

INTRODUCTION

2015 has been an eventful year, with many dramatic issues hitting the headlines, from xenophobia rearing its head again to the recent student activism against the cost of higher education. In this edition we highlight some of the prominent issues dealt with in our Joburg, Durban and Pretoria offices this year. ●

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Staff farewells



Gift Xaba - Johannesburg Legal Advisor.

Gift has been with ProBono.Org since 2013 when he worked as a volunteer for six months at the Thokoza help desk in the municipal offices. He was then an intern at the Johannesburg office, dealing with cases involving housing, labour law and deceased estates. At the same time, he obtained a Master's Degree in banking and international commercial law from the University of Johannesburg. He was promoted to legal advisor in March 2015. We are very proud of his achievements, particularly the fact that he has been accepted for articles at Cliffe Dekker Hofmeyr attorneys from 1 January 2016. Says Gift,

"I will forever feel indebted to ProBono.Org for the opportunity and all the exposure. I have learnt so much, it defies explanation. I am deeply humbled to have been part of an organisation with such a meaningful social function."



Shahista Hassan - staff attorney

The Durban office will be losing staff attorney Shahista Hassan-Khan who has been with ProBono.Org since 2011. She will be leaving to take up a very exciting opportunity at the State Attorney's office. Shahista has demonstrated particular dedication to the situation of refugees and contributed enormously to our work assisting asylum seekers and foreign nationals.



Gugu Ntaka - senior intern

Gugu will also be leaving at the end of December after two years with us. She has completed her LLB degree and will be leaving to pursue new challenges.

Our best wishes to all of them in their new endeavours.

Housing - a complex issue

The importance of information

Tshenolo Masha

2015 has been an exhilarating year legally speaking, from the euthanasia case right up to the silicosis case. These cases have opened up robust conversations about our legal system and the citizens of this country. However, the most impactful legal service is the one where an otherwise impoverished and indigent person has access to knowledgeable and quality legal assistance that involves the most valuable asset a person is likely to know in their lifetime - their house.

The ownership of property in our communities is closely associated with human dignity and is a measure of an individual's ability to provide and care for his or her family. An elderly widow with children or grandchildren who are dependent on her could suddenly find herself in a legal wrangle that sees her fighting to hold on to this precious asset. On delving deeper, one is likely to uncover an unresolved deceased estate involving a bonded property or an unlawful transfer of the immovable property and subsequent sale thereof.

The issue at hand is that of access to information and to the most basic advice that could help avert possible homelessness. But in some instances it also becomes an issue of access to quality services by skilled legal practitioners who will offer sound, honest and realistic advice. This year has highlighted a need for public education on immovable property law, bonded properties and the administration of deceased estates in our communities. We need to

empower community members to actively engage the banks and their regulatory bodies and also government departments like the Deeds Office and the Master's Office.

This engagement, however, requires community members to be properly aware of their rights and their duties in matters involving their homes. We need to dispel the notion of occupation of a property constituting ownership. We need to create an entirely different culture to the one that currently exists in our communities as that has made it too easy for one to lose one's home.

*Housing day at Constitution Hill,
20 October 2015*



Pretoria eviction case

Neo Chokoe

ProBono.Org was approached by occupiers of Capital Park to fight an eviction case. ProBono.Org appointed Maponya Inc Attorneys to assist the clients with the case and they appeared in court to oppose the eviction brought against the occupiers on 22 July 2015 before the North Gauteng High Court. The matter was postponed due to the fact that there was no arrangement made by the City of Tshwane for alternative accommodation.

The water supply for the occupiers was cut off and we approached Lawyers for Human Rights to assist them in reversing this. Lawyers for Human Rights engaged the City of Tshwane and managed to get them to reconnect the water.

Maponya Inc. attorneys attended endless meetings with the attorneys for the owner of the land (applicant) and the City of Tshwane. During one of the round table meetings it was proposed to the City of Tshwane that the occupiers be allocated land in Booysen Extension 4. The land was identified as suitable for habitation by the applicant's attorneys and Maponya Inc. Attorneys also agreed that the proposed land could be offered as alternative accommodation for the occupiers of Capital Park.

A joinder application was filed before the High Court to join the Department of Rural Settlements to the proceedings as an interested party by virtue of its powers to declare land free to be occupied. The joinder application will be heard on 8 December 2015.

There has been remarkable progress in this case and Maponya Inc has worked tirelessly to ensure that the rights of the occupiers are not infringed pending the finalisation of the matter. ●

Claims against former spouses' pension funds

Nomaswazi Malinga

ProBono.Org has seen an increase in the number of clients who request assistance with applications to vary their divorce orders. In some instances the parties failed to seek adequate advice as to what the law entitles them to claim against each other and months after the divorce was granted the one spouse realises that they have been short changed because they did not claim against the ex spouse's pension fund.

In one of our cases, our client, married in community of property, took early retirement and was subsequently divorced. Our client only became aware after the divorce decree was granted that he could have claimed for a share of his ex wife's pension. He was also under the impression that when the decree stated that "the joint estate shall be divided" it included her pension, but little did he know that he had to ask for it specifically. He

now wants to bring an application for a variation of the divorce order to include his wife's pension fund.

There is a misconception that the division of a pension fund is automatic, whereas one needs to pray for it specifically so that it can be endorsed in the divorce order. In the Divorce Amendment Act, Act 7 of 1989, Section 7 was expanded to include subsections (7) and (8) which resulted in the pension interests of a member spouse being regarded as an asset in the estate. Thus, the non-member spouse becomes entitled to claim a benefit, taking into consideration the rules of the particular fund and what the main member would have been entitled to should their membership be terminated at the time of divorce. It is important to note that each claim is dependent on the parties' matrimonial property regime.

In a marriage in community of property, the spouse is entitled to 50% of the pension interest of the member's share as at the date of

divorce. Within a marriage out of community of property with accrual the spouse's pension fund value will only be taken into consideration in order to determine the value of his/her estate for calculating the accrual. In a marriage out of community of property without accrual after 1 November 1984, the spouses keep their separate estates and there is no sharing of assets at the time of divorce. Should the parties wish to share in each others' pension interest, it would have to be by mutual agreement, or they could conclude a settlement agreement that will be incorporated into the divorce decree.

It may happen that the divorce proceedings take a while to finalise and the spouse's pension becomes due and payable before the date of divorce. In that case it will have to be dealt with like any other asset, either belonging to the separate and/or the joint estate. It is best to deal with the pensions and all other relevant claims at the first instance when instituting a divorce. ●

*Women's day at Constitution Hill,
18 August 2015*



Durban Office highlights

Shamika Dwarika

Every year has its challenges and successes, and 2015 has been no different. On the positive side, we have helped numerous clients through our panel of 198 firms of attorneys. We have also expanded our reach to a total of 10 help desks in 2015.

New project - GreenABLE

During 2015, we embarked on a very exciting project in Durban with GreenABLE, an NGO based in the Pinetown area. GreenABLE is unique in that it has a two-fold function. GreenABLE dismantles used printer cartridges that cannot be remanufactured and prevents them from becoming an environmental hazard. Moreover, this work is carried out by previously unemployed disabled black beneficiaries and assists them to

become job ready.

We assisted GreenABLE by providing legal seminars for their beneficiaries on a range of topics, such as labour, maintenance, consumer protection, contracts, social media law and housing, to name but a few. The seminars ran from early February until the end of June. Beneficiaries received thousands of rands worth of free legal training and were more than grateful for our assistance.



14 attorneys from 8 firms participated in this one of a kind project, with a total of 38 seminars being held. The firms are Strauss Daly Inc., Garlickie and Bousfield Inc., Giffords Attorneys, Barkers Attorneys, Livingston Leandy Inc., Fawzia Khan & Associates, Pather and Pather and Simrithi Sharma and Associates. ProBono.Org Durban extends our thanks to all the firms who went beyond the call of duty in participating in this project.

Student Protests - Durban

After a spate of student protests and demonstrations countrywide, students in need of legal assistance from the University of KwaZulu-Natal (UKZN) approached ProBono.Org Durban. Attorney Dunstan Farrell and candidate attorney Shamon Gounden of Farrell Inc. met with the group of students, the Common Student Initiative (CSI), who sought legal support.

Two of the CSI members related an incident earlier that week where they had been assaulted, shot at and detained by security personnel on campus during a demonstration. The students allege that they were picked out of a crowd, identified as leaders in the protest action, forced into an unmarked vehicle and taken to security offices on campus.

The CSI, a group that emerged in opposition to the Student Representative Council (seen as ineffectual) grew rapidly over a matter of

days, with signed up members in excess of a thousand students. The primary issues they raised included that of an interdict granted at the instance of the university against protesting students at the Pietermaritzburg High Court. They alleged that the university would use this to unduly restrict their rights to gather freely and engage with students on campus. They further raised concerns regarding the legitimacy of SRC elections and sought to interdict them. One of their goals was to have a meeting with the Vice Chancellor of the institution and table their agenda.

Advocate Paul Schumann advised on the prospects of the remedies sought by the CSI, including the importance of the group formally registering as a student body with the institution. In addition, Farrell Inc. assisted in obtaining a protection order for a student who had been threatened by fellow students.

The group is now in the process of finalising their Constitution and hope that their endeavours will result in a duly registered student representative body that has the students' needs at its core. ●



Neo Chokoe

*Launch of
the Help
Desk at
the North
Gauteng
High Court.*



The ProBono.Org Pretoria Office was officially launched on 6 May 2015. The office is now fully operational, serving the City of Tshwane and its surrounding areas. The office services a large number of clients on a daily basis on issues of housing, administration of estates, family law, divorces and SMMEs.

Attorneys around the area of Tshwane have shown their commitment to ensuring access to justice by participating in the help desk projects in the North Gauteng High Court and at the office of the Master of the High Court. They have also given their support to the Pretoria office by joining our panel of attorneys and participating in some of our other projects.

A number of activities undertaken by the office in the past few months have highlighted the work of ProBono.Org and encouraged attorneys to sign up to provide legal services to the poor. Some of these included:

- A radio interview on Ubuntu FM, which has established a referral system where audience members can be referred to any of our three offices;
- Attending the AGM of the South African Women Lawyers Association in Polokwane where the Pretoria manager gave a presentation about ProBono.Org to women lawyers and Judge President Makgoba of the Polokwane High Court;
- Attending the AGM of the Law Society of the Northern Provinces to advertise and market ProBono.Org to attorneys practising within the area of jurisdiction of the LSNP.

As result, the Pretoria office now has a total of 29 law firms on its pro bono legal panel. ●

ProBono.Org Guidelines for Law Firms

Erica Emdon

ProBono.Org has prepared a set of Guidelines to assist us to manage the working relationship we have with law firms. We hope that the best possible service is rendered to our clients, who are from among the most vulnerable and marginalised communities in this country, and will encourage law firms to adhere to these Guidelines.

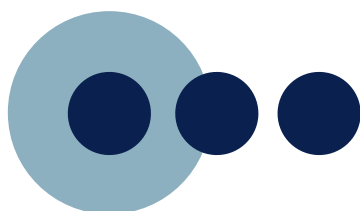
Our guiding principles are, among others, that law firms that take referrals from us should be committed to the Constitution, the rule of law and to providing high quality legal services.

There are certain expectations that ProBono.Org has of attorneys to whom we refer matters, in particular that attorneys explain the legal process to our clients, the relevant time frames of our clients' matters, the legal options available and how often clients can expect to hear from the law firm.

There are a number of provisions relating to the ProBono.Org legal clinics that aim at improving their efficiency. We address the issues of the need for impeccable case information and for avoiding last-minute cancellations, among other things.

ProBono.Org has to produce reports for our board and donors about the types of matters that are opened, the firms that take matters on, the hours of pro bono work undertaken, the outcome of matters, and so forth. The Guidelines provide that law firms will be asked for reports periodically. Moreover, law firms can ask us to submit reports on pro bono hours undertaken to the relevant law society on their behalf.

We are constantly looking at ways of improving our practice and ensuring that we are providing a professional and high quality service to both our clients and to the law firms we work with. It is hoped that these Guidelines will go some way in assisting with this. We welcome comments and refer you to our website where you will find a copy. ●



ProBono.Org

Pro law for all

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