

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS

OVERSIGHT ON UMBHABA ESTATES - NKOMAZI LOCAL MUNICIPALITY (EHLANZENI DISTRICT)

1. INTRODUCTION

The Mpumalanga Provincial Legislature (the Legislature) has a responsibility in terms of Section 118 of the Constitution of the Republic of South Africa, 1996 (the Constitution) to facilitate public involvement in its legislative and other processes. Section 115 (a) and (b) of the Constitution empowers the Legislature to (a) "summon any person to appear before it to give evidence on oath or affirmation, or to produce documents" and sub-section (b) states that "the Legislature or any of its Committees may require any person or provincial institution to report to it".

This is a report back on the oversight visit that was conducted by the Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs (the Committee) on the 14th of February 2017 on a matter regarding Umbhaba Estates situated at Hectorspruit and which is a private farm. The report seeks to inform the House on the activities and recommendations that were taken during the oversight visit.

2. METHOD OF WORK

The Committee conducted an oversight visit and met with the shop stewards as well as the former workers of the Umbhaba Estates on the 14th of February 2017. The visit/ meeting was held in the Nkomazi Local Municipality (Ka-Mhlushwa Community Hall).

3. BACKGROUND AND OBJECTIVES OF THE OVERSIGHT VISIT

3.1 Background

A motion was tabled during the Legislature Sitting of the 20th of October 2016. The motion requested the Legislature to intervene on the prolonged strike at Umbhaba Estates which started in 2015.

Following the tabled motion, the Speaker of the Legislature referred the matter and mandated the Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs to investigate the reported challenges on the Umbhaha Estates and report back to the House.

Although the Portfolio Committee envisaged meeting with the Umbhaha farm management, the request for a meeting from the Portfolio Committee was declined on the basis that the matter is in court. On that basis, the Portfolio Committee conducted an oversight visit and met with the shop stewards and former workers of the Umbhaha Estates on the 14th of February 2017 at Ka-Mhlushwa Community Hall in the Nkomazi Local Municipality.

3.2 Objectives

The following objectives shaped the oversight visit:

- (i) To meet and interact with the former farm workers in order to receive first-hand information regarding the challenges they have been facing in the farm and in order to hear their concerns.
- (ii) To assess the progress made by the other stakeholders who have been involved in the intervention processes.
- (iii) To determine the extent of the challenge and find ways in which the Legislature through the Portfolio Committee can intervene in the matter.
- (iv) To come-up with recommendations and report back to the House as instructed by the Speaker of the Legislature.

4. BRIEFING TO THE COMMITTEE ON UMBAHABA ESTATES

The Committee was firstly briefed by the Legislature's Research and the Legal Services Sections regarding the matter of Umbhaha Estates and the briefing covered the following:

4.2 Background Information on Umbhaba Estates

- a) Umbhaba Estates (Pty) Ltd (“Umbhaba Estates”) is a large agricultural enterprise based in Mpumalanga, South Africa and operating out of three geographical locations, namely: Hazyview, Hectorspruit and Kiepersol. The company grows, ripen and distribute organic bananas to leading chain-stores as well as other markets throughout the country. It has shown consistent growth as a business entity and has distinguished itself as a major agricultural role-player and leading banana producer in South Africa.
- b) The farming operation was founded by Roy and Cheryl Plath in 1979 and the business has been in operation for over 36 years. Umbhaba Estates has a significant impact on the regional socio-economic conditions and is a large-scale employer in the agricultural sector in Mpumalanga. Umbhaba Estates has distinguished itself as a creator of job opportunities, especially over the past 20 years.

4.3 Challenges of the dismissed Umbhaba Farm Workers.

Close to 3000 farm workers at Umbhaba Estates went on strike on 4 November 2015, indicating that they wanted to join a trade union of their choice; that will assist in the challenges and issues of concern regarding their basic conditions of employment. As a result of the strike, more than 390 farm workers at Umbhaba Estates in the Nkomazi Municipality were allegedly dismissed for conduct relating to the refusal by Umbhaba Estates to recognize the Food and Allied Workers Union as a Union of choice by the workers. Other forms of misconduct for which they were allegedly dismissed were linked to the strike action and included intimidating suppliers and non-striking workers, assault, arson and malicious damage to property.

4.4 Legal advice on the matter

- a) It was reported that since the strike commenced and after the dismissals of the farm workers, allegations of intimidation, damage to property and other forms of criminality took place on the farm. As a result of the disputes, labour, civil

and criminal cases are allegedly pending in various courts and other tribunals in South Africa.

- b) It was further reported that the Umbhaba Estates matter touches upon various labour relations issues such as the right to freedom of association, granting of organizational rights and unfair dismissals, which are matters that are entrenched in the Constitution and the Labour Relations Act, 1995.
- c) The Committee was advised that in terms of section 114(2)(b) of the Constitution and rule 131(b) of the Mpumalanga Provincial Legislature Rules and Orders 2013 (“the Rules”), the Committee’s powers are limited. These legal prescripts provide that the Committee has jurisdiction to conduct oversight only on provincial organs of state. Umbhaba Estates is not an organ of state or a state farm and since it is owned by private persons, the Committee does not have powers to conduct oversight on the business of the farm.
- d) The Committee was further advised that:
 - (i) Since the farm workers have approached the National Department of Labour for relief and it seems like the department has not done much to assist, the committee may forward this matter to the NCOP, in line with the Rules, so that the NCOP may call upon the Department of Labour to account on this matter.
 - (ii) Before the Committee may refer the matter to the NCOP, it must gather all the relevant information regarding this matter by calling upon the aggrieved workers to explain to the committee as to what transpired at the Umbhaba Estates.

5. INTERACTIONS BY THE COMMITTEE WITH UMBHABA ESTATES SHOP STEWARDS AND FORMER FARM WORKERS

On the 14th of February 2017 the Committee met with the two (2) concerned and affected stakeholders, namely: shop stewards representing the farm workers as well as the former farm workers on two separate sessions in order to receive first-hand information around their plight.

5.1 Meeting with Shop Stewards

During the meeting with the shop stewards representing the farm workers, the Committee requested the different formations to each provide a brief on the history of the issues as well as all the matters that were regarded as essential by the Committee.

The shop stewards provided a report which covered the following issues and allegations:

- a) There are no official and stipulated working hours at the farm and workers are not paid overtime if they work on Saturdays. Furthermore, workers are not allowed to take time off during weekends and holidays in order to attend to personal engagements such as attending family responsibilities and funerals.
- b) Workers are emotionally and sexually abused by some of the management.
- c) Umbhaha Estates employs workers that do not have proper managerial training and qualifications, most of whom are foreign nationals who are not properly documented.
- d) The farm owner does not want the farm workers to choose and join a union of their choice.
- e) Truck drivers who are transporting goods to different areas within and out of the province are not paid stipends for food and sleep-out and only earn an amount of R38, 00 per trip.
- f) Workers are not registered permanently and most have worked for the farm for more than 15 years and are still considered as temporary workers.
- g) The case relating to the Umbhaha Estates' refusal to allow the farm workers to join a union was referred to the CCMA in November 2015. However, no progress has been made thus far and the arbitration is still pending.

- h) They want Umbhaba Estates to reinstate and back pay all the dismissed workers for all the months that they have been unemployed since they were dismissed without valid reasons.
- i) A firm of lawyers was appointed to handle the labour disputes matter on behalf of the farm workers.

The shop stewards stated to the Committee that if they do not have any response soon, they will mobilize a strike, and they need a time frame indicating when their issues will be resolved. (Documents were later provided to the Committee in support of some of the claims and allegations made).

5.2 Stakeholders involved in resolving the matter

During the deliberations with the affected farm workers and shop stewards, it was revealed that a number of interventions have been attempted by various government and non-government structures in trying to deal with the concerns raised by the workers. The following are amongst the institutions where this matter was reported to:

- The Presidency
- Office of the Premier
- COSATU
- Department of Labour (National and Provincial)
- Human Rights Commission
- Department of Rural Development and Land Reform
- Traditional Leaders in Nkomazi
- Nkomazi Local Municipality
- Department of Social Development
- Political parties in the province
- High level panel on the assessment of the impact of laws passed.

5.3 Responses by the Committee Members

- a) The Chairperson of the Committee apologized on behalf of the Committee and the Legislature for not being able to intervene on the matter as mandated by the Constitution and for the alleged treatment of the workers. He further assured the shop stewards that the Legislature does not at any rate undermine their issues and their plight.
- b) Farm workers who may have been victims of sexual assault were encouraged to report the cases to the police.
- c) The Committee will compile a report that will be tabled in the Legislature.
- d) Relevant stakeholders will be consulted in order to solicit progress reports that will assist in coming up with resolutions in addressing the matter.

5.4 Meeting with Former Farm Workers

Subsequent to the shop stewards meeting, the Committee met with the farm workers in order to obtain more insight on the challenges and the concerns they had.

The following were the issues raised:

- a) Allegations regarding sexual harassment of female employees by the supervisors were raised and that the employer did not assist when the matters were raised with them. Most of the alleged victims were afraid to press charges as it was alleged that the farm owners worked with police who had victimized the workers during most of the protests that took place on the farm.
- b) Workers (specifically the truck drivers) reported that they were forced to drive long distances without being paid the per diem and other allowances as required by the basic conditions of employment. Overtime was also not paid to them whilst working and delivering the packages to other provinces.
- c) Workers emphasized that they need to go back to work, as they are struggling to feed their families.

- d) The working conditions were not conducive, hence workers felt that they needed to join a trade union and be represented so that the union could raise issues and negotiate better working conditions with the farm owners.

6. OBSERVATIONS MADE DURING THE OVERSIGHT VISIT

- (i) There have been prior engagements with different stakeholders at the Local, Provincial and National level and it is not clear how far the processes have gone with each.
- (ii) There have been allegations that the farm is recruiting foreign nationals who do not possess necessary work permits and educational qualifications.
- (iii) There are also allegations that the SAPS is working with the Umbhaba Estates Management to victimize the farm workers, hence there is allegedly no support from SAPS.
- (iv) The farm workers alleged that they have not received any response from government institutions.

7. FINDINGS

The Committee made the following findings:

- a) The Umbhaba Estates matter started before the actual strike, where the employees and union bodies engaged with the employer a number of times regarding the conditions of employment of which the employer refused to change.
- b) The matter is a deliberate act by the employer to infringe the rights of employees including the violation of the Basic Conditions of Employment Act, 1997.
- c) There are two (2) cases regarding the Umbhaba Estate Farm:
 - Refusal by the employer to allow 3 000 farm workers to join their union of choice.
 - Dismissal of the more than 390 farm workers who are part of the 3 000 workers.

- d) The Umbhaba Estates matter involves:
- the alleged infringement of the farm workers' fundamental rights which rights are protected by the Constitution namely: freedom of association; employee's rights to join a trade union and participate in activities of a trade union (labour relations); and human dignity; and
 - The alleged violation of other labour protections that are guaranteed by the Labour Relations Act, 1995 such as organizational rights and the right not be unfairly dismissed by an employer.
- e) Umbhaba Estates allegedly dismissed the farm workers for misconduct linked to the strike action that commenced on 4 November 2015 and the charges included intimidating suppliers and non-striking workers, assault, arson and malicious damage to property.
- f) Umbhaba estates subsequently obtained a prohibitory interdict preventing the alleged dismissed employees from engaging in an unlawful strike and destruction of property through violence.
- g) The farmworkers' disputes relating to unfair dismissal and refusal to grant organizational rights are pending in the CCMA and/or the Labour Court.
- h) A firm of attorneys was appointed on behalf of the farm workers to assist with the labour disputes and they still remain their attorneys of record;
- i) The dismissed farms workers have to date met with a number of stakeholders and are still awaiting feedback on the issues raised.
- j) There are allegations that the farm employs people that do not have the necessary documentation to work in South Africa.
- k) The more than 390 dismissed farm workers are currently without employment and affected by abject poverty.
- l) Most of the issues raised by the dismissed farm workers involve three spheres of government such as the Department of Labour; Department of Rural development and Land Reform and the Office of the Presidency (national sphere); the Premier's Office and Department of Social Development (provincial sphere) and Nkomazi Local Municipality and traditional leaders in Nkomazi (local sphere).
- m) The Legislature does not have the constitutional competency to deal with the matter since it overlaps three spheres of government and it cannot also

conduct oversight at Umbhaba Estates by virtue of it not being a provincial organ of state.

- n) The NCOP has a constitutional obligation to ensure that provincial interests are taken into account in the national sphere of government. In fulfilling this obligation, it provides a national forum for public consideration of issues affecting the provinces. The NCOP would accordingly be empowered to deal with this matter.
- o) Section 69 of the Constitution authorizes the NCOP to summon any person to appear before it to give evidence or to produce documents and to require any institution or person to appear before it.
- p) Rule 30 of the Rules empowers the Legislature to refer a matter that affects a province to the NCOP, in the event where the Legislature does not have the competency to deal with the matter in question.

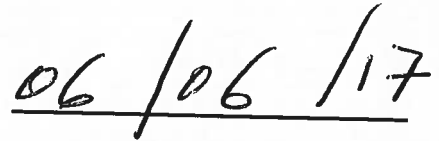
8. OVERARCHING RECOMMENDATIONS

Emanating from the above-mentioned findings, the Committee makes the following overarching recommendations:

- a) The legal processes (cases) that are ongoing should be allowed to unfold and be concluded accordingly in the relevant courts and tribunals.
- b) That the Legislature formally refers the matter to the NCOP in terms of Rule 30, requesting the NCOP to deal with the matter, including asking the State President to establish a commission of enquiry in terms of the section 84(1)(f) of the Constitution and the Commissions Act 8 of 1947 - in order to find a long lasting solution to the farm worker's plight.
- c) The Mpumalanga Provincial Government needs to consider accommodating the dismissed farm workers in programmes such as Fortune-40 and Extended Public Works Programmes (EPWP) and capacitating them with other relevant training or skills in order to ensure that they are able to get some sort of income while the matter is being addressed.

9. CONCLUSION

The Chairperson of the Portfolio Committee, Hon BD Dube, extends his appreciation to Members of the Committee and the support staff of the Legislature for their participation during the oversight regarding the matter of Umbhaba Estates. The Portfolio Committee tables this report to the House for adoption with its recommendations.



HON. BD DUBE (MPL)

DATE

**CHAIRPERSON: PORTFOLIO COMMITTEE ON
AGRICULTURE, RURAL DEVELOPMENT, LAND
AND ENVIRONMENTAL AFFAIRS**