

# **Latest situation and earlier developments**

## **1. Latest Situation as at 30 November 2018**

### **1.1 Land Claim Action Group. (LCAG)**

1.1.1) Ready to go to trial (Since 2006).

1.1.2) Application in hand against the State Attorney, in his private capacity, for non-compliance with the Judges instruction issued at the pre-trial conference of October 2017.

1.1.3) Attempting to force a pre-trial conference in early 2019.

### **1.2 Claimants. (Mekgareng Community)**

1.2.1) Expert witness reports filed. (In July 2018 – following legal action by LCAG to force compliance with Judge Meer's instruction of October 2017.)

1.2.2) Claimants appear to be seeking ways to defer the trial – possibly as a result of:-

- a) Doubts over the strength of their case;
- b) New expropriation legislation in the pipeline; and
- c) On-going developments in the 'expropriation-without-compensation' saga.

### **1.3 State Attorney**

1.3.1) Must set-up next, probably final, pre-trial conference.

(The State Attorney was ordered by the judge to convene a pre-trial conference before the end of 2017. He has so far **ignored** this directive.)

1.3.2) It is possible the state attorney is attempting to delay the trial because of:-

- a) A belief that the case is very weak;
- b) A lack of resources; or
- c) Having paid insufficient attention to the matter.

## **2. Prior situation, at the Pre-Trial conference in October 2017**

Judge Meer:-

2.1) Instructed Claimants to file expert witness report by end January 2018. (Now done, in July 2018, following court action by LCAG.)

2.2) Instructed State Attorney/Land Claim Commissioner to convene, before 15 December 2017, a pre-trial conference. (Still outstanding.) At this pre-trial conference:-

- a) an agreement should be reached in respect of all portions of the claimed land which are deemed to not be restorable;
- b) the issue of the plaintiffs insisting that more properties should be gazetted must be discussed;
- c) the concerns raised by Telkom in respect of the feasibility of restitution should be discussed; and
- d) the parties should agree on suitable dates for trial.

2.3) Gave approval for substituted service to those landowners who cannot be traced.

### 3. Further back in time.

A “day-in-court”, on behalf of the LCAG membership, is awaited but it is largely up to the claimants to decide exactly when that day will be. Other than for a short time (mid 2015 to early 2017— when LCAG adopted a “stand-back-but-remain-alert” approach) LCAG has, for the past 14 years, been engaged in continuous action to bring the matter to trial.

For information with regard to the unfolding ‘month-to-month’ legal processes and the precise situation at any point in time it is necessary to refer to the periodic newsletters issued by LCAG. These are available, together with much other information, on the LCAG website:-

[www.broederstroomlandclaim.co.za](http://www.broederstroomlandclaim.co.za). . No password is required

### 4. Background to the “Broederstroom” land claim

A **single** land claim may embrace **many** individual properties. Thus it is that the land claim, known for convenience as the “Broederstroom” land claim, actually embraces some **650** individually owned and registered properties in the areas of Broederstroom, Leeuwenkloof, Hartebeeshoek (498 JQ and 502 JQ), Welgegund, Petit Mont Rouge, Kafferskraal, Praetors Ride, Weldaba, and Opelugmuseum in the North West Province. This huge single claim, lodged by the Mekgareng Community, is estimated to cover over 18000 hectares and stretches more than 33 kilometres from the Pelindaba nuclear site in the east to the Hartbeeshoek satellite tracking station in the west. The width of the claim, at the widest point, is over 6 kilometres.

Following the gazetting of the Broederstroom land claim (Government notice 26778 of the 17<sup>th</sup> September 2004) a number of landowners came together to discuss the matter and it was agreed to formulate a combined response in the interests of mutual support, efficiency and cost saving (early on it was recognised that the costs of defending the claim would be up to the individual landowners). Subsequently the landowners formed an organisation, the “**26778 Land Claim Action Group**” (**LCAG**). A constitution was developed, a committee was elected, a legal team was appointed, specialists were commissioned and systems (including a web-site for the benefit of members) were put in place. In addition, resources were organised with the objectives of establishing the validity of the claim, of understanding the legal ramifications, of responding appropriately to the claim (“accept” or “reject”) and of defending the matter in court if and when it became necessary.

Membership (on certain conditions) of **LCAG** is available, on application, to owners of portions/subdivisions of the affected farms

The Mekgareng Community are **NOT** claiming the land on the basis that it was ever registered in their names and that they “owned” it. They are claiming it on the basis that they had certain beneficial rights in matters such as the grazing of livestock, collection of muti, worship, burial, khaya construction etc. Typically such benefits might have been granted by an owner of land (say a farmer) to tenant labourers.

Since May 2005 the LCAG committee, guided by the legal team, has been of the opinion that:-

The community claim lodged by the Mekgareng Community is **NOT** valid and that they are **NOT** entitled to any restitution of rights in land. This opinion has been made known to the authorities (The Regional Land Claims Commissioner) and to the claimants.

## 5. General background to land claims in South Africa

Land claims are legislated according to the Restitution of Land Rights Act 22, 1994 and amendments thereto. In summary the objectives of the Acts are:-

To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 18<sup>th</sup> June 1913 as a result of past racially discriminatory laws or practices.

The Acts makes provision for compensating claimants either with the actual land itself OR with alternative land OR with money OR by a combination of such alternatives. It is important to note that it is the Government, and NOT the land owner, that has to provide the compensation. Where the Land Claim Court determines that the claimants are entitled to compensation and that the compensation is to be the actual land itself, then the Government has first to acquire the land from the current owners.

The Restitution of Land Rights Act set a claim cut-off date of 31 December 1998, and some 80,000 claims were lodged. Around 8,000 of these claims (the "Broederstroom land claim" being just one) were still unresolved at July 2014 when the Restitution of Land Rights **Amendment** Act was passed. This act re-opened the land claim process and provided a window, until the end of June 2019, during which further land claims could be lodged. (At the time it was estimated that an additional 379,000 claims, covering much of rural South Africa, were expected to be registered before the window period closed.)

The legality of the Restitution of Land Rights **Amendment** Act was, however, challenged and, in July 2016 (two years after it was introduced), found to be invalid by the Constitutional Court which, in a confusing judgement directed that:-

- Outstanding claims from the previous window period (ended 31 December 1998) must be dealt with **preferentially** within two years (i.e. by August 2018);
- New claims (+-120 000) received in the period June 2014 to July 2016 must be registered but not processed any further;
- Further new claims could be received and registered but not processed any further.

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