IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Matters heard: **24-26 May 2004; 11-12 August 2004**

Date of judgment: **19 October 2004**

Case No: LCC 80/2003

In the matter between:

JOHANNES ABRAHAM LANDMAN First Applicant
JAPIE OLIVIER LANDMAN Second Applicant

and

NAYITSHENI NDLOZI Respondent

Case No: LCC 81/2003

In the matter between:

JOHANNES ABRAHAM LANDMAN First Respondent
JAPIE OLIVIER LANDMAN Second Respondent

and

MDUBANE GAMA Respondent

JUDGMENT

GILDENHUYS J:

[1] This is a joint judgment in the above two matters. The same applicants instituted the proceedings in both matters. In case number 80/2003 the applicants pray on notice of motion for the eviction of Mr N Ndlozi and his family from a farm commonly known as Uitkomst. I will refer to this matter as the Ndlozi matter. In case number 81/2003 the applicants pray, also on notice of motion, for the eviction of Mr M Gama and his family from a farm commonly known as Baroveldt. I will refer to this matter as the Gama matter. The first applicant (Mr Johan Landman) is the tenant of both farms. The farms are owned by his father, the second applicant (Mr Japie Landman).

[2] Mr Ndlozi was employed on Uitkomst and Mr Gama on Baroveldt. They lived with their families and kept animals on the farms where they were employed. Mr Ndlozi was dismissed on 12 November 2002. Mr Gama was dismissed on 21 November 2002. The first applicant notified the respondents to vacate the farms. They refused. The applicants then brought the two applications for their eviction.

[3] Although the papers are not very clear, it seems that the relief claimed in both applications is based on the Extension of Security of Tenure Act[1]. Both respondents, in their answering affidavits, put forward (amongst other defences) the following –

- that they are "labour tenants" as defined in the Land Reform (Labour Tenants) Act[2] (herein referred to as the "Labour Tenants Act");
- that they may only be evicted from their homes on the respective farms in terms of a Court Order obtained under the Labour Tenants Act;
- that they have lodged claims with the Department of Land Affairs for the acquisition of the land used by themselves and their families on the respective farms in terms of section 16(1) of the Labour Tenants Act[3];
- that in terms of section 14[4] of the Labour Tenants Act, no labour

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1 Act 62 of 1997 (as amended).

2 Act 3 of 1996 (as amended).

3 Section 16 is part of Chapter III of the Labour Tenants Act. Subsection (1) reads as follows:
"16. **Right to acquire land** – (1) Subject to the provisions of this Act, a labour tenant or his or her successor may apply for an award of –
a) the land which he or she is entitled to occupy or use in terms of section 3;
b) the land which he or she or his or her family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties;
c) rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm; and *[continue on next page]*
d) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he or she enjoys or has previously enjoyed as a labour tenant,
or such other compensatory land or rights in land and servitudes as he or she may accept in terms of section 18 (5): Provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director-General in terms of section 17 on or before 31 March 2001.

4 Section 14 reads as follows:
"**Eviction pending application for acquisition of rights in land** – No labour tenant may be evicted while an application by him or her in terms of Chapter III is pending: Provided that the Court may order eviction if it is satisfied that special circumstances exist which make it fair, Just and equitable to do so, taking all the circumstances into account."

tenant may be evicted while an application by him in terms of section 16 is pending, except in special circumstances; and

- that special circumstances (as envisaged in the Labour Tenants Act) are not present in their cases.

[4] By agreement between the parties and during a telephonic pre-trial conference held on 29 April 2004, I ordered that the following issues will (in each of the cases) be decided separately from and prior to the other issues:

> "(a) whether the respondent is a labour tenant;
>
> (b) whether the respondent has timeously lodged a claim under chapter III of the Land Reform (Labour Tenants) Act 3 of 1996; and
>
> c) whether notice of the intended eviction has been properly given under section 11 of the Land Reform (Labour Tenants) Act."

[5] For purposes of determining the issues listed above, the following questions were referred to oral evidence:

> "(a) The terms of the respondent's employment, both as at the date when the chapter III claim was lodged and as at the date of dismissal.
>
> (b) Whether the requirements of paragraph (c) of the definition of "labour tenant" contained in the Land Reform (Labour Tenants) Act, have been met.
>
> (c) Whether the respondent is a farmworker, as defined in the Land Reform (Labour Tenants) Act.
>
> (d) Whether the applicant has complied with the provisions of section 11 of the Land Reform (Labour Tenants) Act.
>
> (e) Whether the respondent has timeously and properly lodged a claim in terms of Chapter III of the Land Reform (Labour Tenants) Act."

[6] The two cases were heard together. Oral evidence was received during two hearings at Newcastle. The hearings were very well attended by members of the local community. Due to the history of the matter, emotions ran high at times. I wish to express my appreciation to the legal teams on both sides for conducting their cases professionally and without any agitation.

[7] During the second hearing at Newcastle, the applicants applied for leave to

supplement their founding papers by additional affidavits made by the first applicant. The supplementary affidavits contain alternative prayers to the effect that, should the Court find that the respondents are labour tenants, they be evicted under section 7(2)(b) of the Labour Tenants Act. I gave the applicant leave to file the supplementary affidavits. The contents of those affidavits are not relevant to the issues which I have to decide in the present stage of the proceedings. They may become relevant later on.

[8] During the hearing, it became apparent that the respondents have timeously lodged claims under Chapter III of the Labour Tenants Act[5]. It is also now clear that the applicants did give notice of the intended eviction, as required under section 11 of the Labour Tenants Act.[6] These two issues are no longer in dispute between the parties. The only remaining issue is whether the respondents are labour tenants.

[9] The term "labour tenant" is defined in the Labour Tenants Act as follows –

> "**'labour tenant'** means a person –
>
> a) who is residing or has the right to reside on a farm;
>
> b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
>
> c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm,
>
> including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3 (4) and (5), but excluding a farmworker;"

Paragraphs (a), (b) and (c) of the definition must be read conjunctively[7]; a person who fulfils them all is presumed not to be a farmworker, unless the contrary is proved.[8] The parties agree that the requirements of paragraphs (a), (b) and (c) have been met.

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5 The claims were first on behalf of lodged by Mr Ndlozi and Mr Gama on 19 March 2000. Thereafter they both relodged their claims on 8 January 2001

6 The notices were given as an alternative to eviction notices under ESTA.

7 *Mokwena v Marie Appel Beleggings CC* [1999] 2 All SA 157 (LCC) at 161e; see also *Ngcobo and Others v Salimba CC; Ngcobo v Van Rensburg* 1999 (2) SA 1057 (SCA) at 1067 I/J.

8 See section 2(5) of the Labour Tenants Act, which reads as follows:
"(5) If in any proceedings it is proved that a person falls within paragraphs (a), (b) and (c) of the definition of 'labour tenant', that person shall be presumed not to be a farmworker, unless the contrary is proved."

[10] The applicants contend that the respondents are not labour tenants because they are farmworkers. The term "farmworker" is defined in the Labour Tenants Act as follows –

> " 'farmworker' means a person who is employed on a farm in terms of a contract of employment which provides that –
>
> a) in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and
>
> b) he or she is obliged to perform his or her services personally;"

[11] The definition of "farmworker" calls for an evaluation of the cash and other forms of remuneration earned by a worker on the one hand and the value of his rights to occupy and use land on the other, so as to ascertain which of the two is predominant. The *New Shorter Oxford English Dictionary*[9] gives the following meanings for "predominant":

> "Having supremacy or ascendancy over others"
> "Constituting the main or strongest element."

[12] There is very little legal authority on how the comparison must be made. Streicher JA, in *Woerman NO v Masondo*[10], gave the following guidelines:

> "In order to determine whether each of the respondents was remunerated predominantly in the right to occupy and use land and not in cash or in some other form of remuneration one obviously has to compare like with like and the only way to do that would be to place a monetary value on each component. It was, therefore, necessary for the respondents to adduce evidence in the trial court to enable the trial court to do so. However, no evidence, whatsoever, which could assist in the valuation of the respondents' residential rights, their grazing rights, their cropping rights, the use of the tractor to plough the fields allocated to the respondents and the seed supplied by the owner was adduced in the trial court. The respondents, who were

9 Brown ed, Vol 2 p 2329.
10 [2002] 2 All SA 53 (A) at 61b-g.

legally represented at all stages, could have adduced evidence at the trial as to the number of bags of mealies they used to harvest per year and of the price of a bag of miealies. If they had done that it should have been possible to place a value on their cropping rights. Without evidence as to the size of the fields concerned, the crop that could be expected and the price of mealies, the trial court was in no position to place any value on the cropping rights of the respondents. The same applies to the respondents' grazing rights. Grazing may or may not have been available in abundance in that area. The availability thereof would obviously affect the value of grazing rights. It should have been possible to adduce evidence as to what a farmer would charge for allowing animals to be grazed on his farm or evidence could have been led as to the value to the respondents of the right to keep livestock on the farm. However, no evidence was adduced on the basis of which a value could be placed on the respondents' grazing rights. The value of the right to reside on a farm will depend on the price or rental payable for similar accommodation elsewhere in that region. Evidence could have been adduced as to what farmers would charge a person, who was not expected to work for the farmer, for such accommodation. Evidence as to the rental payable for comparable accommodation in the nearest town could also have been of assistance. Furthermore, it should not have been difficult or costly to produce evidence as to the value of the seed supplied by the owner and the cost of hiring the owner's tractor to plough the fields."

[13] One of the difficulties in putting a monetary value on each component of the earnings is the perspective from which it must be approached. Moloto J, in *Mhlangu v de Jager*[11], seems to have held that the various components should be valued from the perspective of the employee. He relied on a number of cases where a right of occupation had to be valued so as to determine whether a Magistrate's Court has jurisdiction to adjudicate thereon. It was held in those cases that the value of the right *to the occupier* is decisive of whether or not the matter falls within the jurisdiction of the Magistrates' Court.[12] I am not convinced that those cases are of assistance in the

11 2000 (3) SA 145 (LCC), paras [49] and [50].

12 See *Gallman v Dombrowsky* 1973 (2) SA 261 at 262H and *Van der Westhuyzen v Peterson*

present matter. The purpose of valuing a right of occupation in those cases is very different from the purpose of valuing the components of remuneration in labour tenant matters.

[14] The *onus* which a land-owner bears[13] to show that an employee is not a labour tenant because he is a farmworker, indicates that the valuation of the different components of the remuneration does not necessarily have to be made from the employee's perspective. The land-owner might not know what a particular component is worth to the employee.

[15] Some of the examples given in the *Woerman* case[14] of evidence which would assist in placing a monetary value on the different components of remuneration, require a valuation from the perspective of the employee[15], whilst others bear on the perspective of the landowner[16], or depend on objective norms[17]. The different perspectives will yield different values; for example, the income which a worker can obtain from cattle farming could be very different from the amount that a landowner would charge for allowing cattle to be grazed on his farm.

[16] It would, in my view, be unwise to adopt a dogmatic approach when deciding upon a suitable valuation approach. Each case must be considered on its own merits. A method or methods of valuation must be selected which is or are just and equitable in the circumstances of the particular case. That, I believe, is the thinking which underlies the examples given by Streicher JA in the *Woerman* case.

[17] That brings me to the question of the point in time at which the comparison has to be made. The entire period during which the employee complied with paras (a) and (b) of the definition of "labour tenant" must be considered. It was held by Oliver JA in the *Ngcobo* case[18] as follows:

> "[26] In my view, the only way to make sense of the confusion reigning in this area is to conclude that the proviso relating to 'farmworker' cannot, for the reasons advanced above, refer only to the present time. It must refer to the whole period in respect of which the present occupier, whose occupation is under attack, has been occupying the land in question. The proviso relating to farmworker applies not only

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1922 TPD 412 at 414.

13 Section 2(5) of the Labour Tenants Act.

14 See par [12] above.

15 *Eg* the value to the employee of the right to keep livestock.

16 *Eg* the amount which the landowner would charge to allow cattle to be grazed on his farm.

17 *Eg* the price of a bag of mealies.

18 *Supra* n7 at 1075F-I.

to para (a), but also to (b), which also refers to the past.

[27] If one approaches the definition in this holistic or continuous sense, it follows that what has to be established is the predominant quality of occupation over the whole period during which the present occupier has been complying with paras (a) and (b). It may be, as illustrated above, that in respect of some periods the remuneration paid to the occupier in cash or some other form of remuneration (see para (a) of the definition of 'farmworker') may have exceeded the value of the right to occupy and use the land; and *vice versa*. What we have to find is the overall sense and value of the occupation. The present time is but one moment in this continuum."

[18] I turn to the cases before me. In 1987, when Mr Ndlozi arrived, the second applicant was the farmer on Uitkomst. From 1993 to 1998 the first and second applicants farmed together on Uitkoms and on Baroveldt. During 1998 the first applicant left and the second applicant continued farming on Uitkomst and Baroveldt. In 2001 the second applicant was seriously injured in a farm attack, which left him partially disabled. As from September 2001, the first applicant leased both Uitkomst and Baroveldt from the second applicant and farmed there for his own account.

[19] In the Ndlozi matter, Mr Ndlozi testified as follows. The second applicant gave him "a place" on Uitkoms during 1987 and he worked there ever since. At the time of his arrival he had 15 head of cattle and 20 to 25 goats. He was allowed to graze his animals on the farm. He denied that the number of cattle he could keep was restricted to 20, and testified that there was no limitation, although the second applicant told him that he must not keep "too many". At the time when he was dismissed, he had about 27 head of cattle, 4 horses, 11 goats, 6 pigs and "many" chickens. At the time of the trial there were 37 head of cattle, 4 horses, 5 goats, 5 pigs and poultry. His animals all graze in a separate camp on Uitkomst. He testified that, although the first applicant originally gave him the use of a bull, he later reared his own bulls. He denied that the was not allowed to keep bulls.

[20] Originally Mr Ndlozi earned R40 per month. After about eight or nine years, it was increased to R100 per month. He denied that his salary was ever R200 per month. He got one month's leave per year.

[21] Mr Ndlozi was allowed to build huts on Uitkomst for accommodating himself and his family. Presently he has eight huts. He has a small vegetable garden at the huts, and he keeps pigs and poultry there.

[22] Mr Ndlozi received two 80kg bags of mealie-meal per month. Originally, he was allowed to plough and grow crops. That right was replaced during about 1987 by an entitlement to mealie-meal.

[23] In the Gama matter, Mr Gama testified that he lived on Baroveldt since he was

three years old. His father commenced working on Baroveldt during 1963. He started working for Mr Danie Landman[19] on Baroveldt "under the same arrangement he made with my father, that I will keep stock and stay there and then work". The second applicant took the farm over from Mr Danie Landman during 1993.

[24] When Mr Gama started working for Mr Danie Landman, he had two head of cattle. When he got married, he had 30 head of cattle, after paying *lobola*. At the time of his dismissal, he had 40 head of cattle, 50 goats, 7 horses and fowls. He said that when the second applicant took over the farm, he was told that his cattle must not exceed 40 in number.

[25] When Mr Gama started working for the second applicant, he got a salary of R100 per month. This was increased, one month prior to his dismissal, to R200. He was entitled to one month's leave per year.

[26] Originally Mr Gama was allowed to plough lands. This right was subsequently replaced by an entitlement to two 80kg bags of mealie-meal per month.

[27] Mr Gama lives with his family in huts on Baroveldt. At some time his family comprised of himself, his wife, his mother, five children of his own and three of his sister's children. He has a small vegetable garden at the huts, and keeps fowls there.

[28] The first applicant testified that the respondents in both cases received a salary of R100 per month, which was increased to R200 per month "aan die einde van [hul] dienstermyn". The respondents were entitled to one month's leave per year. They also received 2 bags of 80kg mealie-meal per month.

[29] According to the first applicant, the respondents were allowed to keep 20 head of cattle each, together with their progeny, but the numbers had to be brought back to 20 once a year by selling any excess. This rule was never strictly applied. Both respondents also kept horses and goats. Mr Ndlozi's animals grazed in a camp of 117 ha. At the time of his dismissal, he had 39 head of cattle. At the time of the trial, he had 50. Mr Gama's animals grazed in a camp of about 85-90 ha, which is shared by four workers. The camp is presently over-grazed.

[30] The applicants at their expense dipped and injected their employees' cattle for anthrax at the same time as their own cattle. Although the injections were not provided consistently, the dipping was regularly undertaken. I have the impression that that was done by way of accommodation or for the protection of the applicants' own stock, without any contractual commitment towards their employees. Neither Mr Ndlozi nor Mr Gama referred to it in their evidence. Until their dismissal, so the first applicant testified, the employees were provided with bulls to service their cattle. The employees were not allowed to keep their own bulls.

[31] Both respondents were allowed to build huts to accommodate themselves and their families on the farms. They had small vegetable gardens next to their huts.

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19 Mr Danie Landman is the second applicant's brother.

[32] The applicants as well as the respondents presented expert evidence. The applicants called Mr Swanepoel. He is a candidate valuer, an estate agent and an auctioneer. He completed a diploma course at the Sadara Agricultural College, and has been involved in the agricultural sector for 35 years. The respondents called Mr PGC Dodson. He is an agri-business consultant. The two experts differed on the approach to be adopted in establishing which component of the remuneration is predominant. They did not contest each other's findings. Their evidence relate to both cases.

[33] Mr Swanepoel puts the rental value of grazing at R15 per large stock unit per month. A large stock unit consists of one head of cattle, including a calf up to the age of 205 days. Six goats are equivalent to one large stock unit. His valuation is based on a carrying capacity of three hectares for one large stock unit, and an open market rental value of R60 per hectare per annum for grazing.[20] He relied on several comparable leases of similar grazing land to establish the rental value of R60 per hectare.

[34] Mr Swanepoel inspected the camp on Uitkomst. He found 50 cattle in the camp but no goats. He considered the grazing to be in a very good condition. He measured the camp used to graze the workers' cattle in Baroveldt and found it to be 84 hectares in extent. He found 120 cattle in the camp, and also goats. The type of grazing in the Baroveldt camp is not as good as that on Uitkomst, and the camp is over-grazed.

[35] Mr Swanepoel found it difficult to place a value on the traditional housing utilised by the respondents on Uitkomst and Barrowveldt. He testitied that a four-roomed conventional house in the township of Madadeni, outside Newcastle, of about 70 m² in extent, is let by the Municipality at R246 per month. In Volksrust a conventional house of about 70 m² can be leased for R150 – R200 per month. A small type of RDP house on the farm Groenvlei had been leased by the farmer to a teacher at R100 per month.

[36] There was considerable uncertainty as to the value of a 80kg bag of mealie-meal over the period of the lease. This is largely due to continued fluctuations in the price of maize. Eventually, Mr Swanepoel managed to obtain the following prices:

- 80kg bag of mealie-meal: prices at Miltec (Volksrust)

January 2000		R94	
December 2000		R80	
January 2001	R80		
December 2001		R118	
January 2002	R138		

20 It will cost R180 per year in rental to graze one large stock unit (3h x R60 per ha), which comes to R15 per month.

December 2002		R208
January 2003	R200	
December 2003		R99
January 2004	R135	

- 80kg bag of mealie-meal: prices at Vlakpoort

July 1996		R88
December 1998		R85
November 2000		R73.70
March 2001	R87	
February 2002	R167	
June 2003		R120

[37] Mr Dodson estimated the carrying capacity of the grazing on Uitkomst and Baroveldt to be 3 ½ ha for one large stock unit. He said 5 goats equal one large stock unit. He agrees with a rental value of R60 per hectare for grazing. However, he followed a different approach in determining the value of the respondents' right to graze cattle.

[38] Mr Dodson put the cost of regular dipping for ticks, inoculations, nutritional licks and winter licks at R300 per animal per year. If the cost of the licks are omitted (because the respondents were not supplied with licks by the applicants), the balance (according to Mr Dodson) would be R150 per animal per year, or R12.50 per month.
[39] Based on the number of cattle belonging to the respondents which he saw during this inspection in July 2004, he determined that Mr Ndlozi could earn R16500 per year gross from cattle farming. After deducting R4500 for the cost of regular dipping, licks and inoculations, and adding R500 for income from goats, Mr Ndlozi would earn a net amount of R13500 per year, or R1125 per month from farming with cattle and goats.

[40] Also based on the number of cattle he saw during his inspection, Mr Dodson established that Mr Gama could earn R25000 per year gross from cattle farming. After deducting R6000 for the cost of regular dipping, licks and inoculation and adding R12000 as income from goats, he put Mr Gama's net potential income from cattle and goat farming at R31000 per year, or R2583 per month.

[41] Mr Dodson did not endeavour to value the right to housing. He testified that the right to cropping is worth very little, if anything. Neither farm is suitable for cropping.

[42] Before reaching any conclusions on the evidence presented at the hearings, it is necessary to say something about the facilities provided by the applicants to assist the respondents with their cattle farming. No value was placed on the services of a bull by any of the parties. The anthrax injections were intermittently given, and seem

to be an accommodation rather than fulfilment of a contractual obligation. The dipping did take place regularly. It is also doubtful whether this was done pursuant to a contractual obligation. When asked about the costs of dipping, the first applicant replied "dit is in elk geval nie so relevant nie, want daar is nie koste daarvoor …..". I assume that is so because the applicant would be using the same dipping tank for the workers' cattle as for his own cattle. The provision of dipping and inoculations was raised by the first applicant in the Gama matter only, and not on the basis that it was a contractual obligation. None of the respondents referred to it in their evidence, nor were they asked about it in cross-examination.

[43] I come to the comparisons required by the definition of "farmworker".

- I will take the salaries of the respondents to be R100 per month, which it was for almost the entire period from 1993 to the date of dismissal.

- A fair value of the respondents' housing rights would be R250 per month. The traditional housing on the farms is of a lesser quality than conventional housing in a township, but it is larger, can accommodate more people, and it has the advantage of a vegetable garden and facilities to keep fowls and pigs. The rural environment is also more pleasant than a township environment.

- It would be fair to put a value of R120 on a 80kg bag of mealies, taken as an average over the years 1993 – 2002.[21] In determining this average, I tried to make some provision for inflation, although I had no inflation figures at my disposal.

- The benefit to the respondents of having their cattle dipped and inoculated is, in my opinion, worth R10 per month per head of cattle. It is less than Mr Dodson's R15 per month because the inoculations were given intermittently, and only for anthrax. The value of R10 per month is from the respondents' perspective. If the services are valued from the applicants' perspective, I estimate that it could be as low as R5 per month, because it involves very little expense on the part of the applicants.

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21 Both respondents lodged their first claims under the Labour Tenants Act on 19 March 2000. Mr Ndlozi was dismissed on 12 November 2002 and Mr Gama on 21 November 2002.

[44] Using rental value as the basis for valuing the right to graze cattle and taking into account only those components of the respondents' remuneration to which they have an established contractual right, the comparison (in both cases) between the different components of the respondents' remuneration can be as follows:

Right of occupation and use of land:	
Housing (including the right to have a vegetable garden and the right to keep fowls)	R250
Rental value of grazing for 20 cattle (@ R15 per head)	R300
	R550
Remuneration in cash and in kind	
Salary	R100
2 bags of mealie-meal	R240
	R340

[45] In valuing the right to occupy and use land, I have, for purposes of the above comparison, disregarded the value of the following:

- the facility to keep goats and horses;
- the right to exceed the limit of 20 cattle (if there was such a limit) by keeping the progeny, subject to an annual reduction to 20 head of cattle;
- the value of the applicants' indulgence (if it was an indulgence) in allowing the maximum number of cattle to be exceeded.

I have similarly disregarded the value of dipping and inoculations in valuing the remuneration in kind.

[46] If I add in what might be discressionary benefits, but which have been given in practice, the value of the different components of the remuneration (based on the number of animals as at the date of dismissal[22]) could be as follows:

MR NDLOZI

Right of occupation and use of land	
Housing (including the right to keep fowls and a vegetable garden)	R250

22 The average number of cattle kept over the period 1993-2002 would probably be less. Unfortunately, this was not canvassed during the trial.

27 head of cattle (@ R15 per head)	R405
11 goats (5 ½ goats equals 1 stock unit)[23]	R 30
	R685

Remuneration in cash and in kind	
Salary	R100
2 bags of mealie-meal	R240
Dipping and inoculations (@ R5.00 per head of cattle)[24]	R135
	R475

MR GAMA

Right of occupation and use of land	
Housing (including the right to keep fowls and a vegetable garden)	R250
40 head of cattle (@R15 per head)	R600
50 goats (5 ½ goats equals 1 stock unit)	R135
	R985

Remuneration in cash and in kind	
Salary	R100
2 bags of mealie-meal	R240
Dipping and inoculation (@ R5.00 per head of cattle)[25]	R200
	R540

[47] The above comparisons were made on the assumption that the grazing rights must be valued on the basis of the rental value of the grazing land, not in accordance with the income which the employees can derive from it. The rental value is not necessarily the correct yardstick. I have also valued the provision of dips and inoculations from the applicants' perspective. If I assess the grazing rights in accordance with the income which can be derived from it, and the dips and inoculations in accordance with their value to the respondents, the predominance of the remuneration in the form of the right to occupy and use land, would be overwhelming.

[48] On every tenable valuation approach, the value of the right to occupy and use land is predominant. It is therefore not necessary for me to select a single valuation approach which would be appropriate in the circumstances of this case.

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23 The average between Mr Swanepoel's evidence of 6 goats = one large stock unit and Mr Dodson's evidence of 5 goats = one large stock unit.

24 If valued at R10 per stock unit, the amount would be R270, and the total would increase to R610.

25 If valued at R10 per stock unit, the amount would be R400 and the total would increase to R740.

[49] The applicants conceded that the right to grazing constitutes a major portion of the respondents' remuneration. In the Gama matter, Ms Gabriel put to the first applicant:

> "…..it seems to me that the only way the Gamas survived, and the evidence of Ms Gama, she said it was very, very difficult, it seems to me that the only way they survived was because of the extensive grazing and cropping rights they had".[26]

The first applicant replied : "korrek". There is similar evidence in the Ndlozi matter.[27]

[50] The second applicant, in his evidence, conceded that the respondents' main income derives from cattle and goats; the salary can be considered "pocket money".

[51] I conclude that the remuneration given to the respondents in both matters was given predominantly in the right to occupy and use land.[28] For that reason, the respondents are not "farm workers". Because the other elements of the definition of "labour tenant" have been met, it follows that the respondents are labour tenants.

[52] In line with the usual practice of this Court in cases such as these, I will not make any cost orders.

[53] The following order is hereby made in the *Ndlozi* matter (case no LCC 80/03):

a) It is declared that the respondent is a labour tenant as defined in the Land Reform (Labour Tenants) Act, No 3 of 1996;
b) It is declared that the respondent has timeously lodged a claim for the acquisition of land under Chapter III of the said Act;
c) It is declared that proper notice of the intended eviction application had been given under section 11 of the said Act; and
d) No order is made as to cost.

[54] The following order is hereby made in the *Gama* matter (case no LCC 81/03):

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26 Page 82 of the typed record.
27 Pages 99 and 100 of the typed record.
28 The Supreme Court of Appeal came to a similar conclusion on comparable facts in the *Ngcobo* matter (*supra* n7). Olivier JA held (at 1076B-C): "It must be overwhelmingly clear that the value of residence, grazing, cultivation and of having a hearth and home of their own, a place where they could find the fundamental security of living and surviving off the land, must have far outweighed the benefits they received as remuneration in cash or in kind."

a) It is declared that the respondent is a labour tenant as defined in the Land Reform (Labour Tenant) Act, No 3 of 1996;
b) It is declared that the respondent has timeously lodged a claim for the acquisition of land under Chapter III of the said Act;

c) It is declared that proper notice of the intended eviction application had been given under section 11 of the said Act, and;
d) No order is made as to cost.

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JUDGE A GILDENHUYS

Appearances:

For the applicants
MR SM JACOBS
instructed by
MACROBERTS INCORPORATED
PRETORIA.

For the respondents
MS AA GABRIEL
instructed by
CAMPUS LAW CLINIC
DURBAN.