

REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 3 2017
CASES ENROLLED FOR HEARING: AUGUST-SEPTEMBER 2017

1. Pienaar van Heerden & another v The National Director of Public Prosecutions & others (145/2017)

Appealed from WCC

Date to be heard: 15 August 2017

Navsa ADP, Bosielo JA, Molemela AJA, Lamont AJA, Fourie AJA

Criminal law - whether the court a quo erred in granting a restraining order against the appellants in terms of s 26 of the Prevention of Organised Crime Act 121 of 1998 (POCA).

Constitutional law - the issue on appeal is the interpretation of s 25(2) of POCA in a constitutionally complaint matter - the interpretation and application of s 173 of the Constitution - whether the appellants' right to a fair trial in terms of s 35 (3) of the Constitution have been infringed.

2. Thandi Sheryl Maqubela v The State (821/2015)

Appealed from WCC

Date to be heard: 15 August 2017

Ponnan JA, Leach JA, Tshiqi JA, Swain JA, Ploos van Amstel AJA

Criminal law and procedure – conviction – the appellant was convicted of murdering her husband, an acting judge. It was alleged that she and a co-accused had suffocated him with cling wrap, but towards the end of the trial the charge was amended to add, in the alternative, 'causing his death by means unknown to the State'. She, but not her co-accused, was convicted on the alternative ground and sentenced to 15 years' imprisonment. She was also convicted on other counts that do not form part of this appeal. Leave to appeal was granted against conviction – whether the State proved that the accused was murdered and did not die of natural causes - whether it was permissible for the trial court to amend the charge sheet to allege that the deceased died from a cause unknown to the State and thereafter convict the appellant on that basis.

3. Gloudina Johanna Botha v The State (901/2016)

Appealed from NCK

Date to be heard: 15 August 2017

Cachalia JA, Mokgohloa AJA, Gorven AJA, Mbatha AJA, Rogers AJA

Criminal Law and Procedure– Conviction and sentence – Criminal Procedure Act 51 of 1977 – whether the court a quo's refusal of the appellant's application for discharge, in terms of s 174 of the Criminal Procedure Act, was correct – whether the court a quo erred in granting the respondent leave to reopen its case – whether the court a quo erred in finding that the respondent had proved the alleged offence beyond a reasonable doubt and whether the sentence imposed was appropriate.

4. Tovey Hlogi Jeroe Mogoba v The State (1219/2016)

Appealed from LP

Date to be heard: 16 August 2017

Shongwe AP, Seriti JA, Mokgohloa AJA

Criminal Law and Procedure – Sentence – whether the sentence of two life imprisonment on the counts of murder and 15 years' imprisonment on the count of robbery with aggravating circumstances is appropriate – whether the court a quo was correct in finding that no substantial and compelling circumstances exist to impose a lesser sentence – whether circumstances exist to deviate from the prescribed minimum sentence.

5. Shawn Palmer v The State (979/2016)

Appealed from GJ

Date to be heard: 16 August 2017

Shongwe AP, Seriti JA, Mokgohloa AJA

Criminal Law and Procedure – Sentence – whether the court a quo erred in finding that no substantial and compelling circumstances existed to justify a lesser sentence – whether the sentence of life imprisonment was excessive.

6. James Sello Mathekola v The State (487/2016)

Appealed from SCA

Date to be heard: 16 August 2017

Lewis JA, Theron JA, Mathopo JA, Tsoka AJA, Schippers AJA

Criminal law and procedure - whether the applicant enjoys reasonable prospects in an appeal against his convictions on four counts of kidnapping – whether there was a duplication of convictions.

7. Kateryna Karpovska v The State (1396/2016)

Appealed from WCC

Date to be heard: 16 August 2017

Bosielo JA, Majiedt JA, Petse JA, Saldulker JA, Lamont AJA

Criminal Law and Procedure – Conviction – Complainant single witness – Cautionary rule - whether the court a quo erred in finding that the respondent had proved its case beyond reasonable doubt – whether the court a quo erred in finding the appellant guilty of three counts of fraud – whether the appellant has made out a case for leave to appeal – whether the court a quo erred in finding that the witness corroborated each other – whether the court a quo correctly rejected the evidence of the appellant.

8. The National Director of Public Prosecutions v Kalmar Industries SA (Pty) Ltd (1146/2016)

Appealed from ECP

Date to be heard: 17 August 2017

Navsa ADP, Leach JA, Majiedt JA, Ploos van Amstel AJA, Schippers AJA

Criminal Law and Procedure – Prevention of Organised Crime Act 121 of 1998 - whether the property concerned was the instrumentality and/or proceeds of theft in terms of ss 38 and 50.

9. Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation & others (972/2016)

Appealed from CP

Date to be heard: 17 August 2017

Ponnan JA, Cachalia JA, Mathopo JA, Gorven AJA, Rogers AJA

Intellectual Property - Patents - whether the judgment of the SCA dismissing the challenge to the patent on the ground of novelty, renders the question of the validity of the patent on all pleaded grounds res judicata as between the parties – whether the grant of the interim interdict prohibiting the appellant from infringing South African patent 98/10975 by the court a quo is appealable.

10. Jan Karel Pieter Els v The State (1241/2016)

Appealed from GP

Date to be heard: 17 August 2017

Bosielo JA, Theron JA, Seriti JA, Saldulker JA, Tsoka AJA

Criminal Law and procedure – Sentence – whether the sentence imposed on the appellant was shockingly inappropriate.

11. Karabo Rantlai v The State (1178/2016)

Appealed from GJ

Date to be heard: 17 August 2017

Bosielo JA, Theron JA, Seriti JA, Saldulker JA, Tsoka AJA

Criminal Law and Procedure – Sentence – whether the court a quo should have set aside the sentence on count 1 when the conviction on count 1 was set aside on appeal – whether the evidence adduced in the trial court was sufficient to sustain a conviction on count 2 and 3 – whether the trial court was correct in imposing a composite sentence on all three counts.

12. State Information Technology Agency v ELCB Information Services (Pty) Ltd & another (995/2016)

Appealed from GP

Date to be heard: 18 August 2017

Shongwe AP, Theron JA, Majiedt JA, Tsoka AJA, Rogers AJA

Arbitration - reviewability – whether the court a quo erred in not deciding the question of whether the second respondent committed gross irregularities in the conduct of the arbitration proceedings between the appellant and the first respondent – whether the second respondent's arbitration award is reviewable on the grounds relied upon by the appellant.

13. Minister of Safety and Security v Siphon Owen Magagula (991/2016)

Appealed from GP

Date to be heard: 18 August 2017

Lewis JA, Petse JA, Swain JA, Lamont AJA, Fourie AJA

Criminal Law and Procedure - whether the arrest and detention was lawful – whether the arresting officer had reasonable grounds for suspecting the respondent – whether the respondent's pleaded cause of action of the denial of bail was relevant – whether the full court erred in applying the legal principles and failed to correctly analyse the facts of the case.

14. Mosalasing Phillip Morudi & others v N C Housing Services & Development Co Ltd & others (903/2016)

Appealed from NCK

Date to be heard: 18 August 2017

Cachalia JA, Tshiqi JA, Molemela AJA, Mbatha AJA, Schippers AJA

Civil Procedure – rescission of judgment – whether the appellants properly explained their default – whether the appellants had a prima facie defence to the relief claimed in the main application – the meaning to be attributed to the words 'in the absence of' in Uniform rule 4291(a) – whether the rights of the appellants in terms of s 34 of the Constitution were infringed upon.

15. Drift Supersand (Pty) Ltd v Mogale City Local Municipality & another (1185/2016)

Appealed from GJ

Date to be heard: 21 August 2017

Navsa ADP, Leach JA, Petse JA, Molemela AJA, Mokgohloa AJA

Administrative Law - review - legitimate expectation - interpretation - the court a quo refused the appellant's application to review and set aside a decision taken by the first respondent to permit the establishment of a township on certain property in the vicinity of other properties owned by the appellant – appellant objected to the application for the township establishment – whether the appellant was a valid 'objector' for purposes of s 104 of the Town Planning and Townships Ordinance 15 of 1986 – whether the appellant exhausted the internal appeal remedy provided for in s 104 and s 7 of PAJA 3 of 2000 – proper interpretation of the definition of 'administrative action' in s 1 of the PAJA – whether the decision of the first respondent should be reviewed and set aside.

16. Big Five Duty Free (Pty) Ltd v Airports Company South Africa Limited & others (1064/2016)

Appealed from GP

Date to be heard: 21 August 2017

Lewis JA, Ponnann JA, Mathopo JA, Lamont AJA, Mbatha AJA

Constitutional Law – lawfulness of the conduct of an organ of State, ACSA.

Administrative Law – Tender - Civil Procedure – Contract – appeal against the judgment of the court a quo dismissing an application for declaratory and directory relief concerning a tender - whether ACSA is bound by its decision to award the tender.

17. eThekweni Municipality v Mounthaven (Pty) Limited (1068/2016)

Appealed from KZD

Date to be heard: 21 August 2017

Tshiqi JA, Seriti JA, Saldulker JA, Gorven AJA, Ploos van Amstel AJA

Prescription: whether the respondent may avoid the provisions of a registered deed of transfer which obliged it to retransfer property to the appellant by its reliance on Chapter III of the Prescription Act 68 of 1969 – whether the claim to retransfer amounts to a debt in terms of the Act – whether the claim, if it amounts to a debt, was secured by a mortgage bond.

18. E H Hassim Hardware (Pty) Ltd v Fab Tanks CC (1129/2016)

Appealed from GP

Date to be heard: 22 August 2017

Shongwe AP, Molemela AJA, Fourie AJA

Civil Procedure – rescission of default judgment – whether the appellant has a bona fide defence to the respondent's claim which prima facie has prospects of success.

19. The Advertising Standards Authority v Herbex (Pty) Ltd (902/2016)

Appealed from GJ

Date to be heard: 22 August 2017

Navsa ADP, Theron JA, Mathopo JA, Rogers AJA, Schippers AJA

Constitutional law – whether the court a quo was correct in finding that the Advertising Standards Authority (ASA) lacked the lawful basis for exercising jurisdiction over persons who are not members and who have not consented to ASA's jurisdiction – whether the court a quo was correct in finding

that ASA's purported exercised of jurisdiction over non-members was unconstitutional and invalid – whether the ASA's consideration of complaints breached its constitutional rights to freedom of expression and association. **Administrative Law – Promotion of Administrative Justice Act 3 of 2000** – whether the rulings of the ASA qualify as administrative action that must be reviewed - whether the court a quo erred in granting the relief against the ASA.

20. Caroline Keneuo Mgogo v Tertia Richards (1318/2016)

Appealed from FB

Date to be heard: 22 August 2017

Cachalia JA, Majiedt JA, Petse JA, Ploos van Amstel AJA, Mbatha AJA

Insolvency Act 24 of 1936 – court a quo made a final sequestration order on the basis of three nulla bona returns - whether the supervening facts of disposable assets if presented to the court before the order of final sequestration could be ignored by the court a quo, without giving the debtor an opportunity to satisfy the debt.

21. Ludwig Wilhelm Diener N O v The Minister of Justice & others (926/16)

Appealed from GP

Date to be heard: 23 August 2017

Navsa ADP, Lewis JA, Bosielo JA, Majiedt JA, Schippers AJA

Insolvency Law – Company Law – status and preference of the remuneration and expenses of a business rescue practitioner in circumstances where the business rescue proceedings were converted to liquidation proceedings and the remuneration and expenses were not yet paid – whether the claims of a practitioner for remuneration and expenses reasonably incurred could only be satisfied out of the free residue, if any, in a liquidated estate or whether it should have been provided for out of the proceeds of a secured asset, before awarding the balance to the secured creditor – whether the practitioner needs to prove a claim like ordinary creditors, or whether the claim should be dealt with like the claims of the liquidator – whether the claims by the practitioner are liable to a contribution duty in terms of s 106 of the Insolvency Act 24 of 1936.

22. Passenger Rail Agency of South Africa v Mmakgabo Simon Moabelo (1082/2016)

Appealed from GJ

Date to be heard: 23 August 2017

Ponnan JA, Leach JA, Seriti JA, Mokgohloa AJA, Mbatha AJA

Delict – Damages – respondent struck by Metro Rail commuter passenger train 1886 -whether the evidence tendered was reliable and credible – whether the appellant was liable to compensate the respondent for the harm suffered by him as a result of the incident at Kaalfontein on 3 August 2009.

23. MEC for Health & Social Development of the Gauteng Provincial Government v Aubrey Mbhalate obo Nhlamulovuthari Mbhalate (726/2016)

Appealed from GP

Date to be heard: 23 August 2017

Cachalia JA, Theron JA, Swain JA, Tsoka AJA, Gorven AJA

Delict - Damages – whether the appellant should be allowed to render medical services or whether the appellant should provide an undertaking to the respondent instead of paying her for future medical expenses – whether in terms of the common law, damages for future medical expenses/treatment awarded for personal injury can be ordered.

24. V N Mgwanya N O & others v Vernon Xavier Kruger & others (1060/2016)

Appealed from NWM

Date to be heard: 24 August 2017

Shongwe AP, Bosielo JA, Majiedt JA, Mokgohloa AJA, Fourie AJA

Administrative Law – Review – Disciplinary Commission – whether the full court erred in dismissing the application for review of a decision of a disciplinary commission of the AFM church whereby the pastoral status of the first respondent was removed – whether the fact that the third respondent was appointed as assessor as well as secretary of the disciplinary commission resulted in the hearing of the first respondent to be null and void – whether the hearing was in breach of the relevant provisions of the constitution of the AFM Church.

25. Maslamony Theegarajan Pather & another v The Financial Services Board & others (866/2016)

Appealed from GP

Date to be heard: 24 August 2017

Ponnan JA, Cachalia JA, Tshiqi JA, Lamont AJA, Rogers AJA

Securities Services Act 36 of 2004 – whether the second respondent had jurisdiction under the Act to determine that the appellants had contravened s 76 of the Act and to impose the administrative penalties it did - whether the correct standard of proof (being the civil rather than the criminal standard) was applied.

Constitutional Law – whether, in the event that this court finds against the appellants, ss 102-105 of the Act insofar as they are applicable to the offences under s 76, are unconstitutional.

26. Antony Louis Mostert N O v The Registrar of Pension Funds & others (986/2016)

Appealed from GJ

Date to be heard: 24 August 2017

Lewis JA, Saldulker JA, Tsoka AJA, Gorven AJA, Ploos van Amstel AJA

Administrative Law – Pension Funds – the appellant sought an order in the court a quo declaring that reg 35(4) promulgated in terms of s 36 of the Pension Funds Act 24 of 1956, is ultra vires and unenforceable, the application was brought in terms of s 7 of the PAJA - whether a court has the power to mero motu raise the issue of the 180 time-bar contemplated in s 7(1) of the PAJA in circumstances where the respondents did not allege unreasonable delay on affidavit – whether s 7(1) applies to the promulgation of subordinate legislation of general application.

27. Long Beach Home Owners Association v the Department of Agriculture, Forestry and Fisheries & another (865/2016)

Appealed from GP

Date to be heard: 25 August 2017

Shongwe AP, Saldulker JA, Swain JA, Mathopo JA, Schippers AJA

Administrative Law - Review - National Forests Act 84 of 1998 – appeal against the portion of the judgment and order dismissing the appellant's review application against a decision taken by the respondents to refuse a forestry licence to the appellant - whether s 3(3)(a) of the National Forests Act is applicable - whether, if the section is applicable, exceptional circumstances exist.

28. Odifin (Pty) Ltd v Pieter Reynecke (906/2016)

Appealed from GP

Date to be heard: 25 August 2017

Bosielo JA, Theron JA, Petse JA, Tsoka AJA, Rogers AJA

Delict - Claim for damages - Administrative Law - whether the court a quo erred in finding that the appellant acted negligently or that the negligence of the appellant was the sole cause of the respondent's loss - whether the appellant's unlawful administrative action (a decision to debar the respondent in terms of s 14 (1) of the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act) should give rise to delictual liability.

Constitutional law - whether the breach of the constitutional duty imposed by s 14 (1) of FAIS Act would give rise to liability in delict.

29. The Member of the Executive Council for Health and Social Development of the Gauteng Provincial Government v Gertruida Susanna Buys (1001/16)

Appealed from GP

Date to be heard: 25 August 2017

Tshiqi JA, Seriti JA, Molemela AJA, Lamont AJA, Fourie AJA

Delict – Damages – whether the appellant can comply with its obligations in respect of future medical expenses by providing an undertaking in place of a mandatory award, in other words, i.e. whether the appellant should be allowed to provide the respondent with an undertaking to pay directly to the persons who would provide such services to the respondent's minor child instead of paying her the compensation sought for future medical expenses.

30. Pepsico Inc v Atlantic Industries (983/16)

Appealed from GP

Date to be heard: 28 August 2017

Lewis JA, Cachalia JA, Petse JA, Lamont AJA, Rogers AJA

Intellectual Property – Trade Mark – Trade Marks Act 194 of 1993 – whether the PEPSI Twist and PEPSI TWIST LABEL marks of the appellant’s products are confusingly similar to those of the respondent’s TWIST and/or LEMON TWIST and/or DIET TWIST marks – whether the ‘twist’ mark is descriptive of goods classified in class 32 (being beverages).

31. The Minister of Home Affairs & another v Tashriq Ahmed & others (1383/16)

Appealed from WCC

Date to be heard: 28 August 2017

Ponnan JA, Leach JA, Theron JA, Majiedt JA, Schippers AJA

Constitutional Law - The Refugees Act 130 of 1998 – The Immigration Act 13 of 2002 – whether a failed asylum seeker was entitled to apply for a temporary residence permit or ‘visa’ as it is known, in terms of our current immigration law – whether the Department’s policy as set out in the Immigration Policy Directive 21 of 2015 issued by the Director-General of Home Affairs was consistent with the Immigration Act and its regulations, court a quo held that the Directive was unconstitutional.

32. Gweje Khumalo & another v Twin City Developers (Pty) Ltd & others (328/17)

Appealed from LCC

Date to be heard: 28 August 2017

Tshiqi JA, Saldulker JA, Swain JA, Mathopo JA, Molemela AJA

Civil Procedure – Superior Courts Act 10 of 2013 – whether court a quo was correct in dismissing the application with costs - whether court a quo was correct in awarding costs against appellants – whether special circumstances existed in terms of the Act to justify the award of costs.

33. Yarona Healthcare Network (Pty) Ltd v Medshield Medical Scheme (1108/16)

Appealed from GP

Date to be heard: 29 August 2017

Navsa ADP, Petse JA, Mathopo JA, Mbatha AJA, Rogers AJA

Constitutional Law – whether the court a quo’s finding of a fraudulent conspiracy infringed the appellant’s right to a fair trial. **Contract Law - Conductio Indebiti - Excusability** - whether the respondent’s conduct in making twenty payments in error to the appellant over a period of approximately two years is excusable - whether the respondent proved its impoverishment on a balance of probabilities - whether the respondent proved the quantum of its claims.

34. Bafokeng Civil Works (Pty) Limited v Mooka Food Services CC (1297/16)

Appealed from NWM

Date to be heard: 29 August 2017

Lewis JA, Theron JA, Saldulker JA, Mokgohloa AJA, Fourie AJA

Contract - Property Law – Eviction – Rei vindication - whether there existed a lease agreement in the form of two letters - whether, if a lease agreement did exist, the respondent was entitled to occupy the appellant’s premises – whether the respondent had accepted the counter proposals orally or in writing – if said counter proposals were accepted orally, whether it was valid considering an existing lease agreement which was required to be amended in writing and signed by the landlord for validity.

35. The Director of Public Prosecutions: Gauteng Division, Pretoria v Cornelius Johannes Heunis (196/2017)

Appealed from GP

Date to be heard: 29 August 2017

Bosielo JA, Seriti JA, Molemela AJA, Tsoka AJA, Gorven AJA

Criminal Law and procedure: Evidence: appeal by NDPP against conviction - The respondent was convicted on one count of culpable homicide, after he was charged in the trial court with murder read with s 51(2) of the Criminal Law Amendment Act 105 of 1997. He was sentenced to eight years’ imprisonment, five of which were wholly suspended - whether the court a quo misdirected itself with regard to the probative value of the plea in explanation in terms of s 115 of the Criminal Procedure Act 51 of 1977 - whether the legal principles pertaining to circumstantial evidence were correctly applied.

36. Warrick Lesley Visser Heppell v The Law Society of The Northern Provinces (1096/2016)

Appealed from GP

Date to be heard: 31 August 2017

Shongwe AP, Majiedt JA, Mokgohloa AJA, Gorven AJA, Ploos van Amstel AJA

Attorneys Act 53 of 1959 – whether the court *a quo* was correct in granting an order for the appellant's sequestration – whether the court *a quo* was correct in finding that the appellant was not a fit and proper person to continue practising – whether the court *a quo* erred in imposing the sanction – whether the court *a quo* erred in finding that the appellant had not made a full and proper disclosure.

37. Maharaj Sathyandranath Ragunanan & others v Mandg Centre for Investigative Journalism NPC & others (844/2016)

Appealed from GP

Date to be heard: 31 August 2017

Ponnan JA, Petse JA, Tsoka AJA, Mbatha AJA, Schippers AJA

Administrative Law – Review – appeal against the review of the decision by the third appellant to refuse the respondents permission to publish the record of an inquiry in terms of s 28 of the National Prosecuting Act 32 of 1998 - whether the court *a quo* correctly dismissed the application to strike-out – whether the evidence obtained was admissible and contrary to the provisions of the National Prosecuting Authority Act 32 of 1998 – whether the court *a quo* erred in substituting the decision of the National Director of Public Prosecution – whether the decision of the National Prosecuting Authority ought to have been reviewed and set aside – the interpretation of s 41(6) of the National Prosecuting Authority Act 32 of 1998.

38. Dr Di Mtshali N O & others v Buffalo Conservation 97 (Pty) Ltd (250/17)

Appealed from GP

Date to be heard: 31 August 2017

Cachalia JA, Bosielo JA, Theron JA, Lamont AJA, Rogers AJA

Delict - Damages - Animal Diseases Act 35 of 1984 – whether the respondent proved the delictual damages suffered in the form of pure economic loss - whether the appellants' and their officials have a duty to perform statutory duties in terms of the Animal Diseases Act 35 of 194 and Animal Diseases Regulations 1986 – whether the state veterinarians in terms of regulation 20(1)(a)(v) to issue permits for the movement of buffalo's were adhered to – whether the alleged omission was wrongful and gave rise to a delictual claim for damages.

39. Johannes Uys N O & another v Msindo Phillemon Msiza & others (1222/2016)

Appealed from LCC

Date to be heard: 1 September 2017

Navsa ADP, Cachalia JA, Seriti JA, Tsoka AJA, Lamont AJA

Constitutional Law – Interpretation – whether the court *a quo* correctly applied the principles in terms of s 25(3) of the Constitution in determining a just and equitable compensation. **Property Law – Expropriation** - whether the court *a quo* correctly evaluated the evidence of the current land use compared to the potential land use to establish the market value of the subject property - whether the court *a quo* misdirected itself in making a downward adjustment of the market value of the property.

40. Jaron du Preez v Dr Eugene Pretorius (949/2016)

Appealed from GP

Date to be heard: 1 September 2017

Lewis JA, Bosielo JA, Swain JA, Molemela AJA, Gorven AJA

Delict – Professional Negligence of Medical Practitioner – Damages – appellant instituted a claim against the respondent for professional negligence - whether the court *a quo* erred in requiring expert evidence in Insulin Potentiation Therapy (IPT) in circumstances where the appellant led the evidence of the oncologist who testified on all relevant medical issues including IPT – whether the court *a quo* used the wrong legal test to assess the respondent's conduct.

41. Road Accident Fund v Khomotso Polly Mphirime (1036/16)

Appealed from FB

Date to be heard: 1 September 2017

Leach JA, Tshiqi JA, Majiedt JA, Mathopo JA, Ploos van Amstel AJA

Interpretation – Road Accident Fund Act 56 of 1996 – what services and goods may be compensated by an undertaking in terms of the Act – in this regard whether the costs of a domestic assistant can be covered by an undertaking in terms of s 14(4)(a) of the Act – whether this matter has

become moot and/or academic as the legislature has introduced the Road Accident Amendment Bill on 24 November 2016, due to conflicting judgments on this aspect.

42. Tudor Hotel Brasserie & Bar (Pty) Ltd v Hencetrade 15 (Pty) Ltd (793/2016)

Appealed from WCC

Date to be heard: 4 September 2017

Navsa ADP, Leach JA, Swain JA, Molemela AJA, Mbatha AJA

Contract - Property Law - Eviction – whether the *exceptio non adimpleti contractus* applies as a matter of law in lease agreements – whether a tenant who was given partial use and occupation of the leased premises was confined to the remedy of a remission of rental – whether appellant was entitled to apply set-off in respect of the rentals paid prior to the return of the leased premises – whether the agreement to hand back the leased premises constituted a valid and binding agreement.

43. Kurt van Heerden v Buffelsfontein Beleggings (Pty) Ltd (1095/2016)

Appealed from GP

Date to be heard: 4 September 2017

Ponnan JA, Bosielo JA, Tshiqi JA, Seriti JA, Gorven AJA

Law of Contract – lease agreement – interpretation – Sub-division of Agricultural Land Act 70 of 1970 – matter in court a quo adjudicated on the basis of a stated case whether s 3(d) of the Act was applicable to the lease agreement - whether the court a quo erred in finding that clause 2.2 of the lease agreement was invalid and unenforceable and that s 3(d) of the Act did not apply.

44. Scalabrini Centre, Cape Town & others v The Minister of Home Affairs & others (1107/2016)

Appealed from WCC

Date to be heard: 4 September 2017

Cachalia JA, Majiedt JA, Saldulker JA, Lamont AJA, Schippers AJA

Constitutional Law - Administrative Law – Review – Refugees Act 130 of 1998 - whether the respondent's (Director General) decision was irrational and/or unlawful – whether the Respondent's decision was unconstitutional – whether the Director-General failed to comply with the empowering provision in that s 8(1) of the Refugees Act required him to establish as many Refugee Reception Officers as regarded necessary for the purposes of the Act.

45. Zelda Margaretha Costa NO & others v Arvum Exports (Pty) Limited & others (969/2016)

Appealed from WCC

Date to be heard: 5 September 2017

Lewis JA, Leach JA, Saldulker JA, Lamont AJA, Schippers AJA

Contract - Trust Agreements – Specific Performance – Interdict – Cancellation of Agreements – whether agreements entered into between the fourth appellant and the second respondent were authorised by the appellant – whether the second respondent was in breach of its obligation under the two agreements – whether specific performance can be ordered in terms of the agreement – whether agreements were validly cancelled – whether second respondent was entitled to an interdict.

46. Reclamation Property Holdings (Pty) Ltd v Arcelormittal South Africa Ltd & others (1074/2016)

Appealed from GJ

Date to be heard: 5 September 2017

Ponnan JA, Theron JA, Mathopo JA, Ploos van Amstel AJA, Rogers AJA

Property Law – Interpretation – Town Planning – whether portion 32 C of the farm Kleinfontein 67 an a part of the remaining extent of portion 14 constitutes an 'erf' for purposes of the Town Planning and Townships Ordinance 15 of 1986 – whether the general plan of Benoni Extension 74 Township should form part of the appeal record – whether the qualifying fees of the expert witness forms part of the appeal.

47. Investec Bank Limited v Erf 435 Elandspoor (Pty) Ltd & others (1029/2016)

Appealed from GP

Date to be heard: 5 September 2017

Cachalia JA, Majiedt JA, Petse JA, Mokgohloa AJA, Gorven AJA

Prescription – Contract - loan agreement – the determination of the prescription period of a debt that was initially covered by a mortgage bond and later cancelled – whether the prescription period applicable to the debt is 30 years or three years.

48. Bondev Midrand (Pty) Limited v Puling Puling & another (802/2016)

Appealed from GP

Date to be heard: 6 September 2017

Leach JA, Tshiqi JA, Seriti JA, Tsoka AJA, Ploos van Amstel AJA

Law of Contract – Sale Agreement – whether the respondents complied with the provisions of the sale agreement by obtaining the approval of the appellant for the erection of buildings – whether the respondent complied with the provisions of the sale agreement - whether the appellant is entitled to enforce the conditions contained in the title deed – whether the appellant should be estopped from contending that the respondents have not complied with their obligations in terms of the sale agreement. **Constitutional Law** – whether the interpretation of the title deed has the result that the provisions concerned are incompatible with constitutional principles – whether the provisions are unenforceable for being contrary to public policy – whether it has an impact on the construction of the documents.

49. Bondev Midrand (Pty) Ltd v Petrus Kgosi Ramokgopa (803/2016)

Appealed from GP

Date to be heard: 6 September 2017

Leach JA, Tshiqi JA, Seriti JA, Tsoka AJA, Ploos van Amstel AJA

Contract - Property Law – Prescription – whether the court a quo was correct in finding that the appellant's claim constituted a debt as contemplated in terms of s 11(d) of the Prescription Act 68 of 1969 – whether the appellant's claim had prescribed – whether the appellant's right embodied in a title condition in respect of property to claim retransfer to it constituted a real right.

50. Gerhadus Pieter Otto v The State (988/2016)

Appealed from GP

Date to be heard: 6 September 2017

Theron JA, Swain JA, Molemela AJA, Mokgohloa AJA, Mbatha AJA

Criminal law and procedure: conviction and sentence - appellant was convicted on one count of rape of a 15 year old girl in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and was sentenced to ten years' imprisonment. The appellant's application for leave to appeal against his conviction was refused by the trial court, but a further petition to the high court, in terms of s 309C of the Criminal Procedure Act 51 of 1977, was successful. The State's petition for leave to appeal against the sentence was also subsequently granted. The court a quo dismissed the appellant's appeal, and upheld the State's appeal against sentence. The court a quo increased his sentence to 22 years' imprisonment and confirmed the order that the appellant's name be registered on the National Register for Sexual offenders - whether the court was correct in accepting the evidence of the complainant who was a single witness? -was the sentence imposed excessive?

51. Karlien van Vuuren v eThekweni Municipality (1308/16)

Appealed from KZD

Date to be heard: 7 September 2017

Navsa ADP, Theron JA, Majiedt JA, Mathopo JA, Tsoka AJA

Delict – Legal obligation – claim for damages - whether the respondent had a legal duty to ensure that the waterslide facility in a public place was properly supervised and utilised in a safe manner – whether the respondent's failure to take reasonable steps to alleviate the risks rendered it liable for damages - whether as matter of public policy unlawfulness and/or wrongfulness has been established.

52. Kransfontein Beleggings (Pty) Ltd v Corlink Twenty Five (Pty) Ltd & others (624/2016)

Appealed from FB

Date to be heard: 7 September 2017

Lewis JA, Bosielo JA, Saldulker JA, Mokgohloa AJA, Rogers AJA

Company Law – Business Rescue – whether the court a quo was correct in dismissing the application with a punitive order as to costs - whether the appellant is a secured creditor of the first respondent and entitled to the funds held in trust by the sixth respondent – whether the appellant should have joined all of the other creditors of the first respondent who had proved claims in the business rescue – whether the appeal has become moot after termination of the business rescue proceedings - whether the relief sought by the appellant is legally tenable and whether the appellant and the first respondent enjoy any security.

53. Segp Southern Africa (Pty) Ltd v Engala Africa (Pty) Ltd & others (1338/16)

Appealed from GJ

Date to be heard: 7 September 2017

Cachalia JA, Petse JA, Lamont AJA, Gorven AJA, Fourie AJA

Contract Law - Interdicting Payment - Performance Guarantee - whether the court a quo erred in interdicting payment on a guarantee without determining the allegations of fraud – whether the court a quo erred in referring the issues to arbitration – whether arbitration award on contractual disputes is irrelevant to the terms of the guarantee.

54. Vuyo Mvoko v The South African Broadcasting Corporation Soc Ltd (1066/16)

Appealed from GJ

Date to be heard: 11 September 2017

Navsa ADP, Mathopo JA, Mokgohloa AJA, Tsoka AJA, Fourie AJA

Constitutional Law – whether the appellant's constitutional right of freedom of speech in terms of s 16 of the Constitution had been violated - whether the court a quo erred in finding that the South African Broadcasting Corporation (SABC) was entitled to refuse to schedule the appellant to perform his part of the contract - whether the SABC acted lawfully in suspending the appellant from his services under a contract of service.

55. Loch Logan Waterfront (Pty) Ltd & another v Bentel Associates International (Pty) Ltd (147/2015)

Appealed from FB

Date to be heard: 11 September 2017

Lewis JA, Theron JA, Seriti JA, Petse JA, Schippers AJA

Contract - Civil Procedure – locus standi – whether mora interest is applicable to the respondent's claim – whether the transfer of rights and obligations from the second appellant to the first appellant was sufficiently raised on the pleadings – whether the respondent could rely, in good faith, upon the non-variation provision – the admissibility of certain evidence. to the respondent's claim applies, at what rate and from what date it should be calculated – whether certain issues were raised on the pleadings and the admissibility of certain evidence – whether the Respondent may rely on a non-variation clause. **Costs** – whether there is any basis to interfere with the discretion exercised by the court a quo in making the costs order.

56. Abraham Paulus Bisschoff & others v Welbeplan Boerdery (Pty) Ltd (815/2016)

Appealed from NWM

Date to be heard: 11 September 2017

Cachalia JA, Bosielo JA, Majiedt JA, Molemela AJA, Lamont AJA

Civil Procedure - Property Law – Spoliation - whether the court a quo correctly found that the contents of letters constituted an act of spoliation: whether the written demand to the respondent to no longer enter the properties constituted a deprivation of possession for reliance on the mandament van spolie.

57. The Minister of Rural Development and Land Reform v Normandien Farms (Pty) Ltd & others (512/2016 & 370/2017)

Appealed from LCC

Date to be heard: 12 September 2017

Shongwe AP, Majiedt JA, Mathopo JA, Lamont AJA, Schippers AJA

Constitutional Law - whether the eviction of the second to the thirteenth respondents by way of removal of livestock by the sheriff was consistent with the Constitution – whether paragraphs 3 and 4 of the order of the court a quo infringes upon the constitutional and customary rights' of the second to thirteenth respondents - whether the court a quo was correct in interpreting and enforcing environmental imperatives in total disregard of the constitutional and customary rights of the second to the thirteenth respondents and contrary to s 39 of the Constitution. **Property Law – Conservation of Agricultural Resources Act 43 of 1983** – whether the Minister of Rural Development and Land Reform was legally obliged to secure alternative land for the relocation of the second and thirteenth respondents livestock and to make available all resources to do so as ordered by the court a quo – whether the order by the court a quo interfered with the doctrine of separation of powers – whether the first respondent's reliance on the Land and Assistance Act 126 of 1993 in their heads of argument for the first time was permissible – whether the interpretation by the court a quo of the livestock in

terms of the Land and Assistance Act 126 of 1993 was correct – whether the court a quo was correct in granting a cost order against the appellant – whether the second to thirteenth respondents' should be granted condonation and reinstatement of appeal.

58. David John Smyth & others v Investec Bank Ltd & another (674/16)

Appealed from GP

Date to be heard: 13 September 2017

Navsa ADP, Lewis JA, Petse JA, Mathopo JA, Schippers AJA

Company Law - whether the remedy in terms of s 252 of the Companies Act 61 of 1973 Act is available to a beneficial owner of shares in a company who elected to hold those shares through a nominee - whether a legal interest, which falls short of a right to assent a claim is a basis for joinder or intervention as an applicant as opposed to a respondent.

59. Jacob Gedleyihlekisa Zuma v Democratic Alliance & others (771/2016)

Appealed from GP

Date to be heard: 15 September 2017

Navsa ADP, Cachalia JA, Bosielo JA, Leach JA, Tshiqi JA

Administrative Law – Review of a prosecutorial decision – President Zuma seeks leave to appeal to this Court against the order of the court a quo upholding the application instituted by the DA to review and set aside the decision taken by the NDPP to discontinue prosecution against President Zuma on 6 April 2009 - whether the finding that the decision to withdraw the criminal charges against President Zuma by Mr Mpshe, the then acting NDPP, was irrational because he did not refer the complaint of abuse to court – whether the DA established the objective irrationality of the decision.

60. Acting National Director of Public Prosecutions & another v Democratic Alliance & another (1170/2016)

Appealed from GP

Date to be heard: 15 September 2017

Navsa ADP, Cachalia JA, Bosielo JA, Leach JA, Tshiqi JA

Administrative Law – Review of a prosecutorial decision - whether the finding that the decision to withdraw the criminal charges against President Zuma by Mr Mpshe, the then acting NDPP, was irrational because he did not refer the complaint of abuse to court – whether the NDPP considered the merits when making his decision – whether the finding that there was no rational link between the abuse of power and the withdrawal of the charges against President Zuma was correct.