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Farm Dwellers Control Act, 1982

Act 12 of 1982

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Farm Dwellers Control Act, 1982

Act 12 of 1982

Commenced on 4 November 1983

[This is the version of this document at 1 December 1998.]

An Act to regulate and control relations between owners of farms and other persons residing on such farms.

1. Short title, commencement and application

- (1) This Act may be cited as the Farm Dwellers Control Act, 1982, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.
- (2) This Act shall not apply to Royal villages and Chiefs' homesteads or any other area which the Minister may, by notice in the *Gazette*, determine.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Agreement**” means a written agreement entered into or renewed in accordance with [section 4](#);

“**Central Tribunal**” means the Central Farm Dwellers Tribunal established by [section 5](#);

“**to clean**” means to maintain stock free from tick infestation by submerging the stock in a dipping tank containing an effective tick-destroying agent and the application of an effective tick-destroying hand-dressing approved by a Veterinary Officer, or by the spraying of stock in a spray race with an effective tick-destroying agent and the application of an effective tick-destroying hand-dressing approved by a Veterinary Officer;

“**dependants**” means—

- (a) a wife or wives;
- (b) a child; and
- (c) an elderly or infirm relative;

“**dipping facilities**” means a dipping tank or other contrivance for the cleaning and dipping of stock and structures incidental thereto as approved by a Veterinary Officer;

“**District Tribunal**” means a District Farm Dwellers Tribunal established by [section 7](#);

“**effective tick-destroying agent**” or “**hand-dressing**” means an aqueous solution containing the equivalent of 0.16 per centum of arsenious oxide or such other percentage of arsenious oxide or such other ingredients in such proportion as a Veterinary Officer may approve;

“**farm**” means an area of land used for, or in connection with, animal husbandry, forestry or agriculture, but does not include—

- (a) Crown or Government land; or
- (b) land vested in the Ngwenyama in trust for the Swazi Nation; or
- (c) stands, lots or erven in urban areas;

“**farm-dweller**” means a person who resides on a farm other than—

- (a) the owner thereof; or
- (b) a usufructuary or fiduciary; or
- (c) a lessee under a written agreement of lease; or
- (d) the holder of a registered servitude which gives the right of occupation; or
- (e) the manager or agent of a person referred to in paragraph (a), (b), (c) or (d); or
- (f) a member of the family or a guest of a person mentioned in paragraph (a), (b), (c), (d) or (e); or
- (g) a person who is in the full time employment of an owner if it is a condition of his employment that the owner shall provide him or his family with residential accommodation;

“**Minister**” means the Minister for Home Affairs;

“**owner**” used in relation to a farm means—

- (a) a registered owner; or
- (b) if the registered owner is not in occupation of the farm, a person who, as lessee or otherwise, has for the time being the charge, control, use or management thereof;

“**spray race**” means a mechanically-operated contrivance for the cleaning of stock by spraying, with all structures incidental thereto, as approved by a Veterinary Officer;

“**stock**” means cattle, goats, sheep, horses, mules, asses, pigs, dogs, domesticated wild animals and such other animals as the Minister may, by notice published in the *Gazette*, declare to be stock;

“**Tribunal**” means a Central or District Tribunal;

“*umnumzane*” means a person recognized by Swazi law and custom as the head of a homestead and includes a woman;

“**wife**” includes a woman married in accordance with Swazi law and custom.

3. Rights of farm dwellers

- (1) An *umnumzane* who—
 - (a) immediately before the date of coming into operation of this Act, is a farm dweller; or
 - (b) at any time after the date of coming into operation of this Act, is permitted by the owner of a farm to reside thereonshall within ninety days of such date or of such permission being granted, be deemed to be entitled to an Agreement and shall take reasonable steps to have an Agreement entered into within the said period.
- (2) If the owner and the *umnumzane* do not agree on the terms of the Agreement within the time referred to in subsection (1), the owner or the *umnumzane* shall, within ninety days after the expiration of such period, notify the District Tribunal of the District in which the farm is situate why agreement has not been reached.
- (3) If, owing to the absence of the owner, agreement has not been reached or an Agreement has not been executed, the District Tribunal shall—
 - (a) record the name and description of the farm concerned; and
 - (b) defer consideration of the matter pending notice from the *umnumzane* that the owner has returned.

- (4) The *umnumzane* shall notify the District Tribunal of the return of the owner, immediately after such return.
- (5) Upon being notified as provided in this section, the District Tribunal shall, after making such inquiries as to it seem necessary, order that the owner and the *umnumzane* execute an Agreement, containing terms and conditions specified by such District Tribunal, to be executed on or before a date specified by the Tribunal, and if that order is not complied with, such an Agreement shall be deemed to have been executed on the date specified in the order.
- (6) If, after the date specified under subsection (5), the District Tribunal finds that an *umnumzane*, deemed entitled to an Agreement, has not, or is not deemed to have, executed an Agreement, such District Tribunal may, as it considers necessary—
 - (a) act in accordance with the provisions of subsection (5) except that the Agreement so specified shall, if not executed, be deemed to have been executed on a date specified by such District Tribunal; or
 - (b) order the removal of the *umnumzane* and his dependants from the farm.
- (7) The following shall be guilty of an offence—
 - (a) an owner who fails, without reasonable excuse, to comply with subsection (2); or
 - (b) an *umnumzane* who fails, without reasonable excuse, to comply with subsection (2) or (4); or
 - (c) an owner or an *umnumzane* who fails, without reasonable excuse, to comply with an order made under subsection (5) or (6).

4. Agreements for farm dwelling (Schedule)

- (1) An Agreement for the purpose of this Act shall—
 - (a) be in writing in the form prescribed;
 - (b) be expressed to be made between the owner of the farm and the *umnumzane* residing thereon;
 - (c) be expressed so as to confer a right on the *umnumzane* and his dependants to reside on the farm for a definite period;
 - (d) contain—
 - (i) the information specified in Part I of the Schedule;
 - (ii) the conditions specified in Part II of the Schedule; and
 - (e) be approved by the chairman of the Tribunal and thereafter signed by both parties in his presence.
- (2) During the currency of an Agreement, it shall be deemed binding on every owner of the farm to which it relates.
- (3) An Agreement shall terminate—
 - (a) at any time during its currency, if an *umnumzane* and his dependants cease to reside on the farm;
 - (b) according to its terms; or
 - (c) upon its cancellation, for sufficient reason, by the Tribunal.
- (4) An owner of a farm who, without reasonable excuse, fails to report to the District Tribunal any termination or event having the effect of termination of an Agreement binding that owner is guilty of an offence.

- (5) The Minister may, by notice in the *Gazette*, amend the Schedule hereto.

5. Establishment of Central Tribunal

- (1) There is hereby established a Central Farm Dwellers Tribunal.
- (2) The Central Tribunal shall consist of a chairman and not more than five other members appointed by the Minister to hold office for a period not exceeding three years.
- (3) The Minister shall appoint a secretary to the Central Tribunal.
- (4) For the despatch of any business the chairman and three other members shall constitute a quorum of the Central Tribunal.
- (5) The Central Tribunal may make its own rules of procedure and, subject to those rules and subsection (6), may regulate its own procedure.
- (6) Save as otherwise provided in [section 9](#), the Central Tribunal shall not be bound by the rules of evidence applicable to any court but the Tribunal shall ensure that its proceedings comply with the rules of natural justice.

6. Functions of Central Tribunal

Subject to the provisions of this Act, the Central Tribunal shall—

- (a) advise the Minister, generally, as to measures to be taken for the gradual elimination of the existing system of farm dwelling;
- (b) hear and determine any appeal by a person aggrieved by any decision of a District Tribunal;
- (c) make any such decision on appeal as it considers necessary, including the remission of the matter to the District Tribunal with such directions as it deems fit and the cancellation of an Agreement, and removal of the *umnumzane* and his dependants from any farm;
- (d) if it deems it advisable, attempt conciliation between the parties;
- (e) hear the evidence of any witness and consider any document if it deems it necessary to do so in order to arrive at a just determination of the appeal;
- (f) hear an application for renewal of an Agreement and either order its renewal for such period and on such conditions, or make such other order, as it considers necessary;
- (g) make such order as to costs and expenses relating to the proceedings before it and the District Tribunal as it deems fit; and,
- (h) perform such other functions as the Minister may assign to it.

7. Establishment of District Tribunal

- (1) There is hereby established, for each district, a District Farm Dwellers Tribunal.
- (2) A District Tribunal shall consist of a chairman and not more than six other members appointed by the Minister to hold office for a period not exceeding three years.
- (3) The District Commissioner shall appoint a secretary to the District Tribunal.
- (4) For the despatch of business, the chairman and three other members shall form a quorum.

8. Functions of District Tribunal

- (1) A District Tribunal shall in addition to any other functions assigned to it under this Act—
 - (a) report any matter which it has dealt with in terms of such functions to the Central Tribunal;

- (b) hear and decide upon any dispute between an owner and an *umnumzane* concerning the rights and liabilities under an Agreement or as to who are dependants of the *umnumzane*, attempt conciliation and failing conciliation make such order (including an order as to costs) relating to the dispute, including cancellation of the Agreement and the removal of the *umnumzane* and his dependants from the farm as it deems necessary;
 - (c) in the event of an appeal to the Central Tribunal against any decision made by it, forthwith forward the record of the proceedings before it together with its written reasons for such decision to the secretary of the Central Tribunal;
 - (d) act on behalf of the Central Tribunal in respect of any function delegated to it by the Central Tribunal with the approval of the Minister;
 - (e) re-hear any matter which has been rendered to it by the Central Tribunal acting under its appellate jurisdiction, subject to such directions as may have been imposed by the Central Tribunal in regard to such re-hearing.
- (2) The Minister may make rules of procedure for a District Tribunal and, subject to those rules and subsection (3), a District Tribunal may regulate its own procedure.
- (3) Save as otherwise provided in [section 9](#), a District Tribunal shall not be bound by the rules of evidence applicable by any court but each Tribunal shall ensure that its proceedings comply with the rules of natural justice.

9. Exclusion of jurisdiction of courts, appeals and enforcement of decision

- (1) No court shall have jurisdiction to hear or determine any dispute between an owner and an *umnumzane* concerning any rights and liabilities under this Act or as to who are dependants of an *umnumzane* or to order the cancellation of an Agreement or removal of an *umnumzane* or his dependants from any farm.
- (2) The decision of a Tribunal may be enforced as if it were a decision of a Magistrate's Court established under the Magistrate's Courts Act, [No. 66 of 1938](#) and the rules of such Court shall apply *mutatis mutandis*.
- (3) A person aggrieved by the decision of a District Tribunal may, within thirty days of such decision, appeal to the Central Tribunal and therefrom, within thirty days, to the Minister whose decision shall be final.

10. Limitation as to ejectment of farm dweller

- (1) No order for the recovery of possession of land occupied by a farm dweller shall be made unless a Tribunal is satisfied, on a balance of probabilities, that—
- (a) the farm dweller is not entitled to an Agreement in terms of [section 3](#); or
 - (b) the farm dweller has wilfully, or without good cause, committed a material breach of the Agreement; or
 - (c) the farm dweller has committed an act which, in the opinion of the Tribunal, is an act which makes his continued residence on the farm undesirable; or
 - (d) the farm is reasonably required for intensive development:
- Provided that a Tribunal shall not make an order under this paragraph unless it is also satisfied that—
- (i) reasonable alternative accommodation for the farm dweller is available; and

- (ii) reasonable arrangements have been made by the owner to pay to the farm dweller compensation for disturbance, including the value of unripened crops and to provide or pay for the transport of the farm dweller to that accommodation;
 - or
 - (e) the Agreement has terminated without being renewed and the farm dweller continues to reside on the farm.
- (2) Notwithstanding any other provision of this Act no Tribunal shall order the vacation by a farm dweller of any farm or his removal therefrom so that such vacation or removal takes place at any time between the 1st September in one year and the 31st May of the following year and no person shall require a farm dweller to vacate his homestead or remove his crops from a farm during the said period.
- (3) A person who contravenes subsection (2) shall be guilty of an offence.

11. Prohibition against further dwelling

On and after the commencement of this Act, no person shall enter and reside on a farm save with the permission of the owner of such farm.

12. Right of farm dweller to retain and clean stock

- (1) Where a farm dweller owns stock which is lawfully on a farm the owner shall not, without prior written authority from the Director of Veterinary Services—
- (a) fail to provide dipping facilities approved by the Director of Veterinary Services; or
 - (b) fail to permit the farm dweller to use those dipping facilities for the stock; or
 - (c) remove, drive or cause to be removed or driven, from his farm any such stock (or any other animal belonging to the farm dweller), except in compliance with an order made under section 20 of the Natural Resources Act, 1951.
- (2) An owner who wilfully contravenes the provisions of subsection (1) shall be guilty of an offence.

13. Penalties

A person who is guilty of an offence under this Act shall be liable, on conviction, to a fine of one hundred emalangeni or, in default of payment, imprisonment for three months.

14. Regulations

The Minister may make regulations—

- (a) for the form and languages to be used in an Agreement and other matters incidental thereto;
- (b) for the procedure on appeals to him from the decision of a Tribunal;
- (c) for the payment of costs, expenses and compensation;
- (d) for the assessment of current rates of wages for farm labour; and
- (e) generally, to implement the purposes of this Act.

15. Power to summon witnesses

A Tribunal may in writing require any person to attend and give evidence or information before it concerning any matter which it is empowered to consider in exercise of its functions and may require the production of any document relating to any such matter by any person attending before it.

16. Pending proceedings, judgments, orders, etc.

- (1) Without prejudice to any other provisions of this Act, on and after the date of coming into operation of this Act—
 - (a) no proceedings pending before any court in relation to the occupation or use of any farm by a farm dweller shall be continued by or against him; and
 - (b) no judgment or order of a court in respect of any matter referred to in paragraph (a) shall be enforced or executed against a farm dweller.
- (2) The provisions of subsection (1) shall cease to have effect ninety days after the coming into operation of this Act or on such other later date as the Minister may, by notice in the *Gazette*, determine.

Schedule (Section 4)**Written Agreements****Part I – Information**

- (a) Name and number of farm and district;
- (b) names of persons liable for labour;
- (c) periods for which labour to be provided;
- (d) payment for labour;
- (e) payment of tax;
- (f) acreage to be ploughed;
- (g) number and type of stock allowed;
- (h) rations supplied by owner; and
- (i) date of expiry.

Part II – Conditions

1. Labour supplied in excess of the period specified in the Agreement shall be paid for by the owner at current rates as prescribed by regulation made under section 15 of the Farm Dwellers Control Act, 1982.
2. Except where a dependant of the *umnumzane* is, with the approval of the owner, deputizing for the *umnumzane*, labour provided by a dependant of the *umnumzane* shall be paid for by the owner at current rates as prescribed.
3. In any proceedings against the farm dweller involving a breach of this Agreement, he shall not rely on an allegation that the breach was due to his having fulfilled a customary tribal obligation other than the Reed Dance, the Ncwala ceremony and the annual meeting of the Swazi National Council.
4.
 - (1) The *umnumzane* shall forthwith report to the owner the arrival or presence of strangers at the homestead.
 - (2) *Bona fide* temporary guests of the *umnumzane* and his dependants may visit the farm.
5. The owner shall point out poles and grass, if any, on the farm which may be used by farm dweller for the purpose of maintaining his homestead.

6. The owner shall keep a register of the large stock of the farm dweller.
7. The farm dweller has the right to use manure from his homestead

Note: The Farm Dwellers Act, 1967, expired on the 31st December, 1977 in terms of its section 1(1) and was subsequently extended to 31st December, 1980.