



## JUTA'S ADVANCE NOTIFICATION SERVICE

MAY 2014

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

Herewith the cases of interest in the May reports, as well as the 2014(1) Namibian Law Reports.

### JUDGMENTS OF INTEREST IN THE MAY EDITIONS OF THE *SALR* AND THE *SACR*

#### **SOUTH AFRICAN LAW REPORTS**

##### **Attacked while on duty at hospital**

A doctor was attacked and raped while on duty at a state hospital, but when she claimed for her damages, the MEC filed a special plea that the doctor was precluded from claiming, because the attack was an accident under the Compensation for Occupational Injuries Act. The court found that the attack was intentional and deliberate, and was not a risk that was a usual incident of the job. The plaintiff was not precluded from claiming damages. *DN v MEC for Health, Free State* 2014 (3) SA 49 (FB)

##### **Notice of default still not received?**

With reference to its *Sebola* judgment, the Constitutional Court revisits the notice of default sent by a credit provider to a consumer, and spells out what is required to bring the notice to the attention of the consumer. *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC)

##### **Who cleans up water pollution from the gold mines?**

Harmony had managed gold mining operations on behalf of a land owner, but the business and land were sold to another company that then went into liquidation. Harmony disputed that it had to comply with a directive requiring it and other mining companies to take anti-pollution measures regarding water contamination. *Harmony Gold Mining Co Ltd v Regional Director, Free State Department of Water Affairs, and Others* 2014 (3) SA 149 (SCA)

#### **SOUTH AFRICAN CRIMINAL LAW REPORTS**

##### **Did accomplice in robbery know about a weapon?**

If an accomplice to a robbery did not have intent regarding a weapon used, do the consequences of aggravating circumstances attach to him too? The appellants complained that the legislation created strict liability that infringed their rights to freedom and security, and right to fair trial. *Minister of Justice and Constitutional Development and Another v Masingili and Another* 2014 (1) SACR 437 (CC)

##### **Exhumation of body for evidence**

The post-mortem report was not clear on the two gunshot wounds to the deceased's head, so the prosecution needed to exhume the body for further examination. The application may be made ex parte, and without notice to the family of deceased, and could also be done after commencement of the criminal trial arising from the death of the deceased. *Botha v Minister of Justice and Constitutional Development and Others* 2014 (1) SACR 479 (NCK)

### **The war on rhino poachers**

The killing of rhinos, the court held, solely to trade their horns was a serious crime. The evidence on record revealed that 26 rhinos had been shot and killed for their horns, and the arrest and prosecution of the appellant prevented the potential loss of a further 50 rhinos, solely for their horns. *S v Lemtongthai* 2014 (1) SACR 495 (GJ)

### **THE NAMIBIAN LAW REPORTS 2014(1)**

#### **Failure to pay maintenance to be taken seriously**

Failure to pay maintenance for a child is not to be dealt a mere slap on the wrist, even for first offenders. Economic abuse in the form of failing to pay maintenance is a species of domestic violence, as stipulated in s 2(1)(c) of the Combating of Domestic Violence Act 4 of 2003. *S v EZ* 2014 (1) NR 18 (HC)

#### **Breathalyser to meet standards**

A breathalyser device used to make the alcohol analysis had to be properly approved in accordance with legislation, for the analysis to be reliable, and for any admission made pursuant thereto to be reliable. *S v Titus and Others* 2014 (1) NR 129 (HC)

#### **Lay litigants and the rules of court**

Although court should be understanding of the difficulties experienced by lay litigants and assist them where possible, the rules of court were adopted to ensure fair and expeditious resolution of disputes, in interest of all litigants and the administration of justice. Condonation for non-compliance with rules is not permissible where that would render proceedings unfair. *Worku v Equity Aviation Services (Namibia) (Pty) Ltd (In Liquidation) and Others* 2014 (1) NR 234 (SC)

### **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](mailto:lawreports@juta.co.za)

Kind Regards

**The Juta Law Reports Team**

## **SOUTH AFRICAN LAW REPORTS**

**MAY 2014**

### **TABLE OF CASES**

- *MV v CV* 2014 (3) SA 1 (KZP)
- *Vengadesan NO v Shaik and Others* 2014 (3) SA 14 (KZD)
- *Nielson v Rautenbach NO and Others* 2014 (3) SA 17 (GNP)
- *Ekurhuleni Metro Municipality and Another v Various Occupiers, Eden Park Extension 5* 2014 (3) SA 23 (SCA)
- *Ferris and Another v FirstRand Bank Ltd* 2014 (3) SA 39 (CC)
- *DN v MEC for Health, Free State* 2014 (3) SA 49 (FB)
- *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC)
- *Absa Bank Ltd v Makuna Farm CC* 2014 (3) SA 86 (GJ)
- *Absa Bank Ltd v Summer Lodge (Pty) Ltd* 2014 (3) SA 90 (GP)
- *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another* 2014 (3) SA 96 (SCA)
- *Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others* 2014 (3) SA 106 (CC)

- Ronald Bobroff & Partners Inc v De La Guerre 2014 (3) SA 134 (CC)
- Commissioner, South African Revenue Service v Miles Plant Hire (Pty) Ltd 2014 (3) SA 143 (GP)
- Harmony Gold Mining Co Ltd v Regional Director, Free State Department of Water Affairs, and Others 2014 (3) SA 149 (SCA)
- Hattingh v Hattingh 2014 (3) SA 162 (FB)
- Malcolm v Premier, Western Cape Government 2014 (3) SA 177 (SCA)
- Incubeta Holdings (Pty) Ltd and Another v Ellis and Another 2014 (3) SA 189 (GJ)
- Cassimjee v Minister of Finance 2014 (3) SA 198 (SCA)
- President of the Republic of South Africa and Others v Reinecke 2014 (3) SA 205 (SCA)
- MEC for Health, Eastern Cape, and Another v Kirland Investments (Pty) Ltd t/a Eye and Laser Institute 2014 (3) SA 219 (SCA)
- Sphandile Trading Enterprise (Pty) Ltd and Another v Hwibidu Security Services CC and Others 2014 (3) SA 231 (GJ)
- eThekweni Municipality v Ingonyama Trust 2014 (3) SA 240 (CC)
- Retail Motor Industry Organisation and Another v Minister of Water and Environmental Affairs and Another 2014 (3) SA 251 (SCA)
- Multi-Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd 2014 (3) SA 265 (GP)
- Fischer and Another v Persons Unknown 2014 (3) SA 291 (WCC)
- Renaming of High Courts 2014 (3) SA 319

## FLYNOTES

### **MV v CV (KZP)**

KOEN J and BEZUIDENHOUT AJ  
2013 NOVEMBER 18; 2014 FEBRUARY 7

**Children**—Maintenance—Order—Enforcement—Execution—Refusal to authorise issue of warrant of execution appealable—Maintenance Act 99 of 1998, ss 25–27.

### **VENGADESAN NO v SHAIK AND OTHERS (KZD)**

JEFFREY AJ  
2014 JANUARY 28

**Insolvency**—Rehabilitation—Deceased insolvent—May not be rehabilitated—Nor may his estate be—Insolvency Act 24 of 1936, ss 124, 127A and 129.

### **NIELSON v RAUTENBACH NO AND OTHERS (GNP)**

MABUSE J  
2013 NOVEMBER 13, 15

**Company**—Proceedings by and against—Security for costs—Application for furnishing of—Approach of court—Common law stating that incola plaintiff may not be compelled to give security—But court may order security if proceedings vexatious.

### **EKURHULENI METROPOLITAN MUNICIPALITY AND ANOTHER v VARIOUS OCCUPIERS, EDEN PARK EXTENSION 5 (SCA)**

PONNAN JA, MALAN JA, MAJIEDT JA, WILLIS JA and SALDULKER JA  
2013 NOVEMBER 4, 26

**Land**—Unlawful occupation—Eviction—Statutory eviction—Whether just and equitable—Occupation of homes built by province on municipal land—Flawed allocation process—Failure to honour promise to occupiers of preference—Not just and equitable to evict—Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, s 4.

**FERRIS AND ANOTHER v FIRSTRAND BANK LTD (CC)**

MOSENEKE ACJ, SKWEIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, MADLANGA J, MHLANTLA AJ, NKABINDE J, VAN DER WESTHUIZEN J and ZONDO J  
2013 NOVEMBER 5; DECEMBER 12

**Credit agreement**—Consumer credit agreement—Debt rearrangement—Order—Breach—Credit agreement enforceable without further notice—Notice of termination of debt review not required.

**Credit agreement**—Consumer credit agreement—Debt review—Good-faith requirement—Once debt-rearrangement order granted, good-faith requirement falling away—National Credit Act 34 of 2005, s 86(5) (b).

**DN v MEC FOR HEALTH, FREE STATE (FB)**

MOCUMIE J  
2013 OCTOBER 22, 23

**Delict**—Exclusion of liability—Statutory barring of claim by employee against employer for occupational injury—Doctor claiming damages from MEC for injuries sustained during assault and rape while on duty at state hospital—Whether incident amounting to ‘accident’ as defined, thus precluding claim—Compensation for Occupational Injuries and Diseases Act 130 of 1993, s 35.

**KUBYANA v STANDARD BANK OF SOUTH AFRICA LTD (CC)**

MOSENEKE ACJ, SKWEIYA ADCJ, CAMERON J, DAMBUZA AJ, JAFTA J, FRONEMAN J, MADLANGA J, MHLANTLA AJ, NKABINDE J, VAN DER WESTHUIZEN J and ZONDO J  
2013 NOVEMBER 7; 2014 FEBRUARY 20

**Credit agreement**—Consumer credit agreement—Debt enforcement—Preliminary procedures—Notice of default—Delivery—Meaning of—Credit provider’s obligations as to delivery—Consumer’s obligations as to receipt—Methods of delivery—Proof of delivery—National Credit Act 34 of 2005, ss 129(1) and 130(1).

**ABSA BANK LTD v MAKUNA FARM CC (GJ)**

BORUCHOWITZ J  
2013 AUGUST 26, 28 and 30

**Company**—Business rescue—Liquidation proceedings—Meaning—Proceedings following grant of winding-up order—Companies Act 71 of 2008, s 131(6).

**ABSA BANK LTD v SUMMER LODGE (PTY) LTD (GP)**

VAN DER BYL AJ  
2013 FEBRUARY 21–22

**Company**—Business rescue—‘Liquidation proceedings’—Meaning—Proceedings following grant of liquidation order—Companies Act 71 of 2008, s 131(6).

**Company**—Business rescue—Liquidation proceedings already initiated—Effect—Issue and service of business rescue application suspends liquidation proceedings (those proceedings following grant of liquidation order)—Liquidation order not set aside or discharged but merely suspended—Company cannot carry on business while order suspended—Companies Act 71 of 2008, s 131(6).

**QUARTERMARK INVESTMENTS (PTY) LTD v MKHWANAZI AND ANOTHER (SCA)**

MAYA JA, BOSIELO JA, THERON JA, PILLAY JA and PETSE JA  
2013 AUGUST 20; NOVEMBER 1

**Appeal**—New grounds on appeal—Mero motu raising of by court—Court not only entitled but compelled to do so—This, however, subject to provisos that facts supporting new ground covered in pleadings, and doing so not unfair to party against whom it is directed.

**Land**—Sale—Transfer—Fraud inducing transfer—Underlying transaction tainted by fraud—Real agreement defective in that no intention on part of owner to transfer ownership—Ownership not passing despite registration.

**ESTATE AGENCY AFFAIRS BOARD v AUCTION ALLIANCE (PTY) LTD AND OTHERS (CC)**

MOSENEKE ACJ, SKWEIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, MADLANGA J, MHLANTLA AJ, NKABINDE J and ZONDO J  
2013 NOVEMBER 18; 2014 FEBRUARY 27

**Search and seizure**—Without warrant—Constitutionality—Warrantless search by statutory body—Enabling provisions unconstitutional—Declaration of unconstitutionality suspended to afford parliament time to cure invalidity—Reading-in to regulate interim situation—Estate Agency Affairs Act 112 of 1976, s 32A(1); Financial Intelligence Centre Act 38 of 2001, s 45B.  
**Constitutional practice**—Courts—Constitutional Court—Powers—Declaration of invalidity of statutory provision—Retrospectivity, suspension and reading-in—General principles restated.

**RONALD BOBROFF & PARTNERS INC v DE LA GUERRE (CC)**

MOSENEKE ACJ, SKWEIYA ADCJ, CAMERON J, FRONEMAN J, JAFTA J, VAN DER WESTHUIZEN J, ZONDO J, MADLANGA J and DAMBUZA AJ  
2014 FEBRUARY 20

**Constitutional law**—Legislation—Validity—Contingency Fees Act 66 of 1997—No merit in either rationality review of whole Act or reasonableness review of ss 2 and 4 thereof—Act and impugned sections valid.

**COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE v MILES PLANT HIRE (PTY) LTD (GP)**

VAN NIEKERK AJ  
2013 SEPTEMBER 13; OCTOBER 3

**Revenue**—Income tax—Recovery—Pay now, argue later principle—Effect of appeal by taxpayer—Disputed tax debt not recoverable under ‘pay now, argue later’ rule during winding-up proceedings unless court before which those proceedings serve permits—Tax Administration Act 28 of 2011, s 177(3).

**HARMONY GOLD MINING CO LTD v REGIONAL DIRECTOR, FREE STATE DEPARTMENT OF WATER AFFAIRS, AND OTHERS (SCA)**

NAVSA ADP, BRAND JA, SHONGWE JA, ZONDI AJA and MEYER AJA  
2013 NOVEMBER 25; DECEMBER 4

**Environmental law**—Pollution control—Water pollution—Mining activities—Duties of landholder—Gold mining company required to take anti-pollution measures due to water contamination—Whether directive invalid or unenforceable when company no longer owning, controlling, occupying or using land on which gold mining operations undertaken—National Water Act 36 of 1998, s 19(3).

**HATTINGH v HATTINGH (FB)**

VAN ZYL R  
2010 DECEMBER 23

**Credit agreement**—Consumer credit agreement—Whether agreement subject to NCA—Nature of relationship between parties and objects of NCA—Contract terminating business relationship between parties providing that defendant would pay sum to plaintiff in annual instalments—Upon default, unpaid balance, together with interest, immediately due—Relationship between parties not governed by objects of NCA—Notice not required—Summary judgment granted.

**MALCOLM v PREMIER, WESTERN CAPE GOVERNMENT (SCA)**

NAVSA JA, SHONGWE JA, THERON JA, WALLIS JA and LEGODI AJA  
2014 FEBRUARY 21; MARCH 14

**Prescription**—Extinctive prescription—Delay in completion—Creditor a minor—Meaning of ‘minor’—Person under 18—Meaning applying only to claims arising after 1 July 2007—Prescription Act 68 of 1969, s 13(1)(a).

**INCUBETA HOLDINGS (PTY) LTD AND ANOTHER v ELLIS AND ANOTHER (GJ)**

SUTHERLAND J  
2013 OCTOBER 5, 16

**Execution**—Application for leave to execute pending appeal—Test—No longer based on ‘preponderance of equities’—New test in Superior Courts Act involving two distinct factual findings—Firstly, that applicant for leave to appeal or appeal would not suffer irreparable harm if order put into operation—Secondly, that applicant for activation of order would suffer irreparable harm if order remained stayed—Superior Courts Act 10 of 2013, s 18(3); Uniform Rules of Court, rule 49(11).

**CASSIMJEE v MINISTER OF FINANCE (SCA)**

MTHIYANE DP, BRAND JA, CACHALIA JA, SOUTHWOOD AJA and BORUCHOWITZ AJA  
2012 MAY 22; JUNE 1

**Practice**—Withdrawal and dismissal of proceedings—Dismissal—Delay in prosecution of action—Requirements.

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS v REINECKE (SCA)**

MPATI P, WALLIS JA, PETSE JA, SALDULKER JA and VAN ZYL AJA  
2014 FEBRUARY 17, 28

**Magistrate**—Dismissal—Constructive dismissal—Magistrate, appointed as relief magistrate, removed from judicial functions and allocated to administrative duties by chief magistrate—Chief magistrate lacking power to dismiss magistrate—No repudiation of contract of employment—No constructive dismissal.

**Magistrate**—Employment—Nature—Though performing judicial function and thus part of judiciary, may remain employee of state under contract of employment—Certain employment-related disputes concerning magistrate resorting under public law—Having public-law, as opposed to contractual, remedies.

**Labour law**—Dismissal—Constructive dismissal—Public servant—Appropriate remedy—Magistrate bringing contractual claim for damages—Magistrate’s dismissal governed by public law—Restricted to public-law remedy.

**MEC FOR HEALTH, EASTERN CAPE, AND ANOTHER v KIRLAND INVESTMENTS (PTY) LTD t/a EYE AND LASER INSTITUTE (SCA)**

MTHIYANE DP, MAYA JA, PLASKET AJA, SALDULKER AJA and MEYER AJA  
2013 MAY 3, 16

**Administrative law**—Administrative action—Finality of decision—Functus officio principle—Applications for establishment of private hospitals refused by Superintendent-General but decisions not communicated to applicant—Decisions not final therefore reversal by acting replacement not offending against functus officio principle—Superintendent-General functus officio, however, in relation to decisions of replacement.

**Administrative law**—Administrative action—Invalidity—Consequences—As long as invalid administrative decisions not set aside on review, existing in fact and having legal consequences—May only be set aside in proceedings properly brought for judicial review.

**SPHANDILE TRADING ENTERPRISE (PTY) LTD AND ANOTHER v HWIBIDU SECURITY SERVICES CC AND OTHERS (GJ)**

ANDRÉ GAUTSCHI AJ  
2014 JANUARY 30; FEBRUARY 25

**Company**—Winding-up—Application—Furnishing of copy to South African Revenue Service—Furnishing must be done reasonable time before hearing—Affidavit describing how application furnished must be filed before or during hearing—Companies Act 61 of 1973, ss 346(4A)(a)(iii) and 346(4A)(b).

**eTHEKWINI MUNICIPALITY v INGONYAMA TRUST (CC)**

MOGOENG CJ, MOSENEKE DCJ, FRONEMAN J, JAFTA J, KHAMPEPE J, NKABINDE J, SKWEYIYA J, VAN DER WESTHUIZEN J, ZONDO J and MHLANTLA AJ  
2013 FEBRUARY 12; MARCH 28

**Constitutional practice**—Compliance with rules of court and court's directions—Failure to comply—One way of halting non-compliance would be for court to require proper compliance with rules and refusing condonation where these requirements were not met.

**Constitutional practice**—Applications and motions—Application for condonation—For late filing of application for leave to appeal—Requirements restated—Where no reasonable prospects of success on appeal, and more than two-month delay not satisfactorily explained or covered, condonation refused.

**RETAIL MOTOR INDUSTRY ORGANISATION AND ANOTHER v MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS AND ANOTHER (SCA)**

MPATI P, NUGENT JA, TSHIQI JA, PLASKET AJA and SALDULKER AJA  
2013 MAY 8, 23

**Administrative law**—Administrative action—Functus officio principle—Industry-wide waste-tyre management plan, drafted by private-industry body, withdrawn by minister after approval and publication in terms of empowering Act—Whether minister having lawful authority for withdrawal or functus officio—Approved plan instrument of subordinate legislation—Functus officio principle therefore not applicable and withdrawal of plan lawful—National Environmental Management Waste Act 59 of 2008.

**MULTI-LINKS TELECOMMUNICATIONS LTD v AFRICA PREPAID SERVICES NIGERIA LTD (GP)**

FABRICIUS J  
2013 AUGUST 19; SEPTEMBER 6

**Jurisdiction**—High court—Foreign defendant—No attachment to found or confirm jurisdiction—Court having jurisdiction if (1) summons served on defendant while physically present in South Africa; and (2) there was adequate connection between action and court's area of jurisdiction—Principle applying also where defendant is corporate entity—Supreme Court Act 59 of 1959, s 19(1)(a); Superior Courts Act 10 of 2013, s 21(1).

**Costs**—Costs de bonis propriis—When to be awarded—Against practitioner—Conduct so deviating from norm that it would be unfair to expect practitioner's clients to bear costs—Conduct earning displeasure of court, such as dishonesty, obstruction of justice, irresponsibility, gross negligence, reckless litigation, misleading the court, gross incompetence, and carelessness—Costs de bonis propriis would not always be indicated in case of errors of law and failure to comply with rules.

**FISCHER AND ANOTHER v PERSONS UNKNOWN (WCC)**

GAMBLE J  
2014 FEBRUARY 20, 25; MARCH 13

**Land**—Unlawful occupation—Eviction—Statutory eviction—Applicability of statute (PIE)—Newly erected informal structures showing no signs of human habitation—PIE applicable once structures completed—Semble: Land effectively occupied by erection of informal structure on

it, regardless of its state of completion—Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, ss 4, 5 and 6.

**Housing**—Right to housing—Meaning of ‘home’ in context of PIE—Interpretation should be wide rather than restrictive—Where person’s housing circumstances dire, much less may be required to establish ‘home’ by way of regular occupation and degree of permanence—In such circumstances it was not so much period of occupation of property which rendered PIE applicable, but intention behind it—Constitution, s 26(3); Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

## RENAMING OF HIGH COURTS

**Court**—High court—Renaming—New names of high court divisions listed—Corresponding abbreviations set out—Superior Courts Act 10 of 2013, ss 6 and 50.

# SOUTH AFRICAN CRIMINAL LAW REPORTS

MAY 2014

## TABLE OF CASES

- Minister of Justice and Constitutional Development and Another v Masingili and Another 2014 (1) SACR 437 (CC)
- S v Chabalala 2014 (1) SACR 458 (GP)
- S v Swartz 2014 (1) SACR 461 (NCK)
- Broodryk and Others v Minister of Correctional Services and Others 2014 (1) SACR 471 (GJ)
- Botha v Minister of Justice and Constitutional Development and Others 2014 (1) SACR 479 (NCK)
- S v Lemtongthai 2014 (1) SACR 495 (GJ)
- S v Luphuwana 2014 (1) SACR 503 (GJ)
- S v Luruli and Another 2014 (1) SACR 511 (GJ)
- S v Carter 2014 (1) SACR 517 (NCK)
- S v Dlamini 2014 (1) SACR 530 (GP)
- S v Mashava 2014 (1) SACR 541 (SCA)

## FLYNOTES

### MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND ANOTHER v MASINGILI AND ANOTHER (CC)

MOGOENG CJ, MOSENEKE DCJ, CAMERON J, FRONEMAN J, JAFTA J, MADLANGA J, NKABINDE J, SKWEIYA J, VAN DER WESTHUIZEN J, ZONDO J and MHLANTLA AJ  
2013 AUGUST 27; NOVEMBER 28

**Robbery**—Sentence—Robbery with aggravating circumstances—Minimum sentence in terms of s 51 of Criminal Law Amendment Act 105 of 1997—Armed robbery not separate crime—Elements of crime same as for robbery—Intent as regards aggravating circumstances not required to establish offence—Section 1(1)(b) of Criminal Procedure Act 51 of 1977 not creating strict liability (liability without fault) and not unconstitutional—Position of accomplice who did not have intent as regards use of weapon could be accommodated by consideration of mitigating factors that amount to substantial and compelling circumstances.

**Robbery**—Aggravating circumstances—What constitutes—Accomplice—Liability of—Where accomplice did not perform any act suggesting that there were aggravating circumstances—Insertion of ‘accomplice’ in definition of ‘aggravating circumstances’ in s 1(1)(b) of Criminal Procedure Act 51 of 1977 not creating strict liability that infringed right to freedom and security, and right to fair trial.



**S v CHABALALA (GP)**

JORDAAN J and ISMAIL J  
2013 AUGUST 29

**Assault with intent to do grievous bodily harm**—Sentence—Fine—Had to be within realistic ability of accused to pay—First offender, 65-year-old pensioner sentenced to fine of R4000—Sentence excessive and reduced on review and magistrate ordered to enquire, in terms of s 297(5) of Criminal Procedure Act 51 of 1977, if fine should be paid in instalments.

**S v SWARTZ (NCK)**

OLIVIER J and PAKATI J  
2013 NOVEMBER 29

**Plea**—Plea of guilty—Alteration of to plea of not guilty—Effect of s 113(2) of Criminal Procedure Act 51 of 1977—Accused having pleaded guilty to alternative charge and such plea accepted by prosecutor—Magistrate not satisfied after questioning accused that he was guilty—Trial proceeding on original (more serious) charge—In absence of indication by prosecutor, court had correctly proceeded on basis of original charge.

**BROODRYK AND OTHERS v MINISTER OF CORRECTIONAL SERVICES AND OTHERS (GJ)**

VAN OOSTEN J  
2013 SEPTEMBER 2, 9

**Prisons**—Prisoner—Parole—Lengthy term of imprisonment—Sentences imposed before coming into operation of Correctional Services Act 111 of 1998—Longer period of imprisonment, imposed by s 136(1) before parole could be considered, not in conflict with provisions of s 35(3) (n) of Constitution.

**BOTHA v MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND OTHERS (NCK)**

KGOMO JP and LEVER AJ  
2013 OCTOBER 29; NOVEMBER 29

**Evidence**—Exhumation of body—Application in terms of provisions of s 3(4) of Inquests Act 58 of 1959—Application may be made ex parte and without notice to family of deceased—Decision one of judicial nature and not subject to provisions of Promotion of Administrative Justice Act 3 of 2000—Nothing preventing NDPP from making application for exhumation after commencement of criminal trial in respect of death of deceased.

**S v LEMTONGTHAI (GJ)**

TSOKA J and LEVENBERG AJ  
2013 AUGUST 29, 30

**Environmental offences**—Rhino horn—Unlawful trading in rhino horn in contravention of National Environmental Management: Biodiversity Act 10 of 2004—Sentence—Legally shot 26 rhinos as result of hunting permit—Appellant fraudulently amended permits in order to illegally export rhino horn—Seriousness of offence emphasised and need for deterrence—Effective sentence of 30 years' imprisonment imposed.

**S v LUPHUWANA (GJ)**

COPPIN J and VALLY J  
2013 NOVEMBER 6 CASE No DH 10/07

**Trial**—Mental state of accused—Enquiry in terms of s 78(2) of Criminal Procedure Act 51 of 1977—Requirements of—Section 78(2) requiring that charge be put to accused, that he plead to it and that admissible evidence be led establishing commission of offence.

**S v LURULI AND ANOTHER (GJ)**

WEINER J  
2012 JULY 20

**Rape**—Sentence—Life imprisonment—Minimum sentence in terms of Criminal Law Amendment Act 105 of 1997—Accused having abducted two female paramedics in ambulance, whilst assisting burnt child, raped them at gunpoint and forced a passer-by to sexually assault them—Accused sentenced to eight terms of life imprisonment, plus an additional 35 years' imprisonment.

**S v CARTER (NCK)**

KGOMO JP and MAMOSEBO AJ  
2013 AUGUST 5; SEPTEMBER 27

**Appeal**—By Director of Public Prosecutions or other prosecutor on question of fact—Semble: Court expressing desirability of amending Criminal Procedure Act 51 of 1977 to allow appeal by state, on facts, against discharge or acquittal of accused.

**Appeal**—Notice of appeal—Requirement of filing notice of appeal—In terms of s 309B of Criminal Procedure Act 51 of 1977 and rule 67 of Magistrates' Court Rules—Respondents must take stand against non-compliance provisions and take points in limine.

**S v DLAMINI (GP)**

PHATUDI J, LAMPRECHT AJ and DE VRIES AJ  
2013 AUGUST 16

**Sentence**—Prescribed sentence—Minimum sentences—Imposition of in terms of Criminal Law Amendment Act 105 of 1997—'Substantial and compelling circumstances'—Court declining to consider whether substantial and compelling circumstances present where it had no hesitation in imposing maximum sentence.

**S v MASHAVA (SCA)**

NAVSA ADP, MAYA JA and SALDULKER JA  
2013 NOVEMBER 26; DECEMBER 2

**Sentence**—Concurrence of sentences—Life sentence—Other determinate sentences imposed on accused who is sentenced to life imprisonment—Such sentences automatically run concurrently with sentence of life imprisonment in terms of s 39(2)(a)(ii) of Correctional Services Act 111 of 1998—Order that other sentences not run concurrently with life sentence in violation of that provision.

## THE NAMIBIAN LAW REPORTS

2014 (1)

### TABLE OF CASES

- Samicor Diamond Mining (Pty) Ltd v Minister of Mines and Energy and Others 2014 (1) NR 1 (HC)
- S v Okuani 2014 (1) NR 16 (HC)
- S v EZ 2014 (1) NR 18 (HC)
- Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia and Another 2014 (1) NR 22 (HC)
- S v Tjikotoke 2014 (1) NR 38 (HC)
- S v Ndengu 2014 (1) NR 42 (HC)
- Moussa v Prosecutor-General and Others 2014 (1) NR 50 (HC)
- S v Iilonga 2014 (1) NR 53 (NLD)
- Hailulu v Director of the Anti-Corruption Commission and Others 2014 (1) NR 62 (HC)
- Kalipi v Hochobeb and Another 2014 (1) NR 90 (HC)
- Prosecutor-General v Uuyuni 2014 (1) NR 105 (HC)

- S v Titus and Others 2014 (1) NR 129 (HC)
- CSC Neckartal Dam Joint Venture v Tender Board of Namibia and Others 2014 (1) NR 135 (HC)
- S v Kauaria 2014 (1) NR 163 (HC)
- Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC)
- Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC)
- Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC)
- Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)
- Strauss and Another v Witt and Another 2014 (1) NR 213 (HC)
- Witvlei Meat (Pty) Ltd and Others v Disciplinary Committee for Legal Practitioners 2014 (1) NR 217 (SC)
- Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liq) and Others 2014 (1) NR 234 (SC)
- S v Ashimbanga 2014 (1) NR 242 (HC)
- Chairperson, Council of the Municipality of Windhoek, and Others v Roland and Others 2014 (1) NR 247 (SC)
- S v Gomaseb 2014 (1) NR 269 (HC)
- Weatherly International plc v Bruni and McLaren NNO and Another 2014 (1) NR 273 (SC)
- Benz Building Suppliers v Stephanus and Others 2014 (1) NR 283 (LC)
- Ongopolo Mining Ltd v Uris Safari Lodge (Pty) Ltd and Others 2014 (1) NR 290 (HC)

## FLYNOTES

### **SAMICOR DIAMOND MINING (PTY) LTD v MINISTER OF MINES AND ENERGY AND OTHERS (HC)**

VAN NIEKERK J

2012 NOVEMBER 16; 2013 FEBRUARY 19

**Review**—Application for—Time within which proceedings to be instituted—Delay—Whether delay unreasonable—Question whether delay unreasonable clearly a question of fact and not of law—Question to be determined objectively on particular facts and circumstances of each case—Determination of such question not entailing exercise of discretion—But it does imply making of a value judgment.

**Review**—Application for—Time within which proceedings to be instituted—Delay—Whether unreasonable delay should be condoned—Determination of such delay bringing issues of prejudice to any party and public interest to fore—In interests of administration of justice that finality be reached within reasonable time.

### **S v OKUANI (HC)**

NDAUENDAPO J and SIBOLEKA J

2013 FEBRUARY 5

**Immigration**—Offences—Entering Namibia without unexpired passport bearing valid visa or authority—Contravention of s 12(1) read with s 12(4) of Immigration Control Act 7 of 1993—Charge must contain allegation that immigration official demanded from accused unexpired passport bearing valid visa or authority as set out in s 12(1) and that accused failed to produce it—Provisions of s 12(1) and (4) must be cited in charge in order to create offence.

### **S v EZ (HC)**

DAMASEB JP and NDAUENDAPO J

2013 JULY 22, 23

**Maintenance**—Failure to pay maintenance for child in contravention of Maintenance Act 9 of 2003—Sentence—Not to be treated lightly, even for first offenders—Economic abuse in form of failure to pay maintenance a species of domestic violence as stipulated in s 2(1)(c) of Combating of Domestic Violence Act 4 of 2003.

**Maintenance**—Failure to pay maintenance for child in contravention of Maintenance Act 9 of 2003—Sentence—Periodical imprisonment—Intention of court in imposing such sentence is (i) to ensure accused remains employed to earn income from which to pay maintenance and (ii)

to send clear message that failure to pay maintenance will not be countenanced by court—Court to elicit information in sentencing process to determine when accused works—Failure to do so might mean periodical imprisonment imposed during time accused should be at work—Such failure constituting material misdirection justifying setting aside of sentence.

**WITVLEI MEAT (PTY) LTD v AGRICULTURAL BANK OF NAMIBIA AND ANOTHER (HC)**

SMUTS J  
2013 JULY 18, 26

**Practice**—Judgments and orders—Application for stay of execution of judgment pending appeal—Jurisdiction of court to consider application where appeal had lapsed as applicant had failed to lodge security timeously—Court having jurisdiction to determine matter in terms of its inherent jurisdiction where dictates of real and substantial justice required it.

**S v TJIKOTOKE (HC)**

DAMASEB JP and HOFF J  
2012 OCTOBER 29

**Criminal procedure**—Sentence—Several offences—Taking of counts together for purposes of sentence—Should only be done in exceptional circumstances—Where globular sentence exceeded maximum permissible for any of individual counts that had been taken together, this was an incompetent sentence and a nullity.

**S v NDENGU (HC)**

HOFF J and VAN NIEKERK J  
2013 MAY 29

**Criminal procedure**—Trial—Mental state of accused—Enquiry into mental capacity—Person requesting referral for observation required to lay a basis for such request.

**Criminal procedure**—Trial—Mental state of accused—Enquiry into mental capacity—Report by psychiatrist—Parties required to indicate their stance regarding report—Where parties do not do so, duty of court to enquire.

**Criminal procedure**—Trial—Mental state of accused—Enquiry into mental capacity—Report by psychiatrist—Unrepresented accused—Duty of court towards—Court required to explain to accused that he could dispute report—Where neither party indicates stance, duty of court to call witness to testify about report.

**MOUSSA v PROSECUTOR-GENERAL AND OTHERS (HC)**

PARKER AJ  
2013 APRIL 15

**Court**—Jurisdiction—Matters relating to pending criminal trial in lower court—Applicant applying for order releasing him from detention where two previous bail applications had failed—Court lacking jurisdiction as this would be usurping function and order of lower court.

**Court**—Jurisdiction—Matters relating to pending criminal trial in lower court—Applicant applying for order declaring that his trial date had to be last postponement of his matter—Court lacking jurisdiction as matter speculative and would be anticipating facts which were not before it.

**Court**—Jurisdiction—Matters relating to pending criminal trial in lower court—Applicant applying for order compelling Prosecutor-General to withdraw criminal case against him—Such order beyond jurisdiction of court as art 88(2) of Namibian Constitution vesting sole power in Prosecutor-General to prosecute.

**S v IILONGA (NLD)**

LIEBENBERG J  
2013 FEBRUARY 19, 25

**Criminal procedure**—Sentence—Minimum sentences—‘Substantial and compelling circumstances’—What constitutes—Immaturity and lack of education of rural offender—Statement from bar that young offender immature and unsophisticated, insufficient to

establish this as a factor—Proper basis for treating offender in any way differently than other offenders required to be established.

**Criminal procedure**—Sentence—Minimum sentences—‘Substantial and compelling circumstances’—Although mitigating factors seen in isolation constituted substantial circumstances, when viewed against background of aggravating factors they were not substantial and compelling circumstances—Young first offender raping 8-year-old girl who suffered severe trauma—Court imposing higher sentence than mandatory minimum.

**HAILULU v DIRECTOR OF THE ANTI-CORRUPTION COMMISSION AND OTHERS (HC)**

DAMASEB JP

2012 MARCH 20; 2013 JULY 19

**Criminal law**—Corruption—Investigation under provisions of Anti-Corruption Act 8 of 2003—Irrelevant that investigation done for improper motive but public institutions warned to guard against becoming instruments for settling private scores.

**Criminal law**—Corruption—Arrest under warrant issued in terms of provisions of Anti-Corruption Act 8 of 2003—Prior decision by Prosecutor-General under s 31(2) not required before arrest.

**Criminal law**—Corruption—Arrest under warrant issued in terms of provisions of Anti-Corruption Act 8 of 2003—Less drastic means than arrest of securing attendance of subject at court to be considered before arresting subject.

**KALIPI v HOCHOBEB AND ANOTHER (HC)**

GEIER J

2013 APRIL 4; MAY 30

**Practice**—Stay of proceedings—Grounds—Lis alibi pendens—When available—High court having inherent jurisdiction to stay civil proceedings pending outcome of other civil proceedings to prevent abuse of its process if an action already pending between the same parties on same cause of action—Discretion to be sparingly exercised.

**PROSECUTOR-GENERAL v UUYUNI (HC)**

GEIER J

2012 NOVEMBER 23; 2013 MARCH 12

**Criminal procedure**—Search and seizure—Preservation of property order—Application for—In terms of s 51 of the Prevention of Organised Crime Act 29 of 2004—Requirements for—Application brought ex parte and in camera but insufficient grounds shown for application to be in camera—No absolute entitlement to in camera hearing in s 98(1) of Act.

**S v TITUS AND OTHERS (HC)**

SHIVUTE J, SIBOLEKA J and MILLER AJ

2013 NOVEMBER 4, 28

**Criminal law**—Traffic offences—Driving with an excessive concentration of alcohol in the blood—Proof of—Reliance on breathalyser test in terms of s 82(7) of Road Traffic and Transport Act 22 of 1996—Reliability of test—Device to be approved by minister by notice in Gazette and must conform to requirements of any standard publication contemplated in s 94(4) of Act as specified in such notice—GN 100 of 2003 not meeting requirements of s 82(7).

**CSC NECKARTAL DAM JOINT VENTURE v TENDER BOARD OF NAMIBIA AND OTHERS (HC)**

DAMASEB JP, SMUTS J and UEITELE J

2013 MAY 23, 24; JULY 4

**Review**—Application for—Parties—Locus standi—Applicant a joint venture of certain parties—Joint venture agreement providing that it would terminate when tender awarded to third party—On proper interpretation of agreement, its termination only triggered in event of lawful award of tender or where joint venture parties elected not to challenge award—Nothing in agreement to suggest that joint venture parties had precluded themselves from challenging

tender award—Joint venture parties also having agreed to challenge award and having successfully applied to intervene in application and join proceedings—Challenge to standing moot—Joint venture having standing to apply for review of award.

**Government procurement**—Procurement process—Clarification of tender in terms of s 15(1) of Tender Board of Namibia Act 16 of 1996 (Nm)—Right of clarification that of tender board to assist it in examination, evaluation and comparison of tenders—Right of clarification not that of tenderers who do not comply with tender specifications—Incumbent upon tenderers to complete their tenders properly in all respects required by tender documentation—Failure of tenderer to complete portion of information required not resulting in right of tenderer to clarification by tender board to ensure omission by tenderer can be rectified.

**Government procurement**—Procurement process—Decision of tender board—Referral of tenders to ministry for its recommendation in terms of s 19 of Tender Board of Namibia Act 16 of 1996 (Nm)—Tender board not obliged to act upon such recommendation—Tender board obliged throughout to apply its own mind and exercise its discretion fairly and impartially in respect of each tender before it—Evaluation of tenders sent by ministry to board must fairly reflect evaluations and tenders themselves.

**S v KAUARIA (HC)**

SHIVUTE J and PARKER AJ  
2013 FEBRUARY 12

**Criminal procedure**—Sentence—Competence of—Accused convicted on two counts—One count dealt with in terms of s 112(1)(b) of Criminal Procedure Act 51 of 1977 and other count in terms of s 112(1)(a) as amended by s 7 of Act 13 of 2010—Magistrate taking both counts together and imposing wholly suspended sentence of six months' imprisonment—Section 112(1)(a) as amended providing that court may impose any competent sentence other than imprisonment without option of a fine or fine exceeding N\$6000—Magistrate misdirecting himself by taking two counts together and imposing imprisonment without option of fine—Sentence set aside and substituted with sentence of fine or imprisonment wholly suspended for three years.

**SHILONGO v CHURCH COUNCIL OF THE EVANGELICAL LUTHERAN CHURCH IN THE REPUBLIC OF NAMIBIA (SC)**

SHIVUTE CJ, MAINGA JA and MTAMBANENGWE AJA  
2013 JUNE 13; OCTOBER 16

**Appeal**—Application for condonation—Non-compliance with Rules—Court expressing grave concern about alarming wave of condonation applications for non-compliance with rules of court—Application for condonation not there for the asking nor a mere formality—Of cardinal importance that practitioners take time to study the rules and apply them correctly.

**Appeal**—Application for condonation—Late filing of notice of appeal—Appellant under an obligation to take an active part in the compilation of the record—Responsibility cannot be shifted on to official transcribers.

**NAMIB CONTRACT HAULAGE (PTY) LTD v OSHAKATI GARAGE CC (SC)**

MARITZ JA, MAINGA JA and MTAMBANENGWE AJA  
2013 JUNE 17; NOVEMBER 15

**Appeal**—Application for condonation—Late filing of notice of appeal—Notice served on respondent's legal representatives and Registrar of Supreme Court timeously but through an oversight on part of messenger, only a month later on Registrar of High Court—Condonation granted.

**Practice**—Parties—Substitution—Effect of failure to file a notice of substitution of plaintiff at trial—Point taken for the first time on appeal—Substitution had taken place without objection from appellant—No prejudice created—Failure condoned.

**Practice**—Parties—Authorisation—Failure to file power of attorney and resolution authorising action on behalf of close corporation—Non-compliance with rule 7(1) and (4) of the rules of court not rendering proceedings void and could be condoned in appropriate circumstances.

**Practice**—Rules of court—Compliance with—Routine non-compliance with rules 5(1) and 8(1) of the rules of court becoming a menace in appeal cases in the Supreme Court, wasting valuable time.

**ARANGIES T/A AUTO TECH v QUICK BUILD (SC)**

SHIVUTE CJ, STRYDOM AJA and O'REGAN AJA  
2012 NOVEMBER 6; 2013 JUNE 18

**Practice**—Withdrawal and dismissal of proceedings—Dismissal—Application for dismissal of action on grounds of failure to prosecute action within reasonable time—Court will consider following: length of delay, explanation therefor, prejudice caused to defendant thereby, effect of delay on conduct of trial and extent to which defendant contributed to delay—Not necessary to establish that dilatory litigant intended never to prosecute action to finality or to cause prejudice to other party—But such intention, if established, will amount to abuse of process—Relationship between delay and prejudice may have bearing on outcome of application—Approach that application might only succeed if intention is averred and proved cannot be endorsed.

**VOX ORION (PTY) LTD t/a VOX ORION v PRINSLOO (LC)**

GEIER J  
2013 MAY 31; JUNE 13

**Labour law**—Termination of employment—Payment of remuneration—Payment of commission—Contract of employment providing that commission payable only 'after customer acceptance, full provisioning and the customer being invoiced'—Employee resigning after doing work entitling him to commission—Termination of employment occurring before full provisioning and invoicing of customer had taken place—On proper interpretation of s 9 of Labour Act 2007, read with s 37 and definition of 'remuneration' in s 1, commission not due and owing to employee on termination of employment—Claim for payment thereof failing.

**STRAUSS AND ANOTHER v WITT AND ANOTHER (HC)**

SILUNGWE AJ  
2007 JULY 2; 2009 NOVEMBER 19

**Prescription**—Acquisitive prescription—Servitude—Acquisition of against local authority—Effect of s 65 of Local Authorities Act 23 of 1992—Section merely precludes a person from asserting, by prescription, any right in respect of the immovable property that was at the time owned by a local authority council.

**WITVLEI MEAT (PTY) LTD AND OTHERS v DISCIPLINARY COMMITTEE FOR LEGAL PRACTITIONERS AND OTHERS (SC)**

MAINGA JA, CHOMBA AJA and O'REGAN AJA  
2013 JULY 3; NOVEMBER 15

**Legal practitioner**—Disciplinary procedure—Appeal in terms of s 35(3) of Legal Practitioners Act 15 of 1995 against decision by disciplinary committee of law society—Such appeal one in ordinary strict sense, ie rehearing on merits but limited to evidence or information on which decision under appeal was given—Only determination to be made is whether decision right or wrong.

**Legal practitioner**—Rights and duties—Duties of loyalty and confidentiality owed to clients—Proper approach to determining ambit of such duties—Duty of loyalty imposing obligation upon legal practitioner to act diligently and devotedly in interests of client—Such duty existing as long as relationship of legal practitioner and client exists, but is terminated when that relationship ends—Implications of duty set out—Duty of confidentiality imposing obligation upon legal practitioner not to divulge any information received from client in confidence—Nor may practitioner use such information to promote his/her own interests—Such duty extends beyond termination of practitioner's mandate—Legal practitioner may not take instruction from new client that will give rise to risk that confidential information obtained from existing or former client may be disclosed.

**Legal practitioner**—Disciplinary procedure—Complaint that legal practitioner breached duty of confidentiality—Proper approach to be followed—Complaining client must establish (a) that it provided confidential information to legal practitioner that was relevant or related to issue upon which practitioner has given advice to, or is acting in litigation on behalf of, another client; and (b) that disclosure of confidential information would be likely to be adverse to complaining client's interests—Once (a) and (b) established, presumed that there is risk of breach of confidentiality and practitioner will bear burden of establishing absence of such risk.

**WORKU v EQUITY AVIATION SERVICES (NAMIBIA) (PTY) LTD (IN LIQUIDATION) AND OTHERS (SC)**

O'REGAN AJA, ZIYAMBI AJA and GARWE AJA  
2013 NOVEMBER 4, 15

**Practice**—Rules of court—Compliance with—Lay litigant—Although court should be understanding of difficulties experienced by lay litigants and seek to assist them where possible, rules were adopted to ensure fair and expeditious resolution of disputes in interest of all litigants and administration of justice—Condonation for non-compliance with rules not permissible where that would render proceedings unfair.

**S v ASHIMBANGA (HC)**

VAN NIEKERK J and UEITELE J  
2012 SEPTEMBER 21; NOVEMBER 2

**Criminal procedure**—Appeal—Notice of appeal—Grounds of appeal—Failure properly to set out grounds of appeal—Appellant a lay person, serving custodial sentence drawing up notice of appeal—Complaint about notice of appeal to be approached with some leniency—Where issues raised by appellant discernible and state able to file full heads of argument on merits and state not materially prejudiced, appeal not struck off roll.

**Criminal procedure**—Appeal—Argument on appeal—Appellant on appeal relying on contradictions between police officers' witness statements and their testimony at trial—Such point not made in court a quo nor were police officers confronted with such contradictions—Appeal to be decided on basis of record of proceedings in court a quo—Not permissible for appellant to rely on witness statements or such ground of appeal.

**CHAIRPERSON, COUNCIL OF THE MUNICIPALITY OF WINDHOEK, AND OTHERS v ROLAND AND OTHERS (SC)**

STRYDOM AJA, CHOMBA AJA and O'REGAN AJA  
2013 JULY 4; NOVEMBER 15

**Local authority**—Town planning—Town planning scheme—Scheme providing that buildings in residential area may not exceed two storeys without permission of council—Clause 21(3) of Town Planning Scheme of Windhoek unambiguous and regulation 29B of Building Regulations which dealt with coverage of property not relevant to its interpretation.

**Court**—Jurisdiction—Exclusion of jurisdiction—Domestic remedies—Clause 51 of Town Planning Scheme of Windhoek applicable only to applicants for decision under scheme.

**Review**—In what cases—Error of law by administrative official—Although court will pay respect to interpretation of legislative provisions by experienced and skilled town planners in their field of expertise that there were limits to respect that will be paid—Where interpretation so at odds with ordinary meaning of provision that it would not be appropriate for court to respect that interpretation, court would review decision.

**S v GOMASEB (HC)**

SMUTS J and MILLER AJ  
2013 NOVEMBER 25, 29

**Criminal law**—Rape—Sentence—Factors to be taken into account—Youthful first offender (15 years and one month old) convicted of contravening s 2(1)(a) by inserting his finger into vagina of five-year-old girl—Sentence of six years' imprisonment of which half was suspended for five years not inducing sense of shock—Combating of Rape Act 8 of 2000.



**WEATHERLY INTERNATIONAL PLC v BRUNI AND MCLAREN NNO AND ANOTHER (SC)**  
MAINGA JA, CHOMBA AJA and O'REGAN AJA  
2013 JULY 2; NOVEMBER 15

**Company**—Compromise—Scheme of arrangement in terms of s 311 of Companies Act 61 of 1973—Sanctioning of scheme of arrangement or compromise by high court does not mean its terms become an order of court and executable.

**BENZ BUILDING SUPPLIERS v STEPHANUS AND OTHERS (LC)**  
PARKER AJ  
2013 OCTOBER 18; NOVEMBER 19

**Labour law**—Dismissal—Proof of—Onus of proof on employee to prove fact of a dismissal in unfair dismissal dispute in terms of s 33(4) of Labour Act 11 of 2007—Act of dismissal conscious and clearly expressed command or order directed to employee that he/she was discharged from employer's service.

**ONGOPOLO MINING LTD v URIS SAFARI LODGE (PTY) LTD AND OTHERS (HC)**  
DAMASEB JP  
2013 JULY 15; 2014 FEBRUARY 19

**Prescription**—Extinctive prescription—Land—Whether claim for return of land fraudulently obtained constituting 'debt'—Whether fraud that enabled the transfer single act, or continuing wrong that could interrupt prescription—Prescription Act 68 of 1969, ss 10(1) and 11(d).

## NEW RELEASES FROM JUTA

[Planning Law in Namibia](#)

[101 Questions and Answers About: The Protection of Personal Information Act](#)

[Journal of Comparative Law in Africa / Revue de Droit Compare en Afrique \(Vol. 1, issue 1 - 2014\)](#)

[Juta's 2014 Compendium of Tax Legislation \(Volumes 1 & 2\)](#)

[The Quantum of Damages Quick Guide 2014 - Quantum conversion tables and medical diagrams](#)

[Taxation of Legal Costs in South Africa](#)

[Juta's Sentencing Report \(online\)](#)