

NKUZI TIMES

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APOLOGY

We apologise for the delay in the release of this issue. It is not easy to regularly produce the Nkuzi Times, an activity that Nkuzi has no dedicated resources for. However we shall continue to produce and circulate the Nkuzi Times when we can, thank you for your continued interest.

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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

Zimbabwean Workers Down Tools On A South African Farm

At approximately 3pm on June 23rd, we (Shirhami Shirinda and Lincoln Addison) arrived at Tshipise near Musina following a call to assist Patrick Masocha, a farm worker involved in a dismissal case. While we were consulting with Patrick, we noticed a large group of farm workers walking alongside the road. Upon consulting with others who were standing nearby, it came to our attention that those workers were involved in a labour dispute at their farm; a farm owned by a large citrus producer, the Maswiri-Boerdery company.

Upon consulting with the workers themselves, we were informed that they were fruit pickers all from Zimbabwe. These workers are in South Africa without proper documents. The workers produced some I.D. cards, however these did not seem legitimate; they were not issued by any South African government department or agency. The workers explained that their employer violated the existing verbal agreement which stipulated that they would be paid according to the "stock" system. According to this method, workers are supposed to be paid according to the number of bags they fill with fruits. Yet the workers further explained that on pay day they were in fact not paid according to the "stock" system, but rather the owner paid them according to an hourly set-wage. This resulted in the workers receiving less money than they would have with their commission under the agreed "stock" system.

The Zimbabwean workers were thus discontented and made efforts to bring their concerns to the employer the following morning at work. These efforts failed however as the owner refused to acknowledge their concerns and responded with threats to dismiss them. The Zimbabwean workers therefore decided collectively to stop work and initiate a strike action. They left the farm and walked along the Tshipise/Masisi road for 10 Kilometers back to the compound where they are staying.

We elected to intervene with some farm supervisors who were standing near a garage and apparently doing nothing about the strike. We notified them of the worker's concerns and the uncertain status of the Zimbabweans in South Africa. The supervisors responded by saying that the strike is illegal, to which we replied that it is the employment of Zimbabweans without work permits that is illegal. Following this exchange there was a short argument with the supervisors, but this was resolved after several phone calls and it was agreed that supervisors would meet with the Zimbabwean workers the following day. The supervisors requested the presence of Nkuzi officials at the proposed meeting. We notified the Department of labour at Makhado as well as SABC; both agreed to come to the meeting.

From our perspective, it appears there is a subversive network through which Zimbabweans are illegally employed and exploited as cheap labour on farms. They are issued with documents that come from questionable sources, and do not qualify as work permits or official identity documents. Due to their precarious

position, Zimbabweans are effectively powerless to improve their desperate situation. The government must act decisively to regulate the flow of Zimbabwean migrant farm labour entering South Africa, so that they can be issued proper documents ensuring the enforcement of labour legislation and other constitutional rights. These workers should be commended for acting to challenge exploitation despite the obvious risks of doing so.

Shirhami Shirinda. Nkuzi. Candidate Attorney

Another Sad Farm Worker Story

Mr. Ernest Jonas, who says he originates from the former Transkei homeland, came to Limpopo in 1998 and settled on the farms around the Waterberg District. All this time he has survived by doing piece jobs on farms. It seems he has not been able to have a permanent job because he does not have an ID document.

On the 20th January 2005, he approached our office for assistance. He said that, from 21st September 2004 he was working for a farmer called Gerrit Van Moerkerk at a farm called Doorenfontein that is situated 15 kilometres from Modimolle. In terms of a verbal agreement between the two parties Jonas was to be paid R800 per month.

On 23rd December, three months after he was employed, he quit work because he had not received any salary since he started working. He pleaded for us to assist him to get the money he has worked for even if he is not reinstated to the job. I contacted the farm owner who agreed to meet us, but when we went to Doorenfontein we were surprised as he refused to meet or to speak to us. We drove back to the office where I wrote a letter, on behalf of our client, requesting him to pay the money he owes. The whole amount was calculated to be R2,225. The owner responded within three days with a large document indicating the money owed by Jonas for food and drinks supplied by the farm shop.

All the alleged debts left Jonas with no cent and instead the employer indicated that that Jonas must still pay him R94.03. In his document the employer claimed that: Jonas begged for work and he was temporarily employed; he was asked for his ID document, but did not bring it; he was paid more than the law prescribes; he was paid every month in the presence of other permanent staff; his salary was discussed with him every month in the presence of someone that could speak his language.

After all this I called Jonas and asked him to come to the office to discuss the matter further. I also asked him to bring his ID document so that we could refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA). It seemed clear that despite the farmer's claims there was indeed some unfair labour practice going on. Jonas came to the office without any waste of time. He denied having the debts claimed by the farmer. He claims that he only took 14 Chibukus, which cost R5.00 each, and 6 Supapack pieces of chicken, which cost R 7.50 each.

I asked him about the ID document and he told me he has the duplicate, which is at his uncle's place. He promised to bring it to me, but he never returned. After waiting some days for Jonas I went to his place to look for him, but he has gone and nobody knows where he is now.

Hey! Madoda these are some of the challenges we come across in our day-to-day activities.

Jay wa ka Tlakula. Nkuzi. Project Officer

Land Owner Destroys Family Home With His Bakkie

On the 21st June 2005 witnesses claim that Russel Khourie, the owner of Plot 74 Doornrandjie Farm in Laizonia in Gauteng, tied a rope around a house on the farm that belongs to the Mahlangu Family. Attaching the rope to his bakkie he drove away pulling the whole three roomed house down with furniture and possessions belonging to the Mahlangus inside; luckily none of the family members were inside at the time. It is alleged that Khourie then told bus drivers taking children to a nearby school to move their buses and threatened them with a gun. A neighbouring farm worker who came to see what was happening says he was also nearly knocked down when Khourie chased him in his bakkie. These incidents follow a range of threats made against local farm residents by Khourie who has been buying up land in the area over the last year.

The Mahlangu family - including 68 year old Christinah Mahlangu and eight children - have lived on the farm for eighteen years and never had any difficulty with the previous owner. The family are occupiers that should have legal protection under the Extension of Security of Tenure Act (62 of 1997) that also makes evicting people without a court order a criminal offence.

Nkuzi Development Association was contacted by the Mahlangus when they found their house destroyed. Ntokozo Nzimande, a Project Officer with Nkuzi, and Attorneys from Noko Incorporated Attorneys went to investigate.

Charges were laid against Khourie at the Erasmia Police Station and Noko Attorneys, who work as part of the Rural Legal Trust supported team in Gauteng, are preparing an urgent application for a restoration order and investigating a possible restraining order.

Ntokozo Nzimande. Nkuzi. Project Officer

Nb: An interim court order was obtained in the Land Claims Court on Friday 24th restraining Khourie from further actions against the occupiers and ordering the repair of damages done. A date is set for full argument on the matter where the owner will have a chance to argue against it being made a permanent order.

Child Support Grant: A Bad Excuse for Dismissal.

Anna Selamolele, who is a domestic worker for Sankie Marx at Knoopfontein farm near Modimolle, was dismissed on 1st March 2005 for no apparent reason. On this day when she reached work she was told by Annie Botha, the mother of her employer, not to come to work anymore. When Anna asked why she was being dismissed she was told that she is not supposed to work because she is receiving a child support grant.

By chance Anna met on the same day officials from the Social Development Department who were making inspections on farms. Anna related her story to them and they explained to her that a person cannot be dismissed for getting the grant and she is entitled to get the grant if she earns less than R1,000 per month. She was advised to go back to her employer and explain the situation, but she was too afraid.

On 4th March 2005 Anna approached our office for advice and assistance. Anna was very worried about how she will be able to support her three children and to pay her debts. She related her story and indicated that her employer has a negative attitude towards her and the tensions started long ago. Sometimes the employer accuses her of stealing things from the house, at other times she can spend the whole day never talking to Anna.

I tried to call the employer, while Anna was still in our office, to secure a meeting with her to discuss Anna's issue, but I could not get hold of her. I therefore wrote a letter to the employer and faxed it immediately. The letter indicated that she has dismissed our client unfairly and that the reason she has given is not valid. The letter also requested her to reinstate Anna to her previous job on the same terms and conditions that existed prior to her dismissal and that she pay her full wages for the period 1st March until she recommences work. Mrs. Marx was given seven days notice to respond to the request or the matter would be taken to the Commission for Conciliation Mediation and Arbitration (CCMA).

On 8th March I received a call from Anna with a loud clear voice saying that she had been reinstated to work. The only change was that she is no more working in the house, she is now working outside, but the wages will still be the same. Her last words were "thank you very much Ms Tlakula, I was not sure if this was going to work for me."

Jay wa ka Tlakula. Nkuzi. Project Officer

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 and to 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 Engelbrechdt.

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

On 2nd February 2005 Engelbrechdt 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 18th 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. Engelbrechdt 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. Engelbrechdt 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 21st 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

IN BRIEF

"Mini Land Summit" Held in Limpopo

The Provincial department of Agriculture in Limpopo convened a "mini land summit" that was held on the 24th May. This is supposedly part of the build up and preparation for the "national land summit". Nkuzi received an invitation to participate in the "mini summit" 2 working days before it was held. Despite the short notice Nkuzi agreed to attend and to present an input.

On the day of the summit Nkuzi and other stakeholders invited to speak were given three minutes to make their presentations. A number of groups such as the Landless People's Movement were not invited to attend.

All present, including the Premier, acknowledged that there are serious problems that need to be addressed, however little progress was made in identifying and agreeing on solutions to the crisis of land reform.

NGOs Consult On "National Land Summit"

On Wednesday 22nd June delegates from land sector NGOs operating in all provinces of South Africa met in Kempton Park to discuss the "national land summit" and strategies for engaging with it. The group included all NLC affiliates and representative of other organisations such as the Landless People's Movement (LPM), the Programme for Land and Agrarian Studies (PLAAS), Women on Farms Project, Association for Northern Cape Rural Advancement (ANCRA), and the Tenure Security Coordinating Committee (TSCC).

The meeting discussed the main reasons for the dramatic failures of the current land reform programme and identified possible solutions. Serious concerns were also raised about the process of preparation for the "summit". It was agreed that the concerns regarding the process and civil society participation need to be raised with the Director General of Land Affairs and further clarity sought on the intentions of holding a "summit". The outcome of this will inform future strategies for engagement with the "summit" process.

OPINION**Draft Farm Housing Policy Must Be Rejected.**

At the heart of the extremely poor working and living conditions of farm workers is the dependency they have on farm owners for everything from accommodation to work and basic services such as water and schooling. Central to this relationship of dependency are the acutely unequal power relations that are underpinned by farmers' control of the land and other means of production and economic opportunities in rural areas. These power relations were deliberately and at great expense created during the colonial and apartheid eras through a two pronged process of dispossessing black people from the land and denying them economic opportunities while simultaneously providing state support, including a plethora of subsidies and protections, for white farmers.

Dealing with the poor conditions on farms and the transformation of rural areas must involve breaking these power relations through the creation of independent land rights, homes and economic opportunities for farm workers. This requires the establishment of sustainable human settlements where people have their own homes, access to services provided by the state (not dependent on private land owners) and where there are a range of economic opportunities to choose from.

The Department of Housing realising that their existing products were not delivering housing for farm workers took the positive step of developing a specific policy to try and meet housing needs for farm workers. This is an important opportunity to develop a policy that can contribute to the kind of sustainable human settlements that are needed for farm workers.

Sadly the draft 'Farm Housing Policy' drawn up, by consultants from Umhlaba Development Services, for the Department of Housing misses the opportunity to contribute to progressive transformation. At the heart of the draft policy is the same two pronged approach as seen during colonial and apartheid times: state payments to farmers for improvements in their assets combined with weakening farm workers rights in particular denying them opportunities to gain independent land rights. As well as recreating some of the apartheid era subsidies for farmers the draft undermines specific gains made for farm workers and farm dwellers by the Departments of Labour and Land Affairs.

The Department of Labour with its new labour laws and the determination for the agricultural sector has made a valuable intervention aimed at improving the lot of farm workers. The minimum wage allows farmers to provide up to 20% of the wage in the form of housing provided such housing and related services meet minimum standards, thus creating an incentive for farmers to upgrade and maintain housing in order to reduce the cash wage bill. The draft housing policy now offers to give the farmer state funds to provide the quality of accommodation that will allow the deduction for workers wages. The farmer wins twice; first the state provides capital to improve the value of his property (value he will keep when he sells), and he can also cut running costs by using the state funded housing as a basis for reduction of his wage bill.

The draft refers in a few places to the Extension of Security of Tenure Act (ESTA) essentially arguing that farm occupiers tenure rights will be as determined by ESTA. Where the draft if implemented will weaken rights in terms of ESTA is in financing the provision of housing by the farmer and linking access to that housing firmly to employment and possibly even rental agreements. In terms of section 8(2) of ESTA the proper termination of employment is grounds for eviction where the right of residence arose from the employment agreement. Section 10 (3) removes the requirement that alternative accommodation be found before evicting an occupier if that occupier was living in a dwelling provided by the owner. Occupiers being moved into new houses rarely know that this will involve a reduction in their land rights. Even if they do know it is unlikely to be a move they could succeed in legally preventing as the courts will probably find the state financed housing to be suitable alternative accommodation.

Throughout the first draft of the policy there were numerous clauses expressly denying farm workers and occupiers the right to ownership of their own homes. In the revised version dated 16th March there has been an effort to remove some of these, however the definition of an "Agri-village" retains the bizarre directive that "[s]ecurity of tenure farm occupiers and farm workers does not include right of ownership." More importantly the general thrust of the policy remains the same. The cosmetic changes to make the draft less blatantly anti farm workers has done nothing to change the overall effect of the policy and leaves the draft full of contradictions and ambiguities.

The only situation where farm worker ownership is really encouraged and required is in "off farm" settlements where workers who have secured ownership may be able to get the housing subsidy. This of course is not a new opportunity, it is merely a statement of the policy as it already exists; a policy that the Department of Housing has already realised was not yielding results for farm workers. What is needed is a clear identification of the obstacles that prevented farm workers benefiting in the past and the identification of interventions that can ensure farm dwellers do get their own homes in sustainable settlements. The proposals in the draft policy remove all incentive for farmers to cooperate in the establishment of independent settlements for farm dwellers as it offers a far more attractive option that gives them money and bolsters their control over the lives of farm workers. This is particularly unfortunate as many farmers are beginning to realise that new forms of settlement are needed in commercial farming areas and are/were beginning to realise the government was not going to accept the continuation of feudal style relations in South Africa's rural areas. The basic approach can only have been adopted to please farm owners.

It is also alleged that the policy needs to "accommodate the long term migrant nature of many farm occupiers". This reflects a decidedly flawed understanding of the lives of farm occupiers. The "migrant nature" of many farm occupiers lives is not a desirable option taken freely by farm workers and occupiers; it is more often forced on them through the blunt weapon of eviction. It is also a product of the fact that farm workers have been denied secure homes of their own and have been dependent on insecure employment opportunities. It is unjust laws and

policies that have imposed this disempowering system on farm workers, the housing policy cannot be allowed to follow the Umhlaba proposal of intentionally continuing such an injustice. The "migrant" approach also ignores, with potentially devastating consequences, the fact that hundreds of thousands of farm occupiers have, far from being migrant, lived on the same farms for generations.

Owning property is for many people a key mechanism for capital accumulation and the basis of a secure livelihood. Owners are secure in the knowledge that they will, either through continued use or through sale, benefit from the improving value of their property. Consequently they also look after and invest in that property. All of this contributes to more stable and prosperous communities. Migration, where this is the preferred option, is accommodated through ensuring that there is an active property market, limited transaction costs, and property values are protected. Thus the owner if she has a better opportunity elsewhere cashes in her property investment through selling it and reinvests in the new location of her choice. This enables the opportunity for continued accumulation that is denied when people are made permanently insecure tenants on someone else's property. State provision of rental stock is an option that may suite some people, but this should only be one of a number of options and most certainly must not be tied to employment.

Completely counter to the creation of a more independent existence for farm workers the draft housing policy positions farmers as "critical in driving" the process. They are not only the "primary applicant", but also have "ongoing management and maintenance roles". The 16th March draft introduces the notion of co-applications, yet continues to refer to "envisaged beneficiaries". How can the beneficiaries only be "envisaged" if they are applicants? Existing power relations on farms combined with this kind of ambiguity will inevitably lead to farm owners control and empowerment, not to mention enrichment, at the expense of workers.

There is no mention at all of how farm occupiers could have any form of livelihood aside from working for farm owners. There is no mention of ensuring availability of land to continue, let alone expand, existing cropping and livestock activities that many occupiers engage in. Dependence on farm employment is absolute and the obvious results if jobs are scarce will be rural poverty traps or migration to the growing and also insecure urban informal settlements.

The idea of using state funds to build assets belonging to a farm owner cannot be accepted. The concept of the land owner having to pay back certain percentages of the funds should they sell within ten years does not change the fact that these assets will be wholly owned by the farmer. The enforcement of paying back is unlikely to ever happen and in any case farmers are offered an out clause in 6.3 that waives the pay back requirement if the buyer "takes over the housing agreement"

Creating the kind of truly sustainable settlements required for farm workers is a challenge. It will require cooperation between different departments, addressing the lack of capacity in municipalities and state intervention to ensure that land for

such settlements is made available in commercial farming areas. This is a worthwhile challenge the prize being the transformation of commercial farming areas and empowerment and development for one of the most marginalized sectors of the population.

Even the current draft of the policy requires that the challenges of capacity and inter-departmental cooperation be overcome if it is to be implemented effectively. The difference is that in the current draft capacity and cooperation are only required for monitoring after money is handed over. The obvious result will be that no effective monitoring will happen; minimum standards will not be met and farmers will be free to use the assets created for their own benefit in any manner they wish.

Reading and re-reading the draft housing policy confirms only one thing: it must be rejected in its entirety as its starting point is fundamentally flawed.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research