

PRO BONO & HUMAN RIGHTS ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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CDH Pro Bono & Human Rights Practice continues to prevail with clients' right to citizenship cases

Since our SCA victory in the [Jose brothers' matter](#) in 2020, the CDH Pro Bono & Human Rights Practice (Practice) has continued to assist several clients in enforcing their rights to citizenship under section 4(3) of the South African Citizenship Act (Citizenship Act).

CDH Pro Bono & Human Rights Practice successful in holding the Department of Education accountable

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CDH Pro Bono & Human Rights Practice continues to prevail with clients' right to citizenship cases

Since our [SCA victory in the Jose brothers' matter in 2020](#), the CDH Pro Bono & Human Rights Practice (Practice) has continued to assist several clients in enforcing their rights to citizenship under section 4(3) of the South African Citizenship Act (Citizenship Act).

The Practice did face some difficulty following the directives made by the Minister of Home Affairs in terms of the Disaster Management Act 57 of 2002, under which the Department of Home Affairs (DHA) declined to accept or process any section 4(3) citizenship applications, since the onset of South Africa's 'hard lockdown' in March 2020, regardless of the clients' circumstances or if applications were submitted before the COVID-19 virus was prevalent in South Africa.

Ms Chitengu was born and raised in South Africa by her mom, who fled Zimbabwe decades ago. Towards the end of 2020, the Practice took over Ms Chitengu's matter. At the time of taking on her case, she was commencing her Masters of Laws Degree at the University of the Witwatersrand. Her application for citizenship was already submitted as far back as July 2019, however despite numerous attempts to follow up with the DHA, our Practice failed to receive the outcome of Ms Chitengu's application. In another case, the three

Mbumba sisters were born in South Africa to Angolan Nationals and have lived in South Africa all their lives. Our Practice applied for citizenship for the sisters in October 2019, however the Practice did not receive the outcome of these applications.

In light of the DHA's failure to process the aforementioned clients' applications, the Practice launched High Court proceedings in the Pretoria High Court in July 2021 in which Ms Chitengu and the Mbumba sisters were cited as applicants. The Practice reviewed the DHA's failure to process our clients' section 4(3) applications, and challenged the DHA's interpretation of its directives. Alternatively, it was argued that if the directives purport to preclude the DHA from indefinitely accepting, processing and/or adjudicating any applications in terms of section 4(3), irrespective of when the application was made and the circumstances of the applicant, they are to that extent unconstitutional, unlawful and invalid.

Despite initially filing a notice to oppose, the DHA subsequently agreed to adjudicate Ms Chitengu and the Mbumba sisters' citizenship applications, and they were provisionally awarded South African citizenship on 27 January and 1 February 2022, respectively. This outcome has had a material impact on the lives and futures of the Practice's clients who can now remain in South Africa as free citizens.

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Simultaneously, the Practice has been assisting Ms N, a 26-year-old stateless person who was also born in South Africa and has lived here all her life. In the early 1990's Ms N's parents fled the Angolan civil war and sought asylum in South Africa. Ms N submitted an application to the Minister for the recognition of her citizenship in terms of sections 4(3), 2(2) and 15 of the Citizenship Act in December 2018. Several years later, the Minister had still not taken a decision in respect of the application and the Practice proceeded to launch review proceedings in the High Court in September 2020.

The matter was heard on the unopposed roll on 13 July 2021 and the High Court declared that the Minister had unreasonably delayed in deciding Ms N's citizenship application. The Minister was also ordered to consider and decide the client's citizenship application within 30 calendar days of service of the order. Despite service of the order on the Minister (care of the State Attorney) and the Director General in July 2021, the DHA failed to give

effect to the order, this despite our best efforts to engage with the DHA regarding the enforcement of the order. The Practice therefore proceeded to supplement the papers and launched further proceedings in December 2020 in which we sought to declare the Minister in breach of the Court's order of July 2021.

Several years after her initial citizenship application was submitted, Ms N was subsequently granted provisional citizenship in January 2022.

Despite the long, often exhausting battles fought by the Practice against various organs of state, outcomes like the ones above remind us of our sense of purpose and why our work is so important. The Practice aims to continue guiding the way for other individuals within similar predicaments.

**JACQUIE CASSETTE AND
TRICIA ERASMUS**



CDH Pro Bono & Human Rights Practice successful in holding the Department of Education accountable

One of the growing areas of focus of our Pro Bono & Human Rights Practice (Practice) is promoting access to education and the accountability of public officials in the basic education system.

The Practice recently won an important victory in a matter in which we represent 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 (the School), a “no fee” paying coeducational English medium government school situated in Tsakane Township. The learner passed away as a result.

The Practice is assisting the family to claim damages from the Minister of Basic Education (Minister), and the Gauteng Education Department (Department) for the loss suffered as a result of the death of the learner.

The Practice also assisted the parents to launch an application (mandamus application) to ensure that the School, the Minister and the Department attend to the infrastructural defects at the school – which pose a serious threat to the safety of the learners at the School.

On the fateful day, the learner ran into her mobile classroom during break time to get out of a heavy thunderstorm. As she entered the doorway, the 17-year-old grabbed onto the doorframe and was electrocuted. She died on the scene. Sadly, this learner’s death is not the first death or injury to occur in the school environment due to unsafe school infrastructure.

Pursuant to the death of the learner the Department instructed a private law firm to conduct an investigation into the death of the learner. After investigating the firm issued a damning report which concluded that:

- *The School leadership and the Department knew that circuit breakers and earth leakage were missing in the distribution boxes in the mobile classrooms at the School after having been stolen on several occasions. They should reasonably have foreseen that*

harm may occur, and had a duty of care as diligens paterfamilias to protect the learners from harm, and had an obligation under the Regulations for Safety Measures at Public Schools and the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure to have replaced the safety mechanisms, and ensure that the classrooms were safe for learning and teaching. They failed in this regard.

The Report made the following recommendations, amongst others:

- That in the short term, and as a matter of urgency, the circuit breakers and earth leakage be replaced;
- That disciplinary steps be taken against implicated Department officials who failed to comply with their duties to attend to the problem;

CDH Pro Bono & Human Rights Practice successful in holding the Department of Education accountable

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- 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.

Despite numerous attempts by the Practice over a prolonged period of time to reach out to the Department regarding the implementation of the Report's recommendations no response was forthcoming. As a result, it became necessary to approach a court in order to hold the Department accountable. In March 2021, the Practice launched court proceedings in the Gauteng Local Division of the High Court (Court), Johannesburg, seeking a structural order against the Minister, the Department and the

School inter-alia and requiring them to take all steps necessary to comply with their constitutional, statutory and common-law obligations to protect learners at the School against the risk of electrocution, including:

- Urgently replacing and/or repairing the circuit breakers and earth leakage equipment and ensuring that all electrical installations at the School are safe for use.
- Clarifying the scope of responsibilities of all officials in the chain of command within the Department and providing clarity about who is responsible for each part of the maintenance program insofar as electrical installations are concerned.
- Improving security at the School to prevent the repeated theft of circuit breakers and earth leakage equipment.
- Undertaking community education programmes to make the public aware of the importance of electrical safety mechanisms and the risks associated with theft of these mechanisms.

- Repairing the storm-water drainage system in the area outside the mobile classrooms.
- Disciplining and holding accountable officials at the Department and the School who were responsible for the respondents' failure to comply with their constitutional, statutory and common-law obligations.

Despite numerous attempts by the Practice over a prolonged period of time to reach out to the Department regarding the implementation of the Report's recommendations no response was forthcoming.



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The Practice also sought an order requiring the Respondents to file an affidavit(s) within 15 days of the court order in which they account to the Court as to the steps they have taken to comply with their constitutional, statutory and common-law obligations to protect learners at the School against the risk of electrocution.

Section27, a public interest law organisation that does admirable work in the field of basic education applied and was admitted as an amicus curiae in the matter.

Disconcertingly, no response was received by any of the Respondents even to the court application. This despite our Practice reaching out to the Department through email correspondence and telephone calls to discuss the matter. The matter was accordingly set down and heard on the unopposed roll on 7 February 2022. The Honourable Judge Senyatsi who heard the matter granted the order without hesitation.

The Practice is proud of its efforts in having the school learners guaranteed their right of access to basic education in a safe and dignified environment as envisaged by section 29 of the Constitution.

JACQUIE CASSETTE AND GIFT XABA

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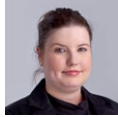


OUR TEAM

For more information about our Pro Bono & Human Rights practice and services in South Africa and Kenya, please contact:



Jacquie Cassette
Practice Head
Director
Pro Bono & Human Rights
T +27 (0)11 562 1036
E jacquie.cassette@cdhlegal.com



Tricia Erasmus
Senior Associate
Pro Bono & Human Rights
T +27 (0)11 562 1358
E tricia.erasmus@cdhlegal.com



Gift Xaba
Associate
Pro Bono & Human Rights
T +27 (0)11 562 1089
E gift.xaba@cdhlegal.com



Clarice Wambua
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E clarice.wambua@cdhlegal.com



Brigitta Mangale
Senior Associate
Pro Bono & Human Rights
T +27 (0)21 481 6495
E brigitta.mangale@cdhlegal.com

BBBEE STATUS: LEVEL ONE 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

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196.
Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111
E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001.
PO Box 695, Cape Town, 8000, South Africa.
Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388
E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D,
Riverside Drive, Nairobi, Kenya.
P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 |
+254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central,
Stellenbosch, 7600.
T +27 (0)21 481 6400
E cdh Stellenbosch@cdhlegal.com



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA