

INGONYAMA TRUST BOARD – LONG -TERM LEASE OF PREMISES

2647LT

THE SCHEDULE

Item 1	The Lessee	Mr. Khulekani B. Ngcobo, ID No. 8001018876086, he being duly authorized.
Item 2	The Premises	All the portion 6 of the farm Reserve No.16 No.15836 HV, in extent 0.39 hectares (more or less) as shown on the attached plan.
Item 3	The Rent	Base rental of R 2600.00 (Two thousand six hundred rand) per annum
Item 4	Escalation Percentage (subject to Clause 4.2)	10 % per annum on the base rent only
Item 5	Commencement Date	1 st day of July 2012
Item 6	Termination Date	30 th day of June 2052
Item 7	Applicable Traditional Authority	Ntsinde Traditional Council
Item 8	Use of Premises	Residential development
Item 9	Domicilium citandi et executandi.	Recorded under clause 16 of this agreement
Item 10	Contact Information	Lessor: 65 Trelawney Road, Pietermaritzburg 3201 P O Box 601 Pietermaritzburg 3200 Telephone : 033 846 9900 Facsimile : 033 346 2528 Lessee: P.O. Box 122 , Jozini 3969 Telephone: 073 237 4678 Facsimile :

L.S.


THE LEASE

1. DEFINITIONS

- 1.1 In this lease, unless the context clearly indicates other wise:
 - 1.1.1 use of a word denoting the singular will include the plural and *vice versa*,
 - 1.1.2 use of a word denoting one gender will also mean the other genders, and
 - 1.1.3 the following words will have the meanings given:
 - 1.1.3.1 "Lessor" will mean the Ingonyama Trust, established by section 2(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994 (as amended);
 - 1.1.3.2 "Lessee" will mean the person described in Item 1 of the Schedule;
 - 1.1.3.3 "premises" will mean the premises described in Item 2 of the Schedule;
 - 1.1.3.4 "Schedule" will mean the Schedule at the beginning of this lease; and
 - 1.1.3.5 "improvements" will mean any fixed structure of any kind whatsoever erected on the premises.
- 1.2 The Schedule and Annexures "A" "B" and "C" if applicable, will form an integral part of this lease.

2. THE LEASE

- 2.1 The Lessor hereby lets to the Lessee who hereby leases the premises upon the terms and conditions stated in this lease.

3. THE PERIOD

- 3.1 The primary period of this lease shall, notwithstanding the date of signature hereof, be deemed to commence on the commencement date stated in Item 5 of the Schedule and shall, subject to the provisions of this lease, terminate on the termination date stated in Item 6 of the Schedule subject to termination and renewal rights thereafter as hereinafter set forth.
- 3.2 This lease may, at the option of the Lessee, upon the same terms and conditions as contained herein (but for the provisions of this clause) be renewed for an additional period of ten (ten) years, provided notice is given in writing to the Lessor at least six (6) months before this lease would otherwise expire.
- 3.3 Thereafter, the Lessee may at least 180 days prior to the extended termination date, in writing apply to the Lessor for an extension of this lease for such further period as the Lessee may in such application indicate, either upon the same terms and conditions as stated in such application or upon modified terms and conditions as stated in such application.
- 3.4 The Lessee shall, together with any application referred to in clause 3.2, submit the written consent of the traditional authority referred to in Item 7 of the Schedule, to the extension of this lease as applied for.
- 3.5 The Lessor shall, prior to the termination date, in writing advise the Lessee of its acceptance or rejection of the application for such extension, or it may notify the Lessee of any terms and conditions differing from those proposed by the Lessee in the application for extension, subject to which it is prepared to extend this lease.

- 3
- 3.6 The Lessee shall, prior to the termination date, if the Lessor has submitted terms and conditions differing from those proposed by the Lessee in the application for extension subject to which it is prepared to extend this lease, in writing, notify the Lessor if he accepts or rejects such modified terms and conditions.
- 3.7 In the event of the Lessor accepting the application for an extension of the lease made in terms of clause 3.3, or in the event of the Lessee accepting the modified terms and conditions submitted by the Lessor as contemplated in clause 3.6, then this lease shall be deemed to have been extended in accordance with the terms and conditions so agreed upon and the correspondence exchanged between the parties as contemplated herein shall be deemed to be an integral part of this agreement unless the parties agree to record such extension and the terms and conditions applicable thereto in writing over their signatures.
- 3.8 The Lessor agrees and undertakes to agree to an extension of this lease as applied for in terms of clause 3.3, unless it has a compelling reason not to do so, which, without limiting the generality of the foregoing, may include the failure of the traditional council to consent to such extension, the adverse behaviour of the Lessee during the initial period of the lease and lapses in the timely payment of rent.
- 3.9 The Lessee shall be entitled at any time to terminate this lease on 12 months written notice to the Lessor.
4. THE RENTAL
- 4.1 the Lessee shall pay to the Lessor, as and by way of rent:
- 4.1.1 rental to the Lessor of the amount stated in Item 3 of the Schedule, and
- 4.2 The base rental payable in terms of this lease shall escalate annually on the annual anniversary of the commencement date, or if the commencement date is a date other than the 1st day of a month, on the 1st day of the month immediately following the annual anniversary of the commencement date, by an amount equal to the escalation percentage set out in Item 4 of the Schedule.
- 4.3 Notwithstanding the provisions of Clause 4.2, the Lessor shall be entitled, in its discretion, to require the Lessee to pay a fair market rental in respect of the base rental determined for premises subject to the following:
- 4.3.1 the Lessor may only exercise such entitlement on written notice ("the rental adjustment notice") given no less than 60 days prior to the expiry of each 5 year period of this agreement calculated from the commencement date and such new fair market rental shall take effect on the expiry of such 5 year period;
- 4.3.2 for the purposes of calculating the fair market rental of the premises it is recorded that the improvements have been effected by the lessee at its own cost and the base rent shall accordingly reflect this;
- 4.3.3 the parties shall endeavour to agree a fair market rental for the premises but failing agreement in writing within 60 days of receipt of the rental adjustment notice then such fair market rental shall be determined by an independent valuer ("the Valuer");

- 4.3.4 the Valuer shall be a suitably qualified valuer based in KwaZulu-Natal agreed on by the parties, but failing written agreement within 7 days of request by either party, shall be a person nominated by the Chairman or his Deputy for the time being of the S A Institute of Valuers, KwaZulu-Natal branch;
- 4.3.5 the Valuer shall act as an expert and not as an arbitrator, his determination of the rental shall be final and binding and his costs and charges shall be borne by the parties in equal shares;
- 4.3.6 thereafter, the Lessor shall be entitled to, and the Lessee may (with the written consent of the Lessor which consent shall not be unreasonably withheld), initiate a review of such fair market rental upon the expiry of each 5 year period of this lease calculated from the date on which the fair market rental in respect of the premises took effect in terms of clause 4.3.1, by giving written notice to the other party no less than 90 days' prior to the expiry of such 5 year period, and the provisions of clauses 4.3.1 to 4.3.5 shall otherwise apply (with the changes required by the context);
- 4.3.7 the Lessee shall be entitled to terminate this lease by giving the Lessor no less than 3 months' written notice within 90 days of the date on which the fair market rental first takes effect in terms of clause 4.3.1 or the date on which any adjustment to the fair market rental takes effect pursuant to clause 4.3.6, as applicable.
- 4.4 The rental shall be paid as follows :
- 4.4.1 An amount equal to the base rental shall be paid monthly in advance.
- 4.4.2 The Lessee shall annually, as provided for in Annexure B, pay the difference between the base rental and the gross rental calculated in accordance with the provisions of Annexure B
- 4.5 The rental shall be paid, without deduction or demand and on due date, to the Lessor either at its office at 65 Trelawney Road, Pietermaritzburg 3200, or by depositing the rental to the Lessor's Banking Account at the First National Bank, Branch Code 257355 Account Number 62004600038 REF: NGCOBOKBXXXXXX002647 .
- 4.6 The Lessee shall be entitled to determine to which place referred to in Clause 4.5 the rental shall be paid, but the onus shall be on the Lessee to ensure that such rental reaches the Lessor in a manner enabling the Lessor to immediately utilize the moneys so received by it for its own use and benefit.
- 4.7 Notwithstanding the provisions of Clause 4.5, the Lessor may from time to time, in its sole discretion, substitute another address or bank account, as the place for the payment of rental, by giving the Lessee at least one months written notice thereof.
- 4.8 The rental payable in terms of this lease shall be exclusive of value-added tax, and the Lessee shall pay any such tax to the Lessor simultaneously with the payment of rental in terms of this lease.
- 4.9 Should the Lessee fail to pay the rental amount on the due date, the Lessee shall be in breach of the agreement and interest shall accrue at a rate of prime plus 2% on the

outstanding amount calculated from the date of upon which the rent is due until date of payment of the outstanding amount, both days inclusive.

5. THE TRADITIONAL COUNCIL CONSENT

- 5.1 It is recorded that the Traditional Authority referred to in Item 7 of the Schedule has granted its consent to the lease of the premises to the Lessee in accordance with the provisions of this lease, which consent is annexed hereto as Annexure C.

5 USE OF PREMISES AND IMPROVEMENTS

- 6.1 The Lessee acknowledges that it has inspected the premises and acknowledges them to be in a fair and usable state of repair, save for any defects referred to in Clause 6.2.
- 6.2 The Lessee and the Lessor, represented by a duly appointed agent, shall undertake an inspection of the premises within 21 days of the date of the commencement of this lease, and they shall jointly record any defects which are present in or on the premises, and two copies of such record shall be signed by or on behalf of both parties and a copy retained by each of them.
- 6.3 The Lessee shall maintain the premises, but taking into account the state of the items referred to in Clause 6.2, in a good state of usable repair during the currency of this lease, fair wear and tear excepted, and it shall repair or replace any part thereof which is damaged, destroyed or lost during the currency of this lease.
- 6.4 The Lessee shall use the premises only for the purposes set out in Item 8 of the Schedule and for no other purpose, provided that he may undertake such additional activities which are ordinarily and necessarily ancillary to such main use.
- 6.5 Notwithstanding the provisions of Clause 6.4, the Lessor may, in writing from time to time during the currency of this lease, and with the consent of the Traditional Council described in Item 7 of the Schedule, authorise the Lessee to use the premises for any other purpose specified in such written consent.
- 6.6 The Lessor:
- 6.6.1 does not warrant that the premises are suitable or fit for the purposes for which the Lessee intends to use them, and the Lessee takes occupation of the premises in terms of this lease as they stand;
- 6.6.2 is not obliged, and shall not at any stage during the currency of this lease, or any extended period thereof, be obliged, to maintain, repair, renovate, rebuild, refurbish, clean or alter any part of any improvements existent or to be erected on the premises.
- 6.6.3 shall not be obliged or be required to make provision for or supply any services to the premises, and all services, including water, electricity, telephone, sewer and septic tank services shall be acquired by the Lessee at its sole cost and expense, both as to the installation and the maintenance thereof and in respect of the supply thereof.
- 6.7 It is recorded that the Lessee intends to undertake the improvements described in Annexure "A" to this lease, and the Lessor has consented thereto.

- 6.8 The Lessee shall comply with all legal requirements applicable to the use and occupation of the premises by the Lessee and to effecting the improvements referred to in Clause 6.7, including, but not limited to:
- 6.8.1 any planning approvals required from any local authority;
 - 6.8.2 any zoning of the premises limiting the use of the premises for any specified purpose;
 - 6.8.3 any environmental laws or regulations.
- 6.9 The Lessee shall produce proof that he has complied with the provisions of Clause 6.8 if demand is made therefor by or on behalf of the Lessor.
- 6.10 The Lessee shall not commence the construction of any improvements without the written approval of the Lessor to the specific plans and specifications applicable to such improvements being first had and obtained which consent shall not be unreasonably withheld.
- 6.10.1 Prior to the commencement of any improvements as contemplated in Clause 6.7, and after receiving the approvals referred to in Clause 6.8, the Lessee shall submit detailed plans and specifications to the Lessor, for the Lessor's approval, indicating the nature and extent of such improvements and the materials to be used in the construction thereof.
- 6.10.2 The Lessor shall be entitled to require the Lessee to modify or amend any such plans or specifications, but only on good and objective grounds, and it shall not unreasonably withhold its approval to such improvements.
- 6.10.3 In the event of the Lessor not communicating with the Lessee as provided for in Clause 6.10.1.1 within 60 days of the receipt of the plans and specifications referred to in Clause 6.10.1, then the Lessor shall be deemed to have approved of such plans and specifications.
- 6.10.4 In the event of the Lessor and the Lessee being unable to agree upon the nature of the extent of such improvements, then such dispute shall be referred to mediation and arbitration as hereinafter provided.
- 6.11 Unless special written authority is given by the Lessor, the Lessee shall commence any development as contemplated in Clause 6.7 within twelve months of the commencement date and shall complete the development to the satisfaction of the Lessor within a period of twenty-four months of the commencement date, and this lease will lapse if the development is not so completed.
- 6.12 Unless the Lessor directs otherwise, the Lessee shall, within twelve months of the date of the Lease, fence the boundaries of the premises and the lessee shall, during the currency of this lease, including any extended period thereof, maintain the fence to the satisfaction of the Lessor.
- 6.13 If the Lessee, at any time during the currency of this lease, wishes to undertake any structural alterations or additions to the premises, he shall comply with the provisions of Clauses 6.8, 6.9 and 6.10 hereof, and the sub-Clauses thereof, and any reference in such Clauses or sub-Clauses to improvements shall, for the purposes of this Clause, be deemed to be a reference to the structural alterations or additions contemplated herein.



7 STANDARD CONDITIONS

- 7.1 Save with the written authority of the Lessor, no electrical power or telephone pole or line or water, drainage or sewer pipe being upon or passing through, over or under the premises and no replacement thereof, shall be moved or in any way be interfered with and reasonable access thereto shall be preserved to allow for inspection, maintenance, repair, renewal and replacement thereof.
- 7.2 The Lessor shall have the right to grant to a statutory corporation or parastatal organisation, the right freely to exercise or have a public servitude over the premises for the purpose of providing and maintaining public utility services and more particularly for the purpose of erecting telephone or electric power poles, installing electric or telephone wires and cables, laying down drains, sewers or water pipes and maintaining the same, provided that such right shall take into account the interests of the Lessee under this lease.
- 7.3 No act, matter or thing, whatever, shall be done or permitted to be done upon the premises or any part of such premises which may cause or lead to pollution of the environment or result in the creation of any hazard to the health of other persons, or become a nuisance or annoyance to or damage or in any way interfere with the peace and comfort of occupiers of adjoining or other premises in the neighbourhood.
- 7.4 The lease does not extend to or include the rights to precious or base metals, precious stones, minerals, and mineral products on or under the premises.
- 7.4.1 The Lessee shall not be entitled to receive any rents, royalties, or other money or other consideration payable under any concession or in respect of precious or base metals, precious stones, minerals, and mineral products on or under the premises or any other part thereof.
- 7.5 The Lessee shall be responsible for and shall timeously pay to the local and relevant authorities all rates, taxes and any other similar outgoings which may be levied on the leased premises from the date of commencement of this Lease. It is recorded that such rates, taxes and any other similar outgoings may be levied and imposed at the discretion of the lessor and the levying authority notwithstanding any exemption that may be enjoyed from time to time by the lessor.
- 7.5.1 In the event of the Lessee failing for any reason whatsoever to make such payment, then the Lessor shall be entitled to make such payment and recover the amount so paid from the Lessee on demand.
- 7.6 The Lessee shall permit entry on the premises at any reasonable period of the day by any duly empowered:-
- 7.6.1 officer, employee, servant or agent of the Lessor
- 7.6.2 employee, servant or agent of any statutory corporation or parastatal organization established to provide and maintain public utility services.
- 7.7 The Lessee shall, during the currency of this lease, including any extended period thereof, but subject to prevailing economic circumstances, ensure that the development

is occupied and utilised for the purposes intended, and any failure to do so shall constitute a breach of this lease.

- 7.8 The Lessee shall at all times bear the cost of refuse removal from the Premises and the cost of all electricity, gas and water consumed on the Premises, provided however that should the Lessor at any time pay any of these amounts, then the Lessee shall be obliged to refund such amounts to the Lessor on demand.

8. MAINTENANCE

- 8.1 The Lessee shall, at its own expense, during the currency of this lease, including any extended period thereof, maintain all improvements erected or to be erected on the premises, and all fixtures and fittings being part of such improvements, to a standard commensurate with a development of the nature of the improvements now existent or in the future to be erected on the premises under the provisions of this lease, and it shall undertake all repairs and renovations required from time to time without undue delay.

- 8.2 The Lessor shall be entitled to enter upon and inspect the premises and all improvements made thereon at any reasonable time, and it shall be entitled to require the Lessee to comply with the provisions of Clause 8.1, and any failure by the Lessor to comply with such notice shall constitute a breach of this lease.

9. INSURANCE

- 9.1 The Lessee shall at all times be responsible for the insurance of all improvements now existent or in the future to be erected on the premises under the provisions of this lease, and the Lessor shall have no obligation to insure any such item whatsoever.
- 9.2 The Lessor agrees and undertakes, at the request of the Lessee, to undertake to and on behalf of any financial institutions that advances funds to the Lessee for the purposes of making improvements to the premises against the security of a mortgage bond to be registered over this lease, that it will utilize the proceeds of any insurance claim made on any insurer under any insurance policy referred to in Clause 9.1 solely for the purposes provided for in that Clause.

10. DESTRUCTION OF PREMISES

- 10.1 This lease shall in no way be affected by the partial or total destruction of any improvements erected or to be erected upon the Premises.
- 10.2 In the event of total destruction of any improvements, the Lessee shall be obliged to either clear all rubble and debris from the premises so that it is rendered into the condition the premises were in before the improvements were made, and thereafter the Lessee shall ensure that the premises remains in such condition, or the Lessee shall procure that further improvements of a similar nature to those destroyed are erected.
- 10.2.1 The Lessee shall comply with the provisions of Clause 10.2 within 90 days of the occurrence of the event that caused the destruction of such improvements, or such longer period as the Lessor may in writing allow.
- 10.3 In the event of either the partial or total destruction of buildings upon the Premises, the Lessee shall not be entitled to any remission of rental whatsoever.

11. CESSION AND ASSIGNMENT

- 11.1 The Lessee shall not cede or assign this lease, either in whole or in part, the premises or any portion thereof without the consent of the Lessor first being obtained.
- 11.2 The rights vested in the Lessee under and in terms of this lease shall be personal to the Lessee only and shall not extend to any company, close corporation or other legal entity with which the Lessee is associated with or in which the Lessee may hold shares, a members interest or other interest.
- 11.3 Nothing in this clause shall be construed as to prevent the Lessee from subletting the buildings thereon insofar as it does not derogate from the terms and conditions of this lease and is solely for the purposes as set on in Item 8 of the Schedule.

12. NO CLAIMS

- 12.1 The Lessee shall not have any claim against the Lessor for any loss or damage, which the Lessee may suffer:
- 12.1.1 by reason of the premises or any portion thereof suffering from some defective condition; or
- 12.1.2 arising out of *vis major* or *causus fortuitus* or any other cause either wholly or partially outside of the Lessor's control; or
- 12.1.3 arising outside of the negligence of the Lessor.
- 12.2 The Lessor shall not be liable for any loss or damage sustained by the Lessee, any sub-lessee, any employee, guest or invitee of the Lessee or of any Sub-Lessee, arising from any cause of action arising from the use and occupation of the premises by any such person or institution, or their presence on the premises, and the Lessee hereby specifically indemnifies the Lessor against any such claim, and promises and undertakes to make good to the Lessor any amount that the Lessor may in law be obliged to pay in respect of any such claim.

13. BREACH AND CONFLICT RESOLUTION

- 13.1 In the event of the Lessee failing to pay any rental payable in terms of this lease on due date without deduction or demand, and failing to remedy such default within thirty (30) days of the receipt of written demand made therefore by or on behalf of the Lessor, then the Lessor may, on twenty four (24) hours written notice to the Lessee declare this lease to be cancelled and it may thereupon retake possession of the premises. Should the Lessor knowingly or negligently breach any material provision of this agreement that is incapable of being remedied, or, should the Lessor breach any provision of this agreement which is capable of being remedied and fail to commence to remedy such breach within 14 days of a written notice from the Lessee requiring it to rectify such breach or to complete remedying such breach within a reasonable time, then in any of those events the Lessee shall be entitled to cancel this lease without prejudice to any of its other rights including its right to claim damages.

Should the Lessor dispute the Lessee's right so to cancel then any such dispute shall be referred to a court of competent jurisdiction.

- 13.2 Should the Lessor cancel this lease in terms of Clause 13.1 and the Lessee dispute the Lessor's right so to cancel this lease and remain in occupation of the premises, then:

- 13.2.1 the Lessee shall, pending the determination of such dispute, continue to pay to the Lessor on the due date thereof, all amounts due under this lease, including rental, and the acceptance thereof by the Lessor shall be without prejudice to the Lessor's rights;
- 13.2.2 should such dispute be determined in favour of the Lessor, then any such payments shall be deemed to be accounts paid by the Lessee on account of damages suffered by the Lessor by reason of the cancellation of this lease, and/or the unlawful holding over by the Lessee.
- 13.3 Any issue or dispute arising from any cause contemplated in Clause 13.1 shall be resolved by a court of competent jurisdiction.
- 13.4 In the event of there being any breach of this lease by either party (other than a dispute contemplated in Clause 13.1), or any dispute or disagreement between them as to interpretation of any provisions of this lease, or in the event of any provision of this lease providing for the resolution of such dispute by mediation or arbitration, then such dispute or disagreement (hereinafter collectively referred to as a "dispute") shall be referred to mediation and arbitration in the manner set out in Clause 13.5, provided that the parties first shall have attempted to resolve such dispute at two consecutive meetings prior to referring such matter accordingly.
- 13.5 Any dispute referred to in Clause 13.4 shall:
- 13.5.1 in the first instance, be referred to mediation; and
- 13.5.2 if such mediation does not resolve such dispute within a period of thirty (30) days of being so referred, then the dispute shall be referred to arbitration; and such proceedings shall be conducted in accordance with the provisions hereinafter set out.
- 13.6 Either the Lessor or the Lessee may refer any dispute to the President of the Natal Law Society with a request that he appoint a mediator, and, if necessary, an arbitrator, in accordance with the provisions of this agreement. The parties to this agreement agree to accept any such mediator or arbitrator so appointed by such President.
- 13.7 Arbitrations shall be conducted in accordance with the provisions of the Arbitration Act, No 42 of 1965, subject to the provisions of this agreement.
- 13.8 The issue which the arbitrator shall be asked to decide will be determined by the party referring the dispute to arbitration.
- 13.9 The arbitrator shall have the power to decide on the procedure he/she shall adopt in the conduct of any arbitration proceedings.
- 13.10 The parties to any dispute may elect to have legal representation at any hearing before any arbitrator appointed in terms of this clause.
- 13.11 In respect of any dispute resolving proceedings conducted in terms of this agreement, it is agreed that:
- 13.11.1 the proceedings shall be conducted expeditiously consistent with fair practice;

L. J



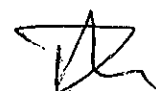
- 13.11.2 the mediator or arbitrator may consult such advisors as he may deem necessary to assist him on any matter of a technical nature;
- 13.12 It is expressly agreed that:
- 13.12.1 each party shall bear their own costs of any mediation or arbitration proceedings undertaken under the provisions of this agreement, including the costs of legal representation;
- 13.12.2 each party shall bear an equal share of the costs of the mediator and/or arbitrator and any costs associated with such appointment, the party first referring any dispute to mediation or arbitration under the provisions of this Clause being responsible for the collection and payment of such costs, provided that in the event of the arbitrator being of the opinion that any party to the conflict has acted in bad faith, maliciously or frivolously, or in the event of any party liable to contribute towards any costs in terms of this Clause failing or refusing to pay such costs within a reasonable period of demand being made therefore, then such arbitrator may direct that such party shall refund to any other party the reasonable costs of such arbitration or any part thereof, or pay such contribution, and such award shall constitute a liquid debt due by the party against whom it is made in favour of the other parties to this agreement.
- 13.13 An arbitrator shall be entitled, either:
- 13.13.1 to order specific performance to rectify a breach or,
- 13.13.2 at the request of either party specifically made therefor, to declare the lease cancelled.
- 13.14 In the event of either party failing to comply with an order of specific performance made by an arbitrator, then the other party may approach a Court of competent jurisdiction to enforce such order as though such order were an order of that Court.
- 13.15 Any party that has suffered loss or damage as a result of a breach of this lease by the other party shall be entitled, upon any arbitration proceedings being completed, and based on the findings of the arbitrator, to recover such loss or damage from the other party in any Court of competent jurisdiction.
- 13.16 Any decision of an arbitrator shall be binding on the parties to the dispute and shall, subject to the provisions of Clauses 13.14 or 13.15, not be made the subject of any legal proceedings by any such party.
- 13.17 The parties to this agreement agree and undertake that they shall conduct their relations with each other arising from this agreement in a spirit of good faith.

14. TERMINATION

- 14.1 Upon the termination of this lease for whatever reason, whether as a consequence of the effluxion of time or otherwise, all buildings and other permanent structures on the Premises shall remain the premises of the Lessor, without compensation of any sort to the Lessee.

15. MISCELLANEOUS

- 15.1 The Lessee shall not, without the written consent of the Lessor, permit any person to occupy the premises during the currency of this lease, or any extended period of this lease, under circumstances which shall enable such person to claim a right in law to use and occupy the premises independently of the Lessee's right to the use and occupation of the premises under this lease.
- 15.2 This Lease shall be interpreted and construed in accordance with and any proceedings arising therefrom shall be governed by the laws of the Republic of South Africa.
- 15.3 This agreement constitutes the entire contract between the parties relative to the subject matter hereof and this agreement cancels any prior agreement between the parties with regard to the subject matter hereof unless specified to the contrary. No variation of any of the terms and conditions of this agreement will be binding on the parties unless committed to writing and signed by them respectively.
- 15.4 If any provision in any definition is or contains a substantive provision imposing rights and/or obligations on a party, effect shall be given to such provision as if it were a substantive provision in the body of this agreement.
- 15.5 No indulgence which any party may grant to any other shall prejudice or constitute a waiver of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or might arise in the future.
- 15.6 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 15.7 No representations or warranties of any nature whatsoever, express or implied, have been made by the Lessor or any person purporting to act on the Lessor's behalf to induce this Lease.
- 15.8 This Lease shall be binding on the successors in title of the parties.
- 15.9 Clause headings in this Lease are for convenience only and shall not be taken into account in the interpretation hereof.
- 15.10 When any number of days is prescribed in this agreement, these shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday, or a Public Holiday.
- 16. DOMICILIUM**
- 16.1 The parties choose the following addresses for the purposes of notices in respect of matters arising out of or in connection with this lease and also as addresses for the purposes of *domicilium citandi et executandi*:



- 16.1.1 The Lessor at: 65 Trelawney Road, Pietermaritzburg, 3201.
- 16.1.2 The Lessee at: All the portion 6 of the farm reserve No.16 No.15836 HV in extent 0.39ha
- 16.2 Any notices which are to be given in terms of this lease by either party to the other party shall be presumed, until the contrary is proved, to have been received:
- 16.2.1 if posted by registered post 7(seven) days after the date of posting;
- 16.2.2 if delivered by hand, on the date of delivery;
- 16.2.3 if transmitted by facsimile, on the day of transmission (if transmitted on a business day) or the first business day after transmission.
- 16.3 Either party may by notice in writing from time to time alter its address and facsimile details.

18. DELEGATION

- 18.1 The Lessor may, in its discretion, and from time to time during the currency of this lease, including any extended period of this lease, delegate the administration of this lease, or any part thereof, to any official in the employ of any department of the national government, or the government of the Province of KwaZulu-Natal, any local authority within whose area the premises fall or the traditional council within whose area the premises fall.
- 18.2 Any written document evidencing such delegation and signed by an authorised member of the Ingonyama Trust Board shall be sufficient proof of such delegation.

19. REGISTRATION OF LEASE

- 19.1 In the event of the Lessee wishing to register this lease against the title deeds of the land of which the premises form a part, then it shall, at its expense:
- 19.1.1 cause the premises to be surveyed so as to produce a diagram of the premises for the purpose of the registration of the lease;
- 19.1.2 obtain the consent of the Traditional Authority referred to in Item 7 of the Schedule to the registration of this lease;
- 19.1.3 proceed to duly cause this lease to be so registered.
- 19.2 The Lessor agrees and undertakes to support and co-operate with the Lessee in and about the registration of this lease as contemplated in Clause 19.1, and its signature to this lease shall constitute its consent to such registration.

Signed by Warren Elbert Robin Raubenheimer in his capacity as a member of the KwaZulu-Natal Ingonyama Trust Board established in terms of section 2A(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994, he being duly authorised thereto by His Majesty the King, King Goodwill Zwelithini KaBhekuzulu on the twenty-fourth day of March 2006 at on day of year

As Witness

1.
2.

LESSOR

L.D
[Signature]

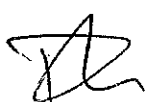
309

Signed by the Lessee aton theday ofyear

As Witness

1.
LESSEE

3.

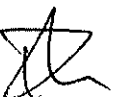
L.S.


310

15

ANNEXURE "A"

The following is a brief description of the proposed masterplan that the Lessee shall effected to the premises.

A handwritten signature, possibly reading 'L.O', is located in the bottom right corner of the page.

ANNEXURE "B"

- B1. As provided in the schedule to the lease and clause 4.1.1 of the lease, the Lessee shall from the date stated in Item 5 of the Schedule pay by way of rent, the base rent applicable at that time or 3% of the Gross rents, whichever is the greater. The "Gross rents" being calculated as "total income" received from every and all business or other commercial activities conducted or to be conducted by the Lessee on the premises at any time during the currency of this lease.
- B2. The Lessee shall, within 60 days of the close of the Lessee's financial year, submit to the Lessor his audited financial statements for each and every business conducted by the Lessee on the premises for such financial year which statements shall reflect the gross rental income earned by each such business.
- B3. The Lessor shall, within 21 days of the receipt of such financial statements, be entitled, in its discretion, to require the Lessee's financial records to be audited by an auditor nominated by it to verify the financial statements referred to in Clause B2.
- B4. Notwithstanding anything to the contrary contained in any financial statements referred to in Clause B2, or disclosed in any supporting documentation on which such financial statements are based if, in the opinion of the Lessor, the income disclosed by the Lessee in such financial statements are based, if, in the opinion of the Lessor, the income disclosed by the Lessee in such financial statements is significantly less than a prudent business would reasonably expect to earn under the circumstances prevailing during the period covered by the financial statements in the locality of the premises, then the Lessor shall be entitled to substitute an amount for such income which would reasonably reflect the income that a prudent business would, under the circumstances described, earn, and the rental payable in terms of Clause B1 shall be calculated on the income so determined by the Lessor, subject to the provisions of Clause 10.
- B5. In the event that there is a discrepancy between the gross income reflected in the financial statements referred to in Clause B2 and the figures calculated by the auditor referred to in Clause B3, or in the event of the Lessor applying the provisions of Clause B4 and the Lessee disputes such substituted income, then the resultant dispute shall be resolved by mediation and arbitration as provided for in Clause 13.4 of the body of the lease, provided that the Lessee shall, pending the outcome of such mediation and arbitration, pay the rental contemplated in Clause B1, determined according to the

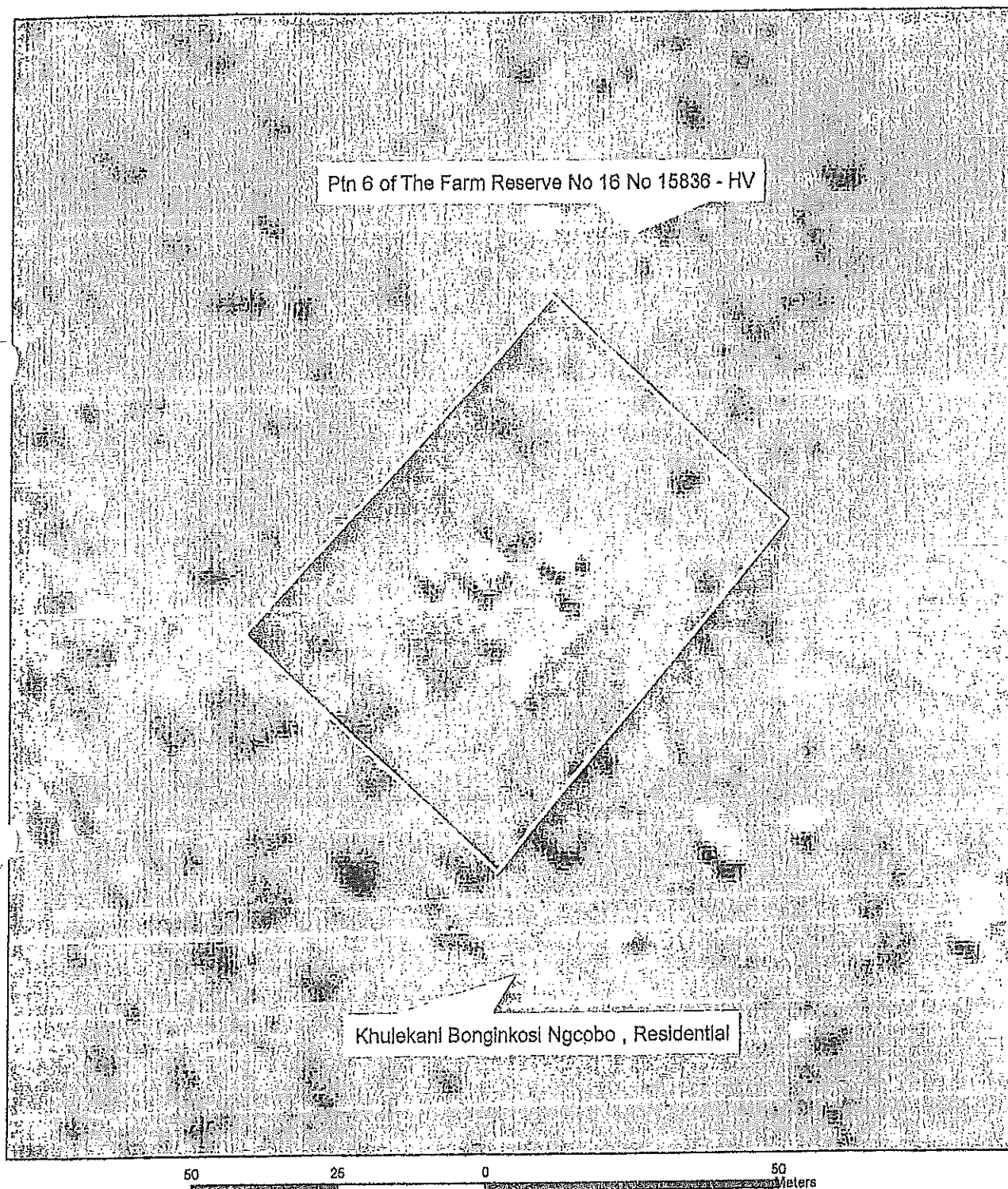
L.S.


financial statements prepared by the auditors appointed by the Lessor in terms of the provisions of Clause B3, or by the Lessee in terms of Clause B4, by the date mediated in terms of Clause B7.

- B7. In the event that the process of mediation and/or arbitration arriving at an amount less than the amount paid in terms of the proviso to Clause B5, then the Lessor shall refund and excess rental paid by the Lessee to the Lessor within 30 days of the date that the mediation and /or arbitration process is completed, together with interest thereon at the prime rate (charged by the First National Bank) plus 2% calculated from the date upon which the Lessee pays such rent and the date on which the excess is refunded.
- B8. The rental payable in terms of Clause B1 hereof shall be payable within 7 days of the expiry of the period referred to in Clause B2, or if the provisions of Clauses B4 and B5 are invoked, then within 21 days of the receipt by the Lessee of a written notice from the Lessor demanding payment of rental determined in terms of those Clauses.
- B9. The provisions of Clause 4.4 to 4.9 of the main agreement shall apply mutatis mutandis to the payment of rental in terms of this Annexure B.

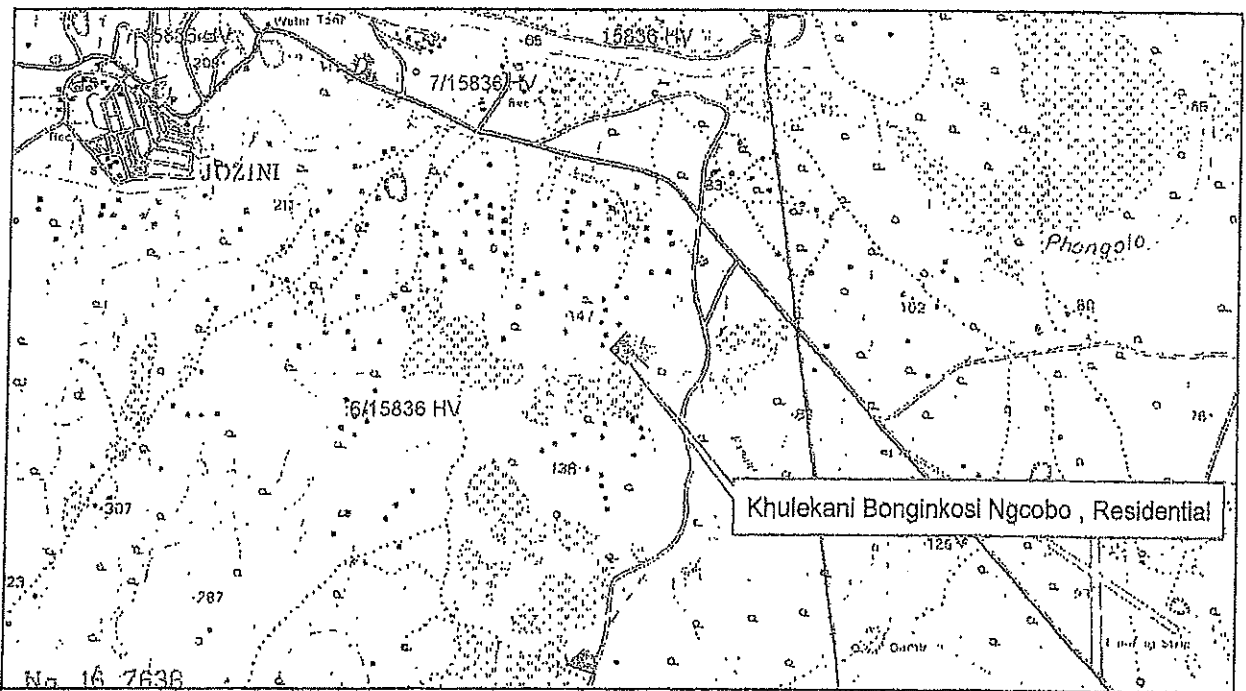
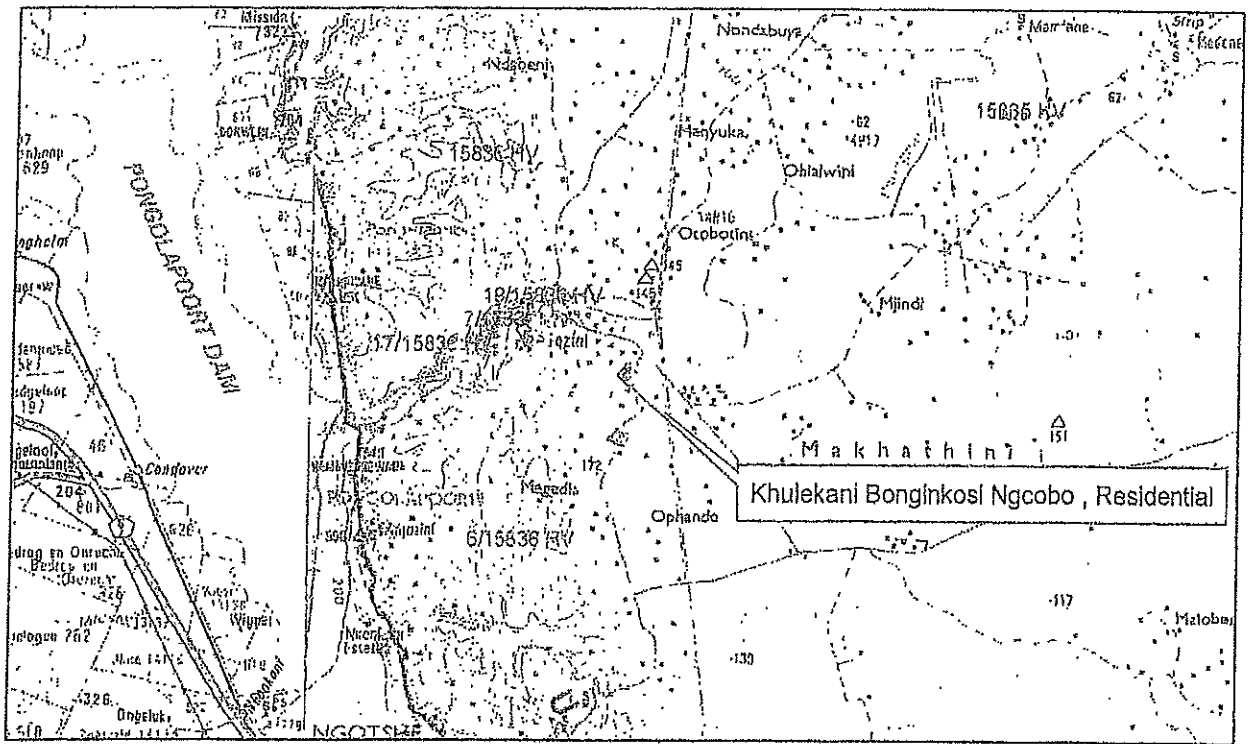
Khulekani Bonginkosi Ngcobo , Residential Umkhanyakude

313



Legend			Date of Drawing : 27 October 2010 S.C.Ellis	 INGONYAMA TRUST BOARD
 Land parcels owned by Ingonyama Trust  Leases  State Domestic Facilities  PTOs	 Land Claims  Titles  Servitudes  Mineral Rights			
		Data Acknowledgements : 1 : 50,000 Topographic Images - CDSM, Dept. Land Affairs 1 : 250,000 Topographic Images - CDSM, Dept. Land Affairs		

L.S
✱



SG No.

Area (Ha) :

SG Comp No. :

Centroid - Lat :

- Long :

Owner Name :

Deed Number :

Municipality :

Regional Authority :

Map Ref :

L 13

[Handwritten signature]

LEASE SKETCH PLAN

APPLICANT: *Khulekani Bonginkosi Ngcobo*

TYPE OF LEASE: *Residential*

DISTRICT MUNICIPALITY: *UMkhanyakude*

LOCAL MUNICIPALITY: *Jozini*

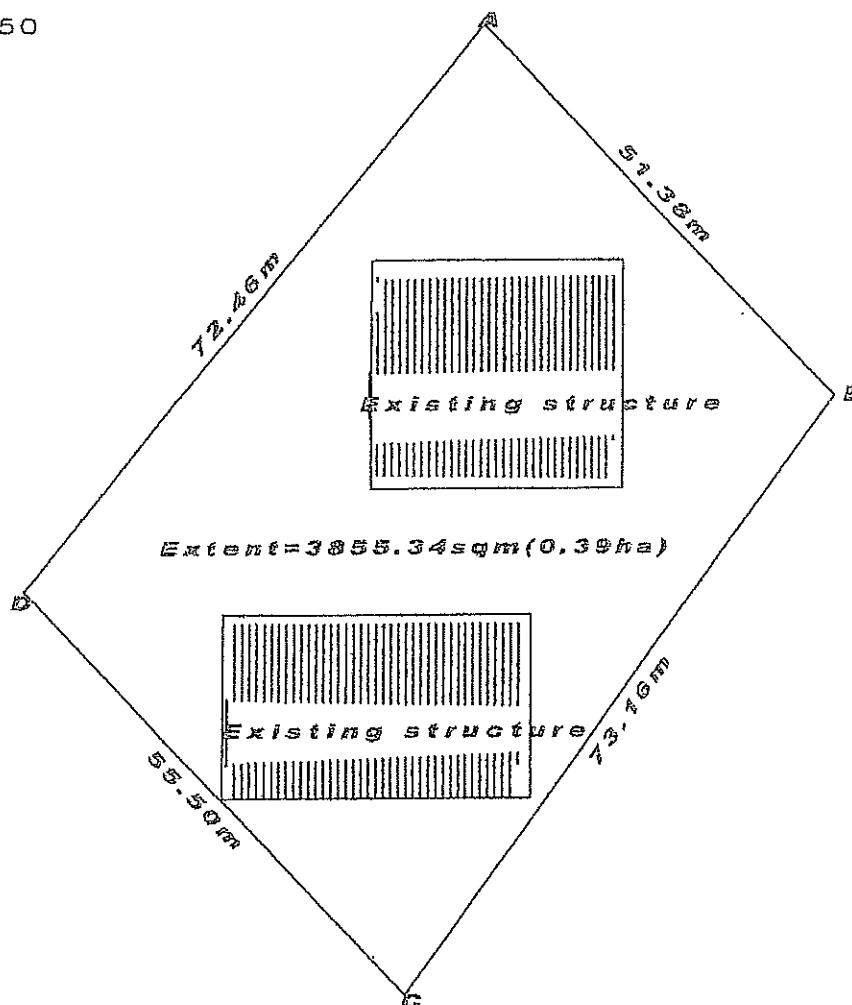
TRADITIONAL COUNCIL: *Nsinde*

ISIGODI (TRADITIONAL WARD): *Maphaya*

ITB REF:

315

SCALE: 1:750



APPROXIMATE CO-ORDINATES

SYSTEM: *WG33*

NAME	Y	X
A	+89308.827	+3036980.717
B	+89272.855	+3037017.397
C	+89316.373	+3037076.204
D	+89355.113	+3037036.465

NOTE: CO-ORDINATES AND DIMENSIONS ARE ACCURATE TO +/-3m

Surveyed and Prepared:

For: Ingonyama Trust Board
PIETERMARITZBURG

By: Land Administration Survey Services
Northern Implementation Office

Tel: 035-874 2663

Fax: 035-874 2664

Date: August 2010

[Signature]

316

TRADITIONAL COUNCIL CONSENT

1. Description of site -

RESIDENTIAL2. At a meeting held on 09 JULY 2010

the _____ at _____

NTSINDE Traditional Council Office, the NTSINDE
Traditional Councilresolved that it had no objection to the application to acquire rights to land by
Khulekani Bongokosi Ngweni

(give full particulars of the applicant)

The form of tenure thereof to be agreed between the applicant and the Ingonyama Trust Board as
land owner-in-law in terms of section 3 of the Ingonyama Trust Act, Act 3 of 1994, as amended.
This consent is given in terms of section 2 (5) of that Act.

3. The Traditional Council confirms that all persons occupying or having an interest in the said Land
have been consulted and have no objections to the proposals.
4. The applicant has been advised and confirms that he/she/it will not do anything or erect any
structure on land until an appropriate tenure right has been agreed to and the necessary documents
have been signed with the Ingonyama Trust Board.

Signed

CHAIRMAN

MEMBER

MEMBER

SECRETARY

NTSINDE TRADITIONAL
COUNCIL

09 JUL 2010

PRIVATE BAG X12
UBOMBO 3970

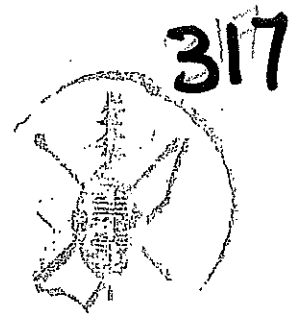
Notes:

1. The consent submitted to the Trust must be an original, on Traditional Council headed notepaper
and with a Traditional Council date stamp.
2. Please provide a full legal description supported if possible by a site plan and co-ordinates.
3. This consent together with the Ingonyama Trust Board standard application form (ITB1) must be
submitted timeously to the Secretariat, Ingonyama Trust Board 188 Hoosen Haffjee Street / Box
601, Pietermaritzburg 3201.

L.3

INGONYAMA TRUST BOARD

ESTABLISHED IN TERMS OF THE KWAZULU-NATAL INGONYAMA TRUST ACT
(ACT NO. 3 OF 1994) VAT REGISTRATION NO.: 4340182098



Enquiries Imibuzo Navrae	Nomonde Nzimande	Telephone Ucingo Telefoon	033-8469900	Private Bag Isikhwama Seposi Privaat Sak	P.O. Box 601 Pietermaritzburg 3200
Reference Inkomba Verwysing	KN8/5/11/18/2647lt	Fax iFeksi Faks	033-386 2528	Date Usuku Datum	June 27, 2012

Mr, Khulekani B. Ngcobo
P.O. Box 122
Jozini
3969

Dear Mr. Ngcobo

Proposed Residential site- Jozini

I am pleased to advise you that the Board has approved the grant of a lease to you.

I accordingly attach two copies thereof. Would you please sign both copies and initial, together with the witnesses, all pages.

Then would you return both copies to me for signature on behalf of the Board. Your cheque for the first years rent, or evidence of payment thereof, should accompany the signed leases.

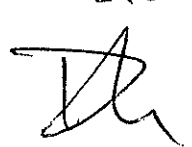
Kindly use the following banking details and Reference when making your payment:

Bank Name: First National Bank
Account Number: 62004600038
Branch Code: 257355

Reference Number: NGCOBOKBXXXXXX002647

Yours Sincerely


NOMONDE NZIMANDE
REAL ESTATE OFFICER
INGONYAMA TRUST BOARD

L.S


🔒 Premium content from before 2017 is now available for everyone!

318
FA26

Ingonyama Trust Board on land conversion to leases

Rural Development and Land Reform

07 March 2018

Chairperson: Ms P Ngwenya-Mabila (ANC)

Share this page:



Meeting Summary

The Committee met with the Department of Rural Development and Land Reform (DRDLR), accompanied by the Minister and Deputy Minister, and the Ingonyama Trust Board (ITB), to be briefed on the land conversion to leases. The ITB briefed the Committee on the background to the conversion of Permission To Occupy (PTO) to leases project, context of the PTOs, the advert and issues with the budget.

The Department briefed the Committee on the legislative mandate of the ITB, role of the Department in supporting the IT and the Department's policy on conversions to leases.

The Committee questioned how the long term leases would benefit the communities, who was defined as "community" in the conversion, policy gaps converting PTOs to leaseholds and the necessary regulations. Members were concerned about the implications of paying rent as a result of the conversion and that this could lead to hardship and poverty. Members emphasised that leases were not the highest forms of ownership but in fact made tenants out of those who had the right to occupy and use the land. This brought into question the interests of the ITB and what would happen if people could not afford to pay. The Committee also inquired about the long term title deeds, when the land audit would be completed, incorporation of business and industry, perpetuation of feudal forms of land ownership and unintended consequences of previous legislation. Members stressed that government should abolish feudal patterns of land ownership, safeguard the role and position of the state over land custodianship and that measures currently proposed were interim or transitional. The Committee also discussed the ITB budget, public hearings and consultation in all KZN districts on the proposal to covert PTOs to leases and what the White Paper said about conversions.

The Committee did not have enough time to hear the briefing of Dr Aninka Claassens (Land and Accountability Research Centre) on the recommendations and findings of the High Level Panel. The Chairperson wrapped up the day's proceedings by instructing the Department to get its house in order when it came to briefing the Committee on the exact invitation of the Committee and to ensure this message reached the ITB too. The Department and Trust were to halt the process of conversion to ensure there was extensive consultation and that the views of the Committee were considered. The Committee would then require another briefing. The Department was asked to respect the Committee. The position of the Committee was for informal ownership to be converted to title deeds.

Meeting report

The Chairperson stated that the Department of Rural Development and Land Reform (DRDLR) and the Ingonyama Trust Board (ITB) were invited to brief the Committee on media advertisements to convert the Permission to Occupy (PTO), on Ingonyama Trust Land, to long term leases, clarify the notices and state its impact on the community. The Committee also requested a briefing on the status of PTOs in relation to leases and impact on the community.

Minister's Comments

Minister of Rural Development and Land Reform, Ms Maite Nkoana-Mashabane, stated that South Africa was about the only country where majority of its citizens owned only about 4% of the land. She indicated that the mandate of her administration included ensuring that the black citizen majority enjoyed the benefits of its land. Her administration was tasked to ensure that the black citizen majority, which had earlier been dispossessed of the land, regained the land.

Ingonyama Trust Board (ITB)

Judge Jerome Ngwenya, ITB Chairperson, indicated that the ITB was not aware that the Committee had invited it to respond to complaints. He however proceeded with the briefing which included a background on the ITB, the Permission to Occupy (PTO) conversion project. The ITB had received a threatening letter from the Legal Resources Centre in Durban to withdraw the invitation to covert PTOs to leases. The deadline imposed was January 2018 but the ITB did not respond to this threat. The ITB received an invitation from the KZN Christian Council to a workshop in January 2018, but again the ITB did not feel the need to participate.

L.J

Judge Ngwenya explained the context of PTOs as a document issued to black people only during Apartheid. Members were informed of the central tenets of the PTOs. PTOs did not provide for ownership or rights. The Abolition of Racially Based Land Measures Act (1991) did away with PTOs however PTOs have not been abolished and some communities still have them. The ITB then took a resolution. The law that establishes the ITB, namely section 2, outlines that the ITB may not infringe on rights.

On the issue of the advert, the KZN province lost the case regarding the granting of housing allowances to government employees in rural areas. Both the provincial government, as the employer, and the trade union movement, on behalf of the workers, complied with the order that there must be a legally recognised PTO and that only the ITB could issue a PTO. Delays were caused by the ITB putting documents in place to ensure all civil servants in KZN on Ingonyama Trust land, accessed their allowance backdated to 2015. The conversion of the PTO recognised the rights and displayed compliance with the judgement that one could not be discriminated against on any grounds, let alone that of race. The Centre for Land Accountability interpreted the Ingonyama Trust Act differently but this could be dealt with at the appropriate forum. Many people had very superficial information on what a PTO is – PTOs are not legally recognisable instruments under the present constitutional regime. Financial institutions do not accept PTOs as collateral but they do accept long-term leases. Many parts of the country are under long term leases and there is good reason why the ITB holds on to long term leases.

The Committee should note that the ITB's budget is currently in excess of R50 million but it only receives R19 million from the state – this amount only allows the ITB to pay staff to sit in the office and do nothing. If the ITB has to conduct surveys it needs funds for equipment and cars. Long term leases recognise rights of beneficiaries. There has yet to be a case of people evicted on Ingonyama Trust land or that the Trust had infringed upon rights. The ITB did not think it was out of line to provide long term leases at this stage as it was a legally recognised instrument throughout the world. The ITB had not resisted applying any land reform programme.

The Chairperson asked that the ITB refrain from mentioning meetings it had with other people/organisations because the Committee was not privy to these meetings.

Judge Ngwenya indicated he did not deal with the HLP issues because the invitation read out by the Chairperson had not covered those issues.

The Chairperson asked the ITB to focus its responses to question on the PTOs and leases as Dr Aninka Claassens had not been invited to address such issues. She informed the ITB that Dr Claassens was invited to clarify the High Level Panel's (HLP) recommendations on land reform and rural development.

Department of Rural Development and Land Reform (DRDLR)/ Ingonyama Trust Board

Adv Sello Ramasala, DRDLR Head Legal Unit, indicated that the Committee sought clarity on the legislative mandate of the ITB, role of the DRDLR in support of the ITB, DRDLR policy on conversions to leases by the ITB and implications of conversion in relation to the Upgrading of Land Tenure Rights Act (ULTRA). The ITB was a statutory, corporate body and also a juristic person. It is an organ of state and a public trust. The roles of the DRDLR in support of the ITB include appointment of eight members by the Minister, bearing of its administrative costs, as indicated by Judge Ngwenya, establishment of a board in consultation with the Director-General of the DRDLR and recommendation of promulgations by the board for the Minister's attention. The regulations include procedures for land allocations, rents levies and other charges for the right to use land and distribution of income received by the Board. Other roles include inspection of the Board accounts and submission of Annual Reports on Trust activities to the Minister.

Presently, the DRDLR does not have written policies on conversions - the Communal Land Rights Act (CLARA), 2004, provides for conversion of PTOs to ownership while the Communal Land Tenure Bill also proposes conversions from PTOs to ownership. The position of DRDLR is to upgrade PTOs to ownership – this is provided for in the ULTRA. The conditions for conversions from PTOs to ownership is that the Minister and community must first approve the conversion.

Discussion

The Chairperson asked the DRDLR and ITB to explain to communities living in the village the difference between the PTO and long-term leases and also how the leases will benefit these communities. She also asked DRDLR to clarify what the implications of being bound by ULTRA were when the ITB was the approving authority through a lease.

Adv Ramasala said the matter could be viewed in two ways - the landlord would say the lease was better option while the tenant would disagree. The PTO considers the existing rights of the land owners because the people had lived on the land before the apartheid government came in. If a party has to convert a PTO to a lease then it would be charged rent by the leaser and negotiate other conditions – this suggests the PTO is stronger, in terms of rights, than a lease agreement. It would be a violation of existing rights for people to forgo existing rights and opt for a new arrangement through a lease – the ITB may view this differently. There was also the matter of compensation for the loss of formal rights.

The Chairperson clarified the issue of the invitation by stating that the Committee invited the Minister, Deputy Minister, ITB and senior officials of the DRDLR to come to a briefing on the recommendation of the HLP by Dr Aninka Claassens. The ITB and Department were requested to prepare a report and make presentations on the conversion of PTOs to lease holds on Ingonyama Trust land. The presentation should cover, but not be limited to, legislative mandate of the ITB, role of the DRDLR in supporting the ITB, background to the conversion of PTOs to lease hold rights, policy position of the Department in relation to the conversion, implications of the policy position on conversion, in terms of ULTRA, status report on the number of both residential and business PTOs converted to leases today, new residential and business leases issued and a financial report. The Committee had not received the status report on the number of both residential and business PTOs converted to long term leases to date, new residential and business leases issued and the financial report on fees collected by the ITB.

Mr M Filtane (UDM) was of the opinion that the Committee should first hear the briefing of Dr Claassens on the PTOs and leases. If his proposal was not accepted, he wanted clarity on some items.

The Chairperson explained Dr Claassens was not invited to brief the Committee on PTOs and leases. She had only been invited to brief the Committee on the HLP recommendations.

Mr Filtane asked Adv Ramasala to confirm if the DRDLR had presented the regulations recommended by the ITB to the Minister. The fact that the DRDLR confirmed it did not have written policy on the conversions, put the entire process on the back foot. This would mean the Committee would be unable to efficiently deliberate on the matter. Definition and identification of the 'community' involved in the conversion was required.

Adv Ramasala explained the approval of the Minister, in terms of ULTRA, provides that the Minister be satisfied on the basis of a report that the rights or interests of holders are protected. "Community" is defined by the list of communities as contained in the schedule of the Ingonyama Trust Act.

Mr A Madella (ANC) observed there was a policy gap converting PTOs to leaseholds. He asked why the DRDLR had not looked at a way of converting old apartheid laws in a manner that would assist those who had lived on the land for generations to acquire permanency and access to resources such as housing allowances. He expressed concern with these people having to pay rent in the event of converting PTOs to leaseholds – this would lead to hardship and poverty. The Department must come to the fore, provide the necessary regulations and ensure the process did not impoverish the people.

Judge Ngwenya could not answer as to the gaps in legislation because the ITB did not make legislation, it administered it.

Mr M Nchabeleng (ANC) was disappointed with the ITB presentation which implied a lease was the highest form of land ownership which in fact made tenants of those who had a right to occupy and use the land. Tenants would now have to pay rent on the land – he doubted if the ITB had the interest of the people at heart. He expressed concerns that the ITB was dispossessing people of their lands. What is going to happen if those people could not pay?

Judge Ngwenya said that he was not trying to convince the Committee on what was right and wrong – the ITB implemented where the Committee instructed. Challenges would however be pointed out. Breach clauses were present in the PTO.

Ms T Mbabama (DA) asked Judge Ngwenya to state what had changed between June 2016 and now concerning the long term title deeds.

Judge Ngwenya said nothing had changed since the King's announcement in 2016 – the King asked for a sustained process of consultation. Consultation began with traditional leaders in July 2016 and from this there were a number of views the ITB was analysing. The Board would then move to communities.

Mr K Robertson (DA) noted that the ITB had still not conducted a land audit – this meant there was no planning for spatial development, which sectors would be used for agriculture, mining etc. Was it not time that the ITB started incorporating businesses and industry on the Ingonyama Trust, once a land audit was conducted? He agreed that people could not own their land or have their own title deeds on the Ingonyama Trust – what was going to be done about this?

Judge Ngwenya said the land audit was being undertaken although it was not completed – the process required internal personal capacity and financial capacity. The organogram, for more people were employed by the ITB, was completed and was now being costed.

Mr S Matlase (EFF) noted the powers of the ITB should be exercised to advance public good and public interest, as an organ of state. The ITB should not be viewed as a private organ or entity. He hoped this was an understanding the Trust also shared. With the enactment of the 1994 KZN Trust Act, there were unintended consequences which now, in hindsight, have to be addressed which the Act has created. This included the perpetuation of forms of land ownership, notably, private ownership, colonial patterns of ownership and feudal forms of land tenure. This is seen in the Act referring to the Trust as a body corporate with perpetual succession – this resulted in modern forms of feudal land tenure such as Permission to Occupy. Government should abolish such patterns of land ownership in the interests of SA. This would safeguard the role and position of the state over land ownership/custodianship and protect the birthright to land of the people of SA. He emphasised that measures proposed in the Bill were interim or transitional while there was consultation before the final stage of the most advanced, progressive and radical form of land ownership.

Judge Ngwenya said ULTRA was not only limited to PTOs – leases could also be converted to full ownership rights under ULTRA. Title deeds must be addressed with sufficient caution. Currently in SA there were various types of title deeds and they should all be taken into consideration.

Mr P Mnguni (ANC) appreciated the discussion especially that of the evolution of society. He remarked that in a capitalist state, there would be elements of the old system i.e. primitive, colonial values. He made it clear that Parliament should note its appreciation of the Amakhosi in the present society. Turning to the ITB budget, the Member knew the Trust has other sources of income on top of the R19 million referred to. It could be worrying then for the ITB to say that it is underfunded. The Department made it clear the Ingonyama Trust was a public one so the Trust ought to be accountable publically. While the ITB land came from the KZN government, it remained South African land. The Committee was not aware of the case involving the public servants – it was not known whether this case mandates the ITB conversion of PTOs. Would the inhabitants of the ITB land in KZN know that they would have to pay rent within seven days failing which they may be evicted within 24 to 48 hours? This was unpalatable, condemnable and unacceptable. From PTOs, it was best to advance to ownership. He asked Judge Ngwenya to clarify if the ITB had conducted public hearings in all the districts of KZN regarding the proposal to convert PTOs to leases as a solution. Without consultation, the proposed solution would be illegitimate.

Adv Rala indicated that the DRDLR presentation specified there was no policy on leases – the Communal Land Tenure policy dealt with conversions and existing rights. The ULTRA provides for conversion from PTO to ownership while the CLAR Act stated that there must be compensation if a right was taken away.

Mr Mnguni said the conversion of informal or inferior rights is provided for in the White Paper on South African Land Policy of 1997.

The Chairperson stressed that it is important for the ITB to communicate its intention and consultant to get all views. While Judge Ngwenya was talking about the budget, it seemed as if the conversion to leases was supposed to raise money for the ITB since it said its budget is insufficient.

Ms Leona Archary, Acting DRDLR DG, said the Department made about R19 million available to assist the Board in carrying out its administrative responsibilities as per the Act. The Minister oversees the Trust and the Board. The funds allocated to the ITB are audited and accounted for in terms of financial regulations. Annually, the ITB also reports to various structures including the House of Traditional Leaders, the Premier and the Minister. The Annual Report would contain information on the funds the ITB receives.

Judge Ngwenya indicated that there were adverts for leases and adverts for parties who did not have documents. The advert did not say if the party did not have a document, it would have to convert to a lease. The advert came before the award so it was not responding to a judgement – the court case occurred in the process of the advert. As a public trust, the ITB was subject to regulations however the relevant provisions of the Trust outlined it as a corporate body and may do all things lawfully as body corporates do. The Trust is administered for the benefit and material and social welfare of the members of the Trust. On the issue of budget then, the generation of revenue is to protect the interests of the beneficiaries and meet statutory obligations. He agreed on the importance of consultation however it had not been wide enough. The distinction however was that the conversion of PTOs had been happening since the Board came into existence. Traditional councils had not yet been consulted in detail. The breach clause is available to various instruments but up until today nobody has been prejudiced by the clause and this showed the attitude of the ITB.

Mr Filtane suggested that the Committee postpone the briefing it was supposed to have received from Dr Claassens due to other parliamentary business which was due to resume shortly.

Mr Robertson agreed with Mr Filtane's suggestion.

The Chairperson asked if Members had other questions for the ITB/DRDLR.

Mr Mnguni asked for an update on the process.

Judge Ngwenya explained there were a number of processes in place. Regarding the office of the Premier, this process was at the stage of quantifying the number of applicants – this was people looking for replacements of PTO documents. Due to urgency, it was hoped that by June 2018, the ITB had dealt with a number of applicants and issued documents. The invitation by the Committee, as read by the Chairperson, to the Department, was not the same invitation as was given to the ITB. The ITB then did not have some of the required information with it – a full response could be provided in writing on the amount collected in rental. The ITB received rental each month so the Committee must be clear on what exact information it required with regard to rental amounts. If the question was related to rental collected as a result of the advert, the answer was currently zero.

Mr Filtane asked the DRDLR to clarify what was contained in the White Paper on conversions. Members required a full understanding of the legislative and policy framework for informed discussion.

Judge Ngwenya replied that the schedule of communities could be provided to the Member.

Adv Vela Mngwengwe, DRDLR Chief Director Property Management/Advisory Services, said the section of the White Paper referring to tenure reform, provided for a move away from permits to protected rights including ownership.

Mr Robertson asked for timeframes for completion of the land audit and when the Committee would have the report on the land audit.

Judge Ngwenya replied that it would be completed at the end of the next financial year.

The Chairperson remarked that Members would not be part of Parliament then.

Mr Robertson said that whether Members were available in the next financial year or not, it is pertinent for the Committee to receive the final report on the land audit specifically for the people residing on Ingonyama Trust land and for the creation of an income. This final date needed review.

The Chairperson addressed the Deputy Minister and asked the DRDLR to put its house in order because the Committee did not send two separate invitations – it was for the Department to communicate with the ITB. It would be a problem if everyone was not on the same page. The Committee was not pleased with the process – ITB and the Department needed to go back and look at the matter. If necessary, the process should be put on hold so that the comments of Members were looked at and how the conversion would affect communities. Thorough consultation was required. Before implementation was carried out, the Committee should be briefed again. The DRDLR and ITB must respect the Committee and not take it for granted by responding to questions in any fashion. The Committee would like to see conversion of informal ownership to title deeds – this would give people the dignity of owning land on which they are residing instead of being tenants. She apologised to Dr Claassens for not being able to receive her briefing on the recommendations and findings of the High Level Panel due to lack of time.

Adoption of Committee Minutes Dated 28 February 2018

The Committee considered and adopted its minutes dated 28 February 2018. Ms N Magadla (ANC) moved for adoption and the motion was seconded by Ms Mbabama.

4/5

10/26/2018

Ingonyama Trust Board on land conversion to leases | PMG

322

Committee minutes dated 28 February 2018 were adopted without amendments.

The meeting was adjourned.

Share this page:



 Premium content from before 2017 is now available for everyone!

Ingonyama Trust Board 2017/18 Quarter 3 performance, with Deputy Minister

Rural Development and Land Reform

23 May 2018

Chairperson: Ms P Ngwenya-Mabila (ANC)

Share this page:    

Meeting Summary

Ingonyama Trust Board (ITB) achieved "zilich" in its Quarter 3 performance for 2017/18. This was the view of the Portfolio Committee after it was briefed by ITB. It wondered where the money had been spent because there was zero performance for the money spent. About 90% of the budget was spent on compensation of employees. The Committee complained that ITB presents the same plans every year for organizational restructuring, policy development and training of traditional councils. Also it keeps changing its Annual Performance Plan once approved by the Committee. The Committee resolved that it will peruse the ITB plans and reports submitted over the past two years. It appeared that the Department of Rural Development and Land Reform did not review ITB documents before presentation to the Committee. There was concern that vacancies have not been filled although the posts were advertised in 2017. ITB has been only "planning to plan" and had provided as pretexts for not performing its incomplete organogram and the desire to outsource work. Members suggested the ITB had gone against the Committee resolution to halt the conversion of Permission To Occupy (PTO) to long-term lease agreements because of an advertisement on the ITB website about the "PTO upgrade".

ITB responded that it does not understand why the Committee is penalising it for ITB getting insufficient funds to do its work. It was busy restructuring and the other items would be done when the ITB organogram has been completed. Other services would be outsourced because they require specialised skills. ITB pointed out that there is no ruling that says it should not issue leases.

Members remarked that ITB has never approached the Committee about losing staff at a strategic level. It keeps telling the Committee about an incomplete organogram. Members asked that ITB consider its role and how conversion of PTOs to leases would help vulnerable communities. They asked why R5 was being collected from each KZN household and if ITB is part of the mobilisation of the Amabutho on the Ingonyama land matter. The relationship of the Acting CEO to the King was raised. Members asked about staff suspensions; if any cars had been purchased and about virements. Due to the lengthy discussions, the ITB Quarter 4 performance was not presented.

The Minister arrived at the tail-end of the meeting and spoke about land hunger. She also said that we need to understand that we must account for the money given by government

Meeting report

Ingonyama Trust Board (ITB) 2017/18 Quarter 3 performance

Ms Thembeke Ndlovu, Acting CEO: ITB, went through the performance indicators of the Ingonyama Trust Board and indicated what had or had not been achieved (see document).

Administration

- Staff training on the monitoring and evaluation framework has been deferred until the new organogram has been finalised and the skills audit has been undertaken.
- 50% of the Customer Service Charter plan has been implemented. The process was delayed due to the review of the draft organogram.
- 50% of the stakeholder engagement plan has been implemented. Engagements are ongoing but depend on the finalisation of the plan. The plan is to be finalised with the KZN Provincial House of Traditional Leaders (PHTL) for future engagements.
- Communication reports were completed, but were not submitted to the Board. The submission of the reports would be fast-tracked.
- No workshops were done with amakhosi though the plans were set for January 2018.
- 50% of the IT infrastructure has been implemented. The draft implementation plan was done but had to be reviewed after receiving comments. The implementation plan would be completed by Quarter 4.
- There is 50% implementation of the plan for IT policies developed and approved by the Board. The draft implementation plan was done and had to be reviewed after receiving comments and it will be revised to effect these comments.
- Due to the specialised nature of the policies to be reviewed, the Board decided to outsource the function.
- There is 100% achievement in the recording of all movable assets in the asset register.
- No posts have been filled in the HR provisioning plan.
- 69% achievement was recorded for the timely conclusion of performance agreements. Drafts had been prepared but could not be concluded in the absence of senior management.

- Senior positions were being filled.
- Only one training programme had been conducted. The HR Committee resolved that training be done once the organogram is finalised and managers are appointed.
- No Memoranda of Agreement (MOAs) with traditional councils have been approved by the Board. This was suspended pending the finalisation of the new organogram.

Land Management

- No Land Tenure Policy has been developed and approved. Priority is given to approved tenure procedures.
- No research has been conducted on the land allotment practices adopted by the various traditional councils. This would be done in the next financial year because it requires specialised skills.
- No valuation has been done on land parcels for commercial use. The decision is to use municipal values on these properties. The valuation would be finalised and reflected in the annual financial statements.
- No achievement was recorded for Spatial Development Plans of strategically located land. A discussion with the municipality has to take place. The discussion has been kept in abeyance. Terms of references have been finalised.
- The development of a report to identify prime land and its approval by the Board had not happened. This would be done during the next financial year.
- There are no approved plans for agriculture production on trust land.
- No agriculture projects have been approved by the Board.
- No potential projects of high commercial value for partnership with the private sector have been identified and implemented.
- No plan has been developed and implemented on land with development rights.
- No monitoring has been done on compliance and adherence to the ITB BBBEE scorecard for commercial developments.
- There are no development rights applications submitted and obtained in line with the findings of the land audit.
- No traditional councils have been trained and no training plan has been approved by the Board.
- The development of the framework for supporting social cohesion programmes would be outsourced. The terms of reference were being fast-tracked.

Discussion

The Chairperson remarked that the ITB seemed to have underperformed during the third quarter. Most of the non-performance was attributed to the lack of a finalised organogram and ITB wanting to outsource.

Mr M Filtane (UDM) said that the ITB has not performed. The score is zero. He does not think the Department goes through the ITB reports before they are presented to the Committee. The R20m given to the ITB appears to be used for the Administration Programme. The Act clearly states what the money should be spent on. The ITB's presentation is full of rhetoric. Every year they present plans to restructure the organisation, train traditional councils, and develop policies. The Department should be tasked to look at the ITB reports of the last 24 months because the ITB is "planning to plan". ITB has never approached the Committee to state it is losing staff at a strategic level. It told the Committee of an incomplete organogram. It is not clear which traditional councils are going to be trained. It is not acceptable to plan to train them because traditional council members do not come and go like politicians. He wondered where the money had been spent because there is zero performance.

Ms Jabulile Bhengu, ITB Deputy Chairperson, informed the Committee that traditional councils have terms of office. The members are not there for good. COGTA has to ensure these traditional councils hold elections. That is why new members need to be trained after elections.

Judge Jerome Ngwenya, ITB Chairperson, added that a traditional leader is not a sole leader. The traditional leader addresses the concerns of his or her own people in the council. Training for members of the traditional councils would continue to happen even after the election of new members because they need to know the Constitution and they would continue to receive training on the broader aspects of legal and other matters.

Ms Matsimbi (ANC) said that the ITB has presented good reasons for non-performance, but it is under-performing. ITB has advertised posts since 2017 and those posts have not been filled and they are going to be re-advertised.

Judge Ngwenya replied that three posts were advertised in November 2017. Ms Ndlovu occupies one of the positions and another is occupied by Mr Madondo who has just been appointed. The position of the CEO has not been filled and the process is underway. He did not think that somebody else would take a different view from what was presented. Members were not aware of the structural problems the ITB is sitting with. They have budgeted for more funds than what they have. He asked where the shortfall is going to come from if the government gives you R20m and you need R100m to perform. The trust money in the olden days was collected by tribal authorities for specific projects. The Committee is penalising them for not getting sufficient funds to do their work.

Mr R Cebekhulu (IFP) referred to the conversion of PTOs to leases and asked what role the ITB was thinking of following to help vulnerable communities.

Judge Ngwenya replied that there is no ruling that says the ITB should not issue leases.

Mr P Mnguni (ANC) remarked that the land portfolio is a burning issue. The sole trustee is the King. It is a big error for the ITB to think that everything must fall under the King is correct. He wanted to know if the Acting CEO was related to the king. He said if she is related, there is a conflict of interest by her participating in the activities of the ITB and she should be kind enough to protect the image of the king. He further wanted to know if the chairperson of the Board is doing business with the ITB because there is a conflict of interest if he is doing that. He wanted to find out why ITB has disregarded the call of the Committee to halt the conversions of the PTOs to leases in the interest of an inclusive process. The Committee pronounced itself on the leases and asked ITB to halt the

process and focus on other activities. However, ITB has advertised on its website for the conversion of the PTOs. By doing that, it was rendering this Committee useless. He wanted to know why R5 was being collected from each KZN household and asked if ITB is considering being part of the mobilisation of the Amabutho on land matters.

Judge Ngwenya replied that the emotions arising from the Committee were for good and sometimes for bad reasons. He said he would not deal with issues that have a political sting. Some of the questions were personal. There must be a better way of understanding why things are the way they are. He stated that Mr Cebekhulu is an ITB beneficiary. He asked if people are going to say there is a conflict of interest if he is on the Committee and an ITB beneficiary. On the question of business interests, his family has been in business for a very long time and he was carrying on with that. When leases had been discussed by the Board, he had recused himself. He was aware of the "PTO upgrades" process and said that there should be an inclusive process that involves consultation with relevant stakeholders. No one has come to the ITB to say that he or she wants to upgrade a residential PTO. The exception is only when a person wants to take a bond on tribal land and has no papers because commercial banks are not involved with PTOs. The ITB is compliant with the law.

Judge Ngwenya replied that there was no mobilisation of amabutho on land matters. He was aware of the R5 that was being collected. The King had stated it clearly that people should contribute R5 to defend the Ingonyama land. It was the King's call. ITB is not receiving that money and is focusing on its constitutional mandate.

Ms Ndlovu told the Committee she is a professional person. She is a qualified teacher and she knows people's land rights. She has served the Department. The Quarter 3 and 4 reports were not crafted by her, but by her predecessors because she was not with the Department at that time. She asked the Committee to give her a chance and that her CV and files would be handed to the Committee by Mr Southgate. She applied to ITB for land tenure management services because she wanted to cut a niche for herself. It was a personal choice. If there is a need to apply for the CEO position, she would apply. She stated that she was not directly related to the King, but is only related to Queen Thandi Ndlovu who is her mother's sister. Queen Thandi Ndlovu is married to the King Zwelithini.

A DRDLR official commented that there was no nepotism in the appointment of Ms Ndlovu. The ITB is addressing a big piece of land where there are more than 300 chiefs and the traditional councils have plus minus 1 000 members. The Department deals directly with the King.

The Chairperson asked if the drafting of the organogram is outsourced and when it would be completed. She asked how many vacant posts have been filled, and if any staff members have been fired or suspended. She remarked that 95.1% of the budget has been spent on compensation of employees but there are unfilled posts. The compensation of employees is supposed to be under the Administration Programme. She asked if any cars have been bought and who is responsible for their maintenance. She asked if there were any virements during the 3rd quarter.

Judge Ngwenya replied that they have outsourced the process of compiling the organogram and it would be finalised soon. He said they have created posts to the tune of 200. The current staff complement is 60. They have added 35 people who are on contract and that was why they have 60 staff members. Three posts were advertised in November 2017.

Judge Ngwenya said the suspended employees were suspended in 2016 for refusing to cooperate in the upgrading of the PTOs. They distorted information. They colluded with public figures to deprive people of their rights. The person they colluded with got awarded thousands of hectares. This then led to the suspensions and disciplinary hearings. ITB is not tampering with the disciplinary process. The six suspended employees have lawyers that have told ITB the employees were given instructions by people in higher-up positions. The cases are ongoing and have to do with corrupt activities.

On the compensation of employees, Judge Ngwenya replied that those fixed costs would always be there whether there is performance or not. He indicated to the Board that ITB has not performed. That is why they did not hide it in the presentation. Some projects are funded by the communities and those communities have the right to keep their money. The Committee needs to give itself more time to understand matters between COGTA, ITB and the traditional councils.

Mr Amin Mia, ITB Chief Financial Officer, reported that ITB did not buy new vehicles during the third quarter, and that the administration is responsible for vehicle maintenance. He replied that the underspending is in the Rural Development programme under ITB. He noted that the Quarterly Report highlighted only the underperformance. There was no virement by the ITB.

Mr M Nchabeleng (ANC) remarked that the Committee needed to apply for legal help to rescue ITB because it is sliding downhill. Interventions need to be put in place. He said he is tempted to request the CV of the Acting CEO and to know of her relationship to the King.

Mr Filtane remarked that it is wasteful expenditure to pay ITB employees for work not done. It is not understandable why the Board is retaining people who are not productive and not given work. He wanted to know if written permission is obtained from the traditional council for obtaining communal land if the Act is specific on what the king could do or in appointing people for leases.

Judge Ngwenya replied that a person is allocated land by a traditional leader who would then inform the ITB about the matter. Then the ITB would send an inspector to look at the land.

Mr Mnguni pointed out the ITB website has an advertisement on the conversion of PTOs.

Ms Bhengu apologised for the advertisement and stated it would be removed and they were not undermining the resolution of the Committee.

Ms Matsimbi said she did not accept the story that ITB has been given insufficient money by the Department to do its work. It is stated in the report that ITB has got money elsewhere. She asked for clarity on the R2.7m paid to beneficiaries.

Mr Mia replied that the money is used to fund projects in communities and expenses for traditional councils.

The Chairperson acknowledged the arrival of the Minister and asked her to comment.

Minister of Rural Development and Land Reform, Malte Nkoana-Mashabane, remarked that when we fought for freedom, those that had come to colonise us did not leave post-freedom. That is why we are fighting for a political freedom of a special kind. Land hunger should not find obstacles along the way. We have not arrived at where we are going. In most rural areas, traditional leaders are overseeing dry land. We need to understand that we must account for the money given by government. People are tired of not being able to access fertile land.

The Chairperson remarked that the Committee is not happy with the Quarter 3 performance and the delays in the finalisation of policies. The Committee is also not happy with the ITB changing its Annual Performance Plan after it has been presented and adopted by the Committee. She requested that the Committee staff look at all the reports that the ITB submitted over the last 24 months.

The meeting was adjourned.

Share this page:    

Durban Office

N240 Diakonia Centre • 20 Diakonia Avenue • Durban 4001 • South Africa
Tel: (031) 301 7572 • Fax: (031) 304 2823 • Website www.lrc.org.za
PBO No. 930003292
NPO No. 023-004



11 December 2017

Your Ref:

Our Ref: T Mbhense

Mr Jerome Ngwenya
Chairperson
The Ingonyama Trust
Pietermaritzburg

By email: info@ingonyamatrust.org.za;
mkhizeza@ingonyamatrust.org.za;
mxakazas@ingonyamatrust.org.za

Dear Sir:

**NOTICE ISSUED TO PERMISSION TO OCCUPY HOLDERS AND
NOTICE TO GOVERNMENT EMPLOYEES AND RESIDENTS
RESIDING ON LAND UNDER TRADITIONAL LEADERSHIP ON
INGONYAMA TRUST LAND**

- 1 We act for a number of persons who hold a Permission to Occupy (PTO) or informal land rights on land vested or registered in the name of the Ingonyama Trust. Our clients are listed in annexure **LX1**. We expect that we will also be instructed by additional persons.
- 2 Our clients act in their own interest, and in terms of sections 38 (b), (c) and (d) of the Constitution, they also act -
 - 2.1 as members of and in the interest of the group constituted by persons who hold PTO's or informal rights to land in respect of land vested or registered in the Ingonyama Trust;
 - 2.2 on behalf of members of that group who cannot act in their own names; and
 - 2.3 in the public interest.

National Office:
Cape Town:
Durban:
Grahamstown:
Johannesburg:
Constitutional Litigation Unit:

J Love (National Director), T Wegerif (Deputy National Director), K Reinecke (Director: Finance), EJ Broster
S Dass (Director), A Andrews, S Kahenovitz, WR Kerfoot, C Mafiso, M Mudarikwa, EL Roos, HJ Smith
S Samuel (Director), TC Mphahlele, A Turpin
C McConnachie (Director), LK Jolobe, S Sephton
N Fakir (Director), AF Ashton, LJD Lmache, APN Mehlo, SP Mkhize
SG Magardie (Director), MJ Bishop, G Blzos SC, O du Toit, NMR Kekena, LK Siyo, ER Webber, WO Wicomb

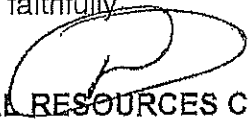
W. J

- 3 We are instructed that the Ingonyama Trust is requiring, attempting to persuade or "inviting" members of that group to "upgrade" their existing land rights into leases with the Ingonyama Trust. We have been provided with copies of notices which the Trust has caused to be published in that regard.
- 4 This conversion of existing land rights into leases will undermine the tenure security of the people affected:
 - 4.1 Whereas they currently have land rights indefinitely, the leases proposed by the Ingonyama Trust are for a fixed period of time
 - 4.2 They will be forced to pay rent, which they are not currently required to do;
 - 4.3 Should they fail to pay, they risk losing their right to the land they currently occupy and use;
 - 4.4 They are compelled to fence the properties;
 - 4.5 They may not build without the permission of the Ingonyama Trust; and
 - 4.6 If they vacate the premises, all buildings and structures that have been built on the land will belong to the Ingonyama Trust.
- 5 This conduct of the Ingonyama Trust in inducing rights-holders to enter into such leases is unlawful for a number of reasons, including the following:
 - 5.1 It undermines their rights under section 25(6) of the Constitution and the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA). The Ingonyama Trust is an organ of state. It is required to respect, protect, promote and fulfil the rights in the Bill of Rights.

- 5.2 It will result in a breach of the provisions of IPILRA.
- 5.3 It is in breach of section 2(8) of the Ingonyama Trust Act, which provides that the Ingonyama shall not infringe upon any existing rights or interests.
- 5.4 It will result in a breach of Upgrading of Land Tenure Rights Act ("ULTRA") No. 112 of 1991. Section 3 of ULTRA provides that any land tenure right mentioned in Schedule 2 of the Act shall be converted into ownership by the registrar of deeds by the registration of such erf or piece of land in the name of such person. Schedule 2 of ULTRA includes any permission to occupy any allotment within the Black Areas Land Regulations, 1969 (R.188 of 1969).
- 6 We are instructed to require that the Ingonyama Trust -
- 6.1 withdraw the abovementioned notices, in the same manner as the manner in which they were published, on or before 10 January 2018;
- 6.2 undertake not to require or attempt to persuade or "invite" any holder of a PTO or and informal right in land to "convert" or "upgrade" his or her rights into a lease;
- 6.3 undertake to provide every person who has agreed to such a "conversion" with
- 6.3.1 full information, in a manner and form to be agreed, on the consequences of agreeing to such a "conversion"; and
- 6.3.2 the opportunity to have that "conversion" reversed at no cost and without suffering any prejudice;

- 7 If the Ingonyama Trust does not comply with these requirements by 10 January 2016, we are instructed to approach the High Court for the appropriate relief. The relief sought will include interim relief and costs.
- 8 We look forward to hearing from you as a matter of urgency.
- 9 Should you wish to engage on these matters, feel free to contact us at thabiso@lrc.org.za or on 031 301 7572.

Yours faithfully


LEGAL RESOURCES CENTRE
Per: MR T MBHENSE

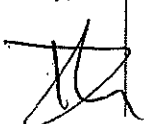
CC:

Minister of the Department of Rural Development and Land Reform
Pretoria
Email: Gugile.Nkwinti@drdlr.gov.za; nomava.otshe@drdlr.gov.za

Director-General of the Department of Rural Development and Land Reform
Pretoria
Email: Debbie.Khan@drdlr.gov.za; leona.archary@drdlr.gov.za;

Chief Director
Department of Rural Development and Land Reform
Pretoria
Email: vela.mngwengwe@drdlr.gov.za

MEC: Co-operative Governance and Traditional Affairs (KZN)
Pietermaritzburg
Email: communications@kzncogta.gov.za // Nathi.Mpungose@kzncogta.gov.za
// Karl-Heinz.Kuhn@kzncogta.gov.za

L.S.


Annexure LX1

Name	Area
Bongani Zikhali	Jozini
Msawenkosi Lifana Luthuli	Mnini
Robert Nhlanhla Luthuli	Mnini
Hamilton Luthuli	Mnini
Busani Luthuli	Mnini
Mfundisi Luthuli	Mnini
Masheki Luthuli	Mnini
Hluleka Luthuli	Mnini
Isaac Luthuli	Mnini
Lindelani Luthuli	Mnini
Lucky Luthuli	Mnini
Zakhele Luthuli	Mnini
Mlamuli Luthuli	Mnini
The Anglican Church	Umlazi
Cynthia Mngadi	Mgababa
Rural Women's Movement	KZN

Durban Office

11th Floor Aquasky Towers • 275 Anton Lembede Street • Durban 4001 • South Africa
Tel: (031) 301 7572 • Fax: (031) 304 2823 • Website www.lrc.org.za
PBO No. 930003292
NPO No. 023-004

LRC **FA 29**
Legal Resources Centre

30 January 2018

332

Your Ref:

Our Ref: T Mbhense

Mr Jerome Ngwenya
Chairperson
The Ingonyama Trust
Pietermaritzburg

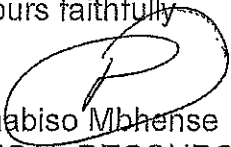
By email: info@ingonyamatrust.org.za
mkhize@ingonyamatrust.org.za
mxakazas@ingonyamatrust.org.za

Dear Sir:

**NOTICE ISSUED TO PERMISSION TO OCCUPY HOLDERS AND
NOTICE TO GOVERNMENT EMPLOYEES AND RESIDENTS RESIDING ON
LAND UNDER TRADITIONAL LEADERSHIP ON INGONYAMA TRUST LAND**

1. We refer to our letter of 11 December 2017, a copy of which is attached for easy reference.
2. We have not received any response to that letter.
3. We wish to avoid unnecessary litigation. Would you kindly advise of the following:
 - a. Whether the allegations in paragraphs 3 to 5 of our letter are in dispute, and if so, which of them are in dispute;
 - b. The response of the Ingonyama Trust to paragraph 6 of our letter.

Yours faithfully


Thabiso Mbhense
LEGAL RESOURCES CENTRE

CC:

National Office:
Cape Town:
Durban:
Grahamstown:
Johannesburg:
Constitutional Litigation Unit:

J Love (National Director) T Wegerif (Deputy National Director) K Relnecke (Director Finance) EJ Broster
S Dass (Director) A Andrews S Kahanovitz C Mathiso M Mudarikwa EL Roos
S Samuel (Director) TC Mbhense A Turpin
C McConnachie (Director) LK Jolobe S Sephton
N Fakir (Director) AF Ashton LJ Llmacher SP Mkhize
SG Magardie (Director) MJ Bishop G Blzos SC, C du Tolt NM Kekana P Mdakane Y Ndoko ER Webber WC Wicomb



Minister of Rural Development and Land Reform

Pretoria

Email: Gugile.Nkwinti@drdlr.gov.za; nomava.otshe@drdlr.gov.za

Director-General of Rural Development and Land Reform

Pretoria

Email: Debbie.Khan@drdlr.gov.za; leona.archary@drdlr.gov.za

Chief Director

Department of Rural Development and Land Reform

Pretoria

Email: vela.mngwengwe@drdlr.gov.za

MEC: Co-Operative Governance and Traditional Affairs (KZN)

Pietermaritzburg

Email: communications@kzncogta.gov.za; Nathi.Mpungose@kzncogta.gov.za;

Karl-Heinz.Kuhn@kzncogta.gov.za

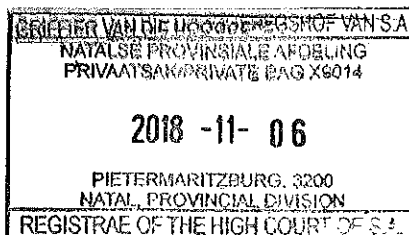
L.S.
DK

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL PROVINCIAL DIVISION, PIETERMARITZBURG**

CASE NO:

In the matter between:

COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION	First Applicant
RURAL WOMEN'S MOVEMENT	Second Applicant
HLETSHELWENI LINA NKOSI	Third Applicant
BONGANI ZIKHALI	Fourth Applicant
ZAKHELE MALCOLM NKWANKWA	Fifth Applicant
HLUPHEKILE BHETINA MABUYAKHULU	Sixth Applicant
MABONGI GUMEDE	Seventh Applicant
KN	Eighth Applicant
SM	Ninth Applicant
and	
THE INGONYAMA TRUST	First Respondent
THE INGONYAMA TRUST BOARD	Second Respondent
THE MINISTER OF RURAL DEVELOPMENT AND LAND REFORM	Third Respondent



SM.

[Signature]

**THE MEC FOR CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS, KWAZULU-NATAL**

Fourth Respondent

**KWAZULU NATAL PROVINCIAL HOUSE OF
TRADITIONAL LEADERSHIP**

Fifth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned,

SIZANI NGUBANE

do hereby make oath and say:

- 1 I am an adult female director of the second applicant, the Rural Women's Movement ("**RWM**"), resident at Greener Pastures Farm, District Road No. 354, Lynnfield Park, Umlaas Road, KwaZulu Natal.
- 2 The RWM's head office is at Greener Pastures Farm, District Road No.354, Lynnfield Park, Umlaas Road, KwaZulu-Natal.
- 3 I am duly authorised to make this affidavit on behalf of the second applicant herein. I attach the resolution of RWM's committee

SPM.

[Signature]

authorising RWM to bring these proceedings and also authorising me to sign this affidavit on behalf of RWM as annexure **RWM 1**.

- 4 The contents of this affidavit are true and correct and, save where the contrary appears from the context, are within my personal knowledge and belief. Any legal submissions made in this affidavit are made on the advice of my legal representatives.
- 5 This application involves the Ingonyama Trust ("**the Trust**") and the Ingonyama Trust Board ("**the Board**" or "**the ITB**")'s undermining the security of tenure of residents and occupiers of Trust-held land in KwaZulu-Natal, and extorting money from them, by unlawfully compelling them to conclude lease agreements and pay rental to the Trust to continue living on the land. Their action has transgressed the constitutional rights of thousands of occupiers of Trust-held land.
- 6 The first to ninth applicants have brought this application to obtain a relief for themselves, and also to secure a solution for all occupiers of Trust-held land who find themselves in a similar situation.
- 7 This affidavit is structured as follows:

- 7.1 First, I describe RWM and its interest in these proceedings, including the basis for its standing. I will also describe my own experience;

SPM.

[Signature]

7.2 Second, I lay out the evidence that demonstrates that the Trust, the Board or ITB has transgressed the constitutional rights of thousands of occupiers of Trust-held land; and

7.3 Third, I deal with the issue of costs.

I RWM

8 The Rural Women's Movement ("**RWM**"), is an independent rural women's Non-Profit Organization ("**NPO**"), which is registered with the Department of Social Development [**"Registration # 031-695-NPO"**] and based in KwaZulu-Natal. The organisation was initiated in 1990 and officially launched by 250 rural women in November 1998. The RWM has extensive experience in land issues, poverty relief and the realisation of socio-economic rights in rural areas.

9 The RWM is recognized as a significant institution by its peers and other actors working in the land and custom sector. The RWM is one of five organizations, internationally who won the Nelson Mandela/Graca Machel Innovation Award in 2005. Its director (myself) was a Finalist at the Women of the Year Award in 2007. The RWM was awarded a Special Commendation by the Southern Africa Trust in 2010, in recognition of its innovative education work to promote women and girls' rights, the RWM director was awarded the 2011 International Human Rights Training Program Ruth Selwyn Bursary in Empowering Women and Girls in Montreal, Canada.

SPU.



- 10 In 2017, I was awarded the 2018 Woman of Distinction Award by the NGO Committee on the Status of Women in New York. This was for my work with the Rural Women's Movement. The NGO Committee on the Status of Women represents over a 100 NGOs and works closely with the UN Commission on the Status of Women. During this period, I was also nominated for the Jaime Brunet Award by the International Alliance of Women in Greece and the Africa Food award by the Women's International News Gathering Services based in Canada.
- 11 I have in excess of thirty years of experience working with women within the poorest and most remote rural communities in KwaZulu Natal. I have, in particular, focussed on their development in the context of their access to land and land rights.
- 12 During 1992 and 1993, I was employed as the KwaZulu-Natal Provincial Co-ordinator of the Women's National Coalition ("WNC"), of which I was one of the founding members. Whilst Provincial Co-ordinator of the WNC, I participated in research on *inter alia* the land rights of rural women which eventuated in the formulation of the Women's Charter for Effective Equality. I also co-founded the Midland's Women's Group in 1993 and the RWM in 1998. The RWM is a land rights organization which works towards developing land and inheritance rights of rural women in KwaZulu-Natal.
- 13 During February 1995 to January 2004, I was employed as the Gender Co-ordinator of the Association for Rural Advancement



("AFRA"). AFRA is a KwaZulu-Natal-based independent, land rights, non-governmental organization ("NGO") which works with members of formerly disadvantaged groups, including rural women, in KwaZulu-Natal whose land rights have been undermined or rendered insecure.

- 14 During my employment with AFRA, I liased extensively with rural women's groups in KwaZulu-Natal concerning problems that rural women encountered as a result of their lack of security of tenure in land.
- 15 In March 2003 I was the leader of an AFRA team that convened a workshop for rural women on the Communal Land Rights Bill ("the Bill") in KwaZulu Natal. The workshop was attended by approximately 103 delegates from 14 different rural areas in KwaZulu Natal.
- 16 Some of the women present gave personal testimony on their problems of insecurity of land tenure. They spoke, in particular, of being evicted from their homes by their brothers or other family members after the death of their parents or their husbands
- 17 As an NGO, RWM depends on donor funding. It needs to use funding in the most efficient and effective way possible to achieve its goals. Litigation is particularly costly and, die to funding constraints, RWM is not able to bring individual applications on behalf of the occupiers of the Trust-held land. As a result, RWM took the decision to bring this systemic application.

SPM.

SP

18 RWM brings this application in several capacities:

18.1 First, in its own interests. RWM as an organisation has an interest in the enforcement of the Interim Protection of Informal Land Rights Act 31 of 1996 and section 25 of the Constitution of the Republic of South Africa;

18.2 Second, in terms of section 38(b) of the Constitution, RWM bring it on behalf of all occupiers of Trust-held land who are facing the situation that third to thirteen applicants are facing, who cannot act in their own name because they lack the funds to hire a lawyer to challenge the action of Ingonyama Trust;

18.3 Third, RWM acts in the interest of the class of occupiers of Trust-held land who are facing the situation that third to thirteen applicants are facing. This form of standing is recognised in section 38(c) of the Constitution;

18.4 Fourth, RWM acts in the public interest under section 38 (d) of the Constitution. It is in the public interest generally that the Ingonyama Trust must not infringe the constitutional rights of the occupiers of Trust-held land. It is in the public interest that the security of tenure is not infringed.

19 RWM has the necessary standing to bring this application together with other applicants.

II TRANSGRESSION OF CONSTITUTIONAL RIGHTS

SPM.

SN

- 20 I came to hear about Ingonyama leases issued to individuals for residential sites between 2015 and 2016. I remember a workshop in the Zululand district in which different women complained of receiving accounts for rental arrears from Ingonyama Trust Board's lawyers for that they simply could not pay. They were extremely anxious about having outstanding accounts, and worried what the consequences would be. They said that when they had signed applications for tenure rights, it had not been explained to them that these were lease agreements requiring the annual payment of rent and which escalates with 10% annually. One woman, who is a widow, complained that an employee of the Ingonyama Trust Board had denied her permission to build a garage for a car on her own property now that they held a lease over it.
- 21 When I went to a workshop at Jozini, I was told that people there were directed to the Inkosi's place by their induna only to arrive to find long queues. They joined the queues and were helped by young women who took their details and asked them to sign their names. They were told that their details would be sent to Pietermaritzburg. They insist that they had no idea that this would result in rental statements or lease agreements.
- 22 People in Jozini are extremely fearful about the consequences of the arrears statements that they receive. Most of them are struggling to make a living and simply cannot afford the rental amounts demanded.

SPM.

SH

In order to make ends meet, quite a few women rent out rooms in their houses to teachers or people from elsewhere who have local jobs. They depend on the rental from these rooms to buy food and pay school fees. However, amakhosi and izinduna advise them that since they are running businesses their residential leases must be converted to business leases, and they must pay over a portion of the rental they receive to the Ingonyama Trust Board in addition to their own rent. This has made people extremely anxious and scared. They have no other means of earning a living. They are not sure whether they must evict their tenants, or how they can keep them secret.

23 I also met a group of young women and men who wanted to start a farming business on an empty piece of land. They are trying to make a future for themselves in a context where it is impossible for them to get jobs. But they were told they would have to pay the Ingonyama Trust Board R250 000 per annum for the land they had identified. This is absolutely beyond their means and has made them despair about their dreams of bringing vacant land into production.

24 I met a woman from Bergville in 2014. She had started a small crèche, but she was told that in order for her to continue she needed to take out a lease with the Ingonyama Trust Board. She now gets yearly statements which she cannot pay and lives in fear that her crèche and her house will be taken away from her. Many of the leases that I know about are in the names of individual women (widows). This

SPH.

sk

is because of the high numbers of unmarried women with families in KwaZulu-Natal. In many families there are simply no adult men to sign the leases.

- 25 I have also heard of some cases in which the Ingonyama Trust Board or the inkosi insists that the lease must be in the name of whatever man they find on the property, because they assume that a man must always be the household head. This creates great difficulties if the man is just a boyfriend of the woman who owns and has established the property.
- 26 In 2015, the RWM identified an area of 110 hectares that we wished to use for a commercial farming project involving women and girls. The land was in Mpophomeni and it was vacant. We negotiated a reduced rental of R3000 for the first year with a representative of the Ingonyama Trust Board. However, before we could even begin using the land we saw that people were laying out plots. We reported this to the Ingonyama Trust Board offices, explaining that a certain Induna Zuma was illegally allocating the land and selling plots to people from outside the local community. The Ingonyama Trust Board did nothing and soon the land was fully occupied. We gave up our dream of farming there and we were never refunded our initial rental of R3000 that we had paid.
- 27 I previously made an expert affidavit in the *Tongoane* litigation that successfully challenged the constitutionality of the Communal Land

SPH.



Rights Act, 2004 (CLRA). The gist of my evidence was that the CLRA, in seeking to upgrade 'old order rights', such as customary allocations and Permissions to Occupy (PTOs), inadvertently entrenched past gender discrimination, because, officially, these old order rights had been allocated exclusively to men. The Bill had been amended to address this problem by deeming old order rights to be held by all spouses in a marriage. In my affidavit I pointed out that while this was an improvement, it nevertheless excluded all women family members who are not wives, such as sisters, aunts and widowed mothers.

- 28 The Ingonyama Trust leases have the effect that land which is a family asset is registered in the name of one person to the exclusion of other family members. Where this is a man it has a direct negative impact on the tenure security of female members of the family.
- 29 Historically, under customary law, parts of the land were used primarily by women and in many instances, women accessed arable land directly. Unmarried women and widows were also able to acquire areas of arable land directly and in their own right.
- 30 However, this practice was consistently undermined by colonial and apartheid laws which provided that land could be allocated only to the male head of the family. Pursuant to this injunction, Native Commissioners persistently vetoed allocations of land directly to women. Hence, over time, allocation of arable land to women stopped

SPU.



and it was only allocated to men. Moreover the Black Areas Land Regulations (Proclamation R188 of 1969) provided that Permission to Occupy (PTO) certificates should be issued only in the name of the male household head, ignoring the rights of other family members in land.

- 31 This notwithstanding, women continued to occupy and use the land. It is, therefore, not surprising that in most rural areas that I have worked in, the cultivation of arable land remains the prerogative of women. Despite the fact, however, that women are the primary users and occupiers of rural land, old order rights held by men undermine the status of use and occupation rights held by women within family-based systems of land rights in extended families under customary law.
- 32 When customary and PTO rights are converted into leasehold registered in the name of a man, the consequences of women's past exclusion is not only formalised but their vulnerability is increased by potentially exposing them to eviction from the land. The leases issued by the Ingonyama Trust Board therefore undermine, rather than enhance, women's security of tenure.
- 33 In addition to a denial of their legal status, women may also find a commensurate decline in their social and bargaining position in the household and in the community. This is particularly important because the family-based nature of land rights is deeply embedded in

SPH.



customary law and is likely to persist just as it has in the past. However registering rights to one person alters the power dynamics within families, and severely weakens the status and ability of those excluded to assert or secure their rights within family decision making processes. Single women will, in this respect, be in an even weaker position than before to assert their rights in family held land. If they are to encounter conflict with the male holder, or his wife they will have little option but to leave the household and find accommodation elsewhere. As pointed out above, I have come across various examples of sons and their wives evicting the widowed mother and unmarried sisters from the natal home, because of internal family problems.

- 34 In my work with rural women over the past 30 years, I have observed that many women choose to have children outside of marriage. I have also observed that the social stigma of not marrying is not nearly as bad as it used to be. These days, mothers often advise their daughters not to marry because of the problems that come with marriage. I too have been advised by my mother not to marry as both she and her widowed stepmother were evicted from their respective marital homes. Therefore, mothers often advise their daughters that their futures will be more secure if they establish themselves independently with their children.

SPH.

W

- 35 Articles by Dorrit Posel and Stephanie Rudwich¹ and by Christine Mhongo and Debbie Budlender² document the steady decline in marriage rates among black women in South Africa. This has resulted in increasing numbers of single women heading households in KwaZulu-Natal in particular.
- 36 I am advised that the right to equality as provided for in section 9 of the Constitution is a right to substantive equality. Substantive equality requires, in the context of securing land rights for women, an examination of their actual, social and economic conditions and their relationship to systematic patterns of domination within society. In this regard, I am advised that the primary purpose of the equality provisions, in the Constitution, is to recognise the social and economic disparities between groups and individuals and to seek to eliminate the sources and effects of past and present disadvantage and discrimination.
- 37 A substantive understanding of equality in this regard ought to recognise that women, and more especially rural women, are subject to inequality which is deeply structural and has become embedded in the very way that African societies are organised as a direct result of apartheid, its laws and value systems.

¹ Reference Marriage, Land and Custom

² Reference Marriage, Land and Custom

SPM.

BN

38 The action of Ingonyama Trust perpetuates the ideology of male dominance. Furthermore, instead of realising the security of tenure of thousands of occupiers of Trust-held land, the Ingonyama Trust is infringing them.

39 In the circumstances, this court has wide powers to grant an appropriate remedy. Given the constitutional dimension of the case, it has all the powers available to it in section 38 of the Constitution to grant "appropriate relief" and the powers in section 172 of the Constitution to make an order that is "just and equitable". As such, I request this court to grant an order that the applicants are seeking in their notice of motion.

III COSTS

40 I submit that the general rule that costs follow the result should be followed in this case. The position of the Applicants and the people they represent, combined with the reprehensible conduct of the Ingonyama Trust demands that Applicants receive their costs if they are successful.

41 However, if the Applicants are unsuccessful, each party should bear its own costs. The Applicants have brought this case to enforce the

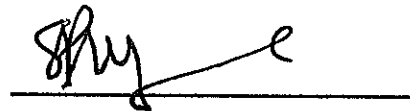
SPU.

↓

constitutional rights of the occupiers of Trust-held land. They should not have to pay the respondents' costs if they are unsuccessful.

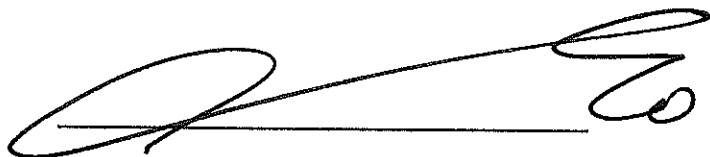
IV CONCLUSION

42 I submit that a case has been made out for the relief sought in the notice of motion to which this affidavit is attached and the Applicants pray for an order in its terms.



DEPONENT

I, **CERTIFY** that this affidavit was signed and sworn to before me at PIETERMARITZBURG on this the ^{21st} day of ~~OCTOBER~~ 2018, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God."



COMMISSIONER OF OATHS

Full names:

Capacity:

Address:

AUBREY BONGANI ZENZELE NGCODO
COMMISSIONER OF OATHS
ATTORNEY & CONVEYANCER
190 HOUSEN HAFEEJEE STREET
PIETERMARITZBURG, 3201
SOUTH AFRICA



EXTRACTS OF THE MINUTES OF THE COMMITTEE OF RURAL WOMEN'S
MOVEMENT (RWM)

30 JULY 2018

Whereas:

1 RWM has discovered that:

1.1 Since 2007, and possibly earlier, the Ingonyama Trust ("**the Trust**") and the Ingonyama Trust Board ("**the Board**" or "**the ITB**") have been undermining the security of tenure of residents and occupiers of Trust-held land in KwaZulu-Natal, and extorting money from them, by unlawfully compelling them to conclude lease agreements and pay rental to the Trust to continue living on the land.

1.2 In compelling and inducing residents to conclude lease agreements, the Trust and the Board have –

1.2.1 violated the customary law and statutory "Permission To Occupy" ("**PTO**") rights of residents and occupiers living on Trust-held land, which are protected by the Constitution and by Act of Parliament;

1.2.2 assumed and exercised land administration powers that they do not have, but which are vested in the third and fourth respondents, the Minister of Rural Development and Land Affairs ("**the Minister**") and the MEC for Cooperative Governance and Traditional Affairs, KwaZulu-Natal ("**the MEC**"); and



- 1.2.3 induced and required residents and occupiers to sign lease agreements on the basis of false and incomplete information and without giving notice of the material terms of the lease agreements, including rental.

And as a consequence thereof:

- 2 In order to address the problem of undermining the security of tenure of residents and occupiers of Trust-held land in KwaZulu-Natal by the Trust, the Board or ITB, RWM intends launching proceedings in the High Court in Pietermaritzburg compelling the Trust, the Board or ITB to cancel any residential lease agreement concluded between informal land rights-holders and the Trust.

It is hereby resolved that:

- 3 For the purposes of the abovementioned proceedings the Committee of RWM appoint Sizani Ngubane to take all necessary steps to pursue such proceedings on behalf of RWM. Without limitation, the Committee of RWM hereby authorises Sizani Ngubane to instruct the Legal Resources Centre to represent RWM and the occupiers of Trust-held land whose rights have been undermined by the Trust, the Board or ITB. The Committee of RWM further authorises Sizani Ngubane to sign all affidavits and documents and to take all other steps necessary pertaining to the said proceedings.



- 4 We, the Undersigned hereby confirm that the above resolution was adopted at RWM meeting on the 30 day of July 2018.

Prisca Shabalala

Prisca Shabalala– Chairperson of the RWM Committee

SP

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL PROVINCIAL DIVISION, PIETERMARITZBURG**

CASE NO:

In the matter between:

COUNCIL FOR THE ADVANCEMENT OF THE

SOUTH AFRICAN CONSTITUTION

RURAL WOMEN'S MOVEMENT

HLETSHELWENI LINA NKOSI

BONGANI ZIKHALI

ZAKHELE MALCOLM NKWANKWA

HLUPHEKILE BHETINA MABUYAKHULU

MABONGI GUMEDE

KN

SM

and

THE INGONYAMA TRUST

THE INGONYAMA TRUST BOARD

**THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORM**

**THE MEC FOR CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS, KWAZULU-NATAL**

**KWAZULU NATAL PROVINCIAL HOUSE OF
TRADITIONAL LEADERSHIP**

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

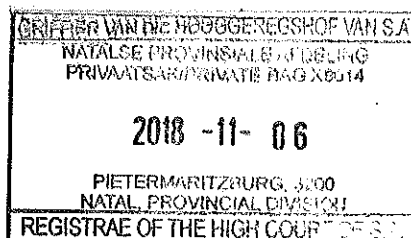
Fifth Applicant

Sixth Applicant

Seventh Applicant

Eighth Applicant

Ninth Applicant



First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

H. L. N. 1

THIRD APPLICANT'S SUPPORTING AFFIDAVIT

I, the undersigned,

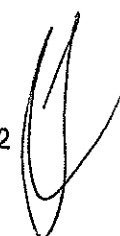
HLETSHELWENI LINAH NKOSI

do hereby make oath and say:

1. I am a 62 year-old female, residing at Portion 6 of the Farm Reserve No. 16, Maphaya Village, Jozini, KwaZulu-Natal. I live within the jurisdiction of the Ntsinde Traditional Council.
2. The facts set out herein are within my personal knowledge, unless the context indicates otherwise, and are, to the best of my knowledge and belief, both true and correct. Where I refer to information conveyed to me by others, I believe it to be true and correct.
3. I confirm that I seek the relief sought in the notice of motion, on the grounds set out in the founding affidavit deposed to by Parmananda Naidoo.
4. I approach this court on the following bases:
 - 4.1. In my own personal interest in terms of section 38(a) of the Constitution, as a person that has had a lease concluded over my land;
 - 4.2. On behalf of the minor children living on this land with me, in terms of section 38(b) of the Constitution; and

H. L. M.

2



- 4.3. In terms of section 38(c) and (d) of the Constitution, in the interest of similarly placed people living on land administered by the Ingonyama Trust who are concluding lease agreements with the Trust to the detriment of their rights, and in the public interest.

PERSONAL HISTORY

5. I was born in Ngotshe (Louwsburg), my father was Nkuhlelela Nkosi and my mother Chazile Nkosi. I am the last born at home, with an older brother and older two sisters. My father had two other wives, MaSizane was his first wife, and had a son and a daughter; my father's second wife was MamThilezi who had a son and two daughters.
6. When I was growing up my family were labour tenants who lived on a very large piece of land in Ngotshe. This land was on a farm owned by white farmers who recognised traditional leadership. My father owned over a hundred heads of cattle that lived on the farm with us and grazed with the cattle of other families around us. We also farmed a lot of different products. We ate most of what we harvested, or shared it with the other families. We also sold some maize and the milk from the cows to help with money.
7. My whole family worked on the farm for a set number of months, usually on a six month rotation. The farmer would come and a boy and a girl from the family would be sent to go to the main farm to work. If you were not working on the farm, you would have to be working in the forest.

H. L. M. 3 

8. My family left the farm in 1974. This was after my father died in 1973. Our leaving the farm was precipitated by my initial experience working at the farmhouse. This was in 1972, I had broken a glass in the house and the farmer had beaten me up very badly as a result. My father decided then and there that something like this would never happen again and resolved to leave the farm and find us a home somewhere else. My father was very sick at the time, so my brother was tasked with finding us somewhere else to go. My father died shortly before we found this place and moved.
9. When my brother came here – to Maphaya Village in Jozini – he went to speak to the headman in the community. The headman then took my brother to the incumbent *induna* (headman), it was Nduna Mzileni at the time. We were given a residential plot as well as a large plot for farming. I do not know the exact process that was followed.
10. We all left the farm: my mother and sisters; my father's other two wives and their children; my brother and his 3 wives; and all the children from the various families. We also came with all my father's cattle, although they were much less than before and they have since mostly died. A total of 12 structures were built on the homestead that we shared. Each unit had a house to live in as well as a kitchen.

H. L. H



11. I moved out of my family's homestead and onto the plot that I am currently living on in 2005, with my sister Doris and her young daughter. I spoke to my brothers and the other men on the homestead about getting this plot with my sister. When we moved here we were initially only able to build a two-room flat to live in, but over the years we have added more homes. In addition to the initial two-room flat, I built a six-room house and a two-room flat, and my sister added a five-room house.
12. My sister and I also had ploughing fields allocated to us. This land was, however, taken away by the induna for other people to live on. We had already spent about R3500 to clear the ground so we could farm. The chief knew about the induna taking this land – he told us that if he wants to, he can take the land. Tradition requires that we be given another plot elsewhere to replace what was taken, but this was never done and we never got back the money we spent on the land.
13. My sister died in 2006 and now I live here with her four children. My own children have since died. My sister had four children, Bongani, Buhle, Sne, and Fan Fan. At the moment only Bongani is working, but his work does not pay him much. Buhle does not work and has two children, Senamile who is five years old and Olwethu. Bongani has five children: Sethu, Anele, Sanele, Awanda and Asavela. The children who go to school are Anele, Sanele and Awanda. We pay about R300 for school fees; also spending R350 on transport to school for each of them. I fell ill some time ago and now I receive a R1600 disability grant that I use to purchase groceries at home.

H.L. H



14. All of the money that comes into this home goes to buying groceries for everyone so they can eat, this usually amounts to R1300. We get some help from a little money from the grandchildren's father for school and transport.

LEASES

15. In 2011, I formed part of the traditional council. During one of our meetings the chairperson, who at that time was Mr Myeni, announced that Permissions to Occupy ("PTOs") were no longer valid and that community members would now have to conclude leases with the Ingonyama Trust. He said that this would be better for everyone because these leases could be used to borrow money from the bank, and that you can now show your rights in the land and that you are not going anywhere. Mr Myeni said that it would be even better for people that want to have a business.
16. The induna were instructed to call community meetings to inform their community members of this requirement to conclude a lease. They were told to inform people that the instruction came straight from the Ingonyama Trust that there must now be leases.
17. My induna called a community meeting to tell people that homes are now required to have leases. The induna told the community members at the meeting that the Ingonyama Trust now required that all residents have leases; everyone would be required to sign a lease in relation to their land.

H.L. 17 6



18. From all of this, I felt that it was necessary for me to conclude a lease. I was first required to go the Traditional Council with my identity document. But when I tried to conclude the lease in my name I was told that the Ingonyama Trust does not allow a woman to conclude the lease on her own, and that I needed a male relative to conclude it on my behalf. I did not understand why this was the case. Since there was no male relative that could do it, they told me that the man who was my partner at the time would have to conclude the lease in his name on my behalf.
19. I explained to the Traditional Council that this land did not belong to my partner but was mine. I told them my sister and I had built all these houses on the land ourselves with our own money – my partner had nothing to do with the land and all the work we had done on it. The Traditional Council and the induna resolved that I could sign the lease alongside my partner, but the lease would still be made out in his name.
20. I then went to the Traditional Council with my partner, Zakhile Napoleon Khanyile, to conclude the lease agreement. When we got there we were not given the opportunity to thoroughly read the forms we were given. The only information we were given was that this was a form to apply for a lease. Nothing further was explained to us about what the form said. A woman who works at the Traditional Council's offices filled out the form and instructed us to sign it.
21. We were then told to go to the municipal offices with the signed form to complete another form. When we got to the municipality, an official took the

HLH



documents from the Traditional Council, my identity document and my partner's identity document, and completed another form for us. We were instructed to sign these forms as well, with no explanation about the purpose and contents of the form. We then took this pack of forms back to the Traditional Council, where we were told the forms would be sent to the Ingonyama Trust for processing. They said the lease would arrive in the mail in due course.

22. Before the lease came in the post, a representative of the Ingonyama Trust came to survey and measure out my plot to determine the amount the rent would be. When the official was there, he told me that my land was too big and that it would mean that I had to pay more rent. He suggested that I decrease the size of my plot so that I would not pay an excessive amount in rent.
23. The first time I found out how much the rent would be was when the lease eventually arrived in the mail with the rental amounting to R1680. When I got the lease I saw that the Ingonyama Trust had actually made it a commercial lease, this lease was meant to run from 1 April 2011 until 31 March 2051. I have attached a copy of this lease, marked "HLN 1".
24. A new residential lease, also in Zakhile my partner's name, was recently reissued. This lease commenced 1 February, 2014 and will run until 31 January 2054. I have attached a copy of this lease, marked "HLN 2". The rent in this reissued lease is R1600, I do not know why there is a difference in the rental amounts.

H.L.H

A stylized handwritten signature, possibly reading 'H.L.H', with a large, sweeping flourish extending upwards and to the right.

25. I have not paid any rent since the first lease arrived. I have received letters from the Ingonyama Trust addressed to my partner saying that I am in arrears and that I must pay. I have not paid the rent because I cannot afford to pay it — the little money that comes into our household is used to take care of the children. Also, the lease is not in my name and my rights are not protected like they said they would be. When I first took steps to conclude a lease I did not fully understand what was going on. But I now see how much it has weakened my rights.
26. Before the lease was concluded none of the important provisions were explained to me. Nothing was explained to me about the 10% increase or that if payment is not made I could lose my land. When I went to the office of the Traditional Council and later to the municipality, I was made to sit there while an official filled out the forms and I signed where I was told to sign. I have heard numerous accounts from other members of the community that this was their experience of concluding the lease as well.
27. I signed the lease because they said if you do not sign a lease your land will be taken, and I did not want to lose my land. I also wanted to be able to borrow money and they said I needed a lease to be able to borrow money so I could start my business.
28. I went to my brothers and the induna for this land so my sister and I could live peacefully. As per tradition I paid the once off fee that is required. Now they want me to pay the Ingonyama Trust every year. I do not even understand

H. L. L. 19

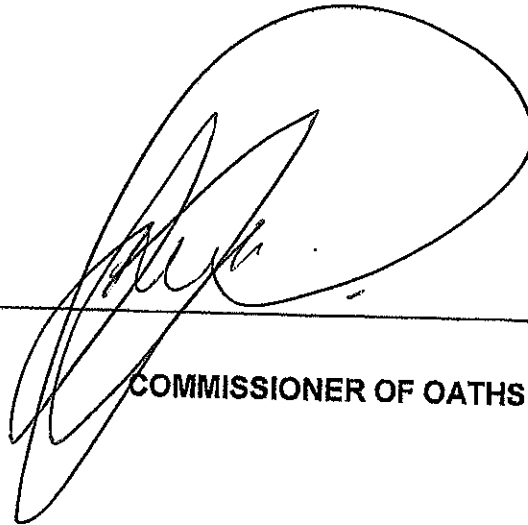
where this money from the leases is going because it is not going to the community. I do not understand why the Ingonyama Trust is coming into our communities and requiring these things of us.



HLESHWENI LINAH NKOSI

The Deponent has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to or before me at Jozini on this 22nd day of October 2018 the regulations contained in Government Notice No. R1258 of 21 July 1972, having been complied with.

THOMAS IGNATIUS HERMANUS WESSELS
 COMMISSIONER OF OATHS
 PRACTISING ATTORNEY-RSA
 166 PIET RETIEF STREET
 PONGOLA 3170
 TEL: 072 160 4406 FAX: 086 244 7014



COMMISSIONER OF OATHS

TAG "C" "HLN 1"
363

INGONYAMA TRUST BOARD – LONG -TERM LEASE OF PREMISES

THE SCHEDULE

1688 It

Item 1	The Lessee	Mr Zakhele N. Khanyile of P.O. Box 393 Jozini 3969, ID No. 6002205938087, he being duly authorised.
Item 2	The Premises	All that portion of Portion 6 of the Farm Reserve No.16 No.15836 HV in extent 0.47ha (more or less) as shown on the attached plan.
Item 3	The Rent (subject to Clause 4.2)	R1680.00 (one thousand six hundred and eighty rand) per annum.
Item 4	Escalation Percentage	10% per annum.
Item 5	Commencement Date	1 st day of April, 2011
Item 6	Termination Date	31 st day of March, 2051
Item 7	Applicable Traditional Council	Ntsinde
Item 8	Use of Premises	Private Residence

Please initial here.

H.E. NKOSI
Z.N. KHANYILE

H.L.H

SMZ
H.L.H

THE LEASE

1. DEFINITIONS

- 1.1 In this lease, unless the context clearly indicates other wise;
- 1.1.1 use of a word denoting the singular will include the plural and *vice versa*;
- 1.1.2 use of a word denoting one gender will also mean the other genders, and
- 1.1.3 the following words will have the meanings given:
- 1.1.3.1 "Lessor" will mean the Ingonyama Trust, established by section 2(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994 (as amended);
- 1.1.3.2 "Lessee" will mean the person described in Item 1 of the Schedule;
- 1.1.3.3 "premises" will mean the premises described in Item 2 of the Schedule;
- 1.1.3.4 "Schedule" will mean the Schedule at the beginning of this lease; and
- 1.1.3.5 "improvements" will mean any fixed structure of any kind whatsoever erected on the premises.
- 1.2 The Schedule and Annexures "A" "B" and "C" if applicable, will form an integral part of this lease.

2. THE LEASE

- 2.1 The Lessor hereby lets to the Lessee who hereby leases the premises upon the terms and conditions stated in this lease.

3. THE PERIOD

- 3.1 This lease shall, notwithstanding the date of signature hereof, be deemed to commence on the commencement date stated in Item 5 of the Schedule and shall, subject to the provisions of this lease, terminate on the termination date stated in Item 6 of the Schedule.
- 3.2 The Lessee may at least 180 days prior to the termination date, in writing apply to the Lessor for an extension of this lease for such further period as the Lessee may in such application indicate, either upon the same terms and conditions as stated in such application or upon modified terms and conditions as stated in such application.
- 3.3 The Lessee shall, together with any application referred to in clause 3.2, submit the written consent of the traditional council referred to in Item 7 of the Schedule, to the extension of this lease as applied for.
- 3.4 The Lessor shall, prior to the termination date, in writing advise the Lessee of its acceptance or rejection of the application for such extension, or it may notify the Lessee of any terms and conditions differing from those proposed by the Lessee in the application for extension, subject to which it is prepared to extend this lease.
- 3.5 The Lessee shall, prior to the termination date, if the Lessor has submitted terms and conditions differing from those proposed by the Lessee in the application for extension subject to which it is prepared to extend this lease, in writing, notify the Lessor if he accepts or rejects such modified terms and conditions.
- 3.6 In the event of the Lessor accepting the application for an extension of the lease made in terms of clause 3.2, or in the event of the Lessee accepting the modified terms and conditions submitted by the Lessor as contemplated in clause 3.5, then this lease shall be deemed to have been extended in accordance with the terms and conditions so agreed upon and the correspondence exchanged between the parties as contemplated herein shall be deemed to be an integral part of this agreement unless the parties agree to record such extension and the terms and conditions applicable thereto in writing over their signatures.

Please initial here

H. E. NIKOSI
Z. N. KHANSILE

H. L. L

365

3.7 The Lessor agrees and undertakes to agree to an extension of this lease as applied for in terms of clause 3.2, unless it has a compelling reason not to do so, which, without limiting the generality of the foregoing, may include the failure of the traditional authority to consent to such extension, the adverse behaviour of the Lessee during the initial period of the lease and lapses in the timeous payment of rent.

3.8 The lessee shall be entitled at any time to terminate this lease on 12 months written notice to the Lessor.

4. THE RENTAL

4.1.1 the Lessee shall pay rental to the Lessor of the amount stated in Item 3 of the Schedule, and any additional rent as may be provided in the schedule and Annexure B hereof.

4.1.2 The rental due for a financial year will be invoiced once the lease is finalised and will be invoiced (for the full year) at the beginning of a financial year for subsequent years.

4.2 The rental payable in terms of this lease shall escalate annually on the annual anniversary of the commencement date, or if the commencement date is a date other than the 1st day of a month, on the 1st day of the month immediately following the annual anniversary of the commencement date, by an amount equal to the escalation percentage set out in Item 4 of the Schedule.

4.3 Notwithstanding the provisions of Clause 4.2, the Lessor shall be entitled, in its discretion, to require the Lessee to pay a fair market rental in respect of the premises subject to the following:

4.3.1 the Lessor may only exercise such entitlement on written notice ("the rental adjustment notice") given no less than 60 days prior to the expiry of each 5 year period of this agreement and such new fair market rental shall take effect on the expiry of such 5 year period;

4.3.2 for the purposes of calculating the fair market rental of the premises it is recorded that the improvements have been effected by the lessee at its own cost and the rent shall accordingly reflect this;

4.3.3 the parties shall endeavour to agree a fair market rental for the premises but failing agreement in writing within 60 days of receipt of the rental adjustment notice then such fair market rental shall be determined by an independent valuer ("the Valuer");

4.3.4 the Valuer shall be a suitably qualified valuer based in KwaZulu-Natal agreed on by the parties, but failing written agreement within 7 days of request by either party, shall be a person nominated by the Chairman or his Deputy for the time being of the S A Institute of Valuers, KwaZulu-Natal branch;

4.3.5 the Valuer shall act as an expert and not as an arbitrator, his determination of the rental shall be final and binding and his costs and charges shall be borne by the parties in equal shares;

4.3.6 thereafter, the Lessor shall be entitled to, and the Lessee may initiate a review of such fair market rental upon the expiry of each 5 year period of this lease calculated from the date on which the fair market rental in respect of the premises took effect in terms of clause 4.3.1, by giving written notice to the other party no less than 90 days prior to the expiry of such 5 year period, and the provisions of clauses 4.3.1 to 4.3.5 shall otherwise apply (with the changes required by the context);

4.3.7 the Lessee shall be entitled to terminate this lease by giving the Lessor no less than 3 months' written notice within 90 days of the date on which the fair market rental first takes effect in terms of clause 4.3.1 or the date on which any adjustment to the fair market rental takes effect pursuant to clause 4.3.6, as applicable.

Please initial here

H. E. Mkesi
Z. N. KHANYILE

OMZ

H.L. 4

H.L. 4



366

4.4 The rental shall be paid in advance.

4.5 The rental shall be paid, without deduction or demand and on due date, to the Lessor either:
4.5.1 at its office at 188 Hoosen Haffjee Street, Pietermaritzburg, or
4.5.2 by depositing the rental to the Lessors Banking Account at the First National Bank, Branch Code 257355 Account Number 62004600038 (Ref No. ZNKHANYILEXXX001688).

4.6 The Lessee shall be entitled to determine to which place referred to in Clause 4.5 the rental shall be paid, but the onus shall be on the Lessee to ensure that such rental reaches the Lessor in a manner enabling the Lessor to immediately utilize the moneys so received by it for its own use and benefit.

4.7 Notwithstanding the provisions of Clause 4.5, the Lessor may from time to time, in its sole discretion, substitute another address or bank account, as the place for the payment of rental, by giving the Lessee at least one months written notice thereof.

4.8 The rental payable in terms of this lease shall be exclusive of value-added tax, and the Lessee shall pay any such tax to the Lessor simultaneously with the payment of rental in terms of this lease.

5. THE TRADITIONAL COUNCIL CONSENT

5.1 This lease shall be subject to the suspensive condition that the Traditional council referred to in Item 7 of the Schedule grants its consent to the lease of the premises to the Lessee in accordance with the provisions of this lease, which consent shall be obtained within 60 days of the signing of this lease by the Lessee, failing which the lease shall lapse:

5.2. In the event that the said Traditional council withdraws its consent to the lease of the premises to the Lessee in terms of this lease prior to the termination of this lease by effluxion of time for good, reasonable and objectively determined cause, then such act by the Traditional council

5.3. shall be deemed to constitute a dispute between the Lessor and the Lessee which shall be resolved by mediation and arbitration as hereinafter provided, and the parties may include the said Traditional council as a party to such proceedings.

5.2.1 In the event of an arbitrator coming to the conclusion, on a balance of probabilities, that the grounds upon which the Traditional council has withdrawn its consent are good, reasonable and objectively determined, and that it would in the circumstances be fair and equitable to the parties to this lease and to the Traditional council, to amend the terms of this lease, or to terminate this lease, then the arbitrator may, with the consent of the Lessor, make an appropriate award accordingly, but subject to the provisions of Clauses 5.3, 5.4 and 5.5.

5.3 The Lessee hereby waives and abandons:-

5.3.1 any claim for loss or damage he may in law have against the Lessor; and
5.3.2 any claim he may in law have against the Lessor for or in respect of any compensation for or in respect of any improvements made by the Lessee to the premises whilst occupying the same in terms of this lease, whether authorised under this lease or not; where such claim for loss or damage or compensation arises, directly or consequentially, from any award made by an arbitrator in terms of Clause 5.2.1.

5.4 Notwithstanding the provisions of Clause 5.3, an arbitrator may, in his discretion, in any award amending or terminating this lease, order that the Lessor shall pay a specified sum of money to the Lessee as and by way of compensation for any such improvements, if he deems it objectively to be just and equitable to do so.

Please initial here

H.E. NIKES:
Z.N. KHANYILE

SNK

H. L. H

H. L. H

- 5.5 Any compensation awarded by an arbitrator in terms of Clause 5.4 shall be limited to an amount not exceeding the costs, including labour and value-added tax, incurred by the Lessee in and about the making of the improvements in respect of which compensation is to be paid.
- 5.5.1 The arbitrator may order that such compensation shall only be payable to the Lessee by the Lessor on disposal by the Lessor of the improvements concerned or the rights to the use and occupation thereof to a third party by way of lease.

6 USE OF PREMISES AND IMPROVEMENTS

- 6.1 The Lessee acknowledges that it has inspected the premises and acknowledges them to be in a fair and usable state of repair, save for any defects referred to in Clause 6.2.
- 6.2 The Lessee and the Lessor, represented by a duly appointed agent, shall undertake an inspection of the premises within 21 days of the date of the commencement of this lease, and they shall jointly record any defects which are present in or on the premises, and two copies of such record shall be signed by or on behalf of both parties and a copy retained by each of them.
- 6.3 The Lessee shall maintain the premises, but taking into account the state of the items referred to in Clause 6.2, in a good state of usable repair during the currency of this lease, fair wear and tear excepted, and it shall repair or replace any part thereof which is damaged, destroyed or lost during the currency of this lease.
- 6.4 The Lessee shall use the premises only for the purposes set out in Item 8 of the Schedule and for no other purpose, provided that he may undertake such additional activities which are ordinarily and necessarily ancillary to such main use.
- 6.5 Notwithstanding the provisions of Clause 6.4, the Lessor may, in writing from time to time during the currency of this lease, and with the consent of the Traditional Authority described in Item 7 of the Schedule, authorise the Lessee to use the premises for any other purpose specified in such written consent.

6.6 The Lessor:

- 6.6.1 does not warrant that the premises are suitable or fit for the purposes for which the Lessee intends to use them, and the Lessee takes occupation of the premises in terms of this lease as they stand;
- 6.6.2 is not obliged, and shall not at any stage during the currency of this lease, or any extended period thereof, be obliged, to maintain, repair, renovate, rebuild, refurbish, clean or alter any part of any improvements existent or to be erected on the premises.
- 6.6.3 shall not be obliged or be required to make provision for or supply any services to the premises, and all services, including water, electricity, telephone, sewer and septic tank services shall be acquired by the Lessee at its sole cost and expense, both as to the installation and the maintenance thereof and in respect of the supply thereof.
- 6.7 It is recorded that the Lessee has undertaken the improvements described in Annexure "A" to this lease, and the Lessor has consented thereto.
- 6.8 The Lessee shall comply with all legal requirements applicable to the use and occupation of the premises by the Lessee and to effecting the improvements referred to in Clause 6.7, including, but not limited to:
- 6.8.1 any planning approvals required from any local authority;
- 6.8.2 any zoning of the premises limiting the use of the premises for any specified purpose;
- 6.8.3 any environmental laws or regulations.
- 6.8.4 Notwithstanding anything to the contrary in this lease contained, no provision of this lease shall be interpreted as constituting the consent of the Lessor to the subdivision or consolidation of the land hereby leased as described in section 21(1) of the KwaZulu-Natal Planning and Development Act No.6 of 2008 and any application by any person or municipality, including the lessee, for the approval of any such subdivision or consolidation under section 26(3) of that Act is specifically prohibited.

Please initial here

H.E. M. M. M. S.
Z. N. KHANVILLE

H. L. L.

H. L. L.

- 6.9 The Lessee shall produce proof that he has complied with the provisions of Clause 6.8 if demand is made therefor by or on behalf of the Lessor.
- 6.10 The Lessee shall not commence the construction of any improvements without the written approval of the Lessor to the specific plans and specifications applicable to such improvements being first had and obtained.
- 6.10.1 Prior to the commencement of any improvements as contemplated in Clause 6.7, and after receiving the approvals referred to in Clause 6.8, the Lessee shall submit detailed plans and specifications to the Lessor, for the Lessor's approval, indicating the nature and extent of such improvements and the materials to be used in the construction thereof.
- 6.10.1.1 The Lessor shall be entitled to require the Lessee to modify or amend any such plans or specifications, but only on good and objective grounds, and it shall not unreasonably withhold its approval to such improvements.
- 6.10.1.2 In the event of the Lessor not communicating with the Lessee as provided for in Clause 6.10.1.1 within 60 days of the receipt of the plans and specifications referred to in Clause 6.10.1, then the Lessor shall be deemed to have approved of such plans and specifications.
- 6.10.2 In the event of the Lessor and the Lessee being unable to agree upon the nature of the extent of such improvements, then such dispute shall be referred to mediation and arbitration as hereinafter provided.
- 6.11 Unless special written authority is given by the Lessor, the Lessee shall commence any development as contemplated in Clause 6.7 within twelve months of the commencement date and shall complete the development to the satisfaction of the Lessor within a period of twenty-four months of the commencement date, and this lease will lapse if the development is not so completed.
- 6.12 Unless the Lessor directs otherwise, the lessee shall, within six months of the date of the Lease, fence the boundaries of the premises and the lessee shall, during the currency of this lease, including any extended period thereof, maintain the fence to the satisfaction of the Lessor.
- 6.13 If the Lessee, at any time during the currency of this lease, wishes to undertake any structural alterations or additions to the premises, he shall comply with the provisions of Clauses 6.8, 6.9 and 6.10 hereof, and the sub-Clauses thereof, and any reference in such Clauses or sub-Clauses to improvements shall, for the purposes of this Clause, be deemed to be a reference to the structural alterations or additions contemplated herein.

7 STANDARD CONDITIONS

- 7.1 Save with the written authority of the Lessor, no electrical power or telephone pole or line or water, drainage or sewer pipe being upon or passing through, over or under the premises and no replacement thereof, shall be moved or in any way be interfered with and reasonable access thereto shall be preserved to allow for inspection, maintenance, repair, renewal and replacement thereof.
- 7.2 The Lessor shall have the right to grant to a statutory corporation or parastatal organisation, the right freely to exercise or have a public servitude over the premises for the purpose of providing and maintaining public utility services and more particularly for the purpose of erecting telephone or electric power poles, installing electric or telephone wires and cables, laying down drains, sewers or water pipes and maintaining the same, provided that such right shall take into account the interests of the Lessee under this lease.
- 7.3 No act, matter or thing, whatever, shall be done or permitted to be done upon the premises or any part of such premises which may cause or lead to pollution of the environment or result in the creation of any hazard to the health of other persons, or become a nuisance or annoyance to or damage or in any way interfere with the peace and comfort of occupiers of adjoining or other premises in the neighbourhood.
- 7.4 The lease does not extend to or include the rights to precious or base metals, precious stones, minerals, and mineral products on or under the premises which shall be and remain the property of the Lessor.

Please initial here

H. E. M. KOSI
Z. N. KHANJILE

SUZ

H. L. H

359
369

- 7.4.1 The Lessee shall not be entitled to receive any rents, royalties, or other money or other consideration payable under any concession or in respect of precious or base metals, precious stones, minerals, and mineral products on or under the premises or any other part thereof.
- 7.5 The Lessee shall be responsible for and shall timeously pay to the local and relevant authorities all rates, taxes and any other similar outgoings which may be levied on the leased premises from the date of commencement of this Lease. It is recorded that such rates, taxes and any other similar outgoings may be levied and imposed at the discretion of the lessor and the levying authority notwithstanding any exemption that may be enjoyed from time to time by the lessor.
- 7.5.1 In the event of the Lessee failing for any reason whatsoever to make such payment, then the Lessor shall be entitled to make such payment and recover the amount so paid from the Lessee on demand.
- 7.6 The Lessee shall permit entry on the premises at any reasonable period of the day by any duly empowered:-
- 7.6.1 officer, employee, servant or agent of the Lessor
- 7.6.2 employee, servant or agent of any statutory corporation or parastatal organization established to provide and maintain public utility services.
- 7.7 The Lessee shall, during the currency of this lease, including any extended period thereof, but subject to prevailing economic circumstances, ensure that the development is occupied and utilised for the purposes intended, and any failure to do so shall constitute a breach of this lease.
- 7.8 The Lessee shall at all times bear the cost of refuse removal from the Premises and the cost of all electricity, gas and water consumed on the Premises, provided however that should the Lessor at any time pay any of these amounts; then the Lessee shall be obliged to refund such amounts to the Lessor on demand.

8. MAINTENANCE

- 8.1 The Lessee shall, at its own expense, during the currency of this lease, including any extended period thereof, maintain all improvements erected or to be erected on the premises, and all fixtures and fittings being part of such improvements, to a standard commensurate with a development of the nature of the improvements now existent or in the future to be erected on the premises under the provisions of this lease, and it shall undertake all repairs and renovations required from time to time without undue delay.
- 8.2 The Lessor shall be entitled to enter upon and inspect the premises and all improvements made thereon at any reasonable time, and it shall be entitled to require the Lessee to comply with the provisions of Clause 8.1, and any failure by the Lessee to comply with such notice shall constitute a breach of this lease.

9. INSURANCE

- 9.1 The Lessee shall at all times be responsible for the insurance of all improvements now existent or in the future to be erected on the premises under the provisions of this lease and shall produce evidence in the form of a Policy and premium receipts thereof if so required by the Lessor, and the Lessor shall have no obligation to insure any such item whatsoever.
- 9.2 Every insurance policy referred to in this clause shall be ceded to the Lessor as beneficiary thereunder, provided that the Lessor shall utilize the proceeds of any such policy solely for the purpose of restoring the improvements insured and for no other purpose.
- 9.3 The premiums on any such insurance policies shall be paid by the Lessee who shall provide proof of such payment to the Lessor,

Please initial here

H. E. NIKOS.
Z. N. KHANILE

HLH

SMZ

H.L. H

- 9.4 The Lessor agrees and undertakes, at the request of the Lessee, to undertake to and on behalf of any financial institutions that advances funds to the Lessee for the purposes of making improvements to the premises against the security of a mortgage bond to be registered over this lease, that it will utilize the proceeds of any insurance claim made on any insurer under any insurance policy referred to in Clause 9.1 solely for the purposes provided for in that Clause.

10 DESTRUCTION OF PREMISES

- 10.1 This lease shall in no way be affected by the partial or total destruction of any improvements erected or to be erected upon the Premises.
- 10.2 In the event of total destruction of any improvements, the Lessee shall be obliged to either clear all rubble and debris from the premises so that it is rendered into the condition the premises were in before the improvements were made, and thereafter the Lessee shall ensure that the premises remains in such condition, or the Lessee shall procure that further improvements of a similar nature to those destroyed are erected.
- 10.2.1 The Lessee shall comply with the provisions of Clause 10.2 within 90 days of the occurrence of the event that caused the destruction of such improvements, or such longer period as the Lessor may in writing allow.
- 10.3 In the event of either the partial or total destruction of buildings upon the Premises, the Lessee shall not be entitled to any remission of rental whatsoever.

11 CESSION, ASSIGNMENT AND SUB-LETTING

- 11.1 The Lessee shall not cede or assign this lease, either in whole or in part, nor sub-let the premises or any portion thereof without the consent of the Lessor first being obtained.
- 11.2 In the event of the Lessor agreeing in terms of the above sub-clause to the sub-letting of the premises by the Lessee, the Lessee agrees to procure that the ultimate Sub-Lessee of the premises, or any portion thereof, shall, at all times, be subject to the terms and conditions of this lease.
- 11.3 The rights vested in the Lessee under and in terms of this lease shall be personal to the Lessee only and shall not extend to any company, close corporation or other legal entity with which the Lessee is associated with or in which the Lessee may hold shares, a members interest or other interest.

12. NO CLAIMS

- 12.1 The Lessee shall not have any claim against the Lessor for any loss or damage, which the Lessee may suffer:
- 12.1.1 by reason of the premises or any portion thereof suffering from some defective condition; or
- 12.1.2 arising out of *vis major* or *causus fortuitus* or any other cause either wholly or partially outside of the Lessor's control; or
- 12.1.3 arising outside of the negligence of the Lessor.
- 12.2 The Lessor shall not be liable for any loss or damage sustained by the Lessee, any sub-lessee, any employee, guest or invitee of the Lessee or of any Sub-Lessee, arising from any cause of action arising from the use and occupation of the premises by any such person or institution, or their presence on the premises, and the Lessee hereby specifically indemnifies the Lessor against any such claim, and promises and undertakes to make good to the Lessor any amount that the Lessor may in law be obliged to pay in respect of any such claim.

13. BREACH AND CONFLICT RESOLUTION

- 13.1 In the event of the Lessee failing to pay any rental payable in terms of this lease on due date without deduction or demand, and failing to remedy such default within seven (7) days of the receipt of written demand made therefore by or on behalf of the Lessor, then the Lessor may, on twenty four (24) hours written notice to the Lessee declare this lease to be cancelled and it may thereupon retake possession of the premises. Should the Lessor knowingly or negligently breach

Please initial here

H.E. MKOS.
Z.N. KHANYILE

SMZ

H.L.L

H.L.L

[Handwritten signature]

any material provision of this agreement that is incapable of being remedied, or, should the Lessor breach any provision of this agreement which is capable of being remedied and fail to commence to remedy such breach within 14 days of a written notice from the Lessee requiring it to rectify such breach or to complete remedying such breach within a reasonable time, then in any of those events the Lessee shall be entitled to cancel this lease without prejudice to any of its other rights including its right to claim damages.

Should the Lessor dispute the Lessee's right so to cancel then any such dispute shall be referred to a court of competent jurisdiction.

- 13.2 Should the Lessor cancel this lease in terms of Clause 13.1 and the Lessee dispute the Lessor's right so to cancel this lease and remain in occupation of the premises, then:
 - 13.2.1 the Lessee shall, pending the determination of such dispute, continue to pay to the Lessor on the due date thereof, all amounts due under this lease, including rental, and the acceptance thereof by the Lessor shall be without prejudice to the Lessor's rights;
 - 13.2.2 should such dispute be determined in favour of the Lessor, then any such payments shall be deemed to be accounts paid by the Lessee on account of damages suffered by the Lessor by reason of the cancellation of this lease, and/or the unlawful holding over by the Lessee.
- 13.3 Any issue or dispute arising from any cause contemplated in Clause 13.1 shall be resolved by a court of competent jurisdiction.
- 13.4 In the event of there being any breach of this lease by either party (other than a dispute contemplated in Clause 13.1), or any dispute or disagreement between them as to interpretation of any provisions of this lease, or in the event of any provision of this lease providing for the resolution of such dispute by mediation or arbitration, then such dispute or disagreement (hereinafter collectively referred to as a "dispute") shall be referred to mediation and arbitration in the manner set out in Clause 13.5, provided that the parties first shall have attempted to resolve such dispute at two consecutive meetings prior to referring such matter accordingly.
- 13.5 Any dispute referred to in Clause 13.4 shall:
 - 13.5.1 in the first instance, be referred to mediation; and
 - 13.5.2 if such mediation does not resolve such dispute within a period of ten (10) days of being so referred, then the dispute shall be referred to arbitration;
 and such proceedings shall be conducted in accordance with the provisions hereinafter set out.
- 13.6 Either the Lessor or the Lessee may refer any dispute to the President of the Natal Law Society with a request that he appoint a mediator, and, if necessary, an arbitrator, in accordance with the provisions of this agreement. The parties to this agreement agree to accept any such mediator or arbitrator so appointed by such President.
- 13.7 Arbitrations shall be conducted in accordance with the provisions of the Arbitration Act, No 42 of 1965, subject to the provisions of this agreement.
- 13.8 The issue which the arbitrator shall be asked to decide will be determined by the party referring the dispute to arbitration.
- 13.9 The arbitrator shall have the power to decide on the procedure he/she shall adopt in the conduct of any arbitration proceedings.
- 13.10 The parties to any dispute may elect to have legal representation at any hearing before any arbitrator appointed in terms of this clause.
- 13.11 In respect of any dispute resolving proceedings conducted in terms of this agreement, it is agreed that:
 - 13.11.1 the proceedings shall be conducted expeditiously consistent with fair practice;
 - 13.11.2 the mediator or arbitrator may consult such advisors as he may deem necessary to assist him on any matter of a technical nature;
- 13.12 It is expressly agreed that:
 - 13.12.1 each party shall bear their own costs of any mediation or arbitration proceedings undertaken under the provisions of this agreement, including the costs of legal representation;
 - 13.12.2 each party shall bear an equal share of the costs of the mediator and/or arbitrator and any costs associated with such appointment, the party first referring any dispute to mediation or arbitration

Please initial here

H. E. NIKOS
Z. M. KHANILE

SR

H. L. H

H. L. H

under the provisions of this Clause being responsible for the collection and payment of such costs, provided that in the event of the arbitrator being of the opinion that any party to the conflict has acted in bad faith, maliciously or frivolously, or in the event of any party liable to contribute towards any costs in terms of this Clause failing or refusing to pay such costs within a reasonable period of demand being made therefore, then such arbitrator may direct that such party shall refund to any other party the reasonable costs of such arbitration or any part thereof, or pay such contribution, and such award shall constitute a liquid debt due by the party against whom it is made in favour of the other parties to this agreement.

- 13.13 An arbitrator shall be entitled, either:
- 13.13.1 to order specific performance to rectify a breach or,
- 13.13.2 at the request of either party specifically made therefor, to declare the lease cancelled.
- 13.14 In the event of either party failing to comply with an order of specific performance made by an arbitrator, then the other party may approach a Court of competent jurisdiction to enforce such order as though such order were an order of that Court.
- 13.15 Any party that has suffered loss or damage as a result of a breach of this lease by the other party shall be entitled, upon any arbitration proceedings being completed, and based on the findings of the arbitrator, to recover such loss or damage from the other party in any Court of competent jurisdiction.
- 13.16 Any decision of an arbitrator shall be binding on the parties to the dispute and shall, subject to the provisions of Clauses 13.14 or 13.15, not be made the subject of any legal proceedings by any such party.
- 13.17 The parties to this agreement agree and undertake that they shall conduct their relations with each other arising from this agreement in a spirit of good faith.

14. TERMINATION

- 14.1 Subject to clause 5 upon the termination of this lease for whatever reason, whether as a consequence of the effluxion of time or otherwise, all buildings and other permanent structures on the Premises shall remain the premises of the Lessor, without compensation of any sort to the Lessee.

15. MISCELLANEOUS

- 15.1 The Lessee, at its expense, shall be entitled to affix and erect such signage in and about the premises as may reasonably be required for the purposes of any commercial businesses to be conducted on the premises, provided that, upon the termination of this lease for any reason whatsoever, the Lessee shall, at its expense, in consultation with the Lessor, remove all such signage and restore the Premises and any improvements situated thereon to a clean and tidy state commensurate with a development of this nature.
- 15.2 The Lessee shall, and it shall take all reasonable steps to ensure that any sub-lessees, employees, contractors and other invitees, at all times comply with all laws and statutory, municipal and other by-laws and regulations applicable to the Premises and the activities to be carried on thereon, and in particular, they shall recognise and respect the Inkosi and tribal authority of the Traditional Council referred to in Item 7 of the Schedule.
- 15.3 The Lessee shall, and it shall use its best endeavours to ensure that any sub-lessee does, employ persons from the community resident in and about location of the premises in preference to any persons not so resident.
- 15.3.1 If the Lessee employs any person who is not so resident, he shall, if called upon by the Lessor, provide a written explanation as to the reason for such employment.
- 15.4 The Lessee acknowledges that he is aware of the provisions of the Interim Protection of Informal Land Rights Act 31 of 1996 and he shall observe the provisions of that Act in regard to any persons holding informal rights to land as defined in that Act to any part of the premises.

Please initial here

H.E. Inkosi
Z. M. KHANILE

Sik

H. L. L

H. L. L

373

- 15.5 The Lessee records and acknowledges that the Lessor has given him no warranty that the premises are not subject to the rights of any person holding informal rights to land as defined in the Interim Protection of Informal Land Rights Act nor that the land is not subject to a claim under the Restitution of Land Rights Act 22 of 1994, and it shall be incumbent on the Lessee to make appropriate enquiries to ascertain whether such Acts apply to the premises.
- 15.6 The Lessee records and acknowledges that the Lessor has given him no warranty that the premises are not subject to the rights of any person holding informal rights to land as defined in the Interim Protection of Informal Land Rights Act nor that the land is not subject to a claim under the Restitution of Land Rights Act 22 of 1994, and it shall be incumbent on the Lessee to make appropriate enquiries to ascertain whether such Acts apply to the premises.
- 15.7 The Lessor shall not be required or obliged to give notice to vacate, or to take any steps to evict, any persons residing on the premises on the commencement date or at any time thereafter.
- 15.8 The Lessee shall not, without the written consent of the Lessor, permit any person to occupy the premises during the currency of this lease, or any extended period of this lease, under circumstances which shall enable such person to claim a right in law to use and occupy the premises independently of the Lessee's right to the use and occupation of the premises under this lease.
- 15.9 This Lease shall be interpreted and construed in accordance with and any proceedings arising therefrom shall be governed by the laws of the Republic of South Africa.
- 15.10 No agreement shall be deemed to exist between the parties until this Lease has been duly signed by the Lessor and the Lessee.
- 15.11 This agreement constitutes the entire contract between the parties relative to the subject matter hereof and this agreement cancels any prior agreement between the parties with regard to the subject matter hereof unless specified to the contrary. No variation of any of the terms and conditions of this agreement will be binding on the parties unless committed to writing and signed by them respectively.
- 15.12 If any provision in any definition is or contains a substantive provision imposing rights and/or obligations on a party, effect shall be given to such provision as if it were a substantive provision in the body of this agreement.
- 15.13 No indulgence which any party may grant to any other shall prejudice or constitute a waiver of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantees which may have arisen in the past or might arise in the future.
- 15.14 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 15.15 No representations or warranties of any nature whatsoever, express or implied, have been made by the Lessor or any person purporting to act on the Lessor's behalf to induce this Lease.
- 15.16 This Lease shall be binding on the successors in title of the parties.
- 15.17 Clause headings in this Lease are for convenience only and shall not be taken into account in the interpretation hereof.
- 15.18 When any number of days is prescribed in this agreement, these shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday, or a Public Holiday.

Please initial here

Standard long-term lease amended
January 2004

H. E. KIKOS.
Z. N. KHANJILE

H. L. H

SHZ

H. L. H

16. DOMICILIUM

- 16.1 The parties choose the following addresses for the purposes of notices in respect of matters arising out of or in connection with this lease and also as addresses for the purposes of *domicilium citandi et executandi*:
- 16.1.1 The Lessor at: 188 Hoosen Haffjee Street, Pietermaritzburg, 3200.
- 16.1.2 The Lessee at the Premises being: All that portion of Portion 6 of the Farm Reserve No.16 No.15836 HV.
- 16.2 Any notices which are to be given in terms of this lease by either party to the other party shall be presumed, until the contrary is proved, to have been received:
- 16.2.1 if posted by registered post 7(seven) days after the date of posting;
- 16.2.2 if delivered by hand, on the date of delivery;
- 16.2.3 if transmitted by facsimile, on the day of transmission (if transmitted on a business day) or the first business day after transmission
- 16.3 Either party may by notice in writing from time to time alter its address and facsimile details.

17. COSTS

- 17.1 The costs and charges for the preparation, execution and stamping of this lease, and any stamp duty payable on such lease, shall be borne by the Lessee.

18. DELEGATION

- 18.1 The Lessor may, in its discretion, and from time to time during the currency of this lease, including any extended period of this lease, delegate the administration of this lease, or any part thereof, to any official in the employ of any department of the national government, of the government of the Province of KwaZulu-Natal, any local authority within whose area the premises fall or the traditional council within whose area the premises fall.
- 18.2 Any written document evidencing such delegation and signed by an authorised member of the Ingonyama Trust Board shall be sufficient proof of such delegation.

Please initial here

H.E. MKOSI
Z.M. KHANISILE

SME

H.L. H

H.L. H

375
375

19. REGISTRATION OF LEASE

- 19.1 In the event of the Lessee wishing to register this lease against the title deeds of the land of which the premises form a part, then it shall, at its expense:
- 19.1.1 cause the premises to be surveyed so as to produce a diagram of the premises for the purpose of the registration of the lease;
- 19.1.2 obtain the consent of the Traditional Council referred to in Item 7 of the Schedule to the registration of this lease;
- 19.1.3 proceed to duly cause this lease to be so registered.
- 19.2 The Lessor agrees and undertakes to support and co-operate with the Lessee in and about the registration of this lease as contemplated in Clause 19.1, and its signature to this lease shall constitute its consent to such registration.

Signed by Warren Elbert Robin Raubenheimer in his capacity as a member of the KwaZulu-Natal Ingonyama Trust Board established in terms of section 2A(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994, he being duly authorised thereto by His Majesty the King, King Goodwill Zwelithini KaBhekuzulu on the twenty-fourth day of March 2006.

Signed at.....On the.....day of....., 2011

As Witness

1.
2.

Signed by the Lessee/for and on behalf of the Lessee by Z.N. KHANYILE..... he being duly authorised thereto by a resolution of the Directors/Trustees/Management Committee of the Lessee adopted at a meeting held at NTSINAE TR on the 08 day of APRIL..... 2011

As Witness

1. H.E. KIKOS..... Z.N. KHANYILE.....
2.

H.L.H.
H.L.H.
H.L.H.

376
376

ANNEXURE "A"

The following is a brief description of the improvements that the Lessee has effected to the premises.
(Lessee to complete please it is suggested that the existing improvements are also noted).

Please initial here

H.E. KHOSI
Z. N. KHANNILE.

SMZ

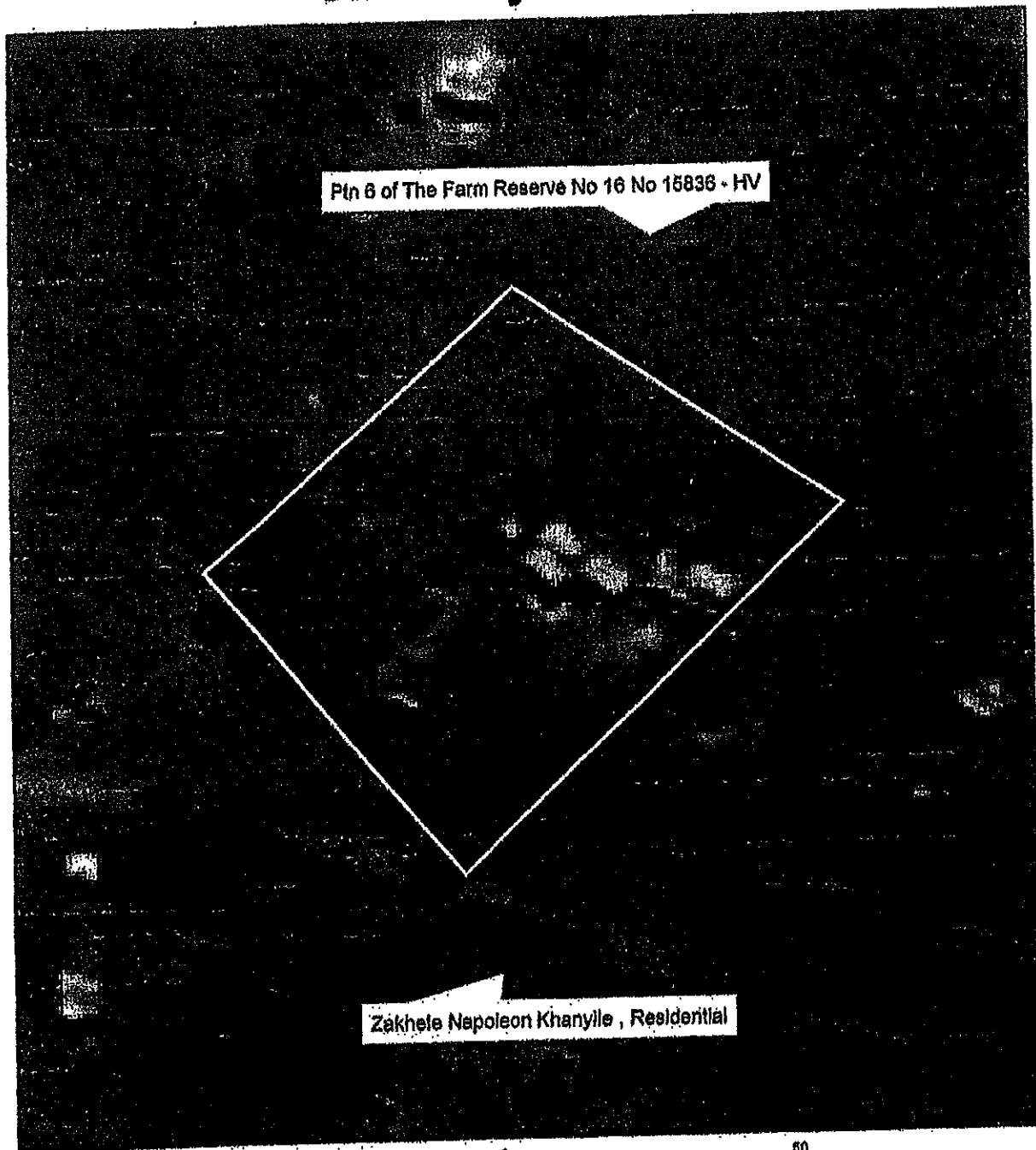
H. L. 11

HLH



377

Zakhele Napoleon Khanyile , Residential Umkhanyakude

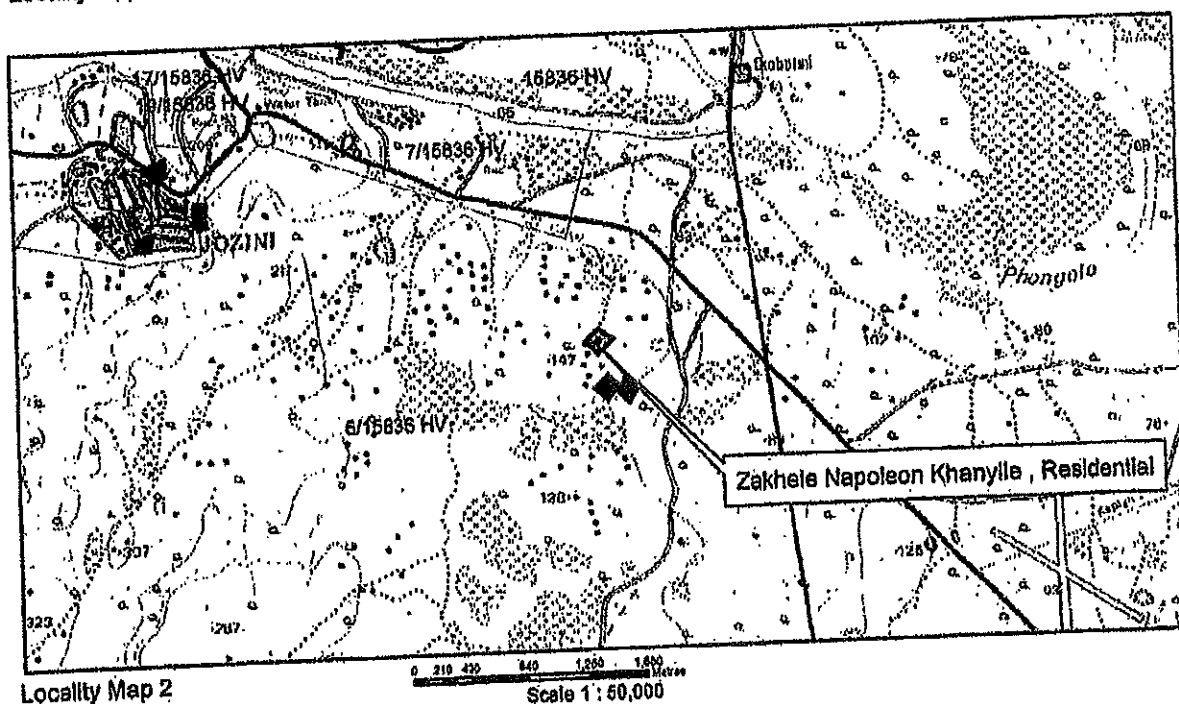
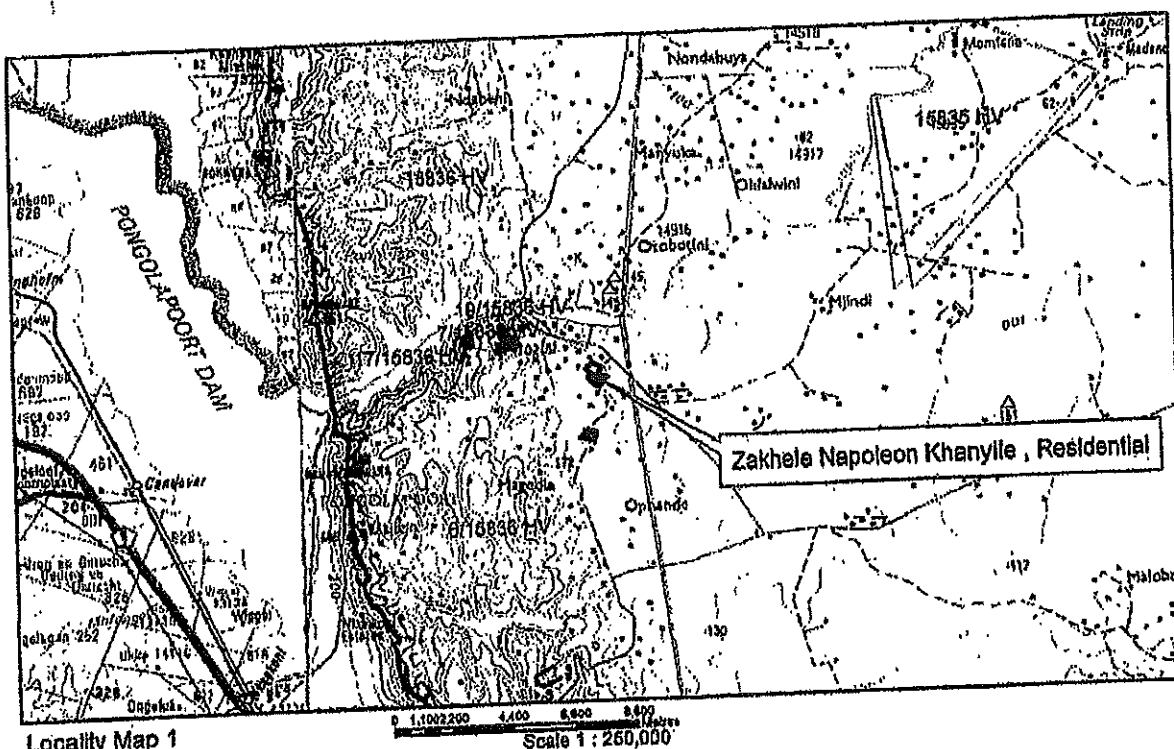


Legend			Date of Drawing : 27 October 2010 S.C.Ellis	 INGONYAMA TRUST BOARD
Land parcels owned by Ingonyama Trust	Land Claims		Date Acknowledgements : 1 : 50,000 Topographic Images - CDSM, Dept. Land Affairs 1 : 250,000 Topographic Images - CDSM, Dept. Land Affairs	
Leases	Titles			
State Domestic Facilities	Servitudes			
PTOs	Mineral Rights			

Siz

H.L. M

H.L. M



SG No.		Owner Name :	
Area (Ha) :		Deed Number :	
SG Comp No. :		Municipality :	
Centroid - Lat :		Regional Authority :	
- Long :		Map Ref :	

HLV

HLV

TRADITIONAL COUNCIL CONSENT

1. Description of site -

RESIDENTIAL

2. At a meeting held on 09 JULY 2010 at
the NBUNDE Traditional Council Office, the NBUNDE
Traditional Council

resolved that it had no objection to the application to acquire rights to land by

Khangile Zakele Nalokun (give full particulars of the applicant)

The form of tenure thereof to be agreed between the applicant and the Ingonyama Trust Board as
land owner-in-law in terms of section 3 of the Ingonyama Trust Act, Act 3 of 1994, as amended.
This consent is given in terms of section 2 (5) of that Act.

3. The Traditional Council confirms that all persons occupying or having an interest in the said Land
have been consulted and have no objections to the proposals.
4. The applicant has been advised and confirms that he/she/it will not do anything or erect any
structure on land until an appropriate tenure right has been agreed to and the necessary documents
have been signed with the Ingonyama Trust Board.

Signed

[Signature]
CHAIRMAN

[Signature]
MEMBER

[Signature]
MEMBER

[Signature]
SECRETARY

NBUNDE TRADITIONAL
COUNCIL
09 JUL 2010
PRIVATE BAG X12
UBOMBO 3970

Notes:

1. The consent submitted to the Trust must be an original, on Traditional Council headed notepaper and with a Traditional Council date stamp.
2. Please provide a full legal description supported if possible by a site plan and co-ordinates.
3. This consent together with the Ingonyama Trust Board standard application form (ITB1) must be submitted timeously to the Secretariat, Ingonyama Trust Board 188 Hoosen Haffjee Street / Box 601, Pietermaritzburg 3201.

SMZ

H. L. M

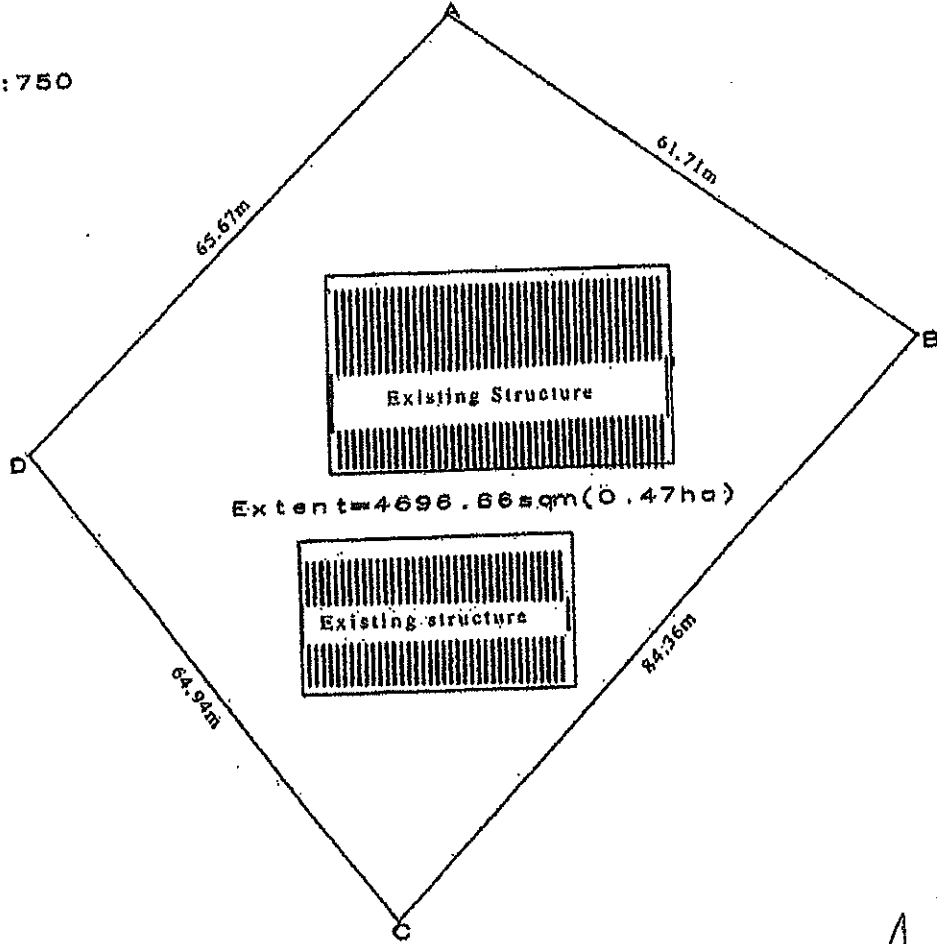
HL M

LEASE SKETCH PLAN

APPLICANT: Zakhele Napoleon Khanyile
TYPE OF LEASE: Residential
DISTRICT MUNICIPALITY: UMkhanyakude
LOCAL MUNICIPALITY: Jozini
TRADITIONAL COUNCIL: Nsinda
ISIGODI (TRADITIONAL WARD): Maphaya
ITB REF:



SCALE 1:750



APPROXIMATE CO-ORDINATES		
SYSTEM: WGS84		
NAME	Y	X
A	+89363.493	+3036639.406
B	+89313.788	+3036675.986
C	+89371.016	+3036737.971
D	+89409.847	+3036685.920

NOTE: CO-ORDINATES AND DIMENSIONS ARE ACCURATE TO +/-3m

Surveyed and Prepared:
 For: Ingonyama Trust Board
 PIETERMARITZBURG
 By: Land Administration
 Survey Services
 Northern Implementation Office
 Tel: 035-874 2663
 Fax: 035-874 2664
 Date: August 2010

H.L.H

SMZ

H.L.H

HLN 2
381

INGONYAMA TRUST BOARD – LONG-TERM LEASE OF PREMISES

2277LT

THE SCHEDULE

Item 1	The Lessee	Mr. Zakhale Napoleon Khanyile; Number: 600220 5938 087
Item 2	The Premises	A Portion of portion 6 the Farm Reserve No.16 No. 15836 registration Division HV, in the Ward of Maphanya in the District of Ubombo, in extent approximately 0.47 hectares all of which is depicted on the diagram annexed hereto.
Item 3	The Rent	Base rental of R 1600.00 (One thousand six hundred rand) per annum.
Item 4	Escalation Percentage (subject to Clause 4.2)	10 % per annum on the base rent only
Item 5	Commencement Date	1 st day of February 2014
Item 6	Termination Date	31 st day of January 2054
Item 7	Applicable Traditional Authority	Ntsinda Traditional Council
Item 8	Use of Premises	Residential development
Item 9	Domicilium citandi et executandi	Maphanya Area Jozini KwaZulu-Natal
Item 10	Contact Information	Lessor: 65 Trelawney Road, Pietermaritzburg 3201 P O Box 601 Pietermaritzburg 3200 Telephone : 033 846 9900 Facsimile : 033 846 2528 Lessee: P.O. Box 393 Jozini 3969 Telephone: Cell phone: 072 411 8792 Facsimile:

HLN

SMZ

Y	
Y	

HLN

PROVINCE OF KWAZULU-NATAL

ANNEXURE A

(REGULATION 2)

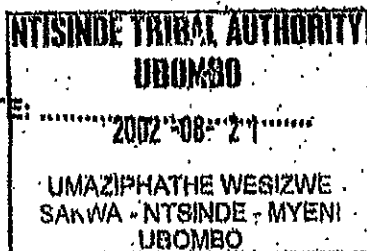
KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS, 1994 AS AMENDED

RECOMMENDATION FOR ISSUE OF PERMISSION TO OCCUPY *MYENI NTSEINDE* TRIBAL AUTHORITY

TO: The District Administrator/Secretary for Traditional & Environmental Affairs

It has been resolved to recommend the allocation to *HLANYANISA PHILLIP ZIMU*
(allottee's name) Identity/registration No. *520606 6114 DBI*
Of a portion of land/allotment in *MYENI NTSEINDE* (tribal ward).

You are invited to arrange a site inspection with our representative and the allottee.



DATE: 2002-08-21

Silwane Magon
CHAIRMAN OF TRIBAL AUTHORITY

T.Y. Magon
SECRETARY OF TRIBAL AUTHORITY

SMZ

H.L. L

H.L. V

PROVINCE OF KWAZULU-NATAL

ANNEXURE C

(Regulation 4(c) (ii))

KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS, 1994 AS AMENDED

SKETCH

Serial No.

Corner point description

A:
B:
C:

Sides in metres

AB=
BC=

(draw figure representing the allotment here (below))

The figure.....
represents allotment.....
in ward.....
Area/district of.....
in extent.....square metres

DATE: **NTSINDE TRIBAL AUTHORITY**
UBOMBO
2002-08-20
UMAZIPHATHE WESIZWE
SAKWA - NTSINDE - MYENI
UBOMBO

FOR SECRETARY FOR AGRICULTURE

T.Y. MABASO
FOR TRIBAL AUTHORITY

Copy received by me on.....

SIGNATURE OF HOLDER AND INITIALS

Siz
H. L. 4

H.L. 4

PROVINCE OF KWAZULU-NATAL

ANNEXURE B

(REGULATION 4(c)(i))

KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS, 1994 AS AMENDED

SITE INSPECTION CERTIFICATE

Serial No.

This is to certify that:

1. An inspection in-loco was carried out on 19..... in respect
of allotment
in ward
in extent

2. The allotment has been allocated to (allottee's full name)
identity/registration No.
#for purpose.

NTSINDE TRIBAL AUTHORITY	
UBOMBO	
DATE	2002-08-21
UMAZIPHATHE WESIZWE SANWA - NTSINDE - MYENI UBOMBO	

FOR: SECRETARY FOR AGRICULTURE

T.V. MABISO
FOR: MYENI NTSINDE TRIBAL
AUTHORITY

[Handwritten signature]
HLH

delete that which is not applicable
delete if the allotment is in the area of a town planning scheme

[Handwritten signature]

H. L. H

TO: HLANGANISA PHILIP ZIMU

PAGE: 1 OF 1
DATE: 26/09/2002

FROM: CPM-ME

COMPANY: EZZUW PHONE NO:

FAX NO: FAX FAD 7551



Gedwana Bay National Park, Private Bag x310, Mbazwana 3074. Phone 035 8710981/035 8710159 Fax 035 8710116

TO: The Directorate of Land Utilisation
Private Bag x 31
Ulundi 3838

FROM: CPM-ME

FILE:

DATE: 23/09/2002

SUBJECT: PTO Application for Mr H.P. Zimu ID 5206088114081

This is to confirm that the area where Mr Hlanganisa Phillip Zimu has applied for his permission to occupy does not fall under the Ezemvelo KZN Wildlife jurisdiction area. Therefore, the application is recommended.

Your co-operation will always be appreciated.


E. NDLOVU
CONSERVATION PARTNERSHIPS MANAGER
MAPUTALAND EAST

H.L. 17

SMZ
H.L. 17

