

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 2 OF 2019

CASES ENROLLED FOR HEARING: MAY 2019

1. Patronacia Thembi Maswanganyi obo Teboho Maimela Machimane v Road Accident

Fund (1175/2017)

Appealed from LP

Date to be heard: 2 May 2019

Maya P, Wallis JA, Zondi JA, Mocumie JA, Weiner AJA

Delict – damages – Road Accident Fund Act 56 of 1996 – whether the court a quo had a discretion to refuse to make the draft settlement order an order of court – whether it correctly compelled the parties to go to trial – whether the full court erred by focusing solely on prayer 2 in the notice of motion.

2. Fatima Alexandra & others v Riedewaan Carelse N O & another (1032/2017)

Appealed from WCC

Date to be heard: 2 May 2019

Navsa JA, Saldulker JA, Mbha JA, Dambuza JA, Davis AJA

Housing - Eviction – application for special leave to appeal against the judgment and order of the court a quo, which upheld an eviction order granted in the magistrates' court and condonation for its late filing – whether the City's emergency housing policy was unconstitutional because it did not make provision for reasonable accommodation for mentally disabled persons – whether first respondent had locus standi to institute eviction proceedings – whether the eviction was just and equitable.

3. Department: Transport, Province of KwaZulu-Natal v S Ramsaran & others (1274/2017)

Appealed from KZP

Date to be heard: 2 May 2019

Ponnan JA, Mathopo JA, Van der Merwe JA, Mokgohloa AJA, Gorven AJA

Administrative Law – Public Finance Management Act 1 of 1999 – whether the appellant, a provincial entity, could instruct (without the intervention of the State Attorney), private

attorneys to assist in the recovery of losses sustained as a result of criminal conduct of the respondents – whether the court a quo correctly exercised its discretion when it refused the appellant’s application for extension of time.

4. Danielle Beijers v Harlequin Duck Properties 231 (Pty) Ltd t/a Office Space Online (1216/2017)

Appealed from GJ

Date to be heard: 3 May 2019

Cachalia JA, Majiedt JA, Zondi JA, Mocumie JA, Gorven AJA

Contract – matter concerning an alleged oral agreement in respect of the sharing of commission – whether the court a quo erred in remitting the matter back to the regional magistrate’s court for hearing of further evidence.

5. Nkosinathi Wiseman Mngomezulu v Ethekwini Metropolitan Municipality (079/2018)

Appealed from KZD

Date to be heard: 3 May 2019

Leach JA, Dambuza JA, Molemela JA, Schippers JA, Eksteen AJA

Delict – unlawful assault and malicious damage to property – the appellant contends that members of the respondent conducted a series of unlawful demolitions in an informal settlement, which resulted in the appellant being shot four times in the abdomen by an official of the respondent – whether the findings of fact, in relation to the appellant’s credibility made by the court a quo were correct – whether the appellant acted within the bounds of defence of property.

6. Schoeman Alida & others v Lombard Insurance Company Limited (1299/2017)

Appealed from GJ

Date to be heard: 3 May 2019

Tshiqi JA, Swain JA, Mathopo JA, Makgoka JA, Plasket JA

Contract Law – suretyship – appellants were sued in their capacities as sureties and co-principal debtors for and behalf of Golden Sun Retailers (Pty) Limited – whether there was compliance with a demand guarantee issued by the respondent which triggered the liability of the respondent to Sasol Oil (Pty) Limited – liability of Golden Sun to the respondent in terms

of a counter indemnity – liability of the appellants as sureties in terms of the deeds of suretyship in respect of Golden Sun to pay to the respondent ‘premiums’ in terms of the counter-indemnity.

7. NPGS Protection and Security Services & another v Firststrand Bank Limited (314/2018)

Appealed from GJ

Date to be heard: 6 May 2019

Navsa JA, Mbha JA, Makgoka JA, Mokgohloa AJA, Davis AJA

Practice and Procedure/Constitutional Law - appeal against an order of summary judgment – whether the respondent’s claim was clearly established – whether the appellants established a bona fide defence - whether the second appellant was deprived of judicial oversight in terms of s 26(1) of the Constitution – whether the second appellant’s right to adequate housing was breached.

8. Zulmira Fedelia Stoffberg N O & others v The City of Cape Town (1325/2017)

Appealed from WCC

Date to be heard: 6 May 2019

Ponnan JA, Tshiqi JA, Van der Merwe JA, Schippers JA, Eksteen AJA

Property law - Prescription Act 18 of 1943 – whether appellants proved ownership of Farm 77 as a result of acquisitive prescription – whether the eviction of the appellants was justified – whether the fifth appellant was estopped from claiming ownership of the property – whether the fifth appellant’s claim to have the property transferred to him has prescribed and whether the respondent acquired the property by means of acquisitive prescription by virtue of continued and open possession for a period of 30 years.

9. Gold Circle (Pty) Ltd v Anil B Maharaj (1313/2017)

Appealed from KZP

Date to be heard: 6 May 2019

Majiedt JA, Wallis JA, Saldulker JA, Molemela JA, Weiner AJA

Equality Court/High Court/Estoppel – whether the Equality Court was correct in upholding a special plea of estoppel – whether the court a quo failed to exercise judicial restraint in considering the appeal.

10. National Union of Public Service and Allied Workers on behalf of Members v The Member of the Executive Council for Health: Gauteng Province & others (261/2018)

Appealed from GP

Date to be heard: 7 May 2019

Navsa JA, Mbha JA, Mocumie JA, Schippers JA, Davis AJA

Civil Procedure – jurisdiction – whether the court a quo had the necessary jurisdiction – Labour Court vis-a-vis High Court – to grant the relief sought by the appellant and whether that relief was competent in law – whether matter ought to have been referred to the bargaining council – whether the court a quo confused the basis for the relief sought by the appellant with the rights that were being affected by the respondents’ alleged unlawful activities.

11. Ishmael Blessing Segwati v The State (620/2018)

Appealed from GJ

Date to be heard: 7 May 2019

Ponnan JA, Leach JA, Mokgohloa AJA

Criminal Law and Procedure – Criminal Procedure Act 51 of 1977 – appeal against sentence of 25 years’ imprisonment on a charge of theft and attempted theft – whether the court a quo erred in finding that the appellant had two previous convictions of theft and treated him as a third time offender when imposing sentence – whether the court a quo erred in imposing a sentence of 25 years in terms of s 51(2) of the CPA.

12. Elijah Percy Ledwaba v The State (605/2018)

Appealed from GP

Date to be heard: 7 May 2019

Ponnan JA, Leach JA, Mokgohloa AJA

Criminal Law and Procedure – sentence – appeal against a sentence of 5 years’ direct imprisonment on a charge of culpable homicide – whether sentence shockingly inappropriate considering appellant was a police officer and not the aggressor.

13. Bayport Securitisation RF Ltd v Noluvuyo Sakata (1320/2017)

Appealed from ECB

Date to be heard: 7 May 2019

Cachalia JA, Swain JA, Zondi JA, Mathopo JA, Makgoka JA

Civil Procedure - rescission of judgment - whether there was a valid ground for rescission - whether rescission could be granted mero motu.

14. Gauteng Department of Agriculture and Rural Development & others v Inter-Waste (Pty) Ltd & others (458/2018)

Appealed from GP

Date to be heard: 10 May 2019

Navsa JA, Swain JA, Zondi JA, Molemela JA, Weiner AJA

Administrative law — National Environment Management Act 107 of 1998 the first respondent was successfully in reviewing and setting aside a compliance notice issued by the first appellant to stop operating a waste landfill site until it obtained a new licence – the issue on appeal is whether the environmental management inspector employed had the power to issue a compliance notice under s 31L of the National Environment Management Act 107 of 1998 – whether the environmental management inspector could issue a compliance notice requiring compliance with a licence that expired – whether a court could order the first appellant to issue a waste management licence without the applicable statutory requirements for issuing of a licence being followed.

15. Rhino Oil and Gas Exploration South Africa (Pty) Limited v Normandien Farms (Pty)

Ltd & another (100/2018)

Appealed from WCC

Date to be heard: 10 May 2019

Ponnan JA, Mbha JA, Mathopo JA, Van der Merwe JA, Plasket AJA

Property law – Mineral and Petroleum Resources Development Act 28 of 2002 – whether the appellant complied with s 79(1) of the MPRDA read with Regulation 2 and 28 of the MPRDA Regulations when it lodged its exploration application with the second respondent – whether such failure constituted an illegality – whether the appellant's application for an exploration right was defective – whether the acceptance of the exploration right application could or ought to have been set aside – whether there was adequate public notice of the application in terms of s 10 of the Act- – whether the second

respondent's acceptance of the appellant's scoping right application could or ought to have been set aside.

16. Adhu Investments CC & others v Kumaran Padayachee (1410/2016)

Appealed from GP

Date to be heard: 10 May 2019

Cachalia JA, Tshiqi JA, Schippers JA, Gorven AJA, Eksteen AJA

Contract – respondent instituted action in the high court against the first and second appellants for damages based on breach of an agreement – the third appellant was later joined as a defendant on the basis of a *stipulatio alteri* – after hearing evidence the high court ordered the three appellants jointly and severally to pay the respondent the amount of R2,5 million – whether a finding of liability on the part of the third appellant excluded a finding of liability against the first and second appellants – whether the *stipulatio alteri* was properly pleaded and proved – whether the court erred in granting judgment against the third appellant.

17. Philip Rudolph van der Merwe v Elode van der Merwe (843/2018)

Appealed from GP

Date to be heard: 13 May 2019

Tshiqi JA, Saldulker JA, Zondi JA, Molemela JA, Davis AJA

Family Law – divorce – the parties were married on 8 January 2011 and signed a power of attorney authorising Weyers to appear before a notary public and to conclude an ante-nuptial contract with terms reflected in a draft agreement, which provided for a marriage out of community of property, excluding accrual – respondent claimed rectification of the ante-nuptial contract to include accrual — whether the respondent proved that she was entitled to rectification of the ante-nuptial contract executed by the notary – whether dissensus between the parties relating to the inclusion of the accrual system in the ante-nuptial contract justified an order that the accrual system did apply to the marriage.

18. Intech Instruments v Transnet Limited t/a South African Port Operations (1165/2018)

Appealed from KZD

Date to be heard: 13 May 2019

Majiedt JA, Dambuza JA, Mathopo JA, Makgoka JA, Plasket AJA

Contract Law – interpretation – the defendant owns and operated two bulk handling facilities, namely an iron ore terminal at the Saldanha Bay Port and a manganese terminal at the Port Elizabeth Port. In 2006 the appellant, a sole proprietorship in terms of two contracts concluded between it as contractor and the respondent as employer, undertook to do certain work in respect of these two facilities – whether the contractor was bound to refurbish and upgrade the entire facility or to do the work specified in the tender document embodied in the contract – whether the appellant validly cancelled the contract in August 2006 – whether the respondent did so in response on the same day.

19. Moeketsi Mokoena v The State (200/2018)

Appealed from GJ

Date to be heard: 14 May 2019

Maya P, Tshiqi JA, Saldulker JA, Swain JA, Gorven AJA

Criminal Law and Procedure – Criminal Procedure Act 51 of 1977 – interpretation of s 342A – whether the trial should be held *de novo* before a different magistrate.

20. Afgri Grain Marketing (Pty) Ltd v Trustees for the Time Being of Copenship Bulklers

A/S (In Liquidation) & others (797/2018)

Appealed from GJ

Date to be heard: 14 May 2019

Wallis JA, Van der Merwe JA, Mocumie JA, Schippers JA, Mokgohloa AJA

Admiralty Jurisdiction and Regulation Act 105 of 1983 – the first to third respondents obtained an ex parte arrest order in camera in terms of s 5(3) of the Act. The order was upheld after having being reconsidered in terms of Rule 6(12)(c) – whether the court a quo was correct to grant an arrest order in terms of s 5(3) of the Act – whether it was appropriate to seek the arrest order on an urgent ex parte basis – whether the respondents made any material non-disclosures and whether the respondents demonstrated a genuine and reasonable need for security – whether paragraph 9 of the arrest order is competent.

21. Ramesh Singh & others v The Companies and Intellectual Property Commission (822/2018)

Appealed from GP

Date to be heard: 15 May 2019

Navsa JA, Mbha JA, Schippers JA, Mokgohloa AJA, Davis AJA

Company Law – Companies Act 71 of 2008 – the appellants instituted a review application in which they sought to review and set aside the decision by the first and second respondents to accept and investigate complaints filed with the first respondent by Mr R E Smith, a director of two of the three appellant companies and the decision to authorise summonses in relation to those complaints – whether the decision by the CIPC should be reviewed and set aside – whether the court a quo should have converted the CIPC’s investigations into a trial or suspended the investigations pending an action in a different matter – whether the first and second respondents acted in accordance with the first respondent’s constitutional and statutory obligations and in compliance with the provisions of the Companies Act.

22. The City of Tshwane Metropolitan Municipality v Mystra Pty (Ltd) (Registration no:

2009/018779/07) (317/2018)

Appealed from GP

Date to be heard: 15 May 2019

Cachalia JA, Swain JA, Zondi JA, Molemela JA, Eksteen AJA

Civil procedure – Constitutional law – the respondent’s cause of action, in seeking declaratory relief, was an alleged constitutional obligation; it avers that the appellant has a constitutional obligation to supply it with municipal services especially as from its date of occupation, as it has been paying its municipal accounts – whether the court a quo was entitled to make a declaratory order that was not sought – whether the respondent made out a case for a declaratory order – whether the appellant should have been ordered to pay the costs of the hearing on the return date of the rule nisi.

23. The Director of Public Prosecutions v Kholofelo Charmaine Moloto (1007/2018)

Appealed from LP

Date to be heard: 15 May 2019

Tshiqi JA, Majiedt JA, Van der Merwe JA

Criminal law and Procedure – appeal against sentence – whether the court a quo erred in finding that there were substantial and compelling circumstances entitling the trial court to deviate from the prescribed minimum sentence – whether the reasons given by the trial court for imposing a sentence of five years’ imprisonment in terms of s 276(1)(i) of the Criminal Procedure Act 51 of 1977 are valid– whether the trial court misdirected itself by imposing a sentence in terms of s 276(1)(i) of the Act.

24. Jeffery Bob Nare v The State (380/2018)

Appealed from GP

Date to be heard: 16 May 2019

Navsa JA, Saldulker JA, Eksteen AJA

Criminal Law and Procedure – Criminal Procedure Act 51 of 1977 – appellant petitioned the court a quo for leave to appeal against convictions and sentence –court a quo granted leave to appeal against sentence only – this appeal is against the dismissal of the appellant’s petition in terms of s 309C of the CPA for leave to appeal against his convictions.

25. Thokozani Kwazi Chonco v The State (1247/2018)

Appealed from GJ

Date to be heard: 16 May 2019

Navsa JA, Saldulker JA, Eksteen AJA

Criminal Law and Procedure – sentence – whether the sentence of 18 years’ imprisonment is startlingly inappropriate – whether substantial and compelling circumstances existed warranting a departure from the imposition of the minimum sentence.

26. Minister of Mineral Resources v John Douglas Stern N O & others (1369/2018)

Appealed from ECG

Date to be heard: 16 May 2019

Cachalia JA, Mbha JA, Mathopo JA, Van der Merwe JA, Davis AJA

Environmental law – Mineral and Petroleum Resources Development Act 28 of 2002 – administrative law –court a quo invalidating and setting aside the Regulations for Petroleum Exploration and Production in terms of s 107 of the MPRDA – whether the appellant had authority to make the regulations under the MPRDA – whether the process of promulgating the regulations was procedurally fair.

27. Treasure Karoo Action Group & another v Department of Mineral Resources & others (790/2018)

Appealed from GP

Date to be heard: 16 May 2019

Cachalia JA, Mbha JA, Mathopo JA, Van der Merwe JA, Davis AJA

Administrative law – environmental law – Mineral and Petroleum Resources Development Act 28 of 2002 – appeal against judgment and order of the court a quo dismissing an application sought to invalidate and set aside the Regulations for Petroleum Exploration and Productions which were promulgated in terms of s 107 of the MPRDA – whether the MPRDA, read with the National Environmental Management Act 107 of 1998 authorised the Minister of Mineral Resources to promulgate the regulations – whether the exercise of the ministerial power to make regulations constituted administrative action – whether there was a legal basis for a finding of procedural unfairness within the context of judicial review under the doctrine of legality.

28. Edmund Harold Moss & another v KMSA Distributors (Pty) Limited (673/2018)

Appealed from GP

Date to be heard: 16 May 2019

Wallis JA, Dambuza JA, Makgoka JA, Plasket AJA, Weiner AJA

Contract– suretyship – appeal against judgment and order for payment of R3 million made against appellants as sureties – arbitration award was obtained against the principal debtor – whether the suretyship agreement, on a proper interpretation, read with the dealership agreement was restricted in its operation to obligations, duties and liabilities arising under the dealership agreement – whether it also covered liability that arose outside of the dealership agreement.

29. The Motor Industry Ombudsman of South Africa v Silverpark Motors CC t/ Silverton Motors & another (479/2018)

Appealed from GP

Date to be heard: 17 May 2019

Maya P, Cachalia JA, Molemela JA, Schippers JA, Gorven JA

Interpretation – Consumer Protection Act 68 of 2008 – South African Automotive Industry Code of Conduct – fuel retailer – whether the first respondent was a retailer as defined in the Consumer Protection Act – whether the first respondent’s business fell within the definition of automotive industry as defined in the Code.

30. Eskom Holdings SOC Limited v Sipehele Sidoyi & others (1207/2018)

Appealed from ECM

Date to be heard: 17 May 2019

Leach JA, Wallis JA, Mocumie JA, Mokgohloa AJA, Weiner AJA

Administrative Law – Promotion of Administrative Justice Act 3 of 2000 – disconnection of electricity by the appellant – whether the notice provisions of PAJA had to be complied with by the appellant prior to the disconnection - whether the connection was illegal and fell within the provisions of regulation 7(7).

31. Eskom Holdings SOC Limited v Nomajapan Masinda (1225/2018)

Appealed from ECM

Date to be heard: 17 May 2019

Leach JA, Wallis JA, Mocumie JA, Mokgohloa AJA, Weiner AJA

Civil Procedure – spoliation order – disconnection of electricity by appellant – whether the mandament van spolie was open to the respondent.

32. Pontso Dennis Ndou v The State (247/2018)

Appealed from GJ

Date to be heard: 20 May 2019

Leach JA, Saldulker JA, Zondi JA, Mocumie JA, Eksteen AJA

Criminal Law and Procedure – Criminal Procedure Act 51 of 1977 – conviction and sentence – reversal of acquittal by court a quo on one of the counts (sitting as court of appeal) – whether court a quo was correct – whether sentence imposed too harsh and severe.

33. Daniël Da Silva Marques De Almeida v The State (728/2018)

Appealed from Regional Court Gauteng

Date to be heard: 20 May 2019

Leach JA, Saldulker JA, Zondi JA, Mocumie JA, Eksteen AJA

Criminal Law and Procedure – sentence – appellant was sentenced to eight years’ imprisonment for attempted murder – whether the regional magistrate was correct in imposing a custodial sentence in light of this court and the Constitutional Court’s guidelines for the sentencing of primary caregivers – whether the sentence imposed disturbingly inappropriate.

34. Crockery Gladstone Farm v Rainbow Farms (Pty) Ltd (592/2018)

Appealed from LP

Date to be heard: 20 May 2019

Tshiqi JA, Mbha JA, Mathopo JA, Davis AJA, Weiner AJA

Civil Procedure – default judgment – appeal against order of the full court of the Limpopo Division, Polokwane – whether court was correct in upholding an appeal against an order dismissing an application for rescission - whether the order should be set aside.

35. The Director of Public Prosecutions v Pule Andrew Ramolefi (705/2018)

Appealed from GJ

Date to be heard: 20 May 2019

Majiedt JA, Van der Merwe JA, Gorven AJA

Criminal Law and Procedure – sentence – the court a quo imposed a wholly suspended sentence on a charge of murder, deviating from the prescribed minimum sentence – whether compelling and substantial circumstances existed for such deviation – whether the sentence imposed was shockingly inappropriate.

36. The Minister of Defence and Military Veterans & others v Mozamane Teapson Maswanganyi (739/2018)

Appealed from GP

Date to be heard: 21 May 2019

Navsa JA, Majiedt JA, Van der Merwe JA, Molemela JA, Davis AJA

Statutory Interpretation –Defence Act 42 of 2002– whether s 59(1)(d) applied automatically to the respondent’s termination of service to the exclusion of s 42 of the Military Discipline Supplementary Measures Act 26 of 1999 – whether respondent should have been automatically reinstated when his conviction of rape was set aside on appeal.

37. Victoria Palesa Leqasa v Horace Mthombeni & another (546/2018)

Appealed from GJ

Date to be heard: 21 May 2019

Ponnan JA, Swain JA, Mbha JA, Mocumie JA, Mokgohloa AJA

Property Law – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) –whether the eviction order granted by the court quo was just and equitable – whether s 3 of PIE criminalised the letting out of property unlawfully occupied – whether eviction could be granted where it will lead to homelessness.

38. Reatile Thabo Mochebelele v The Director of Public Prosecutions, Gauteng Local Division, Johannesburg & others (377/2018)

Appealed from GJ

Date to be heard: 21 May 2019

Maya P, Wallis JA, Makgoka JA, Schippers JA, Plasket AJA

Constitutional law – whether the political instability in Lesotho had the potential to violate the appellant’s right to dignity – whether the appellant is being discriminated against due to his ethnicity, social origin, culture, language and birth – appellant’s right to security. **Interpretation – Extradition Act 67 of 1969 – application of s 10 of the Extradition Act** – second respondent discharged the appellant in an extradition inquiry in terms of s 10 of the Act – the first respondent sought to review and set aside the decision of the second respondent in the court a quo, which application was successful – the issues on appeal are whether the court a quo was correct in reviewing and setting aside the decision to discharge the appellant in terms of s 10.

39. Paula Grobler v The Master of the High Court & others (645/2018)

Appealed from GJ

Date to be heard: 22 May 2019

Maya P, Leach JA, Dambuza JA, Mokgohloa AJA, Plasket AJA

Wills Act 7 of 1953 – whether an unsigned Will and Testament of the late Mr Grobler was in fact the final Will of Mr Grobler –whether the Will satisfied the requirements in terms of s 2(3) of the Act – whether the inference could be drawn that the electronic mail sent to the late Mr Grobler was accepted by him.

40. Aphelele Nontangane obo Esinakho Nontangane v Member of the Executive Council for Health, Eastern Cape (585/2018)

Appealed from ECM

Date to be heard: 22 May 2019

Cachalia JA, Tshiqi JA, Molemela JA, Gorven AJA, Weiner AJA

Delict – damages – failure to monitor the appellant and foetus during labour – whether negligence of hospital staff was causally connected to the child’s brain damage – whether injury occurred too close to delivery for damage to have been prevented.

41. National Credit Regulator v Southern Africa Fraud Prevention Services NPC (560/2018)

Appealed from GP

Date to be heard: 22 May 2019

Wallis JA, Saldulker JA, Zondi JA, Schippers JA, Eksteen AJA

National Credit Act 34 of 2005 (NCA) – interpretation – whether the respondent contravened s 70(2)(f) of the NCA read with regulation 17 –whether the respondent’s fraud information is prescribed consumer credit information as envisaged in s 43 of the NCA – whether respondent's fraud information is subject to time limits imposed by s 70(2)(f) read with regulation 17.

42. Joan Cynthia Griessel N O & others v Harold Lee De Kock & another (334/2018)

Appealed from GP

Date to be heard: 23 May 2019

Navsa JA, Leach JA, Majiedt JA, Molemela JA, Davis AJA

Trusts – whether the first respondent had vested rights as beneficiary in respect of the trust and whether the factual dispute in respect thereof should have been decided on the respondent’s version – whether the third respondent should have been joined as tenth respondent in the absence of any application for joinder – whether the court a quo erred in ordering the second respondent to appoint a further independent trustee to the trust and granting final relief against the eight respondent where no relief was sought for such an order – whether the court a quo was correct to order punitive costs.

43. Atakas Ticaret Ve Nakliyat AS v Glencore International AG (768/2018)

Appealed from KZD

Date to be heard: 23 May 2019

Ponnan JA, Swain JA, Zondi JA, Schippers JA, Gorven JA

Maritime law – International Arbitration Act 15 of 2017 – the Admiralty Jurisdiction Regulation Act 105 of 1983 – joinder – whether the admiralty court retains discretion to join a party to a South African action – whether an international arbitration agreement takes away the admiralty court’s discretion – whether the right to claim joinder had been exercised prior to coming into force of the International Arbitration Act 15 of 2017 – whether it is appropriate to grant joinder of the respondent in the action.

44. Ephenia Mogogodi Broondie N O v Kgomotso Comfort Maposa (Nee Ledwaba) & others (642/2018)

Appealed from WCC

Date to be heard: 23 May 2019

Tshiqi JA, Saldulker JA, Van der Merwe JA, Makgoka Ja, Mokgohloa AJA

Family law – Matrimonial Property Act 88 of 1984 – validity of donation of 75 percent of the membership interest by late spouse – marriage in community of property – whether the consent of the spouse was required for donation of membership interest –requirements for deemed consent in terms of s 15(9)(a).

45. Rehau Polymer (Pty) Ltd v Brunettes Electrical (Pty) Ltd & others (641/2018)

Appealed from ECP

Date to be heard: 24 May 2019

Ponnan JA, Swain JA, Mocumie JA, Makgoka JA, Eksteen AJA

Contract — whether the contractual warranty in the lease agreement was suspended – whether the premises let complied with the National Building Regulations – whether the premises were fit for purpose.

46. De Vasconcelos, Roberto Carlos De Freitas & others v Business Partners Ltd (637/2018)

Appealed from GP

Date to be heard: 24 May 2019

Cachalia JA, Mbha JA, Dambuza JA, Davis AJA, Plasket AJA

Contract – suretyship – whether the royalty is interest disguised as royalty – whether the loan agreement between the respondent and principal debtor for whom the appellants stood surety was contra bonos mores – whether the in duplum rule applies.

47. Road Accident Fund v Sihle Madikane (1270/2018)

Appealed from ECM

Date to be heard: 24 May 2019

Leach JA, Wallis JA, Mathopo JA, Molemela JA, Weiner AJA

Delict – Damages – extent of respondent's brain injury – loss of earning capacity – whether the respondent's injury resulted in patrimonial loss – whether the court a quo was correct in its approach to the evidence of the experts.

48. De Sousa, Sharon Ann Vas v De Sousa, Luis Manuel Ritho & others (617/2017)

Appealed from GJ

Date to be heard: 17 May 2019

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

Intervention Application – whether the applicant was entitled to intervene and be joined as a defendant in an action relating to shareholding in a company (the main proceedings) – whether the court a quo was correct in finding against the applicant and granting cost orders against on a punitive scale judgment has subsequently been given by the court a quo in the main proceedings, which judgment is currently subject to an appeal before this court – whether the applicant demonstrated a real and substantial interest for leave to intervene to be granted – whether the court a quo was correct in dismissing the applicant's application for leave to intervene.

49. National Home Builders' Registration Council & another v Xantha Properties 18 (Pty) Ltd (780/2018 and 784/2018)

Appealed from WCC

Date to be heard: 27 May 2019

Leach JA, Saldulker JA, Van der Merwe JA, Gorven AJA, Weiner AJA

Interpretation – Housing Consumers Protection Measures Act 95 of 1998 – whether s 14 of the Act applies to activities of home builders who built homes for the rental market and not for sale to housing consumers.

50. Fundsatwork Umbrella Pension Fund v Anna Marie Guarnieri & others (830/2018)

Appealed from GP

Date to be heard: 13 May 2019

Cachalia JA, Wallis JA, Mbha JA, Mocumie JA, Eksteen AJA

Pension Funds Act 24 of 1956 – a member of the fund (the deceased) died in February 2014. The fund distributed the death benefit payable in terms of s 37C of the Act to the deceased's estranged wife, mother, son and daughter. The fund's final resolution was passed four days after the mother died in July 2014 – a fact then unbeknown to the fund - and payment was made in terms thereof. The fund became aware of the mother's death in November 2014 when the first respondent lodged a complaint with the Pension Funds Adjudicator challenging the decision of the fund. The Adjudicator set aside the fund's decision and ordered the fund to make a new decision; after consideration the fund made the same decision. The court a quo found that the mother should have been excluded because when the second decision was made it was known that she was dead – whether the court a quo was correct in reviewing and setting aside the fund's decision in which the fund distributed the death benefits payable to its deceased member in terms of s 37C of the Act – whether the court a quo was correct in ordering the fund to distribute the sum of R541 215.49 to the first, second and third respondents.