

SOUTH AFRICA / JUDGMENT

Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Others (107/2013) [2016] ZALCC 23; 2017 (4) SA 422 (LCC) (8 December 2016)

[2016] ZALCC 23

COURT

Land Claims Court

BEFORE

Ncube AJ

CASE / FILE NUMBER

107/2013

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IN

THE LAND CLAIMS COURT OF

SOUTH

AFRICA

(HELD

AT

RANDBURG)

Case

No.: 107/2013

Reportable:

Yes

Of

Interest to other Judges: Yes

Date:

8/12/2016

Date

of hearing: 10-

11 October

2016

Date

of Judgment: 8

December 2016

In

the matter between:

BHEKINDLELA
MWELASE
First Applicant
JABU
AGNESS MWELASE
N.O.
Second Applicant
NMDENI
SIKHAKHANE
Third Applicant
BAZIBILE
GRETТА
MNGOMA
N.O.
Fourth
Applicant
ASSOCIATION
FOR RURAL ADVANCEMENT
(AFRA) Fifth
Applicant
and
THE
DIRECTOR-GENERAL FOR THE DEPARTMENT
OF
RURAL DEVELOPMENT AND LAND
REFORM First
Respondent
MINISTER
OF RURAL
DEVELOPMENT
AND
LAND
REFORM Second
Respondent
HILTONIAN
SOCIETY
Third Respondent

JUDGMENT

NCUBE AJ:

Introduction

[1] The Land Reform (Labour Tenants Act No 3 of 1996) ("the Act") was enacted in response to the constitutional imperative at Section 25 (6) of the Constitution of the Republic of South Africa, Act 108 of 1996, for Parliament to enact legislation for persons whose tenure of land was insecure as a result of past discriminatory laws or practices. The preamble of the Act states inter alia that its

purpose is to provide for security of tenure of labour tenants and to provide for the acquisition of land and rights in land by labour tenants. It also records that it is desirable to institute measures to assist labour tenants to obtain security of tenure and ownership of land.

- [2] Chapter 3 of the Act deals with the acquisition of ownership or other rights in land by labour tenants. Section 16 enables a labour tenant to apply for an award of the land which he or she is entitled to occupy or use, and sections 17 to 19 specify the procedure for processing of labour tenants' claims. The Director-General of the Department of Rural Development and Land Reform ("the First Respondent") is mandated by the Act to play a pivotal role in the processing of applications by labour tenants. Sections 17 to 19 of the Act specify in detail this crucial role.
- [3] The Minister of Rural Development and Land Reform ("the Second Respondent") also has a crucial role to play. Section 26 of the Act provides that it is the Minister who grants advances or subsidies for the acquisition of land by labour tenants.
- [4] It is apparent from the Act that if the First and Second Respondents fail to process applications for awards in land by labour tenants, the noble goals of the Constitution at Section 25 (6) echoed in the Act, of granting security of tenure and ownership of land to labour tenants, will not come to pass. This regrettable state of affairs has, unfortunately, 20 years after the promulgation of the Act in 1996, actually come to pass.
- [5] The First and Second Respondents and the Department of Rural Development and Land Reform ("the Department"), have not been able to provide statistics of exactly how many labour tenant claims have been lodged throughout the country. Numerous requests by the Applicants for this information have not been adequately acceded to. However, the First and Second Respondents do not deny that they have failed to process labour tenant applications adequately and that many claims remain unattended to. The First Respondent has admitted that labour tenant applications have not been proactively managed for a number of years. He further admitted in an April 2015 report, that the process of collating outstanding information for the referral of Chapter 3 applications may take between 12 to 24 months.
- [6] The admission that the processing of labour tenant claims has been effectively neglected and is currently in a chaotic state, prompted the Applicants to launch this application for the appointment of a Special Master to process the claims of labour tenants. The First and Second Respondents, while agreeing that it is appropriate for this Court to supervise the performance of its duties under the Act, resist the appointment of a Special Master.
- [7] The matter which I am required to decide is whether it would be appropriate to appoint a Special Master to deal with the serious problems that have been created due to the many years of disregard and neglect of labour tenants' claims. It is common cause that many applicants for awards in land have either moved away or died, that land has changed hands and disturbingly, that files have been lost by the Department. It also appears to be common cause that in many ways the Department is required to start the entire process from scratch. It needs to collect information that was lost or never obtained originally and to verify

information that has changed hands over many years. The Applicants allege that the Department has shown that it is not up to the task. Against this backdrop, I turn to consider whether it would be appropriate to appoint a Special Master in all the circumstances.

Background

Facts

[8] This application was launched in June 2013. Part A of the Notice of Motion sought relief in respect of the First to Fourth Applicants'

claims for awards in land owned by the Third Respondent. Part B sought systemic relief for the processing of all outstanding labour

tenant applications that have been lodged. The First Respondent agreed to the relief sought in Part A and the labour tenant applications of the First to Fourth Applicants were then referred to this Court for determination. The systemic relief sought under Part B has come before this Court several times and the content of the relief sought by the Fifth Applicant, the Association for Rural Advancement, has changed. Whilst initially court supervision of the complex administrative processing of labour tenant claims was sought, currently, as aforementioned, the appointment of a Special Master to supervise the process, is sought. The First and Second Respondents, being the state respondents, oppose the appointment. The Third Respondent held a watching brief in these proceedings.

[9] The Applicants contend that this application was launched because of clear evidence that the Department was failing to process labour tenant applications. The First to Fourth Applicants contend they had repeatedly requested that the Department refer their Section 16 claims to this Court, and that the Department had consistently failed to do so. It was only when this litigation was brought that the Department referred the claim. That experience, it is contended by Mr Cowling, the Director of AFRA, the Fifth Applicant, is supported by hundreds of labour tenants that have been assisted by the Fifth Applicant. It is supported too by the supporting affidavit of Mr Mahlaba, the Chairperson of the Landless People's Movement as well as the supporting affidavits of six labour tenants detailing the Department's failure to process their applications. It is moreover supported by a petition by several hundred labour tenants who support the application. The latest figures provided in the August 2016 report by the First and Second Respondents, indicate that there are 10914 claims under Section 16 of the Act that have not been settled. Based on this evidence the Applicants submit that the Department is guilty of a persistent failure to properly process labour tenant claims as required by the Act. They therefore, in their original notice of motion, sought a structural interdict that would require the Department to provide statistics of the current status of all labour tenants' claims and report to the Court regularly on its progress until all outstanding claims were settled or referred to this Court.

- [10] In his Answering Affidavit eventually filed only in March 2014, after the Applicants had brought an application compelling its filing, the First Respondent did not deny that he had failed to process labour tenant applications. Instead, he in effect stated he was not required to process labour tenant applications because labour tenants were better off being assisted through either restitution claims or other land reform programmes. The First Respondent stated that by mid-2014 the Department would give an accurate assessment of the present state of all labour tenant claims. This did not occur.
- [11] When the matter came to Court on 19 September 2014, the statistics and outstanding labour tenant claims had still not been provided. Parties then agreed to an order requiring the Department to prepare that information and present it to Court by 31 March 2015. This, the Applicants refer to as the Collation Order.
- [12] The First Respondent filed an affidavit and partial statistics almost a month late on 24 April 2015. In the affidavit the First Respondent admitted that labour tenant applications had not been pro-actively managed for a number of years. Despite the undertaking to collate all necessary information pertaining to claims by mid-2014, the First Respondent admitted in his affidavit filed a year later, that the collation of information may take anything between 12 to 24 months. The First Respondent further stated that the process in KwaZulu-Natal was not successful and it needed to be fundamentally revisited. As the answering affidavit of the director of the Fifth Applicant appropriately commented in response "the wretched state of the Department's records is a shock and will seriously complicate the performance of its duties".
- [13] The Applicants persisted in seeking the Court's supervision of the Department's implementation of the Act, but now, however, they also raised the need for a Special Master. They contended that due to the nature and scale of the problem, ordinary court supervision would be ineffective. They took the stance that a Special Master to assist the Court and the Department to ensure the resolution of labour tenant claims, was the most effective way forward.
- [14] When the matter returned to Court on 9 June 2015 the Department agreed to a detailed Court supervision along the lines the Applicants had sought in their initial notice of motion and an order to that effect was granted. This, the parties have referred to as the Supervision Order. The order:
- 14.1 Recorded the First Respondent's intention to fully implement the Act; together with any possible future amendments;
- 14.2 Stated that the implementation would be subject to court supervision and that the First and Second Respondents would file reports every three months until 12 February 2017 on their progress;
- 14.3 Required each report to include an implementation plan.

- [15] Regrettably reports were not filed timeously in accordance with the implementation plan and there was non-compliance with other aspects of the plan and furnishing of information required. At a hearing on 29 January 2016 the parties agreed to a postponement to 24 March 2016. Reports furnished in the interim also failed to adequately comply with the supervision order.
- [16] At the hearing of 24 March 2016 all parties accepted there should be Court supervision. However the First and Second Respondents sought a postponement because they had changed their attorneys. On 17 May 2016 by agreement a Negotiation Order was granted. In terms thereof the parties undertook to negotiate in good faith to conclude a memorandum of understanding. The Negotiation Order provided for ongoing court supervision and reporting and specified that if the parties could not conclude a memorandum of understanding, the matter could be set-down for hearing. Negotiations did not proceed smoothly and culminated in the Applicants launching proceedings to hold the Minister, the Second Respondent, in contempt of Court and to interdict him from claiming to have complied with the Negotiation Order.
- [17] From the history of the litigation, it is apparent in my view, that the Department has not been able to comply with its own timeframes or to provide accurate information on how far the collation of labour tenant claims had progressed. The Applicants contend the Department has also not filed updated implementation plans, and it is impossible to know when it will finish collating information. The Respondents have not been able to comply moreover with the Supervision Order, in that implementation plans have in the main not been filed with each report. One plan was filed with the report of 30 July 2015. Subsequent reports did not contain such plans. The Department should have filed 5 implementation plans. The Applicants contend, correctly in my view, that the failure to accurately estimate future progress, or to provide proper plans, seriously undermines the supervision process. The Applicants contend that failure to implement the provisions of the Act and court orders, by the Department and its employees, can be ascribed to factors like incompetence, intransigence and inattentiveness.

- [18] It is against this

background

that I must consider whether the appointment of a Special Master would come to the rescue of a dire situation or whether court supervision will suffice. It is helpful to begin with an understanding of the nature and function of a Special Master as envisaged.

Nature and Functions of a Special Master

- [19] The nature and functions of a Special Master have been extensively discussed in the Applicants' lengthy heads of argument. The salient features extracted therefrom are as follows:

19.1 A Special Master is an independent person who is appointed by, and reports to, the Court.

19.2 His or her duty is to assist the Court. In the present case it would be to assist the court in the processing and adjudication of labour tenant claims in the manner as determined by the Court.

19.3 The Special Master is not an advocate for the claimants or for the Government but an agent of the Court and as such, he or she is given limited decision making powers. Were a Special Master required to assist the Court in implementing a Court order, as is sought in this application, his or her powers would always be subject to oversight by the Court.

19.4 A Special Master provides additional resources to the Court. He/she will bring skills that are chosen specifically for the case at hand, and can devote enough time to the litigation to become fully acquainted with the parties and extensive information involved. A Special Master can also engage more informally with the parties than a judge can.

[20] The concept of a Special Master is a relatively novel one in South African law. However, the role and function thereof is not unlike that of a court appointed amicus curiae or the family advocate. Their powers too are determined by the court and they assist in matters where specialist skills or capacity are needed.

[21] In the Land Claims Court Section 32 (3)

(b) of the Restitution of Land Rights Act No 22 of 1994, which permits the Court to conduct any part of any proceedings on an informal or inquisitorial basis, allows the Court to depart from the normal adversarial approach to litigation in South Africa. See *Mlifi v Klingenberg* 1999

(2) SA 674 (LCC) at para

104. This would be in line with the appointment of a Special Master to assist the Court.

[22] It is noted, as is pointed out by the Applicants, that the use of Special Masters is widespread in the United States of America and in India. In the United States, "Settlement Masters" are used to facilitate settlements, "Discovery Masters" to supervise discovery, "Monitors" can be used to supervise implementation of court

orders

or structural injunctions, and so on. In India the Supreme Court frequently appoints commissions with specialised skills, to assist the courts in determining, developing and implementing remedies. As one commentator puts it: "The courts preferred to appoint committees to develop plans to solve constitutional violations in cases "where complexity was high and the judges own grasp of the myriad interlocking policies was low." [1]

[23] The Applicants contend that the important characteristics for a Special Master are: independence, diligence, managerial experience, an ability to mediate disputes, to work with both parties, and experience in land related matters. The Applicants envisage a two-

stage process. They propose that firstly the parties attempt to agree on a willing candidate for the Court to approve. If the parties cannot agree on a candidate, they will each provide two proposed candidates to the Court for approval and the Court shall make the appointment.

- [24] They envisage that the Special Master will be a senior advocate or retired judge with experience in land related matters. He or she could, they contend, also be a former civil servant with relevant land related experience. The Department, say the Applicants, should bear the costs of the Special Master as part of the costs in the litigation.

Discussion

- [25] As aforementioned the August 2016 report indicates that 10 914 labour tenant applications remain to be settled. The Respondents' reports concede that settling these applications is an enormous task. The Applicants estimate that if the outstanding claims each took a day to settle, that process alone would take approximately 24 years (assuming work on week-ends), and approximately 40 years with no weekend work. If this is correct, I agree that such a time frame would be an unacceptable burden on labour tenants, who have already waited 20 years for their claims to be processed. Most, if not all Applicants would have died by the time their applications are finalised.

- [26] While the First Respondent acknowledges that the task is exceptionally large and complex, he maintains that the appointment of a Special Master will not accelerate or improve the finalisation of these claims. He states that thousands of claims are being processed simultaneously in seven different offices and once these are processed and are referred to Court, the process will become a judicial and no longer an administrative task. The problem, he contends, will then be one of limited judicial resources. A special

Master according to him will not solve this problem, only additional resources will.

- [27] The difficulty with this approach, as is correctly pointed out by the Applicants, is that it completely underplays the pro-active and strategic role that the First Respondent must play in efficiently processing labour tenant claims. The First Respondent is required to play a crucial role in managing the referral process so that the adjudication of claims occurs expeditiously and efficiently. Thus far, this has not occurred. A Special Master, if appointed, could play a crucial role in aiding the Department to develop a comprehensive strategy for the efficient processing and referral of claims and the reporting thereon to this Court. Given the complexities of thousands of applications which could be referred to this Court, the potential for the Court to be overburdened, (given its composition as referred to below), without a considered strategy in place, is very real. Simply referring thousands of applications to this Court, the scenario envisaged by the Respondents, will not result in efficient finalisations, but may very likely occasion a further delay in the settlement of labour tenant claims. The presence of an independent, qualified and competent person to oversee the process will undoubtedly assist the Court and the parties in the expeditious processing and finalization of claims.

[28] An important factor to bear in mind is that it is unfortunately the case, and one beyond the control of this Court[2], that currently there is only one permanent Judge and an additional 4 or 5 Acting Judges at the Land Claims Court each term. This means that often no single judge will hear an entire matter until its completion as occurred in this particular case. Each new judge appointed to an on-going case is required to familiarise himself or herself with the history and detailed

issues

of the dispute between the parties. Were a Special Master to be appointed, as envisaged, these disadvantages would be significantly ameliorated for the benefit of all concerned.

[29] Then there are a series of other problems which have confounded the Department, which cry out for the intervention of a dedicated and competent person such as a Special Master. Firstly there is the question of lost applications which the Department has repeatedly been asked by the Applicants to address, but appears unable to do so. It would seem that there is no current protocol for dealing with lost applications. A Special Master could assist the Department to develop that protocol. Then, seemingly there is still uncertainty about the provinces in which labour tenant applications were lodged and poor record keeping by the Department. Initially the Department only reported on its progress in Mpumalanga and KwaZulu - Natal. After enquiries it took a year for the Department to acknowledge claims lodged in the Free State and the Western Cape. This is another area in which a Special Master can supervise the improvement of performance.

[30] It is trite that throughout this litigation the Respondents have repeatedly failed to comply with deadlines many of which were in orders by agreement. I agree with the Applicant that delays could be ameliorated with the input of a Special Master on planning and internal coordination within the Department.

[31] The Respondents object to the appointment of a Special Master on the basis that such will introduce external persons into their command line functions. It is difficult to understand how the vast improvement of the Respondent's seemingly fraught functions by an external person can be objected to. External expert input to improve seemingly failing line functions should, on the contrary, be welcomed. The Respondents also contend that such an appointment will lead to further delays and will result in additional costs being incurred. There is no evidence to back this assertion. This notwithstanding, the Respondents have urged the Court, should it decide to accede to the appointment of a Special Master, to at least give the parties three weeks to decide on a suitable candidate.

[32] In the light of the dire state of labour tenant applications as traversed in detail above and the history of this litigation none of the Respondents' objections, in my view, withstand scrutiny. Heads of argument for Respondents submit that the First Respondent should be allowed to continue with his quarterly reporting until the end of 2017 at which stage the true success or failure of the process can be assessed. It is apparent in my view that the process thus far

with inadequate reporting has not been successful and that to adopt this stance would be to exacerbate an already fraught situation.

[33] It would seem to me that if the current approach of supervision by the Court is followed, it will take many more years before labour tenants receive the relief to which they are entitled. It is foreseeable that in order to protect their rights, potential labour tenants will have to continue to approach this Court in order to address the Department's non-compliance. I agree with the Applicants that such litigation will be a drain on this Court's time and the resources of the Department and indeed the public purse. This scenario makes the appointment of a Special Master not only desirable but urgent in my view. It is in the interests of justice that this Court should enlist the aid of a Special Master for this important process.

[34] The resort to new remedies to effectively protect threatened constitutional rights such as those of labour tenants has been acknowledged. In *Fose v Minister of Safety and Security*

[1997] ZACC 6; 1997

(3) SA 786 (CC) at paras 19 and 69 Ackerman J, writing for the majority, said:-

"Appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights ... Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated. The courts have a particular responsibility in this regard and are obliged to 'forge new tools' and shape innovative remedies, if needs be, to achieve this goal."_

[35] In *Meadow Glen Home Owners Association and Others v City of Tshwane Metropolitan Municipality and Another* 2015 (2) SA 413 (SCA) at 428 para 35 the Supreme Court of Appeal hinted at the possibility of Courts making use of institutions like Special Masters to supervise the implementation of Court orders. Wallis JA and Schoeman AJA explained:

"Both this court and the Constitutional Court have stressed the need for courts to be creative in framing remedies to address and resolve complex social problems, especially those that arise in the area of socio-economic rights. It is necessary to add that when doing so in this type of situation courts must also consider how they are to deal with failures to implement orders; the inevitable struggle to find adequate resources; inadequate or incompetent staffing and other administrative issues; problems of implementation not foreseen by the parties' lawyers in formulating the order; and the myriad other issues that may arise with orders, the operation and implementation of which will occur over a substantial period of time in a fluid situation. Contempt of court is a blunt instrument to deal with these issues and courts should look to orders

that secure ongoing oversight of the implementation of the order. There is considerable experience in the United States of America with orders of this nature arising from the decision in *Brown v Board of Education* and the federal court-supervised process of desegregating schools in that country. The Constitutional Court referred to it with approval in the TAC (No 2) case. Our courts may need to consider such institutions as the special master used in those cases to supervise the implementation of court orders."

[36] Effective relief is undoubtedly required for the many thousands of vulnerable labour tenants. The Department has thus far experienced grave difficulties in providing this. If a Special Master could potentially achieve that end, such an appointment is more than justified in my view. I am satisfied that the size and complexity of the task alone supports the appointment of a Special Master to, inter alia, assist this Court to meaningfully monitor implementation. The Department has acknowledged the complexity and enormity of the task. It has demonstrated that it is unable to process the applications with the haste and the scale that is required. As is stated by the Applicants, the last year and a half of reporting, and the frequent returns to this Court, have demonstrated that this Court, the Department and the Applicants require help in implementing the Act. A Special Master in my view would go a long way to assist the process and I intend granting an order for such appointment. To avoid confusion with the other Masters, I am of the view that the title "Special Master of Labour Tenants" be accorded.

[37] The Applicants have furnished me with a comprehensive draft order which in my view contains more detail than necessary, and may intrude onto the functions of the State Respondents, in breach of the separation of powers principle. The order I propose making is considerably less detailed and concentrates on steps to prepare an implementation plan. Once the plan is at hand, the Court will be in a better position to make orders for its implementation.

[38] I accordingly grant the following order:

[1] The First Respondent's failure to process or refer to the Court applications brought under Section 16 of the Land Reform Labour Tenants Act, No 3 of 1996 ("the Act"), is declared to be inconsistent with Sections 10, 25(6), 33, 195 and 237 of the Constitution of the Republic of South Africa, 1996.

[2] A Special Master of Labour Tenants ("the Special Master") shall be appointed as set forth hereunder.

[3] By not later than 30 January 2017, any party may deliver a nomination of a person to be appointed as the Special Master. The nomination must be in writing, accompanied by:

3.1 A short curriculum vitae of the nominated person;

3.2 Suggested terms of appointment and a remuneration structure acceptable to the nominee; and

3.3 The nominated person's acceptance of the terms of appointment and the remuneration structure.

[4] By not later than 28 February 2017, the First and Second Respondents/the Department may comment on all nominations submitted by the parties.

[5] The Court will reconvene on Friday, 3 March 2017 at 10h00 at the Land Claims Court, Randburg, at which hearing the Court shall:

5.1 Consider the candidates nominated for the position of Special Master;

5.2 Appoint a Special Master, if there is a suitable candidate;

5.3 Establish his or her terms of appointment and remuneration; and

5.3 Give such further directions as it may deem appropriate.

[6] The Special Master, once appointed, is hereby ordered to prepare, in collaboration with the First Respondent and/or his delagees, and to deliver by not later than 31 March 2017, a plan, ("the Implementation Plan"), for the performance of the duties of the First Respondent and the Department with supervision by the Special Master, in relation to pending labour tenant claims under Sections 16, 17 and 18 of the Act. The Implementation Plan must set forth:

6.1 The total number of claims lodged to date, and the number which have not yet been processed and finalised;

6.2 An assessment of the skill pool and other infrastructure required for processing labour tenant claims, and to what extent such skill pool and infrastructure is available within the Department of Rural Development and Land Reform ("the Department");

6.3 Targets, on a year to year basis, for the resolution of pending labour tenant claims, either by agreement of by referring the claim to the Court;

6.4 A determination of the budget necessary during each financial year for carrying out the Implementation Plan, including both the Department's operating costs for processing claims and the amounts required to fund awards made pursuant to applications in terms of section 16 of the Act;

6.5 Plans for co-ordination with the Court to ensure the rapid adjudication or arbitration of unresolved claims referred to the Court in terms of Section 18 (7) read with Sections 19 to 25 of the Act; and

6.6 Any other matters which the Special Master may consider relevant.

[7] The First and Second Respondents shall co-operate, and cause the Department to co-operate with the Special Master in the preparation and execution of the Implementation Plan, and shall ensure:

7.1 that the Special Master is provided with all documents (including archival documents) and records requested by him or her;

7.2 that all officials of the Department are reasonably available to meet with the Special Master and provide him or her with such information as he may reasonably require; and

7.3 that all reasonable requests by the Special Master are timeously responded to.

[8] By 15 April 2017 the First and Second Respondents/The Department shall file a report indicating which portions of the plan (if any) are objected to together with the grounds for objection and proposals for alternative provisions.

[9] The Court shall reconvene on Wednesday, 19 April 2017 at 10h00 at the Land Claims Court, Randburg, at which hearing the Court shall:

9.1 Consider the Implementation Plan delivered by the Special Master together with the report filed by the First and Second Respondents/The Department;

9.2 Approve the Implementation Plan, with or without amendments, or otherwise deal with the Plan as it may deem fit; and

9.3 Make such further orders as may be advisable, including orders relating to the fulfilment of the Implementation Plan and the processing of pending labour tenant claims.

[10] Any party may, on notice to the other parties and to the Special Master (when appointed), apply to the Court for a clarification or amendment of this order.

[11] The First and Second Respondents, jointly and severally, the one paying the others to be absolved, must pay the Applicants' costs in these proceedings incurred up to the date of this Order, taxed as between party and party, and including the costs consequent upon the employment of two counsel.

[12] There is no order as to costs in respect of the Third Respondent.

NCUBE AJ

Land Claims Court

Randburg

Appearances:

For the Applicants: A. Dodson S C.

Instructed by Legal Resources Centre, Durban

For the First Respondent: C R Jansen S C

Instructed by State Attorney, Pretoria

For the Second Respondent: V. Notshe S C

Instructed by State Attorney, Pretoria

For the Third Respondent: J.J Botha

Instructed by Tomlison MnguniJames Inc, Pietermaritzburg.

[1] MP Singh VN Shukla's Constitution of India 12 ed (2013) at 347.

[2] The Restitution of Land Rights Amendment Act which provided for the appointment of judges to the court has been declared invalid by the Constitutional Court and referred back to Parliament. There is currently therefor no provision for the appointment of permanent judges to this Court.

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