

NKUZI TIMES

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NEWS

Old Lady and Children Get Old and New Home Through Negotiations

Annah Mabje is 64 years old; she lives on the farm Thaba Tswana Boskama (operating as Hoekomnie Boedery) near Modimolle. The farm owner runs a bed and breakfast on the farm and also keeps some wild animals and grows vegetables. Annah was married to Piet Motshegoa, who passed away on 9th April 2002, and they had six children. Although Annah, who is illiterate, says she cannot remember when they arrived on the farm she does know that the family lived on the farm for a 'very long time'.

When Annah and her husband arrived on the farm the owner was one Mr C. Mantjies who later sold the farm to Pieter & Miemie Greyling. When Greyling took over the farm Annah Mabje was staying on the farm with two of her adult children who were working on the farm and the family lived in a three room house. One of Annah's sons, who lived in his own place at Mabopane, passed away and soon thereafter his wife also died. They left Annah with three grandchildren to take care of: Thabiso born in 1990, Lerato born in 1992 and Elza born in 2000.

After the death of the children's parents Annah had to care for them and brought them to the farm. The farm owner was not happy with the presence of the three children and he told Annah that she and the children must leave. Annah felt she had no choice and left, finding temporary shelter with relatives at Phagameng Township outside Modimolle. She then approached Nkuzi for assistance.

On the 11th January 2005 I took Annah and her 3 grandchildren to the farm. We found Mr and Mrs Greyling present and I negotiated with them explaining that they cannot just evict our clients without following the correct procedure. Initially the Greyling's were adamant that they can evict whoever they want as the farm is their private property. It took time to explain that if they felt entitled to evict they should approach a court for an eviction order. I also explained that they cannot evict Annah for living with and looking after her grandchildren who are orphans and have nowhere else to go. After more than an hour of discussion they agreed to let Annah and her grandchildren stay on the farm.

One of the concerns raised in the negotiations was that Annah and her family are staying in a three roomed house. With the daughter occupying one room and her son the other room Annah and her grandchildren are all sleeping in the remaining single room which was too small for four people. We inspected the room and indeed it was too small. I asked if the Greyling's could extend the house. They were not willing to extend the house on the farm, but eventually agreed to build a new house in the neighbouring township.

The family are now on the farm and the children have enrolled at the local farm school on the 13th January. Work is starting on the building of the four room house in the township. Our client is happy with the agreement; she will soon be

having her own house and will still be allowed to use her room in the house on the farm.

Nandu Malumbete. Nkuzi. Attorney

The Plight of Children on Farms

Mr George Madisha came to a plot on the farm Doornratjie, 40kms west of Pretoria, around 1991. He was asked by the owner, Mr. Naartjie Boffel, to look after the farm and has stayed there without working or paying rent ever since. The owner usually came to the plot only after about 3 years just to see if the place was well looked after. Boffel decided to sell the farm without informing the occupiers. According to the family they only realized things had changed when one morning last December a big white man in a van parked in the yard and the man told them; "This is my farm, you should disappear tomorrow". While they were still in shock this man, Mr. Khourie, went to the house and started counting them and asking them their names. Khourie told the family members that if they didn't move he would poison the water, demolish the houses and send his men to beat them at night. At the time George Madisha was at work as he normally gets piece jobs around farms in the area.

The following day Mrs Lizbeth Madisha started packing while the husband, George Madisha, had gone to work. George Madisha asked for a day off so that he could build a temporary structure for the family on another piece of land. Lizbeth Madisha was on the beneficiary list for a gardening project that had been initiated by the Department of Land Affairs so Lizbeth and George Madisha moved onto the piece of land allocated for her on this project. During the process of building and establishing a new home the children were left to look after the house and possessions on the old plot at Doornratjie.

We were approached to assist the family by a Mr. Mpande, who is the Chairperson of a committee set up in the Laizonia area to deal with evictions and other community problems. On my intervention I advised the family to lay criminal charges against Khourie for illegal eviction. The Madisha's were visibly scared even at the mention of his name and refused to go to the police; they said they just wanted out of the farm, nothing else. A letter was written to Khourie asking that the family be given enough time to vacate the farm. He agreed in a telephone conversation, but refused to sign any agreement. This left the family still unsure that they would not be harassed.

The family continued for 2 days sleeping at the separate plots and then on the night of 5th January the house on the farm, where the children were staying was broken into. The two boys aged 16 and 12 were assaulted while the daughter, aged 15 was raped. In the morning the father was called to the Erasmia Police Station where the children were still shaking with fear. After questioning by the police they were taken to the hospital to be examined. The girl has since been taking treatment at the Laudium Clinic and we arranged a social worker to assist

with counselling. A case of rape, assault and housebreaking has been opened at the police station, but there is no progress with the investigation.

Who is to be blamed: Parents who leave their children or owners who destroy families by threatening and evicting them? Out of desperate circumstances children on farms are often left unattended, this time tragedy struck.

Ntokozo Nzimande. Nkuzi. Project Officer: Farm Dweller Programme

Occupiers Act to Demand Their Rights

On 11th February 2005 the Pretoria High Court confirmed a rule nisi (temporary) eviction order against about 500 families occupying plot 175 Kameeldrift, just 20kms northeast of Pretoria. While the court found that there is alternative land available it did not take into consideration that it is more than 30kms away. The ruling gave the families thirty days to move inflicting more hardship on them as their work and livelihoods is within the area of Kameeldrift.

The Judge's decision was based on the disputed representation made by the Dinokeng Tsa Taemane Local Municipality that suitable alternative land is available at the Refiloe Township, near Cullinan. Representatives of the families say that in another case in the same area, Plot 78 De Wagensdrift that has 48 families, it has been indicated that the identified area outside Refiloe is not suitable for human habitation and as a result the families are still living in tents at De Wagensdrift.

A decision was therefore taken by the community to stage a sit-in at the offices of the Executive Mayor, Jan Boschhoff. On 22nd February five mini-bus taxis were organised to take about 100 people to the Municipal offices in Rayton. The sit-in took place from 12.00 in the presence of a heavy contingency of the Public Order Policing Unit, SABC radio news, and other journalists.

The sit-in was called off at about 18:15 after the Executive Mayor addressed the group and agreed to a consultative meeting with all occupiers of plot 175 and other plots in that area. The meeting is due to take place on Friday 25th February to explore the possibility of getting alternative land within the area of Kameeldrift.

Amandla Bahlali base Mapulazini: Amandla

Siphiwe Ngomane. Nkuzi. Programme Manager: Farm Dweller Programme

Municipality Opens Road for Community and Lands in Court

The community of Swongozwi have lived for centuries in the Soutpansberg Mountains overlooking the town of Makhado. While most of the community were removed due to apartheid laws a small part of the community were allowed to remain on the site in order to maintain the graves where to this day the Venda kings and royal family members are buried. The community have lodged a land

claim on the white owned farms that surround the approximately 150 people who remain living at Swongozwi.

In December one of the neighbouring farmers dug up the only passable access road that crossed his land and locked a gate at the entrance to the road. This is a road that has been used and maintained for decades by the community and the Municipality. A village was cut-off, Municipal trucks that bring water for the village could not pass and reaching a shop involved walking more than ten kms. The owner refused to open the road so the Makhado Municipality took a bulldozer, knocked down the gate and filled in the holes.

At last a municipality willing to act decisively to defend the basic rights of the poor on farms, they should be commended for this. Instead of commendation the Municipality was promptly taken to court by the land owner who is trying to force them to repair the gate and re-dig the holes in the road. The court case started on the 21st February and is now postponed for a few weeks; in the meantime there is an attempt to negotiate a solution. Sanity must prevail; a community cannot simply be cut-off from the public roads and services and certainly this should not be done by a municipality forced by a court to destroy its own road.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research

IN BRIEF

HIV/AIDS and Land Reform

The Human Science Research Council (HSRC) is running a research project that aims to establish more clearly the impact of HIV/AIDS on land reform and land based livelihoods in South Africa. Research is being carried out in sites in Limpopo (done by Nkuzi), Kwa Zulu Natal and the Eastern Cape. It is hoped that findings from the research will assist in guiding policy and programme responses that can ameliorate the negative impact of the pandemic on land reform. The first reports from this study should be available around May 2005.

OPINION

Government Gets Serious About Land Reform

Land reform has received more attention than ever before in the national budget speech and more importantly in the financial allocations. The substantial increase in the allocations for land reform, in particular for land restitution, are welcome with the total DLA budget creeping up to just under 0.8% of total government expenditure during the coming financial year and projected to get close to 1% in the following year. While this is still a small part of overall government business it is not the joke that some previous allocations for land reform have been. With an 84% increase in the total allocation to DLA for this year, made up largely of a whopping 134% increase for restitution and an extra 56% for 'land reform'

(redistribution and tenure), government finally seems to be getting serious about land reform.

It is disappointing that land claims have not been finalised within the three years indicated by President Mbeki in 2002, but it had been clear for some time that this would not be achieved. Aside from administrative delays and obstruction by some land owners the budget allocated was wholly inadequate. The extension of the process for a further three years was indicated in the President's state of the nation address on 11th Feb 2005 and confirmed by the Minister for Agriculture and Land Affairs Thoko Didiza on 17th Feb. We hope that the process can now be resolved with the more realistic budget of R9.9 billion that has been allocated for the coming three years. This amount still falls short of the estimated R13 billion required, but it is getting close and government has been willing to add more when the restitution budget has been overspent in the past. With the inadequate finance excuse all but removed pressure is on the Commission for the Restitution of Land Rights (CRLR) to ensure they make a success of this process. Not least among their challenges must be ensuring that the development potential of land restitution is realised to the benefit of claimants.

The substantial increase in the 'land reform' component of the DLA budget for the coming year and estimates of more increases in the following years is encouraging and in stark contrast to last year's estimates of declining expenditure on 'land reform' in the Medium Term Expenditure Framework. However the stated target for the number of hectares to be redistributed in the coming year is still far less than 1% of agricultural land, well short of the pace of delivery required if 30% of agricultural land is to be redistributed by 2015.

It is disappointing that there is still no separate budget line for the provision of tenure security to farm dwellers. The failure to ring fence financing for farm dwellers is indicative of the lack of any proactive programme to give them land of their own. It appears farm dwellers will remain neglected while the Land Redistribution for Agricultural Development (LRAD) programme consumes the lion's share of the 'land reform' budget line.

Communal land rights gets its own budget line for the first time, a nominal R11million for the coming year estimated to increase to only R27.7million in 2007/08 year. This according to the output targets is for the completion of ESTA/LTA legislation, completion of 'community land rights regulations' and the implementation of 7 pilot projects. Can we take this as confirmation that the Communal Land Rights Act (CLRA) is still a long way from full implementation or will it come into effect with no substantial resources allocated for implementation? The statement in the strategic overview section of the budget vote that the CLRA 'process' including land transfers 'is scheduled for completion in 2007' must be a typing error.

The target for ESTA/LTA consolidation 'by November 2005', combined with the space made for this on the 2005 'draft legislative programme' of Parliament indicates we may finally see some action on this piece of legislation that has been

mooted since 2000. Whether this will be to the benefit of farm dwellers or an attack on their already limited rights remains to be seen.

The 2005/06 budget represents a significant step in the right direction for land reform. There are of course still weak areas in the budget and significant policy and implementation problems to overcome. Let's hope that as the improvements for the restitution process bear fruits we will see a similar commitment shown to the other land reform programmes.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research

Meeting the Moving Deadlines

The President set a deadline for all restitution of land rights claims to be settled by March 2005, later this slid to the end of 2005. Now it has been confirmed that there will be another three years to settle all the land claims; that is to the end of the 2007/08 financial year. It is important in the light of this that we begin to evaluate the performance of government against deadlines set for land reform previously.

After the promulgation of the Restitution of Land Rights Act in 1994 the cut-off date for the lodgement of all land claims was set for December 1997. However, it took the government a bit longer to set up the Commission for Restitution of Land Rights (CRLR) and have sufficient capacity and systems to ensure that the deadline was met. This resulted in piece meal campaigns intended at encouraging people who lost land rights, through the enforcement of apartheid legislation, to lodge their land claims. The campaign started very late and was not effective since it left the majority of the potential land claimants out. The date was postponed to December 1998 and with the assistance of NGOs a significant number of people lodged their claims before the extended cut-off date.

Provision was made in the Land Reform Labour Tenant Act passed in 1996 for people who are 'labour tenants' in terms of the Act, either still living on the farm or recently evicted, to apply for ownership of the land they lived on and used. The Department of Land Affairs embarked on a campaign to raise awareness among labour tenants to submit their applications before March 1999. This was once again postponed to March 2000 due to the weaknesses of that campaign in many provinces.

The President of South Africa in setting the deadline for the settlement of all land claims by March 2005 acknowledged first and foremost that restitution is a right the majority of land claimants are still yearning to access. Restitution is a process through which the country can begin to heal the wounds inflicted on the nation by apartheid which amongst other monstrous acts created the racially skewed land ownership patterns still shaping our country today. Secondly, the establishment of a commission by its very nature presupposes that it will work for a specified period of time. Therefore, the President is right to bring the life of the commission to an end within a specified time frame.

Sadly the three year time frame set in 2002 was, like other deadlines, never backed by a clear strategy or the required budget for it to be met. Now the deadline has yet again been extended by another three years to enable the CRLR to do the job, but the challenge remains; will they be able to execute their mandate and settle all the outstanding claims? In my opinion they could do it if they adopt the right attitude, secure resources to meet their obligations, get the support from the President's office and cooperation from land owners.

One of the key factors hindering the work of the CRLR is land owners who are not willing to cooperate. In Limpopo province this is practically illustrated by some farmers who refuse Commission staff entry onto land to do inspections in loco. Other land owners are bent on ensuring that land claimants never get their land back by disputing the validity of claims without facts and taking the Commission to court. While we acknowledge that they have the right to take the Commission to court this should not be used as a delaying tactic.

To deal with such kind of land owners the Commission must exercise its powers to expropriate land as provided for in the Constitution of the country and the Restitution of Land Rights Act as amended. The Commission cannot be forced, by threats and court actions, to submit to unreasonable demands of some racist land owners. After building a strong case the Commission can single out one unwilling racist land owner for expropriation to set an example for others who are against transformation. In cases where land owners are refusing Commission staff entry into farms for inspection in loco they must get court orders to enter farms whether land owners want it or not.

The President of the country could also support the Commission by urging land owners to collaborate with the land restitution process. Community members whose land claims are not yet settled are fed up with the attitude of farmers and want to take matters into their own hands. Although that action will be regrettable, one cannot blame communities after they have been patient for all these years only to be frustrated by farmers at the final stages of their claims.

It will be regrettable if the Commission fails to meet the new deadline without applying all the necessary provisions of the Act at their disposal such as expropriation. Now is the time for the Commission to act on the expropriation clause in the constitution and the restitution legislation. The extended deadline also gives them an opportunity to prepare claimants and support institutions for post settlement challenges. The CRLR should view this extension of the deadline as an opportunity to perform its role better.

Lucas Mufamadi. Nkuzi. Executive Director

President Skips Land

In his state of the nation address to Parliament last week, President Mbeki could not be expected to speak on every issue affecting the country, but some of the pressing issues of land reform certainly deserved more attention.

The President in the second paragraph referred to the success in moving "toward the realisation of the vision contained in the Freedom Charter...that, 'South Africa belongs to all who live in it, black and white.'" He went on to refer to the removal and destruction of Sophiatown, describing the removal as a "horrible act of violence against a people", one that made the "unequivocal...statement that the government of the day was determined to communicate the understanding that South Africa did not belong to all who live in it". The transformation of Sophiatown into the white area of Triomf was "the Triumph of white supremacy".

The President did not mention that those removed from Sophiatown, hundreds of whom lodged land claims, have not had their land returned. While the validity of their claims was undeniable the government decided that "restoration of the land was not feasible...and alternative land within the same magisterial region was not available" (Minister Thoko Didiza responding to a question in Parliament in 2000) and therefore they offered only financial compensation to the claimants.

As Andile Mngxitama, Land Rights Coordinator for the National Land Committee said at the time "[a] once vibrant community, forcibly removed by apartheid, is now relegated to the scrap-heap of history by flat-rate household payments that will do little more than meet the current household needs of the dispossessed".

If the removal of Sophiatown sent a message in the strongest terms that "South Africa did not belong to all who live in it" and was a "triumph for white supremacy", what does the failure to return those removed signify? What is the unequivocal message sent by the government of today when those dispossessed receive no land and the settlement of Triomf remains in place?

We cannot say that we have achieved the vision of the Freedom Charter while over 80% of our agricultural land remains in the hands of less than 1% of the population, and hundreds of thousands of people removed from places like Sophiatown and farms and villages around the country have not got their land back, even when their land claims are said to have been settled.

We cannot say the country "belongs to all" and certainly cannot say, as the Freedom Charter also demands, that the land has been "shared among those who work it" while millions of black farm workers continue to live with insecurity on land owned by others and face regular abuse of their basic rights.

There is no mention in the President's address of farm workers, those who produce the food we eat yet suffer the worst working conditions of any sector of our society. Tens of thousands of labour tenants who have lodged claims years ago for ownership of the land they live on got no clue from the President as to when their claims will be addressed. In the meantime these labour tenants and farm

workers are more likely to receive an eviction order from the land owner than assistance from the Department of Land Affairs.

There is no mention of the progress or lack thereof in redistributing 30% of agricultural land to black South Africans as promised by the government.

During 2004 the Communal Land Rights Act became law, but it will only come into effect on a date still to be prescribed by the President. This law will change the legal rights of over 15 million South Africans to their land and homes. Despite the potentially far reaching impact, the President gave no indication of when it might come into affect or what implementation plans the government has for this legislation.

In his state of the nation address in 2002 Mbeki said “[w]e intend, within the next three years, to complete the land restitution process”.

Just over three years later Mbeki’s state of the nation address makes no mention of this commitment; his only direct reference to land reform is a promise to “allocate additional resources over the next three years to cover outstanding claims in the land restitution programme”. This gives little clarity or hope to land claimants and land owners, all of whom want to see the speedy resolution of the land claims process.

With all due respect for the President, and while recognising what has been achieved in South Africa over the last ten years it is not justifiable to say with such confidence that we are successfully advancing to the realisation of the vision of the Freedom Charter.

It is not justifiable when so many land issues remain unresolved. It is even less justified when the President in the same speech says nothing specific about why land reform commitments have not been met and gives so little indication of what will be done to resolve land issues in the future. Sadly the President’s speech and the vision of the Freedom Charter have little relevance to the daily lives of millions of landless people and farm workers in South Africa.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research. (Feb 14th 2005).