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Phumi Ngenelwa Celebrating 10 years with ProBono.Org

Phumzile (Phumi) Ngenelwa is the Office Manager at ProBono.Org. On 1 July she celebrated her ten-year anniversary with the organisation.

She came from the firm CA Schoeman Attorneys in Northcliff, where she worked for two years as a filing clerk, later becoming an administrator. She heard about ProBono.Org through one of her colleagues, who heard there was a vacancy for a receptionist and passed on Phumi's CV. She got the job and started on 1 July 2008.

At that time there were only 4 members of staff and the organisation was situated in Schreiner Chambers in Pritchard Street. Phumi was a jill of all trades at the time, making tea, cleaning and doing reception duties.

When ProBono.Org moved to Constitution Hill in 2009 Phumi took on the job of administrator, maintaining a database and undertaking simple bookkeeping, scheduling appointments for attorneys and providing clients with information



and providing statistical reports.

Phumi's duties later expanded still further to providing staff training on in-house systems and programmes, maintaining personnel files and leave, making travel arrangements, sending out newsletters and invitations and advertising vacant posts, among many others.

Phumi feels that hard work and dedication does not go unnoticed and her many promotions are evidence of this. During her time with the organisation Phumi has also furthered her studies and has a bookkeeping diploma and personnel management certificate.

She now mentors and guides the staff of over 28 permanent staff, and is particularly relied on and loved by our interns. Congratulations Phumi.

Here's to the next ten years. What would we do without you?



Our fight against domestic violence, one community workshop at a time

By Zunaid Latief, Cape Town

Domestic violence, in all its unsightly forms, reaches every corner of our society. Abuse is an issue that does not respect race, gender, sexuality, class, religion or wealth. It is however, especially prevalent in previously disadvantaged communities. Women, children and men are subjected to physical, verbal, psychological, emotional and financial abuse daily. Alarming, abuse most commonly occurs within a domestic setting. Bearing this in mind, we are faced with a simple question. What can we do to combat and prevent domestic violence?

Between the period of 17 January and 17 July 2018, the ProBono.Org Cape Town office has seen a significant decrease in the number of cases pertaining to domestic violence. We would like to think that our various community workshops held across Cape Town's most poverty-stricken regions is positively influencing the number of clients seeking legal advice in respect of domestic violence. With the assistance of the selfless attorneys on our panel, we have managed to embark on a venture that entails educating the public and creating

awareness on domestic violence and its far-reaching consequences.

The aim of these workshops is not limited to merely creating awareness. We also aim to equip communities with the legal tools and mechanisms afforded to them in terms of the Domestic Violence Act and the Harassment Act. For example, the court process involved with instituting an application for a protection order is thoroughly explained and attendees at the workshops are encouraged to liaise with the local South African Police Services and court officials when utilising these tools.

Previously, these workshops were limited to a few areas in Cape Town such as Khayelitsha and Macassar. However, during the course of the year, the staff at the ProBono.Org Cape Town office in collaboration with the enthusiastic attorneys on our panel, have overseen workshops in several new areas such as Elsies River, Kuils River, Gatesville and Athlone. Furthermore, we are looking at branching out even further, with workshops scheduled to be held in Bonteheuwel, Delft and Bishop Lavis in the near future.

The effects of branching out

into these areas have been overwhelmingly positive. In tandem with the commitment of our panel attorneys as well as the dedication of the local community advice offices, a platform is being established where members of the community are being empowered with knowledge and equipped with mechanisms to combat and prevent domestic violence and, more importantly, educate their families, neighbours and colleagues in this regard.

While the fight against domestic violence is a long and tedious one, blighted with obstacles and hardships, it is evident that the most significant way to assist communities in navigating these obstacles is to empower them with knowledge, creating a sense of awareness and informing them of the legal mechanisms in place. This in turn breeds a sense of confidence amongst the community and, we believe, impacts the number of cases relating to domestic violence that come through our door. This idea must continue to be enforced and should later transcend into all other areas of concern in the law... one community workshop at a time. ●

Marriages (civil, civil unions and registered customary marriages) **concluded with the (main/only?) aim of obtaining permanent residency and ultimately South African citizenship - are they valid marriages?**

By Elsabe Steenhuisen



This is a complex issue with legal and moral implications which are briefly dealt with here. The full discussion is available on our website.

Marriage is a special type of juristic act resembling a contract, but remaining sui generis as marriage creates a status while ordinary contracts do not. The right to marry is not protected in our Constitution, but it was held that sec 10 in the Bill of Rights should be interpreted so as to afford protection to the core elements of the institution of marriage and family life and the right and duty of the parties to live together as spouses.

In light of the above, should there be a problem when a person opts to change their status from unmarried to married in order to obtain other rights, and then opts to get divorced upon securing such other rights? In other words, is it correct to refuse a divorce in order to punish a person for obtaining these other rights by forcing a person to stay married? Is it a legal problem, a moral

problem, or both?

The Department of Home Affairs (DHA) discovered in 2010 that almost 7 000 South Africans ended up in **fake** marriages with foreigners in the past three years. *"In cases where the transaction is honoured, the victim will approach Home Affairs... to apply for a new identity document, claiming his or her ID is lost. When records show the applicant is married, he or she will claim the marriage took place without his or her consent, and will then seek annulment. Often, when this scam happens, the foreigner has by then already obtained citizenship and/or permanent residence in the country."* (www.iol.co.za/news/politics/7-000-locals-in-fraudulent-marriages-670475).

ProBono.Org encountered at least three scenarios in this situation:

1. One of the spouses had no idea of the marriage but found out later by chance that he/she is married. One normally asks for expungement from

the DHA and if necessary one would approach the court asking for an order to compel the DHA to expunge.

2. Both spouses agreed to the marriage - the SA citizen is normally compensated or promised compensation for the assistance given to the non-SA citizen. The non-SA citizen usually disappears immediately or a short while thereafter. In most instances the parties did not have an intimate relationship or at most, a few liaisons.
3. Both spouses agreed to the marriage - one of the spouses is totally innocent and the behaviour of the other spouse comes as a shock. Sometimes the SA citizen ensures large gifts from a foreign spouse and then disappears, or a SA citizen was naive and did not know that the non-citizen had ulterior motives.

Should the courts refuse to grant a divorce in scenarios two and three, based on the view that no marriage was concluded, or that the marriage was concluded for fraudulent purposes and the plaintiff comes to the court with unclean hands?

Sec 11(6) and 26(b) of the Immigration Act 13 of 2002 deal with the legal requirements for spousal visas and spousal permits. Once the marriage has been in place for five years, permanent residency can be applied for but the permit shall lapse if at any time within two years of the issuing of the permit the good faith spousal relationship no longer exists.

But the question remains: how should the court view marriages as stated in scenarios two and three – valid, void or voidable? The Martens (1952) and Maseko (1992) cases give us the answer. Provided the marriage has been properly solemnised, its validity is unaffected where the parties marry for a purpose extraneous to marriage. In such instances one can say that the parties married without the intention of establishing a true marriage relationship. For example, if they enter into it as 'a joke', or for the purpose of enabling one party to enter or remain in the other party's country, or to be permitted to leave his or her own country – the marriage is valid.

Another problem arises – what grounds is the plaintiff going to present as reasons for an irretrievable breakdown of the marriage relationship?

We advise that the allegations and the evidence should provide the real reasons for the marriage. ●

Wills Week at ProBono.Org

By Swazi Malinga

As part of our community outreach, we conduct workshops to create awareness about the importance of having a Last Will and Testament. We regularly visit communities in areas like Orange Farm, Tembisa and Kagiso. When a client approaches our offices with a request to draft a will, we send a request to our panel of volunteer attorneys and, depending on their availability, they will take on one or two wills drafting requests at a time. Although this process works, it does take a long time and we sometimes receive at least ten client requests a week, which then results in a backlog. We therefore decided to embark on a ProBono.Org Wills Week from 23 to 27 July 2018, which coincided with the Mandela Centenary celebrations.

We are proud to announce that during the week we were able to draft 100 wills for our clients. We would like to extend our gratitude to the following law firms who volunteered their time and drafted these wills: Maponya Attorneys, Ndingije Attorneys, Kloppe Jonker Attorneys, Norton Rose Fulbright SA and Werksmans Attorneys. ●



Women's Day 2018

ProBono.Org Johannesburg held our annual Women's Day event on 15 August, which was attended by 87 women from Orange Farm, Kagiso, Tembisa and Dobsonville. Grateful thanks to everyone who assisted us to make this day special:

- Our guest speaker Sibongile Baloyi, acting head of the UNISA Law Clinic, who addressed the audience on customary marriages
- NGOs who came and spoke about their work, including Legal Aid SA, who gave out T-shirts and water bottles, the S A History Archive, the Advisory and Information Centre Law Clinic, and the Teddy Bear Clinic who provided teddy bears.
- Third and final year law students from UNISA, WITS, UJ and one of our previous interns who were our volunteers on the day.
- Over 15 lawyers who volunteered their time to hold individual consultations with women who needed legal advice.
- Mjele Msimang who volunteered to take the photos.



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