

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 1 OF 2019
CASES ENROLLED FOR HEARING: FEBRUARY – MARCH 2019**

1. South African Airways SOC Limited v Comair Limited (782/2017)

Appealed from GJ

Date to be heard: 15 February 2019

Navsa AP, Tshiqi JA, Swain JA, Dambuza JA, Makgoka JA

Competition Act 89 of 1998 - damages - the issues to be determined in this appeal are as follows - the proper and appropriate approach in determining damages under s 65 (6) of the Competition Act - the appropriate methodology in determining the quantum of damages for prohibited practices under the Competition Act – the period during which SAA’s infringing schemes caused travel agents to divert passengers from Comair to SAA - whether the court a quo erred in finding that Comair continued to suffer damages after the termination of SAA’s infringing schemes continued to have ‘lingering effects’ on consumer choices after the ‘lingering effects period’.

2. Sihle Zikalala & others v Lawrence Dube & others (73/2018)

Appealed from KZP

Date to be heard: 15 February 2019

Lewis ADP, Ponnar JA, Leach JA, Zondi JA, Davis AJA

Interpretation - Constitutional and Administrative Law - appeal against decision of the Full Court of the KwaZulu-Natal Division, Pietermaritzburg (based on an interpretation of the Constitution of the African National Congress (the ANC)) setting aside a provincial conference and all the decisions taken at that provincial conference - the meaning of rule 17.2.1 of the ANC constitution - whether the respondents’ application was governed by the Promotion of Administrative Justice Act 3 of 2000 and was out of time having been launched beyond the stipulated 180 day time period.

3. Heinrich Mans v Anita Mans (1317/2017)

Appealed from GP

Date to be heard: 15 February 2019

Cachalia JA, Majiedt JA, Schippers JA, Mokgohloa AJA, Matojane AJA

Family law - Divorce Act 70 of 1979 - whether the settlement agreement attached to the respondents counter-claim in the divorce proceedings constituted an agreement between the parties - whether the document was signed in contemplation of the divorce between the parties and if so, whether this unilateral written recordal by the appellant is valid and enforceable.

4. Benhaus Mining (Pty) Ltd v The Commissioner for the South African Revenue Service (165/2018)

Appealed from Tax Court

Date to be heard: 18 February 2019

Lewis ADP, Mbha JA, Mocumie JA, Makgoka JA, Davis AJA

Income Tax - Tax Administration Act 28 of 2011 - whether Benhaus qualifies for the deduction of 'capital expenditure' in terms of s 15(a) read with s 36 of the Income Tax Act 58 of 1962 - whether the business activities carried on by Benhaus during 2005 to 2009 constituted 'mining' or 'mining operations' as defined in s 1 of the Income Tax Act - whether the fees earned by Benhaus from rendering services constituted 'income derived from mining operations' as envisaged in s 15(a) read with s 36(7C) of the Act.

5. The Chairperson of The Municipal Appeals Tribunal, City of Tshwane & others v Brooklyn and Estate Areas Citizens Association & another (1239/2017)

Appealed from GP

Date to be heard: 18 February 2019

Ponnan JA, Majiedt JA, Swain JA, Eksteen AJA, Rogers AJA

Administrative law – review – internal remedies - whether the first appellant had the power to condone the late filing of an internal appeal submitted in terms of s 51 of the Spatial Planning and Land Use Management Act 16 of 2013 in respect of the first respondent's appeal - whether the first appellant could lawfully usurp the powers and functions of the Director, Townships Board and the Administrator provided for by s 59 of the Town Planning and Township Ordinance 15 of 1986 - whether the first appellant was directed by s 20(9)(e)(i) read with s 18(3)(a) to (e) of the City of Tshwane Metropolitan Municipality: Land Use Management By-Law to first dispose of points in limine raised by the fourth appellant before dealing with the merits - whether the court a quo should have entertained the review application when the respondent failed to exhaust all internal appeal remedies in the absence of an exemption application in terms of s 7(2)(c) of the Promotion of Administrative Justice Act 3 of 2000.

6. Enver Mohamed Motala v The Master of the North Gauteng High Court, Pretoria (92/2018)

Appealed from GP

Date to be heard: 18 February 2019

Leach JA, Wallis JA, Mathopo JA, Van der Merwe JA, Dlodlo AJA

Administrative law - review - Companies Act 71 of 2008 - appeal against judgment and order of the court a quo refusing a judicial review application - whether the removal of a liquidator from the Master's panel of liquidators constituted administrative action - review of Master's decision - whether the court a quo had the jurisdiction to either appoint a liquidator or direct the Master to do so in terms of s 375 of the Act.

7. Polokwane Local Municipality v Granor Passi (Pty) Ltd & another (289/2018)

Appealed from GP

Date to be heard: 19 February 2019

Ponnan JA, Tshiqi JA, Wallis JA, Zondi JA, Dambuza JA

Municipal Law - whether the resolution taken by the municipality constituted administrative action - whether the resolution was correctly reviewed and set aside - whether the municipality was biased and the action was procedurally fair - whether the respondent could rely on rei vindication as a cause of action - whether the respondent made out a case for the development of the common law - whether payment of the purchase price in terms of a written deed of sale between the parties was proved by the first respondent - whether the first respondent had to prove compliance with statutory prescripts in terms of s 79(18) of the

Local Government Ordinance 17 of 1939 and s 14 of the Local Government: Municipal Finance Management Act 56 of 2003.

8. Gridmark CC v Razia Trading CC (349/2018)

Appealed from WCC

Date to be heard: 19 February 2019

Cachalia JA, Majiedt JA, Van der Merwe JA, Mocumie JA, Dlodlo AJA

Contract law - interpretation - whether certain correspondence between the parties which altered the contract amounted to a compromise - whether the actions amounted to an agreement of compromise.

9. Raubex Construction (Pty) Ltd v Bryte Insurance Company Ltd (337/2018)

Appealed from GJ

Date to be heard: 19 February 2019

Leach JA, Swain JA, Mathopo JA, Makgoka JA, Eksteen AJA

Contract law - construction - defects - retention guarantee - whether the court a quo erred in finding that the respondent had proven fraud on the part of the appellant so as to escape its liability towards it based on an unconditional retention guarantee it gave for Dolphin Construction (Pty) Ltd - whether the appellant's claim relates to defects found after practical completion of the work - whether the appellant complied with the requirements of the retention guarantee.

10. Norbert Ketzler v Gardens Lodge Body Corporate (1073/2017)

Appealed from WCC

Date to be heard: 20 February 2019

Navsa AP, Tshiqi JA, Swain JA, Carelse AJA, Matojane AJA

Property law - claim for levies of a sectional title - whether the appellant should be granted condonation for the late filing of the appeal record and whether his appeal should be reinstated - whether the appellant's contention that the interest raised by the respondent may not exceed the rate of prime plus two percent constitutes a bona fide defence to the Body Corporate's claim and raises an issue which ought to be submitted to arbitration - whether the opposing affidavit by the appellant in the summary judgment contained a bona fide defence and fully disclosed the nature and grounds and material facts relied upon.

11. The Trustees for the time being of the Oregon Trust (IT728/1995) & another v BEADICA 231 CC & others (74/2018)

Appealed from WCC

Date to be heard: 20 February 2019

Lewis ADP, Cachalia JA, Saldulker JA, Mbha JA, Schippers JA

Contract Law - lease agreement - public policy - whether the respondents were required to give notice of their exercise of the rights that they enjoyed to renew their lease agreement in the form and within the time period required by the leases - whether questions of public policy, good faith, ubuntu, and/or fairness overcome their failure to have done so - whether public policy can and should be applied to cut through contractual principle of *pacta sunt servanda* in appropriate circumstances.

12. Atwealth (Pty) Ltd & others v Alan Kernick & others (116/2018)

Appealed from ECG

Date to be heard: 20 February 2019

Wallis JA, Zondi JA, Dambuza JA, Davis AJA, Rogers AJA

Contract law - investments - damages - whether the court a quo erred in finding that the e-mail of 28 April 2011 constituted advice - whether the respondents made investments allegedly on advice of the second appellant - whether the advice of the second appellant was given wrongfully and negligently - whether the first appellant is vicariously liable for actions of second appellant who was in its employment at the time of the incident - whether the second and third respondents are protected by a disclaimer which was displayed on their e-mails.

13. Timothy Fanfani Mabaso v National Commissioner of Police & another (1222/2017)

Appealed from WCC

Date to be heard: 21 February 2019

Navsa AP, Van der Merwe JA, Makgoka JA, Mokgohloa AJA, Eksteen AJA

Administrative law - Promotion of Administrative Justice 3 of 2000 - application in terms of PAJA for the review and setting aside of the respondent's failure to take a decision pursuant to having given notice in terms of s 3 of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 - the proper interpretation of s 3 of the Act within the context of the Act and relevant constitutional considerations – whether there is a duty or any obligations on the respondents.

14. Geoffrey Cook v Murray Morrison & another (1319/2017)

Appealed from GJ

Date to be heard: 21 February 2019

Lewis ADP, Leach JA, Saldulker JA, Mathopo JA, Rogers AJA

Prescription - interpretation - whether the court a quo erred when it held that the appellant's claims had prescribed as at the date of the issue of summons - whether the court a quo was competent to hold that the appellant's claims had prescribed where the issue of prescription is heavily intertwined with the facts and evidence, which required a trial - whether the matter should have been referred to trial for further evidence on (a) the existence of partnership and (b) the correct date upon which the contract was cancelled, if, indeed it was cancelled.

15. Sivubo Trading and Projects CC v Development Bank of Southern Africa (233/2018)

Appealed from GJ

Date to be heard: 21 February 2019

Tshiqi JA, Majiedt JA, Schippers JA, Carelse AJA, Matojane AJA

Contract law - offer and acceptance - interpretation of two paragraphs in a letter which respondent 'conditionally accepted' a tender offer that appellant had submitted - respondent claims order of court a quo not appealable - whether the amendment to the citation of the appellant amounted to a substitution of a defendant or the correction of a misnomer - whether the service of the summons interrupted prescription.

16. Rabia Helga Beukes v Dr Samuel Johannes Smith (211/2018)

Appealed from GP

Date to be heard: 22 February 2019

Navsa AP, Zondi JA, Dambuza JA, Mocumie JA, Mokgohloa AJA

Delict - medical negligence - consent - the appellant claimed damages from the respondent for not having obtained her informed consent for a laparoscopy procedure during which her colon was perforated

resulting in a wound infection necessitating lifesaving surgical intervention - whether the respondent obtained the required consent for the laparoscopy - whether the appellant was made aware of the risks of the procedure and informed of the alternative procedure known as laparotomy.

17. Johannesburg Society of Advocates v Christiaan Serfontein Edeling (326/2018)

Appealed from GJ

Date to be heard: 22 February 2019

Ponnan JA, Wallis JA, Saldulker JA, Schippers JA, Eksteen AJA

Admission of Advocates Act 74 of 1964 - re-admission of advocate - the respondent was struck from the roll of advocates in South Africa in 1997 after he was found to be no longer a fit and proper person to practise, he remained admitted and enrolled to practise in Lesotho as an advocate - whether the question of the fitness and propriety of an applicant for re-admission is one of discretion or whether a discretion only arises on the question of whether he should be re-admitted after the court has found as an objective fact that such applicant was a fit and proper person - whether this court has the jurisdiction to alter on appeal the discretion exercised by the court a quo - whether the respondent established that he was a fit and proper person for re-admission and whether he had discharged the additional onus expressed in *Swartzberg v Law Society of the Northern Provinces* 2008 (5) SA 322 (SCA) - whether an advocate, found, when struck from the roll, to have committed a massive fraud on the fiscus, to have perjured himself before a Special Income Tax Court and whose evidence in the striking off application was described by the court as untruthful and improbable should be re-admitted as an advocate – the propriety of an advocate practising in Lesotho while struck off the roll in South Africa.

18. Centriq Insurance Company Limited v Marisa Vogel Oosthuizen & another (237/2018)

Appealed from FB

Date to be heard: 22 February 2019

Cachalia JA, Mbha JA, Mathopo JA, Dlodlo AJA, Rogers AJA

Contract - breach of contract - exclusion clause - whether the appellant was obliged to indemnify the second respondent pursuant to the written professional indemnity policy in operation between them when the second respondent was faced with a claim from the first respondent pursuant to the investment advice he had given her to make a two million rand investment - whether the exclusion found at clause 3(ii) of the policy had the effect of excluding the appellant's obligation to indemnify the second respondent.

19. Africa Charter Airline CC v Avisys Aviation Systems CC (421/2018)

Appealed from GJ

Date to be heard: 25 February 2019

Lewis ADP, Saldulker JA, Van der Merwe JA, Makgoka JA, Davis AJA

Contract Law - breach of contract - interpretation - whether the Boeing Service Letter formed part of the contract between the parties - the interpretation of the Boeing Service Letter and whether that agreement contained an implied or tacit term.

20. The Pretoria Society of Advocates v Margaret Van Zyl (517/2018)

Appealed from GP

Date to be heard: 25 February 2019

Ponnan JA, Majiedt JA, Wallis JA, Swain JA, Schippers JA

Admission of Advocates Act 74 of 1964 - removal of the respondent from the roll of advocates - whether grounds exist for this court to interfere with the sanction imposed by the court a quo in circumstances where the respondent made herself guilty of dishonesty - committed perjury in the disciplinary proceedings in the court a quo - whether the court a quo granted an appropriate order as to costs.

21. Parktown High School for Girls v Emeran Hishaam obo Emeran, Naqeeb (093/2018)

Appealed from GJ

Date to be heard: 25 February 2019

Cachalia JA, Leach JA, Tshiqi JA, Mokgohloa AJA, Rogers AJA

Delict - damages - negligent breach of a legal duty - leave to appeal against the dismissal of a special plea - special plea based on s 60(1)(a) of the South African Schools Act 84 of 1996 (the Act) - the issue on appeal is the interpretation of s 36 of the Act and whether the respondents were correct in instituting action against the appellant in terms of s 60(4) of the Act instead of the State in terms of s 60(1)(a) - whether the fashion show in which the respondent was injured was a school activity as defined in s 1 of the Act.

22. Twende Africa Group (Pty) Ltd t/a Tag Marine v MFV Qavak (476/2018)

Appealed from ECP

Date to be heard: 26 February 2019

Navsa AP, Wallis JA, Dambuza JA, Makgoka JA, Davis AJA

Shipping Law - contract - obligations of a buyer to a shipbroker - appeal against order of the court a quo in terms of which the arrest of the respondent's vessel was set aside - the appellant, a shipbroker, introduced Fisherman Fresh and Donohue Fishing in relation to a possible sale of the vessel - it was a tacit/implied term of the brokerage agreement with Fisherman Fresh, that the parties would transact through the appellant - whether Fisherman Fresh breached this obligation by concluding a sale agreement with Donohue through different brokers and was thus liable for damages.

23. Tadvest Industrial (Pty) Ltd v Anthea Hanekom & others (083/2018)

Appealed from LCC

Date to be heard: 26 February 2019

Ponnan JA, Majiedt JA, Swain JA, Carelse AJA, Matojane AJA

Property law - Extension of Security of Tenure Act 62 of 1997 (ESTA) - application to introduce further evidence on appeal - whether the court a quo erred in finding that the respondents derived their consent to occupy the appellant's property from s 3(4) and (5) of ESTA - whether the appellant complied with s 8(1) of ESTA in terminating the respondents' right of residence and whether the termination was just and equitable - whether the first and second respondents have satisfied the requirements for an eviction order in terms of ss 9(2) of ESTA - the impact of the requirements of 'meaningful engagement' and 'alternative accommodation'.

24. National Home Builders Registration Council v Michiel Wessel Adendorff & others (406/2018)

Appealed from LT

Date to be heard: 26 February 2019

Leach JA, Saldulker JA, Mbha JA, Dlodlo AJA, Eksteen AJA

Trusts - Housing Consumers Protection Measures Act 95 of 1998 (the Act) - whether a trust engaged in the building of residential homes is governed by the Act - interpretation of the phrase 'home builder' - home builder means a person natural and/or juristic - is a trust a home builder taking in to consideration that a trust is not a natural or juristic person - whether a trust is 'a person' as contemplated in s 10(1) of the Act.

25. The Minister of Safety and Security v Kholeka Nancy MSI (273/2018)

Appealed from ECG

Date to be heard: 27 February 2019

Navsa AP, Majiedt JA, Mathopo JA, Schippers JA, Eksteen AJA

Delict - damages - whether the employer should be held vicariously liable for the acts of the employee - whether a sufficiently close link between the acts of the employee for his own interest and the purposes and business of the appellant was established by the respondent - whether the test set out in *K v Minister of Safety and Security* was correctly applied - whether the trust element that the public ordinarily reposes in the police only arises in situations where the parties were related to each other as police officer and citizen – whether the trust element includes circumstances where the parties were interacting as lovers in a domestic setting, or as family members of the police officer.

26. Ernest Theron v Premier of the Western Cape Province & another (1310/2017)

Appealed from WCC

Date to be heard: 27 February 2019

Lewis ADP, Cachalia JA, Saldulker JA, Mbha JA, Dambuza JA

Contract law - damages - Provincial Development Council Repeal Act 5 of 2011 - the appeal concerns the termination of the appellant's employment contract as a result of the disestablishment of the Provincial Development Council in terms of the repealed Act - the court a quo ruled that the appellant was only entitled to notice pay and not remuneration for the full unexpired period of the contract – issues on appeal (a) the effect of s 4(b) of the repealed Act that brought about the disestablishment of the Provincial Development Council, which provides for payment of all outstanding liabilities of the Council, by the first respondent, as from the date of disestablishment (b) the remuneration payable to the appellant for the remaining term of the appellant's fixed term employment contract (c) the legal principles applicable to premature termination of fixed term employment contracts and the consequences thereof and (d) whether the appellant was only entitled to notice pay of one month.

27. Minister of Police v Mfanuka Jacob Masina (1082/2017)

Appealed from GP

Date to be heard: 28 February 2019

Tshiqi JA, Wallis JA, Zondi JA, Van der Merwe JA, Matojane JA

Prescription - s 3(2) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 - whether the court a quo erred in finding that the respondent's debt has not been extinguished by prescription as contemplated by s 11(d) of the Prescription Act 68 of 1969 - whether the court a quo erred by relying on s 12(3) of the Prescription Act and in granting costs on punitive scale.

28. Bergvriervier Municipality v Rhynardt Van Ryn Beck (1269/2017)

Appealed from WCC

Date to be heard: 28 February 2019

Navsa AP, Zondi JA, Mathopo JA, Mocumie JA, Eksteen AJA

Constitutional law - administrative functions of the appellant - whether the appellant had a legal duty to prevent flooding and damages resulting from flooding that flowed and originated from areas outside of its jurisdiction - whether the breach of such duty can be regarded as wrongful in the circumstances - whether the appellant failed in those administrative functions (s 195 and 152 – 156 of the Constitution) and to what extent such failure affects the questions of reasonableness of conduct on the part of the appellant.

29. Petrus Jacobus Maryn Van Staden NO & others v Pro-Wiz Group (Pty) Ltd (412/2018)

Appealed from GP

Date to be heard: 28 February 2019

Wallis JA, Makgoka JA, Schippers JA, Mokgohloa AJA, Rogers AJA

Company Law - business rescue - whether the liquidators had locus standi to oppose the application for business rescue - which powers of the liquidators are suspended by s 131(6) of the Companies Act 71 of 2008 - pending the hearing of s 131(1) of the Companies Act with whom does the administration of the assets of a company vests - whether exceptional circumstances exist to refer to any consideration of costs in determining whether the decision would have any practical effect or result – whether the appellants' application for the costs in terms of Rule 41(1)(c) of the Uniform Rules of the Court should be successful, insofar as this issue is found to constitute a practical effect or result as required in s 16 (2)(a)(i) of the Superior Courts Act 10 of 2013.

30. CDH Invest NV v Petrotank South Africa (Pty) Ltd & others (483/2018)

Appealed from GJ

Date to be heard: 01 March 2019

Ponnan JA, Saldulker JA, Davis AJA, Carelse AJA, Rogers AJA

Companies Act 71 of 2008 - Interpretation - whether the appellant is entitled to raise grounds of appeal that did not form part of its application for leave to appeal - whether the court a quo erred in declaring the Resolution invalid and setting it aside - whether the court a quo was correct in refusing to grant an order compelling the holding of a shareholders' meeting for the purposes of considering and passing of the Resolution.

31. Clicks Retailers (Pty) Limited v Killarney Mall Properties (Pty) Limited (229/2018)

Appealed from GP

Date to be heard: 01 March 2019

Cachalia JA, Mbha JA, Dambuza JA, Mathopo JA, Dlodlo AJA

Contract law - lease agreement - whether the option to renew the lease agreement was validly exercised.

32. Jalite (Proprietary) Limited v Shanghai Furniture Import & Export CC (223/2018)

Appealed from GJ

Date to be heard: 01 March 2019

Leach JA, Zondi JA, Mocomie JA, Mokgohloa AJA, Matojane AJA

Administrative law - whether the respondent discharged its onus in the court a quo - whether the new issue raised by the appellant regarding liability for the burglar bar improvements can be entertained - whether the new issue raised caused unfairness to the respondent - whether the facts before the lower courts were sufficient to dismiss the appellant's claim and grant the respondent's counterclaim - whether an appeal court is entitled to overturn a trial court's decision on the factual finding of the trial court.

33. JJPC Brand Administrators & another v P Lombard & others (1223/2017)

Appealed from LT

Date to be heard: 04 March 2019

Navsa AP, Tshiqi JA, Wallis JA, Van der Merwe JA, Eksteen AJA

Prescription - right of servitude - whether the court a quo misdirected itself in re-routing an existing public road rather than having that issue determined in terms of s 62(1)(d) of the Limpopo Roads Agency proprietary Limited and Provincial Roads Act 7 of 1998 - whether the court a quo ought to have granted relief to relocate the existing road to the alternative location proposed by the respondents - whether the existing road is a public road or a private road - whether the appellants acquired a right of servitude by prescription in ordering the re-routing of the road.

34. Deeps Betting Grounds (Pty) Ltd v The Northern Cape Gambling Board (492/2018)

Appealed from NCK

Date to be heard: 04 March 2019

Lewis ADP, Makgoka JA, Schippers JA, Carelse AJA, Matojane AJA

Administrative Law - statutory interpretation - interpretation of Regulation 7(c) of the Northern Cape Gambling Regulations - whether the decision of the Northern Cape Gambling Board not to grant the appellant a final license to conduct bookmaker activities, as contemplated in the Northern Cape Gambling Act, 3 of 2008 at Erf 7195, Upington, should be reviewed and set aside - whether the Northern Cape Gambling Board failed to correctly interpret Regulation 7(c).

35. M Visagie & Associates CC & another v Small Enterprises Finance Agency Ltd (262/2018)

Appealed from WCC

Date to be heard: 04 March 2019

Majiedt JA, Swain JA, Zondi JA, Mocomie JA, Rogers AJA

Rule 27(9) of the Magistrate Court Rules - interpretation - court enforcing terms of settlement agreement - whether the appellants breached the settlement agreement - whether the magistrate court was correct in finding that in terms of the settlement agreement the appellants were required to make payment of their monthly rental obligation on the first working day of the month - whether the rental was payable in terms of the common law - appeal against costs order.

36. Mount Edgecombe Country Club Estate Management Association II (RF) NPC Niemesh Singh & others (323/2018)

Appealed from KZP

Date to be heard: 05 March 2019

Ponnan JA, Saldulker JA, Swain JA, Schippers JA, Rogers AJA

Constitutional law – interpretation of the appellant’s Conduct Rules and the application of the National Road Traffic Act 93 of 1996 (NRTA) – whether the appellant’s self-regulation of the roads within the Mount Edgecombe Country Club Estate contravenes national legislation and the principle of legality - interpretation of s 1 of the Act - whether the roads within the estate are public roads - whether the Conduct Rules may be interpreted in a manner which permits the appellant to regulate the roads within the estate separately from the regime provided for in the Act and without obtaining prior consent of the state functionaries.

37. Anton De Waal Alberts & others v Daniel Jacobus Louis Nel N O (128/2018)

Appealed from GP

Date to be heard: 05 March 2019

Leach JA, Tshiqi JA, Zondi JA, Davis AJA, Eksteen AJA

Company law - locus standi - s 53(b) of the Companies Act 61 of 1973 - whether the trial court was correct in granting summary judgment against the company and directors - whether the full court was correct in finding in favour of the respondent on the point in limine - whether the court a quo was correct in dismissing the appeal on the basis that the appellants did not have locus standi.

38. Kelopile Getruida Motsumi v Azurapix (Pty) Ltd (322/18)

Appealed from FB

Date to be heard: 05 March 2019

Majiedt JA, Wallis JA, Mbha JA, Dambuza JA, Van der Merwe JA

Property law - sale in execution - appeal against the dismissal of an urgent application to stay a sale in execution of the appellant’s immovable property - whether the urgent application should have been granted and whether the appeal has become moot.

39. Petrus Wilhelm Terblance v Minister of Water and Environmental Affairs (081/2018)

Appealed from GP

Date to be heard: 06 March 2019

Navsa AP, Leach JA, Mocumie JA, Mokgohloa AJA, Dlodlo AJA

Prescription - claim for damages - whether the respondent’s failure to comply with the provisions of s 54(4), alternatively s 59(4) of the National Water Act 36 of 1998 violated the appellant’s water use rights - whether the appellant’s existing water use in terms of the provisions of the Act constituted a personal or a real right against which prescription does not run - whether the respondent’s failure to maintain Government Water Works that form part of the Rhenoster River Government Scheme and failure to provide water to the appellant constituted continuous wrongs that prevented prescription from running against the appellant - whether the respondent is liable to pay damages to the appellant arising from the suspension of the appellant’s existing lawful water use without first affording him an opportunity to make representations in terms of the provisions of s 54(4) and s 59(4) of the Act.

40. Moto Health Care Medical Scheme v HMI Healthcare Corporation (Pty) Ltd & others (341/2018)

Appealed from GP

Date to be heard: 06 March 2019

Ponnan JA, Schippers JA, Davis AJA, Eksteen AJA, Rogers AJA

Civil procedure - prescription - company law - whether the court of first instance correctly concluded that the liquidators of Calabash Health Solutions (Pty) Ltd (Calabash) had condoned the appellant's failure to deliver a written notice required in terms of s 359(2)(a) of the Companies Act 61 of 1973 before it could institute action against Calabash and that the appellant's claim in the sum of R 30 776 615 together with interest a tempore morae and legal costs had not prescribed - whether the court of first instance correctly held that the first and second respondents' claims against Calabash had become prescribed as a result of which the parties had no locus standi to oppose the application in their capacity as alleged creditors of Calabash - whether the service of summons (after Calabash's winding-up) on Calabash's chosen domicilium interrupted the running of prescription.

41. Skycap Investments 110 CC v Livinafrica (Pty) Ltd & others (433/2018)

Appealed from WCC

Date to be heard: 06 March 2019

Cachalia JA, Saldulker JA, Mbha JA, Mathopo JA, Makgoka JA

Sectional Titles Schemes Management Act 8 of 2011 - locus standi - whether the appellant had locus standi to pursue the interdictory relief sought in the main application - whether the appellant discharged the onus on it in the contempt application - whether s 9 of the Act deprived the appellant of its locus standi to seek interdictory relief against the first respondent in respect of the building works carried out, without all necessary planning approvals.

42. Phaswana Stephen Ratlou v Man Financial Services (SA) (Pty) Ltd (1309/2017)

Appealed from GJ

Date to be heard: 07 March 2019

Lewis ADP, Swain JA, Dambuza JA, Carelse AJA, Matojane AJA

Contract law- National Credit Act 34 of 2005 – issue on appeal and cross-appeal whether a compromise (transactio), constitutes a credit agreement as contemplated by the Act – whether the effect of making that compromise an order of court will negate or nullify the rights and remedies afforded by the Act to the party who received credit in terms of the compromise - whether the credit receiver/consumer is still entitled to have the compromise or court order declared as reckless, alternatively to form part of a debt restructuring order or rely on any other remedies afforded by the Act - whether a court is entitled to mero motu make an agreement an order of court solely on the basis that the parties to the agreement expressly agreed that it may be made an order of court - whether a compromise (in this case an acknowledgement of debt) constituted a credit transaction, governed by the Act where the underlying settled causa was not governed by the Act - whether it constituted a credit transaction governed by the Act and the court a quo could make the agreement an order of court absent a prayer for that relief.

43. Andries Petrus Burgers v The Land and Agricultural Development Bank of South Africa & another (194/2018)

Appealed from GP

Date to be heard: 07 March 2019

Ponnan JA, Saldulker JA, Mathopo JA, Mokgohloa AJA, Davis AJA

Contract - cession - National Credit Act 34 of 2005 - the appellant, a 'consumer' as defined by the provisions of the National Credit Act became over-indebted and attempted to utilise the debt review provisions of the Act to alienate his over-indebtedness to the respondent - issues on appeal (a) whether the cession provisions of the agreements between the appellant and the first respondent amounted to

‘security’ in terms of s 88(3) of the Act (b) whether the cession provisions are adjudged to be security in terms of s 88(3) and be enforced by the first respondent (c) whether the proceeds of the appellant’s farming activity (subject to the cession) may be utilised for the purposes of payment to creditors of the appellant in terms of a debt review re-arrangement order.

44. Firststrand Bank Ltd V Nedbank Ltd (1249/17)

Appealed from LP

Date to be heard: 07 March 2019

Cachalia JA, Mbha JA, Van der Merwe JA, Dlodlo AJA, Rogers AJA

Contract law - interpretation - company – insolvency - cancellation clauses - whether upon a proper construction of the cancellation clauses the outright cession of the book debt automatically becomes cession in securitatem debiti - whether a secured creditor has locus standi to approach a court for relief when the liquidator has failed to do so - cross appeal - ss 34 and 39(2) of the Constitution – interpretation of contracts.

45. The Director General of the Department of Home Affairs & others v De Saude Attorneys & another (1211/2017)

Appealed from WCC

Date to be heard: 08 March 2019

Navsa AP, Majiedt JA, Makgoka JA, Carelse AJA, Matojane AJA

Constitutional law - interpretation - s 38(a) or (b) - whether in terms of the Constitution the respondents, who describe their business as ‘*assisting foreign nationals in applying for immigration and citizenship status*’, had locus standi to bring an application of immigration and citizenship status in the court a quo – whether the court a quo had jurisdiction to hear the application.

46. Africa Automotive Aftermarket Solutions (Pty) Ltd t/a Midas v Thornhill Shopping Centre (Pty)

Ltd (1311/2017)

Appealed from LT

Date to be heard: 08 March 2019

Lewis ADP, Leach JA, Tshiqi JA, Mocumie JA, Dlodlo JA

Contract law – repudiation - interpretation of lease agreement - whether the common law entitles a contracting party to claim specific performance - whether the lessee should continue to trade - whether the court a quo was correct in finding that the tenant undertook to trade continuously.

47. Born Free Investments 247 (Pty) Ltd v Pierre Du Plessis Kriel NO (1183/17)

Appealed from WCC

Date to be heard: 08 March 2019

Wallis JA, Zondi JA, Mathopo JA, Schippers JA, Mokgohloa AJA

Administrative law - interpretation - procedure - Protection of Funds Act 28 of 2001 - whether condonation for the late filing of proceedings should be granted – whether the institution of legal proceedings against the respondent without leave of the Western Cape High Court makes the institution of action void - whether the special plea was properly upheld by the full court.

48. Jose Pebro Morais Carneiro v The Sate (425/18)

Appealed from GJ

Date to be heard: 11 March 2019

Lewis ADP, Wallis JA, Mathopo JA, Davis AJA, Rogers AJA

Criminal law and procedure - appeal against conviction of murder - whether the identity of the accused was proved beyond reasonable doubt - whether the evidence of the witnesses was truthful and reliable as the credibility is challenged on serious contradictions of two versions.

49. Nceba Tyhulu v The State (810/2018)

Appealed from WCC

Date to be heard: 11 March 2019

Cachalia JA, Mbha JA, Mocomie JA, Dlodlo AJA, Matojane AJA

Criminal law and procedure - appeal against conviction and sentence - the appellant appeared in the Paarl Regional Court (the trial court) on 2 counts of contravening s 4(1)(a)(1)(aa) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and two counts of contravening s 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 - the appellant was convicted on 4 main counts and sentenced to an effective 13 years' imprisonment - leave to appeal was refused by both the trial court and the WCC, whereafter this court granted him special leave to appeal – whether it was proved that the substance handed to the appellant in a trap operation was methamphetamine (Tik) - whether the trap went beyond merely creating an opportunity to commit the offence and accordingly the evidence should not have been admitted.

50. Mohammed Sani Aliko v The State (552/2018)

Appealed from ECG

Date to be heard: 11 March 2019

Leach JA, Dambuza JA, Van der Merwe JA, Carelse AJA, Eksteen AJA

Criminal law and procedure - appeal against sentence - the trial court convicted the appellant of premeditated murder and sentenced him to life imprisonment on 6 December 2013, the appellant appealed against both his conviction and sentence with the leave of the trial court. On appeal the court a quo upheld the appeal against the conviction and found the appellant guilty of murder but dismissed his appeal against his sentence of life imprisonment - this court granted the appellant special leave - whether the court a quo applied to wrong sentencing provisions, as the applicable sentence for murder is 15 years' imprisonment - whether the sentence imposed is shockingly inappropriate - whether there are substantial and compelling circumstances present to warrant a lesser sentence - the appellant requests the court to uphold the appeal and replace his sentence with an appropriate sentence backdated to 6 December 2013.

51. Robin Tendai Vela v Efora Energy Limited (formerly known as SacOil Holdings Limited) (385/2018)

Appealed from GJ

Date to be heard: 12 March 2019

Navsa AP, Dambuza JA, Makgoka JA, Davis AJA, Eksteen AJA

Tax Law - Tax Administration Act 28 of 2011 - appeal against the judgment granted in favour of the respondent on its claim in convention for the repayment of unpaid PAYE - whether the respondent waived its right to recover that amount from the appellant – whether the appellant proved how much leave was due to him and whether the payment of the bonus was agreed at a meeting of the respondent's

remuneration committee - the proper interpretation of the share option scheme and whether the appellant proved his damages if the share option scheme was breached.

52. John Tutton v The State (294/18)

Appealed from KZP

Date to be heard: 12 March 2019

Tshiqi JA, Saldulker JA, Zondi JA, Schippers JA, Dlodlo AJA

Criminal Law and procedure - s 276 B(2) of Criminal Procedure Act 51 of 1977 - whether the court a quo erred in failing to notify the appellant that a non-parole period will be imposed - whether the appellant was afforded an opportunity to address the court on the issue - whether the non-parole period should be set aside.

53. Jason Naidoo v The State (333/2018)

Appealed from WCC

Date to be heard: 12 March 2019

Majiedt JA, Van der Merwe JA, Mocumie JA, Carelse AJA, Matojane AJA

Criminal Law and procedure - cautionary rule - credibility of a single child witness who was under the influence of alcohol at the time of the alleged incident - whether the trial court correctly applied the cautionary rule - whether the concept of corroboration and standard of proof was correctly applied - whether the court a quo erred in confirming the credibility and factual findings of the trial court.

54. Nishal Gunas v The State (819/18)

Appealed from KZP

Date to be heard: 13 March 2019

Cachalia JA, Mbha JA, Dlodlo JA, Carelse JA, Matojane JA

Criminal Law and procedure - appeal against conviction of murder - whether the magistrate failed to apply caution when evaluating and accepting the evidence of a single child witness - whether the magistrate failed to attach due weight to the chain of evidence - whether the court a quo failed to adequately assess the role and involvement of the investigating team - reconstruction of missing evidence - whether the absence of a full record is prejudicial to the case of the appellant.

55. Neville Charles Cooper v The State (285/2018)

Appealed from WCC

Date to be heard: 13 March 2019

Tshiqi JA, Saldulker JA, Dambuza JA, Mocumie JA, Mokgohloa AJA

Criminal Law and procedure - leave to appeal against the refusal of leave to appeal by the court a quo - appellant convicted on two counts of contravention of s 305(1)(q) of the Children's Act 38 of 2000 - whether the high court erred in finding that the appellant did not have a reasonable prospect of success against his convictions and sentence imposed.

56. Njabulo Mkhize & others v The State (390/2018)

Appealed from KZP

Date to be heard: 13 March 2019

Majiedt JA, Swain JA, Mathopo JA

Criminal Law and procedure - appeal against the dismissal of an appeal against conviction and sentence on charges of culpable homicide - whether the court a quo was justified in increasing the sentence - whether the circumstantial evidence excluded all other innocent explanations - whether the State succeeded in proving a common purpose between the appellants – whether the sentence induced a sense of shock.

57. Nico Viljoen v The State (663/2018)

Appealed from NCK

Date to be heard: 14 March 2019

Navsa AP, Van der Merwe JA, Schippers JA

Criminal law and procedure - appeal against the convictions and sentence for contravening s 20 of the Diamonds Act 56 of 1986 (purchasing uncut diamonds) - whether the court a quo erred and misdirected itself in finding that the State has proved its case beyond reasonable doubt - whether the court erred in imposing a sentence which was not justified to the facts of the case.

58. Casparus Janse van Rensburg v The Minister of Police (424/2018)

Appealed from GP

Date to be heard: 14 March 2019

Ponnan JA, Leach JA, Rogers AJA

Criminal Law and procedure - interpretation - lawfulness of the appellant's arrest - whether the jurisdictional requirements of s 40(1)(a) and (b) of the Criminal Procedure Act 51 of 1977 were present at the time of the arrest – whether the arresting officer exercised his discretion rationally and lawfully.

59. The Director of Public Prosecutions, KwaZulu-Natal v Donovan Mark Ramdass (1236/2017)

Appealed from KZD

Date to be heard: 14 March 2019

Wallis JA, Swain JA, Mokgohloa AJA

Special leave - whether special circumstances exist for this court to grant the applicant special leave to appeal against the acquittal of the respondent in the trial court - whether the trial court was correct in finding that the applicant has failed to prove criminal capacity - whether questions raised by the applicant constitute questions of law.

60. Sizazonke Electrical CC & another v Eskom Holdings SOC Limited (222/2018)

Appealed from GP

Date to be heard: 15 March 2019

Tshiqi JA, Mbha JA, Zondi JA, Davis AJA, Carelse AJA

Contract law - cancellation - damages - whether the respondent had lawfully cancelled all the relevant agreements - whether the respondent followed the correct procedures - whether respondent repudiated the agreements - if repudiation did occur - whether the damages in the form of loss of profit claimed by the appellants should be determined.

61. Mamela Maqhula v The State (508/2018)

Appealed from ECG

Date to be heard: 15 March 2019

Majiedt JA, Mathopo JA, Mocumie JA, Makgoka JA, Mokgohloa AJA

Criminal law and procedure - appeal against the court a quo's dismissal of a petition for leave to appeal against conviction of common assault by the regional court, Port Elizabeth - whether the court a quo erred in dismissing the petition - whether there was credible evidence that the appellant poured hot water over the complainant - whether the applicant's version was reasonably possibly true.

62. Dennegeur Estate Home Owners Association & another v Telkom SA SOC Ltd (366/208)

Appealed from WCC

Date to be heard: 18 March 2019

Lewis JA, Ponnann JA, Zondi JA, Dlodlo JA, Eksteen AJA

Spoilation order - Electronic Communications Act 35 of 2005 - whether the installation by Telkom of copper cables inside a portion of underground plastic sleeves, which are the property of the landowner, amounts to possession of the plastic sleeves and/or associated ducts and underground infrastructure of the estate on which the cables are installed - whether an act of spoliation occurred when Vodacom installed cables in the same sleeves without hampering the service delivered by Telkom via its copper cables - whether Telkom's delay of eight months before bringing the spoliation proceedings evinced acquiescence.

63. The South African Municipal Workers' Union National Provident Fund v Umzimkhulu Local Municipality & others (297/2018)

Appealed from KZP

Date to be heard: 19 March 2019

Lewis ADP, Tshiqi JA, Swain JA, Van der Merwe JA, Dlodlo AJA

Pension Funds Act 24 of 1956 - interpretation - whether the court a quo erred in finding that rule 3.2.1 does not prohibit in service elective transfers - whether a rule of the appellant should be set aside as being unconstitutional - whether the rules of the appellant is enforceable with reference to ss 13 and 13A (1) and (2) of the Act.

64. Municipal Employees Pension Fund & another v SAMWU National Provident Fund & another (1412/2018)

Appealed from: ECM

Date to be heard: 19 March 2019

Lewis ADP, Tshiqi JA, Swain JA, Van der Merwe JA, Dlodlo AJA

Constitutional Law – Interpretation - the issues on appeal are the proper interpretation of Rule 3.2.1 of the SAMWU Fund Rules and ss 13A(5) and 14 of the Pension Funds Act 24 of 1956 – whether Rule 3.2.1 is constitutional and valid – whether the rule precludes SAMWU Fund members from transferring to another accredited pension fund during employment.