



JUTA'S ADVANCE NOTIFICATION SERVICE

SEPTEMBER 2017

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

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SOUTH AFRICAN LAW REPORTS

Whether a minority shareholder's claim for relief from oppressive conduct is a debt capable of prescription

The Constitutional Court, upholding an appeal from the Supreme Court of Appeal, held that a minority shareholder's claim under the old Companies Act 61 of 1973 for relief from oppressive conduct was not a 'debt' as defined in the recent case of *Makate v Vodacom Ltd* 2016 (4) SA 121 (CC) (2016 (6) BCLR 709; [2016] ZACC 13). It was therefore incapable of prescription. *Off-Beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Ltd and Others* 2017 (5) SA 9 (CC)

Duties of a landowner when a fire starts on their property

In issue was the fault of a defendant landowner relating to a fire that had started on his property and had spread to the plaintiff's neighbouring plantation, causing substantial damages. The SCA found that while the defendant had not in fact prevented the fire spreading, his steps taken in attempting to do so were reasonable in the circumstances, and he could not therefore be said to be negligent. The court also ruled conclusively that foreseeability was not relevant to the determination of wrongfulness, but confined to the elements of negligence and causation. *MTO Forestry (Pty) Ltd v Swart NO* 2017 (5) SA 76 (SCA)

Power of the Speaker of National Assembly to direct that voting in a motion of no-confidence take place by secret ballot

When the Speaker of the National Assembly refused a request by the UDM to direct that voting in a motion of no confidence in the President be conducted by secret ballot, on the basis that she was not empowered to do so, the present declaratory proceedings were launched. The Constitutional Court granted the declarator sought, that the Constitution and the Rules of the NA permitted the Speaker to direct that a vote on a motion of no confidence in the President be conducted by secret ballot. *United Democratic Movement v Speaker, National Assembly and Others* 2017 (5) SA 300 (CC)

SOUTH AFRICAN CRIMINAL LAW REPORTS

An appropriate sentence for a double-contract killing

In the SCA the state appealed against two sentences of 20 years' imprisonment imposed by the High Court on the accused in respect of two counts of murder—the accused had contracted killers to kill her husband and then to kill one of the contracted killers who attempted to blackmail her. Taking into account inter alia that the accused actively participated in the murders and displayed no remorse, the SCA substituted the sentences on each count for life imprisonment. *Director of Public Prosecutions, Gauteng v Tsotetsi* 2017 (2) SACR 233 (SCA)

Constitutionality of CPA provisions imposing prescription period of 20 years for sexual offences, other than rape or compelled rape

The High Court declared that s 18 of the Criminal Procedure Act 51 of 1977 was arbitrary, irrational and unconstitutional to the extent that it imposed a period of prescription of 20 years for offences as contemplated by the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 other than rape or compelled rape. *NL and Others v Frankel and Others* 2017 (2) SACR 257 (GJ).

Appropriate award for general damages in respect of an unlawful search of a family's home

On appeal, the SCA confirmed the correctness of the sums (R200 000 or R250 000) granted by the court a quo to each of respondents—a family of four—for general damages arising from the entry into their home of numerous police officials without a lawful warrant and for the unlawful pointing of firearms at them, and for assaulting, humiliating and intimidating them. In doing so the SCA stressed the aggravating circumstances: the incident happened in the dead of night; it took place in the sanctity of the family's home; and the respondents suffered serious trauma. *Minister of Safety and Security v Augustine and Others* 2017 (2) SACR 332 (SCA).

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Kind Regards

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