

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

**CASE NO:**

<b>COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION</b>	First Applicant
<b>RURAL WOMEN'S MOVEMENT</b>	Second Applicant
<b>HLETSHELWENI LINA NKOSI</b>	Third Applicant
<b>BONGANI ZIKHALI</b>	Fourth Applicant
<b>ZAKHELE MALCOLM NKWANKWA</b>	Fifth Applicant
<b>HLUPHEKILE BHETINA MABUYAKHULU</b>	Sixth Applicant
<b>BONGI GUMEDE</b>	Seventh Applicant
<b>KN</b>	Eighth Applicant
<b>SM</b>	Ninth Applicant

and

<b>THE INGONYAMA TRUST</b>	First Respondent
<b>THE INGONYAMA TRUST BOARD</b>	Second Respondent
<b>THE MINISTER OF RURAL DEVELOPMENT AND LAND REFORM</b>	Third Respondent
<b>THE MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, KWAZULU-NATAL</b>	Fourth Respondent
<b>KWAZULU NATAL PROVINCIAL HOUSE OF TRADITIONAL LEADERSHIP</b>	Fifth Respondent

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**NOTICE OF MOTION**

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**TAKE NOTICE** that the above-named Applicants intend to make application to this Court for an order in the following terms:

1. It is declared that the First Respondent (“**the Trust**”) and the Second Respondent (“**the Board**”) acted unlawfully and in violation of the Constitution by –

1.1. cancelling Permission to Occupy rights (“**PTO rights**”), and

1.2. concluding residential lease agreements with the holders of PTO rights and/or of informal land rights protected under the Interim Protection of Land Rights Act 31 of 1996 (“**IPILRA rights**”) without the genuine and informed consent of such rights-holders,

in respect of residential land or arable land or commonage which is owned and held in trust by the Ingonyama as trustee of the Trust (“**Trust-held land**”).

2. The Trust and the Board are ordered to publish and distribute the notice annexed hereto marked “**A**” (“**the lease cancellation notice**”) in the following manner:

2.1. by publication of the lease cancellation notice in both English and Zulu in the *Witness*, the *City Press*, the *Mercury*, *Sowetan*, *Sunday Tribune*, *Isolezwe*, *UmAfrika* and *Ilanga* newspapers at least once a week in each newspaper for a period of two months from the date of this order;

- 2.2. by having the lease cancellation notice read in Zulu on the radio stations known as *Ukhozi FM*, *Inanda FM*, *Izwi Lomzansi FM*, and *Gagasi FM*, and read in English on *East Coast Radio FM*, *Radio 2000*, *Metro FM* and *SA FM*, at least twice a week on each station for a period of two months from the date of this order;
  - 2.3. by placing the lease cancellation notice in a prominent position at all offices of the First and Second Respondent throughout KwaZulu-Natal within 5 (five) days of the date of this order; and
  - 2.4. by distributing the lease cancellation notice to all churches, traditional councils, community-based organisations and non-governmental organisations in KwaZulu-Natal that are known to the First Respondent or are nominated by the Applicants' legal representatives.
3. The Board is ordered to report to this Court, on affidavit, on its compliance with paragraph 2 of this order, within 20 (twenty) days of the date of this order (“**the publication report**”). The Applicants may reply to the publication report within 5 (five) days of receipt thereof.
4. The Trust and the Board are ordered, upon the request of any person who held or holds a PTO right or IPILRA right in Trust-held land, which request may be made and must be received at any office of the Board or local Traditional Council or Co-Operative Governance and Traditional Affairs:
  - 4.1. to cancel any residential lease agreement concluded between such rights-holder and the Trust;

- 4.2. to restore to the rights-holder(s) concerned occupancy and use rights, held under statutory and/or customary law, in respect of any portions of Trust-held land that were terminated by, or in the process of, the conclusion of a residential lease agreement;
  - 4.3. to consult with the Third Respondent (“**the Minister**”) or the Fourth Respondent (“**the MEC**”) acting as the Minister’s delegate, and to take all necessary steps to receive applications for PTO rights, and to issue and register PTO rights, subject to and in accordance with chapter XI of the KwaZulu Land Affairs Act 11 of 1992 (“**the Act**”) and the KwaZulu Land Affairs (Permission to Occupy) Regulations (G.N. 32/94) (“**the Regulations**”).
5. Upon the cancellation of any lease in terms of paragraph 4.1 above, the Trust is directed to –
  - 5.1. refund any and all money paid by the lessee as rental or otherwise for or under the cancelled lease agreement, which refund must be issued with a receipt and recorded in the Trust’s books of account; and
  - 5.2. to maintain a written record of the land rights restored on the cancellation of leases on Trust-held land as contemplated in paragraph 4.2.
6. The Minister and the Department of Rural Development and Land Reform are directed to oversee and ensure compliance by the Trust and the Board with the orders in paragraphs 4 and 5 above.

7. The Board and the Minister are ordered to report to this Court, on affidavit, on the compliance by the Trust and the Board with paragraphs 4, 5 and 6 of this order, every 3 (three) months from the date of this order until the order is discharged (“**the lease cancellation report**”).
  - 7.1. The lease cancellation report shall include, but is not limited to, the following information in respect of the Trust-held land:
    - 7.1.1. The number of requests to cancel leases received from holders of a PTO right and/or IPILRA right over the reporting period;
    - 7.1.2. The number of leases cancelled on request by holders of a PTO right and/or IPILRA right over the reporting period;
    - 7.1.3. The nature and extent of the land rights restored on the cancellation of leases on Trust-held land;
    - 7.1.4. The amounts the Trust has reimbursed lessees for rental or any other amounts paid under or pursuant to the lease agreements;
    - 7.1.5. The applications for PTOs received and the number of PTOs that have been issued and registered over the reporting period;  
and
    - 7.1.6. All the steps taken, including with the Minister and/or the MEC, to facilitate the issuing and registration of PTOs, the surveying of allotments for PTOs, the granting of deed of grants and certificates of registration in respect of such allotments.

- 7.2. The Applicants may reply to the lease cancellation report within 2 (two) weeks of receipt thereof.
8. The Trust and the Board are interdicted from taking any further steps and/or engaging in any conduct, to persuade or induce any person who held or holds a PTO right or IPILRA right in Trust-held land to conclude a lease agreement with the Trust, without furnishing such rights-holders with complete and accurate information about their existing land rights and the nature and effect of the lease agreement.
9. It is declared that the Minister, the MEC acting as the Minister's delegate, the Trust and the Board are obliged to exercise the powers conferred by chapter XI of the Act and the Regulations to demarcate allotments, to issue and register Permissions to Occupy, to survey such allotments, and to obtain certificates of registered title in respect of such allotments in Trust-held land.
10. It is declared that the Minister, the MEC, the Trust and the Board are in breach of their duties to exercise the powers referred to in paragraph 9 above.
11. It is declared that the Minister has breached her duty to respect, protect, promote and fulfil the constitutional right to property of the holders of PTO rights and IPILRA rights vested in respect of the Trust-held Land, by—
- 11.1. failing to exercise, alternatively failing to ensure the exercise by her delegate, of the statutory powers referred to in paragraph 9 above;

- 11.2. failing to exercise oversight of the conduct and affairs of the First and Second Respondents; and
  - 11.3. failing to respect and protect the existing property rights and security of tenure of the residents of Trust-held land, as required by sections 7(2), 25(1) and 25(2) of the Constitution.
12. The Minister, the MEC, the Trust and the Board are directed to develop and implement, diligently and without delay, the administrative capacity necessary to—
- 12.1. demarcate allotments, issue and register Permissions to Occupy for residential, church, crèche, school or public purpose;
  - 12.2. survey such allotments;
  - 12.3. grant deed of grant rights and to obtain certificates of registered title in respect of such allotments in the Trust-held land in accordance with chapter XI of the Act and the Regulations.
  - 12.4. issue and register officially recognised certificates of land rights, and if there are none other, then to register PTOs in accordance with the PTO Regulations; and

13. The Minister or the MEC (as the Minister's delegate) and the Board shall report to the Court, on affidavit, on the steps taken to comply with paragraph 12 of this order ("**the administrative measures order**"), within 3 (three) months of the date of this order and until the order is discharged. The Applicants may reply to the administrative measures report within 2 (two) weeks of receipt of the report.
14. The Applicants may re-enrol the matter on a date to be determined by the Registrar, in consultation with the presiding Judge, for such further relief as may be appropriate in respect of the implementation of this order.
15. The Trust and the Board and any other respondent opposing this application is directed to pay the costs of this application, including the costs of three counsel;
16. Further and/or alternative relief.

**TAKE NOTICE THAT** the founding affidavit of **PARMANANDA LAWSON NAIDOO**, the supporting affidavits of **SIZANI NGUBANE, THE THIRD TO NINTH APPLICANTS** and the expert affidavit of **PROFESSOR THANDABANTU NHLAPO**, and the annexures to these affidavits, will be used in support of the application.

**TAKE NOTICE FURTHER** that the Applicants have appointed the address of their attorneys set out below as they address at which they will accept notice and service of all process in these proceedings.

**TAKE NOTICE FURTHER** that if you intend opposing this application you are required (a) to notify Applicant's attorney in writing on or before..... (b) and within

fifteen days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the unopposed motion roll on a date and time to be allocated by the Registrar of this Court.

**DATED AT DURBAN THIS                      DAY OF NOVEMBER 2018**

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Applicants' Attorney

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AND TO: **THE REGISTRAR**

High Court  
Pietermaritzburg

AND TO: **THE INGONYAMA TRUST AND  
THE INGONYAMA TRUST BOARD**

First and Second Respondent  
65 Trelawney Road  
Southgate, Pietermaritzburg

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

Third Respondent  
Care of The State Attorney  
MetLife Building, 6th Floor  
391 Anton Lembede Street  
Durban

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

Fourth Respondent  
Care of The State Attorney  
MetLife Building, 6th Floor  
391 Anton Lembede Street  
Durban

AND TO: **THE KWAZULU-NATAL PROVINCIAL HOUSE OF TRADITIONAL  
LEADERSHIP**

Sixth Respondent

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