103/85

CASE NO. 179/84
/CCC

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between

SHADRACK MORE — APPELLANT

AND

MINISTER OF CO-OPERATION & DEVELOPMENT — FIRST RESPONDENT

J DE VILLIERS — SECOND RESPONDENT

CORAM: RABIE CJ, KOTZé, TRENGOVE, BOTHA et GROSSKOPF JJA

HEARD: 29 AUGUST 1985

DELIVERED: 19 SEPTEMBER 1985

J U D G M E N T

TRENGOVE, JA:

This/ .....

This appeal is about a dispute that arose from the issue by the State President, acting under the powers conferred upon him by section 5(1)(b) of the Black Administration Act, 38 of 1927 (the Act), of a withdrawal order that was directed, inter alios, at members of the Bakwena Ba Magopa tribe. As a result of this dispute the appellant, in an urgent application that was heard before Van Dyk J in the Transvaal Provincial Division on 25 November 1983, sought an order:

1. Interdicting and restraining servants of the first respondent from forcibly evicting or in any way unlawfully interfering with the Applicant and other members of the Bakwena Ba Magopa tribe resident at Magopa, save by due process of law or with their consent given in writing;
2. Directing the first respondent to comply with

the provisions of s 5 Act 38 of 1927;

3. Declaring the threat by Second Respondent to remove members of the Bakwena Ba Magopa tribe resident at Magopa by force to be unlawful and ultra vires s 5 of Act 38 of 1927;
4. Directing that first respondent only pay the costs of this application should the relief sought be opposed.
5. That the orders set out in paragraphs 1, 2 and 3 above serve as interim orders with immediate effect returnable on a date to be arranged.

The learned judge dismissed the application with costs and also refused an application by the appellant for leave to appeal. The appellant was subsequently granted leave to appeal by this court.

The outcome of this appeal turns mainly on the proper interpretation of section 5(1)(b)

of the Act. The facts set out by the appellant in his founding affidavit were not placed in issue by the respondents for the purposes of the proceedings in the court a quo. The essential facts may be stated as follows:

The appellant is a member of the Bakwena Ba Magopa tribe which had for many years prior to 25 November 1983 been resident in the village of Magopa situated on the farms Zwartkop No 605 (also known as Zwartrand) and Hartbeeslaagte No 82 (also known as Hartebeeslaagte) in the district of Ventersdorp. The farms were purchased by the tribe in 1916 and 1931 respectively, and they were

held/ .....

held in trust by the first respondent for the members of the tribe who resided there. The farms also fell within the provisions of section 21(1) of the Development Trust and Land Act, 18 of 1936. The appellant had a residence on the Zwartkop farm. Over the years the members of the tribe built homes, schools and churches on these farms and they created what could be described as a self-supporting community. They carried on farming operations there and produced much of their own food. They also owned cattle and sheep and the necessary farming implements, including tractors and ploughs. There was also a cemetery on the farms which was used for the burial of the members of the tribe.

On 10 November 1983, the State President issued an order under section 5(1)(b) of the Act in terms of which members of the Bakwena Ba Magopa tribe, and certain other persons, resident on the farms in question, were directed to withdraw from the farms - within 10 days of the service of the order upon them - to the Pachsdraai area in the district of Groot Marico, in order to reside there and not at any time thereafter to return to the farms. The terms of the order, which was issued in Afrikaans, read as follows:

"AAN DIE LEDE VAN DIE SWART STAMME, DIE LEDE VAN DIE SWART GEMEENSKAPPE EN DIE SWART PERSONE WOONAGTIG IN DIE OOPGESTELDE SWART

GEBIEDE ZWARTRAND EN HARTEBEESLAAGTE, DISTRIK VENTERSDORP, PROVINSIE TRANSVAAL

NADEMAAL ek dit in die algemene publieke belang dienstig ag dat u, die lede van die Swart stamme, die lede van die Swart gemeenskappe en die Swart persone woonagtig in die Oopgestelde Swart Gebiede Zwartrand en Hartebeeslaagte, distrik Ventersdorp, provinsie Transvaal, saam met die lede van u gesinne, moet trek na die Pachsdraai gebied, wat insluit gedeeltes van Rooderand en Doornlaagte, distrik Groot Marico, provinsie Transvaal.

SO IS DIT dat ek, kragtens die bevoegdheid my verleen by artikel 5(1)(b) van die Swart Administrasie Wet, 1927 (Wet 38 van 1927), hiermee beveel dat u, die lede van die Swart stamme, die lede van die Swart gemeenskappe en die Swart persone woonagtig in die Oopgestelde Swart Gebiede Zwartrand en Hartebeeslaagte, distrik Ventersdorp, provinsie Transvaal, binne die tydperk van tien dae na bestelling van hierdie bevel aan u, moet trek na die genoemde Pachsdraai gebied, wat insluit gedeeltes van Rooderand en Doornlaagte, distrik Groot Marico, provinsie Transvaal, om daar te woon op daardie gedeeltes van, of persele op

voormelde/ .....

voormelde gebied, wat vir u, die lede van die Swart stamme, die lede van die Swart gemeenskappe en die Swart persone woonagtig in die Oopgestelde Swart Gebiede Zwartrand en Hartebeeslaagte, distrik Ventersdorp, provinsie Transvaal, uitgewys is of wat te eniger tyd na bestelling aan u van hierdie bevel op u versoek deur die Hoofkommissaris, Pretoria, of sy verteenwoordiger, of 'n beampte van die Departement van Samewerking en Ontwikkeling, aan u uitgewys sal word en wat in ieder geval by u aankoms aldaar deur genoemde Hoofkommissaris, of sy venteenwoordiger, of genoemde beampte, aan u uitgewys sal word.

EN EK BEVEEL verder dat u, die lede van die Swart stamme, die lede van die Swart gemeenskappe en die Swart persone woonagtig in die Oopgestelde Swart Gebiede Zwartrand en Hartebeeslaagte, distrik Ventersdorp, provinsie Transvaal, nadat u getrek het, nie te eniger tyd na die genoemde Oopgestelde Swart Gebiede Zwartrand en Hartebeeslaagte, distrik Ventersdorp, provinsie Transvaal, mag terugkeer nie."

On/ .....

On 18 November 1983 the second respondent served the order on the members of the tribe at a gathering specially convened for this purpose. Having read out the terms of the order, the second respondent warned the gathering that anyone who had not moved from the farms by 28 November 1983 would be summarily and forcibly ("met geweld") ejected on the following day, i e on 29 November 1983. The appellant and the other members present then indicated that they were not prepared to move. As a result of the second respondent's threat of forcible removal, the appellant then instructed his attorney to write to the first respondent: (a) for an under-

taking to comply with the provisions of the first proviso to section 5(1)(b) "in the light of the refusal of the tribe to move" and to place the matter before Parliament; and (b) for an assurance that no forcible eviction of the members of the tribe would take place without due process of law. Pursuant to these instructions the appellant's attorney wrote to the first respondent on behalf of the appellant "and the Bakwena Ba Magopa (the Tribe) resident on the farms Zwartkop en Hartbeeslaagte, Ventersdorp," on 21 November 1983. In this letter, which was also served on the first respondent on the same date, it was said, inter alia:

"We/ .....

"We are instructed to give you notice that in the absence of reasonable negotiations and consultations our clients will remain on the said property after 28 November 1983 which they are entitled to do in terms of s 5 (1)(b) of the Act, until the necessary resolution by Parliament as required by the Act has been approved."

"This letter serves notice to you that our clients will refuse to move to Pachtsdraai on the due date of 28 November 1983. Any attempt to evict our clients summarily or forcibly without following the procedures laid down in s 5(1)(b) after 28 November as threatened or at any time will constitute an unlawful violation of our clients' rights."

"Our clients cannot wait until after your department has committed irreversible and unlawful acts. We hereby demand an undertaking that no forcible eviction of the members of the Bakwena Ba Magopa resident at the above farms will take place until the

necessary Parliamentary Resolution has been approved and until the necessary procedure envisaged by s 5(2)(b) has taken place. Such undertaking is to be delivered or telegraphed or telephoned to our offices by 9.00 a.m. tomorrow, 22 November 1983, failing which we are instructed to proceed without further notice to obtain the appropriate relief from the Supreme Court."

Since there was no positive response to this letter by 09h00 on 22 November 1983, the appellant instituted proceedings against the respondents by way of the urgent application later that same day.

In the respondents' answering affidavit, deposed to by Mr S C Vermaak, Deputy Director in the Department of Development and Co-operation, it was stated, inter alia:

"I humbly/ .....

2.

I humbly submit that there is not sufficient time to file replying affidavits to all the allegations contained in the Applicant's affidavits in support of the Notice of Motion and should the need arise, I humbly beg that it may please the Honourable Court to allow the Respondents to file such further affidavits. In view of the fact that it is my submission that this matter could be finalised and finally dealt with on the allegations contained in this affidavit, certain facts are herewith placed before the Honourable Court for consideration.

3.

The main submission by the Applicants is contained in paragraph 6.3 of the affidavit of the Applicant where it is submitted that the order in terms of Section 5 of the Black Administration Act No. 38 of 1927 is of no force and effect 'unless and until Parliament has adopted a resolution confirming that the tribe be removed. No such resolution has thus far been adopted'.

4.

It is my humble submission that a resolution

approving the withdrawal has in fact been adopted by both Houses of Parliament."

The submission in paragraph 4 was based on the minutes of proceedings of both Houses of Parliament from which it appeared that (a) on 16 May 1975 the House of Assembly adopted a resolution accepting a recommendation contained in the First Report of the Select Committee on Bantu Affairs (SC 9/175) that the House approves the withdrawal, inter alia, of Bantu tribes residing on the farms Zwartrand and Hartebeeslaagte in the district of Ventersdorp; and (b) that on 27 May 1975 the Senate adopted a similar resolution. The resolution did not specify the place or area to

which/ .....

which the said tribes were required to withdraw.

To sum up thus far. It was common cause at the hearing of the application that the Bakwena Ba Magopa tribe had in fact refused to move from the tribal farms as directed in the withdrawal order. The only point at issue was whether there had been compliance with the provisions of section 5 (1)(b) and, in particular, with the first proviso thereof. It was submitted on behalf of the appellant that the withdrawal order was of no force or effect because the withdrawal had not been approved by a resolution adopted by both Houses of Parliament in accordance with the provisions of the first proviso of section 5 (1)(b). In this

regard it was further contended that the 1975 Parliamentary resolution, on which the respondent relied, did not constitute compliance with the terms of the proviso because it was adopted some eight years before the issue of the order and did not approve of the withdrawal of the tribe to the Pachsdraai area. In essence, therefore, the issue in the court a quo, as in this court, hinged upon the true interpretation of section 5 (1)(b) of the Act which reads:

> "The Governor-General may -
> (b) whenever he deems it expedient in the general public interest without prior notice to any person concerned order that, subject to such conditions as he may determine after consultation by the Minister with the Black Government concerned, any tribe, portion of a tribe, Black community or Black shall withdraw from any place to any other place or to any

district or province within the Republic and shall not at any time thereafter or during a period specified in the order return to the place from which the withdrawal is to be made or proceed to any place, district or province other than the place, district or province indicated in the order, except with the written permission of the Secretary for Plural Relations and Development: Provided that if a tribe which is resident on land referred to in section 25(1) of this Act or in section 21(1) of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), refuses or neglects to withdraw as aforesaid no such order shall be of any force and effect unless or until a resolution approving of the withdrawal has been adopted by both Houses of Parliament. ....."

In rejecting the contentions advanced on behalf of the appellant, and in holding that the 1975 Parliamentary resolution constituted sufficient compliance with the first proviso of section 5(1)(b),

the learned judge referred with approval to the following passages in the unreported judgment of Solomon, AJ, in Steven Sihewula v Mr Kotze - Minister of Bantu Administration and Development (22.11.1977, SECLD) in which a similar issue arose:

> "The applicant says that the terms of the Resolution as adopted by Parliament, entitle him and the people whom he represents, to refuse to withdraw from their areas because Parliament did not approve of their removal to the areas to which they are supposed to withdraw, nor did Parliament have before it the terms of Order served upon them, nor did Parliament consider what accommodation was available to them in the areas to which they are required to withdraw; furthermore, that the said Resolutions were passed more than two years before the issue of the said Order, and that in any event Parliament, in 1975, had approved only of their withdrawal from

the present land, but did not approve of their being moved to any specific area or place or areas referred to in the said Order."

and

"It is significant that Parliament, in 1975, adopted a resolution involving the withdrawal of Bantu tribes or communities from a number of areas in the Cape Province and in other provinces. That it was the intention of the Legislature to resolve in advance from which areas the withdrawals should take place, is clear from the wording of the proviso to Section 5(1)(b). The words 'unless or until' in the proviso imply that the resolution may be adopted either before or after the refusal to withdraw.

The Order by the State President, on the other hand, must, in terms of the Section, direct that the withdrawal be from one place to another place. That requirement is complied with in the Order issued in this case ....."

and

"To suggest that the Resolution of Parliament has necessarily to embody a reference to the place to which the community is to be moved,

implies/ .....

implies that Parliament is obliged to decide in advance, not only from which area a community is to be moved, but also to which area it is to be moved. That this was not the intention of the Legislature, appears clearly from the passing of the omnibus resolution in 1975, and the terms of the section. It is clear that what was intended was that Parliament should have the power to decide the areas from which Bantu communities should be withdrawn, and that when the time came to implement the withdrawal, the State President should specify the area to which such withdrawal should be made."

and

"It seems to me that the words of the section establish that the Resolution of Parliament need refer to the withdrawal of the persons concerned from a place, and that such Resolution can be adopted either in anticipation of the State President's Order, or thereafter. The State President's Order, however, must embody a reference both to the place from and the place to which the persons must withdraw. These requirements have

been met in the present case and the applicant's submissions that the State President's Order is of no force and effect, must be rejected."

So much for the background to this dispute.

I come next to the merits of the appeal which, as I have already mentioned, hinge on the true interpretation of section 5 (1)(b) of the Act. First, a few general remarks. The Act purports to be an Act for the better control and management of Black Affairs. Under section 1 it is provided that the State President shall be the Supreme Chief of all Blacks in the Republic and shall in respect of all Blacks in any part of the Republic "be vested with

all/.....

all such rights, immunities, powers and authorities as are or may be from time to time vested in him in respect of Blacks in the Province of Natal." Section 5 falls within a chapter dealing with Tribal Organisation and Control. It has been held that although section 5(1)(b) may be a re-enactment of a principle of the customary law of Blacks its provisions must, nonetheless, be interpreted in the same manner as the provisions of any other Statute are interpreted (Saliwa v Minister of Native Affairs, 1956(2) S A 310(A) at 317 F - G). The section provides for what, in present-day parlance, is known as a form of social engineering, namely, the enforced removal of people (in this instance Blacks)

from/ .....

from any area to any other area, and for this purpose it confers some quite extraordinary powers on the State President. (See e g R v Mpafuri, 1928 TPD 609; R v Mabi and Others, 1935 TPD 408; Mpanza v The Minister of Native Affairs and Others, 1946 WLD 225; R v Mpanza 1946 AD 763; and Saliwa's case supra.) The State President is vested with an almost unlimited discretion to issue withdrawal orders. Under the power conferred upon him by section 5(1)(b) he may without prior notice to any person concerned, issue such orders in respect of "any tribe, portion of a tribe, Black Community or Black" in the Republic. He is under no obligation whatever to consult with the persons

concerned, or to afford them an opportunity of being heard, before issuing such an order. The only matter that he is obliged to consider - and that is, no doubt, an important consideration - is whether he deems it expedient in the general public interest to order the withdrawal. In this appeal we are, of course, concerned with the provisions of section 5 (1)(b) only in so far as they relate to withdrawal orders issued in respect of Black tribes. There can be no doubt that the enforcement of such an order may have grave and far-reaching consequences for the tribe concerned, and it may also impinge on the rights of personal liberty of its members.

The instant case provides a striking example of the drastic inroads that such an order could make upon a tribe and its members residing on tribal lands. In a case such as this it is, therefore, necessary that the court should carefully scrutinise the terms of the order issued, and the procedure adopted for its enforcement, in order to ensure strict compliance with the provisions of section 5(1)(b).

I proceed to consider whether the learned judge a quo erred in holding (following Solomon AJ) that the 1975 Parliamentary resolution complied with the requirements of the first proviso of section 5 (1)(b) even though it was adopted some eight years before the

withdrawal order was issued and embodied no reference to the place to which the tribe was required to withdraw. It will be recalled that Solomon AJ held that it could be inferred from the wording of the proviso, and particularly from the use of the expression "unless or until", that a resolution approving "the withdrawal" could be adopted in anticipation of the State President's order, or thereafter. The requirements of the resolution were satisfied, so it was held, if the resolution incorporated a reference to the place from which the tribe concerned was required to withdraw. I am unable to agree with this view as it appears to me to be based upon a misconception of

the/ .....

the purpose of the proviso and the function assigned therein to the two Houses of Parliament. It is clear from a reading of the provisions of section 5 (1)(b) that a number of requirements have to be satisfied before a withdrawal order can be enforced against a tribe that refuses or neglects to withdraw as directed. Firstly, the terms of the order must comply strictly with the provisions of the section. One of the essential requirements is that the place from which and the place, district or province to which the tribe is directed to withdraw should be clearly specified (see R v Mpafuri, supra at 612). It is obviously a matter of the greatest importance for a tribe and its members to

be told where they are required to resettle. After the order has been issued it must be served on the tribe, in accordance with the provisions of section 1 (bis) (b), at a public meeting convened for that purpose. The tribe may then agree to move or they may decide against it. They may have perfectly reasonable grounds for being unwilling to move, for example: there may be a lack of accommodation or amenities at the place to which they have to withdraw; the water supply may be inadequate; the agricultural potential of the land or the grazing may be inferior to that of the tribal lands; the place in question may be much further from the places of employment of the

members/ .....

members of the tribe; the conditions imposed by the State President may be unacceptable; the compensation offered to the tribe may be considered to be insufficient; and so on.

Now, what is the position if a tribe refuses or neglects to withdraw to the place or area specified in the withdrawal order? The first proviso, it will be recalled, stipulates that, in such an event, the order will not be of any force or effect "unless or until a resolution approving of the withdrawal has been adopted by both Houses of Parliament". This proviso is obviously intended by the legislature to provide a check on or curb of the exceptional

powers/ .....

powers vested in the State President. Both Houses of Parliament are required to review the State President's decision and to decide whether or not to approve of "the withdrawal". Counsel for the respondents contended that, in the context of the proviso, the expression "the withdrawal" must be interpreted simply as a withdrawal <u>from</u> a particular place and not, as was submitted on behalf of the appellant, as meaning a withdrawal not only <u>from</u> a specific place but also <u>to</u> a specific place or region. I am unable to accept this interpretation. Where the legislature has used the same words, in this case the words "withdraw" (Afrikaans "trek") or "the withdrawal" (Afrikaans

"die/ .....

"die trek") in the same enactment there is a reasonable supposition, if not a presumption, that it intended the words to bear the same meaning throughout the enactment (Minister of the Interior v Machadodorp Investments (Pty) Ltd and Another, 1957(2) S A 395 (A) at 404 D - E; Pantanowitz v Sekretaris van Binnelandse Inkomste, 1968 (4) S A 872 (A) at 879 D - E; and Durban City Council v Shell and B P Southern Africa Petroleum Refineries (Pty) Ltd., 1971(4) S A 446 (A) at 457 (A).

An analysis of section 5 (1)(b) clearly indicates, in my view, that the words "withdraw" and "the withdrawal" connote movement from an area

to/ .....

to another area. The first time the word "withdraw" appears in the section it is explicitly used in the sense of "withdraw from any place to any other place or to any district or province". And where the expression "the withdrawal" occurs a few lines further on it obviously has a corresponding connotation. In the phrase "withdraw as aforesaid" in the first proviso the word "withdraw" is patently used in the sense initially employed in the section. And, finally, the use of the definite article in the expression "the withdrawal" in the proviso lends further support to the interpretation contended for by the appellant, namely, that a resolution adopted by both Houses of

Parliament/ .....

Parliament in terms of the proviso must be a resolution specifically approving of the withdrawal which was ordered by the State President. It is common cause that the 1975 Parliamentary resolution is not such a resolution.

I turn again to the role assigned by the legislature to the Houses of Parliament in the first proviso of section 5 (1)(b). The learned judge a quo, adopting the reasoning of Solomon AJ, placed considerable reliance upon the words "unless or until" in the proviso as implying that a resolution by both Houses of Parliament may be adopted either before or after the issue of the order and

the refusal or neglect of the tribe concerned to withdraw. It seems to me that in doing so the learned judge a quo failed to appreciate the real significance of the function entrusted to the two Houses. The necessity for both Houses to review the State President's decision only arises once the tribe has refused or neglected to withdraw as directed in the State President's order. And in considering whether or not it should approve of the withdrawal, both Houses of Parliament would, no doubt, weigh up the interests of the tribe concerned as against the general public interest. And, as stated before, a tribe may have perfectly reasonable and legitimate

reasons for not wanting to withdraw to the place or region specified in the order. It follows, as a matter of logic and common sense, that the two Houses cannot possibly fulfil their role meaningfully unless they are apprised of the terms of the order and the reasons for the tribe's refusal or neglect to withdraw. If the two Houses had the right, as counsel for the respondents contended, to approve of the withdrawal without due regard to the terms of the order and the reasons for the tribe's attitude, the whole purpose of the proviso would be thwarted. The sole safeguard provided to a tribe against consequences of the exercise by the State President of the drastic

powers conferred upon him would, in effect, be bypassed. As far as the tribe is concerned, it would be pointless and futile to offer it an opportunity of considering whether or not to withdraw if its fate has already been sealed by a prior resolution of both Houses of Parliament approving of the withdrawal. It was clearly not the intention of the legislature that the Houses of Parliament would be entitled merely to act as a rubber stamp. Although there may be an element of ambiguity in the proviso arising from the use of the expression "unless or until", I am satisfied, upon the wording of section 5 (1)(b) as a whole, that the legislature never intended

to empower the Houses of Parliament to approve of a withdrawal order prior to the promulgation of the order and the tribe concerned being afforded an opportunity of responding thereto. It is, moreover, a well-established principle of interpretation of statutes that when "two meanings can be given to a section, and the one meaning leads to harshness and injustice, while the other does not, the Court will hold that the Legislature rather intended the milder than the harsher meaning", per Wessels, JA, in Principal Immigration Officer v Bhula, 1931 AD 323 at 336. (See also: Steyn, Die Uitleg van Wette, 5th ed. p 103; and Craies on State Law, 7th ed pp 86-87).

The/ .....

The learned judge a quo (and Solomon AJ) further assumed that the court was entitled to determine the intention of the legislature in enacting section 5 (1)(b) from the terms of the 1975 Parliamentary resolution. In my respectful view, this was a mistaken assumption. The 1975 Parliamentary resolution was not a legislative enactment by Parliament but an executive act by the two Houses of Parliament in consequence of the authority conferred upon them by a statutory enactment, namely, section 5 (1)(b). In the circumstances, this court is not concerned with, nor should it be influenced by, the interpretation which the two Houses might have given to the wording of

the section, or with their perception of the scope of their authority. As far as the court is concerned, the intention of the legislature can only be derived from the wording of the statutory enactment itself. So much for the issue which was debated in the court a quo.

When the matter came before us, counsel for the respondents sought to raise a number of factual issues that were not raised or debated in the court a quo, namely: (a) that the facts set out in appellant's founding affidavit do not establish that the tribe had refused to move to Pachsdraai and (b) that the withdrawal order issued by the State President on 10 November 1983 was not directed at the tribe as

such/ .....

such, but at the members of the tribe who had not yet moved to Pachsdraai voluntarily. In my view these issues cannot be raised at this stage of the proceedings. The appellant alleged in his founding affidavit that the tribe had been ordered to move to Pachsdraai and that it had refused to do so. When the matter came before the learned judge a quo these allegations had not been put in issue by the respondent. The only issue before the court at that stage was one with which I have already dealt. It appears to have been common cause between the parties that if the court were to resolve that issue in favour of the appellant he would be entitled to

some form of interim relief. (Cf A J Shepherd (Edms) Bpk.v Santam 1985(1) S A 399 (A) at 415 B - D and Chemfos Ltd v Plaasfosfaat (Pty) Ltd 1985 (3) S A 106 (A) at 114J - 115A).

To sum up. For the reasons set out above, I have come to the conclusion that the court a quo erred in holding that the 1975 Parliamentary resolution constituted compliance with the provisions of the first proviso of section 5 (1)(b) and that it should, accordingly, have granted the appellant some form of interim relief, for example, an interim order interdicting and restraining the servants of the first respondent from forcibly evicting or in any way unlawfully interfering with the appellant. We have been informed by counsel

that, save for the question of costs, the dispute between the parties has become academic because the farms in question have, in the meanwhile, been expropriated by the State and vacated by the appellant and the members of the tribe who supported his application.

In the result the following order is made:

(a) The appeal succeeds with costs, including the costs of the application to this court for leave to appeal, but excluding wasted costs occasioned by the duplication of pages in the record;

(b) The order of the court a quo as to costs is set aside, and the respondents are ordered to pay the appellant's costs in the proceedings in the court a quo, including the costs of the application to that court for leave to appeal;

(c)/ .....

(c) The costs referred to in paragraphs (a) and (b) above, include the costs involved in the employment of two counsel.

TRENGOVE, JA

RABIE, CJ)
)
KOTZé, JA)
) CONCUR
BOTHA, JA)
)
GROSSKOPF JA)