

Introduction

In this issue we profile the people and the excellent work of the Durban Pro Bono.Org office. We introduce you to the new staff members and focus on the legal education workshops, legal achievements and pertinent legal issues handled by the team. ●

IN THIS ISSUE: AUGUST 2014

- Durban Masters Office
- Faces of Durban Office
- SAPS Legal Training
- Administration Orders
- Durban Refugee Clinic
- 15km Rule
- Awards Nomination Call

Durban Master's Office Legal Clinic/Help Desk

The number of people seeking advice relating to deceased estates at the Durban Master's Office Legal Clinic continues to increase. The clinic runs every Thursday at the offices of the Master of the High Court and provides important and invaluable advice to the many desperate and grieving families left with the heavy burden of administering their loved ones' estates.

The popularity of this clinic is the result of the passion and dedication of the many attorneys that take time out of their busy schedules to provide assistance to the poor and vulnerable who visit the help desk. Together with the support and dedication of the staff at the Master's office, the clinic has managed to assist over 300 hundred applicants within a 6-month period, where estates were in limbo due to the lack of access to legal advice and justice.

The clinic provides advice on Section 18 (3) estates, as well as once-off advice on the general administration of estates. Through the clinic, many estates have been taken on for further assistance by the pro bono attorneys. A large number of matters are easily settled at the clinic, particularly estates



involving minor beneficiaries.

However, despite the success of assisting with many estate matters, there are many challenging matters involving the fraudulent transfer of properties, fraudulent beneficiaries and misappropriation of monies owed to beneficiaries. Solving these matters often requires litigation at the High Court, which is very costly and unaffordable to most people.

Those that visit the clinic are often the sole breadwinners and are unaware of debts that incur after a person passes away. Such debts include arrear rates

and municipal levies, which results in many homes being left without basic utilities such as water and electricity.

ProBono.Org provides free legal advice and community workshops to educate the vulnerable, towards preventing them from becoming easy prey to corruption and fraud.

The ProBono.Org Master's office legal clinic runs every Thursday from 10am to 12pm at the Master's Office, Durban. For more info, contact: philiswa@probono.org.za

Shahista Hassan, Staff Attorney ●

Faces of the ProBono.Org Durban office

The ProBono.Org Durban office moved into new premises (in the Nedbank Building in Durban Club Place) in March 2014. The move was necessitated by a desperate need for a larger space to accommodate the increased number of people who attend our in-house legal clinics and was also prompted by concerns around safety. While the walls are still bare, the staff are very happy to be working in a safer building.

The Durban office has also recently undergone some staffing changes. The end of June sadly saw the Regional Director, Advocate Michelle Posemann leaving. We would like to thank her for her contribution. Her hard work and dedication will be missed. Staff attorney, Sinqobile Khuluse also left us in June, while July saw 2 staff members joining us. Firstly, Attorney Shamika Dwarika, who replaced Michelle Posemann as Regional Director and intern Buhle Sibiya, who is currently in her final year LLB. August saw Petrina Chetty starting as a staff attorney. So we currently have 9 full-time staff members in Durban: **Regional Director:** Shamika Dwarika, **3 staff attorneys:** Shahista Hassan, Bhavna Ramji and Petrina Chetty, **office**



administrator: Philiswa Sithole, and **4 interns:** Gugu Ntaka, Gugulethu Makhanya, Zoleka Manciya and Buhle Sibiya.

Bhavna will be relocating to Johannesburg in September to join the Johannesburg office. It is a great loss for the Durban office, but a gain for Johannesburg, as she is a dedicated and hard worker. Shahista will be going on maternity leave in September. We wish them both the best of luck in their different and extremely exciting endeavours. Despite the staffing

Back row: Left to Right Shamika Dwarika (Regional Director), Gugu Ntaka (Intern), Shahista Hassan (Staff Attorney), Petrina Chetty (Staff Attorney)

Front row: Left to Right Philiswa Sithole (Administrator), Zoleka Manciya (Intern), Gugulethu Makhanya (Intern), Buhle Sibiya (Intern) and Bhavna Ramji (Staff Attorney).

changes at the Durban office, we continue to strive to do the best we can for the people who need us.

Shamika Dwarika, Durban Regional Director ●

LEGAL TRAINING FOR SAPS OFFICERS

Redpeg is an NGO that does research and training on public health issues. It has been instrumental in providing clinics with post-exposure prophylaxis (PEP) for victims of rape. The intention is that once a rape has been reported, the victim is referred by the police station to the local clinic where he/she can obtain PEP. However, Redpeg discovered that PEP was not being accessed because rape victims are reluctant to report rapes in the first place. The chain breaks at this early stage and PEP is lying unused in many clinics, despite a serious need for it.

Redpeg has now undertaken to address this concern at the level of SAPS, by working with two police unions, SAPU and POPCRU.

The unhelpful attitude and/or lack of training amongst many police officers discourages the reporting of crimes of sexual violence and consequently affects access to the PEP.

Redpeg, in partnership with ProBono.Org, is running training sessions for 500 SAPS officers in Durban. To date, two 5-day training sessions have been held. The legal aspect of the training covers the Bill of Rights and other

constitutional provisions relevant to issues around rape and sexual violence (including equality, privacy and access to health care), the Sexual Offences Act, and the national instructions for police on sexual offences.

The seminars will hopefully help to increase both the reporting of crimes, and access to PEPs.

The first session was presented by Romy Croxford of Barkers Attorneys, who "thoroughly enjoyed lecturing the learners", and "found that the lectures given during the seminars were very informative and dynamic, appealing to a wide range of learners." The second session has been presented by Benita Witcher, a senior law lecturer at the University of KwaZulu-Natal.

There are 9 remaining sessions in Durban. We have some pro bono attorneys on board for the SAPS training, but we do have slots that still need to be filled between August 2014 and February 2015. If you are interested in getting involved, please contact: shamika@probono.org.za.

Bhavna Ramji, Staff Attorney ●

Attorneys' Seminar on Consumer Law

On 1 July 2014, ProBono.Org held an attorneys' seminar in Durban on the Consumer Protection Act and the National Credit Act. We were privileged to have Professor Tanya Woker, the doyenne of consumer law in South Africa, as presenter. The seminar was attended by a variety of people and we had a full (indeed overflowing) house of attorneys, debt counsellors and government officials.

Professor Woker is an expert in her field and has extensive practical and academic experience in the area of consumer law. Her experience as a member of the National Consumer Tribunal made for interesting discussion.

The seminar shed light on a range of topics, from the application of the Acts, to recent developments, and problematic clauses, but specifically opened our eyes to dispute resolution mechanisms under the two Acts.

There remain serious issues with the enforcement of the CPA, which criminalises certain conduct, but which cannot ensure the enforcement of these provisions. Put bluntly, consumers cannot approach the South African Police Service (SAPS) because SAPS is not trained to deal with consumer matters and complaints, even if the conduct involves criminal conduct. Secondly, consumer complaints are not perceived by officers as important criminal matters.

At the first level of communicating with a supplier, organisations like ProBono.Org and the Black Sash are ideal mechanisms for disempowered consumers to deal with suppliers and service providers. ProBono.Org has had a number of successful cases in this regard. We are also able to take matters further, even after the consumer and supplier have reached a deadlock, through our lawyers reporting cases to the National Credit Regulator, bringing applications to the National Consumer Tribunal, and, after all remedies have been exhausted, going to court.

The problematic question that follows is whether a consumer can approach a court directly, without first approaching the bodies established under the statutes. The decision of the Constitutional Court in *Chirwa v Transnet* 2008 (4) SA 367 (CC), which upheld the requirement to exhaust all statutory remedies before approaching a High Court is applicable in principle. It is therefore unlikely that a consumer who approaches a court directly to obtain relief under the CPA or NCA will be successful.

Bhavna Ramji, Staff Attorney and Gugu Ntaka, Intern ●

NOT THE EASY WAY: THE PITFALLS OF ADMINISTRATION ORDERS

Under Section 74 of the Magistrate's Court Act 32 of 1944, any person may, upon application to a Magistrate's Court (by a third party), be placed under administration. In order to be placed under administration, the applicant must have at least two creditors and overall debts not exceeding R50 000 at the time of making the application. After the court has granted an application under Section 74, the applicant stops paying creditor/s directly, and makes monthly payments to the administrator and, most alluring for the applicant, is protected from any legal action by creditor/s. The effect is that many poor people, who have purchased household appliances on credit and have also taken out additional small (unsecured) loans to support their families, fall victim to this misleading remedy.

The 'remedy' not only carries hidden costs, it is also one of the main causes of endless consumer debt for the following reasons:

- Nothing is free. Before an administrator pays the consumer's debts, he is entitled to a portion of the consumer's monthly payment, which can be as much as 12.5% of the total debt.
- Interest continues to accrue while the consumer is under administration.
- Administrators are only obliged to, and usually do, distribute payments to the consumer's creditors once every three months, while interest is charged daily.

We have chosen the case of Miss K to illustrate the pitfalls of administration orders.

We were approached by Miss K on 24 January 2014, regarding an administration order and a growing debt to Bank X. Miss K is 45 years old and works as a packer at a small factory, where she earns R1 100.00 per week. Miss K was placed under administration in September



Social workers at Kerr House, Durban who are regularly faced with people seeking help after being placed under administration. ProBono.Org has provided them with pamphlets aimed at educating people on administration orders.

2008. At the time of being placed under administration, she owed R44 506.88 to various creditors. In terms of the administration order, R700.00 was paid monthly to Miss K's administrator.

Five years into administration, on August 2013, Miss K met with her administrator who advised that she still owed R12 834.72 to her various creditors. Four months later, in December 2013, Miss K's administrator advised her employer that the balance due in terms of the administration order was now R39 915.27! So Miss K's debts had more than tripled in a four-month period. We have since ascertained that Miss K's debt had increased as a result of the interest rates charged by Bank X. The most difficult aspect of this case has been our inability to help Miss K thus far. All our requests for legal assistance have been rejected, as most of the attorneys on our panel also act for Bank X in one way or another.

It is unclear why Section 74 of the Magistrate's Court Act has withstood legislative review/scrutiny despite the numerous amendments to the Act over the years. It is now time that Section 74 is amended to ensure that the provision does fulfil its original objectives.

Bhavna Ramji (Staff Attorney) and Cuan Els (Volunteer) ●

Durban Refugee Legal Clinic

The ProBono.Org office in Durban is proud to have recently won a High Court judicial review application against the Department of Home Affairs in respect of overturning a decision to reject the application for asylum of Mr Jean Kahindo Shukuru.

Shukuru, a Congolese national, had fled his country of origin during the political unrest between government soldiers and rebels in the country. His family owned a laundry business and had been accused by government soldiers of assisting and working with the rebels.

These accusations were as a result of the family having laundered uniforms similar to those worn by soldiers and rebels. The soldiers stormed into their home and captured the family. They were taken to a camp in the bush where Shukuru was forced to watch his mother being tortured and eventually killed. He was also forced to witness his sister being gang raped by the soldiers and later killed.

Having experienced such persecution, Shukuru managed to escape one night, despite being shot at by the soldiers. He was assisted by a truck driver and eventually arrived in South Africa to seek protection from the persecution suffered.

Despite having a claim for asylum on grounds listed under Section 3 of the Refugee Act 1998, as amended, Shukuru's claim for asylum and refugee status was rejected by the Refugee Status Determination Officer (RSDO) as "manifestly unfounded". On appeal, the Standing Committee for Refugee Affairs (SCRA) further rejected his application. It was clear from the reasons provided for the decision that both the RSDO and SCRA had failed to conduct a proper interview with Shukuru and allow him a fair and proper hearing.

Shukuru was issued with an order to leave South Africa. He had not understood why he was being sent back to the country that haunted him with memories of his dead family members. At the ProBono.Org Durban offices, Shukuru was afforded the opportunity to get legal advice and assistance from one of the many attorneys who volunteer their time to provide a service to our clients.

Advocate Sarah Jane Linscott and attorney Andrew Eastes initially took the case on judicial review but then had to withdraw due to personal circumstances. The case was then referred to attorney Sharmin Ramrachia-Singh who followed up and was successful in obtaining a High Court order to overturn the decisions of the RSDO and SCRA. The order also granted Shukuru refugee status.

The success of this case is due to the dedication and commitment of the attorneys involved, helping to make access to justice a reality.

Shahista Hassan, Staff Attorney ●

The 15km Rule and Difficulties for Pro Bono Attorneys

In terms of Rules 5 and 13 of the Magistrate's Court Rules, when an attorney does not have offices within 15km of a Magistrate's Court, a correspondent address within 15km must be used. The original purpose behind such a rule is to relieve parties of the burden of travelling and searching for each other in the course of litigation. It also simplifies the tasks of court officials.

But what happens when this rule becomes an obstacle to accessing justice?

In many of the cases that come to ProBono.Org's Consumer Clinic, default judgments and emolument attachment orders have been granted against clients in distant (and sometimes obscure) Magisterial Districts. The key issue in these cases is the abuse of jurisdictional rules by unscrupulous attorneys. Arising from this, is the difficulty that pro bono attorneys face when trying to assist indigent clients in rescinding these judgments and orders.

Miss M's case exemplifies this: After having lived and worked in Durban her whole life, a judgment was granted against her in a town in North West. Amishka Panday of Linda Mazibuko & Associates agreed to handle this matter on a pro bono basis. However, after two months of trying to secure a correspondent, Amishka was forced to return the matter to ProBono.Org as she could not secure a law firm willing to assist with a rescission application on a pro bono basis. There are many similar cases, which see clients trapped and forced to pay off debts based on improperly, or fraudulently obtained, judgments. Many poor people do not have funds available to seek the advice of an attorney, and usually approach organisations like ProBono.Org when it is too late to defend or oppose the matter. They are also more susceptible to sign consents to jurisdiction (and judgments) and are then also easy targets for fraudulent consents.

For attorneys who attempt to deal with

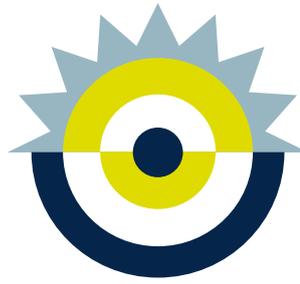
these matters pro bono, the generally simple task of bringing a rescission application becomes riddled with obstacles, including: (i) attorneys within 15km who are unwilling to do pro bono work; (ii) a lack of enforcement by Law Societies of pro bono rules, or (iii) where a Law Society is willing to assist, the delay in securing a pro bono attorney.

In cases where only a correspondent is required, bearing in mind that service of process is particularly easy in the age of email, fax and courier, we are of the view that the 15km rule should be relaxed in pro bono matters. The question of finding an attorney in a one-horse town to move an application is a more difficult one. Until a solution is found, the situation of indigent judgment debtors remains precarious and they will continue to rely on the sense of civic duty of professionals, not always manifesting simultaneously in two different attorneys from separate Magisterial Districts.

Bhavna Ramji, Staff Attorney ●

ANNUAL
PRO BONO
AWARDS CEREMONY

ProBono.Org **2014**



Are you making a difference?



Photographer: Joanne Carty

Call for nominations

NOMINATE YOURSELF, YOUR FIRM, OR YOUR COLLEAGUE

The 2014 Annual pro bono Awards Ceremony, the first of its kind in South Africa, will publicly acknowledge and pay tribute to the valuable and exceptional work done by pro bono attorneys and advocates during 2013.

Join us in celebrating and rewarding these achievements on **7 October, 18h00** at Katy's Palace Bar in Kramerville, Johannesburg.

SEND IN YOUR NOMINATIONS NOW!

Nomination forms available:

- On our website – www.probono.org.za
- From Phumi – phumi@probono.org.za
- Or call 011 339 6080

**CLOSING DATE FOR NOMINATIONS:
31 AUGUST 2014**

AWARD CATEGORIES

Law Firm Awards for 2013

Most pro bono hours by a firm with:

- Over 50 professionals
- Between 10 and 50 professionals
- Fewer than 10 professionals

Advocate Award for 2013

- Advocate that undertook the most pro bono hours

Attorney Awards for 2013

- Full time pro bono attorney that undertook the most pro bono hours
- Attorney who undertook the highest number of pro bono hours, part time, while conducting his or her own practice

Media Award

- Journalist that gave pro bono work most coverage

ProBono.Org Director's Special Mention Awards

- ProBono.Org's award for attorneys/advocates who sourced pro bono work through ProBono.Org, and demonstrated exceptional commitment.



ProBono.Org

Pro law for all

1st Floor West Wing Women's Jail
Constitution Hill • I Kotze Street
Braamfontein
tel: 011 339 6080 • fax: 011 339 6077
www.probono.org.za

Suite 9001, Nedbank Building
Durban Club Place, Durban
tel: 031 301 6178 • fax 031 301 6941

VISIT OUR WEBSITE AND
FACEBOOK PAGE WHERE
YOU CAN READ ABOUT OUR
UPCOMING EVENTS AND
DOWNLOAD PODCASTS
OF OUR RADIO PROGRAMME
PROBONO LAW.

www.probono.org.za