



**11 June 2021**

**INGONYAMA TRUST JUDGMENT AN ENORMOUS WIN FOR RURAL RESIDENTS IN KZN**

**Press Statement issued by Land and Accountability Research Centre, University of Cape Town**

The unanimous judgment of the KZN High Court in the case against the Ingonyama Trust and the Ingonyama Trust Board is an enormous victory for the people who live on trust land in KwaZulu-Natal.

Today, 11 June 2021, the court found that the Trust acted unlawfully in issuing leases to people who are already the 'true and beneficial owners of the land' in terms of Zulu customary law and the Ingonyama Trust Act.

The judgment, authored by Deputy Judge President Isaac Madondo, went beyond that, to also say that the way leases were issued abrogated citizens' Constitutional rights to tenure security, such as the informal rights to land which are protected by the 1996 Interim Protection of Informal Land Rights Act, and the rights of people with old-order Permission to Occupy (PTO) certificates. The Court found that all leases concluded by the Trust over residential, arable, communal, and commonage land are unlawful and invalid.

The court ordered the Trust to repay the rental that has already been paid to it by lessees.

The Court also made findings against the Minister of Agriculture, Rural Development and Land Reform. These have enormous ramifications for the tenure security of the 18 million South Africans living in all former homeland areas.

The court found that Minister Thoko Didiza had breached her duty to respect, protect, promote and fulfill the right to tenure security of the holders of IPILRA rights in KZN.

It ordered her to report back to the court every three months to explain the practical steps that have been taken and progress made to secure and record such rights.

Because the government has failed to introduce measures to secure tenure rights, it ordered her to ensure that the old PTO system is honoured in the meantime.

While these orders are specific to and only apply to Ingonyama Trust land, they have far-reaching implications for the rest of the country where informal land rights are also insecure, and where these are unrecorded because of government's failure to introduce the tenure security laws that are required by the Constitution.

The Department has recently announced that it will be introducing the Communal Land Tenure Bill to parliament very soon. This judgment is bad news for that bill because it seeks to vest control over

communal land in traditional leaders at the expense of the tenure rights of those who have inherited communal land over generations. The bill may well have to go back to the drawing board if the Minister is to fully comply with the principles laid out in the Ingonyama judgment.

It remains to be seen how the new King will respond to the judgment. We hope he will be overjoyed that his subjects have been reaffirmed as the rightful owners of their land. The management of the Ingonyama Trust has caused many headaches recently, particularly in Parliament where the Trust has repeatedly been asked to explain why it has obtained qualified audits. It is also facing upheaval from within, with strike action by Ingonyama Trust Board staff on the cards following reported unhappiness over pay discrepancies and employment conditions.

The KZN High Court judgment puts beyond doubt that the management of the Trust has systematically undermined the ownership rights of people living on Ingonyama Trust land. It also vindicates the High Level Panel report which in 2017 recommended that the Act that gave rise to the Trust in 1994 should be repealed or amended. This followed the panel's finding that the Trust was abrogating the land rights of those it exists to protect.

Politicians have been reluctant to tackle the issue, but this court judgment makes it impossible for them to ignore it – it must urgently be addressed.

ENDS

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