Exploring the challenges of quitrent rights on land use, development and ownership in the Eastern Cape

By

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DECLARATION

I, Phucuka Penelope Malgas (Penxa), declare that:

The research reported in this dissertation, except where otherwise indicated, is my original research and it has not been submitted for any degree or examination at any other university. All the other sources, used or quoted, have been indicated and acknowledged by means of complete references.

Signature: Signed by candidate

Date: 07 June 2024

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Ultimately, to my kids and my late parents, this is dedicated to you with love!

ABSTRACT

This research examines the restrictions of the quitrent rights system and the impact thereof on land and economic development in the Eastern Cape province of South Africa. To appreciate the current challenges, one has to understand the historical development and complexities of the quitrent rights system.

Many quitrent titles were surveyed in the former Transkeian and Ciskeian Territories between 1890 and 1923. Formal title deeds were registered in the Deeds Registry in respect of the affected land parcels in various categories that were either residential, arable or commonage portions. The quitrent right holders were later moved from the land into betterment schemes, and “permissions to occupy” (PTO) were allocated to them. In the process, the state ignored the existing quitrent rights and began to construct schools, hospitals, dams, nature reserves and roads over the land which had been accorded a quitrent. Even though some quitrents lapsed due to forfeiture or cancellation, most of these quitrent titles in the former Transkeian Territories are still reflected in the Deeds Registry. Until an investigation reveals that a (still registered) quitrent has lapsed, it must be regarded as valid and enforceable.

In terms of the Deeds Registries Act 47 of 1937, an immovable property can only be registered against an approved Surveyor-General Diagram, as per the Land Survey Act 8 of 1997. An immovable property affected by a quitrent is not eligible for registration at the deeds office as the approved diagram of such a property is encumbered by a caveat preventing registration. Registration will only be permissible upon providing proof that compensation was paid to the quitrent holder or beneficiary.

The impact on land administration is such that properties affected by the quitrent right system cannot be registered at the Deeds Office and thus cannot be disposed of nor transferred. This means no notarial lease agreements can be registered on any land affected by a quitrent for development purposes. This poses a negative impact on investment and economic development.

The study investigates the challenges and implications that the quitrent rights have on land use, development and ownership. It identifies and presents possible workable solutions in resolving the challenges presented by the existence of quitrents. Finally, it determines the role that government can play in resolving the land ownership dilemma that the quitrents present.

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LIST OF ABBREVIATIONS

CBD	Central Business District
CRLR	Commission on the Restitution of Land Rights
DALRRD	Department of Agriculture Land Reform and Rural Development
DPW	Department of Public Works
EC	Eastern Cape
GIAMA	Government Immovable Asset Management Act 19 of 2007
IDP	Integrated Development Plan
IDZ	Industrial Development Zone
KSDLM	King Sabata Dalindyebo Local Municipality
LED	Local Economic Development
ORTDM	Oliver Reginald Tambo District Municipality
PSC	Public Service Commission
PFMA	Public Finance Management Act 1 of 1999
PTO	Permission to Occupy
SANRAL	South African National Roads Agency SOC Ltd
SDF	State Domestic Facilities
SEZ	Special Economic Zone
SG	Surveyor-General
SOC	State Owned Company
TBVC	Transkei, Bophuthatswana, Venda and Ciskei
WCIDZ	Wild Coast Industrial Development Zone
WCSEZ	Wild Coast Special Economic Zone

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CHAPTER ONE: INTRODUCTION

1.1. Introduction

The ownership of land in South Africa's rural areas remains complicated and defined by pluralist land tenure systems (Evers et al., 2005), despite the ushering of a new legislative regime. The above-mentioned systems consist of state tenure, private tenure and communal tenure. The inherited colonial and later Apartheid land policies and legislation continue to haunt access to and registration of land to the majority of black people residing in the rural reserves (Hitchcock-Lopez, 2019). Despite the dismantling of colonialism on 31 May 1910 and that of the Apartheid rule on 27 April 1994, little has been achieved in normalising the land tenure rights for rural communities (Boonzaier, 2006; McLachlan, 2019).

One of the measures that were introduced to grant limited rights in respect of land during the colonial era is quitrent tenure system. This refers to long-term land occupation rights that were granted to specific persons who were deemed loyal to the Crown (Williams-Wynn, 2016). Quitrent can be better understood as an old-order tenure right that was introduced by the Colonial powers to, amongst others, tie the indigenous people (Africans) to land (Williams-Wynn, 2016). Even though some of the quitrent rights have been commuted to freehold title within the present-day Eastern Cape Province, many others were left unattended (Williams-Wynn, 2015). While some quitrents lapsed due to forfeiture or cancellation, most of these quitrent titles in the former Transkeian and Ciskeian Territories are still "live". All quitrents must, therefore, be assumed to be live rights until an investigation reveals whether they have lapsed or not (Williams-Wynn, 2015).

This research focuses on the challenges of quitrents that are encountered when initiating land use, development and ownership. This research further examines the burdens of the quitrent rights system and their impact on land development. The research focuses on two municipalities in the Eastern Cape namely, the King Sabata Dalindyebo Local Municipality (KSDLM) and the Amahlathi Local Municipality. In each of these municipalities, the study focuses on a specific area affected by quitrent rights. In the case of KSDLM, the specific area is Mthatha. Figure 1 depicts an aerial photograph of the Mthatha Airport and Mthatha Dam which are affected by the quitrents in KSDLM.

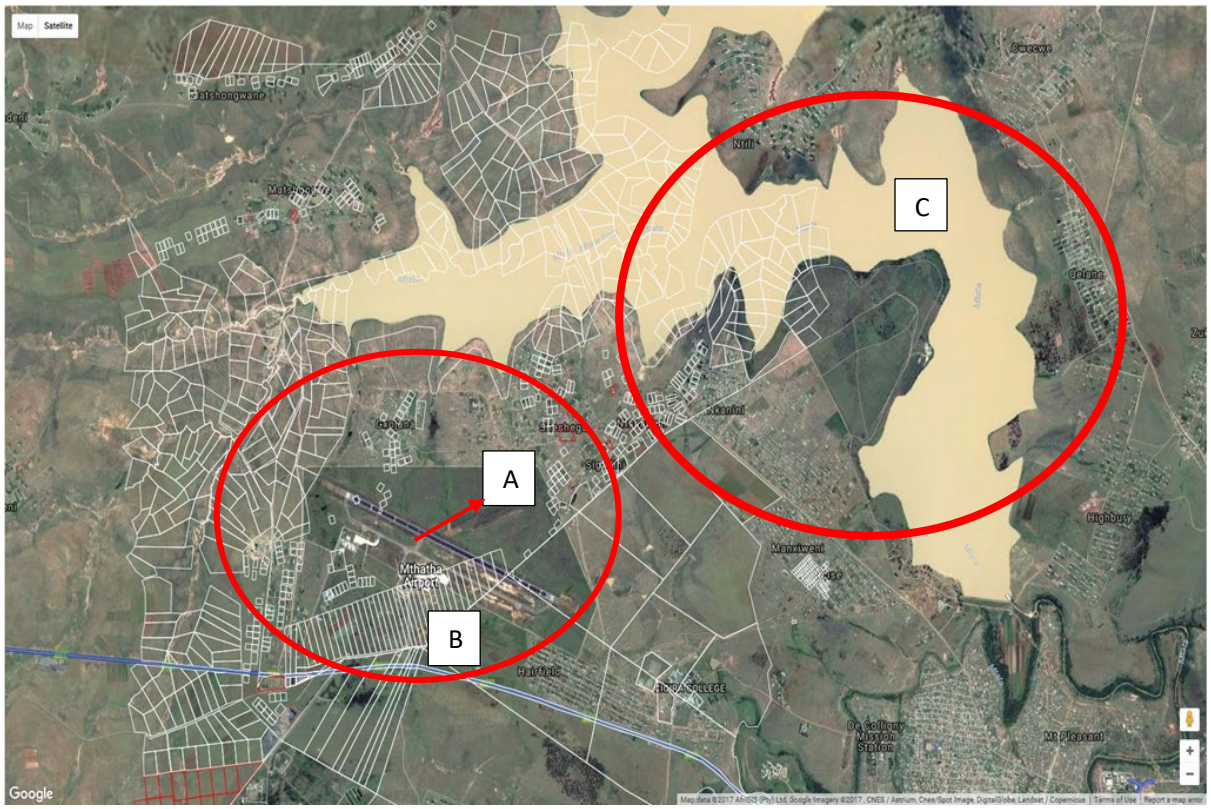

Figure 1: Location of the K D Matanzima (Mthatha) airport and Mthatha Dam (AfriGIS and Google Imagery, 2017)

The Mthatha region is still affected by a number of "live" quitrent rights over the surveyed land, although some of this land had already been developed with community, government and private facilities and infrastructure (Williams-Wynn, 2015). Figure 1 is an illustration of certain areas in the former Transkei, which are still affected by quitrent rights. It depicts the effective quitrents that are underlying the Mthatha Dam and Airport area, which continue to prove challenging when land developments have to take place. The area marked "A" relates to the Mthatha Airport (aviation zone which includes the runaway, airport buildings and communication infrastructure). The area marked as "B" relates to Mthatha Airport non-aviation zone, land restored to claimants in terms of the Restitution of Land Rights Act 22 of 1994, set aside for the new Wild Coast Special Economic Zone (WCSEZ). The area marked as "C" relates to the Mthatha Dam, the main water source for the city and surrounding villages.

Figure 2: Amahlathi Municipality in relation to other municipalities (Map created by the UCT GIS Lab using data from the Municipal Demarcation Board)

Figure 2 depicts the Amahlathi Municipality in relation to other municipalities within an encompassing Amathole District Municipality. In the Amahlathi Local Municipality, the focus is on the Mgwali area. A number of quitrent rights were issued in the form residential, sizeable arable lots and user rights to commonage portions. By the twentieth century, most quitrent owners had lost control of much of pockets of the commonage as newer residential areas rapidly expanded on them in the form of Permission to Occupy. This then created an overlap of rights, with quitrent underneath a permission to occupy compounding the land tenurial system in Mgwali.

As quitrents cannot be ignored, the State cannot register newly surveyed diagrams that are affected by underlying old-order rights. The latter means that a title deed cannot be issued in terms of the Deeds Registries Act 47 of 1937. Instead, the registration of the subject property is put on hold vide caveat endorsements against the diagrams. The negative impact for any new development (public and private) on land affected by underlying quitrents is great and is a real complication as no deed registration or notarial lease agreements can be issued. The development risks associated with no security of tenure over such areas are a reality for any investor to

contemplate. For prospective developers, no long-term leases can be signed without a title deed. There is currently a stalemate situation within the Department of Agriculture Land Reform and Rural Development (DALRRD) on how to deal with these unique old-order rights as they relate to the following categories of land uses, namely residential, arable and commonage. Although the matter is being debated by the Surveyor-General (SG) and the Commission on the Restitution of Land Rights (CRLR), there is unfortunately no clear tenure policy on how to deal with the land right matter. Intervention at political level is therefore required to solicit a workable solution, without compromising any possible land tenure right claims thereafter. Currently, only development applications sanctioned by the Minister of the Department of Agriculture, Land Reform and Rural Development in a communal area that overlaps any quitrent erf may be lodged for examination and approval by the Surveyor General in the Eastern Cape, but cannot be registered until such time as the portion required for public benefit has been either expropriated or otherwise lawfully acquired. Even the developments as sanctioned by the Minister their resultant diagrams can still not be registered, a land administration complication (Surveyor-General Circular 13 of 2016). Williams-Wynn (2021) defines land administration as a process of determining information about the relationship between people and land as well as rules and arrangements connected with owning specified interests in land. According to Hull, et al., (2020:2) “at the most basic level, land administration can be conceived as the operational component of land governance in pursuance of national land policy goals, plans and which involves processes of determining, recording and disseminating information about the relationship between people and land”.

The research explores possible workable solutions to the challenges of quitrents to enable the development, use and ownership of land. Apart from presenting the problem of the research, the research attempts to trace the origin of the colonial quitrent tenure system, and discusses the historical village land holding or ownership system.

1.2. Definition and Origin of the Quitrent Tenure System

For centuries, land occupation and ownership have been a contentious issue worldwide (Evers et al., 2005; Boonzaier, 2006). Frontier wars against colonists have been fought over land in almost all developing countries, including South Africa

(Wotshela, 2014). This resulted in the importance of land ownership in determining wealth amongst the people. Today, poverty and economic inequality are largely related to land ownership (Glavovic, 1991).

“Land tenure right means any leasehold, deed of grant, quitrent or any other right to the occupation of land created by or under any law and, in relation to tribal land, includes any right to the occupation of such land under the indigenous law or custom of the tribe in question” (Upgrading of Land Tenure Rights Act 112 of 1991 Upgrading of Land Tenure Rights Act 112 of 1991: 2). The quitrent right was one of the distinctive land tenure systems that was introduced by the English Imperial Government over her colonies and protectorates (Bond, 1912). Therefore, it is imperative to trace and understand the origin of quitrent tenure system, as one of the many systems that entrenched the inequality in land holding prior to the modern constitutional model of land freeholding in South Africa.

Studying the pre-colonial period of land use and occupation by the natives and settlers within the British colonies can only enhance this understanding. According to Bond (1912), the fall in the value of land because of the rise of trade and industry accelerated the conversion of varied feudal dues that were levied by the Crown in the medieval period into fixed quitrents by the beginning of the sixteenth century.

The lack of comprehensive work on the origin, nature and scope of the quitrent land tenure system makes it difficult to provide a standard and acceptable meaning to the concept. The following meanings allocated to the word and concept of quitrent are based on different historical contexts, and the discussion attempts to identify the common thread that can yield a working definition of the term for the purpose of this research.

The term quitrent is believed to have originated from the Latin word, Redditus Quieti during the medieval period (Wood, 1907; Mozley & Whiteley, 1908), defined simply as a rent that frees the tenant of a holding from other services such as labour, that was obligatory under feudal tenure (Wood, 1907). However, defining the word quitrent in an academic sense is rather challenging as the word has been used loosely rather than in a legal sense (Gelev, 2015).

According to the Halsbury’s Laws of England (1952 cited in Campbell 2009:32), “quitrent is referred to as a fixed, permanent rent that was paid annually to the Crown

either in cash or in kind, in lieu of other tenurial services. From this definition, three truths emerge on the nature and extent of the quitrent". Firstly, it was regarded as a service to the British government in return for access and use of land. In this way, quitrents represented the authority and power of the Crown over its subjects (Bond, 1912). The second fact is that quitrent was not only paid in cash. There were other ways in which the landholders could offer services to the Crown, such as labour military conscription as a service of the quitrent burden (Campbell, 2009). However, the most important fact of the quitrent is that it absolves the payer of such other duties that they would have otherwise had to offer to the government.

On the other hand, Bond (1912:497) posits that "quitrent became part of the general colonial land policy of the British Crown government, not only limited to certain continents". Campbell (2009:32) further emphasises this fact in observing that, "even where the Crown granted freehold estates in fee simple in colonial lands, the practice of retaining tenurial services in the form of quitrent was never abandoned".

1.3. Problem Statement

Quitrent rights still exist in parts of the Eastern Cape but little is known of their scope and impact on land use, development and ownership. Land encumbered with quitrent rights were surveyed between 1890 and 1923. The surveys are captured into the cadastral database at the Surveyor General office in East London. The bulk of the quitrents remain unregistered in title deeds at the Deeds Registry as they remain in the cadastral database to date. The same can be said about the general impact on land administration of already encumbered land by improvements over it, such as a school or a road, and on existing developments over land affected by quitrents. The absence of a clear legislative framework on how to deal with the existing quitrent land tenure system has created a bigger problem of unclear land tenure.

1.4. Research Question

The research question to be addressed may be stated as:

To what extent do quitrent rights impact on land use, development and ownership in the Eastern Cape province of South Africa?

This main question is supported by two sub-questions:

i. What are the possible solutions in dealing with the existence of quitrent rights?

ii. What is the role of government in resolving the land ownership dilemma presented by quitrents?

1.5. Research Objectives

The purpose of this research is to explore the extent of challenges posed by the quitrent land tenure system on land use, development and ownership.

The research objectives to be achieved are to:

i. Investigate the challenges and implications that the quitrent rights have on land use, development and ownership in the Eastern Cape.
ii. Identify and present possible workable solutions in resolving the challenges presented by the existence of quitrents.
iii. Determine the role that government can play in resolving the land ownership dilemma that the quitrents present.

1.6. Research Methodology

The above objectives are achieved by adopting a qualitative research approach using the following research method:

i. A literature review is conducted on the origins and historical background of the quitrent right system and its introduction and application in South Africa. It explores how the quitrents have since been incorporated into the current tenure system and its implications. The literature review lays a theoretical foundation for the study.
ii. A multi-case study approach is used for the collection of data. The first case is the King Sabata Dalindyebo Local Municipality, which includes the Mthatha area. In this area, the Mthatha airport, dam, national roads and schools have been constructed over quitrent rights. The second case is the Amahlathi Local Municipality, which includes Mgwali – a human settlement with a history of quitrents.
iii. Data collection is done by conducting one-on-one semi-structured interviews with the research participants to understand their opinions, perceptions, experiences and events relating to their encounters with quitrent rights.

iv. Data collected from the participants is analysed to identify common themes and trends. These are compared to highlight various implications and complications of the existing quitrent rights. A thematic analysis approach is used to respond to the objectives of the study.

v. Conclusions are drawn based on the analysis of the input from the participants and literature.

vi. Recommendations are made for further research.

1.7. Limitations

One of the limitations of the study is that many experienced people with knowledge of the quitrent right system have since retired and were not available to participate in the research. Identifying available research participants with the required knowledge and experience proved very challenging. The main research participants are government officials, based on the prevalence of the subject matter in their operations. The sample is very small due to the limited knowledge amongst current government officials.

The poor quality and limited availability of historic documents and cadastral diagrams depicting existing quitrent titles and extents have proven to be a challenge. The extent of the quitrents is still to be quantified by the DALRRD. Moreover, the lack of current information on the administration of quitrent, as a colonial-era tenure system, has proven to be a challenge.

1.8. Structure of the Dissertation

This dissertation consists of five chapters.

Chapter One provides an introductory overview of the research, context, aims and objectives. It also states the research question and briefly explains the methodology followed in the research.

Chapter Two focuses on the literature review in the form of a theoretical framework covering the origins of the quitrent system and its existence in the South African land tenure system.

Chapter Three provides an outline of the methodology employed in conducting the study. It also discusses the ethical considerations relevant to this study.

Chapter Four presents the findings of the research data and the analysis thereof. The results are presented and summarised in themes responding to the research questions.

Chapter Five provides concluding remarks and recommendations. It also highlights aspects that may form a basis for further study.

CHAPTER TWO: LITERATURE REVIEW

2.1. Introduction

Chapter one introduces the origin of the research problem in relation to other pertinent issues that are covered by the study, which is the quitrent land tenure rights and its challenges to land development in general. This chapter presents the colonial experiences of the quitrent right system, in both the international and the South African contexts. It further highlights the available readings and literature on the subject of the quitrent system, including various historic and recent legislation. The chapter concludes by looking at the implications of the quitrent right system in the current, modern land tenure legislation.

2.2. Understanding the Colonial Period of Quitrent Land Tenure System

The quitrent land title system can be best understood as one of the major land tenure systems that were introduced by the colonial powers over their protectorates, to provide them with sustainable service and financial support (Bond, 1912). The system was introduced by the British Empire around the eighteenth century over all the land that they had annexed. This section briefly considers both the international and African experiences with the quitrent right system, highlighting their challenges.

2.2.1. The Origin of the Quitrent Tenure System

Numerous historians and writers have traced the system of quitrent to the medieval period (Wood, 1907; Mozley & Whiteley, 1908; Bond, 1912; Campbell, 2009). Mozley and Whiteley (1908), posit that the payment of quitrent was not only a rent, but also served as a means to absolve the tenant of a holding from performing other services that were obligatory under the feudal tenure. According to Bond (1912:496), “as survival of feudalism, quitrents became one of the main distinctive features of English land tenure during the sixteenth and seventeenth centuries”. During the middle ages, the quitrent system was entrenched as a commutation of feudal dues such as the provision of free labour and supply of food to the Crown due to the scarcity of labour and the fall in the land value (Bond, 1912; Campbell, 2009).

In effect, quitrent tenure also had benefits to the holder in that it protected the occupier of the land from the burden of having others interfere with their distinct rights that

affected the land (e.g. hunting rights that would have hindered farming). Thus, it was a payment for distinct rights that were connected with the full enjoyment of the land, albeit with no full ownership of the land (title deed) (Hitchcock-Lopez, 2019).

The first incidents of applying the quitrent system outside England is believed to be the annexation of the American Colonies (the New World) in the sixteenth century (Bond, 1912). The application of quitrent in the American Colonies also served to emphasise the feudal notion of imposing a mother-country relationship with the Crown. It was a reminder to the annexed colonies of their fiefdom to the British Imperial government, and that the land belonged to the Crown (Bond, 1912).

Despite the silence in earlier proprietary charters on quitrents, the proprietary charters of the grants of Maryland, Maine, South and North Carolinas and Pennsylvania from 1632 onwards expressly emphasised the right of the crown to reserve a rent in the form of quitrent (Bond, 1912). Subsequently, the quit-rent became an annual fixed and heritable charge upon the land, and created a socage tenure (Bond, 1912). The Merriam-Webster (2023), defines a socage as a "tenure of land by agricultural service fixed in amount and kind or by payment of money rent only and not burdened with any military service".

As stated by Bond (1912:497) "the quitrent was a core part of the general colonial policy of England and extended beyond those colonies along the Atlantic seaboard into other continents that were conquered by the British Imperial government". Kozub (1983:100), remarked precisely on this view as follows:

> "The quit-rent system was an inextricable part of the feudal manorial land system transported from England to American soil. All lands discovered by English subjects were considered feudal possessions of the English Crown. The privilege of holding various territories in liege to the Crown was conferred upon a lord as a Royal prerogative. Grants of lands were made by the liege lords to the settlers…"

According to McLachlan (2018, 2019), the implementation of quitrent is traceable in, amongst the others, the Colonial South Wales (Campbell, 2009), Prince Edward Island (Bumsted, 2000), Rhodesia (Rhodesian Study Circle), North Borneo (Trove, 1946), Maryland, South Wales, Australia, and Cape of Good Hope Colony.

2.2.2. Introduction of the Quitrent System in South Africa: The Case of the Cape Colony

Following the imposition of the quitrent tenure system by the Imperial government on other colonies and protectorates in the American states and Europe, the practice was introduced to South Africa in the eighteenth century (Wotshela, 2014; McLachlan, 2018; Hitchcock-Lopez, 2019).

Despite having challenges in the New World, the British High Commissioner proceeded with the quitrent tenure in other parts of the world, with the Cape Colony being the first to experience such in South Africa (Bond, 1912). It is argued that the pastoral indigenous communities were the first to be dispossessed of their land by settlers in South Africa (McLachlan, 2019). This was perpetrated by the arrival of the non-indigenous settlers in 1652 at the Cape of Good Hope, and was further entrenched in law by the colonial government later (McLachlan, 2019).

From its inception, the quitrent tenure system was a way of encouraging the farmers to settle in the Cape in order to produce the much-needed crops for the non-indigenous agriculturalist (McLachlan, 2018). The quitrent rights holders were used to work on the farms for crop production, thus the farmers were guaranteed free labour as an incentive. Guelke cited by Elphick and Giliomee (1988), supported the above view in that Van Riebeeck, the first Commander of the Dutch East India Company's (the Company) settlement at the Cape, miscalculated the fertility of the land. Elphick and Giliomee (1988) argued that by the end of ten years of occupation, only 15 farms were really producing some crops, which were not able to support thousands of people in the Cape alone. According to McLachlan (2019), this made the Company rely more on livestock farming in order to meet the demands of the colonial government (Netherlands).

However, as McLachlan (2018:11) indicates, "the herds of livestock for the non-indigenous farmers and the Company increased in the coming years, resulting in the shortage of land for grazing". This prompted the colonial government to provide more land for grazing, through a system of controlled occupation (McLachlan, 2018). Although the colonial government in Netherland exercised control over the land use in terms of loan places agreement, ensuring that no complete ownership is transferred

to the occupiers, it was only after the end of the Company's rule in 1795 that the quitrent titles were introduced.

According to McLachlan (2019:115), "Governor Cradock introduced the quitrent tenure system in the Cape Colony through the enactment of the Conversion of Loan Places to Perpetual Quitrent Proclamation on 6 August 1813 (Perpetual Quitrent Proclamation)". The effects and aftermath of the introduction of quitrent in the entire Cape, including the Eastern Cape are fully considered in section 2.3 below.

2.3. The Tribal Authorities Quitrent context

Prior to the democratic dispensation, South Africa was characterised by dual, segregated administrative structures of governments, with the other part being recognised as South Africa, and the other being homelands reserves of the country. In 1951, the then South African government passed into law the Bantu Authorities Act 68 of 1951 which gave rise to the re-establishment of tribal authorities for Black Africans. The Promotion of Bantu Self-Government Act 46 of 1959 created 10 African homelands or Bantustans. The latter resulted in the following homelands namely, Bophuthatswana, Ciskei, Gazankulu KaNgwane, KwaNdebele, KwaZulu, Lebowa, Transkei, QwaQwa and Venda. Four of the Bantustans were granted independence as republics, and the remaining had varying degrees of self- governance (Lipton, 1972). **Figure 3** shows the location and borders of the former homelands.

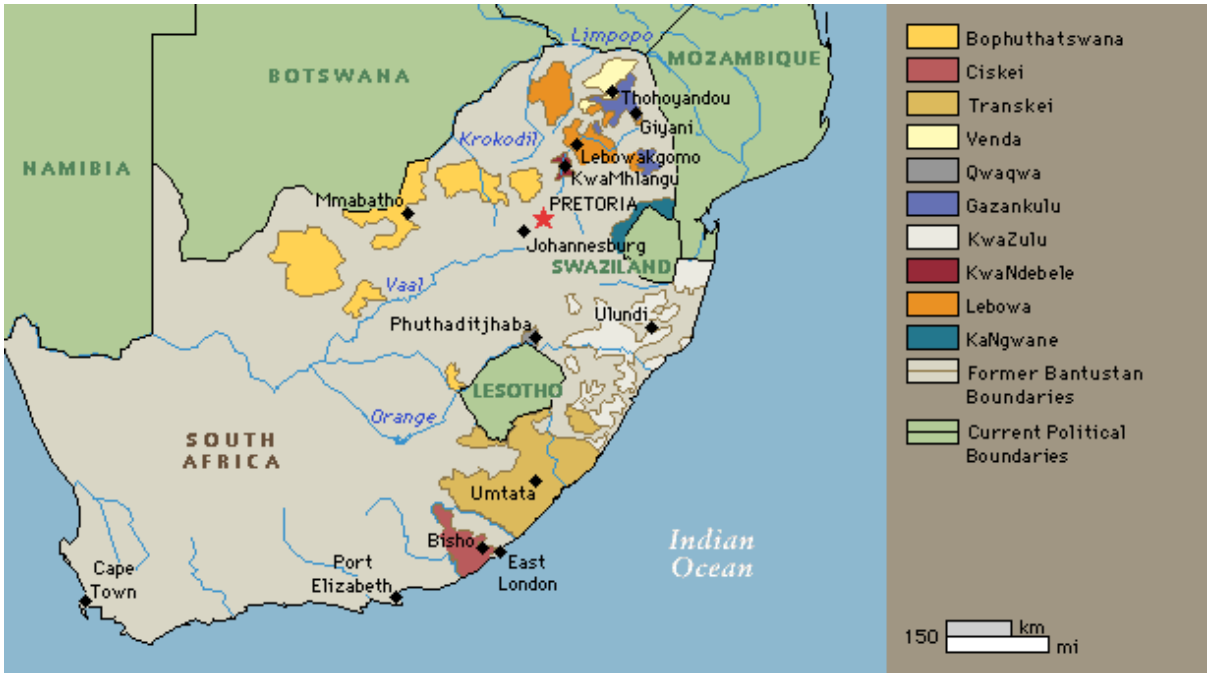

Figure 3: Location of former homelands, 1970 (Luwaya, et al., 2022:1).

The Bantu Homelands Citizenship Act 26 of 1970 made every Black South African, irrespective of actual residence, a citizen of one of the Bantustans, thereby excluding Blacks from the South African body politic. With the new democratic order, the homeland system was abolished and the country was unified by the creation of nine provincial governments. The Eastern Cape Province was born out of the amalgamation of a section of the former Cape Province, and the Ciskei and Transkei quasi-independent states, which are situated along the south-eastern area of South Africa, bordering the Indian Ocean.

According to the Government Communication and Information System (2013:3), “the Eastern Cape was home to about 6 562 053 people, which made it the third highly populated province after KwaZulu-Natal”.
The history of the present-day Eastern Cape was one of fierce conflict between European colonists and African peoples for almost 100 years from the late eighteenth century, punctuated by nine frontier wars. From the 1830s much of the land west of the Kei River was surveyed as farms, and sold off in large freehold or quitrent units. By the time hostilities abated in the late nineteenth century, a definite colonial order had taken shape. This history and the complex social dynamics arising from fluctuating land rights in this region are crucial for understanding the many challenges facing post-apartheid land reform initiatives, as is an appreciation of the enduring impact of the Native Trust and Land Act 18 of 1936 in this region (Wotshela, 2014).

Overall, the number of quitrent allocations arising from The Glen Grey Act 25 of 1894 was significant. In addition to the Glen Grey district, where 8 000 lots were surveyed and title deeds issued, a remarkable 26 594 quitrent titles were issued in all the other Transkeian districts, apart from Ngcobo. In Mthatha alone, 8 524 quitrent residential sites had been surveyed by 1905, although less than half that number had been titled and registered to owners by 1920 (Wotshela, 2014).

English administration began to tighten up land tenure from the early nineteenth century, increasingly circumscribed by more precisely regulated quitrent tenure adapted from the local Dutch version already in place at the Cape, but which did not require land survey. It was only from the mid-nineteenth century, when more precise and sophisticated instruments of land surveying entered the Cape Colony, that the English concept of freehold tenure was gradually introduced as the preferred tenure

for colonial citizens, along with the alternative of leasing. The introduction of clearly defined, surveyed, private property parcels found their spatial counterpart in the notion of African reservations. In the patchwork mix of the old Cape Colony, incorporated Africans were administered in blocks of land referred to as 'locations', which could be internally surveyed, or not (Kingwill, 2013).

Grey's taste for surveys and title for blacks was part of his overall conception of restructuring land relations and land distribution. Title was, in his terms, the surest means to appropriate the authority from the chiefs and the corollary, deplete the chiefs' power over individuals. The amaMfengu were the first targets of his plan to disempower chiefs "and the best way to do this was to issue individual titles to the land" (Moyer, 1976:396), which at the same time was thought to increase the willingness of blacks to defend colonial interests. "Give a man a real and unfettered interest in a country and generally speaking, they will help to defend it" was a frequently-heard justification among the colonial administrators for individual title (Moyer, 1976:398).

2.3.1. Quitrent Tenure and Traditional Communal Tenure in the Transkeian and Ciskeian Territories

It is imperative to gain some understanding of the evolution of land tenure in the Eastern Cape, particularly the former Transkei and Ciskei homelands prior to analysing the effects of the quitrent right system. The history of present-day Eastern Cape was one of fierce conflict between European colonists and African peoples for almost one hundred years from the late eighteenth century (Peires, 1987). In 1850, the Cape Colonial government established planned village settlements in which Africans were issued with quitrent allotments. Quitrent villages were first established on mission lands in the new districts of Victoria East, Middledrift and the Amathole Basin and were extended in other areas (Wotshela, 2014). The Natives Location Act 40 of 1879 introduced quitrent tenure to the mission settlements of Mgwali and Wartburg, near Stutterheim. The Act, ratified land surveys and the demarcation and separation of inalienable residential plots from arable fields, open pastures and public lands. By 1890, a total of approximately 12,479 residential and 13,641 arable lots had been surveyed for each quitrent landowning families in the Ciskei districts (Wotshela, 2014).

The Quitrent tenure system was later extended to the east of the Kei River, through the application of the Glen Grey Act 25 of 1894. The application of the latter legislation was initially designed for the Glen Grey area, east of Queenstown. Between 1895 and 1905, the application of the Glen Grey Act was extended to about half of the Ciskei and seven magisterial districts in the Transkeian Territories (Butterworth, Ngcobo, Mthatha, Tsomo, Ngqamakwe, Idutywa and Xhalanga). A remarkable 26,594 quitrent titles were issued in all other Transkeian districts, apart from Ngcobo. Mthatha alone 8,524 quitrent residential sites had been surveyed by 1905. By 1920, less than half of that number had been titled and registered (Wotshela, 2014).

Broadly defined, land tenure is concerned with the relationship between man and the land. Glavovic (1991:282) and Evers, et al. (2005:3) define land tenure as “the rights of secure, long-term access to land and other resources, their benefits, and the responsibilities related to these rights”. Land tenure security refers to the legal and practical ability to defend one’s ownership, occupation, use of and access to land from interference by others. Tenure refers to the status of the individuals or groups in relation to the property, that status can be anything from freehold, leasehold, quitrent (Boudreaux & Sacks, 2009). A critical component of tenure security is the legal right not to be unlawfully or arbitrarily evicted from one’s home. Without secure tenure, people are unable to exercise their rights over land and face the risk of losing these rights altogether (Clark & Luwaya, 2017). From this definition, it can be deduced that the term is very broad and general in its application, thus its application should be carefully considered. For example, the rights mentioned in the definition relates to terms such as ownership, proprietorship and entitlement, which accommodates a temporary dimension of tenure such as quitrent title and leases (Evers et al., 2005).

Furthermore, land tenure systems reflect the need of the community at that particular point in time (Glavovic, 1991). During the inception of the Cape Colony, indigenous Africans and San people were largely pastoral nomads, only the Khoikhoi kept some sheep and goats, and the countryside was sparsely inhabited, there was no shortage of land (Glavovic, 1991; Wotshela, 2014; McLachlan, 2018). As such, these early indigenous groups were freely moving around in search of fertile areas for their livestock, and as seasons change for the Sans who lived by hunting (Glavovic, 1991). The land tenure of these early occupiers of land was governed by their traditional laws, and were largely communal in nature (Glavovic, 1991). The tribal chief had absolute

power to dictate when and where to move, sub-delegating the allocation of sites to his headmen in the process of settlement (Glavovic, 1991). This then poses a challenge to claim land rights for the pastoral communities and the Khoisan communities (a collective term for the Khoikhoi and the San), and the early Xhosa speaking Africans, which were the first to be disposed of their right to the grazing and hunting land (Glavovic, 1991; Wotshela, 2014; McLachlan, 2019).

It is also important to provide a common understanding of the traditional communal tenure in the context of this study. According to Letsoalo (1987, cited by Du Plessis & Pienaar, 2010), there is a vast misunderstanding of the concept of 'communal land tenure', which had rendered various conflicting definitions to the term. This dissertation refers to earlier African land holding as traditional communal tenure for the following reason. As stated in the above paragraph, the allocation of land followed a traditional fashion and its well-established customs and laws of the tribe concerned (McLachlan, 2019). According to McLachlan (2019:107), some of the conditions that characterised the allocation of communal land were as follows:

i. "The size of the space was determined by the amount of grazing needed by the combined livestock belonging to the members of a community.
ii. The location of the physical space was determined by the location of the water resources where a specific community was acknowledged as being the primary user of such resources.
iii. The boundaries of the land used as grazing by the combined livestock of a community were not fixed".

It is clear from the previously mentioned characteristics that the communal spaces described therein were mainly used as grazing spaces for the combined livestock of a particular tribe or community. This view is supported by Glavovic (1991:283) in that, "in the traditional land holding, tenure was communal in as far as grazing land was concerned, but individual in respect of arable and residential land". This then enables the common understanding of the traditional communal tenure as the traditional allotment of land to an individual family for residential and agricultural use, with a commonage reserved for combined grazing to the community.

2.3.2. The Glen Grey Act and its Effects on the Native System of Land Tenure in the Transkeian Districts

"The Glen Grey Act 25 of 1894 was introduced on 12 July 1894 by Cecil John Rhodes. The Act was officially approved by the then Cape parliament on 16 August 1894" (Thompson, 1991:2). Parliamentarians, business people, authors, historians and researchers have rendered various commentary and publications on the effects of the Glen Grey Act. As is the case with analytical work, these works present opposing views on the Act.

Following the gold and diamond rushes of the late nineteenth century, there emerged legislation allocating or permitting the acquisition of land along race lines. Although the country was not yet under a union, the Glen Grey Act 25 of 1894 was a significant piece of legislation. Cecil John Rhodes (then prime minister of the Cape Colony) saw it as 'a native bill for Africa' (Woodhouse, 2023). Rhodes wanted to draw out labour for mines that he owned near to the small district north of Queenstown (Glen Grey) and stated that some 'gentle stimulus' was needed for natives to 'come forth and find out the dignity of labour' (Rhodes, 1894). The Act introduced rules defining tenure rights in land (converted to perpetual quitrent); limited the size of holdings (individual tenure on four morgen plots); specified succession and introduced taxation (in the form of a labour tax on non-title holders to prevent squatting), while limiting the franchise.

Rhodes' (1894) speech to the Cape parliament emphasised the segregationist function of the reserves:

> "My idea is that the natives should be kept in these native reserves and not be mixed with the white men at all. Are you going to sanction the idea, with all the difficulties of the poor whites before us that these people should be mixed up with white men, and white children grow up in the middle of native locations"?

Glen Grey was "designed to set a pattern of land-holding throughout the Cape African reserves" (Davenport, 1987:181)**.** The Act marked "a key moment in the disenfranchising of Africans and restricting civil and land rights" (Phuhlisani, 2017:6).

It has been argued that the promulgation of the Glen Grey Act 25 of 1894, was an attempt to tie African people to the land in the Glen Grey District through the issuance of quitrent title. The titleholder would have to comply with the authority of the colonial

administration and contribute to its coffers through the payment of prescribed taxes, or forfeit and face eviction (Williams-Wynn, 2016). Accordingly, the first quitrent was issued in terms of the Glen Grey Act 25 of 1894.

The Glen Grey Act was established as a system of individual (rather than communal) land tenure, later provided for individual tenure in the homeland of Transkei. Under the Act, nuclear families were provided with indivisible individual plots, heritable only by the oldest male son (Wotshela, 2014). Over time, complex local politics and social dynamics evolved around this landholding system.

The concept of quitrent was first introduced in Mthatha and other towns in the Transkeian Territory, such as Butterworth (the oldest town in the Region), Lady Frere and Engcobo. The individual land plots were surveyed into so-called garden for cultivation purposes and building lots for erection of a dwellings or trading station, (Viedge, 2001). The concept of quitrent and its implication for tenure recognition and development is covered elsewhere in this work.

The Glen Grey Act provided an opportunity to land tenure for Africans whom were ordinarilly excluded in any form of land ownership at the time (O'Malley, 2005). Lots within the allotment areas were issued by perpetual quitrent title, a form of ownership where a loyal subject was granted land on condition of payment of an annual tax in lieu of service, in order to fund the administration. The holder's name was registered in the office of the secretary to the Governor. "The Act laid down the rule of one- man-one-plot in the reserves" (Wolpe, 1972:437) and the Act, "further excluded property ownership altogether as a voting qualification for blacks who held under Glen Grey title, holding a quitrent title did not bestow any right to vote African quitrent title holders" (Davenport, 1987:108).

The land was allocated to blacks only at the discretion of the governor. The quitrent rights allocated were not permissible for mortgage. This then limited the owners in adding value to their properties as they could not approach banks and borrow money against the subject properties for any investment purposes. Most importantly, the allotments were surveyed hence they are in this day registered at the Deeds Office. The quitrent title holders had to pay rent, if they default for a period of a year the lot get re-allocated. Some of the locations especially in the former Transkeian and Ciskeian territories were established as a result of the allocations of quitrent titles to

blacks. Most importantly, the Act started in Glen Grey and could be extended to other districts.

2.4. The Existence and Impact of Quitrent Titles in the Case Study Locations

King Sabata Dalindyebo Local Municipality (KSDLM) forms part of the five local municipalities (Mhlontlo, Nyandeni, Port ST Johns, Ingquza Hill) within the OR Tambo District Municipality. It is considered to be the largest, in terms of surface area of the five local municipalities within the district. OR Tambo District Municipality is strategically located along major road networks within the Eastern Cape Province, including the N2 national road and R61 provincial road. These are critical routes for trade and logistics, thus making towns and local municipalities, along these routes of economic importance. KSDLM, is home to two major towns, which include Mthatha and Mqanduli in the inland area. Mthatha is the regional economic hub as well as the administrative centre in the region (KSDLM Spatial Development Frame Work, 2020).

The town of Mthatha is strategically located at the intersection of the N2 national route, which links it to major cities such as Cape Town, Durban and East London; and the R61 regional route, linking it to Engcobo and Port St John's at the coast (Dzinotyiweyi, 2009). This makes Mthatha very attractive for business operators and transportation of goods and people from the Eastern Cape Province to the rest of the Country. With the new spatial demarcation that came with the democratic dispensation, Mthatha became part of the Eastern Cape Province of South Africa (Dzinotyiweyi, 2009). Its local municipality, the King Sabata Dalindyebo Local Municipality (KSDLM) (which is also an amalgamation with Mqanduli) is categorized as a B municipality, and its area of jurisdiction covers an extent of 3,027.37 km² out of the district's 12,095.51 km² in terms of area, which is about 25% of the total coverage (KSDLM Spatial Development Frame Work, 2020). A category B municipality is a municipality that falls outside the eight metropolitan areas. It is referred to as a Local Municipality and it falls within a District Municipality. It also shares powers and functions with District Municipalities (Constitution of the Republic of South Africa, 1996).

According to Williams-Wynn (2016:7), "Umtata (now Mthatha) was the first town proclaimed in the Transkeian Territories by Proclamation 192 of 1882 (Transkei Proclamations 1907)". The Proclamation defines the extent of the town by defining the outer boundary of the commonage. The streets and erven of the town were surveyed

and granted to the occupants. The survey of the commonage, being the full extent of the proclamation, only happened in 1920 (Williams-Wynn, 2016).

However, Dzinotyiweyi (2009) posits that the town of Mthatha was actually established in 1879 (which is prior to the above-mentioned proclamation), on the banks of the Mthatha River and right at the intersection of the N2 national road and the R61 provincial road. The town came about as a form of an informal settlement and service centre in the British colonial era, initially established as a military base for colonial forces (Dzinotyiweyi 2009). This view is also supported by Williams-Wynn (2016:7) in that “an informal town would form around the Magistrate’s court”.

Furthermore, the town is the administrative centre of the OR Tambo District Municipality (ORTDM). However, in as much as the town falls among the smallest district municipalities in the Eastern Cape Province, its parent district municipality, the OR Tambo District Municipality has the second largest population after the Amathole District Municipality. The district had a population of 1,514,306 in 2019 and is the second most populous, after the Amathole District Municipality, accounting for 26.20% of the Eastern Cape Provincial population (COGTA, 2020) Mthatha is arguably the most developed, with perhaps the best infrastructure as compared to other municipal areas (King Sabata Dalindyebo Local Municipality, 2020).

Even though the Mthatha Central Business District (CBD) and surrounding areas are fully developed with infrastructure and several buildings, the city is heavily underlined by live quitrent titles. It is estimated that there are currently over 450 live quitrent titles encumbering the Mthatha Dam and the adjacent Mthatha Airport. This chapter is focusing on the impact and challenges of the said quitrent rights in the urban renewal and further development of land. The quitrents that are underlying the Mthatha dam and Airport area, have and continue to prove challenging when developments have to take place. The second case location area is that of Mgwali in the Amahlathi Municipality, Eastern Cape where quitrent rights were never abolished, as detailed in a Border Rural Committee report (1998 cited by Adams et al., 1999). Mgwali Mission lies some 25 kilometres from Stutterheim within the Amahlathi Municipality, Eastern Cape.

The Amahlathi Local Municipality is a Category B municipality situated in the Amathole District of the Eastern Cape Province. It is bordered by the Chris Hani District to the

north, Buffalo City Metro to the south, Mnquma and Great Kei to the east, and Raymond Mhlaba to the west. It is an administrative area, and one of six municipalities in the district. Amahlathi is an isiXhosa name that means ‘a place where many trees are grouped together, a forest’. Forests are a key feature of the area (Amahlathi Local Municipality, 2020).

The Mgwali mission station was established in 1857 by the Church of Scotland. It was then incorporated into the Cape Colony as part of Kafraria in 1873 and 152 residents were granted quitrent titles. At the turn of the 20th century, the population increased due to the eviction of farm workers from surrounding white-owned farms. Quit-renters commonly accepted the evictees as their tenants. Mgwali was later declared a betterment area in 1949. Arable and grazing land were separated and fenced off. People residing close to arable land, most of whom were evictees from white farms were allocated residential sites through Permission to occupy permits on what was commonage, fundamentally undermining Quitrenters’ rights to the commonage (Adams et al., 1999).

Mgwali was declared a ‘black spot’ (an area where black people lived in isolated pockets of land outside the borders of former homelands) in the 1960s and the community was faced with relocation to Frankfort in the former Ciskei (Lelyveld, 1983). With Quitrenters at the forefront of the struggle against relocation tenants and Permission to Occupy holders formed a united front against forced removal. Some of the lots were then re-allocated which had been left by the Quit-renters who moved to Frankfort. In the wake of the collapse of a successful community alliance between these various groups to resist forcible removals, the area is now characterised by simmering discontent. Economic and social progress in the area awaits the resolution of a number of problems:

i. The Mgwali village, and other villages for example Mtshobela, Nduka on the commonage/allotment area (referred to as Umgwali Reserve 728) encroached on the some of the 94 quitrents that were surveyed in 1880. The villagers were granted Permission to Occupy (PTO) resulting in the establishment of villages that were not formally established and developed sporadically around the mission station that was established in 1857. In order to accommodate the growth of families including returning migrant

workers, new sites had to be allocated within the Locations. Therefore, Proclamation 143 of 1919**,** introduced the land register kept by the Magistrate, in which the Magistrate would record all permissions to occupy" (PTO) granted by him for any native person to remain in occupation of such homestead and arable land as are in his lawful but unregistered possession. Most PTO were not surveyed in the same manner as quitrents, but the Magistrate often had sketch plans attached to his registers indicating some form of relative position (Wotshela, 2014). The PTO were issued over land accorded with a quitrent title resulting into overlapping rights. The first set of PTO in Mgwali were only introduced in 1962, through the application of betterment in the area. This has caused contestation and remains unresolved. Land development is delayed and affected as long as the ownership dilemma remains.

ii. The Mgwali allotment area (commonage) of approximately 2 000 ha remains unsurveyed state land, although it has a reserved number from the Surveyor-General's Office as Umgwali Reserve 728 (Wotshela, 2014). A total of 94 garden and building lots were surveyed by the colonial government in 1880 vide S.G.-diagram 2438/1880 and allocated to black quitrent holders. The occupancy duration of these quitrent lots are unknown. Tenure upgrading of these quitrents never took place, and the people were removed during the apartheid years. It was only in 1996 that three new townships were established adjacent to the old quitrent lots and tenure upgrading were restricted to these townships (general plans 2600/1996, 2629/1996 and 2632/1996).

The village of Mgwali sporadically developed on the commonage along the main road to Tsomo. The occupants created their own yards and over time encroached unitedly onto the quitrent lots that were not occupied and identifiable on the ground. Permission to Occupy Certificates were also issued by the Department of Agriculture for areas on the allotment area, again encroaching on the original quitrent lots (Adams et al., 1999). State domestic facilities for example schools and clinics were also built over the quitrent lots. No proper development can take place on the commonage if the land is not surveyed and duly registered. The land remains unregistered

(unalienated) state land under the jurisdiction of the Department of Public Works and Infrastructure in terms of the provisions of jurisdiction as per Proclamation 67 of 1995.The unresolved tenure issues have resulted into a breakdown in land administration and uncertainty as to the legal status of land rights claimed by the various stakeholders.

The impact of forcible resettlement has gone beyond the loss of assets. It has had a negative impact on social structures within the affected communities and has resulted in destructive power struggles and a mounting spiral of land-related disputes and killings (Adams et al., 1999).

The lack of legal clarity over land rights has a potential to delay land development and investment (Coleman, 2018). The land tenure system in South Africa is recorded in two separate systems. A formal system that follows the surveying of land, deeds registration and transfer of land. The system is accurate, fast and expensive and more reliability is placed on the system. The other is a less formal system of rights on communal land held under (Coleman, 2018):

i. Customary tenure with no formal records;
ii. Permission to Occupy certificates mapped and recorded in land registers by magistrates;
iii. Quitrent title, which is registered but limited; and
iv. Illegal sales by traditional leaders of communal land pieces of land ownership knowledge still missing.

The main thread observed from the reading of the South African land tenure framework with specific reference to the Upgrading of Land Tenure Rights Act 112 of 1991 as amended to Upgrading of Land Tenure Rights Amendment Act 6 of 2021 is the conspicuous absence of quitrent treatment. From the Upgrading of Land Tenure Rights Amendment Act 6 of 2021 one can conclude that there is currently no mechanism whereby quitrents in the Transkeian Territories can be upgraded.

It is clear that the South African authorities have not considered the existence of quitrent rights in some parts of South Africa, when addressing the effects of colonial practices and apartheid on land tenure. Act 108 of 1996, Section 25 (1) provides that no law may permit arbitrary deprivation of property. Further, Section 25 (6) provides that a person or community whose land tenure is legally insecure as a result of racially

discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. Notwithstanding these provisions of the Constitution as well as the various government efforts since 1994 to redress access to land and align contested property regimes, government has failed to an extent of enacting a piece of legislation to treat the problem of quitrent and it remains a problem to date.

The implication for upgrading the underlying quitrents will result into an ownership dilemma due to the overlapping rights over the same land. Properties affected by quitrents cannot be disposed of, even for land development purposes due to the complexity around ownership. This aspect is explored in detail in the following section.

2.5. The Challenges of Live Quitrent Rights On Land Development

The limitations imposed by the quitrent tenure system on land development and economic development have not been fully examined. This renders the land reform programme ineffective to meet the social, legal and economic expectations of both the government and beneficiaries (Mostert, 2002).

Key spatial development issues highlighted in the KSDLM Spatial Development Framework 2020, indicates a high demand and increase in development over the last five (5) years. The high demand and increase relates to all sectors including shopping malls and mixed use developments. Also, the issue of a shortfall of land, especially the serviced land for a range of developments is highlighted. The majority of land is communal and unregistered state land. Another important aspect is the issue of land reform as it pertains to the reform of land tenure and the regularization of land rights in the municipality. The quitrent land right system falls within the ambit of land tenure rights requiring regularisation. This impacts on the abilities of land owners to exercise authority over land holdings and land use regulators to engage in a more structured manner with land owners.

2.5.1. Subdivision and Registration of Land

In terms of Section 47 (a) of the Deeds Registries Act 47 of 1937, read together with the definition of the said Act, immovable property can only be registered against an approved Surveyor-General Diagram, as per Section 14 of the Land Survey Act 8 of 1997. The Office of the Surveyor-General (East London) issued a Circular providing

guidance on how to process survey applications on land with overlapping quitrent titles and examination thereof in the Eastern Cape,(Surveyor-General Circular 13, of 2016). Although a diagram affected by underlying quitrent lots may be approved in terms of this Circular, registration is not permissible. All these diagrams with overlapping land rights are encumbered by a caveat to prevent registration in the Deeds Office. Registration will only be permissible on condition proving compensation was paid to the quitrent holder or beneficiary.

As an example, all quitrent ‘’lots” surveyed between 1894 and 1923 in the former Transkei have corresponding diagrams or general plans approved by the Surveyor-General and are archived in the Surveyor-General’s office in East London. The records of Quitrent title holders are filed in the office of the Registrar of Deeds: Mthatha. Although these quitrent lots have been re-numbered into erven, there appears to be no mechanism to upgrade them (tenure upgrade to ownership). The Upgrading of Land Tenure Rights Act 112 of 1991, cannot be applied to quitrent erven in the former Transkei, unless the erven were brought under the prescripts of Proclamation R188 of 1969. Only those quitrent erven that were created in terms of the Glen Grey Act 25 of 1894 were brought under Proclamation R188 of 1969. Therefore, registered quitrent erven in the seven Districts of Gcuwa (Butterworth), Nqamakwe, Tsomo, Idutywa, Cala, Engcobo and Mthatha, fall outside the application of the Upgrading of Land Tenure Rights Act 112 of 1991 (Surveyor-General Circular 13, of 2016).

The Circular acknowledges that the quitrent erven cannot be ignored as they have active registered title deeds records at the deeds office. Most if not all of the quitrent title holders passed away many years ago (Surveyor-General Circular 13 of 2016). Although the quitrent title is not freehold title, counsel from the Chief Registrar of Deeds and several Registrars of Deeds have confirmed at a joint meeting with the Surveyor-General: Eastern Cape that quitrent title is very similar to and therefore must be treated as if it were freehold (Surveyor-General Circular 13 of 2016). Further, what is highlighted in the circular is that quitrent erven are not State land unless the State has procedurally resumed title to it.

There are many state assets namely state domestic facilities, including national roads subdivisions being undertaken by SANRAL, and other land development that conflict with the boundaries of quitrent erven. Historical actions have resulted in there being

no clarity on what must be surveyed and what diagrams are necessary to enable organs of state to follow legal processes to register diagrams of state assets in the Deeds Registry, where the land parcels delineated on such diagrams overlap with quitrent erven (Surveyor-General Circular 13 of 2016).

The Circular has provided some solution to the above issue with conditions. The solution provided by the circular favours government-orientated developments. Any diagram for the purpose of registering a state asset, including a national road or development sanctioned by the Minister of Rural Development and Land Reform in an Administrative communal area of the former Transkei, that overlaps any quitrent erf can be lodged for examination and approval at the Surveyor-General office, subject to the following condition that, the Land Surveyor framing a diagram that affects a quitrent erf will treat the quitrent mutatis mutandis like a freehold erf (Surveyor-General Circular 13 of 2016). While the proclamations under which the original quitrent erven were registered stipulate that the quitrent holder may not subdivide his erf, it proclaims that the Governor had the right to resume the whole or any portion of the land granted, on payment of compensation. Therefore, the state can, by following either a normal acquisition by means of agreement or statutory expropriation process, acquire the whole or a portion of a quitrent erf, if it is required for public benefit. The SG's office is very aware that many diagrams of state assets have historically been approved that overlap quitrent erven. "Whenever an official in my office discovers (or is made aware of) such overlap, the SG's office will lodge a caveat with the Registrar of Deeds stating that the diagram of the state asset cannot be registered until such time as the portion of the whole of the quitrent erf has been either expropriated or otherwise lawfully acquired" (Surveyor-General Circular 13 of 2016: s3).

According to the Surveyor-General Circular 13 of 2016 no diagram of subdivision of a quitrent erf will be accepted for examination by his office unless the prescribed records of survey submitted are accompanied by:

i. A copy of every applicable statutory consent (required in accordance with Section 6(1) (b) of the Land Survey Act 8 of 1997), and
ii. Confirmation from the authority that instructed the Land Surveyor to carry out the survey that it acknowledges that the diagram, although approved, cannot be registered until the statutory expropriation process has been completed in accordance with the requirements of Section 7(4) of the Expropriation Act 63

of 1975, or the land represented on such diagram has been otherwise lawfully acquired.

Simultaneously with the approval of the diagram, the Surveyor-General will lodge a caveat with the Register of deed notifying him that the subdivision of the quitrent erf cannot be registered until such time as the portion required for public benefit has been either expropriated or otherwise lawfully acquired.

2.5.2. General Land Administration

The unregisterability of surveyor diagrams affected by underlying quitrent titles as discussed above have various composite limitations on the general principles of land administration.

The existence of quitrent rights has a huge impact on the following issues:

Land administration

Properties with underlying quitrent rights cannot be registered in the Deeds Office. Title Deeds cannot be issued in respect of Government land affected by a quitrent right. This has an impact on the completeness of the immovable asset registers of both National and Provincial Governments and the accounting and reporting of assets in terms of National Treasury prescripts are affected negatively. Section 42 of the Public Finance Management Act 1 of 1999 states that an Accounting Officer of an institution must take full responsibility and ensure that proper control systems are in place for the managing, including the safeguarding and maintenance of the assets, and for the management of liabilities, of the department, trading entity or constitutional institution as well as drawing up an inventory of such assets.

Long term lease agreements

Section 1(2) of the Formalities in Respect of Leases of Land Act 18 of 1969 provides that no lease of land which is entered into for a period of not less than ten years (notarial lease agreement) can be implemented outside the framework of a Title Deed. The agreement has to be registered against a title deed of the leased land. In terms of Section 102 of the Deeds Registries Act 47 of 1937, a registered long-term lease agreement constitutes immovable property which is

capable of being mortgaged as security for a loan or other debt. The impacts on investment and economic development are huge as the economic benefit that can be derived from land affected by quitrent rights cannot be realized. The negative impact for any new development (public and private) on underlying quitrents is immense and a real dilemma, as no deed registration or notarial lease agreements can be issued. The development risks associated with tenure security over such areas is a reality for any investor to contemplate.

Land development

Currently, only development applications sanctioned by the Minister of Agriculture, Rural Development and Land Reform in a communal area that overlaps any quitrent erf may be lodged for examination and approval. Simultaneously with the approval of the diagram, the Surveyor-General will lodge a caveat with the Registrar of Deeds notifying him that the subdivision of the quitrent erf cannot be registered until such time as the portion required for public benefit has been either expropriated or otherwise lawfully acquired (Surveyor-General Circular 13, of 2016).

Vesting of state land

The evolution of political systems of governance in South Africa had a variety of implications for the proper management of state immovable assets. As governments changed forms and assumed new names, the registration of immovable assets into the resulting forms of governments did not move at the same pace as the metamorphosis of political systems. The effect was that immovable assets remained registered in the names of governments which no longer existed. Some of these governments include the Union of South Africa; Republic of South Africa; the four Provincial Administrations of the Cape of Good Hope, Natal, Orange Free State and Transvaal; Republics of Transkei, Bophuthatswana, Venda and Ciskei (TBVC States); Self-Governing Territories of Gazankulu, Lebowa, KaNgwane, KwaNdebele, KwaZulu and QwaQwa. As political parties during pre-democracy negotiations sought to bring all the various forms of government into a single political system, they inevitably had to address and resolve the status of immovable assets that vested in such governments. A mechanism was consequently created in the Interim Constitution of the Republic

of South Africa Act 200 of 1993 to bring certainty regarding the ownership of immovable assets since the forms of governments that emerged after negotiations materially differed in form and in substance from those created by the apartheid system. The said mechanism is provided for in Section 239 of the same Act 200 of 1993 and is described as transitional arrangements for assets and liabilities (Vesting guidelines, 2017).

Therefore, the confirmation of vesting is a constitutional obligation in terms of the Interim Constitution of the Republic of South Africa Act 200 of 1993 that commenced in 1994 as a legal instrument to confirm the ownership (custodianship) of state land as at 27 April 1994 and 24 April 1994 in the case of KwaZulu-Natal, between either the National Government of the Republic of South Africa or the provincial government (the nine Provinces). The confirmation of vesting is mainly determined by the legislative competencies of Provinces as listed in Schedule 6 of the current Constitution of the Republic of South Africa Act 108 of 1996, intended land use and the organ of State who kept records of a property prior to the new dispensation. The confirmation of vesting is a legal requirement to deal with any transaction on a Title Deed of a State-owned property, for example, disposals, signing of long-term lease agreements or the registration of servitudes, etc. The issuing of a vesting certificate in a particular sphere of government has therefore a huge impact on state land administration, development confidence and security of tenure.

The Item 28(1) Certificate (or 293 Certificate) for the confirmation of vesting as issued by the Minister for the Department of Agriculture, Rural Development and Land Reform (DALRRD) is also an enabler for provincial and national custodians of state land to record and account immovable assets (National Treasury Accounting and Reporting for Immovable Assets, 2018). The payment of rates and taxes by the State for registered properties in terms of the Municipal Property Rates Act 6 of 2004 (as amended with Act 29 of 2014) is also dependable on the issuing of a vesting certificate by DALRRD. The survey of state domestic functions (SDFs), such as schools, clinics and dams is a prerequisite for the signing of an Item 28(1) Certificates in order to issue State Titles. The existence quitrent diagrams and titles (“huurpag”) remains a huge challenge for surveying of State Land. There are numerous SDFs built over defunct quitrent allotments,

although the quitrent diagrams still exist with quitrent deeds attached thereto. The confirmation of vesting in terms of Item 28(1) to Schedule 6 of the Constitution of the Republic of South Africa Act 108 of 1996 cannot be implemented fully, as registration and endorsement cannot occur on Deeds with underlying quitrents.

Servitudes

The registration of servitudes and any other usufruct rights cannot be implemented, which will cause resistance in the development of the rural areas affected by quitrents.

2.5.3. State Domestic Facilities

Government has a number of State Domestic Facilities (SDFs) which have been built on land that does not belong to either Provincial or National government. The National Department of Public Works has developed a framework with the aim to determine the appropriate solution for dealing with these SDFs that are on either tribal, municipal, Parastatal and other privately owned land. It further seeks to regularize the traditional Permission to occupy arrangements as there is no standard way of accounting for these land parcels (State Domestic Facilities Framework, 2014).

In addition to this mixture and confusion of land rights, the state has, since 1913, perceived that all community land of the Transkeian territories was state land. Therefore, multi-state organizations could do as they pleased. Schools, hospitals, clinics, post offices, police stations, military camps, nature reserves, dams, airports, railways, national and provincial roads, power lines and pipelines, etc., were constructed wherever the state saw fit and in essence these are state domestic functions. These were constructed without any consideration of the documented rights of the quitrent holders. This has serious implications on the state registering certificates of registered state title for portions of community land on which state assets were constructed, but now found to be encroaching onto older existing land rights, in particular onto Quitrent erven (Williams-Wynn, 2015).

An example is the Mthatha Dam and adjacent Mthatha Airport with more than 400 underlying quitrents (see figure 1 discussed above). This has implications on the payment of rates and taxes on State Domestic Facilities as the right of responsibility

is unknown. Section 24(1) of the Local Government: Municipal Property Rates Amendment Act 29 of 2014 stipulates that: “A rate levied by a municipality on a property must be paid by the owner of the property”. Section 40(a) of the Local Government: Municipal Property Rates Amendment Act 29 of 2014 defines a property as an immovable property registered in the name of a person, including, in the case of a sectional title unit registered in the name of a person. In terms of the Deeds Registries Act 47 of 1937, immovable property can only be registered against an approved Surveyor-General Diagram, as per the Land Survey Act 8 of 1997. This then means all State Domestic Facilities affected by quitrent rights cannot be registered at the Deeds Office. This delays the accountability and correct accounting treatment of the State Domestic Facilities in the asset registers of National and Provincial Government Custodians. It results in non-payment of rates and taxes as the right responsibility in as far as ownership is unknown.

Should all the quitrents be upgraded to full title, the impact of restoration (monetary compensation) for State Domestic Facilities will be enormous – a figure that is currently unquantified (Williams-Wynn, 2020). Should all quitrents be upgraded to full title, more than 400 provincial state domestic facilities will be affected – in that these will be converted in private ownership. Such change of ownership will have huge implications for state security as the change in ownership would place state facilities under private ownership, as well as the recording and accounting of immovable assets. The effect on national State Domestic Facilities must still be quantified, but a good example is the Mthatha Dam, which is affected by more than a hundred quitrents. Should the quitrents be upgraded, the result will be that the dam will be owned by more than a hundred private individuals (Williams-Wynn, 2020).

The impact of quitrent rights has unintended consequences on local development as most developments are dependent on the availability of land that does not have restrictions and limitations. The next section highlights the relationship between land development and local economic development.

2.6. Relationship between Land Development and Local Economic Development

Rabie (2011 cited by Koma, 2012) provides three reasons as to why municipalities embark on a process of formulating local economic development strategies. The first

relates to the development of the local economy and local markets. The second relates to the development of the local community in order to address poverty and improve local people's chances of access to employment and business opportunities. The third is to fulfil legislative and development mandates of municipalities. Further, Rabie (2011 cited by Koma, 2012) states that the purpose of local economic development is to build up the economic capacity of a local area to improve its economic future. It is a process by which public, private and non-governmental sector partners work collectively to create better conditions for economic growth and employment generation. Local economic development offers a municipality, the private sector, the non-profit sector partners and local community the opportunity to work together, and aims to enhance competitiveness and thus encourage sustainable growth that is inclusive (Malefane, 2009).

According to Fernando (2022), there are four factors of production namely, land, labour, capital and entrepreneurship. Land as a factor has a broad definition and can take on various forms, from agricultural land, to commercial real estate to the resources available from a particular piece of land. Natural resources, such as oil and gold, can be extracted and refined for human consumption from the land. Cultivation of crops on land by farmers increases its value and utility. Land is the most significant investment for a real estate venture. When the economy grows so does the demand for land to build industries. Therefore, land is an important factor to support and sustain production. Local economies require the supply and availability of land to grow. Key spatial development issues highlighted in the KSDLM Spatial Development Framework, 2020, indicates a high demand and increase in development over the last five (5) years. The unresolved tenure issues in KSDLM with specific reference to Mthatha will hinder the development trajectory envisaged for the municipality.

The underlying Mthatha Airport and Dam land have underlying quitrent titles which are old order rights and recognizable at the Deeds Offices. The subject property has therefore overlapping rights. The existence of Quitrent titles have a negative impact on the release of land for restitution purposes and local economic development.

The quitrent rights are limiting the supply and availability of land for development especially private developments. The next section highlights the recognition of the quitrent rights by the Courts of Law as rights equally deserving of legal protection.

2.7. Recognition and Protection of Quitrent Rights in the Courts of Law

The case of Jacobs v Department of Land Affairs 2016 (5) SA 228 LCC, illustrate the attitude of our courts and in particular the land claims court when it comes to adjudication and vindication of the rights of a claimant for land restitution where quitrents are involved. The judgment recognises that quitrent rights are equally deserving of legal protection and assertion. This then confirms that rights of quitrent title holders are protected in law and if land development continues and the rights are ignored the ramifications are significant resulting in long drawn-out court cases as well as compensation of the quitrent right holders or beneficiaries thereof. If it is a government development over a piece of land with a quitrent title, government will be liable to compensate a beneficiary or a successor in title of a quitrent right. The judgement further illustrates that quitrent holders such as land owners were dispossessed under the past discriminatory practices and their claims for land restitution is in no way or form different. Thus therefore even though pro government developments are allowed to proceed, the risk of compensating future claims exists as quitrent title holders are protected in law and that their rights are legally protected. In 2010, some of the Mgwali quitrent owners finally received financial compensation as their restitution award, fifteen years after they had first filed their claim for losses incurred during the application of betterment planning in the area (Wotshela, 2014).
Chiefly, the judgment above also illustrates that the test for restitution of land claim under the auspices of the Restitution of Land Rights Act 22 of 1994 is not how the ownership or entitlement of the land was arranged, but the motive for dispossession. If the motive for dispossession was racially motivated and enabled by discriminatory practices and laws, the then claim falls within the ambit of the Act.

2.8. Abolition of Quitrent Rights Act 54 of 1934

With the exception of the Cacadu District (formerly Glen Grey), the quitrents in the Transkeian Territories were not brought under the application of Proclamation R188 of 1969 and therefore the Upgrading of Land Tenure Rights Act 112 of 1991 cannot be applied to them. There is currently no mechanism whereby quitrents in the remaining former Transkeian Territories can automatically be upgraded. Quitrents cannot be ignored.

Since the Proclamation R188 of 1969, there were some minor amendments made to Proclamations 227 of 1898, 75 of 1903 and 200 of 1910, but they have never been cancelled or superseded. Specifically, while the Glen Grey Act is repealed by Proclamation R188 of 1969 (and therefore Quitrent titles falling within the District of Cacadu (formerly Glen Grey) now fall under the prescripts of Proclamation R188 of 1969), land ownership issued under Proclamations 227 of 1898, 75 of 1903, 200 of 1910 and others remain and do not fall under Proclamation R188 of 1969 (Williams-Wynn, 2017).

There was one last, major piece of legislation affecting land ownership in the Transkeian Territories, namely the Abolition of Quitrent Rights Act 54 of 1934. The Glen Grey Act 25 of 1934, converted all “white-owned” “Quitrent Titles” into freehold titles by removing the requirement to pay an annual quitrent or periodical payment required as a condition of title. Unfortunately, this Act specifically excluded any “native quitrent” and, therefore, any title owned by a “native” in the Transkeian Territories were retained as Quitrent Title (Williams-Wynn, 2017).

2.9. Chapter Summary

The quitrent system is generally associated with the colonial policy of England and was extended to other continents which were conquered by the British Imperial government. The system in South Africa especially in the Cape Colony afforded an opportunity to black people to own land during the colonial era. The Abolition of Quitrent Act 54 of 1934 converted all white-owned quitrent titles into freehold with the exclusion of any native quitrent (Williams-Wynn, 2017). The native quitrent rights are registered at the Deeds Office through survey diagrams. These rights cannot be ignored as if they do not exist.

The unresolved tenure issues brought about by the existence of quitrent have implications on general land administration, which have not been fully explored. Many developments on land affected by a quitrent are affected as they cannot be formally registered at the Deeds Office. The quitrent rights are protected and recognised at the Deeds Office. Government has a responsibility to develop a system to address the quitrent rights as they continue to affect land ownership and development thereof.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1. Introduction

This chapter describes the research methodology in terms of various approaches (paradigms), the design of the study, and the collection and analysis of data. The approach that is used in this inquiry is based on qualitative methods and techniques. In this chapter, the specific research design for this study and the reasons for its selection are discussed. The chapter explains how the data is collected and analysed.

Further to the above, this chapter shows how the reliability and validity of research findings are ensured. The ethical considerations are also discussed in this chapter of the research report.

3.2. Research Approach and Design

The research methodology is concerned with the research process and the set of tools that are required to execute the design (Babbie & Mouton, 2001). This study adopted a phenomenological strategy as it seeks to understand and interpret the social reality. In simpler terms, phenomenological strategy is used to understand the phenomenon of the existence of quitrent rights and its challenges on land use, development and ownership. The views of the participants are explored and the participants that are chosen are those who have experience of the quitrent tenure system in their operations. The qualitative research approach is preferred as it provides a greater insight into why participants feel a certain way, which adds depth of understanding to the research problem. An interpretive dimension is added to better understand the participants' shared meaning (or their construction of reality) of the unresolved quitrent tenure system. The interpretivist perspective allows the researcher to interact with the subject of investigation. It also allows the researcher to engage with the context in order to make sense of the respondent's perspective (Hesse-Biber & Leavy, 2011)

In terms of this research methodology, phenomenology is appropriate to the qualitative approach for it records and analyses the beliefs and perceptions of the participants in relation to what is being researched. It seeks to gain deep insight into the experiences and thoughts of the participants in relation to the phenomenon being studied and a conclusion is drawn about the phenomenon either confirming or contradicting it (Mouton 1996 cited in Coetzee et al., 2001).

The qualitative research method is used to try and understand why participants have responded in a certain way, or hold particular opinions. Accordingly, the study relies mostly on the use of data collection methods such as unstructured interviews, direct participants' observation and document analysis, and techniques such as qualitative content analysis and analytic induction to analyse data (Mouton 1996 cited in Coetzee et al., 2001). The research methodology employed in this research is defined in terms of the research sample, data collection methods and data analysis and synthesis strategies.

Babbie and Mouton (2001) defines a research design as the most important part of the study as it maps out how the researcher has to conduct the study and which tools will be used in order to answer the research questions of the study and respond to the objectives of the study. Accordingly, a research design represents broad categories, which could be further refined, which should be applied in a flexible approach in order to allow space for overlapping and borrowing between the research designs (Maree, 2009 cited in Jamjam, 2017).

Qualitative methods are interpretive and enable the researcher to gain new insights about a particular phenomenon (Leedy & Ormrod, 2015). Qualitative research is useful to understand the underlying meaning of the research problem in its real context through the views of the participants. This is a more concise definition of qualitative research and it provides the motivation behind the choice of approach for this research report. The main disadvantage of a quantitative research method is that the participants do not shed insight into why they feel a certain way on the other hand the advantage of the method is the use of questionnaires which can reach a large sample of participants relatively quick (Cassim, 2011). A key element is "understanding the underlying meaning of the problem", which implies that the researcher seeks to understand the meaning of data, as well as the relationship patterns that are underpinning the phenomenon and are shared by the participants who were interviewed, as well as the other identified interviewees (Jamjam, 2017).

A question that often arises is how many cases is enough to comprehensively cover the main issue in question. One way of judging the likely number of cases required is to consider the degree of theoretical development in the field being studied. In a field where there is strong body of existing theory, one is usually expected to have fairly

specific research questions, and one may look for particular cases to verify or challenge certain ideas, in which instances a few cases may suffice, even settling for a single-case study design when one wishes to test a theory in an exceptional context (Cassim, 2011). As a research method, a case study is used to contribute to an existing body of knowledge. It is further used to understand a complex social phenomenon. The more the research question seeks to explain some present circumstance for example how or why some social phenomenon works, the more the case study method will be relevant (Yin, 2009). The strength of the case study method is its ability to deal with a full wide variety of evidence, documents, interviews, artefacts and observation (Yin, 2009:11). According to Yin (2009) a single case study provides a basis for significant explanations and generalizations.

The phenomenon of quitrent tenure system has very limited and old body of knowledge. The rights still exist more in the eastern side of the Eastern Cape and the rest of the quitrent rights in South Africa were abolished in terms of the Abolition of the Quitrent Rights Act 54 of 1934. This has contributed to the limited degree of theoretical development especially in the recent.

In order to respond to the research question the Eastern Cape Province is the case study area with two local municipalities chosen as case locations where the phenomenon of quitrents is still prevalent. The two municipalities are King Sabata Dalindyebo located in the OR Tambo District Municipality and Amahlathi located in the Amathole District Municipality. The focus is on certain areas within these two municipalities.

For the first case location in KSDLM, Mthatha will be the focus area. In Mthatha, specific areas where quitrent rights are still prevalent are identified and investigated to examine if the existence of quitrent rights have challenges on land development. The areas are as follows: Mthatha airport and Mthatha dam have been developed over 400 quitrent titles. The airport and the dam are State Domestic Facilities (SDF). The very same property is a subject of a land claim. Other areas of focus are the museum, Qunu and the N2 which is the national road passing through Mthatha.

For the second case location in Amahlathi Local Municipality, the Mgwali location has been identified for the purposes of the research. In Mgwali location a number of families were accorded Permission to Occupy (PTO) by the then headman. The PTOs

overlapped with quitrents. The area has been selected due to quitrent rights overlapping with other rights in land.

3.3. Sampling

For the sampling of the population of this study, purposive sampling is used because the selected participants have knowledge of the subject matter and ease of access. Babbie (2013) refers to this type of sample as the judgemental sample. The sample is selected on the basis of the knowledge on the subject matter. For example, the officials from the Department of Agriculture, Land Reform and Rural Development, are selected on the basis that the department is responsible for the Survey of land and custodian of the deeds records of the country. All the records pertaining to the quitrent rights are recorded and safeguarded by the deeds office. Officials from the Provincial and National departments of Public Works are selected because their property portfolios are affected by the existence of the quitrent rights on a number of state domestic facilities (schools, clinics and roads). King Sabata Dalindyebo Local municipality's official is sampled as the municipality is responsible for the spatial and economic development of Mthatha, which is affected by the existence of quitrent rights. An official from the Surveyor-General: Eastern Cape is sampled because of the knowledge of the genesis of the problem and matters relating to quitrent rights and land administration. An official from the Amahlathi Local Municipality is sampled, the official is responsible for land administration in the municipality.

The choice of a non-probability sampling is determined by the knowledge of the respondents about the matter under investigation and their willingness to participate. The researcher has a limited population pool to sample from due to the limited number of participants who have first-hand experience and knowledge about the quitrent rights system and its origins and its impact. According to Laxton (2004 cited by Cassim, 2011), in order for a sample to accurately represent the target population it has to be of an appropriate size and there are a number of factors which influence the sample size. One of those factors is whether the target population is infinite or finite. In this study, the target population can be regarded a finite as very few people are aware of the existence of the quitrent ownership system in South Africa.

3.4. Data Collection

Qualitative research is useful to collect data in the field at the site where the participants experience the matter under study (Cresswell, 2009). According to Maree (2009:81) “in qualitative studies, the data collection and analysis are not regarded as a separate process but as an ongoing cyclical process”. This means that more data can still be collected even after the interpretation stage if a gap has been identified and more information is still needed to close this gap, as mentioned by the above author. Creswell (2013) agrees that qualitative research is conducted because there is a need for a deeper understanding of the matter and this understanding can only be realised through talking to people.

Both the primary and the secondary methods of collecting data are used in this study. Primary data refers to all the data that the researcher collected via the interviews.

It is important to understand what is meant by the interview, and what the process of interviewing entails. According to Alvesson, 2003; Haigh, 2008; Qu and Dumay, (2011, cited in Mallet, 2017), interviews allow researchers to attain an in-depth understanding of the phenomenon in question, as they provide a flexible platform ranging from highly structured to open-ended interviews. Simply put, the interview is a conversation, the art of asking questions and listening. From this definition, it is clear that the interview method is not a neutral method because of the exchange and interactions that takes place between the interviewer and the interviewee, that is, listening and giving answers. A qualitative interview is a bilateral interaction wherein the interviewer poses questions to the interviewee. The interaction allows the interviewer to gather in-depth information about the phenomenon. The interview is not a one way stream rather a discussion and interactive with open-ended and follow up questions (Babbie and Mouton, 2001).

The purpose of using the interview method for this study is to gather the information that could not be accessed by other methods. Interviewing enabled the researcher to access the inner perspectives, experiences and knowledge of the research subjects through deep, open-ended questions (Patton, 2002).

The semi-structured and unstructured interviews exhibit the characteristics of a basic interview in that they are flexible, iterative and continuous, rather than cast in stone

(Herbert & Rubin 1995; Babbie et al., 2001 cited by Jamjam, 2017). These types of interview methods as used in this study consisted of a number of open-ended questions that focused on certain areas of the research topic (Leedy & Ormrod, 2001; Hancock, 2002; Merriam, 2002). The participants were able to provide case studies to demonstrate the implications of the quitrent rights and how these affect their operations with specific reference to land development and administration. These kinds of interviews are preferred for their ability to allow the researcher to ask certain questions in the same way, while also being able to adapt in order to accommodate the respondents or to probe them further where necessary. The approach would assist as the participants come from different working backgrounds as well as their experiences of the quitrent system.

As a result of the above, the respondents are enabled to speak from their experiences and understanding of the phenomenon (Babbie & Mouton, 2001). Unlike the highly structured interview which asks the same question from one interview to another, semi-structured and unstructured interviews allowed the researcher to dig deeper for more information, where necessary (Hancock, 2002). Furthermore, the semi-structured interview schedules in this research allowed the researcher some flexibility and adaptability as the questions are structured differently for the participants depending on the different institutions they work for. The participants' experiences of the quitrent rights differ from one sphere of government to another. This has allowed the researcher to gain different perspectives of the phenomenon. Participants are from National, Provincial and Local government. This ensured that the conversations yielded rich data (Seidman, 2006).

The unstructured interviews used in this study consisted of open-ended, in-depth interview questions which allowed for wider coverage of data gathering in order to address the research questions (Denzin & Lincoln, 2000). The interview questions are compiled in the form of interview schedules (**see Annexure 1**) relevant to the problem; and are used for discussion with the participants (Merriam, 2002; Patton, 2002). The interview schedules are structured to adapt to the different backgrounds of the participants. The interviews with the respondents were held between November 2022 and January 2023. They were held in person, one-on-one in the Eastern Cape Province. The interviews took between one and two hours per session. Employing the open-ended questions format further resonated with the strategic, philosophic and

methodologic aims of the qualitative design in that it mitigated against bombarding the respondents with predetermined, hypothetic – questions that will premeditate responses when gathering data (Babbie & Mouton, 2001; Patton, 2002).

The unstructured interview is preferred for its ability of allowing the researcher to ask questions in any order, and to go as far as having a conversation with the respondents and probing further on the topic or question (Hancock, 2002). Furthermore, the unstructured interview is selected in order to gain rich and detailed understanding of the phenomenon (Hancock, 2002). To achieve this, the themes emanating from the research and interview questions were used as a list of topics for analysis.

Data from the above-mentioned interviews is recorded by means of taking notes and the use of a voice recorder instrument (Hancock, 2002). The above-mentioned methods of recording data are used complementary to each other. For example, when taking notes, the researcher might have been bias and record only the information that closely resonates with his perceptions of the problem. Whereas, recording data with the voice recorder ensures that all relevant information is captured during the interviews (Hancock, 2002).

In order to ensure openness from the interviewees when using the recorder, the researcher assured them of the confidential nature of information shared with the researcher (Leedy & Ormrod, 2001; Merriam, 2002).

On the other hand, secondary data is the data that already existed when the study commenced, and which the researcher had no degree of control over (Babbie & Mouton, 2001). For the purpose of this study, data collection process focuses on gathering textual data instead of the numeric type (Babbie & Mouton, 2001). Moreover, the study is based on the secondary data through documentary sources various Government Acts, the Constitution, various municipal planning documents (IDP, LED, and Spatial Development Frameworks), Surveyor General's documents.

Studying of other documents that are relevant to the study such as national legislation, books, academic journal and internet articles, workshops and conference papers; and reviewing of other relevant materials such as newspaper articles on land claims and tenure rights, in order to gather more evidence.

3.5. Data Analysis

The data analysis is more dependent on the findings of the researcher than on the analysis of tools used for support (Babbie, 2007). To analyse the qualitative data, a content analysis is used. The data is sorted by the themes that represent the main points of the research question, and the responses were then coded to represent various answer patterns that have in turn resulted in useful information coded to represent various answer patterns that were, in turn, translated into meaningful information. During the analysis of data, the researcher continued to maintain contact with respondents to provide further clarity while having access to the research tools for direct observation. For each interview that was conducted, more knowledge was gained by the researcher, and this process was also assisted by the interview questions used to guide the interview. Data analysis in the qualitative research involves key areas such as the researcher's views on the collection and analysis of the data, the design, the methods used and the researcher's theoretical interpretation of the analysed data (Jamjam, 2017).

Cresswell (2009:184) outlines that "this is a process of making sense out of the text data and the image data". He further mentions that it involves the analysis of the information into themes and patterns, and the interpretation of the meaning of the themes. The participants' perspectives also assist with the formulation of these themes and the interpretations of the meaning of the data. Arguably, making sense of the data gives meaning to the achievement of the purpose of the research. The themes, which capture the core essence of the research question and the responses, were coded to represent various answer patterns, which are translated into meaningful information.
In the case of this study, the data emerging from the interviews was recorded. The information gathered from the interviews of each of the categories of informants is recorded on a recorder when conducting the interviews. The information gathered is categorised around the main research question and the sub -questions and was coded as themes. Cresswell (2009) mentions that raw data is organised and coded into themes in the case study after which they are interpreted.

The thematic analysis of the data is performed by organising the information according to how the themes emerged from the interviews and from the primary and secondary sources. From the responses, similar issues, ideas and views are clustered into

categories and themes developed (Grbich, 2013). The themes are referred to as the outcomes of conceptualising. Sometimes data analysis takes place while data is collected. For example, while reading the records from the newspapers and the case judgements, some patterns emerged.

Grbich (2013:261) mentions that "data analysis in qualitative research involves the researchers' views and their impact on the data analysis; it relates to the design and methods used and how the data is gathered and managed". According to the above author, the process starts with the preliminary data analysis stage, where the researcher engages with the data to obtain a deeper meaning (Grbich, 2013). Hesse-Biber (2010), also asserts that data analysis and interpretation are not mutually exclusive because as the data collection progresses, the researcher must become open to new ideas and revise the analysis and interpretation.

3.6. Ethical Considerations

The research complies with and adheres to the ethical code of research as prescribed by the University of Cape Town and has obtained the Ethics Clearance to conduct the research. Confirmation of ethics clearance is attached to this dissertation as Annexure 1. This study is, therefore, scrutinising the real challenges that are brought about by the unresolved quitrents rights over land development and the fact that their existence knowledge is limited to very few people. It is for this reason that participants' identities have been kept confidential in the study. Instead, a code is assigned to each participant. The table below depicts the participants and their codes to protect their identities and to uphold confidentiality.

Research Participant	**Participant Code**
Senior Official, Surveyor General: Eastern Cape Department of Rural Development and Land Reform	SG1
Senior Official from King Sabata Dalindyebo Municipality	KSD2
Senior Official: Provincial Public Works: Eastern Cape	DPW3
Middle Management Official: Provincial Public Works: Eastern Cape	DPW4
Senior Official: National Department of Public Works: Eastern Cape	NDPW5

Senior Official: Amahlathi Local Municipality	MHLT6

Table 1: Sampling - Outline of Participants

Authors Denzin and Lincoln (2005:144) have identified three crucial ethical matters that must be considered in research, namely, “consent from the participants, the right to privacy, and physical and emotional care”. Participants agreed to take part in the study, provided that their identities to be protected. The researcher complied with the above relevant ethical standards.

This is important, as all the land matters relating to land tenure are very emotive and sensitive in nature. Anonymity was also guaranteed to the respondents. Babbie and Mouton (2001), mentions that when anonymity is executed, the response is not attached to the respondent by withholding the identity.

Participation in the study is voluntary and participants are informed beforehand that they reserve the right not to respond to questions that they regard as personal or sensitive. All the participants were provided with an information sheet and a consent form for their completion and signature. A sample of the Consent Form is attached to this dissertation as Annexure 3. The participants were treated with respect and sensitivity since the matter is sensitive.

3.7. Chapter Summary

This chapter started with a brief discussion of the importance of the research methodology. The rationale behind choosing a case study as an appropriate method for answering the research question as well as the choice of data collection tools was given. The research focuses on Mthatha in the King Sabata Dalindyebo Local Municipality and Mgwali in Amahlathi Municipality as the areas are still affected by quitrent rights. A number of cases in and around Mthatha were analysed to respond to the research question.

The data was gathered through semi-structured interviews guided by an interview schedule for each category of participants with open-ended questions. Different interview schedules were developed for different categories of participants due to their different work experiences and encounters with the quitrents. This was necessary as each category represented a certain perspective in which the researcher was

interested. Permission to conduct the interviews was obtained from all the respondents and the purpose of the study was explained. The questions were sent well in advance to allow the participants to familiarise themselves. The questions seek to understand the participants' understanding of quitrent rights, their impact on land development, the role of government in dealing with these rights etc. Face-to-face interviews were held with each respondent.

The next chapter presents the results of the interviews with the participants.

CHAPTER FOUR: DATA ANALYSIS

4.1. Introduction

In this chapter, the results of the interviews conducted with the participants are discussed. Senior Government Officials from King Sabata Dalindyebo Municipality, Amahlathi Municipality, Provincial Department of Public Works and Infrastructure: Eastern Cape, National Department of Public Works and Infrastructure and National Department of Agriculture, Land Reform and Rural Development were interviewed. The results are presented and summarised in themes. The themes are responding to the research focus, namely, “Exploring the challenges of quitrent rights on land use, development and ownership in the Eastern Cape”. Three themes with sub-sections are explored in this chapter. The first theme relates to the participant’s level of understanding of quitrent rights. The second theme focuses on the impact of quitrent rights on land use, development and ownership. The final theme examines the impact of quitrent rights on land administration.

4.2. Understanding of Quitrent Rights

The respondents displayed limited knowledge on how the quitrent rights came into existence. Participant DPWI5 attributed the existence of such rights to former homelands (TBVC States). This is based on the participant’s understanding that these rights were granted by former homeland governments to people. The participant is not aware of the reasons why the rights were given to certain individuals. The participant was first introduced to the existence of the quitrent rights when joining the regional office of the National Department of Public Works and Infrastructure in Mthatha. These rights were not applicable or relevant in other regions of the National Department of Public Works and Infrastructure where the participant worked in the past.

Participant SG1 from the National DALRRD working in the office of Surveyor General in East London confirmed the existence of quitrent rights in the Eastern Cape and that the existence of these rights is known and understood by a few in government. The participant confirmed that many pieces of land affected by quitrent rights have been surveyed and there are surveyor general’s plans with information of such land parcels affected by quitrent rights as well as information about owners (even though many may be deceased). The information is recorded at the Deeds Office in Mthatha.

According to Participant SG1, if the existence of the rights is not in the public domain, how can they be treated as important in the discourse of land rights, tenure and rural development for communities in South Africa?

Participants DPW3 and DPW4 displayed a good understanding of how the quitrent rights came about and how they have come across the existence of these rights in land administration of provincial state land.

Participant KSD2, working in the Town Planning division responsible for Forward Planning and Development Control had no knowledge of the quitrent rights. Even though a number of properties in that Municipality are affected by quitrents, the participant has not come across any development affected by the quitrent rights. This strengthens the notion of a lack of knowledge amongst government officials of the existence of these rights, not to mention the impact they might have on land development. The participant is working in a division responsible for forward planning, which is concerned with planning for the future and designing strategies to help cities to develop in a coordinated and coherent manner. This process amongst other things looks at strengths, weaknesses, constraints and threats which may affect the future development of the city. The other area of responsibility of the participant's division of work focuses on development control which primarily is concerned with the control of the use of land and property as confirmed by the official.

Participant MHLT6, working in the Land administration and Survey Unit of the Municipality had an understanding of the prevalence of overlapping land tenure claims in Mgwali Location. The Participant had very limited knowledge and understanding of the quitrent rights. The participant, understood the existence of land tenure issues pertaining to PTO's in the area.

4.3. The Impact of Quitrent Rights on Land Use and Development

Participants from both the National, Provincial spheres of government and the Municipality confirmed that quitrent rights have an impact on land development. The latter is confirmed by examples of developments where quitrent rights are a factor. The examples as cited by the respondents are discussed below.

4.3.1. Nelson Mandela Museum, Qunu and surrounding properties

The Nelson Mandela Museum at Qunu in Mthatha is not directly affected by quitrents, but is located in an area heavily surrounded by quitrents. The adjacent school, which is a provincial state domestic facility is affected by quitrents as reflected on the SG Plan number 130601/1917.

The museum is located on Location 20 called Headman's Location, but is not yet surveyed. The surrounding area has many quitrents lots (304 garden and 98 building lots, as well as Qunu Trading site and the United Free Church and School Site) that were granted to individuals but never formally registered (upgraded). The quitrent lots were renumbered to erven, but not registered.

The impact is that the N2, which is a declared national road crosses various quitrents (e.g. Erven 323, 324, 325 and 326, Mthatha). The South African National Roads Agency Limited and National Roads Act 7 of 1998, requires the registration of these roads at the Deeds Office in terms of the Deeds Registries Act 47 of 1937. Because of the underlying quitrent rights the specific road cannot be registered. The nearby Milton Mbekala Senior Secondary School and Qunu Junior Secondary School, are state domestic facilities, located and developed over a number of quitrents. The subject properties cannot be registered at the Deeds Office. Although subdivision from the quitrent were made and even vested, these are problematic as the underlying tenure is still regarded as live and cannot be ignored. The registration at the Deeds Office of these newly surveyed state facilities cannot be concluded due to the underlying quitrent diagrams as depicted on SG Plan 13060/1917. They therefore remain without Title Deeds. Participant DPW3 from the provincial Department of Public Works confirmed that these properties cannot be disposed on the open market for development purposes due to ownership limitations as a result of the underlying quitrents

4.3.2. South African National Roads Agency N2 Construction Project

The project is located between the town of Viedgesville and the city of Mthatha in the King Sabata Dalindyebo Local Municipality in the Eastern Cape Province. As part of the engineering design, the Consulting Company Gibb was tasked with identifying and classifying the affected properties. As part of this process, it was found that the

properties affected along the proposed road alignment can generally be classified as land held under Quitrent Title, granted to individuals in terms of Proclamations 227 of 1898, 16 of 1905 and 196 of 1920.

According to Participants DPW3 and DPW4, a Quitrent Title is a unique form of ownership. The land was surveyed and formal Quitrent titles were registered in the Deeds Offices in the Transkeian territories between 1894 and 1923. All Quitrents have corresponding Diagrams or General Plans archived in the Office of the Surveyor-General (SG): Eastern Cape.

The Quitrent Title land areas along this route are as follows:
vide SG Diagram No. 8119/1915;
vide SG Diagram No. 7749/1916;
vide SG Diagram No. 8112/1915;
Hill 30, vide SG Diagram No. 639/1884 and
West 34, vide SG Diagram No. A3736/1923.

The construction of the road has proceeded in terms of the Surveyor-General: Eastern Cape Circular13 of 2016, which provides that any diagram for the purpose of registering a state asset including a national road or development sanctioned by the Minister of Rural Development and Land Reform in an administrative area of the former Transkei that overlaps any quitrent erf can be lodged for examination and approval but cannot be registered at the deeds office (SG Circular13 of 2016). The development has been allowed to proceed because it is a public service infrastructure development in the interest of the general public. Any other development is not catered for in the circular. The Surveyor General's circular partially resolves the quitrent dilemma and only in favour of government related developments but the circular does not provide a solution to the broader resolution of the quitrent rights still in existence especially for private sector developments.

The Spatial Development Framework, (2020) of the King Sabata Dalindyebo Local Municipality highlights quitrent title as another land tenure category which is widespread within the municipality. The framework acknowledges the lack of transfer of the titles to their heirs which has resulted to a legacy of overlapping land rights and boundaries. The framework further highlights that the surveying of the land affected by quitrent rights was discontinued due to the high cost of survey. This then also

highlights that the extent and magnitude of quitrent titles/rights is not fully recorded and documented in government records. The KSDLM Spatial Development Framework has not explored the implications of quitrent rights over land development which makes it possible that they may be overlooked when land development applications are submitted for approval.

4.3.3. The Impact of Quitrents on the Wild Coast Special Economic Zone at the Mthatha Airport, KSDLM

According to Participant KSD2, the Wild Coast Special Economic Zone project is one of the few identified and registered anchor projects that will have a direct and indirect impact on the economy of the KSDLM and assist to reach goals around employment generation and economic growth in terms of the King Sabata Dalindyebo Local Municipality Local Economic Development (LED) Strategic Framework, (2020). According to Participant DPW3, the project is located on the land affected by the Kwa Link Community Land Claim as well as the number of underlying Quitrent live titles. The description and extent of the claim, as confirmed by Participant SG1, described in a memorandum approved by the Chief Land Claims Commissioner, Ntloko-Gobodo (2017:19) in settlement of the claim is as follows:

i. Portions of Farms No. 75, Farm No 10 and Farm No 4 Mthatha. The area is currently known as Mthatha Airport and is located about 16 km from Mthatha Central Business District and lies north of R61 and Upper Ncise lies on the west of the claimed land;
ii. It measures 428, 82 hectares and is unregistered state land, a challenged highlighted in the KSD Spatial Development Framework earlier in the chapter. The land has state domestic facilities on it namely, Mthatha Airport, Mthatha Dam, South African Police offices. A portion of the claimed land is non-restorable as it is earmarked aviation zone where the Mthatha airport has been built on. The latter is under the custodianship of the Provincial Department of Roads and Public Works: Eastern Cape.

On 13 April 2016, the claimant community reached a resolution with the relevant government stake holders at Kwa-Link in the settlement of their land claim that:

i. 185,17 ha of land abutting the K D Matanzima airport will be restored;

ii. 243,65 ha which include the aviation zone of the airport will not be restored;
iii. Financial compensation will be paid for the land not to be restored;
iv. The development of the restored land area will be done in cooperation with the Eastern Cape Provincial Government, Department of Economic Development, Environment and Tourism (The Office of the Regional Land Claims Commissioner , 2016)

According to Participant SG1, a memorandum to the Chief Land Claims Commissioner, Ntloko-Gobodo (2017:19) "a settlement of R35,841,272.52 (Thirty Five Million Eight Hundred and Forty One Thousand, Two Hundred and Seventy Two Rand and Fifty Two Cent) to the claim is approved for payment in respect of the non-restorable land being the aviation zone". The various colonial proclamations affecting the land at the airport have never been superseded or repealed and are therefore still in force today. Even the name of the airport has not officially been changed through a gazette notice as confirmed by Participant DPW3.

Participant DPW4 confirmed that, the airport is located on unregistered portions of state land. The diagram however is still not approved by the Office of the Surveyor-General due to the unresolved issue of the old order quitrent rights. There are 23 quitrent diagrams dissecting the aviation zone (the airport).

Participant DPW3 further confirmed that, the Mthatha Dam located next to the Mthatha Airport, was surveyed in 2005 with an extent of 2 199,0791 ha, is located on consolidated Farm 80, Umtata Registration Division. Portion 11 of the farm Ncise 75, which is the largest section (901 ha) of the twelve components of the dam is affected by more than 150 underlying quitrent diagrams (S.G.-diagram 2758/2005; consolidation diagram 2762/2005 and quitrent plan – Office of the Surveyor-General).

In terms of the Deeds Registries Act 47 of 1937 immovable property can only be registered against an approved Surveyor-General Diagram, as per the Land Survey Act 8 of 1997. The Office of the Surveyor-General (East London) issued in 2016 a Circular to deal with the applications of overlapping quitrent lots on newly surveyed diagrams in the Eastern Cape. The Circular provides guidelines for the examination of diagrams for approval. Although a diagram effected by underlying quitrent lots may be approved in terms of this Circular, registration is not permissible. All these diagrams with overlapping land rights are encumbered by a caveat to prevent registration in the

Deeds Office. Registration will only be permissible on condition proving compensation were paid to the quitrent holder or beneficiary. The claimants in this regard are supportive of the development but due to the underlying rights quitrent titles development is not proceeding as planned as confirmed by Participant SG1.

4.3.4. Impact of Overlapping Land Rights in Mgwali

The village of Mgwali is located within the Amahlathi Local Municipality. It sporadically developed on the commonage along the main road to Tsomo. Mgwali location has about ninety four building and garden lots allocated to black quitrent holders surveyed by the colonial government in 1880 vide SG Diagram 2438/1880 (Fanti, 1984). Permission to Occupy Certificates were also issued by the Department of Agriculture for areas on the allotment area, encroaching on the original quitrent lots. This then undermined the essential rights of the quitrent rights holders (Adams et al, 1999).

Participant MHLT6 confirmed that the overlapping rights in Mgwali have caused tensions amongst the various groups in the area. No proper development can take place on the commonage if the land is not surveyed and duly registered. The Participant confirmed that the community is opposed to any development in the area for as long as the issue of the overlapping rights is not resolved.

4.4. The Impact of Quitrent Rights on Land Administration

All the respondents confirmed the negative implications of quitrent rights on land administration, especially in government relating to ownership of land and completeness of government asset registers.

Participant DPW3, explained that the department became aware of the quitrent rights when it commenced with the process of surveying state domestic facilities on communal land in the former Transkei in the 2017/18 financial year. The state domestic facilities include clinics, hospitals and schools amongst others. The surveying sought to register such facilities and to achieve a complete record of all provincial owned properties as per the provisions of the Government Immovable Asset Management Act 19 of 2007 (GIAMA) which provides a uniform framework for the management of an immovable asset that is held or used by a national of provincial department. The Participant, highlighted that the surveyors uncovered a dilemma of overlapping land rights. The surveyors discovered that there are old diagrams of when

the land was previously surveyed and the state domestics facilities were erected on top which then created the dilemma of overlapping land rights. This became a problem which the provincial government could not ignore. When the diagrams were submitted to the Surveyor General's office in East London for approval, they were not accepted due to the overlapping rights. After extensive engagements amongst surveyor generals in the country it was decided that the quitrents cannot be ignored.

Participant DPW3, further confirmed that this phenomenon is prevalent in the former Transkei area of the Eastern Cape, particularly from the Kei River up to Mthatha and from the Indian Ocean to Cofimvaba. The participant also highlighted the fact that there are no complete records of the quitrents at the Deeds Office, although there is knowledge of their existence. All the participants confirmed that the issue of unresolved quitrent rights affects the recording and accounting of government immovable assets, which leads to incompleteness of the asset registers. For properties to be on the asset register they must be surveyed first and registered at the Deeds Office.

Participant SG1 mentioned that an interim measure has been introduced whereby diagrams affected by quitrents are approved. However, such approval is subject to a caveat that the diagram cannot be registered at the Deeds Office. Therefore, a title deed cannot be issued against the diagram. The latter has serious land administration limitations as highlighted by Participants DPW3 and SG1. They confirmed that security of land tenure is very important for any developer and development projects. The Deeds Registries Act 47 of 1937 provides the security for immovable assets and related rights thereon. The inability to register a property and recognize land rights has huge implications for developers, investors and municipalities.

The impact of the quitrents and caveat preventing registration of land has two important implications. The first relates to the registration of long-term leases for land development and investment purposes. The Deeds Registries Act 47 of 1937 requires that all leases longer than 9 years 11 months must be registered against the Title Deed(s) of a property. Without the official security of long-term lease tenure, no financial institution will provide funding or invest in development projects. The second implication is that no other land rights such a servitudes or usufructs rights can be

registered. There will be reluctance from developers and bulk infrastructure providers to invest in infrastructure where land rights cannot be protected.

Participant SG1 highlighted the impact of quitrent to beneficiaries of land reform and land restoration is also a reality. Claims are overlapping old-order rights which make the restoration of tenure more complex. The delay in researching settlement agreements and final restoration is now much delayed because of the overlapping old-order rights namely quitrent rights underneath and land restitution claims on top of the same properties. This predicament is prevalent in the Mthatha airport, transfer to the Ncise (Kwa-Link) and Kaplan (Fairfield) Communities in the KSDLM area is delayed as a result of the overlapping rights which cannot be ignored. This of course has a ripple effect on any planned development down the value chain that is envisaged by communities and affected parties.

The survey of provincial state domestic facilities (SDFs) affected by underlying quitrents are more expensive and time consuming than land to be surveyed without underlying quitrents. The additional cost of framing a quitrent diagram is approximately R8 000 per quitrent. The total additional cost to survey land affected by quitrents in the Eastern Cape is estimated at R3, 2 million according to Participant DPW3. The cost would have to be borne by the office of the Surveyor General: Eastern Cape as it is their mandate to survey land.

4.5. Chapter Summary

This chapter illustrates that there is currently a stalemate situation on how to deal with quitrent rights as a unique old-order right within the Department of Rural Development and Land Reform. Although the matter is being debated by the Surveyors'-General and the Commission on the Restitution of Land Rights, there is unfortunately no clear tenure policy on how to deal with the land right matter. Intervention at a political level is therefore required to solicit a workable solution for the possible abolishment of all quitrents, without compromising any possible land tenure right claims thereafter. The issue is compounded by the overlapping land rights which also remain unresolved and affects any possible developments. Land administration dilemma (not knowing who owns what) has implications on the completeness of land ownership details at the Deeds office as well as land availability for development. This sentiment is shared by all the participants.

The Eastern Cape's planning law history is complex in that it has had an array of legislation that sought to manage land tenure, land administration and land use in rural, urban and traditional areas as you back as 1927. The latest legislation was passed in 1997 and the promulgation of the Regulation of Development in Rural Areas Act No. 8 of 1997. The Act stopped traditional authorities in the Eastern Cape of their development duties as prescribed in the Bantu Authorities Act as amended in relation to the allocation of land, a cornerstone of chiefly power (Ntsebeza, 1998).

The Act effectively transferred development functions to elected rural councillors in the Eastern Cape. The development function bestowed to them in terms of the Act never got to be implemented due to lack of coordination at Provincial and National level.

CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSIONS

5.1. Introduction

This chapter begins by presenting certain recommendations for how best to deal with existing quitrent rights. These recommendations provide possible solutions in resolving the challenges presented by the existence of quitrents and further determine the role that government can play in resolving the land ownership dilemma. Thereafter, the chapter demonstrates how the research objectives were achieved. The chapter concludes with a few concluding remarks and recommendations for further research.

5.2. Recommendations

The recommendations seek to advance proposals on how best to deal with the existing quitrent rights which cannot be ignored. The recommendations highlight the importance and urgency of bringing the land discourse into the public domain:

i. New legislation should be tabled especially to address the quitrent land question and how to upgrade such rights and deal with existing overlapping rights (quitrent and land claims). Alternatively, the Upgrading of Land Tenure Rights Amendment Act 6 of 2021 may be amended to incorporate the quitrent issues more rigorously by taking the lead in the identification, recording of such rights in the former Transkei areas and the inclusion thereof in the amendment. With the exception of the Cacadu District (formerly Glen Grey), the quitrents in the Transkeian territories were not brought under the application of Proclamation R188 of 1969. Therefore, the Upgrading of Land Tenure Rights Amendment Act 6 of 2021 cannot be applied to them. Schedule 1 of the Act specifies upgrading to any quitrent title as defined in regulation 1 of the Black Areas Land Regulation, 1969 (Proclamation no R188 of 1969).

ii. The Department of Agriculture, Rural Development and Land Reform is advised to embark on a public consultative and participative process to enlighten the community/ public and government officials entrusted to process land administration matters on the existence of such rights.

iii. As an interim solution to stimulate development applications, the Office of the Surveyor-General should also allow for the lodgment of non-state survey diagrams

that are overlapping with quitrents. While the proclamations under which the original quitrent erven were registered stipulated that the quitrent holder may not subdivide his erf, it proclaims that the "Governor" had the right to resume the whole or any portion of the land granted, on payment of compensation. Therefore, the State should be able, by following either a normal acquisition by means of agreement or statutory expropriation process, acquire the whole or a portion of a quitrent erf, if it is required for public benefit. The same should be applicable to stimulate private developments and economic growth.

iv. The Minister for Agriculture, Rural Development and Land Reform should provide guidance on the way forward to deal with quitrents, even if interim measures are put in place. In order to speed up development applications and approval of diagrams for registration purposes, an option is the abolishment of quitrents (as it was done in the case of the Abolition of Quitrent Act 54 of 1934 for quitrents in the former Transvaal), but with a proviso that any decedent may lodge a tenure claim for monetary compensation or restoration where possible.

v. The abolishment of the quitrents be considered through the publishing of a proclamation or decree. Should there be any land rights claim after such an abolishment, the State should still consider such claims as it is being done in terms of the Restitution of Land Rights Act 22 of 1994. The amendment of the said Act to include old order quitrent rights is a possibility. Such an intervention will allow the Government to protect its state domestic facilities through former Title Deeds and allow development and other government programmes to be implemented without any delay.

vi. To assist in raising the abolishment of the old order rights to the table, the Executive Member of the Department of Public Works: Eastern Cape should solicit political support for the possible abolishment of all quitrents, without compromising any possible land tenure right claims from the Minister of Agriculture, Rural Development and Land Reform and pronouncement on how to deal with this complex tenure matter.

vii. The national Department of Agriculture, Rural Development and Land Reform be approached to appoint a commissioner to determine who the successors in title of the deceased estates should be – in order to determine who, the current owners of each quitrent title are.

viii. The waiver of caveats currently endorsed on newly surveyed diagrams that prohibits the registration of state domestic functions be considered by the Department of Agriculture, Rural Development and Land Reform.

ix. An inter-governmental task team (National and Provincial Department of Public Works as their property portfolios are affected by quitrent rights, Department of Agriculture, Rural Development and Land Reform, National Office of the Surveyor General, Department of Local Government and House of Traditional Leaders, Office of the Premier: Eastern Cape, Provincial Treasury: EC etc.) should embark on a collaborative approach to fast-track the mapping and resolving of quitrent tenure rights within an agreed timeframe.

x. The Department of Rural Development and Land Reform should embark on a process of identifying and surveying of all land affected by quitrent rights for documentation, record keeping and protection thereof.

xi. Land Ownership and Tenure Rights Clearance Certificates should be issued for each development on public land by the municipalities when approving development plan to ensure that old order rights are protected and not ignored.

xii. Further research on the extent and quantification of the quitrent rights in South Africa is recommended. Furthermore, the articulation on the rightful beneficiaries is required, as many of the original landowners have passed away long ago. Further research should also examine the impact of overlapping land rights and the challenges they pose to post-apartheid land reform initiatives.

5.3. Achieving the Research Objectives

As stated in Chapter 1, the research question which the study had to respond to is:

To what extent do quitrent rights impact on land use, development and ownership in the Eastern Cape province of South Africa?

This main question is supported by two sub-questions:

i. What are the possible solutions in dealing with the existence of quitrent rights?

ii. What is the role of government in resolving the land ownership dilemma presented by quitrents?

The study had three main objectives, namely to:

i. Investigate the challenges and implications that the quitrent rights have on land use, development and ownership in the Eastern Cape;
ii. Identify and present possible workable solutions in resolving the challenges presented by the existence of quitrents;
iii. Determine the role that government can play in resolving in resolving the land ownership dilemma that the quitrents present.

The subsections below set out how the study achieved each of these objectives.

5.3.1 Investigate the Challenges and Implications that the Quitrent Rights have on Land Use and Development in the Eastern Cape

The research focused on two municipalities namely, the KSDLM with specific reference to Mthatha area and Amahlathi Municipality with specific reference to Mgwali Location. The areas were sampled due to the prevalence of quitrents in the areas. In and around Mthatha, a number of DFS's (schools, clinics etc.) have been built over land affected by quitrents. The State is unable to take registration of the subject properties as registration of these properties is not permissible at the Deeds Office due to the underlying quitrents. The very same properties cannot be disposed of when they become superfluous to the domestic needs of the State to facilitate any development as they remain without Tittle Deeds. The development at Mthatha Airport has been hindered by the existence of the underlying quitrent rights. Long-term leases for land development and investment purposes cannot be registered at the Deeds Office as required in terms of Deeds Registries Act of 1937. The same problem applies to the registration of servitudes.

The Mgwali area is also affected by quitrent rights compounded by the PTOs issued on top of the old-order right. This has caused contestation within the community and development in the area has been placed on hold pending the resolution of the overlapping rights. The research has demonstrated the effects, challenges and implications that the quitrent rights have on land use, development and ownership in the Eastern Cape.

5.3.2 Identify and Present Possible Workable Solutions in Resolving the Challenges Presented by the Existence of quitrents

The research has explored a few possible workable solutions ranging from the abolishment of the remaining quitrents to the development and enactment of a special dispensation to deal with existing quitrents. Recommendations regarding these solutions are set out in section 5.2 of this chapter. Whilst investigating the development of a special piece of legislation to deal with the existence of quitrent rights, private land developments should be allowed to proceed with restrictions and provisions protecting the existing rights. The response is in relation to objective ii of the study.

5.3.3 Determine the Role that Government can play in Resolving the Land Ownership Dilemma that the Quitrents Present

The research has demonstrated that government is well vested to deal with land tenure issues. It is government who enacted the Abolition of Quitrent Rights Act 54 of 1934. The Act automatically upgraded the rights to ownership with the exception of those in the Transkei and Ciskei Territories. The role of government is evidenced by the fact that only government-orientated developments are allowed on land affected by quitrent rights. Tenure reform must provide for the solution over overlapping rights and it is the role and responsibility of government to bring about tenure reforms with clear procedures on land ownership to mitigate any uncertainty on who owns what in a country. The research has also demonstrated that government has a role to protect land tenure rights as no one has weaker land tenure over the other. The response is in relation to objective iii of the study.

5.4. Conclusions

After more than hundred years since the introduction of the quitrent system in the Cape Colony, the quitrent rights still exist and remain unresolved in the age of democratic South Africa. Instead, new layers of rights have been created over the existing quitrent rights creating a land ownership dilemma. As it can be seen in the area of Mgwali, in the Amahlathi Municipality, the overlapping rights in respect of PTO's and Quitrent continues to cause tensions in the community to an extent of stalling developments. Often the provision of additional land makes good economic sense as well as providing a way to recognise and confirm existing rights to land. The Eastern Cape Surveyor-

General's Circular has provided a partial solution to the challenges and implications that quitrents pose over land development. The solution provided by the circular favours government-orientated developments. The approach comes across as if government undermines pre-existing lands rights. Any land development sanctioned by the private sector is not provided for in the circular. This approach is a total disregard by government towards finding a lasting solution to the quitrent dilemma. Uncertainty regarding land ownership in the former homelands has discouraged both public and private investment in services (Adams et al., 1999). Further, the study has proven through a few identified developments that quitrents do have implications for land development.

This is further complicated by the fact that the survey diagram of any property/land with an underlying quitrent title cannot be registered at the Deeds office for the purposes of issuing a Title Deed which is the most recognised form of ownership. Most land developments require land ownership due to the huge financial injection to any development. In turn, it renders developments unbankable due to lack of ownership as banks use land as a collateral. The reason why the issue of quitrent rights has not arose sharply is due to lack of knowledge from the broader society and this has potential of future claims being lodged on all land developments which have taken place ignoring the underlying quitrent rights especially for government as seen from the developments cited above.

The study reveals that the lack of government action has contributed to the lack of awareness and understanding amongst many stakeholders of the existence of quitrent rights. According to Participant SG1, a lot of people are not aware of these rights and the lack of awareness and conscientising of the various communities who need to know about these rights is part of the failure of the post-1994 government. The Upgrading of Land Tenure Rights Amendment Act 6 of 2021 has missed an opportunity of upgrading the quitrent titles in general. Instead, schedule 1 of the Act has not been amended to include those quitrent titles outside Proclamation No R188 of 1969.

According to Mzwakali (2021) during the last days of apartheid, as part of the early steps towards political settlement, the Upgrading of the Land Tenure Rights Act 112 of 1991 was passed to allow for the upgrade and transition of some land rights from

semi-formal and informal to ownership through registration in the deeds office. The political settlement is however applauded as it guaranteed protection of certain land rights especially those which were not protected pre-1994. The act did not fully address the full spectrum of land tenure issues in South Africa.

The study highlights a number of land administration challenges especially for government as a result of the quitrent titles. The absence of legislation has contributed to the administrative nightmare as mentioned by some of the participants. The office of the Surveyor General in the Eastern Cape is applauded for recognising the existence and protection of these rights. To some extent the Surveyor General: Eastern Cape is protecting the rights because if they would allow the process to just continue there would be an infringement of those rights and they would be forgotten. The fact that these rights have been validated by the Office of the Surveyor General: Eastern Cape, have implications on the developments undertaken on land with underlying quitrent rights. There is currently no mechanism whereby quitrents in the remaining former Transkeian and Ciskeian Territories can automatically be upgraded as they fall outside the proclamation. The implications have been explored in Chapter 4 above.

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Annexure 1: Ethics Clearance

UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

2022/11/08

EBE/00034/2022

RE: Research Ethics Committee Project Approval Letter

Dear Phucuka Penelope Malgas,

Your application for ethics review of your project titled

Exploring the challenges of quitrent rights on the development of land.

has been reviewed and evaluated by the

Engineering & Built Environment Committee.

You may proceed with your research project titled:

Exploring the challenges of quitrent rights on the development of land.

Please note that should:

(i) any serious or adverse effects to participants occur and/or,

(ii) aspect(s) of your current project change and/or

(iii) any unforeseen events that might affect continued ethical acceptability of the project occur then you should immediately report this to the approving REC. You may be required to submit an amendment to this application, in order to determine whether the changed aspects increase the ethical risks of your project.

Based on the information supplied your application has been successful and is approved.

Please note the following additional conditions associated with this approval:

(i)

Regards,

Engineering & Built Environment Committee.

Annexure 2: Interview Schedule

Interview Questions for Municipal Officials

1. What is your understanding of old order rights with specific reference to Quitrent rights?
2. What is the extent of the quitrent rights in your Municipality?
3. Do you think that the Municipalities have a role in resolving old order/Quitrent rights and what is that role?
4. Do you think the community is aware of the existence of Quitrent rights, their existence and status? If not, do you think they should be made aware and what awareness mechanism/s should be used.
5. How is the Municipality dealing with the quitrents when approving land development plans on land affected by quitrent rights?
6. Do quitrent have any impact on land development in your municipality and what is that impact?
7. Do you know that some the land affected by quitrent title holders are also affected by Land Claims in terms of Land Restitution Act?
8. How is the Municipality addressing the quitrent issue on the municipal planning tools, namely Integrated Development, Spatial Development Framework, Local economic development?

TITLE: Exploring the challenges of quitrent rights on the development of land.

Interview Questions with Officials of the Surveyor-General of the Eastern Cape/Western Cape

1. What is your understanding of old order rights with specific reference to Quitrent rights?
2. What is the extent of the quitrent rights in the Country?
3. What is the legal status of quitrent rights?
4. Do you think they have an impact on land development?
5. If Yes, What is your understanding of that impact?
6. Do you think the current land reform legislation and or policies are dealing/addressing the Quitrent rights?
7. Do you think that the Municipalities which are still affected by quitrent rights have a role in resolving them and how would you define/explain that role?
8. Circular No. 13 of March 2016 by Surveyor General: Eastern Cape?
9. To what extent does Circular No. 13 of March 2016 issued by Surveyor General, Eastern Cape addresses the impact of Quitrent rights on land development?
10. Are the Municipalities affected by quitrent rights aware of Circular No. 13 of March 2016 issued by Surveyor General: Eastern Cape pertaining to surveys overlapping Quitrent erven?
11. What is your understanding of the Circular and its implications on land development?
12. Do you think that the communities in and around areas affected by quitrents are aware of the existence Quitrent rights and their value to beneficiaries?
13. What is the impact of Quitrent Diagram/Titles on State Land Administration, with reference to?
    - The recording of State Domestic Functions
    - Survey of State Domestic Functions
    - Vesting to confirm ownership of State land
14. Would you recommend the abolishment of the existing quitrent rights?
15. Would the abolishment of Quitrent rights have any financial implications for the State?
16. Is government doing enough to bring the existence of quitrent rights to the attention of affected beneficiaries/ communities?
17. Are there any plans within the National Department of Rural Development and Agrarian Reform to deal with the still existing Quitrent rights

TITLE: Exploring the challenges of quitrent rights on the development of land.

Interview Questions for Officials of the Provincial Department of Public Works and Infrastructure: Eastern Cape

1. What is your understanding of old order rights with specific reference to Quitrent rights?
2. Do you know and understand the extent of the quitrent rights in the Country?
3. What has been the impact of quitrent rights on the Department as the Custodian of Eastern Cape Provincial Government State land?
4. Do you think they have an impact on land development in general?
5. How do you think should the Quitrent problem be addressed by the Department of Rural Development and Land Reform? Should there be a specific dispensation – e.g. Proclamation/legislation for Quitrents?

TITLE: Exploring the challenges of quitrent rights on the development of land.

Annexure 3: Informed Consent Letter

Information sheet and consent form

Introduction
My name is Phucuka Malgas and I am conducting research towards a master's degree. I am investigating the impact of quitrent rights on land development in general and would like to invite you to participate in the project.

About the project
The purpose of this research is to explore the extent of the challenges of quitrents that are encountered on land development. This research attempts to examine the burdens of quitrent rights systems and its impacts on land development, the local economic development with a view to find a workable solution to the problem of quitrents.

Participation is voluntary
Please understand that you are not obligated and do not have to participate in this project. Your participation is entirely voluntary. The choice to participate is yours alone. If you choose not to participate, there will be no negative consequence. If you choose to participate, but wish to withdraw at any time, you will be free to do so without negative consequence. However, I would be grateful if you would assist me by allowing me to interview you.

Expectations from participations
I will only ask you a few questions regarding your understanding of the history of Quitrent rights, their continued existence and how they impact land development. It is expected that participants would make proposals on how to treat/deal with the existing quitrent rights and if not addressed, what are the implications for government. The questions are categorised as follows:

Primary research question

To what extent do quitrent rights impact on land use, development and ownership rights in the Eastern Cape province of South Africa?

Sub-questions

i) What are the possible solutions in dealing with the existence of quitrent rights?
ii) What is the role of government in resolving the land ownership dilemma presented by quitrents?

This should take 15 to 30 minutes. There is no financial obligation from the project or you as the participant. Therefore, there is no payment/reimbursement available. With your permission, I would record this interview however if you do not agree that is still acceptable. I also need your consent to refer to this recording and any notes I may have taken for academic purposes including my projects.

Benefits to participants
No indirect or indirect harm

Risk of harm to participants
No foreseen or unforeseen risks

Sharing and use of data
Data generated from the interview will be synthesised and used to answer the research questions set for this master's project.

Ethical approval
The research has been reviewed and approved by the University Research Ethics Committee of UCT, with the ethics reference number and permission has been obtained to circulate this survey.

Anonymity and confidentiality
All information collected in this study will be kept private in that you will not be identified by name. Confidentiality will be maintained as pseudonyms will be used.

By signing the consent form you agree to the terms stipulated in this consent sheet regarding the interview. If you are not comfortable with the terms please make a note on the form.

Interviewee name:	Interviewee's signature:
Date:	Date:

Consent form for recording of interview – to accompany information sheet given to participant

Title of project: Exploring the challenges of quitrent rights on the development of land.

Name of interviewer: Phucuka Malgas

Title of degree: Msc in Property Studies

University of Cape Town

I
……
…, confirm the following:

1.	I have read the information sheet provided by the researcher and thus understand the projects aims and objectives.	
2.	I am participating in this project voluntarily and understand that I may withdraw from the interview at any time if I so do wish.	
3.	I acknowledge and understand that confidentiality will be maintained.	
4.	I have been asked permission to record this interview and have given my permission.	
5.	I understand that this data is accessible to other researchers only if they honour the confidentiality agreement.	

Participant

Date ……

Signature of participant ……
Name of participant …….

Organisation of
participant…….

Researcher:

Name:
……

Signature:
……
Date: ……