

BOTSHABELO AND THE “ORDERS OF THE COURTS”.

Why Botshabelo is the most legally endangered Category 1 Heritage Site in South Africa.

Botshabelo is a Category 1 Heritage Site as intended by the National Heritage Resources Act in terms of the blanket status afforded to all previous national monuments.

The failure of the South African National Heritage Council to officially declare Botshabelo a heritage site, is not only a neglect of its mandate but also an wilful participation together with all relevant government institutions to transform the Heritage Site from a “common law , European and colonial heritage of the oppressor, the missionaries of Alexander Merensky of the Berlin Mission Society” to that “ of a customary heritage paying tribute to the oppressed and the dispossessed indigenous ‘inboekselling” refugees of Ramapodoe of the Kopa Tribe and the BaPedi of Johannes Dinkwanyane”, that found shelter at the station in 1863 and 1864.

The submission to have Botshabelo declared as a National Heritage Site was again submitted to the National Heritage Council in June 2002. It was accompanied by an updated conservation policy which was compiled by the Department of Landscapes and Architecture of the University of Pretoria under the auspices of the South African Heritage Resources Agency as stipulated by the National Heritage Resources Act (Act 25 of 1999).

The submission was at the time regarded by the then chairman of the board as “premature”, requesting that it be re-submitted with a recommendation from the Town Council of Steve Tshwete and a letter from the owner supporting the declaration.

All these documents in reference were included in the “Contract of Restitution” between all the relevant authorities whereby the claimants, The Botshabelo Community Development Trust, gave the National Heritage Council permission to “declare Botshabelo even before the heritage site was transferred to the Trust”.

As the letter of recommendation from the Steve Tshwete Town Council did not arrived in good time the submission could not be resubmitted in 2003. Any further delay (it is now 2017) by the National Heritage Council in the declaration of Botshabelo is a deliberate stalling by intent influenced by political pressure from the National Government not to grand it Category 1 heritage status.

The “new owners” recently expressed their frustration with the National Heritage Council’s failure to approve their application to have Botshabelo declared a National Heritage Site and blamed the Council as the “sole obstacle in declaring Botshabelo” and that they do not know what more to do to have it declared”.

It is described by SAHRA as “a heritage resource of great national value since it has associations with both events of historical importance and the diversity of cultures and their interactions as it embodies the histories of many of the diverse cultural groups which comprise the peoples of South Africa”.

“At the very least the Botshabelo precinct should be part of a declared National Heritage Site that includes the Agricultural lands, Cemeteries, Church precinct, Fort Merensky, the game reserve and hiking and bird trails, Moutse village, the Seminary and village precinct, the South-NdeBele village and the workshop precinct.

“Botshabelo represents a melting pot of cultures and events as each unique precinct has a direct socio-cultural and historical associations and connotations with its earlier inhabitants and events as it was developed as a self-sustaining mission- community with all the requisite infrastructure”.

“The palimpsest of routes and infrastructure relating to the place as one for victualing, rest and repairs on the trade route to the Zoutpansberg as recorded in the written histories of the early pioneers and settlers”, noted an earlier writer in 1880.

“The site is a place of significant landscapes, from wilderness areas to cultural landscapes but current sentiments in terms of management regarding ecological concerns is resulting in a rapid erasing of aspects of acculturation of the landscape”.

The untransformed (greater) part of the reserve is described in an Environment Impact Assessment Report as “highly significant” and under “strict land use controls” and consist of two animal habitats, “Primary undisturbed grasslands” and “Pan wetlands”.

The EIA states that 18 red data species are present in the undisturbed grassland while 7 are present in the pan wetlands.

The Giant Bull Frog, a protected species in the pan upon which the “new owners” now want to develop a township, is at risk due to its habitat restrictions and lack of mobility as it aestivate underground away from water. If any disturbance occur during their hibernation in winter it will impact severely on their numbers and destroy the population.

The planned development of 1 000 residential stands with 4 000 chemical toilets for 10 000 people in the wetlands is in conflict with the land use guidelines of the Mpumalanga Biodiversity Conservation Plan over of the site.

At present the greatest damage done to the site as a heritage resource is the neglect and wilful conversion of the nature reserve into an “ecological landscape”.

Permission has been granted by the Mpumalanga Government to the claimants to proceed with the development of the township despite various studies that still has to be done. The EIA makes it clear that further investigation as required by SAHRA and the Mpumalanga Tourism and Parks Agency must be undertaken before the application could be considered.

This was rejected by the claimants and the provincial government because “they do not have money to conduct it and they rejected the EIA as a document that in an unconstitutional manner deprive them of their rights to develop an township and to resettle on their ancestral land”.

The Mpumalanga Department of Economics, Environment and Tourism approved the application even before it was concluded while the Department of Agriculture, Rural Development and Land Administration rejected any development on any part of the reserve, because “ the Botshabelo nature reserve and heritage site is a scarce resources that cannot be renewed and must be preserved and natured for our descendants”.

The EIA is an incomplete document as stated in the conclusion remarks of Clean Stream Environmental Services, who conducted the investigating on behalf of the claimants and the provincial government paid for it.

Before the land claim was approved the claimants rejected any compromise in the form of restitution in cash or alternative land or a “Makuleke- Agreement to co-ownership and management but insisted on relocation within the nature reserve “because they are entitled to develop a township and to stay on their ancestral land”.

They succeeded in their claim that their “fictitious” and weak “personal rights they had under their customary law as dispossessed tenants,” to “be upgraded to full and sole common law ownership”, denying all others who have a constitutional right to Botshabelo, those same rights.

South-Africa has two parallel systems of Law, Common Law and (v/s) Customary Law that constitute the Constitution and which Government is now trying to intergrade but to many is not succeeding in doing so.

The Constitutional Court in 2014 stated that customary law was ranked lower than the common law and any customary law that was inconsistent with the common law, was considered to be invalid. But no longer.

“The Constitution recognises customary law as a system of law equivalent to the common law and that the validity of each of them must be tested against the Constitution. This means that a customary law rule that is inconsistent with the common law retains its validity if it is in line with the Constitution”.

“The days of declaring customary law invalid for being in conflict with common law are over”, the court ruled.

The court stated that courts are obliged by the Constitution to apply customary law when it is applicable, subject to the Constitution and any legislation that deals with customary law.

Restitution means under the Constitution the upgrading of any personal rights, whether weak, formal or informal, an indigenous person might claim in property, to full common law ownership. It also means that a land claim will be successful where claimants can “prove they have a strong historical right to that land as their heritage” and their mere presents on the property in the past, will constitute and prove such a claim.

It is made clear to us that a registered landowner who claims property rights on his property under the common law, no longer is entitled to ownership of that land when a claim is lodged on his land, but has only a right to dispute the amount that government is offering for expropriation.

Restitution also means the return of the land to its use as it was when the claim occurred and to acknowledge the rights of other stakeholders in the past and in the future of that property. Botshabelo cannot return to a self-sustaining mission station but it surely can be “returned” to a self-sustaining tourist attraction and educational facility of world repute.

It cannot be “rehabilitated and developed as a township”.

The fate of Botshabelo now lays squarely in the hands of the Judges of the Constitutional Court and in the Court’s interpretation in future hearings, reviews and appeals in applying Customary Law v/s Common Law as “The Two Equal Pillars of our Constitution”, in making sure to find that (customary/common) law that prevailed at the time in history when the/a claim accrued and that gave rise to the present (land) claim, and to identify that (customary/common) law and to apply that (customary/common) law”.

The Constitutional Court in 2014 in the case Bapedi Marota Momone (the Royal House of Mampuru II) v/s the Commission on Traditional Leadership Disputes and Claims (the house of Sekhukunkune I) for the throne (lands) of Sekhukuneland, the court puts Common Law and Customary Law on an equal footing as the “amalgam of the Constitution and declared that, as was the case up to now, Customary Law no longer will be subjected to Common law but only to the Constitution”.

The Constitutional Court gave legality to the Commission as “a specialized body appointed by the President in accordance with the Framework act, Act 41 of 2003, ‘to cleanse traditional leadership of illegitimate traditional leaders’, whose decision have to be respected and added weight to” when the Constitutional Court found that all relevant information was taken in consideration by the Commission when it ruled that the customary Law of the BaPedi, as it prevailed in 1864, dictates that the claim by the Royal House of Crown Prince Mampuru II, the legitimate heir to the throne of Sekhukuneland, to be King, to be dismissed.

The cut-off date for claims and disputes to be investigated was put as “after 1927 or beyond if good grounds exist to do so”, as this was the date when “the unconstitutional interference in the tradition affairs of the indigenous people started”.

The Customary Law of the BaPedi nation, known as the rule of “bloodshed and might”, prevailed at the time (1864) when King Sekhukune I (the elder brother of the Lesser House) took the Kingship from prince Mampuru II (the younger son of the Senior House) by “bloodshed and might” when he threw an assegai at prince Mampuru as a challenge to do combat for the crown. Prince Mampuru did not take up the challenge but fled to the Swazi thereby giving the crown (according to this rule) to Sekhukune I.

Thus, he took the crown by “bloodshed and might” as is permissible according to the BaPedi customary law as applicable in 1861.

The ruling of the Constitutional Court was rejected by the House of Mampuru as an “unconstitutional ruling that promotes the use of violence and bloodshed between people in settling their disputes”.

In the case of Botshabelo, the counter claimants, “those who brought the land”, the BaPedi Batubatse Communal Society, claim they now have the constitutional right to take Botshabelo from the Trust by “their customary right of bloodshed and might”.

Crown Prince Mampuru II was anointed by his father, King Sekwati as future king before his death in 1861 and King Sekwati stated in his Will that “Mampuru will be King and Sekhukune will inherit all my personal belongings”.

Thus the Kingship of Sekhukuneland was in 2014 bestowed upon the House of King Sekhukune I as the Commission has found that his claim based upon customary law is valid. The Commission described the lands of Sekhukune land as it was in 1864 as “including those territories (locations) under control of the BaPedi chiefs and/or where BaPedi communities under chiefs lived.

In 1864, both tribes of the BaPedi under Dinkwanyana and the Kopa under Ramapudu, lived as “traditional communities under their chiefs”, at Botshabelo and is “included” in the definition as accepted by the Commission.

The Commission has a mandate to investigate on request or on its own accord all Traditional Leaders and Kingships and to identify imposters and to “dethrone” them by replacing them by those identified by the Commission as the right full heir, king, paramount chief or chief according to the customs of those tribal communities under investigation.

The findings of the Commission in other disputes and claims were in most cases rejected by those concerned (“the losers”) and challenged in the Constitutional Court and one decision of the Commission was set aside.

This Commission was later described as “ ill equipped and its findings as fundamentally flawed in its failure to grapple with, much less to clarify, the meaning of custom within the context of an democratic dispensation”, by a former commissioner who resigned from it.

He described the Commission as “to serve as a mask or even a blunt instrument to facilitate outcomes that are the very reverse of customary law and that the Commission knows as much of the meaning ‘customary’ as the man next door.

Others warned against the commission`s persistent manner to ignore the cut-off date of 1927 in finding “special circumstances to ‘open Pandora`s box of tribal matters, claims and disputes’ as an intentional move to ‘accommodate, amongst other, the claim of the House of Sekhukukune and they described it`s finding as ‘a gesture of gratitude by government’ to the House of Sekhukukune for their support through the Sekhukukune revolt in the liberation struggle”.

We have objected to the Office of the Chief Justice against the “unconstitutional interference of the President in the matters of the courts by obligating the courts through the Framework Act to “blindly” accepts the findings of the Commission.

The court accepted the findings (evidence) of the Commission as that of “a specialist body constituted by experts appointed by the President that must be treated with appropriate respect and that the court must give weight to its findings of (as) fact by those with special expertise and experience in deciding on a wealth of historical material which the court cannot easily assess”.

We believe that not the Constitutional Court, nor the Commission, can decide on any claim that arose before 1913 as this is the cut-off date for the court to be constitutional according to the Constitution.

The Commission is totally independent and its findings must be implemented without delay.

The conclusion of the Commission and the ruling of the Constitutional Court have a direct impact on Botshabelo as it now has become the battle ground between the Old Order of Rights, the Common Law , the” Written Law”, against the New Order of Customary Law, the “Unwritten Law”, the law of “ Word of Mouth”), despite a standing and valid high court order to the contrary.

It is through this “new interpretation of common law against customary law as equal under the Constitution” that the proven common law rights of others and that of the right full owner of Botshabelo, the Town Council of Steve Tshwete, were rejected and replaced by the fictitious proxy/nominee- rights the illegal claimants claim as their entitlement and heritage according to their customary law.

This led to the unsolicited handover of Botshabelo, one of the most important intercultural and historical sensitive sites to one specific cultural group, the BaPedi while in total rejecting the claim of all the other stakeholders, like the NdeBele, the Swazis, the Merenskys, those of the descendants of the missionaries, Der Bund (BNBM) and cultural organisations who do have a undeniable rightful claim to it as their heritage.

The ancestors of the claimers, in 1905, went on the rampage when it was conveyed to them, that the High Court of Transvaal of 1905, had rejected their land claim (the first claim of 1880 - 1906) and they utterly destroyed Botshabelo as they are now doing again. They broke down the village, looted all they could and then desecrated the church, tipping the altar, breaking it, then spreading the holy bread on the church floor before trampling on it.

At the time the missionaries were arrested and the inhabitants believed that they would not return and they force fully claimed to be the owners of Botshabelo. The English troops did nothing to prevent them for looting and destroying the station and it was only after their release from prison in Middelburg that the missionaries in 1906 obtained an eviction order and the squatters were removed by armed British guards.

While we regard the manner in which the land claim was awarded in 2000 as an “ unevenly handed and corrupt, non- transparent, illegal, unconstitutional and in contempt of court and a violation of our constitutional rights in property as endorsed by the court of 1905, the claimants claim right full restitution through the correct application of customary law as the correct law to apply in deciding on the claim.

The future interpretation of the values of Botshabelo as a (common law) heritage site where the relevant conservation and heritage laws are adhere to is now at risk and the claimants can now , as sole owners of the property freely apply customary law in their interpretation of what the future of Botshabelo should be “as they know best how to interpret and develop their heritage site”.

As have been proven in the recent past and the present is that their customary vision of Botshabelo do not include the participation of affected and interested third parties in any conservation plans for its future that is based in historical common law. In fact, those rights are in total denied by customary law.

Botshabelo is now to be transformed from a intercultural heritage site that is dear to so many cultures, to a cultural landscape depicting “the struggle history of the BaPedi Christians under the despotic missionary, Alexander Merensky, supported and maintained by the oppressive regime of the Zuid-Afrikaansche Republic”.

What has to be preserved as a “living heritage site benefiting all of the greater community of Middelburg and South-Africa as a whole, has been degenerated through neglect, rot, decay and fraud to a dilapidated cluster of buildings resembling a burned down mission station in a neglected nature reserve now owned and abused by a few”.

The most eminent danger for Botshabelo is the inability of the collective (the Trust as a community under customary law) to take as individuals responsibility for the conservation of Botshabelo and to act responsible according to the common law, to protect Botshabelo. They have chosen rather to leave the site to rot and decay, blaming it on the failure of the collective, denying responsibility.

The confusion about the future of Botshabelo and its neglect that is now the trademark of the Trust, Provincial and National government and the counter claim by the BaPedi Batubatse Corporate Society on Botshabelo as their ancestral Djate (their houses of stone), have ultimately sealed her doom and will now utterly destroy the heritage site as it will prolong the present impasse with many years of wasted time in fighting over ownership, giving rot and decay a free hand.

The decision of the Provincial Government in 2013 when it transferred R21 million Lotto money to the Trust without oversight and an order of compulsory repair or an approved budget to spend the money according to the management plan for Botshabelo, is a matter of grave concern as it is not clear what the money was intended for. The implementation of the management plan, which was commissioned by SAHRA in order to support the claim, was a pre-condition to the approval of the illegal claim and it must be implemented and enforced.

The collapse of part of the roof of the historical Lutheran Church and the following neglect to contain the damage is a clear demonstration of the inability of the National Heritage Council, the

Trust, the Provincial Heritage Management Authority, the Town Council of Steve Tshwete and SAHRA to maintain, conserve and develop Botshabelo.

Merensky, or "Mpangissa" the "Quick Maker", as his congregation called him, in person had to stand security for the building of the large church, mill and the schoolhouse. Beams and trusses for the roof were ordered from the Pongola forests, where a former Hermannsburg missionary colonist lived, a journey of eight days away from Botshabelo.

More than 200 000 bricks were fired in kilns and building operations continued throughout the summer at the end of which we laid the foundation stone filled with the usual documents and once it was finished it made a fine sight", Merensky wrote.

"Upon entering from the main door beneath the 66 feet high tower, one is presented with a light, airy and spacious interior the length of which is to the back of the altar 120 feet. The altar niche is separated from the choir stall by a twenty feet high gothic arch which is vaulted and is painted blue. The woodwork and balcony was stained brown and the walls were whitewashed. The pulpit was made of airbricks, beautifully plastered and painted with silver grey oil paint.

The benches were made by the missions carpenters and stained glass from Germany was used to build the lead-stained glass gothic windows on top, those behind the altar and the two round ones placed in the gable end of the transept.

"The church bell was a present from missionaries from the Earldom of Ruppin and the beautiful altar cloths and lovely holy containers given to us years ago by the Sisterhood of the Diaconic House of Bethanien in Berlin", Merensky wrote.

The "Overshot waterwheel mill" built on and a newly surveyed farm by German bricklayers became a monument for German skills and enterprise and produced 40 sacks of wheat every 24 hours and was cheaper to run than the "Norman mill" some farmers had on their farms.

The Norse mill originated in Norway and was a primitive structure which used a paddled horizontal wheel whose axle was linked to the grindstone in a direct turning ratio. The overshot mill however used a vertical wheel connected to a series of gears designed to increase this turning ratio, thereby making it more efficient.

For this purpose a channel 1360 paces long that took 20 people six months to excavate, was dug in the Klein Oliphants river. The channel was only a few feet deep at its highest point, but increased to 12 feet at its lowest level and was four to five feet wide. The mill was later dismantled.

Once an extensive hydraulic system was in operation at Botshabelo and Merensky's surgery was fitted with "running water" and a reservoir.

Prior to the arrival of Johannes Dinkwanyane and his followers at Botshabelo in Januarie 1864, a part of the people of Ndebele chief Ramapudoe, son of King Maleo, who was overthrown by Sekhukuni, came to Botshabelo while the other part moved to the farm Rietkloof in the northern part of the then Middelburg district.

Merensky wrote that the Kopa was first to arrive at the station and received plots downstream of the Mochlotsi river (Klein Olifants) which they praised while the BaPedi who arrived later, received land to the east, near the Keerom river.

The descendants of those people of chief Ramapudoe (NdeBele) who came to the station in 1863 is now known as the BaPedi Batubatse Corporative Society, the counter claimants, who now claims the land from the Botshabelo Community Development Trust (the Dinkwanyane).

The Society denied being from the Kopa tribe but claim to be “the descendants of the original owners, the BaPedi, who bought the land in 1864”. They claim that the members of the Trust are descendants from “those that came to Botshabelo to be educated by them only to take their land from them through an illegal land claim”.

The Botshabelo Community Development Trust claimed Botshabelo in the name of Sekhukukune who's “half-brother”, Johannes Dinkwanyane, their ancestral forefather, “bought the farm with Merensky in 1864”. They claimed and received Botshabelo as “ their ancestral lands that Merensky and the Lutheran Church held in proxy/nominee on their behalf”.

According to the Chief Land Claims Commissioner the claim of the Trust has been awarded because “they are the direct descendants of the original buyers of the farms”.

The claim by Johannes Dinkwanyane , alias Seth Kgalema, (and others) to be from the royal house and to be a blood brother of King Sekhukukune, is not supported by the Commission on Traditional Leadership Disputes and Claims as the Commission stated that “King Sekwati had only two sons, Crown Prince Mampuru II and Sekhukukune I.

Sekhukukune was born Matsebe but got his name from his tribesmen because like “a Khukhuna”, a spirit, he moves quietly in the dark forest in the night to get food and water for his besieged kraal. He was the “Warrior King”, while crown prince Mampuru was known as “The Diplomat”.

Prince Mampuru II paid Johannes Dinkwanyane a visit early in 1871 at Botshabelo in what Alexander Merensky described as an “hostile intrusion upon my station that prevented me from joining Karl Mauch on an expedition to the north, searching for the lost city of Ophir in the lands of Sofala”.

Mampuru gave Johannes, his subject, an ultimatum “to move of the station or face death at the hands of his King”.

When Merensky tried to keep Johannes and his followers at Botshabelo , Johannes rebelled against the decision of Merensky (the BMS) not to buy and hold land in proxy on his and his follower's behalf. He rejected and denounced any claim of ownership on the lands of Botshabelo.

Johannes warned Merensky that he, Johannes, is a free man and that if he, Merensky (the BMS), does not take pity upon him and his people by buying them a farm and register it in his, Merensky's name, then he, Johannes, will have no other option than to go to Sek.

This Merensky, the BMS, refused to do buy them land as proxy/nominee holder as it would have been illegal.

The ZAR and the BMS decided to let Johannes and his people move to Vrischgevaagt, a farm near Lydenburg that belonged to an missionary.

Johannes and his following , in 1864, fleeing for their lives, jointed the trek of Merensky from Lydenburg after Merensky saved them from the marauding cannibals and the murderous impis of King Sekhukukune. The king saw their departure as a treacherous abuse of this trust and was determined to punish them for it and gave orders to “find the traitors (Johannes and his people) and to kill them”

Merensky, the missionaries and the BaPedi converts were blamed by Sekhukukune for “causing the heat” and for being responsible for the devastating drought and famine of 1864 because they no longer observed some of the significant customs as well as their tribal obligations and duties by deserting and angering the spirits of their forefathers and the tribe by settling around or on mission stations.

It was the time of the Mfecane, the “undeclared war” triggered by the worst drought of that century and aggravated by the scorch earth policy of Mzilikatzi who years earlier on his way to Zimbabwe drove out and massacre the Basuto`s of the Highveld.

Everything they had were taken from them by Sekhukukune and they “had nothing to eat but to chew on the ends of the animal skins that covered them and the burned field could not support them as the game were long dead by then”.

To survive, men turned cannibals and against their brothers and robbed them of the little they had in order not to die from hunger.

Many of the followers of Sekhukukune, including Johannes and his people, one of his senior wives and Martinus Sewushane, his gunsmith and elder tribesman, were converted to Christianity and he, Sekhukukune, fear losing control over the tribe. He banned Christianity, attacked the mission stations and converts in his territory, burned it and killed their livestock.

Earlier he had killed all Mampuru`s councillors and most of his followers in attacks on their kraals but Mampuru succeeded in escaping to the NdeBele.

He ordered Merensky to leave Sekhukukune land and according to some, Merensky, his pregnant wife and the fleeing converts, were miraculously saved by crossing the Steelpoort river in time before a flash flood prevented Sekhukukune`s impi from overtaking and killing them.

Merensky, who later spear headed the penetration of the Berlin Mission Society into East Africa and his family was now on their way to settle permanently at his Head Quarters at Botshabelo from where the BMS would established more than 120 stations and trading posts.

Here amongst the ruins of EkaPumaleni, the Place of Rest, that is believed to be the long lost temporary homestead of the warrior Matebele (NdeBele) chief, Mzilikatzi were he briefly tallied around 1826, Merensky built Botshabelo, the Place of Refuge.

It became a “City State” with an economy stronger than that of its host, the ZAR and the bread basket of the region as all roads led to Botshabelo, the Institute of Learning and Enterprise.

EkaPumaleni, the Place of Rest, became Rustplaats, the Place of Rest / Rustplaats became then Toevlugt, the Place of Safety. Toevlugt, the Place of Safety then became Botshabelo, the Place of Refuge (a safe resting place).

Due to security reasons Merensky and the congregation build their houses in the plain below the fort and against the side of the “mountain” as close together as possible and “ the house were strung together by means of courtyards and only the outer houses were directly in the line of attack”.

“The inner stone fortifications were small but solid and could receive the people quickly and safe guard them; the only entrance to the two villages was flanked by walling and their gate was easily defended and closed by night by a wooden door”, Merensky wrote.

The village was divided by swampy areas on both side of the Oliphants river and it took several years to lower the river bed in order to drain the swamps. Then they constructed the first arched stone bridge in Transvaal and built roads leading to the houses. More of these bridges, made of large stone blocks, laid in corbelled course which come together by and by, and that were dressed on top with large blocks, were built by many of the people, making roads leading to their villages.

Later they built a firewall around the station to prevent a bushfire “ rushing upon the station”.

From the outset they planted a great number of peach and apricot trees they gather from surrounding farms where some of the inhabitants worked and a forest of peach trees did especially well on the slope below the fort. Merensky found that in Africa one does not have to graft these wild little trees and as he could plant thousands of them if was not long before beautiful gardens, which included quince, pomegranates and figs, adored the station.

The new mission develop rapidly and in time it became the most important, the largest and the best organised institution within the Berlin Missionary Society. It was a model mission and was self-sufficient, with its cultivated fields, gardens, wagon maker`s shop, schools, hostel, Seminar, church, brickyard, bakery, cattery house, surgery, Mill, print-shop, store and Fort.

The first building built In 1865 was a combined church and school building with low stone walls and thatched roof that later served as a school and store room and after another year they had to build a second and larger church that seated 600 people and that was dedicated on 15th of March 1868. In was enlarged in 1873 and for many years it was the largest church building in the Transvaal.

A German school was also established and the missionaries send their children there and also in 1873 a school for the children of baptised members of the congregation, was build. In 1873, 1315 people, of whom 1034 were baptised stayed at the mission. In 1882 the numbers were at 1700 of whom 1475 were baptised and in it`s prime as many as 3 000 people stayed there.

A training school for catechists and evangelist followed in 1878 and in 1906 a seminary for the training of teachers was erected while a further primary school building was built in the 1930`s and a high school with hostel in 1940.

The workshops served as a trade school and the wagon maker`s shop produced wagons for a growing trade of transport riders and it supplied 10 new mission stations with wagons.

The road between Botshabelo and Middelburg had been widened, and often 20 to 40 wagons traversed it per day.

The mill, the shop and its trade with local inhabitants, the search for medical and surgical care found Boer and Englishmen, farmers and travellers from far and wide, on wagon, cart and horse, descending upon Botshabelo.

The tradesmen at Botshabelo develop skills as gunsmiths and as fitters and turners they used English tools to manufacture their own screws, taps, springs and other necessary parts for the gun lock and could apart from the barrel, manufacture guns that was in high demand.

They were trained as carpenters, turners, fitters, wagon makers, brick layers, farmers, gunsmiths and evangelists.

After 15 years of profit, the wagon maker`s shop had to close down as the need for new wagons and repair work declined and the constant frontier wars prevented the establishment of proper agricultural practises as nobody was prepared to invest their money.

There also was no market for their products in Transvaal and it now has to be transported to the Free State and Natal.

Earlier, while still at the kraal of Sekhukukune, Merensky asked Sekhukukune about the legend of Queen Sheba and Sekhukukune gave Merensky, as a trusted friend, the "long lost key" on where to find the "Lost City of Queen Sheba, in the unknown lands of Prester John from where Phoenician ships carried vast treasures of gold to Jerusalem, to King Salomon who was building the Temple of Yawhe and his palace".

King Sekhukukune told Merensky that as a child he had seen the ruins, situated upon an immense plain, many hours in extent, covered with gigantic antique structures and gave him directions and later in 1871 he gave, carriers and guides for the Mauch- expedition.

Rumours had for many years reached the utmost corners of the world of the existence of ruins of temples, obelisks and pyramids in regions between the Limpopo and Zambezi in the far interior of South-Africa and Merensky who learned about this in Germany took it upon himself to go and find the lost gold mines of the legendary ruler of Zimbae, the Monomatopa.

As Merensky found it in 1871 impossible to leave his growing station amidst rumours of war he secured the services of Karl Mauch, a German school master with a passion to see Africa and a self-taught geologist who resigned his post and worked his way out to Botshabelo with 30 Ponds in his pocket.

Mauch, a good player of the harmonica, had an adventures spirit and never gave up looking for gold and by the time he left South-Africa on the expedition north, he had travelled the Transvaal and discovered the goldfields of Lydenburg, that at Injati, at Hartly, at Gatooma and at Mazoo.

Wherever he went he collected all geological and geographical details of the district and he put together a rough sketch map that was to become the first authentic map of the Transvaal. He left it with Merensky who in exchange gave him all his maps on Zimbabwe.

Merensky wrote in the Transvaal August of 20th of October 1868 how he had failed in his first attempt in 1861 to find the ruins of Zimbabwe when his expedition had to turn back because his carriers refused to go further when within reach of the ruins, word reached them that an virulent epidemic of smallpox is decimating the population of Zimbabwe, fearing for their own lives.

In September 1871, from his study at Botshabelo, he broke the news to the world when he wrote in a letter to his superior, Dr Pietermann at Gotha, Germany, that the "Lost City of Sheba, at Ophir, in the mystical Biblical land of Sofala", has been discovered by the explorer Karl Mauch. Mauch, became famous for his discovery of the ruins of Zimbabwe in what would be his last expedition. He died shortly afterwards.

The news started a gold rush to Southern – Africa after the world learned that the "ancient and rich gold mines of King Salomon, the Eldorado of Africa, has been discovered as prospectors, gold diggers and others descended upon South-Africa.

Merensky earlier studied all the old Portuguese literature about the old trade routes and ancient centres in Africa and maps about the long lost city and was by now a master of the language. He rejoiced in Mauch finding the lost "Temple of Solomon and the Palace of the Queen of Sheba" on account of the maps and directions he compiled through the years and that was used in the "a final push into the uncharted interior, which the Berlin Mission Society materially assisted".

Merensky, first complete map of South Africa, containing all the colonies and native territories, was published in 1868 at Botshabelo and seven years later he produced another map that was the standard reference to Transvaal for years to come.

In 1884 he combined his information and that of Mauch and in collaboration with Frederick Jeppe, he drew and printed at Botshabelo a map that together with his other maps, was for close on 20 years, the main source of information, not only for the Transvaal, but also for the whole of South Africa.

At Botshabelo, the Bible was first translated in SeSotho and parts of it printed in the print shop.

As a missionary trainee he had studied a certain amount of medicine and learnt to do amputations with safety but decided to go to Pretoria to learn all he could about surgery and medicine. Because they lived in (indigenous) times when a reckless interpretation of laws by many of their neighbours made the survival of the Mission Station nigh impossible and as proper medical care was a necessity, he decided to sit for some sort of exam in Pretoria and in 1870 was registered as a doctor and surgeon and was now able to practice medicine lawfully.

He became the only qualified surgeon in the whole Middelburg district, and very often the kitchen table was pulled out into the courtyard and curtained off for an emergency operation.

He was also a writer and of his many writings, his "Travels in South-East-Africa" stands out as a masterpiece of description, and was compared to Livingston's "Journeys", but his most memorable work was his exploration in geographical and geological fields.

Other work are; Sud-Afrika, geographisch, ethnographisch and historisch (1875); Beitrage zur Kenntnis Sudafrikas (1875); Erinnerungen aus dem Missionsleben in Transvaal, 1859-1882 (1888) and Deutsche Arbeit am Njassa (1894).

He returned to Germany in 1882 before leaving for Njassaland (Malawi) in 1891 and in 1892 he paid a last visit to Pres. Kruger and Botshabelo. Honorary Doctoral degrees were bestowed upon him by the Universities of Berlin and Heidelberg.

He later became famous for his lectures in Germany on Zimbabwe and the world was astounded to hear about an long lost civilization of an advanced white gold digging people that in ancient times populated the area. The ruins Theodore Bent earlier dated, after astronomical observations of the northern stars setting over the south-eastern walls of the Temple, as before the year 2 000 BC.

When a Roman coin, dated AD - 138, depicting the Roman Emperor Antoninus Pius, was found by Theodore Bent, at a depth of 70 feet in a shaft of an ancient gold mine at Umtali, in today's Zimbabwe, it gave credit to ancient records of the Romans penetrating south via Lake Tsjad, driving other nations before them, causing mass emigration and immigrations of many nations, reaching Ptolemy's Agizymba, south of the equator, where the Monomotopa, the Queen of Sheba, lived. At last the Romans found the goldmines of King Solomon.

When war broke out between the British and the ZAR in the Transvaal, Botshabelo laid between the two armies. At Botshabelo, out in the wilds, The Union Jack was hoisted by the British. The Boer commander send Merensky a letter ordering him to pull down the flag and that he, Merensky, who was the ZAR's Commissioner of Peace at Botshabelo, would be held responsible for every attack on the Burgers by the natives.

He thought it advisable to attend a meeting of the Krijgsraad at Middelburg and made it clear that he cannot be held responsible for every native and if the burgers want to pull down the flag, they were welcome to do so but that he cannot do so.

Before long the Boers needed Merensky. They had no doctor capable of dealing with major wounds and operations and the men were dying in the field for lack of proper medical care. A desperate message arrived at Botshabelo. Would Merensky come and help them?

He went immediately, leaving his family in the care of a farmer whose life he had once saved.

He went with the Boers into the Battle of Majuba (1880-81) and later gave a detail description of the battle as seen from his field-hospital.

He was a Preacher with a Mission in Religion, a Bible to sustain it and guns and ammunition, lots of it, to maintain it and he had permission from the ZAR to guard the "frontier" as Botshabelo was now a buffer zone between king Sekhukukune and the ZAR.

As they were surrounded by enemies they built a fort about 100 feet higher up the slope, above the houses and church, to protect the mission from any attack from the Matabeles of Mzilikatzi or the impis of Sekhukukune but they were deterred from attacking the stronghold.

Fort Wilhelm, after King Wilhelm of Prussia from where the BMS originates, were built of oxidised stones and their cavities were filled with "daka/daga", a mortar mixture of clay, straw and lime. It has walls 12 feet high and resembles a peasant's fortification, not unlike some medieval city walls in Southern Germany. The cattle kraal next to the fort is built of un-oxidised stone with no daga filling. The fort was plastered and "whitewashed".

The fort, a national monument and provincial heritage site, now is "a unique example of Sotho drywall- architecture that differs from other Bantu strongholds". It was "built" by Makoetle, a Big Game hunter that stayed at the mission and it was guarded by Johannes and his men who had 30 guns amongst them and who were trained by Merensky and by now were gunmen to be reckoned with.

Today Fort Merensky, renamed in honour of the rev. dr. Alexander Merensky, is the property of the Simon van der Stel Foundation and although it was renovated years ago, the "drywall structure" has deteriorated and needs urgent repairs to prevent it from crumbling down under its own weight, into a sorry heap of stones.

The daga filling has been washed out between the rocks, now forming a drywall without support that might crumble under any kind of pressure applied to it either by visitors or animals. A restoration plan has been forwarded to the Foundation years ago but the prevailing uncertainty prevents any sensible restoration of the fort.

The walls are four to five feet wide at the base, the upper part is narrower and had embrasures with a "firing ledge". The Post was finally finished with a central tower and a bastion on the western and eastern ends. The interior is divided in two, one enclosure for the people of Maserumola (Sekwati/Sekhukukune) and the other for the NdeBele of Matlala (Ramapodoe).

Johannes Dinkwanyane and his followers (about 320 people) in 1873 left Botshabelo as a rich community with two ox wagon, fine spans of oxen and many possessions and about 30 guns and ammunition.

They left Botshabelo in free will to save themselves from Mampuru and not because “they no longer could endure the inhuman treatment of the missionaries who demanded unpaid labour from them and who ruled by the sjambok”.

According to customary law once a plot has been allocated to you by your customary leader (king/chief-in this case Merensky as ultimate administrator of Botshabelo)) you and your descendants have a right to use it and to occupy it forever or until that right is taken from you by your (traditional) leader or you leaving it.

However, once you leave that land out of free will, you give up all rights you had in that property and will most properly in future not be allocated any land “for disrespecting the orders of your chief”.

Two years later, Johannes, now recognized as a petty chief by king Sekhukukune, refused to pay “gun taxes” (he had about 30 guns) to the ZAR at Lydenburg and he and his people abandoned Vrischgewaagt, they invaded Boomplaats, an ancient stronghold at Mofolofolo (Boomplaats). Now he claimed all the territories of Lydenburg in the name of Sekhukukune and declared war on the ZAR.

Sekhukukune send an commando through the Steelpoort valley to go and assist Johannes, but the ZAR attacked before the impi could reach Johannes. Johannes was killed and war with Sekhukukune broke out and early in 1877 Sekhukukune sent his trusted friend, Alexander Merensky, to Pretoria to sue for peace.

An agreement was reached and on the 15th February 1877 in the Seminary at Botshabelo, a peace agreement was signed granting Sekhukukune pardon and a suspension of the war against him as the king “pledged himself and his tribe under guarantee of his own possessions and property, and that of his tribe, to be subjects of the ZAR and to pay 2 000 head of cattle as a fine”.

A territory east of the Lulu Mountains and a piece of land on the western side of the mountain from Magnet height towards the north-west as far as Panama, which is about 12 miles long and six miles broad, was granted to him for occupation.

Sekhukukune signed the treaty on the 16th of February 1877 but later denied it.

Later in 1877, while expecting a good harvest he decided to punish those chiefs who did not support him during the war with the ZAR. He raided Lydenburg and a white farmer was killed and then attacked the Pokwane who stayed on territory that he earlier according to the peace agreement, had seeded to the ZAR.

With the help of Mampuru 11, the Swazis and the Boers, he was overcome by the British and taken as a prisoner to Pretoria.

Mampuru now was the king of Sekhukukune land with his kraal at Kgono in the Middelburg district. With the retrocession of the ZAR, Sekhukukune, who was also acknowledged by the ZAR as a BaPedi king, was freed and returned to Sekhukukuni land, again claiming and taking the throne from Mampuru.

On the night of August the 13th, , 1882, the power struggle for the throne between the two brothers came to an bloody end when Mampuru, with the help of the Mapoch, surprised Sekhukukune on his veranda and stabbed him to death with a short assegai.

Mampuru again declared himself king but before he could take over the kingship a commando under Genl. Piet Joubert arrived and drove him off. Mampuroe now rejects the authority of the ZAR and refused to appear when he was called and the ZAR then moved against him and he was beaten and taken prison and later hanged for the murder and killing of Sekhukukune.

This "killing of Sekhukukune by Mampuru", the Commission as a Court of Law earlier did, rejected as "not an application of the customary rule of 'Bloodshed and Might' in Mampuru 'retaking the crown', but is a case of murder".

Earlier in 1877, Johannes was killed at Boomplaats. Others say he was assassinated. To his followers he was their Moses and to others the George Washington of his time. To many he was the founding father of the Independent BaPedi Lutheran Church when he "broke away" from Botshabelo in 1873 but it was Johannes Winter who was expelled from the BMS for his views that greater autonomy must be given to black Christians in 1880 who founded the church. He lived and died amongst the BaPedi in Sekhukukune land.

The Dinkwanyane in other land claims, also claimed Vrischgewaagt and Boomplaats as "their ancestral land" and it was rewarded to them. Boomplaats was expropriated by die State when the owner did not want to sell.

Boomplaats is the oldest and most mysterious heritage site in South-Africa with an history that is unknown to most South-Africans and dates back more than 100 000 years when an unknown white advanced gold producing civilisation peopled Mpumalanga.

The site, spreading wider into neighbouring towns and farms over a huge area, pre-dates our understanding of the pre-historic history of the peoples of Southern-Africa, but the archaeological evidence does not support the present government doctrine of "Africans first", claiming that the Ba N`tu was the first to settle in historic times in Southern-Africa, (Mpumalanga).

Now it has been entrusted to a group of people through an illegal land claim to whom it is foreign (apart from Mofolofolo where Johannes spent less than 2 years) and who do not have the means, knowledge or will, to protect this most important site.

The Dinkwanyane (the Trust) at Botshabelo, sees the decision of the Constitutional Court in rejecting the appeal against the decision of the Supreme Court of Appeals in awarding the kingship to Sekhukukune, as an vindication to their claim that "Botshabelo belongs to the people of king Sekhukukune" and that the decision in fact is a validation of their 150 year old land claim on Botshabelo.

To them the Constitutional Court "restored their ancestral customary property rights on the lands of Botshabelo", and "that the court has put the farms firmly in the hands of the king as sole guardian to do with it as he seems fit". "He cannot sell it, because it is not his to sell".

The king has supreme authority over the land as customary law dictates that no other authority can claim any rights base in common law on that property and that heritage laws, based in common law, is not supreme to customary law and that the Act on National Heritage Resources, act no 25 of 1999 is according to customary law not applicable in locations (places, cities or towns) under traditional (customary law) control.

To the new BaPedi owners and Kopa - counter claimants, the awarding of the claim on the farms of Botshabelo is a manifestation of the government's intentions to restore the traditional territories of the BaPedi as it was before the "colonization of the ZAR".

To them the kingship has been restored to their king. Now his lands must be restored too and Botshabelo is part of that historical territory.

They defend the decision of the Land Claims Commissioner to "reject any common law or customary rights other communities claim on the heritage site and applauded the commissioners contempt of the Orders of the High Court of Transvaal of 1905, in her rejecting the two existing historical court orders, - that awarded the property to the BMS and the eviction order of 1906, - as a clear application of customary law as superior to common law in applying when dealing with claims (as proxy/nominee- property) by former tenants and (BaPedi) members of a congregation on the property of the Berlin Mission Society and/or the Lutheran Churches.

To them the Zuid-Afrikaansche Republic did not exist and now shifting their claim as proxy/nominee- property, claims that the ZAR had no mandate to sell the lands to Merensky (and them?) and that the BMS used the court of 1880- 1905 "to steal their land and to defraud them of their customary rights to the land as subjects of king Sekhukukune before the arrival of the colonists".

These rights ,they claim, have now been restored by the Constitutional Court in rejecting the appeal of the Royal House of Mampuru to be king and by the fictitious and illegal endorsement of the decision of the Land Claims Commissioner by the Land Claims Court in awarding their claim on the farms of Botshabelo ,"as the lands upon which we were born, belongs to us".

The Mpumalanga Heritage Foundation and the more than 2 000 members of Der Bund Der Nachkommen Der Berliner Missionaries, descendants of the missionaries and personnel of the BMS at Botshabelo, in South Africa and Germany, always maintained that our right to communal ownership on the Heritage Site is vested in our common law rights in property as upheld by the Supreme Court of the then Transvaal of 1905.

In 1905 the Supreme Court of Transvaal rejected a land claim by Seth Kgalema and Others (the first land claim by the ancestors of the present illegal claimers, the Dinkwanyane, the Botshabelo Community Development Trust, the Trust) that the farms (property of the Berlin Mission Society – Botshabelo, Toevlugt, Doornkop and the other farms) belongs to them by proxy/nominee- right through the Lutheran Church that held the lands in proxy as nominee in 1905 on their behalf since their forefather, Johannes Dinkwanyane brought it in 1864 from the ZAR.

They were in 1905 ordered by the court to leave the farms, which they occupied by force and on refusal, the same court in 1906 gave an eviction order and the British Forces removed them by force.

The court ruled that Botshabelo was " allocated by the then Zuid-Afrikaansche Republiek to the Berlinger Missionsgesellschaft, (der Berliner Zendingsgenootskap) subject to the payment of a "Jaarlykshe Recognitie van Een Pond Tien Sjieling" (Dead 9963/1871).

The Berlin Mission Society in Germany was in 1858 requested by the ZAR to send missionaries to South Africa to replace the English missionaries which they no longer trusted.

The farm Toevlugt 269 JS was “ allocated to the Society” and is described in the Deeds of Transfer of 1880, as “de Plaats Toevlugt 472, bevattende 2 969 morgen on which is situated the houses of the missionaries, the church, the Fort, school buildings, gardens and forest”.

As the BMS was not granted corporative rights in the ZAR the farm and future farms were registered in the name of Alexander Merensky, administrator by proxy from the BMS. An Geo-Political investigation that was done on the ownership of Botshabelo proved that the Merensky family is the only “community” that can claim a proxy right on the farms as a the right of administration was given to Alexander Merensky by proxy from the BMS.

Merensky in the following years extended the property to about 17 000 ha and at the time when he returned to Germany in 1882, Botshabelo was a “City State”, the bread basket of the Easter Transvaal with an economy stronger than that of its host, the ZAR.

All roads led to Botshabelo and apart from the enterprise at the mission station it was an “Institute of Learning” and Religion, and indeed the first Rainbow Nation of South Africa.

But the winds of change were blowing across the seas and world events overtook Botshabelo. Locally she lost control of the trade as alternative roads were opened and the traffic bypassed her.

During both world wars Botshabelo received no financial assistance from Berlin and they had to preach, teach and feed the people and themselves virtually without any income.

At Botshabelo some of the huge Eucalyptus trees had to be felled and sold to the mines for an income.

In 1962 the Berlin Mission began to withdraw from South-Africa. The Seminary was closed in 1963 and the training of teachers and the buildings were taken over by the then Department of Bantu Education and continued until the end of 1971.

Botshabelo declined further and some her farms were sold off.

In 1969 (transport 1972) the BMS sold Botshabelo to the Middelburg Municipality and it was declared a nature reserve and heritage site in 1985. Fort Merensky is a declared National Monument and Provincial Heritage Site and although it lays within the heart of Botshabelo, it was not claimed by the Trust. Nor did the Trust claimed the other farms that was Botshabelo, totalling about 17 000 ha.

Botshabelo became an international tourist destination visited mostly by tourist from France and Germany. It became world famous when Easter Mahlangu, our greatest NdeBele artist and painter toured Europe. She was invited by BMW to Germany to paint their newest engineering masterpiece and she transformed that car masterly into a piece of NdeBele art that today still grazes their museum.

She called Botshabelo her home and the South- NdeBele villiage at Botshabelo was world famous for their painted curios. After the land claim was approved she was branded “a monkey in a cage that preforms for European tourist throwing peanuts at her”. She and her fellow South- NdeBele artist were driven of the reserve and their village was “destroyed by vandals” who removed all useable building materials.

Dr Hans Merensky, the great Geologist and one of the greatest sons of South Africa was born at Botshabelo on 16th of March 1871. He discovered platinum at Rustenburg, diamonds on the west

coast at Alexander Bay, chrome at Potgietersrus, phosphate, copper and vermiculite at Phalaborwa and gold in the Free State.

He went to Germany as a boy when his father returned and after school graduated with honours in geology and mine engineering at the University and the State Academy of Mining in Berlin. Later he received the Leibnitz gold medal, one of the highest academic awards in Germany, and two honorary degrees for his publications on his scientific research.

He came back to SA in 1904 and died in 1952 at his farm Westfalia in the Magoba's Kloof which is now a research station on avocado pears and timber. The farm was handed over to land claimers after an successful land claim.

Contrary to common believe that alluvial diamonds originates from pipes in mountains, he believed that diamonds came from the sea. The Hans Merensky Foundation was formed after his death which contributes widely to schools, libraries, universities and people in need and also to Botshabelo.

Locally Botshabelo was a destination of choice and bookings had to be bone far in advance and the historical church was a magnet for local couples to host their weddings. The hiking trails, beautiful landscapes and indigent fauna and flora drew hikers and holiday makers from afar and its caravan park was always occupied.

On weekdays more than 1 000 visitors paid to enjoy the tranquillity of Botshabelo and game watching tours were a relaxing weekend activity.

Then, in 1995 the first rumours of a land claim on Botshabelo came to light and indeed a former nurse and recently admitted (1992) attorney from the Black Sash in her early fifties` and future land claims commissioner (1997-2000), Mrs Dirkje Gilfillan, now at the offices of the Legal Resources Centre in Pretoria, was preparing an contemptuous and illegal land claim on Botshabelo in contempt of the historical orders of the Supreme Court on 1905-06.

In 1995 the Legal Resources Centre requested a report from the Department of Land Affairs on ownership of Botshabelo and Report 9/1995 was compiled by the Ministry and given to the Centre. The report made it clear that a land claim for the restitution of Botshabelo would be illegal as the claimants were paid R17 293-21 in 1972 as compensation they claimed as law full tenants for the losses of the houses they were renting, fences and trees.

Report 9/1995 also made it clear that the claimants never in the past claimed ownership of Botshabelo and that they maintained during negotiations between them, the state and the Lutheran Church (not as owner but with a mandate from the owner, the BMS) between 1958 and 1972 that they were not the owners of the land but will full tenants that resided on the property for many years with the permission of the owner, the BMS.

An agreement was reached and signed by the claimants in 1971, after the church bell fell down and cracked, that they accepted the compensation and new houses as demanded as fair and adequate and they requested the state to transport them the following year, 1972, to Motetema, their residence of choice where every squatter (BaPedi, Swazi and NdeBele families) received a new house and infrastructure.

To them the cracking of the church bell was a sign that "our days at Botshabelo are over and that they must move" and even today they all admit that their move to Motetema was their negotiated decision and not a forced removal.

The report made it also clear that Botshabelo was “allocated” to the BMS and that not Merensky or Johannes Dinkwanyne ever “bought Botshabelo from the ZAR”. The report also made it clear that the properties of the BMS does not belong to the, or a, Lutheran Church in South Africa.

The BMS never was, is not and never will be the Lutheran Church. Nor did it become the Lutheran Church and never did its property belong to the/or a Lutheran Church. It is and was always registered in Germany as the Berlin Mission (Society) Werke and did not “become” the Lutheran Church in South-Africa.

The Evangelical Lutheran Church Property Management Company that now claims the property of all independent Lutheran Churches in South-Africa, was illegally constituted in 1968 by some black church elders through the Rustenburg resolution.

The claimants, the BCDT, claimed the land from the Lutheran Church who never was the (original) owner.

The report however does not mentioned the historical court case in the Supreme Court of Transvaal of 1905 (1880 – 1905) in dealing with the question of ownership of the farms.

The case, The Berlin Mission Society v/s Seth Kgalema and Others (1880 – 1905/1906): To have the farms and property registered in the name of the Society ended the first land claim when the court upheld the ownership of the BMS and an eviction order was granted by the court to remove the claimants from the farms.

Our investigation proves that the Legal Resources Centre was in 1995 aware of the historical orders of the court but that they decided to disrespect it as it “did not address the claimants ancestry customary and historical rights as dispossessed owners, to the land and that the LRC will litigate to upgrade their weak personal rights to full ownership rights as described in the Constitution”.

In contempt of the orders of the Supreme Court of 1905 and 1906 that rejects any land claim on Botshabelo as proxy/nominee- farms, the claim was in 1998 excepted by the Land Claims Commissioner, Mrs. Dirkje Gilfillian “as a valid claim that meets the criteria of the law for further investigation”.

In 2000 in contempt of the Supreme Court of 1905 and objections and counter claims that were rejected and wiped off the table without addressing them, the claim was approved by the same attorney, Mrs. Dirkje Gilfillian, now Regional Land Claims Commissioner for The Northern Province and Mpumalanga “as a valid claim as the claimants are direct descendants of the original buyers of the land”.

Since the illegal publication of the notice of the land claim, Botshabelo declined as a tourist attraction. All the game were sold off and the property is left to ruin, rot and decay. After it was handed over to the claimants in 2002 it became a burned down mission station in what is best described by the local mayor of the Steve Tshwete municipality as “a crime against the collective”.

This “crime against the collective” is purely the making of the same council that decided to enter into contempt of court when it relent under political pressure to “acknowledge the claim as proxy/nominee- land and to sell Botshabelo to the Department of Land Affairs for R4 million”.

The Trust (the BCDT) with the present Deputy- Minister of Justice and former Premier of Mpumalanga, Mr. Thabang Makwetla as a member, in 2013 received R21 million from the Lotto in a grant that was solicited by the South African Heritage Resources Agency and facilitated by the Mpumalanga Provincial Heritage Authority for the “up keeping” of the Heritage Site, but R10 million

was defrauded from the Trust and the R11 million in their account, was frozen by the North Gauteng Supreme Court.

Charges of theft was laid in 2013 against members of the Trust by members of the Trust at the SAPS in Groblers, MP, (where the R10 million was withdrawn in cash) after they were beaten up by other members, when asking about the money that disappeared. Earlier this month we requested the National Prosecuting Authority to investigate the progress in the case.

In 2005 my Foundation laid charges of fraud and corruption against Mr Makwetla and the Trust for submitting an illegal land claim in contempt of the Supreme Court of 1905 and 1906 but the National Prosecuting Authority in Mpumalanga refused to act (investigate) after receiving the docket from the Mpumalanga Commissioner of Police.

In 2016 we asked for a review with the same outcome.

We have again asked the NPA to investigate why the charges were not pressed and if need be, we shall lay the same charges again against the Trust and Deputy- Minister Makwetla. We shall also lay charges against the SAPD for not investigating the fraud, against the Public Protector for manufacturing fact and law, against the Manager of the Land Claims Court for falsifying the records of the court and for contempt of court and against the Chief Land Claims Commissioner for corruption in approving the claim.

On behalf of the descendants of the missionaries and the people of Middelburg, my Foundation in 2012 requested the Public Protector to investigate the corruption , now totalling about R250 million, surrounding the land claim and why the claim of dr. Klaus Merensky, that of the BaPedi Batubatse Corporate Society, descendants of “the original BaPedi owners that bought Botshabelo as their ancestral land “, were wiped of the table and why the objections of other affected and interested parties were not addressed in accordance with the rules of the Constitution (and the Land Claims Court).

On September 4, 2014, we met with the investigation team of the Public Protector at the offices of the Middelburg Observer (MP) when the OPP undertook to investigate if all the administrative prescripts have been followed in advertising, investigating and awarding the claim.

We informed SAHRA in 2012 that in accordance with the Act, Botshabelo, like all previous declared national monuments, enjoys blanket status as a “declared national monument” and that SAHRA is in contempt of the Supreme Court of the Western Cape when the court ruled in 2007 that SAHRA must extent its authority as national guardian of our heritage and take control of the management of Botshabelo as a Category 1 Heritage Site. We made it clear that the claimants cannot manage the conservation of Botshabelo and that it will be destroyed by their neglect, without any reply.

Late last year (8/2016) we again send our submission warning against the neglect and destruction of the heritage site only to receive a letter stating that SAHRA does not manager Botshabelo and that our concerns have been referred to a unite within SAHRA that might be able to help.

Our requests since 2014 to the Nelspruit office of the Public Protector for updates went unanswered and only after the SABC requested a copy of the report did we succeed in May 2016 to get a copy of the findings/report of the Public Protector.

Since 28 April 1998 when dr Klaus Merensky submitted his claim for the restitution of his Great-Grandfather`s property, Groenfontein No 266 JS and the return of the family`s valuable belongings

and compensation for the relocation of 4 family graves, including those of his parents, are we all still waiting to have our day in court.

Portion 4 of the farm Groenfontein 266 JS, 944.72 ha in extent (1103 morgen) ,was given as a present by the ZAR to Alexander Merensky for medical and Diplomatic services rendered to the ZAR and was later returned to the RSA after his death.

On the same date the Bund Der Nachkommen Der Berliner Missionare, representing about 2 000 descendants of the missionaries and staff at Botshabelo in South-Africa and Germany, submitted our "claim" not to hand the heritage site over to the BaPedi of Johannes Dinkwanyane and to reject the claim as it has no merit and to secure a sustainable outcome including all the many stakeholders.

We truly believed that the Public Protector would be able through investigation to distinguish between the true facts and false fiction and that justice will be done but we were in for a unbelievable shocker, a rude awakening that really disturbed us.

After our meeting with the investigating officers on 4 September 2014 the investigator concluded his investigation and closed the file on 30 September 2014. He did not inform us about the completion of the report or the findings. Nor did the OPP published the report as part of her annual report for 2014 or made it public. He then filed it and left the employment at the OPP.

The Office of the Public Protector found that the claim was dealt with by the Land Claims Court and stated that her office cannot investigate the matters of the courts and that we had enough time to state our case to the court but that we did not attend the hearing.

She ruled that we must appeal the decision of the Land Claims Court and found no wrong doing by anyone involved in the claim.

We rejected her findings/cover letter as a fabrication of law and fact because there never was a case before the Land Claims Court dealing with the claim. We stated that she further manufactured a law given the Land Claims Court, a High Court a mandate to overrule another High Court, the Supreme Court of Transvaal of 1905.

The orders of the High Court of 1905 and 1906 stands until it has been successfully appealed to and set aside by either the Supreme Court of Appeals or the Constitutional court, which up to date has not been done.

To us her findings/cover letter is the most traitorous document ever compiled from within the Office of the Public Protector to undermine her credibility and we requested her to withdraw the document as it is without any legal fact and or principal.

The OPP is in contempt of court in rejecting the orders of 1905 and 1906 when she found that the Land Claims Court has ruled on the case and she admitted the utter legal sin by creating an fictitious court case and legal facts that do not exist.

We were informed by telephone that the report has been referred for review.

We requested her office to forward us the case number, record and judgement of the case after we have been assured by the investigating officer that a letter was indeed received from the Department of Land Reform and Rural Development with the information and that it is part of the file at the OPP.

Her office cannot forward such information as it does not exist. Any document referring to a case nr., record and judgement will be a further falsification of the records of the Land Claims Court and we have therefore requested the National Prosecuting Authority to investigate the OPP.

Before the findings/cover letter of the OPP was made available to us, we were informed by the Land Claims Court that there is no case nr, record or judgement for a hearing by the court on Botshabelo. Since the findings/cover letter of the OPP has been given to us, we have requested the Land Claims Court to provide us with the information as stated by the OPP in order to appeal the judgement. We also asked the NPA to investigate who tampered with the records of the LCC, without reply.

The OPP played ball with us between their offices in Nelspruit and Pretoria, both denying responsibility for the report. We have now again asked the Human Rights Commissioner to engage the OPP to forward us the case nr, record and judgement, without reply.

In 2013 we asked the Human Rights Commissioner to investigate the continuous abuse of our human rights in us being denied access to the proses and late last year (2016) we send him the report of the OPP asking him to engage the Land Claims Court and the OPP in finding the case nr., record and judgement, without reply up to date.

The decision to approve the claim was taken by the Land Claims Commissioner and the relevant Minister in contempt of court and is illegal as the claim is not valid because the claimants did not receive compensation for any losses in 1972.

Today, the Land Claims Court is in contempt of the Supreme Court of Appeals of 2004 when the Appeals Court ruled that only the Land Claims Court and not the Land Claims Commissioner can approve or deny a land claim.

The Land Claims Court up to now (2017) did not review or set aside the decision of the land claims commissioner of 2000 that approved the claim and to withdraw from the proses because the Land Claims Court cannot overrule the High Court of 1905 and can therefore not hear a claim on Botshabelo.

What the Land Claims Court should do is to respect the orders of the High Court of Transvaal of 1905 by declaring the claim and the awarding thereof as illegal and unconstitutional by overturning the transfer of the properties and to order that Botshabelo and the other farms that were illegally expropriated or where the owners were forced to sell or face expropriation, to be returned to their right full owners.

This contempt of the historical court orders we find in South- Africa and also in Germany and in Britain in various "academic publications, highlighting the struggle of the landless in South-Africa".

The two local publications edited by Prof Peter Delius, sponsored by the Mpumalanga Provincial Government and published by Highveld Press and the University of KwaZulu/Natal Press, "Mpumalanga, History and heritage" and the revised version, "Mpumalanga, an illustrated history", are two books that were published in contempt of the court orders as it do not refer to the court case but continues to state as academic fact that "the land was bought by Alexander Merensky and Johannes Dinkwanyane who then established the mission station, Botshabelo".

As his previous reference work, "The Land Belongs to Us; The Pedi Polity, The Boers and the British in the Nineteenth Century Transvaal", has now been unmasked as "a work in which the author manipulated the facts to obtain a pre- determent result, it no longer can be regarded as an

“academic work as it lacks true historical facts in reference to the ownership of the farms as ordered by the court of 1905”.

The author romanticised the true facts by creating scenarios that did not exist at Botshabelo as depicted in his book.

There was no animosity between Johannes and Merensky.

There was no desire by Johannes and his people to leave Botshabelo. They had to because if they did not, Mampuru would have attacked Botshabelo and kill them (and all others, including the missionaries) for “siding with Sekhukune and the Missionaries.

There was no slavery or forced labour at Botshabelo but only willing participants in working the lands and to develop the station. Their right to stay at Botshabelo was subjected to them paying rent and providing labour to work their designated lands. They gladly gave a tenth of their harvest and their paid labour to develop the station.

Not Johannes or Merensky ever bought Botshabelo/Toevlugt. It was “allocated before 1864 to the BMS”.

Before publication of the two “Mpumalanga Books”, we provided the research team of prof. Delius with all the detail about the court case but the authors ignored it and did not correct the historical truth and facts.

This contempt are also promoted in Britain by prof. Deborah James in her publication, “Gaining Ground, Rights and Property in SA Land Reform, dealing with Doornkop, one of the farms of Botshabelo where the illegal land claimers of Seth Kgalema were removed from in 1906. She denies the court orders in contempt in all her references to historic ownership and falsely created a case of “poor people that had been dispossessed of their land by merciless missionaries that stole their land”.

The truth is, according to the Deeds Office, that they sold their land to government, than moved back as squatters working on farms and in surrounding towns. They all received compensation in 1972 when they moved to Motetema as well as a new house and infra -structure.

Thus they have been paid three times for the same land and received the land. First when they sold their land to government in 1928. Then when they received compensation and new house when they moved to Motetema in 1972 and in 2002 when again they received the land and restitution subsidies.

Now they are the proud owners of a house in both the rural area of Motetema and Doornkop.

In the book, “In Gottes Namen Hutten bauen, Kirchlicher land besitz in Sudafrika, die Berlin Mission und die Evangelish Lutherische Kirche SudAfrika zwischen 1834 and 2005, by Andrea Schultze and publish in Germany, this contempt is further promoted when the author stated that “the farms were bought with the money of the land claimers as not Merensky or the BMS had any money to pay for the farms”.

In our struggle to save Botshabelo we in 2002 and again in 2015, asked the Cultural Attach`e at the Embassy of the Federal Republic of Germany to engage our Government not only to respect the historical court order of 1905 and its own laws on heritage and restitution, but also to respect our ancestral heritage based in common law, on Botshabelo as descendants of the German missionaries and staff.

In 1913 when the “Plakkerswet”, (Squatters Law), The 1913 Land Act, came into effect, Botshabelo faced new problems. The law permitted only 5 families to live on the station (per farm) while at the time, many black families were still staying there.

The Mission appealed for help to the German Ambassador in London and after negotiations by the German Ambassador in this respect, it was permitted that more than 5 squatter families could reside at Botshabelo.

This time, after many moons have passed and after we insisted, we only received an e-mail from the German Embassy stating that “the case of Botshabelo is a complicated internal legal matter and that the Embassy cannot interfere”.

Maybe the Honourable Ambassador remembered the “Kruger-Telegram of 1896” that Kaiser Wilhelm 11, the German Emperor send to Pres. Kruger after the failed Jameson-invasion congratulating the ZAR for beating of the armed thugs and in capturing them in securing the independence of the ZAR against foreign aggression without help from others.

Kaiser Wilhelm was severely reprimanded by his Grandmother, Queen Victoria, Monarch of the British Empire for his undiplomatic behaviour, interfering in the matters of Britain and for nearly causing a war between Germany and Britain.

When the missionaries were arrested in 1905 for siding with the Boers, the German Government paid their bail of 25 000 Ponds.

The response is indeed a diplomatic one to a matter that is not complicated at all but straight forward simple. But then, how complicated can you make a matter especially when you do not want to apply diplomatic pressure in addressing such an “insignificant matter” in the bigger picture of cultural relations between South-Africa and Germany?

But the “ internal legal matter” as the Embassy puts it, has now become an international legal matter involving German citizens as the Berlin Mission Werke in Germany has now by implication “been found guilty of fraud and corruption by a South-African court and the Public Protector for illegally selling the proxy/nominee- properties of the congregation to the Town Council of Middelburg and other farmers, falsely claiming to be the owner while well knowing that Botshabelo did not belonged to the BMS”.

The approval of the claim now opened the door for claims worth millions of Rand by the farmers that were expropriated against the BMS for damages suffered due to the “ fraud and corruption” committed by the BMS.

We shall again approach The Embassy to engage our government to respect the court orders on this matter and to find an acceptable way to curb the continuous contempt of our court orders in publications in Germany and to demand from the German Government to demonstrate its opposition to the illegal manner in which the land claim was concluded by imposing cultural sanctions against South-Africa in withholding subsidies and grants.

We shall engage UNESCO to apply pressure on South-Africa for not conforming to the UN Guidelines on culture as prescribed in resolution 33c/29 of 2005, of the United Nations for not developing Botshabelo as part of the Struggle Heritage Routes in recognising the contribution of all South-Africans to the continuing struggle for freedom as our common heritage, and for excluding the contribution Botshabelo made to the history of the world, in not using the site to promote a culture of peace amongst the peoples of South Africa and the world.

The historic multi-cultural diversity of Botshabelo is what makes it unique as a heritage site that includes most of the peoples of South-Africa and the life stories of many of her sons and daughters must be told and honoured. It is their history that is the Botshabelo that is worth to be declared a Category 1 Heritage Site and listed as a potential World Heritage Site.

One of her sons and struggle hero of our present history is David Bopape, a BaPedi teacher and political leader and freedom fighter that was the founding secretary of the South-Africa National Congress Youth League in 1944 together with O.R. Tambo, Walter Sisulu and Nelson Mandela. He completed his secondary school training at The Botshabelo Training Institute and after qualifying as a teacher at Botshabelo, he taught for 9 years. He later organised the Anti-pass and Alexander Bus Boycotts in 1944.

He still is the only man in history that held a political meeting on Table Mountain and when his comrades went in exile he stayed behind, stating that there is no struggle in exile. If someone is to erect a statue for him at Botshabelo, I, as the grave keeper and curator of Fort Merensky personally shall take care of it.

We have shared the manufacturing of legal fact and law by the Public Protector in her report by her creating a fictitious court case and judgement of the Land Claims Court and the neglect of the Human Rights Commissioner to protect our human rights, with the Office of the State President, the Chief Justice, the Judge President of the Land Claims Court, the Oversight Committee on the Public Protector, the National Prosecuting Authority, the Media, the DA, Corruption Watch, The South African Institute for Accountability and the SABC.

None of them seem to share our concerns about the implications of the manufacturing of legal fact and law through the creation of a fictitious court case that absconds all those involved in the corruption surrounding the illegal land claim by the most respected office of the Public Protector.

The falsification of the records of the Land Claims Court, and the contempt of the Public Protector in rejecting the historical orders of the Supreme Court and the contempt of the Land Claims Court in not applying the order of the Supreme Court of Appeals of 2004 to nullify the arbitrary and unconstitutional decision of the Land Claims Commissioner on Botshabelo, also seem not to concern them.

The re-opening of the window for the lodging of claims for the restitution of historical rights in property is the last flickering light of hope to save Botshabelo through the restoration of Botshabelo to the descendants of the missionaries and staff as their property. This would be the only legal claim.

As sole ownership of Botshabelo was "returned to the claimants as them being the direct descendants of the original buyers of the farms", restitution for damages and losses suffered due to the illegal and force full removal of people from the land they were squatting on without paying them compensation, has become, in the case of Botshabelo, a claim for historical common law ownership and not for restitution.

The Dinkwanyane, the Trust, lodged the claim for sole ownership of the farms through a fictitious proxy/nominee- right held on their behalf by the Lutheran Church and not for the restitution for losses suffered through a forced removal although they stated in their written claim, that they have not received any compensation.

For the same reason a claim by Dr. Klaus Merensky and us, as not being squatters that have been removed from our land without compensation at the time of the forced removals, but descendants of Alexander Merensky, the missionaries and staff from the BMS that have a proxy/nominee right

through Merensky as the original owner, that is proven by the historical court order, against the new owners, must be regarded as the only valid claim and as the Supreme Court has ruled in 1905-06 on this matter, the Land Claims Court, as an equal court, must withdraw from the proceedings.

The claim of the BaPedi Batubatse Corporate Society, who now claims the land from the Trust "as being the descendants of the original BaPedi people that bought the land in 1864", must naturally be opposed but it must be allowed by the Commissioner and dealt with by the Supreme Court of Appeals.

It has been proven that nobody can protect, conserve and develop an heritage site if you are not the owner of it.

For this reason we shall claim Botshabelo as we are entitled to it as sole owners by proxy/nominee-right in order to protect it.

We are still open to any agreement with the "new owners" and the State in accommodating our claim and that of the Society as co-owners of Botshabelo through "our common law proxy/nominee-right as descendants of the original buyers of the land", and until the question of ownership that includes all those that claim Botshabelo, is not solved in an inclusive manner that legally protects our common law rights, there can be no Botshabelo Heritage Site.

Time is running out for Botshabelo and what should now be her finest hour, might by her final hour as the relentless destruction by neglect and decay due to the inability of the "new owners" to save, protect and manage her, is claiming its toll.

The unwillingness of the National and Provincial Governments to take heritage and not political decisions in not granting the request from the "new owners" to declare it, as demonstrated by the failure of the National Heritage Council to act, can now only be changed by the Supreme Court of Appeals.

As soon as we can secure the fake case nr. and the fictitious record of the judgement of the Land Claims Court on Botshabelo from the Judge President of the Land Claims Court as stated by the Public Protector, we will apply to the Constitutional Court for leave to appeal direct to the Constitutional Court to have the report of the Public Protector overturned and to enforce the order of the Supreme Court of Appeals of 2014, that declared the decision of the land claims commissioner, unconstitutional.

The Public Protector, after given as an ultimatum to "ask for a review or I (the PP) will close the file, is now reviewing her report.

As the report is without any legal fact and is but a fabrication of fact and law in that the OPP created a fictitious court case, we have ask the PP to withdraw the report and to investigate our complaint against the land claim.

Our request for an update went unanswered and we now awaits the outcome.

Therefore we had no other choice but to ask the present Public Protector to investigate adv. Madonsela for her manufacturing of fact an law as contained in her report now on review, again without reply.