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“The road to Constitutionalism is not easy. Sometimes it is fraught with thorns, and at other times laurels. However, what is important is for all of us to put our shoulder to the wheel to ensure that the Constitution takes us to the promised land where everyone will be free from want, lack and deprivation.”

Mohamed Shafie Ameermia

Welcome to our new National Director

Adv. Mohamed Shafie Ameermia was appointed as the National Director at ProBono.Org in September 2023. He is a human rights activist with a long and distinguished career advocating for the indigent, poor and vulnerable communities within the Republic of South Africa as well as internationally.

He served in various senior executive managerial capacities as a legal advisor to the Limpopo Provincial Government on legal and socioeconomic rights on land, housing, education, water and sanitation and on the right to education, social justice and transformation. In 2014, he was appointed by the President of the Republic of South Africa as national Commissioner of the South African Human Rights Commission (SAHRC) for a period of seven years, where his national mandates included access to justice, the right to housing, water and sanitation and business and human rights.

He is an admitted Advocate of the High Court of the Republic of South Africa and holds Bachelor of

Arts and Bachelor of Laws degrees (BA LLB), from the University of the Witwatersrand and a Master of Laws (LLM) degree in Constitutional Law and Human Rights and Fundamental Freedoms from the University of Pretoria.

In 2017 he received the Robert G. Storey International Leadership Award from the Center for American and International Law in Dallas Texas, USA in recognition of his human rights contributions as national Commissioner on the South African Human Rights Commission. (see [http:// youtube/oVTitqBAWql](http://youtube/oVTitqBAWql)).

After his term of office ended at the South African Human Rights Commission, he was appointed, in February 2022, as a Consultant at the Center for Applied Studies (CALs) at the Olive Schreiner School of Law at the University of the Witwatersrand. In September 2022 he was awarded the Robert and Rene Glidden Professorship Scholarship where he was invited to share his human rights experiences at Ohio University in Athens Ohio, USA. ●

Landmark Case puts Housing Rights of Tertiary Students into Question: The South Point Properties (Pty) Ltd v Mqulwana and Others

By Opeyemi Faith Adeniji, Cape Town intern

The recent pronouncement made by the Supreme Court of Appeal (SCA) in the matter of *Stay at South Point Properties (Pty) Ltd v Mqulwana and Others (UCT intervening as amicus curiae) (1335/2021) [2023]* ZASCA has attracted significant legal scrutiny. On 3 July 2023, the court held that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) is inapplicable to student accommodation as it does not meet the legal definition of a “home”. In its reasoning, the court emphasised that student accommodation serves a distinct purpose and is characterised by a limited tenure. Since students reside in the accommodation primarily to pursue their studies, it is intended to provide lodging for the duration of their academic pursuits and not beyond.

The matter at hand pertains to the domicile of students residing in New Market Junction, a Cape Peninsula University of Technology (CPUT) student housing facility managed and owned by Stay At South Point Properties, a private leasing company. In 2020, it came to light that these students allegedly occupied the residence without the owner’s consent, prompting legal



action. The owner filed an eviction via *rei vindicatio* in 2021, but the Western Cape High Court rejected the application. The High Court reasoned that a tertiary education residence qualifies as a “home” for its residents. As a result, since the respondents, in this case, occupied the residence for the entirety of the 2020 academic year, they could only be lawfully evicted by means of an application brought in accordance with the PIE Act.

Although eleven students were initially granted permission to continue residing in their lodgings for the academic year of 2021, they

were subsequently instructed to relocate to the alternative housing provided by the property company for the purpose of maintenance and clean-up at the primary site. However, the students refused to comply with the request. Subsequently, the property owner instructed private security to evict them from the property on 12 January 2021. Following this, the owner applied and instituted *rei vindicatio* proceedings on 15 January 2021 to remove the students from the student residence.

Notably, the *rei vindicatio* process is comparatively less onerous on the applicant when juxtaposed with the PIE process. The *rei vindicatio* is a legal mechanism that permits an owner who has been unjustly deprived of their property to reclaim it from anyone who is exercising unlawful physical control over it. This is independent of the good faith of the person exercising physical control, including whether they possessed it in good faith or had paid for it. The justification for this mechanism is founded in the owner’s right of exclusive possession and control over his or her property. Therefore, the owner may claim their property from anyone who has it as nobody else is authorised to withhold it from them unless they possess a right that is

(continued)

enforceable against the owner. When initiating a *rei vindicatio*, the owner is only required to allege and prove that they are the owner, and that the defendant is holding the property. The burden of proof rests on the defendant to demonstrate any right to continue holding against the owner.

On 22 January 2021, the High Court issued a *rule nisi* calling on the students to show cause as to why they should not be removed from the student residence. Counsel representing the students argued that the owner should have approached the court in terms of PIE instead of *rei vindicatio*.

The students appealed the decision in the Supreme Court of Appeal (SCA) on the basis that PIE was applicable and therefore the owner's *rei vindicatio* application was flawed. The owner argued that the student residence did not meet the definition of a "home" as per section 26 of the Constitution and therefore PIE was not suitable to remove the students. It is worth noting that the students were no longer residing at the student residence at the time of the appeal, rendering the arguments moot. Nonetheless, both parties agreed that the appeal should proceed given the matter's broader implications.

The SCA reasoned that PIE was enacted to give effect to section 26(3) of the Constitution. According to section 26(3), no person may be evicted from their home without a court order made after considering all relevant circumstances. While PIE primarily pertains to the occupation of land, it is evident that the Act also serves to uphold the constitutional protections against homelessness. Therefore, if a person's occupation of land does not constitute their "home", PIE does not apply. The court relied

on the case of *Lester v Ndlambe Municipality and Another (514/12) [2013] ZASCA 95; [2014] 1 All SA 402 (SCA); 2015 (6) SA 283 (SCA)* to support this position. In this case, the court stated that section 26(3) must be read in conjunction with section 26(1), which guarantees the right to access adequate housing. It has been established that if a person cannot prove that they have no alternative accommodation and would be rendered homeless, the protection of section 26(3) does not apply.

In determining the definition of a "home", the court referred to the definition provided in the case of *Barnett and Others v Minister of Land Affairs and Others (304/06) [2007] ZASCA 95; 2007 (6) SA 313 (SCA); 2007 (11) BCLR 1214 (SCA)*. The court in *Barnett* held that the sensible and ordinary meaning of home is a place with 'regular occupation coupled with some degree of permanence'. The court reasoned that it could be accepted with confidence that PIE only applies to the eviction of persons from their homes. Although the operative provisions of PIE do not expressly state this, the use of terminology such as "relocation" and "reside" (in sections 4(7) and 4(9)) as well as the wording of the preamble, establishes a direct link with section 26(3) of the Constitution.

The SCA held that PIE did not apply in the matter because student accommodation does not fall under the definition of a "home". Conversely, student residence is for a limited duration, for a specific purpose, time-bound by the academic year, and subject to rotation. Therefore, the property owner was entitled to remove the students from the student accommodation by way of the *rei vindicatio* application.

The vulnerability of students and the high demand for student housing makes this decision particularly worrying. According to a 2020 study conducted by the International Finance Corporation, it is shocking to note that there are only 13,668 available student beds in Cape Town, while the current student population is estimated at 75,000. This means that approximately 80% of students are unable to secure dedicated accommodation. The lack of student housing options poses a serious risk to students by exposing them to Gender-Based Violence (GBV) and other criminal activities.

Given the circumstances, it can be argued that the court should have taken this case as an opportunity to develop the law to protect vulnerable students by ensuring they are afforded the same level of protection as unlawful occupants covered by the PIE Act. The *rei vindicatio* process does not appropriately protect the rights of students. ●

Offer of assistance

Attorney Natasha Veegh would like to assist ProBono.Org by making herself available to support legal practitioners taking matters from the Joburg office. She is offering to mentor them in domestic violence, divorce and family law matters.

Please contact her on:

natasha.veegh@gmail.com and 084 435 2369

PROJECTS:

Gender Based Violence (GBV)

We have initiated a project focusing on Gender Based Violence which will be rolled out through our three offices over the next five years. The project is informed by the need to address the crisis of gender based violence and femicide facing the country. We seek to provide legal support, awareness raising and capacity building for victims of GBV through the volunteer work of the legal profession in taking GBV cases and providing information through workshops and resources. ProBono.Org will partner with

volunteer attorneys, the community advice offices and other NGOs to provide free legal services to clients who are impacted or affected.

We would like to encourage our panel of legal practitioners to be part of the project by conducting workshops, providing advice and taking on cases. Please sign up on the home page of our website if you have not already done so.

We are grateful to the First Rand Empowerment Foundation for their support for this project.

Refugee Project Visit to Musina

The project paralegal in Johannesburg visited Musina and Polokwane from 26 to 29 September to conduct workshops to inform community members on the difference between the Refugee Appeals Authority of South Africa (RAASA) and the Standing Committee on Refugee Affairs (SCRA); their roles and duties; how to draft representations to the SCRA; and how to apply for asylum seeker certificates.

During our last visit in July, it became clear that the community advice office we work with required clarity on the appeal process given the number of rejections by the Refugee Status Determination Officer (RSDO) and how to note appeals.

Carol Lemekwana from Lawyers for Human Rights (LHR) presented on the following topics:

- The difference between the functions of RAASA and SCRA/unfounded and manifestly unfounded process
- Drafting notices of appeal
- Drafting of representations to SCRA

In Polokwane, the Chairperson of SCRA, Jane Mugwena, was present and thanked ProBono.Org and LHR for inviting SCRA and giving them an opportunity to engage with the communities.

Participants were also given copies of pamphlets on Birth Registration for Asylum Seekers, Refugees & Foreign Nationals that were prepared for ProBono.Org by Cliffe Dekker Hofmeyr and translated into isiZulu, tshiVenda and Shona.



Launch of the Refugee Manual for Legal Practitioners and Birth Registration Pamphlets

By Margaret Fish, Operations, Grants & Communications Manager

On 28 September ProBono.Org launched an updated and comprehensive version of the Refugee Manual produced for us by Cliffe Dekker Hofmeyr Attorneys (CDH). The manual is aimed at legal practitioners so that they are well equipped to deal with refugees and asylum seekers looking for legal assistance.

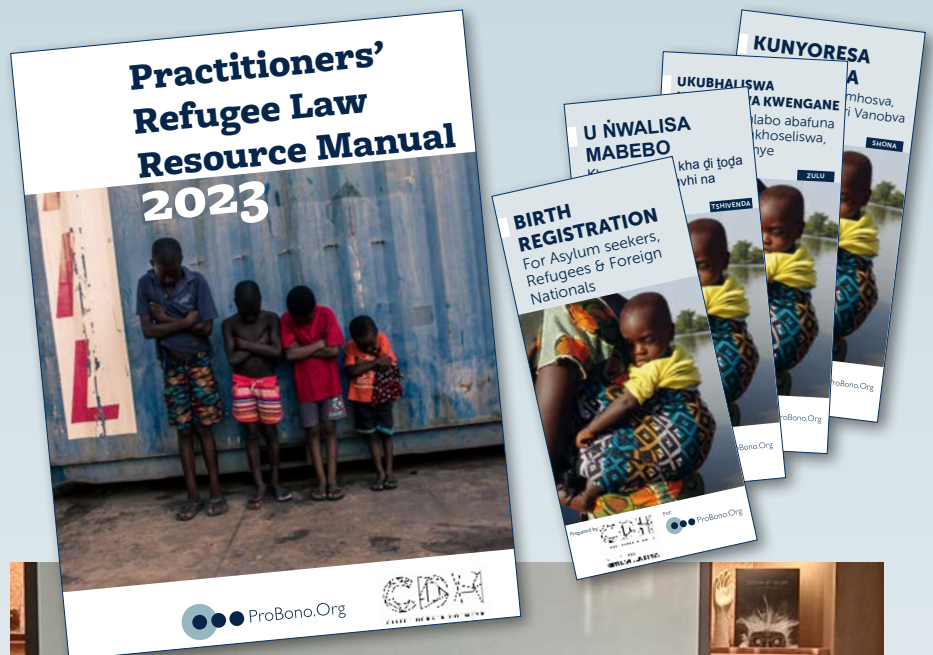
We are extremely grateful to Elgene Roos, who prepared the manual, and to the head of Pro Bono at CDH, Jacquie Cassette, who also gave the keynote address at the launch and spoke about the difficulties in ensuring the human rights and dignity of refugees and asylum seekers in a difficult and hostile environment.

The launch at the Radisson Red Hotel in Johannesburg was well attended by the legal profession, including those who volunteer their time to staff the refugee help desk at ProBono.Org and take on our clients' cases.

Community Advice Office (CAO) paralegals were also in attendance. We had sent out a survey to CAOs we work with, asking them to list the most common issues that refugees bring to their advice centres. As a result of this survey, the first in a series of pamphlets has been produced for communities on Birth Registration. This pamphlet has been translated into isiZulu, TshiVenda and Shona.

We would also like to acknowledge Misereor, who have provided support to this project over the past three years.

The Refugee Manual and the Birth Registration pamphlets are available on our website - <https://probono.org.za/resources/>



Welcome to our new staff members

Nonkululeko Sibambato – Senior Staff Attorney, Johannesburg

Nonkululeko Sibambato is an admitted attorney who began her career as an intern at Lawyers against Abuse after completing her law studies at Rhodes University. She later joined Mncedisi Ndlovu and Sedumedi Attorneys as a candidate attorney and later on as an associate specialising in commercial litigation, construction law and family law. In 2022 she returned to Lawyers Against Abuse as a legal officer providing free legal services to victims of gender based violence. She is currently completing her LLM in Human Rights Law.



Nonkululeko is passionate about human rights law and ensuring that legal services are accessible to vulnerable and marginalised members of society. Her areas of professional interest are in the sexual and reproductive rights of young women, legal research and family law related issues.

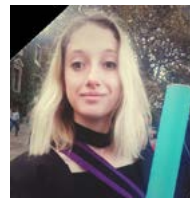
Nonkululeko is an avid reader and Toni Morrison and Tsitsi Dangarembga are her favourite authors.

Nomkhosi Mqadi – Legal Intern, Durban

Nomkhosi completed her LLB degree at the University of KwaZulu-Natal in 2022. She has an interest in social justice which began during her involvement in a Street Law Project at the Denis Hurley Centre. She perceives the law as something that should be accessible to all.



Guest slot



By Grethen de Waal, Groundup

GroundUp News has launched a system to publicly keep track of late judgments (view it [here](#)) to provide an incentive for judges to hand down their judgments in time. Our system currently records that 115 cases were reserved for more than six months and have not yet been handed down, but there may be many more. We encourage lawyers and litigants to add to the system (using [this form](#)). When the court hands down judgment, you can let us know with the same form. We will not share your identity. ●

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 December 2023**