



JUTA'S ADVANCE NOTIFICATION SERVICE

MARCH 2012

Dear *South African Law Reports* and *Criminal Law Reports* subscriber

Herewith the cases of interest in the March reports. Also included below are the table of cases and flynotes.

JUDGEMENTS OF INTEREST IN THE MARCH EDITIONS OF THE *SALR* AND THE *SACR*

SOUTH AFRICAN LAW REPORTS

Temporary shelter for the homeless

A municipality's housing policy distinguished between persons it evicted from 'bad buildings', and persons that private landowners evicted: providing the former with temporary accommodation, but not the latter. The Constitutional Court found that to the extent that eviction might result in homelessness, it was of little relevance whether removal from one's home was at the instance of a municipality or a private property owner. The policy was accordingly unconstitutional. *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC)

The police, the hearsay evidence and the missing money

The court had to decide whether to allow hearsay statements made by absconded robbers, to determine whether the State could be held liable for losses made up by the full amount stolen during the robbery, or, alternatively, the appropriation of the proceeds of the robbery by the investigating officers. *Giesecke & Devrient Southern Africa (Pty) Ltd v Minister of Safety and Security* 2012 (2) SA 137 (SCA)

Renaming of streets: was there proper process and consultation?

The council's initial street renaming policy provided for consultation with the addressees, but it later amended this to consultation with ward committees. The Democratic Alliance took issue with the renaming process, alleging that proper public consultation had been lacking, that no proper deliberative process had taken place, and that the council had failed to comply with its own street naming policy. The court examined these contentions, and whether the DA could rely on the Promotion of Administrative Justice. *Democratic Alliance v Ethekwini Municipality* 2012 (2) SA 151 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

What is electricity in law and in science? Can it be stolen?

The accused had raised the defence that electricity was not capable of being stolen. The court looks at how electrons are driven through the power grid, and examines the nature of electricity, and whether it was possible for such energy to be stolen. *S v Ndebele and Others* 2012 (1) SACR 245 (GSJ)

Offenders not to be punished to point of being broken

Where the court is dealing with an appropriate sentence for multiple offences, care must be taken that the aggregate penalty is not too severe. The Supreme Court of Appeal provided a

more balanced sentence for an appellant convicted of multiple counts related to housebreaking. *S v Moswathupa* 2012 (1) SACR 259 (SCA)

Shocking crimes by youthful offender visited by shocking sentence

A boy not yet 15 years old committed robbery and rape, and was met with a cumulative sentence of 25 years. On appeal the sentence was reduced, the appeal court holding that the sentence should be individualised, with the emphasis on preparing the child offender from the moment of entering into the detention facility for his or her return to society. *S v BF* 2012 (1) SACR 298 (SCA)

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Kind Regards

The Juta Law Reports Team

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Bail—Pending appeal—Refusal of—Appeal against—Important to bear in mind that decision whether or not to grant bail one entrusted to trial judge—Trial judge best equipped to deal with issue—Court on appeal having to defer to exercise of trial court's discretion unless latter court failed to bring unbiased judgment to bear on issue, did not act for substantial reasons, or exercised discretion capriciously or upon wrong principle.

Bail—Pending appeal—Refusal of—Appeal against—Convicted person having automatic right of appeal against refusal of bail pending appeal—Supreme Court of Appeal having complained for more than two decades about such situation—Executive not having acted thereon.

Bail—Pending appeal—Application for—Factors to be taken into account—Whether applicant a flight risk—Applicant's assets not only factor to be considered, but also personal circumstances of applicant.

S v BF (SCA)

MTHIYANE JA, BOSIELO JA and SHONGWE JA
2011 SEPTEMBER 15, 29

Sentence—Prescribed sentences—Imposition of in terms of Criminal Law Amendment Act 105 of 1997—In imposing such sentence on offender aged 14 years and 10 months, trial court overlooking s 51(6) of Act providing that s 51 of Act not applying to person who was under age of 16 years at time of commission of offence—Such constituting material misdirection—Nor can such case be regarded as 'borderline case'.

Juvenile offenders—Sentence—Seriousness of offence, its impact on victims and interests of broader society to be taken into consideration—While s 28(1)(g) of Constitution provides that child 'may be detained only for the shortest appropriate period of time', word 'may' therein suggesting that where circumstances demand incarceration of child as only appropriate sentence, it can be imposed—But incarceration should only be imposed as measure of last

resort—Sentence should also be individualised with emphasis on preparing child for return to society.

Juvenile offenders—Sentence—For robbery with aggravating circumstances and rape—Cumulative sentence of 25 years shockingly and disturbingly inappropriate for juvenile aged 14 years and 10 months at time of commission of offence—In altering sentence on appeal, court imposing shortened sentence to give effect to s 28(1)(g) of Constitution—Sentence reduced to 10 years for robbery and 12 years for rape, ordered to run concurrently, and antedated to date of sentence in trial court.

**BOTHA v MINISTER OF SAFETY AND SECURITY AND OTHERS;
JANUARY v MINISTER OF SAFETY AND SECURITY AND OTHERS (ECP)**

TSHIKI J

2010 NOVEMBER 11–24; 2011 APRIL 1

Arrest—Without warrant—Further detention of accused—Obligatory for police to establish justification for such further detention—Constitution, 1996, ss 7, 8, 10 and 12—Information relating thereto to be relayed to public prosecutor—Prosecutor, after applying mind to matter, to be in informed position whether or not to apply for further detention of accused—Police officer investigating case should be in position to inform prosecutor about strength or otherwise of case—Failure of police officer so to apply his mind could result in further detention being contrary to applicable constitutional provision and being declared unlawful.

Prosecution—Prosecutor—Powers and duties of—Prosecutors to carry out public functions independently and in interests of public—Must act in accordance with requirements of Constitution, 1996—Must also have regard to rights of accused, including right to bail and not to be detained arbitrarily and without just cause—Information to be supplied to court in bail proceedings can but come from prosecutor—Latter having duty to place before court any information relevant to court's exercising of discretion with regard to grant or refusal of bail.