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NOVEMBER 2011

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### **JUDGEMENTS OF INTEREST IN THE NOVEMBER EDITIONS OF THE SALR AND THE SACR**

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

##### **Labour law: persons employed by the South African Police Service under the Public Service Act and the right to strike**

In *South African Police Service v Police and Prisons Civil Rights Union and Another* 2011 (6) SA 1 (CC) the South African Police Service (SAPS) appeal a decision of the Labour Appeal Court that only members of the SAPS employed under the South African Police Service Act 68 of 1995 are engaged in an essential service under the Labour Relations Act 66 of 1995 (LRA). In issue is whether persons the SAPS employ under the Public Service Act, 1994 (Proc 103 of 1994) engage in an essential service under the LRA, and so are prohibited from striking by the LRA.

##### **Partnerships: powers of liquidators**

*Morar NO v Akoo and Another* 2011 (6) SA 311 (SCA) concerns a liquidator of a partnership. He has difficulty carrying out his duties and applies to a High Court for it to give him extra powers. It refuses. He then appeals to the Supreme Court of Appeal. In issue on appeal is whether a liquidator can use the *actio pro socio*; and whether the *actio* or the common law give a court the power to order, inter alia, a partner to contribute to the costs of liquidation, or to order that a partner be interrogated by counsel.

##### **Interdict preventing disposal of assets pending conclusion of action for damages: whether appealable**

In *Atkin v Botes* 2011 (6) SA 231 (SCA) Atkin shoots Botes, and Botes sues Atkin for damages. Botes thinks Atkin will dispose of his assets to defeat a damages award. So Botes,

ex parte, obtains an interdict which prevents Atkin doing so, until conclusion of the trial. It is confirmed. Atkin then appeals the order. In issue is whether he can.

## **SOUTH AFRICAN CRIMINAL LAW REPORTS**

### **Sentence: fraud which exploits ancestor beliefs**

In *S v Mwase and Others* 2011 (2) SACR 462 (FB) the appellants were convicted on various charges of fraud. These arose from their involvement in a scheme that exploited the complainants' ancestor beliefs by obtaining money from them against false promises of securing their health and wealth through the ancestors. In an appeal against the sentences imposed, the court—in dealing with the aspect of deterrence—considers the seriousness of this type of offence.

### **Appeals to the SCA: new procedure**

In *S v Senkhane* 2011 (2) SACR 493 (SCA) the Supreme Court of Appeal consider the automatic right of appeal to it against the refusal by a High Court—sitting as a court of appeal—of an application for condonation. Exercising its inherent jurisdiction to regulate its own procedures, the SCA lays down a new procedure.

### **Written plea explanation as sole factual basis for sentence**

In *S v Van der Merwe and Others* 2011 (2) SACR 509 (FB) a magistrate holds that the appellants' failure in their written plea explanations to deal with the charge-sheet's allegation that their actions had a race motive, is a tacit admission of the allegation. The appellate court considers whether the magistrate's reasoning is correct, or whether a plea explanation that is accepted by the State, is the sole fact source for sentence.

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Kind Regards

**The Juta Law Reports Team**

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