S v LITAKO 2014 SACR 431 (SCA): A CLARIFICATION ON EXTRA CURIAL STATEMENTS AND HEARSAY

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SUMMARY

On 16 April 2014, the Supreme Court of Appeal handed down judgment in the matter of *S v Litako* 2014 2 SACR 431 (SCA) ("*Litako*"). The judgment reconsiders the landmark decision of the same court, *S v Ndhlovu* 2002 2 SACR 325 (SCA) ("*Ndhlovu*") in which the court held that an informal admission made by one accused could be admitted against a co-accused even if the accused in court denies making the statement and the statement itself is therefore considered to be hearsay. The court in *Ndhlovu* applied section 3 of the *Law of Evidence Amendment Act* 45 of 1988 and found that the hearsay extra curial admission could be admitted in the interests of justice. In *Litako* the court found that section 3 did not overrule an existing common law rule, which is that the extra curial statement of an accused (whether an informal admission or a confession) cannot be tendered against a co-accused. This is because section 3 does not expressly overrule this common law rule. Rather, the provision itself requests that its application be subject to the common law. The judgment is important for various reasons. Firstly, it is generally in keeping with the existing rule on the cautionary treatment of accomplice evidence. Secondly, the judgment highlights the current confusion in the relationship between statute and common law with regards to informal admissions and confessions. Thirdly, the court employs methods of statutory interpretation to re-examine the principle from *Ndhlovu* and finds that the court in that case did not apply its mind correctly in disregarding the common law rule. The court undertook a teleological approach to interpretation by infusing the meaning of the words with the spirit, purport and objects of the Bill of Rights and found that the statute had not overruled the common law rule.

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