



Practical Legal Work to Students is the ‘Messiah’ to Save the LLB Curriculum: Section 20, South African Black Women in Law, in the Human Rights Court

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February 11th, 2020

Introduction

Reports, articles, and reviews are being submitted to deal with the ongoing complaints about the South African Bachelor of Laws degree.⁴ However, through all these protests, the solution to this problem seems to be unclear. It is possible that the inspectors of this problem may complicate the procedures to overcome this barrier more than necessary; maybe what is needed is the return to the basics.

This means training aspiring legal practitioners the old fashion way. This traditional method has been understood by Nova University Law Center in the 1980s.⁵

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⁴ ‘Major shake-up for law degree following report’ *IOL News Online* available at <https://www.iol.co.za/news/south-africa/major-shake-up-for-law-degree-following-report-24834116> accessed on 17 December 2019.

⁵ RI Abrams & MR Masinter ‘The New Nova Curriculum: Training Lawyers for the Twenty-First Century’ (1987) 12(77) *Nova. L. Rev* 77.



Nova created workshop programs to advance lawyering skills development through simulation and drafting exercises.⁶ In other words, Nova created programs to expose students to practical legal work to raise the high standard of their law degree in actualising competent legal practitioners.

South African Black Women in Law (SABWiL) has realized this problem and immediately provided a solution through its annually held Human Rights Court. The proceedings of this court function similarly to the Nova program, with the mission of exposing students to practical legal work. Coming to the end of 2019, SABWiL hosted its fourth annual Human Rights Court⁷ in commemoration of the signing of the South African Constitution in Sharpeville, Soweto by the first democratic President Nelson Mandela on 10 December 1996.⁸ The case hypothetical dealt with section 20 of the Constitution, which is the right to citizenship. During the proceedings, three parties made submissions, which are the Applicants, Respondents, and *Amicus Curiae*. This paper is to look at different views from the three parties and reflect on the efficacy of the SABWiL Human Rights Court in enhancing their advocacy and legal skills, as aspiring legal practitioners.

Moot Courts are a useful instrument in giving practical legal knowledge to students, which cannot be achieved through reading books alone. It can be compared to swimming, to be a skilful swimmer, one needs to get into the water and not merely read about the water. Our society needs efficient lawyers, for the purpose of providing proficient legal practitioners who are flawless. Mooting is essential to build lawyers for the benefit of the society through their competency.

Overview of the Proceedings

The counsel for the Applicants, Respondents and *Amicus Curiae*, including the justices, had to meet in the morning for a brief introduction before the proceedings. A nervous feeling was witnessed amongst the participants, and this was due to little or no mooting experience at all. However, within the midst of

⁶ Ibid 2.

⁷ SHRC Case Scenario

⁸ #s20 SHRC Directive, para 1.



nervousness, one of the *Amicus Curiae* participants highlighted that ‘being nervous and being excited is the same sensation.’⁹ The crucial point which can be deduced from this point is the excitement that flooded the faces of the participants.

Boitumelo Nqai, who is the deputy president of SABWiL Alumni, opened the proceedings with a moment of silence, remembering the women who have recently been brutally murdered and abused through Gender-Based Violence. Secondly, Madillo Mofokeng, who is the president of SABWiL Alumni, gave an alumni address on the importance of SABWiL moot court training and the reasons behind its formation. Furthermore, she alluded to the importance of being woke, reading, and academic writing, especially as aspiring legal practitioners. Lastly, Veroschkka Motimele, who is the director of events, gave a reading of the case hypothetical and a brief introduction of the parties involved. After the introductory session, the proceedings commenced, starting with the Applicant’s lead counsel to the last junior counsel, representing Donald and Mila Person, arguing for the return of Ms. Person and her child, Mikael. The counsel for the Respondents followed with the same sequence, were arguing on behalf of the Minister of Home Affairs and opposing the return of Ms. Person and her child. Lastly, the *Amicus Curiae* made their submission and gave different views to the court to take into consideration. The presiding justices gave a clear and unambiguous judgment with reasons. The judgment was handed down, the Applicants received a majority judgment, while the Respondent received a minority judgment, and ultimately the court decided that Ms. Person and her child should return to South Africa, so that she can stand trial.

Overcoming Barriers to Progress

Like every challenge faced, the only solution is to overcome it. Despite the difficulties faced by the teams, they managed to overcome them. Starting with financial constraints, SABWiL Directors generously provided a traveling and accommodation scholarship assistance for the participating students. With support, everything immediately fell into the right place.

The team had to contribute virtually less amount of money after the support. The teams finally managed to figure a solution to the internet connection that was

⁹ Deb Bixler, Cash Flow Show Radio.co.



causing a backlog, and this later becomes a crucial step because team members managed to render case discussions and finalize the Heads of Argument. The teams ultimately managed to use some of the funds to assist with minor adjustments in ensuring a successful submission.

Benefits from the Human Rights Court

The SABWiL Human Rights Court plays a crucial role in student development, especially in mentoring aspiring legal practitioners. The radical transformation that took place during the preparation of the Heads of Arguments became somehow unbelievable. The participants benefited from this court in various aspects, *inter alia*; 1. Leadership development, 2. Advocacy skill, 3. Research Skills, and 4. Teamwork. Starting with leadership, participants received the opportunity to actively take charge and decide for themselves on the approach which the team would deem as fit in solving the problem presented by the case. Secondly, each participant made an oral submission; this is a crucial step as team members had to overcome their fears of public speaking. Thirdly, the issue presented by the case required research, and team members had to dig-up information in solving the issue at hand. Participants learned how to find the relevant law and enhance their research skills. Lastly, they needed to work together and think like a single agent. This is a critical skill considering *Ubuntu* as one of the founding values of SABWiL resonated deeply within the participants as it taught them to work collectively and develop their teamwork skills, also to recognize themselves as members of the community rather than individual agents.

Substantive knowledge from the hypothetical

The case¹⁰ covered a very critical topic, which is citizenship¹¹. In order to understand this concept of citizenship, a little flashback is necessary. In 1948 the South African government focused on policymaking upon the political as well as the social segregation of the country's various population groups.

¹⁰ SHRC Case Scenario.

¹¹ Section 20 of the Constitution of the Republic of South Africa, 1996 and Act 88 of 1995.



This system recognized *non-white* persons as citizens of their homelands rather than citizens of the Republic, i.e., Zulu speaking people; in KwaZulu and Xhosa speaking; in the Eastern Cape. South African Constitutional law scholars like Adv. Tembeka Ngcukaitobi SC have continuously argued that the issue of citizenship is one of the reasons for land dispossession; this is because only citizens of the state could own land, and only white people became recognized citizens, which resulted in their ownership of most of the land.¹² So, the main point is that the issue of citizenship is more severe than it is perceived; the surprising part is that it is intertwined with other issues that are still affecting South Africa until today, such as the redistribution of land. Another crucial question that the arguments had to address is the question of the status of a minor.¹³ The arguments revolved around the protection of minors; this is to further the commitment of South Africa in protecting children.

Interviews from the Participants

Counsels for the Applicants, Respondent and *Amicus Curiae*, all agreed that the experience was an exceptional one that benefited all of them immeasurably. They shared their views through the SABWiL media team that interviewed all the parties that were involved. All the participants and legal practitioners that were partaking happily reported their excitement about the proceedings, the growth that they witnessed in themselves and the exposure which was a reminder why they value this profession. This served as motivation to reach aspired goals, to tackle every challenge and take every opportunity with both hands.

Conclusion

Mooting is one of the essential parts for law students to gain competency needed to survive the reality of practice and to be able to withstand any challenge that approaches. The SABWiL Human Rights Court is a catalyst that ensures the efficacy of the South African democracy. It is giving birth to the future successors of the Constitutional journey. Practical activities such as the SABWiL moot are the only essential component that can save the LLB curriculum. This births

¹² T Ngcukaitobi *The Land is Ours: Black Lawyers and the Birth of Constitutionalism in South Africa* (2018).

¹³ Section 28 of the Constitution of the Republic of South Africa, 1996.



courageous, hardworking, and ethical legal practitioners that are able to foster positive constitutional development.

Halala South African Black Women in Law for this commitment to building future protectors of our Constitutional democracy, which will not only focus on accountability but also focus on wealth redistribution and the upliftment of the previously disadvantaged groups, including women.