



JUTA'S ADVANCE NOTIFICATION SERVICE

JANUARY 2015

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

Herewith the cases in the January law reports.

We wish all our readers a peaceful festive break, and a prosperous new year.

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

SOUTH AFRICAN LAW REPORTS

Minister liable for negligent prosecutor

The prosecutor failed to put relevant information to the court at the accused's bail application, resulting in the accused being released on bail, which opportunity he used to rape a 5-year-old girl. The minister unsuccessfully argued that the prosecutor had not been negligent, and relied on an immunity defence. *Minister of Justice and Constitutional Development v X* 2015 (1) SA 25 (SCA)

The doctrine of entanglement

When a church minister announced her intention to enter a same-sex marriage, disciplinary action followed, then an appeal, followed by an approach to the high court, when the matter was referred to arbitration. In issue was whether the minister had shown good cause to set aside the arbitration agreement. *De Lange v Presiding Bishop, Methodist Church Of Southern Africa And Another* 2015 (1) SA 106 (SCA)

Conflicting medical expert opinions

A court's preference for one distinguished professional opinion, over another, is not sufficient to establish negligence. The court had to decide whether there had been failure to act in accordance with a practice accepted as proper in the relevant field. It had to subject the opinion to critical analysis, with a view to establishing whether it had a logical basis, and whether it reached a defensible conclusion. *Medi-Clinic Ltd v Vermeulen* 2015 (1) SA 241 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Provisions of Criminal Procedure Act ruled unconstitutional

Section 77(6)(a) was found to deprive the court of a discretion and to dictate a mandatory outcome, regarding an accused who is not able to understand the proceedings. It was found that the section dictated incarceration in prison, hospital or mental institution, and impermissibly infringed the rights of children in section 28(1) of the Constitution, not to be detained except as last resort. *De Vos NO and Another v Minister of Justice and Constitutional Development and Others* 2015 (1) SACR 18 (WCC)

Mother given life sentence for aiding the rape of her own children

The mother had been key to the perpetration by making her children available for rape and sexual abuse. She watched while they were being degraded, violated, stripped of their dignity and their innocence taken away from them. *S v HB* 2015 (1) SACR 76 (GP)

Gang of robbers given effective 25 year sentence

The gang committed a spate of robberies with military precision, severely traumatizing their victims. Despite some accused being young first offenders who had been in custody for duration of trial, no substantial and compelling circumstances could be found. *S v Tlale and Others* 2015 (1) SACR 87 (GJ)

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

JANUARY 2015

TABLE OF CASES

- Country Cloud Trading CC v MEC, Department of Infrastructure Development 2015 (1) SA 1 (CC)
- Minister of Justice and Constitutional Development v X 2015 (1) SA 25 (SCA)
- FirstRand Bank Ltd v Land and Agricultural Development Bank of South Africa 2015 (1) SA 38 (SCA)
- MC Denneboom Service Station CC and Another v Phayane 2015 (1) SA 54 (CC)
- Kluh Investments (Pty) Ltd v Commissioner, South African Revenue Service 2015 (1) SA 60 (WCC)
- Mitchell v City of Tshwane Metropolitan Municipal Council 2015 (1) SA 82 (GP)
- President of the RSA and Others v M & G Media Ltd 2015 (1) SA 92 (SCA)
- De Lange v Presiding Bishop, Methodist Church of Southern Africa and Another 2015 (1) SA 106 (SCA)
- Jacobs and Another v Transnet Ltd t/a Metrorail and Another 2015 (1) SA 139 (SCA)
- Somali Association of South Africa and Others v Limpopo Department of Economic Development, Environment and Tourism and Others 2015 (1) SA 151 (SCA)
- Security Industry Alliance v Private Security Industry Regulatory Authority and Others 2015 (1) SA 169 (SCA)
- DN v MEC for Health, Free State 2015 (1) SA 182 (SCA)
- Bengwenyama-ya-Maswazi Community and Others v Minister for Mineral Resources and Others 2015 (1) SA 197 (SCA)
- Bengwenyama-ya-Maswazi Community and Others v Genorah Resources (Pty) Ltd and Others 2015 (1) SA 219 (SCA)
- Medi-Clinic Ltd v Vermeulen 2015 (1) SA 241 (SCA)
- Thomas v Minister of Defence and Military Veterans 2015 (1) SA 253 (SCA)
- Wright v Wright and Another 2015 (1) SA 262 (SCA)
- RM v RB 2015 (1) SA 270 (KZP)
- Nkabinde and Another v Judicial Service Commission and Others 2015 (1) SA 279 (GJ)

FLYNOTES

COUNTRY CLOUD TRADING CC v MEC, DEPARTMENT OF INFRASTRUCTURE DEVELOPMENT (CC)

MOGOENG CJ, MOSENEKE DCJ, CAMERON J, FRONEMAN J, JAFTA J, KHAMPEPE J, MADLANGA J, MAJIEDT AJ, VAN DER WESTHUIZEN J and ZONDO J
2014 MAY 20; OCTOBER 3

Delict—Specific forms—Interference with contractual relationship—Wrongfulness—Repudiation of contract by state resulting in harm to stranger to contract—Blameworthiness and risk of indeterminate liability—Doctrine of state liability—Vulnerability to risk—Interference in existing contractual relationship.

Delict—Specific forms—Pure economic loss—Recognition of claim beyond established categories—Wrongfulness to be positively established—Conduct to be wrongful vis-à-vis claimant.

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT v X (SCA)

LEWIS JA, TSHIQI JA, WALLIS JA, ZONDI JA and FOURIE AJA
2014 SEPTEMBER 1, 23

Criminal procedure—Prosecution—Prosecuting authority—Immunity—Forfeited if conduct unlawful—Failure by prosecutor at bail hearing to place all relevant information before court—Accused released and committing violent sexual crime—Prosecutor failed to take reasonable precautions to avoid harm—Conduct unlawful and, moreover, negligent—State liable for damages suffered by victims—National Prosecuting Authority Act 32 of 1998, s 42.

Delict—Specific forms—Negligent prosecution—Negligent conduct by prosecutor at bail application—Failed to place all relevant information before court—Accused released and committing violent sexual crime—All elements of delictual liability present—No prosecutorial immunity—State liable for damages suffered by victims.

FIRSTRAND BANK LTD v LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA (SCA)

MAYA JA, SHONGWE JA, WALLIS JA, SWAIN JA and LEGODI AJA
2014 MAY 12; SEPTEMBER 18

Mortgage—Notarial bond—General notarial bond—Bondholder's preference over free residue of insolvent estate limited to realised value of hypothecated movable assets—Insolvency Act 24 of 1936, s 102.

Insolvency—Creditors—Preferent creditors—Preference under general notarial bond—Bondholder's preference over free residue limited to realised value of hypothecated movable assets—Insolvency Act 24 of 1936, s 102.

MC DENNEBOOM SERVICE STATION CC AND ANOTHER v PHAYANE (CC)

MOGOENG CJ, MOSENEKE DCJ, CAMERON J, FRONEMAN J, JAFTA J, KHAMPEPE J, LEEUW AJ, MADLANGA J, NKABINDE J, VAN DER WESTHUIZEN J and ZONDO J
2014 OCTOBER 3

Land—Unlawful occupation—Eviction—Statutory eviction—Role of court—Court to ensure that PIE complied with before ordering eviction of unlawful occupier—Where, as in present case, eviction being order of type not requiring compliance with PIE but its ambiguous wording possibly including unlawful occupiers in its ambit, such order rendered defective by non-compliance with PIE—Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, s 4.

Land—Unlawful occupation—Eviction—Statutory eviction—Ambit of PIE—Not applying to eviction of juristic persons or persons not using property as a form of dwelling or shelter—Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, s 4.

KLUH INVESTMENTS (PTY) LTD v COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE (WCC)

TRAVERSO DJP, ALLIE J and ROGERS J

2014 AUGUST 8; SEPTEMBER 9

Revenue—Income tax—Income or capital accrual—Income from farming—Whether income so qualifying two-pronged enquiry—First threshold enquiry whether taxpayer carrying on farming operation—Only if so, second enquiry arising whether disputed income derived from such farming operations—Income Tax Act 58 of 1962, s 26; and para 14 of sch1.

MITCHELL v CITY OF TSHWANE METROPOLITAN MUNICIPAL COUNCIL (GP)

FOURIE J

2014 SEPTEMBER 8

Local authority—Municipal service charges—Statutory charge upon property in respect of amount due—Charge constituting statutory hypothec which is extinguished where property concerned sold at sale in execution and subsequently transferred—Local Government: Municipal Systems Act 32 of 2000, s 118(3).

Local authority—Municipal service charges—Municipal clearance certificate—Debts incurred prior to two-year period envisaged by s 118(1)—Successors in title not becoming co-debtors in respect of such debt—Municipality not entitled to withhold municipal services from them until such debt paid—Local Government: Municipal Systems Act 32 of 2000, s 118(1).

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS v M & G MEDIA LTD (SCA)

NAVSA ADP, BRAND JA, PONNAN JA, MBHA JA and MATHOPO AJA

2014 SEPTEMBER 4, 19

Administrative law—Access to information—Access to information held by public body—Request—Refusal—Application to compel—Disclosure of record to court—'Judicial peek'—Ambit—Ex parte representations to court—Not aimed at introduction of new evidence—Promotion of Access to Information Act 2 of 2000, s 80(1) and 80(3)(a).

DE LANGE v PRESIDING BISHOP, METHODIST CHURCH OF SOUTHERN AFRICA AND ANOTHER (SCA)

PONNAN JA, WALLIS JA, PILLAY JA, FOURIE AJA and MATHOPO AJA

2014 AUGUST 26; SEPTEMBER 29

Voluntary association—Disciplinary proceedings—Methodist minister announcing intention to enter same-sex marriage—Contravention of church's law—Church disciplinary tribunals terminating ministry—Minister referring matter to arbitration—Arbitration prescribed by church laws—Whether good cause to set aside arbitration agreement—Doctrine of entanglement—Whether arbitration agreement concluded—Arbitration Act 42 of 1965, s 3(2).

Arbitration—Matters excluded—Matters of status—Semble: Matter of status possibly including person's right to hold an office—Such office might include position of ordained minister of religion—Arbitration Act 42 of 1965, s 2(b).

JACOBS AND ANOTHER v TRANSNET LTD t/a METRORAIL AND ANOTHER (SCA)

NAVSA ADP, MAJIEDT JA, SALDULKER JA, SWAIN JA and ZONDI JA

2014 AUGUST 21; SEPTEMBER 17

Delict—Elements—Negligence—What constitutes—Train operator's designation of 90 km/h train speed on section of track passing through crossing with no booms or warning lights.

Evidence—Expert evidence—Evaluation—Conflicting expert opinions—Approach to.

Evidence—Expert evidence—Role of expert witness.

SOMALI ASSOCIATION OF SOUTH AFRICA AND OTHERS v LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM AND OTHERS (SCA)

NAVSA ADP, BRAND JA, PONNAN JA, MAJIEDT JA and MATHOPO AJA

2014 SEPTEMBER 16, 26

Immigration—Refugee—Asylum seeker—Rights—Self-employment—Asylum seekers and refugees have right to self-employment where they have no other means to support themselves—Constitution, s 10.

Constitutional law—Human rights—Right freely to choose trade, occupation or profession—Asylum seekers and refugees—Self-employment—Right not creating blanket prohibition on asylum seekers and refugees' self-employment—Constitution, s 22.

SECURITY INDUSTRY ALLIANCE v PRIVATE SECURITY INDUSTRY REGULATORY AUTHORITY AND OTHERS (SCA)

MPATI P, MHLANTLA JA, LEACH JA, HANCKE JA and SWAIN AJA
2014 MAY 5; AUGUST 15

Security industry—Regulation—Security service provider—Payment of fees to regulatory authority—Amendment to regulations increasing fees payable by security service providers—Validity—Whether permissible to classify businesses by size and income for imposition of differentiated fees—Security officers Act 92 of 1987, s 32(2).

MEC FOR HEALTH, FREE STATE v DN (SCA)

NAVSA ADP, BRAND JA, PILLAY JA, MBHA JA and SCHOEMAN AJA
2014 AUGUST 29; OCTOBER 8

Delict—Exclusion of liability—Statutory barring of claim by employee against employer for occupational injury—Doctor claiming damages from MEC for injuries sustained during rape while on duty at hospital—Whether precluded by COIDA—Test—Whether act causing injury constituting risk incidental to employment—No bright-line test though, each case to be dealt with on own merits—Compensation for Occupational Injuries and Diseases Act 130 of 1993, s 35(1).

Delict—Exclusion of liability—Statutory barring of claim by employee against employer for occupational injury—Doctor claiming damages from MEC for injuries sustained during rape while on duty at hospital—As matter of policy actions based on rape to be restricted to COIDA only in exceptional circumstances—Compensation for Occupational Injuries and Diseases Act 130 of 1993, s 35(1).

BENGWENYAMA-YA-MASWAZI COMMUNITY AND OTHERS v MINISTER FOR MINERAL RESOURCES (SCA)

NAVSA ADP, BRAND JA, SHONGWE JA, MAJIEDT JA and SCHOEMAN AJA
2014 AUGUST 22; SEPTEMBER 26

Minerals and petroleum—Mining and prospecting rights—Prospecting right—Preferent community prospecting right—Representation of community—Corporate vehicle—Sufficiency of community control and benefit—Mineral and Petroleum Resources Development Act 28 of 2002, s 104.

BENGWENYAMA-YA-MASWAZI COMMUNITY AND OTHERS v GENORAH RESOURCES (PTY) LTD AND OTHERS (SCA)

NAVSA ADP, BRAND JA, SHONGWE JA, MAJIEDT JA and SCHOEMAN AJA
2014 AUGUST 22; SEPTEMBER 26

Minerals and petroleum—Mining and prospecting rights—Prospecting right—Preferent community prospecting right—Competing applications—Locus standi of claimant—Registered title to land not essential—Credible land claim sufficient—Obstructive conduct of minister and her department deprecated—Mineral and Petroleum Resources Development Act 28 of 2002, s 104.

MEDI-CLINIC LTD v VERMEULEN (SCA)

PONNAN JA, WALLIS JA, PILLAY JA, ZONDI JA and DAMBUZA AJA
2014 AUGUST 22; SEPTEMBER 26

Evidence—Expert evidence—Evaluation—Conflicting medical experts' opinions—Approach to.

Delict—Elements—Negligence—What constitutes—Nurses' failure to turn patient to prevent bedsores—Not negligent in circumstances.

THOMAS v MINISTER OF DEFENCE AND MILITARY VETERANS (SCA)

MPATI P, LEWIS JA, CACHALIA JA, MBHA JA and GORVEN AJA
2014 AUGUST 22; SEPTEMBER 11

Delict—Exclusion of liability—Act barring employee suing employer for damages—Meaning of 'employer'—Each part of state an 'employer'—Compensation for Occupational Injuries and Diseases Act 130 of 1993, s 35(1).

WRIGHT v WRIGHT AND ANOTHER (SCA)

MAYA JA, SHONGWE JA, MAJIEDT JA, SALDULKER JA and GORVEN AJA
2014 AUGUST 29; SEPTEMBER 22

Practice—Reference of particular matter to referee—Referee's report—Challenge to—Proper approach—Supreme Court Act 59 of 1959, s 19bis; Superior Courts Act 10 of 2013, s 38.

RM v RB (KZP)

CHETTY J
2014 SEPTEMBER 8, 19

Media—Social media—Defamation—Remedies—Interdict—Facebook posting—Application for interdict restraining posting of future defamatory material—Not all defamatory statements actionable—Too drastic limitation on freedom of expression—Alternative options for relief available.

NKABINDE AND ANOTHER v JUDICIAL SERVICE COMMISSION AND OTHERS (GP)

MAYAT J, CLAASSEN J and KGOMO J
2014 SEPTEMBER 18, 19, 26

Constitutional law—Administration of justice—Judicial Service Commission—Complaint of judicial misconduct—Decisions—Review—New procedures applied retrospectively to complaint lodged in terms of old rules—No substantive rights retrospectively violated—Principle of legality not breached and application for review dismissed.

Constitutional law—Administration of justice—Judicial Service Commission—Complaint of judicial misconduct—Complaint not lodged in prescribed form—Provision directory and not peremptory in respect of impeachable complaints—Non-compliance therefore not invalidating complaint—Judicial Service Commission Act, s 14(3) (b).

Constitutional law—Administration of justice—Judicial Service Commission—Complaint of judicial misconduct—Appointment of prosecutor to lead evidence for judicial conduct tribunal—Whether offending against separation of powers—Provision not inconsistent with Constitution—Judicial Service Commission Act 9 of 1994, s 24(1).

SOUTH AFRICAN CRIMINAL LAW REPORTS

JANUARY 2015

TABLE OF CASES

- Minister of Safety and Security v Hlomza 2015 (1) SACR 1 (SCA)
- S v Velebhayi and Others 2015 (1) SACR 7 (ECG)
- De Vos NO and Another v Minister of Justice and Constitutional Development and Others 2015 (1) SACR 18 (WCC)
- S v Pedro 2015 (1) SACR 41 (WCC)
- S v HB 2015 (1) SACR 76 (GP)
- S v Zumani and Others 2015 (1) SACR 83 (GJ)
- S v Tlale and Others 2015 (1) SACR 87 (GJ)

- Van Staden and Another v National Director of Public Prosecutions and Another 2015 (1) SACR 96 (WCC)

FLYNOTES

MINISTER OF SAFETY AND SECURITY v HLOMZA (SCA)

MPATI P, LEWIS JA, MHLANTLA JA, SALDULKER JA and LEGODI AJA
2014 MARCH 18; APRIL 2

Police—Liability of—Use of firearm by off-duty policeman who shot his wife and killed himself—Police authorities aware that he was emotionally unstable and violent—Court relying on speculative assumptions in upholding claim—Plaintiff not having made out prima facie case—Appeal upheld.

S v VELEBHAYI AND OTHERS (ECG)

PLASKET J and DUKADA J
2013 OCTOBER 30; NOVEMBER 21

Stock theft—Sentence—Theft of 168 sheep—Well planned and executed theft of large numbers of sheep from four different farms over period of two months—Robust sentence called for—Court to send unequivocal message to those who plundered property of others, thereby endangering fragile rural economies, that they should expect severe response from courts—Effective sentences of 23 years' and 28 years' imprisonment however startlingly inappropriate and replaced with sentences of 14 years' and 16 years' imprisonment respectively.

DE VOS NO AND ANOTHER v MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND OTHERS (WCC)

GRIESEL J
2014 AUGUST 13; SEPTEMBER 5

Trial—Mental state of accused—Order in terms of s 77(6)(a) of Criminal Procedure Act 51 of 1977—Where accused who is not able to understand proceedings be held in psychiatric hospital—Constitutionality of provision—Section depriving court of discretion and dictating mandatory outcome, namely incarceration in prison, hospital or mental institution—Legislation having failed, when promulgating Child Justice Act 75 of 2008 to bring provisions of CPA in line with CJA—Section impermissibly infringing rights of children in s 28(1) of Constitution not to be detained except as last resort—Less restrictive means available to achieve purposes—Provision could not be saved by Constitutional limitations clause—Subparagraphs (i) and (ii) declared unconstitutional.

Fundamental rights—Enforcement of—Before completion of trial—Application for order of invalidity of statutory provision—Where law threatened constitutional rights not necessary for applicants to wait until law implemented and accused person detained before approaching court—Rule against dealing with constitutional issues prior to conclusion of proceedings not an inflexible one.

S v PEDRO (WCC)

ROGERS J and BINNS-WARD J
2014 JUNE 23; JULY 9

Trial—Mental state of accused—Enquiry in terms of ss 77, 78 and 79 of Criminal Procedure Act 51 of 1977—Referral for assessment and report by psychiatrists—Number of psychiatrists to be appointed.

S v HB (GP)

KOLLAPEN J and THOBANE AJ
2014 JUNE 18

Rape—Accomplice to—Sentence—Rape of minor—Mother convicted of being accomplice to rape of minor children—Sentence of life imprisonment not disproportionate to seriousness of offences committed.

Rape—Sentence—Life imprisonment—Minimum sentence in terms of Criminal Law Amendment Act 105 of 1997—Mother convicted of being accomplice to rape of two minor children—Minimum sentence applicable to accomplices—Sentence of life imprisonment not disproportionate to seriousness of offences committed.

S v ZUMANI AND OTHERS (GJ)

VAN OOSTEN J and BUTHELEZI AJ
2014 MAY 27; JUNE 4

Arms and ammunition—Unlawful possession of arms and ammunition in contravention of ss 3 and 4 of Firearms Control Act 60 of 2000—Proof of possession—Presumption in s 117(2)—Requirement that all reasonable steps had been taken to link accused to possession of firearms not met where firearms not subjected to fingerprint analysis.

S v TLALE AND OTHERS (GJ)

MUDAU AJ
2013 OCTOBER 7

Robbery—Sentence—Robbery with aggravating circumstances—Minimum sentence in terms of s 51 of Criminal Law Amendment Act 105 of 1997—Accused (gang of six) convicted of spate of robberies executed with military precision—Victims severely traumatised, one lucky to have escaped with her life—Despite some accused being young first offenders who had been in custody for duration of trial, no substantial and compelling circumstances present—Sentence of effective 25 years' imprisonment imposed.

VAN STADEN AND ANOTHER v NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND ANOTHER (WCC)

BOQWANA J
2014 APRIL 23

Prevention of crime—Restraint order in terms of Prevention of Organised Crime Act 121 of 1998—Application for payment of living expenses under s 26(6)—Whether living expenses of defendant payable from property owned by person other than person against whom restraint order made—Payment could only be granted in relation to property of the person seeking the order.