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JUNE 2015

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JUDGMENTS OF INTEREST IN THE JUNE EDITIONS OF THE SALR AND SACR LAW REPORTS.

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SOUTH AFRICAN LAW REPORTS

Oppressive conduct in companies

The section in the new Companies Act that provides relief from oppressive conduct should be interpreted to advance the remedy, rather than to limit it. The list of orders that the section permitted a court to make, was non-exhaustive and open-ended. *Grancy Property Ltd v Manala and Others* 2015 (3) SA 313 (SCA)

Bill Clinton defence not applicable

An attorney was spending time on a farm with his family, when he discovered his wife (also an attorney) engaged in oral sex with his uncle. Defending the delictual claim, the uncle argued that the act in question was not adultery, on the basis that adultery involved sexual intercourse, and fellatio could not be said to be sexual intercourse. *PV v AM* 2015 (3) SA 376 (ECP)

Costs de bonis propriis for indifferent officials

Costs *de bonis propriis* were only to be awarded in exceptional circumstances, such as this case, where officials had shown indifference and incompetence, detailed by multiple failures in their duties. Although such costs orders were drastic measures, the court was faced with state employees who simply could not be bothered to do their work. Recent authorities dealing with the conduct of public officials revealed that shaming them no longer worked—even the exhortations of the highest court fell on deaf ears. *Lushaba v MEC For Health, Gauteng* 2015 (3) SA 616 (GJ)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Effect of new Superior Courts Act on appeals

Disquiet was expressed at the effect of s 16(1)(b) of Superior Courts Act 10 of 2013. There was a real danger that appeals which deserved to be heard would be stifled because the bar had been set far too high once a petition to the high court failed. In failing to properly regulate the process, the legislature may have opened the door to some worthy appeals failing to make the cut. *S v Van Wyk And Another* 2015 (1) SACR 584 (SCA)

Substantial and compelling circumstances

Even if an accused was legally represented, but failed to prove substantial and compelling circumstances, whether through lack of experience or proper instructions, a legal duty

remained on the presiding officer to ensure that all available facts were properly enquired into, before sentence was decided. *S v Mokgara* 2015 (1) SACR 634 (GP)

The role of prosecutors

The role of prosecutors could not be equated with that of magistrates or judges. Their duties and functions were different. The contention that the involvement of the prosecutor would compromise the accused's right to a fair trial simply because he had previously assisted in litigation to which the accused was linked, could not be sustained. *Porritt and Another v National Director of Public Prosecutions and Others* 2015 (1) SACR 533 (SCA)

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Kind Regards

The Juta Law Reports Team

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FLYNOTES

GRANCY PROPERTY LTD v MANALA AND OTHERS (SCA)

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HARDENBERG AND ANOTHER v NEDBANK LTD (WCC)

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