

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 2 2014 - MAY**

CASES ENROLLED FOR HEARING

MEC for Health, Eastern Cape Province v Feza Mbodla (449/13)

Appealed from ECM

Date to be heard: 2 May 2014

Mthiyane DP, Maya, Wallis JJA, Van Zyl, Mathopo AJJA

Prescription - Whether the court a quo was correct in holding that the respondent's claim against the defendant had not been extinguished by prescription - whether respondent complied with the notice requirements of the Limitation of Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 - whether respondent's action for damages against the appellant prescribed by reason of actual or constructive knowledge of his claim.

Minister of Police v Jaco Scott & another (969/13)

Appealed from GNP

Date to be heard: 2 May 2014

Navsa, Shongwe, Theron, Willis JJA, Legodi AJA

Delict – Whether the appeal should be reinstated - whether appellant is liable for damages to the second respondent (a company) for the unlawful arrest of the respondent (CEO of the company) – quantum of damages to be awarded to first and second respondent – condonation for the late filing of the record.

Investec Bank Ltd t/a Investec Private Bank v Mavhungu David Ramurunzi (445/13)

Appealed from WCC

Date to be heard: 2 May 2014

Lewis, Ponnar, Bosielo, Saldulker JJA, Mocumie AJA

Prescription – Whether the credit provider's claim prescribes in circumstances where (a) an action is instituted prior to the elapse of the three year period of prescription in terms of the Prescription Act 68 of 1969; (b) the matter is thereafter adjourned by the court in terms of s 130(4)(b) of the National Credit Act 34 of 2005 due to non-compliance by the credit provider with the provisions of s 129(1)(b) of the NCA; and (c) the requisite notice in terms of s 129 of the NCA is subsequently delivered to the consumer but more than three years after the debt became due.

Security Industry Alliance v Private Security Industry Regulatory Authority & others (479/13)

Appealed from GNP

Date to be heard: 5 May 2014

Mpati P, Mhlanta, Leach JJA, Hancke, Swain AJJA

Administrative law – Whether the first respondent gave adequate consideration to comments received during the notice and comment process – whether the first and second respondents considered the written representations received – whether the decision to amend the regulations was reasonable and rational – whether the decision by the respondents to amend the regulations was a policy decision.

Road Accident Fund v Fonseca Rui Fernando Faria (567/13)

Appealed from GSJ

Date to be heard: 5 May 2014

Maya, Shongwe, Willis JJA, Van Zyl, Mocumie AJJA

Road Accident Fund Act 56 of 1996 – Whether the court should entertain the appeal as the decision will have no practical effect – whether the respondent is entitled to general

damages arising from a motor vehicle collision under the Act – whether the appellant’s rejection of a serious injury assessment report can be overridden by the high court.

Lourens Stephanus Prinsloo v The State (534/13)

Appealed from FB

Date to be heard: 5 May 2014

Bosielo, Saldulker JJA, Mathopo AJJA

Criminal Law – Appeal against conviction – whether the respondent has proved its case beyond reasonable doubt - whether the witnesses of the respondent contradicted themselves – whether the appellant’s version was wrongfully rejected.

Magistrate M Pangarker v Botha & another (446/13)

Appealed from WCC

Date to be heard: 6 May 2014

Mthiyane DP, Lewis, Mhlantla, Wallis JJA, Legodi AJA

Civil procedure – Whether the appellant on 8 March 2012 failed to entertain the first respondent’s application for the postponement of his divorce trial - whether appellant committed a gross irregularity by not granting the first respondent the opportunity to argue a postponement application and by not granting the first respondent a fourth postponement of his divorce trial due to the unavailability of his fifth attorney of record.

Constitution – whether conduct constitutes a failure of justice and the denial of a fair trial in terms of sections 2, 34 and 39(1) of the Constitution - in the event of a finding of gross irregularity, whether the appellant is liable in her personal capacity for the costs of opposing the relief sought in the review application.

Solidarity & another v The Public Health & Welfare Sectoral Bargaining Council & others (422/13)

Appealed from LAC

Date to be heard: 6 May 2014

Ponnan, Bosielo, Theron JJA, Hancke, Swain AJJA

Labour Law – Whether the LAC erred by finding that the second appellant (Kotze) had not been dismissed and/or by finding that Kotze had ‘resigned’ – whether the LAC correctly interpreted the Labour Relations Act and the Public Service Act – whether s 17(5) of the PSA applies to suspended employees – whether the LAC had the jurisdiction to entertain the dispute.

The Minister of Water and Environmental Affairs v Air Jaws Africa CC (t/a Shark Adventures) & others (450/12)

Appealed from WCC

Date to be heard: 6 May 2014

Maya, Shongwe, Willis JJA, Van Zyl, Mocomie AJJA

Administrative Law – whether the court should review and set aside decisions by the appellant to refuse the allocation of permits for White Shark Cage Diving to the first respondent.

Nthabiseng Matshwene Evelyn Kgatla-Kgaphola v Davel de Klerk Kgatla Inc. (409/13)

Appealed from GNP

Date to be heard: 9 May 2014

Mpati P, Navsa, Leach, Wallis JJA, Van Zyl AJJA

Company Law – whether, in the absence of agreement, respondent may continue trading in the registered name which corresponds with the appellant’s surname.

Constitution – whether respondent’s continued and indefinite use of appellant’s name is an infringement of the latter’s personal identity rights.

Samancor Chrome Limited v Rham Equipment (Pty) Ltd (532/13)

Appealed from GSJ

Date to be heard: 9 May 2014

Lewis, Ponnan, Shongwe JJA, Legodi, Mocumie AJJA

Contract – whether the judgment delivered by Blieden J in November 2009 renders res judicata the issue whether the parties concluded one or two agreements when they contracted for the supply and maintenance of vehicular mining equipment – Interpretation - Whether it is permissible for a court when interpreting judgments to have regard to material extrinsic to the judgment in circumstances where the judgment itself is clear and unambiguous.

Rustenburg Local Municipality v Vincent Mdango & others (937/13)

Appealed from NWM

Date to be heard: 9 May 2014

Mhlantla, Bosielo, Theron, Willis JJA, Swain AJJA

Eviction – whether court a quo erred in suspending the eviction order granted in terms of PIE – whether the court a quo erred in fact or in law in depriving the appellant of its costs.

Thomas Walter Rothwell Hepple & others v The Law Society of the Northern Provinces (507/13)

Appealed from GNP

Date to be heard: 12 May 2014

Mthiyane DP, Ponnan, Saldulker JJA, Hancke, Mathopo AJJA

Attorneys Act 53 of 1979 – Whether Appellants’ names should be struck from the roll of practising attorneys – whether the appellants are guilty of conduct unbecoming an attorney and whether the appellants, given their conduct are fit and proper to practise.

The Commissioner for The South African Revenue Services v Terraplas South Africa (Pty) Ltd (375/13)

Appealed from GNP

Date to be heard: 12 May 2014

Navsa, Mhlantla, Leach JJA, Van Zyl, Mocumie AJJA

Interpretation - Customs and Excise Act 91 of 1964 - meaning of the words ‘floor’ and ‘floor covering’ – classification in terms of s 47(9)(a)(1)(aa) of the Act – whether floor can be interpreted to mean ‘the surface in a room or building upon which one walks’ and not ‘a level space’ as contended by the respondent.

Contract – Whether privity of contract exists between the appellant and first respondent - whether the contracts are valid and enforceable and effect of pending litigation on contract – whether the sub-consultancy agreement concluded pursuant to the main agreement between the appellant and the second respondent is valid and enforceable.

Firstrand Bank Ltd v The Land and Agricultural Development Bank of South Africa (436/13)

Appealed from GNP

Date to be heard: 12 May 2014

Maya, Shongwe, Wallis JJA, Swain, Legodi AJJA

Constitution – Whether the judgment and order of the court a quo results in an arbitrary deprivation of the appellant’s property rights as a concurrent and preferent creditor in terms of s 25 of the Constitution.

Insolvency Law – Interpretation – Whether the preference afforded to the holder of a general notarial bond in terms of s 102 of the Insolvency Act 24 of 1936 extends only to such portion of the free residue as may consist of the proceeds of movable property.

The Minister of Police & another v SA Metal and Machinery Company (Pty) Ltd (462/13)

Appealed from WCC

Date to be heard: 13 May 2014

Mpati P, Lewis, Bosielo, Theron JJA, Mocumie AJJA

Delict - Whether the requirements for reliance on the actio ad exhibendum were met by the respondent - whether it was appropriate for the respondent to seek relief by way of application.

Plaaskem (Pty) Ltd v Nippon Africa Chemicals (Pty) Ltd (574/13)

Appealed from GNP

Date to be heard: 13 May 2014

Mthiyane DP, Mhlanthla, Shongwe, Willis JJA, Hancke AJJA

Contract – Whether the contract between the parties was terminable on reasonable notice – whether a tacit term to that effect ought to have been imported into the contract.

Gerhardus Adriaan Odendaal & another v Structured Mezzanine Investments (Pty) Ltd (482/13)

Appealed from WCC

Date to be heard: 13 May 2014

Ponnan, Maya, Leach, Saldulker JJA, Swain AJJA

Surety - Whether deed of suretyship complies with the requirements of s 6 of The General Law Amendment Act 50 of 1956 – whether the principal debt secured by the deed of suretyship is identifiable to the extent that it is capable of ascertainment by reference to the document supplemented by extrinsic evidence.

LA Health Medical Scheme v Johannes Petrus Louw Horn & others (385/13)

Appealed from WCC

Date to be heard: 15 May 2014

Navsa, Maya, Wallis, Saldulker JJA, Mathopo AJJA

Interpretation – the proper interpretation of the rules of a pension fund pertaining to the payment of a retrenchment benefit.

Royal Sechaba Holdings (Pty) Ltd v Grant William Coote & another (366/13)

Appealed from GNP

Date to be heard: 15 May 2014

Lewis, Bosielo, Theron, Willis JJA, Legodi AJJA

Arbitration – Whether an arbitration award can sustain a defence of res judicata or issue estoppel where the party raising it was not a party to the arbitration award.

Estoppel – Whether it would be fair and equitable in the circumstances to uphold the respondents' special defence of issue estoppel.

Selwyn Davids v The State (461/13)

Appealed from WCC

Date to be heard: 15 May 2014

Ponnan, Shongwe JJA, Hancke, Van Zyl, Mocumie AJJA

Criminal Procedure – Appeal against conviction and sentence - whether the State proved its case beyond a reasonable doubt – whether the trial court and the court a quo erred in its assessment of the evidence in so far as it related to the number of perpetrators involved, the reliability of the testimony of the appellant's co-accused, the appellant's testimony and the inference to be drawn from the appellant's failure to call an alibi witness – whether or not the trial court erred in refusing to grant the appellant's application for discharge in terms of s 174 of the Criminal Procedure Act 51 of 1977 - whether, in refusing the s 174 application, the appellant's constitutional rights to silence, not to be compelled to give self-incriminating evidence and to a fair trial were infringed.

Daniella Cornelia Butler & another v Gerrit Marthinus van Zyl & others (554/13)

Appealed from GSJ

Date to be heard: 16 May 2014

Mpati P, Ponnan, Willis JJA, Van Zyl, Legodi AJJA

Interdict - Whether or not the interim interdicts granted by the then Bophutatswana Provincial Division of the High Court are alive and in force.

Company Law - Whether notices seeking to convene a shareholders meeting are invalid - whether the court should compel the second respondent to convene a shareholders meeting.

The Body Corporate of 'The Avenues' v Barney Hurwitz (in his capacity as the sole trustee for the time being of The Hurwitz-Smilg Sea Point Trust) & another (217/11)

Appealed from WCC

Date to be heard: 16 May 2014

Navsa, Shongwe, Leach JJA, Swain, Mocomie AJJA

Property Law – Whether the respondents have any right of development in respect of the scheme concerned – whether the respondents' right to extension in respect of the scheme pursuant to s 18 of the Sectional Titles Act of 1971 lapsed under s 60 of the Sectional Titles Act 95 of 1986 – whether the rights of extension now vest in the appellant – whether the respondents, as non-owners of residential units in the scheme, are entitled to own non-residential units – whether the respondents' consent was required in order for the appellant to alienate their right of extension – alternatively whether respondents were entitled to withhold such consent from the appellant.

Jacobus Michael Prinsloo v The State (525/13)

Appealed from GNP

Date to be heard: 16 May 2014

Bosielo, Theron, Wallis JJA

Criminal law – Appeal against sentence and conviction - whether the State proved the guilt of the appellant beyond reasonable doubt – whether the conviction and sentence imposed on the appellant was justified in the circumstances.

Evidence - whether the court a quo erred in relying on inadmissible hearsay evidence and the evidence of an accomplice.

Willem Pfeiffer v Cornelius Johannes van Wyk & others (267/13)

Appealed from GNP

Date to be heard: 19 May 2014

Mthiyane DP, Lewis, Mhlanthla, Saldulker JJA, Mathopo AJJA

Contract – whether the contract between the appellant and the first and second respondents is valid – whether the court could make an order for the substitution of the appellant's improvement lien by the filing of security by the third respondent, who is not the owner of the property improved and against whom no enrichment claim lies – whether there has been compliance with s 2(1) of the Alienation of Land Act 68 of 1981.

Vhembe District Municipality v Stewarts & Lloyds Trading (Booyens) Pty Ltd & another (397/13)

Appealed from LT

Date to be heard: 19 May 2014

Ponnan, Leach, Theron JJA, Van Zyl, Swain AJJA

Civil Law – Whether the condonation granted by Ebersohn AJ in the court a quo for the late filing of the answering affidavit appealable – if so, whether the respondent has made out a sufficient case for condonation – whether the requirements of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 applicable – whether the service of the summons by the second respondent met the requirements of s 115(3) of the Local Government: Municipal Systems Act 32 of 2000.

Nngwedzeni Johannes Madzivhele v The State (75/14)

Appealed from LT

Date to be heard: 19 May 2014

Shongwe, Wallis, Willis JJA, Hancke, Legodi AJJA

Sentence – Appeal against life sentence imposed on conviction of one count of rape – whether substantial and compelling circumstances exist to justify the imposition of a lesser sentence.

Nicolin Peter Crouwcamp v Civic Independent & others (416/13)

Appealed from WCC

Date to be heard: 20 May 2014

Mpati P, Navsa, Bosielo, Saldulker JJA, Mocumie AJJA

Administrative Law – Whether there is a reasonable perception of bias where an attorney who acts as a chairperson of a disciplinary hearing of a voluntary association also acts for one of the parties in litigation involving his decision - legality of decision in which a stranger is involved in the decision making of a committee of a voluntary association – whether the meetings of the first respondent were quorate when the disciplinary committee of the first respondent was appointed – the procedural and substantive fairness of the disciplinary hearing before the eight respondent.

The Local Municipality of Madibeng v Paphiri Business Enterprise CC (134/13)

Appealed from GNP

Date to be heard: 20 May 2014

Lewis, Leach JJA, Hancke, Swain, Mathopo AJJA

Contract law – whether the respondent has established the essential terms of the contract it is relying on – whether respondent has proved its damages on a balance of probabilities.

The Commissioner for The South African Revenue Service v Pretoria East Motors (Pty) Ltd (291/12)

Appealed from Tax Court

Date to be heard: 20 May 2014

Ponnan, Maya, Theron, Wallis JJA, Van Zyl AJJA

Tax law – Whether the respondent failed to discharge its statutory onus of proving that each of the assessments was wrong – whether the respondent was entitled to deduct deemed input tax on its purchases of second hand vehicles from third parties.

The Director-General: The Department of Home Affairs & others v Musena Nicole Dekoba (224/13)

Appealed from WCC

Date to be heard: 22 May 2014

Mthiyane DP, Maya, Wallis JJA, Van Zyl, Mathopo AJJA

Refugee law – Administrative law – Whether the court is empowered to order the appellant to issue the respondent with an asylum seeker permit pursuant to s 22(1) of the Refugees Act 130 of 1998 after the respondent's application for asylum had been rejected and her appeal to the Refugee Appeal Board had been dismissed – whether the Refugee Appeal Board was functus officio – if so, whether the appellants were authorised to interfere with the decision.

Eskom Holdings Soc Ltd v Lindy Norton & another (464/13)

Appealed from GNP

Date to be heard: 22 May 2014

Navsa, Lewis, Shongwe JJA, Hancke, Mocumie AJJA

Contract – The proper interpretation of a clause in a deed of servitude – whether the appellant was entitled to rely on it to claim that it was not required to pay the first respondent the servitude rental - whether the respondent was entitled to cancel the agreement of servitude – whether the appellant is estopped from relying on the provision concerned – whether the respondent is entitled to rely on the doctrine of election to avoid a non-waiver clause contained in the deed of servitude.

Nyelisani Ndateni v The State (959/13)

Appealed from LT

Date to be heard: 22 May 2014

Mhlanthla, Theron, Willis JJA, Swain, Legodi AJJA

Criminal Law – Rape – Appeal against sentence – Whether the trial court erred in sentencing the appellant to life imprisonment on his conviction of rape – whether the trial court was justified in finding that no substantial and compelling circumstances existed justifying the imposition of a lesser sentence – whether the court a quo misdirected itself by sentencing the appellant to life imprisonment without considering other suitable forms of sentence under the circumstances.

The MEC: Department of Police, Roads and Transport, Free State Provincial Government v Terra Graphics (Pty) Ltd t/a Terra Works & another (483/13)

Appealed from FB

Date to be heard: 23 May 2014

Navsa, Ponnann, Leach, Saldulker JJA, Legodi AJJA

Contract – Whether privity of contract exists between the appellant and first respondent - whether the contracts are valid and enforceable and effect of pending litigation on contract – whether the sub-consultancy agreement concluded pursuant to the main agreement between the appellant and the second respondent is valid and enforceable.

Stamford Sales and Distribution (Pty) Ltd v Metraclark (Pty) Ltd (676/13)

Appealed from GSJ

Date to be heard: 23 May 2014

Lewis, Maya, Mhlanthla JJA, Van Zyl, Swain AJJA

Civil Procedure – Whether the verifying affidavit in support of an application for summary judgment was defective for failing to comply with rule 32(2) – whether the defendant's opposing affidavit sets out a bona fide defence.

Andrew Kinloch Butters v Nomsa Virginia Mncora (419/13)

Appealed from ECP

Date to be heard: 23 May 2014

Shongwe, Wallis, Willis JJA, Mathopo, Mocumie AJJA

Civil Procedure – whether the requirements for making a correction under Uniform Rule 42(1)(b) have been met – whether there was an error made - whether the error was patent - whether the error was made by the court itself - whether the error is capable of correction without altering the intended sense or substance of the judgment.