



JUTA'S ADVANCE NOTIFICATION SERVICE

JUNE 2012

Dear South African Law Reports and Criminal Law Reports subscriber

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

JUDGEMENTS OF INTEREST IN THE JUNE EDITIONS OF THE SALR AND THE SACR

SOUTH AFRICAN LAW REPORTS

Disobedience of a court order

All orders of court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside. Will disobedience of a court order amount to contempt of court where the order is null and void? *The Master of the High Court (North Gauteng High Court, Pretoria) v Motala NO and Others* 2012 (3) SA 325 (SCA)

Dismissal for poor work performance

The unpleasant and difficult area of dismissal is covered in *Boss Logistics v Phopi and Others* 2012 (3) SA 409 (LC). The court examines what standard of performance is required and finds that this will depend on the nature, complexity and volume of the work; the qualifications and experience of the employee; the degree of stress inherent in the position; the extent to which the employee is required to exercise their own initiative; and the extent of the training required. The court notes that senior or managerial employees in general are required to monitor their own performance and to request assistance where needed.

Can an arbitrator recuse himself?

An arbitrator may not resign, except where a clause in an arbitration agreement allows him to do so, or where the parties consent thereto. Should an arbitrator abandon his duties without such consent, he might well expose himself to a claim for damages. *Umgeni Water v Hollis NO and Another* 2012 (3) SA 475 (KZD)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Using the words of the charge sheet to plead guilty

While it is no doubt undesirable for allegations contained in the charge-sheet to merely be repeated in a plea of guilt, there is no inflexible rule that an accused, who uses certain of the phraseology in a charge, cannot be convicted. Each case is to be considered in the light of its peculiar facts and circumstances. *S v Mbuyisa* 2012 (1) SACR 571 (SCA)

Spousal violence met with harsh sentence

In determining an appropriate sentence for spousal violence, a court is justified in taking into account the prevalence of such violence in its area of jurisdiction, and the court would be correct in treating it as an aggravating feature of the case. *S v Philander* 2012 (1) SACR 582 (ECG)

Duty on prosecutors to be proactive

There was a duty on prosecutors to be proactive in taking steps to protect the community against any criminal conduct, and hence they should actively participate in the bail process. There could be no doubt that state counsel had a public duty to place all relevant facts before a court deciding an appeal, and that the state in the present case had failed in its duty when it merely filed a notice to abide by the court's decision. *S v Sithole and Others* 2012 (1) SACR 586 (KZD)

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Please forward any comments regarding *The South African Law Reports* and *The South African Criminal Law Reports* to lawreports@juta.co.za.

Kind Regards

The Juta Law Reports Team

SOUTH AFRICAN LAW REPORTS

JUNE 2012

TABLE OF CASES

- The Master of the High Court (North Gauteng High Court, Pretoria) v Motala NO and Others 2012 (3) SA 325 (SCA)
- South African Property Owners Association v Johannesburg Metropolitan Municipality and Others 2012 (3) SA 335 (GSJ)
- Silver Falcon Trading 333 (Pty) Ltd and Others v Nedbank Ltd 2012 (3) SA 371 (KZP)
- MV *Cos Prosperity* 2012 (3) SA 381 (WCC)
- Phoenix Shipping Corporation v DHL Global Forwarding SA (Pty) Ltd and Another: MV *Cos Prosperity* 2012 (3) SA 381 (WCC)
- Commissioner, South African Revenue Service v Van Kets 2012 (3) SA 399 (WCC)
- Boss Logistics v Phopi and Others 2012 (3) SA 409 (LC)
- FirstRand Bank v Raheman and Another 2012 (3) SA 418 (KZD)
- Pascoal and Another v Wurdeman and Others 2012 (3) SA 422 (GSJ)
- South Coast Furnishers CC v Secprop 30 Investments (Pty) Ltd 2012 (3) SA 431 (KZP)
- Shelfplett 47 (Pty) Ltd v MEC for Environmental Affairs and Development Planning and Another 2012 (3) SA 441 (WCC)
- Umgeni Water v Hollis NO and Another 2012 (3) SA 475 (KZD)
- Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others 2012 (3) SA 486 (SCA)
- Eisenberg & Associates and Others v Director-General, Department of Home Affairs and Others 2012 (3) SA 508 (WCC)
- Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd 2012 (3) SA 531 (CC)
- Absa Bank Ltd v South African Commercial Catering and Allied Workers Union National Provident Fund (Under Curatorship) 2012 (3) SA 585 (SCA)
- Wesbank v Martin 2012 (3) SA 600 (WCC)
- Attorneys Fidelity Fund Board of Control v Mettle Property Finance (Pty) Ltd 2012 (3) SA 611 (SCA)
- Minister of Correctional Services v Lee 2012 (3) SA 617 (SCA)
- MV *F Elephant* 2012 (3) SA 633 (WCC)
- Wanderers Club v Boyes-Moffat and Another 2012 (3) SA 641 (GSJ)

FLYNOTES

THE MASTER OF THE HIGH COURT (NORTH GAUTENG HIGH COURT, PRETORIA) v MOTALA NO AND OTHERS (SCA)
PONNAN JA, MALAN JA and WALLIS JA
2011 NOVEMBER 18; DECEMBER 1
[2011] ZASCA 238

Contempt of court—Disobedience of court order—Where order giving rise to alleged contempt nullity—Not obeying such order not constituting contempt—Null and void order could be disregarded, no formal setting-aside thereof required.

SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION v JOHANNESBURG METROPOLITAN MUNICIPALITY AND OTHERS (GSJ)
MOSHIDI J
2011 FEBRUARY 22; MAY 24

Local authority—Rates—Imposition—Promulgation of assessment rate tariff—Increase in rates applicable to non-residential property—Legality—Proper procedures and public participation—Whether local authority may impose rate on non-residential property exceeding that imposed on residential property—Applicable statutes and conduct of authority analysed—Rate not unlawfully levied.

SILVER FALCON TRADING 333 (PTY) LTD AND OTHERS v NEDBANK LTD (KZP)
GORVEN J
2011 NOVEMBER 24; DECEMBER 2

Practice—Judgments and orders—Default judgment—Rescission—Judgment based on summons lacking averments to sustain cause of action—Such erroneously granted within meaning of rule—Uniform Rules of Court, rule 42(1)(a).

Credit agreement—Consumer credit agreement—Whether agreement subject to NCA—Mortgage agreement—Such falling within large agreement category of credit agreements—Large agreements entered into by consumers who are juristic persons with asset values or turnover exceeding threshold value set by minister falling within s 4(1)(a) and not subject to NCA—National Credit Act 34 of 2005, s 4(1)(a).

MV COS PROSPERITY PHOENIX SHIPPING CORPORATION v DHL GLOBAL FORWARDING SA (PTY) LTD AND ANOTHER (WCC)
YEKISO J
2012 FEBRUARY 1

Arbitration—Recognition of foreign arbitration award—Award unenforceable if agreement on which based invalid or if recognition and enforcement of award would be contrary to public policy—Lack of consensus rendering arbitration agreement unenforceable—Resulting award would not be recognised or enforced in South Africa—Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977, s 2 and s 4(1)(a)(ii).

Arbitration—Recognition of foreign arbitration award—Party resisting recognition or enforcement of foreign award not obliged to seek to have award set aside in country in which it was made—May challenge award made in England in South African court even though he failed to do so in England despite statutory estoppel provided for in English Arbitration Act 1996—Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977, s 2 and s 4(1)(a)(ii).

COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE v VAN KETS (WCC)
DAVIS J
2011 AUGUST 22; NOVEMBER 22

Revenue—Income tax—Request for information by commissioner—Ambit of commissioner's powers—Whether commissioner may request South African taxpayer to furnish information regarding taxpayer of foreign country with which South Africa has double tax agreement (DTA)—DTA and Income Tax Act to be read as coherent whole—Relevant provisions of Income

Tax Act applying to all taxpayers falling within scope of DTA, including residents of foreign country—SA taxpayer ordered to supply requested information—Income Tax Act 58 of 1962, ss 74A and 74B.

BOSS LOGISTICS v PHOPI AND OTHERS (LC)

DE SWARDT AJ

2010 JANUARY 20, 27

Labour law—Dismissal—Incapacity—Poor work performance—Reasonable period required for employer to evaluate performance depending on circumstances—Court or commissioner not, in absence of evidence of bad faith or unfairness, to second-guess employer on this score.

Labour law—Dismissal—Incapacity—Poor work performance—Standard of performance required—Depending on nature, complexity and volume of work; qualifications and experience of employee; degree of stress inherent in position; extent to which employee required to exercise own initiative; and extent of training required.

Labour law—Dismissal—Incapacity—Poor work performance—Employer's duty to counsel employee—Such duty falling away where employee engaged on basis of false claims about experience.

Labour law—Dismissal—Incapacity—Poor work performance—Employer's duty to counsel employee—Depending on level of seniority, and qualifications and skills of employee—Senior or managerial employees in general required to monitor own performance and request assistance where needed.

FIRSTRAND BANK v RAHEMAN AND ANOTHER (KZD)

MOKGOHLOA J

2011 MARCH 22; 2012 FEBRUARY 10

Credit agreement—Consumer credit agreement—Debt review—Termination—When competent—Whether credit provider may terminate debt review after review referred to magistrates' court for debt rearrangement—Case law discussed—Termination of debt review possible while matter pending before magistrate, but not if magistrates' court had made order to rearrange debt—National Credit Act 34 of 2005, ss 86(10) and 87.

PASCOAL AND ANOTHER v WURDEMAN AND OTHERS (GSJ)

JP COETZEE AJ

2012 FEBRUARY 2, 7

Trust and trustee—Trustee—Breakdown in fiduciary relationship between trustees—Interim relief—Minority group of trustees seeking to replace majority-vote rule with unanimous-vote rule—Provisions of instrument conclusive—No prima facie right founded in statute or public policy established—Court refusing to read in term requiring unanimity—Application refused—Trust Property Control Act 57 of 1988, s 13.

Trust and trustee—Trust instrument—Variation—Application for interim order allowing deviation from provisions of instrument—Minority group of trustees seeking to replace majority-vote rule with unanimous-vote rule—Provisions of instrument conclusive—No prima facie right founded in statute or public policy established—Court refusing to read in term requiring unanimity—Application refused—Trust Property Control Act 57 of 1988, s 13.

SOUTH COAST FURNISHERS CC v SECPROP 30 INVESTMENTS (PTY) LTD (KZP)

GORVEN J, VAHED J and STRETCH AJ

2012 FEBRUARY 10, 28

Practice—Applications and motions—Dispute of fact—Approach of court—Whether genuine factual dispute raised on papers—Test—Similar in nature to that in trial at point where plaintiff's case has been closed and absolution is sought before defence is embarked upon—Court does not enter into evaluation of credibility of witnesses unless clear that witnesses were untruthful—In motion proceedings, robust approach can only be taken, and matter decided on probabilities, if clear falsity emerging from papers.

SHELFPLETT 47 (PTY) LTD v MEC FOR ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING AND ANOTHER (WCC)

ROGERS AJ

2011 NOVEMBER 22–23; 2012 MARCH 5

Constitutional law—Co-operative government—Autonomy of spheres of government—Competences—Municipal planning and provincial planning—Contention that MEC impermissibly taking into account considerations of municipal planning character in making decision not to amend regional structure plan (RSP)—Considerations taking nature from function they relate to—RSP a provincial planning instrument and amendment thereof a provincial planning function—Accordingly considerations MEC taking into account were provincial planning considerations—Constitution, Sch 4, Part B, and Sch 5, Part A; Physical Planning Act 125 of 1991.

Township—Town planning and zoning schemes—Regional structure plan—Nature—Species of subordinate legislation—Constitution, s 172(1)(a); Physical Planning Act 125 of 1991.

UMGENI WATER v HOLLIS NO AND ANOTHER (KZD)

VAN ZYL J

2011 JUNE 21; 2012 MARCH 8

Arbitration—Arbitrator—Recusal—Statute not providing for resignation or recusal—Arbitrator may not resign, except where clause in arbitration agreement allows him to do so, or where parties to reference consent thereto—*Semble*: Should arbitrator abandon duties despite lack of consent, he would expose himself to claim for damages.

Arbitration—Arbitrator—Removal—Good cause—What constitutes—Apprehension of bias—Court to be respectful of intentions of parties and purposes of arbitration—Applicant for removal on ground of apprehension of bias to show that, viewed holistically, arbitrator's conduct of proceedings giving rise to reasonable perception of bias—Double requirement of reasonableness—Both person apprehending bias and apprehension itself to be reasonable—Arbitration Act 42 of 1965, s 13(2)(a).

DEMOCRATIC ALLIANCE AND OTHERS v ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS (SCA)

MPATI P, NAVSA JA, BOSIELO JA, TSHIQI JA and PLASKET AJA

2012 FEBRUARY 15; MARCH 20

[2012] ZASCA 15

Criminal procedure—Prosecution—Prosecuting authority—Decision to discontinue prosecution—Decision by National Prosecuting Authority to discontinue prosecution subject to constitutional (rule of law) review—Political party having locus standi to bring application for review of decision to discontinue prosecution of President of the Republic—Record of proceedings relating to decision to discontinue prosecution (excluding President's representations) compellable—Matter referred back to high court for review—Ambit of review issue for high court.

Constitutional law—Constitution—Foundational values—Rule of law—Judicial control of exercise of public power—Courts may subject any exercise of public power to constitutional review under rule of law principle—Decision of National Prosecuting Authority to discontinue prosecution subject to judicial review—Political party having locus standi to apply for review of decision to discontinue prosecution of President of the Republic—Record of proceedings relating to decision to discontinue prosecution compellable.

Practice—Parties—Locus standi—Political party—Application for review of decision of National Prosecuting Authority to discontinue prosecution of President of the Republic—Political party having locus standi to apply for review of decision.

EISENBERG & ASSOCIATES AND OTHERS v DIRECTOR-GENERAL, DEPARTMENT OF HOME AFFAIRS AND OTHERS (WCC)

CLOETE AJ

2011 NOVEMBER 16, 23

Immigration—Aliens—Temporary residence permit—Applications for change of status or conditions of permit—Duty of state—Application for order compelling state to deal with backlog and to comply with 30-day statutory deadline—Administrative bungling by state—Whether applicants (immigration practitioners) entitled to relief sought—Importance of temporary residence permits to foreign residents stressed—State failing in duty to make required decisions—State ordered to comply with deadlines—State's failure to decide applications within reasonable time reviewed and set aside.

MAPHANGO AND OTHERS v AENGUS LIFESTYLE PROPERTIES (PTY) LTD (CC)

MOGOENG CJ, MOSENEKE DCJ, CAMERON J, FRONEMAN J, JAFTA J, NKABINDE J, SKWEIYA J, YACOOB J, VAN DER WESTHUIZEN J and ZONDO AJ
2011 NOVEMBER 3; 2012 MARCH 13
[2012] ZACC 2

Landlord and tenant—Protection of tenants—Unfair practice—May consist in single act—Rental Housing Act 50 of 1999, s 1.

Landlord and tenant—Protection of tenants—Unfair practice—Practice that unreasonably prejudices 'rights or interests' of tenant or landlord—'Interests' including all factors bearing on wellbeing of tenants and landlords—Rental Housing Act 50 of 1999, s 1.

Landlord and tenant—Lease—Termination—Landlord having right to terminate lease 'on grounds that do not constitute an unfair practice and that are specified in the lease'—'And' to be read conjunctively—Rental Housing Act 50 of 1999, s 4(5)(c).

ABSA BANK LTD v SOUTH AFRICAN COMMERCIAL CATERING AND ALLIED WORKERS UNION NATIONAL PROVIDENT FUND (UNDER CURATORSHIP) (SCA)

LEWIS JA, PONNAN JA, CACHALIA JA, BOSIELO JA and SHONGWE JA
2011 AUGUST 24; SEPTEMBER 27
[2011] ZASCA 150

Pension—Pension fund—Rules—Interpretation—Provision that contracts to be signed by chairperson and two other trustees—Rule binding on fund, members, officers and persons claiming to act under rules—Contracts negotiated and signed by principal officer only—While provision for principal officer to enter into contracts for day-to-day functioning of fund desirable, rules in casu containing no such provision and none to be imported by necessary implication—Contracts void as being beyond powers of fund—Even if matter approached on basis that it was matter of internal management only, suppliers of office equipment and cessionary of contracts knew of existence of rule—Fund not liable on contracts.

WESBANK v MARTIN (WCC)

BINNS-WARD J
2010 JUNE 4; AUGUST 13

Credit agreement—Consumer credit agreement—Debt review—Termination—When effective—Notice of termination by credit provider not ipso facto terminating debt review; instead affording period of notice—Upon completion of period of notice credit grantor entitled to institute judicial proceedings for recovery of debt—Termination of debt review contemplated by such notice occurring when judicial proceedings instituted by credit provider—Only debts in respect of which notice had been given terminated—National Credit Act 34 of 2005, s 86(10).

Credit agreement—Consumer credit agreement—Over-indebtedness—Judicial relief—Declaration of over-indebtedness and referral to debt counsellor—Judicial debt enforcement also court 'proceedings in which credit agreement is being considered' for purposes of court making such declaration—Discretion of court to make such declaration should only be exercised in favour of consumer in exceptional circumstances—Consumer should explain why debt review not instituted or allowed to have terminated—National Credit Act 34 of 2005, ss 85, 86(10) and 129(1)(a).

ATTORNEYS FIDELITY FUND BOARD OF CONTROL v METTLE PROPERTY FINANCE (PTY) LTD (SCA)

HARMS DP, VAN HEERDEN JA, MAYA JA, THERON JA and WALLIS JA
2011 AUGUST 25; SEPTEMBER 16

[2011] ZASCA 133

Attorney—Fidelity fund—Claims against—Claim for pecuniary loss resulting from theft of money entrusted to attorney in course of his practice—Whether money ‘entrusted’ to attorney—Factoring company, in terms of agreement with attorney, paying money from mortgage transactions or property sales to attorney as representative of mortgagor or seller—Factoring company simply discharging debt to mortgagor or seller—Debt discharged moment money paid into attorney’s trust account—Attorney no more than conduit for money—‘Entrustment’ of money to attorney not proved—Claim dismissed.

MINISTER OF CORRECTIONAL SERVICES v LEE (SCA)

MPATI P, NAVSA JA, NUGENT JA, SNYDERS JA and NDITA AJA
2012 FEBRUARY 23; MARCH 23
[2012] ZASCA 23

Delict—Causation—Factual causation—Omission—Prison TB-management system—Whether authorities’ failure to maintain adequate system was cause of plaintiff’s TB—No proof that reasonably adequate system would eliminate risk of infection.

MV F ELEPHANT

GULF SHEBA SHIPPING LTD v MV F ELEPHANT AND OTHERS (WCC)

BLIGNAULT J
2011 APRIL 4, 7

Shipping—Admiralty law—Maritime claim—Enforcement—Action in rem—Arrest—Associated ship arrest—Ship subject to charterparty—Deemed ownership of charterer if ship ‘at any time’ subject of charterparty—Whether associated-ship provisions thereby extended beyond termination of charterparty—Answer in affirmative—Phrase ‘at any time’ to be given its ordinary meaning—Admiralty Jurisdiction Regulation Act 105 of 1983, s 3(7) (c).

Shipping—Admiralty law—Maritime claim—Enforcement—Action in rem—Arrest—Associated ship arrest—Claim in respect of which arrest made—When arising—Claim against ship subject to suspensive condition—Claim arising when suspensive condition fulfilled—Fact that claim still to be quantified, or might be subject to set off against counterclaim, not destroying its interim existence—Admiralty Jurisdiction Regulation Act 105 of 1983, s 3(7) (a).

WANDERERS CLUB v BOYES-MOFFAT AND ANOTHER (GSJ)

VAN OOSTEN J
2010 FEBRUARY 1

Costs—Counsel’s fees—Costs of two counsel—No general rule that costs of two counsel always to be allowed in interlocutory applications where main action or application deserving two counsel—General rule is that costs entirely matter for discretion of court, to be exercised judicially on consideration of facts of each case, and is essentially matter of fairness to both sides.

SOUTH AFRICAN CRIMINAL LAW REPORTS

JUNE 2012

TABLE OF CASES

- S v Stander 2012 (1) SACR 537 (SCA)
- S v Mavundla 2012 (1) SACR 548 (GNP)
- Director of Public Prosecutions v Modise and Another 2012 (1) SACR 553 (GSJ)
- S v Agliotti 2012 (1) SACR 559 (GSJ)
- S v Smith 2012 (1) SACR 567 (SCA)
- S v Mbuyisa 2012 (1) SACR 571 (SCA)

- S v Matshiba 2012 (1) SACR 577 (ECG)
- S v Philander 2012 (1) SACR 582 (ECG)
- S v Sithole and Others 2012 (1) SACR 586 (KZD)
- S v CS 2012 (1) SACR 595 (ECP)
- S v Mashinini and Another 2012 (1) SACR 604 (SCA)
- S v Dewhurst 2012 (1) SACR 627 (ECP)
- Maqhunyana v Minister of Safety and Security and Others 2012 (1) SACR 630 (ECM)

FLYNOTES

S v STANDER (SCA)

CLOETE JA, SNYDERS JA and PETSE AJA
2011 NOVEMBER 4, 29
[2011] ZASCA 211

Sentence—Imprisonment—Term of—Non-parole period—Section 276B of Criminal Procedure Act 51 of 1977—Such order should not be imposed for convenience of court or even Department of Correctional Services—Their convenience irrelevant—Circumstances arising after sentence may render application in terms of s 276A(3) for conversion of sentence entirely appropriate—Court, refusing to entertain such application because it is not convenient to itself or Department, committing irregularity.

Sentence—Imprisonment—Term of—Non-parole period—Section 276B of Criminal Procedure Act 51 of 1977—Such order should only be made where there are exceptional circumstances justifying it—As what are exceptional circumstances cannot be spelled out in advance, court should determine whether such order should be made on facts of each case—These should be facts relevant to parole and not only aggravating factors of crime committed—Proper evidential basis to be laid for finding that such circumstances exist.

Sentence—Imprisonment—Term of—Non-parole period—Section 276B of Criminal Procedure Act 51 of 1977—In determining whether to impose such order, and what period to attach to order, parties entitled to address sentencing court—Failure to afford parties such opportunity constituting misdirection.

S v MAVUNDLA (GNP)

SOUTHWOOD J and PRELLER J
2011 SEPTEMBER 23

Rape—Sentence—Life imprisonment—Minimum sentence in terms of Criminal Law Amendment Act 105 of 1997—Accused changing positions and ejaculating three times—No rest or interruption between acts—Amounting to one prolonged act of rape—Life sentence therefore not applying—Section 51(1) and Part I of Schedule 2.

DIRECTOR OF PUBLIC PROSECUTIONS v MODISE AND ANOTHER (GSJ)

LAMONT J
2009 NOVEMBER 26

Evidence—Affidavit in terms of s 212(4) and (8) of Criminal Procedure Act 51 of 1977—Where state does not rely on these provisions of Act and leads oral evidence by experts, not necessary for state to produce a certificate—Electronic Communications and Transactions Act 25 of 2002, s 15.

S v AGLIOTTI (GSJ)

KGOMO J
2010 AUGUST 12, 16

Bail—Evidence adduced at bail proceedings—Admissibility of at subsequent trial—Section 60(11B)(c) of Criminal Procedure Act 51 of 1977—Duty of court to warn accused where accused intends to use affidavit.

S v SMITH (SCA)

CLOETE JA, MAYA JA and PLASKET AJA
2011 MARCH 3, 15
[2011] ZASCA 15

Appeal—Generally—Reasonable prospects of success—Issue to be decided is whether the appellant has reasonable prospects of success on appeal, and not the merits of the appeal—Reasonable prospects of success present if a sound, rational basis exists for the conclusion that the appellant has prospects of success on appeal.

S v MBUYISA (SCA)

CLOETE JA, PONNAN JA and LEACH JA
2011 AUGUST 26; SEPTEMBER 26
[2011] ZASCA 146

Plea—Plea of guilty—Written statement in terms of s 112(2) of Criminal Procedure Act 51 of 1977—Content of statement—Repetition of allegations in charge-sheet—Undesirable, but no inflexible rule that an accused, who uses certain of the phraseology in a charge, cannot be convicted.

S v MATSHIBA (ECG)

EASTERN CAPE HIGH COURT, GRAHAMSTOWN
REVELAS J and TSHIKI J
2011 APRIL 28; MAY 17

Sentence—Correction of—Amendment of in terms of s 298 of Criminal Procedure Act 51 of 1977—Amendment not permissible where original sentence not wrong—Not permissible to alter sentence 20 days after sentence imposed.

Housebreaking with intent to steal and theft—Sentence—Lengthy term of imprisonment—Accused convicted on six counts and sentenced to ten years' imprisonment on each count—Although offence serious and prevalent in division, court overemphasised the seriousness of the offence—Sentence replaced with sentence of three years' imprisonment on each count, to run concurrently.

S v PHILANDER (ECG)

VAN ZYL J and GRIFFITHS J
2011 AUGUST 10; SEPTEMBER 2

Culpable homicide—Sentence—Spousal violence—Death caused by assault on spouse—Court justified in taking into account prevalence of spousal violence in its area of jurisdiction—Can be treated as aggravating feature of case justifying substantial custodial sentence.

S v SITHOLE AND OTHERS (KZD)

STEYN J
2011 AUGUST 12, 19

Bail—Appeal against refusal of—From magistrates' court to high court—Duty of prosecution—State counsel has a public duty to place all relevant facts before a court deciding an appeal—State in present case had failed in its duty when it did not file heads of argument and merely filed a notice to abide by the court's decision.

S v CS (ECP)

TSHIKI J and BESHE J
2012 MARCH 30

Juvenile offenders—Sentence—Committal to child- and youth-care centre—Reviewability of sentence—Sentence subject to review, whether child legally represented or not—Child Justice Act 75 of 2008, ss 76 and 85.

S v MASHININI AND ANOTHER (SCA)

PONNAN JA, MHLANTLA JA and BOSIELO JA
2011 NOVEMBER 22; 2012 FEBRUARY 21
[2012] ZASCA 1

Sentence—Prescribed sentences—Minimum sentence—Imposition of in terms of Criminal Law Amendment Act 105 of 1997—Charge-sheet—Error in—Charge-sheet incorrectly stating offence as one of contravening s 51(2) instead of s 51(1)—Accused sentenced on basis of s 51(1)—Misdirection vitiating sentence, notwithstanding that accused, who was represented, at no stage objected to irregular procedure.

S v DEWHURST (ECP)

REVELAS J and MAKOLA J
2011 NOVEMBER 22

Trial—Mental state of accused—Order in terms of s 47 of the Mental Health Care Act 17 of 2002 that accused, who was not capable of acting in accordance with his appreciation of the wrongfulness of his conduct, be held in a psychiatric hospital—Order can only be made after evidence has been placed before court linking accused with offence with which he was charged—Criminal Procedure Act 51 of 1977, s 77(6)(a)(i).

MAQHUNYANA v MINISTER OF SAFETY AND SECURITY AND OTHERS (ECM)

DUKADA AJ
2010 AUGUST 26; 2011 JANUARY 27

Police—Duties and powers of—Roadblocks—Setting up of in terms of s 13(8) of South African Police Service Act 68 of 1995—Certificate in terms of s 13(8)(a) authorising setting-up of roadblock—Words 'where it is reasonable in the circumstances' in s 13(8)(a) referring to circumstances or situations at place where roadblock to be set up in order to avoid danger to motorists and police officials—Reasonable to set up roadblock to perform function referred to in s 215 of Constitution, 1996.

Police—Duties and powers of—Roadblocks—Setting up of in terms of s 13(8) of South African Police Service Act 68 of 1995—Certificate in terms of s 13(8)(a) authorising setting-up of roadblock—Validity of—Allegation that no jurisdictional facts present relevant to issuing of certificate—Facts upon which such allegation based to be disclosed—Failure to do so fatal to application for order declaring certificate invalid.