

A Brief History of Land Rights in Kwazulu-Natal

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Key words: History, land occupation, tenure security, de facto land rights, Cadastre.

SUMMARY

Hunter-gatherers, the early peoples that inhabited the fertile lands that today are known as the Province of KwaZulu-Natal, Republic of South Africa, have vanished entirely and the only evidence that remains from their times is their burial grounds, their waste middens and their rock art. Three hundred and fifty years ago, when Europe and the East already had great libraries and formal land records, there was not even the most primitive of writing that recorded the existence and migration south of African herders and tillers, who either displaced the hunter-gatherers or assimilated them into their own clans.

Between the years 1816 and 1828, or thereabouts, King Shaka, leader of one clan of African people, conquered most of the clans that had by then occupied what is now KwaZulu-Natal. Shaka “gave” a small part of this conquered territory to some European traders. His successor Dingane also “gave” some land to Gardiner, a British Missionary, and then, in 1838, allegedly a substantial area to the *Boer* leadership. (The *Boers* were a large group of migratory farmers of predominantly Dutch descent who sought their own homeland.) These *Boers* then allocated most of it to land-hungry individuals and land, surplus to their needs, was sold to speculators.

However, it was never the intention of Shaka or Dingane to relinquish their sovereignty over KwaZulu-Natal. According to Gardiner, Dingane had made it clear to him that he was to be “chief” over the European settlers, under himself as king. After Dingane’s army was defeated by the *Boers*, the African clans displaced by Shaka sought to re-occupy their ancestral land settled by the *Boers*. The *Boers* used their Cape-style Roman-Dutch law, which emphasised written record, to satisfy themselves that the land of KwaZulu-Natal had been granted to them freehold by their leadership. There was therefore never any question on their part of giving the land back or compensation to the earlier occupants. This resulted in several skirmishes over the land between the *Boers* and the African clansmen.

Unwilling to let the *Boers* have their own homeland, the British annexed what was then “Natal” in 1842 and brought all land of the new colony, howsoever previously owned, under the Sovereignty of Her Majesty. New title deeds were issued in accordance with the laws created for the Territory of Natal by the Colonial Government. It is these self-same title deeds and the succession thereof which remain in force today.

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1. THE HUNTERS, HERDERS AND FRONTIER RUFFIANS

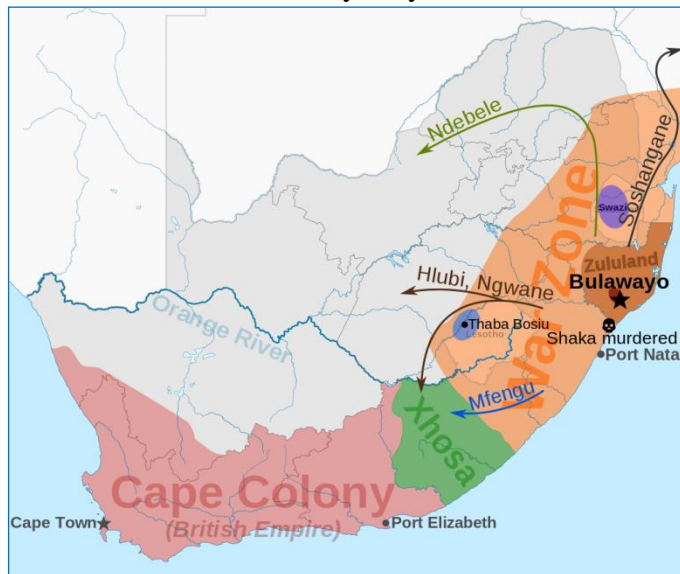
Bulpin (1966, pp. 3, 5) writes: “*Who exactly were the first human beings to inhabit this land remains unknown ... The [San], the pioneer settlers of what is now the land of [KwaZulu-Natal], have vanished entirely and the only knowledge we have of them is from the memories of newcomers who encountered and displaced them ... nothing else remains save mounds of kitchen debris buried beneath the sand of the shore; Stone Age tools and the paintings on the rocks which bear mute and poignant witness to the vanished race of hunters, the game animals they pursued and their fights and escapades with encroaching newcomers, both African and European.*” There was no written record of occupation, which, by the nature of the hunters, was transient, dependent on water and the movement of game.

Brookes and Webb (1965, p. 2) continue: “*The Nguni who finally settled in [what is now KwaZulu-Natal] were a people whose] culture revolved around cattle. They were the people’s most cherished possession. They it was which, by the institution of lobola, regulated, almost in a sacramental way, marriage and family relationships; and they were intimately connected with Bantu religion. While cattle were the particular care of the men, agriculture proper was still largely women’s work ... Socially they were a well-organised people, possessing a magnificently worked out system of law ... of persons, and only in a minor degree a law of contract ... a deep pietas, reinforced by law, protected age and station.*” John Bird (1888, p. 103) has record of evidence led by Henry Francis Fynn before the Native Affairs Commission of 1852, which contains a list of all the tribes that inhabited that area before they were dispersed by Shaka. See also Bulpin (1966, p. 42) and Brookes and Webb (1965, p. 14). Further, Brookes and Webb (1965, p. 5) record: “*The Port of Natal was beginning to become known, and its value and the friendliness of its indigenous inhabitants suggested to the Dutch East India Company that it would be desirable to acquire it. The Noord... was sent [towards the end of 1689] and instructed to buy the Port [from the then chief Inyangesi] ... Inyangesi’s son repudiated the agreement in a discussion with Captain Gerbrantzer of the Postlooper; he was not responsible, he claimed, for what his father had said.*” In any case, the 1689 “acquisition” was not followed by any permanent occupation.

By the beginning of the 19th century, Nguni clans, known among others as the *amaThuli*, the *amaCele* and the *amaDebe*, occupied the area around the Bay of Natal. Like the San, the Nguni peoples had no written record defining occupation. Any ownership was defined in terms of belonging to a clan and dominance to protect grazing land and water for their cattle. Completely preoccupied with scrapping with each other for the best land and acquiring more cattle, Shaka allegedly settled their quarrels by giving them a common enemy in the shape of his warriors.

Wylie¹ (Natal Witness, 1999) questions the source of the historical records and is quoted as saying: “The question for me was why white writers wrote about Shaka in a way which was based on no evidence at all ... I rapidly discovered that the history and the fiction meld into one thing ... Early witnesses ... were working in an area under no colonial control – they were really frontier ruffians – and what they wrote was wildly exaggerated.” While Wylie’s comment is acknowledged, there is sufficient evidence to accept that Shaka’s campaigns left an almost uninhabited land between the Tugela and uMzimkhulu Rivers. Turned into refugees, some former occupants turned bandit, others clung to the land they had claimed for themselves by finding sanctuary in the thick riverine bush or the hilly wilderness. Many fled south. Although they escaped with their lives, it was at the expense of their property and livestock.

Into this turmoil stepped parties of “British subjects” – explorers, pioneers, hunters and traders, all seeking business, especially in the lucrative ivory trade, with the local tribesmen who by now had either become subjects of Shaka or refugees. Shaka gave permission to these “frontier ruffians” to occupy land in the vicinity of the Bay of Natal. Although these first beneficiaries claimed they had been granted territory about 40 km wide and extending from the Bay inland almost 100 km, the concession was most likely only the area referred to as *siBubulungu* (see footnote²). Further, Lugg



(1949, pp. 14 – 15) suggests that Shaka’s concession “amounted to nothing more than a permission to occupy the area during the King’s pleasure ... Shaka also gave some of the same land to Lieutenant King and some to Nathaniel Isaacs. Again in later years, Dingane authorised Captain Allen Gardiner to take control of the settlement ... the whole scheme was a risky and precarious adventure.” On this matter, Brookes and Webb (1965, p. 19) concur.

Figure 1: "Shaka's Empire map" by Discott.
Source: -

¹ Dr Dan Wylie, a lecturer in English at Rhodes University, undertook research into the way white writers wrote about Shaka for his PhD thesis. This was expanded into a book entitled “Savage Delight: White Myths of Shaka”. However, the quote is from an interview with Margaret von Klemperer published in the Pietermaritzburg newspaper, The Natal Witness, on the 24th August 1999.

² *siBubulungu* means “place of the ship people” and was considered by the European settlers to be an extensive area from the Tugela to the uMzimkhulu and from the sea to the Drakensberg. However, this appears to have been unlikely, as the word “*siBubulungu*” became an accepted Zulu word for the Bluff, meaning a “long round-topped ridge” (Maphalala, 1978, p. 7; Koopman, 2005?, p. 14). This research therefore considers the “*siBubulungu*” to have meant the ridge between the Bay of Natal and the Indian Ocean, an area of no more than a few square kilometres.

https://commons.wikimedia.org/wiki/File:Shaka%27s_Empire_map.svg#/media/File:Shaka%27s_Empire_map.svg

Captain Allen Francis Gardiner, a naval officer turned missionary, arrived at the Bay of Natal on the 29th December 1834. Dingane signed a treaty with Gardiner, appointing him as the supreme chief over the area described as *siBubulungu*. Bulpin (1966, p. 85 – 92) records: “*Gardiner accepted the offer but he was awkwardly placed. He well knew that the traders were too rugged a crowd to accept a missionary as their government. Accordingly, he ... sailed to England on 19th December 1835 in order to induce the British Government to take over Natal ... but the high authorities considered it would yield them no profit, only trouble. Gardiner accordingly returned with only the meagre status of a J. P. [Justice of the Peace] over the British residents ... On the 1st June 1837 he called a meeting and disclosed his appointment as a J. P. and would-be ruler of Natal. The ivory traders shouted him down ... they would have none of Gardiner.*”

2. THE BOERS

Six months later, in December 1837, a large group of *Boers* crossed over the Drakensberg into what they called the “*Republiek van Natal*”, with Pieter Mauritz Retief as their leader. The term *Boer* is Dutch for “Farmer” and the *Boers* were descendants of the predominantly Dutch *Trekboers*, or “migratory farmers”. As their family numbers and their herds increased, the *Boers*, together with their servants and slaves, had initially trekked eastwards from the Dutch “*Vereenigde Oost-Indische Compagnie*” (Dutch VOC, or, which translated is the United East Indian Company) settlement at the Cape in search of water and land on which to graze their cattle. On finding a decent water supply and good grazing, a *Boer* would settle and proclaim an area of land as his own, frequently ousting the Khoi herders and sometimes appropriating their cattle and occasionally their women. By the end of the 18th century, they had expanded their occupation from the Cape as far as the Great Fish River, more than halfway from the original Cape settlement to the Bay of Natal. However, the further east the *Boers* migrated, the more they came into contact with San hunters and Nguni herders, who themselves were moving south and west in search of the same things. Once the British had taken over the Cape Colony from the Dutch in 1806, they did everything in their powers to ensure that the *Boers* became subjects loyal to the British Crown (Binckes, 2013, pp. 114 – 153). After 30 years of uncertainty and conflict, many of the *Boers*, dissatisfied with their life under British rule, left the Cape Colony and travelled north in order to find their own homeland. The *Boers* that chose to leave the colony also became known as “*Voortrekkers*”.

Louw (1986, p. 11) suggests that the reason for their leaving was: “*that about 80% of them who had farms had never received title to their land.*” However, reading Binckes (2013, p. 158 – 161) and Ross (2013, pp. 28 – 29) *et al*, it is more probable that most of the dissatisfaction arose from the unwillingness (or inability?) of the British to control the cycle of stock theft, conflict, confiscation and retribution prevalent on the eastern frontier. The exclusive right to land instituted by the Dutch VOC and adopted by the British was a foreign concept to the Nguni clansmen, whose wealth was in cattle, not immovable property. Their right to use any land for grazing had historically never before

been questioned, and so the retaliatory reprisals over cattle and land began. In addition, the San clans took to hunting the docile cattle as their custom did not recognise exclusive land rights or ownership of livestock!

The total number of *Boers*, servants and slaves that immigrated into KwaZulu-Natal could have numbered 25,000. Dingane (successor of Shaka) would have seen this invasion as a real threat to his sovereignty, especially with the superiority of the *Boers*' guns and horses, which Dingane desired, but which the *Boers* apparently refused to supply. More importantly, the vast herds of cattle and sheep (i.e., wealth) that the *Boers* brought with them would have been coveted by the Nguni clansmen. The "British subjects" at *siBubulungu* would have encouraged Dingane to repel the *Boers*, as the *Boers* would otherwise break the monopoly that the resident traders had enjoyed. Whatever the reasons, it cannot be doubted that the motive for action was power and wealth and so, on or about the 4th February 1838, the *Boer* leadership, on visiting Dingane, were ambushed and killed.

The death of Retief and his advance party initiated a dreadful year of revenge killings and retaliations. The *Boers* eventually drove Dingane and his warriors over the Pongola River, thereby conquering Natal (a portion of what was to become KwaZulu-Natal). The *Boers* returned to what was left of their families, who had garrisoned themselves at a place they called Pieter Mauritz Burg (after Retief, their assassinated leader), taking with them 31,000 head of cattle and some 1,000 Zulu children. The cattle and the children were distributed amongst the *Boers*. The children were taken on as "apprentices" – a form of slavery, but probably also as a human shield against retaliation from the Zulus. From that time on, the *Boers* claimed that Dingane had ceded Natal (from the Tugela to the uMzimvubu River and from the Indian Ocean to the Drakensberg mountains) to the *Boers*. They alleged that a document, dated 4th February 1838 and witnessed by three Zulus and three *Boers*, was found in the pocket of the deceased Retief. Saunders (1988, p. 121) doubts the authenticity of the document, but Brookes and Webb (1965, p. 31) seem to be satisfied that there is sufficient evidence to accept the cession.

The *Boers* laid out three towns: Congella, across the Bay of Natal from *siBubulungu*, Pieter Mauritz Burg (now Pietermaritzburg) 70 km inland as the capital and Weenen, a further 100 km north of Pieter Mauritz Burg. The *Boers* began to settle the land. Every adult male *Boer* who had come to the now formed Republic before the beginning of 1840 was entitled to two farms together with one erf in any of the three towns. The country was divided into 12 wards, each with a Veldt Cornet (with similar functions to a Justice of the Peace) overseeing ward affairs. For Government, a new Volksraad was elected in March 1839 with 24 members. In 1841 the Volksraad passed a law stating that there would only be one form of land tenure – freehold, but owners of farms larger than 1,000 morgen had to pay 12 rix-dollars annually to "protect" their land rights (Louw 1986, p. 12). The Volksraad granted land on a lavish scale: a grant was made in writing to each *Boer* after the payment of a small registry fee, but no survey was performed. The "owner" was then free either to occupy the land or sell his rights to others, often for a ridiculously low price. In this way, speculators were able to acquire many farms.

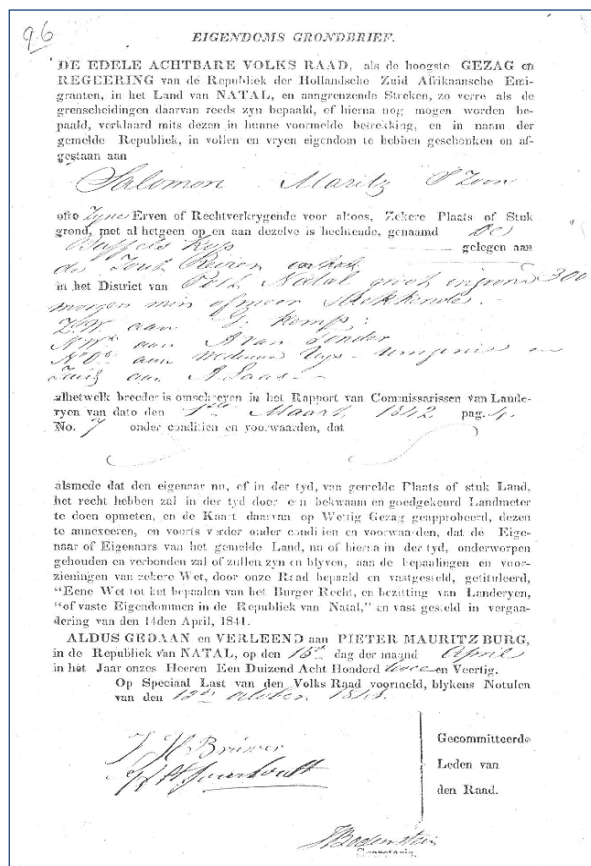


Figure 2: An example of a Boer title deed from 1842
 Source: South African Archive, Pietermaritzburg

3. RE-OCCUPATION BY THE NGUNI CLANS

“Now, after the defeat of the Zulus, the trekkers learnt just why Natal had been so inviting a no-man’s-land. A horde of tribespeople who had fled the country in fear of their lives twenty years before, in Shaka’s time, now started to troop happily back from sundry points of refuge in foreign lands. Overnight, whole parties of people would appear on farms, mostly allotted to trekkers but as yet unoccupied, squat contentedly down on their old kraal sites, and erect huts. This influx drove the trekkers almost to distraction. After lengthy deliberation they decided, on the 2nd August 1841, that all the returned tribespeople should be forcibly collected, removed and settled in one vast location between the Mzimvubu and the Mthamvuna Rivers. The classic policy of complete segregation could then be followed, with a convenient deviation which allowed each farm to retain five families of African squatters as a labour force” (Bulpin, 1966, p. 127).

So, the earlier occupants, the herder and tiller clans of the Nguni – such as the *amaThuli*, the *amaCele* and the *amaDebe* – sought to re-occupy their ancestral land. The *Boers* used their Roman-Dutch law, instituted by the Dutch VOC in the Cape and to which they were accustomed, to satisfy themselves that the land of Natal had been granted to them freehold. The Roman-Dutch law places emphasis on documented contract, and as the people of the Nguni clans had no record of land ownership, the *Boers* would not recognise their earlier occupation. The *Boers* believed that they had occupied vacant land, but even if it had been occupied before, their victory over the Zulus entitled them to the spoils of war. There was therefore never any question on their part of giving the land back.

4. AND THEN CAME THE BRITISH

After the *Boers*' invasion of Natal and Dingane's defeat, the Traders of the *siBubulungu* settlement at the Bay saw fit to lodge a greatly exaggerated protest with the Colonial Government – after all, they claimed that Shaka had granted the land to “British subjects”! The Traders were not willing to share Natal with anyone. Sir George Napier, Governor of the Cape Colony, sent despatch after despatch urging the British government to intervene in Natal. Of course, the British politicians were reluctant. “*New territorial acquisitions that could not be justified on the balance sheets of the empire were almost certain to come under sharp attack, no matter how strong might be the reasons for annexation on other grounds*” (Brookes and Webb, 1965, p. 42).

Eventually, the Colonial Government instructed a regiment of the Royal Inniskilling Fusiliers under Captain Charlton Smith to relocate from the uMngazi River to the Bay of Natal. This regiment, on arrival, attempted to take control of the well-defended *Boer* town at Congella, but were repelled by the *Boers*. The *Boers* naturally objected to their offence, and in turn put the British forces under siege. Of course, now the British had an excuse to retaliate. To the British, the *Boers* were rebellious British subjects who again had to be forced to acknowledge their allegiance to the British crown. Once this “*Boer* rebellion” had been crushed, the British Government could not make up its mind what to do with the place. The Governor at the Cape wanted to annex Natal, but Britain still did not want it. At last, by Proclamation in the Cape of Good Hope Government Gazette No. 1951, dated Friday, May 12, 1843, Napier was given his instructions, and he proceeded to incorporate Natal into the British Colony. Note the British use of the word “Farmers” as a direct translation of the Dutch “*Boers*”. The following extracts of that proclamation are reproduced, stating:

“...III That the district of Port Natal according to such convenient limits as shall hereafter be fixed upon and defined will be recognised and adopted by Her Majesty the Queen as a British Colony and that the Inhabitants thereof shall, so long as they conduct themselves in an orderly and peaceable manner be taken under the protection of the British Crown...

“...IX All sums of money arising from land, and whether by sale, rent, fine or quitrent, shall be vested in her Majesty, as shall also dues and customs which may at any time, after the legal establishment of the Colony, be collected on any part of the Natal Coast, and all such sums of money shall be applied exclusively to the maintenance of the Civil Government of the District.

“X That the Farmers and all others holding land within the District of Port Natal, shall, pending the further pleasure of Her Majesty, be protected in the enjoyment of all such lands as they shall be found by Her Majesty’s Commissioner to claim and hold...”

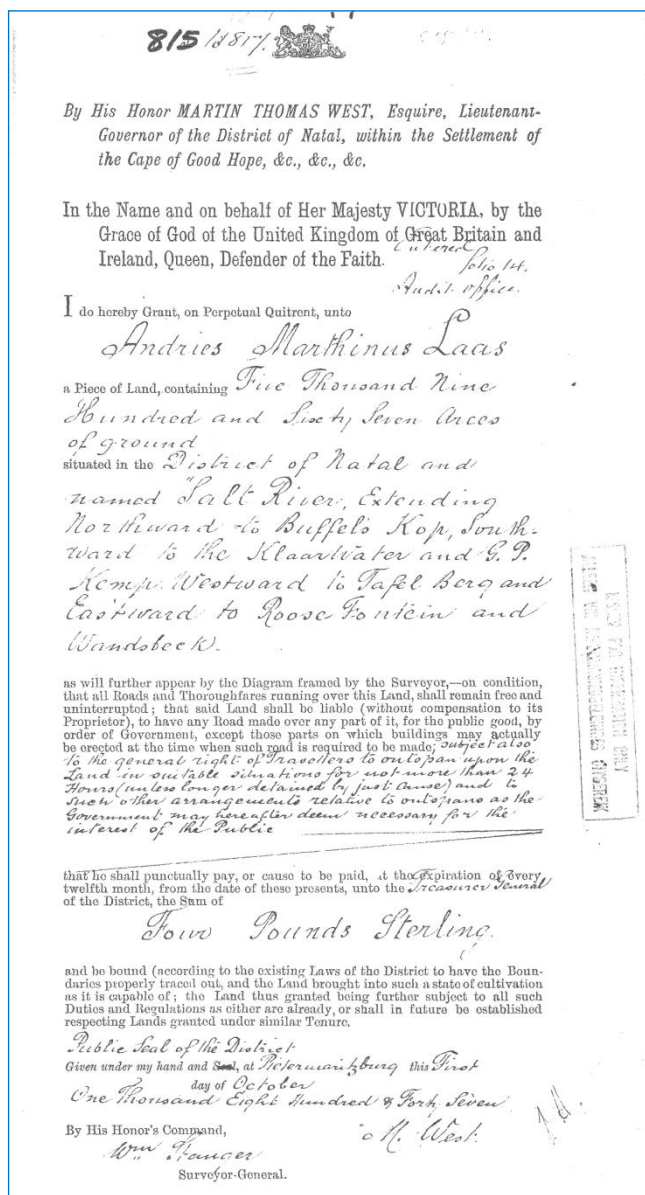


In the same Gazette, a minute read by the Governor in the Legislative Council on the 4th May, 1843, was published for general information. Much of the minute is a duplication of the above Proclamation.

However, the minute noted in addition: *“That the Commissioner shall make it his first duty, to enquire into, and report upon, the number of Farmers and others holding Land within the District of Natal, and of the extent of it, which they, or those from whom they derive their claim, shall respectively have bona fide occupied for a period of twelve months previous to the arrival of the Commissioner, with a view to their receiving hereafter, grants from the Crown for such an area thereof as Her Majesty may determine, subject to such Fine or Quitrent as Her Majesty may see fit to impose. In the mean time, they will be protected in the enjoyment of all such Lands as they may be found by the Commissioner to claim and hold.”*

Figure 3: Front page of the Government Gazette dated Friday, May 12, 1843
 Source: South African Archive, Pietermaritzburg

The key issue here is that all land within the District of Natal was now Crown Land. While the land that the *Boers* occupied was protected, subject to the findings of the Commissioner, their *Eigendoms Grondbrief* (Title Deed) was not. The British would issue no title deed unless a diagram of the occupied property had been surveyed in order to determine the area, from which the value of the farm could be determined. In addition, the land speculation of the *Boers* mentioned earlier had left much of the District owned but not occupied. Therefore, the Colonial Administration would only issue a title deed based on a surveyed diagram of a farm that had been occupied for at least 12 months. Once these decisions had been made, the next step was for governance to be established, especially with regard to the determination of land ownership. On instruction from Her Majesty, Sir Peregrine Maitland, Governor of the Cape, wrote to Dr. William Stanger on the 17th February 1845, appointing him to be the first Surveyor-General of Natal. A letter of instruction to Dr. Stanger, also dated 17 February 1845 and signed by the Colonial Secretary of the Cape, John Montagu, listed his tasks, which were, among others, to survey the whole of Natal, as well as the erven in all the towns and the farms. Louw (1989, p.12) notes that “*He only had the four surveyors to assist him.*” On Dr. Stanger’s appointment and tasks, Louw (1989, p. 10 – 12) goes on to state that: “*Later some people were to blame Dr Stanger for helping to accelerate the emigration of the Boers from Natal due to his insistence on leaving the survey of farms to last. From normal priority point of view, he was considered correct and anyway he followed his written instructions in the order which they were listed ... He tried his best to keep the distribution of land in the hands of honest and capable people. He disagreed with the advice of Sir Harry Smith to grant more land to the Boers during the 1847 rebellion at Klip Rivier, as he considered this as giving in to their cause. Generally, Dr Stanger considered the Boers as a miserable, lawless bunch.*”



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Figure 4: One of the first title deeds issues by the British Colonial Administration in 1847

Source: Office of the Registrar of Deeds: Pietermaritzburg

There appear to be several reasons why the British Colonial Government could not keep the *Boers* on their farms, nor even in Natal, in addition to Louw's suggestion above. Of course, their main reason for originally leaving the Cape was that they refused to accept British rule – in particular, they were unwilling to comply with British law and give up their slaves. In addition, each adult male *Boer* was limited to enjoy only the farm where he resided, even though many had purchased more and, in addition, he was now required to repurchase that one farm from the British colonial administration. Further, these farms were not being granted to the *Boers* freehold – they were granted on perpetual quitrent, which meant an annual payment to the Treasurer-General of the District. Another reason would have been the continued land invasions from the Nguni clansmen, who still contested for their unwritten land rights, especially where they had formerly settled, tilled their own fields and grazed their own cattle – cattle that were now largely in *Boer* hands!

The British went to great lengths to get the *Boers* back onto the land. The Proclamation of Sir H. G. Smith, Governor of the Cape as appeared in the Cape of Good Hope Government Gazette dated 18th February 1848 is a good example of this. The Proclamation itself is dated 10th February 1848 and assures the *Boers* that they will receive their diagram and title as soon as is possible. The proclamation goes on to encourage the *Boers* to return to their farms, with an added assurance that her Majesty would promote the erection of churches and schools and would consider the provision of ministers and schoolmasters, but it adds an extra undertaking that the British administration would ensure that *“all classes of the Coloured Population who have had free Locations given to them must be removed, so that a distant line be established between different races of Her Majesty's subjects.”*

Three months later, the Colonial Government went even further in their attempts to get citizens onto farms. The Minute on Land Settlement at Natal, dated 24th May, 1848 and published in the Supplement to the Cape of Good Hope Government gazette dated 25th May, 1848 entitled anyone who so wished to receive: *“a full farm of 3,000 Morgen, (instead of one of 1,000 Morgen).”* The only catch was that: *“The grantee and his heirs shall not, for a term of seven years, sell or let to hire the farm granted, either wholly or in part, without the previous consent of the Lieutenant Governor, (who will judge, according to circumstances, whether such consent should be given,) and that any breach of the stipulations shall entitle the Government to resume the farm.”* This offer was to expire on the 10th February 1849.

With the promise of a better life in the Colony, the British colonial administration attracted or coerced many thousands of Europeans – mostly British, but also Irish, Dutch, German and others – to relocate to the District of Natal, now part of the Province of KwaZulu-Natal. Many were allocated farms that have been in the same family to this day. Many others settled in the towns and villages of the province and developed a very strong British culture. Those who were granted land rights were given the opportunity to prosper. However, this was not the case with all people of the district.

5. NATIVE LOCATIONS AND MISSION RESERVES

When Henry Cloete had investigated the *Boers*' intentions to remove all the Nguni clansmen from Natal in 1843, he proposed the compromise of setting up six rural "Locations" within Natal. It was this plan which Martin West, the first Lieutenant Governor of Natal, took up when he assumed office. In 1846 he appointed a Commission consisting of Dr. Stanger, Theophilus Shepstone and Rev. Newton Adams. After the Proclamation of the 18th February 1848 stipulated that there should be a "*distant line*" between the "White" farmers and the "*Coloured Population*", the task of the Commission was to make the Location policy practicable and to indicate the areas where the Locations were to be set up. The intention was to provide, within these Locations, resources to enable the Zulus to become self-sufficient. However, Brookes and Webb (1965, page 59) quote Earl Grey (who was then Secretary of State for the War and Colonial Departments), as writing: "*It is my duty, at once and distinctly to discountenance the expectation that any plans ... which would involve large expense can be adopted.*" Brookes and Webb continue: "*All hope that the Locations could be made active agencies of civilisation ... had, therefore, to be abandoned. The Locations had to be merely places where the Africans could live their own lives. By a piece of unparalleled administrative virtuosity, Shepstone ... got from 80,000 to 100,000 of them into the ... Locations and that without bloodshed.*"

The first Locations were demarcated in November 1846. By 1864, there were 42 Locations (consisting of 836,509 hectares) and 21 Mission Reserves (of 70,764 hectares), which, together, represented about 10% of the Colony of Natal. Government Notice No. 57 of 27th June 1864 created the Natal Native Trust. The Crown transferred to the Trust all the Location Land in Natal, to be held in trust for the "Native" population. The South African Native Trust established under the Natives Land and Trust Act of 1936 was based on the principles of the Natal Native Trust and has absorbed the earlier Trust. The following extract is quoted from the Deed of Grant of the Inanda Native Location, dated 9th December 1864: "*...it was expedient to provide for the disposal and management of certain lands in Her Majesty's Colony in Natal which were then or might thereafter be applicable to purposes connected with the support, advantage or well-being of the inhabitants of the said Colony of African descent thereafter called "Natives" and that it might be convenient that such lands or some portions thereof or interest therein should be vested in an incorporated Board of Trustees in order to such disposal and management as aforesaid, Her Majesty did give, grant and ordain that certain persons ... should be one body politic and corporate in deed and in name by the name of the "Natal Native Trust" ... Her Majesty did further ordain and declare that the said Corporation might take and hold lands within the Colony, or any interest in such lands, and might grant, sell, lease, or otherwise dispose of the same lands, in such wise as they should deem fit for the support, advantage, or well-being of the said Natives or for purposes connected therewith.*"

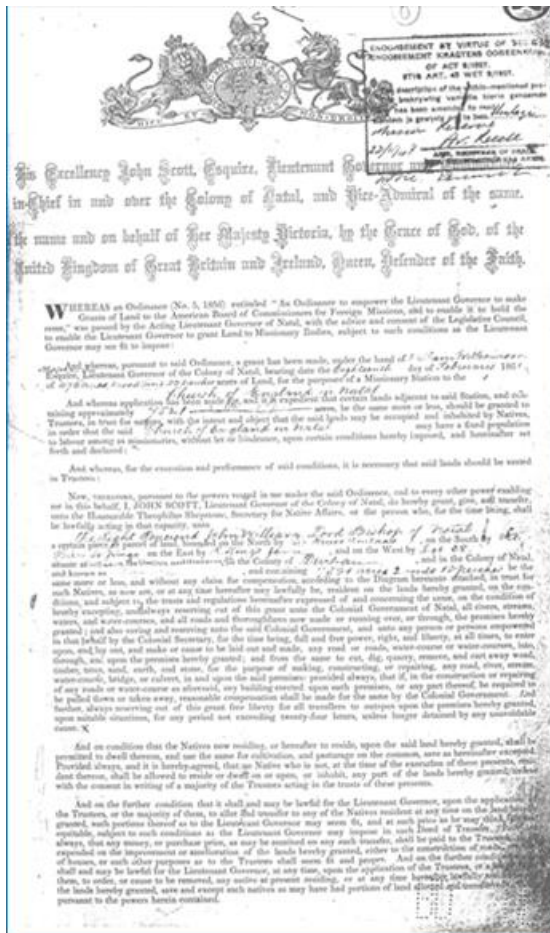


Figure 5: Front page of the “Inanda Native Location” title deed, dated 1864
 Source: Office of the Registrar of Deeds: Pietermaritzburg

Similarly, the following is extracted from the Deed of Grant No. 8309 dated 4th November 1862, and being the grant for Umlazi Mission Reserve: “...Whereas an Ordinance (No. 5, 1856) entitled “An Ordinance to empower the Lieutenant Governor to make Grants of Land to the American Board of Commissioners for Foreign Missions, and to enable it to hold the same,” was passed by the Acting Lieutenant Governor of Natal, with the advice and consent of the Legislative Council, to enable the Lieutenant Governor to grant Land to Missionary Bodies, subject to such conditions as the Lieutenant Governor may seem fit to impose ... “And whereas application has been made for, and it is expedient that certain lands ... should be granted to Trustees, in trust for natives, with the intent and object that the said lands may be occupied and inhabited by Natives, in order that the said Church of England in Natal may have a fixed population to labour among as missionaries, without let or hindrance, upon certain conditions hereby imposed, and hereinafter set forth and declared ... Now, therefore, pursuant to the powers vested in me under the said Ordinance, and to every other power enabling me in this behalf, I, John Scott, Lieutenant Governor of the Colony of Natal, do hereby grant, give, and transfer ... unto the Right Reverend John William, Lord Bishop of Natal, a certain piece or parcel of land ... on condition that the Natives now residing, or hereafter

to reside, upon the said land hereby granted, shall be permitted to dwell thereon, and use the same for cultivation, and pasturage on the common, save as hereinafter excepted.”

The greatest injustice of the whole land rights system, created in the area that is today called KwaZulu-Natal, was that people of African descent (San hunters, Khoikhoi herders, Nguni herders and tillers and others of mixed race) were prevented from owning land. The land on which African people resided belonged to the white farmer, or was held in trust, either by the Native Trust or by the Mission Societies. Brookes and Webb (1965, p. 60) record that: *“It was West, Shepstone and the missionaries who established the Location system, despite the combined opposition of Sir Harry Smith, [Sir Benjamin] Pine, the Voortrekkers and the British Settlers ... [By] 1961 the Locations and Mission Reserves were overcrowded, and not one of them could feed its own population except for food purchased by wages from outside.”*

6. CONCLUSION

So, Shaka had conquered first Zululand and then Natal and “given” a portion of the latter to various British frontiersmen. Dingane, Shaka’s successor, had “given” it firstly to Gardiner and then to the *Boers*. To all this we add the fact that it was never the intention of either Shaka or Dingane to relinquish sovereignty over Natal. Certainly, Dingane had made it clear to Gardiner that he was to be “chief” over the white settlers, under himself as king. With Dingane defeated, the *Boers* had then allocated most of what they called the “*Republiek van Natal*” to land-hungry individuals. Land surplus to the need of the individual was sold to speculators. The earlier occupants sought to re-occupy their ancestral land. But then the British came and annexed Natal, which brought all land, howsoever previously owned, under the Sovereignty of Her Majesty as the paramount and exclusive authority. Between 1846 and 1864, Title Deeds were issued in accordance with the laws created for the Territory of Natal by the Colonial Government. The *Boers* used the Roman-Dutch law from the Cape, to which they were accustomed, to satisfy themselves that the land of Natal had been granted to them freehold. The British then wrested the Land of Natal from the *Boers* and issued new title deeds to those that could prove occupancy. The British administration also created trust land and mission land for occupation by the indigenous peoples and annexed all of the lands of the Zulu peoples onto the District of Natal, thereby creating one province: KwaZulu-Natal. There was therefore never any question on their part of giving the land back to any previous occupant, especially if they had no documented proof. These were the spoils of war! It is these self-same title deeds and the succession thereof which still remain in force today.

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BIOGRAPHICAL NOTES

Chris Williams-Wynn grew up in the Eastern Cape, South Africa, and went to school at St Andrew's College in Grahamstown. He completed a BSc (Honours) degree in Land Surveying from what is now the University of KwaZulu-Natal in 1981 and his Masters in Public and Development Management at the University of the Witwatersrand in 2007.

He is a Registered Professional Land Surveyor, a Registered Sectional Titles Practitioner and a Registered Township Planner. Having worked for 17 years in the private sector, he moved into the government sector due to his deteriorating physical ability. Mr. Williams-Wynn was appointed the Surveyor-General: KwaZulu-Natal on 1st May 1998, and transferred at his own request to establish the Office of the Surveyor-General: Eastern Cape on 1st July 2010.

Mr. Williams-Wynn advises Government institutions on land issues, with particular interest in legislation affecting property development approvals and land administration. He serves on the Townships Board, the Land Use Regulations Board and the Spatial Planning and Land Use Management Steering Committee. He has recently had papers published in the PositionIT magazine, the Deeds Journal and on the FIG website. One of his main passions is to see people in the Traditional Communities also benefit from the Land Rights system of the country.

Outside of his survey career, Mr. Williams-Wynn is interested in environmental conservation, with special interests in birds, trees and estuaries. This interest has benefited his knowledge concerning coastal public property and the legal position of boundaries adjoining the high water mark of the sea and rivers. He is a Society Steward of the Methodist Church and an active Rotarian. He is married to Glenda, a Natural Sciences Graduate, who works in the Conservation Ecology Research field and they live in Kidd's Beach.

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