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DECEMBER 2014

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JUDGMENTS OF INTEREST IN THE DECEMBER EDITIONS OF THE *SALR* AND THE *SACR*.

SOUTH AFRICAN LAW REPORTS

Contingency fee agreement

Their client having been rendered quadriplegic in a car crash, the attorneys sought to retain a large contingency fee amount as security for attorney-and-client costs. It was found that they would likely be entitled to a fraction of the sum retained, and were ordered to repay the entire sum and submit an itemised bill of costs. *Bitter NO obo De Pontes v Ronald Bobroff & Partners Inc and Another* 2014 (6) SA 384 (GJ)

Business rescue and release from debts

The release of a company from debts, under a business-rescue plan, is not available to a surety of company as a defence against a principal debtor's claim. The applicant had contended that the acceptance of the business plan amounted to a statutory compromise which was available as a defence in rem to a surety or co-principal debtor like himself. *Blignaut v Stalcor (Pty) Ltd and Others* 2014 (6) SA 398 (FB)

Delictual action for adultery abolished

Is the innocent spouse's delictual action for adultery still sustainable? The Supreme Court of Appeal exercises its right to develop the common law by entirely abolishing the innocent spouse's action for adultery based on the *actio injuriarum*. The action had become obsolete due to a shift in social mores, it targeted only the third party and not the guilty spouse, and it did disproportionate damage to the children of the marriage and to the dignity and privacy of the third party. Furthermore, it was often motivated by anger and a desire for retribution, rather than a need for closure or solace. *RH v DE* 2014 (6) SA 436 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Justice delayed is justice denied

The Supreme Court of Appeal looks into a sorry state of affairs, including inordinate delays, improperly crafted indictments and other irregularities which could violate section 35(3)(d) of the Constitution, which guarantees every accused the right to have their trial begin and conclude without any unreasonable delay, with differing opinions on the cause and the remedy. *S v Makatu* 2014 (2) SACR 539 (SCA)

Decision to prosecute set aside

Even accepting the most stringent test for rationality imaginable, the decision of the NDPP did not pass muster. The impugned decisions were arbitrary, offended the principle of legality, and therefore the rule of law, and were unconstitutional. The impugned decisions were accordingly declared invalid. *Booyesen v Acting National Director of Public Prosecutions and Others* 2014 (2) SACR 556 (KZD)

The rights of mentally disabled complainants

A rape victim was called into court so that the magistrate could see whether she was mentally disabled, despite the evidence of a clinical psychologist. The onus on the state is discussed. The court refers to the directives of the National Director of Public Prosecutions, which required public prosecutors to adopt a victim-centred approach to give priority to the emotional and psychological wellbeing of the complainant; to make every effort to reduce secondary traumatising; and to make additional efforts in this regard in respect of mentally disabled complainants. *S v Mnguni* 2014 (2) SACR 595 (GP)

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

Kind Regards

The Juta Law Reports Team

SOUTH AFRICAN LAW REPORTS

DECEMBER 2014

TABLE OF CASES

- Malan v City of Cape Town 2014 (6) SA 315 (CC)
- Motswai v Road Accident Fund 2014 (6) SA 360 (SCA)
- Road Accident Fund v Coughlan NO 2014 (6) SA 376 (SCA)
- Bitter NO obo De Pontes v Ronald Bobroff & Partners Inc and Another 2014 (6) SA 384 (GJ)
- Blignaut v Stalcor (Pty) Ltd and Others 2014 (6) SA 398 (FB)
- Palala Resources (Pty) Ltd v Minister of Mineral Resources and Energy and Others 2014 (6) SA 403 (GP)
- Oosthuizen v Van Heerden t/a Bush Africa Safaris 2014 (6) SA 423 (GP)
- RH v DE 2014 (6) SA 436 (SCA)
- Florence v Government of the Republic of South Africa 2014 (6) SA 456 (CC)
- Dladla and Others v City of Johannesburg and Another 2014 (6) SA 516 (GJ)
- Sibisi NO v Maitin 2014 (6) SA 533 (SCA)
- Nell and Others NNO, Ex parte 2014 (6) SA 545 (GP)
- Governing Body, Hoërskool Fochville and Others v Centre for Child Law 2014 (6) SA 561 (GJ)
- Turnbull-Jackson v Hibiscus Coast Municipality and Others 2014 (6) SA 592 (CC)

FLYNOTES

MALAN v CITY OF CAPE TOWN (CC)

MOSENEKE ACJ, SKWEYIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, KHAMPEPE J, MADLANGA J, MAJIEDT AJ, VAN DER WESTHUIZEN J and ZONDO J
2014 FEBRUARY 20; SEPTEMBER 18
[2014] ZACC 25

Lease—Termination—Public rental housing—When permissible—On notice alone—On arrears alone—For breach of ‘illegal activities’ clause—Constitution, s 26.

MOTSWAI v ROAD ACCIDENT FUND (SCA)

CACHALIA JA, MAJIEDT JA, SWAIN JA, DAMBUZA AJA and GORVEN AJA
2014 AUGUST 18, 29
[2014] ZASCA 104

Judge—Irregular finding—Finding of fraud against attorney—No proper hearing—Inference of fraud made on basis of court papers and after informal discussion in chambers with parties’ legal representatives—Procedure improper and inference wrong—Professional reputation of attorney and others involved in case irregularly and unfairly impugned.

ROAD ACCIDENT FUND v COUGHLAN NO (SCA)

LEWIS JA, THERON JA, PILLAY JA, MBHA JA and MATHOPO AJA
2014 AUGUST 15; SEPTEMBER 3
[2014] ZASCA 106

Delict—Specific forms—Loss of support—Dependant’s action—Deductibility of foster child grant—Grant to be deducted from damages for loss of support.

BITTER NO obo DE PONTES v RONALD BOBROFF & PARTNERS INC AND ANOTHER (GJ)

MAYAT J
2014 APRIL 23, 25

Attorney—Fees—Contingency fees—Claim for refund of unlawfully charged contingency fees—Attorney seeking to retain fees as security for attorney and client costs—Would likely be entitled to fraction of sum retained—Ordered to repay entire sum retained and submit itemised bill of costs.

BLIGNAUT v STALCOR (PTY) LTD AND OTHERS (FB)

POHL AJ
2013 NOVEMBER 7, 14

Company—Business rescue—Business rescue plan—Release of company from debts—Not available to surety of company as defence against principal debtor's claim—Companies Act 71 of 2008, s 154.

PALALA RESOURCES (PTY) LTD v MINISTER OF MINERAL RESOURCES AND ENERGY AND OTHERS (GP)

KEIGHTLEY AJ
2014 MAY 8; AUGUST 4

Minerals and petroleum—Mining and prospecting rights—Lapsing upon deregistration of rights-holder—Not revived by subsequent restoration of company's registration—Mineral and Petroleum Resources Development Act 28 of 2002, s 56(c); Companies Act 71 of 2008, s 73(6A).

OOSTHUIZEN v VAN HEERDEN t/a BUSH AFRICA SAFARIS (GP)

LOUW J and KEIGHTLEY AJ
2014 JUNE 3, 10
[2014] ZAGPPHC 449

Nuisance—Neighbour disputes—Contagion—Plaintiff's cattle infected by disease carried by defendant's game—Plaintiff aware of risk of contagion yet deliberately did nothing to avert it—Risk of contagion low and cost of prevention high—Not reasonable in circumstances to saddle defendant with obligation to act—Not liable for plaintiff's damages.

RH v DE (SCA)

BRAND JA, CACHALIA JA, TSHIQI JA, MAJIEDT JA and MBHA JA
2014 AUGUST 27; SEPTEMBER 25
[2014] ZASCA 133

Delict—Specific forms—Injuria—Adultery—Delictual action for adultery abolished.
Constitutional law—Common law—Development—Delictual action for adultery abolished.

FLORENCE v GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (CC)

MOSENEKE ACJ, SKWEYIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, KHAMPEPE J, MADLANGA J, MAJIEDT AJ, VAN DER WESTHUIZEN J and ZONDO J
2014 FEBRUARY 18; AUGUST 26
[2014] ZASCA 22

Land—Land reform—Restitution—Compensation—Equitable redress in form of financial compensation—Change in value of money over time—Focus of enquiry change in monetary value of loss from immediately after dispossession—Consumer Price Index appropriate measure to calculate such loss—Restitution of Land Rights Act 22 of 1994, s 33(eC).

Land—Land reform—Restitution—Entitlement—Claimant not entitled to costs of memorial plaque in addition to claim for equitable redress in form of financial compensation—Such claim

also falling outside defined meaning of 'claim'—Restitution of Land Rights Act 22 of 1994, ss 1 and 2(2) (eC).

Land—Land reform—Restitution—Remedial power of court to grant alternative relief—Not additional but mutually exclusive of other orders court entitled to make—Restitution of Land Rights Act 22 of 1994, s 35(1) (e).

DLADLA AND OTHERS v CITY OF JOHANNESBURG AND ANOTHER (GJ)

WEPENER J

2014 AUGUST 12, 22

Local authority—Powers and duties—To shelter evicted persons—Shelter rules and policies—Prohibition on spouses residing together—Requirement that residents leave during day—Constitutionality—Constitution, ss 10, 12 and 14.

SIBISI NO v MAITIN (SCA)

LEWIS JA, PONNAN JA, PILLAY JA, DAMBUZA AJA and MATHOPO AJA

2014 AUGUST 27; OCTOBER 1

[2014] ZASCA 156

Delict—Defences—Consent—Medical procedure's risks—Informed consent—Test for.

EX PARTE NELL AND OTHERS NNO (GP)

TUCHTEN J

2014 JULY 28

Company—Business rescue—Termination—Court setting aside resolution to begin rescue and putting company into liquidation—Business rescue practitioner and company applying for leave to appeal order—Effect—Application not suspending operation of order—Companies Act 71 of 2008, ss 5(4) and 132(2) (a)(i); Superior Courts Act 10 of 2013, s 18(1).

GOVERNING BODY, HOËRSKOOL FOCHVILLE AND OTHERS v CENTRE FOR CHILD LAW (GJ)

SUTHERLAND J

2013 OCTOBER 8; NOVEMBER 19

Discovery and inspection—Production of documents—Notice to produce documents—Ambit—Confidential documents referred to in affidavit—Not necessary to produce documents if privileged, but confidentiality not ground for refusal—Uniform Rules of Court, rule 35(12).

Discovery and inspection—Production of documents—Notice to produce documents—Ambit—Confidential documents referred to in affidavit—Whether appropriate to conserve confidentiality of questionnaires obtained from learners in preparation of public-interest litigation—No public-interest rationale justifying refusal to discover, public-interest litigators subject to same rules of engagement as any other litigant—Children's rights not trumping ordinary rule that disclosure be made—Uniform Rules of Court, rule 35(12).

TURNBULL-JACKSON v HIBISCUS COAST MUNICIPALITY AND OTHERS (CC)

MOSENEKE ACJ, SKWEYIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, KHAMPEPE J, MADLANGA J, MAJIEDT AJ, VAN DER WESTHUIZEN J and ZONDO J

2014 FEBRUARY 4; SEPTEMBER 11

[2014] ZACC 24

Local authority—Buildings—Building plans—Approval—Duties of decisionmaker—Level of compliance required in exercising powers in terms of provision—SCA declining to follow standard set out by CC on grounds clearly wrong and obiter—SCA erring in not following CC—Dictum part of ratio decidendi, not obiter—Even if wrong, as part of ratio decidendi still binding on SCA—National Building Regulations and Building Standards Act 103 of 1977, s 7(1) (b)(ii).

SOUTH AFRICAN CRIMINAL LAW REPORTS

DECEMBER 2014

TABLE OF CASES

- S v Makatu 2014 (2) SACR 539 (SCA)
- Booysen v Acting National Director of Public Prosecutions and Others 2014 (2) SACR 556 (KZD)
- S v Kleinhans 2014 (2) SACR 575 (WCC)
- S v Mnguni 2014 (2) SACR 595 (GP)
- Botha v Minister of Police and Another 2014 (2) SACR 601 (GP)
- S v Chokoe 2014 (2) SACR 612 (GP)
- S v Maseti 2014 (2) SACR 621 (ECG)
- S v Mashengoane 2014 (2) SACR 623 (GP)
- S v MDT 2014 (2) SACR 630 (SCA)
- National Director of Public Prosecutions v Ndolose 2014 (2) SACR 633 (ECM)

FLYNOTES

S v MAKATU (SCA)

NAVSA ADP, MAYA JA, BOSIELO JA, PILLAY JA and MEYER AJA
2013 SEPTEMBER 3; OCTOBER 25
[2013] ZASCA 149

Sentence—Prescribed sentences—Minimum sentence—Imposition of in terms of Criminal Law Amendment Act 105 of 1997—Indictment—Indictment made no mention of part 1 of sch 2 to CLAA, nor did it indicate whether there were any aggravating features which would bring charge within ambit of minimum sentencing regime—Charge defective—Sentence of life imprisonment set aside.

BOOYSEN v ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS (KZD)

GORVEN J
2014 FEBRUARY 7, 26

Prosecuting authority—National Director of Public Prosecutions—Authorisation in terms of s 2(4) of Prevention of Organised Crime Act 121 of 1998 to charge person with commission of offences contemplated in s 2(1)—Challenge to legality of authorisation—Challenge correctly brought as separate application before trial, especially where applicant one of many accused and he was only one in respect of whom authorisation was made.

Prosecuting authority—National Director of Public Prosecutions—Authorisation in terms of s 2(4) of Prevention of Organised Crime Act 121 of 1998 to charge person with commission of offences contemplated in s 2(1)—Challenge to legality of authorisation—No information in dockets or additional statements relied on by NDPP justified authorisation—Decision not passing even least stringent test of rationality—Authorisation set aside.

S v KLEINHANS (WCC)

BOZALEK J and PILLAY AJ
2014 FEBRUARY 28; MAY 13

Sexual offences—Child pornography—Sentence—Accused guilty of numerous counts of child pornography, sexual assault and sexual grooming—Accused 74-year-old successful businessman who had health problems—Evidence that accused would benefit from community-based treatment programme—Seriousness of offences required period of imprisonment—Four years' imprisonment imposed with further four years suspended on certain conditions.

S v MNGUNI (GP)

LOUW J and KEIGHTLEY AJ
2014 JULY 30

Fundamental rights—Rights of mentally disabled complainants in criminal cases—Failed to address question of mental disability under s 1 of Criminal Law Amendment Act 32 of 2007—Further failure to secure appropriate psychological expert evidence led to further violation of rights—Secondary victimisation by presiding officer and prosecutor by calling complainant into court to determine themselves if mentally disabled—Violation of rights to privacy, dignity, bodily integrity.

Rape—Of mentally disabled person—Prosecution of such cases—Directive issued by National Director of Public Prosecutions in terms of s 66 of Criminal Law Amendment Act 32 of 2007—Prosecutors obliged to comply with directives—Prosecutors to ensure all statements in docket are accurate and complete, including expert evidence of psychological nature, in order to prove whether victim was mentally disabled as intended by s 1 of Act.

BOTHA v MINISTER OF POLICE AND ANOTHER (GP)

TEFFO J
2013 MAY 16; 2014 MAY 19

Domestic violence—Protection order—Breach of—Arrest in terms of s 8(4) of Domestic Violence Act 116 of 1998—Arrested without warrant—Arrest in situation of domestic violence—Police has authority to arrest without warrant, but no evidence led that arrest justified—Interim protection order of no force or effect unless served—Arrest where order not served unlawful—No contravention of non-existent order—Damages awarded.

Arrest—Legality of—Arrest without warrant—Domestic Violence Act 116 of 1998, s 8(4)—Arrest in situation of domestic violence—Police has authority to arrest without warrant, but no evidence led that arrest justified—Interim protection order of no force or effect unless served—Arrest where order not served unlawful—No contravention of nonexistent order—Damages awarded.

S v CHOKOE (GP)

PRETORIUS J and RAULINGA J
2014 MARCH 28

Trial—Record—Record lost, destroyed or incomplete—Procedure to be followed in reconstruction—In partly heard matters trial court not functus officio—Where secondary evidence unobtainable owing to failure of recording evidence, witnesses could be recalled to give evidence again—Thereafter trial to continue in normal way.

S v MASETI (ECG)

TSHIKI J and LOWE J
2014 APRIL 15

Sentence—Suspended sentence—Putting into operation of—Irregular for court imposing suspended sentence to fetter discretion of subsequent court—Considering whether to put suspended sentence into operation by providing that suspended sentence should not run concurrently with other sentence.

S v MASHENGOANE (GP)

RAULINGA J, KOLLAPEN J and MAKHOBABA AJ
2014 APRIL 16

Evidence—Confession—Admissibility of—Magistrate taking confession from accused where accused had clearly been assaulted and had told magistrate he had been threatened to make statement—Incumbent on magistrate not to readily take statement where suspect had injuries and complained about threats of further assaults.

Evidence—Confession—Admissibility of—Patently inadmissible statement made to magistrate—Accused having been induced by threats and assault—Duty of prosecutor—To immediately draw judge's attention to shortcomings in statement.

S v MDT (SCA)

NAVSA JA, SHONGWE JA and LEACH JA
2014 MARCH 20
[2014] ZASCA 15

Rape—Sentence—Rape of child by father—Minor child—Difficult to consider more heinous offence—Necessary to impose heavy sentences in such cases to prevent young girls from being abused—No substantial and compelling circumstances justifying lesser sentence than life imprisonment.

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS v NDOLOSE (ECM)

STRETCH J
2014 MARCH 27

Evidence—Witnesses—Statements—Affidavits—Validity of—Person who commissions affidavit may not have interest in matter—Witness to same event having interest in matter—Commissioner of oaths required to state his name, address and capacity—Affidavits made in contravention of these requirements invalid.