

## Introduction

In this issue we provide an overview of the wide range of interesting and significant pro bono cases handled by the attorneys, firms and advocates on our pro bono panel. These cases demonstrate how the constitutional guarantee contained in Section 34 of the Constitution, stating that everyone has the right to have any dispute resolved by the application of law, decided in a fair public hearing, before a court, is meaningless if people are unable to afford legal representation and are not represented.

Pro Bono.Org would like to thank everyone for their pro bono contributions over the past year. We wish you all a restful and rejuvenating holiday and we look forward to another year of increasing access to justice. ●

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# OVERVIEW OF RECENT PRO BONO CASES

## HOUSING

- Fasken Martineau represented the Human Rights Commission by bringing an urgent application for an interdict against the Gauteng Housing Department (GDH) to prevent the unlawful and inhumane demolition of homes in Lenasia. More than 50 homes were to be demolished, as the GDH alleged that they had been illegally built on government-owned land as a result of fraudsters having sold the stands to homeowners. The GDH contracted bulldozers and began to demolish the homes, most of which were not listed on any court order. Many of the occupants were women, children and elderly, who were left hysterical and homeless, and their personal belongings had been thrown onto the streets, resulting in violent protests. The urgent application was successful and an interdict was granted preventing any further demolition of houses. A settlement was facilitated between the parties that led to a Task Team being set up by the Minister of Human Settlement,



for further investigation into the matter.

- Advocate Laurence Broster SC (acting for the Legal Resources Centre) was the lead counsel in the case of Jabulani Zulu and 389 others (Madlala Village, KZN) vs eThekweni Municipality. The case centres on the right to housing and due process in the context of evictions. The community members live on land that is owned by the MEC of Human Settlement. They had been subjected to systematic evictions by the Municipality's Land Invasion Control Unit and SAPS, wherein homes had

been demolished, personal property destroyed and people assaulted. These evictions took place without a court order, despite the requirements of the Prevention of Illegal Evictions Act. Subsequently the MEC obtained an order enabling the Municipality to evict anyone who moves onto the land listed in the notice of motion – this extends to over 1200 properties in KZN. Applications for leave to appeal were dismissed in the High Court and Supreme Court. Advocate Broster has formulated an application for leave of appeal to the Constitutional Court. ●

## HEALTH

- Webber Wentzel successfully represented Medecins Sans Frontiers (Doctors without Borders) in an application for approval from the SA Medicines Control Council for the use of an unregistered medicine for the treatment of drug-resistant TB. This will potentially save the lives of 15 000 patients per year, who have been diagnosed with multi-drug-resistant TB.
- Webber Wentzel is also assisting a consortium of NGOs (ILO, UNAIDS, SANAC, SECTION 27, Legal Aid) and the Department of Justice on the establishment of HIV Legal Clinics in all 9 provinces. These HIV Legal clinics will be staffed by pro bono attorneys and they will take on HIV/Aids, TB and other health-related matters. This will ensure access to justice for this group of vulnerable persons, and will also help to reduce the stigma and discrimination around these diseases. ●



## SPORT

Werksmans successfully represented athlete and 2012 Comrades champion Ludwick Mamabolo, in defending charges of doping against him, and representing him in disciplinary proceedings brought against him by the SA Institute of Drug-Free Sport. Mamabolo's case related to the constitutional principles of: the right to human dignity, the right to a profession, the right

to just administrative action and the right to privacy. The successful defence of Mamabolo created the precedent that athletes competing in SA are entitled to drug testing that is conducted with care and is in accordance with international standards. ●

## CONSUMER

ENS Africa successfully assisted a client in realising a claim against Matsolo Attorneys (MA) in the Western Cape. The client was under debt review and despite making regular payments to MA, her debt was not being reduced. With the assistance of ENS Africa, the misappropriated funds were paid back to her, and the Cape Law Society subsequently launched an investigation into the conduct of MA. ●

## POLICE BRUTALITY

- Cliffe Dekker Hofmeyr represented the SA Human Rights Commission (SAHRC) in their findings related to the ordeal suffered by a UCT student who was harassed and detained by members of the President's Special Protection Unit, for allegedly making a rude gesture with his middle finger. The student lodged a complaint with the SAHRC, which they found in his favour and then made various recommendations. Cliff Dekker Hofmeyr, acting for SAHRC, brought an application against the Minister of Police which was unfortunately subsequently dismissed.
- Cliffe Dekker Hofmeyr also acted for the international NGO, Peace and Justice Initiative (head office in The Hague) as amicus curiae in the matter taken on appeal to the Constitutional Court from the Supreme Court, related to the Supreme Court finding that the SA Police Service is empowered to investigate allegations of police torture committed in Zimbabwe. The judgement was reserved in May 2014. ●



## LGBT RIGHTS

Webber Wentzel successfully assisted a Ugandan gay rights activist (Dr Paul Semugoma) by opposing his improper detention and deportation (for prosecution in Uganda under the Anti-Homosexuality Bill) and by securing him a specialised skills work permit for South Africa. ●



## LABOUR

- Mervyn Taback Inc successfully represented 13 Ford Motor Company employees in an unfair dismissal matter and achieved the most favourable settlement of the matter for all of the employees.
- Moni Attorneys Inc represented a security guard employed by Bearing Man in an unfair dismissal matter. He was a shop steward and was dismissed for speaking out at a meeting. The matter had taken 5 years to be resolved, as it had been wrongly referred to the Durban Bargaining Council (as Bearing Man head offices are in Durban) and was then finally referred back to the Johannesburg Bargaining Council, as the client had been employed in Johannesburg. Natasha Moni was given instructions at this point, and with her assistance, the matter was resolved in the client's favour - he obtained a full year's salary as compensation.
- Mabaso Attorneys has represented clients in many unfair dismissal cases, such as the case of 14 foreign language interpreters employed by the Department of Justice in and around greater Johannesburg. They had all been dismissed under unfair and unclear circumstances. They had referred an unfair dismissal dispute to the Bargaining Council, whereby the Commissioner ruled that the relationship with the Department of Justice was not employment related. Mabaso Attorneys successfully insisted that the Commissioner's ruling be reviewed by the Labour Court. Judgement has been reserved.
- Mabaso Attorneys also successfully represented a client against Jay's Liquor Store in Nancefield. The Labour Court granted the application in the client's favour and ordered the employer to pay an amount of R35 000 as compensation. The company however, failed to comply with the court order. Mabaso Attorneys then obtained a writ of execution against its property. The company has since complied and paid out R37 000 to the client. ●

## LAND

- Webber Wentzel assisted the Khomani San community (Northern Cape) to obtain post-land restitution support under the supervision of the courts, related to their successful land claim in 2009. Since 2009 the state had not demonstrated the capacity or the will to comply with the contractual and legal duties to the Khomani San in relation to

the land claim. The High Court order achieved in 2014 compels the state to implement the terms of the 2009 land settlement agreement and to properly fulfil their developmental duties in relation to the restored land.

- Webber Wentzel also assisted over 6 000 households in the Protea South informal settlement (near Johannesburg)

to successfully oppose their eviction by the City of Johannesburg. The City was further ordered to provide basic interim services such as communal water taps, chemical toilets and high mast lighting. This judgement stands as a precedent for the in situ upgrading of informal settlements elsewhere in the country. ●



## CHILDREN

- Bowman Gilfillan has successfully assisted parents with obtaining birth certificates for children in cases where the birth was never registered and the biological mother or father was not traceable.
- Bowman Gilfillan has also assisted with Children's Court matters referred by ProBono. Org and the Centre of Child Law. Bowman Gilfillan successfully represented a child in a complex matter that ran over a period of 2 years and concluded with the child being adopted. ●



## INFORMAL TRADERS

- Hogan Lovells SA represented street traders in seeking an interdict against the City of Johannesburg and the Metro Police from unlawfully and forcibly removing street traders and confiscating their goods. After an initial failed application in the High Court, an urgent application to the Constitutional Court was successful in obtaining relief for the traders.
- Advocate Paul Kennedy SC (acting for the Legal Resources Centre) appeared in the Constitutional Court on behalf of thousands of inner city informal traders in the successful urgent proceedings to interdict the City of Johannesburg from unlawfully evicting the traders and thereby depriving them of their livelihood. ●



## REFUGEE/ASYLUM SEEKERS

- Fasken Martineau assisted an asylum seeker who had married a SA citizen in terms of customary law and had become widowed. The asylum seeker was unable to open a bank account, report a deceased estate and claim provident fund benefits because of her legal status. Due to the lack of funds, the client faced eviction. Fasken Martineau successfully assisted the client to open a bank account, report the estate and obtain the death benefit from the pension fund (R600 000) for her and her child's maintenance.
- Advocate Paul Kennedy SC was the lead counsel for the SA Human Rights Commission in the matter against Minister Pandor and others, where judgement was handed down by the Gauteng High Court that the detention practises of the Department of Home Affairs at the Lindela Repatriation Centre, were unlawful and unconstitutional. ●



## ENVIRONMENT

Advocate Mark Townsend acted for 3 NGOs as amici curiae (namely EarthLife, Greenpeace and the Electromagnetic Research Foundation) vs Eskom in respect of the environmental issues raised, particularly related to the importance of applying a precautionary approach when dealing with the exposure of people, especially children, to electromagnetic radiation from high voltage power lines. ●

## DOMESTIC VIOLENCE

- Fasken Martineau took on a case where a woman had acid thrown in her face by her husband in front of her children. Representations to the Parole Board successfully prevented the release of the perpetrator. This case is important because of the gender and victim empowerment aspects.
- Advocate Cathy Welsh handled the Schaper domestic violence and divorce matter. Schaper's husband (the accused) had been harassing/assaulting her, her sister and her mother over a long period of time. A protection order had been obtained, but the lack of enforcement of the protection order by SAPS ultimately led to the death (murder) of the mother by the accused. Advocate Welsh applied significant pressure on the Prosecutor to ensure that the accused was denied bail. The murder case will be heard in 2015. ●