



JUTA'S ADVANCE NOTIFICATION SERVICE

OCTOBER 2012

Dear South African Law Reports and Criminal Law Reports subscriber

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

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

SOUTH AFRICAN LAW REPORTS

Do defaulting consumers collect their registered mail?

When banks send defaulting consumers a notice under the Credit Act and the registered mail is returned as uncollected, who bears the risk of non-receipt? Will the bank need to take another step to notify the consumer? Two high court judgments consider the recent Constitutional Court judgment of *Sebola* and then tackle this issue. *Absa Bank Ltd v Mkhize and Another and Two Similar Cases* 2012 (5) SA 574 (KZD) and *Nedbank Ltd v Binneman and Thirteen Similar Cases* 2012 (5) SA 569 (WCC)

Protection from eviction from agricultural land

The Extension of Security of Tenure Act protects occupiers of agricultural land from eviction, if the occupier had express or tacit consent to stay there. The Supreme Court of Appeal looks at what sort of consent is sufficient and whether it needed to originate in agreement, in particular where a right of residence was based on an employment contract. *Sterklewies (Pty) Ltd t/a Harrismith Feedlot v Msimanga and Others* 2012 (5) SA 392 (SCA)

Extradition to face a possible death penalty

Can South Africa deport a person wanted for criminal prosecution in another country, when that country might impose the death penalty? And what if a country with the death penalty assures that it will not impose such penalty? *Minister of Home Affairs and Others v Tsebe and Others* 2012 (5) SA 467 (CC)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Illegal shebeen run with barefaced disregard for the law

Despite police efforts, a shebeen continued to thrive as a co-ordinated business to profit from criminal activity. In the circumstances forfeiture of the house under the Prevention of Crime Act was proportionate and appropriate. *Van der Burg and Another v National Director of Public Prosecutions and Another* 2012 (2) SACR 331 (CC)

Youth of accused not enough to avoid life imprisonment

The accused were young, unskilled and had only piecemeal jobs. Their hard, deprived upbringing was however no excuse for the brutal and vicious murder using a golf club. The court could find no circumstances to avoid imposing life sentences. *S v Mahlangu and Others* 2012 (2) SACR 373 (GSJ)

Accused's bail application on affidavit only not succeeding

In his bail application the accused put forward favourable circumstances that weighed in his favour. However, in light of the state's oral evidence, the accused had not discharged the onus of showing the exceptional circumstances required for his release on bail. *S v Najoje* 2012 (2) SACR 395 (ECP)

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Kind Regards

The Juta Law Reports Team

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Evidence—Witnesses—Issue of subpoenas in terms of s 205(1) of Criminal Procedure Act 51 of 1977—Validity of—Whether magistrates issuing subpoenas had applied their minds properly in deciding to issue subpoenas requiring applicant's bank managers to attend before them for examination in regard to allegations of fraud and corruption levelled against a close corporation of which applicant director—No legal basis on which magistrates' confirmation under oath, that they had properly considered applications for subpoenas and had applied their minds before authorising the issuance of the subpoenas, could be rejected.

Evidence—Witnesses—Issue of subpoenas in terms of s 205(1) of Criminal Procedure Act 51 of 1977—Validity of—Whether failure of magistrate issuing subpoenas to keep copy of application or reasons for decision constituted procedural irregularity—No formal requirement that applications be kept or that reasons for decisions be recorded imposed by s 205—Applicant furnished with copies of applications and subpoenas and failing to show that he was prejudiced in his claim to review decisions to issue subpoenas.

Evidence—Witnesses—Issue of subpoenas in terms of s 205(1) of Criminal Procedure Act 51 of 1977—Validity of—Whether applicant entitled to be afforded hearing by magistrate before issue of subpoenas and to service of copies of subpoenas—No legal requirement that applicant be given notice of s 205 proceedings, that he be given hearing at such proceedings or that he be furnished with copies of subpoenas—Such procedures would undermine very objective of s 205: to obtain information in investigation and prosecution of serious crime.

Prosecuting authority—Prosecutor—Authority of—Whether prosecutors authorised to bring s 205 applications—Issuing of authorities to prosecutors to bring requests in terms of s 205 falling within ambit of necessary functions incidental to instituting and conducting criminal proceedings provided for in terms of s 20(1)(b) of National Prosecuting Authority Act 32 of 1998—No requirement in s 205 that authority under which prosecutor applies for subpoena be granted specifically for each individual application—Prosecutors authorised to bring applications.

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