



JUTA'S ADVANCE NOTIFICATION SERVICE

NOVEMBER 2012

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

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

'The old saying – "if it looks like a duck, quacks like a duck and waddles like a duck then it probably is a duck" certainly applies in this case.'

Satchwell J in para 34 of *Dutch Reformed Church Vergesig and Another v Sooknunan* 2012 (6) SA 201 (GSJ) regarding the respondent's denial of his creation of a certain website.

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

SOUTH AFRICAN LAW REPORTS

Postings on Facebook page lead to litigation

One of the legal implications of the use of social media such as Facebook was that the owner of the website was responsible for regulating access to and censoring postings thereto, and was obliged to remove postings which were shown to be unlawful in content or impact. The owner was in effect the publisher thereof, much as a newspaper took responsibility for the content of its pages. *Dutch Reformed Church Vergesig and Another v Sooknunan* 2012 (6) SA 201 (GSJ)

Exemption clause at hotel unconstitutional?

A guest signed into a hotel and signed a disclaimer that broadly exempted the hotel from any liability for injury to the guest. The following day a heavy steel gate fell on the guest while he was trying to leave the hotel. Was the disclaimer binding on the guest? *Naidoo v Birchwood Hotel* 2012 (6) SA 170 (GSJ)

Amending pleadings during trial

The modern tendency of the courts is to grant an amendment where such amendment facilitates the proper ventilation of the disputes. But what of the inconvenience to the other party, the witnesses and the court? And should not the plaintiff quickly obtain his order and return of his cash flow, and the defendant be freed of litigation? *Randa v Radopile Projects CC* 2012 (6) SA 128 (GSJ)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Drug mule gets 20 years

The accused was a first offender, married, with a young daughter, but had brought over six kilograms of cocaine into the country. The number of lives potentially affected by abuse of the drug outweighed the personal circumstances of the accused. A twenty year sentence was fitting. *S v Keyser* 2012 (2) SACR 437 (SCA)

Recent possession enough for robbery conviction?

The appellant's conviction of robbery in the regional court had been based on his possession of the robbed motor vehicle. The appellant was found in possession of the vehicle eight days after the robbery, the vehicle was fitted with false plates, and he gave a false explanation for his possession. The question on appeal was whether the court a quo had correctly invoked the doctrine of recent possession. The court noted that in the present day and age stolen vehicles change hands with amazing speed and disingenuousness. *S v Madonsela* 2012 (2) SACR 456 (GSJ)

Smashed bottle of whisky: was it theft?

In a liquor store the accused hid a bottle of whisky under his clothing with the intention of stealing it. On being spotted by the security guard he attempted to put the bottle back, but the bottle broke. Was he guilty of theft or attempted theft? *S v Mekula* 2012 (2) SACR 521 (ECG)

WE WELCOME YOUR FEEDBACK

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

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S v CT (GNP)

ISMAIL J and KHUMALO AJ
2012 FEBRUARY 24
[2012] ZAGPPHC 68

Fundamental rights—Right to a fair trial—Failure of 9-year-old child complainant in rape case to testify through an intermediary as provided for in s 170A of Criminal Procedure Act 51 of 1977—Trial court to consider whether child should testify without aid of intermediary—Child testifying by means of CCTV in terms of s 158 of Act using interpreter—Such failure on its own not rendering trial unfair—No prejudice to accused—Review dismissed.

Evidence—Witnesses—Children—When complainants in sexual offence cases—Appointment of intermediary in terms of s 170A(1) of Criminal Procedure Act 51 of 1977—Trial court failing to consider appointment of, and to appoint, intermediary through which 9-year-old rape complainant could testify—Such failure on its own not rendering trial unfair.

S v MEKULA (ECG)

EKSTEEN J and GOOSEN J
2012 MAY 16
[2012] ZAECGHC 40

Theft—Attempted theft—What constitutes—Accused in liquor store concealing bottle of whisky under clothes—Being spotted by security guard and breaking bottle in attempt to put it back—Accused would have been unable to leave premises with bottle—Owner, through security guard, still exercising effective control over bottle—On review, conviction of theft substituted with attempted theft.

Review—Delay in submission of record of proceedings—Clerk of lower court to forward record of proceedings to registrar of high court within one week of determination of case—Where delay in forwarding record exceeding prescribed time limit, record to be accompanied by proper explanation for reasons for delay—Criminal Procedure Act 51 of 1977, s 303.

S v NKUNA (GSJ)

FRANCIS J and COPPIN J
2012 MAY 18
[2012] ZAGPJHC 115

Drug offences—Dagga—Enquiry in terms of s 255 of Criminal Procedure Act 51 of 1977—Neither s 255 nor s 21(1) of Prevention and Treatment of Drug Dependency Act 20 of 1992 restricted to young people, or those who are addicts rather than recreational users.

S v MK (GSJ)

VAN OOSTEN J and MAYAT J
2012 MAY 31
[2012] ZAGPJHC 113

Juvenile offenders—Sentence—Diversion in terms of s 52(1) of Child Justice Act 75 of 2008—Can be done at any stage of trial.

Juvenile offenders—Sentence—Imprisonment last resort—Possibility of diversion to be considered.

Juvenile offenders—Sentence—Rape—Sentence of five years' imprisonment, on 16-year-old who was in dire need of guidance, correction, rehabilitation and reintegration into community, strikingly inappropriate.

S v MOSIA (FB)

RAMPAI AJP, DAFFUE J and PHALATSI AJ

2012 MARCH 19; APRIL 19

Rape—Sentence—Life imprisonment—Minimum sentence in terms of Criminal Law Amendment Act 105 of 1997—'Substantial and compelling circumstances'—Cases of rape may be so serious that, despite favourable personal circumstances of appellant and impact of sentence on appellant, they justify imposition of life imprisonment and finding of absence of 'substantial and compelling circumstances'—Sentence of life imprisonment confirmed on appeal.

Sentence—Life imprisonment—Mitigating factors—Personal circumstances of accused—Joint rape perpetrated by appellant and his brother—Complainant viciously assaulted prior to rape and incident having serious adverse effects on quality of her life—Gravity of rape incident and callous disregard for victim's bodily integrity and emotional feelings not to be outweighed by circumstances of appellant, favourable though they were, and adverse impact of sentence imposed on him—Sentence of life imprisonment confirmed.