

NKUZI TIMES

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NEWS

We Finally meet the Minister

Constitutional Court Affirms Rights of Labour Tenants.

More than ten years after submitting their claim for restitution of their lost land rights the Popela community finally won a long fought battle to have their rights recognised. In a unanimous decision, the Constitutional Court overturned rulings by the Land Claims Court and the Supreme Court of Appeal to affirm that the Community whose rights in land were diminished to labour tenancy by the time the 1913 Land Act was passed, were still entitled to restitution in terms of the law.

NGOs Withdraw from post-Land Summit Processes Citing no Commitment from Government

Citing an obvious lack of commitment from the Department of Land Affairs civil society organisations that were involved in the post summit process intended to provide a platform for meaningful engagement on policy legislation and implementation. After nearly one year of the DLA failing to meet basic commitments such as provision of secretarial support to task teams, commitment of senior officials to the process, adequate notice of meetings, and full disclosure regarding DLA policy, legislative and implementation plans, a unanimous decision was taken by all organisations to withdraw from the process.

Department of Housing Fails to Deliver Policy for Farm Dwellers

In June the

IN BRIEF

Case study on Marobala-o-Itsoshe (Restitution)

Background:

The Marobala-o-those Communal Property Association (CPA) was formed in November 2003 after a successful land claim was approved by the RLCC Limpopo where seven land claims were merged into one. Under the forced removals in the 1960's the communities have not been moved far from the land as most claimants come from villages surrounding the project area. Areas originally occupied by the community became incorporated into the then Lebowa homeland while some of the adjacent land, from which some of the communities were removed, was held in Trust by the Government.

Under the restitution process land comprising of five farms with different uses was restored to the Marobala-o-Itsoshe CPA in 2004. Two of the farms were privately owned (one a successful and regionally famous potato farm producing for export markets, and the other a dairy operation while

the rest were State land). The area restored amounts to almost 9 000ha in total to 600 households. The Marobala-o-Itsoshe project is located 2 km west of Dendron town and 60 km north of Polokwane.

Challenges / successes and strategies employed

After land was transferred and celebrations conducted the community was charged with the responsibility managing the affairs of the Communal Property Association. The committee started drifting a way from the membership by taking decisions without their approval e.g. training opportunity were given to non beneficiaries; list of beneficiaries was including individuals not known but excluding genuine beneficiaries. The community was left in the dark as far as many deals are concerned on their property. The state of affairs led to discontent and mistrust amongst beneficiaries. The community started challenging the committee's decisions for example bringing their own cattle on the farm refusing to pay any levy, and demarcating plots for themselves.

Pressure from the community made other committee members to break away from the committee and followed the deputy chairperson. The broke away group started representing the views of the community at large and presenting them to the RLCC. On numerous occasions communicating with the Commission but no intervention came forth. The RLCC was always telling them that the only committee recognized was the original one therefore they are not in a position to entertain whatever their concerns.

Nkuzi was approached as a last resort in the whole saga. Nkuzi participated in all groups' activities with a view to win their confidence and presented the situation to the RLCC, and at first an agreement could not be reached on the matter. Two meetings were held and chaired by the Commission where underlying issues were debated and way forward proposed.

Nkuzi continued to empower members about what their constitution says on all matters from dispute and Special meetings. The two groups were not communicating directly with each other; they used lawyers to do so.

In one general meeting a motion was passed to call a Special Meeting with two items on the agenda, the amendment of the constitution and to pass a motion of no confidence in the CPA executive. Due processes were followed and the Special Meeting was held, the constitution was amended and a motion of no confidence was passed. The new committee was elected to replace the old one. It is a matter of time to see if the existing cohesion will prevail to pull everybody together.

Lessons learnt

- Ordinary people if empowered with information, they are able to take a decision and own it;
- Those in leadership should encourage and nurture diverse views as a way enriching the debates and quality discussions;
- External support agencies should never support individuals but try by all means to listen those silent voices;
- CPA executive committees need to keep lines of communications open with the greater community in order to promote transparency and good governance principles; and
- Community members should be taken through their constitution on numerous occasions so as to hold their leadership accountable.

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.

OPINION

The State of Service Delivery on Farms

Democracy and its constitutional imperatives adopted in 1996 have not yet seen the dawn of light on farms in South Africa. One asks a question how long should the farm workers wait to enjoy the fruits of democracy? The black majority who live in different social settings are beginning to realize the fruits of democracy, in the form of access to clean water, decent housing, electricity, schooling and access to health facilities. The farm workers on the other hand continue to languish in poverty living under conditions that could equate to slavery. They do not have a place they could call home, since their tenure security is linked to their contract of employment. Once they lose their jobs it is the end of the road since all the other socio economic rights are curtailed. They find themselves confronting extreme conditions of

survival lacking basic services such as water, access to fire wood or schooling. The land owner usually disconnect their water supply, prevent them from collecting firewood and limit their access to land for grazing such that they will be left with no option but to leave the farm.

Nkuzi has witnessed the repeat of the same strategy by land owners, especially when we successfully defend the tenure rights of farm dwellers and farm workers and prevent illegal evictions. We have seen the farm workers living conditions deteriorate to a level that is completely unacceptable, where people share a source of water with animals, where people had no access to firewood and are fenced in with their animals that begin to waste away until they die. The successful prevention of illegal eviction is usually preceded by a rights education, which empowers farm workers to understand and appreciate their rights as contained in the constitution and different tenure legislation. Immediately farm dwellers are equipped with new knowledge the farmer embarks on constructive evictions by changing the people's living conditions for the worst. Once again I ask a question who is responsible for service delivery on farms? The farmer argues sometimes rightly so that it is not his responsibility to provide water, electricity and schooling facilities to people who are not his employees. At the same time government sometimes argues that they cannot provide those services on somebody's private property.

In this scenario does it matter who is right and who is wrong? I don't think so. It could not be right to deny a human being the right to clean water even when you have the capacity to provide it. At the same time it is not right to subject farm workers to those living conditions even when they are voting citizens of this country. Farm workers are entitled to the same living conditions as people who live in towns and townships. However we are witnessing more service delivery strikes emanating from towns and townships rather than farms. Why is it that we do not witness service delivery protest from farms? It is mainly because farm dwellers are not organized and they live in isolated areas which makes it difficult for them to coordinate their activities. Are the farm workers not angry enough about the situation they find themselves in? I would say they are as angry as people who find themselves in townships and towns, but are powerless because they are less educated and do not have access to people holding positions of power, from local government level to national level.

The day will come and is drawing near when farm dwellers shall no longer despair but demand what is rightfully theirs. I hope when that day comes it will find a changed attitude from the land owners and a government that is ready to provide services to this segment of our society through what ever means possible. The new approaches to land reform such as the Proactive Land Acquisition Strategy and Area Based Planning shall benefit farm workers only if it is implemented by a specialized vehicle situated outside the Department of Land Affairs with the support of all other critical departments.

Lucas Mufamadi. Nkuzi, Executive Director

Farm Workers Abuse Continues

During apartheid, there was a law during apartheid which enabled land owners to discipline a "misbehaving" farm worker any way they please. This would include assaults, using what ever instrument, rape, shooting, tying to the tree for the whole night in winter and ultimately killing. The denial of basic services such as water and access to firewood was another form of

discipline. The other form of discipline was denying farm workers their wages or supply of food they were entitled to after working for the land owner. All these were taking place with absolute impunity. There was little hope for recourse, since the police would only open cases reported by a white person. When farm workers try to open such cases they could be subjected to further assaults during apartheid by the police. In fact it is widely acknowledged that police stations on farms were established to protect and safeguard only the interest of white commercial farmers. Thirteen years into our democracy we need to ask ourselves has the situation changed or not.

Honestly speaking I would like to believe that assaults, rape and murders of farm dwellers have gone down in the new South Africa. However cases that are reported to Nkuzi and those that are picked up by newspapers paint a very bleak picture. In most of the rights education workshops run by Nkuzi in Limpopo new cases of abuse of farm workers by farmers are reported all the time. We have assisted many farm workers to open cases against land owners with the nearest police stations. When farm dwellers try to open cases at the police stations, the police officers usually chase them away claiming there is no case in what they are reporting. It is therefore still very difficult to open a case without external assistance. Farm workers mentality has not changed; they still believe that land owners can do as they wish to them with impunity. The attitude of the police has also not changed and it's not helping matters either. This has enormously contributed to the under reporting of cases by farm workers to the police stations especially cases of illegal evictions.

Most of the cases that were reported including those of murder did not go anywhere because the police claim there was insufficient evidence to prosecute the white land owner. There is only one case where a land owner was convicted of murder and sentenced to fifteen years in prison for throwing Nelson Chisale into the lion's enclosure. The other cases in which perpetrators are farmers who got away with fines or exonerated include the case of a farmer who killed a twelve year old boy thinking it's a dog; a farmer who shot and killed a Zimbabwean man thinking is a baboon, a farmer who killed Mr Mkhari recently for hunting on his farm. All these cases were thrown out or reduced to culpable homicide due to lack of evidence. Why is there such a huge shortage of witnesses when farmers are involved in the killing of farm workers? Where are other farm workers who work on the same farm?

No farm worker wants to testify against their employers. Apart from loosing their source of livelihoods they are also severely terrified of farmers. This fear is driven by what these farm workers have witnessed happening to their fathers, mothers and relatives when they found themselves on the wrong side of the farmer. They have also suffered serious psychological damage such that they have no confidence at all to stand against a land owner especially in the court of law.

It is not surprising that these forms of abuse continue even under the current dispensation, where farm workers have rights because even today the majority of farm workers who report cases to us do not want to be identified as complainants. They just want to see justice being done without them jeopardizing their lives. They fear for their lives and those of their loved ones. They do not trust the police since they always feel the police are conniving with the farmer. Can the police change and begin to safeguard the interest of both farmers and farm workers equally as its required by the constitution. It will happen after a very long time. For this to happen there should be concerted efforts to educate all the stakeholders about the new laws and the rights of farm dwellers. Also the Department of Safety and Security should

replace officials who have been working in those rural areas for years to break the long established relations between them and the farmers.

The situation is made worse by the fact that the farmer is occupying a very powerful position since he is a land owner and also the only source of livelihood not only to farm workers but also the police. Many of these rural police stations find themselves benefiting in kind during harvest time. It is not uncommon to find bags of potatoes or oranges in some of these police stations during harvest time. It is therefore not surprising that not a single farmer has been arrested for illegal eviction. This is also why farmers get away literally with murder.

Lucas Mufamadi. Nkuzi, Executive Director

Tribute to Siphwe Ngomane

The untimely death of comrade Siphwe Ngomane in March this year shocked everybody within the land sector. The last time I saw Siphwe at the hospital he was recovering from a debilitating illness. We talked about how important it was for him to fully recover so that he could continue the struggle against landlessness and poverty. In the spirit of a warrior he wanted to fight the disease outside the hospital while serving the farm workers. He told me it is tiring to fight the disease in the hospital since it weighed down on his fighting spirit. After a short illness he succumbed to the disease and died. It was shocking because Siphwe was a young man who was full of energy and ready to share his life with farm dwellers - the forgotten and downtrodden citizens of our country .

Siphwe was always happy and had this infectious smile that melted the hearts of the most difficult farmer. He was a shrewd thinker who usually got the results he was hoping for. When he picked up a fight for the rights of farm dwellers he never backed down. He would go all the way until a case was finalized in favour of our client. Going to the field with him was always an unforgettable experience, both to the experienced land activist and also to our visitors. He never compromised the rights of landless and poor people. He was so passionate about the rights of the farm workers such that he took different leadership positions at local, provincial and national level to transform policy and practice in favour of the poor and landless.

We always looked forward to Siphwe's inputs at different forums and meetings where he was always at his best. He was articulate and persuasive making it it s difficult not to agree with his point of view. He was charismatic and an orator who enjoyed giving impromptu speeches. He was a master of the English language who usually introduced new words into the vocabulary of those who were less fortunate. In almost all his presentations we looked forward to picking up a new word of two. He had a very sharp and critical mind that could analyze what was happening currently by contrasting it with what happened in the past. He understood the ongoing struggle of our people and the policies that are meant to undo the injustices of the past. He was a comrade, a friend and a family man.

Siphwe loved life and lived his short life to the full. He was a snazzy dresser who was very choosy in terms of what he wore. He would wear designer label clothes and shoes and had very good taste in food and drinks. He made many friends and I am sure he also made a few enemies among the

people who continued to oppress others. He had a very deep sense of justice. Nkuzi has lost a leader, an activist, a field worker, a thinker and pragmatist who pushed boundaries to secure the interest of the poor. He was always ready to serve the people and always responded positively to calls for assistance, whether it was at night or over the weekend. As part of the Nkuzi management he wanted to see the organization grow into a strong force to be reckoned with. We dare not disappoint him. He left a void in our organization, in our hearts and in our homes. We shall cherish the fond memories of the moments we shared with him until we also join him in the next life.

Nkuzi appreciates the overwhelming support we received from representatives of organizations within the land sector. Let's honor Siphwe by ensuring that we continue the struggle to secure farm dwellers land rights until they are realized.

Amandla!! Long live the fighting spirit of comrade Ngomane long live. Amandla!!!

Lucas Mufamadi. Nkuzi, Executive Director