



JUTA'S ADVANCE NOTIFICATION SERVICE

OCTOBER 2013

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

Herewith the cases of interest in the October reports. Also included is the table of cases for Burrell's Intellectual Property Law Reports 2012, which is now available.

JUDGMENTS OF INTEREST IN THE OCTOBER EDITIONS OF THE *SALR* AND THE *SACR*

SOUTH AFRICAN LAW REPORTS

Trade union liable to members?

The employees instituted a high court action for damages against their union for failing to properly prosecute unfair dismissal claims on their behalf. The labour union had, after representing the respondent employees at a conciliation meeting that followed on their retrenchment, failed to refer the dispute to the labour court within the required 90 days or to apply for condonation. *Food and Allied Workers Union v Ngcobo NO and Another* 2013 (5) SA 378 (SCA)

Res ipsa loquitur and medical negligence

Negligence cannot be inferred from a concession by a surgeon that something must have gone wrong during the operation. Even with the best will in the world things sometimes go amiss in surgical operations or medical treatment. A doctor is not to be held negligent simply because something went wrong. The application of *res ipsa loquitur* in medical negligence cases is discussed. *Buthelezi v Ndaba* 2013 (5) SA 437 (SCA)

Issuing of licences for performing animals by magistrate declared unconstitutional

In *NSPCA v Minister of Agriculture, Forestry and Fisheries, and Others* 2013 (5) SA 571 the Constitutional Court found that magistrates may no longer issue licences for the exhibiting and training of performing animals since this practice offended against the doctrine of separation of powers.

SOUTH AFRICAN CRIMINAL LAW REPORTS

Prisoners seek prison closer to families

The 'high-risk' offenders, jailed for the long term as a result of convictions for armed robbery and murder, applied to be moved to a prison closer to their families, one with less security. After looking at various aspects of the case, the court refused the application. *Masilela and Others v Bouwers and Others* 2013 (2) SACR 350 (GNP)

Admission of guilt or a mere traffic fine?

The accused scraped against another car while reversing from a parking bay, thought that there was no damage, and left. Tracked down, he offered to pay for the scratch, but the complainant had already reported the incident. The accused paid what he thought was a

traffic fine, but was in fact an admission of guilt, giving him a criminal record. He applied for review, and the conviction and sentence were set aside. *S v Mutobvu* 2013 (2) SACR 366 (GNP)

Circumstantial evidence: found in bloody shirt, next to deceased

The appellant was found wearing a bloodstained shirt, next to the shot deceased, but no weapon could be found. On appeal against his murder conviction, the court looks at the inferential reasoning involved in circumstantial evidence. The fact that no weapon was found on the appellant weighed against the circumstantial evidence, and the appeal against conviction succeeded. *S v Nkubungu* 2013 (2) SACR 388 (ECM)

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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- Orange Personal Communication Services Ltd v Account Works Software (Pty) Ltd 2012 BIP 186 (GNP)
- Paramount Mills (Pty) Ltd v Border Star Bakery (Pty) Ltd 2012 BIP 176 (RTM)
- Pioneer Foods (Pty) Ltd v Bothaville Milling (Pty) Ltd 2012 BIP 351 (FB)
- Safrotex International (Pty) Ltd v Abdul Naeem Hassan 2012 BIP 162 (GNP)
- The Gap Inc v Salt of the Earth Creations (Pty) Ltd and Others. 2012 BIP 135 (SCA)
- Transunion Auto Information Solutions (Pty) Ltd v Autobid (Pty) Ltd 2012 BIP 231 KZD)
- Viceroy Hotels LLC v The Van Ryn Wine & Spirit Company Ltd 2012 BIP 127 (RTM)
- Videx Wire Products (Pty) Ltd v Camworth Technologies Ltd 2012 BIP 21 (CP)