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OCTOBER 2016

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#### **SOUTH AFRICAN LAW REPORTS**

##### **Freedom of speech and the Marikana massacre**

During a sitting of the National Council of Provinces, Mr Malema said that the ANC government massacred the people in Marikana. He was told to withdraw the statement and when he refused was ordered to leave. However, he had not contravened the standing orders and should not have been ordered to leave. *Chairperson, National Council of Provinces v Malema and Another* 2016 (5) SA 335 (SCA)

##### **Without prejudice letter not admissible**

To counter the defendant's plea of prescription, the plaintiff sought to produce a without-prejudice letter written on behalf of the defendant, to show that prescription had been interrupted, arguing that the letter would be admissible for the limited purpose of establishing an interruption of prescription. *KLD Residential CC v Empire Earth Investments 17 (Pty) Ltd* 2016 (5) SA 485 (WCC)

##### **Public participation**

The Restitution of Land Rights Amendment Act 15 of 2014 was declared invalid because Parliament failed to satisfy its obligation to facilitate public involvement in accordance with the Constitution. Given the gravitas of the legislation and the thoroughgoing public participation process that it warranted, the truncated time line was inherently unreasonable. It had been simply impossible for the council to afford the public a meaningful opportunity to participate. *Land Access Movement of South Africa and Others v Chairperson, National Council of Provinces and Others* 2016 (5) SA 635 (CC)

## ***SOUTH AFRICAN CRIMINAL LAW REPORTS***

### **Cellphone photo evidence**

The accused contented that the photo was inadmissible because his rights had not been explained to him prior to his photo being taken by a security guard. However, the photo aided the state witnesses in explaining their testimony as to what the accused had been wearing at the time. It substantiated their testimony, had probative value and was admissible. *S v Skhosana* 2016 (2) SACR 456 (GJ)

### **Money laundering**

For a conviction on money laundering there had to be a clear intention to hide or conceal the 'hot' money. This entailed the laundering of the legal funds to convert them into 'clean' money which the criminal could then safely spend. Money-laundering was by its very nature a secretive practice but the spending of the proceeds of this accused's fraudulent tax refunds had not been concealed at all. *S v Van Der Linde* 2016 (2) SACR 377 (GJ)

### **Sexual orientation in prison**

The applicant, a gay man who was serving a sentence in prison, applied for an order directing the respondents to accommodate him in a single cell or in the same cell as inmates of the same sexual orientation. Heterosexual inmates regarded him as a woman and continually harassed him. *Mapodile v Minister of Correctional Services* 2016 (2) SACR 413 (GJ)

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Kind Regards

**The Juta Law Reports Team**

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