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MARCH 2019

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JUDGMENTS OF INTEREST IN THE MARCH 2019 EDITIONS OF THE SALR AND SACR LAW REPORTS. SEE ALSO, FURTHER BELOW, THE TABLE OF CASES FOR THE BOTSWANA LAW REPORTS 2016 (2).

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

SOUTH AFRICAN LAW REPORTS

State entities may be held to their promises

In 1989 the general manager of the SA Transport Services, a state organ, promised employees that their pension benefits would remain the same when government-owned company Transnet Ltd took over. The promise was echoed by government officials. When the promise was broken a decade later, the applicants, both members the new Transnet pension funds, instituted a class action against them. The Constitutional Court found that the breach of promise constituted unlawful state action that could be challenged outside PAJA. *Pretorius and Another v Transport Pension Fund and Others* 2019 (2) SA 37 (CC)

Ancient doctrine invoked to protect community land rights

When a landowner sought to evict a community from a parcel of land on which it had a church and where its children went to missionary school, the community—which had been present in the area since the early 1800s—invoked the doctrine of *vetustas* to ask for the registration of public servitude in its favour. The Supreme Court of Appeal found that the community had established immemorial usage of the land in question and directed the Registrar of Deeds to register a servitude for the purpose of a church and related activities. *Grootkraal Community and Others v Botha NO and Others* 2019 (2) SA 128 (SCA)

Foreign welfare payment as collateral benefit in RAF claim

The plaintiff, a British citizen resident in South Africa, sustained serious injuries in a car crash before permanently leaving for the United Kingdom, where his injuries qualified him for a welfare payment called a personal independence payment (PIP) valued at R2 million. The Road Accident Fund conceded liability, leaving the issue of the contingency to be applied to the PIP for decision by the Western Cape High Court (the parties were agreed that the value of the PIP had to be deducted from the award). The court found that, given the of evidence about the pervading projected socioeconomic and political environment in the UK, a 20 % contingency would be fair. *D'Oliveira v Road Accident Fund* 2019 (2) SA 247 (WCC)

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Pushing complainant not sufficient to constitute aggravating circumstances

The accused pushed the complainant off her feet while escaping the scene of a housebreaking. The court found that this did not constitute aggravating circumstances for purposes of s 1(1) of Criminal Procedure Act 51 of 1977. *S v Davids* 2019 (1) SACR 257 (WCC)

Identification of child complainant in sexual offence

The court held that it was incumbent on court to never reveal the identity of a child complainant in a sexual offence. *S v Masuku* 2019 (1) SACR 276 (GJ)

Whether light being shone into vehicle at night constituting search

A law-enforcement official shone his light into a vehicle revealing two hunting rifles that would have been easily visible in daytime. The court held that such did not constitute a search and the evidence seized was not unconstitutionally obtained. *Du Toit and Others v Provincial Minister of Environmental Affairs and Development Planning, Western Cape and Others* 2019 (1) SACR 311 (WCC)

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Kind Regards

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