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## **How stokvels manage their activities outside courts, UCT study finds**

The South African stokvel sector is massive and controls vast financial resources. It holds an estimated R49.5 billion in member savings and has some 11.6 million participants. Stokvels are part of the informal economy and as such are largely beyond the reach of the law.

With a sector of this size, Associate Professor Andrew Hutchison said they undertook a study aimed at understanding why few stokvels or their members appear before South African courts. "Our findings suggest that the answer may lie in the fact that stokvel members prefer to manage their own affairs through non-state means. This is what economists would call "private ordering". In stokvels this process begins with contracting," said Hutchison.

"One of very few cases dealing with a stokvel in the South African Law Reports arose more than two decades ago. Since cases which reach at least high court level and lead to a development of the law tend to be reported, this scarcity is revealing," added Hutchison. "The story behind the case offers some suggestions on why this may be so."

In January 1998, Ms Malgas borrowed R6 000 from her friend Ms Mndi. The source of the capital lent was Ms Mndi's stokvel, the Masikhule Club. The capital was advanced by the club to Ms Mndi at a rate of 30% per month. Ms Mndi in turn lent the money, on the same terms, to Ms Malgas. It took Ms Malgas some time to repay this loan. Eventually in December 1998, she repaid R34 692.60 to Ms Mndi, who then transferred this sum to her stokvel.

Ms Malgas clearly felt aggrieved at having to repay such a large amount, since she later instituted a claim against Ms Mndi in the magistrate's court for return of the money paid. Indeed, the sum paid was above what was at the time lawfully chargeable as a fee for the use of money. She won her case, but due to the intricacies of the law of unjustified enrichment, she received only R4 435.40 back from Ms Mndi. This amount represented Ms Mndi's personal share of the profits on the loan according to her stokvel's rules.

"This case illustrates how stokvel practices may not always be lawful and that it can be difficult to address this effectively through the courts," said Hutchison.

## **Governance issues**

Most stokvels will have a constitution. "If a stokvel applies for a bank account, a written version of this constitution will be required," he said. "The constitution provides the blueprint for how meetings are run and how office bearers are elected, as well as determining the rules of the stokvel and debt collection procedures. In our view, the constitution forms a contract between a member and the group. There are elaborate procedures for obtaining consent to a constitution. This is sometimes done through oral ceremonies or even through formalising written consent through an affidavit at the local police station."

He said stokvels involve loans and if a loan was not repaid, most of the participants would resolve the situation themselves through negotiation or use group pressure through club members. "If this failed, members would approach a street committee, or even the local taxi-men for dispute resolution assistance. As a last resort, the debtor's property might be attached and sold by the group without resorting to the courts."

Concluded Hutchison: "South African law is not part of the stokvel contract enforcement process, and indeed some practices reported to us would be illegal under formal sector law. Rather, a working system has been devised to govern communities where money is short, access to justice is unaffordable, and debts must be repaid for the good of all."

***ENDS***

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