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Understanding the Constitution

By Koketso Molotsi, ProBono.Org intern

South Africa has one of the most inclusive Constitutions in the world, yet frequently ordinary people do not know the powers of the Constitution. It has recently been made more visible because of the well-publicised "Nkandla" case, which was heard in the Constitutional Court.

Even when people see the Constitution being put into practice, few people have a real understanding as to how it relates to them. A perfect example is Section 36 of the Constitution, which outlines the Limitation of Rights. The section provides that the rights in the Bill of Rights may be limited only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

To illustrate, I will use a case regarding a deceased estate and its surviving heirs. J and B are brothers whose mother died intestate. J went to the Master's Office to report the estate but falsified facts by saying he was the only surviving heir of his mother's estate. He was then issued with Letters of Authority. Subsequently J transferred



his late mother's property to himself and then sold the property to a third party. B now seeks legal assistance to reverse the title back into his mother's deceased estate.

The problem the court would be faced with is how to remedy the matter. Should the court reverse title back into the deceased's estate? What happens to the innocent third party who bought the house from J? Does the third party seek restitution from J for fraudulently selling him the house? Does B claim his half share of the sale of the estate from J? All these scenarios are things clients may not take into consideration when seeking

legal assistance or when they say with conviction that the Constitution protects them and that they have rights.

It is good that there are discussions amongst ordinary people about the Constitution, but now the conversation needs to be taken to a higher level where people are no longer just scratching the surface. People need to be educated on how the Constitution works for them in their day to day lives, making them understand that while we all have rights which are protected by the Constitution, these rights are limited and that these rights cannot infringe on the rights of others. ●

ProBono.Org Durban says Thank you!

By Petrina Chetty, ProBono.Org, Durban



Showing appreciation to attorneys, advocates and organisations is one of the events that the Durban staff looks forward to hosting. Not because we get to “glitter and glamour” on the day, but because we are able to give a little something back to those who go above and beyond to assist ProBono.Org and our clients.

This year, we held our second annual Appreciation Day event on 9 June at the AHA Waterfront Hotel. This occasion marks the growing success of our organisation. It is an opportunity for our staff to meet and greet some of the attorneys that we do not have an opportunity to work with. This year we were fortunate to be able to share the event with our Johannesburg colleagues.

The 2017 Appreciation Day event would not have been possible without our generous sponsors, some of which were Lexis Nexis, Juta, Sanlam, Urban Lime and Virgin Active. We were very honoured to have as our keynote speaker Professor David McQuoid-Mason of the University of KwaZulu-Natal and the founder of the Street Law Programme. Professor Mason embodied the spirit of the event and came appropriately and amusingly dressed with a “Keep Calm and Do Pro Bono” t-shirt. As our Master of Ceremonies we had

popular DJ Kevin Minter-Brown of Durban Youth Radio fame.

The highlight of the event and the moment our guests waited in anticipation for, was the handing out of the Certificates of Appreciation. Some of the attorneys and firms that were recognised were Carol Holness from Norton Rose Fulbright SA for her continuous support and assistance for our refugee work, Kerry Forbes for helping us the most as an individual attorney, Tate, Nolan & Knight Attorneys who completed the highest number of pro bono hours for a medium firm and Shepstone & Wylie Attorneys, being the large firm that has assisted us the most.

All in all, the event was a success. The guests walked away with goodie bags, full bellies and, hopefully, good memories. ●

The Durban High Court Help Desk

By Sebastian Chetty, ProBono.Org intern, Durban

The help desk at the Durban High Court was established by ProBono.Org as part of a pilot project in April 2017 in partnership with the KwaZulu-Natal Law Society to fulfil their mutual vision to address the lack of access to justice for unrepresented people and communities appearing before the High Courts. The ultimate aim and objective of this partnership is to promote the right enshrined in section 34 of our Constitution, which gives everyone the right to access to courts. The idea for the project came from the Deputy Judge President of the KwaZulu-Natal Provincial Division of the High Court, the Honourable Justice Madondo.

Since its establishment, the help desk has assisted a number of disadvantaged people who would otherwise not have obtained the relief they desired. The growth of the desk is evident from the numbers of people we attend to, which is increasing daily. In June alone, 44 clients were seen. The desk deals with legal issues ranging from housing, evictions and consumer law to family law.

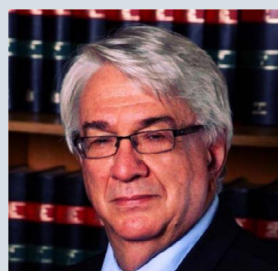
Many matters coming before the desk are of a family law



nature, specifically dealing with urgent applications regarding children and their rights. These matters are given immediate attention due to their urgency, as they require an application to be brought or opposed in court within a very short period of time after the matter is brought to the desk. The challenges and pressure in these matters are overcome by the dedication of the advocates who are readily available to come to our organisation’s assistance in taking on the matters at short notice.

We hope that the commitment the volunteer attorneys and advocates have shown will continue and inspire other legal professionals to get involved in contributing to the vision of making justice accessible to all, irrespective of wealth or status. ●

Obituary Nic Swart



ProBono.Org is saddened by the sudden passing of Nic Swart on 10 August in Botswana, where he was attending the SADCLA conference. Nic was the CEO of the Law Society of SA (LSSA) and the founder and director of Legal Aid and Development (LEAD), responsible for the professional training of attorneys. Since 2003, there has been an enrolment of 10 000 per annum at LEAD courses. Prior to serving in these two institutions he was

a professor (extraordinary) at the University of Pretoria and a senior lecturer at the North West University law faculty. He also sat on a number of boards. He held BA LLB and B Com degrees from the University of Pretoria and UNISA, and was both an attorney, advocate and certified assessor, moderator and facilitator. In 2015 he was awarded the Lexis Nexis SA Rule of Law Award. May he rest in peace. ●

Women's Day - 2 August 2017

The ProBono.Org Johannesburg office hosted its annual Women's Day on 2 August 2017. The event was attended by women from Orange Farm, Tembisa, Kagiso and our local clients. This year's topic was Divorce, Mediation, Parenting Plans and Settlement Agreements, which was presented by our keynote speaker Advocate Veerash Srikison.

The more than 20 volunteer attorneys who attended the event held individual consultations with clients and received a presentation on Collaborative Practice in Divorces by Marissa Galloway-Bailey of the Collaborative Network. Further presentations for the community members present were given by the Teddy Bear Clinic, the Dobsonville Advice Centre, the South African Police Services and Street Law presenters from UNISA.

To make our Women's Day even more memorable, Advocate Srikison facilitated



the provision of gifts from Ackermans, Roman's Pizza, Essay Magazine and Mama's and Papa's Magazine. Grateful thanks to our guest speaker and the NPOs, NGOs, volunteer attorneys, sponsors and the Johannesburg staff team for making this day a success. ●

Welcome to our new Cape Town faces



Asanda Conjwa – Administrator

Asanda, who hails from Mthatha in the Eastern Cape, holds a BA degree in Language and Communication and an Honours Degree in Political Studies from the University of the Western Cape. She has worked in the NGO sector for 8 years and is currently studying towards her LLB degree. Asanda has always been passionate about social justice and strives to be a voice for the voiceless by advocating for marginalised people's rights.



Naeelah Williams – Staff Attorney

Naeelah grew up a stone's throw away from Khayelitsha, a township in Cape Town where the need for social justice has always been particularly prevalent. Very early on she made the decision to pursue a career that would contribute to the upliftment of the poor. She completed her LLB at the University of the Western Cape in 2011, obtained a Postgraduate Certificate in Practical Legal Training from the University of Cape Town in 2012 and was admitted as an attorney and conveyancer in the Western Cape High Court in 2014. Naeelah worked at Scorpion Legal Protection as a legal advisor and it was there that she realised that, while our country is undergoing a transformative transition, there is still much more work to be done. Naeelah is passionate about access to social justice and is determined to be a driving force behind the positive change in our country. ●

Note: Our Cape Town office has a new address from 1 August 2017:

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REFUGEE MANUALS

By Tshenolo Masha

As part of commemorating and observing the plight of refugees and asylum seekers on World Refugee Day, ProBono.Org in partnership with Cliffe Dekker Hofmeyer, Fasken Martineau and Norton Rose Fulbright SA launched three Refugee Law Guides for Legal Professionals. The guides were developed by these three law firms to assist legal professionals to render pro bono services to refugees and asylum seekers. The keynote speaker at the launch was Judge Raylene Keightley who presided over the case of FAM vs the Minister of Home Affairs, where she delivered a judgment which obligated the Department of Home Affairs to apply procedural fairness to refugees as envisaged in the Constitution, and which is widely used as case law in review applications for asylum and refugee status. In her address the judge pointed out that South Africa's commitment to the protection of refugees and asylum seekers did not only rest with the state but also with legal professionals in ensuring the country's international obligations are applied to this vulnerable group, who in most instances do not have access to legal services. She highlighted that the principle of non-refoulement is the cornerstone of asylum and refugee law and that legal professionals are entrusted with ensuring that the law which provides protection to this vulnerable group is utilised. She also made a call for more professionals to get involved in this space.



The manuals are available for download on our website. ●

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

www.probono.org.za