

LRC to argue for special master to implement labour tenant land claims

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Tomorrow, 9 June 2015, in the Land Claims Court (Johannesburg), the Legal Resources Centre will be arguing for the appointment of a special master in the matter between Bhekindlela Mwelase and others and the Department of Rural Development and Land Reform.

The special master will support and supervise the Department in implementing a plan to compile and process outstanding land claims that have been made by labour tenants. The LRC will also request the court to limit the Department to a maximum of 3 years to complete this process.

The Department of Rural Development and Land Reform has not prioritised land claims lodged under the Land Reform (Labour Tenants) Act 3 of 1996 for over 14 years, jeopardizing thousands of indigent South Africans' security of tenure.

The LRC represents Mwelase and other labour tenants who lodged applications on the 2 June 1995 for land they were residing on and utilising. These applications have not yet been processed. The failure to process the land claims affect between 19 000 and 22 000 labour tenants who are residing on farms in Kwa-Zulu Natal, Mpumalanga and the Free State.

On the 19 September 2014, [an order was made by the Land Claims Court](#) directing the Director-General of the Department to submit a detailed report by 31 March 2015, containing statistics on the current status of all labour tenants applications lodged, a schedule indicating the status of each individual labour tenant claim and the DGs plan for further processing all outstanding labour tenants' claims.

The DG [was late in filing the report](#); however, the report was finally filed on the 24 April 2015. In the reporting affidavit, the DG admits that the information contained in the report is inaccurate and insufficient. The Department further admitted that they were not in a position to immediately begin processing the remaining claims, as they had not compiled sufficient information.

In their proposed plan to remedy this situation, the Department is requesting another two years to complete the compilation of information of the outstanding claims, before they can begin to process these labour tenant claims.

Special Master

However, in light of the affidavit filed by the DG, our clients believe it is necessary for the Land Claims Court to appoint a special master to assist in the implementation of the order.

The institution of a special master is new, but not unprecedented, in South African law.

Several facts warrant the appointment of a special master in this case. Firstly, the implementation of the Court order will take a long time and will require a detailed evaluation of a large amount of information. Secondly, the reporting affidavit demonstrates the extent of the failure of the Department to process claims until today. It has not only failed to process the applications, it has also failed to keep records.

Background to the matter

The Land Reform (Labour Tenants) Act 3 of 1996 came into effect on the 22 March 1996 and was designed to provide security of tenure to labour tenants. In particular, section 16 of the Act enables labour tenants to apply for acquisition of ownership of the land they were entitled to occupy in their capacity as labour tenants.

On the strength of this provision, thousands of labour tenants lodged claims with the Department of Rural Development and Land Reform before the cut-off date of 31 March 2001. They hoped that their applications were going to be processed efficiently.

Thereafter, Chapter III of the Act creates certain obligations that must be carried out by the Department in order to expedite this process. Thus, section 17(1)(a) requires the Department to notify landowners that such an application has been made. Section 17(2)(c) stipulates that the Department must publish notice of such applications in the Government Gazette. Thereafter, should the parties fail to settle the question of acquisition of land by the labour tenants, the Department must refer the matter to the Land Claims Court.

It is clear from these provisions that the Department is authorised (and obliged) to play a proactive role in resolving the issue of acquisition of land by labour tenants. Thus, this is not merely an issue between the landowner and the labour tenant; only the Department can refer the matter to court and hence it acts as a gatekeeper in this particular respect.

But what happens when the Department fails to carry out its obligations? Either the Department fails to process notices in terms of section 16 or fails to refer cases to court. Unfortunately, this has proved to be a fairly common issue, with the result that literally thousands of labour tenant applications throughout the country have not been processed or referred to court by the Department, 14 years after the cut-off date.

The case of Mwelase is a good example in this regard. The applicants occupy land on the Hilton College Estate and lodged claims for acquisition of land in June 2000. After certain preliminary negotiations, the process ground to a halt. The effect of this is that the applicants are literally living in limbo, since their status as labour

tenants is disputed by Hilton College.