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Events

Dialogue on Mandela the Lawyer

In collaboration with the Nelson Mandela Foundation (NMF), ProBono.Org held a dialogue on Nelson Mandela the legal practitioner on 11 October to mark the centenary of Madiba's birth.

The conversation was the first of several planned to start a conversation about the importance of pro bono work and the ethics and values needed to reshape the profession to be more public-spirited. The conversation was started by Sahm Venter, senior researcher at the NMF, who emphasised the importance of pro bono work during apartheid and the work of the Independent Defence and Aid Fund (IDAF) established by Canon John Collins of St Paul's Cathedral to defend political activists.

Former Constitutional Court Judge Albie Sachs spoke about how Madiba the lawyer was a commanding presence in a courtroom. He stressed the importance of not seeing Mandela the lawyer as a conflict with Mandela the revolutionary. He used the law to make a living and also to fight for his people in court. His legal experience also helped him when it came to drafting the Constitution.

Lwando Xaso, senior associate at ENSafrica, found Mandela's speech about being "a black man in a white man's court" relevant today for young black lawyers in law firms where they are expected to dress and act according to the firm's culture and thereby feel they are losing their own culture and feel alienated in their workplaces. It is

sad that even as transformation is on people's lips and in their policies, they do not make an effort to get to know their black lawyers. Several audience members, who were mainly young black lawyers, echoed this feeling. One said that she had found that in her community people did not know about the Constitution and she felt she could give back by educating them about the law.

ProBono.Org National Director, Michelle Odayan, who facilitated the dialogue, said that legal practitioners who give their time and experience to provide access to justice should not be regarded as poor and inferior.

We are planning to hold further dialogue sessions on topical issues in 2019 as part of our young lawyer development programme.

The Open Society Foundation in SA turns 25

On 29 and 30 November ProBono.Org attended the 25th anniversary of the Open Society Foundation for South Africa (OSF-SA), which opened offices in 1993. However, founder George Soros had already been engaged in South Africa since 1979 when he launched a scholarship programme for black students to study at the University of Cape Town.



The programme for the celebration included tours to some of the Cape Town projects funded by OSF-SA, a film preview, panel discussions at the OSF offices, a photo exhibition of grantees' social justice projects and a commemorative public lecture at the City Hall with Samia Nkrumah in conversation with Patrick Gaspard, President of the OSF.

A highlight of this last evening was the announcement of the next 25 recipients of fellowships and scholarships, one of the presenters being the first recipient of a bursary in 1979.

Congratulations OSF-SA! ●

Attorney get-together and feedback session

On 6 December a good crowd of attorneys, advocates and mediators

gathered at our offices to socialise and give us feedback on their experiences staffing our legal clinics and help desks and taking on our clients' cases. We are grateful for this feedback and also for the good work of all our partners in 2018. We are proud to report that with your help we have assisted over 10,000 needy people this year. We wish every one of you a restful and happy festive season. ●



The dead man's property

By Neliswa Ncama, Durban intern

The passing of a loved one is one of the most challenging experiences that a family has to face. After a funeral, they are left to pick up the pieces and figure out how to proceed after this tragedy. The family would have to begin the process of winding up the estate by reporting the death to the Master of the High Court. A number of issues may arise at this point; one of them being the transfer of the property once the estate has been wound up.

A conveyancer is needed to handle the transfer of the property so that the ownership of the property vests in the heir. In theory, this may seem to be the sensible approach considering the complexity of transfer matters. However, it is hard for the poor and marginalised to be able to afford these services, as conveyancers' costs are just too high. In the event that the family is able to raise the money to pay a conveyancer, or organisations such as ProBono.Org are willing and able to assist with this transfer, the family is still faced with the challenge of ensuring that utilities and rates are paid up to date, in order to receive a clearance certificate before transfer can take place.

ProBono.Org is only able to assist in matters where the value of the estate is below R250 000 and where the client is able to pay the disbursement costs, which would include transfer costs required by the Deeds Office. In the instance that someone is unable to access pro bono services, they would also be required to pay the costs of a private attorney. While the rationale is that the estate will cover such costs, the reality is that often the only asset in the estate is the house that needs to be transferred. Payment arrangements may also be made with a private attorney, but this



just means that the process may take years to complete.

These expenses are the reason why many families do not have title deeds to a property. Without them, the family may still have security of tenure (or rights in the property) but these are incomplete as the heir/s are still unable to fully exercise their rights. If the heir is unable to get the property transferred, issues such as encroachment of property, payment of utilities and the ability to evict others from the property are difficult, and sometimes impossible, for the heir to deal with, as proof of ownership is required.

The time has come when the Deeds Office needs to cater for the poor, who make up the majority of our population. The Deeds Office should put in place systems to assist a lay person with the transfer of property. Many other government institutions allow a lay person to transact on their own. An example of this is where the The Master's Office allows a lay person to report a deceased estate valued below R250 000, without requiring them to appoint an attorney. This is a massive cost saving for a poor person. Alternatively, there should be some sort of government subsidy or loan that families in this position could apply for in order for property rights to be attained by the most vulnerable in society. The death of a loved one should not be the reason why a family's dignity is compromised and puts them in a situation where they do not own their own home. ●

Defamation via social media – rights vs responsibilities

By Neliswa Ncama, Durban intern

Social media platforms have become an increasingly convenient and instant means of communication across the globe. However, easy access to Facebook, WhatsApp and Twitter, amongst others, does not come without drawbacks, particularly relating to matters of defamation.

Defamation via social media has been the bone of contention of several hearings before the Commission for Conciliation, Mediation and Arbitration (CCMA), particularly where employees share information regarding their employers that is disgraceful or detrimental to their employers' reputation.

On 6 November 2018, ProBono.Org Cape Town was approached by a children's hospice for assistance with a labour dispute relating to the conduct of an employee, where an allegation was made via a WhatsApp text message to one of the employer's board members alleging maladministration, financial mismanagement and a lack of transparency by the CEO of the non-profit organisation.

The employee was subsequently charged with defamation of character, in that he intentionally conveyed false information to the board member, and was further charged with bringing the organisation's name into disrepute, in that he claimed that the CEO had misrepresented the organisation's financial position to the Department of Social Development.

In this regard, a disciplinary hearing ought to have been held on 22 August 2018, where Mr. M was appointed as an independent chairperson, but he was unfortunately involved in a serious accident and was no longer able to oversee such disciplinary process.

The children's hospice, like many NGOs in South Africa, is currently faced with an unfortunate funding crisis, and has limited financial and human resources available that would have enabled a fair and thorough disciplinary hearing. ProBono.Org Cape Town proceeded to brief counsel to act as an independent chairperson and to facilitate the disciplinary hearing, which was held on 23 November 2018.

Summary of the Chairperson's findings:

- The chairperson noted that he could not find the employee guilty on both allegations as it would amount to a duplication of "convictions".
- The chairperson could see no evidence showing that the employee had brought the employer into disrepute. The allegation made was via a private WhatsApp text message to one of the employer's board members. There was therefore no evidence that the employee's allegation was publicised in any way, or that it affected the employer's reputation.
- The question remained whether the employee was guilty of defamation of character in that he 'intentionally gave false information that humiliated

and belittled the CEO, which made her look foolish and ridiculous and which rendered her less worthy of respect by the board members. The chairperson found the employee guilty of this allegation, in that he conveyed information to one of the employer's board members which was false. If the employee had made the proper inquiries, he would have discovered that there was no inflation of figures. The CEO confirmed (and it was not contested) that the Department was fully aware of how the employer arrived at its figures and accepted that the employer was acting appropriately.

- The chairperson further noted that he did not accept that the employee made the allegation in order to bring an impropriety to the attention of the board. If that was so, the employee would have sent a message detailing that concern. However, the allegation relating to inflating figures was a throw-away (yet deeply insulting) remark.
- Moreover, the chairperson considered whether the employee's allegation amounted to a protected disclosure for the purposes of the Protected Disclosures Act and found that it did not.
- Firstly, the allegation was not a 'disclosure' within the definition of the Act, given that it did not relate to a serious impropriety within the meaning set out in *Malan v Johannesburg*

Philharmonic Orchestra (JA 61/11) [2013] ZALAC 24 (12 September 2013). The allegation was one relating to figures which were readily available and known by the board. They were also known by the Department which accepted them and the manner in which they were calculated.

- Secondly, the employee's allegation was made to the employer and, in terms of the Protected Disclosures Act, had to be made in good faith, which the chairperson did not accept was the case under the circumstances.

- The employee's conduct was therefore unacceptable, and the appropriate sanction imposed was a written warning suspended for 6 months on condition that the employee was not found guilty of similar misconduct within the stipulated period.

Employees now have several platforms where they can vent their frustration and raise concerns regarding their employers. However, employees ought to utilise such platforms responsibly or face severe consequences, as illustrated in this case. While freedom of speech and expression, together with the right to privacy, affords us great power, the risk of publicly defaming the character of another has increased exponentially with the constant evolution of the social media landscape. Consequently, we have to remain cognisant of the fact that with such great power comes great responsibility. ●

Thanks to our volunteers

Every year we are fortunate to have the assistance of a number of volunteers, including law students and LEAD graduates, who help at courts and other help desks. On 3 December we held a lunch to thank our 2018 volunteers and hand out certificates.



Wishing all our partners and supporters a happy and peaceful festive season



Farewells

Lorraine Mashaba, our data capturer, is leaving us to take up a new position from January 2019, and our Children's project intern, Daphne Makombe, has been offered articles for next year. We thank them both for their good work and wish them everything of the best for the future. We will miss them.



Closure

Our offices will be closed from 24 December 2018 and will reopen on 7 January 2019. We wish all our partners and supporters a happy and peaceful festive season and we look forward to our further collaboration in the new year.