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PRO BONO & HUMAN RIGHTS NEWSLETTER



INDEX**INTRODUCTION**

The Pro Bono & Human Rights Practice: a year not to be forgotten **3**

PRO BONO LITIGATION

Victory in the SCA for two brothers after a grueling struggle for their birthright **5**

Assisting a grieving family to get justice and redress **8**

"*The Land is Ours*" – an embattled road to the vindication of customary land rights **10**

A change for survivors of sexual abuse **12**

In defense of public interest lawyering **13**

SPECIAL PROJECTS, CAMPAIGNS, TRAINING AND PARTNERSHIPS

The EWOFA Drive - a reflection of commitment and solidarity during tumultuous times **14**

Section27 advice office/CA project **16**

CDH/Project O & Orlando high school initiative **17**

Employment readiness: CDH CV and interview skills workshop **18**

At the intersection of practical law and the academy – a project to move clinical education forward **19**

Just Grace – CSR support **20**

Ikamva Labantu – legal support **21**

INTRODUCTION

THE PRO BONO & HUMAN RIGHTS PRACTICE: A YEAR NOT TO BE FORGOTTEN

Like all other law practices our Pro Bono & Human Rights Practice (Pro Bono Practice) was impacted by the lockdown - courts and government departments closed, which made it impossible to move forward with much of our litigation for weeks, nor could we roll out many of the community training and special projects that form an important arm of our work. Consultations with our clients – many of whom do not have the luxury of access to the sophisticated modern technology that has allowed many corporate businesses to continue to operate relatively seamlessly in a virtual world – presented a real challenge. But we learnt to adapt and do the best we could to continue to offer novel ways of assisting and serving our clients, communities and people in need. After all, challenges present opportunities for reflection, growth and adaptation and as the year progressed our Pro Bono Practice did all three.



First, we were forced to reflect not only on how to continue to service our clients and communities in a socially distant manner, but on the enormity of the socio-economic challenges presented by lockdown and the extreme poverty it left in its wake and how we might meaningfully use our resources to make the most impact. We then found novel ways in which to do so. As examples - we collaborated with ProBono.Org to produce short videos for communities explaining in simple terms some of the lockdown regulations, arranged and facilitated numerous webinars by members of our firm on topics of relevance to the lockdown and participated in a COVID-19 hotline together with many other public interest organisations to provide assistance to the many people severely impacted in a myriad of ways by the lockdown. We also partnered with some of our key stakeholder community organisations to provide what small relief our firm could offer to vulnerable communities.

And as this newsletter illustrates, despite the challenges our Practice has continued to thrive and indeed grow. Not only did we win victories in some important longstanding cases (see for instance the discussion on the *Jose* matter), we solidified and built relationships with key public interest organisations in mutually beneficial ways that enable us both to maximise our impact. Pursuant to this the Johannesburg Practice took on some important new impact litigation aimed at ensuring systemic change in both the education and health sectors, and in supporting public interest law centres to continue to do the vital work that they do in promoting and enforcing constitutional rights. The Cape Town Practice on the other hand spearheaded ground-breaking cases concerning the vindication of customary land rights and the development of our civil law concerning sexual assault. Many others in our firm also worked hard to provide a range of pro bono services to a variety of deserving clients.

INTRODUCTION

THE PRO BONO & HUMAN RIGHTS PRACTICE: A YEAR NOT TO BE FORGOTTEN...*continued*



Perhaps the most universal consequence of the lockdowns that accompanied the global pandemic was the devastating socio-economic consequences for already impoverished and vulnerable communities. Certainly, in South Africa the stark disparities and inequalities that exist in our society were painfully exacerbated and laid bare for us all. No longer can any of us in good conscience remain unresponsive to the overwhelming needs of the many millions in need.

As the Pro Bono Practice, it is in part our mandate to ensure that CDH remains ever responsive to such needs. I am proud to say that, as the size of our collective CSR and pro bono contribution during 2020 reveals, CDH has not shrunk from this responsibility but remains ever committed to serving, empowering and

supporting vulnerable communities and individuals in a variety of ways – and (as this newsletter illustrates) in finding sustainable and innovative ways to do so. In total the firm donated over 10,300 hours and R25,000,000 in pro bono services to numerous organisations and individuals during 2020 and implemented various CSR initiatives. Details of some of our work follow.

A big thank you to my small but exceptionally dedicated, talented and passionate team who gave everything despite many obstacles and who helped better the lives of many through their efforts. It is an honour to work with you all. And thank you to all the other practitioners in the firm who gave generously of their time and resources to pro bono and CSR causes. You did CDH proud!

Best wishes to all of our clients and stakeholders for a safe and peaceful new year.

PRO BONO LITIGATION

VICTORY IN THE SCA FOR TWO BROTHERS AFTER A GRUELLING STRUGGLE FOR THEIR BIRTHRIGHT

In a satisfying victory for our Pro Bono Practice, on 25 November the Supreme Court of Justice (the SCA) resoundingly dismissed the Department of Home Affairs (DHA) appeal against the judgment of the Gauteng High Court in the matter of the *Minister of Home Affairs and Others v Jose and Another* (169/2020 [2020] ZASCA 152 (25 November 2020)). The High Court had found in the brothers' favour and ordered the Minister to grant them citizenship within 10 days of its order.



Photo Credit : Madelene Cronje

Section 4(3) is a provision which was introduced into the Citizenship Act on 1 January 2013 by way of the South African Citizenship Amendment Act. It makes provision for individuals born in South Africa (SA) to foreign parents who have not been admitted to the Republic for permanent residence, and who have lived in the Republic from the time of birth until

obtaining the age of majority, to apply for citizenship, if their births had been registered in accordance with the Births and Deaths Registration Act.

In 2014, after being faced with the realisation that their refugee status was to be withdrawn as part of the Angolan repatriation process, the brothers (born and raised in SA of Angolan refugee

parents) pursued every avenue to regularise their stay in SA including obtaining temporary study permits to allow them to finish their schooling. After having been advised by a legal NGO that they were in fact eligible for citizenship under section 4(3), the brothers approached the DHA for assistance in applying for citizenship. They were however turned away by the relevant DHA officials.

PRO BONO LITIGATION

VICTORY IN THE SCA FOR TWO BROTHERS AFTER A GRUELLING STRUGGLE FOR THEIR BIRTHRIGHT...*continued*

Our Practice agreed to assist the brothers on a pro bono basis and made applications on their behalf by way of affidavit. This was the only way that an application could be made as the DHA had failed to put in place the necessary administrative procedures to apply for citizenship. But our attempts to assist them in this manner were thwarted by the DHA and as a result, we were forced to bring a High Court application in June 2017 to enforce their rights. The primary relief sought in the High Court was that the DHA's failure to make a decision in their applications be reviewed and that the Minister be directed to grant each of them citizenship in terms of section 4(3) of the Citizenship Act.

The application succeeded with costs and in March 2019, Yacoob J ordered the Minister of Home Affairs to grant the applications of each of the brothers for South African citizenship in terms of section 4(3) of the Citizenship Act within 10 days of the order. The learned Judge was of the view that exceptional circumstances existed which rendered it appropriate for the court to order that the applications be granted.

Considering it in the public interest to do so, in August 2019 Yacoob J granted leave to the DHA to appeal to the SCA only on the question whether it was competent in the particular circumstances of this case to order the Minister to grant (as opposed to consider) the brothers' applications for citizenship.

In a compelling judgment handed down in favour of the brothers, Ponnann JA and Matojane AJA (in which Cachalia and Nicholls JJA and Poyo-Dlwati AJA concurred) recognised the importance of citizenship by quoting Hannah Arendt in their opening paragraph:

'[c]itizenship is more fundamental than civil rights.'

'For Arendt, the issue was not simply a question of statelessness, but one of common humanity, and the responsibility we have to one another as human beings who share the world in common. As long as we live in a world that is territorially organised into national states, a stateless person "is not simply expelled from one country" they are "expelled from humanity."

The SCA considered the requirements for citizenship in terms of section 4(3) and confirmed that the brothers met requirements including the fourth requirement that their births had been registered in terms of the Births and Deaths Registration Act. The SCA also rejected the DHA's defence that the brothers "never applied" for citizenship because, so it was argued, they failed to make use of the correct application forms. The SCA pointed out that this argument was "cynical and self-serving" as the Minister had to date failed to create the necessary application forms for section 4(3)

citizenship applications. Despite the narrow scope of the appeal, the DHA also argued that it had no record of the brothers' applications – an argument the SCA rejected as "plainly disingenuous".

The SCA held that the DHA had every opportunity to investigate and respond to the claims made by the brothers, but instead in their answering affidavit admitted the relevant allegations by the brothers that established that they met the requirements. It also rejected an attempt by the DHA to argue in the hearing that this (merely) constituted a "conditional admission" made exclusively for the purposes of the application. The SCA considered this argument to be "plainly untenable".

In its judgment the SCA also considered the recent decision of the Constitutional Court (CC) in the matter of *Chisuse and Others v Director-General, Department of Home Affairs and Another* where the CC recognised that there may be cases in which a court may need to give directions to the Executive despite the need to consider the doctrine of separation of powers. The CC held that:

"These authorities must also find application in determining the appropriate relief in a case dealing with citizenship. The reason for this is that citizenship does not depend on a discretionary decision; rather, it constitutes a question of law. The

PRO BONO LITIGATION

VICTORY IN THE SCA FOR TWO BROTHERS AFTER A GRUELLING STRUGGLE FOR THEIR BIRTHRIGHT...*continued*

amended Citizenship Act does not require the Department of Home Affairs to consider any public interest when deciding whether or not to recognise a person's citizenship. Instead, if the requisite conditions to acquire citizenship are satisfied, the Department of Home Affairs is required to recognise this citizenship and proceed with the concomitant administrative procedures, without any further consideration."

Relying on this dictum the SCA held that the DHA's argument that the matter had to be referred back to the Minister was pointless, given that the brothers clearly met the requirements of section 4(3) and therefore that the appeal was contrived and served no purpose. The SCA also held that the appeal was "unsustainable as a matter of law" given the *Chisuse* judgment. It accordingly dismissed the appeal with the costs of two counsel.

The only issue that remained was the issue of a punitive cost order. In their heads of argument filed with the SCA on 3 August 2020 the brothers had argued that the *Chisuse* judgment effectively disposed of the issue on appeal in their favour and accordingly invited the DHA to withdraw their appeal. In the event that the DHA failed to do so, they requested that the SCA grant a punitive costs order against the DHA and consider directing personal cost orders against the relevant DHA officials who decided to persist with the appeal.

The SCA agreed that the DHA "should have reconsidered its position" upon receipt of the brothers' heads of argument which it failed to do and that it would therefore be unfair to expect the brothers to bear the costs caused by the appeal after 3 August 2020. The court noted that:

"The question whether a party should bear the full brunt of a costs order on an attorney and own client scale must be answered with reference to what would be just and equitable in the circumstances of a particular case. A court is bound to secure a just and fair outcome. More than 100 years ago, Innes CJ stated the principle that costs on an attorney and client scale are awarded when a court wishes to mark its disapproval of the conduct of a litigant."

Thus, the SCA granted costs in favour of the brothers on an attorney client scale but decided against a personal cost order as it was of the view that the requirements for same were not met in this matter.

The SCA judgment hopefully brings an end to an arduous struggle by the brothers for recognition of their right to the citizenship and will assist an entire class of similarly situated vulnerable people to rightfully claim their birthright.

The SCA granted costs in favour of the brothers on an attorney client scale but decided against a personal cost order as it was of the view that the requirements for same were not met in this matter.

PRO BONO LITIGATION

ASSISTING A GRIEVING FAMILY TO GET JUSTICE AND REDRESS

As a result of our commitment to access to justice, coupled with our commitment to making as meaningful an impact as we can with the resources we have, our Pro Bono Practice has over the last few years turned its focus on running social accountability and impact litigation. This with the goal of maximising the contribution CDH can make to the national constitutional project of promoting a better life for all, poverty reduction and achieving effective and sustainable development in an open and democratic society based on human dignity, equality and freedom.

Within this context, the Johannesburg Practice has recently taken on a number of cases for clients from poor or marginalised communities that have been the victim of widespread ills in both our basic education and public healthcare systems. This with a view to seeking relief which will not only assist our clients but effect widespread systemic changes for the benefit of whole classes of affected persons.

One such case sees us assisting the parents and siblings of a Grade 12 learner who was tragically electrocuted in her mobile classroom on 30 January 2017 at Geluksdal Secondary School and who died as a result, to claim damages from the Minister of Basic Education and the Gauteng Education Department for the loss suffered by them as a result of the death of the learner.

Geluksdal is a "no fee" paying coeducational English medium government school situated in Tsakane Township close to Brakpan in the Ekurhuleni Metropolitan Municipality (the School). On the fateful day, the learner ran into a mobile classroom during break time to get out of a heavy thunderstorm. As they entered the doorway, the 17-year-old innocently grabbed onto the doorframe and was electrocuted. They died on the scene. Sadly, this pupil's death is not the first death or injury to occur in the school environment due to unsafe school infrastructure. We have all become used to almost daily accounts in the news of learners dying at school or while under the supervision of schools.

Pursuant to the death of the learner the Gauteng Department of Basic Education (the GDE) instructed a firm of attorneys, to conduct an investigation into the death of the learner. The appointed attorneys duly conducted an investigation and issued a report to the GDE (the Report).

According to the Report, upon inspection of the premises after the incident, a Works Inspector found that there were no circuit breakers in the DB's in the mobile classroom where the accident occurred and that accordingly, the chances of a learner being electrocuted were high. A qualified electrician also confirmed that circuit breakers are a safety feature critical to prevent electrical shocks and are a standard component in such DB's and are in fact a regulatory requirement. Based on the information collected during the course of the investigation the appointed attorneys found among others that:

- The SGB and the School had over time fixed the wiring and replaced stolen circuit breakers and earth leakages on several occasions. However, theft and vandalism were an ever-present problem and so after replacing same three times the SGB made sure there was lighting in the mobile classrooms but knew that the circuit breakers were missing.
- The Principal had reported the matter to the Department but from thereon "the problem fell through the cracks" because different divisions in the Department thought that others were attending to it. Seemingly nothing was done to address the absence of circuit breakers and earth leakage.

PRO BONO LITIGATION

ASSISTING A GRIEVING FAMILY TO GET JUSTICE AND REDRESS...*continued*

- Regrettably during the course of the investigation the Works Inspector failed to shed any light on the knowledge the Department had of the problem, prior to the accident, and what steps (if any) the Department had set in motion to address the absence of circuit breakers and earth leakage.

The Report concluded that:

- The School leadership and Department knew that circuit breakers and earth leakage were missing in the distribution boxes in the mobile classrooms at Geluksdal Secondary School. They should reasonably have foreseen that harm may occur, and having a duty of care as diligens paterfamilias and as envisaged in the Regulations for Safety Measures at Public Schools and the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, should have replaced the safety mechanisms, and ensured that the classrooms were safe for learning and teaching. They failed in this regard.
- Recognised that the School is situated in a low-income area and vulnerable to theft and vandalism. On at least three occasions the School had experienced the frustrating cycle of theft, replacement, theft replacement, etc; and
- The Department was liable for the learner's death, as envisaged in section 60(1) of SASA.

The Report further made the following recommendations:

- that in the short term, and as a matter of urgency, the Department replace the circuit breakers and earth leakage;
- that the Department reprimand the Works Inspector for failing to provide a report on the matter as requested, and for failing to co-operate during the conducting of the investigation;
- that the Department clarify the scope of responsibilities of various officials in the chain of command so that there is clarity about who/which unit is responsible for each part of the maintenance program;
- that security at the School be improved; and
- that community education programmes be undertaken to make the public aware of the importance of electrical safety mechanisms and the risks associated with the theft of same.

In or about January 2019 the grieving family was put in touch with our JHB Practice which agreed to assist them on a pro bono basis to hold the Minister of Education and the GDE accountable for the loss of their daughter and to help them claim compensation. A claim for damages was instituted in the Gauteng High Court in January this year in which the family seeks damages for amongst others, emotional shock, trauma and grief, future medical expenses and constitutional damages.

Relying on the development of the common law of delict in terms of section 39(2) of the Constitution we are also making a novel claim in which the

family claim damages for loss of support as a result of their daughter and sibling's death. This is on the basis that the learner had been the head girl of her primary school, was academically successful and among the top achieving students in her grade and bore significant household duties such as cooking, cleaning and looking after her younger brother, which enabled her parents to work, and as an adult would have gained employment and earned an income, and would have borne a duty of support to her parents and siblings.

Despite intimating that it wished to settle the claim the GDE has failed to take any meaningful steps to enter into settlement negotiations, nor has it put up any meaningful substantive defense. Accordingly, we are taking further steps to prepare for trial.

Furthermore, despite numerous attempts to follow up with the GDE on the steps that it has taken to implement the recommendations of the Report, the GDE has failed to respond or give any indication that it has done so. As a result the family, which is concerned for the safety of their youngest daughter who also still attends the School and all other learners attending the School, will also be instituting an application for systemic relief against the Minister and the relevant Departments of Education to require them to take all necessary steps to ensure the safety of learners at their School. Our team is in the process of finalising this application. This to help ensure that no more learners die at our Schools as a result of the failure on the part of our education authorities to adhere to their constitutional and statutory duties to ensure a safe learning environment for learners.

PRO BONO LITIGATION

"THE LAND IS OURS" – AN EMBATTLED ROAD TO THE VINDICATION OF CUSTOMARY LAND RIGHTS

The relationship between the Moravian Church in South Africa (the Church) and the community of Elim is a long, tension-filled one. At the beginning of 2020 those tensions came to a head in the form of an urgent application launched by the Church in which a declaration of ownership of the land comprising Elim was sought, the Church seeking to tighten its grip on the community of Elim. The community has launched its own counterclaim seeking a declaration of ownership in its favour. And so the legal battle for the land begins.

Elim comprises six farms and is zoned agricultural land. The title deed reflects the Church as owner of the land. However, such ownership was obtained and sustained under colonial and apartheid systems when the indigenous people of Elim could not own immovable property under these oppressive systems. The Cape Town Practice, which represents the Elim community in its entirety, is instructed and has conducted research indicating that the land has at all times been held by the Church for the benefit of the community, and so it is the members of the community who are the true owners of the land.

The dispute over the land is an issue which has caused deep conflict between the inhabitants of Elim and the Church for several years. The issue of ownership of the land cannot be divorced from the history of Elim, the manner in which Elim as a Moravian Mission Station came to be established, and the influence and impact of colonialism and apartheid on the indigenous and/or customary rights of the community. The application brought by the Church brings to the fore the consequences of the history

of our country and its past treatment of indigenous and coloured people. Historical literature indicates that the families who comprise the Elim community are descendants of the coloured/Khoikhoi people and/or slaves who lived on the farms comprising Elim during pre-colonial times. As such, the Practice's consideration and progression of the matter has necessitated a careful assessment of the history, customs and practices of the people of Elim. The application is a reminder that while oppressive systems may have long been dismantled, the crippling consequences thereof run deep and endure to this day.

The Church's application seeks a declaration that only it has the right to conclude lease agreements in respect of the Elim land, that all lease agreements concluded by the Overseers Council (a Church body operating for the benefit of the community) be declared void and that the Overseers Council be interdicted from concluding further rental agreements in respect of the land. In effect, the Church is purporting to exercise what it believes to be its ownership rights in respect of the land.

The counterclaim launched on behalf of the Elim community seeks, among other things, a declarator that Elim is owned by the inhabitants of the Elim community, and that the Church is only the titular owner of the land and that it holds the land nominally on behalf of and for the benefit of the community. However, it is important to note that the counterclaim is launched in order to place before the court a thorough response to the application launched by the Church. In truth, a matter such as this cannot and should not be decided on the papers. In order for all relevant information to be placed before the court, oral evidence must be lead under action proceedings in which elders in the community, historians and further experts are able to assist the court with evidence that properly ventilates the issues. It is for this reason that the Practice has included in the counterclaim an alternative claim in which an order is sought to stay the Church's application pending the determination of the action proceedings to be instituted by the Elim Community, in which the appropriate evidence can be lead to finally determine the issue of ownership.

PRO BONO LITIGATION

"THE LAND IS OURS" – AN EMBATTLED ROAD TO THE VINDICATION OF CUSTOMARY LAND RIGHTS

...continued

In the case brought by the Church the Practice aims to promote the indigenous law ownership rights of the Elim community such that the noose of oppressive systems is finally untied. A long road lies ahead.

Having resided on the land for generations, the community's right of ownership under indigenous law cannot be ignored. This matter is reminiscent of the considerations in the *Richtersveld Community in Alexkor Ltd and Another v Richtersveld Community and Others* 2003 (12) BCLR 1301 (CC) case. Here the Constitutional Court recognised that the determination of the real character of indigenous title to land involves the study of the history of a particular community and its usages. Notwithstanding the subject land being registered in the name of Alexkor, it was concluded that the real

character of the title that the Richtersveld community possessed was a right of communal ownership under indigenous law, and because the applicable law in the Cape Colony at the time of annexation respected and protected land rights of the indigenous people, no act of State or legislation extinguished the land rights of the Richtersveld community subsequent to annexation but before 19 June 1913.

In the case brought by the Church the Practice aims to promote the indigenous law ownership rights of the Elim community such that the noose of oppressive systems is finally untied. A long road lies ahead.

PRO BONO LITIGATION

A CHANGE FOR SURVIVORS OF SEXUAL ABUSE

In the landmark case of *Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others* (Frankel), section 18 of the Criminal Procedure Act was declared irrational, arbitrary and unconstitutional insofar as it did not afford the survivors of sexual assault, other than rape or compelled rape, the right to pursue a charge after a lapse of 20 years from the time the offence was committed. The effect of section 18 was to penalise a complainant whose delay was due to their inability to act, by preventing them from pursuing a charge, even if they may have a reasonable explanation for the delay.

The *Frankel* judgment was a welcomed development in our law, recognising the unique psychological harm suffered by survivors of sexual assault and empowering them to take legal action after grappling with the psychological harm and trauma that comes with the sexual violence.

The law governing the survivor's ability to pursue a civil damages claim, however, remains unchanged, with section 12(4) of the Prescription Act providing that prescription begins to run in respect of certain sexual offences listed in the section from the date on which the plaintiff acquires a meaningful appreciation that they are not to blame for the sexual assault – thereafter the usual three-year prescription period applies.

Much like the unconstitutional section 18 of the Criminal Procedure Act, section 12(4) draws an arbitrary distinction between sexual offences, in that it allows for the interruption of prescription only for those sexual offences that are listed in the section. It also places an unfair

evidentiary burden on survivors, requiring them to prove that their mental or psychological condition rendered them unable to institute proceedings earlier, and lead evidence as to their mental or psychological condition and the impact thereof on their ability to have instituted proceedings sooner. This burden infringes several of the survivor's rights, including but not limited to their rights to dignity and access to courts, and results in their secondary victimisation.

In October 2020, the Cape Town Practice launched action proceedings in which constitutional challenges to section 12(4) of the Prescription Act are raised on the above and further grounds. Our clients are two sisters who suffered sexual abuse in the 1970s at the hands of their stepmother's two brothers. Having only recently come to the realisation that neither of them was the cause of, nor bore the responsibility for the abuse they suffered, along with their new-found sense of empowerment as a consequence of the *Frankel* judgment, they pursued criminal

charges and approached the Cape Town Practice to explore the possibility of a damages claim against the brothers.

Our Practice has instituted the proceedings not only in the interest of the sisters, but also in the interest of similarly placed survivors of sexual violence and in the public interest. The proceedings have been instituted with the intention to bring the civil law in line with the *Frankel* criminal law developments, and to serve as a further source of empowerment for survivors of sexual abuse.

The need to develop the civil law in this way has been recognised by our government, as demonstrated by the National Council of Provinces recently passing the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill which seeks to amend the Prescription Act and extend the list of sexual offences in respect of which prescription is interrupted to "any sexual offence in terms of the common law or a statute". Though not yet assented to by the President at the time of instituting proceedings, the recognition of the need to develop our civil law in this manner is welcomed. However, the Bill will not cure the core constitutional issue: the evidentiary burden placed on the survivor and the consequent infringement of their rights.

The persistent nature of violence against women in South Africa grows more gruesome every day and requires us all to play our part together and relentlessly. In driving these proceedings the Practice will engage institutions whose objective is the promotion and protection of women's and vulnerable persons' rights in further support of the proposed constitutional development.

PRO BONO LITIGATION

IN DEFENSE OF PUBLIC INTEREST LAWYERING

Our Johannesburg Practice was recently asked to represent a number of public interest law centres (our clients) to make application to be joined as *amici curiae* in a matter in which the role of public interest lawyering has come under attack by a large international mining company (the Company) that has applied for a mining license to mine in an area of great environmental vulnerability and significance.

In a High Court appeal against the granting of a water license to the Company for the purposes of its mining activities brought by a number of environmental organisations, the Company accuses the Environmental Law Centre (the Centre) representing these organisations of acting unethically and having a conflict of interest because they share an alignment of interest and purpose with their clients. Not only does the Company seek a punitive costs order against the Centre but it also seeks an order referring the Centre to the Legal Practice Council for disciplinary proceedings.

Our clients include the Legal Resources Centre (LRC), Section27, the Equal Education Law Centre, the Centre for Child Law, and Ndifuna Ukwazi. All of them have a long and proud history of defending human rights and providing access to justice to poor and marginalised communities that would otherwise not have access to legal services. They seek to make representations to the court about the long history of public interest lawyering in South Africa, the critical role

that public interest legal centres play in defending and enforcing the Constitution, and the damaging precedent this matter would create if the relief sought by the Company was granted, as well as the adverse impact and chilling effect such an order would have on the ability of vulnerable litigants to access justice through court. They also seek to make reference to international experience and the role and experience of public interest law centres across the world.

The Company has consented to our clients being admitted as *amici* but we await word from the Director-General of the Department of Water and Sanitation (the other respondent) about his attitude to our clients' application. In the meantime our clients have served and filed a formal application to be admitted as *amici* by the court in terms of Rule 16A of the Uniform Rules of Court.

Because of the significance and importance of the matter, it will be heard early next year before a two-judge bench of the Gauteng High Court, Pretoria.

**SPECIAL PROJECTS, CAMPAIGNS,
TRAINING AND PARTNERSHIPS**

THE EWOFA DRIVE – A REFLECTION OF COMMITMENT AND SOLIDARITY DURING TUMULTUOUS TIMES



What started off as a feeding scheme for the elderly in the early 1960s has grown into an organisation which homes 60 residents (the oldest resident being 100 years). Eersterust Welfare Organisation for the Aged (EWOFA) was founded on the principle of instilling dignity back into the elderly community of Eersterust. It also captures the essence of Ubuntu which is deeply embedded in the fabric of the South African society.

SPECIAL PROJECTS, CAMPAIGNS, TRAINING AND PARTNERSHIPS

THE EWOFA DRIVE – A REFLECTION OF COMMITMENT AND SOLIDARITY DURING TUMULTUOUS TIMES...*continued*

Much can be said about the importance of caring for the vulnerable in our communities and EWOFA has, since its inception, managed to provide care and support to its residents. The home provides its residents with three meals a day, accommodation, 24-hour physical and psychological assistance and care, and also has its own qualified nurse on staff. EWOFA also has an active ageing programme which they have developed in conjunction with the Department of Social Development that provides the residents with a range of daily activities which they can participate in allowing them to stay active and focused.

The COVID-19 pandemic has mandated solidarity and strong cooperation between members of society in an effort to mitigate its effects on vulnerable populations. In an effort to continue living up to the spirit and purport of Ubuntu, CDH and the Pro Bono Practice endeavoured to raise funds for

EWOFA with the aim of hosting a holiday lunch and tea for the residents. The relationship between CDH and the home dates back to 2018 when CDH provided financial support to EWOFA by hosting the Prides Plights art exhibition, the proceeds of which were donated to the home. Since then, the Pro Bono Practice has maintained a special relationship with the home by conducting annual visits to the home around November/December. Last year, we hosted a holiday tea for the residents and provided them with delicious treats.

This year, we managed to raise proceeds exceeding the value of R11,000 to host a holiday lunch for the home and to provide all the residents with personalised gifts. Over and above the generous donations generated from the drive, employees of the firm also donated personal items including clothing, magazines and DVDs, among other things. The overwhelming

support from members of the firm therefore enabled us to once again give back to the home during these turbulent times.

The CDH-EWOFA relationship reflects the level of selflessness required from members of society. There is no doubt that the COVID-19 pandemic has had catastrophic effects on the economy, and as a result has magnified the disproportionate socio-economic effects on vulnerable members of society. We therefore recognise the value of inculcating a strong sense of commitment towards eradicating societal inequalities amongst members of both the firm and society. As the saying goes, "*your greatness is not what you have, it is what you give*".

This year, we managed to raise proceeds exceeding the value of R11,000 to host a holiday lunch for the home and to provide all the residents with personalised gifts. Over and above the generous donations generated from the drive, employees of the firm also donated personal items including clothing, magazines and DVD's, amongst other things. The overwhelming support from members of the firm therefore enabled us to once again give back to the home during these turbulent times.

SPECIAL PROJECTS, CAMPAIGNS, TRAINING AND PARTNERSHIPS

SECTION27 ADVICE OFFICE/CA PROJECT

Section27 is a public interest law Centre that seeks to achieve substantive equality and social justice in South Africa with a particular focus on effecting structural change and accountability to ensure the dignity and equality of everyone. Section27's main areas of focus include the constitutionally entrenched right to education as well as the right to basic health care services.

In September 2019, CDH launched a pilot project with Section27. The project entails that candidate attorneys (CAs) rotating through our Corporate & Commercial, Dispute Resolution, Competition Law and Pro Bono Practices help the team running Section27's advice office one day a week. The CAs assist with attending to clients, responding to requests for assistance, drafting letters as well as research.

The advice office is situated in Braamfontein and ordinarily the CAs would spend their time working and assisting at the office. Due to the COVID-19 pandemic and the nationwide lockdown we had to make alternative arrangements for the CAs to continue assisting virtually using telecalls and email. The CAs have successfully managed to carry out their instructions and ensure smooth communication even in the unprecedented "new normal".

To begin with CAs attended at the office for a morning only from 09h00 until 13h00. We have now extended their participation to a full day to allow for the CAs to complete more tasks and to learn as much as possible from the office.

The main objectives of this project are to assist Section27 to render valuable legal services to the public and to provide a unique opportunity for the CAs to gain exposure to meaningful public interest work. The CAs are afforded exposure to public interest matters that they would not have had exposure to in a normal commercial setting and are afforded an opportunity to make a contribution, even if only a small one, to assisting less privileged people gain access to legal advice and to enforce their rights. From feedback obtained the CAs have found participation in the project truly rewarding:

"It was a pleasure to assist and a great learning experience. Yesterday my eyes were opened to the disparity between well-funded and poorly funded schools within South Africa. We do hear and read on a weekly basis that the public system is failing its students but when one is actually confronted with the reality of the situation, it really shows that there is much to still be done. I was shocked that in some low funded public schools, the total grade average was 30%. These learners are being

deprived of a fighting chance due to no fault of their own. It definitely made me realise that at times we as people in privileged spaces are not aware of the severity of some of the conditions that have become the norm for some." – Arnold Saungweme, First year CA

"The session went very well! It was interesting, humbling and eye-opening experience. I applaud Section27 on the work they do. The session made it even clearer how much the indigent and vulnerable need free legal assistance to fight to protect and give effect to their rights. I am glad I was able to assist, even in a small way". – Nicola Stipinovich, First year CA.

Section27 have in return noted that the input of our CAs has helped assist more members of the public and that as an organisation they too have benefited from the project.

We are delighted by the success of what we believe is an innovative collaboration and look forward to continuing the project in 2021.

SPECIAL PROJECTS, CAMPAIGNS, TRAINING AND PARTNERSHIPS

CDH/PROJECT O & ORLANDO HIGH SCHOOL INITIATIVE

Project Obduratus (Project O) is a youth based organisation and its stated primary aim is *“to break the cycle of poverty through the development of the youth of South Africa”*. The organisation focuses on learners from under-resourced and disadvantaged backgrounds and give those fortunate enough to have studied further or who are learning new skills an opportunity to use their skills to give back to the community. Development is offered through education and various upliftment programs to provide employment and empowerment opportunities to the youth after matric. The Project is based in Gauteng and its current primary focus is school learners who hail from townships and informal settlements in and around the City of Joburg and Ekurhuleni Metros.

About three years ago CDH provided the Project with pro bono assistance to prepare its registration documents and register it with CIPS and this is how our firm's relationship with the Project began. Since then our Practice has actively fostered an ongoing relationship with the Project because of the truly inspiring work it is doing.

One of the schools adopted by Project O is Orlando High School. We have since collaborated with Project O on an initiative for the benefit of Orlando High learners. The initiative is aimed at empowering the learners by offering, among other things, the following programmes:

- A career counselling/guidance programme; and
- A job readiness programme (including but not limited to workshops on CV drafting, preparing for a job interview and some handy tips on employment and work etiquette etc).

Project O has prior to and during the nationwide lockdown provided more than 50 Orlando High School learners with essential (perishable and staple) food packs as a relief measure to curtail the effects of the lockdown on the poorest of the learners and their families. Most of the learners who benefit from this initiative come from families with no household income at all.

Due to the importance of this cause and given our already existing relationship with the Project, CDH opted to adopt/support this Project O initiative as our JHB office COVID-19 CSR cause. Through an initiative lead by our Pro Bono Practice, employees in our JHB office were called upon to raise funds to be donated to Project O's relief effort. CDHers heeded this important call and rose to the occasion. Over the months of June and July a total of 79 donations, amounting to R40,950 were collected.

These donations aided Project O to come up with a number of aid programmes to assist learners who require assistance the most. These include the following programmes: the provision of food and hygiene hampers. Additional items distributed to those in need included blankets, shoes and jackets. The funds further aided Project O to start a programme termed *“The 2020 Recovery Plan”* for learners at Orlando High School and surrounds which included a Mental Health Care kit, and an enhanced Remote Tutoring programme with remote learning through pre-recorded videos circulated to learners and uploaded onto Google Classrooms (which included lesson explanations, memos and study packs). Needless to say, learners required data on their phones or devices in order to access these tutorials. Aided by the funds raised, Project O was able to include data sponsorship as one of its aid programmes to disadvantaged learners. We are delighted to have been able to have provided such valuable assistance to learners in need at Orlando High.

SPECIAL PROJECTS, CAMPAIGNS, TRAINING AND PARTNERSHIPS

EMPLOYMENT READINESS: CDH CV AND INTERVIEW SKILLS WORKSHOP

Although thousands of learners sit for the National Senior Certificate examinations (matric) each year, not all of these learners make it to higher education institutions. Due to lack of access to finance and networks, amongst others, for many of these learners higher education remains a dream. In 2017 Stats SA published a report indicating that only 33,8% of youth aged 18-24 were attending higher educational institutions. The implication is that many of these young people land up seeking employment opportunities post matric.



However, many young work seekers from under-resourced communities rarely have access to the social networks and contacts that can assist or guide them in the process of seeking employment.

On Saturday 21 November 2020 and as part of our drive to assist previously disadvantaged learners, our Pro Bono Practice joined forces with CDH's Graduate Recruitment Programme and Project O to put together a workshop for Orlando High School's Grade 11 and 12 learners. Themed "*Employment Readiness: CDH CV and Interview Skills workshop*" the workshop (and the presentation material that was circulated to the learners) is intended to be a guide for the learners and included skills development relating to CV drafting, interview preparation, and general workplace etiquette.

Although the workshop is primarily aimed at those learners who will not be pursuing higher education after matric – it also

remains relevant for young people who will be pursuing higher education and be seeking part-time and informal job opportunities during their studies.

The workshop was a huge success with a good turnout – with 102 Grade 11s turning up on the day. Unfortunately, Grade 12s were unable to attend because they were writing their examinations but we hope to find an opportunity going forward to enable the Grade 12 learners to benefit from the workshop.

Our Pro Bono Practice will continue to work with Project O going forward and we already have a number of collaborations planned for 2021 that are aimed at continuing and strengthening our relationship – a relationship which is founded on our mutual unwavering commitment and dedication to assist previously disadvantaged learners and communities.

SPECIAL PROJECTS, CAMPAIGNS, TRAINING AND PARTNERSHIPS

AT THE INTERSECTION OF PRACTICAL LAW AND THE ACADEMY – A PROJECT TO MOVE CLINICAL EDUCATION FORWARD

Born of a need to prepare law students for the realities of legal practice – a profession in the throes of technical and process revolution, and facing fierce competition – and spearheaded by like-minded academics and business people, the LawLab Pilot project seeks to change the way in which law students prepare for legal practice.

For many years, clinical education that takes place in the various Law Clinics within South African universities has prepared students to make the step up from trained law student to attorney. The practical gap is sometimes more of a chasm than a step. This is in part because whilst the large, medium and even small law firms have embraced technologies, Law Clinics have lagged behind, to a large degree because of the absence of necessary funding.

In a project in which our Knowledge Management team is taking the lead, CDH and the Nelson Mandela University (NMU) Law Faculty are however working to set

up a low-cost, adaptable, light weight yet realistic combination of systems and processes to bring the work done in NMU's Law Clinic closer (in its use of systems) to a level of that found in a "for profit" law firm. In fact, the "blank canvass" of a law clinic allows creation of a slicker, and more efficient technology architecture than is the case in many large law firms, who have to deal with legacy systems which hampers full utilisation of newer technologies. To do this a consortium comprising of CDH, NMU and the technology partner CloudEssentials accessed funding provided by CDH to create a business whose aim it is to create a "package of software, systems, and know-how" to enable the law clinics (and in this pilot project, specifically the NMU Law Clinic) to continue their work for the most vulnerable people in need of legal aid and assistance, whilst also providing superior training to the students who aid the attorneys in the clinics.

A belief that drives the project is that excellent legal services (which includes excellence in systems and technology) should be more easily attainable for law clinics (and indeed small law firms). In a sense, with the help of the technology partner in LawLab, CloudEssentials, what was once perhaps unattainable to small firms and law clinics due to cost, complexity and the requirements for customisation and therefore also unavailable to their clients, will (we hope) become less expensive to recreate post the pilot project.

What does LawLab actually do? LawLab is a collective – a collective of technical know-how in IT and law – working together to map out the key processes in small legal firms and law clinics, sourcing, customising and combining key pieces of software, and implementing these within the firms and clinics. A key part of this process is upskilling the users of the systems and empowering them to service their clients more efficiently. LawLab is not a product. LawLab is a business that brings together resources to improve access to justice for those who cannot afford the fees of the large corporate law firms.

To be clear, the work done by the law clinics and small firms remain the work of its attorneys, to assist their clients with their best legal endeavours. The LawLab systems, however, will make that a little easier.

The combination of products, like any good recipe, will remain our secret for the time being and may change over time. But the key ingredients are recognisable to those who have worked in law – systems and processes to on-board clients, collect and save documentation (think FICA, think letters and court papers, emails and correspondence), matter management system (like diaries, workflows), document automation and time-keeping software.

The longer-term aim is to use what LawLab learns in this pilot project, to make future rollouts to law clinics and small firms faster, cheaper and more accessible.

SPECIAL PROJECTS, CAMPAIGNS,
TRAINING AND PARTNERSHIPS

JUST GRACE – CSR SUPPORT



Just Grace is an NGO focused on providing wide-ranging assistance for the Langa, Cape Town community, with a particular emphasis on assisting the youth of Langa. Its team of social workers, educators, tutors and community helpers work tirelessly to respond to the needs of the community in several areas, including providing food parcels – particularly under lockdown – career assistance, education and the overall development of the community. The Cape Town Practice has partnered with Just Grace on several occasions since 2018.

In May and June 2020 the Practice led a collection drive in the Cape Town office in which funds were collected to assist Just Grace in creating food parcels for the Langa community in response to the effects felt by the global pandemic and resultant lockdown. The funds raised by the Cape Town office allowed for the creation of food parcels to assist 228 individuals in Langa.

In October and November 2020 a further CSR campaign was run by the Cape Town office in support of Just Grace. This campaign called on the office to provide support to Just Grace in one of several ways, including providing organisational assistance, computer training, a book collection drive, a stationery collection drive and providing legal information sheets in which legal issues relevant to the Langa community are summarised. Under this campaign members of CDH's Human Resources and Knowledge Management teams facilitated career

guidance and computer training sessions for the Just Grace learners. The book drive produced over 30 books to be added to Just Grace's student library, and the stationery drive produced useful tools to assist the learners as they prepared for their end of year exams. Finally, fact sheets providing vital information and guidance around domestic and gender-based violence have been provided to Just Grace to circulate in the community.

The Practice looks forward to providing further support to Just Grace in 2021.

SPECIAL PROJECTS, CAMPAIGNS, TRAINING AND PARTNERSHIPS

IKAMVA LABANTU – LEGAL SUPPORT

Ikamva Labantu is an NGO providing a wide range of support to more than 25 communities across the Western Cape. Established over 50 years ago, Ikamva has become an impressive operation that responds to the various needs of the communities it serves in a manner that shows respect and love for these communities, and demonstrates its understanding of the importance of promoting and protecting the rights of members of the communities.

In 2018 and 2019, and in partnership with ProBono.org, the Cape Town Practice rolled out legal clinics aimed at supporting members of the communities in Ikamva's seniors' program. The clinics were largely run on a referral basis, with members of the Cape Town office consulting with the Ikamva seniors to provide preliminary advice, their view on the merits of the senior's matter and providing referral letters and bundles where necessary and appropriate.

As a result of the global pandemic no legal clinics were held in 2020. Even prior to the national lockdown, the Practice appreciated the importance of practicing social distancing, particularly given that the Ikamva seniors are considered a high-risk group with respect to COVID-19, and so the clinics were placed on hold. When the national lockdown began, the clinics became an impossibility.

This notwithstanding, the Practice greatly values the opportunity to partner with Ikamva and to provide meaningful assistance for the Ikamva seniors. As such, its priority for the time being is not to roll out the legal clinics afresh, but to ensure those seniors who have previously attended the clinics have received the assistance they required where referrals have taken place. This is in recognition of the need to provide meaningful assistance that properly addresses the legal needs of the Ikamva seniors, in a manner that promotes the prompt resolution of the legal matter for the seniors. Further legal clinics will only be considered once the Practice and Ikamva are satisfied that each senior who has previously attended a clinic has been properly assisted by the referral party.

The Practice looks forward to rolling this and further initiatives out with Ikamva Labantu in 2021.

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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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