



JUTA'S ADVANCE NOTIFICATION SERVICE

NOVEMBER 2013

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

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

SOUTH AFRICAN LAW REPORTS

Settlement agreements as part of divorce orders

The practice of incorporating settlement agreements into divorce orders is salutary and in line with judicial policy. It benefits the parties and the administration of justice by encouraging negotiation over litigation to sort out financial and proprietary issues. Also, arrangements concerning the welfare of children born of the marriage cannot be disposed of without the intervention of the court. *PL v YL* 2013 (6) SA 28 (ECG)

Can your ex-attorney take a case against you?

In order to obtain an interdict preventing a legal practitioner representing a client against a former client, the former client would need to prove that (1) confidential information was imparted or received in confidence as a result of the attorney-client relationship and the information remains confidential; (2) it is relevant to the matter at hand; and (3) the interests of the present client are adverse to those of the former client. *Wishart and Others v Blieden NO and Others* 2013 (6) SA 59 (KZP)

Does funding litigation expose the funder to a costs order?

Parties involved in litigation in which another party is being funded by an outsider would be entitled to relief in the form of an order joining the funder to the litigations so that a direct order for costs can be obtained against it. Allowing such joinder would have the beneficial effect of combating possible abuses arising from the recognition of the validity of champertous contracts. *Price Waterhouse Coopers Inc and Others v IMF (Australia) Ltd and Another* 2013 (6) SA 216 (GNP)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Differing opinions on rape sentence

A 56-year-old man with a previous conviction for attempted rape was convicted of the rape of a 7-year-old girl and sentenced in a regional court to life imprisonment. On appeal his sentence was reduced, however the full bench was not in agreement, and a strong dissent (in favour of a life sentence) was recorded in *S v GK* 2013 (2) SACR 505 (WCC).

Disastrous effect on life of rape victim

The appellant had been convicted in a regional court of the rape of his 12-year-old daughter. He was a 38-year-old man married to the complainant's mother, and he had two other children. He had a drug habit and had previous convictions for theft, fraud, attempted rape and other offences. The evidence indicated clearly that the complainant had suffered severely as a result of the rape which had had a disastrous effect on her life thereafter. His appeal against his life sentence was dismissed. *S v PB* 2013 (2) SACR 533 (SCA)

Practising without a fidelity fund certificate

Section 83(10) of the Attorneys Act 53 of 1979 that creates the offence of practising as an attorney without a fidelity fund certificate is directed at persons who could notionally obtain a fidelity fund certificate. Only an admitted attorney can obtain such a certificate and the offence which the Act creates in respect of non-practitioners who purport to practise as practitioners is contained in s 83(1) of the Act. *Law Society of the Cape of Good Hope v Adams* 2013 (2) SACR 480 (WCC)

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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- *Wishart and Others v Blieden NO and Others* 2013 (6) SA 59 (KZP)
- *MB v DB* 2013 (6) SA 86 (KZD)

- Osborne and Another v West Dunes Properties 176 (Pty) Ltd and Others 2013 (6) SA 105 (WCC)
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- Gerson v Mondi Pension Fund and Others 2013 (6) SA 162 (GSJ)
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- Waterkloof Marina Estates (Pty) Ltd v Charter Development (Pty) Ltd (in Liquidation) and Others 2013 (6) SA 185 (GNP)
- Kwalindile Community v King Sabata Dalindyebo Municipality and Others 2013 (6) SA 193 (CC)
- Price Waterhouse Coopers Inc and Others v IMF (Australia) Ltd and Another 2013 (6) SA 216 (GNP)
- Herholdt v Nedbank Ltd (Cosatu as Amicus Curiae) 2013 (6) SA 224 (SCA)
- MEC for Environmental Affairs and Development Planning v Clairison's CC 2013 (6) SA 235 (SCA)
- Holdsworth and Others v Reunert Ltd 2013 (6) SA 244 (GNP)
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- RMB Private Bank (A Division of FirstRand Bank Ltd) v Kaydeez Therapies CC (in Liquidation) and Others 2013 (6) SA 308 (GSJ)

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Prescription—Extinctive prescription—Debt—Commencement of prescription—Knowledge of debt—When deemed—Onus on debtor claiming prescription to allege and prove deemed knowledge—No negative inference to be drawn from creditor's failure to testify where no evidence to rebut—Prescription Act 68 of 1969, s 12(3).

ROAD ACCIDENT FUND v DUMA AND THREE SIMILAR CASES (SCA)

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Motor vehicle accident—Claim against Road Accident Fund—Limits—'Serious injury' threshold for general damages—Decision on whether injury serious enough to qualify for general damages conferred on RAF, not court—Decision constituting administrative action and unreasonable delay in making it to be contested with administrative remedies—Claim for general damages premature until claimant has complied with procedure for determination of serious injury—Road Accident Fund Act 56 of 1996, ss 17(1) and 17(1A).

PL v YL (ECG)

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Marriage—Divorce—Order of court—Incorporating settlement agreement—Practice of incorporation of settlement agreements into divorce orders salutary and in line with judicial policy—Arrangements concerning welfare of children cannot, be disposed of without intervention of court—Divorce Act 70 of 1979, s 7(1).

WISHART AND OTHERS v BLIEDEN NO AND OTHERS (KZP)

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Marriage—Divorce—Proprietary rights—Accrual system—Proof of accrual—Where respective estates of parties to be assessed—Operative moment *litis contestatio*, and not when divorce order made—Matrimonial Property Act 88 of 1984, s 3(1).

Marriage—Divorce—Proprietary rights—Accrual system—Proof of accrual—Incomplete disclosure of financial information—Court entitled to make inferences and take probabilities into account in deciding whether or not assets concerned forming part of non-discloser's estate—Matrimonial Property Act 88 of 1984, s 3(1).

Marriage—Divorce—Litigation—Parties not entitled to conceal their intentions in order to obtain technical advantage over other party.

Evidence—Hearsay—When admissible—Statements based on discovered documents in divorce action, where used to establish accrual claim—Even if hearsay, such statements in certain circumstances admissible in terms of Law of Evidence Amendment Act 45 of 1988, s 3(1).

OSBORNE AND ANOTHER v WEST DUNES PROPERTIES 176 (PTY) LTD AND OTHERS (WCC)

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HABITAT COUNCIL AND ANOTHER v PROVINCIAL MINISTER OF LOCAL GOVERNMENT etc, WESTERN CAPE, AND OTHERS (WCC)

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Constitutional law—Separation of powers—Between tiers of government—Local and provincial competences—Determination of boundaries between functional areas of each tier—Proper approach—Constitution, sch 4 and sch 5.

NEDBANK LTD v MENDELOW AND ANOTHER NNO (SCA)

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Administrative law—Administrative action—What constitutes—Master of high court's signing of certificate of no objection to transfer of immovable property—Such merely clerical act not amounting to administrative action—Administration of Estates Act 66 of 1965, s 42; Promotion of Administrative Justice Act 3 of 2000.

Administrative law—Administrative action—What constitutes—Registrar of Deeds' registering of transfer of property and of mortgage bond—Merely clerical acts not amounting to administrative action in this instance—Deeds Registries Act 47 of 1937, s 3(1); Promotion of Administrative Justice Act 3 of 2000.

TABOO TRADING 232 (PTY) LTD v PRO WRECK SCRAP METAL CC AND OTHERS (KZP)
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Pension—Disputes—Pension funds adjudicator—Powers—Disposal of complaints—May make order which court of law can make—May not without more substitute own discretion for that of board of trustees—Pension Funds Act 24 of 1956, s 30E.

Pension—Disputes—Pension funds adjudicator—Determination of dispute—Application to high court for relief against—Procedure appeal in wide sense, not review—Applicant to lay legal basis on which adjudicator, and thus court, should set aside decision of board of trustees—Pension Funds Act 24 of 1956, s 30P.

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KWALINDILE COMMUNITY v KING SABATA DALINDYEBO MUNICIPALITY AND OTHERS (CC)

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Land—Land reform—Restitution—Application for ante omnia order—Whether in public interest to make such order or whether, if such order not made, public would suffer substantial prejudice—Applicant to adduce facts enabling court to exercise value judgment of where public interest lays in relation to land sought not to be restored—Court to consider nature and extent of restoration claim when making such value judgment—Restitution of Land Rights Act 22 of 1994, s 34(6).

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Constitutional law—Parliament—Motion of no confidence in President of Republic—Whether inherently urgent—Scheduling of debate and vote subject to National Assembly’s constitutional authority to ‘determine and control its internal arrangements, proceedings and procedures’—Sufficient that motion be accorded priority over other motions and business, by being scheduled, debated and voted on within reasonable time given assembly’s programme—Constitution, s 57(1).

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