



JUTA'S ADVANCE NOTIFICATION SERVICE

MARCH 2018

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

Herewith the cases in the March 2018 law reports

JUDGMENTS OF INTEREST IN THE MARCH 2018 EDITIONS OF THE *SALR* AND *SACR* LAW REPORTS. SEE ALSO, FURTHER BELOW, THE TABLE OF CASES FOR THE *BOTSWANA LAW REPORTS* 2014(2).

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

SOUTH AFRICAN LAW REPORTS

Provocation as a defense to the *actio de feris*

The *actio de feris* imposes strict liability on the owner of wild or dangerous animals brought on or into a public place, or a place to which members of the public have access to, for damages caused by such animals. Here the plaintiff relied on the *actio* to claim damages for injuries he sustained when, visiting the defendant's farm, he fell down in the process of running away to escape an attack by defendant's 'undomesticated' ostrich. The Supreme Court of Appeal considered the owner's defense that the plaintiff had provoked the attack. *Van der Westhuizen v Burger* 2018 (2) SA 87 (SCA).

State organs reviewing their own decisions: PAJA or legality review?

The Constitutional Court confirmed that an organ of state must bring a legality review when seeking to have its own decisions reviewed; it could not use the Promotion of Administrative Justice Act 3 of 2000 (PAJA). This was because PAJA was only available to private parties; it was enacted to give effect to a private citizen's constitutional right to just administrative action. *State Information Technology Agency Soc Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC).

Equality for spouses in pre-Recognition Act polygamous customary marriages

At customary law the rights of ownership and control of marital property vest in the husband. The Recognition of Customary Marriages Act 120 of 1998 introduces equality in status between husbands and wives in customary marriages, but s 7(1) the Act provides that '(t)he proprietary consequences of customary marriages entered into before the commencement of this Act continue to be governed by customary law'. In *Gumede* the Constitutional Court held s 7(1) to be constitutionally invalid in so far as it related to monogamous customary marriages. In this case the Constitutional Court extended the finding of constitutional invalidity to pre-Recognition Act polygamous customary marriages. *Ramuhovhi and Others v President of the Republic of South Africa and Others* 2018 (2) SA 1 (CC).

SOUTH AFRICAN CRIMINAL LAW REPORTS

Section 105 A plea bargain agreements: consensus required

The accused (on charges from murder and rape) applied for an order compelling the state to accept a plea of guilty on charge of culpable homicide, and to order that his prosecution on the original charges be permanently stayed. This on the basis of a draft agreement made during plea bargain negotiations, which the accused claimed constituted a binding plea bargain agreement under s 105A of the Criminal Procedure Act 51 of 1977. The agreement was however not concluded as no consensus was reached. The court held that this was fatal to the application. *S v Phillips* 2018 (1) SACR 284 (WCC).

Scope of protection orders: what can be ordered?

In addition to a protection order, an order was sought under s 7 (2) of the Domestic Violence Act 116 of 1998 that certain digital equipment of the respondent be handed over to the sheriff so that all sensitive and intimate material offending the complainant's right to privacy could be removed. In an appeal against the court a quo's refusal of the latter relief, it was held that despite the section relied on not specifically empowering a court to grant such an order, the court was obliged to fashion relief that would adequately address the problem. It directed the respondent to hand over to the sheriff all his digital devices. *KS v AM* 2018 (1) SACR 240 (GJ).

Request by National Director of Public Prosecutions to vacate office

Section 12(8)(a) of the National Prosecuting Authority Act 32 of 1998 provides that the National Director of Public Prosecutions may request to vacate his office. One of the issues that was raised in this case was what constitutes such a request. This where a settlement agreement was reached whereby the NDPP left office against payment of some R 17 357 233. It was held that the request was required to emanate from the NDPP and not from persuasion by payment of a greater sum of money than permitted by law. *Corruption Watch (RF) NPC and Another v President of the Republic of South Africa and Others* 2018 (1) SACR 317 (GP)

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Kind Regards

The Juta Law Reports Team

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