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APRIL 2014

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

Herewith the cases of interest in the April reports.

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

SOUTH AFRICAN LAW REPORTS

Ubuntu and eviction

When considering the fairness of an eviction of an unlawful occupier, the spirit of ubuntu must be taken into account. Ubuntu promotes a normative notion of humanity, of human beings who recognise the 'other', of values of solidarity, compassion and respect for human dignity. These are no less important when the person involved has tenaciously tried to hold on to her home so as to provide an education for her child within a stable environment, as it would be for a larger community of applicants. *Resnick v Government Of The Republic Of South Africa And Another* 2014 (2) SA 337 (WCC)

Duty of bank when instruction forged

A third party altered an overseas transfer form, resulting in 1,6 million dollars being transferred out of the customer's account. He claimed damages from the bank. The bank was required to effect credit transfers timeously, in good faith and without negligence; and the customer to draw his payment instructions with reasonable care so as to prevent fraud or forgery. *Absa Bank Ltd v Hanley* 2014 (2) SA 448 (SCA)

Misappropriation of money by agent of bank

An agent swindled large sums of deposits, but fled the country when sequestered by the bank. Two customers came forward seeking compensation, but it emerged that fictitious names had been used in concluding certain investment agreements, to conceal substantial taxable funds from the eyes of Receiver. The plot thickens, and the Supreme Court of Appeal writes the final chapter. *Absa Bank Ltd v Arif and Another* 2014 (2) SA 466 (SCA)

Interpretation of contracts

The process of interpretation starts with words, but does not stop at literal meaning. All relevant context must be considered. The former distinction of background and surrounding circumstances is no longer to be made. The process is no longer in stages, but is now unitary. *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Circumstantial evidence in rural areas

The appellant was linked to murder and robbery through his possession of a cellphone taken at the time of robbery and possession of firearm used to shoot deceased. The items were found in his possession one and a half months after the incident. Although a significant period of time had passed since incident, as this was rural area where items were not easily traded, possession was recent enough to conclude that the appellant involved in the incident. *S v Thwala* 2014 (1) SACR 414 (KZP)

Crimes by those in authority

A senior police officer with 24 years' experience was convicted of numerous counts of fraud, corruption, defeating or obstructing the course of justice, and theft. The criminal scheme involved stealing firearms from police and planting them on innocent civilians, and claiming a share of the reward from an informer who was part of the scheme. A minimum sentence of 15 years' imprisonment on each count of fraud was appropriate, despite the accused's favourable personal circumstances. *S v Boshoff* 2014 (1) SACR 422 (ECG)

No escape from life sentence for rapist

A life sentence was given to a 24-year-old man, a first offender, who ran a tuck-shop, was a primary caregiver, and capable of rehabilitation. The Supreme Court of Appeal considered that he had raped a 12-year-old girl, three times, after brazenly abducting her while she played with her friends. His appeal against the sentence was dismissed. *S v Kwanape* 2014 (1) SACR 405 (SCA)

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