



EASTERN CAPE PROVINCIAL LEGISLATURE

PORTFOLIO COMMITTEE ON PUBLIC WORKS AND INFRASTRUCTURE

Tel: 040 608 0094

Fax: 086 67344989

E-mail: ptyabazayo@ecleg.gov.za

Date: 13 November 2023

Enquiries: Mr P. Tyabazayo

Ref: Expropriation Bill 2020

NEGOTIATING MANDATE

- To** : **The Chairperson
Select Committee on Transport, Public Service and
Administration, Public Works and Infrastructure**
- Name of Bill** : **Expropriation Bill**
- Number of Bill** : **[B 23B -2020]**
- Date of Deliberation** : **13 November 2023**

1. Vote of the Legislature

The Province votes in favour of the Bill, with the proposed amendments and therefore mandates the Permanent Delegate to the NCOP to negotiate in favour of the Bill within the following parameters:

The proposed amendments are as follows:

(a) Clause 1 of the Bill – definition of “property”

The Bill defines “property” as meaning “property as contemplated in section 25 of the Constitution.”

It is important to note that section 25 of the Constitution does not define property. In section 25 (4) (b), the Constitution provides that “for purposes of this section- property is not limited to land.” For purposes of legal certainty on what constitute “property” within the context of the Bill, the term “property” must be clearly defined.

(b) Clause 2 of the Bill – Application of Act - addition of sub-clause (3) after sub-clause (2) and re-numbering thereof

That clause 2 (3) be added as follows:

“(3) Where the land identified for expropriation is communal land under the control and custodianship of a traditional leader or a chief, as the case may be, the expropriating authority must follow the customary practices and processes in expropriating such land.

The Bill must clearly distinguish between land in urban areas and communal land in rural areas as the processes for both acquisition and disposal are different. In a case of communal land under the control and custodianship of the traditional leaders, a peculiar process involving the traditional leaders and the community members who occupy the land by virtue of being holders of Permission To Occupy (PTO) must be followed.

(c) Clause 6 of the Bill – Consultation with municipality during investigation - addition of sub-clause (4) after sub-clause (3) and re-numbering thereof

That clause 6 (4) be added as follows:

“(4) The municipal manager shall, before delivering the written response contemplated in sub-section 3, table the response to the municipal council for deliberation and approval.”

(d) Clause 7 (1) of the Bill – Notice of intention to expropriate - addition of paragraph (b) after paragraph (a) and re-numbering thereof

That clause 7 (1) (b) be added as follows:

“(b) Where the land is communal land, serve a notice of intention to expropriate on the traditional leader concerned and to all the lawful occupiers of such land.”

(e) Clause 7 of the Bill – Notice of intention to expropriate - addition of sub-clause (5) after sub-clause (4) and re-numbering thereof

That clause 7 (5) be added as follows:

“(5) A traditional leader, a community and lawful occupiers in a communal land must respond to the notice contemplated in subsection (1) within a reasonable period of time after having considered the notice in accordance with the traditional practices and processes applicable to that community.”

The proposed addition in clause 7 stems from the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996). This is important as the Act provides in section 2 (1) that a holder of an informal right to land may not be deprived of such right without his/her consent.

The Act further provides in section 2 (2) that where the land is held on a communal basis, a person may only be deprived of such land or right in land in accordance with the custom and usage of that community.

(f) Clause 12 (3) of the Bill – Determination of compensation - Amendment of clause 12 (3)

That clause 12 (3) be amended as follows:

“(3) It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all the relevant circumstances, **[including but not limited to]** which include – “

The proposal in this regard is that the list of circumstances that may result in nil compensation to be paid for land must be a closed list. In other words, all the circumstances must be stipulated in clause 12(3). The concern is that if there is a wording to the effect “but not limited to” may result in uncertainty in the law.

(g) Clause 12 (3) (c) of the Bill – Determination of compensation - Amendment of clause 23 (3) (c)

That clause 12 (3) (c) be amended as follows:

“(c) notwithstanding registration of ownership in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), where an owner has wilfully abandoned the land by failing to exercise control over it.”

The submission in this regard is that there must be an element of intention from the owner to abandon the land. The submission is that in some instances the owner does not wilfully abandon the land but may be forced by circumstances such as land invasion or disaster.

(h) Clause 15 (3) of the Bill – Payment of compensation - Amendment of clause 15 (3)

That clause 15 (3) be amended as follows:

“(3) Any delay in payment of compensation to the expropriated owner or expropriated holder by virtue of subsection (2) or any other dispute arising **[will not prevent the passing of the right to possession to the expropriating authority in terms of section 9(2) or (4), unless a court orders otherwise]** shall impede the passing of the right to possession to

the expropriating authority in terms of section 9(2) or (4), unless the court orders that possession shall pass to the expropriating authority.”

(i) **Clause 19 (6) of the Bill – Mediation and determination by court - Amendment of clause 19 (6)**

That clause 19 (6) be amended as follows:

“(6) Subsection (2) does not preclude a person from approaching a court on any matter relating to the application of this Act. An owner or right holder who elects not to exercise the right in terms of subsection (3) shall be provided with legal representation at the state’s expense to institute legal proceedings on any matter relating to the application of the Act.”

(j) **Clause 19 (8) of the Bill – Mediation and determination by court- Amendment of clause 19 (8)**

That clause 19 (8) be amended as follows:

“(8) Any appeal against the decision of a court on the amount of compensation [will not prevent the expropriating authority from expropriating for the amount approved or decided, unless a court grants an interim interdict based on compelling prospects of success of the appeal.] shall suspend the operation and execution of the decision or order appealed against pending the finalization of the appeal, unless the expropriating authority makes an application and is granted by the court for the immediate operation or execution of the decision or order.

The current phrasing of clause 19 (8) of the Bill is contradictory to section 18 (1) of the Superior Courts Act, 2013 (Act No. 10 of 2013) which essentially provides that the operation or execution of a decision or order of the court is suspended when an appeal is noted. The current phrasing of clause 19 (8) places a burden on the owner or right holder to lodge an interlocutory application for the suspension of the execution of the decision appealed against when the law makes it clear that when an appeal is noted, the operation or execution is suspended. This burden must be placed on the expropriating authority, it must be the expropriating authority that lodges an interlocutory application for an immediate execution or operation of the decision.

2. General Comments

The report of the Portfolio Committee attached hereto brings to the attention of the Select Committee all the other issues raised by the stakeholders relating to the Bill and are matters that ought to be given serious consideration by the Department of Public Works and Infrastructure.



HON T. MATIWANE (MPL)
CHAIRPERSON OF THE PORTFOLIO
COMMITTEE ON PUBLIC WORKS AND
INFRASTRUCTURE

13 November 2023

DATE