



## JUTA'S ADVANCE NOTIFICATION SERVICE

SEPTEMBER 2013

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

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

### JUDGMENTS OF INTEREST IN THE SEPTEMBER EDITIONS OF THE *SALR* AND THE *SACR*

#### *SOUTH AFRICAN LAW REPORTS*

##### **Exercising the right to acquire marketable security, and simulation**

The Western Cape High Court considers whether gains made by taxpayers who participated in their employer's deferred delivery share incentive scheme, constituted taxable gains for the purposes of s 8A of Income Tax Act 58 of 1962. The court also considers the much debated effect that the decision in *Commissioner for the South African Revenue Service v NWK Ltd* 2011 (2) SA 67 (SCA) ([2011] All SA 347; [2010] ZASCA 168) has on the well-established common-law principles for simulation. *Bosch and Another v Commissioner, South African Revenue Service* 2013 (5) SA 130 (WCC).

##### **Insurance law: whether non-owner has insurable interest in fishing vessel**

In this case *Lorcom Thirteen (Pty) Ltd* was the 100 % shareholder in *Gansbaai Fishing Wholesalers (Pty) Ltd*, which owned the *Buccaneer*, a fishing boat. *Lorcom* had the right to use the boat and also an expectation of becoming its owner. *Lorcom* was also the insured under a contract of insurance with *Zurich Insurance Company South Africa Ltd*, which provided for the payment of R3 million in the event of the total loss of the *Buccaneer*. The R3 million was the market value of the vessel. The *Buccaneer* was lost and *Lorcom* claimed under the policy, but *Zurich* repudiated the claim and this led *Lorcom* to sue. In issue was whether *Lorcom* has an insurable interest in the *Buccaneer* to the extent of its market value. See *Lorcom Thirteen (Pty) Ltd v Zurich Insurance Company South Africa Ltd* 2013 (5) SA 42 (WCC).

##### **High-handed official rebuked for abuse of power**

The Supreme Court of Appeal issued a warning to government officials who abused their powers that costs orders *de bonis propriis* would be made against them, in particular where they attempted to interfere in litigation initiated against them. The court's ire was provoked by the conduct of the MEC for Economic Development, Gauteng, who had, on a pretext, dissolved the provincial gambling board when it refused to accede to her wish that it accommodate a third party of her choosing in its building, and had subsequently attempted to meddle in the litigation instituted by the board. A costs order on attorney and client scale was made against her. See *Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng* 2013 (5) SA 24 (SCA).

## **SOUTH AFRICAN CRIMINAL LAW REPORTS**

### **Rape committed on elderly and children equally egregious**

In imposing a term of life imprisonment for the rape of an 82-year-old woman, the court held that children and elderly people were both vulnerable members of society. They were soft targets for criminals and required, expected and deserved equal protection from the courts, and that this should be reflected in sentences imposed for the rape of such people. *S v Tuswa* 2013 (2) SACR 269 (KZP)

### **Misappropriation of social grant payments by clerk deserving of imprisonment**

The court held that the notion that the perpetrators of white-collar crime did not deserve imprisonment was incorrect. Despite being a first offender, it was considered that the interests of society far outweighed the appellant's interests and those of her family. The appeal succeeded to the extent that the period of imprisonment was reduced to four years' imprisonment. *S v Piater* 2013 (2) SACR 254 (GNP)

### **Gambling addiction no excuse for repeat offender**

Appellant was convicted of the theft of a large amount of money from her employer and was sentenced to 15 years' imprisonment. She had on two previous occasions been convicted for similar offences. In confirming her sentence the court held that her addiction did not constitute a 'substantial and compelling circumstance' and that the matter was clearly one in which the nature of the crime and interests of society had to carry a substantial amount of weight. *S v Wiggil* 2013 (2) SACR 246 (ECG)

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Kind Regards

**The Juta Law Reports Team**

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