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My Lockdown Experience:

A workplace away from the workplace: A reflection on the supporting role of an organisation

By: Mattew December, Legal Intern, Cape Town

"What do you think the organisation can do for you and your personal development?"

This was the stand-out question for me during my interview with ProBono.Org in Cape Town during December 2019. I thought for a second, and the answer I gave was that I had a clear indication that I wanted to be a part of this special organisation.

On 16 March 2020, it was the beginning of a new week and panic hit due to the novel coronavirus hitting South African shores at an unprecedented high. The uncertainty was visible on everyone's faces and management engaged with staff about the fear of consulting with clients coming from all over the city and its outskirts. The support received was unbelievable as we were reassured that our health comes first and that measures would be put in place as soon as possible to protect us in the office.

After consultation with head office, management informed us that we would be working from home from 23 March and that our office would be closed indefinitely. The leadership shown by the management of the organisation was proactive and commendable as similar measures were then adopted as national policy when President Cyril Ramaphosa called a national lockdown in line with the Disaster Management Act. This illustrated the organisation's commitment to the wellbeing of its staff.

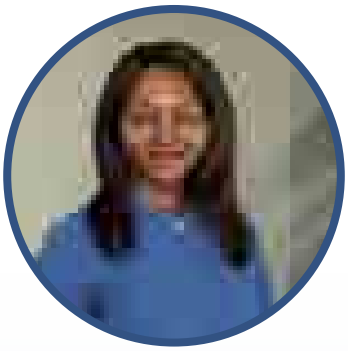
Presently, the whole organisation has a WhatsApp support group and various support channels have been introduced at office and national level to assist every employee during these trying and uncertain times. The organisation has also shown foresight in rapidly introducing a model by which employees are able to work from home and still earn an income. It is no secret that there is presently no obligation for employers to pay salaries as staff are out of office, however ProBono.Org has continued to remunerate its employees on time since the lockdown period was declared.

It is undoubtedly a huge challenge to operate during these times, especially considering the nature of the organisation's work and its limited resources. However, the model adopted by ProBono.Org has ensured that the organisation is able to continue with its mandate and facilitate access to justice for society's marginalised. This is especially important as ProBono.Org has to convince donors and potential donors that the organisation is making an impact. This basically means that statistics are very important. Although the organisation offers assistance via email and WhatsApp, the majority of clients were people that visited the offices for consultations. This has of course been impossible during the lockdown, however, the organisation has introduced a hotline where people may seek assistance and the telephone and email lines continue to be operative.

The COVID-19 pandemic has had an unprecedented effect on almost every facet of society. The invaluable role that ProBono.Org has played in the lives and wellbeing of its employees could surely be an example to other organisations on how to boost staff morale and maintain an effective level of productivity during this time. Everyone has a role to play in countering the effects of the pandemic and lockdown and as an employer ProBono.Org has risen to the occasion and provided proactive, decisive and supportive leadership. The role the organisation has played in supporting its staff is invaluable and one can only be grateful in knowing that it has been a privilege being part of such an incredible team. ●

Sayi Nindi and Meluleki Nzimande join the ProBono.Org Board

At their meeting in June 2020 the ProBono.Org board resolved to appoint two additional members to the board, Sayi Nindi and Meluleki Nzimande.



Sayi Nindi studied at the University of Pretoria where she graduated with an LLB and an LLM. She was admitted as an attorney in 2009. She worked at the Legal Resources Centre – Constitutional Litigation Unit – where she specialised in private sector accountability litigation.

Sayi has experience in Public Law, Administrative Law, Commercial Law, Employment Law, Class (Group) Actions, Constitutional Law, Business & Human Rights Law, Land claims, and Housing and Evictions Litigation.

Sayi has advised public entities, municipalities and government departments on appropriate procurement processes. She has also assisted with legal issues arising when tenders are evaluated and she has represented government where tender awards have been challenged. Moreover, she has advised on decisions that must be lawful, procedurally fair and reasonable. Sayi has also conducted judicial reviews of decisions made by the government and other organs of state.

Sayi has acted on behalf of communities and individuals who have challenged multinational corporations or multimillion-dollar projects over human rights violations. She has also acted as amicus curiae in a number of landmark cases.

She has acted for various corporate companies as well as state-owned entities in various labour disputes and has advised on the restructuring of businesses from an employment law perspective.

She has presented at various international conferences and workshops, including making submissions at the United Nations Human Rights Council in Geneva, Switzerland, and the African Commission on Human and People's Rights in Banjul, Gambia. Sayi has given a lecture at the University of Pretoria's Centre for Human Rights in Business and Human Rights.

Meluleki Nzimande hold the position of Chief Commissioner, International Trade Administration Commission of South Africa. He has a Bachelor of Science in Chemistry & Microbiology; and Bachelor of Laws from the University of the Witwatersrand.

Prior to taking up his present post, Meluleki was a Partner in the Corporate Department of the law firm Webber Wentzel, where he practised for approximately sixteen years, nine of which he spent as a Partner in that firm. He was a member of that firm's International Trade Law Unit for approximately fifteen years. The Unit advised numerous multinational and South African companies and government on various areas of international trade law, including matters involving understanding and enforcing rights and obligations arising out of bilateral investment treaties, multilateral agreements such as the World Trade Organisation (WTO) General Agreement on Tariffs and Trade, 1994, the General Agreement on Trade in Services, the Agreement on the Implementation of Article VI of GATT, 1994, the Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Safeguards.

Prior to joining Webber Wentzel, Nzimande worked for Unilever South Africa (Pty) Ltd (Unifoods Boksburg factory) where he held various positions including those of assistant laboratory manager, shift manager in the margarine plant and production manager of the oil bottling plant.

Nzimande volunteers his time to social causes, including the Reverend LW Mbete Education Trust which provides stop-gap financial support to students at tertiary institutions. He is a member of the National Association of Democratic Lawyers (NADEL) and the current Chairperson of the Johannesburg branch of NADEL. He enjoys travelling, reading and spending time with family and friends.●

Six Years Down the Road

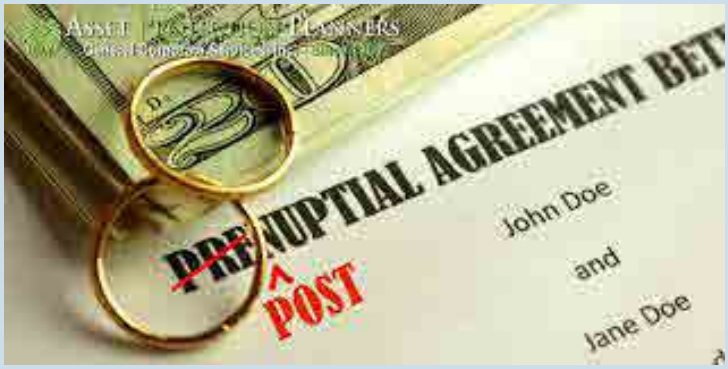
By Shamika Dwarika, Regional Director

Change. Adapt. Those two words seem to embody the spirit of my time with ProBono.Org. Six years can seem like a lifetime, but for me it has gone by in the blink of an eye. I have been through numerous changes within the organisation, from new staff and management and expansion of our national footprint through new offices, to awards ceremonies and appreciation days. Through it all, our willingness and ability to adapt to change has been the key to our success as an organisation. In this time of COVID-19, this has never been truer or more necessary. We have found new ways to work and continue to grow - ways that would have seemed impossible when I joined ProBono.Org on 1 July 2014. Few people find their passion in life and even fewer are able to make their passion their career. I have been one of those fortunate people. I have also been very fortunate to be based in Durban, with a panel of private attorneys who are dedicated and committed to undertaking pro bono work and partners who see value in what we do and provide support to us. Being at an organisation such as this, knowing and being able to see tangible proof of the help we provide to people, has been rewarding beyond words. For, as we all know, not only must justice be done, it must also be seen to be done. ●

Guest Slot

By Amorette Gangel, Associate, BDK Attorneys

Validation of a postnuptial agreement



On 26 May 2020, the Constitutional Court dismissed an application by an appellant who sought to have a postnuptial agreement, which was entered into between a married couple during the course of their marriage and not sanctioned by Court, declared valid.

In the matter of AM v HM, a couple were married out of community of property by way of an Antenuptial Contract. During the course of their marriage the parties entered into a postnuptial agreement whereby it was agreed that the wife would be entitled to half of the matrimonial estate upon divorce, contrary to the terms of the Antenuptial Contract.

The postnuptial agreement intended for the marital regime of the parties to be altered from out of community of property to in community of property. However, Section 21 of the Matrimonial Property Act, 1984 (Act 88 of 1984) dictates that should a married couple intend to change their marital regime, leave from the Court must be sought.

Subsequently, the parties instituted action for divorce and the wife sought to enforce the postnuptial agreement. The Regional Court dismissed the wife's claim on the basis that the enforcement of the postnuptial agreement was contrary to Section 21 of the Act and that at the time of signing the agreement, divorce was not contemplated.

The matter was taken on appeal to the High Court who overturned the decision of the Regional Court. The matter was subsequently taken on appeal to the Supreme Court of Appeal who upheld the decision of the Regional Court. The Supreme Court held that the wife had failed to prove that the postnuptial agreement was in contemplation of divorce.

The matter was then brought before the Constitutional Court who dismissed the matter on the basis that the appellant (the wife) sought to ventilate new issues which were not previously argued before the High Court and Supreme Court of Appeal.

It is imperative that when parties seek to alter their marital regime, application first be made to a High Court for such leave (permission). An agreement which is in contemplation of divorce may be enforced and relied upon by parties. However, a postnuptial agreement which seeks to alter the marital regime must first be approved by the court. ●

Is parental maintenance legally recognised?

By Melissa Engelbrecht, Legal Intern – Cape Town

When the word maintenance is mentioned, many often think of a woman claiming maintenance in respect of a minor child or a wife claiming maintenance from her soon to be ex-husband. But too often we overlook the possibility that as one gets older, the role of caretaker is reversed. The question then arises: can parents claim maintenance from their children?

In terms of the Maintenance Act 99 of 1998, parents and children have a reciprocal duty of support and the basis for a child's duty to support his or her parent(s) is the sense of dutifulness or filial piety.

It is of utmost importance to keep in mind that like any other application made to court there are criteria that need to be met on the part of the person to be maintained and the ability to support on the part of the person from whom support is being claimed. More specifically, a parent would need to prove his/her dependence on the child's support as well as prove that the child in question has the ability to take on this added responsibility of maintaining the parent.

South African courts have confirmed common law, in so far as that a parent can claim maintenance from his or her child. The aspect that required some clarity was what a parent was entitled to in terms of this support. This question was expressly dealt with in the case of Van Vuuren v Sam, where Rabie JA referred to the same criteria as aforementioned but also emphasised that support of parents must be confined to basic needs, namely food, clothing, shelter, medicine and care in terms of illness. However, this judgment did not create precedent as the same question was addressed in Surdus v Surdus where the court held that the quality of the parent(s)

life needed to be assessed and the support would need to be aligned with that.

When making an application of such a nature, more external factors are taken into consideration such as the issue of siblings, extra income and the quality of the parent(s) life. To discuss this in a practical sense, our courts would not allow parents to target one child because he or she has a slightly better paying job than their siblings. Where parents are working or receive a government grant, this will also be taken into consideration.

The law around the issue of parents claiming maintenance from their son-in-law or daughter-in-law is clear, and a parent cannot claim maintenance from them as a reciprocal duty exists between parents and child/ren and relates to them claiming from the nearest relative first. There are of course exceptions to this general rule – a parent can claim from his/her daughter- or son-in-law if the son or daughter is deceased and they can prove that they were financially dependent on the deceased.

A similar matter was dealt with in Osman v RAF, where Mrs Osman's son died in a motor vehicle accident. The money claimed from the Road Accident Fund was due to the deceased's wife, but Mrs Osman submitted a maintenance claim. Her son and his wife lived with her in the same house and he supported her financially as she was divorced and did not work. The court in this case looked at the neediness of a parent. Again, all she needed to prove was that she was dependent on the deceased. In this case the maintenance application was granted due to the fact that while her son was alive he would give her a credit card, buy groceries and pay her mortgage bond and this was enough for the court to establish neediness.

Times have indeed changed and with time the law too has evolved. The area of parental maintenance is still underutilised. At present we do not have a precedent-setting case and these matters are dealt with on a case by case basis where judges may use their discretion and other judgments as case guidelines..●

Section 7(6) of the Recognition of Customary Marriages Act 120 of 1998

By Phindile Cele, former Johannesburg intern

The coming into effect of the Recognition of Customary Marriages Act 120 of 1998 brought recognition of both monogamous and polygamous marriages, as in the past these types of marriages were recognised as customary unions. The Act introduced changes to ensure that customary marriages adhere to the principles provided by the Constitution. This is particularly evident in how the Act attacks the rules of patriarchy, and aims to ensure that women have the same status and capacity as their husband to acquire and dispose of their assets in a customary marriage. Previously, the matrimonial property system in customary marriages was regulated by the status differentiation between the rankings of houses in a polygamous marriage. The arrangement consisted of:

- Family property: property acquired by the family head which has not been allocated to any of his wives' houses, that he as the head has the right to use as he pleases; and
- General property: property acquired by the wife and children of a household.

This arrangement was considered unconstitutional as it placed women and their children at a disadvantage in that women involved in such marriages generally lack the opportunity to earn an income and acquire property. Previously a wife did not own any of her property during her marriage and would leave her marriage without having acquired any property because her capacity as a wife was limited to her husband's exclusive capacity to administer the immovable property.

As a result, the Act now provides that the default matrimonial system for monogamous customary marriages is a marriage in community of property and of profit and loss, unless the parties enter into an antenuptial contract excluding community of property, profit and loss. Section 7(6) was enacted to ensure the protection of all parties who wish to enter into a customary marriage, especially women. This section provides that a husband involved in a customary marriage who wishes to enter into a further customary marriage with another woman after the commencement of the Act must make an application to the court to approve a written contract which will regulate the future matrimonial property system of his marriages. After taking into consideration the rights of all the interested parties, the court terminates the existing property system and distributes the property between the spouses equally.

Statistics however reveal that most parties who enter into customary marriages are indigent people who are based in areas where there are issues of inaccessibility to courts, which then results in section 7(6) being less effective. The Act as well is silent on the consequences of non-compliance. However, we find authority on the principle of non-compliance in the case of Mayelane v Ngwenyama. The Supreme Court of Appeal in 2012 heard that section 7(6) deals merely with the patrimonial consequences and that non-compliance does not render the marriage void. The court further found that the failure to comply with the mandatory provisions of this subsection cannot but lead to the invalidation of subsequent customary marriages, but the further marriage would be out of community of property. This however means that the consequences of their patrimonial interests are directly opposed to each other as we see the rights of both wives compromised. This is the reason why in most polygamous marriages we find that one spouse is married in community of property and the other spouse is married out of community of property. This creates conflict as the first wife's property is often used to establish the prospective wife's household, and the prospective wife would own nothing, while the first wife owns a share in her property with their husband. It is evident that a further customary marriage without a court-approved written contract influences one or both of the spouses negatively.

As it stands in terms of the Act, there is a need for development in terms of the consequences of non-compliance of section 7(6). There is a great need to advise and encourage those who are parties to a customary marriage, or those who are looking into entering into a customary marriage, about the consequences the law will present them with should they decide to enter into a further marriage without obtaining approval from the court.●

Write for us

We would like to invite legal practitioners to contribute to our bi-monthly newsletters by writing an article of up to 400 words (one page) on a topical issue of law. Please indicate your interest to the editor at **margaret@probono.org.za**

The deadline for articles for the next issue will be **1 September 2020.**

ProBono.Org®

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