

**REPUBLIC OF SOUTH AFRICA
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CASES ENROLLED FOR HEARING

Morné Barnard v The State (891/12)

Appealed from FB

Date to be heard: 2 May 2013

Mpati P, Theron JA, Pillay JA, Willis AJA, Erasmus AJA

Criminal law – rape – whether sexual intercourse took place without consent of complainant – whether substantial and compelling circumstances justifying imposition of lesser sentence than prescribed minimum.

CShell 271 (Pty) Ltd v Oudtshoorn Municipality (481/12)

Appealed from WCC

Date to be heard: 2 May 2013

Navsa JA, Leach JA, Petse JA, Swain AJA, Zondi AJA

Review – whether respondent entitled to relief setting aside award of tender – whether unreasonable delay on part of respondent in seeking to have tender set aside – whether respondent entitled to declaratory relief to effect that tender was not awarded to appellant.

The Baphiring Community & others v Tshwaranani Projects & others (806/12)

Appealed from LCC. 2010 (3) SA 130 (LCC); [2010] 3 All SA 353 (LCC)

Date to be heard: 2 May 2013

Cachalia JA, Shongwe JA, Van der Merwe AJA, Mbha AJA

Restitution – Restitution of Land Rights Act 22 of 1994 – whether restoration of various portions to first appellant feasible as required by s 33(cA).

Member of the Executive Council for Health, Eastern Cape Province NO & another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute (473/12)

Appealed from ECG

Date to be heard: 3 May 2013

Mthiyane DP, Maya JA, Plasket AJA, Saldulker AJA, Meyer AJA

Administrative law – review – review of first and second respondents' decisions in respect of applications for private hospitals – whether necessary for court to declare decision improper and unlawful.

Road Accident Fund v Ele Myhill NO (Swalibe Minors) (505/12)

Appealed from GSJ

Date to be heard: 3 May 2013

Brand JA, Shongwe JA, Leach JA, Willis AJA, Van der Merwe AJA

Delict – whether court a quo correctly approached cause of action based on restitution in integrum by assessing whether compromises involved reasonable compensation – whether compromises should be set aside as not having been in interests of minors – whether respondent has established that compromises not in interests of minors.

Tristar Investments (Pty) Ltd v The Chemical Industries National Provident Fund (455/12)

Appealed from GSJ

Date to be heard: 3 May 2013

Nugent JA, Lewis JA, Tshiqi JA, Petse JA, Swain AJA

Contract law – Investment Consulting Agreement, interpretation of – whether appellant licensed under Financial Advisory and Intermediary Services Act 37 of 2002, s 7 to provide services specified in agreement.

Peter Taylor and Associates v Bell Estates (Pty) Ltd & another (558/12)

Appealed from KZD

Date to be heard: 6 May 2013

Mpati P, Tshiqi JA, Pillay JA, Plasket AJA, Saldulker AJA

Prescription

Minister of Water and Environmental Affairs v Minister of Agriculture, Forestry and Fisheries & others (450/12)

Appealed from WCC

Date to be heard: 6 May 2013

Navsa JA, Cachalia JA, Leach JA, Petse JA, Mbha AJA

Review – review of dismissal of internal appeal – whether appellant or first respondent who had power to decide internal appeal in relation to allocation of permits in WSCD sector – whether appellant had power and acted ultra vires and decision falls to be set aside – if appellant had power, whether exercise of this power reviewable.

City of Tshwane Metropolitan Municipality v Thomas Mathabathe & another (502/12)

Appealed from GNP

Date to be heard: 6 May 2013

Ponnan JA, Majiedt JA, Erasmus AJA, Swain AJA, Zondi AJA

Local government – practical effect of Local Government: Municipal Systems Act 32 of 2000, s 118(3) – whether appellant entitled to veto transfer of property in event that undertaking in which provision is made that historical debt would be paid upon registration of property, or within reasonable time thereafter, is not furnished by conveyancer attending to transfer of property.

B A Platjies v Director of Public Prosecutions, Transvaal (43/13)

Appealed from GNP

Date to be heard: 7 May 2013

Mthiyane DP, Shongwe JA, Majiedt JA, Van der Merwe AJA, Meyer AJA
 Criminal procedure – whether legal position as to subject of *autrefois acquit* has been altered by provisions of Constitution, s 35(3)(m) – whether magistrate’s order appealable – whether fair and just to stop prosecution of appellant in view of long history of and many delays in case.

National Union of Public Service and Allied Workers obo Mani & others v National Lotteries Board (576/12)

Appealed from LC (Johannesburg)

Date to be heard: 7 May 2013

Nugent JA, Ponnann JA, Theron JA, Pillay JA, Willis AJA

Constitutional law – whether provisions of Constitution, sections 16, 17 and 23(2)(b) applicable – labour law – whether dismissal unfair – alternatively whether ordinary unfair dismissal within meaning of Labour Relations Act 66 of 1995, s 188.

Knox D’Arcy AG & another v The Land and Agricultural Development Bank of South Africa (654/12)

Appealed from GNP

Date to be heard: 7 May 2013

Lewis JA, Maya JA, Petse JA, Erasmus AJA, Swain AJA

Contract – whether appellants have proved compliance with provisions of written agreement entitling them to cession of book debts (loans) by respondent.

Retail Motor Industry Organisation & another v Minister of Water and Environmental Affairs & another (145/13)

Appealed from GNP

Date to be heard: 8 May 2013

Mpati P, Nugent JA, Tshiqi JA, Plasket AJA, Saldulker AJA

Constitutional law – whether first respondent had power to approve an Integrated Industry Waste Tyre Management Plan (IIWTMP), submitted by second respondent who is a non-profit company and not a tyre producer as defined in Waste Tyre Regulations – whether first respondent acted ultra vires enabling legislation and/or at odds with enabling legislation when she firstly mero motu and without any prior notice to or consultation with interested parties, revoked earlier approved administrative action – whether she thereafter mero motu and without notice to or consultation with interested parties, considered and thereafter approved such amended IIWTMP – whether first respondent’s approval of IIWTMP which also includes treatment of solid tyres, ultra vires provisions of enabling legislation.

Oakdene Square Properties (Pty) Ltd & others v Farm Bothasfontein (Kyalami) (Pty) Ltd & others; Farm Bothasfontein (Kyalami) (Pty) Ltd v Kyalami Events & Exhibitions (Pty) Ltd & others (609/12)

Appealed from GSJ. 2012 (3) SA 273 (GSJ); [2012] 2 All SA 433 (GSJ)

Date to be heard: 8 May 2013

Brand JA, Cachalia JA, Van der Merwe AJA, Zondi AJA, Meyer AJA

Company law – Companies Act 71 of 2008, sections 128 and 131, interpretation of – test to be applied in business rescue applications – whether court a quo

misdirected itself in exercise of its discretion, with regard to certain material facts and law.

Emergency Medical Supplies and Training CC (trading as EMS) v Health Professions Council of South Africa & another (116/12)

Appealed from WCC

Date to be heard: 9 May 2013

Mthiyane DP, Maya JA, Shongwe JA, Erasmus AJA, Mbha AJA

Review – whether respondents correctly decided to withdraw appellant's accreditation to offer emergency care practitioner training – whether November 2006 CCA examinations set and conducted by respondents irregular and/or fundamentally unfair.

Gauteng Gambling Board & another v MEC for Economic Development, Gauteng Provincial Government (620/12)

Appealed from GSJ

Date to be heard: 9 May 2013

Navsa JA, Leach JA, Willis AJA, Swain AJA, Saldulker AJA

Review – whether respondent acted lawfully, reasonably and procedurally fairly when terminating membership of first appellant's members for refusing to comply with instruction to relocate first appellant's operation – whether court a quo ought to have permitted respondent, who had effected terminations after being aware that application challenging validity of contemplated terminations had already been served, to continue to rely on validity and propriety of terminations.

Municipality of Mossel Bay v Evangelical Lutheran Church & another (443/12)

Appealed from WCC

Date to be heard: 9 May 2013

Lewis JA, Theron JA, Majiedt JA, Plasket AJA, Zondi AJA

Property law – title deed, interpretation of relevant portion.

Doreen Topham v Member of the Executive Committee for the Department of Health, Mpumalanga (351/12)

Appealed from GNP

Date to be heard: 10 May 2013

Mpati P, Brand JA, Cachalia JA, Van der Merwe AJA, Meyer AJA

Delict – medical negligence – whether appellant proved causal negligence on part of respondent's employee(s).

Arendsnes Sweefspoor CC v Dalia Marcelle Botha (471/12)

Appealed from GNP

Date to be heard: 10 May 2013

Mthiyane DP, Shongwe JA, Leach JA, Pillay JA, Petse JA

Prescription – whether summons properly served – whether timeous interruption of prescription.

Anne Christine Hubbard v Cool Ideas 1186 CC (580/12)

Appealed from GSJ

Date to be heard: 10 May 2013

Navsa JA, Ponnann JA, Theron JA, Willis AJA, Mbha AJA

Arbitration – whether failure by respondent to register in terms of Housing Consumers Protection Act 95 of 1998, s 10 rendered award by arbitrator void – whether court a quo could not have confirmed order in terms of Arbitration Act 42 of 1965, s 31 – whether failure to register prohibited respondent from claiming payment of balance which appellant owed in terms of building contract – whether claim based on valid contract.

Farrel & Associates Attorneys v Grahame Shedden Harkess (589/12)

Appealed from KZD

Date to be heard: 13 May 2013

Mpati P, Nugent JA, Leach JA, Pillay JA, Zondi AJA

Costs – whether client entitled to request attorney to tax bill of costs – whether attorney may appropriate moneys from client's trust account under circumstances where amount appropriated not liquidated sum and appropriated without client's consent.

Magaliesburg Protection Association v The MEC: Department of Agriculture, Environment and Rural Development, North West Provincial Government & others (563/12)

Appealed from NWM

Date to be heard: 13 May 2013

Navsa JA, Maya JA, Tshiqi JA, Plasket AJA, Swain AJA

Review – whether the court a quo erred in not finding that the failure by the First and Second Respondents to consider the Environmental Management Framework and the Rustenburg Spatial Development Framework resulted in various contraventions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) – whether the court a quo erred in not considering and finding that the First Respondent was biased against the Appellant – whether the court a quo erred in not declaring the First Respondent's decision invalid.

Gabriel Buthelezi v Priscilla Zanele Ndaba (575/12)

Appealed from KZP

Date to be heard: 13 May 2013

Brand JA, Lewis JA, Cachalia JA, Majiedt JA, Saldulker AJA

Delict – medical negligence – whether respondent discharged onus of proving wrongfulness and negligence – whether evidence of expert witnesses revealed complication experienced by respondent does not justify inference of negligence.

Matthew Robert Michael Lester v Ndlambe Municipality & another (514/12)

Appealed from ECG

Date to be heard: 14 May 2013

Mthiyane DP, Cachalia JA, Theron JA, Majiedt JA, Zondi AJA

Local government law – existence of discretion to be exercised by high court regarding demolition of residential dwelling constructed without plan approval, alternatively contrary to approved plans – whether discretion should be exercised in favour of appellant to extent of only partial demolition – extent to which provisions of Constitution, s 26 impact upon discretion.

Radon Projects (Pty) Ltd v NV Properties (Pty) Ltd & another (528/12)

Appealed from ECG

Date to be heard: 14 May 2013

Nugent JA, Leach JA, Pillay JA, Erasmus AJA, Saldulker AJA

Contract law – determination of jurisdiction of arbitrator – whether second respondent had jurisdiction to arbitrate claims submitted by appellant.

Elizora Olivier Todd v FirstRand Bank Ltd & others (497/12)

Appealed from WCC

Date to be heard: 14 May 2013

Lewis JA, Ponnann JA, Maya JA, Willis AJA, Swain AJA

Property law – constitutional law – whether sale-in-execution of immovable property valid despite non-compliance with Uniform Rules of Court, Rule 46 (7)(e) – whether, if valid at common law, common law should be developed.

Mattheus Johannes Lotter v KSO Financial Services (Edms) Bpk (484/12)

Appealed from FB

Date to be heard: 15 May 2013

Navsa JA, Brand JA, Erasmus AJA, Van der Merwe AJA, Meyer AJA

Civil procedure – summary judgment – whether obtained by fraud – whether court a quo correct in finding that appellant, for purposes of Magistrates' Courts Rules, Rule 49(8) already knew of fraud in 2008.

Anele Ngqukumba v Minister of Safety and Security & others (660/12)

Appealed from ECM

Date to be heard: 16 May 2013

Brand JA, Maya JA, Theron JA, Petse JA, Meyer AJA

Mandament van spolie – whether order for restoration ante omnia precluded in applications based on mandament van spolie where search and seizure declared unlawful – whether court a quo correct that vehicle should be retained by police until police clearance certificate has been issued.

MEC for Local Government, Environmental Affairs and Development Planning v Clairison's CC (408/12)

Appealed from WCC

Date to be heard: 16 May 2013

Nugent JA, Ponnann JA, Tshiqi JA, Willis AJA, Swain AJA

Review – whether appellant's dismissal of appeal by respondent pursuant to Environmental Conservation Act 73 of 1989, s 35 against decision by appellant's delegate refusing environmental authorisation for development of retirement village on respondent's property correct.

Mohammed Shaffie Mowzer v Brait Investments Ltd (482/12)

Appealed from WCC

Date to be heard: 16 May 2013

Lewis JA, Shongwe JA, Leach JA, Plasket AJA, Mbha AJA

Contract law – proper interpretation of suretyship clause by which appellant bound himself to respondent – whether punitive costs should be awarded against respondent.

Iain Cameron McLaggan v The State (84/13)

Appealed from ECG

Date to be heard: 17 May 2013

Mthiyane DP, Majiedt JA, Pillay JA, Plasket AJA, Saldulker AJA

Criminal law – rape – whether court a quo erred in convicting appellant – whether appellant ought to have been acquitted – cross-appeal against sentence – whether court a quo misdirected itself in assessment of factors applicable to sentence – whether court a quo overemphasized personal circumstances of respondent in cross-appeal.

James Azwinndini Nedzamba v The State (911/12)

Appealed from LT

Date to be heard: 17 May 2013

Navsa JA, Tshiqi JA, Petse JA, Van der Merwe AJA, Zondi AJA

Criminal law – rape – whether state correct in charging appellant with rape under common law if alleged offences committed on 17 March 2008 (after coming into effect of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007) – whether state proved its case against appellant beyond reasonable doubt – sentence – whether provisions of Criminal Law Amendment Act 105 of 1997 applicable to appellant – whether substantial and compelling circumstances justifying lesser sentence.

Brian Nimrod v The State (949/12)

Appealed from WCC

Date to be heard: 17 May 2013

Cachalia JA, Shongwe JA, Erasmus AJA, Mbha AJA, Meyer AJA

Criminal law – rape – Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, s 3 – whether appellant contravened section – whether court a quo correct in accepting evidence of single state witness in finding appellant guilty – whether court a quo correct in rejecting evidence of appellant – sentence – whether sentence justified.

The Land and Agricultural Development Bank of South Africa v Ryton Estates (Pty) Ltd & others (460/12)

Appealed from GNP

Date to be heard: 20 May 2013

Brand JA, Theron JA, Majiedt JA, Van der Merwe AJA, Meyer AJA

Unjust enrichment – whether, in absence of agreement or custom (or statute), recovery of mora interest on unpaid interest which is due and payable constitutes unjust enrichment.

North East Finance (Pty) Ltd v Standard Bank of South Africa Ltd (492/12)

Appealed from GSJ

Date to be heard: 20 May 2013

Lewis JA, Ponnann JA, Shongwe JA, Saldulker AJA, Zondi AJA

Contract law – whether cancellation of agreement between appellant and respondent on account of appellant's alleged fraudulent misrepresentation relieves respondent from submitting to arbitration – interpretation of arbitration clause in agreement – whether severable from remainder of agreement – whether respondent has laid sufficient basis to persuade court not to refer matter to arbitration.

Competition Commission of South Africa v Arcerlomittal South Africa Ltd & others (680/12)

Appealed from CAC

Date to be heard: 21 May 2013

Brand JA, Nugent JA, Cachalia JA, Pillay JA, Mbha AJA

Competition law – whether leniency application made by third respondent subject to disclosure, due to its being privileged and/or qualifying as restricted information in terms of Commission Rule 14(1)(e) and (2) – if privilege applies, whether Commission waived privilege – whether documents submitted in support of leniency application, and investigation file of Competition Commission, subject to disclosure.

The Kenmont School & another v Devarajh Moodley & others (454/12)

Appealed from KZD

Date to be heard: 21 May 2013

Ponnan JA, Tshiqi JA, Plasket AJA, Van der Merwe AJA, Saldulker AJA

Review – legality and implementation of admission policy – whether compromise between parties – whether decision taken by appellant reviewable – constitutional issue concerning child's right to education might arise.

Lourens Wepener van Reenen v Santam Limited (623/12)

Appealed from GNP

Date to be heard: 21 May 2013

Maya JA, Leach JA, Theron JA, Willis AJA, Meyer AJA

Prescription – whether claim had prescribed when summons was issued against respondent – whether running of prescription interrupted by conduct of respondent by instructing attorneys to act on behalf of Abakor Limited – whether running of prescription interrupted by acknowledgement of liability as provided in Prescription Act 68 of 1969, s 14(1).

City of Tshwane Metropolitan Municipal Council v Marius Blom & GC Germishuizen Incorporated & another (433/12)

Appealed from GNP

Date to be heard: 22 May 2013

Mthiyane DP, Lewis JA, Shongwe JA, Petse JA, Zondi AJA

Local government law – whether Municipal Property Rates Act 6 of 2004, s 8 authorises appellant to adopt policy including categories not listed therein – whether inclusion of category of 'non-permitted use' by appellant renders illegal use of property lawful – whether higher than normal rate on property constitutes penalty without due process – whether court a quo entitled to change rateable category of property – whether court a quo could have allowed for debatement of respondent's account – whether appellant should have been ordered to pay costs of application.

Henry Malgas & others v The State (703/12)

Appealed from WCC

Date to be heard: 22 May 2013

Navsa JA, Majiedt JA, Willis AJA

Criminal law – appeal against sentence.

Trevor Brian Robinson v The State (472/12)

Appealed from GNP

Date to be heard: 22 May 2013

Ponnan JA, Tshiqi JA, Erasmus AJA, Plasket AJA, Mbha AJA

Criminal law – whether appellant correctly convicted on two counts of fraud – whether trial court erred in finding that appellant made false representations to complainant – whether court a quo erred in finding that appellant had submitted alleged fraudulent invoices to complainant and thereafter demanded payment in respect thereof.

Tshifhiwa Tshisilingo Nemavhola v The State (45/12)

Appealed from LT

Date to be heard: 23 May 2013

Cachalia JA, Petse JA, Erasmus AJA

Criminal law – rape – whether court a quo erred in sentencing appellant to life imprisonment – whether court a quo misdirected itself in finding no substantial and compelling circumstances justifying imposition of lesser sentence.

Tshirangwana Masotsha Tshilidzi v The State (650/12)

Appealed from LT

Date to be heard: 23 May 2013

Lewis JA, Shongwe JA, Majiedt JA, Van der Merwe AJA, Swain AJA

Criminal law – whether trial irregular: sentence – whether substantial and compelling circumstances warranted deviation from sentence of life imprisonment.

Nelson Mphathalatse Tladi v The State (895/12)

Appealed from GNP

Date to be heard: 23 May 2013

Maya JA, Tshiqi JA, Pillay JA, Saldulker AJA, Mbha AJA

Criminal law – rape – whether state proved beyond reasonable doubt that appellant raped the complainant twice – whether appellant's defence reasonably possibly true – sentence – whether prescribed sentence is life imprisonment or 20 years' imprisonment in view of appellant's two previous convictions for rape.

APPEALS DISPOSED OF WITHOUT WRITTEN JUDGMENT IN 2012

D P Lekgau v The State (18/12) – 22 February 2012

Eugene Ralph Morgan v The State (680/11) – 24 February 2012

Beaufort West Minerals (Pty) Ltd v Eybers and others (275/12) – 6 March 2012

Shaukat Alli Moosa & another v Mahomed Rafik Osman Siddi Akoo NO (134/11) – 9 March 2012

SA Commercial Catering & Allied Workers Union & another v Growthpoint Properties Ltd & another (46/11) – 13 March 2012

Michael George Burgess and others v Wonderhoek Farms (Edms) Bpk (449/11) – 16 March 2012

C L Carstens NO & others v B M Carstens NO (409/11) – 10 May 2012

Nenzhelele Tshitereke v The State (304/12) – 17 September 2012

Quipmar Business Finance (Pty) Ltd t/a Capital Fortys and others v B Langton Construction CC and others (183/12) – 13 November 2012

Welcome Bila v The State (546/12) – 22 November 2012