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JULY 2018

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

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SOUTH AFRICAN LAW REPORTS

Competition law: a first case on predatory pricing

Here the Competition Appeal Court held that the test for whether predatory pricing—where a dominant firm undermines competitors by deliberately reducing prices to a loss-making level—was objective, and the dominant company's intention therefore irrelevant. It was further held the appropriate cost benchmark in this determination is 'average avoidable costs'. *Media 24 (Pty) Ltd v Competition Commission* 2018 (4) SA 278 (CAC).

Extent of record for purposes of reviewing proceedings of judges' appointment

Transcripts of the Judicial Service Commission's post-interview deliberations form part of record for the purposes a review of a selection process to appoint judges. This was so, the Constitutional Court here held, because Uniform Rule 53(1)(b) had be interpreted to advance applicant's rights of access to courts and to equality. *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC)

Two issues relating to accrual system

Is the commencement value of each estate as stated in antenuptial contract, binding on the parties when the accrual is calculated? This case holds that declared values are merely prima facie proof of the actual commencement values, and subject to rebuttal by any party, including the spouses. It also holds that an accrual claim may be decided during divorce proceedings. *TN v NN and Others* 2018 (4) SA 316 (WCC).

SOUTH AFRICAN CRIMINAL LAW REPORTS

First appearance: duty of court, prosecutor and investigating officer to consider bail

The accused was brought to court within two hours of his arrest on a charge of assault with the intention to do grievous bodily harm. The matter was then postponed for further investigation—without the court considering releasing the accused on bail—resulting in the accused being incarcerated for a week on charge that did not warrant his remaining in custody. This oversight, said the SCA, constituted a shocking violation by the prosecutor, the magistrate and the investigating officer of their duties to ensure that the question of bail was

properly considered at the appellant's first appearance. *De Klerk v Minister of Police* 2018 (2) SACR 28 (SCA).

Poaching marine living resources not victimless crime

In considering an appropriate sentence following a conviction on charges of unlawful possession or control of abalone for commercial purposes, the court highlighted the negative effect poaching has on coastal communities—it was not a victimless crime and called for severe punishment. *S v Miller and Others* 2018 (2) SACR 75 (WCC).

Evidential value of voice identification

During the course of a robbery, the accused asked the complainant if he recognised him as he had previously worked for him. After his arrest, he was identified by the complainant in an identification parade—through his voice. This case holds that, provided the parade is properly held, evidence of voice is acceptable in our courts but it had to be credible in the sense of reliability. *S v Mahlangu* 2018 (2) SACR 64 (GP).

WE WELCOME YOUR FEEDBACK

Please send any comments or queries to lawreports@juta.co.za.

Kind Regards

The Juta Law Reports Team

SOUTH AFRICAN LAW REPORTS

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