

Staff news

Interns for 2022

Johannesburg

Xoliswa Maaroganye

has been appointed as Communications Intern for 2022, with funding support from the Raith Foundation.



She is passionate about Communications in the workplace and how it can be used to inspire innovative solutions and convey the organisation's brand both internally and externally. She enjoys creating visual content and employing social media platforms as a tool to interact and share information as a means of organisational branding.

Xoli completed a BA degree in Communication Science and Psychology in 2018 at Varsity College. She went on to further her studies at the University of Pretoria. She holds an Honours degree in Augmentative and Alternative Communication and intends on obtaining a Master's in Communication. Xoli is ecstatic to be part of the ProBono.Org team and eagerly looks forward to all there is to learn in order to grow and further her career while making a positive change in people's lives.

Ayanda Zulu was born in Port Shepstone, KwaZulu-Natal and obtained his LLB at the University of KwaZulu-Natal in Durban. Upon completing his studies he took up an internship in administrative adjudication at the Road Traffic Infringement Agency.



Ayanda studied clinical law, which exposed him to legal aid in civil matters spanning labour law, illegal evictions and small claims matters. He was inspired by the great work done by public interest lawyers in representing the less fortunate.

Ayanda has ambitions to practise law and contribute towards greater access to justice.

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Neo Maloka was born and raised in a small town in the Free-State. In 202, she completed her LLB studies from the University of the Free-State. During the course of her studies she had the opportunity to volunteer at the University of the Free-State Law Clinic where she consulted with clients and assisted them with their legal matters under the guidance of her supervisor. Neo is grateful for the opportunity offered to her by ProBono.Org and believes that the experience she will acquire will be pivotal in her law career.



Kgomotso Leshabane studied B.Com law and LLB at the University of Johannesburg. She recently completed her practical legal training (PLT) at the Johannesburg LEAD school with the aim of learning and preparing for the attorney board exams.



Growing up in Soweto exposed her to many people's frustrations due to a lack of access to justice which caused them either to take the law into their own hands or simply accept the injustice of being victims of various crimes. This made her eager to study law so that she could make a change, however small.

Staff news

Interns for 2022

Cape Town

Tyler Idas, our newly appointed legal intern, was born and raised in Cape Town. Her drive for improving social justice began while still at high school where she was involved in various community initiatives such as feeding schemes and community safety.



Her passion for improving access to social justice prompted her to enrol at UCT for both a Bachelor of Social Sciences, majoring in Policy Analysis as well as an LLB. While completing her studies Tyler has been involved with the SHAWCO Law (LAWCO) organisation as Curriculum and Evaluations Coordinator charged with structuring and facilitating basic legal education workshops within previously disadvantaged communities such as Manenberg and Khayelitsha. In doing so, the LAWCO committee was placed in the fast growth SMME category at the Standard Bank Top Women Awards in Leadership as an all-female committee.

Tyler hopes to further her growth of legal knowledge and its application and to make a meaningful impact in communities and households with her work at ProBono.Org.

Durban

Vuyisile Shabangu graduated with an LLB from the University of South Africa (UNISA) in 2021. During her academic career she participated in Human Trafficking events, and the Men for Change Conference which was hosted by Open Life Crisis Centre in partnership with UNISA. Vuyisile was also elected as the Deputy Chairperson of the Black Lawyers Association student chapter at UNISA Durban. Her role was to assist students with academic challenges they experienced within the campus.



Vuyisile is a member of the Young African Leaders Initiative (YALI) Network, which is a vibrant online community where young African leaders can learn how to effect change around important issues in their communities and improve their leadership skills through tailor-made online content. Vuyisile's dream is to specialise in human rights law and mining law. She is grateful for the opportunity to be a legal intern at ProBono.Org and is very excited to embark on this journey.

Welcome to all our new interns. May they grow and flourish during their year with us. ●

Farewell to Shamika

We are sad to announce that our Durban Regional Director, Shamika Dwarika, is leaving ProBono.Org in February. Not only is she leaving ProBono.Org but will also be leaving the country to further her career at an NGO in Ireland. Shamika has been with our organisation since July 2014 and has made an invaluable contribution to the Durban office and to ProBono.Org. We wish her success in her next career move and the very best moving forward.



We applaud the legal profession for a successful partnership in carrying out pro bono work

By Xoliswa Maaroganye, Communications Intern

The Annual ProBono.Org Awards are held to honour the legal practitioners and others for their consistent diligence and outstanding contribution to pro bono work. The 2021 awards were held online on 27 January 2022 where all three ProBono.Org offices convened in celebrating the pro bono work of the legal profession in 2020/2021.

Our guest speaker, Janine Myburgh, Chairperson of the Legal Practice Council noted that "ProBono.Org has a phenomenal impact on the legal profession". Moreover, she noted that "the Department of Justice has not yet promulgated regulations around community service in terms of Section 29 of the Legal Practice Act"... "I will personally persist that this remains on the desk of the Ministry of Justice", she said. Ms Myburgh went on to acknowledge the amazing men and women of the legal profession who "selflessly go beyond the call of duty to make the legal system accessible to all".



These were the award winners:

Most Helpful Attorney

- Venilla Govender of Meumann White Attorneys, Durban
- Candice Pillay, Norton Rose Fulbright SA

Most Helpful Advocate

- Adv Andre Strauss, Durban Bar
- Adv David Simonsz, Cape Bar
- Adv Karen Potgieter, The Johannesburg Society of Advocates

Most Promising Newcomer

- Nozipho Mvulane, Rajaram Mvulane Attorneys, Durban
- Sarah Jane Henshall, Henshall & Associates, Cape Town

Most promising Varsity College law student 2021

- Melisha Peters, Durban campus
- Nia Yu, Cape Town campus

Wills

- Rita Padayachee, Mooney Ford Attorneys, Durban
- Natascha Treston, Gascoigne Randon & Associates, Johannesburg



PRO BONO 2021

ANNUAL AWARDS CEREMONY

Staffing a Legal Clinic

- Labour Law – Adv Deidre Goosen, Thulamela Chambers

SMME clinic and workshops during the Covid-19 lockdown period

- Fasken Attorneys
- Deeds Clinic, Bangiso Mhlabeni Inc.
- Housing Clinic, Naledi Motsiri, Werksmans Attorneys
- Refugee Clinic, Ndou Attorneys
- Deceased Estates Clinic, Nomusa Ndaba, Nomusa Ndaba Attorneys

Most Helpful Intern

- Tebogo Makwala, the labour, wills, and CAO junior project coordinator in the Johannesburg office.
- Khanyisa Molaoa, the labour, wills, and Anglo junior project coordinator in the Johannesburg office.

Outstanding student at a university law clinic

- Ewan-Nize Gerber, Stellenbosch University

Highest number of pro bono hours

- The award for 2020 went to Cliffe Dekker Hofmeyr
- The award for 2021 went to Fasken

Small Firm

- Debra Gouws Attorneys, Cape Town

Medium Firm –

- Meumann White Attorneys, Durban
- Smith Tabata Buchanan Boyes Attorneys, Cape Town
- Pandor Attorneys, Johannesburg

Large Firm –

- Cliffe Dekker Hofmeyr for 2020
- Fasken for 2021

Child Law

- Adv Kalliopi Sachinis

Wills and Deceased Estates

- Lawrence de Swardt Attorneys, Cape Town attorneys, Cape Town

Conveyancing

- Debra Gouws Attorneys, Cape Town

The Most Active Community-Based Paralegal

- Mugidien Barnes, Heideveld, Cape Town
- Boitumelo Mthombeni of the Thusang Morwalo Community Advice Office, Kagiso

Attorney Most Committed to the Training of Candidate Legal Practitioners

- Elke Herbst from Bisset Boehmke McBlain, Cape Town

Firm that presented the Highest Number of Webinars Nationally for Legal Practitioners

- Norton Rose Fulbright SA Inc.

Special Mentions

- Adv Daniel Berger of the Bridge Group and Dawn Norton of Mkhabela Huntely Attorneys. They were acknowledged for the enormous amount of work they did on a CCMA arbitration over many months.
- Cliffe Dekker Hofmeyr for the Jose Brothers citizenship matter that they first took on in 2016.
- Werksmans Attorneys were given a special mention for the Tsotetsi case where they achieved success in the unlawful sale of a client's property being set aside.
- Advocate Jazz Vilakazi received a special mention for appearing pro bono in a sexual harassment case at the CCMA.
- Bowmans Attorneys were acknowledged for their professionalism, their detailed feedback, going all the way for

the clients and ensuring that they felt welcome and important.

- Fasken Attorneys were recognised for availing themselves for a client who was unfairly evicted, bringing an urgent application on a Friday, having it heard on the Saturday and executing the order which was in the client's favour.
- Cliffe Dekker Hofmeyr's pro bono department, in particular Gift Xaba and Tricia Erasmus were celebrated for their long-standing commitment and dedication to the Johannesburg Refugee Clinic and clients.

Congratulations to all the winners. We extend our sincere gratitude for your time, resources and expertise in assisting the most vulnerable, especially during the very trying times of COVID-19. A special thanks to all our sponsors for their support in making this event a success. The winners' prizes were kindly sponsored by AJS Business Management Systems. ●

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 April 2022

Access to Justice during COVID-19

Guest Slot

By Andricia Hinckemann
and Sushila Dhever
(Fasken)

This past year has been difficult for our country and the world at large due to the COVID-19 pandemic. Government's pronouncement that people must remain at home to curb the spread of the COVID-19 virus caused heightened levels of anxiety and tension and created a strain on the economy. Job losses became prevalent and the promise of social assistance from Government in some cases did not materialise.

The pandemic brought with it: an increase in domestic violence against women and children; small businesses closing due to financial trouble; and the escalation of landlord/tenant disputes and threatened unlawful evictions. It increased the demand for pro bono

assistance at a time when social distancing became imperative. New ways of providing pro bono assistance had to be sought. Virtual legal helpdesks, webinars for entrepreneurs and online litigation through Caselines were all methods that Fasken adopted to provide access to justice.

The lockdown resulted in us constantly approaching the lower courts in Gender Based Violence matters to obtain protection orders. We were called upon to bring an urgent high court application in an unlawful eviction of a community. With the high courts barely functional and through using Caselines, which was fairly new, we managed to successfully obtain an urgent court order

restoring occupation. Instead of community workshops we hosted a webinar on "The Impact of Covid on Entrepreneurs and how to mitigate risks" in partnership with ProBono.Org and the University of Johannesburg's Centre for Entrepreneurship for small businesses who were facing legal challenges due to COVID-19.

This pandemic has taught us that the need for pro bono assistance will never go away and through partnerships with organisations like ProBono.Org, access to justice can be achieved even through challenging circumstances. Now more than ever we need a community of professionals dedicated to the provision of pro bono services. ●



The Asylum Seeker and Refugee application process

through the eyes of a ProBono.Org employee

By Gugulethu Makhanya, Administrator, Durban



Fleeing one's country of origin due to persecution because of gender, race, political, religion or sexual orientation is both mentally and emotionally traumatic. This is a reality that has plagued numerous foreign nationals who flee their homes. They are forced to seek refuge in a foreign country because they do not receive the protection from their government that we so easily enjoy in our country.

South Africa is known to be one of the African countries that receive a number of refugees. The South African refugee policy allows for refugees to settle freely in any area of the country, where they are allowed to work and study without restrictions. The process of obtaining refugee status, however, is a lengthy one that requires an asylum seeker to go through interviews with the Department of Home Affairs' (DHA) officers, known as Refugee Status Determination Officers (RSDOs). The RSDO's duty is to determine whether an individual applying for asylum qualifies to receive refugee status. This decision is not always made immediately, therefore the asylum seeker is given a temporary permit called an asylum seeker permit,

in terms of Section 22 of the Refugee Act.

In the almost nine years that I have been at ProBono.Org, I've learnt that the application process is intimidating for someone seeking asylum. Oftentimes, the person applying for asylum is unable to speak for themselves during the interviews and must rely on the assistance of interpreters provided by the DHA when explaining their reasons for fleeing their country of origin. It is not uncommon to find asylum seekers complain about the fact that their stories were lost in translation as interpreters rarely tell their full story correctly. This has caused many asylum seekers to be rejected from receiving asylum in South Africa.

The policy on refugee law looks good on paper but unfortunately the reality is completely different. From my experience at ProBono.Org, a number of asylum seekers who entered South Africa over three to five years ago have not yet received their decisions from the DHA. This means that an asylum seeker has to go to the DHA to renew their asylum seeker permit every three to six months or, if they are fortunate, every year. In the meantime, the individual begins to build a life in



this country such as by studying, marrying, having children, and even starting a business.

The common challenge asylum seekers face is the constant fear of uncertainty about their future in this country. Usually when an asylum seeker is rejected by the RSDO for their application being unfounded, the individual is given about thirty days to appeal the decision. That appeal is submitted to the Refugee Appeal Board (RAB). The RAB's duty is to conduct yet another interview with the appellant to either set aside the RSDO's decision or to confirm it. Should the RAB's decision be to confirm the RSDO's decision then the appellant can take the matter on judicial review. If the courts agree with the RAB then the asylum seeker is given less than a month to leave the country voluntarily or be deported.

This system has been failing many who have built lives in the country and are suddenly expected to leave in a matter of a few weeks. Some have children who were

born in the country, and some have families they have made with SA citizens. The system does not take that into consideration. With this in mind, one can imagine that there is great resistance from someone to up and leave the country that they have made their home.

When a rejected asylum seeker fails to leave the country voluntarily, they are taken by the South African Police Services to a deportation centre known as Lindela. Lindela (translated means "Waiting") is a detention centre for undocumented migrants in South Africa, based in Krugersdorp. The centre detains migrants awaiting deportation and others awaiting the outcome of their application to enter the country. One can only imagine the number of migrants that are kept in this centre... migrants from different parts of the African continent. The process of deportation is not always immediate; the individual being deported can stay in the centre for months waiting to be sent back to the country they once fled. The

centre has had much controversy around overcrowding in the waiting cells and the mistreatment of migrants.

Recently, the centre caught the attention of the media when a 26-year old woman died there. Aline Mauwa was a mother of three who lost her life while waiting to be allowed into the country. According to an online article on "Groundup", her death was due to hypertension. Although she sought help from nurses at the facility, she was not assisted, and she died. Mauwa's story is one of many individuals who have suffered under the failure of our refugee system to provide protection to asylum seekers. The question then is - what has our government done to transform this situation? Our refugee law promises liberation and solace for those who need it. However, the implications of these policies have failed many migrants who enter our country hoping for a better future for themselves and their loved ones. ●

Securing the Rights of Children and Unmarried Fathers

By Karabo Mokgatlhe, Johannesburg intern 2021

Menzile Lawrence Naki, a South African man, and Dimitrila Marie Ndovya, a woman from the Democratic Republic of Congo (DRC) wanted to register the birth of their child born in Grahamstown on 1 February 2016 with the Department of Home Affairs. Ms Ndovya was in the country under a visitor's visa which expired soon before she gave birth to their daughter. Due to being in the late stages of her pregnancy Ms Ndovya could not renew her visa or go back to the DRC. Her daughter with Mr Naki was born alive.

The Department refused to register the child's birth on the basis that the mother (Ms Ndovya) lacked a valid visa or permit and could not comply with The Births and Deaths Registration Act. The child could not be registered under section 10 of the Act which gave mothers the right to confer their surname on their children, but not unmarried fathers.

The Constitutional Court has ruled that section 10 of the Act is invalid as it limits the ability of unmarried fathers to confer their surnames on their children.

In my opinion, this judgment also protects the interests and rights of all children (including children born to migrant / refugee parents in South Africa) in that no child will be left stateless while their father acknowledges paternity. This case has also now secured the rights of unmarried fathers in relation to their children in that fathers can now register their children and give them their surname.



With our customary practices in mind while penning this short article, I do not believe that this judgment seeks to disregard or disrespect the customary practice of conferring the surname of the father on the child, but rather the judgment aimed at protecting the interests of the child, which is of paramount importance. In addition, the judgment assists in situations where the mother is undocumented or her consent cannot be readily available, which might prejudice the child.

This judgment has tried to curb discrimination due to marital status, sex and gender when it has to do with conferring of a surname on the child. ●