



JUTA'S ADVANCE NOTIFICATION SERVICE

MARCH 2015

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

Herewith the cases in the March law reports.

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

SOUTH AFRICAN LAW REPORTS

Limitations on freedom of speech during elections

The prohibition against publishing false information or making false allegations during elections should be interpreted restrictively. Freedom of expression was enhanced rather than diminished by the right to free and fair elections. This prohibition was aimed at false statements relating to practical operation of election not those disseminated to influence voters' views about opposing parties. Electoral Act 73 of 1998. *Democratic Alliance v African National Congress and Another* 2015 (2) SA 232 (CC)

Cancellation of contract using electronic signature

A non-variation clause provided for the cancellation and alterations of a contract to be in writing and signed. In issue was whether the typewritten names of the parties at the foot of an email [cancelling the agreement] constituted valid signatures in the circumstances. Electronic Communications and Transactions Act 25 of 2002. *Spring Forest Trading CC v Wilberry (Pty) Ltd t/a Ecowash and Another* 2015 (2) SA 118 (SCA)

Wrongful life claim for child born with medical condition

This claim was brought on behalf of a child with Down's syndrome for damages flowing from the doctor's failure to inform the child's pregnant mother of the high risk of it being born with this condition. Discussed was whether the common law could be developed to recognise such a claim. *H v Fetal Assessment Centre* 2015 (2) SA 193 (CC)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Actual loss not necessary for fraud

Accused had committed fraud involving tens of millions of rands, which was way beyond the R500 000 threshold which was the jurisdictional fact that triggered the minimum sentence provisions. The court erred in holding s 51(2)(a) of the Criminal Law Amendment Act 105 of 1997 was not applicable. The unlawful and intentional making of a misrepresentation did not have to cause actual loss for it to constitute fraud. The minimum sentence of 15 years' imprisonment was imposed on each count, to run concurrently. *S v Brown* 2015 (1) SACR 211 (SCA)

Courts gone soft on crime?

The accused was in a unique situation where he was relentlessly humiliated and degraded by the deceased in the presence of his girlfriend. The court considered the provocation and intimidation by the deceased as substantial mitigating circumstances warranting lesser sentence. This sentence was case-specific and should not be construed as setting precedent of leniency or that courts had gone soft on crime. *S v Motloung 2015 (1) SACR 310 (GJ)*

Offence need not be 'committed' in presence of arresting officer

The test is an objective one and the question to be answered was whether he had direct personal knowledge of sufficient facts at the time of the arrest, on which it could be concluded that the person arrested had prima facie committed an offence in his presence. Arrest was not based on whether the person was guilty of the offence. To hold otherwise would unnecessarily discourage peace officers from arresting offenders who were in the act of committing an offence. *Scheepers v Minister of Safety and Security 2015 (1) SACR 284 (ECG)*

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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

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