



PRO BONO AND HUMAN RIGHTS

November 2013



INTRODUCTION

CLIFFE DEKKER HOFMEYR (CDH) IS COMMITTED TO RESPECTING AND PROMOTING THE RIGHTS ENTRENCHED IN THE BILL OF RIGHTS OF THE CONSTITUTION. AS A CORPORATE CITIZEN, CDH IS COMMITTED TO FACILITATING ACCESS TO JUSTICE FOR THE DISADVANTAGED AND VULNERABLE, AND PROVIDING LEGAL SERVICES TO NON-PROFIT ORGANISATIONS. THESE COMMITMENTS FORM PART OF THE OFFERING OF OUR DEDICATED PRO BONO AND HUMAN RIGHTS PRACTICE. THE PRACTICE GROUP FOCUSES ON MATTERS CONCERNING ACCESS TO INFORMATION, GROSS HUMAN RIGHTS VIOLATIONS, TEACHING AND TRAINING, RULE OF LAW AS WELL AS HOUSING AND REFUGEE LAW.

Every lawyer in the firm is also called on to make a contribution in their own field of practice, which offers them the opportunity to fulfill their social responsibility commitments. Our young lawyers and candidate attorneys gain invaluable experience and perspective through exposure to a wide range of pro bono and human rights matters.

During the past financial year, the firm donated more than R 8 million in pro bono legal services to individuals and worthy causes. The firm has further donated in excess of R8.5 million in pro bono legal services from the period

January to October 2013. In addition CDH submitted its first United Nations Global Compact Communication on Progress during June 2013, which is available online.



ACCESS TO INFORMATION

MandG Centre for Investigative Journalism NPC & Another v The Minister of Public Works & Another

The first applicant is the MandG Centre for Investigative Journalism NPC and the second applicant is Vinayak Bhardwaj, the advocacy co-ordinator of the first applicant. The first respondent is the Minister of Public Works and the second respondent is the Information Officer of the Department of Public Affairs. CDH acts for the first applicant for admission as *Amicus Curiae*, the South African History Archive Trust (SAHA) and the second applicant for admission as *Amicus Curiae* is the Democratic Governance and Rights Unit.

SAHA is an independent human rights archive dedicated to documenting and providing access to archival holdings that relate to past and contemporary struggles for justice in South Africa. SAHA was established by anti-apartheid activists in the late 1980's. Its founding mission was to promote the recapturing of South Africa's lost and neglected history and to record history in the making. SAHA's aims are further to document, support and promote awareness of past and contemporary struggles for justice through archival practices and outreach, and the illustration of access to information.

The second respondent has spent more than R210 million on improvements at and for purposes of the Nkandla estate of the President of the Republic. The applicants made a request in terms of s18 the Promotion of Access to Information Act, No 2 of 2000 (PAIA), for access to all the documents in the first respondent's possession or under its control relating to the improvements and their financial implications. The request was refused and the internal appeal in terms of s77 was deemed to be refused. This matter concerns an application in terms of s78(2) read with s82 of PAIA declaring that the decision taken (deemed to be taken in the instance of the internal appeal) by the respondents to refuse the applicant's request for access to information is unlawful and unconstitutional, reviewing and setting aside the refusal of the applicant's request and directing the

respondents to supply the applicants with a copy of the requested records with 15 days of the granting of the court order. The respondents subsequently disclosed numerous documents and argue that those that have not been disclosed are security-sensitive documents, cannot be located or do not exist despite the respondents doing everything reasonably possible to locate the missing documents.

This matter was set down for hearing by special allocation on 5 and 6 November 2013 during which judgment was reserved. As *amicus curiae*, SAHA made the following submissions: (1) Firstly, in SAHA's experience, a culture of secrecy exists in South African public bodies, which is one of the primary limitations on the right of access to information. This culture has a permeating effect and without intervention it will continue to act as a 'wall' between government and the general public.

This culture manifests itself in response to PAIA requests and how requests are generally only considered once there is a threat of litigation or an appeal. SAHA submitted that this culture frustrates the legislative scheme envisaged by PAIA and indeed the Constitution.

Secondly, the failure to create and keep records of state activities is constitutionally problematic in that it frustrates the right of access to information, it is inimical to transparent and accountable governance and impoverishes the historical record

which is a legally required to be maintained in terms of national legislation. SAHA argued that there is an obligation to create records by reducing decisions and instructions to writing and to minute deliberations of state institutions as mandated by a wide range of legislation. Furthermore, government bodies are required to maintain proper management and care of their records for preservation and use as outlined in the National Archives and Record Service of South Africa Act, No 43 of 1996 among others.

Thirdly, there is a trend by state organs to rely on apartheid era legislation, such as the National Key Points Act, No 102 of 1980, the Protection of Information Act, No 84 of 1982 and the misapplication of PAIA's security exemptions to withhold information from the general public and to resist PAIA requests. SAHA further provided the court with practical examples of such refusals and made legal submissions regarding the proper interpretation and application of the abovementioned apartheid era legislation in the context of PAIA's own security exemptions. SAHA has intervened as a friend of the court in numerous cases, and those interventions, and their work in general, has a direct impact on the public's ability to access information, as well as the important task of recording our history for the benefit of future generations.

*Christine Jesseman, Tricia Erasmus
and Vincent Manko*

GROSS HUMAN RIGHTS VIOLATIONS

In 2008-2010, New Perimeter, DLA Piper's dedicated pro bono organisation, helped international organisation AIDS-Free World to document and publicise politically-motivated human rights abuses against Zimbabwean women. With the assistance of Zimbabwe- and Southern Africa-based NGOs, AIDS-Free World reached out to Zimbabwean women who were brutally beaten and systematically raped because of the women's public support for the opposition political party in Zimbabwe. DLA Piper, through New Perimeter, was the principal law firm partner in this endeavor.

A New Perimeter team of nine DLA Piper lawyers participated in four trips to southern Africa to take testimony from Zimbabwean women who were victims of politically-motivated sexual violence at or around the time of the 2008 presidential elections. These trips resulted in 70 sworn affidavits from victims outlining the details of the abuse. The women shared heartbreaking stories of torture and sexual abuse by youth militia under the control of the ruling party, ZANU-PF, in retaliation for the women's expressed or perceived

support for the opposition political party. In addition, New Perimeter team members organised and analysed the collected data and provided legal analysis.

New Perimeter's assistance was vital to the production of the report: *Electing to Rape: Sexual Terror in Mugabe's Zimbabwe*. The report was released at a press conference in Johannesburg in December 2009. New Perimeter team lawyers also assisted AIDS-Free World with litigation and advocacy strategies with dual goals of bringing about

accountability and raising awareness of the issue of these grave human rights abuses in Zimbabwe to spur the application of political pressure on Mugabe.

The Pro Bono and Human Rights practice of CDH acted as attorneys of record in 2012 and 2013 in further matters arising from the above New Perimeter project in the domestic South African context.

Christine Jesseman and Tricia Erasmus

RULE OF LAW

Freedom Under Law v National Director of Public Prosecutions & 5 Others

CDH acts for Freedom Under Law, the applicant. The applicant is a non-profit organisation whose objective is to promote democracy under law and advance the understanding of and respect for the rule of law and the principle of legality in Southern Africa. This it does principally by instituting or joining in litigation from time to time to combat and correct institutional conduct in conflict with the rule of law.

The first respondent is the National Director of Public Prosecution (NDPP), the second respondent is the National Commissioner of the South African Police Service (National Commissioner), the third respondent is the Head of the Specialised Commercial Crime Unit (SCCU), the fourth respondent is the Inspector-General of Intelligence (Inspector-General), the fifth respondent is Richard Naggie Mdluli (Lt-Gen. Mdluli) and the sixth respondent is the Minister of Police (Minister).

On 15 May 2012, the applicant instituted proceedings against the respondents in the North Gauteng High Court, Pretoria for the following:

Part A:

(a) an interim order that Lt-Gen. Mdluli be interdicted from discharging any functions or duty as a member or senior member of the SAPS; and

(b) an interim interdict against the National Commissioner and the Minister from assigning any function or duty to Lt-Gen. Mdluli.

Part B:

(a) reviewing the decision made to withdraw certain criminal charges against Lt-Gen. Mdluli;

(b) reviewing and setting aside the decision to withdraw disciplinary proceedings against Lt-Gen. Mdluli;

(c) reviewing or setting aside the decision to reinstate Lt-Gen. Mdluli as the head of Crime Intelligence in SAPS;

(d) directing the NDPP as SCCU to reinstate certain criminal charges against

Lt-Gen. Mdluli and take necessary steps to ensure that criminal proceedings are re-enrolled and prosecuted without delay; and

(e) directing the National Commissioner to reinstate disciplinary charges against Lt-Gen. Mdluli and take such steps necessary for the prosecution and finalisation of the charges.

With the exception of the Inspector-General, all the respondents opposed the relief sought in these proceedings. Part A of the application came before

Makgoba J on 5 June 2012 and an interim interdict was duly granted with costs against the National Commissioner and Lt-Gen. Mdluli. Thereafter the applicant was successful in its application to compel the National Commissioner to file the record of decision, and the respondents' application for leave to appeal part A was also dismissed with costs.

Part B of the application was set down by special allocation, for hearing on 11 and 12 September 2013 before Murphy J and judgment in favour of the applicant

was handed down on 23 September 2013. The respondents are however currently in the process of appealing the aforementioned judgment.

*Christine Jesseman, Tricia Erasmus
and Vincent Manko*

DISPUTE RESOLUTION

Minister of Police v South African Human Rights Commission & 2 Others

The South African Human Rights Commission (SAHRC) was vindicated in the South Gauteng High Court in June 2013 when an application brought by the Minister of Police to review, set aside and substitute its findings and recommendations was dismissed. The SAHRC's findings related to the ordeal suffered by Chumani Maxwele, a UCT student at the time, who was allegedly harassed, detained and abused by members of the President's Special Protection Unit (SPU) in 2010 for supposedly making a rude gesture with his middle finger.

Maxwele lodged a complaint with the FW De Klerk Foundation's Centre for Constitutional Rights which escalated the complaint to the SAHRC. The complaint alleged that certain of Maxwele's human rights were violated, including his rights to human dignity, security and freedom of the person. In May 2010 the SAHRC advised the Section Head of the SPU of this complaint and requested a substantive response from the Minister of Police. The SAHRC is still waiting for that response.

The SAHRC subsequently found that Maxwele's human rights had been violated by the Minister and the SPU. The SAHRC recommended that, on behalf of all the members or employees who were involved, the Minister should make a full written apology to Maxwele for their

unlawful and unconstitutional behaviour and recommended further that a plan should be implemented to, amongst other things, confirm and ensure that the SAPS acts, teaches and requires its members to act in accordance with the Constitution and the law. The Minister lodged a late appeal against the findings and recommendations with the SAHRC which was dismissed in November 2011.

In response the Minister launched an application to review, set aside and substitute the SAHRC's decision on appeal to the South Gauteng High Court in January 2012. CDH opposed the application on behalf of the SAHRC and acted pro bono throughout the entire process as did the counsel on brief.

The application was heard in June 2013 before Judge Classen and was dismissed after hearing argument from both sides. Judge Classen said that in terms of the merits of the case, he could do no better than to refer to the comments of Nicola de Havilland, the then-Director of the Centre for Constitutional Rights, made in the letter lodging the complaint with the SAHRC. Ms de Havilland stated that, "The attitude of the police members involved reveals a shocking ignorance of the Bill of Rights and of their overriding duty to uphold the Constitution and the rights that it assures. It is reminiscent precisely of the attitude of intolerance, the unfettered power and the lack of accountability that characterised the conduct of the police during the apartheid regime and that resulted in the wide spread suppression of the freedom and rights of the

people of our country". Classen J found that the SAHRC correctly upheld the view of the Centre for Constitutional Rights.

The Judge also found that, in consistently failing to substantively respond to the complaint of the Centre for Constitutional Rights and Maxwele, the Minister had displayed a disconcerting attitude which, if not downright contemptuous of the SAHRC, at the very least showed disrespect for the SAHRC's standing as a body instituted by the Constitution and tasked with a duty to investigate events where human rights are violated. The judge stated that the Minister is duty bound as a member of the Executive to give his full cooperation to the SAHRC to enable the SAHRC to execute its own duties expeditiously, timeously and effectively. Classen J found that the Minister's conduct fell far short of this duty.

Kerry Plots

Tanelle Welff Ministries v Governing Body of Spine Road High School and Another

We were instructed on behalf of seven churches in Mitchell's Plain on the Cape Flats to apply for a spoliation order against a school governing body, after they were unlawfully deprived of their use and enjoyment of classrooms situated on the school premises. Most of the churches had been letting the classrooms from the school, for purposes of their religious meetings in the evenings and over weekends, for more than a decade. In a crime-ridden and poverty stricken society such as Mitchell's Plain, where drugs, gang violence and domestic abuse are rife, churches perform a vital social function.

CDH assisted the churches in obtaining a spoliation order against the school governing body and principal, in terms whereof the school was ordered to restore possession of classrooms to the churches.

Freddie Terblanche



Scholars and Zunaid Lundell from CDH at the entrance of the Constitutional Court.

TEACHING AND TRAINING

Human Rights Day

This year CDH, headed up by the Pro Bono and Human Rights Practice, teamed up with Constitutional Hill Trust for Human Rights Day. Our eager volunteers spent the day teaching one hundred and eighty scholars, from disadvantaged backgrounds, about their Human Rights. The volunteers also shed some light on the inner-workings of the Constitutional Court, the history behind its location and the unique artwork of the Court.



Opening address by Judge Jody Kollapen of the North Gauteng High Court.



Left Back: Zunaid Lundell, Tshepo Molotywa, Gillian Olsen, Tricia Erasmus, Gigi Nyanin, Zwonaka Sididzha, Shane Johnson, Samantha Brenner. **Front:** Kitso Thabanelo, Sihle Masango, Wandile Sishi, Gareth Howard, Tiffany Jeggels.



Group of Scholars from Soweto and Thembisa with CDH volunteers.



University of Pretoria



The LLM class, Christine Jesseman and lawyers from New Perimeter and DLA Piper

Teaching at the University of Pretoria and the University of the Western Cape: special economic zones

In October 2011 and 2013, an international team of lawyers delivered a week long course at the University of Pretoria on the use of special economic zones as a tool for attracting foreign direct investment and increasing development. The course was part of Africa's first Masters Degree on international trade and investment law in Africa, a highly selective course run by the University of Pretoria and targeted at graduate level students from across Africa.

The teaching took place on site at the University of Pretoria to students from countries as diverse as Botswana, Cameroon, the DRC, Lesotho, Malawi, Namibia, Somalia, South Africa, Tanzania, Zambia and Zimbabwe. The New Perimeter teaching team included: DLA Piper lawyers from around the world as well as CDH attorneys.

At the request of the University, the New Perimeter team designed a course to expose students to the concepts and

mechanics of special economic zones, the benefits and constraints of special economic zones as a policy tool, and to equip them with the knowledge and tools necessary to act as future trade and investment policy advisors in their respective countries. The curriculum was participatory and interactive, and required the students to apply the knowledge they learnt in a group presentation to the class on the prospects of implementing a special economic zone in four African countries. The

above project was also replicated at the University of the Western Cape in October 2012 and Christine Jesseman, director of our Pro Bono and Human Rights Practice and Cezanne Britain-Renecke, a director in our Corporate and Commercial Practice, were part of the teaching team. Christine has been involved in all three years of this teaching project.

CLINICS

Inner city housing clinic

The Inner City Housing Clinic enables our Real Estate practice to assist clients with the provision of general legal advice regarding housing related matters, providing assistance and representation of complex Rental Housing Tribunal hearings, facilitating mediation between the tenants and landlord and/or estate agents or managing agents. We also assist clients with eviction and spoliation matters and liaise with the Johannesburg City Council.

The Corporate Governance Clinic

The Corporate Governance Clinic is our signature pro bono clinic with ProBono.Org, focussing on company law, compliance and corporate governance for non-profit organisations. Since its inception in 2012, the clinic has grown from strength to strength and is staffed by our Corporate and Commercial attorneys. They advise non-profit organisations on establishing non-profit organisations, drafting

memorandums of incorporation or amendments to MOIs, compliance issues in terms of the new Companies Act and various corporate governance queries. We are in attendance on the last Tuesday of every month between 09h00 - 12h00. In addition, several matters have been referred to various practices within the firm.

The Refugee Law Clinic

The Refugee Law Clinic is held at the ProBono.org offices situated at Constitutional Hill. The Clinic is staffed by members of our Pro Bono and Human Rights Practice on a monthly basis; usually on a Thursday. The clinics run from 09:00 am in the morning until 12:00pm in the afternoon and members from the community travel from a far usually by foot, others that are more fortunate by taxi, to attend the clinic. At the clinic we assist an array of foreign nationals most originate from Angola, the Democratic Republic of the Congo, Ethiopia and Zimbabwe. The Pro Bono and Human Rights Practice provide the attendees of the clinic with an array of legal assistance and advice which varies from assistance with drafting appeal documents to drafting heads of argument and attending appeal proceedings at the Refugee Appeal Board. "It is a humbling experience to assist those in the community who have hope during even the hardest of times" reveals Associate Tricia Erasmus.

SASLAW Pro Bono Office

The South African Society for Labour Law (SASLAW) introduced the SASLAW Advice Centre in Gauteng in February 2011 to assist people with labour issues who would not otherwise have access to justice. Attorneys from various law firms volunteer at the advice centre and assist unrepresented litigants with employment law disputes. The attorneys assist with drafting, providing legal advice as well as court appearances. The SASLAW Advice Office has also been launched in Cape Town.

The advice centre allows our team to provide professional legal advice to unrepresented members of the public who would otherwise not be afforded the opportunity. The experience is rewarding as we are able to assist members of the public to gain clarity and professional legal advice on their matters. In addition, associates and candidate attorneys have the opportunity to sharpen their drafting, negotiating and Court appearances.

Our Employment Practice has not only logged the highest number of hours in the Pro Bono Clinic for the last two years in a row, but has also been commended for the work done in the Pro Bono Office by Judge Van Niekerk.

Pro Bono Acting Judges

Directors in our Employment Practice Aadil Patel, Faan Coetzee, Fiona Leppan and Mohsina Chenia, regularly sit as Acting Judges in the Labour Court on a pro bono basis. This assists the court in alleviating the backlog.

Master's Office Help Desk

The Master's Office Help Desk is staffed by Gretchen Barkuizen-Barbosa from our Trusts and Estates Practice in Johannesburg. "Since the inception of the Master's Helpdesk" says Gretchen "I have been fortunate to assist individuals - who have recently (and sometimes, not so recently) lost a loved one - through a difficult time in their lives. I mainly provide legal and emotional support to the family members attending the Master's Office by assisting them with general administration procedures of reporting a deceased estate, and obtaining the Letters of Authority

enabling the clients to deal with the assets of the deceased. Following which we assist the client with the transfer of fixed property from the deceased estates to the legal heirs.

Assisting with the administration of these deceased estates is often a challenging experience with complicated legal issues, for example dealing with succession issues related to the traditional concept of 'family homes', however in the end, a very satisfying and enriching one."

Deeds Office Clinic

Staffed by our Real Estate practice in Cape Town, the Deeds Office Clinic was established in conjunction with the Registrar of Deeds. A qualified conveyancer manages the office on a daily basis from 10:00 to 13:00. Advice is mainly property related legal advice to members of the public who qualify in terms of the means test. Conveyancers volunteer for this service and are included on a roster that ensures that each conveyancer assists approximately three times a year. Members of the public are given access to the deeds office information system to assist them with their queries and to provide relevant information for the conveyance to be able to provide the required advice.

CORPORATE AND COMMERCIAL AND PRIVATE PUBLIC PARTNERSHIPS

The Women's Ideas and Trade Fair

The goal of the Women's Ideas and Trade Fair (WITF) is to provide a platform for women to have a more visible role in society while showcasing their innovation and success stories. The WITF is based on the Swedish model and will be hosted by The Mhani Gingi Social Entrepreneurial Network, in Africa for the first time on 6 – 8 March 2014.

The WITF focus areas are as follows:

- Entrepreneurship;
- Education;
- Health;
- Food; and
- Social.

CDH has served on the executive committee and will participate in the programme by addressing one of the focus areas mentioned above.

Cezanne Britain-Renecke

West Coast Community Foundation

The West Coast Community Foundation (WCCF) is an independent, registered, non-profit organisation that aims to mobilise capital and distribute resources to organisations and projects in reducing poverty and developing communities along the West Coast.

The WCCF is positioned in a unique way allowing us to be able to respond to a number of local issues. By linking donors with the causes and communities they are most interested in supporting we are able to transform countless lives and assist in the building of stronger communities.

The focus areas of the WCCF includes:

- Health;
- Women empowerment;
- Youth development;
- Community development;
- Education and skills development; and
- Environmental management.

CDH advises the WCCF on all aspects of corporate governance and render general commercial law advice when required.

Cezanne Britain-Renecke

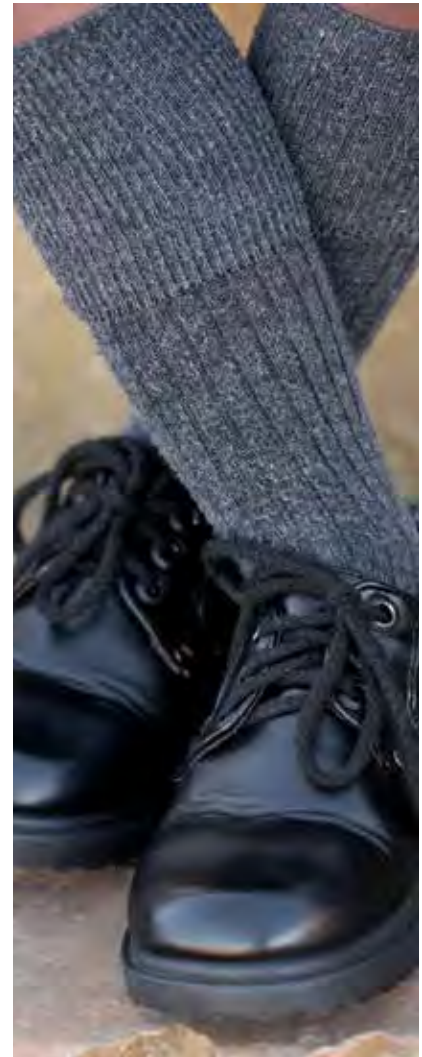
Adopt-a-School Foundation

CDH provides pro bono legal services to the Adopt-a-School Foundation and was involved in the project initiated by the Shanduka Foundation and Kagiso Trust that aims at improving education in South Africa.

Werner Mennen, Badian Maasdorp, William Midgley, Lyle Horsley, Claire Barclay

"This partnership will see both organisations contributing through their respective programmes: the Adopt-a-School Foundation and the Beyers Naude School Development Programme. These organisations will combine their resources, knowledge and best-practice whole school development models to make a sustainable and long-term improvement to education. Each organisation has committed R100 million over five years to adopt all the schools in the Fezile Dabi district. The Free State provincial government will match this contribution by a further R200 million."

*Express Eastern Free State
6 March 2013*



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