

February 2013

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

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

## JUDGMENTS OF INTEREST IN THE FEBRUARY EDITIONS OF THE SALR AND THE SACR

### *SOUTH AFRICAN LAW REPORTS*

#### **Use of polygraph test as employment selection criteria**

The exclusive reliance on polygraph-test results in the employment selection process, to eliminate candidates for appointment to a position, in the absence of any other information placing a question mark over their integrity, was found to be unfair. *Sedibeng District Municipality v South African Local Government Bargaining Council and Others* 2013 (1) SA 395 (LC)

#### **What are 'reasonable prospects' of business rescue for a company?**

The underlying philosophy is that business rescue is preferable to liquidation, however, vague averments and speculative suggestions are insufficient. What is required is a reasonable possibility: one that is based on a ground that is objectively reasonable. *Prospec Investments (Pty) Ltd v Pacific Coast Investments 97 Ltd and Another* 2013 (1) SA 542 (FB)

#### **Legal representation at the CCMA**

A rule at the Commission for Conciliation, Mediation and Arbitration barred parties to arbitrations for dismissal for misconduct or incapacity from being represented by legal practitioners. The rule was found to be unconstitutional in *Law Society, Northern Provinces v Minister of Labour and Others* 2013 (1) SA 468 (GNP).

### *SOUTH AFRICAN CRIMINAL LAW REPORTS*

#### **Tenders for family and friends: is it fraud?**

In a government tender for school books the appellants failed to disclose their connection to persons employed by the state. Such constituted prejudice. The general public, whose funds were being used to finance such projects, had an interest in these tenders. Prejudice was not only proprietary, and failure to reveal relationships was prejudicial to other tenderers and

rendered the state incapable of administering public funds fairly and equitably. *S v Tshopo and Others* 2013 (1) SACR 127 (FB)

### **Right to legal representation not absolute**

The appellant's conduct changed throughout trial, first handling his own defence, then telling court he wanted legal representation. Despite this, the magistrate had nonetheless shown tolerance and patience. The magistrate assisted him with his case throughout the trial, especially in cross-examination. The appellant had abused his constitutional right to legal representation. There was no substantial injustice that occurred, and his appeal was dismissed. *S v Moyce* 2013 (1) SACR 131 (WCC)

### **Bail and the right to be presumed innocent**

After being arrested for murder and robbery with aggravating circumstances, the accused's bail application was refused, despite the prosecutor and the investigating officer not opposing bail. The appeal against such refusal was dismissed. The right to be presumed innocent is a trial right, and not pre-trial right. *S v Mbaleki and Another* 2013 (1) SACR 165 (KZD)

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**Prevention of crime**—Restraint order in terms of s 26(1) of the Prevention of Organised Crime Act 121 of 1998—Can only be made if there is reasonable possibility that both conviction and confiscation will follow—Confiscation not automatic consequence of conviction and requires finding by court that defendant has benefited from offence and that such order is appropriate in the circumstances.

**S v JOSEPH (GSJ)**

MOSHIDI J and PANDYA AJ

**Sentence**—Driving offence—Exceeding speed limit—Driving at a speed of at least 102 km/h where speed limit 60 km/h—Automatic review in terms of s 304 of the Criminal Procedure Act 51 of 1977—Magistrate misdirecting himself in imposing a fine of R8000 once he had established that the accused was unable to pay a fine—Sentence of payment of a fine of R8000 or 12 months’ imprisonment suspended for five years on certain conditions, including the completion of 80 hours of community service, substituted with sentence of payment of a fine of R4000 or six months’ imprisonment suspended for four years on certain conditions, but no community-service obligation imposed.

**S v LM (FACULTY OF LAW, UNIVERSITY OF THE WESTERN CAPE: CHILDREN RIGHTS, PROJECT OF THE COMMUNITY LAW CENTRE AND OTHERS AS AMICI CURIAE) (WCC)**

DESAI J, GAMBLE J and HENNEY J

2012 MAY 28; OCTOBER 23

**Review**—In what cases—Juvenile—Broad interpretation given by full bench to s 85 of Child Justice Act 75 of 2008 so as to make all cases involving children younger than 16 years, irrespective of sentence, reviewable, and most cases involving children under 18 years at time of the commission of the offence.

**S v WV (GNP)**

LEGODI J, MNGQIBISA-THUSI J and LEBALA AJ

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