy to address one of the Provincial Workshops.

Getting information to those who are going to be affected by the CLRA and related laws is clearly going to be a major challenge and essential for people to defend their rights. Nkuzi is developing plans to continue working on this next year and to be ready to respond when the Act finally comes into effect.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research

IN BRIEF

DG of Land Affairs Resigns

Dr Gilingwe Mayende, the Director General of the Department of Land Affairs, has resigned and will leave the post from the end of December 2004. There has been much speculation that he would be leaving, the confirmation came in a memo on 9th December. Mayende served as the DG from 2000 and his contract was due to end in April 2005. He previously served as the Regional Land Claims Commissioner in the Eastern Cape. Mayende said that "the time has come for me to explore other challenges." There has been no indication yet of whom his replacement will be.

Traditional Leadership Bill Published In Mpumalanga

The Mpumalanga Province has published the Mpumalanga Traditional Leadership and Governance Bill, 2004 to provide amongst other things for the "recognition of traditional communities; to provide for the establishment and recognition of traditional councils". The Bill is published in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) and is the first such provincial legislation to be published, other provinces are required to pass similar legislation soon. The Bill is of particular interest due to its impact on local governance including the administration of land in terms of the Communal Land Rights Act (Act 11 of 2004). The Traditional Affairs section in the Department of Local Government in Mpumalanga has indicated that submissions on the Bill can be made up to the middle of January 2005.