

Pro Bono Awards 2020



By Margaret Fish, Operations, Grants & Communications Manager

Given this year's extraordinary circumstances, the annual Johannesburg Pro Bono Awards were held online on 29 October 2020. It was extremely gratifying to see how many of our legal practitioners and other guests were able to join the event, even though we were not able to meet in person.

In his welcome address, Chair of the Board, Mohamed Randera paid tribute to the volunteer efforts of the many members of the legal fraternity who managed to continue to assist our clients during the lockdown, by consulting with clients by phone or virtually. *"In addition, legal education did not stop. We have seen the attendance and participation of some 500 lawyers in Johannesburg alone."* In addition to the webinars, through the AFSA project over 300 paralegals have received training in various community advice offices countrywide.

We were honoured to have Constitutional Court Justice Leona Theron give the keynote address. "Pro bono work is intrinsic to our profession and speaks to a genuine desire to make a difference in our community". Doing pro bono work is one way of connecting us to the good in law and the good in lawyering, she said. "Doing good has been proven to make us happier and more fulfilled. There is a strong positive association between volunteering, life satisfaction and general health. Pro bono work does not only benefit those who receive



the work. It has a much larger impact. It makes employees feel happier and more engaged. It also builds better lawyers, often creating training opportunities for younger lawyers. Firms that support pro bono work enjoy a competitive advantage. Young talent is not only attracted by exciting work and reliable income but also by the opportunity to feel fulfilled and to perform what they inherently feel to be their duty as citizens.

The COVID-19 pandemic has required us to find new ways of doing things (as with this awards ceremony!). It has given us a glimpse into the future of the profession

In this issue

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Write for us



We would like to invite legal practitioners to contribute to our bi-monthly newsletters by writing an article of up to 400 words (one page) on a topical issue of law. Please indicate your interest to the editor at margaret@probono.org.za

The deadline for articles for the next issue will be:
1 February 2021

ProBono.Org

Commemorating World Aids Day

This is ProBono.Org's first video in a series of videos to better equip pro bono legal practitioners to advise and assist persons living with HIV/AIDS in realising their human rights.

<https://youtu.be/jRb7R4jNwFM>

and highlighted the potential for proactive measures to drive access to justice and modern, transparent and efficient court processes.”

Justice Theron challenged all the lawyers present to pledge to serve, to pledge to devote themselves to doing whatever they can to ensure that every South African can exercise their right to have access to justice.

She went on to congratulate each of the finalist and winners. “I salute

each one of you who has performed pro bono work over the past few years and I encourage you to continue to do so. I also challenge you to find a friend or a colleague who is not engaged in pro bono work and persuade them to do as you are doing. You have raised your hand and said ‘Thuma Mina – send me’ and for that I thank you.”

And so to the awards. There were 15 categories this year:



<p>Housing <i>Finalist</i> Stephanie Jacobs – Jacobs Attorneys <i>Winner</i> Naledi Motsiri – Werksmans</p>	<p>Labour Law <i>Finalist</i> Manager Gumbo – K M Legal Consultants <i>Winner</i> Naledi Motsiri – Werksmans</p>	<p>Large Firm <i>Finalist</i> Cliffe Dekker Hofmeyr <i>Winner</i> Fasken</p>
<p>Deceased Estates <i>Finalist</i> Sarah Jane Goldman – Lawtons Africa <i>Winner</i> Mahlape Mohonoe</p>	<p>Community Advice Office Award <i>Winner</i> Rita Tladi – WATLA (Women and the Law)</p>	<p>Medium Firm <i>Winner</i> Klopper Jonker Attorneys</p>
<p>Refugees <i>Finalist</i> Elsie Mokoena <i>Winner</i> Katekani Mashamba</p>	<p>SMME Award <i>Winner</i> Sushila Dhever – Fasken</p>	<p>Small Firm <i>Finalist</i> Ceri von Ludwig Attorneys <i>Winner</i> Jacobs Attorneys</p>
<p>Conveyancing <i>Finalist</i> Chrysi Kripotos <i>Winner</i> JD van der Merwe – Bowmans</p>	<p>Wills <i>Winner</i> Brenda Rangata – Maponya Attorneys</p>	<p>Advocate Award <i>Finalist</i> Pule Tshweu <i>Winner</i> Nkabane Zwane</p>
<p>Family Law <i>Winner</i> Marinus Labuschagne – MCV Inc.</p>	<p>Child Law <i>Finalist</i> Roeline Goosen <i>Winner</i> Kruger Engelbrecht</p>	<p>Outstanding Student at a University Law Clinic <i>Finalist</i> Lara Dreyer – University of Pretoria <i>Winner</i> Heinz Hartzenberg – University of the Western Cape</p>

There were also three Special Mentions:

Fasken was acknowledged for their dedicated work over the years at the NISAA and FAMSA legal clinics in Soweto.

Bowmans was given a special mention for their work at the domestic violence help desk at the Randburg Magistrates’ Court.

And

Jazz Vilakazi for his availability to assist ProBono.Org clients, often at short notice.

Congratulations to all the winners and finalists, many of whom are second and third-time winners, which demonstrates consistence in their caring for the less fortunate. ●



Jazz Vilakazi

Durban Appreciation Day 2020

By Shamika Dwarika, Regional Director

Four thousand, two hundred and fifty three (4,253). That is the number of clients the Durban office saw in 2019.

Stop for a minute and think about how many people, households and families were affected positively by the assistance rendered to those people. Now think about how many people would have been adversely affected were we not able to render this assistance. That's why the Durban office of ProBono.Org held their first ever virtual Appreciation Day event. This annual event to give back to those legal practitioners who have gone above and beyond in providing free legal assistance to those who cannot afford it, was held on Friday 30 October 2020.

ProBono.Org cannot provide free legal assistance to the financially needy without the dedicated legal practitioners from private practice who give freely of their time. These practitioners are proof that being in private practice is no barrier to doing pro bono work if one is truly passionate about doing so. Commitment is key and we hoped to inspire practitioners to remain committed to helping those in need. The organisation as a whole continues to show year on year growth and this is due to the buy-in of the private legal profession, partners and stakeholders with whom we work, which fostered this growth. Our event showcased the most helpful legal practitioners in a number of categories and they received certificates for their efforts.

This was our fifth annual Appreciation Day Event and it was an honour to have the esteemed Justice Edwin Cameron deliver the keynote address for our office. He reiterated the importance of pro bono work and the value of social justice in South Africa. Apart from our help desks, during 2019 our office focussed on our work with the elderly, developing young legal practitioners and raising awareness of gender based violence. As always, the event was attended by members of the legal community, attorneys and advocates alike, as well as stakeholders in the field of social justice and human rights and some of our committed sponsors such as LexisNexis SA and the IIE's Varsity College. ●



“ProBono.Org cannot provide free legal assistance to the financially needy without the dedicated legal practitioners from private practice who give freely of their time.”



COVID-19 national response suffocates access to “normal” healthcare?

The Constitutional perspective

By Shadreck Masike - Cape Town intern

The year 2020 has seen the world being hit by a global health crisis caused by the corona virus, COVID-19 variant. Most countries responded to this crisis by imposing nationwide lockdowns, which basically limited economic and social activity to curb the spread of the virus which was ravaging the world. More than 32 million people globally have been confirmed COVID-19 positive and nearly a million have succumbed to this virus as at 25 September 2020.

There has been major focus on the impact of the corona virus outbreak on the economy and socially, but little has been said on how mitigating the spread of the virus has affected access to the right to healthcare services. The question that arises is: did the South African National Response to COVID-19 crowd out ‘normal’ healthcare, and if so, is that constitutional?

Spotlight reported that the pandemic was landing on top of South Africa’s pre-existing crisis for oncological services. Dr Lydia Cairncross, Head of Groote Schuur Hospital’s Breast and Endocrine Surgery Unit in Cape Town, summarised the situation as follows:



Dr Lydia Cairncross

“At the beginning of the lockdown period we had a large number of women waiting for breast cancer surgery, over 80 [women],” she said. “We also have patients waiting for other forms of diagnostic surgery as well as treatments for other malignancies. What we have had to do is prioritise cancer surgery over other elective surgery. We have also had to put some patients onto alternative therapies where that has been possible...”

This statement reflects the general approach that most public health institutions have adopted in order to combat the spread of the corona virus. What this means is that it is now the health institution that decides whether to attend to you or not, depending on the severity of the situation. But the point which is missed here is that a seemingly minor health condition can develop into a serious health complication if left unattended. It may be argued that such prioritisation

may be justifiable in the context of a pandemic that has crippled even the most effective health systems around the globe. But the question remains - is it Constitutional in light of section 27 of the constitution?

Section 27 (1) (a) of the South African Constitution provides that every person has the right to have access to healthcare services. This right applies to everyone at any given point, and its application can only be limited in terms of a general law on condition that such limitation is reasonable and justifiable in a democratic society based on human dignity, equality and freedom, after taking all factors into consideration. This right

entitles an individual to approach a public medical facility to seek medical attention of their choice, either at their own expense or that of the State. There is no doubt considering the statement above that this freedom has been limited. But limitation alone does not render it unconstitutional; it must be unreasonable and unjustified and at odds with the principles of democracy.

It is understood that COVID-19 caught the world by surprise and fragile health systems like South Africa’s would be very vulnerable and find it difficult

to cope. However, suspending access to health and delegating the authority to decide who gets treatment for what and when is deeply problematic. Access to health is inseparable from the inherent right to life and human dignity and should only be limited in very extreme instances that do not put lives in jeopardy. There is a need to balance the two, i.e., strategically responding to the pandemic, whilst at the same time ensuring that the response does not crowd out access to healthcare for other conditions. It is accepted that these are difficult times, but a society’s resolve to uphold constitutionalism and respect human rights is seen in the most difficult and trying times. COVID-19 is not the only and will not be the last pandemic we will witness and this should be taken as a wake-up call to prepare for the unpredictable. It is submitted that the war against COVID-19 can still be won, and effectively so, while upholding the rule of law, the bill of rights and constitutionalism. ●

The Cost of COVID-19 for Migrant Workers

By Zanele Malindi - Johannesburg intern

The COVID-19 pandemic has brought with it an array of unique issues, in addition to shining a spotlight on extant inequalities in South Africa. Issues of migration, xenophobia and disparate access to health resources are not new to the country; in fact, they are integral to the very fabric of our still young democracy. However, it is fair to say that the global pandemic has exasperated and compounded many of these issues, leaving some people in a state of despair, especially those who are most vulnerable.



The SADC region has a historical and ongoing tradition of migration, not only between states but also internally. People's reasons for migrating are so varied and complicated, and migration is rarely entirely a matter of choice. However, the migration of people is too often coupled with xenophobia, which stops them from accessing the very thing they moved for in the first place. They are unable to get jobs; may be persecuted by their new community members and are often overlooked and actively mistreated by the government.

Non-citizens, even without the pressure of a global pandemic, are shut out of the economy and have no access to health care. However, during COVID-19 these issues are clearly being exacerbated. Non-citizens are unable to get proper documentation with the closure of Home Affairs offices and are unable to renew their documents if they do have them, resulting in the closure of their bank accounts and being unable to access any funds to live on. Furthermore, migrant workers often exist in the informal work spaces, meaning their access to work and money was completely cut off during lockdown. Even if they do get access to the system, the systematic xenophobia often prevents people from getting a fair chance to create a life in South Africa.

The government has failed to think of or include migrants in any of their COVID relief plans. It is only with the victory in court, brought by the Scalabrini Centre and represented by Norton Rose Fulbright SA, that

asylum seekers and special permit holders were able to apply for the COVID-19 Social Relief Distress grant. This happened in the middle of June, three months after the declaration of the State of Disaster and the subsequent lockdown. Moreover, strict policing has left people terrified to move around the country freely, or to pursue access to the healthcare they need. Furthermore, it is only due to societal pressures that permits would be extended while Home Affairs offices were closed, leaving even people who have all their documentation unable to renew their permits and potentially being marked as overstaying in the country or even being deported. Many people who come to South Africa are fleeing their country of origin, leaving them stateless and not under the protection of any government.

This global pandemic, although terrible in so many ways, has finally forced people to really register the stark inequalities that exist in our country, especially where the fate of migrants is concerned. We can only hope that the government uses this opportunity to do some real work in acknowledging and fixing these problems. However, there is also much to be done in communities and on the ground. The power of the people is immeasurable, and we have seen time and time again the change that people-led movements can make. This is an opportunity for all people to recognise these issues and fight for those who are so often overlooked and silenced. ●

The Advancement of Women's Rights in South African Law

By Seshni Govender- Staff attorney, Durban

Over the years, the rights of women in South Africa have been suppressed, which forced women to live in a patriarchal society. South African women were previously under the social and legal control of their fathers or husbands and were even taken to be second-class citizens. African women were by far the most disadvantaged group as a result of their race and gender.

Many laws of the country contributed to the prejudice against women and added fuel to an already burning fire. The customary laws and marriages were governed by the notion that men are privileged over women. It was the position in the Black Administration Act, 35 of 1927 and the Natal Code of Zulu law of 1985 that African women in a marriage will be deemed to be a minor and of a lower status than their husbands. African women were subjected to their husbands' marital power and had no say in their marriages. Since the Black Administration Act only applied to customary marriages, it imposed many restrictions on African women such as not being allowed to own property or acquire credit. Furthermore, they had limited contractual capacity and access to courts. These restrictions placed a tremendous burden on African women who were made to live feeling helpless and at the mercy of their husbands.

Women in South Africa finally received formal recognition as equal citizens with the introduction of the Bill of Rights. Our Constitution provides women with a full range of rights but it is specifically Section 9, which is the Equality clause that provides South Africa women with ultimate protection. It is stated in Section 9(3) *"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth"*. The clear prohibition of discrimination on grounds of gender, sex, pregnancy and marital status is intended to protect women.

As the law started to develop so did case law. In the case of *Brink v Kitshoff NO (CC 15/95)[1996] ZACC9;*



1996 (4) SA 197; 1996 (6) BCLR 752 the Constitutional Court took an important step in affirming women's rights. In this case Section 44 of the Insurance Act of 1943 was challenged because it deprived married women, but not married men, of all or some of the benefits of life insurance policies made in their favour by their husbands. The Constitutional Court held that Section 44 discriminated against married women based on sex and marital status, which was a violation of the equality clause.

From 1996 onwards we started to see a clear advancement in women's rights and the legislature started to enact more laws to improve life for women. The Choice on Termination of Pregnancy Act 92 of 1996 was passed to recognise women's reproductive health rights and prevent the terrible outcomes of illegal backstreet abortions. The Domestic Violence Act 116 of 1998 followed and was passed to recognise that domestic violence is not a private matter but a serious crime against society. The definition of domestic violence was broadened to include unmarried women who are involved in relationships or living with their partner, people in same-sex relationships, mothers and their sons, and other people who share a living space.

Despite the aforementioned laws being passed, black women in customary marriages were still being subjected to patriarchal views. Therefore the

Recognition of Customary Marriages Act 120 of 1998 (herein referred to as the RCMA) was enacted to improve the position of women in customary marriages and to bring customary laws in line with the principles of the Constitution. The RCMA came into force on 15 November 2000 and aimed to correct the past discrimination against African women by officially recognising all African customary marriages in South Africa. It is specifically stated in Section 6 of the RCMA that women in customary marriages are on equal footing with their husbands in both status and capacity. Since Section 6 of the RCMA is the driving force for equality for African women in customary marriages, Section 9 was added to contribute to the enforcement of Section 6. Section 9 of the RCMA allows for the application of the Age Majority Act, 57 of 1972. It is clearly stated in the Age Majority Act that when a woman reaches 21 or enters into a civil or customary marriage she becomes a major. Therefore this gets rid of the notion that African women shall still be deemed to be minors once they are married.

Section 7(1) of the RCMA brought to light some issues for African women who were married before the commencement of the RCMA. It is stated in Section 7 (1) that marriages entered into before the RCMA will be governed by customary law. This Section of the RCMA places the majority of married women back in the position they were in originally. This was later challenged in the case of *Gumede v President of the Republic of South Africa and Others 2009 (3) BCLR 243 (CC)* where it was stated that all monogamous customary marriages were deemed to be "in community of property" unless the spouses contracted otherwise.

The *Gumede* case provided relief for women in monogamous marriages. However the position remained the same in respect of polygamous marriages. In the case of *Ramuhavhi and others v President of the Republic of South Africa and others (CCT194/16) [2017] ZACC 41 (30 November 2017)*, Section 7 (1) of the RCMA was declared unconstitutional. The court found that Section 7(1) was discriminatory based on gender, race and ethnic or social origin as it contributes to inequality between husbands and wives in polygamous marriages before the enforcement of the RCMA. The Constitutional Court held that since there was no justification for such discrimination, Section 7(1) was



inconsistent with our Constitution.

Parliament was ordered by the Constitutional Court to change the legislation within 24 hours and made an interim order that husbands and wives that entered into polygamous marriages before the RCMA must share equally in the right of ownership, management and control of the matrimonial property. This judgment has provided wives that are in polygamous marriages entered into before the RCMA, the right to have joint and equal ownership in respect of all property in the house she and her husband live in and to jointly act in the best interest of the family. However, each spouse will retain the exclusive right to his or her personal property.

In light of the above, it can be seen that the rights of women in South Africa have come a long way over the years. Legislation and case law have sought to ensure that the rights of women are protected and they are put on the same level as men in society. Despite these improvements in our law however, there are still many women that lack knowledge of these laws and are therefore still living under patriarchal notions and beliefs. Therefore our only way forward in society today is to educate the women of South Africa. The knowledge that they gain will be the key to getting rid of a patriarchal society. ●