

REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
BULLETIN 3 2016

CASES ENROLLED FOR HEARING: AUGUST – SEPTEMBER 2016

**1. Joest (Pty) Ltd v Jöst GmbH + KG & others (319/2015 & 324/2015)**

Appealed from GP

Date to be heard: 15 August 2016

Navsa JA, Petse JA, Willis JA, Saldulker JA, Swain JA

**Intellectual Property: Trade Mark:** whether appellant or first respondent is the rightful proprietor of the JOEST/JÖST trade mark in South Africa: whether the appellant used the trade mark in South Africa as a licensee of the first respondent: whether on a proper interpretation of the know-how agreement concluded between appellant and first respondent in June 1996 constituted a trade mark licence agreement: consequently whether the appellant should be granted the interdictory and ancillary relief sought for trade mark infringement and passing-off.

**2. S A Hackney Pony Breeders' Society & another v Adam Majiet (131/2015)**

Appealed from WCC

Date to be heard: 15 August 2016

Cachalia JA, Seriti JA, Mocumie JA, Fourie AJA, Potterill AJA

**Administrative Law: Review:** whether the Society's decision to deregister the equine Fire Highly Explosive (FHE) and his progeny was valid in terms of the Society's constitution, by-laws, rules and regulations: whether the Association is precluded from denying the registration of FHE and his progeny in the Stud Book of the Society and whether the Association acted rationally and in a procedurally fair manner in its decision to deregister FHE and his progeny. **Costs:** whether the court a quo correctly exercised its discretion in making the costs order.

**3. Fluxmans Inc v Steven Zulla Levenson (523/2015)**

Appealed from GJ

Date to be heard: 16 August 2016

Mpati AP, Theron JA, Zondi JA, Van der Merwe JA, Makgoka AJA

**Legal practice: Contingency Fees Act 66 of 1997: Prescription: Prescription Act 68 of 1969:** whether the respondent's claim against the appellant had prescribed and whether the court a quo was correct in finding that knowledge of the invalidity of the common law contingency fee agreement constitutes a 'fact' for purposes of s 12(3) of the Prescription Act – whether the rule in *Wilken v Kohler* 1913 AD 135 approved in *Legator* 2010 (1) SA 35 (SCA) is applicable to the respondent's claim for recovery against the appellant.

**4. South African National Roads Agency Limited v City of Cape Town (66/2016 and 003/2016)**

Appealed from WCC

Date to be heard: 16 August 2016

Navsa JA, Cachalia JA, Wallis JA, Petse JA, Mocumie JA

**Administrative Law:** subject matter of the appeal relates to decisions taken in respect of the implementation of the N1/N2 Winelands Toll Road Project in the Western Cape Province: the choice of tolling as a funding mechanism to finance the N1/N2 Winelands. **Cross-Appeal:** Conditional leave to cross-appeal under SCA Petition 003/2016 having been referred to oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013.

**5. Envitech Solutions (Pty) Ltd v City of Cape Town & another (420/2015)**

Appealed from WCC

Date to be heard: Postponed

Lewis JA, Swain JA, Dambuza JA, Mathopo JA, Dlodlo AJA

**Administrative Law: Review: Promotion of Administrative Justice Act 3 of 2000:** Constitutional Law: whether on the interpretation of Reg 27(4) relating to the procurement of goods Appellant's tender was non-responsive and the City's award of the tender thus reviewable under the PAJA.

## 6. **Travellex Limited v Sean Maloney & another (823/2015)**

Appealed from GP

Date to be heard: 17 August 2016

Mpati AP, Tshiqi JA, Mathopo JA, Fourie AJA, Schoeman AJA,

**Civil Procedure: Jurisdiction:** Ad fundandam jurisdictionem: the court a quo granted the respondents an order of attachment to found and confirm jurisdiction against the shares of the appellant in an action for contractual damages which the respondents intended to bring: whether there existed a ratio jurisdictionis which afforded the court a quo jurisdiction to determine the suit between a local peregrinus as plaintiff and a foreign peregrinus as defendant: whether the principle in *Siemens Ltd v Offshore Marine Engineering Ltd* 1993 (3) SA 913 (A) at 929G-H should be extended to invoke jurisdiction of the Gauteng Division of the High Court for an incola in an action against a foreign peregrinus: whether court a quo had jurisdiction to grant the attachment order notwithstanding the agreement between the parties submitting the resolution of disputes arising from it to arbitration.

**Rescission:** whether the appellant made out a case for rescission of the attachment order under the common law or under Uniform rule 42.

## 7. **The Minister of Water and Environmental Affairs & another v Really Useful Investments No 219 (Pty) Ltd & another (436/2015)**

Appealed from WCC

Date to be heard: 17 August 2016

Navsa JA, Wallis JA, Dambuza JA, Mocumie JA, Dlodlo JA

**Environmental Law:** whether s 49 of the National Environmental Act 107 of 1998 (NEMA) limits liability under s 34(1) of the Environmental Conservation Act 73 of 1989 (ECA) to conduct that was unlawful, negligent or in bad faith and thus whether the first respondent's claim against the appellants under s 34 of the ECA was precluded by s 49 of NEMA.

## 8. **Theresa Janklaas & another v P G Bison Southern Cape (Pty) Ltd (851/2015)**

Appealed from WCC

Date to be heard: 17 August 2016

Bosielo JA, Theron JA, Seriti JA, Zondi JA, Van der Merwe JA

**Land: Unlawful structure: Final Interdict:** whether, on the papers having regard to the Plascon-Evans rule, the respondent had proven a clear right for a final interdict to demolish unapproved building extensions: whether the requirement of the absence of any satisfactory alternative remedy met. **Constitutional Property Law:** whether the respondent's land ownership rights and the appellants' rights to human dignity and adequate housing should have been taken into account in the exercise of the discretion to grant the interdict by applying the disproportionality or prejudice test.

## 9. **Mthethelelwa Dube v The State (89/2016)**

Appealed from KZD

Date to be heard: 18 August 2016

Maya DP, Tshiqi JA, Theron JA, Seriti JA, Dlodlo AJA

**Criminal law: Sentence:** Accused charged with two counts of rape involving his minor daughter: accused pleaded guilty and sentenced to life imprisonment in terms of the minimum sentencing provisions: application for special leave to appeal granted on the basis that substantial and compelling circumstances may exist: notice of appeal raising a number of issues not mentioned in application for special leave to appeal: whether charges irregular in that both charges were identical in the charge sheet: whether accused adequately notified of applicability of minimum sentencing provisions: whether irregular to treat both counts of rape as a single offence for purposes of sentencing: whether delay in trial unfairly resulted in more severe sentence being imposed: whether sentence shockingly inappropriate.

#### **10. David Lichtenstein v The State (1094/2015)**

Appealed from NWM

Date to be heard: 18 August 2016

Maya DP, Tshiqi JA, Theron JA, Seriti JA, Dlodlo AJA

**Criminal Law: Sentence:** life imprisonment imposed by high court in respect of a charge of murder and 15 years' imprisonment in respect of robbery with aggravating circumstances: full court dismissing appeal against sentence: appeal against that decision: prescribed minimum sentence applicable in respect of both sentences: whether there were substantial and compelling circumstances justifying a lesser sentence.

#### **11. Hans Pieter Wolfgang Scheibert v Lynette Ethel Allen (694/2015)**

Appealed from WCC

Date to be heard: 18 August 2016

Lewis JA, Shongwe JA, Willis JA, Saldulker JA, Dambuza JA

**Contract: Damages: Breach of warranty:** appellant gave a warranty in selling his property to the respondent that alterations to the property had been approved by the City of Cape Town; however, unbeknown to the respondent, approval had not been obtained; the appellant admitted a breach of warranty for the installation of a second kitchen on the ground floor: whether the respondent established her claim for damages for breach of the warranty: whether the respondent mitigated her damages: the quantum of damages and whether damages had been correctly awarded.

#### **12. Ambrose Monye & another v The State (107/2016)**

Appealed from GP

Date to be heard: 18 August 2016

Bosielo JA, Zondi JA, Van der Merwe JA, Potterill AJA, Schoeman AJA,

**Criminal law: Sentence:** Appellants alleged to have acted as middle-men in a contract killing: convicted of murder and sentenced to life imprisonment in terms of minimum sentencing provisions: during the trial they elected to remain silent, but at sentencing stage they admitted to being involved in the conspiracy and agreed to cooperate with the State investigation into the alleged instigator of the contract killing: whether this constituted substantial and compelling circumstances and sentence shockingly inappropriate.

#### **13. Moshina Essop v The State (31/2016)**

Appealed from KZP

Date to be heard: 18 August 2016

Bosielo JA, Zondi JA, Van der Merwe JA, Potterill AJA, Schoeman AJA

**Criminal law and procedure: Sentence:** whether the effective term of imprisonment induces a sense of shock and whether the petition for leave to appeal to the KwaZulu-Natal Division of the High Court, Pietermaritzburg against the sentence imposed by the regional court, Pietermaritzburg should have been granted.

#### **14. E Slabbert v The MEC for Health and Social Development of Gauteng Provincial Government (432/2016)**

Appealed from GP

Date to be heard: 19 August 2016

Mpati DP, Petse JA, Willis JA, Dambuza JA, Potterill AJA

**Delict: Damages**

#### **15. Uphill Trading 14 (Pty) Ltd & another v FirstRand Bank Limited (486/2015)**

Appealed from KZP

Date to be heard: 22 August 2016

Mpati AP, Bosielo JA, Willis JA, Fourie AJA, Makgoka AJA

**Business Rescue: Companies Act 71 of 2008:** sections 151 and 153: whether a 'binding offer' made by one creditor to another in terms of s 153(1)(b)(ii) of the Companies Act is automatically binding or whether the offeree may decline the offer: whether the recent case of *African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers & others* [2015] ZASCA 69 should be reconsidered.

**16. Municipal Employees Pension Fund v The Natal Joint Municipal Pension Fund (Superannuation) & others (562/2015)**

Appealed from KZP

Date to be heard: 22 August 2016

Maya DP, Theron JA, Wallis JA, Zondi JA, Schoeman AJA

**Local Government: Pension Funds: Local Government Ordinance 24 of 1973 (KZN):** Local Government Ordinance 27 of 1974 (KZN): KwaZulu-Natal Joint Municipal Provident Fund Act 4 of 1995 (KZN): whether local authorities in KwaZulu-Natal and their employees may belong to only the pension funds established in terms of the above provincial legislation, or whether they may also belong to other funds, including the Respondent, which was established in terms of Gauteng provincial legislation.

**17. Thobani Notshokovu v The State (157/2015)**

Appealed from ECG

Date to be heard: 22 August 2016

Shongwe JA, Seriti JA, Petse JA, Mathopo JA, Potterill AJA

**Criminal Procedure: Superior Courts Act 10 of 2013:** reconsideration of leave to appeal in terms of s 17(2)(f): Appeal against refusal by the court below to grant leave to appeal against conviction by the regional court for alleged rape: whether leave to appeal should have been granted: circumstances under which an application for reconsideration of an order refusing leave to appeal to this court will be granted and a variation of such order allowed.

**18. Galefele Hilda Ndaba v James Ndaba (600/2015)**

Appealed from GP

Date to be heard: 23 August 2016

Mpati DP, Seriti JA, Petse JA, Swain JA, Makgoka AJA

**Family Law: Divorce: division of assets upon divorce:** appeal against the dismissal of an application for the appointment of a liquidator of a joint estate and the division of pension interests at the date of divorce: the appellant and respondent were married to each other in community of property and the marriage was annulled by decree of divorce on 25 May 2012: whether a court may order after divorce that the parties' respective pension fund interest be declared to form part of the joint estate, thus liable to be shared equally despite the fact that such an order was not made or did not form part of the proceedings in the divorce act.

**19. Mark William Shelton & another v Eastern Cape Development Tribunal & others (489/2015)**

Appealed from ECG

Date to be heard: 23 August 2016

Lewis JA, Wallis JA, Willis JA, Saldulker JA, Potterill AJA

**Administrative Law: Development Facilitation Act 67 of 1995 (DFA):** DFA declared unconstitutional and invalid by Constitutional Court, but declaration suspended to give Parliament an opportunity to remedy: not remedied within specified time: second respondent submitted an application for development of certain properties to first respondent two days before the end of the suspension period: whether upon expiry of the suspension period, the declaration removed the first respondent's jurisdiction to consider the application: if so, whether decision to be set aside in terms of DFA or the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

**20. Delizile Mbhele v MEC for Health for the Gauteng Province (355/2015)**

Appealed from GJ

Date to be heard: 23 August 2016

Cachalia JA, Tshiqi JA, Theron JA, Mocomie JA, Fourie AJA

**Constitutional law: Delict:** claim for constitutional damages for infringement of right to rear a child: appellant, allegedly as a result of the negligence of the employees of the respondent, gave birth to a stillborn child: whether the particulars of claim disclosed a cause of action: whether the appellant abandoned her claim for emotional shock: whether causation was proved: whether South African law

recognises the right to rear a child: if so, whether infringement results in a claim for constitutional damages.

#### **21. Henry Emomotimi Okah v The State (019/2014)**

Appealed from GJ

Date to be heard: 24 August 2016

Navsa JA, Shongwe JA, Dambuzza JA, Van der Merwe JA, Schoeman AJA

**International Law: Constitutional validity: Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004:** this appeal concerns the validity of s 15 of the Act: whether the court a quo had the express jurisdiction to hear the specified offences and whether the court a quo erred in finding that the evidence proved a contravention of s 14: whether the court was competent to assert jurisdiction over the appellant: whether the State proved that what had been committed in Nigeria had been crimes in line with the 'double criminality' principle.

#### **22. Vusimuzi Nkosingi Mhlongo v The State (140/2016)**

Appealed from KZP

Date to be heard: 24 August 2016

Bosielo JA, Swain JA, Zondi JA, Mocomie JA, Dlodlo AJA

**Criminal law and procedure:** whether the court misdirected itself in fixing a non-parole period in that no notice of an intention to fix a non-parole period was given to the parties nor were they given an opportunity to present argument or evidence: whether the provisions of the Criminal Law Amendment Act 105 of 1997 were correctly applied.

#### **23. Trevor Gumede v The State (800/2015)**

Appealed from KZP

Date to be heard: 24 August 2016

Bosielo JA, Swain JA, Zondi JA, Mocomie JA, Dlodlo AJA

**Criminal law and procedure: Evidence:** the admissibility of a firearm allegedly found in the appellant's room during a search without a warrant at his home: whether the single evidence of the inspector proves beyond reasonable doubt that the firearm was found under the appellant's pillow: whether the recovery of the firearm 33 days after the offences were committed was sufficiently 'recent' to infer the appellant's guilt in the robbery and murder – admissibility of the appellant's pointing-out and simultaneous confession.

#### **24. Aboobaker Seedat v The State (731/2015)**

Appealed from GP

Date to be heard: 24 August 2016

Tshiqi JA, Seriti JA, Saldulker JA, Mathopo JA, Fourie AJA

**Criminal Law and Procedure: Conviction:** whether the regional magistrate erred in convicting the appellant of rape and finding the State witnesses reliable: whether the version of the appellant that he did not rape the complainant was reasonably possibly true: whether the matter must be remitted to the regional court for further evidence: whether the appellant was properly represented at trial. **Cross-Appeal: Sentence:** Whether the SCA has jurisdiction to hear an appeal by the State against a sentence imposed by a superior court sitting as court of appeal: the suitability of wholly suspending a sentence (or postponing the passing of sentence) subject to conditions ordering the accused to pay monetary compensation to a rape victim.

#### **25. Cornelius Marthinus Jansen v The State (236/2015)**

Appealed from GJ

Date to be heard: 24 August 2016

Tshiqi JA, Seriti JA, Saldulker JA, Mathopo JA, Fourie AJA

**Criminal Law – Conviction – Sentence** – whether the appellant contravened s 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 – whether the appellant had committed the crime of rape in terms of s 3 of the Act – whether the sentences imposed were just and proper.

**26. Afgri Corporation Limited v Mathys Izak Eloff & another (20474/2014)**

Appealed from GP

Date to be heard: 25 August 2016

Maya DP, Bosielo JA, Theron JA, Van der Merwe JA, Makgoka AJA

**Zambian substantive law: Contract: Acknowledgment of debt:** whether the English Sale of Goods Act, 1893 applies: whether acknowledgment of debt valid and enforceable: whether delivery of a shipment of maize prior to acknowledgment of debt constituted payment of the debt: whether ownership of the maize transferred to the appellants: whether debt otherwise discharged.

**27. The Law Society of the Northern Provinces v Frederick Kyle (246/2015)**

Appealed from GP

Date to be heard: 25 August 2016

Navsa JA, Cachalia JA, Petse JA, Willis JA, Saldulker JA

**Attorneys Act 53 of 1979: Professional Ethics:** Application to suspend attorney from practice: Appeal against order of the court a quo suspending respondent from practising as an attorney for a period of six months: whether this punishment was appropriate, or whether the court a quo should have suspended the respondent indefinitely, until such a time as the appellant was satisfied that he was a fit and proper person and fit to practise.

**28. G4S Cash Solutions (SA) (Pty) Ltd v Zandspruit Cash & Carry (Pty) Ltd & another (852/2015)**

Appealed from GJ

Date to be heard: 25 August 2016

Lewis JA, Mathopo JA, Fourie AJA, Potterill AJA, Schoeman AJA,

**Contract:** Contract for the provision by the appellant of cash management and security services: respondents claiming damages for losses suffered as a result of thefts perpetrated by persons imitating the appellant's personnel: whether claim excluded by a time-bar clause in the contract: whether the claim is a delictual claim or a contractual claim, and whether a separate delictual claim would be competent in these circumstances: whether this court should decide on whether the claim is competent, or should refer the matter back to the trial court.

**29. The Commissioner for the South African Revenue Services v Alan George Marshall No & others (816/2015)**

Appealed from GP

Date to be heard: 26 August 2016

Navsa JA, Bosielo JA, Dambuza JA, Van der Merwe JA, Makgoka AJA

**Value-Added Tax Act 89 of 1991:** whether s 8(5) of Value-Added Tax Act 89 of 1991 applies only to services deemed to have been rendered, or also to services actually rendered: whether air ambulance services rendered by non-profit trust to provincial health departments should be zero-rated in terms of s 11(2)(n) of the Act.

**30. Martin Fraser Wingate-Pearse v The Commissioner for the South African Revenue Service (830/2015)**

Appealed from Tax Court Johannesburg

Date to be heard: 26 August 2016

Lewis JA, Cachalia JA, Tshiqi JA, Theron JA, Wallis JA

**Tax Administration Act 28 of 2011:** Appeal against interlocutory ruling regarding onus in a tax appeal in terms of s 107 of the Tax Administration Act 28 of 2011 (TAA): whether ruling appealable: whether s 78(1) of the Income Tax Act 58 of 1962 or s 95(1) of the TAA was applicable to the tax assessment on the facts: where the onus of proof lies in respect of the facts required for the tax assessment.

### **31. Luvuyo Nicolaas Mbele v The Road Accident Fund (799/2015)**

Appealed from WCC

Date to be heard: 26 August 2016

Shongwe JA, Saldulker JA, Swain JA, Zondi JA, Dlodlo AJA

**Prescription:** Appellant and Road Accident Fund (RAF) settled a claim in 2008 and the RAF issued an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996 to compensate the appellant for future medical expenses once actually incurred: the appellant issued summons in 2013 for expenses actually incurred in 2009: whether the Prescription Act 68 of 1969 is applicable to the claim for reimbursement and whether the claim has prescribed.

### **32. Krishna Soobramoney Padachie & another v The Body Corporate of Crystal Grove & another (704/2015)**

Appealed from KZD

Date to be heard: 29 August 2016

Maya DP, Petse JA, Willis JA, Fourie AJA, Makgoka AJA

**Arbitrations: Arbitration Act 42 of 1965:** Matter referred to arbitration by agreement between parties: during arbitration, appellant raised certain points of law with arbitrator: whether these points of law should have been referred to a court or counsel in terms of s 20 of the Arbitration Act 42 of 1965 by the arbitrator or the appellant: whether the appellants were prevented from applying to court for such a referral by the arbitrator: whether arbitrator's award should be reviewed and set aside.

### **33. Pepkor Retail (Pty) Limited v Truworths Limited & another (900/2015)**

Appealed from WCC

Date to be heard: 29 August 2016

Navsa JA, Cachalia JA, Zondi JA, Mathopo JA, Van der Merwe JA

**Intellectual Property: Trade Marks Act 194 of 1993:** trade mark infringement: interdict based on infringement by use of identical marks: whether the court a quo was correct in striking out portions of the appellant's affidavit: whether the undertaking provided by the appellant and accepted by the first respondent was valid and enforceable and whether its terms precluded the first respondent from seeking to interdict the appellant from using the infringing mark: whether or not the first respondent's trade mark registration 'The Look' is liable to be cancelled in terms of s 10(1), 10(2) and/or (b) and/or (c) and/or s 27 of the Trade Marks Act 194 of 1993 and whether or not the appellant has infringed the first respondent's rights in its registered trade mark by using the phrase 'The look for less' in terms of s 34(1)(a), (b) and (c) of Trade Mark Act 194 of 1993.

### **34. eThekweni Municipality v Breakers Share Block Limited (42/2016)**

Appealed from KZD

Date to be heard: 30 August 2016

Mpati AP, Shongwe JA, Swain JA, Mocomie JA, Potterill AJA

**Contract law:** Interpretation of contractual clause in lease relating to calculation of floor area.

### **35. Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd (886/2015)**

Appealed from WCC

Date to be heard: 30 August 2016

Navsa JA, Theron JA, Wallis JA, Petse JA, Willis JA

**Copyright:** Application for interdict prohibiting infringement of copyright involving copying of substantial portions of English/Afrikaans dictionary: whether literary work proved to have been copied

### **36. State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd (641/2015)**

Appealed from GP

Date to be heard: 30 August 2016

Cachalia JA, Bosielo JA, Tshiqi JA, Van der Merwe JA, Dlodlo AJA

**Administrative Law: Promotion of Administrative Justice Act 3 of 2000:** whether the provisions of PAJA apply to a case where an organ of state seeks to review and set aside its own conduct: whether the appellant should be permitted to set aside the main agreement without complying with PAJA: whether there was an unreasonable delay on the part of the appellant in bringing the application and if such delay is found to exist, whether the court should overlook the delay.

**37. Breakers Share Block Limited v The eThekweni Municipality (804/2015)**

Appealed from KZD

Date to be heard: 31 August 2016

Mpati AP, Shongwe JA, Swain JA, Mocomie JA, Potterill AJA

**Local Government:** Municipal rates and taxes: Municipal Property Rates Act 6 of 2004: reclassification by respondent municipality of the appellant from 'residential' to 'business and commercial' properties in terms of the respondent's rates policy in respect of the 2013/2014 rates year: whether the court a quo granted competent relief: whether appellant's property had been properly categorised for purposes of collecting rates under the Act: whether the respondent's notice sent to the appellant purporting to advise it of the reclassification of its property complied with s 49(1)(a) of the Act.

**38. The Commissioner for the South African Revenue Services v Van Der Merwe, Liebenberg Dawid Ryk NO & others (598/2015)**

Appealed from KZD

Date to be heard: 31 August 2016

Lewis JA, Theron JA, Wallis JA, Petse JA, Dambuza JA

**Tax law: Customs and Excise Act 91 of 1964: Value-Added Tax Act 89 of 1991:** whether the provisions of ss 20(4), 38 and/or 39 of the Customs and Excise Act 91 of 1964 or s 7(1)(b) of the Value Added Tax Act 89 of 1991, constitute an embargo in favour of the Commissioner preventing the liquidation of a company in the process of being wound-up, and unable to pay its debts, from taking possession of property of the company in the custody and/or under the control of the Commissioner and dealing with such property as provided for in the law relating to insolvency, unless duty and/or value-added tax has been paid on such property.

**39. The National Director of Public Prosecutions v Ishwarlall Ramlutchman (677/2015)**

Appealed from KZP

Date to be heard: 31 August 2016

Bosielo JA, Seriti JA, Zondi JA, Mathopo JA, Van der Merwe JA

**Prevention of Organized Crime Act 121 of 1998:** Confiscation order: Interpretation: meaning of benefit: appeal against an order dismissing an appeal by the appellant against the refusal by the regional magistrate of the special commercial crimes court to grant a confiscation order in favour of the appellant: whether the meaning of the word 'benefit' as defined in s 12(3) of POCA should be truncated to mean net profit: the nature of the enquiry under s 18 of POCA with particular reference to the sufficiency of evidence to make an order for an appropriate amount: accordingly, whether the regional magistrate correctly refused the application for the grant of a confiscation order in favour of the appellant.

**40. Tamryn Manor (Pty) Ltd v Stand 1192 Johannesburg (Pty) Ltd (785/2015)**

Appealed from GJ

Date to be heard: 01 September 2016

Maya DP, Bosielo JA, Saldulker JA, Van der Merwe JA, Fourie AJA

**Contract: Sale of immovable property:** whether an agreement for sale of immovable property was capable of being rectified where the agreement wrongly recorded the identity of parties without recourse to oral evidence: whether the exception was correctly upheld.

**41. Yuppiefchef Holdings (Pty) Ltd v Yuppief Stuff Online CC (1088/2015)**

Appealed from WCC

Date to be heard: 01 September 2016

Lewis JA, Wallis JA, Swain JA, Dambuza JA, Schoeman AJA

**Intellectual Property: Trade Marks Act 194 of 1993:** Trade mark infringement and passing off: Appeal against an order dismissing an application for final interdictory relief based on ss 34(1)(a), 34(1)(b) and 34(1)(c) of the Trade Marks Act to prohibit infringement of a trade mark and common law rights of passing off: whether the use by the respondent of the trade mark Yuppief Gadgets and Yuppief Stuff in relation to a variety of goods sold online, including household goods, constituted use of a mark in relation to the same or similar goods for which the appellant's Yuppiefchef trade mark was

registered: whether the respondent's use of that trading style for its online retail business constituted passing off: whether an interdict should be granted.

**42. Edwards John Black v FirstRand Bank Limited t/a Wesbank (20734/2014)**

Appealed from GJ

Date to be heard: 01 September 2016

Cachalia JA, Shongwe JA, Tshiqi JA, Seriti JA, Makgoka AJA

**National Credit Act 34 of 2005:** notice in terms of s 127: whether the respondent complied with the provisions of ss 127(2) and (5) of the National Credit Act before it sold the appellant's vehicle and claiming the resultant shortfall from the appellant: whether the notices in terms of ss 127(2) and (5) were received by the appellant: whether the respondent did not dispose of the vehicle for the best price reasonably obtainable as contemplated in s 127(4)(b) of the National Credit Act: whether the shortfall owing was correctly determined: whether the quantum of damages was proved.

**43. Kathleen Joan Schmitz v Michael John Schmitz (779/2015)**

Appealed from KZD

Date to be heard: 02 September 2016

Maya DP, Tshiqi JA, Saldulker JA, Fourie AJA, Dlodlo AJA

**Family Law: Matrimonial Property Act 88 of 1984: Divorce Act 70 of 1979:** appeal against a declaratory order that a marriage governed by the accrual system: whether the date of calculation of the accrual should be *litis contestatio* and not the date of divorce: whether on a proper interpretation of the relevant provisions of the Matrimonial Property Act 88 of 1984 and the Divorce Act 70 of 1979, the determination date for the value of the accrual is *litis contestatio*.

**44. Transnet SCO Limited v Total South Africa (Pty) Ltd & another (728/2015)**

Appealed from GJ

Date to be heard: 02 September 2016

Lewis JA, Theron JA, Zondi JA, Makgoka AJA, Schoeman AJA,

**Contract: Interpretation: Petroleum Pipeline Act 60 of 2003:** Appeal against an order dismissing the appellant's defences raised in opposing the first respondent's action for declaratory relief that the variation agreement concluded between it and the appellant in 1991 is valid and binding, and seeking an order for specific performance from the appellant for payment of an amount in excess of R172 million: whether the agreements pertaining to tariffs payable for the transportation of petroleum products concluded between the first respondent and the appellant remain enforceable despite the promulgation of the Petroleum Pipeline Act: whether the first respondent is entitled to an order for specific performance of a contract which the appellant contends was abolished by legislation

**45. Donald Khobane v The State (887/2015)**

Appealed from GJ

Date to be heard: 02 September 2016

Shongwe JA, Willis JA, Dambuza JA, Mathopo JA, Mocomie JA

**Criminal law and procedure:** whether or not two judges of the South Gauteng High Court, Johannesburg, in considering the appellant's application for leave to appeal against his sentence of 15 years' imprisonment imposed by the regional court Alexandra on a charge of fraud, ought to have found that there was a reasonable prospect that another court might conclude that the trial court misdirected itself by imposing a sentence that is startlingly inappropriate and failing to find substantial and compelling circumstances warranting the imposition of a lesser sentence: whether the trial court misdirected itself by invoking the provisions of the Criminal Law Amendment Act 105 of 1997 (minimum sentences legislation) in circumstances where the appellant had not been forewarned that the State might request the trial court to invoke these provisions.

**46. Bonitas Medical Fund v The Council for Medical Schemes & another (814/2015)**

Appealed from GP

Date to be heard: 05 September 2016

Mpati AP, Bosielo JA, Petse JA, Swain JA, Van der Merwe JA

**Administrative law:** Section 44(4)(a) of the Medical Schemes Act 131 of 1998: interpretation of s 49(1) of the Act: whether the registrar's decision of 10 November 2014 ordering an inspection into the affairs of the appellant medical fund in terms of s 44(4)(a) of the Act and s 2 of the Financial Institutions Act 80 of 1998 is appealable in terms of s 49 of the Act.

**47. XO Africa Safaris CC v The Commissioner for the South African Revenue Service (395/2015)**

Appealed from Tax Court Cape Town

Date to be heard: 05 September 2016

Navsa JA, Wallis JA, Saldulker JA, Mathopo JA, Dlodlo AJA

**Tax Law: Section 11(2)(l) of the Value-Added Tax Act 89 of 1991:** interpretation of s 11(2)(l) of the VAT Act: the proper VAT rating of services supplied by a South African VAT vendor to a foreign tour operator: whether the local services comprising hotel accommodation, restaurants, guided tours and excursions in South Africa were supplied by the appellant as contemplated in the VAT Act and if so, whether they were subject to VAT at the standard rate of 14% or whether they were subject to a zero-rating in terms of s 11(2)(l) of the VAT Act.

**48. Pieter Johannes Muller v Sanlam Life Insurance Limited (1162/2015)**

Appealed from WCC

Date to be heard: 05 September 2016

Lewis JA, Seriti JA, Willis JA, Fourie AJA, Potterill AJA

**Civil procedure and practice: Condonation:** the appeal lapsed: whether or not appellant's non-compliance with the SCA rules should be condoned and the appeal reinstated. **Prescription:** Section 12(1) of the Prescription Act 68 of 1969: claim for proceeds of four life insurance policies in the total amount of R8 876 778 together with interest from the respondent insurer: whether in terms of s 12(1) of the Act appellant's claim became 'due' on 13 September 2006 (the death of the life insured): whether the respondent insurer obtained a 'right' or 'privilege' to rely on prescription on 13 September 2009 (ie 3 years after the date of death) as contemplated in s 12(2)(e) of the Interpretation Act 33 of 1957: whether the insurer tacitly waived its reliance on prescription: whether the insurer should be estopped from relying on prescription.

**49. The Minister of Home Affairs & others v DGLR & another (1051/2015)**

Appealed from GP

Date to be heard: 06 September 2016

Maya DP, Shongwe JA, Theron JA, Swain JA, Fourie AJA

**Constitutional Law: International Law: Administrative law: Citizenship Act 88 of 1995:** refusal by the Department to register the minor child born of Cuban parents in South Africa as a South African citizen: whether the minor child meets the requirements to be declared a South African citizen under s 2(2) of the Act: whether the relief granted by the court a quo was appropriate.

**50. Andries Van Heerden v The Regional Court Magistrate, Paarl & others (883/2015)**

Appealed from WCC

Date to be heard: 06 September 2016

Lewis JA, Tshiqi JA, Zondi JA, Van der Merwe JA, Makgoka AJA

**Criminal law and procedure:** Review in terms of Rule 53 of the Uniform Rules of Court: whether the third respondent had offered the appellant a quid pro quo in exchange for his plea of guilty and whether the third respondent fostered the reasonable belief on the appellant's part that his plea would be reciprocated by which belief he tendered the plea of guilty.

**51. Dobsa Services CC v Dlamini Advisory Services (Pty) Ltd & another (50/2016)**

Appealed from GJ

Date to be heard: 06 September 2016

Bosielo JA, Petse JA, Mathopo JA, Mocomie JA, Schoeman AJA

**Civil procedure and practice:** rescission of default judgment: whether the noting of an application of rescission in favour of the appellant automatically suspended the execution of judgment ie the operation of the writ of execution: whether the appellant ought to have been ordered to pay costs of the urgent application of an interdict on the basis that the mere lodging of the rescission application had automatically suspended the execution of judgment: whether the court a quo properly exercised its discretion when awarding the costs orders in respect of rescission and stay of costs applications: whether an applicant in an application for rescission seeks an indulgence and that costs should be awarded against such applicant unless the respondent's opposition is unreasonable and vexatious: whether the order against costs solely is appealable.

**52. FirstRand Bank Ltd v K J Foods CC (In Business rescue) (734/2015)**

Appealed from GP

Date to be heard: 07 September 2016

Mpati AP, Theron JA, Seriti JA, Van der Merwe JA, Schoeman AJA

**Company Law: Business Rescue: Interpretation:** The meaning and proper interpretation of s 153 (1)(a)(ii) and 153 (7) of the Companies Act 71 of 2008: whether the court a quo found correctly in favour of the respondent by finding the appellant's vote to be inappropriate and setting aside the voting result and adopting the business rescue plan.

**53. Primedia Broadcasting (a division of Primedia (Pty) Ltd) & others v Speaker of the National Assembly & others (784/2015)**

Appealed from WCC

Date to be heard: 07 September 2016

Lewis JA, Cachalia JA, Tshiqi JA, Swain JA, Zondi JA

**Constitutional law:** right to an open Parliament – ss 59 and 72 of the Constitution: constitutionality of Parliament's broadcasting policy and rules and the use of the signal jamming device during the President's annual State of the Nation Address (SONA) of 12 February 2015: whether Parliament's limitations on the broadcasting of incidents of grave disorder and unparliamentary conduct were reasonable and consistent with the Constitution: and whether the use of signal jamming devices at an open sitting of Parliament shortly before the SONA 2015 was lawful and Constitutional.

**54. Windrush Intercontinental SA & another v UACC Bergshav Tankers AS (556/2015)**

Appealed from KZD

Date to be heard: 08 September 2016

Maya DP, Shongwe JA, Wallis JA, Dambuza JA, Makgoka AJA

**Maritime Law:** whether at the time of the arrest of the MT 'Asphalt Venture' there was in existence a maritime lien for crews' wages entitling the respondent to arrest the MT 'Asphalt Venture' by way of an in rem arrest in terms of section 3(4)(a) of the Admiralty Jurisdiction Regulation Act 105 of 1983: whether the court a quo erred in finding that the respondent had established a prima facie case for the proposition that Concord was liable to pay wages to the crewmen and that the claim was supported by a maritime lien.

**55. The Commissioner for the South African Revenue Service v Marula Platinum Mines (Pty) Ltd (218/2015)**

Appealed from Tax Court Gauteng

Date to be heard: 08 September 2016

Navsa JA, Cachalia JA, Tshiqi JA, Mathopo JA, Fourie AJA

**Income Tax Act 58 of 1962 –** Appeal and cross-appeal against ruling of court below concerning classification of expenditure incurred by respondent for income tax purposes – leave to appeal

granted by the court below – respondent is a mining company which extracts mineral ore and then extracts a concentrate from the ore, which it on-sells, the purchase price being finalised a number of months later – income deferred till year of finalisation of purchase price, but expenditure claimed as deduction immediately – whether the ore or the concentrate constitutes ‘trading stock’ for purposes of s 23F(2) of the Income Tax Act 58 of 1962 (ITA) – whether appellant entitled to rely on new argument on appeal that the extraction process constitutes ‘manufacturing’, and if so, whether extraction process constitutes ‘mining’ or ‘manufacturing’ – whether s 23F(2) of the ITA applies where respondent did not intend to acquire ownership of the concentrate – whether the mining costs of ore and concentrate and/or the drying charges fall within expenditure incurred in respect of the acquisition of trading stock in terms of s 22(3)(a)(i) of the ITA – whether s 23F(2) applies to add-backs of deductions claimed under s 11(a) of the ITA – whether costs other than mining costs should be added-back in terms of s 23F(2) – whether royalty expenses were correctly classified as being of a capital nature.

**56. Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd (1040/2015)**

Appealed from WCC

Date to be heard: 08 September 2016

Bosielo JA, Theron JA, Willis JA, Swain JA, Dlodlo AJA

**Prescription: contract:** whether the appellant’s claim prescribed pursuant to a written loan agreement which provided that the loan is due and repayable within 30 days from the date of delivery of the appellant’s written demand: whether the appellant can by its own conduct postpone the commencement of prescription by failing to satisfy a condition that would render a debt due and payable.

**57. Airports Company South Africa SOC Limited v Airport Bookshops (Pty) Limited t/a Exclusive Books (945/2015)**

Appealed from GJ

Date to be heard: 12 September 2016

Lewis JA, Shongwe JA, Willis JA, Zondi JA, Potterill AJA

**Property Law: Eviction:** the main issue on appeal is an alleged tacit term in a lease agreement: whether the termination of a month to month lease agreement was satisfied and terminated upon reasonable notice having been given: whether the court a quo erred in accepting the tacit term that neither party will give notice until a lawful tender process had been followed: whether the extension of the lease agreement was in contravention of s 27 of the Constitution and that the respondent is occupying the premises on an unlawful basis.

**58. The Minister of Justice and Constitutional Development & another v The South African Restructuring and Insolvency Practitioners Association & others (693/2015)**

Appealed from WCC

Date to be heard: 13 September 2016

Maya DP, Wallis JA, Swain JA, Mathopo JA, Van der Merwe JA

**Constitutional Law: Affirmative action policy:** whether the adoption of the policy on the Appointment of Insolvency Practitioners, GN 789, GG 38088, 17 October 2014 constitutes a legitimate affirmative action measure contemplated in s 9(2) of the Constitution and whether the respondents have established irrational, ultra vires and/or the unlawful exercise of public power on the part of the Minister under ss 9, 10, 22 and 33 of the Constitution.

**59. Eskom Holdings Limited v Derek Anthony Halstead-Cleak (599/2015)**

Appealed from GP

Date to be heard: 13 September 2016

Lewis JA, Willis JA, Fourie AJA, Makgoka AJA, Schoeman AJA

**Delict: Consumer Protection: Product liability:** whether the injuries which the respondent sustained when he came into contact with a low-hanging power line – while cycling – for which the appellant is responsible, gave rise to strict liability on the part of the appellant under s 61 of the Consumer Protection Act 68 of 2008.

**60. The Registrar of Pension Funds v British American Tobacco Pension Fund & others (664/2015)**

Appealed from GP

Date to be heard: 13 September 2016

Cachalia JA, Shongwe JA, Petse JA, Dambuza JA, Dlodlo JA

**Pension Fund Law: Pension Funds Act 24 of 1956:** Actuarial surplus utilisation: whether the Fund could validly use a portion of its member surplus account following a surplus apportionment exercise in terms of s 15B of the Pension Funds Act 24 of 1956 (the Act) in order to fund a deficit that arose in the Fund on 31 March 2005: the proper interpretation and application of ss 15A, 15D and 15H of the Act.

**61. Absa Technology Finance Solutions (Pty) Ltd v Fulela Trade and Invest 21 (Pty) Ltd t/a Caltex and Downs Service Station & another (519/2015)**

Appealed from GJ

Date to be heard: 14 September 2016

Lewis JA, Shongwe JA, Swain JA, Dambuza JA, Mocumie JA

**Contract Law:** whether the appellant was entitled to conclude the Master Rental Agreement (MRA) with the respondents for the lease of the electric generator: whether the appellant had to prove ownership of the generator: whether the court a quo was correct in finding that the real issue was whether the plaintiff was entitled to conclude the MRA with the respondents. **Civil Procedure:** whether the appellant lacked locus standi: whether the respondents succeeded in discharging the onus of proving misrepresentation and whether the court a quo was correct in granting absolution from the instance.

**62. The Standard Bank of South Africa Limited v Willem Mottel & others (829/2015)**

Appealed from WCC

Date to be heard: 14 September 2016

Cachalia JA, Tshiqi JA, Theron JA, Saldulker JA, Makgoka AJA

**Property Law: Estoppel: Section 25 and Section 26 of the Constitution:** whether the full court erred in declaring a sale agreement to be *void ab initio* where the first and second respondents sold immovable property to the third and fourth respondents, even though the appellant holds a mortgage bond over the property passed in its favour by the third and fourth respondents: whether the first and second respondents are estopped from denying that they intended to pass transfer of the property and whether the passing of ownership serves as the basis for enforceability of the appellant's bond, notwithstanding any misrepresentation made to the first and second respondents.

**63. Johannes George Kruger v Joint Trustees of the Insolvent Estate of Paulos Bhekinkosi Zulu & another (1121/2015)**

Appealed from KZP

Date to be heard: 15 September 2016

Mpati AP, Willis JA, Saldulker JA, Dambuza JA, Potterill AJA

**Banking Law: Banks Act 94 of 1990: civil procedure:** whether the administrator was entitled to take possession of assets of a person suspected of operating an unlawful scheme in contravention of s 11 of the Banks Act 94 of 1990: correctness of the in limine procedural points upheld by court a quo.

**64. Peter Gees v The Provincial Minister of Cultural Affairs and Sport, Western Cape & others (974/2015)**

Appealed from WCC

Date to be heard: 15 September 2016

Maya DP, Bosielo JA, Seriti JA, Fourie AJA, Dlodlo AJA

**Administrative Law: Promotion of Administrative Justice Act 3 of 2000:** the interpretation of section 34(1) of the National Heritage Resources Act 25 of 1999 and the scope of this court's decision in *Qualidental Laboratories (Pty) Ltd v Heritage Western Cape* 2008 (3) SA 167 (SCA): whether the Act authorises heritage authorities to impose conditions controlling future development on a property

when granting a permit authorising demolition of the structure on a property with no formal heritage status.

**65. Mull Chand Malu v Rothmans of Pall Mall, London, Limited (329/2015)**

Appealed from GP

Date to be heard: 20 September 2016

Maya DP, Shongwe JA, Wallis JA, Makgoka AJA, Schoeman AJA

**Intellectual Property: Trade Mark: Trade Marks Act 94 of 1993:** whether the appellant's subject mark application no. 2006/04784 SIR label is confusingly similar to two of the respondent's label trademarks and thus incapable of registration in terms of provisions of s 10(12) and (14) of the Act.