SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

Brown v Mbhense and another
Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today (by a majority of three judges, two judges dissenting) dismissed an appeal against a judgment of the Land Claims Court, holding that the Land Claims Court was correct in its conclusion that the respondent (Ms Mbhense) falls within the definition of a 'labour tenant' as contained in section 1 of the Land Reform (Labour Tenants) Act 3 of 1996.

Ms Mbhense (a 67 year old woman) was born on Highgate Farm in the Umgeni district of KwaZulu-Natal and has lived there all her life. Her parents were also born on the farm, lived there and worked for the owner. She claimed that there was an agreement between her parents and the owner, entered into before she was born, that they could keep stock and also plough portions of the land. Her parents and parents-in-law were buried on the farm. From the time that Ms Mbhense was a girl until the time that she herself had children (a period of more than 17 years), she worked for the owner of the farm, first looking after his children and thereafter as a cook. When she married, her husband (like his parents before him) was also working for the owner of the farm and he continued to do so until his death. Ms Mbhense and her husband used cropping land on the farm throughout their marriage. She continued to do so after her husband's death and she still does so today in a small vegetable garden in front of her dwelling

It was undisputed that Ms Mbhense complied with requirement (a) of the definition of 'labour tenant', having resided on the farm her whole life. The appeal turned on whether or not she had proved that: (b) she had the right to use cropping or grazing land in consideration for providing labour to the owner or lessee of the farm; and (c) that her parent or grandparent resided on the farm and had the right to use cropping or grazing land in consideration for providing labour to the owner or lessee of the farm.

In the majority judgment, the SCA referred to the precarious position of labour tenants and the fact that they represent a vulnerable section of society, are almost always impecunious, unsophisticated and unschooled. It is important to appreciate the power imbalance in the relationship between the farm owner and the labour tenant and that labour tenancy relationships in apartheid South Africa were by and large coercive. It is simplistic to approach the relationship between a farm owner and a labour tenant as necessarily one in respect of which only one member of a household or family unit has the right to be or remain on the farm as a labour tenant. To gauge the existence of a labour

tenancy agreement in the technical and precise manner akin to that applicable to usual residential or commercial tenancies is far too restrictive an approach and one that goes against the objective and general tenor of the Act.

With regard to requirement (b), the majority of the SCA held that Ms Mbhense herself did indeed have the right to use cropping land on the farm, an entitlement which she exercised unfettered over a lengthy period of time, both during her employment and thereafter, and in consideration for which right she provided labour.

With regard to requirement (c), the majority held that it was only the last element that was seriously disputed, namely whether Ms Mbhense had proved that her parents' right to use cropping or grazing land was in consideration of the obligation to provide labour. Ms Mbhense testified that the agreement between her parents and the owner was to the effect that they were to have cropping rights and the right to graze a number of stock on the farm, and that they were paid as well. The SCA held that this, together with the meagre salary paid to Ms Mbhense's father, compelled the conclusion that her father had provided labour at least partly in consideration for the right to use cropping and grazing land on the farm.

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