



OFFICE OF THE REGIONAL LAND CLAIMS COMMISSIONER: WESTERN CAPE

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ENQUIRIES: Mr. XA KAMA

Ref No: Z58 / MARTINS FAMILY CLAIM

Ms A. Vorster
Municipal Manager
P.O Box 20
Swellendam
6740

Attention: Ms Anneleen Vorster

RE: REQUEST THE RELEASE OF AVAILABLE MUNICIPAL LAND IN SWELLEDAM LOCAL MUNICIPALITY, WESTERN CAPE FOR RESTITUTION PURPOSES.

1. PURPOSE

- 1.1 To request the Swellendam Municipality to release any available Municipal Land in the Overberg District Municipality preferably in Swellendam to the Regional Land Claims Commission: Western Cape (RLCC: WC) for Restitution purposes.

2. BACKGROUND

- 2.1 The Martin Family lodged a land claim with the RLCC: WC before the cut –off date of (31st December 1998) for ownership rights, which were lost in Swellendam due to implementation of Group Areas Act. This claim was perused and the Commissioner was undoubtedly satisfied that it complied with the provisions of Restitution of Land Rights Act. The Group Areas Act of 1957 made provisions on how to control ownership, occupation, removal and designation of “disqualified” persons and companies. The Group Areas Development Act of 1957 dictated acquisition, dispossession and compensation of the affected properties within the framework of the Group Areas Development Board.
(Annexure A: Approved Research)
- 2.2 The claimant has shown interest for alternative Municipal Land in Swellendam as the preferred method of compensation.

- 2.3 Should the Land be available it is requested that the Municipality of Swellendam releases it for Restitution purposes at a minimal cost or gratis.
- 2.5 The RLCC in association with the Department of Land Reform and Rural Development (DLRRD) promote and support complete integrated development as a social upliftment strategy and the City of Cape Town as an organ of State is required to allocate land for Restitution purposes.
- 2.6 By releasing the available land to the RLCC: WC, it will be of assistance in addressing the skewed patterns of land rights and redress the claimant's needs for the injustices caused by the dispossession.
- 2.7 Finally, it will be highly appreciated if this matter could receive urgent attention as the Commission is under pressure to finalise all claims that were submitted by 31 December 1998 as ordered by the Land Claim Court.

3. SUMMARY

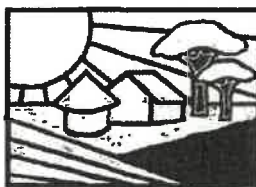
- 3.1 The Land Restitution Programme (LRP) has been introduced in terms of, and is governed by the provisions of the Restitution of Land Rights Act, Act No. 22 of 1994, as amended. This programme forms part of a comprehensive land reform strategy.
- 3.2 The key objective of the LRP is that it serves as the Government's instrument to redress the injustices of land dispossession. The injustices, in brief, refer to the dispossession of people of the land they occupied and the resettlement of such individuals at alternative locations. Under the previous legislative dispensation, the majorities of the people were not allowed to own properties as this abolished previous legislation was utilized to dispossess and forcefully removed thousands of people to alternative locations.
- 3.3 The LRP thus aims to restore affected persons to their previous situations or to compensate them for their losses. To achieve this, various options have been developed in terms of which beneficiaries of the programme could be awarded assistance such as Alternative Land, where original land cannot be restored.

4. RECOMMENDATIONS

It is hereby recommended that the Overberg District Municipality:

- 4.1. Releases any available Municipal Land in Swellendam to the RLCC: WC, for Restitution purposes.
- 4.2. Provides the office of the RLCC: WC with any requirements and or conditions pertaining to the possible release of the land requested.


MR. R. JANSE VAN RENSBURG
ACTING CHIEF DIRECTOR: RESTITUTION SUPPORT
WESTERN CAPE
DATE: 25/09/03



COMMISSION ON RESTITUTION OF LAND RIGHTS
IKHOMISHANA YOKUBUYISELWA KWAMALUNGELO OMHLABA
KOMISHINI E MABAPI LE PUSETSO YA

DITSHWANELO TSA LEFATSHE
KOMMISSIE OP HERSTEL VAN GRONDREGTE

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'HONORING THE PROMISE OF OUR CONSTITUTION'

RESEARCH (RULE 5) REPORT

LAND CLAIM LODGED BY MS MELINDA PRISCILLA ZASS,
ON BEHALF OF THE DIRECT DESCENDANTS OF THE LATE MR GEORGE
CHRISTIE MARTIN FOR ERVEN 740,742 & 743, SWELLENDAM SITUATED IN THE
SWELLENDAM LOCAL MUNICIPALITY IN THE WESTERN CAPE PROVINCE

REFERENCE NO: M288 (KRK6/2/3/A/12314/390)

Compiled by: Ms Esmerelda Reid
RLCC: Research and Investigation Unit (Western Cape)
Date: 26 January 2011

1. Introduction

An investigative research in terms Sections 11 and 2(1) of the Restitution of Land Rights Act 22 of 1994 (as amended) as read with Rules 3 and 5 of the rules regarding the procedure of the Commission on Restitution of Land Rights

The claim was lodged in the prescribed manner as stated in the Restitution Act. The claim under research has been lodged for Erven 740, 742 & 743 Swellendam, measuring 660m² each, Swellendam Local Municipality, Western Cape.

The Terms of Reference is to advise the RLCC on the validity of the claim as well as to make recommendations towards the manner of settlement of the claim.

2. Particulars of claimants

Mrs. MP Zass lodged the claim on the 24 December 1998 with the Regional Land Claims Commission: Western Cape before the 31st December 1998. (Annexure A: Claim form)

This date is within the period for lodgement of claims as provided for in Section 2(1) (e) of the Restitution of Land Rights Act, 1994 (Act No.22 of 1994), as amended.

The claimant is claiming on behalf of the direct descendants of the dispossessed, i.e. Mr George Christie Martin

3. Property Description - Rule 5(j)

Property as was and as is

The property under claim is for Erven 740, 742 & 743 Swellendam, measuring 660m² each. These properties are under the jurisdiction of the Swellendam Local Municipality which forms part of the greater Overberg District Municipality.

The property has since been consolidated into the current description, i.e. Erf 2696, which was subdivided and are remaining portions of Erven 2700, 2701, 2704, 2705, 2706, Swellendam (Annexure B: Aktex Report)

4. History of acquisition of property of the claimed land - Rule 5(b)

Erven 740, 742 & 743 Swellendam were acquired by Mr George Christie Martin through T131/1984 from Mr William Andrew September. (Annexure C: Deed of Acquisition). The claimant family was using the properties for residential purposes.

5. Establish the nature of rights in land the claimants were dispossessed of - Rule 5(g)

The dispossessed lost ownership rights, and therefore residential rights were lost. **(Annexure D: Erf Register).**

6. Particulars on legislation or practice used to dispossess the claimants - Rule 5(f)

Erven 740, 742 & 743 Swellendam were acquired by Mr George Christie Martin through T131/1964. **(Annexure C: Deed of Acquisition).** The claimant family was using the properties for residential purposes. These properties fell within the area demarcated for the "white group". The Area was declared a "White Group" Area by the Group Areas Act of 1968, Proclamation 40 of 1964. **(Annexure E: Deeds Search Report).** These properties were disposed off to the Community Development Board through T2508/1966. **(Annexure F: Deed of Dispossession).**

It seems that the claimant family was allowed to reside on the property for 4 years, where after they moved in 1968 to Railton, an area demarcated for only "coloured" people. **(Annexure G: Claimant Affidavit).** After dispossession the properties were has been consolidated Erf 2696, which was subdivided and are remaining portions of Erven 2700, 2701, 2704, 2705, 2706, Swellendam. **(Annexure E: Deeds Search Report)**

7. Establish which Government Department or Institution dealt with the Dispossession - Rule 5(f)

Proof of the state's involvement is that the dispossession occurred as a result of the application of the Group Areas Act.

8. Date and circumstances of the dispossession of the rights in land - Rule 5(d)

The Area was declared a "White Group" Area by the Group Areas Act of 1968. Proclamation 40 of 1964. **(Annexure D: Deeds Search Report).**

9. Land use prior to removal and at the time of dispossession

The property was used for residential purposes at the time of dispossession. There are currently municipal flats on the properties. **(Annexure H: Email from Municipality)**

10. Compensation Received - Rule 5(e)

The dispossessed was paid R1 860.00 (One Thousand Eight Hundred and Sixty Rand Only) in lieu of the forced removals (i.e. the lost of 3 properties) and the family had to find accommodation at own cost. Due to the politics at the time coloured and black people has to accept what ever the state are offering to them. The could not challenge the government at the time. The family moved to Railton, an area demarcated for only "coloured" people. Having regarded all relevant circumstances, the compensation received at the time of dispossession, was not just and equitable as contemplated in Section 25 (3) of the Constitution of South Africa 1996.

The rights of the claimants were violated when they were dispossessed of their legally acquired dwellings on racial grounds. They were forced to sell, vacate or move to smaller allocated municipal houses.

Having regard to factors mentioned in Section 33 of the Restitution Act, the State would not require such compensation to be deducted from the award here in.

11. Current owner(s) (Annexure B: Aktex Report)

Erf No	Current Owner
Rem Erf 2696	Oorgangsgraad – Swellendam
Erf 2700	Steenkamp Madelein
Erf 2701	Gerber Jan Hendrik
Erf 2704	Drysdale Marcus & Drysdale Nicolene Mare
Erf 2705	Vorster Paul
Erf 2706	Van Fritz as Familie Trust

12. Recommendations

Based on the information available to me, it's recommended that:

12.1 the claim be accepted as prima facie valid, as it meets the S2 criteria and other prescripts of the Restitution Act and that the claim be forwarded for finalization of its settlement;

Recommended / ~~Not recommended~~



Ms Esmerelda Reid
Researcher

Date: 26/01/2011

13. Recommendations

Based on the information available to me, it's recommended that:

13.1 the claim be accepted as prima facie valid, as it meets the S2 criteria and other prescripts of the Restitution Act and that the claim be forwarded for finalization of its settlement;

Recommended / Not recommended


Mr M Mphahlele
 Senior Legal Administration Officer: WC
 Date: 26-01-11

14. Recommendations

Based on the information available to me, it's recommended that:

14.1 the claim be accepted as prima facie valid, as it meets the S2 criteria and other prescripts of the Restitution Act and that the claim be forwarded for finalization of its settlement;

Recommended / ~~Not recommended~~

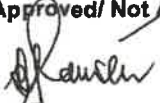

Mr D Smit
 Director: Operations
 Date: 27/01/11

15. Recommendations

Based on the information available to me, it's recommended that:

15.1 the claim be accepted as prima facie valid, as it meets the S2 criteria and other prescripts of the Restitution Act and that the claim be forwarded for finalization of its settlement;

Approved/ Not Approved


Ms E Jansen
 RLCC: WC
 Date: 1/2/11

Title

Restitution of Land Rights Act (22/1994) as
Amended: Erven 740, 742 & 743,
Swellendam

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