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## A Small, Sweet Victory

Penelope Andrews

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*In South Africa where no democratic structures exist for the majority black population to vent grievances, the courts have become one very small but vital avenue of struggle.*

I had a daughter who died on 14 April 1988 at the age of 27. When the news was brought to me by members of my family, I had to be told of this sad news in the street as the bearer of the news was not allowed entry into the building.

*Testimony of Betsy Moatsi  
(domestic worker)*

I am married by customary union to one Moloa Jeremiah Mphaka and have been so married for the past 15 years. There are two children born of this marriage, aged 11 and 4 years respectively. The children live in Soweto with Mr Mphaka's mother. Mr Mphaka visits me on a regular basis but we meet in his motor car in the street as we are aware that should he attempt to enter the building he would be stopped.

*Testimony of Johanna Motoung  
(domestic worker)*

In June 1989 the Legal Resources Centre defended the rights of owners of sectional title units to allow domestic workers like Johanna Motoung and Betsy Moatsi to receive visitors in their living quarters. The case was heard in the Supreme Court in Johannesburg (*Renate Kahn and Jonathan Stone v Body Corporate of Majestic Towers and Intersuburb Property Services*, Case No. 88/16275).

The case was significant because the residents of the individual apartment blocks were all white, and the domestic workers all black. Moreover, it was a landmark case since it was the first time that a matter of this nature was brought before a South African court and successfully challenged.

The case arose out of a rule by the body corporate of Majestic Towers, an apartment block close to the downtown area of Johannesburg, that domestic workers (who resided on the top two floors of the apartment block) were not allowed visitors at all in their premises.<sup>1</sup> This rule was challenged by two owners of individual apartment blocks in the building, both of whom employed domestic workers and who wished to exercise their right that their employees receive visitors in their premises.

The rights of ownership of both applicants were vested in the *Sectional Titles Act* No. 66 of 1971, such Act later repealed and replaced by Act No. 95 of 1986 (referred to as 'the Act'). Included

in their rights of ownership were the right of exclusive use of servants' quarters which were situated on the top two floors of the building.

In terms of the Act the body corporate of Majestic Towers is controlled, managed and administered by means of rules, namely management and conduct rules. Management rules govern the manner in which the body corporate is to be managed, whereas conduct rules relate to the conduct of owners and persons visiting the premises. The rules prohibiting visitors to servants' quarters therefore fell within the definition of conduct rules.

In terms of s.35(2)(b) of the Act a conduct rule may be added to, amended or repealed from time to time by special resolution of the body corporate. This section also states that in order to effect such addition, amendment or repeal to a conduct rule, the Board of Trustees of the body corporate must convene a meeting of the members of the body corporate upon 30 days notice of the proposed resolution. Furthermore, 75% of all members at such meeting, or alternatively, agreement in writing by 75% of all members of the body corporate and at least 75% of all such members personally or by proxy or by a representative is required to legitimate such resolution. Section 35(3) of the Act also states that any conduct (or management) rules must be reasonable, and apply equally to all owners of units put to substantially the same purpose.

The legal challenge to the body corporate's resolution prohibiting domestic workers from receiving visitors therefore revolved around two issues, viz. the procedural validity of the resolution and the substantive question of reasonableness and applicability to all unit owners. It was the contention of the applicants that the amendment to the conduct rules which enshrined the prohibition on visitors was not legally enforceable since the procedures required by the Act were not followed.<sup>2</sup> The applicants also contended that there had been non-compliance with s.35(3) referred to above.

The respondents raised *inter alia* the following objections to the applicants' submissions. They claimed that the policy not to allow visitors to the servants' quarters existed by reason of the inadequacy of the security system in operation at Majestic towers.<sup>3</sup> Moreover, they claimed that the bathroom and toilet facilities for servants were not adequate to cope with a greater number of people.

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They also claimed that the rule was reasonable because a majority of unit holders supported it. Their final contention was that the applicants had not exhausted all their domestic remedies in terms of the Act and that the Supreme Court was not the proper forum to solve matters of this (domestic) kind.

The Supreme Court rejected the arguments put forward by the respondents. In handing down judgment, Mr Justice Van Schalkwyk held that visitors to domestic quarters was a 'natural consequence of the right of ownership' and the trustees could therefore not make a rule which deprives a unit holder of his or her right of ownership. The judge found that the Board of Trustees in making the rule had not followed the procedures set out in the Act and the resolution was 'therefore invalid for that reason alone'. The judge accepted the applicants' contention about the unreasonableness of the resolution and declared it invalid. He rejected the argument put forward by the respondents' attorneys that a rule could be reasonable because the majority of unit holders supported the rule.

Public interest litigation in South Africa is a fairly recent phenomenon. The Legal Resources Centre, the leading public interest law firm in the country with offices in most of the major cities, has in its ten years of existence been involved in trailblazing legal work. Much of the work done at the Centre involves asserting rights that most people living in democratic countries take for granted — for example, the right to live where you choose, the right to a decent family life, the right not to be dismissed arbitrarily without proper procedures being followed and the right to make officials or bureaucrats accountable when your rights are violated. In a legalistic and overly bureaucratized country like South Africa, where a large body of statute law is designed to enforce a system of racial dominance and discrimination, the result has been to render 'criminals' of black people on a large scale.<sup>4</sup> By force of circumstance they have been unable to comply with these laws which render a normal life virtually impossible. In addition their lives have been governed in even the minutest details by an army of state bureaucrats who have the administrative function of enforcing these laws. It is against this background that the need for public interest lawyers is evident.

The significance of the work of public interest lawyers rests not so much in their ability to bring about fundamental

social, political or economic change — that this does not occur is obvious. However, in limited ways public interest lawyers make the courts and the legal system more accessible to poor, disadvantaged and disenfranchised people, the overwhelming percentage being black. Moreover, the illiteracy rate amongst the black community is very high, and public interest lawyers can act as advocates for consumers against the exploitative practices of certain creditors and for workers against unlawful practices of employers.<sup>5</sup> They also very often provide relief from the excesses of over-zealous bureaucrats, or act as a buffer against the awesome powers of the police and military.

In a country like South Africa, with a grotesquely distorted political, social and economic structure, where class and race divisions almost always coincide, and where no democratic structures exist for the majority black population to vent grievances, the courts have become one very small, but vital avenue of struggle. Despite the court structures and the legal system reflecting the dominant order,<sup>6</sup> victories in that forum have been sweet. Most importantly, as black people organise in their streets, in their communities and in their factories, they are using the legal forum more and more to assert the very limited rights which they have under the law. Recourse to the courts reflects not so much their acceptance of the legitimacy of the legal system, but rather their desperate need for some form of immediate relief from a system of racial tyranny.

## References

1. This prohibition was contained in House Rules, cl.14.6, which reads: 'Under no (the word no is emphasised) circumstances are any visitors allowed to the servants' quarters of the complex'.
2. The resolution was passed at a meeting of the Board of Trustees to which neither applicant had been invited and then presented as a *fait accompli* to all the residents.
3. The body corporate, in announcing the resolution to the individual owners, cited fear of assaults and thefts, drunkenness, disorderly behaviour - all strongly linked to the question of inadequate security.
4. For example, because of the existence of the *Group Areas Act* which designates residential areas for the various racial groups, a decent, hardworking black person, seeking shelter for his or her family, is liable to be charged criminally if that person seeks such shelter in a residential area reserved for the white community.
5. It cannot be emphasised sufficiently how illiteracy and ignorance of the law serves as the most vital tool of exploitation of those sectors of the black community. The problem is compounded when one appreciates how technologically advanced and economically sophisticated a country like South Africa is; where third world communities have daily to interact with first world structures and environment.
6. Judges are generally white and historically have been appointed because of their [conservative] political leanings, although certain judges have more and more come to reflect a criticism of the *status quo* through their judgments. Black attorneys make up a very small proportion of the legal population.