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OCTOBER 2017

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SOUTH AFRICAN LAW REPORTS

The duty of a court when unlawful occupiers consenting to their eviction

Unlawful occupiers of a block of flats mandated four among them to appear in proceedings for their eviction. These four consented, purportedly on the others' behalf, to the occupiers' eviction, and an order to such effect was granted. The occupiers sought to rescind that order in the High Court, which was refused. On appeal, the Constitutional Court stressed the obligation of a court to proactively determine whether an eviction was just and equitable. They carried this obligation *even where occupiers consented to their eviction*. The CC rescinded the eviction order given the real risk of homelessness. *Occupiers, Berea v De Wet NO and Another* 2017 (5) SA 346 (CC)

The repentance principle

A party who decides to abide by a repudiated agreement was entitled to change that decision and cancel where the defaulting party persists with its refusal or failure to perform. For it to do so, it was sufficient that the aggrieved party reasonably perceived that the defaulting party would not remedy its breach despite having been given the opportunity to do so; no further act of repudiation was required. *Primat Construction CC v Nelson Mandela Bay Metropolitan Municipality* 2017 (5) SA 420 (SCA)

The right of the media to broadcast court proceedings

The trial of the accused—charged with murdering three of his family members with an axe—attracted huge media interest. A major publisher brought an urgent application for permission to record and broadcast the proceedings. The court granted the application, on the basis of the media's right to freedom of expression, but also on the principle of open justice, which demanded that court proceedings had to, where possible, be accessible to any member of the public who wished to be accurately informed of such proceedings. *Van Breda v Media 24 Ltd and Others* 2017 (5) SA 533 (SCA)

SOUTH AFRICAN CRIMINAL LAW REPORTS

The right to anonymity of child witnesses when reaching majority

Eighteen years after the applicant was abducted as a baby girl, criminal proceedings were brought against the suspected kidnapper. In the midst of intense media interest, the applicant sought a declaration to the effect that the right to anonymity afforded her as a child witness in terms of s 154(3) of the Criminal Procedure Act 51 of 1977 extended into her majority. The court disagreed and refused the declaration, holding that the section protected the child and only the child. *Centre for Child Law and Others v Media 24 Ltd and Others* 2017 (2) SACR 416 (GP)

Life sentence for rape involving 'grievous bodily harm'—whether intent to be shown

In terms of part 1(c) of sch 2, read with s 51(1), of the Criminal Law Amendment Act 105 of 1997, rape involving the infliction of 'grievous bodily harm' called for a minimum sentence of life imprisonment. The SCA, reversing the decision of the High Court a quo, confirmed that these provisions *did not require* the state to show that the accused had *intent* to cause grievous bodily harm. *Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi* 2017 (2) SACR 384 (SCA)

An appropriate sentence for offences related to child pornography

The accused was found guilty of numerous counts relating to child pornography, sexual assault and using children for child pornography. In considering sentence, the court felt that a custodial sentence was called for, given the seriousness of the offence. The court sentenced the accused to 10 years' imprisonment of which two were suspended. *S v AR* 2017 (2) SACR 402 (WCC)

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Kind Regards

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