

AUGUST 2015

PRO BONO AND HUMAN RIGHTS EXTERNAL NEWSLETTER

EVENTS

NEW MATTERS

ONGOING MATTERS

UPDATES

IMMIGRATION AND REFUGEES SEMINAR

In our experience in assisting many refugees over the years, the bounds between refugee law and immigration law is often not well understood by lay persons or even many lawyers. As a result foreigners often seek to obtain refugee status in circumstances where they may not qualify for it and would be better suited applying for some form of immigration status. Accordingly, we felt there was a need for someone like Michael with specialist expertise in both areas of the law, to help build awareness amongst practitioners, NGO's and community organisations working in the field.

Michael gladly and generously obliged.

Topics covered at the seminar ranged from the procedural requirements necessary to apply for various types of visas from work visas to relative's visas and from spousal visas to study visas to the discourse surrounding illegal, undesirable and prohibited persons. In addition, forms of direct and permanent residence were discussed and an overview of the new amendments to the Immigration Act and Regulations was provided. In respect of refugee law in particular, developments

relating to the Zimbabwean Special Dispensation permit were considered as were the differences between economic migrants and refugees.

The seminar was well-attended by various representatives of law firms, paralegal institutions and NGOs including Lawyers for Human Rights, the Legal Resources Centre and the Wits Law Clinic. It proved to be an interactive and engaging experience in which a number of topical questions were raised as a result of attorneys' and activists' experiences in the discipline. Issues around the independence of services offered on behalf of the Department of Home Affairs by VFS Global were raised through audience discussion as were challenges experienced in respect of converting visas and dealing with spousal permits. All in all, the seminar provided attendees with a concise and current overview of immigration law and related refugee matters relevant to South Africa today.

Our sincere thanks go to Michael Yeates for all the time and hard work he put into preparing and presenting the seminar.

On the morning of 28 July 2015 the Pro Bono and Human Rights Practice (Pro Bono Practice) hosted a seminar at our Johannesburg Office on the Immigration Act and Refugees in collaboration with our Employment Practice and ProBono.Org.

The seminar was presented by Michael Yeates, a director in Cliffe Dekker Hofmeyr's (CDH) Employment Practice, with a specialty in Immigration Law.

PROBONO.ORG WOMEN'S DAY EVENT

As a contribution towards a Special Women's Day ProBono.Org event, Jacquie Cassette and Tricia Erasmus spent the morning of 5 August 2015 at Pro Bono.org providing legal advice to women from many different walks of life on a range of issues, including family law matters and property disputes.

CONTINUED PARTICIPATION IN THE NATIONAL SCHOOLS MOOT COURT COMPETITION

After the great success of last year's National Schools Moot Court Competition (NSMCC), Cliffe Dekker Hofmeyr is once again actively supporting the NSMCC this year.

As part of our contribution to the 2015 NSMCC, earlier in the year members of the Pro Bono Practice facilitated a training workshop for learners preparing for the essay component of the competition. We will also be hosting a large seminar and event at our firm during the oral rounds (see upcoming events).

Jacque Cassette and Tricia Erasmus will together with other members of the firm also be assisting with the adjudication of the oral rounds of the competition on 8 and 9 October 2015.

Cliffe Dekker Hofmeyr is also offering a generous bursary to the four finalists of the 2015 competition.

MANDELA MEMORIAL DIALOGUE: UNIVERSITY OF THE WITWATERSRAND

The Pro Bono Practice attended the Mandela Memorial Dialogue hosted by the WITS School of Governance on 30 July 2015. The topic of discussion was Social Justice and Development.

The panel comprised the following illustrious group of speakers: the Public Protector, Advocate Thuli Madonsela; Mark Heywood (Executive Director of s27); Kaajal Ramjathan-Keogh (Executive Director of the Southern African Litigation Centre); Zwelinzima Vavi (former general secretary of COSATU) and Pregs Govender (Deputy Chair of the South African Human Rights Commission). The panel discussion was moderated by Professor Bonita

Meyersfeld, the director of the Centre for Applied Legal Studies and an Associate Professor at Wits Law School.

Each panellist provided a unique perspective on the relationship between social justice and development and what needs to be done to further the struggle for both in current day South Africa. Advocate Madonsela discussed the powers of the Public Protector's Office and the contribution her office can and does make, while Mark Heywood emphasised the critical role played by civil society in promoting social justice. He also noted with concern how civil society organisations are coming under increasing threat, citing recent disturbing

instances of civil society organisations being branded as "enemies of the state." Kaajal Ramjathan-Keogh provided the audience with an intimate account of SALC's experience in the Al Bashir matter as a case in point. Zwelinzima Vavi talked to the impact of corruption on South Africa's development and challenged all in the room to take action. Finally Pregs Govender emphasised the continued systemic inequality experienced by black women in our country and the extent to which this plagues the struggle for social justice.

The discussion was then opened to the audience with a number of provocative questions being posed.

MANDELA DAY EVENT: OLIVER'S HOUSE

On 17 July 2015, CDH joined hands with Oliver's House to help feed 200 children and a 100 elderly members of the Zenezele community. The event was attended by CDH staff members and almost the entire Pro Bono Practice.

The volunteers helped prepare and serve warm meals to members of the community, while also handing out blankets to the elderly and the children residing at Oliver's House.

It was indeed a 67 minutes well spent as there were smiles and laughter all around and the event was thoroughly enjoyed by everyone.

PROBONO.ORG AWARDS CEREMONY

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AWARDS CEREMONY
2015 ●●● ProBono.Org



ProBono.Org's Annual Pro Bono Awards were held on 17 September 2015. Our Pro Bono Practice was shortlisted for the Most Impactful Case in 2014 for its contribution to the SAHA/R2K National Key Points matter.

The ceremony took place at Constitutional Hill. The Public Protector Thuli Madonsela was the guest speaker.



MOOT COURT WORKSHOP TO BE HOSTED AT **CLIFFE DEKKER HOFMEYR**

On 7 October 2015 the Pro Bono Practice will be hosting a seminar for 72 learners and their educators at our offices to assist them with preparation for the oral rounds of the NSMCC.

Members from various practice areas will be assisting us with the seminar which will traverse various topics ranging from an introduction to the South African legal system, a discussion of some relevant constitutional rights and principles, to the art of mooting. Members of the

Johannesburg Bar's Advocacy Training Committee will address learners on oral advocacy.

Acting Justice Matojane from the Constitutional Court will be attending as guest speaker.



INTERVENTION BY CORRUPTION WATCH AS *AMICUS CURIAE* IN SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD & OTHERS // DEMOCRATIC ALLIANCE & OTHERS

The Pro Bono Practice recently assisted Corruption Watch to bring an application to be admitted as an amicus curiae in the pending appeal before the Supreme Court of Appeal (SCA) in the matter of South African Broadcasting Corporation & Others // Democratic Alliance & Others

Mr Hlaudi Motsoeneng (Motsoeneng) and the SABC appealed the decision handed down by Schippers J in the Western Cape High Court in which he ordered the SABC to institute disciplinary proceedings against Motsoeneng (the Chief Operating Officer). Judge Schippers' decision followed a finding by the Public Protector, that disciplinary action should be taken against Mr Motsoeneng for his dishonesty relating to the misrepresentation of his qualifications, abuse of power and improper conduct.

Essential to the issues before the SCA is the nature and extent of the powers of the Public Protector in issuing appropriate remedial orders to remedy state misconduct. Schippers J found that the Public Protector's findings and decisions are not binding but that an organ of state has a constitutional obligation to act rationally and not to irrationally reject or ignore the Public Protector's findings and proposed remedial action.

Given the number of high profile disputes between various state / public bodies and the Public Protector currently besetting our public space (and the potential threat that this stand – off poses to the very fabric of effective and accountable governance), it is vital that the issue be timeously and authoritatively determined.

As an NGO whose particular focus is on ensuring that custodians of public resources

act responsibly and in the public interest, the issue is one of particular interest to Corruption Watch.

Motsoeneng, the SABC and the Minister all refused to grant Corruption Watch consent to intervene as an *amicus* and accordingly an application had to be made to the President of the SCA. Leave to intervene was granted by the SCA on 3 August 2015.

Corruption Watch filed its heads of argument on 19 August. It made novel submissions on the proper interpretation of s182 of the Constitution which, other than granting her the power to investigate and report on any state conduct that is alleged or suspected inter alia to be improper, empowers the Public Protector in s182 (c) to "take appropriate remedial action."

On the basis of what it considers to be a proper interpretation of s182, Corruption Watch argued that the Public Protector is afforded the power by the Constitution to make remedial binding orders on organs of state subject to certain limitations.

The appeal was heard in the SCA on 18 September 2015.

Advocates Wim Trengove SC and Carol Steinberg of Thulamela Chambers as well as Luke Kelly of the Cape Bar generously volunteered their time and expertise to this matter on a pro bono basis.

NEW REFUGEE MATTER

Our Practice recently took on another refugee matter on behalf of an asylum seeker from the Democratic Republic of Congo (DRC) whom we are assisting to bring an appeal before the Refugee Appeal Board (the RAB) against a decision by the relevant Refugee Status Determination Officer (RSDO) rejecting his application for asylum.

Our client (who was studying to become a social worker) was a member of an opposition party in the DRC and was detained and tortured by police loyal to the ruling party on several occasions in the run up to the 2006 elections in that country. He finally fled the DRC in August 2006 because of fears for his ongoing safety after his father was murdered and his mother and wife were assaulted by security

forces who came looking for him.

Like in many other instances, our client's application was refused by the RSDO in a materially flawed decision without him having been afforded a proper hearing in accordance with the prescripts of the Refugees Act and the Regulations made thereunder. In the meantime, according to reports by various NGO's and IO's country conditions in the DRC remain volatile with members of opposition parties and journalists facing renewed persecution by the state in the run up to the 2016 elections in which Joseph Kabila seeks to stay in power for a third term.

Heads of argument were filed and numerous consultations were held with client in preparation for his appeal hearing

which was scheduled for 24 August 2015, only for the hearing to be cancelled by the RAB without explanation and rescheduled for May 2016.

Our client who has already been waiting for five years to have his appeal heard is accordingly forced to wait together with his family for another nine months just to receive an audience before the RAB. In all likelihood he will have to wait another few years thereafter for the RAB to hand down its decision. In the meantime as asylum seekers with precarious rights he and his family are forced to continue to live in a state of horrible uncertainty. Neither he nor his wife (who is a trained nurse) are able to secure formal employment seemingly because of their asylum seeker status.

MEDIA ARTICLE

In July 2015 the Pro Bono Practice submitted an article about our various refugee matters for publication in the Pro Bono Section of 'Without Prejudice' in which we highlight some of the systemic problems encountered by asylum seekers in the processing of their applications for refugee status. The article was well received and published in the September edition.



HIGH COURT REVIEW OF REFUGEE APPEAL BOARD DECISION

The review application in one of our refugee matters was heard on 28 July in the North Gauteng High Court. Judgment was reserved.

Our client, a citizen of the DRC, has been seeking asylum in South Africa for almost a decade.

We contend that the decision of the RSDO and that of the

RAB made in the matter some nine years later were vitiated by material irregularities. Advocate Paul Slabbert of Group One assisted us in taking this review forward and argued the matter.

SAHA: SECTION 29 TRANSCRIPTS AND TRC DATABASE

The Department has since sought to meet with us in order to reach a settlement in the database and another SAHA matter and the meeting proceeded on 15 July 2015. During the meeting some outstanding s29 transcripts were handed over. It was also agreed that a meeting be arranged between SAHA and the Department's experts in order to work out a way forward in the database matter. The experts' subsequent meetings were fruitful and we are pleased to report that significant progress in obtaining a comprehensive version of the database has been made.

In June 2015 our Practice launched an application against the Department of Justice and Correctional Services (the Department) in the South African History Archive (SAHA) TRC database matter as a result of the ongoing failure by the Department to comply with the then Minister Jeff Radebe's decision to grant SAHA access to the database subject to the protection of personal information where necessary.

SOUTH AFRICAN HIV CLINICIANS SOCIETY: DEFAMATION

The Pro Bono Practice is assisting the Southern African HIV Clinicians Society (SAHIVCS) to defend a defamation claim lodged against it in the Gauteng Division of the High Court held at Johannesburg by a doctor. The matter relates to publications made by SAHIVCS concerning a s exual lubricant gel marketed by the relevant doctor in what the SAHIVCS considers to have been done in an irresponsible manner.

The applicant filed his heads of argument on 14 August 2015 and we recently filed ours on 28 September 2015.

CORRUPTION WATCH HALFWAY HOUSE SCHOOL PAIA MATTER

Pursuant to the review application which we lodged a few months ago on its behalf, Corruption Watch has been provided with a 2013 report on the financial affairs of the Halfway House School by the Department of Basic Education.

Settlement discussions are being entertained. The report provided Corruption Watch with useful information and will be used to inform a special report on corruption in schools soon to be published by it.

OUR TEAM

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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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