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JULY 2014

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

Herewith the cases of interest in the July reports.

The Index and Annotations to the Namibian Law Reports 1990-2013 is now available. The subject index has been revised to reflect current trends in the law, with detailed cross-referencing, to enable speedy and thorough location of cases on topic.

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[The Index and Annotations to the Namibian Law Reports 1990-2013](#)

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

SOUTH AFRICAN LAW REPORTS

A child's right to school books

The Constitutional right to basic education was infringed when all textbooks were not delivered in time to schools, before the commencement of the academic year. *Basic Education for All and Others v Minister of Basic Education and Others* 2014 (4) SA 274 (GP)

To prosecute or not to prosecute?

The Supreme Court of Appeal upheld the high court's setting-aside of the impugned decisions not to continue with Lieutenant-General Mdluli's prosecution, only insofar as setting it aside was justified on the grounds of legality and rationality, and not also—as the high court had found—on the basis that such decisions were subject to review under the Promotion of Administrative Justice Act. *National Director of Public Prosecutions and Others v Freedom Under Law* 2014 (4) SA 298 (SCA)

A deponent's knowledge of the facts

It is required that a deponent in a verifying affidavit be able to swear positively to the facts. A deponent for a corporation need not have first-hand knowledge of every fact comprising the

corporation's cause of action, and may rely for knowledge on documents in the corporation's possession. *Rees and Another v Investec Bank Ltd* 2014 (4) SA 220 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

The validity of the Sexual Offences Register

The compulsory registration of a child sex offender in all circumstances was an infringement of the best-interests principle. There were less restrictive means to achieve the aims of the Register, and courts should be afforded a discretion, and the child offender the concomitant opportunity to lead evidence. *J v National Director of Public Prosecutions and Others* 2014 (2) SACR 1 (CC)

Splitting of charges

The proper test is to take a common-sense view of the matters, in light of fairness to accused, to establish whether a single offence or more than one has been committed. In view of the possible overlap between different offences under the Sexual Offences Act, prosecutors must, when faced with a single incident, formulate the most appropriate charge, bearing in mind the need to avoid duplication. Charges are to be formulated with clarity and, where reliance is placed on statutory provisions, the appropriate provisions must be identified. *S v BM* 2014 (2) SACR 23 (SCA)

Accused's evidence in mitigation

The accused's evidence under oath in mitigation went unchallenged, however, it appeared from the magistrate's reasons for sentencing that he disbelieved the accused. The magistrate was obliged to put these misgivings to the accused, at the time, so that the accused had a chance to address the doubts. The sentencing proceedings had been unfair. *S v Madibane* 2014 (2) SACR 88 (GP)

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Kind Regards

The Juta Law Reports Team

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