

**PRESENTATION FOR LAND DIVIDED CONFERENCE AT THE UNIVERSITY OF CAPE TOWN, 24
– 27 March 2013**

The Story of Kalkfontein

By Stephen Tongoane

The Story of Kalkfontein 143JR

I am a resident at Kalkfontein 143JR, near Settlers in the Dr J.S. Moroka Municipality in the province of Mpumalanga. I am one of the leaders of the Kalkfontein B and C Community Trust. Our forefathers, a group of co-purchasers from diverse ethnic backgrounds (e.g. Tswana, Ndebele and Pedi) grouped together to purchase land in 1921, 1923 and 1924 in terms of an exemption in the Natives' Land Act, which meant that the Minister of Native Affairs, as he was at the time, held the title to the farm on our behalf and denied us ownership by title deed over the land bought by our forefathers. This practice enabled the apartheid government to include the farm Kalkfontein in the now defunct homeland of KwaNdebele without any consultation, ignoring our rights of ownership to the farm.

Each family was required to contribute a sum of 203.00 pounds in order to buy the two portions of the land (in other words, B & C), which consists of about 2000 ha of land. There were originally 30 co-purchasers. Today, their descendeants number more than 10 000.

The form of governance that was used prior to 1979 (in other words, prior to the introductions

A document called Particulars on Legislation Used to Dispossess Claimants says this about the Natives' Land Act:

"[6.3] The Natives' Land Act of 1913 was the first major piece of segregation legislation passed by the Union Parliament, and remained a cornerstone of Apartheid until the 1990's when it was replaced by the current policy of land restitution. The Natives' Land Act of 1913 created a system of land tenure that deprived the majority of South Africa's inhabitants of the right to own land which had major socio-economic repercussions.

...

Section 1 (1a) reads as follows:

‘A native shall not enter into an agreement or transaction for the purchase, hire or other acquisition from any person other than the native of any such land or any rights thereto, interest therein, or servitudes there over’.”

This section, which says that a “native” cannot enter into an agreement over land, is similar to what is happening today, where only traditional leaders can enter into agreements for mining rights (for example, in the Mineral and Petroleum Resources Development Act Amendment Bill) and into agreements for development, and where the purchasers of the land are not being consulted and are instead bypassed or overlooked.

The KwaNdebele government subsequently included Kalkfontein within the jurisdiction of the Ndzundza Tribal Authority. In 1978 that tribal authority was created under the Bantu Authorities Act of 1951 pursuant to the creation of the KwaNdebele homeland, ignoring our request for a community authority. In 1990, there was a Commission of Inquiry into Alleged Maladministration and Irregularities by the Inkosi and Members of the Ndzundza (Pungutsha) Tribal Authority (by Judge K.W. Kruger). The Kruger Commission report, dated 19 October 1990, states the following:

“That consideration be given to the disestablishment of the Ndzundza (Pungutsha) Tribal Authority and the re-establishment of a Community Authority.”

In 1994, the government was taken to court (Case No. 17808/92). On the 25th of January 1994, the court ordered a number of things, inter alia that the original purchasers, or descendants of the original purchasers of the land in question, are entitled to the transfer and/or registration of the farms referred to in the notice of motion concerned in their name whether individually or collectively, in a manner and fashion to be determined once the identity of the various descendants has been finally established. And indeed, we did exactly that. In portion A they established a communal property association in terms of the Communal Property Association Act (Act 28 of 1996) in 1996. In portion B and C, our land was registered as a community trust until today.

Let me quote a letter from the Director-General of the Department of Constitutional Development, dated 26 January 1995, in which he wrote to the Director-General of the Department of Land Affairs that:

“The recognition of a Ndebele tribe on the properties was opposed since the early 1960’s when the idea was first proposed, until the official recognition of such a tribe in 1978. Subsequent events have proved that the recognition of the tribe and the appointment of an inkosi were indeed mistakes. It is therefore recommended that the recognition of the tribe and the appointment of an inkosi over all three properties should be withdrawn by the Eastern Transvaal Government as a first step in normalizing the situation on the properties. The Pungutsha Tribal Authority should also be disestablished. Alternatively the jurisdiction of the inkosi and the tribal

authority could be restricted to that portion of the properties concerned where an inkosi is really wanted. A form of tribal government can only survive under conditions of voluntary acceptance and can never be foisted on people, especially private land owners as in the case under review.

As a second step in this process it is recommended that ownership of the land should be transferred to the co-purchasers or their descendants.”

The apartheid legislation has imposed on us a tribal authority against our will – a fact acknowledged by senior government ethnologist Dr. N Van Warmelo as far back as the 1950s. Imposing on us a tribal authority through apartheid legislation has had devastating effects on our security of tenure and property rights and we do not recognise the legitimacy or authority of the Ndzundza Tribal Authority, as we are a community trust.

In 2007, we instituted a land claim and the land claims court granted us full title to the land in terms of the Restitution of Land Rights Act of 1994. The land was returned to its rightful owners in 2008. But through various legislations, such as the Communal Land Rights Act, the government wants to reverse the gains we had made.

I was the first applicant in the Constitutional Court case against the Communal Land Rights Act (CLRA), where it was argued that the CLRA undermined the Kalkfontein community's security of land tenure. Although the CLRA was eventually struck down, the Kalkfontein Community Trust has faced continuous struggles to achieve security of land tenure.

Current developments

We are still experiencing interference in the day-to-day running of our affairs as a trust by the Ndzundza (Pungutsha) Traditional Council. For example, they want to allocate stands in our area much against the court order of 1996. They also summon our people to attend cases at the traditional court. The traditional authority violated a court order by inviting our people to attend meetings at the Ndzundza (Pungutsha) Traditional Authority office. In most cases our people do not attend.

The government still does not recognise the trust and the CPA although an Act has been passed recognising these two structures. The local municipality also does not want to deal with us directly – it deals with the traditional authority. When coming to issues that affect residents of portion B and C, the municipality bypasses the trust and consults with the traditional authority.

The government should draw a parallel between private ownership and traditional authority. The people of Kalkfontein are no different from the neighbouring farmer, Mr Maritz, who has a farm adjacent to Kalkfontein, next to our two portions, but he is not

subjected to traditional rule or governance. There is no difference between Mr Maritz and the people of Kalkfontein B and C – both bought and own the land privately.

An appeal is made to the highest authority to take into cognisance that privately owned land bought by different individuals or co-purchasers cannot fall under the rule of a chief if he or she is not of the co-purchasers, or if the co-purchasers do not agree to be ruled by a chief in their property or properties. Therefore, the right to land tenure should be respected by all.

Conclusion

In conclusion, recognition and retention of Bantustan boundaries, which were established through the Land Acts and subsequent apartheid laws, is of great concern to us because, since Kalkfontein used to be part of the KwaNdebele homeland, when people report cases to the police they have to travel 90km to and from Mbibane, whereas there are two police stations nearby i.e. Mmametlhake and Marapyane, which used to be part of Bophuthatswana. All these police stations are in the same municipality of Dr J.S. Moroka. The sooner the Bantustan boundaries are dismantled the better. It is not only in the case of police stations, but the jurisdiction of Dikgosi's because they even rule in areas they originally had no power to rule over. I therefore suggest that the Nhlapo Commission or any other commission be mandated to look into the legitimacy of some of the so-called dikgosi's.