Melmoth restitution joint venture attempts more venomous than 1913 Land Act

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Joint venture agreements in post settlement modelling of restituted land are nothing, but a second wave of land dispossessions by white land holders in South Africa – with more venomous effects than those of the 1913 Land Act. Recent events regarding the settlement of restitution claims in the Northern KwaZulu-Natal town of Melmoth are a case in hand.

The Melmoth land claims by five communities of Entembeni Royal Household, Entembeni, KwaDludla, Emakhasaneni and Mthonjaneni date back to 1995 and in line with the provisions of the Restitution of Land Rights Act 22 of 1994. The Act provided for the restitution of rights in land to persons or communities who were dispossessed and forcefully removed from their land, as a consequence of Government implementing provisions of the 1913 Land Act. The Restitution of Land Rights Amendment Act 48 of 2003 was passed to amend the Restitution of Land Rights Act of 1994, so as to empower the Minister of Land Affairs to purchase, acquire in any other manner or expropriate land, a portion of land or a right in land for the purpose of the restoration or award of such land, portion of land or right in land to a claimant or for any other related land reform purpose.

Upon successful claim on the restoration of the right to land, communities, through representative entities such as community Trusts or Communal Property Associations (CPAs) and based on the state or usage of the land at the time of settling the claim, claimant communities have an option to either take the land back and use it for purposes such as agriculture or residential or take financial compensation if they so wish or in cases where the land cannot be reversed from its current state, for example if a town has been built on the land.

With a total land size of over 5610 hectares and upon settlement of their land claim by almost R900 million, all five Melmoth communities were presented by outgoing land holders with an already written joint venture agreement based on a 70/30 percentage split, wherein outgoing farmers would have acquired 70% and communities would have had to share in the remaining 30%. The land is under a massive agricultural operation with sugar cane, timber, essential oils, livestock and avocados among other things. The community had opted for the return of the land with an intention to continue to farm the land.

Joint ventures with outgoing land holders are business arrangements where in the context of agricultural land, outgoing farmers would continue to work the land and profit from it in the

name of a newly established company said to be jointly owned by the outgoing farmer and the community trust or CPA. Parties benefit is based on an agreed percentage split. In many similar initiatives the split is based on a 50/50 arrangement. Even this has been continuously challenged by land reform practitioners on the basis that it's an unfair arrangement as the community brings 100% of the land, and the partner brings absolutely nothing worth the 50%, as employees, equipment and business loans are paid through farm proceeds. The 70/30 percentage split agreement by outgoing farmers in Melmoth was, without doubt, outrageous and baseless.

Towards the end of 2019, community leaders representing the these communities approached the South African Farmers Development Association (SAFDA) seeking advice and possible partnership on the best post-settlement model they can consider in the face of what they referred to as an insult by outgoing farmers. This resulted in SAFDA being chosen by four communities of Entembeni Royal Household, Entembeni, KwaDludla and Emakhasaneni as the preferred strategic partner. In March 2020, SAFDA entered into a co-management agreement with the four communities in terms of which the organisation is providing co-management of farm operations with the communities and governance support to all four land holding entities. Communities own 100% of the land. As a co-management partner, SAFDA charges only 5% as opposed to the 70% stake which the outgoing farmers had drafted an agreement on. SAFDA provides ongoing training to the members of the community who have been chosen by the communities to participate in the management and operations of the partnership.

On the basis of the SLA, SAFDA prepared business plans and secured R68million in land development support grants for the four communities from the Department of Agriculture Rural Development and Land Reform. Prior to this the organisation had contributed interest free loan of R7 million to these communities to bridge cash flow gap, while awaiting Government restitution grant. Within one year of operation, SAFDA had facilitated payment of dividends from a R10 million divisible proceeds to the beneficiaries.

What SAFDA has done is literally intercept and disrupt what clearly appeared to be the second round of land dispossession in Melmoth since 1913 – just when the communities think they have had their land returned. Like a serpent sneaking under the door, the 70/30 agreement was being drafted and sneaked-in alongside the conclusion of the land claim process and was going to have one major effect. The outgoing farmers were to work and profit from the land which they had already sold and pocketed almost a billion rand from it.

This is just, but one of many incidents of the reality of land reform in South Africa. As more and more land claims are being settled outgoing landholders are perpetually resorting to joint venture arrangements as means to pocket from both, the land and the government money, hence the resistance of outgoing landholders in Melmoth.

Simply put joint venture arrangements between outgoing landholders and claimant communities in restitution have come up to serve as nothing, but a second wave of land dispossessions. More severe than the 1913 Land Act in that it's a second time loss of the same land for black communities and a double win opportunity for white land holders as they end up with both the land and the money.