



## JUTA'S ADVANCE NOTIFICATION SERVICE

DECEMBER 2016

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

Herewith the cases in the December law reports

### JUDGMENTS OF INTEREST IN THE DECEMBER EDITIONS OF THE *SALR* AND THE *SACR* AS WELL AS THE *BOTSWANA LAW REPORTS 2013(1)*

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

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

##### **Homeless shelter rules are unconstitutional?**

The occupiers had successfully challenged the constitutionality of the rules of a homeless shelter. The Supreme Court of appeal found that: entry-and-exit rules were reasonable in the circumstances, to ensure the safety of residents, to discourage dependency, and to reduce the running costs of the shelter. So too, the gender-separation rule was reasonable: it was necessary in order for the shelter to accommodate all and yet maintain decency and decorum. *City of Johannesburg v Dladla and Others* 2016 (6) SA 377 (SCA)

##### **Body corporate ordered to fix building**

The elevators in a building had been inoperable for two years, forcing residents and visitors to use the stairs, which created an unsustainable, undignified and intolerable situation for elderly and infirm persons, who were vulnerable in society. A final interdict was granted, ordering the body corporate to repair the elevators within three months. *Lyons v Skyways Body Corporate* 2016 (6) SA 405 (WCC)

##### **Burst tyre accident claim at the Road Accident Fund**

The plaintiff, who was injured in a burst-tyre accident while doing contract work for the owner of the vehicle, claimed from the Road Accident Fund, based on the owner's alleged negligent maintenance of the vehicle. The Fund argued that this was a single-vehicle collision and since the driver was not employed by the owner, he could not claim. The court looks at what establishes the legal nexus to establish a claim. *Abrahams v Road Accident Fund* 2016 (6) SA 545 (WCC)

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

##### **State's duty to victims of crime**

At the sentencing stage for a conviction of rape, the state failed to obtain a victim-impact statement and then also failed to cross-appeal a too lenient sentence. The Supreme Court of Appeal noted the lackadaisical manner in which the state treats victims of violent crimes and, in particular, rape. The court warned that there will soon come a time when the state will be held accountable for this failure of its duty. *S v Mhlongo* 2016 (2) SACR 611 (SCA)

### **Drunk driving punishment**

Having one's licence suspended for drunk driving might satisfy the community's need for retribution, but would it be too harsh for the drunk driver? In this case it was found that the accused required his driver's licence for his work; that he was a first offender; and that there was no injury or accident caused by his offence. Given that he was gainfully employed and ran the risk of losing his employment in difficult economic times if the court confirmed the suspension of his licence, the sentence was unduly harsh. *S v Lourens* 2016 (2) SACR 624 (WCC)

### **DNA evidence failure**

The appellant's conviction for the rape of an 80-year-old woman was set aside because the failure by the state to establish the chain of evidence affected the integrity of the evidence and rendered it inadmissible. The forensic expert's evidence lacked reference from whom the samples of blood were received, the investigating officer was not the one who delivered the samples to the laboratory for testing, and there was also no evidence in relation to the gathering, marking and storage of the samples. *S v Matsaba* 2016 (2) SACR 651 (NWM)

## **BOTSWANA LAW REPORTS**

### **Legitimate expectation**

A lessee was given the option to relocate billboards during reconstruction of the road, or to re-erect the billboards when construction was completed. The lessee chose to re-erect later, but then the municipality threatened demolition when the lessee attempted to do so. It was found that the lessee had a legitimate expectation of a hearing before any such action was taken. *Gaborone City Council v Continental Outdoor Media Botswana (Pty) Ltd* [2013] 1 BLR 192 (CA)

### **Provocation and murder**

The accused killed her brother with an axe handle when he entered her house while drunk and tried to take a plate of food that she had prepared for her boyfriend. She had wielded the axe handle in the heat of anger and was not found guilty of murder, but of manslaughter. The test for provocation is less stringent than the proportionality test for self-defence. *State v Gaborekwe* [2013] 1 BLR 406 (HC)

### **Contempt of court by statutory body**

The land board chairperson and secretary were responsible for the non-compliance, more so where proceedings for contempt had been brought before a tribunal or court which had the effect of resulting in the imposition of a term of imprisonment. A land board could not be imprisoned and to therefore suggest that it's most responsible officers could not be cited for contempt purely on the basis that they were not parties to the initial proceedings, would defeat the whole purpose of contempt proceedings in cases of juristic persons. *Kgalagadi Land Board and Others v Moseletsane Syndicate* [2013] 1 BLR 743 (HC)

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**The Juta Law Reports Team**

# **SOUTH AFRICAN LAW REPORTS**

**DECEMBER 2016**

## **TABLE OF CASES**

- Viking Inshore Fishing (Pty) Ltd v Mutual & Federal Insurance Co Ltd 2016 (6) SA 335 (SCA)
- eTV (Pty) Ltd and Others v Minister of Communications and Others 2016 (6) SA 356 (SCA)
- City of Johannesburg v Dladla and Others 2016 (6) SA 377 (SCA)
- Constantia Insurance Co Ltd v Master of the High Court, Johannesburg and Others 2016 (6) SA 386 (GJ)
- FirstRand Bank Ltd t/a First National Bank v Zwane and Two Other Cases 2016 (6) SA 400 (GJ)
- Lyons v Skyways Body Corporate 2016 (6) SA 405 (WCC)
- Attorneys Fidelity Fund Board of Control v Intibane Mediates and Others 2016 (6) SA 415 (GP)
- Educated Risk Investments 165 (Pty) Ltd and Others v Ekurhuleni Metropolitan Municipality and Others 2016 (6) SA 434 (SCA)
- JVJ Logistics (Pty) Ltd v Standard Bank of South Africa Ltd and Others 2016 (6) SA 448 (KZD)
- Erstwhile Tenants of Williston Court and Others v Lewray Investments (Pty) Ltd and Another 2016 (6) SA 466 (GJ)
- Registrar of Medical Schemes and Another v Genesis Medical Scheme 2016 (6) SA 472 (SCA)
- Arendse and Others v Van der Merwe and Another NNO 2016 (6) SA 490 (GJ)
- Southern Value Consortium v Tresso Trading 102 (Pty) Ltd and Others 2016 (6) SA 501 (WCC)
- Masango v Road Accident Fund 2016 (6) SA 508 (GJ)
- De Sousa and Another v Technology Corporate Management (Pty) Ltd and Others 2016 (6) SA 528 (GJ)
- Abrahams v Road Accident Fund 2016 (6) SA 545 (WCC)
- Absa Bank Ltd v Naude NO and Others 2016 (6) SA 540 (SCA)
- Els v Jagga NO and Others 2016 (6) SA 554 (FB)
- Daniels v Minister of Defence 2016 (6) SA 561 (WCC)
- Eravin Construction CC v Bekker NO and Others 2016 (6) SA 589 (SCA)
- University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others 2016 (6) SA 596 (CC)

## FLYNOTES

### **VIKING INSHORE FISHING (PTY) LTD v MUTUAL & FEDERAL INSURANCE CO LTD (SCA)**

MAYA AP, WALLIS JA, SALDULKER JA, SWAIN JA and VICTOR AJA  
2016 MARCH 8, 18  
[2016] ZASCA 21

**Shipping**—Marine insurance—Hull policy—Inchmaree clause—Whether insurer may rely on breach of Merchant Shipping Act (MSA) warranty to avoid liability—Interpretation of due-diligence proviso to Inchmaree clauses—Proviso not concerned with operational negligence—Where insured vessel lost due to negligence of crew, peril covered by Inchmaree clauses—Neither MSA warranty nor due-diligence clause availing insurer.

### **eTV (PTY) LTD AND OTHERS v MINISTER OF COMMUNICATIONS AND OTHERS (SCA)**

LEWIS JA, SALDULKER JA, SWAIN JA, MBHA JA and BAARTMAN AJA  
2016 MAY 31  
[2016] ZASCA 85

**Media**—Broadcasting—Television—Minister of Communications amending Broadcasting Digital Migration Policy without consulting broadcasters or relevant statutory bodies—Amendment markedly changing policy—Consultation required in terms of relevant statutory provisions—Electronic Communications Act 36 of 2005, ss 3(1), (5) and (6).

**Review**—Grounds—Legality—Minister of Communications amending Broadcasting Digital Migration Policy without consulting broadcasters or relevant statutory bodies—Amendment markedly changing policy—Rights of broadcasters impacted, as well as powers and duties of statutory bodies—Failure to consult irrational and procedurally unfair—Electronic Communications Act 36 of 2005, ss 3(1), (5) and (6).

**Review**—Grounds—Legality—Minister of Communications amending Broadcasting Digital Migration Policy without consulting broadcasters or relevant statutory bodies—Amendment failing to achieve its purpose—Amendment thus itself irrational—Electronic Communications Act 36 of 2005, ss 3(1), (5).

**Review**—Grounds—Minister of Communications amending Broadcasting Digital Migration Policy—In doing so, effectively issuing a binding direction—Could not do so, not having been given regulatory powers in respect of broadcasting in terms of Act—Electronic Communications Act 36 of 2005.

### **CITY OF JOHANNESBURG v DLADLA AND OTHERS (SCA)**

MPATI P, LEACH JA, PILLAY JA, WILLIS JA and MBHA JA  
2016 MAY 3, 18

**Local authority**—Powers and duties—To shelter evicted persons—Rules of shelter—Entry and exit time—Male-only and female-only dormitories—Rules not unconstitutional—Constitution, ss 10, 12, 14, 18 and 21.

### **CONSTANTIA INSURANCE CO LTD v MASTER OF THE HIGH COURT, JOHANNESBURG AND OTHERS (GJ)**

VAN DER LINDE J  
2016 MAY 5, 13

**Insolvency**—Creditors—Proof of claims—Procedure—Liquidator's report disputing creditor's claims proved at meeting of creditors—Creditor substantiating claim after being afforded opportunity by Master—Master affording further opportunity to liquidator to respond to substantiation, where no statutory authority therefor—Power of Master to do so—Procedure in Insolvency Act fair—Master limited to liquidator's report and creditor's substantiation in deciding whether to reduce or disallow claim—Insolvency Act 24 of 1936, s 45(3)

**FIRSTRAND BANK LTD t/a FIRST NATIONAL BANK v ZWANE AND TWO OTHER CASES (GJ)**

VAN DER LINDE J  
2016 JULY 27, 29

**Mortgage**—Foreclosure—Judicial execution—Sale in execution—Application for (i) judgment for accelerated full outstanding balance and (ii) order declaring property executable—Where mortgaged property debtor’s primary residence, court may postpone both applications to afford debtor opportunity to pay arrears.

**LYONS v SKYWAYS BODY CORPORATE (WCC)**

MAHOMED AJ  
2016 MAY 26

**Sectional title**—Body corporate—Members—Rights and duties—To service and maintain elevators servicing buildings—Elevators servicing fourstorey buildings inoperable for two years, forcing residents and visitors to use stairs—Elderly owner of unit seeking final interdict compelling body corporate to repair elevators forthwith—Whether adequate alternative remedies available—Body corporate having acted in unreasonably dilatory fashion in attempting to repair elevators—Inoperable elevators creating unsustainable, undignified and intolerable situation for elderly and infirm persons, which class constituting most vulnerable in society—Alternative remedies proposed by body corporate not engendering prompt and enforceable action with tangible results for vulnerable—Final interdict granted, and body corporate ordered to repair elevators within three months.

**ATTORNEYS FIDELITY FUND BOARD OF CONTROL v INTIBANE MEDIATES AND OTHERS (GP)**

POTTERILL J  
2016 JULY 26

**Agency and representation**—Agent—Commission—Disclosure—Of commission earned by purchaser’s agent from seller—Disclosure necessary if earned without purchaser’s knowledge.

**Delict**—Specific forms—Pure economic loss—Claim for damages by purchaser against seller arising from purchase price being inflated with secret commission paid by seller to purchaser’s agent—Seller’s non-disclosure of secret commission amounting to negligent misrepresentation giving rise to delictual liability.

**Delict**—Specific forms—Negligent misrepresentation—Non-disclosure—Seller not disclosing commission agreement with purchaser’s agent—In circumstances of case, policy considerations requiring that legal duty to disclose be imposed.

**EDUCATED RISK INVESTMENTS 165 (PTY) LTD AND OTHERS v EKURHULENI METROPOLITAN MUNICIPALITY AND OTHERS (SCA)**

LEWIS JA, THERON JA, WALLIS JA, MATHOPO JA and VICTOR AJA  
2016 MAY 11, 20  
[2016] ZASCA 67

**Local authority**—Town planning—Municipality intending to allow building of temporary informal housing on land zoned Residential 1—Objection by neighbouring property owners—No reason for informal housing to be excluded from ambit of applicable town-planning scheme—Moreover, municipality permitted to depart from zoning scheme if to the benefit of community or surrounding areas.

**Housing**—Right to housing—Informal settlements—Upgrading—Municipality may, pending upgrade, relocate residents to temporary informal housing on township designated Residential 1.

**JVJ LOGISTICS (PTY) LTD v STANDARD BANK OF SOUTH AFRICA LTD AND OTHERS (KZD)**

OLSEN J

2016 JUNE 7; JULY 22

**Company**—Business rescue—Moratorium on legal proceedings against company—Meaning of '[property] lawfully in its possession'—Companies Act 71 of 2008, s 133(1).

**ERSTWHILE TENANTS OF WILLISTON COURT AND OTHERS v LEWRAY INVESTMENTS (PTY) LTD AND ANOTHER (GJ)**

MEYER J

2015 SEPTEMBER 8–10

**Practice**—Judgments and orders—Rescission—Whether order suspended by application for its rescission—Superior Courts Act 10 of 2013, s 18.

**REGISTRAR OF MEDICAL SCHEMES AND ANOTHER v GENESIS MEDICAL SCHEME (SCA)**

CACHALIA JA, SERITI JA, WILLIS JA, DAMBUZA JA and TSOKA AJA

2016 MAY 11, 27

[2016] ZASCA 75

**Medicine**—Medical aid scheme—Annual financial statements—Credit balance in members' personal savings accounts (PMSA funds)—Constituting trust property and to be accounted for separately—Financial Institutions (Protection of Funds) Act 28 of 2001, s 4(4) and s 4(5); Medical Schemes Act 131 of 1998, s 35(9)(c).

**ARENSE AND OTHERS v VAN DER MERWE AND ANOTHER NNO (GJ)**

BORUCHOWITZ J

2016 APRIL 29; JULY 8

**Company**—Business rescue—Moratorium on legal proceedings against company—Exceptions—Leave of court to proceed—Criteria for leave that applicant must establish—How court to exercise its discretion—Companies Act 71 of 2008, s 133(1)(b).

**SOUTHERN VALUE CONSORTIUM v TRESSO TRADING 102 (PTY) LTD AND OTHERS (WCC)**

BLIGNAULT J

2016 NOVEMBER 23

**Company**—Business rescue—Moratorium on legal proceedings against company—Property owner cancelling lease with company and instituting proceedings for ejection—Company then put into business rescue, and defence raised that moratorium barring proceedings—Whether so—Companies Act 71 of 2008, ss 133(1) and 134(1)(c).

**MASANGO v ROAD ACCIDENT FUND (GJ)**

MOJAPELO DJP

2016 JUNE 22; AUGUST 31

**Attorney**—Fees—Contingency fees—Statutory limitation—Whether legal practitioner entitled to charge as fees 25% of capital amount recovered for client—'Normal fees' and 'success fees' defined—No basis for legal practitioner to charge as fees percentage of capital amount awarded—Contingency Fees Act 66 of 1997, s 2(1)(b) and s 2(2).

**DE SOUSA AND ANOTHER v TECHNOLOGY CORPORATE MANAGEMENT (PTY) LTD AND OTHERS (GJ)**

BORUCHOWITZ J

2014 FEBRUARY 13

**Company**—Oppressive conduct—Relief—Whether available—Conduct affecting company and thence shareholders—Conduct affecting all members—Companies Act 61 of 1973, s 252.

**ABSA BANK LTD v NAUDE NO AND OTHERS (SC)**

PONNAN JA, PILLAY JA, WILLIS JA, SCHOEMAN AJA and FOURIE AJA  
2015 MAY 20; JUNE 1  
[2015] ZASCA 97

**Company**—Business rescue—Business rescue plan—Application to set aside—Creditors to be joined—Companies Act 71 of 2008.

**ABRAHAMS v ROAD ACCIDENT FUND (WCC)**

SALIE-HLOPHE J  
2016 MAY 12; AUGUST 12

**Motor vehicle accident**—Compensation—Claim against Road Accident Fund—Single-vehicle collision—Claim based on negligence of owner—Alleged failure to maintain vehicle—Owner having consented to claimant’s use of vehicle—Consent constituting sufficient linkage between parties to trigger liability—Special plea against claim dismissed—Road Accident Fund Act 56 of 1996, s 17(1).

**ELS v JAGGA NO AND OTHERS (FB)**

MOCUMIE AJP, VAN ZYL J and JORDAAN J  
2015 APRIL 13, 23

**Marriage**—Divorce—Maintenance—Spouse—Deed of settlement incorporated in divorce order providing for payment by husband to wife of maintenance until death or remarriage of wife—Whether claim for maintenance enforceable against husband’s estate—In general, agreement to pay maintenance until death or remarriage of receiving partner terminating on death of paying partner, unless sufficient indication or express stipulations to contrary—Divorce Act 70 of 1979, s 7(1).

**DANIELS v MINISTER OF DEFENCE (WCC)**

ALLIE J  
2016 JUNE 21

**Delict**—Elements—Negligence—What constitutes—Plaintiff suffering perforation of bowel resulting in sepsis—Failure of medical practitioners treating plaintiff’s prior complaints to definitively diagnose small bowel pathology by conducting laparotomy/laparoscopy—Circumstances calling for procedure as matter of urgency—Medical practitioners negligent and liable.

**Delict**—Elements—Unlawfulness or wrongfulness—Liability for omission—Plaintiff suffering perforation of bowel resulting in sepsis—Failure of medical practitioners treating plaintiff’s prior complaints to definitively diagnose small bowel pathology by conducting laparotomy/laparoscopy—Circumstances calling for procedure as matter of urgency—Medical practitioner’s oath demanding of them to place interests of patient before any cost-saving considerations or other conditions of employment—Failure to do so wrongful.

**Medicine**—Medical practitioner—Negligence—Action for damages—Medical practitioner’s oath demanding of them to place interests of patient before any cost-saving considerations or other conditions of employment—Failure to do so wrongful.

**Medicine**—Medical practitioner—Negligence—Action for damages—Plaintiff suffering perforation of bowel resulting in sepsis—Failure of medical practitioners treating plaintiff’s prior complaints to definitively diagnose small bowel pathology by conducting laparotomy/laparoscopy—Circumstances calling for procedure as matter of urgency—Medical practitioners negligent and liable.

**ERAVIN CONSTRUCTION CC v BEKKER NO AND OTHERS (SCA)**

LEWIS JA, TSHIQI JA, SWAIN JA, DAMBUZA JA and PLASKET AJA  
2016 MARCH 15, 23  
[2016] ZASCA 30

**Company law**—Business rescue—Prohibition against enforcement of prebusiness rescue ‘debt owed’—Meaning of ‘debt owed’ in Companies Act 71 of 2008, s 154(2).

**Company law**—Business rescue—Prohibition against enforcement of prebusiness rescue ‘debt owed’—Void disposition made to recipient subsequently placed under business rescue, constituting pre-business rescue ‘debt owed’—Companies Act 71 of 2008, s 154(2); Companies Act 61 of 1973, s 341(2).

**Company**—Winding-up—Unlawful alienations and preferences—Void disposition—Void disposition made to recipient subsequently placed under business rescue, constituting pre-business rescue ‘debt owed’—Companies Act 61 of 1973, s 341(2); Companies Act 71 of 2008, s 154(2).

**UNIVERSITY OF STELLENBOSCH LEGAL AID CLINIC AND OTHERS v MINISTER OF JUSTICE AND CORRECTIONAL SERVICES AND OTHERS (CC)**

MOGOENG CJ, MOSENEKE DCJ, BOSIELO AJ, CAMERON J, FRONEMAN J, JAFTA J, KHAMPEPE J, MADLANGA J, MHLANTLA J, NKABINDE J and ZONDO J  
2016 MARCH 3; SEPTEMBER 13  
[2016] ZACC 32

**Constitutional law**—Human rights—Right of access to courts—Requiring judicial supervision of execution against all forms of property—Constitution, s 34.

**Constitutional law**—Legislation—Validity—Magistrates’ Courts Act 32 of 1944, s 65J(2)(a) and s 65J(2)(b)(i)—Invalid to extent of authorising issuing of emoluments attachment orders without judicial supervision—Severance and reading-in ordered to ensure required judicial supervision.

**Execution**—Attachment of salary—Constitutionality of process—Constitution requiring judicial supervision of execution process against all forms of property—Relevant sections of Magistrates’ Courts Act constitutionally invalid in that they authorise issuing of emoluments attachment orders without judicial supervision—Severance and reading-in ordered to ensure required judicial supervision—Magistrates’ Courts Act 32 of 1944, ss 65J(2)(a) and 65J(2)(b)(i).



# SOUTH AFRICAN CRIMINAL LAW REPORTS

DECEMBER 2016

## TABLE OF CASES

- S v Mhlongo 2016 (2) SACR 611 (SCA)
- S v Lourens 2016 (2) SACR 624 (WCC)
- S v Sheldon-Lakey 2016 (2) SACR 632 (NWM)
- S v Nteta and Others 2016 (2) SACR 641 (WCC)
- S v Matshaba 2016 (2) SACR 651 (NWM)
- Dlamini v Minister of Safety and Security 2016 (2) SACR 655 (GJ)
- Nogwebele v Minister of Police and Another 2016 (2) SACR 662 (WCC)
- Mogale and Others v Minister of Safety and Security and Others 2016 (2) SACR 682 (GP)
- S v Jimmale and Another 2016 (2) SACR 691 (CC)
- S v Porritt and Another 2016 (2) SACR 700 (GJ)
- S v De Jager and Others 2016 (2) SACR 716 (ECG)
- S v Tafeni 2016 (2) SACR 720 (WCC)

## FLYNOTES

### **S v MHLONGO (SCA)**

BOSIELO JA, SWAIN JA, ZONDI JA, MOCUMIE JA and DLODLO AJA  
2016 AUGUST 24; OCTOBER 3  
[2016] ZASCA 152

**Sentence**—Imprisonment—Term of—Non-parole period—Section 276B of Criminal Procedure Act 51 of 1977—Imposition of—Accused to be given notice of court’s intention to invoke provision and had to be heard before such period imposed—Court obliged to give reasons for order.

**Rape**—Sentence—Evidence to be led by state on sentence—Essential that state acquires victim-impact statement.

### **S v LOURENS (WCC)**

HENNEY J and SAVAGE J  
2016 MAY 13

**Traffic offences**—Driving under influence of liquor—Contravention of s 65(1) of National Road Traffic Act 93 of 1996—Sentence—Suspension of driver’s licence—Circumstances to be taken into account—Include personal circumstances of accused and interests of community.

### **S v SHELDON-LAKEY (NWM)**

KGOELE J and GURA J  
2016 MAY 20; JULY 14

**Sexual offences**—Sexual intercourse with boy child under age of 16 years—Contravention of s 15(1) of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007—Sentence—Thirty-nine-year-old married woman in educator-learner relationship with boy whom she was supposed to be counselling—Sexual intercourse occurring on more than one occasion—Sentence of four years’ imprisonment confirmed on appeal.

### **S v NTETA AND OTHERS (WCC)**

HENNEY J  
2016 MAY 30; JULY 22

**Child**—Sentence—Generally—When accused to be treated as child for purposes of Child Justice Act 75 of 2008—Required to have been under age of 18 at time of commission of offence as well as at time of arrest.

**S v MATSHABA (NWM)**

GUTTA J and DJAJE AJ  
2016 AUGUST 19; SEPTEMBER 1

**Evidence**—Expert evidence—DNA analysis—Presentation of such evidence—Chain of handling of samples from collection to analysis to be properly presented.

**DLAMINI v MINISTER OF SAFETY AND SECURITY (GJ)**

VAN OOSTEN J, ISMAIL J and MONAMA J  
2016 JUNE 1

**Arrest**—Without warrant—Legality of—Arresting officer in possession of sworn statement made by complainant to colleague in domestic-violence matter—Complainant confirmed allegations to him and identified husband—Allegation of assault partly borne out by fact that complainant limping—Arresting officer not required to conduct further investigation at couple's home in order to verify allegations before arresting.

**NOGWEBELE v MINISTER OF POLICE AND ANOTHER (WCC)**

HENNEY J  
2016 FEBRUARY 23; MAY 12

**Arrest**—Procedure after arrest—Further detention after court appearance—Whether further detention amounting to malicious prosecution where matter withdrawn because child rape victim was insufficiently mature to testify—This not amounting to withdrawal on merits or acquittal—Eminently reasonable procedure adopted by prosecution in circumstances—Not amounting to malicious prosecution.

**MOGALE AND OTHERS v MINISTER OF SAFETY AND SECURITY AND OTHERS (GP)**

BERTELSMANN J, MOTHLE J and PRELLER J  
2015 SEPTEMBER 18

**Search and seizure**—Search warrant—Warrants in terms of s 21 of Criminal Procedure Act 51 of 1977—Application for—Supporting affidavit—Attestation of—Commissioners of oaths to satisfy themselves of identity of deponent and that person who signs as deponent actually swears to affidavit—Deponents must therefore sign affidavit in commissioner's presence—Failure to fulfil such requirement may lead to potential abuse—Justices of the Peace and Commissioners of Oaths Act 16 of 1963, ss 2–5 and 7.

**Search and seizure**—Search warrant—Validity of—Warrants in terms of s 21 of Criminal Procedure Act 51 of 1977—Affidavit in support of application for search warrant signed by deponent before it was presented to commissioner of oaths—Commissioner therefore not witnessing signing of affidavit—Defect could not be condoned, as there had been no substantial compliance with statutory formalities—Warrants invalid and set aside—Criminal Procedure Act 51 of 1977, s 21; Justices of the Peace and Commissioners of Oaths Act 16 of 1963, ss 2–5 and 7.

**S v JIMMALE AND ANOTHER (CC)**

MOGOENG CJ, MOSENEKE DCJ, BOSIELO AJ, CAMERON J, FRONEMAN J, JAFTA J, KHAMPEPE J, MADLANGA J, MHLANTLA J, NKABINDE J and ZONDO J  
2016 AUGUST 30  
[2016] ZACC 27

**Sentence**—Imprisonment—Non-parole period—Section 276B of Criminal Procedure Act 51 of 1977—Imposition of—Not to be resorted to lightly and not without inviting oral argument—Relevant factors justifying order to be properly proved.

**S v PORRITT AND ANOTHER (GJ)**

SPILG J  
2016 JULY 7, 28

**Trial**—Centralisation—Application for—On grounds that discomfort and expenditure of lengthy trial at centre far from accused's home would infringe fair-trial rights—Accused not satisfying court that their inability to prepare property for trial would amount to infringement of their rights—Application dismissed.

**S v DE JAGER AND OTHERS (ECG)**

SANDI J and BESHE J  
2014 AUGUST 13; 2016 SEPTEMBER 27

**Culpable homicide**—Negligence—What constitutes—Child dying when brick wall collapsed after crowd stormed out of pavilion when accused threw bottles—Reasonable man would not have foreseen that death would result as consequence of bottle-throwing.

**S v TAFENI (WCC)**

BINNS-WARD J and RILEY AJ  
2015 OCTOBER 16

**Sentence**—Prescribed minimum sentences—Criminal Law Amendment Act 105 of 1997—Substantial and compelling circumstances—Power of appellate court to interfere with finding by trial court on existence of such circumstances—Position analogous to discretion of court to grant interdictory relief—Court not restricted from interfering only if able to identify material misdirection or failure of exercise of discretion.

## BOTSWANA LAW REPORTS

2013(1)

### TABLE OF CASES

- AT & T Monnakgotla Transport (Pty) Ltd and Another v Ositang [2013] 1 BLR 319 (CA)
- African Banking Corporation Botswana (Pty) Ltd v Jobtrans and Plant Hire (Pty) Ltd and Others [2013] 1 BLR 421 (HC)
- Attorney-General v Botswana Landboards and Local Authorities Workers' Union and Others [2013] 1 BLR 432 (CA)
- BIFM Capital Investment Fund One (Pty) Ltd v Botswana Building Society [2013] 1 BLR 130 (CA)
- Babapatsi Nataya Outdoor (Pty) Ltd v Gaborone City Council and Another [2013] 1 BLR 557 (HC)
- Baliki v Botswana Power Corporation [2013] 1 BLR 87 (HC)
- Bareeleng v Bareeleng and Others [2013] 1 BLR 31 (HC)
- Bolele v Botswana Council of Non-Governmental Organisations [2013] 1 BLR 196 (CA)
- Botshelo v Gopane [2013] 1 BLR 26 (HC)
- Botswana Landboards and Local Authorities Workers' Union and Others v Director of Public Service Management and Another [2013] 1 BLR 373 (CA)
- Botswana Postal Services and Others v Bosekeng [2013] 1 BLR 402 (HC)
- Botswana Railways Amalgamated Workers' Union v Botswana Railways [2013] 1 BLR 59 (IC)
- Brand Leadership Group (Pty) Ltd v University of Botswana [2013] 1 BLR 80 (HC)
- Central District Council v Motlhabane [2013] 1 BLR 187 (CA)
- Citizen Entrepreneurial Development Agency v Moumakwa [2013] 1 BLR 325 (CA)
- Conferred (Proprietary) Limited v Botswana Building Society and Others [2013] 1 BLR 481 (HC)
- Coyne v Ministry of Lands and Housing and Another [2013] 1 BLR 579 (IC)

- Crocick Development (Pty) Ltd v Pak Galaxy Enterprises (Pty) Ltd [2013] 1 BLR 36 (HC)
- Debswana Diamond Company (Pty) Ltd v Kgosidiile and Another [2013] 1 BLR 759 (HC)
- Debswana Diamond Mining Company v Toto [2013] 1 BLR 167 (CA)
- Directorate of Public Prosecutions and Another v Universal Builders (Botswana) (Pty) Ltd and Other [2013] 1 BLR 54 (CA)
- Enviro Homes (Pty) Ltd t/a ADM v Citizen Entrepreneurial Development Agency (CEDA) [2013] 1 BLR 622 (HC)
- Export Credit Insurance and Guarantee Company (Botswana) (Pty) Ltd v Dawson and Frazer Mechanical Contractors (Pty) Ltd and Another [2013] 1 BLR 520 (HC)
- GDC (Pty) Ltd v Englton [2013] 1 BLR 632 (CA)
- Gaborone Academy of Law v Attorney-General [2013] 1 BLR 539 (HC)
- Gaborone City Council v Continental Outdoor Media Botswana (Pty) Ltd [2013] 1 BLR 192 (CA)
- Gaegopolwe v Attorney-General and Others [2013] 1 BLR 717 (HC)
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