

e-MANTSHI

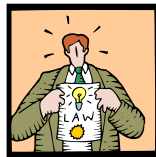
A KZNJETCOM Newsletter

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Welcome to the two hundredth and twenty second issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on <http://www.justiceforum.co.za/JET-LTN.ASP>. There is a search facility available on the Justice Forum website which can be used to search back issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.

"e-Mantshi" is the isiZulu equivalent of "electronic Magistrate or e-Magistrate", whereas the correct spelling "iMantshi" is isiZulu for "the Magistrate". The deliberate choice of the expression: "EMantshi", (pronounced E! Mantshi) also has the connotation of respectful acknowledgement of and salute to a person of stature, viz. iMantshi."

Any feedback and contributions in respect of the newsletter can be sent to Gerhard van Rooyen at gvanrooyen@justice.gov.za.



New Legislation

1. Under section 1(2)(b) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), the Minister of Justice and Constitutional Development, published a rate of interest of 10.5 percent per annum as from 1 September 2025 for the purposes of section 1(1) of the said Act. The notice was published in Government Gazette no 53424 dated 26 September 2025.

The notice can be accessed here:

https://www.gov.za/sites/default/files/gcis_document/202509/53424rg11887gon6668.pdf



Recent Court Cases

1. K.J v I.J and Another (Reasons) (2025/095755) [2025] ZAWCHC 408 (4 September 2025)

FAMILY – Maintenance – *Adult child* – Duty of support – Section 10 inquiry – Daughter sought maintenance from mother while studying – Rule 43 order did not consider dependent daughter’s needs – Maintenance officer lawfully investigated complaint – Found that daughter had a legitimate need for support – Assertion that daughter had no need for maintenance was speculative and contradicted by evidence – Application to suspend maintenance inquiry dismissed – Maintenance Act 99 of 1998, s 10.

This Judgment can be accessed here:

<https://www.saflii.org/za/cases/ZAWCHC/2025/408.html>

2. National Credit Regulator v National Consumer Tribunal and Others and Similar Matters (667/2023) [2025] ZASCA 132 (12 September 2025)

The purposes of the Act include ensuring a fair and transparent credit market, and to protect consumers by encouraging responsible borrowing, avoiding over-indebtedness, fulfilling their financial obligations and promoting equity in the credit market by balancing the rights and responsibilities of credit providers and consumers. Credit providers are enjoined to give effect to these purposes. To that end, this judgment has the following consequences:

- (a) OTR (On the road) fees to be added to the purchase price must be specified, and the credit provider must clearly state the nature and cost of each item.**
- (b) Consumers must be asked whether they prefer to pay cash for OTR fees or to have them financed as part of the amount deferred.**
- (c) To ensure an informed choice in this regard, consumers must be told of the difference between: (i) the cash price of the OTR fees; and (ii) the total cost of the fees, including interest and all other charges, if they are to form part of the principal debt to be financed in terms of the instalment agreement.**

This judgment can be accessed here:

<https://www.saflii.org/za/cases/ZASCA/2025/132.html>



From The Legal Journals

Lewaak, A and Mohapi, S

‘Victim-sensitive cross-examination in sexual offences cases It is time we caught up’

(2025) 38.2 Advocate 42.

The article can be accessed here:

<https://gcbsa.co.za/law-journals/2025/August%202025/42%20to%2051.pdf>

Mtati-Mwange, M

‘The practical limits of the law when constitutional duty collides with community resistance in the enforcement of eviction orders’

(2025) 38.2 Advocate 78.

The article can be accessed here:

<https://gcbsa.co.za/law-journals/2025/August%202025/Advocate%20August%202025%20-%20Copy-78-80.pdf>

Seleka SC, P

‘Legal Practice Council disciplinary processes’

(2025) 38.2 Advocate 69

The article can be accessed here:

<https://gcbsa.co.za/law-journals/2025/August%202025/Advocate%20August%202025%20-%20Copy-69-77.pdf>

(Electronic copies of any of the above articles can be requested from gvanrooyen@justice.gov.za)



Contributions from the Law School

Legal liability for Bullying in South African law

Bullying is a worldwide phenomenon. More than 3.2 million learners are bullied every day. At least 67 % of bully victims do not ask for help as they do not feel that it will improve their situation. This has dire consequences for minors leading to both depression and suicide. South Africa has a complex legal framework with many pieces of legislation regulating bullying (HJW Attorneys ‘Bulling and its complex legal framework’ https://hjwattorneys.co.za/newsandmedia/bullying-and-its-complex-legal-framework#:~:text=A%20criminal%20element,culpable%20homicide%20and%20even%20murder.)). These include:

- The Constitution of the Republic of South Africa and the Bill of Rights of 1996
- The Children’s Act 38 of 2005
- The Schools Act 75 of 2008
- The Protection from Harassment Act 4 of 2013
- The Child Justice Act 75 of 2008
- The Protection of Personal Information Act 4 of 2013

Before one can determine the effectiveness of the legal system in addressing the scourge of bullying, it is necessary to define bullying. According to the Oxford English dictionary, a bully is defined as” (n): a person who deliberately intimidates or persecutes those who are weaker (v) (bullies, bullying, bullied) intimidate or persecute (someone weaker) (at 184; A Laas and T Boezaart “The Legislative Framework regarding Bullying in South African Schools Vol 7 No 6 (2014) PER 2668). The authors then go on to note that bullying encompasses three main elements: (a) Bullying is a form of aggressive behaviour where the bully acts out and behaves in a negative manner. (b) Bullying forms a behavioural pattern over time. (c) Bullying results from a power imbalance (Laas & Boezaart supra 2690). They argue that bullying is a form of violence leading to psychological injury or death (at 2670). These authors go on to suggest that psychological harm which manifests as anxiety or even post-traumatic stress disorder, can have a more enduring impact than actual physical injuries. Furthermore, the legislative enactments identified above such as the Child Justice Act 75 of 2008 and the Protection from Harassment Act 4 of 2013, could be applicable where death ensues (Laas & Boezaart 2670). What is apparent is that the best interests of a child according to s 28 of the Constitution is of paramount importance and should determine which remedies will be used to hold bullies accountable. This is

especially salient as the authors highlight the Protection from Harassment Act, which enables victims to seek protection orders for non-physical bullying, therefore reinforcing this idea that legal recognition and protection does exist for both physical and emotional or psychological injuries.

Van der Bijl one of the leading theorists in the area of emotional harm, has gone a step further and argued that the concept of bodily integrity ought to be used in the definition of assault and therefore should be interpreted to include both psychological and emotional harm. She provides support for her contention through the following references: (1) referencing both the law of delict (J Neethling, J.M Potgieter & Visser *Law of Delict* 6th ed (2010) at 25-26) as well as the Constitution of the Republic of South Africa, which protects both bodily and psychological integrity under section 12(2) (C Van der Bijl "Psychological Assault: The Crime of Assault Revisited" (2012) 25 *South African Journal of Criminal Justice* at 8). She concludes by noting that "any conduct which has a detrimental effect on the physique, the psyche or the sensory feelings can be regarded as an infringement of bodily integrity (at 20-21). Since assault is a 'materially' defined crime, that is since the result or impairment of bodily integrity in this case is more important than the method used (at 20) it would allow for a broader interpretation including non-physical forms of harm including emotional or psychological trauma (at 20-21). In addition, the author draws on English case law discussions to support her arguments, most notably the developments in *R v Chan-Fook* [1994] 1 W.L.R. 689 (CA) at 695; [1994] 2 All E.R. 552 and *R v Ireland* [1998] A.C. 147 (HL); [1997] Crim. L.R. 810 where the United Kingdom held that psychiatric injury can constitute actual bodily harm under the Offences Against the Person Act 1861 (at 14-17). Further the author goes on to reference *R v Dhaliwal* [2006] EWCA Crim 1139; 2 Cr. App. R. 24 at [7]. Part of the reason Judge Roberts noted that "where "a decision to commit suicide has been triggered by a physical assault which represents the culmination of a course of abusive conduct," it would be possible for the Crown "to argue that that final assault played a significant part in causing the victim's death" (at par [7]). What these cases demonstrate is that a recognized psychiatric condition (even where no physical injury exists) can be a ground for criminal liability.

Essentially since the author views assault as a materially defined crime, that is it can result in impairment of bodily integrity, how the impairment resulted is more important than the method used (Van der Bijl *supra* at 6, 20). This would allow for a broader interpretation that includes non-physical of harm, such as emotional or psychological abuse. Whilst the author views assault as an option in such cases, there are key considerations that require attention. If bullying can cause psychological harm, leading to suicide, then is assault the appropriate charge in such cases. There are other considerations as well. First in relation to causation: the prosecution must prove a direct causal link between the bullying and the victim's death. Second, there must be foreseeability: it must be shown that the perpetrator could reasonably have foreseen that their actions might lead to such an outcome. Third, does negligence suffice in such cases. Ordinarily if charges are brought against a minor over the age of 10 years, the

enquiry will be held at the magistrate's court to determine which appropriate measures should be brought against the bully. Section 43-50 outlines the procedures for holding a preliminary inquiry at the magistrate's court to assess the child's circumstances and determine appropriate measures. These options could necessarily include diversion, which is dealt with under s 51-60 which aims to redirect the child away from formal criminal proceedings. If the matter is not pursued criminally, the parents may wish to seek a protection order in terms of section 2-4 of the Protection from Harassment Act 17 of 2011 against the bully at the Magistrates Court. These measures whilst commendable, do not address the serious nature that bullying has on the psyche of the victim nor does it address long term effects, should the victim commit suicide,

At present in South African law, in cases where bullying leads to suicide has not yet led to a conviction for murder or culpable homicide, but the current landscape at least in the United States seems to suggest a possible shift in the approach that the courts use in such cases. In *Commonwealth v Carter* 481 Mass. 352 (2019) Michelle Carter who was 17 years old at the time, was charged with involuntary manslaughter for the death of her boyfriend Conrad Roy aged 18. Roy died by suicide in July 2014 by inhaling carbon monoxide poisoning in his truck. Carter and Roy had a long-distance relationship which took place through phone calls and text messages. Initially Carter had encouraged Roy to get help for his mental instability. Later she began to pressurize him to follow through with his threats to commit suicide. On the day of Roy's death Michelle pressurized him to get back into the truck, after he had exited the vehicle to follow through with the suicide (at 354-356).

The court noted that her verbal encouragement to follow through with the suicide and failure to intervene were deemed to directly have caused Roy's death. The court rejected her first Amendment defense, ruling that her speech or conduct in encouraging him to get back into the truck (at 360) was integral to the criminal conduct and was therefore not protected (363-364). She was convicted of involuntary manslaughter and sentenced to 15 months in jail (365). What is perhaps most notable is that the court was of the opinion that Carter's actions created the likelihood of substantial harm (360-361) and therefore her conviction as a youthful offender was upheld (365).

This raises an important point and perhaps powerful precedent if bullying which is sustained in nature leads to foreseeable death (eg by suicide), the perpetrator could be charged with culpable homicide. Culpable homicide is defined as the unlawful negligent killing of another person. The test is therefore objective: would a reasonable person in the same circumstances have foreseen the possibility of death and acted differently. Whilst it is trite that psychological harm can be relevant in assessing criminal liability (see further Laas & Boezaart), it has not yet reached the level of someone being charged with culpable homicide (at 2670). At present our law is limited to following Van der Bijl's approach which suggests expanding assault to include psychological harm. There are also severe concerns that prohibit South African courts from considering further alternatives such as proof of causation. Perhaps the time has come for courts to give due consideration to holding perpetrators liable for conduct which has significant psychological impact, and leads to serious consequences.

The finding in this case aligns with South African law. Whilst it is trite that there are several persuasive flaws that are inherent to such an approach such as proof of causation, it is argued that in light of the limited options available in South African law and already discussed by theorists such as Van der Bijl, that courts give serious consideration to further expansion of liability in such cases.

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Matters of Interest to Magistrates

The right to family is a child's right

Rayment and Others v Minister of Home Affairs and Others and a related matter 2024 (2) BCLR 264 (CC)

The right to family is a fundamental right of every child. This right is recognised in South African law and other international instruments, where South Africa is a state party. Section 28 of South Africa's Bill of Rights guarantees every child the right to family care or parental care, or appropriate alternative care when removed from family. This right is also enshrined in the United Nations Convention on the Rights of the Child (1990) (UNCRC) and the African Charter on the Rights and Welfare of the Child (1999) (ACRWC). In the case of *Rayment*, the Constitutional Court confirmed and declared that s 18(2) of the Immigration Act 13 of 2002 is unconstitutional, on the grounds that it violates a child's right to family. This article addresses the constitutionality of a child's right to family and the 'unconstitutionality of the Immigration Act' (R Bregman 'Unconstitutionality of Immigration Act Impacting Foreign Nationals' Parental Rights' (<https://bregmans.co.za>, accessed 3-9-2025)).

Facts of *Rayment*

This case dealt with the constitutional validity of certain provisions in South Africa's Immigration Act and the Immigration Regulations. The applicants, foreign nationals who had children with South African citizens or permanent residents, challenged laws that required them to leave South Africa and apply for new visas from outside the country after their spousal relationships ended. They argued that these provisions

infringed their rights to dignity, family life, and their children's rights under the Constitution.

The Immigration Act required foreign parents to leave South Africa and prohibited them from working after their spousal relationships ended, even if they had children who were South African citizens or permanent residents. These provisions adversely affected the children's rights to parental care and their best interests, as guaranteed under s 28 of the Constitution. The applicants argued that the laws unjustifiably limited their rights to dignity, family life, and their ability to fulfil parental responsibilities, violating constitutional rights. The court declared ss 10(6), 11(6), and 18(2) of the Immigration Act and reg 9(9)(a) of the Immigration Regulations inconsistent with the Constitution and invalid. These provisions unjustifiably limited the rights of foreign parents and their children. The declaration of invalidity was suspended for 24 months to allow Parliament to amend the laws. During the suspension period, the court ordered interim measures allowing foreign parents to remain in South Africa, work, and apply for new visas without leaving the country. Foreign parents fulfilling or intending to fulfil their parental responsibilities can 'continue working and residing in South Africa while applying for new visas' (Bregman (*op cit*)). Regulation 9(9)(a) was amended to include foreign parents of South African citizen or permanent resident children as an exceptional category for visa applications within South Africa. It emphasised the importance of protecting the rights of children and ensuring that laws align with constitutional values.

Analysing the unconstitutionality of s 18(2) of the Immigration Act

The Bill of Rights lists numerous constitutional rights which, when applying them, need to take a child's best interests into account, as the child is the most vulnerable person. The South African Constitution operates on the principle that all rights are interconnected and should be read keeping this in mind. With the establishment of South Africa as a democratic state, the South African government pledged to respect, protect, promote, and fulfil the human rights of all people living in South Africa. The government is mandated to create legislation to give effect to the Constitution. This is achieved through the introduction of the Bill of Rights. The Immigration Act restricts the rights of foreign parents of South African citizens or permanent resident children. The Act's regulations violate human dignity, children's rights, and equality by requiring foreign parents 'to cease working or leave the country when their spousal relationships end' (Bregman (*op cit*)). These provisions disrupt family life and the parents' ability to provide for them. The Act also discriminates against foreign parents by imposing restrictions that do not apply to South African citizens, violating the right to equal protection under s 9 of the Constitution.

Legal framework

The Constitution of the Republic in South Africa is the highest law, promoting freedom and protection for its citizens through the Bill of Rights. The Bill of Rights affirms democratic values of human dignity (s 10 of the Constitution), equality (s 9 of the Constitution), and freedom (s 21 of the Constitution), aiming to improve the quality of

life for all citizens and free their potential. It ensures that the actions of the state and others do not infringe on these rights. The constitutional right of a child to family is also protected in the Constitution.

International treaties with South Africa concerning the child

South Africa is a signatory to international conventions on children's rights, including the UNCRC (article 18), ACRWC (article 18(1)), and International Covenant on Economic, Social and Cultural Rights (1976) (article 10(1)). These conventions emphasise the importance of parents having common responsibilities and the child's best interest as the primary concern. The family is considered the natural foundation of society and should receive state protection and support for its development. State parties are obligated to uphold international human rights law to protect persons' rights and raise families (paras 62 and 63).

The right to family is in the best interest of the child

Section 28 of the Constitution protects children's social rights, including the right to family or parental care, especially when parents cannot provide it, and ensures that their rights are respected and protected when the child is temporarily removed. Section 28(2) of the Constitution provides that a child's best interests is of paramount importance in every matter concerning the child. The UNCRC asserts that children have inherent rights and cannot be separated from their parents unless it is in their best interests. Separating a child against their will is considered unlawful. Local state-level social policies should uphold constitutional principles regarding child-solicited dependents (National Child Care and Protection Policy, 2019). The state's unwillingness or inability to regulate large family structures, considering historical difficulties, is not a factor that allows it to escape its obligation to respect, protect, promote, and fulfil the rights of citizens in dependent extended families (African Committee of Experts on the Rights and Welfare of the Child: Children Without Parental Care in Africa (Study 2023)). Section 18(2) of the Immigration Act in South Africa restricts the work of a foreign parent of a child with a relative permit. The Constitutional Court ruled that this limits the right to family, as the relationship between the foreign national and their child is family-oriented. This provision may force the parent to remove their child from South Africa against the child's will, further limiting the child's rights under s 28(1)(b) and (2) of the Constitution (paras 30, 59, 62, 63, and 81; also see [*Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* 2000 \(3\) SA 936 \(CC\)](#) at para 58).

Section 18(2) of the Immigration Act was found unconstitutional on the following basis

Section 18(2) of the Immigration Act states that the holder of a relative's visa may not conduct work (s 18(2) of the Immigration Act). This provision limits the ability of foreign parents of South African citizen children to work and support their children (para 127). It unjustifiably interferes with their ability to fulfil parental responsibilities, such as

providing financial support, education, and healthcare, which are essential for the child's well-being (para 53). The force of separation of families undermines the right to family life, a core aspect of human dignity (para 88 and s 10 of the Constitution). The provision also fails to prioritise the best interests of children (s 28(2) of the Constitution), as it may result in separation from one parent or forced departure (para 88 and s 21(3) of the Constitution), violating their right to parental care and their right to remain in the Republic (s 28(1)(b) of the Constitution). The limitation is not reasonable or justifiable under s 36(1) of the Constitution (para 93), and it does not serve a legitimate governmental purpose (para 107). Regulation 9(9)(a) excludes foreign parents of South African citizen children (para 51), exacerbated by the omission of foreign parents of South African citizen children (paras 93-94). The Constitutional Court in *Dawood* and [*Nandutu and Others v Minister of Home Affairs and Others 2019 \(5\) SA 325 \(CC\)*](#) emphasised that laws requiring family separation or forcing foreign spouses to leave South Africa unjustifiably limit the right to dignity and family life (paras 84, 93 and 96).

Conclusion

The article highlights the importance of the right to family life for children, particularly those born to foreign parents. The Act's requirements risked separating children from their parents or depriving them of adequate parental care and financial support. South Africa is obligated to protect this right, and the Constitution and International Conventions have placed an obligation on the country to do so. The Constitutional Court declared the Act invalid and implemented interim measures to protect affected individuals. 'The Department of Home Affairs issued Immigration Circular 11 of 2024, which outlines new rights and procedures for foreign nationals ... in relationships with South African citizens or permanent residents' (M Magadla 'South Africa updates rules for foreign parents after major court ruling' (www.blackpen-immigration.com, accessed 3-9-2025)).

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A Last Thought

‘But it implies this, that the practitioner shall say or do nothing, shall conceal nothing or state nothing, with the object of deceiving the Court; shall put forward no fact which he knows to be untrue, shall quote no statute which he knows has been repealed, and shall refer to no case which he knows to have been overruled. If he were allowed to do any of these things the whole system would be discredited. Therefore, any practitioner who deliberately places before the Court, or relies upon, a contention or statement which he knows to be false, is in my opinion not fit to remain a member of the profession’

Per Innes CJ in *Incorporated Law Society v Bevan* **1908 TS 724** at 731