



## JUTA'S ADVANCE NOTIFICATION SERVICE

SEPTEMBER 2018

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

Herewith the cases in the September 2018 law reports

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

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

#### **SOUTH AFRICAN LAW REPORTS**

##### **Term 'surviving spouse' to include those in Muslim marriages**

The provision in the s 2C(1) of the Wills Act 7 of 1953, that where a surviving spouse and descendants were beneficiaries in a testator's will, the benefits renounced by descendants vested in the surviving spouse, did not include spouses in monogamous and polygamous Muslim marriages. The CC held that therefore the provision offended their constitutional rights to equality and dignity; and ordered that words are to read into the section: that 'surviving spouse' is to include 'every husband and wife of de facto monogamous and polygamous Muslim marriages solemnised under the religion of Islam'. *Moosa NO and Others v Minister of Justice and Others* 2018 (5) SA 13 (CC).

##### **Loss of future earnings: exclusion of pre-accident voluntary contributions to retirement annuity fund**

The appellant, a claimant for future loss of income as damages arising from a motor vehicle accident, argued that the exclusion of pre-accident voluntary contributions to a retirement annuity fund from the calculation thereof, constituted unfair discrimination because it placed them of equal footing with employees whose employer contributed to a pension fund as part of their remuneration. The SCA held that it did not amount to unfair discrimination: they were treated equally in the sense that regard was had to the employment contract as a whole in order to determine loss of future earnings. *Bouttell v Road Accident Fund* 2018 (5) SA 99 (SCA).

##### **Debt rearrangement: when competent to amend applicable interest rate**

On a purposive interpretation of the National Credit Act 34 of 2005—which encouraged the consensual resolution of disputes—in circumstances where the debt counsellor and credit provider agrees to an amended interest rate, a magistrates' court has the jurisdiction to make an order rearranging the consumer's obligations based upon such amended interest rate. *Pettenburger-Perwald v Vosloo and Others* 2018 (5) SA 206 (WCC).

## **SOUTH AFRICAN CRIMINAL LAW REPORTS**

### **Time bar against instituting prosecution for certain sexual offences lifted**

The Constitutional Court declared s 18 of the Criminal Procedure Act 51 of 1977 constitutionally invalid insofar as it barred the institution of criminal proceedings for sexual offences other than rape and compelled rape after the lapse of 20 years from the time that the crime was committed. This on the basis that the distinction was arbitrary, irrational. *NL and Others v Estate Late Frankel and Others* 2018 (2) SACR 283 (CC).

### **Constitutionality of certain provisions of Intimidation Act prohibiting inducement to harm**

In two similar cases, consolidated for that reason, the SCA confirmed that the provisions of s 1(1)(b) and s 1(2) of the Intimidation Act 72 of 1982 (the Act) were constitutionally valid. It held that the expressions or threats of instigation of violence were excluded from protection of freedom of expression by s 16(2) of Constitution. *Moyo and Another v Minister of Justice and Constitutional Development and Others* 2018 (2) SACR 313 (SCA).

### **Traffic offences: duty to assist injured person at scene of accident**

The accused, stopping after an accident and discovering damage to the vehicle involved, proceeded to a police station to report the matter—instead of first rendering assistance to the person injured in the accident. The court confirmed that failure to render assistance to injured persons at scene of accident was an offence, contravening as it did s 61(1)(c) of National Road Traffic Act 93 of 1996. *S v Taute* 2018 (2) SACR 263 (ECG).

## **WE WELCOME YOUR FEEDBACK**

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Kind Regards

**The Juta Law Reports Team**

## **SOUTH AFRICAN LAW REPORTS**

### **SEPTEMBER 2018**

#### **TABLE OF CASES**

- Johannesburg Metropolitan Municipality v Chairman, National Building Regulations Review Board and Others 2018 (5) SA 1 (CC)
- Moosa NO and Others v Minister of Justice and Others 2018 (5) SA 13 (CC)
- Mtokonya v Minister of Police 2018 (5) SA 22 (CC)
- Rustenburg Platinum Mine v SAEWA (obo Bester) and Others 2018 (5) SA 78 (CC)
- Bouttell v Road Accident Fund 2018 (5) SA 99 (SCA)
- Gongqose and Others v Minister of Agriculture and Others 2018 (5) SA 104 (SCA)
- Pan African Mineral Development Co (Pty) Ltd and Others v Aquila Steel (SA) (Pty) Ltd 2018 (5) SA 124 (SCA)
- PG Group (Pty) Ltd and Others v National Energy Regulator of South Africa and Another 2018 (5) SA 150 (SCA)
- Road Accident Fund v Abrahams 2018 (5) SA 169 (SCA)
- South African National Parks v MTO Forestry (Pty) Ltd and Another 2018 (5) SA 177 (SCA)
- Pettenburger-Perwald v Vosloo and Others 2018 (5) SA 206 (WCC)
- Alderbaran (Pty) Ltd and Another v Bouwer and Others 2018 (5) SA 215 (WCC)

- Collard v Jatara Connect (Pty) Ltd and Others 2018 (5) SA 238 (WCC)
- Groep v WJ Da Grass Attorneys and Another 2018 (5) SA 248 (WCC)
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- BR v LS 2018 (5) SA 308 (KZD)

## FLYNOTES

### **JOHANNESBURG METROPOLITAN MUNICIPALITY v CHAIRMAN, NATIONAL BUILDING REGULATIONS REVIEW BOARD AND OTHERS (CC)**

MOGOENG CJ, CACHALIA AJ, DLODLO AJ, FRONEMAN J, GOLIATH AJ, JAFTA J, KHAMPEPE J, MADLANGA J, PETSE J and THERON J  
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 [2018] ZACC 15

**Constitutional law**—Legislation—Validity—National Building Regulations and Building Standards Act 103 of 1977, s 9—Provision creating right of appeal, against decision of local authority pertaining to approval of building plans, to review board falling under national sphere of government—Unconstitutional and invalid to extent it empowered national sphere of government to exercise appellate powers over matters falling within exclusive municipal executive power.

### **MOOSA NO AND OTHERS v MINISTER OF JUSTICE AND OTHERS (CC)**

MOGOENG CJ, ZONDO DCJ, CACHALIA AJ, DLODLO AJ, FRONEMAN J, GOLIATH AJ, JAFTA J, KHAMPEPE J, MADLANGA J, PETSE AJ and THERON J  
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**Constitutional law**—Legislation—Validity—Wills Act 7 of 1953, s 2C(1)—Provision that where surviving spouse and descendants were beneficiaries in testator's will, benefits renounced by descendants vesting in surviving spouse—To extent that term 'surviving spouse' not including spouses in monogamous and polygamous Muslim marriages, provision offending their constitutional rights to equality and dignity—Appropriate relief that words to be read in that 'surviving spouse' to include 'every husband and wife of de facto monogamous and polygamous Muslim marriages solemnised under the religion of Islam'.

### **MTOKONYA v MINISTER OF POLICE (CC)**

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 [2017] ZACC 33

**Prescription**—Extinctive prescription—Commencement—Knowledge of debt—Whether, before prescription could start running, it was required that creditor have knowledge that conduct of debtor giving rise to debt was both wrongful and actionable—Prescription Act 68 of 1969, s 12(3).

**Practice**—Special cases and adjudication upon points of law—In terms of special case, there must be a question of law that parties require court to decide on agreed facts and in light of their contentions which to be set forth in agreed statement—Court to decide question of law presented to it and having no right to travel outside four corners of agreed statement and decide a different question—Uniform Rules of Court, rule 33(1).

**RUSTENBURG PLATINUM MINE v SAEWA (obo BESTER) AND OTHERS (CC)**

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2018 MAY 17

[2018] ZACC 13

**Labour law**—Dismissal—Racist statement—Use of expression ‘swart man’ (black man) may in certain contexts be racist and result in fair dismissal—Employees under duty not to undermine harmonious relationships at workplace by making racist comments.

**BOUTTELL v ROAD ACCIDENT FUND (SCA)**

NAVSA JA, MAJIEDT JA, MBHA JA, PLASKET AJA and HUGHES AJA

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[2018] ZASCA 90

**Motor vehicle accident**—Compensation—Claim against Road Accident Fund—Quantum—Loss of future earnings—Pre-accident voluntary contributions to retirement annuity fund—Cannot be taken into account when calculating future loss of earnings—Not amounting to unfair discrimination.

**GONGGOSE AND OTHERS v MINISTER OF AGRICULTURE AND OTHERS (SCA)**

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**Criminal law**—Defences—Excluding unlawfulness of act—Necessary authority—Statute making attempt to fish in marine protected area unlawful—Act performed under customary law right—Marine Living Resources Act 18 of 1998, s 43(2)(a).

**PAN AFRICAN MINERAL DEVELOPMENT CO (PTY) LTD AND OTHERS v AQUILA STEEL (SA) (PTY) LTD (SCA)**

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[2017] ZASCA 165

**Minerals and petroleum**—Mining and prospecting right—Application for prospecting right—Acceptance—Return of prospecting rights application for non-compliance with requirements—Not amounting to rejection—Substantial compliance with requirements sufficient, strict compliance not required—Mineral and Petroleum Resources Development Act 28 of 2002, ss 16(3) and 22(3).

**Minerals and petroleum**—Mining and prospecting rights—Application for prospecting right—Nature of MPRDA’s queuing system—Where application of old order mineral right holder and that of another entity accepted in respect of same land and minerals—Once holder of unused old order right submitted application within one year exclusivity period, both unused old order right and the exclusivity it conferred remaining extant until the application is either granted or refused—Where application made but neither granted nor refused, unused old order right and its exclusivity period endure—During such period acceptance and processing of later application precluded—Mineral and Petroleum Resources Development Act 28 of 2002, ss 16(2)(b), 22(2)(b) and sch II, item 8(2).

**Minerals and petroleum**—Mining and prospecting rights—Transition to new order under MPRDA—Duration of old order right-holder’s preferent right to apply for prospecting and mining rights—Such exclusive right survived until application was either granted or refused—Mineral and Petroleum Resources Development Act 28 of 2002, sch II, item 8(3).

**Minerals and petroleum**—Mining and prospecting rights—Lapsing of upon deregistration of right-holder company and subsequent revival upon restoration of company’s registration—Restored company deemed to have held prospecting right throughout period of deregistration until expiry of right—Legal effect thereof that, during such period, no other application could be validly accepted and granted—Mineral and Petroleum Resources Development Act 28 of 2002, ss 16(2)(b), 22(2)(b) and sch II, item 8(2).

**PG GROUP (PTY) LTD AND OTHERS v NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND ANOTHER (SCA)**

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NAVSA JA, LEACH JA, DAMBUZA JA, DAVIS AJA and ROGERS AJA  
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[2018] ZASCA 59

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**PETTENBURGER-PERWALD v VOSLOO AND OTHERS (WCC)**

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**Credit agreement**—Consumer credit agreement—Debt rearrangement—Order—Powers of magistrates’ court—To rearrange over-indebted consumer’s repayment obligations by varying interest rate in credit agreement—Magistrates’ court having such power, where parties having agreed to such amended interest rate—National Credit Act 34 of 2005, ss 87(1) and 86(7)(c)(ii).

**ALDERBARAN (PTY) LTD AND ANOTHER v BOUWER AND OTHERS (WCC)**

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**Company**—Business rescue—Resolution to begin—Setting-aside—When permitted—‘Just and equitable’—Conclusion that termination of business rescue would be just and equitable involving exercise, not of discretion, but of judgment on relevant facts, but once that conclusion was reached, making of order to set aside resolution and terminate business rescue involved exercise of discretion—Companies Act 71 of 2008, s 130(5)(a)(ii).

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**Company**—Business rescue—Resolution to begin—Setting-aside—Requirement that copy of application be served on company and Companies and Intellectual Property Commission—Type of service required—Both company and Commission to be joined—In respect of company, service in terms of Uniform Rule of Court 4(1)(a), ie service by sheriff in one of manners referred to in rule 4(1)—In respect of Commission, service in terms of Uniform Rule of Court 4A(c) as read with Commission’s practice note 9 of 2017, ie service by electronic mail at email address provided by the Commission—Companies Act 71 of 2008, s 130(3).

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**GROEP v WJ DA GRASS ATTORNEYS AND ANOTHER (WCC)**

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**Shipping**—Admiralty law—Maritime claim—Enforcement—Arrest—Sale of arrested property—Property ringfenced from other claims—Court may order sale of maritime property where owner subsequently placed in business rescue—Admiralty Jurisdiction Regulation Act 105 of 1983, s 9 and s 10; Companies Act 71 of 2008, s 133(1).

**Company**—Business rescue—Moratorium on legal proceedings in relation to property belonging to company—Not applying to property already under maritime arrest—Admiralty court may order sale of arrested property—Admiralty Jurisdiction Regulation Act 105 of 1983, s 10; Companies Act 71 of 2008, s 133(1).

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#### **SEASPAN HOLDCO AND OTHERS v MS MARE TRACER SCHIFFAHRTS AND ANOTHER (KZD)**

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#### **FIRSTRAND BANK LTD v CLEAR CREEK TRADING 12 (PTY) LTD AND ANOTHER (SCA)**

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## **SOUTH AFRICAN CRIMINAL LAW REPORTS**

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### **S v FRANSMAN AND ANOTHER (WCC)**

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### **NL AND OTHERS v ESTATE LATE FRANKEL AND OTHERS (CC)**

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**MOYO AND ANOTHER v MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND OTHERS (SCA)**

MAYA P, WALLIS JA, MBHA JA, VAN DER MERWE JA and MAKGOKA AJA

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[2018] ZASCA 100

**Intimidation**—Contravention of s 1(1)(b) read with s 1(2) of Intimidation Act 72 of 1982—Constitutionality of—Expressions or threats of instigation of violence excluded from protection of freedom of expression by s 16(2) of Constitution—Provision in s 1(2) not creating reverse-onus provision, but contravening provisions of s 35(3)(h) of Constitution, in that it placed improper pressure on accused to forgo constitutional right to silence.

**Intimidation**—Contravention of s 1(1)(b) read with s 1(2) of Intimidation Act 72 of 1982—Constitutionality of—Nothing in s 1(1)(b) to suggest that mens rea not required for offence—Did not encompass cases of conventional and protected freedom of expression—Provision passed constitutional muster.