

## IN THIS ISSUE: December 2017

- Recent Pro Bono cases
- Attorney feedback from 2017
- National Director announcement
- Online registration for attorneys
- Office holiday closure

In this final edition of our newsletter for 2017 we highlight a few of the matters that our clients have brought to us...

# Has the law helped or hindered same-sex partnerships?

By Lesego Vakalisa, Legal Intern

A approached our offices, seeking the pro bono assistance of an attorney regarding the estate of his deceased spouse B.

Upon examining the documents provided by A, we realised that his case was an interesting one and touched on a subject that often falls through the cracks.

The facts of the case are as follows: A, who is not a South African citizen, met and fell in love with B. In January 2002 they entered into a life partnership agreement and later concluded a same sex partnership agreement, as same sex marriages were not recognised at the time.

A and B were assisted by an attorney who drafted an affidavit concerning a life partnership between them under the *Aliens Control Act 96 of 1991*.

In April 2002 the *Aliens Control Act* was replaced by the *Immigration Act 13 of 2002*.

During the existence of their partnership they purchased immovable property registered in both their names. They subsequently registered a second bond over the property in 2006 which was granted by a reputable financial institution.

In 2010, B passed away intestate leaving no heirs. Although A received 50% of B's pension fund, B's family received the balance thereof. B's family took control of all B's other assets to the exclusion of A.

A approached the Master of the High Court's office to be appointed joint executor of B's estate but his



application was rejected by the Master who considered that their partnership was not recognised.

A was concerned that the agreement that he and B entered into in January 2002 had been rendered null and void when the 2002 *Immigration Act* came into effect with additional requirements to substantiate the affidavits with a notarial contract, which A and B never signed. Even after the *Civil Union Act 17 of 2006* came into effect, A and B did not enter into a union in accordance with this Act as they believed that their partnership was at all times valid.

A informed us that he felt his rights were being violated and he wished to claim his rightful inheritance as the sole heir and surviving spouse of B.

He needed clarity as to whether or not

his partnership with B was legally valid and whether he was legally entitled to inherit from B's estate, and he wished to know his legal standing as co-owner of the said property.

The facts of the matter are that the parties were neither married nor entered into a civil union in terms of relevant legislation, they purchased property which was registered in both their names, and B died intestate.

We considered the matter and concluded that A would have to bring an application to the High Court to declare the life partnership agreement signed in 2002 to be declared a civil union in terms of the Civil Union Act. If successful A would be the intestate heir in terms of Section 1 (a) of the Intestate Succession Act 81 of 1987." ●

# High conveyancing fees hold up property transactions for the poor

By Uzair Adams

The transfer and registration of immovable property from a seller's name into a purchaser's name is not as straightforward as one may think. A property transaction is not only a lengthy and complicated process, but is costly too; and oftentimes unaffordable for the underprivileged.

This proved to be the case with Glenda Samuels who approached ProBono.Org Cape Town for assistance with the transfer of immovable property she purchased in 2014 for R110 000.00.

Ms. Samuels is an unemployed single mother who receives a state grant for her two minor children and would not have been able to afford the conveyancing fees applicable to her sale, which would have amounted to approximately R8 000.00.

Ms. Samuels' initial consultation was held during July 2017, but various challenges resulted in the process being delayed even though a conveyancer, Vickie Collins from Da Costa Incorporated, accepted the pro bono instruction.

One of the many challenges arose from a condition attached to the title deed, in terms of Section 10 (a) and 10 (b) of the Housing Act 107 of 1997, which stipulates that the owner of an RDP house has to get permission from the Director General of Human Settlements prior to a transfer being permitted. As a result, the conveyancer required written confirmation from the Department confirming that it had no objection to the

transfer, which was received on 16 August 2017.

In addition, the seller was often unavailable to sign the necessary documents as she resides outside Cape Town. The parties finally managed to meet at our offices on 28 November 2017, and Ms Collins guided them through the signing process and ensured that everything required for lodgment at the Deeds Office was in order.

All interested parties view this as a major victory, and a step in the right direction in our effort to making access to social justice more easily accessible and realisable for the poorest sector of our society. ●

**ProBono.Org Cape Town** has moved its offices from the Isivivana Centre in Khayelitsha, and is now situated at Suite 200, 2nd floor, 57 on Strand, Strand Street, Cape Town. Our contact details remain unchanged, but are reflected below for ease of reference:

**Tel: 087 806 6070 Fax: 086 665 6740**

**Email: [infocpt@probono.org.za](mailto:infocpt@probono.org.za)**



## Two of the cases in which Bowmans Attorneys assisted us have come to fruition in the last few months, one of which has taken five years to resolve.

### 1. A CASE OF DISAPPEARANCE

In May 1998, Mr. Jackson Taliwe disappeared on his way home after an evening with friends. On foot, he passed through an unsafe area and had to cross busy roads late at night. He was never seen again. His family, friends and the community searched for him, but their efforts were futile. His employer, after his 18 years of service with them, declared him a deserter. His family approached ProBono.Org seeking closure and the matter was referred to Bowmans.

Bowmans assisted Mrs Taliwe in obtaining a presumption of death

order in 2017. In preparation of the application, and to ensure that they had explored all possible avenues, they requested records from the SAPS to determine if anyone was found in the area where Mr. Taliwe disappeared. Due to the time lapse, this was a challenging process. Fortunately, records of one person were found in close proximity to where Mr. Taliwe went missing. Unfortunately these records were incomplete, unrecognisable and timeworn and accordingly not sufficient to identify the person and to obtain a death certificate. However, based on the circumstances surrounding Mr. Taliwe's disappearance and his personal description, the family believed the records found related to him. This

exercise and the records obtained were instrumental in obtaining the presumption of death order.

Bowmans prepared the application and was assisted by Adv. Xolisa Hilita who appeared in the Johannesburg High Court on the client's behalf. The ultimate outcome of this process was to give the family closure and to enable Mrs Taliwe to claim unclaimed pension fund benefits, which claim has since been paid out to her and her children. These benefits offer substantial financial relief to the family.

We thank the Bowmans team of Melissa Strydom and Carmen Bradfield for a successful outcome in this case.

...continued on page 3



## 2. A MISSING ELECTRONIC MONITORING DEVICE ALMOST DESTROYS A LIFE

By Margaret Fish



Pic: Carolyn Raphaely

Bowmans Attorneys and the Wits Justice Project worked on the tragic case of Dineo Kgatle, who was wrongfully arrested and incarcerated for 26 months after his electronic monitoring device (EMD) was inadvertently lost.

Kgatle was convicted in 2002 on charges of armed robbery, housebreaking, attempted murder and rape and sentenced to 28 years in prison. He was granted parole after 12 years and was fitted with an EMD. Having qualified as a plumber in prison, he got a job on a construction site in Pretoria and started to rebuild his life. Some months later he mistakenly left the base station with the GPS tracker that is attached to the EMD in a bakkie, which then drove off with it. He immediately reported this to his parole officer and the two of them went in search of the device, only to find it was locked up in an office in Pretoria and they abandoned the search.

Later that day Kgatle was arrested and spent the next 26 months behind bars in Baviaanspoort Prison. He appeared before the Parole Board three months after his arrest and was told he had violated his parole conditions and would spend at least seven years in prison

before being considered for parole again. One day he read about the Wits Justice Project in a newspaper. They contacted ProBono.Org on his behalf, who asked the pro bono coordinator at Bowmans for assistance. Bowmans put partner Mandisi Rusa and candidate attorneys Werner van der Westhuizen and Stuart Payne on the case.

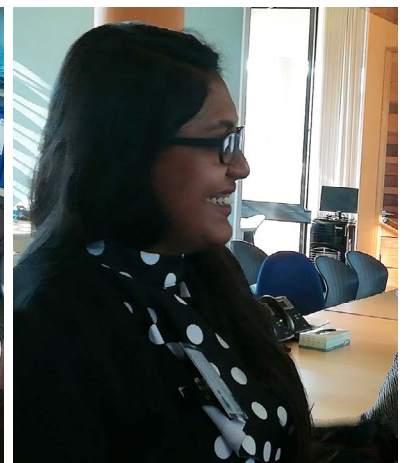
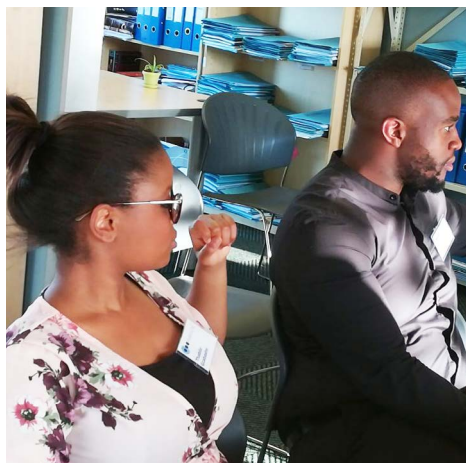
Eventually, in September 2017 North Gauteng High Court judge Peter Mabuse ruled that Kgatle's arrest and detention was unlawful. He finally walked out of Baviaanspoort a free man after more than two years.

The Department of Correctional Services (DCS) abandoned the Electronic Monitoring Project in July 2017 due to many cases where the devices were faulty and those wearing them were wrongfully arrested, as well as issues relating to possible tender irregularities in the appointment of the service provider.

This story is not over, however, as the DCS is now appealing the judgment, possibly in order to prevent or delay a hefty claim for compensation on the part of Dineo Kgatle. ●

## Pro Bono Attorneys provide feedback

On 30 November our Johannesburg office hosted some of the attorneys who did pro bono work for us during the year, either by taking on cases or staffing a legal clinic or help desk. The session provided useful feedback to us about constraints at some of the courts and how we could assist to make the work easier. There was also an animated discussion about mediation as an alternative dispute resolution in family law cases and attorneys asked for training on this. Grateful thanks to everyone who volunteered their time to assist our clients this year. ●





# Message from Erica Emdon, National Director

It is with some sadness that after eleven very special and fulfilling years at ProBono.Org, I have decided to step down. These years have been incredibly rewarding and enriching and I have enjoyed so much seeing the organisation grow and blossom in front of my eyes.

My time at ProBono.Org has been exciting, periodically demanding, and yet very satisfying. I have met a wide range of incredible people from the donor world, from the private legal fraternity and from civil society organisations. All have supported and backed my work in different ways which has been so very encouraging.

Perhaps the most special and significant experience I have had has been seeing how our collective effort has improved the lives of the many thousands of impoverished and vulnerable people who have been our clients every year. So many of them have been able to access legal remedies that have made a vast difference to their lives and each success story has been extremely heartening. ●



## Office holiday closure:

Our offices will close on Friday 22 December and reopen on 2 January 2018. We wish all our associates a safe and restful festive season and we look forward to working with you again in the new year.

## Sign up with us online

Attorneys can now sign up with us online to do pro bono work. Please visit our website at [www.probono.org.za](http://www.probono.org.za) and fill in the form on our home page. This form also lets us know your preferred areas of work so that we can send you the types of cases you want to take on or you can staff one of our many legal clinics.



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