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APRIL 2017

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JUDGMENTS OF INTEREST IN THE APRIL EDITIONS OF THE *SALR AND SACR LAW REPORTS*

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SOUTH AFRICAN LAW REPORTS

Mala fide failure to comply with interim maintenance order

In a divorce, the respondent was a multimillionaire and the controlling mind behind several companies, yet claimed to be unemployed. He was a serial defaulter on maintenance payments and had several court orders against him, but he frustrated their execution by contrived challenges to attachments and by switching funds out of the affected accounts. He was concealing his assets and had engineered a decrease in salary purely to frustrate the court order, establishing mala fides. The court issued a warrant of arrest. *AG v DG 2017 (2) SA 409 (GJ)*

The limits of free speech

Freedom of speech is protected by the Bill of Rights, but a T-shirt bearing slogan 'Kill all whites' during student protests tested the limits. This was advocacy of hatred based on race alone, and constituted incitement to harm white people, which could not be protected by the Bill of Rights. *Hotz and Others v University of Cape Town 2017 (2) SA 485 (SCA)*

Self-help by city against shack-dwellers not permitted

People had built shacks on the respondent city's land, so claiming illegal land invasion, the city demolished the shacks without a court order. While the residents had unlawfully acquired possession of the city's land sufficient to constitute spoliation, the subsequent demolition constituted unlawful self-help by the city. Local authorities should not be permitted, without court sanction, to move in with heavy equipment whenever people moved onto their land. *Residents of Setjwetla Informal Settlement v Johannesburg City* 2017 (2) SA 516 (GJ)

SOUTH AFRICAN CRIMINAL LAW REPORTS

An uncivil response by a magistrate

During a review, queries raised by the judge to the magistrate were couched in respectful and moderate terms. The responses by the magistrate, however, did not address the merits of the issues but rather cast aspersions on the integrity, and intellectual and judicial capacity of the judge. The intemperate, uncivil and disrespectful language used by the magistrate was not only totally unacceptable, but called for strong censure. *S v Njiva and Another* 2017 (1) SACR 395 (ECM)

Accused not informed of minimum sentencing

The charge-sheet stated that the accused raped a 10-year-old girl, without mentioning the applicability of the minimum sentencing provisions. However, the legally represented accused did not raise prejudice in five separate proceedings. The majority of the court found that there was no prejudice suffered and the sentence of life imprisonment was upheld. However, the minority was of the view that to inform the accused about such a patently serious matter at the end of a trial, was to defeat the purpose of the Constitutional right to a fair trial, and was trial by ambush. *S v Tshoga* 2017 (1) SACR 420 (SCA)

Dangerous criminal given bail

The 22-year-old plaintiff, a third-year quantity-surveying student, was viciously attacked and raped by an intruder who had multiple previous convictions, including a number of convictions of rape, and was out on bail at the time of the incident. She based her claim on the failure of the relevant prosecutors and investigating officers to ensure that her assailant was kept behind bars, since he posed a clear threat to the community. *DW v Minister of Police and Another* 2017 (1) SACR 441 (GP)

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Kind Regards

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