

ANNEXURE

SECTION 42D AGREEMENT
IN TERMS OF THE RESTITUTION OF LAND RIGHTS ACT NO
22 OF 1994 AS AMENDED

MANGETHE LAND CLAIM

30 NOVEMBER 2002

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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

ENTERED BETWEEN

Professor Dirk Cornelius Du Toit
in his capacity as Deputy Minister for Agriculture and Land Affairs

Narend Singh
In his capacity as MEC for Agriculture and Environmental Affairs
KwaZulu Natal

e'Ndondakusuka Municipality

AND

BHEKAMAFA COMMUNITY TRUST, on behalf of the Mangethe
Restitution Claimants
as represented by Inkosi Khayelihle Wiseman Mathaba, he being
duly authorised

Hereinafter referred to as "the parties"

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4. DEVELOPMENT AND PLANNING FUNDS

4.1 LAND ACQUISITION FUND

Any funds remaining from the land acquisition shall be used for the development of the agri - business and related activities on the Gananda farm as per business plan.

4.2 PLANNING AND DISCRETIONAL GRANT

Both the planning and discretionary grant as approved by the minister shall be utilised to effect the sustainable development of the acquired land.

The State undertakes to do everything in its powers on a co-operative basis to elicit the commitment and support of other departments at national, provincial and local spheres for the implementation of the Integrated Development Management Plan of the acquired land.

5. EFFECTIVE DATE

This agreement shall come to force And effect on the date of signature hereof.

6. FINALISATION OF THIS AGREEMENT

The parties agree to have this Restitution claim finalised in terms of the Section 42D of the Restitution of Land Rights Act 22 of 1994 as amended.

7. FULL AND FINAL SETTLEMENT

7.1 Having regard to 2.8 the parties hereby confirm that this agreement is in part of full and final of Restitution claim lodged with the Commission in terms of the Restitution of Land Rights Act as amended.

A list of original members of the Claimant Community who were removed from the Reserve 7A their direct descendants (annexure A) is attached to this Agreement. This list reflects the total number of beneficiary families who shall benefit from the agreement as members of Bhekamafa Community Trust.

7.2 The Claimant Community accepts the restitution award and other rights and benefits set forth in this Agreement, as full and final settlement of all claims in connection with the land claimed:

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8. INDEMNITY

The Claimant Community indemnifies the State, against any loss, liability, damage or expense which may be suffered by the State, pursuant to any claim made in respect of the land claimed by any person who proved to be a member of the Claimant Community and/or a beneficiary family, and who has been excluded from this Agreement.

- 8.1 The parties record that this Agreement constitutes the entire agreement between the parties for the purpose of settlement of all claims by the Claimant Community in connection with the land claimed, and that its provisions are accepted in full and final settlement of any land claim which may arise against the State in respect of the land claimed.

9. MEDIATION AND ARBITRATION

- 9.1 Any dispute arising from this agreement shall be settled by mediation process. All parties shall agree on the mediator appointed.
- 9.2 In the event that mediation fails, the dispute arising from this agreement shall be settled by arbitration, in accordance with the law of the Republic of South Africa and pursuant to the provisions of the Arbitration Act No. 42 of 1965.
- 9.3 The arbitrator shall be a practising attorney of at least five years experience whose identity is mutually agreed by both parties. Failing such agreement the President of the Natal Law Society in consultation with the State Attorney of KwaZulu-Natal shall be requested to appoint the arbitrator.
- 9.4 Such arbitration shall be held at a neutral venue to be agreed between the parties.
- 9.5 The costs of the arbitration shall be borne equally by the parties to the dispute unless otherwise agreed.


10. AMENDMENT

This Agreement as well as the Annexures attached constitutes the sole agreement between the parties and no variation or amendments shall be of any force unless in writing and endorsed hereon and signed by the Parties to this Agreement

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11. DOMICILIUM

The parties choose the following addresses as their *domicilium citandi et executandi* for all purposes, including delivery of notices and serving of paper namely:

11.1 THE STATE

C/O The Chief Land Commissioner
Department Of Land Affairs
2nd Floor
184 Jacob Mare' Street
PRETORIA
0001

Macombini Tubal Authority

11.2 THE CLAIMANTS:

Inkosi Mathaba obo of the claimants
Reserve 8
MTHUNZINI

THUS DONE AND SIGNED AT MANGETHE ON THIS
THE 30TH DAY NOVEMBER 2002.

D. du Toit

Professor D.C DU TOIT: Deputy Minister for Agriculture and Land Affairs
(Who warrants his authority hereto)

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Witnessed By:

1. *[Signature]*

2. *[Signature]*

[Signature]

N. SINGH: MEC of Agriculture and Environmental Affairs
(Who warrants his/her authority hereto)

Witnessed by:

1. *[Signature]*

2. *[Signature]*

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NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

3. CONDITION OF RESTORATION

- 3.1.1 The Parties agree that the restored land shall be owned and managed by the Bhekamafa Community Trust in accordance with the proposed land use plan.
- 3.1.2 The proposed land use shall be commercial agriculture, tourism and allied businesses, subsistence agriculture and residential.
- 3.1.3 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.
- 3.1.4 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.
- 3.1.5 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.
- 3.1.6 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.
- 3.1.7 With exception of 3.1.3 (St Andrews Farm) and notwithstanding 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.

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AGREEMENT

1. DEFINITIONS

"Act" means the Restitution of Land Rights Act No. 22 of 1994 (as amended);

"Direct descendant" shall have the same meaning as assigned in section (1) of the Act, and therefore includes the spouse or customary law spouse/s of an original family head;

"Beneficiary families" means any family belonging to the Claimant Community which has been accepted by the Regional Land Claims Commissioner: KwaZulu-Natal, in terms of the provisions of the Act, and is therefore entitled to the benefits under this agreement. Such a family is identified for the purposes of this agreement either by the name of the original family head at the time of dispossession or where the original family head is deceased by the names of the representative family members. (A list of the beneficiary families is attached as Annexure A);

"Department of Land Affairs" shall include a reference to the Commission on Restitution of Land Rights as established in terms of section (4) of the Act;

"The Commission" means the Commission Restitution of Land Rights as established in terms of the Restitution of Land rights Act no. 22 of 1994;

"Land claimed" means the claimed land comprising some portions of Reserve 7A

"Representative family member/s" shall mean the direct descendant/s of an original family head, which direct descendants have been identified and accepted by the RLCC;

"Restoration" shall have the same meaning as the term "restoration of a right in land" as defined in section 1 of the Act;

"RLCC" means the Regional Land Claims Commissioner: KwaZulu-Natal as appointed in section 4(3) of the Act.

"Management Agreement" means the agreement that the Commission shall facilitate for the claimants and shall be concluded not later than six months after the signing of the settlement agreement;

"TRUST" means Bhekamafa Community Trust.

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2. WHEREAS

- 2.1 The Claimants Comprise 199 families as set out in Annexure A hereto, who lost beneficial occupational rights as contemplated in Section 1 of the Restitution Act No 22 of 1994(as amended).
- 2.2 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 Mangethe) situated in the Mthunzini Magisterial District in the North Coast of KwaZulu-Natal with the Regional Land Claims Commissioner KwaZulu - Natal.
- 2.3 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.
- 2.4 The claimant community has registered BHEKAMAFA COMMUNITY TRUST as a land holding entity for the restored the restored properties.
- 2.5 The Claimant Community has a right to restitution of rights in land in the light of:
- 2.5.1 The Claimant Community was dispossessed of unregistered land rights as contemplated in section 1 of the Act, as referred to in 2.2.
- 2.5.2 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
- 2.5.3 The dispossession was effected between the period of 1976 - 1977
- 2.5.4 The claimants received compensation ranging between R10, 00 and R1 800,54
- 2.6 After the removal of Claimants the land was subdivided into 67 portions for the Dunn descendants, who formed themselves into the Mangethe Landowner's Association.

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