

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 4 OF 2019

CASES ENROLLED FOR HEARING: NOVEMBER 2019

1. Minister of Trade and Industry v Sundays River Citrus Company (Pty) Ltd

(798/2018)

Appealed from ECP

Date to be heard: 1 November 2019

Petse DP, Swain JA, Mbha JA, Mbatha JA, Eksteen AJA

Administrative law – interpretation of the Manufacturing Competitive Enhancement Programme (the MCEP) – during 2012 the appellant introduced the MCEP, an incentive programme aimed at supporting manufacturing enterprises – the respondent lodged an application seeking to review and set aside the appellant’s decision to pay the respondent a grant in the sum of R 1 820 748 – the appellant conceded prayer (a) of the notice of motion that the decision ought to have been reviewed and set aside – whether the court a quo was correct in directing the appellant to use the pool account method of calculation in calculating the amount due to the respondent.

2. Defries NO Louis Edward v Goldman Maxwell & others

(238/2018)

Appealed from GJ

Date to be heard: 1 November 2019

Cachalia JA, Mocumie JA, Koen AJA, Weiner AJA, Hughes AJA

Insolvency Act 24 of 1936 – powers of a liquidator appointed by the court – whether the parties to a joint estate may agree in a subsequent settlement agreement to terminate the mandate of the liquidator – whether the applicant was entitled to an indemnity upon release – whether the applicant was entitled to professional fees and costs incurred post conclusion of the agreement.

3. The Director of Public Prosecutions, Gauteng Division, Pretoria, v Lucky Anthony Buthelezi (142/2018)

Appealed from GP

Date to be heard: 1 November 2019

Leach JA, Saldulker JA, Mokgohloa JA, Plasket JA, Dolamo AJA

Criminal law and procedure - sentence – whether s 35 of the constitution was infringed by the trial court when it sentenced the respondent to life imprisonment based on a charge sheet which erroneously referred to s 51 and schedule 2 of the Criminal Law Amendment Act 38 of 2007 instead of s 51 of Act 105 of 1997 – whether the court a quo was correct in sentencing the respondent regardless of the above.

4. Tellytrack v Marshalls World of Sport (Pty) Ltd & others

(971/2018)

Appealed from KZD

Date to be heard: 4 November 2019

Navsa JA, Saldulker JA, Van der Merwe JA, Dlodlo JA, Weiner AJA

Intellectual property – copyright – whether what the appellant transmitted to Multichoice constituted a copyright work comprising cinematograph films, literary works some of which were computer generated literary works of live horse racing events in South Africa and internationally – whether the respondents' infringed the appellant's copyright in these works.

5. The Minister of Police & another v Ruvern Muller

(1037/2018)

Appealed from ECG

Date to be heard: 4 November 2019

Ponnan JA, Plasket JA, Mbatha JA, Koen AJA, Eksteen AJA

Delict – unlawful arrest and detention – whether the respondent's arrest and initial detention (before first court appearance) was lawful in terms of ss 40(1)(b) and 40(1)(e) of the Criminal Procedure Act 51 of 1977 – whether initial detention became unlawful from the moment the family friend of the respondent attended to the police and spoke to detectives – whether the first appellant was liable for the respondent's subsequent detention (from first court appearances onwards), due to the police's failure to record the respondent's family friend's statement.

6. Magic Eye Trading 77 CC t/a Titanic Trucking & another v Santam Limited & others

(775/2018)

Appealed from WCC

Date to be heard: 4 November 2019

Cachalia JA, Zondi JA, Nicholls JA, Gorven AJA, Hughes AJA

Contract – whether the appellants’ claim for a declaratory order in respect of a contingent right to claim indemnification under a policy of insurance had prescribed in circumstances where the issue of potential liability to a third party had not yet been determined – whether the appellants’ potential claim was one capable of repudiation.

**7. Aquarius Platinum (SA) (Pty) (Ltd) v Bonene S & others
(1177/2018)**

Appealed from Land Claims Court

Date to be heard: 5 November 2019

Maya P, Saldulker JA, Van der Merwe JA, Mocumie JA, Dolamo AJA

Property Law – eviction – Extension of Security of Tenure Act 62 of 1997 – whether the first to 167th respondents’ right of residence was lawfully terminated – whether the appellant had *Iocus standi* to litigate for their eviction – whether the eviction would not be just and equitable in terms of s 8 and 9 of ESTA – whether the appellant terminated the occupiers’ right of residence in terms of s 8(1) of ESTA – whether the failure to terminate the right to residence was fatal to eviction application.

**8. Mathebula, Yuza Barclays & another v Standard Bank of South Africa Ltd & others
(987/2018)**

Appealed from GP

Date to be heard: 5 November 2019

Petse DP, Swain JA, Mokgohloa JA, Tsoka AJA, Weiner AJA

Rescission of default judgment – appeal against a dismissal of an application to set aside an order of the high court and subsequent transfers of immovable property in circumstances where there was no service of summons on the chosen domicilium – whether the court process and judgment was invalid and void ab initio and thus should be set aside, together with the subsequent sale – whether the appellants were required to bring an application for rescission of judgment expeditiously even where the judgment was erroneously sought or erroneously granted – whether the appellants brought their application expeditiously – whether the appellants acquiesced in the default judgment – whether the appellants would nevertheless be estopped from seeking the ancillary relief – whether the ancillary relief was inappropriate in the circumstances.

9. Mike Ness Agencies CC t/a Pomech Boreholes v Lourenshof Fruit Company (Pty) Ltd (922/2018)

Appealed from WCC

Date to be heard: 5 November 2019

Cachalia JA, Leach JA, Plasket JA, Dlodlo JA, Gorven AJA

Contract – terms – interpretation – what the term ‘sufficient water’ in the agreement meant – whether the appellant had proven compliance with the meaning – whether the court a quo was correct in finding that the term ‘sufficient water’ was a material term of the contract between the parties.

10. Africa Cash & Carry (Pty) Ltd v The Commissioner for the South African Revenue Service (783/2018)

Appealed from Tax Court

Date to be heard: 6 November 2019

Navsa JA, Swain JA, Zondi JA, Koen AJA, Hughes AJA

Income tax – Tax Administration Act 28 of 2011 – powers of the Tax Court to alter assessment under s 129(2)(b) – whether the respondent proved that the assessments were reasonable – whether the substituted assessments of the Tax Court are reasonable on the evidence – whether the Tax Court ought to have remitted or altered the s 89 *qua* interest.

11. Mark van Wyk v The MEC: Department of Local Government and Housing of the Gauteng Provincial Government & others (1026/2018)

Appealed from GP

Date to be heard: 6 November 2019

Ponnan JA, Van der Merwe JA, Mocomie JA, Mbatha JA, Eksteen AJA

Property law – sale of property – whether the property sold by the first respondent on public auction to the appellant constituted ‘provincial land’ which vested in the Gauteng Provincial Government in accordance with the provisions of s 239(1)(b) of the Constitution – whether the first respondent was empowered to dispose of the property in terms of s 2(1) of the Gauteng Land Administration Act 11 of 1996.

12. Tertiary Education National Union of South Africa (TENUSA) & another v Durban University of Technology (796/2018)

Appealed from KZD

Date to be heard: 6 November 2019

Leach JA, Wallis JA, Saldulker JA, Nicholls JA, Dolamo AJA

Labour Law – documentary evidence – interpretation of evidence – whether the respondent’s council authorised conditions of service that included provision for a post-retirement medical aid subsidy to a certain category of employees – whether the trial judge erred in finding that the evidence of the appellants’ witness failed to establish that the respondent’s council adopted the alleged conditions of service at a meeting held on 23 November 2005 – whether the minutes of the various meetings are to be interpreted to demonstrate the Council’s approval of the conditions of service that included a post-retirement medical aid subsidy clause or its exclusion therein.

**13. Charmaine Helen Montanari v Emilio Pietro Valfredo Montanari
(1086/2018)**

Appealed from GJ

Date to be heard: 7 November 2019

Maya P, Wallis JA, Mokgohloa JA, Dlodlo JA, Eksteen AJA

Family law – divorce – division of estate – living annuity – living annuity acquired by annuitant spouse retiring from a pension fund during the course of the marriage – whether the value of the living annuity was to be excluded from a calculation of the accrual of a party’s estate in the event of a divorce.

**14. Mduduzi Shembe & others v N P Shembe NO
(957/2018)**

Appealed from KZP

Date to be heard: 7 November 2019

Petse DP, Plasket JA, Mbatha JA, Tsoka AJA, Gorven AJA

Law of Succession – succession by nomination – whether Vela Shembe was nominated in writing or orally nominated by the late leader of the Church as his successor – whether both were so nominated – whether the Trust Deed or the Constitution governed the nomination procedure – whether the committee chaired by the third appellant had the power to appoint the first appellant as successor since Vela Shembe was deceased.

15. Yolandi Hewetson v The Law Society of the Free State

(948/2018)

Appealed from FB

Date to be heard: 7 November 2019

Cachalia JA, Leach JA, Nicholls JA, Weiner AJA, Hughes AJA

Professions – Attorneys Act 53 of 1979 – whether the court a quo was correct in striking the appellant’s name from the roll of attorneys – whether a suspension subject to certain conditions would have been a more appropriate remedy – whether it was justified and was impeachable.

16. Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd (1354/2018)

Appealed from ECG

Date to be heard: 8 November 2019

Maya P, Cachalia JA, Wallis JA, Saldulker JA, Mocumie JA

Civil procedure – Customs and Excise Act 91 of 1964 – interpretation – Superior Courts Act 10 of 2013 – whether the court a quo was correct in holding that the relief sought by the respondent fell within the ambit of s 21 of the Superior Courts Act – whether the court a quo was correct in holding that respondent was eligible for a diesel rebate claim as envisaged in s 75(1C)(a)(iii) of the Customs and Excise Act.

17. Felicia Meyers v Member of the Executive Council, Department of Health, Eastern Cape (1010/2018)

Appealed from ECG

Date to be heard: 8 November 2019

Ponnan JA, Plasket JA, Mbatha JA, Koen AJA, Dolamo AJA

Delict – damages – whether the respondent’s servants were causally negligent during the performance of a laparoscopic cholecystectomy at a provincial hospital – whether the trial court erred in finding that the surgeon had not been negligent as the injury was not a major injury – whether the appellant proved negligence on part of the respondent.

18. Zikhulise Cleaning Maintenance & Transport CC v The Chairman: Investigating Committee of the Construction Industry Development Board & others (1112/2018)

Appealed from GP

Date to be heard: 11 November 2019

Leach JA, Saldulker JA, Mocumie JA, Koen AJA, Weiner AJA

Construction Law – Construction Industry Development Board Act 38 of 2003 – whether the Construction Industry Development Board (the CIDB) had the necessary jurisdiction to enforce its code of conduct against a contractor that was not registered with it – whether the CIDB’s code of conduct covered the charges levelled against the appellant – whether the requirements in regulations 28 and 29 of the CIDB Act, are mandatory for inquiry in terms of regulation 30 – whether such requirements were met – whether the CIDB can lawfully have its right to conduct enquiry into the affairs of the appellant – whether the appellant proved that CIDB did in fact have its right.

**19. The National Credit Regulator v Lewis Stores (Pty) Ltd & another
(937/2018)**

Appealed from GP

Date to be heard: 11 November 2019

Wallis JA, Nicholls JA, Dlodlo JA, Eksteen AJA, Hughes AJA

Contract – National Credit Act 34 of 2005 – whether the extended warrantees concluded by the first respondent with customers contravened ss 90, 91, 100, 101(1)(a) and 102(1) of the Act by virtue of the wrong starting and end dates being written into the duration clause, or the commencement and termination dates not being inserted at all – whether the R25 monthly fee charged by the first respondent to members of the Lewis Family Club constituted an impermissible ‘cost of credit’, in contravention of ss 100, 101 and 102(1) of the Act.

**20. Willem Oosthuizen & another v The State
(180/2018)**

Appealed from GP

Date to be heard: 11 November 2019

Van der Merwe JA, Plasket JA, Mbatha JA, Tsoka AJA, Dolamo AJA

Criminal Law and procedure – conviction and sentence – whether the Judge a quo erred in convicting the appellants as charged and whether the sentence imposed was appropriate.

21. Nu-World Industries (Pty) Ltd v Strix Limited

(1349/2018)

Appealed from GJ

Date to be heard: 12 November 2019

Maya P, Mbha JA, Van der Merwe JA, Mokgohloa JA, Gorven AJA

Intellectual Property – civil procedure – interpretation – amendments of declarations – permissibility of an amendment by law – whether the amendment of a declaration filed in the damages inquiry phase of the rule 33(4) separated action, the effect of which is to insert new infringement causes of action for adjudication in that inquiry in circumstances where the pleaded and relied upon infringement causes of action had been finally resolved by this Court.

22. Kwadukuza Municipality v Lahaf

(Pty) Ltd (940/2018)

Appealed from KZP

Date to be heard: 12 November 2019

Petse DP, Leach JA, Zondi JA, Plasket JA, Mbatha JA

Land Use and town planning – interpretation of statutes – whether the meaning of the letters ‘GLA’ (gross leasable area) should be interpreted to comprise all areas that could possibly be leased or all areas used for shop retail purposes in the zoning centres of the Ballito Town Planning Scheme for Special Zone 10 – whether the court should have had regard to the manner in which the parties understood and applied the town planning scheme including GLA.

23. Airports Company South Africa Limited v Masiphuze Trading (Pty) Limited & others (1120/2018)

Appealed from KZD

Date to be heard: 12 November 2019

Cachalia JA, Wallis JA, Nicholls JA, Dlodlo JA, Weiner AJA, Hughes AJA

Property law – deed of suretyship – whether the written deed of suretyship, signed by the third respondent, in favour of the appellant was binding and enforceable against the third respondent when his name was not written on the deed of suretyship when signed – whether the appellant was, in principle, entitled to claim for holding over damages from the third respondent as surety as a result of the first respondent remaining on in occupation of the

appellant's premises after its lease had been cancelled – the quantum of the qualified claim for the duration of the lease agreement.

24. Mzomisi Hlongwa v The State

(1380/2018)

Appealed from GJ

Date to be heard: 13 November 2019

Petse DP, Mbha JA, Mocumie JA, Koen AJA, Gorven AJA

Criminal law and procedure – sentence – whether the sentence of 33 years' imprisonment imposed by the regional court was startlingly inappropriate – whether the failure to charge the appellant in terms of the Criminal Law Amendment Act 105 of 1997 resulted in an unfair trial – if these submissions are rejected; whether the mitigating factors cumulatively considered constitute substantial and compelling circumstances warranting a departure from the minimum sentence of 15 years on counts 1, 2, 3 and 5 (robbery with aggravating circumstances).

25. Joseph Bongani Gwimba v The State

(117/2019)

Appealed from FB

Date to be heard: 13 November 2019

Petse DP, Mbha JA, Mocumie JA, Koen AJA, Gorven AJA

Criminal law and procedure – sentence – special leave to appeal granted by SCA – whether this court has the jurisdiction to hear the merits of the case and / or whether there are reasonable prospects of success on appeal to the high court – issues: whether the court a quo correctly convicted the appellant of three counts of robbery and correctly sentenced the appellant to 15 years' imprisonment – whether the trial court should not have acquitted the appellant, alternatively should have imposed incarceration for a shorter period.

26. Makhuva--Mathebula Community v The Regional Land Claims Commissioner: Limpopo & another (1106/2018)

Appealed from LCC

Date to be heard: 13 November 2019

Navsa JA, Ponnann JA, Swain JA, Zondi JA, Plasket JA

Restitution of Land Rights Act 22 of 1994 – land claims – whether the Land Claims Commissioner was obliged to accept and gazette land which has not been specifically claimed where the claimant has mentioned farms it seeks to claim in the claim form.

27. Jangia Adilu v The State

(274/2019)

Appealed from GJ

Date to be heard: 13 November 2019

Cachalia JA, Saldulker JA, Mokgohloa JA, Tsoka AJA, Dolamo AJA

Criminal law and procedure - sentence – appeal against an order refusing leave to appeal - whether the court a quo, when considering the appellant's application for leave to appeal against his sentence, erred in confirming the absence of compelling and substantial circumstances when sentencing the appellant – whether the court a quo erred in confirming the sentence.

28. Donald Khobane v The State

(1255/2017)

Appealed from GJ

Date to be heard: 13 November 2019

Cachalia JA, Saldulker JA, Mokgohloa JA, Tsoka AJA, Dolamo AJA

Criminal law and procedure - sentence – point in limine: whether the appeal is properly before this court in light of the essential missing portions of the record - whether the failure to refer to the minimum sentencing legislation in the charge sheet constituted an irregularity – whether the appellant was prejudiced by the sentence imposed as a result of said failure to refer to the minimum sentencing legislation – whether the sentence imposed by the trial court should be reduced or set aside.

29. Thabo Floyd Zulu v The State

(1285/2017)

Appealed from GJ

Date to be heard: 14 November 2019

Maya P, Wallis JA, Nicholls JA, Dolamo AJA, Hughes AJA

Criminal law and procedure – conviction – the issues on appeal are (a) the identification of the appellant by the complainant (b) whether the DNA chain evidence was adequately proven (c) whether totality of the evidence proved the appellant’s guilt – whether the appellant has reasonable prospects of success on appeal.

30. Joseph Tiamo Mthembu v The State

(525/19)

Appealed from GJ

Date to be heard: 14 November 2019

Navsa JA, Saldulker JA, Swain JA, Dlodlo JA, Eksteen AJA

Criminal law – conviction and sentence – whether the identity of the shooter on count 1 was proved beyond a reasonable doubt – whether the only inference on the evidence lead on count 3 was to infer guilt on the accused on count 1 since there were two occupants in the vehicle in reference to count 1 – whether the dock-identification of the accused was reliable in implicating him on count 1 – whether the credibility and reliability of witnesses on count 1 could be sustained – whether the sentence imposed on count 1 was appropriate.

31. Malangabi Mbulelo v The State

(148/2019)

Appealed from GJ

Date to be heard: 14 November 2019

Navsa JA, Saldulker JA, Swain JA, Dlodlo JA, Eksteen AJA

Sentencing – whether the effective sentence of 30 years’ imprisonment was startlingly inappropriate – whether the court erred in failing to find that the various mitigating factors, cumulatively considered, constituted substantial and compelling circumstances warranting a departure from the prescribed minimum sentence on count 1 – whether the court erred in failing to consider, properly or at all, the cumulative effect of the sentences imposed, in not ordering that a portion of the sentences imposed on counts 1 and 3 run concurrently with one another.

32. Welcome Bongokuhle Madlala v The State

(338/2018)

Appealed from KZP

Date to be heard: 14 November 2019

Ponnan JA, Mbha JA, Mocumie JA, Mbatha JA, Weiner AJA

Criminal law and procedure– sentence – whether the trial court misdirected itself in holding that there were no substantial and compelling circumstances when it sentenced the appellant – whether the 15 years imposed and life sentence of the appellant was grossly disproportionate to the crime, excessive and unduly harsh.

33. Francis Roderick Basil & others v The State

(866/18)

Appealed from GJ

Date to be heard: 14 November 2019

Ponnan JA, Mbha JA, Mocumie JA, Mbatha JA, Weiner AJA

Criminal law and procedure – conviction and sentence – whether the court convicted the first appellant on a count of murder where the elements of murder were not proven beyond reasonable doubt – whether the court should have found the first appellant guilty of culpable homicide instead – whether *dolus eventualis* as a form of intent was proven beyond reasonable doubt – whether the State satisfied the requirements of the doctrine of common purpose – whether the trial Judge erred in finding that there were no factors or circumstances present that impacted on the appellants’ appreciation of their actions and the ability to control such actions.

34. Witzenberg Municipality v Murray John Martin Bridgman NO & others

(685/2017)

Appealed from WCC

Date to be heard: 15 November 2019

Navsa JA, Mbha JA, Zondi JA, Van der Merwe JA, Hughes AJA

Constitutional law – delict – damages – whether the court a quo erred regarding wrongfulness of the omission – delictual liability of the appellant in respect of damages suffered by a young rape victim with an intellectual disability on whose behalf the first respondent was appointed to act as a curator ad litem – the delictual liability of the appellant in respect of damages claimed by third parties (second and third respondents) who are the victim’s carers and were not parties to the claim – the liability attributed towards the third parties and whether the appellant established that the third parties’ alleged negligence contributed to the rape and its sequelae.

35. Body Corporate of Marine Sands v Extra Dimensions 121 (Pty) Ltd & another (1082/2018)

Appealed from KZP

Date to be heard: 15 November 2019

Ponnan JA, Mocumie JA, Tsoka AJA, Koen AJA, Weiner AJA

Property law – sectional title schemes – levies – a resolution was passed by the appellant changing the way in which levies were imposed on the members of the scheme – the resolution increased the first respondents liability for levies – whether the first respondent was adversely affected by the resolution simply because it had to pay higher levies – whether it was open to the full court to define its own issues and determine the matter on the basis of such issues – whether it was possible to amend the participation quota under ss 32(4) or 35(2)(b) of the STA or to modify owners liability for levies by way of a conduct rule.

36. C Murray NO & others v African Global Holdings (Pty) Ltd & others (306/2019)

Appealed from GJ

Date to be heard: 15 November 2019

Wallis JA, Mokgohloa JA, Plasket JA, Nicholls JA, Gorven AJA

Company law – voluntary liquidation – whether the first to third appellants were lawfully appointed as provisional liquidators of the companies and accordingly have standing to bring the appeal – whether the reports of the first appellant included volumes 3 to 6 of the record are properly part of the record and this court – whether the court a quo correctly held that the companies were solvent at the time the resolutions were signed – whether the only basis available to the shareholders for their voluntary winding-up was provided for in s 80 of the Companies Act 71 of 2008 – whether the requirements of s 62 of the Companies Act 2008 were not complied with in advance of the signature of the resolutions and whether the resolutions were a nullity.

37. J E Mahlangu & another v The Minister of Police (1393/2018)

Appealed from GP

Date to be heard: 18 November 2019

Petse DP, Cachalia JA, Van der Merwe JA, Koen AJA, Dolamo AJA

Sentencing – judicial detention – damages – whether the respondent was liable for the appellants’ incarceration subsequent to their first court appearance – whether the appellants were entitled to be awarded a higher quantum of damages.

38. Mabotwane Security Services CC v Pikitup SOC & others

(1027/2018)

Appealed from GP

Date to be heard: 18 November 2019

Leach JA, Saldulker JA, Swain JA, Mokgohloa JA, Dlodlo JA

Local Government – administrative law – tender process – procurement – whether the first respondent’s decision to cancel a security tender was rational and lawful – whether the first respondent could execute an emergency tender without due regard and adherence to the provisions of the applicable procurement legislation – whether the court a quo was correct in dismissing the appellant’s applications to review and set aside the decisions of the first respondent to cancel a tender and award the same tender to an entity that was disqualified in the initial tender, as an emergency tender – whether the outcome of the appeal would have any ‘practical effect or result’ as contemplated in s 16(2)(a)(i) of the Superior Courts Act 10 of 2013.

39. A Jones v Road Accident Fund

(1286/2018)

Appealed from GP

Date to be heard: 18 November 2019

Wallis JA, Zondi JA, Tsoka AJA, Gorven AJA, Eksteen AJA

Road Accident Fund – prescription – whether the claim involving a motor vehicle accident had prescribed – whether the distinction between the negligence of an identified or unidentified motor vehicles qualified claims against the Road Accident Fund.

40. The Minister of Police & another v Ralph Israel Stanfield & others

(1328/2018)

Appealed from GJ

Date to be heard: 19 November 2019

Navsa JA, Mocumie JA, Plasket JA, Weiner AJA, Dolamo AJA

Criminal procedure – Act 51 1977– Firearms Control Act 60 of 2000 – appeal against order of court a quo referring the matter in which the respondents sought the return of their firearms – whether criminal proceedings have been instituted or there was a reasonable likelihood if such proceedings were related to the firearms in the foreseeable future – whether the firearms were obtained by the appellants lawfully in terms of the Firearms Control Act – whether, if the firearms were returned to the applicants, their possession would be lawful in terms of s 31 of the CPA – whether the matter ought to be referred to an enquiry in terms of s 102 of the Firearms Control Act.

41. Phakwe Mining Services (Pty) Ltd & others v Member of the Companies Tribunal & others (1045/2018)

Appealed from GP

Date to be heard: 19 November 2019

Ponnan JA, Swain JA, Dlodlo JA, Gorven AJA, Eksteen AJA

Civil procedure – review application – application brought by the third respondent before the second respondent in terms of s 71(8) of the Companies Act 71 of 2008 for an order removing the second and third applicants as directors of the first applicant – point in limine raised at the hearing that the third respondent was not a shareholder of the first applicant and therefore had no locus standi to bring the application – reviewability of a decision of the Companies Tribunal on preliminary issues – whether the Members of the Companies Tribunal should have discussed the lack of locus standi of the third respondent in the proceedings before the Tribunal.

42. Neil Malherbe v The State

(1182/2018)

Appealed from GJ

Date to be heard: 19 November 2019

Wallis JA, Mbha JA, Mbatha JA, Koen AJA, Hughes AJA

Criminal law and procedure – Criminal Procedure Act 51 of 1977 – National Child Protection Register – whether the search warrant in terms of which the appellant’s home was searched was valid – whether the admission of the evidence obtained pursuant to the search warrant rendered the appellant’s trial unfair – whether the admissions made by the appellant in terms of s 220 of the Criminal Procedure Act cured the search warrants – whether the State discharged its onus of establishing intention to possess or *mens rea* –

whether this court should set aside the order of the full court, reinstate the sentence imposed by the magistrate, and set aside the order that the appellant be listed on the National Child Protection Register.

43. Ntsieni Morris Kgopana v Mohlaki Rosina Matlala obo Amogeng Matlala (1081/2018)

Appealed from LP

Date to be heard: 20 November 2019

Petse DP, Leach JA, Wallis JA, Van der Merwe JA, Mocumie JA

Contract – offer and acceptance – whether an offer was made with the required *animus contrahendi* – whether there was a tacit acceptance of such offer by the issuing of summons – whether the agreement found to exist by Makgoba JP was an executory donation – whether the agreement was rendered unenforceable in a court of law through non-compliance with s 5 of the General Law Amendment Act 50 of 1956.

44. Zephan (Pty) Ltd & others v Suraiya Begum Noormahomed (1303/2018)

Appealed from GP

Date to be heard: 20 November 2019

Navsa JA, Nicholls JA, Tsoka AJA, Gorven AJA, Weiner AJA

Company law – Companies Act 71 of 2008 – s 155 – whether the court a quo correctly evaluated the appellants’ defence in the context of a rescission application – whether a business plan may be equated to an arrangement in terms of s 155 of the Companies Act – whether there is prima facie evidence that the respondent’s rights in terms of the agreement were novated pursuant to the respondent’s acceptance of benefits conferred through a stipulatio alteri contained in an arrangement in terms of s 155 of the Companies Act – whether the provisions of a court sanctioned arrangement in terms of s 155 of the Companies Act may be circumvented through the mechanism of a non-variation clause contained in an agreement concluded prior to adoption and sanction of the arrangement.

45. South African Football Association v Fli-Afrika Travel (Pty) Limited (1317/2018)

Appealed from GJ

Date to be heard: 20 November 2019

Ponnan JA, Saldulker JA, Plasket JA, Mbatha JA, Eksteen AJA

Contract – breach of contract – damages – whether the full and final settlement agreement concluded by the parties terminated the contractual obligations of the appellant – whether the damages suffered by the respondent arose as a result of the appellant’s failure to perform – whether the respondent knew or ought to have known of the appellant’s impossibility of performance – whether the respondent failed to mitigate its losses by exercising its rights to cancellation under the hotel agreements.

46. Samuel Democracy Zwane NO & another v Andre Pretorius

(399/2018)

Appealed from GP

Date to be heard: 21 November 2019

Petse DP, Cachalia JA, Swain JA, Zondi JA, Mokgohloa JA

Property law – ownership – after an auction that was held on the property, the respondent and the executor of the estate of the late Lesley Megal Pretorius concluded an oral agreement in terms of which the respondent was given the right to take fruits (grass) produced by the property until the property was sold and registered in the name of a willing and able buyer – whether the court a quo was correct in finding the respondent became the owner of the 692 bales of grass on the strength of an oral agreement which was concluded between the respondent and the executor of the estate and on the strength of the principles of *ius fruendi* when the respondent gathered and harvested the grass – whether the respondent proved his ownership in respect of the grass for the purposes of the *rei vindicatio* – whether the respondent could rely upon the *rei vindicatio* to claim the 692 bales of grass from the appellants – whether the applicants should be granted condonation for the late filing of the application for leave to appeal – whether the respondent should be granted condonation for the late filing of the respondent’s opposition to the applicants’ application for leave to appeal.

47. Thomas Christopher van Zyl NO & another v Off The Shelf Investments Seventy Eight (Pty) Limited (1323/2018)

Appealed from WCC

Date to be heard: 21 November 2019

Navsa JA, Mbha JA, Van der Merwe JA, Tsoka AJA, Koen AJA

Company law – liquidation – appeal against refusal of an application for the liquidation of the respondent on the grounds that it was unable to pay its debts – whether the respondent had genuinely disputed its indebtedness – whether the appellants had established their standing as creditors nomine officio.

**48. Shepherd Real Estate Investments (Pty) Ltd v Roux Le Roux Motors CC
(1318/2018)**

Appealed from WCC

Date to be heard: 21 November 2019

Ponnan JA, Leach JA, Nicholls JA, Weiner AJA, Dolamo AJA

Contract – lease agreements – ejection – whether general / omnibus arbitration clause / agreement in a lease agreement provides a deadlock-breaking mechanism if the parties are unable to agree on an essential term in respect of a possible renewed / extended period of lease – whether appellant was bound to refer the dispute(s) to arbitration – whether appellant entitled to final relief on the papers ejecting respondent from the property.

49. The Commissioner for the South African Revenue Services v Clicks Retailers (Pty) Ltd (58/2019)

Appealed from Tax Court (Cape Town)

Date to be heard: 22 November 2019

Wallis JA, Swain JA, Mbha JA, Dlodlo JA, Hughes AJA

Income Tax – interpretation – a claim of deduction from its taxable income – SARS refused deduction claim – whether the court a quo was correct in finding that club card members were not only entitled to income but also rewards – interpretation of s 24c and its application to the Clicks Club Card Loyalty Programme.

**50. FirstRand Bank Limited t/a Wesbank Limited v Nicolaas Johannes Davel
(1229/2018)**

Appealed from GP

Date to be heard: 8 November 2019

Navsa JA, Swain JA, Zondi JA, Mokgohloa JA, Gorven AJA

National Credit Act 34 of 2005 – consumer protection – whether the provisions of National Credit Act provide adequate measures to protect consumers from unreasonable conduct by credit providers in selling goods forming the subject matter of credit agreements –

whether additional directions by the court a quo were necessary, warranted and/or competent – whether the facts, evidence and circumstances of the matter warranted any advance judicial prescriptions by the court a quo – whether the relief sought by the appellant ought to have been granted as prayed for without additional directions and obligations placed on the banks.

51. Maditletse Jennifer Nailana v Freddy Kweletji Nailana

(714/2018)

Appealed from LP

Date to be heard: 26 November 2019

Petse DP, Leach JA, Swain JA, Mbatha JA, Dolamo AJA

Family law – divorce – whether the appellant was entitled to 50 per cent of the respondent’s pension interest – whether it was required that a divorce decree in terms of ss 7(7) and 7(8) of the Divorce Act 70 of 1979 specify which sections of the member’s retirement fund payments should be made – the meaning and interpretation of pension fund, retirement fund and provident fund.

52. Contango Trading SA & others v Central Energy Fund Soc Limited & others

(533/2019)

Appealed from WCC

Date to be heard: 26 November 2019

Cachalia JA, Wallis JA, Zondi JA, Van der Merwe JA, Mokgohloa JA

Civil procedure – administrative law – appeal against decision of the WCC dismissing the first and second appellants’ application in terms of Rule 30A of the Uniform Rules of Court to compel production of various documents in terms of rule 35(12) – whether the legal opinions are relevant in terms of rule 35(12) – whether privilege in the legal opinions and the legal review has been waived either impliedly or by imputation – whether the loss of confidentiality in the legal review and the KPMG report through extensive media reportage entailed the loss of privilege in them – whether the legal review was a document

53. Afriforum NPC v Chairperson of the Council of the University of South Africa

(UNISA) & others (765/2018)

Appealed from GP

Date to be heard: 27 November 2019

Maya P, Petse DP, Leach JA, Koen AJA, Eksteen AJA

Constitutional Law – s 29(2) of the Constitution – the issue on appeal relates to the constitutionality of the decisions of the senate and council of the third respondent and adoption of a new language policy in terms of which the council of the third respondent adopted English as the sole language of learning and tuition and departing from the previous policy where both English and Afrikaans were the languages of learning and tuition – whether the impugned decisions contravened s 29(2) of the Constitution and the criteria of reasonable practicability therein – the legality of the said decisions when the senate as, contended by the appellant, failed to comply with its own rules when it made its decision to recommend the adoption of the new language policy to the council of the third respondent – the rationality of the said decisions and in particular fairness following a failure to consult wider with external interested parties before of the adoption of the new policy.

54. Jason Thomas Rohde v The State

(1007/2019)

Appealed from WCC

Date to be heard: 28 November 2019

Maya P, Van der Merwe JA, Nicholls JA

Criminal law – application for bail pending appeal – Criminal Procedure Act 51 of 1977

– whether the interests of justice required the appellant’s further detention or warranted his release pending the appeal of his convictions and sentences – whether by granting leave to appeal the appellant’s convictions and sentences the Supreme Court of Appeal concluded that there was a reasonable prospect of success, and that the appellant’s release on bail was accordingly justified – whether ss 60(4) - 60(9) of the Criminal Procedure Act applied to an accused but not a convicted person and that any findings in favour of the appellant on these factors should carry no weight – whether the financial and emotional hardships experienced by the appellant were inevitable consequences of incarceration or whether they supported the granting of bail – whether the facts and submissions in support of the granting of bail were compelling enough to justify the interruption of the appellant’s sentence of imprisonment – whether the appellant satisfied the onus resting on him to show that it would be in the interests of justice to release him on bail pending an appeal to this court.

