The Land Reform (Labour Tenants) Act* reminds one of FD Roosevelt's policy after World War II with its saying: "A new deal for the forgotten man!" The Act concerns itself with South Africa's forgotten people who are described as labour tenants. The main thrust of this article is to give an overview of the Act.

The Act provides to labour tenants (and those persons occupying or using land as a result of their association with the labour tenants) the right to acquire property from an owner and provides for the acquisition of land and rights in land by them. They derive their rights from the statute and not from the whim of the owner or his successor in title. The rights do not come about in return for the labour which they provided to the owner or lessee or his successor in title, or because the owner or lessee tolerates them on the property.

Chapter 1

The operative words in the Act are

1. 'Farm worker' - this means a person who is employed on a farm in terms of a contract of employment which provides that:
   a. in return for the labour which he provides to the owner or lessee of the farm, he will be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and
   b. he is obliged to perform his services personally.

2. 'Labour tenant' means a person who:
   a. is residing on or has the right to reside on a farm;
   b. has or has had the right to use cropping or grazing land on the farm or another farm of the owner and, in consideration of such right, provides or has provided labour to the owner or lessee; and
   c. whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm; including a person who has been appointed a successor to a labour tenant, but excluding a farm worker.

3. 'Owner' means the owner of the farm as defined in s 102 of the Deeds Registries Act 47 of 1937. Bear in mind that the definition in the Deeds Registries Act is fairly extensive and complicated and embraces, inter alia, the holder of mineral rights. Throughout the Act there are references to both the owner and a lessee. One should also not forget the term 'lessee' when one reads the definition of 'owner'. This definition comes into play later on, albeit obliquely.

4. 'Family member' means a labour tenant's grandparent, parent, spouse (including a partner in a customary union, whether or not the union is registered) or a dependant.

Chapter 2

Chapter 2 of the Act contains the heart and soul of the Act. A labour tenant's right to occupy and use land is enshrined in s 3 and may be terminated only in terms of the Act. Section 3 states that, notwithstanding the provisions of any other law but subject to the provisions of the Act, a person who was a labour tenant on 2 June 1995 shall have the right, with his family members, to occupy and use that part of the farm in question which he was using and occupying on that date and the occupation and use of which is restored to him in terms of the Act or any other law.

This right may be terminated only in terms of the Act and in no other manner. The Act, however, provides for certain circumstances under which a labour tenant's tenancy comes to an end, such as when:

1. He waives his rights.
2. He becomes permanently disabled, dies, or becomes mentally ill or is unable to manage his affairs due to another disability.
3. He is evicted.
4. The labour tenant acquires ownership of land and receives compensation in terms of the conditions contained in Chapter 3 of the Act.

A labour tenant may nominate another person, acceptable to the owner or the lessee of the farm, to provide labour in his stead. The owner or lessee may not unreasonably refuse to accept the nomination of such a person.

A labour tenant is protected against eviction. He may be evicted only in terms of an order of the Land Claims Court (LCC). The owner is the only one who may institute eviction proceedings by another person.

There is, however, a distinction drawn between an eviction and a relocation for operational requirements. The LCC may order the relocation of the labour tenant if the owner requires the land for his own agricultural activities or for the purposes of any development which, in the opinion of the LCC, is of public benefit. The owner must also show that he will suffer greater hardship than the labour tenant, if the latter is not relocated. If he fails to do that, then the LCC is precluded from ordering a relocation.

If the LCC orders a relocation, it must then simultaneously order the owner to pay the labour tenant and his associates compensation to ensure that they are not unfairly prejudiced by the relocation. The order of relocation may not be executed before the compensation has been paid.

It seems that the LCC is the first proper court of equity in South Africa. Section 33 of the Restitution of Land Rights Act 22 of 1994, as amended, states that the LCC, in considering its decision in any particular matter, shall have regard to various factors including the requirements of equity and justice.

Equity and justice are the cornerstones of an eviction order. A labour tenant who has attained
the age of 65 years, or who, as a result of disability, is unable personally to provide labour and who has not nominated a substitute, may not be evicted. It is clear from the wording of this section that the labour tenant's tenancy does not come to an end just because he is unable personally to provide labour on the farm. This strengthens the interpretation that the labour tenant derives his right not from the whim of the owner or the owner's successors in title, but from the Act.

There is, however, some relief from this provision in that on the death of a labour tenant who has retained such a right, all his ascendants may be given twelve calendar months' notice to leave the farm. Once again, the LCC has the powers of equity to come to the aid of an owner who has been unfairly prejudiced by this section.

Section 13(1)(A) phases in exclusive jurisdiction for the LCC in respect of all matters that relate to the Act. It lays down that if an issue arises in a case in a magistrate's or high court, which requires that court to interpret or apply the Act, and no oral evidence has been led, the matter shall be transferred to the LCC and no further steps may be taken in the case. If, however, any oral evidence has been led, such court is seized of the matter and shall decide it in accordance with the provisions of the Act.

Chapter 3

Broadly speaking, chapter 3 deals with the acquisition of ownership or of other rights in land by the labour tenant or by his successor. A labour tenant is afforded the right to apply for an award within four years of the commencement of the Act (12 March 1996), failing which this right lapses.

He may apply for an award of
1 the land which he is entitled to occupy or use as set out above;
2 the land which he or his family occupied or used during a period of five years immediately prior to the commencement of the Act, and of which he or his family were deprived contrary to the terms of an agreement between the parties;
3 rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm; and
4 such servitudes of rights of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he enjoys or has previously enjoyed as a labour tenant. The reference to servitudes alludes, in passing, to mineral rights and this is the reason why I have urged readers to pay close attention to the definition of "owner" in the Deeds Registries Act.

Failing such an award, the labour tenant may apply for an award of such other compensatory land or rights in land and servitudes as he may accept and which were proposed by the owner and approved by the authorities. It is clear from this provision that the right to apply for an award lapses after four years and, therefore, that the rights that vest in the labour tenant in terms of s 3 are tenous if he does not pursue them with an application for an award.

A labour tenant may waive the rights conferred by this section, but such waiver is subject to the scrutiny of the Director-General of Land Affairs. He must issue a certificate that he is satisfied that the labour tenant had full knowledge of the nature and extent of his rights as well as the consequences of the waiver of the rights.

While perusing the Act, it became obvious to me that the Director-General and the LCC assume the roles somewhat akin to the "upper guardian" role of the high court in relation to children. This might sound paternalistic in the current political atmosphere, and I would then rather describe them as assuming the role of 'supreme protector'.

The application for an award must be lodged with the Director-General, whereas the land concerned is referred to as 'affected land'. This application must be published in the Government Gazette and forwarded to all persons concerned who are invited to react thereto.

If the owner of affected land admits that the applicant is a labour tenant, the owner may submit proposals to the Director-General as to how, on an equitable basis, to dispose of the application. He may offer the labour tenant other rights in land elsewhere on his farm or in the vicinity. The owner may even offer to pay the labour tenant an amount as compensation in lieu of the acquisition of such land or such rights.

A mediator may assist the applicant and the owner to discuss these proposals and to resolve the matter. Any agreement that is reached between the parties is, however, of no force unless the Director-General has certified it to be reasonable and equitable or unless it is incorporated in an order of the court.

An application may for a number of reasons be referred to the court for adjudication. On referral of the application, the president of the court must appoint an arbitrator to hear the application (rules that govern the procedure of the arbitration have been published in the Government Gazette). The arbitrator must make a determination and submit it together with a written report to the court. The court may make this an order of court, with or without technical variations — it is not spelt out what "technical variations" means. This refers to the numerous terms and concepts in the Act that are left to judicial interpretation and it will be very interesting to see how the LCC will interpret and clarify it.

The effects of an application are revealed in s 22. The court has the jurisdiction and power to order that land or a right in land held by an owner of affected land be transferred to the applicant. Does the Act draw a distinction between 'land' and 'affected land'? Or does the reference to land refer necessarily to 'affected land'? If there is a distinction, and to my mind it is obvious that there is, it will have the effect that, if the owner of affected land is also the owner of another piece of land, the court may order this other piece to be transferred to the labour tenant.

An award or an order for the transfer of land shall not be subject to the provisions of the Subdivision of Agricultural Land Act 70 of 1970 or any other law regulating the subdivision of land.

The owner of affected land, however, is entitled to a just and equitable compensation. This may be determined either by the arbitrator or by the court. The statute provides for the situation where the labour tenant fails to honour the order to pay compensation or where the land is subject to mortgage bonds or deeds of sale. There is also provision for a labour tenant to apply for state funding to assist him with the acquisition of the land and its development.

Chapters 4 and 5

Chapters 4 and 5 complete the provisions with regard to the court, arbitrators and miscellaneous provisions. The LCC was created in terms of s 22 of the Restitution of Land Rights Act and it exercises its powers in terms of that Act and the Land Reform (Labour Tenants) Act. Its jurisdiction extends throughout the Republic and it has all the ancillary powers necessary or reasonably incidental to exercise it, including the power to grant interlocutory orders and interdicts. The LCC has the same powers as are possessed by a high court in respect of matters falling within its jurisdiction. The rules regulating the court's proceedings also make provision for urgent applications.

The labour tenant is furthermore protected, in terms of s 39, in that his right to apply to buy land or his right in land shall not be capable of being attached in terms of an order of any court or in terms of ss 55 of the Land Bank Act 13 of 1944; 2 shall not be affected by an agreement entered into in terms of s 38 of the Agricultural Credit Act 28 of 1966; and 3 shall not be regarded as an asset in terms of the Insolvency Act 24 of 1936.

It seems as if the legislature has attempted to rectify a de facto situation. I have discussed this situation with various people who grew up on farms where labour tenants have been living ever since some of them could remember. These people do not have any other place to stay or to turn to. If they are evicted from farms, they become destitute; this is possibly one of many reasons why the squatter camps around small towns are expanding. It is also obvious that the labour tenants need protection because the great majority of them are uneducated or largely so.

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