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Welcome to our 2019 Joburg interns



We are very pleased to be able to report that our 2018 interns were all offered articles with law firms and with Legal Aid South Africa.

Here are the new intakes for 2019 together with volunteer Zandi Mahlangu. We hope they have a rewarding and interesting time with us and that they will carry with them a passion for pro bono work and assisting the less fortunate.



Muchengeti (Chengi) Hwacha

Chengi comes from a long line of legal professionals. His grandfather was one of Zimbabwe's first post-colonial black judges and his father is a founding partner of one of Zimbabwe's top law firms. Following in the family's footsteps Muchengeti completed an LLB at the University of KwaZulu-Natal (PMB). He has supplemented this qualification with Certificates from the University of the Witwatersrand in Intellectual Property Law and Banking and Financial Markets Law.

His first experience with ProBono.Org was as a volunteer at the Divorce Court help desk at the Johannesburg Family Court in August 2018. He was then

brought on as an intern in the Child Law department in January 2019. He has had experience in public interest law, volunteering for organisations such as the International Commission of Jurists (ICJ) Africa, Zimbabwe Lawyers for Human Rights (ZLHR) and the Constitutional Literacy and Service Initiative (CLASI). During his tenure at ZLHR, where he worked on electoral law reform research, he developed a strong passion for activism on electoral issues. He developed this into a campaign for diaspora voting rights in Zimbabwe. Listen to an interview he gave on the topic for Cliff Central Radio here:

<http://cliffcentral.com/no-borders/no-borders-mtv-shuga-oyc-con-courts/>



Phindile Cele

Phindile Cele was born in KwaZulu-Natal and completed her LLB degree at the University of South Africa in 2018.

She is currently doing a Master's degree in Family Law. Before completing her degree she volunteered at Mason Attorneys doing vocational work; volunteering there was confirmation for her that she had chosen the right career path. She applied for an internship at ProBono.Org to gain exposure to various areas of law and help the less privileged. She has a passion to educate, which is a way of giving back to society; to ensure that the

statement "justice for all" is not just a narrative to those who cannot afford legal services. "I am looking forward to learning and mastering the areas of law ProBono.Org specialises in, but mostly I hope to make an impact on the lives of those who need legal assistance", she says. Phindile worked at the University of South Africa as a post-graduate student assistant for two years, assisting academics with research and admin work. "Working at UNISA exposed me to career opportunities available in the academic environment, and after I am admitted as an attorney I would love to pursue a career as an academic, specialising in family law."



Mukhethwa Chauke

Mukhethwa was born and raised in Venda (Limpopo) and, like many people, moved to Gauteng to pursue tertiary education. He completed his LLB degree at the University of South Africa in 2018. He participated in the street law programme at university and was exposed to community work, where he realised that he is a social justice warrior. In 2018 he

had an opportunity to volunteer at ProBono.Org in Johannesburg and was excited to be working in a legal environment for the first time. "Working with people from marginalised and under-privileged communities who have sensitive legal matters is something I have grown an intense interest in. I believe pro bono work should be a mandatory requirement for all legal practitioners. ●

ProBono.Org Joburg participated in the second Human Rights Festival organised by Constitution Hill.

Human Rights Festival 2019

By Margaret Fish

Over four days from 21 to 24 March the festival included poetry, art exhibitions, a film festival, the social forum, activism row, a music evening and We the People walks on the Sunday. In addition, there was a marquee with food stalls and a market where creatives sold their wares.

ProBono.Org had a stand in Activism Row and on Saturday morning we held consultations for people wanting assistance with family law issues. Our family

law attorney and child law consultant, along with volunteer attorneys from Werksmans were on hand to provide advice.

Meanwhile, in Musina in Limpopo our refugee project manager attended a Human Rights Day annual soccer tournament that commemorated human rights with a special focus on refugee and migrant rights. ●





The Family House Project – forward we go!

By Tshenolo Masha

Our collaboration with Dr Maxim Bolt (University of Birmingham and the UK Social Research Council) on the Family House concept continues.

Following the launch of the Position Paper in July 2018, a public consultation was held to get feedback on the research from members of the public. The input identified a need for formal legal recognition of the concept. On 9 February 2019 a summarised version of the position paper was presented to 180 plus community members from Jabulani, Zola, Zondi and surrounding areas in Soweto. It was noted that in many instances when legal reform takes place there is no adequate substantive engagement with the affected communities. There have been many reforms around land ownership and inheritance in urban spaces, but it has previously not been adequately communicated or explained how these changes would affect the manner in which property is owned, administered and even accessed.

As the position paper's research and case work focused on Soweto, this community was an obvious choice for public engagement. Through the Zola Advice Centre, young and old expressed their thoughts, feelings and experiences in relation to this concept. After going through the sections, community members gave feedback on the paper based on their lived experiences. A few assumptions were corrected but mostly the community members concurred that the family house is a concept that is alive within their community but is also difficult to define. The community also called for formal recognition of the concept and families that practise this concept should be able, through legal mechanisms, to register properties as family homes.

The input from this consultation and the consultation in July 2018 with academics, legal professionals and social justice organisations saw the development of a policy toolkit. This document identifies key legislation and

state functionaries that should be explored in advocating for policy and legislative reforms in relation to this concept. The policy toolkit was launched officially on 26 March 2019 at Hogan Lovells. Speakers from The Deeds Office Johannesburg, Master's Office Johannesburg, the Gauteng Provincial Legislature Portfolio Committee on Human Settlements, the Gauteng Department of Human Settlements, the South African Law Reform Commission and a conveyancing practitioner gave their inputs and feedback on the authors' recommendations on action to be taken to ensure policy and legislative change. This will lead to more substantive engagements with state entities such as the Law Reform Commission and provincial departments for policy and legislative reforms.

Both documents and updates on developments on this project can be accessed on this link: <https://www.birmingham.ac.uk/schools/historycultures/departments/dasa/research/the-family-house.aspx> ●

The importance of estate planning and having a will in place

By Naeelah Williams, Cape Town



Estate planning can be defined as planning and preparing for the transfer of a person's assets upon death. Policies, pension funds, immovable and movable property all form part of one's deceased estate. However, so does one's debts and liabilities.

This article aims to amplify the significance of estate planning and will elicit important factors to be considered when doing so.

Planning one's estate is crucial to ensure that your loved ones are looked after when you pass on. Having a Will drafted is therefore a vital part of getting your financial affairs in order and the foundation of every person's estate plan.

ProBono.Org Cape Town has seen a number of clients who require assistance with the winding up of a loved one's estate, only to discover that the deceased estate does not have the necessary liquidity required to settle the debts in the estate, or that people who have never cared for the deceased are to inherit. In most instances this results in extremely trying times for the family members, heirs and dependants of the deceased.

Here are four important factors to consider when doing the necessary planning:

1. Have a Will drafted by a qualified professional.

There are certain formalities in terms of the Wills Act, 7 of 1953, that have to be complied with in order for a Will to be accepted as valid by the Master of the High Court. Many clients approaching ProBono.Org present Wills that often do not comply with all the prescribed formalities which, in essence, renders the Will invalid.

- Once drafted, it is of utmost importance to review your Will on a continuous basis and to ensure that it is up to date, especially after major life events such as death or divorce, and
- Leave clear directions with someone you trust as to where your Will can be found.

2. Take care of who you appoint as the Executor of your estate.

Understanding the importance of this becomes apparent when one understands the role of the Executor. The Executor is the person you

appoint to be in charge of your financial affairs after your passing. The Executor's role is an important one and it is essential that you consider whether the person you are appointing understands the responsibilities of administering a deceased estate.

3. Nominate legal guardians for your minor children.

This is of utmost importance if you have minor children. A testator has the freedom of testation and may appoint in his or her Will the person who will act as the children's guardian upon his/her death. In almost all instances, the surviving parent becomes the guardian, and for this reason many people tend not to appoint a guardian when drafting a Will. However, we urge people who are in the process of getting their affairs in order to nominate a guardian in the event that the surviving parent passes away. This is essential as every parent would want the person acting as the guardian of their minor child/ren to give him/her the same love and care the parent would have given.

4. Consider how your debts may affect your estate.

The heirs to your estate are often burdened by the debt you incurred during your lifetime. It is thus important to be honest with your heirs and to start paying off your debt while you are still alive or, alternatively, to consider taking out some form of life or debt protection insurance.

It is of paramount importance to take heed of the implications of passing on without leaving a valid Will. In South Africa, if a person passes on without a valid Will, his/her estate will be administered in terms of the Intestate Succession Act, 81 of 1987. Intestate succession involves matters around 'blood' relationships. If one passes on intestate, one's estate will be inherited by his/her closest blood relatives. This would entail that the deceased's spouse will receive R250 000, 00 or a child's portion, whichever is greater. The residue of the estate will be inherited by his/her children in equal shares. Should the deceased pass on without leaving behind a surviving spouse, the entire estate will be inherited by his/her children in equal shares. If the deceased passes away without being survived by a spouse, or any descendants, the estate will be inherited by his/her parents and thereafter by his/her closest blood relative/s.

Comprehending and dealing with the loss of a loved one is devastating. It is however advisable and strongly recommended that family members make contact with the Master of the High Court and all other relevant financial institutions as soon as is reasonably possible, as fraud and criminal activity are rife even during trying times such as death. ●

Section 17 of the Consumer Protection Act, the lacuna

By Sanele Zondi, Durban Intern

The Consumer Protection Act, 68 of 2008 ("the Act"), is one of the most important pieces of legislation for the indigent. The purpose of the Act as per section 3(1) is to promote and advance the economic and social welfare of the consumer by providing the legal framework for achieving a consumer market that is fair, accessible and responsible. The Act provides for a variety of consumer rights, but the most notable is section 17, which provides that consumers can now cancel reservations, bookings and orders, except for special ordered goods, and the supplier of the goods and services may impose a reasonable charge for cancellation.

The drafters of the Act however left a lacuna that the suppliers of goods and services have been able to exploit and use to their advantage. The term "reasonable charge" is not defined in the Act and as a result suppliers of goods and

services often impose exorbitant cancellation charges to prevent consumers from cancelling their reservations, booking or orders, or to make a substantial profit despite the cancellation.

Looking at case law for an interpretation of a reasonable charge, we have found the case of Lombard V Pongola Sugar Milling where the court held that a reasonable charge/ remuneration would be the usual charge for the goods. We need to consider the purpose of the Consumer Protection Act, that is to promote the economic and social welfare of consumers. Imposing exorbitant cancellation charges goes against the purpose of the Act as it creates an unfair and inaccessible market, especially to the indigent who were intended to be the beneficiaries of this legislation.

One respectfully submits that most suppliers of goods and services still follow and view cancellation of a reservation or order as repudiation and

the imposition of a reasonable cancellation charge as restitution. This however, is not the approach that the Act envisages. The Act envisages the promotion of social and economic welfare of consumers and it is submitted that regulation of the reasonable charge is necessary. ●

