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DECEMBER 2020

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SOUTH AFRICAN LAW REPORTS

JSE rivals slug it out: New-era stock exchange licence challenged

On 31 August 2016 two new, 'alternative', stock exchanges were licenced: the 4 Africa Exchange and ZARX. They were to compete with each other and, crucially, with the mighty JSE (the venerable Johannesburg Stock Exchange). In formulating their listings requirements, ZAR X and 4AX were able to simplify some requirements that applied to a main board JSE listing. The JSE and 4 Africa however immediately disputed ZARX's licencing, arguing that it had been illegitimately awarded. After the failure of an internal process before the Financial Services Appeal Board, 4 Africa applied in the Gauteng Local Division, Johannesburg to set aside the decision to award ZARX its licence. But 4 Africa failed on every point it raised in its application. The Johannesburg Court emphasised that there had been no irregularity committed by the Registrar of Securities Services in the award of the ZARX licence. See *4 Africa Exchange (Pty) Ltd v Financial Service Conduct Authority and Others* 2020 (6) SA 428 (GJ).

Selection for tax audit reviewable?

If you are unlucky enough to be selected for a tax audit, whether on a random or risk assessment basis, you may have the decision reviewed in court, said the Gauteng Local Division, Johannesburg in *Carte Blanche Marketing CC and Others v Commissioner, South African Revenue Service* 2020 (6) SA 463 (GJ). But the Johannesburg Court emphasised that ripeness and the principle of subsidiarity might derail any such review.

The breakup of a universal partnership between unmarried couples: the Supreme Court of Appeal states the law on parties' assets

In *Khan v Shaik* 2020 (6) SA 375 (SCA) the court reiterated that, unlike with a marriage in community of property, in a universal partnership there was no joint ownership of assets. Since contract was at the heart of a universal partnership, a partner did not have a direct (or real) claim to assets of the other partner. The claim in question constituted a 'debt' for the purposes of the Prescription Act 68 of 1969 and would therefore prescribe after three years from the termination of the universal partnership.

SOUTH AFRICAN CRIMINAL LAW REPORTS

Single sentence to be imposed on composite charge of housebreaking with intent to rob and robbery with aggravating circumstances

The appellant was convicted in the regional magistrates' court of housebreaking with intent to rob and robbery with aggravating circumstances. He was sentenced to seven years' imprisonment in respect of the housebreaking and to a further 15 years' imprisonment in respect of the robbery, the sentences to run concurrently. On appeal the court held that the court a quo had erred in punishing the two offences separately because the appellant was only convicted on a single, composite charge. In instances where one or both of the charges that made up the composite charge attracted a prescribed minimum sentence, the court held that the minimum sentence which should apply was that which was determined by the offence which the housebreaking facilitated, as it was the principal offence at which the housebreaking was directed. *S v Bam* 2020 (2) SACR 584 (WCC)

Award of R5 million for unlawful arrest and detention

The plaintiff was visiting a tavern with friends when he was arrested by the police. No reason was given for the arrest and when he resisted, he was shot in the ankle. He spent some time under guard in hospital and in police cells in appalling conditions. He was released after 150 days in prison. The police showed no interest whatsoever in pursuing the prosecution of the plaintiff or communicating with the prosecutor on the plaintiff being granted bail. Describing the conduct of the police and the whole matter as reprehensible, the court awarded him R5 million in damages in his action against the police for unlawful arrest and detention. A claim for damages for assault was settled separately. *Msongelwa v Minister of Police* 2020 (2) SACR 664 (ECM)

Sentence for murder and attempted murder of fellow police officials in plain clothes

The appellants inter alia shot and killed a fellow police official in plain clothes, and wounded another, during a police action. The appellants had no reason to believe that deceased had committed an offence and were therefore not entitled to the protection of s 49(2) of Criminal Procedure Act 51 of 1977. They were unaware, however, that the victims were fellow police officials, and their sentencing therefore fell within the ambit of s 51(2) of the Criminal Law Amendment Act 105 of 1997, read with part II of sch 2, in terms whereof the prescribed minimum sentence was 15 years' imprisonment. Compelling and substantial circumstances justified a lesser sentence of 13 years' imprisonment. *S v Mathekga and Another* 2020 (2) SACR 559 (SCA)

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Kind Regards

The Juta Law Reports Team

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