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MARCH 2017

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SOUTH AFRICAN LAW REPORTS

Fit and proper person?

The duties of a prosecutor are not to do everything in her power to ensure that the charges against the accused were permanently withdrawn, despite prima facie evidence against him, and contrary to solid legal advice. The duties of a prosecutor are not to lie, to deliberately mislead the court and to deliberately fail to disclose pertinent documents. *General Council of the Bar of South Africa v Jiba and Others* 2017 (2) SA 122 (GP)

Dictionary copyright dispute

There were similarities in the example sentences for certain words in the dictionaries produced by different publishers. The respondent's experts explained that similarities were inevitable in works of this type. In the absence of the opportunity to test respondent's evidence in a trial, the onus of proving copying was not discharged on the basis of the similarities. *Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd* 2017 (2) SA 1 (SCA)

Relying on only the contract

A party bearing an onus in a dispute over the interpretation of a contract should keep in mind that a bare linguistic interpretation of the contract, without evidence about the factual matrix in which the contract was concluded or the subsequent conduct of the parties, might not suffice to discharge it. *G4S Cash Solutions (Sa) (Pty) Ltd v Zandspruit Cash & Carry (Pty) Ltd and Another* 2017 (2) SA 24 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Search without a warrant

The claim by the police that there had been no time to obtain a warrant was rejected, and the search was consequently unlawful. However, real evidence obtained in the search did not necessarily result in unfairness at trial. But where the police had misled the court in justifying the absence of the warrant and the

subsequent pointing-out was inextricably linked to the search conducted without regard to the accused's rights, the evidence was to be excluded. *S v Gumede* 2017 (1) SACR 253 (SCA)

Mother helps husband rape child

The mother alleged that she was compelled to assist her husband to rape their 10 year old daughter. But she failed to call for help from the neighbours. As a mother she had the ability to resist her husband, instead she pushed a cloth into her daughter's mouth while the girl was being raped. The mother was guilty of aiding and abetting the rape. *S v MD and Another* 2017 (1) SACR 268 (ECB)

Child offender failed by the system

The child offender, who had in the meantime become of age, was convicted on his guilty plea. Had the police verified his age from the outset, his parents or guardian and the probation officer would have been involved, and he would probably have been diverted after acknowledging his wrongful conduct, which programmes may have added value to his life. A legal practitioner representing a child offender is required to make an extra effort in ensuring that the best interests of the child are paramount. *S v DW* 2017 (1) SACR 336 (NCK)

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Kind Regards

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Intellectual property—Copyright—Infringement—What constitutes—Copying—Proof—Approach to be adopted.

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[2016] ZASCA 113

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[2016] ZASCA 134

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[2016] ZASCA 97

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[2016] ZACC 35

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