

cape town pro bono cases

slippery floor

pro bono work by julius oosthuizen

Our client slipped and fell on a tiled floor in the Golden Acre shopping centre. The floor was slippery and appeared to be grimy, in all likelihood because it had not been cleaned properly. The accident was witnessed by her two daughters, and there were no warning signs in the area. It appeared that the centre management had previously been made aware of the dangers, however, and subsequent to our client's fall, the floor area in the relevant part of the centre was covered with a non-slip coating. As a result of the fall, our client sustained a fracture to her left ankle that required medical attention and ongoing treatment. She was also immobilised for a period of 10 weeks. She approached us for help in recovering her losses, and to negotiate on her behalf with the relevant insurance company.

After obtaining an assessment of our client's potential future medical expenses, we intervened successfully with the insurance company and negotiated a settlement payment of R65 000 in compensation for past and future medical expenses and general damages.

justice for an injured worker

pro bono work by bridget murray and tess mclaren

Our client is a cleaner at a school in Mitchells Plain, and was injured during the course of her employment in 2002 when a box of A4 paper fell from a shelf onto her shoulder. She attempted to claim compensation from the Department of Labour shortly thereafter as a result of these injuries, but her claim was rejected. The Compensation Commissioner found that there was no evidence of any permanent disablement having been suffered by her. Almost five years later, she still suffered substantial pain and discomfort, and requested that we assist her in objecting to the ruling originally made by the Compensation Commissioner.

We arranged for further medico-legal reports to be prepared and submitted an objection to the original ruling of the Compensation Commissioner in June 2006. We received notification (more than a year after having lodged the objection and notwithstanding constant follow-up with the office of the Compensation Commissioner(!)) that the Compensation Commissioner had, on the strength of our submissions, reconsidered the facts and medical records and had agreed that she had suffered a 15% permanent disablement as a result of the injuries sustained. She has accepted the award of the Compensation Commissioner and is eagerly awaiting payment of the compensation to which she is entitled as a result of the award, which is an amount of approximately R18 000.

a maintenance defaulter gets his come-uppance

pro bono work by vanessa bell

Our client approached our pro bono office about an order attaching arrear maintenance from funds that were about to emanate from the sale of a property that she and her ex-husband owned in half shares. They were divorced in 2006. She advised that since their separation in 2004, she had a maintenance order in place which her ex had continuously defaulted on (R300 per month for four minor children). She had instituted a number of criminal cases against her ex in respect of the arrears, but to no avail. The conveyancer had told her that the arrear maintenance could not be deducted from the sale proceeds of her ex's half share without a court order authorising this.

Her ex was not formally employed, so an emoluments attachment order was therefore not an option. After considering s26 of the Maintenance Act, which also allows for the civil enforcement of arrear maintenance by way of an attachment of a debt owed to the defaulter or a warrant of execution against movable or immovable property, I decided to bring an application for an order for the attachment of a debt, the debt being the proceeds of the sale owed by the purchaser to the client's ex-husband. An application was successfully brought and the court ordered that the arrears, an amount of R12 450, be attached and paid to her upon registration of the transfer of the property.

As the client's ex-husband was a habitual defaulter, the maintenance officer suggested a further application be brought to attach some or all of the balance of the proceeds to secure future maintenance. This would involve an ex-parte application for an interim order to "freeze" the balance of the proceeds in the conveyancer's account and a rule nisi calling upon the client's ex to appear at court to show cause why some or all of the balance of the proceeds should not be administered in respect of future maintenance. I was aware that an application of this nature could be brought against a defaulter's pension fund in terms of the Maintenance Act, but whether this could be done in respect of funds of a different source would be something new.

I brought an application motivating the interim order by setting out the history of the ex-husband's history of default, which was well documented at the maintenance court. The application was also motivated on the basis of it being in the children's best interests to secure future maintenance and that without the assistance of the court, there was a strong likelihood that the ex-husband would continue to default in respect of his maintenance obligations. The maintenance court granted the interim order freezing the funds. The hearing of the matter in

terms of the rule nisi is yet to take place, so the outcome is at present unknown. Watch this space!

one door closes, another opens

pro bono work by keren machanik

Our client was employed by a timber company on a permanent basis. He returned to work in January 2007 to be told by the employer that he would only be required to work on a one-week-on, one-week-off basis. Then, at the end of January, he arrived for work, as usual, only to be told that the truck he had been driving was damaged. He was taken aback when the employer presented him with an acknowledgement of debt document for his signature. He refused to sign the AOD document and left the premises.

At the CCMA hearing, he was unable to successfully prove he had been dismissed. At this point, he approached our pro bono office for assistance. According to the employer's version, our client had simply walked off site. His version was that they had told him if he did not sign the AOD, there was no work for him. The witnesses who gave testimony at the enquiry all seemed to corroborate the employer's version. On the facts there did not seem to be grounds for review. However, even though there may not have been grounds for review, the employer was obliged to correctly calculate and pay him the termination money owed him. This is because he was a permanent employee and to pay him only for the weeks worked and not for the weeks he was requested to "hang around", was in contravention of the Basic Conditions of Employment Act. Also, if there had been any damage to the vehicle he was driving, these damages had to be quantified, blame apportioned and any agreed deductions from his salary would be limited to a quarter of the salary amount owed. None of these procedures had been followed. We sent correspondence to the employer detailing our client's rights and a demand for the monies owed him (R1 500). Three days later, all monies were paid.

motor vehicle matters

pro bono work by fatima ebrahim and max ebrahim

Our client concluded a verbal contract with the owner of a used car sales business in terms of which he would purchase a BMW motor vehicle. He paid the full purchase price of R12 000 and took delivery of the motor vehicle on 15 November 2006.

On 6 March 2007, he was informed by the Sheriff of Khayelitsha that the motor vehicle which he had purchased from a Mr X was under judicial attachment. The Sheriff accordingly removed this motor vehicle and later sold same in execution on 27 March 2007.

We instituted action in the Wynberg Magistrate's Court against Mr X for the payment of the purchase price of the motor vehicle which was removed by the Sheriff. Mr X did not enter an appearance to defend the action and default judgment was granted. Execution proceedings commenced and the Sheriff attached a motor vehicle owned by Mr X and this was later sold for R14 000.

Mr X attempted to have the default judgment rescinded, but was unsuccessful in his attempts at doing so. The Sheriff furnished a cheque for the amount recovered on the sale of the vehicle, less all his costs incurred in the matter, which costs were quite substantial. The Sheriff had not attached sufficient moveable property of Mr X in order to cover both the judgment debt and any costs to be incurred in recovering such judgment debt. We are currently in the process of pursuing all the outstanding costs incurred by the client in recovering the judgment debt. At this stage, our client has received a cheque for the amount which the Sheriff has recovered based on the sale in execution, less the disbursements which have been incurred in pursuing such recovery. A property search has revealed that Mr X owns two immovable properties. We will proceed with further execution proceedings against Mr X's property, firstly moveable and then immovable property, and there appears to be very good prospects of successfully recovering all our client's costs incurred in this matter. Watch this space!

sexual harassment

pro bono work by bradley conradie and ebrahiem abrahams

Our client was exposed to sexual harassment in the workplace by a fellow employee in the form of unwelcome, lewd and suggestive comments of a sexual nature which our client found offensive.

Our client, understandably traumatised, told the harasser that she found his behaviour unwelcome and asked him to stop. Despite her request, he persisted. Next, she turned to her employer for help. Her employer, however, was unsympathetic, despite her documenting the various incidents. Finding her working conditions intolerable, she resigned. At this point, she approached us to assist her in a claim against the employer.

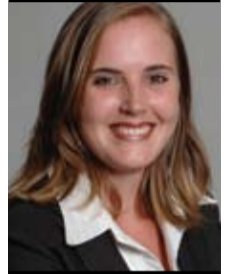
The matter was set down to be heard in the Labour Court last December. However, before the matter was to be heard, the employer thought better of it and decided to settle, agreeing to pay our client R10 000, which was equal to just over six months' salary.



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