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JUNE 2020

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JUDGMENTS OF INTEREST IN THE JUNE 2020 EDITIONS OF THE SALR and, SACR. SEE ALSO, FURTHER BELOW, THE TABLE OF CASES FOR THE BOTSWANA LAW REPORTS 2018 (1).

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SOUTH AFRICAN LAW REPORTS

Acceptance of document as a Will

Shortly before being admitted to hospital for heart surgery, one Mr Van Heerden drafted and signed a document he titled 'Latest Updated Will', and sent a photograph thereof by WhatsApp to his brother-in-law, an attorney, along with the message, 'here are some thoughts regarding an updated Will which has not been legalized yet'. When Mr Van Heerden passed away a little over a week later, this document became the subject-matter of a dispute between Mr Van Heerden's life partner and other family members as to its validity.

The High Court dismissed an application by his life partner for a declaration that this document was the deceased's will, and an order under s 2(3) of the Wills Act 7 of 1953 that the Master accept it as such. In reaching that conclusion, the court considered the correct approach to applying the section; whether the Natal Joint Municipal Pension Fund case had altered this approach; and the significance inter alia of the document's title and signature in light of the Whatsapp messages. *Marshall v Baker NO and Others* 2020 (3) SA 463 (WCC)

Constitutionality of legislation discriminating against spouses in black marriages

Section 22(6) of the Black Administration Act 38 of 1927 (BAA) used to regulate the matrimonial regime of black spouses. It provided that their marriages would be out of community of property, except in certain limited circumstances. This was out of step with the position in respect of marriages between non-black persons, which were by default marriages in community of property. The Marriage and Matrimonial Property Law Amendment Act 3 of 1988 (Amendment Act) repealed, among other things, the aforementioned subsection of the BAA but default status applicable to black spouses married before 1988 was to an extent retained.

This, it was held, perpetuated discrimination against them in that denied the benefits of marriage in community of property granted to other race groups; and accordingly the section was declared unconstitutional and invalid for breaching the s 9 equality provisions of Constitution. *AS and Another v GS and Another* 2020 (3) SA 365 (KZD)

Provincial intervention

Consequent to Makana Local Municipality failing, over extended period, to provide basic services and to meet its financial obligations, due to number of financial and operational crises, the court was approached to order (inter alia) that the province intervene under s 139(5) of Constitution. Granting the order, the court held that the jurisdictional facts for relying on the section were established, and that such an order would not offend the separation of powers. *Unemployed People's Movement v Eastern Cape Premier and Others* 2020 (3) SA 562 (ECG).

SOUTH AFRICAN CRIMINAL LAW REPORTS

Summary conviction after plea of guilty in cases of shoplifting

A magistrate convicted seven accused in separate cases of shoplifting after having accepted a plea of guilty in each case under s 112(1)(a) of the Criminal Procedure Act 51 of 1977. The reviewing court held that, although theft was generally considered a serious matter, it was not inappropriate to use the section in petty cases such as those in question. *S v Gumede and Others* 2020 (1) SACR 644 (KZP)

Whether proceeds of unlawful activities constituting property as envisaged by Constitution

This case concerned the granting of a forfeiture order in terms of s 48(1) and s 50 of the Prevention of Organised Crime Act 121 of 1998 in respect of the renovations to a property funded by the proceeds of unlawful activities. The Constitutional court considered whether such proceeds constituted property as envisaged by s 25 of the Constitution, and whether it was appropriate to conduct a proportionality analysis in circumstances where the person from whom the proceeds were taken had no lawfully recognised interest in the property. *National Director of Public Prosecutions v Botha NO and Another* 2020 (1) SACR 599 (CC)

Fine imposed for racial insult

The court on appeal confirmed the conviction of a white female resident of a retirement village for crimen injuria for calling a black employee of the complex 'stupid' and the 'k' word. The appeal against the imposition of a fine of R2000 or four months' imprisonment suspended for three years was also dismissed. *S v Horwitz* 2020 (1) SACR 587 (ECG)

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Kind Regards

The Juta Law Reports Team

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