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APRIL 2018

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Herewith the cases in the April 2018 law reports

JUDGMENTS OF INTEREST IN THE APRIL 2018 EDITIONS OF THE *SALR* AND *SACR* LAW REPORTS.

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SOUTH AFRICAN LAW REPORTS

Registrar of Deeds held liable for negligent registration of transfer.

The applicant's immovable property had been sold and transferred, without her knowledge, to the third respondent, who shortly thereafter sold it on to the first respondent. It was not disputed that the first transaction was fraudulent and that both transfers fell to be set aside. The main issue was whether the second respondent, the Registrar of Deeds should be held liable for second purchaser's damages. This based on the deeds office's negligence in allowing registration of the first transfer when the deeds ought to have been rejected. *Stirling v Fairgrove (Pty) Ltd and Others* 2018 (2) SA 469 (GJ)

A financial services provider's indemnity insurance policy: proper interpretation of an exemption clause.

An exemption clause in a financial services provider's indemnity insurance policy provided that the insurer would not be liable for certain claims, but with the proviso that 'this (e)xclusion shall not apply to any loss due solely to negligence on the part of the Insured or Employee of the Insured in failing to effect a specific investment transaction in accordance with the specific prior instructions of a client of the Insured'. The court held that when the exemption clause was considered with the policy as a whole and contextually, the proviso did not mean that the policy only indemnified the insured against claims arising from negligent investment advice contemplated in proviso. *Oosthuizen v Castro and Another* 2018 (2) SA 529 (FB).

Environmental rights: Protection against potential risk of environmental disaster.

Flooding of a river flowing through a suburb damaged bordering properties, caused the walls of the riverbed to collapse and blocked a bridge's culverts with rubble and debris. The applicants, fearing that in its current state the river was at a great risk of further flooding and the bridge of collapsing—all posing a great danger to their staff and property—brought an application for an interim structural interdict that, inter alia, the local authority take all reasonable steps to rehabilitate the relevant portion of the river, clean-out the culverts and provide feedback on the steps taken to accomplish this. The court, granting this relief, held that a person's sense of environmental security in relation to potential risks and dangers of environmental disaster fell within s 24 of the Constitution's scope of protection. *Propshaft Master (Pty) Ltd and Another v Ekurhuleni Metropolitan Municipality and Others* 2018 (2) 555 (GJ).

SOUTH AFRICAN CRIMINAL LAW REPORTS

Corruption: appropriate sentence for a bribe

The accused, representatives of a foreign manufacturer, paid incentives to an employee of a South African mining company so that he would persuade his employer to purchase machinery from their principal. The court sentenced them to 10 and five years, respectively. *S v Wang and Another* 2018 (1) SACR 426 (NWM)

Robbery: forced electronic fund transfer

The accused stood trial on two counts of murder and two counts of robbery with aggravating circumstances. The accused was allegedly one of three men who had invaded an elderly couple's home, and had robbed and murdered them. One of the counts of robbery involved the forced electronic transfer of monies. The court raised the question whether this constituted robbery; and answered it in the affirmative. *S v Sishuba* 2018 (1) SACR 402 (WCC).

NDPP: review of decision, based on error of law, to withdraw charges

Where a decision to withdraw charges was based on a material error of law—here that a deputy DPP, Ms Jiba, was protected from perjury charges by s 78 of the Prevention of Organised Crime Act 121 of 1998—the decision fell to be set aside. *Freedom Under Law (RF) NPC and Others v National Director of Public Prosecutions* 2018 (1) SACR 436 (GP).

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Kind Regards

The Juta Law Reports Team

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TABLE OF CASES

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- *Diener NO v Minister of Justice and Others* 2018 (2) SA 399 (SCA)
- *Head of Department, Western Cape Education Department and Others v MS* 2018 (2) SA 418 (SCA)
- *Minister of Home Affairs v Ruta* 2018 (2) SA 450 (SCA)
- *Stirling v Fairgrove (Pty) Ltd and Others* 2018 (2) SA 469 (GJ)
- *Tebtale Marine Inc v MS Mare Traveller Schiffahrts GmbH & Co KG* 2018 (2) SA 490 (WCC)
- *Kumah and Others v Minister of Home Affairs and Others* 2018 (2) SA 510 (GJ)
- *South African Property Owners Association v Minister of Trade and Industry and Others* 2018 (2) SA 523 (GP)
- *Oosthuizen v Castro and Another* 2018 (2) SA 529 (FB)
- *Propshaft Master (Pty) Ltd and Others v Ekurhuleni Metropolitan Municipality and Others* 2018 (2) SA 555 (GJ)
- *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* 2018 (2) SA 571 (CC)

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DLADLA AND OTHERS v CITY OF JOHANNESBURG AND ANOTHER (CC)

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Local authority—Powers and duties—To shelter evicted persons—Rules of shelter—Separation of sexes, including heterosexual partners—Lockout between 08h00 and 17h30—Entry between 17h30 and 20h00—Entry barred thereafter—Constitution, ss 10, 12, 14 and 26.

PUBLIC SERVANTS ASSOCIATION obo UBOGU v HEAD, DEPARTMENT OF HEALTH, GAUTENG AND OTHERS (CC)

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Constitutional law—Courts—Jurisdiction—Labour Court having jurisdiction to declare legislation unconstitutional.

Constitutional law—Legislation—Validity—Public Service Act 103 of 1994, s 38(2)(b)(ii)—Authorising unilateral deductions by state employer to recover moneys wrongly paid to its employees directly from their salaries or wages—Amounting to unlawful limitation of right of access to courts—Offending rule of law by promoting self-help—Labour Court's declaration of constitutional invalidity confirmed—Constitution, ss 1(c) and 34.

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HEAD OF DEPARTMENT, WESTERN CAPE EDUCATION DEPARTMENT AND OTHERS v MS (SCA)

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[2017] ZASCA 186

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Shipping—Admiralty law—Admiralty practice—Writ in rem—Bona fide sale of res (ship) after issuance of writ but before arrest—'Protective writ' issued to preserve right of action against associated ship outside jurisdiction of court—Sale destructive of action in rem—Reference to ship struck from writ—Admiralty Jurisdiction Regulation Act 105 of 1983, s 1(2)(a), s 3(4)(b) and s 3(7)(a)(i).

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Immigration—Refugee—Asylum seeker—Detained illegal foreigners alleging they were asylum seekers—Asking court for release in order to apply for asylum—Whether supplying sufficient evidence of factors qualifying person as refugee, to satisfy court that Act applied to them—Refugees Act 130 of 1998, s 3.

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Constitutional law—Parliament—Obligations—National Assembly’s obligation to scrutinise and oversee executive action and to hold it accountable—Constitutional Court finding that President Zuma had violated constitutional obligations by failing to implement Public Protector’s remedial action against him—Parliament obliged to determine whether grounds for impeachment existed in terms of s 89(1)(a) or (b) of Constitution—Failure to do so in breach of ss 89(1) and 42(3)—Constitution, ss 42(3) and 89(1).

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