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JUNE 2019

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JUDGMENTS OF INTEREST IN THE JUNE 2019 EDITIONS OF THE **SALR** AND **SACR** LAW REPORTS.

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SOUTH AFRICAN LAW REPORTS

Indemnity insurance: the insured's duty to reinstate and the insurer's duty to pay

The court was called on to quantify the insurance claim of Mr Watson, whose factory burned down. The policy contained a 'reinstatement value conditions' clause under which the insurer undertook to reimburse the insured for the replacement value of the lost property. Payment was subject to the condition that the insured start reinstatement work 'with reasonable dispatch'. The problem was that the insurer refused to pay . . . See *Watson and Another v Renasa Insurance* 2019 (3) SA 593 (WCC), in which the court held that the insurer was not entitled to undermine the insured's reliance on the clause by withholding payment.

Tacit contract? The test

When A claimed damaged for the breach of a tacit contract between itself and B, the question was whether B could prove its existence, and the which test was to be applied: 'no other reasonable inference'? 'Balance of probabilities'? And where should the onus lie? See *Buffalo City Metropolitan Municipality v Nurcha Development Finance (Pty) Ltd and Others* 2019 (3) SA 379 (SCA)

Attorneys' liability for misconduct by partner

The partner entrusted with a firm's finances stole from the firm's trust account, without the other partner's knowledge. Was the second partner guilty of professional misconduct? Only if he was guilty of dereliction of duty, said the court in *Law Society, Northern Provinces v Stuart and Others* 2019 (3) SA 535 (GP)

SOUTH AFRICAN CRIMINAL LAW REPORTS

What is an appropriate sentence for a father convicted of murdering his son?

A 58-year-old father was convicted of murdering his son and sentenced to 12 years' imprisonment, 5 years of which were suspended for 5 years. The son had a history of aggressive and violent behaviour towards his family and abused alcohol. The state conceded that the sentencing court had misdirected itself in not properly considering the presentence reports recommending correctional supervision, justifying interference on appeal. Taking into account the numerous mitigating circumstances in the matter, as well as the negative effects of imprisonment on family, the court held that a sentence of correctional supervision would more likely achieve the goal of rehabilitation than any other potential sentencing options. *S v Mosikili* 2019 (1) SACR 705 (GP)

Unbecoming conduct of magistrate during trial

It appeared from the trial record that the magistrate had insight into documentation forming part of the police docket, including the results of DNA swab analysis, that was not introduced into evidence. The magistrate had also interjected in an unbecoming manner during testimony, including assisting the state case by suggesting explanations for discrepancies in the complainant's police statement. The court on appeal held that the conviction was highly unsafe in such circumstances and set it aside. *S v Ndlovu* 2019 (1) SACR 686 (KZP)

Reduction of bail for purpose of paying accused's legal team

The applicant ceded his bail money to his attorney and senior counsel as surety for their fees. When the team ran out of funds an application was launched for a reduction of his bail to pay them. The court, in reference to ss 58, 60(2B) and 63(1) of Criminal Procedure Act 51 of 1977, held that the ceded bail money was not an entitlement that should be refunded to an attorney or counsel but stood as security for the attendance of the accused, and should endure until the finalisation of the matter. *S v Brown and Another* 2019 (1) SACR 691 (ECP)

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Kind Regards

The Juta Law Reports Team

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- *Buffalo City Metropolitan Municipality v Nurcha Development Finance (Pty) Ltd and Others* 2019 (3) SA 379 (SCA)
- *Centriq Insurance Company Ltd v Oosthuizen and Another* 2019 (3) SA 387 (SCA)
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- *Dark Fibre Africa (Pty) Ltd v City of Cape Town* 2019 (3) SA 425 (SCA)
- *Elan Boulevard (Pty) Ltd v Fnyn Investments (Pty) Ltd and Others* 2019 (3) SA 441 (SCA)

- Four Wheel Drive Accessory Distributors CC v Rattan NO 2019 (3) SA 451 (SCA)
- St Clair Moor and Another v Tongaat-Hulett Pension Fund and Others 2019 (3) SA 465 (SCA)
- Evergreen Property Investments (Pty) Ltd v Messerschmidt 2019 (3) SA 481 (GP)
- Ex parte Goosen and Others 2019 (3) SA 489 (GJ)
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- Moloto Community v Minister of Rural Development and Land Reform and Others 2019 (3) SA 523 (LCC)
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- Trio Engineered Products Inc v Pilot Crushtec International (Pty) Ltd 2019 (3) SA 580 (GJ)
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- Aquila Steel (South Africa) (Pty) Ltd v Minister of Mineral Resources and Others 2019 (3) SA 621 (CC)

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[2018] ZACC 47

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Credit agreement—Consumer credit agreement—Debt enforcement—Preliminary procedures—Notice of default—Drawing default to attention of consumer—Creditor must specify arrears—National Credit Act 34 of 2005, s 129(1)(a).

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S v MOSIKILI (GP)

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