

NKUZI TIMES

IN THIS ISSUE

News

- Burial Rights Asserted.
- Widow Found To Be An Occupier In Her Own Right.
- Illegally Evicted Then Legally Evicted, Still No Home Of Their Own.

In Brief

- Marc Leaves Nkuzi.
- Land Summit: Still Talking, Still No Action.
- Government Short Of Tents.
- Full Report Of The National Evictions Survey Now Available.
- Madimbo Land Claims Not So Settled.
- Welcome The New Minister.

Opinion

- Use the Law However Poor.

CONTACTS

For Nkuzi Times comments or contributions: e-mail: landnow@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

Widow Found To Be An Occupier In Her Own Right.

Welheminah Mothupi is an old lady born on the 19th September 1923. She was married to the late Segasoe Mothupi and they both worked and stayed on a farm called Faure near Thabazimbi.

The farm owner was the late Barend Christian Nel (Snr). Welheminah doesn't remember when she started working and staying on the farm, but she knows that her first child was born on the farm in 1947.

In the past the Mothupi family were allowed to stay and keep cattle and goats on the farm without any problem.

Barend (Snr) passed away on 3rd January 1990 and the Rakoor Trust bought the farm. Segasoe Mothupi passed away on 6th April 1998. At the time of his death the family had seven head of cattle. The number of cattle increased and presently Wilhelmina has about thirty head of cattle.

The new owner (Rakoor Trust) was not happy with the presence of our client and her cattle on the farm. As early as 1998 Welheminah was having problems with one of the trustees; Barend Christian Nel (Jnr). She was told to vacate the farm and take her cattle. Barend (Jnr) used to pay her visits late at night to pressure her to move out.

Around 1999 one of her sons took her to his place because he was afraid that something bad might happen to her. She left behind her cattle and a person to look after them. Since then she received many letters from different attorneys demanding that she remove her cattle. Police were used to threaten her and many meetings were held, but the problem remained unresolved.

Barend (Jnr) alleged that there was an oral agreement between his late father and our client's late husband that the Mothupi family can keep only seven head of cattle. The Department of Land Affairs tried to solve the problem but to no avail. The matter was then referred to Nkuzi on 5th December 2002.

Barend (Jnr) in his capacity as a trustee of the Rakoor Trust brought an application for eviction before Court on the 26th August 2005. According to him our client was in breach of the oral agreement because our client was by now having about thirty head of cattle. He wanted the Court to order our client to remove her cattle within ten days from the date that such order is granted and that he be given permission to have the animals impounded.

I went to court on 26th August 2005 to defend the matter, but it was postponed to 16th September 2005.

On 16th September I went back to court. On my arrival I found Barend (Jnr), his attorney and advocate all present. Our client and her two adult children and granddaughter were also present.

The advocate moved his application. His argument was that our client was in breach of the contract and that she must therefore be evicted. He argued further that our client was given twelve months notice to remove her self and her cattle, since she was the late Mr Mothupi's spouse.

My reply was that the applicant used the incorrect procedure in that they argued that our client was a spouse and she was given 12 months notice, whereas our client was not just a spouse, but she is a long-term occupier in her own right. I explained to the court that the procedures to evict dependants and spouses and those to evict long-term occupiers differ.

The first question the court had to answer was whether our client was a long-term occupier in her own right or was just a spouse to her late husband. The court found that our client was indeed a spouse to her husband, but she is also a long-term occupier.

The second question was whether there was any agreement to keep seven head of cattle. I explained to the court that our client and her children are not aware of the existence of any such agreement. The only person who knew about the agreement was Mr Nel (Jnr) who also happens to be one of the trustees. The court found that it is highly unlikely that such an agreement existed. If it existed our client and her children would have been aware of it.

The eviction application was dismissed and our client was informed that she can move back to the farm and that her cattle must not be removed. The court was, however, worried about the carrying capacity of the farm. It ordered both parties to resolve this issue of sustainable carrying capacity.

I approached Department of Agriculture and Department of Land Affairs for them to inspect the farm and inform us as to the exact carrying capacity of the farm. We await the outcome of this investigation, for now Welheminah, her family and her cattle are on the farm where she has lived for most of her long life.

Nandu Malumbete. Nkuzi. Attorney

Burial Rights Asserted

Lucas Moganedi is a 48year old farm occupier residing at Nooitgedag farm near Vaalwater. Lucas is working and staying on the farm with his children, his wife left them when she went away with another man. He started working and staying on the farm around March 1993.

On the 10th August 2005 one of his children, Johannes Moganedi born on the 26th February 1981, passed away after a long illness. The deceased had been working

at Waterberg Game Lodge, a neighbouring farm, but he was still living with his father and siblings.

After the death of his son Lucas approached the farm owner who is also his employer to request permission to bury his son on the farm. The owner refused and the matter was reported to the Department of Land Affairs (DLA). On 18th August 2005 Mashudu Davhana of DLA reported the matter to us and asked for our assistance.

We quickly arranged a meeting with Lucas and he explained the situation and gave us instructions to proceed with the case. I then made an urgent court application in terms of Section 6(dA) of the Extension of Security of Tenure Act (ESTA), as amended, inserted by the Land Affairs General Amendment Act 2001.

An interim order was granted on the 18th August and the return date was 30th August. The order allowed Lucas to bury on 21st August. Peter Beith, the owner, was served with the court order on 18th August 2005 and the burial took place on the 21st. The owner did not oppose the order and on 30th August the order was made final.

Colleagues dealing with burial rights matters are encouraged to use Section 6(dA) of ESTA to help other farm dwellers bury the deceased in line with their traditions and practices on the farms.

Nandu Malumbete. Nkuzi. Attorney

Illegally Evicted Then Legally Evicted, Still No Home Of Their Own.

On Friday 28th October 2005, just a day after the National Conference held at Indaba Hotel to discuss tenure security for farm dwellers, I received a desperate phone call from farm dwellers who were about to be evicted. Angy who phoned me is part of a group of five families who have lived at Plot 45 Krokodilespruit, about 50kilometres to the north-east of Tshwane, for more than six years. I had left my business card with Angy when I was in the area some months before looking for other people who were facing eviction, now at 7.30pm on a Friday evening it was Angy who was about to be evicted by police who said she and the others must leave at once.

I spoke on the phone to the police at the scene and to the Station Commissioner who was elsewhere and explained that they had no business throwing people out of their home in the night, or at any other time. I pointed out to them that it was a criminal offence in terms of the Extension of Security of Tenure Act (ESTA) to evict occupiers without a court order and assured the police that we would pursue charges against them should they evict these occupiers. The Station Commissioner, Captain Chauke, insisted that the people were trespassing and had ignored his instructions to leave and been disrespectful to him some months before so now he would evict them. The officers at the plot were, however, persuaded not to proceed and they left.

At about 9.10am the following morning I received another phone call saying the police were back, now led by Chauke himself, and again telling them to leave. I drove to the farm while trying to call the police and my colleagues for assistance and to organise a lawyer.

On arriving at the plot I found a number of vehicles including two police bakkies, a police car and some other vehicles. The land owners, Mr and Mrs Lekgwati, and the police were there and people's belongings, such as food, pots and beds were being taken out of the house, some piled on the ground and others loaded onto bakkies.

I spoke to Captain Chauke and explained the law to him again, but he insisted, despite acknowledging that he had no court order, that the people must leave. He also warned me to stay out of his way. All the police present had removed their name tags and aside from Captain Chauke they refused to tell me their names or where they were from.

I spoke the occupiers who confirmed that they did not want to leave, had nowhere to go and had all lived there for some years. Eventually the families, including two small babies, were loaded into the police bakkies and driven away. I followed the police until we reached Cullinan Police Station where the families were taken to a police holding cell.

Later our lawyers arrived and by late afternoon we managed to arrange a free bail for those arrested who had all been charged with trespassing. While we were at the police station other police vehicles arrived bringing some of the belongings that the police had taken from the property. We opened a case of illegal eviction against the police and the land owners.

The following week our lawyers, who work with the Rural Legal Trust supported team in Gauteng, got a court order restoring the families to the plot. The trespass charges were also later withdrawn, but this was not the end of the story.

On 18th May 2006 the families were again evicted, but this time with a court order. What has not changed is that there is still no alternative accommodation being arranged for them and they were again thrown into the street along with their belongings.

There has been no progress in the case against the police and land owners for illegal eviction. The eviction order was also enforced despite it never being reviewed by the Land Claims Court; we are still investigating how this happened. For now the evicted families are temporarily in shacks on another plot that they could be evicted from in the future.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research

IN BRIEF

Marc leaves Nkuzi.

Sadly Marc Wegerif the founding Director of Nkuzi will be leaving at the end of May. Marc played a central role in the establishment of Nkuzi and has worked with the organisation since it started operating more than nine years ago. In February 2004 Lucas Mufamadi took over as the Executive Director and Marc moved to work on the Policy and Research Programme, where amongst other activities he coordinated the National Evictions Survey and recently completed the book of the findings. Marc moves to a position in the South Africa office of Oxfam GB where he will work on advocacy and campaigns. We wish Marc well in his new position; he will be sorely missed within Nkuzi and the land sector. We hope that he will not be lost completely to land and agrarian reform work where he has made such a substantial contribution over the last years.

Land Summit: Still Talking, Still No Action.

On 30th May 2006, eleven months after the National Land Summit, there was a meeting of the multi-stakeholder steering committee set up by DLA to look into taking forward the resolutions of the Land Summit.

It is appreciated that DLA is making an effort to involve some stakeholders in this process, but it seems we are still involved in processes to discuss processes. There is little sign of progress in dealing with the urgent challenges of land and agrarian reform that were so clearly identified at the Land Summit and that we in the land sector should by now have clear ideas for dealing with. There is no official report yet available from the Summit and no proposals on the table about the required policy and programme changes.

NGO and civil society representatives should not get too carried away with the desire for their own participation in such government processes. Participation and consultation is fine, but what we should really be demanding is action!

Government Short Of Tents.

When 12 families were evicted illegally from a farm near Eikenhof in Gauteng at the end of April 2006 they had no place to go. The roofs of their houses had been torn off, the overworked RLT lawyers could not make an urgent restoration application for two weeks and the Municipal disaster management team just had no tents left. There are a number of other eviction cases that Nkuzi is currently handling where evictees are still in tents. With the ongoing eviction of farm dwellers, evictions from inner city flats, and the destruction of informal settlements it is no surprise that tent supplies are low in Gauteng.

It is rather cold in Gauteng at the moment so it would be great if the Government could buy some more tents and other supplies. It would be even better if they

would stop the evictions and start making available land and secure homes where the poor can live lives of dignity.

Full Report Of The National Evictions Survey Now Available

The full report of the National Evictions Survey, carried out by Social Surveys and Nkuzi, is now available in the form of a book titled: "Still Searching for Security: The reality of farm dweller evictions in South Africa". This contains all the main findings as well as pictures and more. Printed copies are available from Nkuzi, call 012-323 6417, and it can also be downloaded from the Nkuzi web site, www.nkuzi.org.za. A short documentary, produced by Social Surveys, on the situation of three evicted families is also available on DVD.

Madimbo Land Claims Not So Settled

The 25th of August 2004 edition of Nkuzi Times included a short story that read: "A group of community claims on the Madimbo Corridor were settled on the 14th August 2004. Amongst others the Minister for Agriculture and Land Affairs, the Deputy Minister of Defence and the Nkuzi Director addressed thousands of community members who attended the ceremony to mark the return of 27,000 hectares of land along the Limpopo River to communities who had been removed. Nkuzi has assisted the communities on this land claim for six years." A range of media from newspapers to television also attended and covered this land claim "settlement" party. One thing we did not mention – we are sometimes as keen as the government to claim success – was that there was no settlement agreement signed on that day.

Now at the end of May 2006 there is still no settlement agreement and in fact no agreement. The claimants do not own the land and are not allowed onto the land. The South African National Defence Force is still arguing that they want to keep at least half of the land for their operations and the claimants still demand the return of most of the land they were removed from. Despite this situation the Land Claims Commission have this as recorded as a settled land claim and include the 27,000 hectares in their figures for land "returned".

How many other land claims are recorded as settled when they are really not? Nkuzi knows of quite a number where years after the "settlement" parties no land has actually been transferred. The return of land to successful land claimants is going as slowly as ever and the 2008 deadline for completion of all land claims is looking as unlikely to be achieved as the 2005 deadline was.

Welcome The New Minister.

Nkuzi welcomes the appointment of Lulu Xingwana as the new Minister for Agriculture and Land Affairs and wishes Thoko Didiza the outgoing Minister good luck in her new position in Cabinet. This is not one of the most glamorous portfolios in Cabinet, but surely one of the

most important. Lulu Xingwana, who was appointed on the 22nd May 2006, faces serious challenges if she is to make land reform work in achieving its aims that include issues of justice, reconciliation, poverty alleviation and development. So far we are very far from seeing what we want and need to see from land and agrarian reform in South Africa.

Please madam - or is it comrade? – Minister amongst your new responsibilities prioritise addressing the plight of farm dwellers and please, without putting what is working in land reform on hold, intervene to ensure urgent action on the implementation of the Land Summit resolutions. We hope the experience you have with women's issues and development work will not be forgotten and will put you in a good position to take up these challenges.

OPINION

Use the Law However Poor.

This edition of Nkuzi Times includes three stories of cases related to farm dweller rights. In the first two cases the law, namely the Extension of Security of Tenure Act (ESTA) was used to effectively defend and assert the rights of farm dwellers. It is particularly encouraging that in the case of Welheminah Mothupi the Magistrate recognised that she had long term occupation rights in her own right and could not, after more than sixty years living on the same farm, be evicted simply because her husband had passed away. In the burial rights case we can only imagine the importance for Lucas Moganedi of being able to bury his son in the tradition of the family and the way he saw fit.

In the third case the illegal and then apparently legal eviction of the families living at Krokodilespruit seems to illustrate a dramatic failure of the law to defend people's tenure rights. There has also been a failure of the justice system to bring to book those who flagrantly violated the law and the rights of the occupiers. Just as concerning is the failure of land reforms to make available land for families like this who work on farms, but can find no place in which they can afford to live. The restoration of the families to their homes after the first blatantly illegal eviction was a short lived victory and the families remain today in appalling conditions and with no tenure security.

Clearly ESTA and the tenure reform programmes of the government are not achieving what they were intended to as has also been highlighted by the National Evictions Survey. We must work and campaign to get the laws and their implementation dramatically improved in the interests of farm dwellers. However, we should not miss the opportunities that are there to use these laws to defend the rights of the poor. Lawyers like Nandu Malumbete and many others around the country have shown what can be done when people have good legal representation.

Marc Wegerif. Nkuzi. Programme Manager: Policy and Research