



JUTA'S ADVANCE NOTIFICATION SERVICE

FEBRUARY 2014

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

Herewith the cases of interest in the February reports.

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

SOUTH AFRICAN LAW REPORTS

Cheque stolen in the mail, so was there payment?

SARS sent Stabilpave a tax refund, but the cheque was stolen in the post. In defence of Stabilpave's action for payment, SARS contended that it had paid, and that Stabilpave had assumed the risk of transit when it elected that payment method. *Stabilpave (Pty) Ltd v South African Revenue Service* 2014 (1) SA 350 (SCA)

Payment to child's guardian

Although a child's guardians have the power and the obligation to manage the child's financial affairs, a court cannot simply order that substantial funds be paid to a guardian without first investigating the circumstances under which such funds are likely to be administered, including assessing the motivations, qualifications, and ability of a guardian to properly administer the funds. *Dube NO v Road Accident Fund* 2014 (1) SA 577 (GSJ)

Ancestor's call prevents return to work

In this case an employer ordered the employee to return to work on a certain day, but she disobeyed in the sincere belief that she would suffer misfortune, if she failed to heed her ancestors' call to attend training to become a traditional healer. Was her dismissal unfair? *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi and Others* 2014 (1) SA 585 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Diversion programmes

The juvenile accused successfully completed a diversion programme, but when he had attained majority he was charged again for the same offences, and convicted. The accused had a legitimate expectation in the circumstances of this case that he would not be prosecuted again. Basic fairness demanded that the conviction be set aside. *S v EA* 2014 (1) SACR 183 (NCK)

Restorative justice requirement for parole

The prisoner's application for parole was delayed by the parole board, so that the prisoner could comply with restorative justice. The court described this concept as a fabrication of a process, whereby it was required of a prisoner to make peace with the family of the victim, in this case people outside the borders of our country. The court described the whole process as an illegal concoction undermining the rights of prisoners to be released on parole when they

legally qualified for it. *Gwebu v Minister of Correctional Services and Others* 2014 (1) SACR 191 (ECG)

HIV infection and attempted murder

The accused was employed as an HIV/Aids counsellor at a clinic run by the Department of Health, and knew that he was HIV-positive when he had unprotected sex with the complainant, who had come to the clinic to be tested and had found that she was HIV-negative. His six year sentence was confirmed on appeal. His mens rea was in the form of dolus eventualis and the court could take judicial notice of the fact HIV/Aids had no cure and infection with the virus was likely to lead to a reduced life span. *S v Phiri* 2014 (1) SACR 211 (GNP)

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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

SOUTH AFRICAN LAW REPORTS

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Children—Adoption—Requirements—Child adoptable—Child adoptable if abandoned—Abandoned defined as deserted—Child deserted if noncustodian parent consents to custodian parent's wife, husband or life-partner adopting it—Children's Act 38 of 2005, ss 1 and 230(3)(c).

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[* Corruption Watch and the Centre for Child Law acted as amici curiae.]

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