

## **Court overturns the Ingonyama Trust's PTO Conversion Programme in its tracks**

On Friday the 11<sup>th</sup> of June the Provincial Division of the High Court in KwaZulu-Natal in favour of a group of occupiers who were assisted by NGOs to bring a case against the Ingonyama Trust. The case deal with the Trust's so-called PTO Conversion Programme implemented from 2007 to convert existing PTOs (Permission to Occupy Rights) into leasehold. The Court held that the Ingonyama Trust acted unlawfully by converting PTOs to leasehold, order the programme to cease, the Trust to repay rent collected from occupiers. The Court also held that the Minister failed to exercise sufficient oversight as she has a duty of care towards occupiers living on Trust land. Herewith the salient facts.

The Ingonyama Trust was created by the old KwaZulu Government as a landholding entity to house the land formerly owned by the KwaZulu homeland government. The Act was amended in 1997 to introduce a board for the Ingonyama Trust to assist the King in managing its affairs. Land Rights are allocated according to Zulu customary law and formally recognised through the PTO system (Permission to Occupy), whose legal status remains protected by the Interim Protection of Informal Land Rights Act (IPILRA). In 2007, the Trust decided to replace PTOs with lease agreements whereby occupiers would pay rent to the Trust. A number of occupiers challenged this system on the basis that they were now required to pay rent and could face eviction if the rent was not paid.

The Trust argued that the PTO system was outdated, would not allow the Trust to raise revenue from the occupiers and is also not accepted as collateral by banks. In reply, the Court held that the Trust had no legal mandate to raise funds from occupiers since this is the role of a municipality and there was no evidence that the funds collected was used for the benefit of the community. Most importantly, the court held that the Trust is not the 'owner' of the land in the common sense of the word but holds it in trust on behalf of the people. In this regard, the Trust is not entitled to benefit directly. Communal land rights remain legally insecure but the current occupiers have legally protected tenure rights protected by IPILRA. Although an interim arrangement, PTO rights are perpetual in nature and the role of the Trust, a a statutory institution, is to protect these rights – not to profit from them. Lease agreements, on the other hand, come with a payment obligation and can be terminated if the rent is not paid. In this sense, the conversion of PTO rights to lease agreements threatened the tenure rights of communities living on Trust land. In the Court's words, the Trust breached their duty as the trustee and "*...the Trust has effectively become a landlord rather than a trustee...*".

It is worth baring in mind that lease agreements are not unlawful per say. Leasehold is common in the land redistribution programme as beneficiaries are often given lease agreements on state land. The crucial difference is that these lease agreements are given out as new rights to beneficiaries where no previous rights existed. Communal land is very different as occupiers have existing rights protected by law. Although these rights are informal in nature, they are the *de facto* 'owners' of the land they occupy as their rights are perpetual. The object of the land tenure reform programme is therefore to upgrade these informal rights into legally secure rights. By converting these rights into leasehold, a payment obligation was introduced and their tenure rights were

'downgraded' as an occupier could be evicted if they did not comply with the rental payments. In this sense the Ingonyama Trust's actions were deemed to be unconstitutional since it was an arbitrary deprivation of rights.

Importantly, the Court also ruled that the Minister failed in her duty to protect the occupier's land rights and ordered that a remedial plan be put in place. The Minister is now required to report back to the court every three months on the steps that have been put in place to remedy the situation and protect the occupiers' rights.

The full judgement is [linked](#).