

M E M O R A N D U M

ON IMPLICATIONS OF A SUCCESSFUL APPEAL TO THE  
APPELLATE DIVISION IN KOMANI v B.A.A.B. PENINSULA AREA

Section 10 (1) Ic) of the Bantu Urban Areas Consolidation Act, No. 25 of 1945, as amended, as most of you know, reads:

"(No Bantu shall remain for more than 72 hours in a Prescribed area unless he produces proof in the manner prescribed that) such Bantu is the wife, unmarried daughter or son under the age at which he would become liable for payment of general tax under the Bantu Tax and Development Act, No 41 of 1925, of any Bantu mentioned in paragraph (a) or (b) of this sub-section and, after lawful entry into such Prescribed area, ordinarily resides with that Bantu in such area."

The Courts have held that this provision, like S. 10 (1) (a) and S. 10 (1) (b), is intended to create a right to be in a Prescribed area based on a factual position (As opposed to a right based on the permission of a Labour Officer). In other words, provided that the person meets the factual requirements of S. 10 (1) (c), he or she will have the right to remain in the Prescribed area regardless of whether such right has been endorsed in the particular person's reference book or not.

The 3 requirements which must be met are the following:

- (a) The person must be the wife or unmarried daughter or minor son of a person qualifying under S. 10 (1) (a) or (b) to be in the Prescribed area.
- (b) The person must have entered the Prescribed area lawfully (and entry on a visitor's permit or even on a 72 - hour visit can be adequate to satisfy this requirement).
- (c) The person must be "ordinarily resident" with the person whose dependent he or she is claiming to be.

It is the last requirement which has given rise to most difficulty and which is the source of interest in the Komani case.

Following S. v Maphcele 1963 (2) SA 651 (AD), the Courts have repeatedly held that "ordinary residence" must be "lawful residence" - on the reasoning that residence which is not lawful is too precarious to be "ordinary", since it may be terminated at any moment. Now residence in a Bantu location cannot be "lawful" unless it is residence with the permission of the Housing Authorities. Where a man is himself the owner of a house or the householder in a rented house, his dependents are more-or-less automatically permitted to reside with him and their S. 10 (1) (c) rights are fairly readily established. But where the man is himself a lodger in another house (for example in his mother's or brother's house), his wife will seldom be granted a lodger's permit to reside with him except as a visitor (and even this last, rarely). So that even if accommodation is available in the house where her husband lodges, a woman will generally be obliged to reside there unlawfully. If she does so, no matter for how long she may stay there, her residence remains unlawful, since she resides there without permission of the authorities, and this means that she can never, as long as the authorities refuse her a lodger's permit to reside with her husband in the house where he lodges, establish "ordinary residence" for the purposes of S. 10 (1) (c).