



## JUTA'S ADVANCE NOTIFICATION SERVICE

FEBRUARY 2016

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

Herewith the cases in the February law reports.

**JUDGMENTS OF INTEREST IN THE FEBRUARY EDITIONS OF THE SALR AND SACR, AS WELL AS THE NAMIBIAN LAW REPORTS 2015(4)**

- [Click on the case name to download the original judgment.](#)

### **SOUTH AFRICAN LAW REPORTS**

#### **Right to emergency medical treatment**

The young rugby player suffered a spinal injury that left him paralysed. Should the doctors have known about a certain procedure that had to be performed within 4 hours, and should they have then done so? Was the failure to perform this procedure within 4 hours the cause of his paralysis? *Oppelt v Department of Health, Western Cape* 2016 (1) SA 325 (CC)

#### **Medical aid cover for specialised devices**

A young lady almost lost her leg in a motocross accident, and needed various expensive medical devices to help the leg bones re-unite. A dispute arose over payment for certain of the treatments, and at issue was whether National legislation on minimum benefits trumped the contract between scheme and member. *Council for Medical Aid Schemes and Another v Genesis Medical Scheme and Others* 2016 (1) SA 429 (SCA)

#### **Motion of no confidence in the President**

Was the Speaker in breach of the Constitution or the National Assembly rules by not scheduling in time a motion of no confidence in the President? *Tlouamma and Others v Speaker of the National Assembly and Others* 2016 (1) SA 534 (WCC)

### **SOUTH AFRICAN CRIMINAL LAW REPORTS**

#### **Child abuser gets sentenced**

The accused was convicted on 45 counts of sexual offences, involving the abuse of children between the ages of 3 and 12 years, both boys and girls, leaving them psychologically damaged. Would a life sentence be too harsh? *S v Coetzee* 2016 (1) SACR 120 (NCK)

### **Mother of two and fraud involving R1,4 million**

The mother was the primary caregiver of two children when she was involved in the theft of money from a trust account. She had abused a position of trust and the fraud was serious, but imprisonment would be detrimental to her children, at the time of sentencing, aged 8 and 11. *S v De Villiers* 2016 (1) SACR 148 (SCA)

### **Evidence of cell-phone pictures**

The accused could not deny ownership of the phone, and also assert a right to privacy over the images stored on that phone. Were the photos hearsay, documentary or real evidence? *S v Brown* 2016 (1) SACR 206 (WCC)

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### **Patient refuses blood transfusion for religious reasons**

Could the court order that the patient be given blood, against her wishes? Would the right to bodily autonomy prevail over society and the state's interests in preserving human life? And do things change when the patient has children, and their interests are factored in? *ES v AC* 2015 (4) NR 921 (SC)

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The accused challenged the constitutionality of the reverse onus imposed on a person to show reasonable cause for the possession of stolen goods, arguing that the onus infringed on the presumption of innocence. *Prosecutor-General of the Republic of Namibia v Gomes and Others* 2015 (4) NR 1035 (SC)

### **Inquest where body of deceased missing**

It appeared that the defence force had shot the deceased and handed his body to the Angolan military. The inquest had recorded the details of the deceased as unknown, and dispensed with oral evidence. The High Court set these findings aside and remitted the matter back for a proper inquest. *In Re Rundu Inquest: Venda* 2015 (4) NR 1178 (HC)

### **WE WELCOME YOUR FEEDBACK**

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Kind Regards

**The Juta Law Reports Team**

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2015 JULY 2, 22  
[2015] NAHCMD 163

**Administration of estates**—Claim against deceased estate—Enforcing of—Act not barring creditor using common-law procedure to enforce claim against estate—Administration of Estates Act 66 of 1965.

**TJIPANGANDJARA v NAMIBIA WATER CORPORATION (PTY) LTD (LC)**

MASUKU AJ  
2015 APRIL 24, 30; MAY 15  
[2015] NALCMD 11

**Practice**—Applications and motions—Urgency—High Court Rule 73(4)—Provisions peremptory—Financial hardship and illegal lockout action by employer—Not per se grounds for urgency.

**Labour law**—Urgent interdict—Requirements of—Interdict against lockout—Provisions of s 79(1)(a)–(c) of Labour Act 11 of 2007 peremptory—If applicant for interdict had not met requirements, then court had duty not to grant interdict.

**TJIPEPA v MINISTER OF SAFETY AND SECURITY AND OTHERS (HC)**

UEITELE J  
2014 MARCH 24; APRIL 7–9; MAY 27; 2015 AUGUST 7  
[2014] NAHCMD 193

**Criminal procedure**—Arrest—Wrongful arrest—Plaintiff arrested without warrant—Police must have reasonable suspicion that sch I offence had been committed—Prima facie evidence of offence not required—Suspicion must be based on facts and not mere hunch—Criminal Procedure Act 51 of 1977, s 40(1)(b).

**Criminal procedure**—Arrest—Wrongful arrest—Malicious arrest—Requirements—Plaintiff must allege and prove instigation of deprivation of liberty without reasonable and probable cause, actuated by malice.

**Criminal procedure**—Arrest—Wrongful detention—Arrest lawful—Detention for less than 48 hours not per se unlawful—Detention only unlawful if whimsical or malicious.

**LABUSCHAGNE v SCANIA FINANCE SOUTHERN AFRICA (PTY) LTD AND OTHERS (SC)**

MAINGA JA, SMUTS JA and O'REGAN AJA  
2015 JUNE 17; AUGUST 7

**Practice**—Judgments and orders—Rescission—Application in terms of rule 44(1)(a)—Order erroneously sought or granted in absence of party affected thereby—Focus on nature of procedural error, irregularity or mistake in issuing order to establish whether order granted erroneously—Existence of defence on merits did not affect judgment validly obtained.

**NAMIBIA FINANCIAL INSTITUTIONS UNION (NAFINU) v NEDBANK NAMIBIA LTD AND ANOTHER (SC)**

DAMASEB DCJ, MAINGA JA and SMUTS JA  
2015 AUGUST 7, 19

**Labour Court**—Appeal—Leave to appeal—Interlocutory application—Order not final in effect or definitive of rights and not disposing of substantial portion of relief—Urgent relief temporary in nature in terms of Labour Court jurisdiction—Labour Act 11 of 2007, s 117(1)(e)—Leave of Labour Court required for appeal against interlocutory order—High Court Act 16 of 1990, s 18(3).

**SHEEFENI v COUNCIL OF THE MUNICIPALITY OF WINDHOEK (HC)**

PARKER AJ  
2015 MARCH 16–20; APRIL 7; JUNE 9; JULY 30  
[2015] NAHCMD 172

**Criminal procedure**—Arrest—Wrongful arrest and detention—Requirements for lawful arrest—Failing to inform person of cause of arrest—Arrest and subsequent detention unlawful—Failure to comply with s 39(2) of Criminal Procedure Act 51 of 1977.

**IN RE RUNDU INQUEST: VENDA (HC)**

HOFF J and LIEBENBERG J  
2015 SEPTEMBER 25  
[2015] NAHCMD 228

**Inquest**—Finding—Review of—Section 21(1) of the Inquest Act only finding application when a s 18(1) inquest was held where a deceased's body has been destroyed or where no body has been found or recovered and where evidence proves that a death has occurred—Deceased died unnatural death—Formal inquest to be held—Inquests Act 6 of 1993, s 10.

**COETZEE v TRANSMAMB HOLDINGS LTD AND ANOTHER (HC)**

MILLER AJ  
2015 AUGUST 11; OCTOBER 1  
[2015] NAHCMD 231

**Statute**—Interpretation—National Transport Services Holding Company Act 28 of 1998, sch 1 item 8(1)—Intention of legislature clear—Interpretation of 'transport services' in context of transportation of goods—Words must be interpreted in context within which they were used—'Transport services' to mean any other type of services offered by first respondent in relation to transportation of goods.

**NAANDA AND ANOTHER v EDWARD AND OTHERS (HC)**

PARKER AJ  
2015 SEPTEMBER 24; OCTOBER 8  
[2015] NAHCMD 239

**Practice**—Pleadings—Exception—Exception could not be taken against relief claimed—Relief not part of cause of action—Defendant not pleading to relief sought by plaintiff.

**AUTO TECH TRUCK AND COACH CC v FANNY'S MOTOR REPAIRS AND INVESTMENT CC AND ANOTHER (HC)**

PARKER AJ

2015 SEPTEMBER 22; OCTOBER 6

[2015] NAHCMD 236

**Practice**—Parties—Joinder—Application for leave to join third party—Third party must have direct and substantial interest in outcome of proceedings—Application in terms of High Court Rule 40 alternatively in terms of court's inherent common law discretion—No lis or concurrence of questions of law or fact between applicant and second respondent established—Application refused.

**LAICATTI TRADING CAPITAL INC AND OTHERS NNO v GREENCOAL (NAMIBIA) (PTY) LTD AND ANOTHER (HC)**

PARKER AJ

2015 SEPTEMBER 28; OCTOBER 8

[2015] NAHCMD 240

**Practice**—Applications and motions—Discovery and inspection in motion proceedings—Discovery in terms of High Court Rule 28(1) read with rule 70(3)—Not as of right—Subject to peremptory provisions of rule 66(1)(b) requiring filing of answering affidavit together with relevant documents.

**Practice**—Applications and motions—Discovery and inspection in motion proceedings—Additional discovery in motion proceedings was rare—Exceptional circumstances required—Affidavit required to identify documents and portions relied upon—Must explain nature and relevance of documents and reason for not attaching them to answering affidavit.

**Practice**—Applications and motions—Application for referral to oral evidence—Application for provisional winding-up order—Allowed only in exceptional cases—Purpose of winding-up order to speedily arrest state of affairs—Material dispute of fact not clearly identified—Application refused.

**JOSEA v AHRENS AND ANOTHER (HC)**

SCHIMMING-CHASE AJ

2015 MAY 5–8, 13, 15; JULY 2

[2015] NAHCMD 157

**Motor vehicle accident**—Duty of driver—Right turn—At robot-controlled intersection—Duty to execute turn only if satisfied it was safe—Duty of driver when lights turn yellow—Should not enter intersection unless unable to stop safely—Duty to proceed with caution through intersection if unable to stop in time—Failure in either event constituting prima facie negligence.

**Practice**—Rules of court—Witness statements—Requirements—Full particulars of witness and chronological sequence of events and factual allegation in witness's own words expressed in first person required—Statements constituting evidence-in-chief of witness to be read into record at hearing—High Court Rules 92 and 93.

**Evidence**—Witness—Calling, examination and refutation of—Witness collapsing after commencement of cross-examination—Probative value of evidence—Discretion of court to accept or reject evidence not tested in cross-examination.