SANTA CLAUS

LAW, FOURTH INDUSTRIAL REVOLUTION,
DECOLONISATION AND COVID-19

Editor | Letlhokwa George Mpedi

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General Introduction

Letlhokwa George Mpedi

1. Introduction

This book is about a famous man, a globalist (Harcourt, 2011), by the name of Santa Claus. It focuses on four themes, namely: law, the fourth industrial revolution, decolonisation and COVID-19; and is divided into six sections.

2. Part 1: A man with a past

Part 1 of the book provides a general overview. It comprises two chapters. The first chapter provides a wide-ranging impression of the contents of the book. Chapter 2 by Frahm-Arp introduces the reader to the weird, wonderful and often unholy history of Christmases with a focus on Constantine, the Roman Empire and the formation of Christmas; medieval Christmas and twelve days of frivolity; St Nicholas and gift-giving in medieval Europe; the rise of protestant Christianity and the banning of Christmas; re-imagining Christmas; opening presents on 7 January – the Orthodox Christmas; and Christmas in Africa – the Ethiopian Orthodox Church and the Zion Christian Church.

3. Part 2: Above the law?

Part 2 of the book concentrates on the question of whether Santa and his associates may be or are above the law. Section 9(1) of the Constitution of the Republic of South Africa, 1996 makes it clear that “Everyone is equal before the law and has the right to equal protection

and benefit of the law". However, Santa Claus seems to be violating South African laws with impunity. For example, he violates the sovereignty of South Africa by flying over and landing within its territory without permission and without using a designated port of entry, he drinks alcohol and flies, and breaks into people's private homes. Flying the unfortunate reindeer around the world should surely amount to animal cruelty of the worst order.

This part of the book comprises five chapters that directly and indirectly address the above question. Chapter 3, by Watney, is the *State v Santa Claus and 4 Others*. This is a criminal case brought against Santa Claus and four of his accomplices for the following charges: conducting an enterprise through a pattern of racketeering activity; kidnapping; intimidation; unlawfully selling, dispensing and/or distributing of liquor, failure to comply with the prohibition on entering places and premises closed to the public: nightclubs; and operating a bus service and/or taxi and/or sleigh services for long-distance travel exceeding 70% of the licensed capacity.

In Chapter 4 Van Eck presents a letter of demand against Santa for noncompliance with the South African legislative framework, particularly the Consumer Protection Act 68 of 2008, Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, and Protection of Personal Information Act 4 of 2013. Alberts in Chapter 5 provides Santa with an opinion on the use of Santa Paws and the phrase 'ho ho ho' in welcoming customers by a business in the Western Cape. He advises Santa on the legal position as regards the use of Santa Claus/Santa Paws. He argues that the use of Santa Paws by an undertaking in the Western Cape can cause confusion and 'passing off' would be a viable remedy to safeguard Santa's rights. Furthermore, he advises Santa that his use of 'ho ho ho' can be protected by filing a trademark application for it. This, Alberts argues, must be lodged as a musical annotation for the sound. In Chapter 6 Lenong looks at the appearance of Rudolph the reindeer in Kudumane Magistrate's Court. He deals with the question of whether the enigmatic fall from the sky of this strange animal, a donkey with 5G antennas, is a threat to national security or merely making merry. I guess we will never know

because the appearance of the mysterious animal at the Kudumane Magistrate's Court, which was the talk of the town, ended as mysteriously as it began with Rudolph escorted to his sleigh by ostriches in black. Nkosi in Chapter 7 argues that Santa should thank his lucky stars that South Africa is a constitutional democracy. Otherwise, he could have been burned at the stake or faced a firing squad for his penchant of contravening countless South African laws and regulations. He recounts all the instances where Santa violated the South African laws almost at every corner of the country. He concludes by arguing that Santa is a lucky man indeed in the sense that he would have been faced with a difficult choice (namely, death by fire or execution by firing squad) if he landed in a country, other than South African, headed by a dictator that does not care about human rights.

What is clear from these chapters is that Santa and his associates are not above the law. He and his accomplices have been indicted in the High Court and he is served with a letter of demand. His employee, Rudolph, had a lucky escape from lady justice at the Kudumane Magistrate's Court. Despite his propensity to infringe the South African law, Santa is entitled to the equal enjoyment and protection of the law offered by the Constitution of that country. He can seek a legal opinion on the protection of his trademark (i.e. his recognisable name (Santa Claus) and phrase ('ho ho ho')). Furthermore, despite his disdainful tendency of making a mockery of South African law, he is afforded the same rights contained in the Constitution just like any law-abiding human beings who live or sojourn within the geographic borders of the country. This is true to our constitutional democracy. How ironic! To a great degree, Santa Claus' approach to our law reminds me of a breed of 'deployees', comrades, cadres, *maqabane* or whatever they call themselves these days. The group in question tends to think that the law does not apply to it and its family members, friends and cronies as they help themselves to the state resources, particularly the hard-earned taxpayers' money, and seek to rely on it when it suits them. For their information, the sword and shield provided by the law are not available when we feel like having any of them. They are or should be there at all times.

4. *Part 3: Elves of the world, unite!*

The plight of the elves reminds one of the profound words contained in the Communist Manifesto, namely "*Proletarier aller Länder, vereinigt euch!*" ("Proletarians of all countries, Unite!") (Communist Manifesto). The elves have nothing to lose except the Santa's shackles. Fourie kick-starts this Part of the Book in Chapter 8 by revealing four reasons why Santa is not the employer of the year. She shines the spotlight on the unbearable working conditions that the elves and reindeer are subjected to. These include the long working hours, bullying, working without protective gear, (sexual) harassment, unfair labour practices and unfair dismissal. It is therefore not surprising that the chapter concludes with a newsflash in which it issues a warning about Christmas that is on the verge of being ruined due to possible strike action by the elves. In Chapter 9 Jacobs exposes Santa for having been naughty this year by riding the fourth industrial revolution wave (by, *inter alia*, using the drone technology to load the sleigh with toys and deliver them all over the world) and side-lining the elves and reindeer. True to Santa's nature of having little or no respect of employment law, he did not inform and consult with the elves when he introduced the new technologies to his operation. As illustrated in this chapter Santa has pushed elves and reindeer too far on this occasion. This is because his actions yielded the wrath of the elves and reindeer in a form of strike action and riot, which brought the recalcitrant Santa to his senses. Can things stay that same? Reading between the lines, it seems only time will tell. One thing for sure is that elves and reindeer lives matter. They have (labour and social security) rights too. Jacobs concludes by asking the question "is Santa really bound by South African law or does he play by a completely different set of rules?"

Van Staden's chapter 10 offers an answer to the aforementioned question posed by Jacobs. In this chapter, Floppy the elf takes Santa to the Commission for Conciliation, Mediation and Arbitration (CCMA) for unfair dismissal. The dispute, as referred by Floppy, is about an unfair dismissal (based on poor work performance and incapacity) and unfair discrimination. The fact that Floppy has referred a dispute to the CCMA suggests that Santa is subject to South African (labour) law.

However, before I jump to a wrong conclusion, Floppy will have to show that the CCMA has the jurisdiction to hear the matter. It should be recalled that as previously pointed out by the Labour Appeal Court in *SA Rugby Players Association & others v SA Rugby (Pty) Ltd* [2008] 9 BLLR 845 (LAC): “The CCMA is a creature of statute and is not a court of law. As a general rule, it cannot decide its own jurisdiction. It can only make a ruling for convenience. Whether it has jurisdiction or not in a particular matter is a matter to be decided by the Labour Court.”

In Chapter 11 Nel addresses the widespread and systematic age-based discriminatory practices and policies perpetrated by Santa and his elves. He does that by reflecting on the applicable legal standards regarding equality and non-discrimination based on age, age as a listed ground of discrimination, and the enquiry into a violation of the right to equality in the present case. He concludes by calling for the recognition of the inherent dignity and equal and inalienable rights of all human beings and an all-inclusive and non-discriminatory policy of Christmas gifting for all ages.

5. *Part 4: Gender, culturally and politically insensitive Mr Claus*

This Part of the publication highlights one of Santa’s annoying character traits. That is the utter lack of gender, culture and political sensitivity. For example, he lacks a sense of propriety. What kind of a man goes around saying ‘ho ho ho’ in this day and age? This man is unbelievable! He even asked for an opinion about protecting this phrase as a trademark (see Chapter 5). He sees nothing wrong with the phrase and might think I am the one with the problem. Before I am called names, I would like to refer Santa to the Urban Dictionary and Queen Latifah’s song “U.N.I.T.Y”. Hopeful he will get the point and substitute ‘ho ho ho’ with ‘he he he’ or ‘ha ha ha’ as is, I understand, the case in Australia.

Chapter 12 by Van der Merwe opens up this Part of the book with a letter to Santa Claus. This letter addresses several gender sensitives issues that Santa seem to ignore such as systematic discrimination,

bias and sexism that Santa is well known for. It asks Santa a poignant question why his “office employs so few female elves”. To drive its point home, the open letter articulates the relevant legal framework in South Africa which is built firmly of the Constitution. It concludes by drawing Santa’s attention to women trailblazers Charlotte Makgomo Maxeke, Ada Lovelace, Katie Bouman and Shirley Ann Jackson. This is a solid reminder to Santa, as the Tired Feminist puts it, that he should “never doubt what we women bring to the table because, as my letter reminds you, we are the table!”

In Chapter 13 Magongoa discusses one of the sensitive issues in African culture that Santa disregards when he goes about his nocturnal business in South Africa. Entering and living a house through any access point to the house that is not a door and bringing or taking things from the house at night is taboo. This kind of behaviour illustrated by Magongoa is associated with witchcraft. The fact that Santa flies on his sleigh powered by reindeer does not help the situation. Santa lets himself into the house through the chimney unannounced. This is, as argued by Magongoa, culturally impolite. Despite his cultural insensitivity, the truth that Santa comes bearing gifts may render him the only acceptable witch. However, the chapter suggests that his culturally repugnant nocturnal ways are not irredeemable. They can be remedied using technology, particularly online gift delivery services.

Mpedi in Chapter 14 argues that the Black Pete figure that serves as Santa Claus’ assistant in Europe, particularly in the Netherlands, is racist and offensive. He argues that Santa should learn from, *inter alia*, the Clicks ‘natural hair’ debacle and H&M ‘monkey hoodie’ saga. The Chapter asserts that due to Santa’s standing as a global figure he should unite people and not divide them. His questionable antics, i.e. the use of Black Pete, elsewhere should be challenged in South Africa if he does not change his offensive tendencies. After all, Black Lives Matter.

6. *Part 5: 4IR to the rescue?*

Part 5 builds on the previous parts of the book where suggestions were advanced for Santa to use technology in his quest to spread the Christmas cheer. Reddy, in Chapter 15, deals with Santa's unlawful surveillance of people using AI technologies to determine who is naughty or nice. Chapter 16 by Smidt reports on a huge fine that Santa received for using illegally collected data in his operations. Accordingly, Chapter 15 and 16 makes it clear that in as much as data-driven technology can be helpful to Santa's business, such data must be collected and handled as per the applicable law. Secondly, Santa and his associates are not above the law. In Chapter 17 De Villiers deals with truth, lies, virtual reality and storytelling with a particular focus on Santa Claus and teaching. He argues that the widely told story of Santa Claus can be used as a tool for teaching and learning law. In that regard, he contends that law teachers should learn to adapt stories learnt as children to the story of the South African legal system and most importantly use aspects of fiction and storytelling to explain reality. This, De Villiers postulates, should be supported by virtual and augmented reality technologies, which will enable teachers and their students to do things with instead of hearing, reading or watching about them. He concludes by fantasizing about a virtual ride of a lifetime with Santa that can make him believe that Santa is real or, more appropriately, virtually realistic. 4IR rules! Scan the Quick Repose code below for further discovery and enlightenment.

7. *Part 6: Disentangling COVID-19 from the Christmas cheer*

They say in every disadvantage there is good fortune. However, COVID-19 seems to have brought more deprivation than prosperity to many individuals and their families. To make matters worse it appears

that more misfortune is on the way in the form of a dreary Christmas without the gifts. The final part of the book consists of three chapters which give hope that a jolly Christmas is possible amidst COVID-19. Firstly, Hugo in chapter 18, advises St Nicholas via Zoom on a performance guarantee and COVID-19. The issue at hand is that St Nicholas may not be able to personally deliver the football boots to Tshepo due to the national lockdown in South Africa. Accordingly, Hugo, advises St Nicholas on the legal consequences that arise should Tshepo call up the guarantee. In chapter 19, by Calitz, the elves save Christmas through business rescue after COVID-19 brought Santa & Co to its knees. Last but not least, Munyai in Chapter 20 discusses Santa's mission to happiness. This seems like mission impossible due to COVID-19 and the impending arrest of poor Santa for violating the fundamental right to privacy of the good folks of the People's Republic of China and the Republic of South Africa

8. *Some concluding observations*

Santa Claus is a man with a past. A colourful past indeed. This man changed colours from time to time. It is reported that his suit was tan and, later, green in colour. That was of course before he changed to red and white after he was rather 'captured' by the company that sells surgery water. What a true reflection of the white monopoly capital. Irrespective of how you feel about Santa's past, colours and whom he keeps company with, it is hoped that this publication has provided some further perspectives on this elusive man. Whether you like him or not, that is your call to make. Needless, to say, all the good and bad contained in this book are only in jest. Accordingly, no harm to Santa and his kin, associates and animals is intended. All the names mentioned in the publication are imaginary. However, any resemblance to actual events or locations or persons, dead or alive, is either entirely coincidental or it is only in your hyperactive mind. Ha! Ha! Ha!

9. *List of references*

Communist Manifesto "Working Men of All Countries, Unite!" Available at: <https://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch04.htm>. (1 November 2020).

Harcourt T (2011) "Santa Claus as a Symbol of the Global Economy", available at: <https://www.theglobalist.com/santa-claus-as-a-symbol-of-the-global-economy/> (Accessed: 1 November 2020).