



## JUTA'S ADVANCE NOTIFICATION SERVICE

JUNE 2016

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

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

##### **State's obligations to execute international arrest warrants**

In June 2015 President Omar al Bashir of Sudan visited South Africa to attend the Africa Union Summit in Johannesburg. At the time he was the subject of an international arrest warrant issued by the International Criminal Court. The South African government however allowed him to leave the country without executing the warrants; this in spite of a high court order instructing it to do so. Was the conduct of the government unconstitutional in the light of South Africa's being party to the Rome Statute? *Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others* 2016 (3) SA 317 (SCA).

##### **Binding nature of Public Protector's findings**

In her report arising from an investigation into the costs of the Department of Public Works' security upgrade of the President's private residence, the Public Protector found that the President and his family were unduly enriched, and ordered the President to repay the costs. The National Assembly conducted its own investigation and absolved the President. The Constitutional Court however found the remedial action taken by the Public Protector to be binding on the National Assembly and the President, and in ignoring her report they had acted unconstitutionally. *Economic Freedom Fighters v Speaker, National Assembly and Others* 2016 (3) SA 580 (CC).

##### **Liability for injuries sustained by passenger on train**

Mr Mashongwa sustained a number of serious injuries after being robbed, beaten and thrown off a moving train by three men, who had entered the carriage after the train had already started moving. Mr Mashongwa sued the Passenger Rail Service of South Africa, the owner of the train, for his damages arising from the injuries. He argued that, in its failure to close the doors and post a guard on the train, it had acted wrongfully and negligently. *Mashongwa v Passenger Rail Agency of South Africa* 2016 (3) SA 528 (CC).

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

### **Diversion from criminal justice system of minor, orphaned foreign child**

The accused, a Malawian national, had been convicted of certain minor immigration offences. He had however been convicted on the understanding that he was 18 years old, when he was in fact 17 years of age. On review the matter was set aside for want of compliance with the Child Justice Act 75 of 2008. The reviewing court further stressed that, given the accused's circumstances—he was a minor, orphaned foreign child—a thorough investigation into his background was required. Diversion from the criminal justice system was appropriate, and this had to be investigated. *S v HJ* 2016 (1) SACR 629 (KZD).

### **Sentencing for first offenders of white-collar crime**

The accused had been convicted on multiple accounts of fraud and had originally been sentenced to five years' imprisonment, which was wholly suspended for five years. The appeal court addressed the appropriateness of such a sentence and remarked (while not overturning the sentence imposed) that imprisonment for first offenders charged with white-collar crimes ought to be imposed in suitable cases. The matter also dealt with the right of the state to appeal against the alteration of a sentence by a High Court sitting as a court of appeal. *DPP Western Cape v Kock* 2016 (1) SACR 539 (SCA).

### **Appropriate sentence for a young offender having committed a violent crime**

The accused, a young offender, had been convicted of murder and robbery with aggravating circumstances, and was sentenced to life imprisonment. The appeal court addressed the appropriateness of the sentence and found it to be not shockingly inappropriate: the accused displayed a propensity to commit violent crimes, and this in case had brazenly broke into the home of a frail, elderly man and strangled him. *S v Vananda* 2016 (1) SACR 592 (WCC).

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Kind Regards

**The Juta Law Reports Team**

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