**NATIONAL ASSEMBLY**

**WITTEN REPLY**

**QUESTION 1856**

**INTERNAL QUESTION PAPER [No 22-2017 FIFTH PARLIAMENT]
DATE OF PUBLICATION: 16 JUNE 2017**

**1856. Mr K P Robertson (DA) to ask the Minister of Rural Development and Land Reform:**

1. With reference to ward 6 in the Koukamma Local Municipality, what are the reasons of the Eastern Cape provincial department for taking 16 years to verify the authentic beneficiaries of the Thornham claim;

(2) (a) who are the beneficiaries of the Thornham Trust, (b) on what date was the last meeting of the board with the trustees, (c) are there any government employees who are (i) beneficiaries and/or (ii) board members of Thornham Trust, (d) what is the role of Government in the Thornham Trust, (e) why are residents of Thornham stopped from developing residential and/or business properties on the land and (f) who serves on the current board of (i) trustees and/or (ii) interim committee? **NW2066E**

**THE MINISTER OF RURAL DEVELOPMENT AND LAND REFORM:**

1. On 02 September 2002, the then Department of Land Affairs (DLA) appointed Mr J Benade as a Commissioner for designation of Farms No. 466 and 467 and Portion 1 of Farm No. 469 known as Thornham and currently registered in favour of HW Botha and others. On 29 November 2002 and 7 November 2003, Mr Benade advertised in a Jeffrey’s Bay newspaper (“Our Times”) calling for people who claimed to have an associated land right to make a submission to him in accordance with section 6(1) the Land Titles Adjustment Act, 1993 (Act No. 111 of 1993). In accordance with the above-mentioned section of the Act, the adverts gave a period of two months for people to register their claims.

On 23 July 2004 Mr Benade provided a written statement to the DLA as to whom the property should be registered. The statement declared that the property should be registered in the name of the Thornham Communal Property Association [CPA]. The CPA members would be comprised of those people Mr Benade had verified as landowners. The Thornham CPA was therefore registered on 13 November 2002 (Registration Number CPA/ 00/0487/A). Paragraph 6.1 of the CPA constitution limits the membership primarily to the descendants of the Cunningham and Thorn Families.

On 18 November 2004, Mr Benade passed away. The Department at the time assumed that the late Mr Benade had completed his responsibilities to the Department and claimants as he has made his transfer recommendations to the State Attorney.

In 2006, Mr Dennis Botha of the Thornham Property Owners Association approached the Department with an appeal against the allocation of a title deed to the Thornham Communal Property Association. Mr Botha claimed that the CPA formulation process was flawed and that CPA membership and ownership of the identified property was thus disputed. The Thornham Property Association is represented by Bennett Attorneys and Mr Bennett requested that an alternative Commissioner be appointed in terms of section 3(4) of the Land Titles Adjustment Act, 1993 which provides that another Title Adjustment Commissioner may be appointed if a Commissioner is unable to perform his/her duties.

The challenge in the Thornham case is that the formal function of the appointed Commissioner was already completed in November 2004 with transfer instructions being made to the State Attorney. Mr Bennett was advised that section 3(4) of the Land Titles Adjustment Act does not apply in this case because the Bennett appeal was submitted in September 2006 almost two years after the allocation of the land was done. The two month comment period as provided for in terms of in section 6(1) and advertised in 2002 and 2003 had long expired.

The Department was required to submit proof of this process to support the argument that Mr Bennett’s appeal is late but unfortunately the Department was unable to find any proof of advertisement in terms of section 7(1) of the Act which calls for the Commissioner to advertise his findings for comment by the larger community and the Commissioner had passed on. This meant that in terms of the Act, an alternative Commissioner would have to be appointed but the findings of the first Commissioner would have to be set aside.

The Thornham Property Association through Mr Bennett, filed papers on 13 December 2007 with the Grahamstown High Court seeking the reversal of the findings of the Title Adjustment Commissioner ie the late Mr Benade. The Department was cited as the second respondent and the papers were served to the State Attorney in Port Elizabeth. The Department did not oppose the application because the CPA had informed the Department of its decision not to oppose the application due to their dissatisfaction with the number of people who were left out of the process and those who were identified as beneficiaries.

The Court issued an order for the Land Title Adjustment process conducted and concluded by the late Mr Benade to be set aside; secondly, that another process to determine beneficiaries be opened afresh; and thirdly the Department should pay the costs. The Department facilitated the appointment of a new Commissioner and it was approved by the Minister on 9 June 2010. The Commissioner (Commissioner Bacela) began to work with the community thereafter and was required, in terms of the contract, to complete her work in two years. During her contract period there was a period when the Commissioner could not discharge her duties due to the fact that she was also appointed as an Acting Judge of the High Court. This contributed immensely to the delay in the finalisation of the facilitation process.

During 2016 the Department engaged the Commissioner on the progress of her work and found it unsatisfactory. The Department decided to terminate the contract with Commissioner Bacela. The Department is in the process of drafting Terms of Reference for the appointment of a new Commissioner.

1. (a) There is no registered Trust in Thornham; Trust beneficiaries of Thornham must still be determined once a Commissioner is appointed.

(b) Falls away; see (2)(a) above.

(c) (i),(ii) Falls away.

 (d) Falls away.

 (e) The Department is not aware of these allegations.

 (f) (i) Falls away.

 (ii) The Department is not aware of an interim committee.