

Things built on land.

In Roman Dutch law where a house is built on land in such a way that it is attached to the land, the ownership of that house vests in the owner of the land subject to a right of compensation on the part of the owner of the materials of which the house is built. Thus a hut which is built on land ~~if~~ even if it is built of sods or mud bricks is regarded as attached to the land and so immovable. But in Natal under section 1524 of the Natal Code of Native Law a hut is deemed to be a movable thing & therefore not really attached to the land.

What is said with regard to a house built on land also apply to things planted in land such as a tree or crops. A person having a certificate of occupation to a piece of land is entitled to the crops growing on that land (Pennar vs Trufu NATC (C.O) 1936; also Lejinta vs Molefe NATC (C.O) 1932).

As far as the question of compensation is concerned for the real materials used in building on the land of another, much will depend upon whether the person concerned knew or did not know that the land did not belong to him. "If a man mistakenly ploughs a field in the belief that it is his, he will be allowed to reap the crops, but must then abandon the land, but if he was aware that the field did not belong to him he must forfeit the crops to the real owner."

The Widow's Right to Land

There is a well known principle in Native Law enjoyed by a widow in respect of her late husband's residential & agricultural land. The widow has a right to remain at her late husband's kraal and she may not be ejected even by the Chief. She is not the owner of the land & therefore cannot dispose of it (Mshakoe vs Radebe 1958 NATC(C.D)) nor is she entitled to keep the title deed (Dyasi vs Dyasi 1935 NATC(C.S)). On the other hand the heirs cannot compel her to leave her late husband's kraal & to live with him. The widow's right to the use of the land prevails over that of the heirs (Agy Dyasi's case). In fact in certain cases the widow may even eject the heir from the land if he abuses his rights e.g. when he fails to support the widow or he drives her away from the kraal or makes her position so uncomfortable that she has to leave.

The widow's rights are lost if she deserts her late husband's kraal i.e. if she abandons her right. She does not lose her rights unless she leaves the kraal without just & reasonable cause (Naijona vs Mandulini 4 NATC. 159)

The widow's rights are available not only against the heirs but ^{are} real rights available against everybody. Anyone who acquires such lands acquires it subject to the rights of the widow if he has notice of the widow's rights.