



**Kuniketa besifazane
emalungelo
emhlabatsi, etindlu
netakhiwo**

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Kubonga

Lencwajana yentiwe yi-Land Luhlelo Lwekwahiwa Lwena-Lawyers Emalangelo Embantfu (LHR) kanye ne-Probono.org. Timali letivela kuRiphsbliki yeBunye beJlimane Embassy. I-LHR kanye ne Probono.org babonga bonkhe Basebenti labadlale indzima kulencwajana

Umhalka-10 2023

Singeniso

**“KUNIKETA EMANDLA KUMALUNGELO
EBESIFAZANE KUTAKHIWO”** Lipheshana
lelisekelwe emacaleni emtsetfo netingucuko
letitcutfuke ngekulingana kwalababili kubunikati
betakhiwo nelifa. Kulelipheshana utofundza
mayelana emacula layi nchophamlandvo futsi
laying nsombululo letingumphumela lokhutsatsa
emalungelo alabasikati.



2

Umtsetfosisekelo nekulingana kwalababili

UMTSETFOSISEKELO NEKULINGANA KWALABABILI

Kusukela-1996, Ummango waseNingizimu Afrika wacala kugcizelela kuphakamisa kulingana kwalababili, nekwekutsi wonkhe umuntfu uyalingana ngekwemtsetfo futsi unelilungeko lekuvikelwa ngalokwelinganako futsi nekuhlomulwa ngekwemtsetfo.

Sivumelwano sekucashwa ngalokwelinganako

Iningizimu Afrika yasayina incoco yekucela kuhlonishwa kwato tonkhe tinhlobo tekugceka kubahlululeka kwekucashwa kwebesifazane (i-CEDAW) nga-1995.

Umtsetfo Wekupromotha Kulingana Kuvimba Nekubandlulula Lokufanele kusukela (2000):

Umtsetfo yalesento kucedza kuchwensa kwalababili futsi kukhutsata kulingana. Ivimbela ngekucondzisa imikhuba lebukela phansi sitfunti nemalungelo ebanffu nesifazane, lefaka ekhatsi lifa lelingakafaneki.

Kuvilwa kwemtsetfo sisekelo.

Umtsetfosisekelo waseNingizimu Afrika uvikela emalungelo ebantfu labasikati ekutfoleni takhiwonemhlabatsi.

Emafa emakholoni nelubandlululo.

- Bhukholoniyalu nelubandlululo lwaba nemutselela lomukhulu emitsetcweni esintfu, kwanciphisa kubandlululeka kwalabasikati ngekutfutfukisa kucabanga kwabo ngkutsi nabo bakatitsatsela tincumo.



3

Labasikati ngephasi kweUpgrading yeLand Tenure Rights Act (ULTRA ACT)

LABASIKATI NGEPHASI KWEUPGRADING YELAND TENURE RIGHTS ACT (ULTRA ACT).

ULTRA - Tinyatselo ngembili kwetivumelwano.

Emuva kwekuphela kwembandlululo, incenye yetinyatselo letatsatfwa tekucatulula tinkinga telive kutsi kutfutfukise emalungelo ekutfola takhiwo(ULTRA) lowaphasiswa nga-1991 kute avumele kutfutfukisa nekuguculwa kwalamanye emalungelo emhlabatsi kute labo lebamukwa ngesikhatsi sembandlululo natfole umhlabatsi wabo nge-Deeds Registry.

Wonkhe umuntfu unawo emalungelo ekusebentisa umhlabatsi noma ngabe(sibonelo, indzawo lengasasebenti) nangabe lowo mhlaba uselokishini lelibhalisiwe lelisemtsetfweni, egameni lakhe futsi lohlolowe.

Kwentakakalani ngebunikati bemhlabatsi?

Umangabe irejista yelilokishi(noma ngabe ivulwe emehlwani emtsetfo) lilungelo lebunikati liyaguculwa libesegameni lalebekuvele kubanikati baleylo ndzawo.

Teluleko tenchophamlandvo: Rahube vs Rahube nalabanye:

- Esigabeni lesibalulekile semtsetfo, inkantolo yemtsetfosisekelo yakhipha umlayeto lobalulekile wekuvikela emalungelo etindlu tebesifazane. Lesi sivumelwano lesicopha umlandvo esigabeni sa 2(1) semtsetfo wekutfutfukisa emalungelo emhlabatsi (ULTRA) siphulwe emtsetfweni wekulingana esigabeni 9 semtsetfosisekelo.

Ngemuva:

- Ms. Rahube waya enkantolo ngenca yekutsi wayecoshwe ngumnakabo, akhala ngekwemukwabunikati belikhaya ngenca yemtsetfo welibandlululo esigabeni 2(1) se-ULTRA
- Nga-1970 Ms. Rahube nemnakabo ndzawonye kanye nemndeni wabo. Liningi lemndeni lakhetsa kutfutsa emkhatsini kwa-1980 na-2000, washiya Ms. Rahube ahlaka yedvwa. Nga-1987 umnakabo Watford sitifiketi sekusebenata(lebesiniketwa emadvodza kuphela), kwatsi nga 1998 watfola i-title deed .
- Ms. Rahube wetama kuphikisa ngenca yekutsi lemitsetfo leyayisentjetiswa kumemjka lempezawo nguleyo leyayibekwe ngesikhatsi sembandlululo, lebekuhlukumeteka kakhulu labasikati.
- Inkantolo lephakeme yamemetela kutsi imitsetfo ye-ULTRA ayihambisanji nemutsetfosisekelo wekugucula emalungelo alabasikati.
- Inkantolo yemtsetfo sisekelo yavuma kutsi, i-ULTRA iphikisana nenhoso yesishayamtsetfo ngekuchubekisa embili kucwaya labasikati labamnyama ngesikhatsi selubandlululo. Umyalo wenkantolo wacala kusebenta kusukela 27 Mabasa 1994, lobewunwelwe kusita bonkhe labasikati.

Lokuhlukile:

- Lesincumo asizange sisitsintse timphahla letendluliselwe kubantfu labatsatfu ngekwetsembeka.
- Bekungasebenti kumuntfu wesitsatfu lotfole lifa ngekwenta emafa.
- Kukhuliswa kwemalungelo ekuhlala kube ngumuntfu

lomsikati losebenta ngekwetsembeka nako
akuvunyelwanga.

KuChitjiyelwa Kwamuva (Juni 2020) njengemphumela
wesehlulelo se-Mary Rahube

Lushintjo lolubaluleke kakhulu kulomtsetfo kutsi uma
iNdvuna itfola sicelo sekuvulwa kwelirekhodi lelidolobha,
liyashicilelwaa

kuGazethi, emaphephandzaba endzawo, kumakheli
etinhlelo tekuchumana kanye nesatiso kumasipalati
wendzawo. Lesimemetelo kumele sitjele labo
labatsintsekako kutsi bangakuphikisa lokuguculwa.

Kutawulandzelwa inchubo kute kutfolakale kutsi bobani
labatawuba ngumnikati.

Uma ngabe umuntfu ativa alimala ngekuguculwa
lokwentekke ngemuva kwamhlaka 27 Apreli 1994, angafaka
sicelo enkantolo kutsi ibeke eceleni lokuguculwa bese
ikhapha sincumo lesilungile futsi lesilinganako.



4

Bafati Kanye Nekulandzelana Kwebukhosи

BAFATI KANYE NEKULANDZELANA

KWEBUKHOSI

Ngekuya kwemtsetfo waseNingizimu Afrika, bantu banelilungelo lelisemtsetfweni lekubhala incwadzi yekwaba lifa kute babone kutsi imphahla yabo itawusabiwa njani nabafa.

- Uma umuntfu ashona anelifa lelisemtsetfweni, i-Wills Act ya-1953 iyasebenta, futsi loku kwatiwa ngekutsi lifa lelisemtsetfweni. Lifa lelisemtsetfweni licinisekisa kutsi imphahla yemuntfu loshonile yehlukaniswa ngekuvumelana netifiso takhe. Nangabe umuntfu ashone ngaphandle kwencwadzi yekwaba, batsatfwa ngekutsi bashone ngaphandle kwencwadzi yekwaba, beseke uMtsetfo weIntestate Succession Act wanga-1987 ucala kusebenta. Lomtsetfo uchaza tinchubo letitsite tekwabiwa kwemphahla yemuntfu loshonile emkhatsini wemlingani kanye nemalunga emndeni wakhe uma kungekho incwadzi yekwaba lifa.
- Kuletinye timo, umuntfu angahle ente incwadzi yekwaba lifa, kodvwa angabi nayo yonkhe imphahla yakhe, lokusho kutsi incenye letsite yalemphahla kufanele ibe yincwadzi yekwaba lifa bese kutsi lenye ibe yincwadzi yekwaba lifa. Kuloku, lemphahla lengakabhalwa encwadzini yekwaba lifa isatsatfwa ngekulandzela uMtsetfo weKwaba Lifa.
- Kunconya kutsi umuntfu abhale incwadzi yelifa ngobe ivumela bantu kutsi balawule indlela lifa labo lelitawabelwa ngayo nasebafile futsi isita ekunciphiseni tinkinga tekuphatsa.
- Inchubo yekuphatfwa kwemphahla yemuntfu loshonile,

kungakhatsaliseki kutsi ushone ngekwenta lifa nobe ngekwenta sivumelwano, ilawulwa nguMtsetfo wekuLawulwa kwemphahla yeMhlaba wanga-1965. Kwetfulwa kwemagugu kuvame kwentiwa ngumuntfu lowenta umsebenti wekugcwalisa sivumelwano lesiniketwe yi-Master yeNkantolo lePhakeme. Etimeni lapho khona linani lemphahla yelifa lingaphasi kwemkhawulo lobekwe nguhulumende, lokwabiwa kwemphahla kungacondziswa yi-Nkhosi yeNkantolo lePhakeme.

Iyini incwadzi yelifa?

Incwadzi yelifa isho kutsi umuntfu lowenta sivumelwane naye ufuno imphahla yakhe isetjentiswe njani ngemuva kwekuwa kwakhe.

Tidzingo tesifiso lesisemtsetfweni:

Umuntfu kufanele ente sifungo ngekutitsandzela.

- Umuntfu lowenta incwadzi yelifa kufanele kutsi ngesikhatsi enta incwadzi yelifa abe nemandla ekubhala incwadzi yelifa. Loku kusho kutsi kufanele babe ngetulu kweminyaka lelishumi nesitfupha budzala futsi babe nengcondvo lebhadtile, lokusho kutsi kufanele babe nengcondvo lebhadtile, futsi bakwati kucondza loko lebebakwenta. Kucatjangwa kutsi nobe ngubani lowenta incwadzi yelifa unengcondvo lebhadtile, ngaphandle nangabe kunetizatfu letivakalako.
- I-ncwadzi yelifa kumele ihambisane nemibandzela ledzingekile njengobe ibekiwe kuMtsetfo wencwadzi yemafa. Nangabe letintfo letishiwo ngenhla tingahlangabetwana nato, loyo loshonile utawube ashone ngaphandle kwencwadzi yekwaba.

Nangabe letintfo letishiwo ngenhla tingahlangabetwana nato, loyo loshonile utawube ashone ngaphandle kwencwadzi yekwaba.

Kwentekani nangabe umuntfu loshonile ete incwadzi yekwaba lifa?

Uma ngabe umuntfu afa ngaphandle kwencwadzi yekwaba, imphahla yakhe isetjentiswa ngekulandzela uMtsetfo wekudla lifa ngaphandle kweNcwadzi yeKwaba Nombolo 81 wanga-1987. Lencwadzi ichaza indlela lemphahla letawuhlukanisa ngayo.

Ngekuya kweMtsetfo wekudla lifa, imitsetfo yekudla lifa ise benta ngekuya kwesakhiwo semndeni:

- Umlingani munye, kute bantfwana: Umlingani udla lifa lemphahla yonkhe.
- Balingani bemshado lababili, labete bantfwana: Balingani bemshado batawudla imphahla yelifa ngetabelo letilinganako.
- Umuntfu longakashadi, kodvwa anebantfwana: Bantfwana badla lifa ngetabelo letilinganako.
- Umlingani kanye nebantfwana: Umlingani utfola incenye letsite yelifa lebantfwana, bese bantfwana batfola incenye lesele.

Iyini incenye yemntfwana?

Incenye yemntfwana ibalwa ngekwehlukanisa imphahla yelifa lemufi ngebunyenti bebantfwana labaphilako bemufi kanye nebantfwana labaphilako labashiye bantfwana, kanye

nelinani lebalingani labaphilako.

Umlingani kanye nebantfwana labanyenti: Umlingani ngamunye utfola sabelo semntfwana nobe linani lelitsite lempahala, bese kutsi bantfwana bona batfole lelisele.

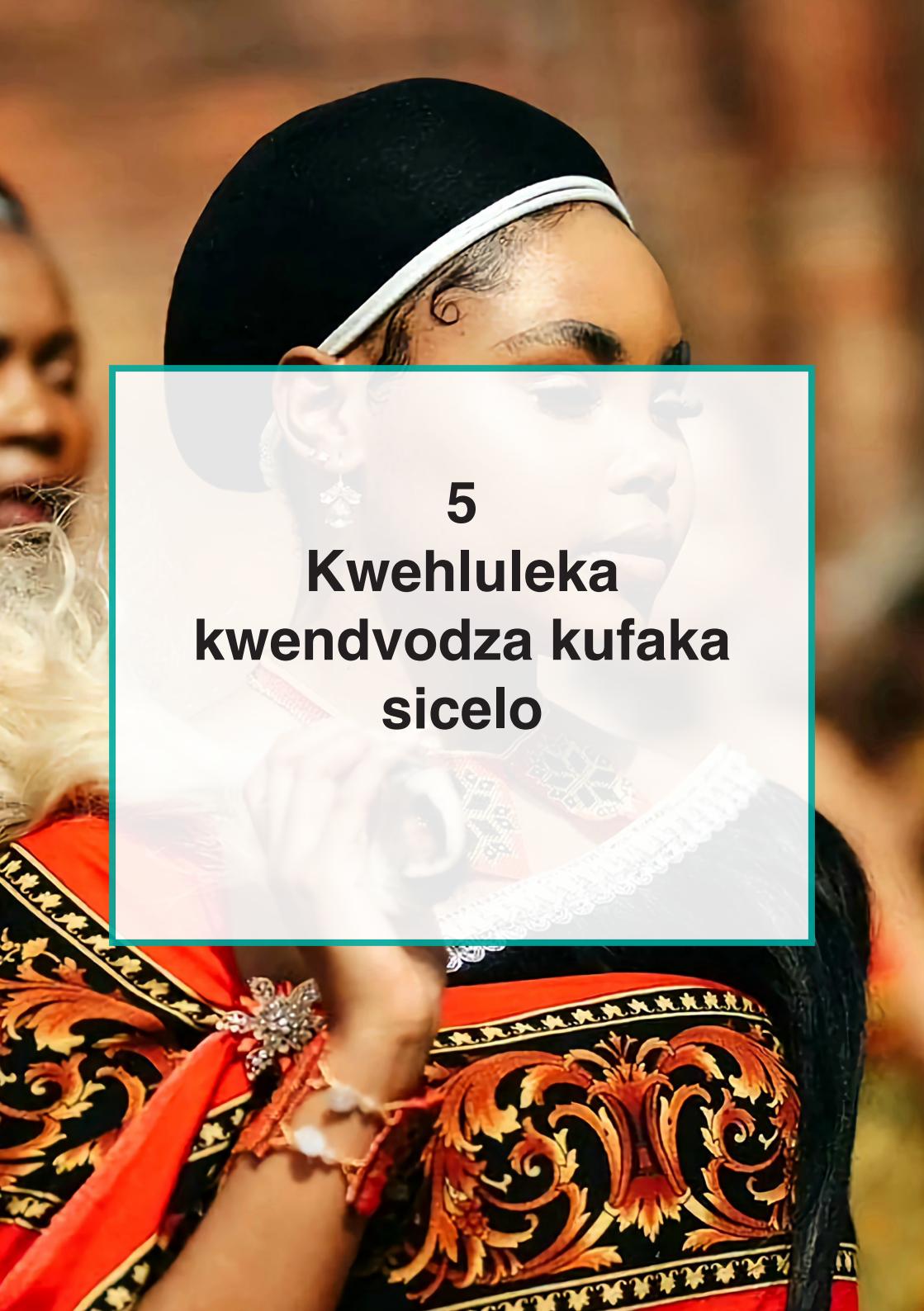
CAPHELA: Umuntfu angenta incwadzi yekwaba ngesikhatsi seliViki laVelonkhe Lekwaba. Yenteka emavikini ekucala lamabili enyangeni yeNyoni. Vakashela: <https://www.Issa.org.za/> kutfola lwati lolwenetiwe.

Kuyini Kulandzelana Kwebukhosi?

Lilungelo lekuzaifa o Lifa lemuntfu loshonile liyindzaba lesemtsetfweni lechaza indlela labazuzako labatawutfola ngayo lifa lemuntfu loshonile.

Tinzuzo:

- Tifiso takho titawugcwaliseka nawufa
- Ungancuma kutsi ngubani lotawutfola lokutsite nekutsi kutawuba ngakanani
- Kutawubakhona kungevani lokuncane mayelana nemcebo wakho
- Ungakhetsa umuntfu lometsembako lotawugcwalisa tifiso takho
- Ungakhetsa umnakekeli webantfwana bakho tintfo takho titolungiswa masinyane.
- Luhlelo Iwekwabelwa kwelifa.
- Kulandzelana nobe timo lapho umuntu atfola khona umcebo, sitfunti, ligunya nobe sihlalo sebukhosi.



5

Kwehluleka kwendvodza kufaka sicelo

KWEHLULEKA KWENDVODZA KUFAKA SICELO

Uyini mtsetfho wetendzabuko?

- Inkosi kumbe mholi wesive nguyeloneligunya lokwaba indzawo besebentisana nemkhandlo wetesintfu.
- Labasikati labangaphansi kwemtsefho wesintu labebabukeka njengalabancane bebangakhoni kutfhola mafa kumbe kwenta tincumo tabo ngekusasa labo.

Macula labalulekile asenkundleni yemacala:

Licala la Beh nalabanye Vs imantji, Khayelitsha, nalabanye (2005) lidlale indzima lebalulekile nasekutiwa ngasekubekeleni inselelo yetokungabi nabulungisa kwetamasiko

Babe wabantfwana labibili bemadodakati akhe na Ms. Bhe lasweleka bete tincwadzi temafa Kani ngekuya kwemitsetfo lengaphansi kwemitsetfo yetamasiko babe wamufi nguye lobetotfola lendlu lebebahllala kuyo nebantfwana bakhe.

Kuye kwqba nekuphikisana ku Ms. Bhe kutsi leni mtsetfo uvuna labedvuna kutsi betfole bodywa ngoba lokho kubukela phansi labesikati Kani ke nenkantolo yavumelana nesikhatalo sakhe.

Inkantolo yatsi lokhu kubukela phansi malungelo alabasikati labhalwe phansi kwi-Bill of Right.

Bantfwana ba Ms. Bhe, njengabantfwana bemufi, bekufuteka batfole lendzwawo. Huvo ya Vumbiwa yi vule leswaku primogeniture a yi fambisani na vumbiwa, yi pfumelela vavasati na vana ku dya ndzhaka ya nhundzu.

Kushintsha kwemitsetfo yesintu nempumelelo:

Hulumende wabe sewatisa mtsetfo wokushintsha kwemitsetfo yetamasiko ye Succession and Regulation of Related matters Act 11 of 2009, leyencabela kuniketwa kwabedvuna bodywana kebha nabafelekati nebantfwana bemshadzo yemasiko.

Uyini mshadvo wesivumelwano wemasiko?

Mshadvo wekuvumelana ngokwetemasiko

Lokudzingekako [section 3 of the ‘Recognition of Customary Marriages Act 120 of 1998’]:

- Bobabili labashadzako kufuteka babe neminyaka lengetulu kuka 18,
- Bobabili kufuteka bente sifungo ngephandi kwetemitsetfo yemishadvo yelisiko; phondze
- Kufuteka kube nesivumelano kulomshadvo phindze kujatjulwe ngendlela yemitsetfo yetamasiko.

Kwehluleka kwebhalisa lomshadvo akulimati kuchubekela embili kawo, kebha kusatofuteka ubhaliswe kungekapheli kubungatwa kwawo itinyanga leti-3.

Labashadze ngokwemasikp batobe sebeyabhala phansi kwe-Martiages Act 25 of 1961 nakukutsi kute lobashadze naye phansi kwemtsetfo yesintu.

Mkhwenyana nangabe afisa kushadzelwa phindze kutofuteka afake sicelo salomshadvo enkantolo khona utoba ngekusemtsetfweni bese kuphuma nendlela yekuhlalisana nabafati.

Kwehluleka kwemlisa kwenta sicelo enkantolo sekwemukela sivumelwano lesibhaliwe lesilawula luhlelo lwemphahla yemshado wekucala newesibili, akuwenti umshado wesibili kutsi ungasasebenti, kepha kwenta lomshado wesibili kutsi ungabi ngumshado wendzabuko

[Ngwenyama v Mayelane and Another 2012 (4) SA 527 (SCA)]

Umshado wendzabuko ngumshado wekuhlanganisa imphahla kanye nenzozo nekulahlekelwa ? Loku kusho kutsi wonkhe umuntfu lohlanganyele kulomshado uhlanganyela tikweleti kanye netinzozo ngalokulinganako.

Umshado wesintfu kumele ucitfwe ngendlela lefanako nemshado wesilungu, ngesincumo sekwehlukanisa, ngaphandle kwaloko angeke ubalwe. Kwehlukana nje kuphela akufeneli.

Landmark: Gumedé v. President of the Republic of South Africa kanye nalabanye

Ngemnyaka wa 2008, Gumedé v President of the Republic of South Africa and Others wafaka sikhalo eNkantolo yeMtsetfosisekelo ngekuncishiswa kwebantfu besifazane kutsi babe nemalungelo lalinganako emphahla ngaphasi kwemtsetfo wesintfu, atsi bekungakalungi. LeNkantolo yavumelana naloko futsi yakhipha lomyalo. Nyalo, bonkhe labasikati labashade ngesintfu, akukhatsateki kutsi bashade nini, banemalungelo lalinganako emphahla.

Lolushintjo lwalungisa lokungalungi lobekwentek
esikhatsini lesendlulile.

Nks. Gumedé wangena emshadweni wesintfu nendvodza yakhe nga-1968, kwatsi ngesikhatsi bahlukana nga-2003 bese batfole tindlu letimbili. Njengobe lomshado bewungaphambi kwekusebenta kwaloMtsetfo, bewungaphasi kwemtsetfo wesintfu futsi Nks.

Gumedé akazange aniketwe emalungelo ekuba ngumnikati waletindlu letimbili.

INkantolo yeMtsetfosisekelo yavuma kutsi lomkhawulo kuloMtsetfo bewunelubandlululo futsi bewungakalungi, futsi wavalal lomtsetfo wekunciphisa. Nyalo bonkhe labasikati labashade ngendlela yesintfu, nobe nini lapho bangena khona emshadweni, banemalungelo lalinganako emphahleni, ngobe imishado yabo isuke ihlanganisa imphahla. .

Umtsetfo Wemishado Yesintfu (1998):

- LoMtsetfo uniketa bafati labashade ngekwemtsetfo wendzabuko lilungelo leliphelele lekutsi babe semtsetfweni, bakwati kwenta imisebenti yabo futsi babe nemalungelo laphelele etintfo.
- Bomake bangatfola, baphatse timphahla, bangenele tivumelwano, baphindze bente emacala, bakhulise kutimela kwabo kutemnotfo.

Kubalulekile Kukhumbula:

- Kubhalisa umshado wendzabuko. Umtsetfo awukuvumeli loko, kodvwa nangabe ungakwenti, kungaba matima kukhombisa kutsi lomshado wendzabuko wentiwe.
- Kucinisekisa kutsi imphahla lefana nendlu bhaliswe.

Kuphumelela nemitsetfo yetemasiko:

Landmark Case : Shilubana nalabanye v Nwamithwa

Ngemumva:

- Lelicala belifaka ekhatsi bukhosi (Hosi) nekwephumelela endzaweni yase Valoyi eNingizimu Africa
- Mtsetfo yaseValoyi ibifaka ekhatsi tindlalifa tababedvuna kukhishwa Ms. Shibusana, indvodakati lendzala, kupokudzaba.
- Mndeni wasebukhosini wancuma kubeka Ms. Shilubana njengeHosi, kebha kwaba nekunhevani.
- Inkantolo yavuna Ms. Shilubana, imbeka njengalonelilungelo lekuphatsa sive.
- Inkantooo yabonisa kubaluleka kwekuphatsa bulili lobungefani ngendlela lefanako esiveni nasekutsatseni tincumo. Lokunye lokubalulekile kutsi mtsetfo wetemasiko ngimtsetfo lophilako, lokusho kutsi kufuteka kuphilwe ngawo.

Lushintjo kwemitetsetfo yesintu:

Kudzala, basikati bebabhkene nekubukeleka phansi ngaphansi kwemitetsetfo yesintu, kebha lushintjo ngekusemtsetfweni lenteka:

- Labasikati sebeyakhona kutfola mafa phansi kwemitetsetfo yetamasiko.

- Basikati banelilungelo lekuphatsa impahla, kutafuteleka baphatswe ngendlela lefanako, phindze banemalungelo lafanako yekuba nendzawo
- Mshadvo yetemasikobibhekwa aphansi kwesilingamiso, lokuniketa bafati ligunya lekutfola ngekulingana nakuba nesihlukaniso
- Lilungelo labasekati lemhlaba liyefana, basikati banelilungelo njengababedvuna. Buholi betemasiko kufuteleka baphatse labasikati ngendlela lefanako

A photograph of a rural scene. In the foreground, there's a dirt road with some sparse vegetation. In the middle ground, there's a white building with a corrugated metal roof and several windows. Behind the building, there are several tall, thin trees, possibly cypress or palm-like trees, standing against a bright sky. The overall atmosphere is bright and slightly hazy.

6 Indlu yemndeni

INDLU YEMNDENI

Kuyintfo levamile eNingizimu Afrika kutsi iminden'i ibe naloko lekutsatsa ngekutsi ?? indlu yemndeni ? .

Lendlu itsatfwa njengenzawo yemndeni futsi bantfu bangakwati kuhamba kuye ngetimo tabo. Ngalokuvamile, bantfu labasikati ngibo labatsintsekako. Umtsetfo lokhona nyalo awuvumi ngeligama lelitsi 'indlu yemndeni' futsi ngaleso sizatfu akukho kubhaliswa lokungentiwa ehhovisi le-Deeds.

Kwanyalo kunetinkantolo letichuba licala lelitsite.





7

Siphetfo

SIPHETFO

INingizimu Afrika yente lokunyenti ekuvikeleni emalungelo ebantfu besifazane. Kubalulekile kwati ngalemitssetfo kanye netingucuko kute kucinisekiswe kutsi bomake bayakwati kujabulela emalungelo lalinganako emphahla kanye nekutimela ngetimali.

8

Kute utfole leminye imininingwane



Kute utfole leminye imininingwane:

- Fundza i-Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1998.
- Buka ku-Upgrading of Land Tenure Rights Act 112 wanga-1991.
- Kubuyeketwa kwelicala Rahube v Rahube and Others 2018, ZACC 42.
- Hlola kuChitjiyelwa kweMtsetfo wekuChitjiyelwa kwe-maLungelo ekuBamba umhlaba 6 wanga2021.
- Bhe and others v Magistrate, Khayelitsha, and Others (2005).
- Umtsetfo Wemishado Yesintfu (1998).
- Umtsetfo wekutfutfukisa kulingana kanye nekuvimbela kubandlulula lokungenabulungiswa (2000).
- Umtsetfo we-Intestate Succussion Act 81 wanga-1987.
- UMTsetfosisekelo weRiphabhulikhi yaseNingizimu Afrika uMtsetfo No. 108 wanga-1996.
- Shilubana and Others v Nwamitwa CCT 3/07
- Ngwenyama v Mayelane and Another 2012 (4) SA 527 (SCA)

**Kuvikela Emalungelo Ebantfu Besifazane Ekufola
Tindlu Nekufola Tintfo - Kusekela Kulingana!**

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