Ea 33

REPUBLIC OF SOUTH AFRICA.

District Office File No. N9/18/1.

Department of Bantu Administration & Development,
P.O. Box 384,
PRETORIA.
17th October 1966.

GENERAL CIRCULAR NO. 33/1966.
(File No. 163/2).

BANTU FEMALES IN PRESCRIBED AREAS.

1. This office is continually being asked to give an explanation of the provisions of paragraph (c) of Section 10(1) of the Bantu (Urban Areas) Act Consolidation, 1945, and in this circular an attempt is made to give such explanation.

2. This paragraph as amended in 1964 reads as follows:-

"No Bantu may remain in a prescribed area for more than 72 hours unless he can prove in the prescribed manner that:-

(c) Such Bantu has a wife, unmarried daughter or son under the age at which he is responsible to pay general tax ....and in terms of paragraph (a) or (b) of this sub-section the Bantu concerned normally resides in the prescribed area after a legal entry thereto."

3. Remaining in a prescribed area for longer than 72 hours, therefore, is prohibited except in so far as this circular letter is concerned unless the Bantu female usually resides in the prescribed area with her husband. It is presumed that the wife may enter the prescribed area at any time and may remain there for 72 hours. Before a Bantu female acquires the qualification laid down in paragraph (c), the following essentials must be present:-

(a) She must be the wife of a Bantu male who already qualifies to be in the area (according to the Legal Advisers this includes the female married according to Bantu family custom but it is evident that such a female must have adequate proof that such a union exists).

(b) Her husband must qualify to remain in the area in terms of Section 10(1)(a) or (b).

(c) She must have entered the area legally.

(d) She must usually live with that Bantu in that area.

2/.....

TO ALL OFFICES OF THE DEPARTMENT OF BANTU ADMINISTRATION AND DEVELOPMENT, ALL MAGISTRATES, DETACHED ADDITIONAL AND ASSISTANT MAGISTRATES IN THE DEPARTMENT OF JUSTICE IN THE REPUBLIC OF SOUTH AFRICA OR MAGISTRATES IN THE TRANSKEI AND THE TRANSKEIAN GOVERNMENT DEPARTMENTS.

4. If a Bantu female may not continue to reside in a prescribed area in terms of Section 1(a), (b) or (d) and does not already live with her husband she may only remain in the area for 72 hours.

And if the 72 hours have expired then the right to remain in the area lapses because although during that period she had resided with her husband it cannot be said that she usually resides with her husband in that area.

5. So it can happen that a Bantu male although born in the area and has always lived there (and thus obtained a Section 10(1)(a) qualification) meets a Bantu female who qualifies in terms of Section 10(1)(a) or (b) to remain in the same area and then marries her, as long as she lives with her husband in that area she requires no further permission to remain in the area.

6. If a female visits the area without any Section 10(1)(d) permission i.e. during the 72 hours automatic permission to remain in the area and she should marry a man who qualifies in terms of 10(1)(a) to remain in that area then it is the opinion of the Legal Advisors (with which view the Department agrees) notwithstanding the interpretation given in certain circles to the decision Madewu versus the State CPA 31.3.1966, the wife does not get a Section 10(1)(c) qualification, as she does not normally live with that Bantu in that area.

7. If the female is illegally in the area and then gets married or claims marriage which has been carried out elsewhere, then she cannot qualify in terms of Section 10(1)(c) because she never entered the area legally in the first instance.

8. The husband who had secured a Section 10(1)(a) or (b) qualification cannot claim that his wife should join him because normally she did not reside with that Bantu in that area. So also a female cannot come and visit her husband with or without a Section 10(1)(d) qualification and then claim that she qualifies in terms of Section 10(1)(c).

9. It follows therefore that the wife normally qualifies in terms of Section 10(1)(c) if she qualifies in terms of Section 10(1)(d) and is allowed by the Labour Bureau concerned to join her husband.

10. If a woman is otherwise already in the area in terms of Section 10(1)(d) i.e. for a limited period and for a specific purpose and then marries a man who qualifies in terms of Section 10(1)(a) or (b), she cannot claim automatic qualification in terms of Section 10(1)(c) as she normally does not live with that Bantu in that area.

11. Notwithstanding the foregoing, the Department is prepared to approve administratively that a man who qualifies under Section 10(1)(a) or (b) and his wife with a similar qualification for another prescribed area being brought into the prescribed area especially where there would be no increase in the number of Bantu in prescribed areas. The approval is naturally subject to the availability of housing.

12. If a female qualifies in terms of Section 10(1)(c) and should divorce her husband or if her husband should die or forfeit his qualification, then the woman also forfeits her Section 10(1)(c) qualification and she may only remain in the area if she has either permission in terms of Section 10(1)(d) or she has acquired in her own right a qualification in terms of Section 10(1)(b) (Notwithstanding the fact, that she may obtain a Section 10(1)(c) qualification, there is no reason why she should not in her own right also obtain a Section 10(1)(b) qualification).

13. Doubt has presumably been spread as a result of the judgement case of R versus Nene 1960(1) S.A. 263 which has been explained that in order to obtain a Section 10(1)(b) qualification the Bantu concerned must complete his qualifying period of residence in the prescribed area on 24.6.52 (the date when the amended Section came into operation). There were also other cases such as R versus Madlebe 1956(2) S.A. 565 and R versus Ndinzani 1956 (4) S.A. 39 which confused the District Officers.

3/...

14. The matter has accordingly been referred to the Legal Advisors who have advanced the opinion that it is permissible to consider the periods before and after the coming into operation of Act No. 54 of 1952 and it should be concluded that the opinions mentioned are not conflicting.

15. In the case of Hlahleni versus the State which was heard in the Cape Division on the 14th August 1965, these qualifications were examined and it would appear as if wrong conclusions were made in the judgement of the Court. Accordingly, certain Local Authorities have pressed for the views of the Legal Advisors to be reviewed and they in turn have replied that the judgements of the Court mentioned could not be changed and they have accordingly re-affirmed the decisions.

16. As a matter of interest the following extracts of the opinion are quoted:-

> "The question that has to be decided here is whether the Plaintiff complies with the qualification as set out in Section 10(1)(b) of Act 25 of 1945, the relevant portion of which reads:-
>
> > "Has lawfully resided continuously in such area for a period of not less than 15 years". The Court considered all the facts relating to the Plaintiff's remaining in Cape Town and finds that for a period of 15 years prior to 1944, the Plaintiff arrived in Cape Town for the first time in that year. From 1945 to 1957 the Plaintiff attended a school in Alice and merely visited Cape Town during that period during the school's vacation from February to August 1964. The Court found that the applicant resided in the Cape Town area and such residence was legal. Ther follows the following portion of the decision of the Court relating to this case on pages 7 and 8;
> >
> > > 'That period of 6½ years' (d.w.s. February 1958 to August 1964)'was, however, insufficient to establish a qualification under section 10(1)(b). The issue is, accordingly, whether there was a period of lawful residence prior to 1958 which can be added to the whole or portion of the 6½ years so as to supply the necessary 15 years of continuous and lawful residence.'

From this it is quite clear that the Court never had in mind that the 15 years prior to June 1952, when the Section came into operation, was completed. If this was the viewpoint of the Court, then the Court could easily have considered that from 1944 to 1952 there were only 8 years in which the Plaintiff could have resided legally in the Cape and the matter would not have gone any further because he only remained in the Cape for 8 years until 1952. What the Court actually did was to decide whether there was a continuous legal residence prior to February 1958 which could be added to the 6½ years of legal residence in order that the matter may come within the purview of Section (1)(d).

After this the Court analyses the question as to whether the Plaintiff resided legally prior to or subsequent to the coming into operation of the Section concerned. On the 24th June 1952 it became illegal for a Bantu to remain in a prescribed area for longer than 72 hours unless he is exempted in terms of Section 10(1)(a)(b)(c) or (d). If he has resided in an area continuously since birth then he is exempted in terms of Section (a). This is clearly not applicable to the Plaintiff. Was he then exempted in terms of (b) on the 24th June 1952. It is quite clear that this was not the case as already stated he was at that stage only 8 years in the Cape. Was he then exempted in terms of (d)? No, because permission was only granted him in December 1954. Thus concerning paragraph (a),(b) and (d) the Plaintiff was not a legal resident in the Cape on the 24th June 1952. Accordingly, the Court considered if he was a legal resident in terms of paragraph (c). Paragraph (c) would have been applicable if on the 24th June 1952 he was also under the age of 18 years and the son of a Bantu who has been exempted in terms of paragraph (a) or (b) and usually resided with his father. The Court found that the Plaintiff's father did not on the 24th June 1952 comply with (a) or (b) and accordingly the Plaintiff could not be exempt in terms of paragraph (c). Accordingly the Plaintiff's residence in Cape Town from June 1952 (when the Section came into operation)

4/...

to October 1954, when the applicant reached the age of 18 years) was illegal. From October 1954 Plaintiff could no longer qualify in terms of paragraph (c) and at that stage he could not be exempt because of (a) and (b) see page 10 of the judgement of the Court. From October 1954 his residence could not be legal even if he had permission in terms of paragraph (d) and this he only obtained in 1958. The Court found that prior to 1958 he did not have a continuous permission to remain in the area. This analysis shows that prior to February 1958, there is no proof that the Plaintiff had a continuous legal residence in Cape Town which he could have added to the following 6½ years in order to make a total of 15 years."

17. It should be noted that in terms of the amended Section 10(1), a Bantu is merely permitted to remain in a prescribed area if he/she can prove in the prescribed manner that he/she either has the necessary qualifications or the necessary permission has been granted. The State President is empowered in terms of Section 38(1)(k) of the same Act (No. 25 of 1945) to issue Regulations regarding the manner in which the proof is required in terms of Section 10(1). Such requirements have been promulgated and contained in Regulation 21 of Chapter IX of the Bantu Labour Regulations, 1965 (G.G. R1892 of 3.12.65). The Bantu concerned must, therefore, in addition give proof that he is in possession of a Section 10 qualification, and that he has the prescribed endorsement in his Reference Book to the effect that he/she is in possession of that qualification.

18. In accordance with Section 38(3)(b) of Act 25 of 1945 it is possible to issue regulations regarding the order of preference for the allocation of housing on a family basis in Urban Bantu Areas. Standard regulations in this connection have not been promulgated but the Department has already in principle decided that the following considerations would apply:-

(a) The only names which may be placed on the waiting list for housing must be male Bantu who qualify in terms of Section 10(1)(a) or (b) of the Act on the understanding that:-

(i) the Section 10(1)(d) qualification was obtained prior to 1952; and

(ii) These males are legally married (according to Civil Marriage or Bantu Custom), to females who are normally resident with them in the prescribed area when the application for housing was made.

(b) The names of females may not be placed on the waiting list although they qualify in terms of Section 10(1)(a) or (b).

(c) Should a man with a Section 10(1)(a) or (b) qualification marry a female from outside the prescribed area then he will be allowed to bring her to the prescribed area if she is domiciled in a prescribed area.

(d) A Bantu male with a Section 10(1)(d) qualification may not be placed on the waiting list except in the case of

(i) A Bantu in the service of the State who has been transferred to the area;

(ii) A married Bantu who normally lives with his wife in a prescribed area and has been transferred by his employed to the area concerned on a permanent basis;

(iii) A married Bantu who normally lives with his wife in a prescribed area and who has been resettled in terms of an approved scheme;

(e) A married Bantu with a Section 10(1)(a) or (b) qualification will not be allowed to bring his wife from a Bantu area.

(f) A Bantu male with a Section (1)(a) or (b) qualification will not be allowed to bring his wife to the prescribed area if she normally resides on a farm or elsewhere in a rural area outside a Bantu area. However, such a case could be referred to the Department with a view to settling in the Bantu Homeland;

(g) A Bantu subject to the requirements of the Section 12 Act 25 of 1945 may not be placed on the waiting list except in the case where repatriation in terms of existing requirements for 5 yearly periods are suspended owing to lengthy residence;

(h) A Bantu with Section 10(1)(a) or (b) qualification may not be placed on the waiting list even when he is living with a Bantu female in terms of Section 12 of Act 25 of 1945 except in the case where repatriation has been suspended.

19. This circular is merely intended to give guidance to District Officers and it is not the intention to interfere with the discretion of the Authorised Officers.

20. The contents of this letter will in due course be included in the Codes "Stadsgebiede" and "Urban Areas". In the meantime, a suitable reference should be made on page 1 of the Codes mentioned.

21. This circular is issued with the concurrence of the Secretary of Justice to officials of his Department.

22. This circular is addressed to Magistrates in the Transkei for information.

HGD/EJM.
11.4.68.

SECRETARY FOR BANTU ADMINISTRATION.

REPUBLIEK VAN SUID-AFRIKA

Distrikskantoorlêer No. N9/18/1

Departement van Bantoe-
administrasie en -ontwikkeling,
Posbus 384,
PRETORIA.
17 Oktober 1966.

ALGEMENE OMSENDBRIEF NO. 33 VAN 1966.
(Lêer No. 163/2).

BANTOEVROUE IN VOORGESKREWE GEBIEDE.

1. Hierdie kantoor word telkens gevra vir 'n verduideliking van die bepalings van paragraaf (c) van artikel 10(1) van die Bantoes (Stadsgebiede) Konsolidasiewet, 1945, en in hierdie rondskrywe word getrag om sodanige verduideliking te gee.

2. Hierdie paragraaf, soos in 1964 gewysig, lees soos volg :-

"Geen Bantoe mag langer dan twee-en-sewentig uur in 'n voorgeskrewe gebied bly nie, tensy hy bewys op die voorgeskrewe wyse lewer dat :-

(c) sodanige Bantoe die vrou, ongetroude dogter of seun onder die ouderdom waarop hy aanspreeklik word vir algemene belasting .... is, van 'n in paragraaf (a) of (b) van hierdie subartikel bedoelde Bantoe en na 'n wettige binnekoms in daardie voorgeskrewe gebied, gewoonlik by daardie Bantoe in daardie gebied woon."

3. Verblyf in 'n voorgeskrewe gebied vir langer as 72 uur word dus verbied tensy, vir sover in hierdie omsendbrief ter sake, die Bantoevrou gewoonlik by haar man daarin woon. Dit veronderstel dat die vrou die voorgeskrewe gebied te eniger tyd kan binnekom en dan vir 72 uur daarin bly. Voordat 'n Bantoevrou die kwalifikasie van paragraaf (c) egter kan verwerf, moet die volgende elemente teenwoordig wees :-

(a) sy moet die vrou wees van 'n Bantoeman wat reeds kwalifiseer om in die gebied te wees (volgens die Regsadviseurs word ook die vrou volgens Bantoe-familiereg ingesluit dog dit spreek vanself dat so 'n vrou toereikende bewys moet lewer van die bestaan van so 'n verbintenis);

(b) haar man moet kragtens artikel 10(1)(a) of (b) kwalifiseer om in die gebied te wees;

(c) sy moes die gebied wettiglik binnegekom het;

(d) sy moet gewoonlik by daardie Bantoe in daardie gebied woon.

2/........

AAN ALLE KANTORE VAN DIE DEPARTEMENT VAN BANTOE-ADMINISTRASIE EN -ONTWIKKELING, ALLE LANDDROSTE, GEDETASJEERDE ADDISIONELE EN ASSISTENT-LANDDROSTE IN DIE DEPARTEMENT VAN JUSTISIE IN DIE REPUBLIEK VAN SUID-AFRIKA, ALLE MAGISTRATE IN DIE TRANSKEI EN TRANSKEISE REGERINGSDEPARTEMENTE.

Note
Sent
to C/A

4. Indien 'n Bantoevrou dus nie kragtens artikel 10(1)(a), (b) of (d) in 'n voorgeskrewe gebied mag bly nie en nie reeds gewoonlik by haar man daarin woon nie, kan sy slegs vir 72 uur daarin kom bly. En indien die 72 uur verstryk het, verval haar reg om daarin te bly, want al het sy gedurende hierdie tydperk by haar man gebly, kan dit nie gesê word dat sy gewoonlik by haar man in daardie gebied woon nie.

5. So kan dit gebeur dat 'n Bantoeman wat in die gebied gebore is en nog altyd daar woon (en dus 'n artikel 10(1)(a)-kwalifikasie verwerf het) 'n Bantoevrou ontmoet wat ook 'n kwalifikasie ingevolge artikel 10(1)(a) of (b) het om in dieselfde gebied te wees, en dan met haar trou. Sodra sy dan en solank sy by haar man in daardie gebied woon, het sy geen verdere vergunning nodig om in die gebied te wees nie.

6. Indien die vrou in die gebied sou kom kuier sonder enige artikel 10(1)(d)-vergunning, d.w.s. gedurende die 72 uur outomatiese vergunning om in die gebied te wees en sy dan met 'n man sou trou wat 'n artikel 10(1)(a) of (b)-vergunning het om in daardie gebied te wees, is dit die regsadviseurs se sienswyse (waarmee hierdie Departement saamstem), dat ondanks die vertolking wat in sekere kringe aan die uitspraak in Madewu teen die Staat KPA 31.3.1966 geheg word, die vrou nie 'n artikel 10(1)(c) kwalifikasie verwerf nie aangesien sy nie "gewoonlik by daardie Bantoe in daardie gebied woon nie".

7. Indien die vrou onwettig in die gebied sou wees en dan trou - of haar beroep op 'n huwelik wat elders aangegaan sou gewees het - kan sy ook nie 'n artikel 10(1)(c)-kwalifikasie verwerf nie aangesien sy nie die gebied in die eerste instansie wettiglik binnegekom het nie.

8. Die man wat 'n artikel 10(1)(a) of (b)-kwalifikasie verwerf het, kan ook nie aanspraak daarop maak dat sy vrou van elders by hom aansluit nie aangesien sy nie kan bewys dat sy gewoonlik by daardie Bantoe in daardie gebied woon nie. So ook kan 'n vrou nie by haar man kom kuier - met of sonder 'n artikel 10(1)(d)-vergunning - en dan aanspraak op 'n artikel 10(1)(c)-kwalifikasie maak nie.

9. Dit volg dus dat die vrou slegs die artikel 10(1)(c)-kwalifikasie kan verwerf indien sy deur die betrokke buro kragtens artikel 10(1)(d) gemagtig is om by haar man aan te sluit.

10. Indien die vrou reeds andersins in die gebied is uit hoofde van 'n artikel 10(1)(d)-permit d.w.s. vir 'n beperkte tyd en 'n beperkte doel, en sy dan sou trou met 'n man met 'n artikel 10(1)(a) of (b)-kwalifikasie, kan sy nie aanspraak maak op 'n outomatiese verwerwing van 'n artikel 10(1)(c)-kwalifikasie nie aangesien sy nie gewoonlik by daardie Bantoe in daardie gebied woon nie.

11. Ondanks die voorafgaande is die Departement bereid om administrasie goed te keur dat 'n man met 'n artikel 10(1)(a) of (b)-kwalifikasie sy vrou met 'n soortgelyke kwalifikasie ten opsigte van 'n ander voorgeskrewe gebied, na sy voorgeskrewe gebied bring veral aangesien daar nie daardeur 'n vermeerdering van die getal Bantoes in voorgeskrewe gebiede veroorsaak word nie. Die goedkeuring is natuurlik onderhewig aan die beskikbaarheid van huisvesting.

3/.....

12. Indien 'n vrou wat 'n kwalifikasie kragtens artikel 10(1)(c) verwerf het, van haar man sou skei of indien haar man sou sterf of sy kwalifikasie sou verbeur, verbeur die vrou ook haar artikel 10(1)(c)-kwalifikasie en kan sy net verder in die gebied aanbly indien sy óf vergunning kragtens artikel 10(1)(d) verkry om aan te bly óf sy self in haar eie reg 'n kwalifikasie kragtens artikel 10(1)(b) bekom het. (Ondanks die feit dat sy 'n artikel 10(1)(c)-kwalifikasie bekom het, is daar geen rede waarom sy nie in haar eie reg ook 'n artikel 10(1)(b)-kwalifikasie verwerf nie).

13. Vertwyfeling is vermoedelik gesaai as gevolg van die uitspraak in die saak R v Nene 1960(1) S.A. 263 wat uitgelê is as sou dit beteken dat ten einde 'n kwalifikasie kragtens artikel 10(1)(b) te bekom, die betrokke Bantoe reeds sy kwalifiserende tydperk van verblyf in die voorgeskrewe gebied moes voltooi het op 24 Junie 1952 (die datum toe die gewysigde artikel in werking getree het). Ook was daar ander sake soos R v Madlebe 1956 (2) S.A. 565 en R v Ndingani 1956 (4) S.A. 39 wat distriksbeamptes verwar het.

14. Die aangeleentheid is gevolglik na die Regsadviseurs verwys wat die sienswyse huldig dat dit toelaatbaar is om beide tydperke voor en na die inwerkingtreding van Wet No. 54 van 1952 in aanmerking te neem en dat daar niks in die genoemde uitsprake is of daarvan afgelei kan word wat hiermee strydig is nie.

15. In 'n saak Hlahleni v Staat wat deur die Kaapse Afdeling verhoor is op 14 Augustus 1965 is hierdie kwalifiserende elemente weer behandel en dit wil voorkom asof foutiewe afleidings weereens van die uitspraak gemaak is. Gevolglik is op aandrang van sekere stedelike plaaslike besture die sienswyse van die Regsadviseurs weereens aangevra en hulle het geantwoord dat die saak glad nie die posisie soos gestel in die genoemde beslissings van ons howe, verander het nie dog die beslissings bevestig.

16. Interessantheidshalwe word die volgende uittreksels uit hul mening aangehaal :-

> "Die vraag waaroor dit hier gaan, is of die appellant voldoen aan die kwalifikasie gestel in artikel 10(1)(b) van Wet 25 van 1945 waarvan die relevante gedeelte lui : 'wettiglik in daar die gebied woonagtig was vir 'n onafgebroke tydperk van minstens vyftien jaar". Die Hof oorweeg dan al die feite met betrekking tot die appellant se verblyf in Kaapstad en bevind dan dat so 'n periode van 15 jaar nie vóór 1944 kon begin het nie aangesien die appellant in daardie jaar vir die eerste keer in Kaapstad gekom het. Van 1945 tot 1957 was die appellant op Alice in die skool en het slegs na Kaapstad gekom in daardie tydperk gedurende skoolvakansies. Van Februarie tot Augustus 1964, bevind die Hof, was die appellant woonagtig in gebied Kaapstad en was sodanige verblyf wettig. En dan volg die volgende gedeelte van die uitspraak waarom die hele saak draai, op bladsy 7 en 8;
>
> > 'That period of 6½ years' (d.w.s. Februarie 1958 tot Augustus 1964) 'was, however, insufficient to establish a qualification under section 10(1)(b). The issue is, accordingly, whether there was a period of lawful residence

4/.....

prior to 1958 which can be added to the whole or portion of the 6½ years so as to supply the necessary 15 years of continuous and lawful residence.'

Hieruit is dit heel duidelik dat die Hof nooit in gedagte gehad het dat die 15 jaar vóór Junie 1952, toe die betrokke artikel in werking gekom het, voltooi moes gewees het nie. As dit die standpunt van die Hof was dan kon die Hof sonder meer gesê het dat van 1944 tot 1952 is slegs 8 jaar en of die appellant nou wettig in die Kaap was al dan nie kan die saak nie verder voer nie aangesien hy tot 1952 slegs 8 jaar in die Kaap was. Wat die Hof dus wel doen, is om na te gaan of daar 'n aaneenlopende wettige verblyf vóór Februarie 1958 was wat by die 6½ jaar van wettige verblyf gevoeg kan word ten einde binne die raamwerk van artikel 10(1)(b) te val.

Hierna ontleed die Hof die vraag of die appellant vóór of ná die inwerkingtrede van die betrokke artikel wettig in die gebied gewoon het. Op 24 Junie 1952 het dit onwettig vir 'n Bantoe geword om langer as 72 uur in 'n voorgeskrewe gebied te bly tensy hy vrygestel is kragtens artikel 10(1)(a), (b), (c) of (d). As hy onafgebroke sedert geboorte in so 'n gebied gewoon het dan is hy ingevolge (a) vrygestel. Dit is duidelik nie op die appellant van toepassing nie. Was hy dan op 24 Junie 1952 vrygestel ingevolge (b)? Dis ook duidelik dat dit nie geval was nie, want soos reeds gesê, was hy op daardie stadium maar 8 jaar in die Kaap. Was hy dan vrygestel kragtens (d)? Nee, want vergunning was eers in Desember 1954 aan hom uitgereik. Dus wat betref paragrawe (a), (b) en (d) was die appellant op 24 Junie 1952 nie 'n wettige inwoner van Kaapstad nie. Vervolgens oorweeg die Hof of hy ingevolge paragraaf (c) 'n wettige inwoner was. Paragraaf (c) sou in sy geval gegeld het as hy op 24 Junie 1952 benewens onder 18 jaar oud te wees ook die seun was van 'n Bantoe wat vrygestel is ingevolge paragraaf (a) of (b), en gewoonlik by sy vader gewoon het. Die Hof bevind dan dat die appellant se vader nooit op 24 Junie 1952 aan paragrawe (a) of (b) voldoen het nie en derhalwe kon die appellant nie vrygestel gewees het ingevolge paragraaf (c) nie. Derhalwe was die appellant se verblyf in Kaapstad van Junie 1952 (toe die artikel in werking getree het) tot Oktober 1954 (toe hy 18 jaar oud geword het) onwettig. Van Oktober 1954 af kon die appellant dus nie langer kwalifiseer ingevolge paragraaf (c) nie, en hy kon op daardie stadium ook nie vrygestel gewees het onder (a) of (b) nie - sien bladsy 10 van die Hofuitspraak. Vanaf Oktober 1954 kon sy verblyf alleen wettig gewees het as hy 'n vergunning ingevolge paragraaf (d) gehad het, en dit het hy eers in 1958 verkry. Voor 1958 het hy nie, so bevind die Hof, 'n deurlopende vergunning gehad nie. Hierdie ontleding toon dus dat daar vóór Februarie 1958 nie bewys is dat die appellant 'n aaneenlopende wettige verblyf in Kaapstad gehad het wat by die daaropvolgende 6½ jaar gevoeg kon word om die 15 jaar vol te maak nie."

17. Daar sal opgemerk word dat ingevolge die gewysigde artikel 10(1), 'n Bantoe slegs toegelaat word om in

'n voorgeskrewe gebied aan te bly indien hy/sy bewys op die voorgeskrewe wyse lewer dat hy/sy óf die nodige kwalifikasie verwerf het, óf die nodige vergunning verkry het. Die Staatspresident word by artikel 38(1)(k) van dieselfde Wet (No. 25 van 1945) gemagtig om regulasies uit te vaardig betreffende die wyse van bewyslewering ingevolge artikel 10(1). Sodanige voorskrifte is wel uitgevaardig en is vervat in regulasie 2(1) van Hoofstuk IX van die Bantoearbeidsregulasies, 1965 (G.K. R1892 van 3 Desember 1965). Die betrokke Bantoe moet dus benewens getuienis dat hy wel 'n artikel 10-kwalifikasie besit, ook die voorgeskrewe endossement in sy bewysboek toon ten effekte dat hy/sy wel daardie kwalifikasie het.

18. Kragtens artikel 38(3)(b) van Wet No. 25 van 1945 is dit moontlik om regulasies uit te vaardig betreffende die voorrangorde by die toekenning van huisvesting op 'n gesinsbasis in stedelike Bantoewoongebiede. Standaardregulasies is nog nie in hierdie verband uitgevaardig nie maar die Departement het reeds in beginsel besluit dat die volgende oorwegings moet geld :-

(a) die enigste name wat op waglyste om huisvesting geplaas moet word, moet manlike Bantoes wees wat kragtens artikel 10(1)(a) of (b) van daar die Wet kwalifiseer, met dien verstande dat :-

(i) die 10(1)(b)-kwalifikasie ook verwerf kon gewees het voor of na 1952; en

(ii) hierdie mans wettiglik getroud is (volgens siviele huwelik of Bantoegebruik) met vroue-ens wat gewoonlik met hulle in die voorgeskrewe gebied woon ten tyde van die aansoek om huisvesting;

(b) name van vroue nie op die waglys geplaas te word nie selfs al sou hulle ook artikel 10(1)(a) of (b) kwalifikasies besit;

(c) indien 'n man met 'n artikel 10(1)(a) of (b)-kwalifikasie sou trou met 'n vrou van buite die voorgeskrewe gebied, mag hy toegelaat word om haar na die voorgeskrewe gebied te bring indien sy in 'n voorgeskrewe gebied gedomisilieer is;

(d) 'n Bantoeman met 'n artikel 10(1)(d)-magtiging nie op die waglys geplaas te word nie behalwe in die geval van :-

(i) 'n Bantoe in die diens van die Staat wat na die gebied oorgeplaas word;

(ii) 'n getroude Bantoe wat gewoonlik met sy vrou in 'n voorgeskrewe gebied woon en deur sy werkgewer na die betrokke gebied permanent oorgeplaas word;

(iii) 'n getroude Bantoe wat gewoonlik met sy vrou in 'n voorgeskrewe gebied woon en wat ingevolge 'n goedgekeurde skema in die betrokke gebied hervestig word;

(e) 'n Bantoeman met 'n artikel 10(1)(a) of (b)-kwalifikasie nie toegelaat te word om sy vrou van 'n Bantoegebied te bring nie;

(f) 'n Bantoeman met 'n artikel 10(1)(a) of (b)-kwalifikasie nie toegelaat te word om sy vrou te bring

indien sy gewoonlik op 'n plaas of elders in 'n landelike gebied buite 'n Bantoegebied woon nie, dog die geval kan na die Departement verwys word met die oog op vestiging in die Bantoetuisland;

(g) 'n Bantoe onderhewig aan die bepalings van artikel 12, Wet 25 van 1945, nie op waglys geplaas te word nie behalwe waar sy repatriasie ooreenkomstig bestaande voorskrifte vyfjaarliks opgeskort is vanweë lang verblyf;

(h) 'n Bantoe met 'n artikel 10(1)(a) of (b)-kwalifikasie, nie op waglys geplaas te word nie indien hy wil saamwoon met 'n Bantoevrou wat aan die bepalings van artikel 12, Wet No. 25 van 1945 onderhewig is, behalwe waar haar repatriasie opgeskort is.

19. Hierdie omsendbrief word slegs bedoel om leiding te gee aan distriksbeamptes en dit is nie die bedoeling om daardeur in te meng met die deskresie van regterlike beamptes nie.

20. Die inhoud van hierdie omsendbrief sal mettertyd in die Kodes "Stadsgebiede" en "Urban Areas" beliggaam word. Intussen moet 'n paslike verwysing daarna op bladsy 1 van genoemde Kodes aangebring word.

21. Hierdie omsendbrief word met die instemming van die Sekretaris van Justisie aan beamptes van sy Departement gestuur.

22. Hierdie omsendbrief word aan Magistrate in die Transkei gestuur ter inligting.

(Get.) ???
SEKRETARIS VAN BANTOE-ADMINISTRASIE EN -ONTWIKKELING.

Collection Number: A1132

Collection Name: Patrick LEWIS Papers, 1949-1987

PUBLISHER:

Publisher: **Historical Papers Research Archive, University of the Witwatersrand, Johannesburg, South Africa**
Location: **Johannesburg**

LEGAL NOTICES: