

## **PRO BONO LEGAL SERVICES INITIATIVE**

### **Fundamental Objective of KwaZulu-Natal Division**

The fundamental objective of the division is to have a transformed justice system which is accessible to, protecting and benefitting all the citizens alike including poor and disempowered members of the society. The desired system must also be understandable and responsive to the needs of all its users. Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or any other impartial and independent tribunal or forum. This section guarantees the right to access to justice which is a fundamental human and democratic right and a pillar of a free and equal society, crucial to the enforcement of the constitutional rights. It therefore follows that access to justice is the most basic right without which most of the human rights cannot be realised, be it civil, social, political or economic. An access to justice may take three important forms, namely physical access to courts, the existence of multilingual courts teemed with interpreters proficient in various languages so to ensure that all understand the court proceedings and the provision of legal representation so to prevent the lack of economic resources from constituting a barrier to an access to justice.

### **Litigation Cost**

Around the world cost of litigation is a major barrier to accessing courts and fear of being saddled with costs should the litigant not be successful serves as an incentive to abandon claims which have good prospects. The costs of litigation are high and in consequence thereof the system becomes unequal for people who are wealthy and those who are poor. Poverty makes it difficult for the poor to enjoy equal protection and benefit of the law. The poor, disadvantaged and vulnerable people should not be prohibited through economic means to access the courts and assert and defend their rights. An access to justice by the poor, marginalised and disempowered section of the population can be made real by the provision of pro bono legal services and public interest litigation initiatives, as social responsibility programmes aimed at providing free legal assistance for those who cannot afford, provided the legal profession acknowledges that it has an obligation to assist. This is precisely so because legal profession is crucial to the protection, advancement and enforcement of human rights entrenched in the Bill of Rights and the promotion of the Rule of Law. The word pro bono originates from Latin phrase, "*pro bono publico*" which means for public good. This describes legal work which the legal practitioners undertake without remuneration as a public service and for which pro bono clients do not have to pay. The public interest matter is the one which on the face of it seems to affect an individual but the positive outcome thereof benefit a large number of people (the notable example is an infringement of a human right).

### **Setting of Pro bono help desks**

Seeing the hardships experienced by the unrepresented litigants, more particularly, in foreclosure, eviction and deceased estates matters and the difficulties of the majority of the court users in their encounter with the law and court procedures in general, I approached Pro Bono.Org and later the Chairperson of the KwaZulu-Natal Law Society (KZNLS) Pro Bono Committee, Mr Pooby Govindsamy,

for assistance. I requested them to set up help desks both at Durban and Pietermaritzburg High Courts. The Pro Bono.Org undertook to set up a help desk at Durban High Court as a pilot project with effect from the 14<sup>th</sup> of March 2017. This would due to budgetary constraint only operate once a month. Needless, to state that this was far inadequate a service, but half a loaf is better than no bread at all. However, the KZNLS Pro Bono Committee responded by making an undertaking to set up help desks in partnership with Pro Bono.Org as well as Legal Aid South Africa at both Durban and Pietermaritzburg High Courts with effect from the 10<sup>th</sup> of April 2017, which would operate on daily basis from 09h00 to 12h00. This is much appreciated and I am much grateful for this initiative.

### **Function of the help desk**

The function of the help desk is to provide legal advice and legal representation, where it is required, to unrepresented litigants who have matters on the roll on any other particular day. The judges are requested to refer the unrepresented litigants to these help desks for legal assistance. As the counsel would probably be at court, on a fee-paying brief, it would constitute a minor inconvenience also to take instructions from the attorneys at the help desk and to appear, where necessary, on behalf of the affected litigant. The junior counsel or attorney would gain experience in matters where the litigant would have been without representation at all but for their assistance.

The pro bono legal services are essential and necessary for litigants that reside in rural, farming and township areas, in particular. In most instances, the litigants that require pro bono legal services are often those who are least likely to know where to begin to seek the help that they require, and lack of economic means to make extensive inquiries for help. If each legal practitioner be it an (attorney or advocate) may receive only one pro bono instruction/ brief an impact on access to justice would be significant. The means test will help to assess the pro bono client status, i.e. whether the client can afford legal fees.

### **Accountable, efficient and independent legal profession**

The Law Society and the Bar Council in all their endeavours should strive to maintain accountable, efficient and independent legal profession. The legal practitioners should also promote public interest litigation and treat access to justice as their own project so to make a difference in the lives of others.

### **Attorneys litigating at the High Court**

In order to familiarise themselves with and adapt themselves to high court practice, processes and procedures, the attorneys should start litigating in the high court on their own in certain matters. A mere certificate of appearance at the high court does not on itself make them become conversant with high court practice. Practice makes perfect. More so, in order to enable them to become more versatile or multi skilled, the attorneys must also strive to run diverse legal practices.

### **Briefing patterns still skewed**

The State should give legal work to disadvantaged legal practitioners. Such initiative will help to hone the legal practitioners and prepare them for the provision of quality legal services to members of the public. Pro bono legal services and public interest litigation will to a certain extent help to transfer skills from previously advantaged legal practitioners (predominantly white) to previously disadvantaged legal practitioners (predominantly black). This can be achieved through the pairing of black legal practitioners with their white counterparts in selected matters. The exercise will also help to address issues relating to demographic imbalances in the racial and gender composition of the bench.

### **Long-term community education programme**

Owing to poverty, lack of education and ignorance most citizens are not aware of their constitutional rights and remedies for their breach, as well as of court processes and procedures. The programme will also help to make legal proceedings and judgments comprehensible to the man on the street and to spread information of law about important legal developments. I am glad to state that the envisaged programme is scheduled to commence at 07h45 on 12 April 2017 in Ukhozi FM, and every subsequent Wednesday thereafter.

**Prepared by: Mjabuliseni Isaac Madondo**

**Deputy Judge President of KwaZulu-Natal Division**

**10 April 2017**