



JUTA'S ADVANCE NOTIFICATION SERVICE

JANUARY 2014

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

We wish you a peaceful and safe holiday, and a prosperous new year!

Herewith the cases of interest in the January reports.

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

SOUTH AFRICAN LAW REPORTS

The protection of the National Credit Act

There is no objection in principle to parties agreeing to make a normally excluded agreement subject to the National Credit Act 34 of 2005. In this case, considerations of contractual freedom, the *pacta sunt servanda* principle, and public policy dictated that the court should enforce such a clause. *First National Bank, a Division of FirstRand Bank Ltd v Clear Creek Trading 12 (Pty) Ltd and Another* 2014 (1) SA 23 (GNP)

Special costs order

Costs were awarded against the defendant on an attorney and client scale in a trial concerning the quantum of damages for medical negligence. The MEC refused to make admissions regarding the content of expert reports, yet no instructions were given for cross-examination, leaving the evidence uncontradicted. *Mokhethi and Another v MEC For Health, Gauteng* 2014 (1) SA 93 (GSJ)

Review of a prosecutorial decision

A prosecutorial decision not to prosecute constitutes administrative action as defined in Promotion of Administrative Justice Act 3 of 2000, s 1. The court is entitled to interfere with prosecutorial decisions that breach the constitutional principle of legality. The courts are also duty-bound under the doctrine of separation of powers to review such decisions. *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP)

SOUTH AFRICAN CRIMINAL LAW REPORTS

DNA evidence can convict or set free

Two judgments examine DNA evidence and result in two different verdicts: a conviction is set aside and in the other a conviction is secured. *S v SB* 2014 (1) SACR 66 (SCA) and *S v Nyembe* 2014 (1) SACR 105 (GSJ)

Accused makes surprise confession

A statement ought to have been ruled inadmissible where an accused took his attorney by surprise and deviated from his exculpatory instructions, instead making a confession to the police. The duties of a legal representative in this situation are also discussed. *S v Saloman and Others* 2014 (1) SACR 93 (WCC)

Substantial and compelling circumstances

What amounts to substantial and compelling circumstances not to impose a life sentence for the rape of a victim under the age of sixteen? Four judgments in this issue examine the factors to be considered, all the more complicated where the perpetrator is a trusted family member. *S v FV* 2014 (1) SACR 42 (GNP); *S v AM* 2014 (1) SACR 48 (FB); *S v SM* 2014 (1) SACR 53 (GNP) and *S v MS* 2014 (1) SACR 59 (GNP)

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Kind Regards

The Juta Law Reports Team

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