

Intro

Everything we do is aimed at assisting those members of our society that cannot access their rights without legal intervention. We support those that cannot afford their own legal fees by using the generous time and skill of the private legal profession. In this newsletter we highlight some interesting projects and cases that indicate the scope of work our attorneys are involved in.

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DURBAN MICRO TRADERS GET TOGETHER WITH PROBONO.ORG



Traders prepare their stalls before the crowds arrive.

To see unfamiliar faces at our events is a welcome indication that ProBono.Org continues to grow and is attracting more attorneys and advocates who are willing to take on *pro bono* work. At a recent Micro Traders Briefing, hosted at Shepstone & Wylie Attorneys, Durban, in conjunction with Asiye eTafuleni (AeT) ProBono.Org set out to find attorneys willing to represent micro traders who encounter legal difficulties, such as the confiscation of their goods by the Metro Police or having difficulties in renewing or applying for their trading permits.

AeT is a non-profit organisation, which assists micro traders to acquire skills and to improve their understanding of urban development. It hosts seminars on various topics (some specifically requested by the micro traders) aimed at empowering this vital segment of society.

The Warwick Triangle precinct consists of a number of markets. Each one caters to a specific clientele, amidst a hub of trains, buses and taxis which never stop moving. The market is so renowned

that people who come to Durban for the first time are given strict instructions to "ask the driver to drop you off eMarket".

Besides the economic activity, the area has a cultural significance that is best represented by the Early Morning market, a heritage site. Ironically, it is this very monument that the traders had to fight for, in the face of the eThekweni Municipality's intention to allow a mall to be constructed in its place. That fight was greatly enhanced by the willingness of attorneys to represent the traders.

In establishing a help desk for micro traders, ProBono.Org is mindful that a coordinated approach is required in order to maximise the effect of the attorneys' interventions. The effect of assistance extends to all those that stand behind each micro trader. For instance there are the trolley porters who cart the traders' goods, those employed by the traders, those who sell firewood and water to the mielie cookers and those dependent on the trader's income. With unemployment raging, every entrepreneur willing to earn a living needs to be supported.

BELL DEWAR ASSISTS IN UNFAIR HIV/AIDS DISMISSAL



Ms M worked for a company in Randburg for over six years as a cleaner. Her conditions of employment were well defined although not set down in a written contract, with working hours from 09h00 to 17h00 and clear duties, which she performed under the supervision of a manager. Over time she was permitted to perform additional administrative tasks enabling her to supplement her wages.

Sometime around 2009 Ms M was diagnosed with HIV/Aids. She decided to disclose her status to her manager so he would understand why she had to leave work from time to time to collect her medication. Ms M made this disclosure to him on the understanding that it would remain confidential. However it came to her attention that he had shared this information with his assistant and one of the director's of the company. Ms M told her manager that he had violated her right to privacy.

From that time onwards his attitude towards her changed. He added new onerous tasks to her original job, made her working hours longer and then, and in 2011 gave her a written contract of employment to sign. The terms were vague and when Ms M said she wasn't prepared to sign it as it was

both unclear and unilaterally changed her employment conditions, she was told that disciplinary action would be taken against her, and she would be dismissed.

Ms M obtained legal assistance from Bell Dewar who amongst other things offered to enable the parties to meet and try and iron out the difficulties. Neither the manager nor anyone else in the company responded. Instead her manager took away her right to do administrative work and earn extra money, and added further cleaning functions to her job. A second contract of employment was given to Ms M, which was unacceptable to her, being even more onerous. The case went before the CCMA twice, on both occasions the employer failed to attend and certificates of non-resolution were issued. Finally Lameeze Jean-Pierre, Ms M's attorney at Bell Dewar took the matter to the Labour Court alleging constructive dismissal, unfair dismissal in terms of the Labour Relations Act and discrimination in terms of the Employment Equity Act.

In the end, through the persistence of her *pro bono* attorneys, Ms M was offered a settlement of R55 000 shortly before the pre-trial meeting.

NORTON ROSE SECURES KIDNEY DIALYSIS TREATMENT FOR ASYLUM SEEKER

In the first week of January 2012 Mrs B, an asylum seeker, who had some time earlier been threatened with deportation and whose situation in South Africa was uncertain, sought assistance from ProBono.Org's Durban office after a state hospital refused to give her husband kidney dialysis treatment. The hospital relied on an internal policy that asylum seekers are not eligible for such treatment. The hospital did however, on humanitarian grounds, place her husband, Mr B on

dialysis for a two-week period.

The Durban office contacted Norton Rose who agreed to act on a *pro bono* basis for Mr B. ProBono.Org had established, through an earlier case, that dialysis is more expensive than a kidney transplant, and that were a donor to be found, this would be the best route to follow. However, in the earlier case the hospital had refused a transplant (despite a donor being available from the family) for the same

reason as above and the client passed away.

The absence of a compatible donor for Mr B renders the transplant route moot, however Norton Rose has been successful in obtaining an undertaking from the hospital that Mr B will be kept on dialysis in the interim. Mr B's wife and family are in the process of being tested to see if they are suitable donors, whereupon an application for a transplant operation can be made.

NOMSA FINDS OUT SHE IS DIVORCED AND FACES FORFEITURE OF BENEFITS

Nomsa, an unemployed mother who was married to a soldier in the SANDF, approached us. They were married in community of property in 2005 and had one child born in 2003. Nomsa moved out of the matrimonial home sometime in 2009 taking the minor child with her.

In February 2012, she decided to institute divorce proceedings. When she approached the Department of Home Affairs to obtain a copy of her marriage certificate she was advised that she was already divorced. At the Family Court at 15 Market Street, she was furnished with a

copy of the Decree of Divorce, which stated that she had been divorced on 22 February 2011. She had never been served with papers, and had no idea she was divorced. In terms of the divorce order Nomsa was ordered to forfeit the benefits of the marriage, which included cars, furniture and her share of her husband's pension fund.

With the *pro bono* help of Radebe Attorneys Nomsa is in the process of launching an application to vary the order to one of division of the joint estate and to claim 50% of her ex-husband's pension fund.

LAST MINUTE INTERVENTION KEEPS MULTIPLE RAPE VICTIM OUT OF PRISON



Ms X, her younger brother and sister and two other girls, were captured by rebel soldiers in the eastern DRC. She was held captive at a remote rebel camp for over a year. During this time she was raped daily. Her younger sister was killed when resisting rape, and her brother was killed when he tried to oppose the rapes. Ms X eventually managed to escape when she was sent to get water, and found her way to South Africa. Her ordeal left her so traumatised that she was unable to speak of the horrors she had endured and unable to tell her story correctly. Her application for refugee status was dismissed as manifestly unfounded, which meant that she could not appeal the decision.

Through a stroke of luck, Ms X happened to meet her half-sister at Refugee Social Services at Diakonia Centre in Durban; and in turn, her sister brought her to ProBono.Org. ProBono.Org assisted her with drafting an affidavit to the Department of Home Affairs seeking

a reprieve on humanitarian grounds. Her luck was short-lived, because when she presented her affidavit to the Department, she was arrested pending deportation. Her tearful and distraught sister informed the Durban office; and acting quickly, ProBono.Org managed to arrange a temporary sojourn for her. Seasoned attorney, Ms Nomcebo Zondi who was staffing the Refugee Legal Clinic on the day, was so moved by the sister's tears that she immediately asked to handle the matter on a *pro bono* basis. Advocate Bedderson has also agreed to act *pro bono*; and it is expected that the review papers will be filed by 15 May 2012.

In the interim Ms Zondi and Durban intern, Margaret Stride, have obtained counseling services for Ms X and her sister assist them to cope with the trauma. It is hoped that with the help of Ms Zondi and Advocate Bedderson, Ms X will be recognised as a refugee in South Africa and not have to return to the horrors she faced in the DRC.

ALBERTON MAINTENANCE HELP DESK

In terms of the Children's Act parents have responsibilities and rights towards their children. However, we at ProBono.Org find that a considerable number of parents try to bypass the responsibility of maintaining their children.

For some it is the fear that the other parent will utilise the money for his or her sole benefit, whilst others do not want to be held responsible for contributing towards their children's expenses.

Through our Maintenance Help Desk at the Alberton Magistrate's Court we have managed to facilitate and assist in enforcing the responsibility.

For instance in the case of Anna, we used Advocate Lindelani Sigogo of the Johannesburg Bar to secure maintenance of R1000 per month plus all school related expenses for her child. Since Anna is a vendor, surviving on very little, this enables her to keep her child in school.

Or in the case of Thandi, an unemployed mother of two, Advocate Mofokeng was able to obtain an order of R2 000 per month for her two children and an order that all school related expenses plus a number of other payments be made.

In cases like these, the contribution of maintenance enables children to remain in school and in the care of their mothers, and avoid conditions which threaten the very existence of household.

UNLAWFUL OCCUPIERS RECEIVE A REPRIEVE WITH THE ASSISTANCE OF BELL DEWAR



Reghana Tulk of Bell Dewar assisted over 400 occupiers living in about 114 shacks in Weinberg, many of who were pensioners and children, from being evicted without due process of the law being followed. She was assisted by Advocate Garth Hulley. The community had taken occupation of the area since 1999. The issue at hand was the importance of proper service of documents.

The owners of the property sought to evict the shack dwellers and were granted leave to serve eviction notices by way of substituted service. Meyer J made an order setting out the manner of service. Notices he said, should be affixed to all entrances to the property, and to the door of each and every structure within the property that appeared to be occupied. Alternatively copies of the notice were to be slid under the doors of all structures. The Sheriff of the Court was also told to assign a number to each structure and was ordered to try and establish the name/s of the occupiers of each structure. If the Sheriff found people present in the properties, he was directed to service notices on such people and explain the content of the application.

In fact the Sheriff, who served notices on two occasions did not comply with the order. On one occasion, for instance four copies of the court order

and notice of eviction were served by fixing them to the outer door of the overall property, rather than on each shack/dwelling. In addition the documents were posted on a notice board. The remainder of the documents (46 copies) were left at the entrance for the occupiers. The Sheriff announced the nature of the legal action to the people who happened to be at the property that day. The Sheriff alleged that the occupiers of the individual shacks would not allow him to serve the documents on individual properties.

In March 2011, Spilg J ordered that the eviction of the occupiers could take place. Bell Dewar sought to assist the occupiers to have this order rescinded on the grounds of improper service. The occupiers only became aware of the eviction application on 21 April 2011 when they were handed out copies of the court order advising them that they had to vacate the property by 30 April 2011.

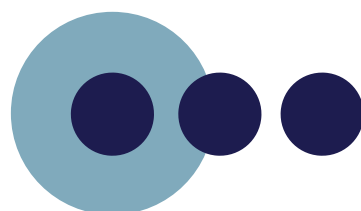
The argument advanced in the application for rescission, relied among other things, on the case of *Lodhi 2 Properties Investments CC and Another v Bondev Developments SA 87 (SCA)* which held that "where notice of proceedings to a party is required and judgment is granted against such party in the his absence without notice of the proceedings having been given to him, such judgement is granted erroneously".

**READ ABOUT OUR UPCOMING EVENTS
ON OUR WEBSITE :**

www.probono.org.za

**1st Floor West Wing Women's Jail
Constitution Hill • I Kotze Street Braamfontein
tel: 011 339 6080 • fax: 011 339 6077
www.probono.org.za**

**7th Floor Tower A Salisbury Centre
347 Dr Pixley kaSeme Street Durban
tel: 031 301 6178 • fax 031 301 6941**



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