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OPINION

### **Madikizela-Mandela's last fight: For women's land rights**

Bathabile Dlamini 17 Apr 2018 16:39

Mama Winnie became a voice of defiance against legislation that further marginalised and subjugated the position of black women

#### COMMENT

The passing on of the “Mother of the Nation”, U'Mama Winnie Nomzamo Madikizela-Mandela, came at a time when there is a renewed focus on one of our country's most important and complex issues — the land question.

As if by her own design, Mama Winnie's last act of defiance was, and will continue to be, against the brutal laws of a system under which she had known all the pain possible that a human can endure. She sought to reverse the historical perversion by colonial authorities of customary law to women's land rights. Up to her last breath Mama Winnie firmly believed that women's equal rights to land, housing and property are human rights that should be upheld by the courts of this land.

It is no wonder that some of the townships and informal settlements around the country are named after this remarkable African woman. At the height of the colonial and apartheid regimes the deliberate distortion and codification of African customary laws and systems, as clearly demonstrated in the 1913 Native Land Act, became the anchor strategy for the colonial imperialists to plunder the African land and its vast resources. In his book *The Wretched of the Earth*, Frantz Fanon makes an inalienable connection between the colonised people and the question of the land. He wrote: “For a colonised people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity.”

It is a fact of history that to no social group the world over has there been directed greater disdain by oppressive systems than black people, and black women in particular. In Southern Africa, it was this paradigm that condoned the enslavement and parading of Sarah Baartman as a freak show attraction in 19th-century Europe. In a continent that claims to be the birthplace of civilisation, Baartman was never seen as a human being, but as a freak whose black body was exploited and subjugated to gratify the master's sexual curiosity and needs. It was the same

chauvinistic tendencies of the apartheid regime that stripped the rain queen, Makoma Modjadji IV, of her powers in 1972.

It was also the same colonial and racist ideology that legislated the minority status and the dehumanisation of the lives of black women by reprehensible pieces of legislation such as the Native Administrative Act (later renamed the Black Administration Act of 1927), which denied black women equal rights to access, use, inherit and own land. Mama Winnie became a voice of defiance against such pieces of legislation that further marginalised and subjugated the position of black women.

The superimposition of Eurocentric and Western legal constructs on African customary law and the commodification of land uniquely affected black women and stripped them of the dignity that Fanon refers to in his book. Those who resisted these imperialistic superimpositions were treated with unhinged brutality, none worse than that directed at Mama Winnie Madikizela-Mandela.

In IsiZulu we say bebemchukuluza, which is to say she was persecuted. Hers was a case like none around her. She was South Africa's first black medical social worker. She walked, even in her early years, as a woman who was owed gratitude by the ground. She presented a new brand of fearlessness to the South African landscape in a fashion similar to how her being presented her beauty: unassuming, yet unbelievable to witness.

To understand her unique lot requires that we understand the nuanced hierarchical systems of patriarchy. For as soon as the apartheid government decided that Nelson Mandela was the most dangerous terrorist in the land, they also set out to destroy her. All sentiment reserved by the state for Mandela was extended, as if in community of property, to Mama Winnie. But as history will eternally show, what awaited them was a war they never won.

In 1962, she fearlessly declared: "If they think because they have put my husband on an island that he will be forgotten, they are wrong. The harder they try to silence him, the louder I will become." And they did try to silence him through her, by attempting to subdue her.

By 1987, she had been cruelly punished in all possible ways, yet still defiantly asserted: "There is no longer anything I can fear. There is nothing the government hasn't done to me. There isn't any pain I haven't known."

Perhaps her greatest legacy, and the least spoken about, will be her last act of defiance against the patriarchal and systematic injustices that deny women living in rural areas equal rights to inherit and own land. Mama Winnie set about challenging the discriminatory notion that a woman's only claim to land is through her relationship to a man.

Mama Winnie and Nelson Mandela married in 1958 under both customary and common law. After her marriage to Nelson, who was in prison at the time, Mama Winnie was allocated a nine-hectare site in rural Qunu in accordance with the customary law of the AbaThembu clan. After their much-publicised divorce, the court granted Mama Winnie and uTata Nelson Mandela a final decree of divorce in respect of their civil marriage, a decision she vehemently opposed. According to the AbaThembu custom, their customary marriage remained extant until Tata had claimed his lobola.

In 1997, the then minister of land affairs Derek Hanekom declared there was to be a 97-hectare land extension to the nine hectares previously allocated to Mama Winnie. In her court application Mama Winnie claimed that this piece of land had been donated to Nelson Mandela without her knowledge or consent. The minister and the court seemed to have based their decision to change the ownership to Nelson solely on the issue of divorce and their own interpretation was that, because the marriage did not exist anymore, Mama Winnie had no claim over the land that had been allocated to her. This is because, across the globe, laws dealing with land and land ownership are steeped in patriarchal ideologies.

Mama Winnie's last fight, which unfortunately she didn't see through to the finish, was to challenge the constitutionality of the court's judgment and assert her inalienable right to own land as a woman. Despite historical evidence attesting to women's strong land rights under customary laws, colonial and apartheid systems would have none of it.

As once noted by Dr Aninka Claassens, director for the Land and Accountability Research Centre at the University of Cape Town: "Because of the superimposition of Western stereotypes of exclusive ownership and male dominance, women's primary rights to fields and strong rights to house property ... were rendered legally invisible by laws such as the Natal Code of Native Law (1878) and the Native Administration Act of 1927."

It is certainly the toxic mix of patriarchy and the superimposition of Eurocentric laws that can be attributed to Mama Winnie's difficulty in asserting her right to own land. In a democratic society such as ours, which is underpinned by constitutionalism, one

would have hoped that the Eastern Cape High Court would have adopted a human rights-based approach. Instead, the court's argument seemed to uphold the patriarchal view to land ownership, as it stated that: "Mrs Mandela would have to show that the original site and the extended site were allocated to her in personal capacity and not in her capacity as representative or wife of Mr Mandela. Whether an allocation of land to a married woman in her personal capacity was possible under customary law is open to question."

This judgment contradicts existing evidence that married and single women have been and continue to be allocated land in their personal capacity under customary law. In Mama Winnie's case, this is supported by the AbaThembu Traditional Authority. Dissatisfied with the decision of the high court, Mama Winnie took her fight to the Supreme Court of Appeal (SCA), which disappointingly dismissed her appeal because of the 17-year delay between the material moment of her land deprivation and her court application. The SCA was at pains to clarify that it had not simply ignored the appellant's customary law right and constitutional right to property.

Even if the appellant were to succeed in asserting her customary law claim to the property, she would not be entitled to the whole property measuring 97 hectares simply because her right of possession, customarily, would have been limited to the small portion allegedly allotted to her by the king and the local community in her capacity as the second wife to the late Nelson Mandela. If the appellant's case had been confined to the small portion of the entire property without conflating it with the larger portion that was donated by the minister in 1997, perhaps her case would have been adjudicated differently.

This rationale was advanced by a court well aware that Mama Winnie's primary application was for the court to declare Hanekom's 1997 decision to arbitrarily donate the extended property as null and void, because it was not granted in accordance with customary law, under which the land was given to her in the first place.

Among the many lessons this case presents, it reminds us that the centuries of systematised distortions of identity continue to contribute substantially to our collective challenge at undoing the material and psychological legacies of our painful history and dismantling the patriarchal justice system. It is also a living testament of Mama Winnie's devotion to the black women's struggle for social justice, the struggle for the realisation of black women's rights to access, control and own land, particularly in South Africa, where women comprise 51% of the total population.

Long after her mortal remains have been laid to rest, Mama Winnie's spirit will march on to the court of the last resort, the Constitutional Court, to lay claim to her land rights and the rights that so many women in our country and across the globe have been systemically denied. And beyond this case, her spirit will live on in the hearts of those she has liberated with her mere being. Mama Winnie will be remembered as a committed champion of women's rights and democracy. Her energy and lifelong dedication to improving the lives of her people will continue to inspire generations of young women in our country and beyond.

Mama Nomzamo Winifred Zanyiwe Madikizela-Mandela, rest in peace, knowing that your contribution to South Africa will forever be remembered. May your spirit live well beyond the measure of time, Madikizela.

Lala ngoxolo Mama We Sizwe!! Hamba Kahle Mkhonto! Ah! Nobandla!!

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