

Enforceability of agreements regarding the relinquishment of labour tenants' rights

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It is increasingly becoming commonplace for the director-general of the Department of Agriculture, Land Reform and Rural Development to refer the claims of labour tenants for the allocation of land, among others, to the Land Claims Court.

This growing tendency to refer the claims of labour tenants to the court can be attributed to the recent ratification by the Constitutional Court, in the case of *Mwelase and Others vs the Director-General of the Department of Agriculture, Rural Development and Land Reform and Another* [2019] ZACC 30, of the Land Claims Court's appointment of a special master for labour tenants to play a supervisory role over the department's processing of labour tenant claims.

A labour tenant is described in the *Land Reform (Labour Tenants) Act, 1996* (Act 3 of 1996) as a person who resides on a farm or has the right to reside on a farm; has the right to use the land for cultivation or grazing purposes, and provides labour to the landowner in return; or whose parent or grandparent resides or used to reside on the farm, or has or had the right to use the land for cultivation or grazing, and provided labour to the owner in return.

Land application notices

In terms of Section 16 of the *Labour Tenants Act*, labour tenants had to apply for the allocation of land before or on 31 March 2001, and in terms of section 17, the director-general had to notify the landowner immediately upon receipt of such application and publish a notice of the application in the *Gazette*.

Unfortunately, given the thousands of applications, the director-general has failed to do so, and section 17 notices, owing to the pressure applied by the

special master, are now being sent to landowners at a brisk pace.

Settlement and waiving of rights

Landowners who are now receiving notices, following the department's lack of action over the years, can either deny the claim and demand that the claim be formally referred to the Land Claims Court and fight the claim, or he/she can try to settle the case. In some instances, the landowner might not want to fight the application, instead opting for a quick settlement of the labour tenant's claim. In other cases, the labour tenant would rather relinquish his/her rights.

In this instance, it is important to remember that a landowner is entitled to fair compensation for the portion allocated to the labour tenant (whether by way of a settlement or court order), as stipulated by the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996), which is payable by the state.

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The right of a labour tenant to reside on and/or make use of the farm, lapses when the labour tenant waives his/her rights, if such waiver is in writing and the agreement has been signed by both the landowner and the labour tenant.

However, when the landowner wants to enter into a settlement agreement with the labour tenant, it is vital to keep in mind that the *Labour Tenants Act* explicitly states that the provisions of any agreement under which a labour tenant relinquishes his/her rights, do not come

into effect before the director-general has certified that he/she is satisfied that the labour tenant has full knowledge of the nature and extent of his/her rights, as well as the consequences of waiving such rights, or unless such provisions are incorporated into a court order or arbitrator's order.

Invalid settlements

Any relinquishment of rights must be handled with the utmost care. It often happens in practice that landowners, to their own detriment, negotiate directly with the labour tenant and offer a monetary settlement or erect a house for the labour tenant, without involving the department or the director-general.

It may also be the case that, after the landowner and the labour tenant 'settled' the matter, and because the director-general was not involved in the matter, the director-general will withhold his/her certification because he/she is not satisfied that the labour tenant had full knowledge of his/her rights and the consequences of relinquishing such rights.

As the terms of such an agreement consequently did not come into effect, the landowner is suddenly confronted with a formal referral of the labour tenant's claim to the Land Claims Court. The referral will then have to be handled without the landowner being armed with a certified agreement.

Therefore, before a labour tenant's claim is settled by way of settlement negotiations, the department and the director-general need to be involved, in order to prevent the landowner from compensating the labour tenant financially or building a house for him/her, only to later be confronted with a claim regarding the allocation of a portion of the farm. 🌱

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