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THE AKKERLAND SAGA - SOUTH AFRICA DESERVES BETTER

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The decision of the Land Claims Court last week whereby *Akkerland Boerdery* once again took ownership of the two farms it originally consisted of, almost went unnoticed. The ministerial notice of expropriation of 29 March - which gave the owners seven days to vacate and leave the farms - was overturned with costs. Apparently the Minister of Rural Development and Land Reform (the infamous Maite Nkoana-Mashabane) admitted her Department made a mistake in issuing the notice of expropriation.

This case has a number of interesting dimensions. The first is that *Akkerland Boerdery* was already in a legal battle with Coal Africa in 2014 over access to one of the farms for coal prospecting - where they received an order against them and were ordered to provide access for prospecting to Coal Africa. A number of organisations supporting *Akkerland Boerdery* maintain that the real reason for the expropriation is actually in order to acquire the coal reserves on the farms - for the publicised Chinese investment near Musina and Makhado (Louis Trichardt). Media reports say that the Chinese government offered to build an industrial city in this area - but that they need a reliable source of electricity, hence the coal-fired power station.

The second dimension is that where the first notice of expropriation was issued after the farm owners and the government could not reach consensus on the property price in terms of a land claim, there is now a second land claim (from a different source). The Kuvule Community (who submitted this second claim) interestingly jointly opposed the notice of expropriation together with *Akkerland Boerdery*. This makes the case even more complicated.

The third dimension is that *Akkerland Boerdery* is one of the farms on the “secret list” of targeted expropriations without compensation, which AfriForum released earlier this year. There was the usual denial from government but AfriForum insisted on the integrity of their (confidential) source.

The whole case will now be examined from scratch by the Land Claims Committee and the second land claim must be heard.

From a macro and constitutional perspective there are four issues that are worrying.

Firstly, while the process of attempting to change section 25 of the Constitution to enable expropriation without compensation is ongoing, the Minister already announced in May that the government would run a number of test cases on expropriation without compensation. This would be done in terms of the *Restitution of Land Rights Act (22 of 1994)*, as amended. This is apparently the first of the test cases. But it is clear that the government did not do their homework and even admitted they had made fundamental mistakes. In the first place, fingers can be pointed at the competence (or lack thereof) of officials in the Department. This unfortunately echoes the findings of the High Level Panel’s Report, which



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was chaired by former President Kgalema Motlanthe - that one of the main reasons for a lack of progress with land reform is the lack of capacity among departmental officials.

The problem is, secondly, that the Act (and even the Bill) does not specifically provide for expropriation without compensation. If the Minister wanted to use it as a test case, she should have requested a declaratory order from the court in terms of the notice of expropriation, or at least permitted *Akkerland Boerdery* to contest the notice of expropriation in court. But the seven-day period stipulated for vacating the property did not allow for that.

A further problem is that the Minister's initial reason given as to why the order was issued, namely that there was a deadlock in a land claim (in this case primarily due to the price, R20 million offered by the State and R200 million requested by the owners), cannot immediately lead to a notice of expropriation, as section 25(2)(b) specifically states that the compensation amount must be decided by a court if no consensus is reached at the time of expropriation. The government's creation of the post of Valuer-General (to determine the value of compensation for land claims), does not nullify this section of the Constitution and therefore does not remove the court's oversight role in expropriation process.

This case makes it clear that neither the officials, nor the Minister know their subject matter and/or did not do any preparation. This makes one wonder what this Minister is doing in this portfolio. One shudders at the thought of what the consequences will be for implementation - even if a political compromise is reached with regards to the amendment of section 25 and an accelerated land reform process.

But fourthly, the greatest concern arising from these events is the apparent contempt that government officials and politicians have for the Constitution, and specifically the Rule of Law - especially where land reform and restitution are concerned. The Constitution clearly stipulates that South Africans whose land has been taken away after 1913 as a result of apartheid legislation and regulations can recover that land through restitution. But it also provides for fair processes to be followed and that (at least for the present) fair compensation must be paid to the owners of the land - which they acquired and paid for legally.

It appears that neither of these two principles has been followed in the case of *Akkerland Boerdery*. The plaintiffs are without land due to a defective process, and the rights of the owners are also affected. South Africa and its people deserve better.

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