

July 2013

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

Herewith the cases of interest in the July reports. Also included below are the table of cases and flynotes.

JUDGMENTS OF INTEREST IN THE JULY EDITIONS OF THE SALR AND THE SACR

SOUTH AFRICAN LAW REPORTS

The minerals expropriation issue finally laid to rest?

Before commencement of the Mineral and Petroleum Resources Development Act 28 of 2002, a holder of mineral rights could prospect, mine, sterilise or freely sell or lease such rights. On coming into force the Act terminated the ability to freely sell or lease the rights, but otherwise left them intact. Thus a law of general application which was not arbitrary had deprived the holders of their rights. In issue was whether this deprivation was also an expropriation. *Agri SA v Minister for Minerals and Energy* 2013 (4) SA 1 (CC)

The voetstoets clause and the faulty roof

Where the purchaser was aware of certain damage, but the seller made fraudulent misrepresentation, relied upon by purchaser, regarding continued validity of warranty in respect of repairs, the seller forfeited the protection of the voetstoets clause and was liable for the costs of further repairs. *Banda and Another v Van der Spuy and Another* 2013 (4) SA 77 (SCA)

Municipalities subject to Consumer Protection Act?

Afriforum challenged two notices of the Minister of Trade and Industry exempting medium- and low-capacity municipalities from parts of the Consumer Protection Act. Municipal services are at the centre of quality of life for all citizens, and their rights as consumers against municipalities cannot be deferred in perpetuity in absence of an express legislative provision allowing it. *Afriforum v Minister of Trade and Industry and Others* 2013 (4) SA 63 (GNP)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Tragic deaths of children not murder

The high court convicted a driver of multiple counts of murder after he drove a minibus full of children past a railway boom and collided with an oncoming train. On appeal to the Supreme Court of Appeal the case turned on whether there had been an intention to kill. *S v Humphreys* 2013 (2) SACR 1 (SCA)

Definition in Criminal Procedure Act unconstitutional

The high court found that the insertion of ‘accomplice’ in the definition of ‘aggravating circumstances’ in s 1(1)(b) of Criminal Procedure Act 51 of 1977 created strict liability that infringed the right to freedom and security, and the right to fair trial, and the court accordingly declared the provision invalid. *S v Masingili and Others* 2013 (2) SACR 67 (WCC)

Deliberate HIV infection amounting to attempted murder

Our common law covers the situation where the HIV virus is intentionally transferred to another person during a rape, justifying a further conviction of attempted murder. *S v Nyalungu* 2013 (2) SACR 99 (T)

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