

## Estates-related legal consultation – example

The example below began in a weekly legal advice clinic run by an NGO that acts as a ‘clearing house’ to channel vulnerable clients towards free legal representation. The clinic is housed in a wood-panelled board room on the seventh floor of the Master of the Johannesburg High Court, the government institution that administers and oversees deceased estates (see data document 5). A queue down the hallway outside represented case after case of fights over houses – largely between poor, black township residents, but sometimes among kin achieving a measure of fragile middle-class accumulation. I shadowed lawyers in these weekly advice clinics over several months. Matters are referred from the clinics to the NGO offices. As when shadowing government officials, it was at times inappropriate to intercede to secure written consent, with lawyers (who had provided written consent) instead introducing me, explaining my presence, and initiating verbal consent. However, where tracing a matter further enabled me to write about it in detail, written consent for academic and policy writing was always secured. The example below is one such case. With consent have been for academic and policy writing, not data sharing in raw form (as per my Data Management Plan), the following excerpt has already been written up and disseminated in a research paper:

*I was sitting next to Noluthando [pseudonym], a young, female attorney, who was trying to figure out the intricacies of the situation in front of her. A young man, Tsepho [pseudonym], and his mother, Patience [pseudonym], sat across the table, visibly agitated. They had been trying to navigate the system since shortly after his father died in 2004. Tsepho’s mother and father had never married, so Patience had no claim on the estate. As the Master’s Office agreed when he reported the estate, Tsepho himself was to split the property down the middle with the woman his father had married then divorced late in life – he as sole heir, and she through her rights in community of property. But, however straightforward the rules here, actually making anything happen proved next to impossible. His father had done well in life, working as a senior employee of the Department of Health and accumulating two township houses. Moreover, unlike many instances, the estate would not be depleted by a large number of heirs. Tsepho had even acquired the all-important Letter of Executorship, the revered but simple stamped Word-template document required to transfer or liquidate property in an estate. Yet things unravelled after that. The attorney appointed to organise matters stalled on selling the houses, and so Tsepho and Patience reported him to the Law Society, after which he withdrew and recommended a liquidator. The first house was then sold, but no cash was forthcoming. The second house, in which the deceased’s ex-wife continued to live, somehow never even appeared in the accounting paperwork for the estate. Tsepho and Patience found another attorney, whom they instructed to take the matter to court – their hope was that a court order to split the estate would cut through the morass of inaction and unaccountability. But the advocate who was appointed prepared the case inadequately, and mother and son decided to withdraw it from the court roll in fear of being held responsible for misrepresenting their circumstances.*

*They were back to square one, a fact only underlined by a comment from an attorney further down the table in the clinic: it’s all because the Master’s Office ‘has no teeth’; in other words, it doesn’t actually have the coercive capacity to regulate. Meanwhile Patience commented, ‘We are scared of lawyers now’. She and Tsepho each had a massive stack of paper, a gradual*

*accretion since they first came to the Master's Office in 2006, much legally irrelevant, but Patience's carefully protected by a red-covered file. In contrast to their lack of purchase on the situation, Tsepho's stepmother, an employee of a major insurance company, had employed an international law firm. Patience and Tsepho themselves were attempting to get a small tourist outfit of the ground in Soweto. Noluthando promised to forward the case to the legal NGO, and also to investigate whether her own firm, which had sent her to volunteer as part of their pro bono obligations, might take up the matter themselves. The consultation ended on an optimistic note.*

*Five months later, Tsepho and Patience's referral date at the NGO, finally came up. As they sat down in a consultation room in the stylish NGO office in central Johannesburg, they immediately embarked on a tirade about Noluthando and her superior at the firm. They had prevaricated about assisting, before ultimately declining without having helped at all. Sitting down with the legal intern responsible for the referral programme, they repeated their story. This time there was no optimism. As the legal intern explained that they would now need to find an attorney willing to take up the matter – and there was no obligation for anyone to do so – Patience snapped: 'it's useless coming here then!' 'It's fifty-fifty', Tsepho responded more cautiously. A week later, the intern would report to them by phone, in advance of their next meeting, that the liquidator indeed appeared to have perpetrated fraud, and had effectively disappeared – his number was out of order. But removing him would be a process in itself – it also appeared that his appointment was authorised by a court. Equally disturbing, the intern had called the Master's Office, and there was no record at all of the funds from the sale of the first house. Tsepho and Patience, the intern later updated me, never came back for their next consultation.*

This was written up in Bolt, M. 2018. 'The making of a black middle class: race, law and property in Johannesburg, South Africa'. Paper presented at the Centre of African Studies, University of Edinburgh, 17 January.