WERKSMANS
ATTORNEYS

LEGAL UPDATE

Pro Bono Matters

1 March 2024 *7 min read*

In the past year, our pro bono team and other lawyers from Werksmans worked on a variety of matters across different legal fields. The following are summaries of a few such matters.

Blowing the Whistle

The Whistleblower House referred an individual, Mr Q, who had discovered wrongdoing within the multi-national company that he worked for. Werksmans' pro team advised Mr Q on the procedures for making protected disclosures and his rights in the process. Acting on the guidance provided by Werksmans, Mr Q blew the whistle in compliance with the company's internal policies and procedures. In response to the protected disclosure, the company's international head office appointed a law firm to conduct an internal investigation. The investigation exposed wrongdoing within the company, thus confirming the legitimacy of Mr Q's disclosures. As a result, disciplinary action was taken against several individuals (which included the dismissal of a senior executive). In expressing his gratitude for Werksmans' assistance, Mr Q wrote:

"[The company's actions] have left me satisfied that my work was not in vain.

Therefore, I would like to thank you for assisting me in the manner that you did, I have also learnt a lot about what whistle-blowers go through in the process of blowing the whistle and do believe that there is still a lot of research that needs to be done on whistle-blowing pertaining investigators who sometimes are not well-trained or do not know or understand how to deal with whistle-blowers."

Fighting for Identity

Ms M, a 27-year-old mother, whose birth was not registered with the Department of Home Affairs ("DHA") upon her birth and who consequently did not have a birth certificate and identity document approached our pro bono team for assistance with applying for the late registration of her birth. Despite being a South African citizen, Ms M faced many difficulties due to her birth not being registered with the DHA. For example, she was unable to complete her high school education, she could not secure employment, she could not apply for social grants that she was entitled to, she was unable to access basic services requiring proof of identity and she was unable to register the birth of her daughter. Ms M's mother, who was also undocumented, had passed away when Ms M was an infant, and her biological father is unknown to her. Werksmans assisted Ms M by guiding her to obtain proof of her identity and engaging with the DHA on her behalf. Through our interventions, over a period of three years, Ms M's birth was finally registered in December 2023. She now has an identity number, which opens up new opportunities for her to live a life of dignity.

To Arrest or Not to Arrest?

In 2023, a warrant was issued by the International Criminal Court ("ICC") for the arrest of President Vladimir Putin of Russia, on the basis that he had committed war crimes involving the unlawful transfer and deportation of children, amongst other things. In terms of the ICC arrest warrant, countries that were state parties to the Rome Statute of the ICC – which includes South Africa – were obliged to arrest and surrender any person against whom such a warrant had been issued, if that person entered their country. It was reported that President Putin had confirmed that he would be attending the BRICS Summit in South Africa which was scheduled for August 2023. Consequently, an urgent application was brought in the High Court against the relevant government officials, in which the applicant sought a declaratory order that South Africa would comply with its obligations to arrest President Putin, should he enter the country. Werksmans pro bono team acted

for an international human rights organisation, Amnesty International, in an application to be admitted as *amicus curiae* (or friend of the court) in the matter. Our client was duly admitted as *amicus curiae* and we made written submissions on two discrete legal points: the government's flawed interpretation of Article 97; and South Africa's legal duties in light of the fact that the crimes for which President Putin stands accused constitute "grave breaches" of International Humanitarian Law (under the Geneva Conventions of 1949). While the matter was settled between the applicant and the government respondents on the day of the hearing, the court expressed gratitude for our client's submissions and involvement as *amicus curiae*.

In Contempt

Werksmans represented a pro bono client in contempt of court proceedings in the Labour Court. Following his dismissal in 2018, the client had referred an unfair dismissal dispute to the CCMA where it was found that his dismissal was unfair. The CCMA ordered that he be reinstated. The employer refused to comply with the order after which the employee brought a contempt of court application in the Labour Court, initially representing himself. His application was dismissed after the court found that he had cited the incorrect person as a director. The employee then approached SASLAW for assistance, who in turn approached Werksmans. Werksmans represented the employee in the re-launched contempt of court application. On the eve of the hearing, the employer opted to have the matter settled out of court. The parties concluded a settlement agreement in terms of which the employer would reinstate the employee. The employee is due to report for work on 1 March 2024 – more than five years after his dismissal.

Enforcing a Cancer Patient's Right to have Access to Healthcare Services

A cancer patient sought assistance from Werksmans after being unreasonably denied chemotherapy at a government hospital. A Werksmans lawyer accompanied the patient to the hospital to fight for her right to receive the life-saving treatment. The team navigated the medical bureaucracy, advocating fiercely for the patient's rights throughout the process. As a result of Werksmans' intervention, the client finally received the chemotherapy treatment she so desperately needed.

Preventing an Unconstitutional Eviction

Werksmans pro bono team represented the South African Human Rights Commission ("Commission") in a dispute involving a municipality which sought to evict a group of families. The Commission had been approached by the group of families who advised that they had been informed by the municipality that a court order had been obtained against them, in terms of which they were required to vacate the location within 30 days of the order, and would be relocated to a secondary location. Werksmans intervened on behalf of the Commission (and the group of families) on the basis that the secondary location to which they would be relocated did not meet the requisite constitutional standards for such sites in numerous ways. Additionally, Werksmans pointed out that the eviction order was in any event unenforceable as it was obtained following numerous material averments being made which were factually inaccurate. Following engagements with the municipality, the impending eviction of the group of families was halted, preventing what would have been an unconstitutional eviction.

Protecting Privacy

An important legal development in South African law in the recent past is the impact of the Protection of Personal Information Act 4 of 2013 on the right to privacy and protection of personal information. In 2023, the Information Regulator issued an enforcement notice in which a government department was found to have breached its statutory obligations to protect the personal information of a group of individuals. Werksmans' pro bono team is currently representing a number of the affected individuals in instituting a civil claim against the government department responsible for the transgressions.

Reversing the Fraudulent Transfer of a Property

Werksmans represented an individual who was a victim of a severe case of identity theft, which resulted in the fraudulent sale of her RDP home ("the property") to unknown third parties. The client was living on the property when the fraud occurred and only found out about the fraudulent sale when she was served with an eviction application instituted by the buyers of the property, who were at that stage reflected as the new owners of the property on the title deed. We assisted the client by staying the eviction proceedings and then proceeded to institute an application to reverse the fraudulent transfer of the property on behalf of the client. The court found in the client's favour and

the client has now received her valid title deed from the Office of the Registrar of Deeds. The client is now able to enjoy her full rights as the rightful owner of the property.

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