



JUTA'S ADVANCE NOTIFICATION SERVICE

DECEMBER 2017

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Herewith the cases in the December law reports

JUDGMENTS OF INTEREST IN THE DECEMBER EDITIONS OF THE SALR AND SACR LAW REPORTS.

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

SOUTH AFRICAN LAW REPORTS

Retrospective amendment, without notice, of Income Tax Act—whether contrary to rule of law

The applicants in this matter challenged the legality of an amendment to the Income Tax Act 58 of 1962, on the basis that it operated retrospectively and was introduced, so it was alleged, without adequate notice. The court held that nothing in the Constitution prohibited Parliament from passing retrospective legislation, and there was no overriding duty to give notice of the retrospective amendment. The amendment was reasonable and justifiable. *Pienaar Brothers (Pty) Ltd v Commissioner, South African Revenue Service and Another* 2017 (6) SA 435 (GP)

PAIA and the right to have access to private funding details of political parties

The failure of the Promotion of Access to Information Act 2 of 2000, the court held, to allow for the disclosure of the private funding particulars of political parties was in breach of the constitutional right to access to information. The Act was therefore declared to be invalid, which declaration was suspended in order to allow Parliament to remedy the defects. *My Vote Counts NPC v President of the Republic of South Africa and Others* 2017 (6) SA 501 (WCC)

Constitutionality of a provision in a will

Testators in a will bequeathed immovable property to their children subject to a fideicommissum to the effect that, beyond their children, such property could devolve only to male descendants. Was this unconstitutional? The court held that it was unfairly discriminatory. But it was justifiable in terms of the limitations clause, considering the importance of the right of the freedom of testation, and the limited extent of the limitation, being confined to the private sphere and affecting a limited amount of people. *King and Others NNO v De Jager and Others* 2017 (6) SA 527 (WCC)

SOUTH AFRICAN CRIMINAL LAW REPORTS

An arrest arising from a violation of a protection order – Is a full and complete investigation required?

Before making an arrest on the basis of an alleged violation of a protection order granted in terms of the Domestic Violence Act 116 of 1998, a full and complete investigation regarding all the allegations in a statement by the complainant was not required in terms of the law; all that was required was that the arrestor exercise discretion rationally within the boundaries of the Act and bring the arrestee to justice. *Rautenbach v Minister of Safety and Security* 2017 (2) SACR 610 (WCC)

Common purpose—Unlawful possession of firearms

The applicants were part of a group of robbers that committed an armed robbery in which certain of their number shot and killed the deceased. The Constitutional Court confirmed the applicants' conviction for murder, on the basis of common purpose, as they knew that some of the group were carrying firearms which could be used to kill someone. The CC however set aside the applicants' conviction on common purpose for unlawful possession of firearms, finding that there was no evidence suggesting that they intended to possess the firearms through the perpetrators. *S v Makhubela and Another* 2017 (2) SACR 665 (CC)

Conviction for murder where expert evidence could not exclude the possibility of natural death

Here the SCA overturned the accused's conviction in the High Court for the murder of her husband. It found that the court a quo was precluded from finding the accused guilty of murder in circumstances where the expert evidence did not exclude the reasonable inference of the natural death of the deceased. *S v Maqubela* 2017 (2) SACR 690 (SCA)

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Kind Regards

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