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APRIL 2019

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JUDGMENTS OF INTEREST IN THE APRIL 2019 EDITIONS OF THE SALR AND SACR LAW REPORTS.

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SOUTH AFRICAN LAW REPORTS

Mall owner granted relief against Eskom

Shopping mall owner Resilient Properties (Pty) Ltd, who had the misfortune of having a mall located in in a municipality that wasn't paying Eskom for electricity, invoked an impending humanitarian disaster in getting the Gauteng High Court to grant interdictory relief against Eskom. The High Court found that though Eskom was entitled to cut off supply to the municipality, its knowledge of the humanitarian disaster that would follow made its decision to do so irrational. *Resilient Properties (Pty) Ltd v Eskom Holdings (SOC) Ltd and Others* 2019 (2) SA 577 (GJ)

Third-party-negligence defence fails in dog attack case

The plaintiff (Cloete) was attacked and seriously injured by three dogs belonging to the defendant (Van Meyerén), and claimed damages under the *actio de pauperie*. Van Meyerén raised a defence of third party negligence, arguing that a thief had left his gate open and allowed the dogs to escape. The Port Elizabeth High Court refused to uphold the defence on the ground that Van Meyerén was unable to prove that the alleged thief had control of the dogs. *Cloete v Van Meyerén* 2019 (2) SA 490 (ECP)

Court orders that persons who qualified as advocates under former Act, be admitted under new Act

The Grahamstown High Court came to the rescue of advocates who failed to meet the minimum qualifications recently imposed by the Legal Practice Act 28 of 2014. The court found that s 115 of the Act made it clear that the various applicants, who had qualified for admission under the former Act before 1 November 2018, were entitled to be admitted and enrolled as advocates without having to in addition satisfy the requirements of the Legal Practice Act. *Ex part Bakkes and Similar Cases* 2019 (2) SA 486 (ECG)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Various aspects relating to execution of search-and-seizure operations and validity of search warrants

The court found, inter alia, that there was no reason why civilian experts should not be used in search-and-seizure operations; Police Investigative Directorate investigators were cast in same position as police officials for the purpose of searches; and the fact that a warrant did not indicate whether the commissioner of oaths acted ex officio did not invalidate said warrant. *Keating and Others v Senior Magistrate and Others* 2019 (1) SACR 396 (GP)

Police treating accused as non-suspect to extract admissions might not otherwise have obtained

The police treated the accused as a non-suspect in order to extract admissions they might not otherwise have obtained if he had been informed of his constitutional rights. Courts were cautioned to be vigilant in examining such circumstances to protect an accused's constitutional right against self-incrimination. *S v Bomvana* 2019 (1) SACR 418 (ECM)

Criminalisation of failure to give prior notice of public gathering unconstitutional

The court found that the criminalisation of the failure to give prior notice of a gathering in terms of 12(1)(a) of the Regulation of Gatherings Act 205 of 1993 constituted an unjustifiable limitation of the right in s 17 of the Constitution to assemble, demonstrate, picket and petition. *S v Mlungwana and Others* 2019 (1) SACR 429 (CC)

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Kind Regards

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TABLE OF CASES

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- *Commissioner, South African Revenue Service v Volkswagen South Africa (Pty) Ltd* 2019 (2) SA 362 (SCA)
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- *Minister of Home Affairs and Another v Ali and Others* 2019 (2) SA 396 (SCA)
- *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Others* 2019 (2) SA 403 (WCC)
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- *Mayekiso and Another v Patel NO and Others* 2019 (2) SA 522 (WCC)
- *NM v John Wesley School and Another* 2019 (2) SA 557 (KZD)

- Resilient Properties (Pty) Ltd v Eskom Holdings (Soc) Ltd and Others 2019 (2) SA 577 (GJ)
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- Wings Park Port Elizabeth (Pty) Ltd v MEC, Environmental Affairs, Eastern Cape and Others 2019 (2) SA 606 (ECG)
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