



JUTA'S ADVANCE NOTIFICATION SERVICE

AUGUST 2016

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

Herewith the cases in the August law reports.

JUDGMENTS OF INTEREST IN THE AUGUST EDITIONS OF THE SALR AND SACR, AS WELL AS THE NAMIBIAN LAW REPORTS 2016(2)

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

SOUTH AFRICAN LAW REPORTS

Media access to company records

Unqualified access to a company's securities register was essential for effective journalism and an informed citizenry. The public had a right to obtain information and ideas from the media. *Nova Property Group Holdings Ltd and Others v Cobbett and Another* 2016 (4) SA 317 (SCA)

Tswana customary law and the Road Accident Fund

A Tswana daughter had agreement with her mother to contribute to her indigent parents' household expenses. After she was killed in a car crash, the question was whether the Road Accident ought to pay her parents for loss of support. *Seleka v Road Accident Fund* 2016 (4) SA 445 (GP)

Education: the light of the nation

A regulation prevented a learner's prospective school from requesting a confidential report in relation to such a learner from their current school. The court held that the regulation was designed to prevent unfair discrimination against a learner during the admission phase. There could be no justification for one school to shift the burden of admission of a troublesome learner onto other schools. *Federation of Governing Bodies for South African Schools v MEC for Education, Gauteng and Another* 2016 (4) SA 546 (CC)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Murder delayed?

Both deceased were alleged to have been shot by the appellant in separate incidents on the same day, and both were admitted to hospital, one dying three months later, and the other ten months later. The judgment covers admissibility of evidence, and causation in murder. *S v Seemela* 2016 (2) SACR 125 (SCA)

Fake rhino horn

Was there the element of prejudice in a charge of fraud for the sale of a fake rhino horn? The co-accused had sold a very good imitation of a rhino horn to a police trap. It was contended that as the police trap had no intention to pay for the rhinoceros horn, there could be no prejudice. *S v Ndwambi* 2016 (2) SACR 195 (SCA)

Road shooting

Was it plausible that the biker had continuously pointed a pistol with his left hand, while riding next to the accused's car, and while stopping and dismounting from the bike? The court ponders whether it needs expert testimony on the controls of a motorbike. *S v Masooa* 2016 (2) SACR 224 (GJ)

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Criminal association

There was a legal duty on a security guard to report theft, the same as with a police officer. The failure to perform such a duty had the effect of associating with the commission of offence, resulting in a conviction of theft. *S v Puriza* 2016 (2) NR 429 (HC)

Owner of vehicle, but without papers

The plaintiff sued the defendant for damages to his motor vehicle, but the defendant sought to non-suit the plaintiff because the car was not registered in the plaintiff's name. The court held that locus standi concerned the sufficiency and directness of a person's interest in the litigation. Vehicle registration legislation did not water down or abrogate the common-law meaning and consequences of ownership. *Uvanga v Steenkamp and Others* 2016 (2) NR 465 (HC)

Spoilation order restores law and order

The deputy sheriff changed the locks and chased the employees away, but without a court order. The maintenance of law and order was greater than the right to recover possession of property. A spoliation order was granted. *Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia* 2016 (2) NR 547 (HC)

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Kind Regards

The Juta Law Reports Team

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Estoppel—Application of—Doctrine of estoppel finds no application when statutory time limits have not been adhered to—Effect of circumventing of statutory time limits—Reliance on estoppel failing.

Labour law—Employee—Employee’s compensation for injuries at workplace—Delegation of powers to consider claims—Interpretation of statutory delegation of powers—Strict interpretation mindful of administrative practicality—Employee’s Compensation Act 30 of 1941, s 108.

HELAO NAFIDI TOWN COUNCIL v SHIVOLO (HC)

DAMASEB JP
2013 MAY 20, 21; JULY 2; SEPTEMBER 24, 26; 2016 MARCH 8
[2016] NAHCMD 62

Practice—Trial—Absolution from the instance at close of plaintiff’s case—Refusal of—When plausible inference in favour of plaintiff’s cause of action existed which was destructive of defendant’s version—Court must accept truth of plaintiff’s evidence unless incurably and inherently improbable and unsatisfactory.

Local authority—Officers and employees—Fiduciary duty—Chief executive officer also chief accounting officer—Fiduciary duties arising from both statute and employment contract—Special relationship toward local authority—Implied duty on employee of statutory body to comply with prescripts of law—Officer not acting bona fide in interest of employer—Breach of fiduciary duties—Losses recoverable.

MALETZKY v PRESIDENT OF THE REPUBLIC OF NAMIBIA AND OTHERS (HC)

PARKER AJ
2015 OCTOBER 29; 2016 MARCH 3
[2016] NAHCMD 50

Practice—Rules of court—Purpose—Creation of procedural mechanisms regulating application and implementation of substantive law in legal proceedings—Purpose of High Court Rule 5—Protection of public against charlatans masquerading as legal practitioners and maintaining and enhancing effectiveness and integrity of judicial process and due administration of justice—Rule did not impact upon contractual freedom.

Constitutional law—Legislation—Validity—Unconstitutionality of High Court Rule 5 alleged—Onus of proof—Onus on person alleging invalidity to prove that rule not reasonably justifiable in democratic society.

Constitutional law—Fundamental rights—Discrimination—Rule applied to all persons who were cessionaries—Rule not discriminatory—Rule made for legitimate, rational, legal and social purposes—High Court Rule 5(1), 5(2)(a), (b), (c) and (d), 5(3) and 5(4) not unconstitutional.

S v PURIZA (HC)

LIEBENBERG J and SHIVUTE J
2015 DECEMBER 4; 2016 FEBRUARY 12
[2016] NAHCMD 19

Criminal procedure—General principles of liability—Accomplice—Liability of—Theft in presence of security guard—Legal duty on security guard of reporting theft—Duty same as that of police officer—Failure to perform such duty—Effect of associating with commission of offence—Guilty of theft.

Criminal procedure—Sentence—Theft—Theft by employee—Security guard in position of trust—Breach of trust serious and deserving of deterrent sentence.

S v CONRADIE AND ANOTHER (HC)

MASUKU J

2015 DECEMBER 1, 2; 2016 FEBRUARY 12

[2016] NAHCMD 24

Criminal procedure—Jurisdiction—Challenge to court’s jurisdiction—Tendering of plea mandatory—Issue of court’s jurisdiction must be pleaded before it could be considered—Criminal Procedure Act 51 of 1977, ss 105 and 106(1)(f)—Accused ordered to plead forthwith.

Criminal procedure—Charge—Quashing of—Charge fully informing accused of case against him—Quashing charge tantamount to refusal of affording state, who was dominus litis, basic procedural right of leading evidence in proving charge against accused—Quashing of charge refused.

WOKER FREIGHT SERVICES (PTY) LTD v COMMISSIONER FOR CUSTOMS AND EXCISE AND OTHERS (SC)

MAINGA JA, SMUTS JA and HOFF AJA

2016 MARCH 3; APRIL 6

Revenue—Customs and excise—Customs duty—Liability for—Legislature imposing liability for customs duty on wide variety of persons in definitions of importer and exporter—Appellant authorising use of its security bond by another agent for releasing from bonded storage goods destined for Angola—Goods never exported from Namibia—Appellant an exporter within definition of Customs and Excise Act 20 of 1998, s 1 and liable as such for custom duties in terms of s 18 of Act.

Revenue—Customs and excise—Clearing of goods—Meaning of—Meaning determined in statutory context—Clearing of goods meaning provision of security for payment of duties and meeting further conditions of Act—Customs and Excise Act 20 of 1998, s 17(3), 17(7) and 17(8).

UVANGA v STEENKAMP AND OTHERS (HC)

MASUKU AJ

2015 OCTOBER 5–8; NOVEMBER 13

[2015] NAHCMD 273

Practice—Parties—Locus standi—Legal interest—Plaintiff must prove legal right or recognised interest in proceedings.

Ownership—Movables—Common-law meaning and consequences of ownership—Third party registered owner of vehicle—Rebuttable by evidence of ownership at common law—Vehicle registration legislation not watering down or abrogating common-law meaning and consequences of ownership.

STANDARD BANK NAMIBIA LTD v SHIPILA (FIRST NATIONAL BANK NAMIBIA LTD AND OTHERS INTERVENING; THE OMBUDSMAN AS AMICUS CURIAE) (HC)

MILLER AJ

2015 MAY 22; NOVEMBER 19

[2015] NAHCMD 281

Practice—Judgments and orders—Order declaring property executable—Nulla bona return and application to court required to declare any property including mortgaged property executable prior to issue of writ—Purpose of judicial oversight—Protection of primary home owners and leases of homes where alternative reasonable manner of debt settlement possible—High Court Rules 108(1) and (2).

OKORUSU FLUORSPAR (PTY) LTD v TANAKA TRADING CC AND ANOTHER (HC)

MASUKU J

2015 SEPTEMBER 7, 8, 17; DECEMBER 7; 2016 FEBRUARY 5

[2016] NAHCMD 16

Practice—Trial—Absolution from the instance at close of plaintiff’s case—Court must bring own judgment to bear on evidence adduced—Court must establish, prima facie viewed, whether there was evidence relating to the elements of the claim.

Prescription—Extinctive prescription—Original particulars of claim interrupted prescription—Amendment not introducing new cause of action, merely expanding and fleshing out skeletal particulars of claim—Right of action same or substantially same as original claim—Special plea dismissed.

VON WEIDTS v MINISTER OF LANDS AND RESETTLEMENT AND ANOTHER (HC)

MASUKU J

2016 MARCH 17; APRIL 4

[2016] NAHCMD 92

Constitutional law—Legislation—Collateral challenge to constitutionality of statute—Challenge must be raised at commencement of proceedings—Imperative to join government functionary responsible for legislation from outset—Collateral challenge only raised after litigation finalised—Government functionary not joined—Application for leave to appeal dismissed.

Constitutional law—Legislation—Collateral challenge to constitutionality of statute—Challenge could only be raised in relation to coercive exercise of administrative power by public authority—Execution of eviction order sanctioned by court not exercise of administrative power by public authority—Collateral challenge inappropriate.

Court—Abuse of process—Duplication of proceedings—Litigation on all issues at once and not in piecemeal or truncated fashion which resultantly called on other party to be dragged to court time and again on same matter—Proliferation of proceedings has deleterious consequences on use of court time.

BUCHHOLZ NO AND ANOTHER v EWERT AND OTHERS (HC)

PARKER AJ

2016 JANUARY 19; FEBRUARY 25

[2016] NAHCMD 37

Sale—Land—Agricultural land—Land Reform Act providing that agricultural land first be offered to state—State had preferential right of first refusal of acquiring all agricultural land—Land only to be sold if state issued waiver—Sale of land in contravention of Agricultural (Commercial) Land Reform Act 6 of 1995 (as amended), s 17(1) void and unenforceable.

HKL v MML (SC)

SHIVUTE CJ, DAMASEB DCJ and SMUTS JA

2016 MARCH 29; APRIL 19

Appeal—Condonation—Non-compliance with Rules of Court—Violation of most rules—Cumulative effect of glaring, inexplicable and flagrant disregard of rules compounded by dishonesty—Court would not consider prospects of success.

Appeal—Condonation—Non-compliance with Rules of Court—Failure of legal practitioners to comply with rules—Limit beyond which litigant could not escape practitioner’s lack of diligence and insufficiency of explanation—Application for condonation and reinstatement dismissed.

CITY OF WINDHOEK v KATUO AND OTHERS (LC)

PARKER AJ
2016 JANUARY 29; MARCH 17
[2016] NALCMD 11

Labour law—Unfair labour practice—What constitutes—Practices under s 50(1) of Labour Act 11 of 2007—Failure to identify section in Act—Gross irregularity—Arbitrator's award set aside.

Labour law—Labour dispute—Dispute about new terms and conditions of agreement—Dispute of interest—Arbitrator had no jurisdiction to conduct arbitration.

DONATUS v MINISTRY OF HEALTH AND SOCIAL WELFARE (HC)

MASUKU J
2016 FEBRUARY 10; MARCH 2
[2016] NAHCMD 49

Practice—Discovery and inspection—Duty of making discovery—Non-compliance with court order serious—Sanctions prescribed in High Court Rules—Consideration of various factors in exercise of discretion—Fair and appropriate sanction required—High Court Rules 28(8) and 53.

Practice—Discovery and inspection—Duty of making discovery—Failure to make full discovery—Striking of defence—Grave and serious sanction—Effectively excluding party from participating in proceeding—Good practice, propriety and fairness requiring notice of application for striking of defence.

S v UIRAB (HC)

LIEBENBERG J
2016 APRIL 1, 6
[2016] NAHCMD 96

Criminal procedure—Mental state of accused—Capacity—Enquiry into mental capacity—Appointment of two psychiatrists not obligatory but justified when accused faced serious charges which could attract lengthy custodial sentences—Appointment of more than one psychiatrist within court's discretion—Criminal Procedure Act 51 of 1977, s 79(1)(b).

WITVLEI MEAT (PTY) LTD v AGRICULTURAL BANK OF NAMIBIA (HC)

PARKER AJ
2016 FEBRUARY 10; APRIL 7
[2016] NAHCMD 97

Spoilation—Mandament van spolie—When available—Deputy sheriff changing locks on premises and chasing applicant's security guards and employees away—Deputy sheriff acting as respondent's agent without court order—Respondent illicitly depriving applicant of its peaceful and undisturbed possession—Maintenance of law and order greater than right to recover possession of property—Spoilation order granted.

JANSE VAN RENSBURG v WILDERNESS AIR NAMIBIA (PTY) LTD (SC)

SHIVUTE CJ, SMUTS JA and O'REGAN AJA
2015 NOVEMBER 4 2016 APRIL 11

Labour Court—Appeals from—Questions of law alone—What constitutes—When decision was asserted as perverse or when fairness of decision questioned—Test exacting—Whether decision of arbitrator was one that no reasonable decision-maker could have reached—Where question of fairness was one where law required one answer and arbitrator had erred or when arbitrator made decision formulating legal test or rule which was asserted as wrong in law—Appeals would lie against those decisions being questions of law—Labour Act 11 of 2007, s 89(1)(a).

HANGANA SEAFOOD (PTY) LTD v VIRINGA (LC)

PARKER AJ

2015 OCTOBER 30; DECEMBER 3

[2015] NALCMD 27

Labour law—Dismissal—Fairness of—Domestic disciplinary body—Duty of acting procedurally fairly, of discharging duties honestly, impartially and in good faith—Domestic disciplinary body not court of law and not bound by rules of evidence.

Labour law—Dismissal—Fairness of—Domestic disciplinary body—Fair reason—Test whether dismissal for fair reason—If reasonable employer might reasonably have dismissed employee—Employee in breach of duty of acting honestly—Breach material and went to root of employment contract—Dismissal fair.

MASHAHU AND OTHERS v KATIMA MULILO TOWN COUNCIL AND OTHERS (HC)

MASUKU AJ

2015 OCTOBER 28; NOVEMBER 18

[2015] NAHCMD 284

Land—Communal land—Customary land rights—Proof of existence of customary land rights—Identification of allocated right in terms of Communal Land Reform Act 5 of 2002, s 21 required—Failing to identify category of allocated right—Failing to disclose prima facie right to relief sought—Interim interdict refused.

NAMRIGHTS INC v NICODEMUS AND OTHERS (LC)

MILLER AJ

2014 OCTOBER 3; 2015 OCTOBER 2

[2015] NALCMD 23

Immigration—Employment permits—Required to regulate and control presence of non-Namibians and reservation of employment for Namibians—Refugee required to hold employment permit unless exempted in terms of s 35 of Immigration Control Act 7 of 1993.

Labour law—Contract of employment—Contract in contravention of laws of Namibia—Refugee working without work permit—Dismissal fair—Monetary claims unenforceable—Contract illegal and unenforceable—Contravention of ss 24 and 27 of Immigration Control Act 7 of 1993.

LM v JM AND OTHERS (HC)

MILLER AJ

2015 JUNE 2-6; AUGUST 5

[2015] NAHCMD 181

Partnership—Universal partnership—Tacit agreement—Evidence required for manifestation of conduct consistent with universal partnership—Court must be satisfied that it was more probable than not that agreement came into existence.

Customary law—Customary marriage—Dissolution of—Annulment in terms of customary law—Constitutionality of customary law—Evidence required to establish customary law and to establish unconstitutionality of customary law.

Customary law—Community court—Enforcement of order—Procedures for enforcement prescribed in s 23 of Community Courts Act 10 of 2003.