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ATTORNEYS

PRO BONO

Recent pro bono highlights

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Werksmans pro bono highlights – National Wills Week

During the week of 13 to 17 September 2021, Werksmans participated in National Wills Week. This is an annual pro bono initiative conducted by various organisations across the country aimed at advising members of the public of the importance of having a valid will. During the course of that week, legal practitioners consult with members of the public and assist them by drafting wills on their behalf.

General

The Constitutional Court found the respondent in a contempt of court application before it guilty of that crime and sentenced him to 15 months' imprisonment. Aggrieved, the respondent brought an urgent rescission application seeking to have that order set aside on the basis that: it was made in his absence; it was erroneously granted; it unjustifiably infringed certain fundamental rights (sections 12, 34 and 35 of the Constitution) to which he is entitled; and it was in the interests of justice to do so.

Several parties opposed the application. Werksmans represented a non-profit organisation that was joined in the matter as an *amicus curiae* (friend of the court). The scope of the arguments made on our client's behalf was limited to outlining what the dictates of the rule of law enjoined the court to do in the circumstances. Having considered the parties' submissions, the court dismissed the application on the basis that it did not meet the statutory and common law requirements for rescissions.

Property

The body corporate of a sectional title scheme instituted action against an elderly woman (our client) who owns an apartment within the scheme. They alleged that she owed approximately R400 000.00 in arrear levies. After several failed attempts to resolve the matter herself, she approached Werksmans for assistance. In defending the action, Werksmans highlighted numerous shortcomings in the body corporate's claim.

Consequently, the body corporate agreed to settle the dispute with our client amicably. Upon the conclusion of the settlement agreement, client said: *"I will forever be indebted to you guys for not only saving this house but also my health... thank you and the entire law firm for all the hard work provided to me throughout the case. I am blown away by your patience, integrity, support and all the hard work you and your team showed on my behalf. Thanks for prioritizing me as a client and doing everything in your power to help me reach settlement on this matter all on Pro Bono basis"*

Three siblings (our clients) had been resident on a property since birth. Our clients' grandfather and his dependants were the registered lessees of the property since 1979 in terms of the Regulations Governing the Control and Supervision of an Urban Bantu Residential Area and Relevant Matters. Our clients' grandfather passed away in 1981. Subsequently, three relatives of the deceased applied (in 2001) for the property to be registered in their names in terms of the Conversion of Leasehold to Freehold Act.

Following a substantive adjudication process, the adjudicator ordered (in 2002) that the property be registered in our clients' names on the basis that our clients' father had the strongest right to the property, and following his death, that right then vested in our clients (who were all still minors at the time). Dissatisfied, the relatives appealed the adjudicator's decision, but were ultimately unsuccessful. The registration of the property in our clients' names was subsequently effected in 2009. In 2017, the relatives launched a judicial review in the High Court in an attempt to set aside the issuance of the title deed. Werksmans opposed the review application on our clients' behalf.

Having considered the matter, the court dismissed the review application citing the inexplicably long delay in bringing the judicial review, as well as the fact that the relatives' allegations that they had a "right" in the estate of our clients' grandfather was "without foundation".

Employment and Labour

The services of four employees were terminated due to the operational requirements of the employer. The four employees referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). The matter was referred to conciliation where the dispute remained unresolved. The employees then referred the dispute to the Labour Court. The employer opposed the employees' dispute in the Labour Court.

The employees approached SASLAW for guidance where they were referred to Werksmans for pro bono assistance. Acting on their behalf, Werksmans amended the employees' papers and thereafter called for a pre-trial conference. Upon receipt of the amended papers, the employer proposed that the matter be settled. Following settlement negotiations, the employer agreed to pay each of the employees 12 months' compensation (the maximum compensation awardable to employees dismissed based on an employer's operational requirements in terms of the Labour Relations Act) as well as outstanding statutory payments to which they were entitled.

In 2016, an employee was employed on a year-long fixed-term contract. In the years that followed, the fixed-term contract was renewed yearly. In 2020, the employer informed the employee that he would be receiving a salary increase in the following financial year. A day later, the employer reneged on this commitment and instead informed the employee that his fixed-term contract would not be renewed.

The employee referred an unfair dismissal dispute to the CCMA. The matter remained unresolved at conciliation after which it was referred to arbitration. The CCMA advised the employee to approach Werksmans for pro bono assistance. In anticipation of the arbitration, Werksmans compiled evidential documentary bundles on the employee's behalf and prepared him for the hearing. The arbitration was heard over two days. In the arbitration award that was subsequently rendered, the employee was found to have been unfairly dismissed and was consequently awarded compensation.

Education

A university student suffering through years of untreated acute clinical depression and severe anxiety failed a non-core (but compulsory) module in her second academic year. The university threatened her with academic exclusion and forced her to sign an undertaking that she would pass the failed module, as well as her remaining third and fourth year modules. In her third and penultimate year, her depression worsened due to extenuating circumstances. Despite this, she passed all her third year modules, but once again failed the module she had previously failed – she obtained 0% due to a technicality occasioned by a change in the programming code for that module.

The university terminated her studies before she could commence her fourth and final year, arguing that she had contravened the undertaking. Her appeals within the university structures were declined at every level. She therefore approached Werksmans for assistance. Werksmans engaged with the university on her behalf, highlighting a bevy of factors which rendered their decision unfair and/or unlawful. As a result, the university overturned its decision to terminate her studies and re-admitted her for her final academic year. Upon learning of her re-admission, she said: *"This is the best news. Thank you for all the work and effort you have put into this and fighting for me. I really appreciate it. Thank you is all I can say but it will never be enough for what you both have done."*

A university student passed all his modules, thereby completing the requirements for his degree. He had secured a job and was due to start as soon as he submitted a copy of his degree to his employer. When he enquired about his graduation date, the university informed him that

he had not fully met the requirements for his degree as he had one compulsory module outstanding, and he therefore did not qualify to graduate.

However, the module in question had been phased out several years before, as a result of which it was never presented to him as a module for which he could register – which is why he had never studied it. Aggrieved, the student approached Werksmans for assistance. Through the pro bono department's intervention, the student was able to obtain his degree and retain his job. Upon completing our mandate in his matter, he said: *"...I would love to thank you for your services. It helped to push the [university]. I would have not received the degree if I did not involve you in the matter. Please continue to do great, someday people like me will offer you a great reward for your services."*



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