THE CHRONOLOGY OF THE PLIGHT SUFFERED BY THE DESCENDENTS OF JOHN DUNN

A RECORD of LAND INVASISONS of EPIC PROPORTIONS

Recorded for the benefit of all people who will hear the cry of the oppressed.

In honour of our fore parents who to took up the challenge on our behalf to secure our heritage and inheritance:

Dan Dunn who tirelessly championed the cause of the Dunn family
Pat Dunn who returned from the diaspora to take up the challenge at the cost of being physically assaulted.
John Hunt, a foreigner who embraced our heritage and took up the challenge at the cost of a bullet.
Alex Fynn who meticulously kept financial records of the DDA and the MLOA

Lest we forget

ABSTRACT

"The descendants of JOHN DUNN, residing at Mangete, have always viewed themselves as a distinct community and have regulated their affairs as such."

Dan Dunn: Chairman of the Dunn's Descendants Association: 1990

INTRODUCTION

This document is a chronological sequence of events illustrating the land invasions that have affected the descendants of John Dunn beginning in 1995. In order not to detract from any recorded facts, this document relies heavily on the legal processes which unfolded in the Courts of South Africa. On the one hand, Court proceedings were instituted by the Dunn descendants and on the other hand land restitution proceedings were instituted against the descendants of John Dunn by the Macambini Traditional Council.

The irreparable harm caused to the Dunn Family, socially, politically and economically is the impact that the land invasions have had on a family which relies heavily on agronomics to sustain themselves. This paper seeks to highlight the fact that although the Dunn descendants were successful in their Application to the Court for the ejectment of the invaders, the laws of South Africa and the institutions responsible for the administration and application of the law have not served the descendants. In no small measure the private sector has also played a role in condoning the invasions despite communications to the contrary. Under these circumstances it has become extremely challenging for the Dunn Family to fully exploit the economic opportunities that could be derived from their land. The hope is for the development of agriculture that is not susceptible to malicious burning of crops and the destruction of crops by livestock being allowed to graze in the area.

It is hoped that this paper will result in obtaining the support of interested persons or entities to assist the Dunn Family in developing an economic hub, not just for themselves but for the Region as a whole. By illustrating the plight of Dunn Family we conclude with a theory of perception highlighting an undercurrent that seeks to displace and dispossess the Dunn's of their land, their inheritance within a free and democratic South Africa where the Rule of Law has betrayed them.

The Dunn Family Trust was formally established in Mangete to address the governance void that occurred with demise of the Dunns Descendants Association and the Mangete Land Owners Association which were instrumental in successfully obtaining a High Court Ruling for the ejectment of people who had unlawfully occupied land belonging to the descendants of John Dunn, commonly referred to as Reserve 7A, Mangete.

It is the view of the Dunn Family Trust that economic success can only be achieved in a peaceful and stable socio political environment.

PURPOSE

The purpose of this paper is to obtain the financial support of donors to assist in giving effect of the Court Proceedings which instructs the various organs of state to remove all unauthorized occupants who have settled on Reserve 7A and to facilitate the resettlement of the occupants on land purchased by the State for this purpose. This objective will require considerable financial resources as the failure of the State to give effect to the Rulings of the Court can only be addressed through the Courts which requires the engagement of legal counsel.

Economic Development

The Trust has embarked on an economic beneficial initiative aimed at uplifting the Mangete community as well as the surrounding communities. The initiative will focus on establishing crop diversification within the area which up until now has relied upon sugar cane farming. Under the current economic environment within South Africa, the sugar cane industry has declined to a point where the two largest producers, viz. Tongaat Hulett and Illovo have scaled back on operations resulting in the closure of some sugar mills.

Of great concern is the migration of Illovo to the north of South Africa's borders to our neighbouring countries which include, Swaziland, Mozambique, Malawi, Tanzania and Kenya. The list is not exhausted and makes for interesting further research to understand the economic drivers behind the migration. During the writing of this paper, Tongaat Hulett applied to the Courts to enter into Business Rescue which is a clear indication that the company was no longer financially sound. Prior to the company entering into Business Rescue, the minority shareholders of Tongaat Hulett objected to its sale on the open market in what was described by the media as "Zimbabwe's controversial Rudland family is set to take control of the 130-year-old southern African sugar giant in a R2-billion takeover". (News 24: 18 January 2022)

The Trust seeks to create economic opportunities centered around an agricultural sector that creates employment and business opportunities with a strong focus on food security. The Mangete Farmers Cooperative has been registered by the Trust which will champion the

initiative and will in turn establish structures to ensure that all land owners within the region are beneficiaries of the Coop. The Cooperative has prepared an extensive Business Plan for the implementation of phase 1 of the initiative which will provide for the cultivation of Tea Tree plantations for the export of Tea Tree Oils.

To achieve the successful implementation of the initiative, the Co Op will require access to vacant agricultural land. A hinderance to achieving this is the unlawful invasion of farms in Reserve 7A. These invasions are largely attributed to the State's failure to implement a Section 42 Agreement founded by the Land Claims Court in 2004 through the establishment of the Bhekamafa Trust.

This failure has left the descendants of John Dunn to seek relief from the High Court and to claim the right to their land by the enforcement of Court's ruling that authorizes the eviction of the land invaders and the prosecution of all people entering upon Reserve 7A without due authorization. However, the Trust would not like to pursue the Court authorised evictions in isolation of enforcing the Section 42D agreement. The Trust therefore seeks access to the various State administrative institutions who are stakeholders in the Section 42D Agreement.

Methodology

Claiming Real Rights

To provide comprehensive insights of the plight facing the descendants of John Dunn in relation to the land invasions and to report the facts as they unfolded. It is imperative that these facts be presented in a chronological and empirical order to maintain objectivity. In order to ensure this the Paper draws extensively on records presented to the High Court by the Descendants of John Dunn in their Notice of Motion dated 16 April 1996 brought before the Supreme Court of South Africa: The Durban and Coast Local Division under Case No. 1931/96.

In 1994 the owners of the individual lots formed the Mangete Land Owners Association (MLOA) with the objective of utilizing that body as its representative. Prior to this the community was represented by the Dunn's Descendants Association, of which Dan Dunn, the First Applicant, was the Chairman. Within the MLOA structure, Dan was elected to the position of Vice Chairman with Tony Roberts, the Nineteenth Applicant being elected to the position of Chairman. Thus the Dunn Family experienced a period of continuity in the local governance of Mangete.

In his capacity as Vice-chairman of the MLOA, Dan was elected to represent the Dunn Family with regard to the influx of illegal settlers on their land. These representations extend to Dan addressing various letters and making representations to certain Cabinet Ministers and Government Officials regarding the influx of persons settling upon the land allocated to the John Dunn descendants at Mangete.

Summary of events leading up to the application

The John Dunn (Distribution of Land) Act, ACT NO.15 OF 1935, defines the conditions upon and the process whereby the land was granted to the various descendants of John Dunn.

Having spent most of his life in Mangete Dan advised the Court that from inception, disputes arose between the descendants of John Dunn and other people living on Reserve No. 7A concerning their respective rights of occupation of the said land.

In terms of Section 14 (4) of the Act all the plots or allotments situated in Reserve No. 7A were, so far as was practical, to be situated in the western and north western portions of the said reserve and were to form one block.

In terms of the said provisions the descendants of John Dunn took up 7,722 acres and the balance of the land making up 10,000 acres was left for occupation of other persons entitled to reside thereon.

In terms of Section 18 (2) of the Act, the Commissioner appointed for the area in which any such plot of land was situated, at the request of any person who was entitled to occupy any such plot of land, and after informal enquiry, was entitled to order the removal from such plot of any person found by him not to be entitled to occupy such plot, and any order so made was to be executed in like manner as if it were a process of ejectment issued from the Magistrate's Court of the district.

Dan advised the Court that in accordance with the aforesaid provisions and in 1976 persons found not to be entitled to occupy the sixty-nine allotments awarded to the descendants of John Dunn were .removed, with just compensation, and settled on an area called Wangu in the north east of Mangete.

Dan noted that during the period 1993 to 1994 further people were displaced due to the survey and construction of the N2 Freeway from Durban to Richards Bay and that the displaced persons were settle elsewhere. As a direct consequence, four one hundred acre allotments of land allotted to the Dunn descendants situated along the borders of Reserve No. 7A, comprising sub-division numbers 16, 59, 60 and 64 were sold to the Department of Transport and transferred to the Macambini Tribal Authority for the resettlement of the aforesaid displaced persons.

Dan recalled, at about the same time it was announced by the authorities that those persons who were moved by the previous government could now return to their original homesteads. At first, a few people from the Wangu area moved onto Mangete. This soon turned into a full scale invasion of the land allocated to the Dunn descendants. This influx of illegal settlers which included persons not affected by the new road but persons fleeing the violence in their own areas and persons seeking business opportunities targeted the privately owned allotments situated on Reserve No. 7A and very few settled on the four allotments bought for such displaced persons by the Department of Transport.

As a direct result of the invasions, Dan instituted negotiations with the Macambini Tribal Authority represented by the Nkosi Mathaba. However, these negotiations proved fruitless as the Nkosi advised him that he was not responsible for the settling of persons on Reserve No. 7A yet did not dispute these people were his subjects and under his authority. The occupation of Reserve No. 7A continued unabated.

In response to the invasion various charges of trespass were laid by the respective land owners with the South African Police and although the matter was referred to the Attorney General of Natal no prosecutions ensued.

In 1993 an endeavour was made by the individual land owners to remove the dwellings that had been erected on their land with the use of pay-loaders. After certain dwellings had been demolished Dan was contacted by the Nkosi who challenged the right of the land owners to demolish the dwellings.

To address this impasse, Dan referred the matter to the Chief Magistrate of Iskalweni, in whose jurisdiction the land is situated, and he undertook to refer the matter to the Chief Minister of KwaZulu/Natal. In addition to this Dan convened a number of meetings with Diakona, which endeavoured to arbitrate between the land owners and the illegal settlers.

The outcome of the processes initiated by Dan was the Chief Magistrate informing Nkosi Mathaba that should any persons allege to have claim to the land, such claims should be referred to the Land Claims Court and he should desist from directing those under his authority to settle upon sub-division No. 7A. However, despite the Nkosi's undertaking to do so, further persons continued to settle upon Reserve No. 7A at the direction of the Nkosi and his councillors.

In response to the above, Dan initiated discussion with various Cabinet Ministers and Government Officials. What follows is a record of the Offices approached:

On the 29 November 1994 letters were addressed to the Minister of Land Affairs and the Premier of KwaZulu-Natal requesting a meeting with them in order to resolve the problem.

On the 7 February 1995 Dan and the executive of the Mangete Land Owners Association presented a memorandum to the Premier of KwaZulu-Natal requesting his assistance in halting the influx of illegal settlers on Reserve No. 7A and seeking their removal.

Thereafter Dan sought the assistance of Mr P Miller M.P.P. who was responsible for land matters in the Provincial Parliament of Kwazulu-Natal and efforts were made to secure an interview with him.

On the 11 April 1995 a meeting was held with the Chief Magistrate for the District of Mtunzini and he was briefed on the situation at Mangete. His advice was that the association should seek a Supreme Court interdict to evict the illegal settlers.

On the 16 May 1995 Mr Roger Burrows (DP) MPP was contacted and he promised to raise the matter in the Provincial Parliament. On the 13 June 1995 a meeting was held and the Mangete Land Owners case was presented to him. He advised that he would draw up a Cabinet Memorandum for submission to the KwaZulu-Natal cabinet and advised the Association to seek an eviction order against the illegal settlers.

In June 1995 Mr Mchunu (ANC) MPP contacted the Association and arranged a meeting. He was supplied with all the information pertaining to the issue and arranged for a Memorandum to be presented to the Minister of Land Affairs, Mr D Hanekom on the 14 August 1995.

The Response of the Traditional Council to the invasions

Despite the representations advanced by the Dunn Family no action was taken by the authorities to remove or halt the illegal settlement of persons at Mangete. On 11 July 1995 the Executive of the Mangete Land Owners Association met with Nkosi Mathaba in a last ditch effort to resolve the illegal settlement problem. However the meeting proved fruitless and the Nkosi intimated that:

he considered Reserve No. 7A to form part of the Macambini Tribal Lands;

he would exercise authority over the said land;

as far as he was concerned the persons resettling on Reserve No. 7A were not placed there by him but had returned of their own accord to occupy their original homesteads;

he considered the removal of the persons in 1976 and their settlement at Wangu to be a forced removal by the previous government;

he would do nothing to abate the influx of persons onto Reserve No. 7A.

All efforts to persuade the individual settlers to move had been fruitless.

At the time the of these representations being made to the Premier of KwaZulu- Natal 110 dwellings had been illegally erected on Reserve No. 7A. At the time of making Application to the High Court, over 300 illegal dwellings erected on Reserve No. 7A.

Damages and disruptions caused by the invasions

At the time of lodging the Application Dan noted that the persons illegally settling on Reserve No. 7A had:

been responsible for the dismantling of the John Dunn homestead which was earmarked for declaration as a National Monument;
caused destruction to the grave of Cathryn Dunn, John Dunn's late wife;
petrol bombed the house of one of John Dunn's last surviving daughters-in-law;
disrupted farming operations of the Mangete community by intimidating the labour and interfering with the farming operations of Tongaat-Hulett;
claimed fully developed farms as their own and prevented the harvesting of sugar cane crops thereon;
been responsible for burning the veld as well as sugar cane fields and destroying palm trees, natural vegetation and timber plantations;
allowed their cattle to graze at random on the lands and sugar cane crops which were destroyed continuously.

Dan concluded that the Dunn Family had no other recourse but to approach the Supreme Court for the relief through their application.

Prayer of the Dunn Family

The Dunn Family conceded that were unable to demolish and remove the structures erected on their land without the assistance of the police as any confrontation with the settlers in an already tense situation would in all likelihood lead to full scale violence and that the police were reluctant to assist the families without a court order evicting the settlers.

What complicated matters further was that the infrastructure of Reserve No. 7A was of such a nature, although surveyed and demarcated, provided no actual boundary fences. Further, the existing access roads traversed various plots. The Application made to the High Court was therefore made in respect of all the sub-divisions forming Reserve No. 7 A considering that:

it would be impossible to determine upon which individual sub-division a settler might have erected their structure;
if the Dunn's applied individually for the relief sought that once the relief is granted in respect of one sub-division the illegal settlers would merely move onto another sub-division in respect of which no order has been granted.

In motivating his Prayer Dan cited the following challenges that the Dunn's faced in identifying the individual illegal settlers:

along with the assistance of the South African Police, he endeavoured to ascertain the identity of the persons settled on the lands. These persons were not prepared to co-operate with them leaving them with no means of establishing reliably their names or identity.
That people were flooding onto the land on an ongoing basis and any attempt to compile a list of names would have been futile.
He was however able to ascertain the identity of the Second, Third and Fourth Respondents cited in the Notice as the identity of these persons was made known to him by Nkosi Mathaba as being his councillors.

Because of the impossibility of establishing the identity of all the persons on the land, Dan respectfully submitted to the Court that the order sought would ensure that the matter comes to the attention of every person settled thereon.

Dan concluded the prayer of the Dunn Family by bringing before the Court that the land bought by the Department of Transport was still vacant and the persons removed from Reserve 7A land could be re-settled thereon.

Application made to the High Court by the Dunn Family

The following Application was made by Dan Dunn on behalf of the Dunn Family:

That the Respondents and all other persons are interdicted and restrained:

from entering upon the individual plots owned by the descendants of John Dunn unless authorised to do so by the owner of the individual plot concerned;

from erecting or causing to be erected any structure of whatsoever nature on the land or placing or causing to be placed on the land, either in any such structure or otherwise, any article of any nature, unless authorised to do so by the owner of the individual plot concerned;

That the Respondents and all other persons occupying or residing on the land be and are hereby evicted forthwith.

That the Applicants are hereby authorised:

in the event of the Respondents or any other person entering, erecting any structure or placing any article on the land in contravention of paragraphs (a) (i) and (ii) hereof, that the Sheriff, or his Deputy, is authorised and directed to take such steps as may be reasonably necessary to evict such persons from the land, to dismantle such structures and further to remove the components thereof or any such articles from the land;

in the event of the Respondents and any other such person failing to comply with paragraph (b) hereof within seven days of the granting of this order, the Sheriff, or his Deputy is authorised and directed to take such steps as may be reasonably necessary to effect such eviction.

Response of the Tribal Authority (pg. 280)

In response to the allegations recorded in the Founding Affidavit submitted to the Court by Dan Dunn, Inkosi Mathaba submitted a Responding Affidavit.

The Macambini Tribal Authority under Inkosi Kaylesha Mathaba in his capacity as the First Respondent listed opposed the granting of the Application filed by Dan on behalf of the Dunn Family on the following grounds:

Land Dispossession

Inkosi Mathaba argued that The Macambini Tribe was dispossessed of the land concerned, under, or for furthering the objects of, racially based discriminatory laws, including inter alia the following:

The Native Land Act No. 27 of 1913;
The John Dunn (Distribution of Land) Act No.15. of 1935; and
The John Dunn (Distribution of Land) Amendment Act No. 13 of 1934.

Inkosi Mathaba contended that the Macambini Tribe, or the individual members thereof, who had lived on the land since time immemorial prior to their dispossession thereof in 1976, or their descendants, had acquired a prescriptive right to the land, more especially so as the

provisions of the John Dunn Act of 1935 in regard to the removal of the indigenous people living on the land, was never enforced until 1976.

Inkosi Mathaba advised the Court that white settlements began in Natal upon the arrival of the British settlers in 1824 and continued in 1838 with the arrival of the voortrekkers from the Cape Colony under the leadership of amongst others, Piet Retief. At this stage, Natal was predominantly inhabited by the Zulus and to a lesser extent other Bantu tribes. In 1843 Natal was annexed by the British and administered as an integral part of the British Colony. In 1854 Natal became a separate British Colony and 1879 the whole of Zululand fell under British rule as a consequence of the Anglo Zulu war of the same year. Further, that prior to 1887 Zululand belonged to the Zulu people. This status remained unchanged by the- Imperial Government during the 10 years in which Zululand was ruled as a British Crown Colony.

In 1897 Zululand was annexed to the Colony of Natal and was proclaimed a Province of Natal in terms of the Zululand Annexation Act No.37 of 1897. The said Act provided, inter alia, that until further provisions had been made, with the approval of His Majesty the King of England, no grants or alienation of Crown lands within the Province of Zululand would be made, nor would the natives be disturbed in the use and occupation of any lands occupied or used by them. In consequence of the investigation of a Commission appointed to delimit reserves in Zululand in 1899, Reserve No.7A, containing the land in issue, was proclaimed. The said Reserve 7A was transferred in Trust to the Zululand Native Trust by Deed of Grant No.7638 dated the 6th of April 1909. Following upon the Anglo Boer War the Colony of Natal became a Province of the Union of South Africa; By virtue of the provisions of the Native Land Act No.27 of 1913 Reserve 7A became a Scheduled Native Area; The John Dunn Act (Land Distribution Act) No.15 of 1935 became law on the 6th of April 1935.

The Dunn Family Settlement Timeline

For the purposes of recording the historical events leading up to the occupation of Reserve 7A, Inkosi Mathaba appointed an ethnologist and recites these timelines as follows:

John Dunn was of white ancestry having been born in England in 1834. In 1936 his parents immigrated to Durban. In 1856 after the Battle of Ndondakusuka John Dunn was appointed a Zulu Chief and given various lands as a reward for services he had rendered King Cetshwayo. The land so given included the land in question situated at Mangete. This land was given to Dunn in his capacity as a Zulu Chief, subject to Zulu law and custom.
As such he never became owner of the land but held it on behalf of the Zulu nation and the people living thereon. When King Cetshwayo gave John Dunn land at Mangete, Mangete had been occupied since time immemorial by its indigenous people, the Macambini Tribe.

In the war between the British and the Zulus, John Dunn turned against Cetshwayo and the Zulu nation and scouted for the British military intelligence. Upon the defeat of Cetshwayo by the British, he was rewarded by the gift of further land in Zululand. The land was given to Dunn by the British in his capacity as a Zulu Chief subject to Zulu tribal laws and custom.

Inkosi Mathaba contends that through this arrangement John Dunn accepted and held all the land given to him both by Cetshwayo and the British according to Zulu law and custom as

appears from his last Will and Testament. He further contends that none of this land was bequeathed, neither was any mention made thereof, nor did any record thereof exist in the Office of the Registrar of Deeds.

John Dunn's popularity and influence- with the British Government gradually declined after 1879 and in December 1882 his authority as an appointed Chief over the various territories including Reserve 7A, was terminated, although his authority as Chief over his tribal, or individual, followers was recognized and remained in place.

At the time of his appointment as a Zulu Chief by King Cetshwayo, Dunn was married to CATHERINE PIERCE who was of Malay extraction. He later married several Zulu women and when he died on the 5th August 1895, he was survived by twenty-three wives, thirty-three sons and forty-six daughters.

Prior to his death John Dunn appointed Lokotwayo Kamcambi as Chief, Inkosi Mathaba's great, great-grandfather.

During September 1976 following upon representations made by Dan Dunn to the erstwhile Deputy Minister of Bantu Administration, A.J. Raubenheimer, the area in dispute, namely Reserve No.7A, was forcibly taken from the Macambini Tribe and given to John Dunn's alleged descendants, under the John Dunn (Distribution of Land) Act, No. 15 of 1935;

The members the Macambini tribe who were resident upon Reserve No. 7 A, Mangete were forcibly removed and dumped at Wangu, some twenty kilometers away, a Leper Colony. Some two hundred families were affected by this forced removal. These persons were temporarily housed in tents provided by the South African Defence Force who had loaded them into army trucks and removed them from the reserve. Paltry "compensation" was paid to these families, for their crops and houses. No compensation was paid for the value of the land and no proper medical care was rendered to the families, neither was any treatment rendered to persons who contracted leprosy as a result of their close proximity to the Leper Hospital. Several members of the tribe died from leprosy, notwithstanding the fact that it was a treatable disease.

No proper sanitation or running water was provided and the families relied for their water consumption on two boreholes. They also fetched water from the Leper Hospital which was much nearer than the boreholes provided. At the time the families were forcibly re-located to Wangu, they were told that proper accommodation would be provided. Notwithstanding numerous representation to the Government, no accommodation was provided at all. Three months after the families had been forcibly removed, the tents provided by the South African Defence Force were taken back.

School-going children were, as a consequence of the forced removal, uprooted from the school at Mangethe. No schools were provided for them at Wangu, as a result of which many children suffered a loss of education.

The appalling unhygienic conditions resulted in the deaths of many members of the tribe. Despite efforts by Inkosi Mathaba's father, who was then Chief of the Macambini Tribe, to

obtain the assistance of the Government to alleviate the conditions under which the members of his tribe were compelled to live, no assistance was forthcoming.

Returning to the land

With regard to the people's resettlement on the land, Inkosi Mathaba cites that members of the Macambini tribe who had been so dispossessed of the land in Reserve 7A, started returning to this land upon:

The formation of a Government of National Unity in South Africa;

The passing of the Constitution of the Republic of South Africa Constitution Act No.200 of 1993 which provided for the restitution of rights in land to a person or community dispossessed under or for the purpose of furthering the views of any racially based discriminatory laws; and

Public announcements through the media pursuant thereto.

In terms of the John Dunn Land Distribution Act, 13 of 1935, it was the Inkosi's understanding that the purpose of the Act was to resolve the dispute between the factions in an amicable manner after a full and proper hearing had been afforded to both factions. For this purpose, the Act specifically provided for the appointment of a Commission (Section 2). The place and time of the first sitting of the Commission was, after determination by the chairman, to be published in three issues of the Gazette and three issues of a newspaper circulating in the Province of Natal (Section 3). It was also understood that members of my tribe affected by the Act and the Commission were to be given personal notice of the sitting.

The Inkosi claimed that to the best of his knowledge and belief, based on what was told to him by members of his tribe, the requisite publication in the Gazette and the newspapers was not given effect, neither were the members of his tribe, adversely affected by the Act, given notification of the sitting of the Commission.

Further, he was unaware, until or about September 1976, that any effect had been given to Act No. 15 of 1935 as he believed the Act had lapsed, or abrogated until members of his Tribe were forcibly removed from Reserve No. 7A, Dunn's Reserve.
The Inkosi believed that the members of his Tribe had every right to occupation of the land in question.

The Inkosi stated that during the years 1993 and 1994, those members of the Macambini Tribe who were forcibly removed from their land, began to return to Reserve No.7A, Dunn's Reserve.

Regarding his people returning to the land, Inkosi Mathaba advised the Court that friction developed between them and certain of the descendants of John Dunn claiming that some of the descendants had claimed State land when they were not living in the area. Further that relatives were invited from as far afield as Cape Town and Durban to lay claim to land that they had left long ago. This resulted in the immediate sale of plots awarded to them, once they had taken transfer.

The Inkosi claimed to have no knowledge of the number of dwellings erected during February 1995, nor the number of dwellings that currently exist on the property. He did however admit that the dwellings have increased as a consequence of the return of more and more of the displaced members of the Macambini Tribe.

The Inkosi submitted that the Applicants should not demolish or remove any structures erected on the land until such time as the dispute has been finally' adjudicated upon by the said Commission.

The Inkosi advised the Court that the land purchased by the Department of Transport was still vacant for reason that those members of the tribe which have returned to the Reserve have settled upon the land which they formerly occupied. They did not occupy the land purchased by the Department of Transport.

The Inkosi denied that there was any flooding onto the land, as alleged.

Following the submission of his answering affidavit, the Inkosi submitted a supplementary affidavit in which he states that his attention has been directed to the Interim Protection of Informal Land Rights Act, 31 of 1996. He therefore believed that the Respondents were entitled to protection under that Act. For that reason the supplementary affidavit was necessary inasmuch as he wished to invoke the provisions of the Act.

The Inkosi submitted that the Respondents had an informal right to land, which is the subject matter of the Dunn's application.

The Inkosi submitted that his tribe, and its members which include the Respondents had lived on the land since time immemorial, pursuant to its tribal practice and indigenous law, consequently acquiring a prescriptive right to the land. In living on the land, the tribe naturally had the use, occupation and access to it up and until the tribe's unlawful dispossession thereof. Upon returning to the land, the Respondents have resumed their use, occupation and access to the land which, were it not for their unlawful dispossession, would have continued without interruption.
Dan Dunn's Replying Affidavit

In response to the replying affidavit submitted by Inkosi Mathaba, Dan Dunn submitted the following responding affidavit:

NOTE

It is important to note that Dan followed a substantive argument for which he was able to provide empirical and conclusive evidence. Dunn himself confirms that he had undertaken an in depth study of the history related to John Dunn. He confirms that he had lived his entire life in Mangete and the members of the Dunn family living on Reserve 7A were known to him. He further obtains sworn affidavits from senior family members who had been resident in the area for more than 50 years and could attest to knowing the families who had lived in Reserve 7A and on which allotments.

Before introducing these affidavits into evidence Dan draws the Court’s attention to arial photographs which clearly demonstrate the settlement patterns prior to 1976 up until 1996. The aerial photographs served to dispute the Inkosi’s claim that his people had lived on the land from time in memorial. This piece of evidence served to be the proverbial nail in the coffin for the Inkosi.

Hereunder are the salient factors cited by Dan in denying the allegations submitted by the Inkosi in his responding affidavit.

The MACAMBINI TRIBE was never in possession of the land forming Reserve No. 7A in Mangete, KwaZulu-Natal or, if they were, they were dispossessed thereof prior to 1913.

As stated in paragraph 12 of his founding affidavit the Applicants are the descendants the late JOHN DUNN. Dan attests that as a descendent of JOHN DUNN, he has made a study of the family history and has a detailed knowledge thereof.

In the late 1850's JOHN DUNN settled In Zululand, at the Invitation of CETSHWAYO, the King of Zululand. CETSHWAYO gave DUNN occupational rights to lands along the southern Zululand coast from Ngoya in the north to the lower Tugela in the south. CETSHWAYO saw in DUNN the end to a quest for a “white chief" to serve as his advisor when dealing with the Natal Government and DUNN emerged between 1858 and 1878 as one of the most powerful chiefs in the Zulu kingdom. He ruled over nearly 25 square miles of territory and 600,000 or 700,000 African subjects.

DUNN increased his social standing by taking numerous Zulu wives, many of whom were daughters of important Chiefs and Headsmen.

During the Anglo Zulu war of 1879 CETSHWAYO and DUNN became estranged and on the 30th December 1878 DUNN, his family, 2000 African retainers and 3000 cattle crossed the Tugela River into Natal for safety. During the war DUNN assisted the British forces and after the war was rewarded for his efforts by being made one of the thirteen Chiefs in terms of the Ulundi treaty, signed on the 1st September 1879, in terms of which DUNN controlled nearly one-fifth of Zululand. However upon CETSHWAYO's return from exile in 1883 DUNN was stripped of his large chiefdom and relegated to the roll of a minor chief in the immediate Mangete/Emoyeni area in southern Zululand. DUNN died at Emoyeni on the 5th August 1895, being survived by thirteen wives at Emoyeni, five at Ngoya and five at Mangete.

In terms of the provisions of the Zululand Annexation Act of 1897, Zululand was annexed by the self-governing British colony of Natal. The Zululand Lands Delimitation Commission was set up to decide which areas of Zululand would be opened to "European settlement" and which land would be demarcated as "African Reserves". On the 7th August 1902, the secretary to the then Prime Minister instructed the Zululand Lands Delimitation Commission to report upon the most suitable area, consisting of 10,000 to 12,000 acres, to select in the district of Umlalazi "for the use of the family of the late Chief JOHN DUNN". When the commission finished its work in 1904 it recommended that the DUNN community should be given an area in the lower Tugela basin and 10,000 acres were set aside and demarcated as Reserve No. 7A.

It must be pointed out that the Commission regarded the DUNN descendants as "natives". Its members were of the opinion that, in due course, the DUNNs would be "indistinguishable" from the tribal population and accordingly placed Reserve No. 7A under the control of the Zululand Native Trust. As far as can be ascertained it would appear that the intention of the Commission was for the descendants of JOHN DUNN not to receive individual portions of the land but that Reserve No. 7A was intended for joint occupation and use by the DUNN family.

In 1909 Reserve No. 7A was demarcated and transferred to the Zululand Native Trust by deed of grant No. 7638, forming Annexure "KWM2" to MATHABA's affidavit. Dann annexed to his affidavit a copy of the Surveyor General's diagram, dated in March 1909, which was compiled from the plan of Zululand accompanying the Zululand Lands Delimitation Commission Report and which depicts Reserve No. 7A, as it then was, including a portion of land on its eastern border, south of the Inyoni River. The DUNN community was thereafter placed under the jurisdiction of the Department of Native Affairs. The DUNN community were accordingly considered as "natives" and no distinction was made between them and the tribal population by the relevant authorities.

Although instructed to select an area "for the use of the family of the late Chief JOHN DUNN" the Commission, and because of its assumption that his descendants would become assimilated with the Zulu population, noted that a number of "natives lived within Reserve No. 7A" but made no provision for them to be moved elsewhere.

In the "Report of the Inter-Departmental Committee on Matters Affecting Coloured Persons on Coloured Mission Stations, Reserves and Settlements" published in 1947, it is noted that although there were about 126 "native villages" in Reserve No. 7A at the time of its delimitation by the Commission that there were only "60 native villages in the reserve" at the time of publishing their report in 1947. It is further noted that there were 44 "DUNN families", resident upon the reserve at the time of their report.

It is however evident from documentation submitted by Dan that Reserve No. 7A prior to 1951, included a portion of the land on its eastern border and south of the Inyoni River. The "Native villages" referred to in the aforesaid report were situated in this area. However in 1951 that area was excluded from Reserve No. 7A and therefore did not form part of "the land" as defined in the Dunn's Application. The document relied on by Dan was annexed to the Application marked "DD7". As opposed to a system of communal land tenure as proposed by the Delimitation Commission the DUNNs sought individual freehold tenure of Reserve No. 7A.

In 1911 the DUNN community began to agitate the authorities for a definition of their rights in the land and in 1912 the then Cabinet decided that Reserve No. 7 A would be sub-divided amongst the 79 children of JOHN DUNN and their descendants, and that each would receive 100 acres within Reserve No. 7A.

From 1918 to 1921 the issue of Certificates of Occupation was considered and in 1921, 34 Certificates of Occupation were granted to the DUNN descendants.

The DUNN community received little assistance from the Department of Native Affairs in their attempts to settle disputes between themselves and the tribal population over the allocation

and occupation of the land. Ultimately in 1935 the JOHN DUNN (Distribution of Land) Act was passed, in terms of which the Applicants presently hold title to their various allotments.

Dan submitted that it was accordingly evident, from the aforesaid, that the Applicants, and their forefathers, had from the inception of Reserve No. 7A been in lawful occupation thereof and that the MACAMBINI TRIBE, at no stage, possessed any rights thereto.

Dan concluded his response to the Inkosi's Responding Affidavit by specifically denying that the Traditional Council and its subjects had acquired a prescriptive right to the land.

Producing the crucial evidence

To support his written testimony that the Macambini Traditional Council had never occupied Reserve 7A, Dan produced the documentary evidence attached to his replying affidavit to dispute the position put forward by Inkosi Mathaba in his affidavit:

Dan ascertained that Reserve No. 7 A had, since 1937, been surveyed by means of aerial photographs on a regular basis as part of the surveys conducted to determine the areas of land devoted to sugarcane cultivation.

Dan obtained, from the Aerial Survey Company of South Africa Limited and from the Chief Directorate; Surveys and Land Affairs at the Department of Land Affairs, a copy of the aerial photographs taken of Reserve No. 7A for the years 1937, 1966, 1973, 1993 and 1996.

Dan further obtained a cadastral diagram of the photographs taken in 1973 and 1996.

The reason why Dan chose these years is that they depicted the state of the land immediately before the removal of the tribal population in 1976 and at present date, after the Respondents moved onto it.

The cadastral diagrams were produced in such a manner that they were transparent and could be placed over the aerial photographs taken for those years.

Dan thereafter placed the said cadastral diagrams upon the photographs taken for 1973 and 1996, respectively, and thereafter traced;

upon the cadastral diagram for the 1973 photograph, those homesteads erected by the tribal population at that date; and

upon the cadastral diagram for 1996 the dwellings now erected by the Respondents.

It is clearly evident from a comparison of the two aforesaid annexures that;

there are very few dwellings erected upon the respective plots in 1973;

the 1996 diagram, depicts a great number of dwellings now erected upon the land;

the erection of the various dwellings in 1996 bear no resemblance to those homesteads erected in 1973.

there are now numerous dwellings erected where previously none existed.

It was accordingly evident, from a mere comparison of the two aerial photographs, one taken before the alleged removal of the Respondents, and one taken after their return, that there is no resemblance between the number, positioning or plots upon which the various dwellings have now been erected.

Addressing the establishment of the Macambini Traditional Council

In dismissing the Inkosi's claim that he held control over Reserve 7A Dan illustrated the following sequence of events in his responding affidavit:

L0K0TWAY0 KAMCAMBINI was not appointed by JOHN DUNN "as chief in his place and stead.

LOKOTWAYO KAMCAMBINI was JOHN DUNN's most senior "Induna".

Upon JOHN DUNN's death his first wife, CATHERINE DUNN, as the chief beneficiary of his estate, tried to enlist the aid of LOKOTWAYO KAMCAMBINI to press her claims with the government for administrative control of Mangete;

CATHERINE DUNN's claim was rejected and the Government/ instead, appointed five of JOHN DUNN's most senior Induna as administrators of the five districts of DUNN's lands and, ironically, appointing LOKOTWA KAMCAMBINI as chief of the Mangete ward;

Although the DUNNs who lived on Reserve No. 7A were subject to African law and were legally classified as "natives" they were not regarded by the authorities as falling within the administrative jurisdiction of the Zulu chiefs. Reserve No. 7A, in its entirety, fell under the executive administrative control of the Magistrate of the Mtunzini District.

Based on the above, Dan denied that Reserve No. 7A was "forcibly taken from the MACAMBINI TRIBE", as alleged by the Inkosi in paragraph 3.22 of his responding affidavit.

The Order of the Court

CASE NO: 1931/96
IN THE HIGH COURT OF SOUTH AFRICA
DURBAN AND COAST LOCAL DIVISION
BEFORE THE HONOURABLE MS JUSTICE PILLAY
AT DURBAN ON THE 6 AUGUST 2004

IN THE MATTER BETWEEN:-

DANIEL ALEXANDER MONTAGUE DUNN & OTHERS	APPLICANTS
AND	
KAYALESHA MATHABA AND OTHERS	RESPONDENTS

****

Upon the Motion of Counsel for the Applicants and upon reading the Notice of Motion and the other documents filed of record,

IT IS ORDERED:-

(A)

THAT the Respondents and all others persons are interdicted and restrained:

from entering upon the individual plots owned by the respective Applicants and specified in Annexure "A" hereto, excluding sub-divisions 16, 59, 60 and 64, ("the land") unless authorised to do so by the owner of the individual plot concerned;

from erecting or causing to be erected any structure of whatsoever nature on the land or placing or causing to be placed on the land, either in any such structure or otherwise, any article of any nature, unless authorised to do so by the owner of the individual plot concerned;

(B)

That the Respondents and all other persons occupying or residing on the land be and are hereby evicted forthwith.

(C)

That the Applicants are hereby authorised:

in the event of the Respondents or any other person entering, erecting any structure or placing any article on the land in contravention of paragraphs (a) (i) and (ii) hereof, that the Sheriff, or his Deputy, is authorised and directed to take such steps as may be reasonably necessary to evict such persons from the land, to dismantle such structures and further to remove the components thereof or any such articles from the land;

in the event of the Respondents and any other such person failing to comply with paragraph (b) hereof within seven days of the granting of this order, the Sheriff, or his Deputy is authorised and directed to take such steps as may be reasonably necessary to effect such eviction.

(D)

THAT the costs of this application are to be paid by any person opposing it.

FUELING THE PERCEPTION OF COMPLICITY

Introduction

The Dunn family feel absolutely abandoned by the Government of South Africa.

Land invasions on Dunns Land continue unabated. The invasions have taken on a different form of late whereby people are simply carving up land into allotments and selling them off without the authorization of the land owners. Massive homesteads are being built on these allotments which has lead the Dunns to believe that the authorities are complicit in the unauthorized construction of high value homes on their land.

After years of representations to various government departments no meaningful responses to the plight of the Dunns has been received. At the very core of this perception is the State's failure to implement an Agreement reached with the Department of Land Affairs to resettle the families on land purchased by the State within Reserve 7A.

At the time of publishing this paper, very little information was available dealing with the land claim instituted by the Macambini Traditional Council. What was available at the time of publication was a:

"SECTION 42D FRAMEWOK AGREEMENT FOR THE SETTLEMENT OF MANGETHE RESTITUTION CLAIM IN TERMS OF THE RESTITUTION OF LAND RIGHTS ACT NO 22 OF 1994 as amended"

As testified by Inkosi Mathaba in Paragraph 2.3 of his Replying Affidavit to the Application lodged by the Dunn family, a Land Claim was lodged by the Macambini Traditional Council.

The following has been obtained from records:

The Claimants Comprised 19S families as set out in Annexure A of the Agreement, who lost beneficial occupational rights as contemplated in Section 1 of the Restitution Act No. 22 of 1994 as amended.

The Claim was lodged by Inkosi Mathaba on behalf of the Claimants over sub divisions 1 - 15, 17 - 58, 61 - 67 of reserve 7A No. 15826 known as the .Dunn's. Reserve (Also known as Mangete) situated in, the Mtunzini Magisterial District on the North Coast of Kwazulu-Natal with the Regional Land Claims Commissioner Kwazulu-Natal.

The RLCC accepted the claims as meeting with the criteria of the Act and gazette notices were published in terms of section 11(1) of the Act in Government Gazette No. 19719 dated 05 February 1999.

The claimant community registered the Bhekamafa Community Trust as a land holding entity for the restored properties.

The Claimant community has a right to restitution of rights in land in the light of:

The Claimant Community was disposed of unregistered land and rights as contemplated in section 1 of the Act, as referred to in 2.2

The Claimant Community lost these rights as a result of racially discriminatory laws and practices as contemplated in section 2(1)(a) of the Act. Namely

The John Dunn Act No 15 of 1935
Bantu Trust Act No 18 of 1936
Proclamation No 118 of 1974
Proclamation No 118 of 1974 as amended by Proclamation No 88 of 1977

The dispossession was effected between the period of 1976 – 1977

The claimants received compensation' ranging between R10.00 and R1 800,54

After the removal of Claimants the land was subdivided into 67 portions for the Dunn descendants, who formed themselves into the Mangete Landowner's Association.

The State has negotiated and -purchased land from the willing sellers within Reserve 7A No 15826 and outside Mangete being the following properties:

Sub 14 of Tugela No 10600
3x1/12 share of Lot 12 of Reserve 7A
Lot 24 of Reserve 7A
1/12 share of Lot 34 of Reserve 7A
Lot 35 of Reserve 7A
Lot 53 of Reserve 7A
Lot 59 of Reserve 7A
Lot 60 of Reserve 7A

The total claimed land was 1196 ha valued at R14 800 000. The land a acquired at the signing of the agreement was 736 ha. The said 736 ha could be increased to approximately 1196 ha.

Property described as Lot 69 of Reserve 7A registered in the name of the Republic of South Africa shall remain Commonage for the use of the Mangethe community. The RLCC shall facilitate negotiations regarding joint ownership of the said Lot by the Mangethe community parties involved

The conditions of the restoration were listed as follows:

The Parties agreed that the restored land shall be owned and managed by the Bhekamafa Community Trust in accordance with the proposed land use plan.

The proposed land use shall be commercial agriculture, tourism and allied businesses, subsistence agriculture and residential.

The Farm known as St Andrew's Farm was acquired as a block to be used for the purposes of the business of the Trust. It shall not be sub-divided or used for human settlement nor subsistence farming.

A memorandum of understanding shall be entered into resulting from the discussions and negotiations on the details of the business to be run on the St Andrew's Farm.

The Bhekamafa Community Trust, shall not acquire the right to dispose of its title to the land restored by way of sale, donation, exchange nor to alienate in any way to any person or institution, nor encumber the title in a manner that will result in any form of dispossession and loss of such title.

Notwithstanding 3.1.5, the acquired land may be leased out to any person or institution as may be necessary for any agri-business or other commercial business.

With the exception of 3 1.3 (St Andrews Farm) and not withstanding 3.1.5 any other portion of land within restored land maybe sub divided and titles allocated to individual beneficiaries in compliance with the Bhekamafa Trust-Deed.

The Parties / Signatories to the Agreement were:

The Department of Agriculture and Land Affairs: Represented by Deputy Minister Professor Dirk Cornelius Du Toit;

The Department of Agriculture and Environmental Affairs: Kwazulu-Natal: Represented by Member of the Executive Committee Mr Narend Singh;

The Bhekamafa Community Trust, on behalf of the Mangete Restitution Claimants: Represented by Inkosi Khayelihle Wiseman Mathaba; and

The e Ńdondakusuka Municipality now known as the Mandeni Local Municipality: Represented by M.P. Ntuli;

Unpacking the Section 42D Agreement

In addition to the land acquired through the land claim process, four allotments (16, 59, 60 and 64) were purchased from the Dunn family by the Department of Transport during the construction of the N2 Toll Road between Durban and Richards Bay. These allotments were purchased for the expressed purpose of resettling the families who had been forcefully removed by the apartheid regime in 1976 and relocated to the area known as Wangu. It was acknowledged by Inkosi Mathaba that the families did not re settle on the farms purchased by the Department of Transport but settled on farms under the ownership of the Dunn family. This was well orchestrated and deliberate until successfully challenged by the Dunn family.

The million dollar questing is "What is the current status of the land purchased by the Department of Transport if people were not settled thereon?"

In 2018 a campaign titled “STOP THE BANTUSTAN BILLS” was initiated by the Alliance for Rural Democracy (ARD). The campaign alerted the Dunn Family Trust to the atrocious intentions of the State in dealing with rural communities which included Mangete. The ARD challenged the Traditional and Khoi-San Leadership Act 3,of 2019 on the basis that the Act disregarded individual rights in favour of autocratic traditional leadership. The Act literally makes no provision for consultation by traditional leadership and neither is it accountable to the people who are represented by traditional leadership structures.

Current land use investigations within Reserve 7A revealed that:

100% of the land acquired by the Department of Transport in 1994 from the Dunn family for the resettlement of the families forcefully removed to Wangu was transferred to the Macambini Traditional Council. The land is being utilized for the sole purpose of cultivating sugarcane. No organ of state has held any institution accountable for this gross violation.

To amplify this gross violation, Tongaat Hullets willingly, through its agent Simamisa under Marc Dunlop, conspired with the Traditional Council to cultivate the land on their behalf thus ensuring that the Council could derive financial benefits and that no people could settle on the land.

100% of the land obtained through the Land Restitution Process is under sugar cane, being cultivated for the benefit of the Bhekamafa Trust. This land is also being farmed for the commercial benefit of Tongaat Hullets through their agent Simamisa.

The land (Lot 69) set aside as communal land for the benefit of the Mangete community has been overrun with land invaders who have purchased individual sites from unscrupulous profiteers and erected mansions. This has been allowed to continue unabated.

An investigation into the workings of the Bhekamafa Trust uncovered a great deal of turmoil within the Trust which lead to court applications being filed by some of the Trustees. A lengthy legal battle ensued culminating in the removal of the Trustees and the appointment of attorney Gavin Price as the Administrator of the Trust.

The State at all levels has abandoned the Dunn family and the Mangete community. From its inception no organ of state has made any attempt to implement the actions/programs contained within the Section 42D Agreement. None of the claimants have been resettled from the Dunn family farms on to the land purchased for them. The State has failed and it will now be incumbent upon the Dunn family to once again approach the courts for relief.

Although the Dunn families were not signatories to the Section 42D Agreement they remain an interested and affected party given the fact that it was the clear and implicit intent of the Land Claims Court to resettle the Applicants / Beneficiaries on the farms purchased for this purpose under the Agreement in full and final settlement.

Illegal electricity connections

It is impossible, in South Africa, when making application for utility (municipal) services to be provided to your home, to do so without proving ownership or authorization from the lawful owner to do so. In the case of Mangete, none of the Dunn family, affected by the land invasions granted any form of authorization to any of the people who have invaded their land and built permanent structures. Yet in every instance the land invaders are granted electrical connections to their homes. It begs the question, "How does this occur?". It also fuels the perception that the service providers are complicit in the efforts to oust the Dunn family from their land or they have found a way to increase their revenue base to the detriment of the Mangete community.

The provision of access roads, piped water and sanitation

Throughout Reserve 7A, government spending is evident in the provision of infrastructure projects to support the new housing developments. In the absence of a land use plan it is clear that the increase in spending on infrastructure for the area is sporadic and in response to socio political demands to appease the mushrooming settlements at the expense of the Mangete community. This therefore begs a new and even more pertinent question: "How does this fit into the land use plan made reference to in the Section 42D Agreement?". When approaching the Mandeni Municipality no answers are provided.

Letters and emails to Eskom and the Municipality have gone unanswered.

The price of votes

In every effort to stem the ongoing land invasions and the construction of permanent homes which have decimated the agricultural economy of Mangete, reports to the South African Policing Services have gone unprosecuted. If land invasions are illegal in South Africa no positive responses to police reports made to SAPS Mandeni or the Mtunzini Magistrates Court have been received.

No effort to stem the invasions from any sphere of government was made. The government closest to the people, the Mandeni Local Municipality has remained uncanningly silent. This has once again created the perception of complicity between the government and the invaders. The question raised is "at what cost to the Dunn family is the municipality maintaining a deafening silence?"

This question is raised against the backdrop of local government legislation and municipal bylaws:

(i) It is not possible within a municipal area to subdivide land without approval;
(ii) It is not possible within a municipal area to develop a homestead without the approval of the building inspectorate;
(iii) It is not possible within a municipal area to obtain services without the approval of the municipality. In the case of Mangete Eskom would be excluded. However,

Eskom does require proof of ownership or a lease agreement with the land owner. No land owner in Mangete has ever granted such approval.

Fueling the theory of complicity is "Why has the municipality not acted against the unauthorized building of homesteads within Mangete?".

Is this because the municipality is afraid of acting against the invaders who will withhold their vote from the ANC controlled council. Voting results of the 2021 election displayed a significant decline in the number of votes received, i.e. from 25 seats in the 2016 election to 19 in 2021. The Dunn family believes that the municipality will not act against the invaders as this would tantamount to political suicide. The family further believes that the municipality could be benefiting from a revenue stream generated from the invaders in the form of municipal rates and taxes as well as the provision of service.

The illegal growing and sale of cane to Tongaat Hullets – Despite having submitted a formal communication to the High Court condemning the invasions and supporting the High Court application submitted by the Dunn Family.

The it is standard practice for the sugar mills owned by Tongaat Hullets to grant a farm owner / lessor / or contractor an allocation for the amount of sugar cane that can be processed at their mills. This is known as a quota, without which a person cannot have their cane processed. The quota specifically requires proof of ownership or the farm owner's consent to cultivate and sell the sugar cane for processing at the sugar mill. Increasingly the invaders are forcefully cultivating cane on farms owned by the Dunn family. A recent trend is for the invaders to either allow their livestock to destroy the cane on Dunn owned farms, poison the crops or to burn the cane. Thereafter they begin with their own cultivation. More recently an invader has commenced with sand mining operations on one of the farms owned by the Dunn family.

Tongaat Hullets through their contractor Simamisa purchases cane cultivated and harvested from Bhekamafa Trust land for the benefit of unknown beneficiaries

The refusal of Government to act against the invaders in their failure to implement the Section 42D Agreement sees the State's failure to reconcile communities that were torn apart by oppressive racial laws. It is feared that the invasions are racially and politically motivated.

Conclusion

There are many instances within South Africa's political and governance landscape where the judiciary has ruled legislation, promulgated within our Parliament, as being unconstitutional. Such legislation has been challenged by opposition political parties as well as social justice organisations which include the Helen Suzman Foundation and the Council for the Advancement of the Constitution. Most recently, as it applies to the Mangete community, on 30 May 2023, the Constitutional Court declared the Traditional and Khoi-San Leadership Act Unconstitutional.

A new and recent victory for the Dunn family has been the successful Application brought before the High Court by Mervyn Dunn and Jim Coleman under CASE NO: D5527/2020B. The Respondents to the Application were noted as:

1. THE UNLAWFUL OCCUPIERS
2. JOYCE THANDIWE SIBIYA
3. MANDENI LOCAL MUNICIPALITY

An excerpt of the Court's Order is recorded as follows:

- The First and Second Respondents and all those occupying the property described hereunder through them: Portion 50 and 51 of Reserve 7A, No. 15826 and Registration Division FU, Province of KwaZulu-Natal, in extent 40, 4686 (forty, four six eight six) hectares, are directed to vacate the property within ninety (90) days of service of this order.

- Applicant is directed to forthwith, serve this judgement on the First and Second Respondents by the Sheriff or his Deputy by providing the Second Respondent with at least ten (10) copies of the judgement, and reading out the order in both English and IsiZulu on a loud hailer at a place where the community regularly meets.

- The Applicant is directed to forthwith, and with the aid of the Sheriff, serve this judgement on the Mandeni Municipality, the MEC for Cooperative Governance and Traditional Affairs: KwaZulu-Natal and the Premier of KwaZulu-Natal.

- The Second Respondent is directed to pay the costs of this application.

The tone of the Ruling lends credence to our perception that the Court, through its wording and Order, specifically in Bullet No.3 holds the Local and Provincial Government accountable.

For the Dunn family the struggle for their rightful inheritance continues. There is no end in sight as no organ of state has reached out to the family in an effort to address the land invasions. It is therefore left up to the Dunn family members to seek legal remedies in compelling the state to resolve the invasions in protecting the rights of the Dunn's, enshrine in Chapter 2 of South Africa's Constitution.

The Trust recognizes that we live in a country where the rule of law is not always respected. This is evidenced through the riots and looting of July 2021 and the ongoing political and taxi murders. With this in mind it is not the Trust's intention to have people evicted from their homes but to have them resettled on land, obtained by the State for this specific purpose. We believe that this approach will bring peace and stability to Mangete, however, the State must demonstrate the will to do so. It is therefore our objective to have the State implement the Section 42D Agreement even if this means the Trust using the Courts to compel the State to do so. However this is a tedious, time consuming and expensive task. The Dunn Family Trust would therefore like to appeal to any persons or institutions concerned with the protection of

individual and collective rights within South Africa, to support the Trust with time or financial resources. It is our prayer that our efforts will culminate in harmonious living conditions being restored to Mangete.

Compiled on behalf of the Dunn Family Trust by Jerome Bruce Schoonberg born 12 July 1962, to Anton Schoonberg and Tilly nee Dunn (Daughter of Cecil Dunn, Son of John Dunn) allocated title to Lot 32 of Reserve 7A, Mangete.