

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 4 2017
CASES ENROLLED FOR HEARING: NOVEMBER 2017**

1. Jose Pedro Morais Carneiro v The State (1040/2016)

Appealed from GJ

Date to be heard: 1 November 2017

Shongwe AP, Tshiqi JA, Majiedt JA, Mocomie JA, Tsoka AJA

Criminal Law – procedure – whether this Court has jurisdiction to hear an appeal against an order by the court a quo sitting as a court of appeal (two judges) striking an application for leave to appeal from the roll – the application for leave was in relation to an earlier order dismissing the appellant's appeal against conviction - the basis for having done so was that in terms of the Superior Courts Act 10 of 2013, special leave was required from this Court – whether the fact that this appeal was pending as at the date of the promulgation of the Superior Courts Act has the effect that the Act is not applicable – whether it made a difference and whether old regime in any event required leave of this Court.

2. Jerry Bafana Mathibela v The State (714/2017)

Appealed from NWM

Date to be heard: 1 November 2017

Shongwe AP, Tshiqi JA, Majiedt JA, Mocomie JA, Tsoka AJA

Criminal Law – sufficiency of evidence – whether evidence in relation to ballistics and the link to the appellant sufficient – whether evidence of pointing out admissible – whether evidence of witnesses could be relied upon – appellant convicted of murder and attempted robbery – whether sentence of life imprisonment too harsh.

3. Meshack Malele & others v The State (723/2016 & 724/2016)

Appealed from GP

Date to be heard: 1 November 2017

Navsa ADP, Swain JA, Mathopo JA, Mokgohloa AJA, Ploos v Amstel AJA

Criminal Law – procedure – reconsideration of an order of this Court refusing an application for leave to appeal referred for hearing in terms of s 17 of the Superior Courts Act 10 of 2013 by President of this Court – applicants, together with their co-accused, were convicted by the court a quo on a count of murder and sentenced to 15 years' imprisonment – the co-accused were granted leave to appeal against their convictions and sentences while the applicants' application for leave to appeal was refused – whether prospects of appeal against conviction of rape and murder – state appears to concede that in light of the fact that other co-accused were granted leave to appeal that it would be in the interest of justice that the applicants be afforded the same opportunity.

4. Milton Zwane & others v The State (1296/2016) and 4.2 Jacob Ndengezi v The State (876/2017)

Appealed from GJ

Date to be heard: 1 November 2017

Navsa ADP, Swain JA, Mathopo JA, Mokgohloa AJA, Ploos v Amstel AJA

Criminal Law – appeal against sentence – whether sentences of 35 years' imprisonment in relation to the first and second appellants and 33 years' in respect of the third appellant (imposed on appeal by the court below) were justified – appellants had been convicted on numerous counts of robbery with aggravating circumstances, attempted murder and unlawful possession of firearms and ammunition – trial court had imposed sentences of 45 years' and 43 years' imprisonment respectively – this was reduced on appeal as set out above – whether lack of explanation of minimum sentence regime intrudes – whether the sentences were unduly harsh and inappropriate

5. Mustaqh Sayed & others v The State (530/2017)

Appealed from GP

Date to be heard: 1 November 2017

Ponnan JA, Petse JA, Willis JA, Lamont AJA, Shippers AJA

Criminal Law – permanent stay of prosecution/autrefois acquit – appellants had initially been convicted in a regional court on charges of kidnapping/attempted murder and murder – case transferred to court a quo for sentence proceedings – convictions set aside – approximately a year

later they were prosecuted on the same offences – presiding magistrate dismissed a plea on behalf of all the appellants in terms of s 106(1)(d) of the Criminal Procedure Act 51 of 1977, namely, that they had already been acquitted of the same offences – application for a permanent stay of prosecution also dismissed – appeal against decisions dismissed by the court a quo – this Court granted special leave – whether initial convictions set aside on merits or on the basis of irregularities – whether the State could retry the appellants – whether the delays were so unreasonable and material to the extent that the appellants’ constitutional rights to a speedy trial were infringed – appellants raising the question of their right to choose their own legal representatives.

6. Frederick Umude & others v The State (148/2017)

Appealed from ECG

Date to be heard: 1 November 2017

Ponnan JA, Petse JA, Willis JA, Lamont AJA, Shippers AJA

Criminal Law – procedure – order by this Court granting leave to appeal against sentence in absence of an appeal in that regard – court below had refused leave to appeal – whether this Court has jurisdiction – whether Superior Courts Act 10 of 2013 applies or old regime – whether trial court or this Court should be approached – whether leave to appeal against the dismissal of the petition should be directed at the court below or presented in this Court – whether merits of appeal should be heard.

7. Mandla Msimango v The State (698/2017)

Appealed from GJ

Date to be heard: 2 November 2017

Cachalia JA, Bosielo JA, Tsoka AJA, Ploos v Amstel AJA, Rogers AJA

Criminal Law – conviction of attempted murder as opposed to assault with intent to do grievous bodily harm – appeal against conviction and sentence – whether conviction of attempted murder should be converted to one of assault with intent to do grievous bodily harm – appellant was also convicted of robbery with aggravating circumstances – whether effective sentence of 20 years’ imprisonment in relation to convictions justified.

8. Daniel Coenraad de Beer v The State (1210/2016)

Appealed from GJ

Date to be heard: 02 November 2017

Cachalia JA, Bosielo JA, Tsoka AJA, Ploos v Amstel AJA, Rogers AJA

Criminal Law – increase of sentence by court of appeal *mero motu* raising adequacy of sentence - appeal against sentence – sentence increased after court below sitting as a court of appeal adjudicating the merits of a conviction *mero motu* raised the adequacy of a sentence of 15 years’ imprisonment, five years of which were conditionally suspended – conviction on a charge of rape in terms of s 3 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007 confirmed – sentence increased to one of life imprisonment – whether competent for court to do so.

9. Mkhabela Sicelo v The State (341/2017)

Appealed from GJ

Date to be heard: 2 November 2017

Leach JA, Seriti JA, Saldulker JA, Plasket AJA, Mbatha AJA

Criminal Law - sufficiency of evidence – appeal against sentence and conviction – appellant convicted in regional court on one count of robbery with aggravating circumstances and sentenced to seven years’ imprisonment – appeal to the high court was unsuccessful – appeal is with the leave of this Court – whether evidence justified the conviction – whether appellant properly identified – whether common purpose proved.

10. Msombomvu Qhinga v The State (1327/2016)

Appealed from ECB

Date to be heard: 2 November 2017

Leach JA, Seriti JA, Saldulker JA, Plasket AJA, Mbatha AJA

Criminal Law - sufficiency of evidence - constitutional rights of arrested person – appeal against conviction – whether pointing out that constituted the only evidence against appellant was in

violation of appellant's constitutional rights – long procedural history – appellant had been one of a number of convicted persons who had applied to this Court for leave to appeal which was refused – that decision was overturned by the Constitutional Court – this Court then granted leave to appeal to the full bench – the full bench dismissed the appellant's appeal – co-appellants were either partially or wholly successful – the initial judgment by the full bench indicated a unanimous decision – this was erroneous – dissenting judgment lodged later – that judgment considered that the appellant's rights were flagrantly violated.

11. Lefu Jantjie Bakane v The State (1180/2016)

Appealed from GP

Date to be heard: 2 November 2017

Tshiqi JA, Majiedt JA, Petse JA, Mocomie JA, Makgoka AJA

Criminal Law – appeal against convictions on charges of murder and robbery with aggravating circumstances and against sentence of life imprisonment imposed in respect of the conviction for murder and 15 years' imprisonment imposed on the conviction for robbery confirmed on appeal by a full bench – whether statement by appellant was correctly admitted – whether doctrine of common purpose properly applied – whether sentence of life imprisonment too harsh.

12. Director of Public Prosecutions, Limpopo v Kagiso Kodishi Mokgotho (068/2017)

Appealed from LP

Date to be heard: 2 November 2017

Tshiqi JA, Majiedt JA, Petse JA, Mocomie JA, Makgoka AJA

Criminal - appeal by the State – This is an application for leave to appeal. After leave to appeal was refused by the court a quo, this Court ordered that the application for leave to appeal be referred to oral argument. The appellant has also applied for leave to amend the original application for leave to appeal - the State seeks to appeal the respondent's acquittal by the court a quo on charges of murder and robbery with aggravating circumstances – the State contends that the court found the version of the respondent to be reasonable possibly true without the respondent having testified – according to the State the evidence was sufficient to sustain convictions.

13. The DPP Gauteng Division, Pretoria v Juda Joseph Plekenpol (333/2017)

Appealed from GP

Date to be heard: 3 November 2017

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

Criminal Law – appeal against sentence by the State – whether court a quo erred in holding that minimum sentence provisions not applicable – whether misdirection to antedate sentence to date of conviction – whether trial court erred in ordering sentences to run concurrently.

14. Direkteur van Openbare Vervolgings, Vrystaat v S Msimango & ander (315/2015)

Appealed from FB

Date to be heard: 3 November 2017

Cachalia JA, Leach JA, Saldulker JA, Mocomie JA, Makgoka AJA

Criminal Law – sentence – Prevention of Organised Crimes Act 121 of 1998 (POCA) offences relating to the managing and/or participation in an enterprise through a pattern of racketeering activities – appeal by the DPP, Free State against sentence – the respondents were convicted of contravening s 2 of (POCA) – three of the respondents convicted of managing and participating in the enterprise, were sentenced to 15 years' imprisonment in relation to all the charges they were convicted of – four of the respondents convicted of conducting or participating of/in the enterprise through a pattern of racketeering activities, were sentenced to 10 years' imprisonment – the pattern of racketeering activities included theft, unlawful refining, possession and dealing in unwrought gold – whether having regard to the time period during which the offences were committed and the value of the items involved and its impact on society the sentences were too lenient and shockingly inappropriate.

15. The Director of Public Prosecutions, Gauteng V Oscar Leonard Carl Pistorius (950/2016)

Appealed from GP

Date to be heard: 3 November 2017

Bosielo JA, Seriti JA, Lamont AJA, Meyer AJA, Mokgohloa AJA

Criminal Law and Procedure – application for leave to appeal by the DPP, Gauteng referred to oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 – the question of reasonable prospects of success relate to whether the sentence of six years' imprisonment imposed by the court a quo was disturbingly inappropriate – whether there are material misdirections entitling this Court to interfere.

16. Cradle City (Pty) Ltd v Lindley Farm 528 (Pty) Ltd (1212/2016)

Appealed from GP

Date to be heard: 6 November 2017

Navsa ADP, Tshiqi JA, Petse JA, Tsoka AJA, Mbatha AJA

Contract – sale of immovable property – interpretation of agreement – in particular the meaning and application of an 'indemnity and undertaking' clause – respondent undertook to take steps to evict unlawful occupiers of land which the appellant purchased from the respondent and an indemnity in favour of the appellant for all losses suffered as a result of a breach of the undertaking – the respondent instituted action against the appellant in the court a quo for, inter alia, the balance of the purchase price of the immovable property – the respondent applied for summary judgment – appellant contended that it had not been provided with vacant occupation and complained that the respondent had not referred to the 'indemnity and undertaking' clause – leave to defend was granted to the appellant – matter went to trial – the court a quo held that the sale agreement including the 'indemnity and undertaking' clause did not suggest that payment of the purchase price was conditional upon the respondent providing vacant occupation – the appellant was ordered to pay the respondent the amounts claimed – whether respondent complied with its obligations – whether the obligations flowing from the purchase agreement and the 'indemnity and undertaking' were reciprocal – whether the respondent ought to have succeeded with its claims – whether the appellant's counter-claims ought to have succeeded.

17. Auction Alliance (Pty) Ltd v Wade Park (Pty) Ltd (342/2016)

Appealed from KZP

Date to be heard: 6 November 2017

Ponnan JA, Majiedt JA, Plasket AJA, Meyer AJA, Ploos v Amstel AJA

Contract - suspensive condition – the respondent in the court a quo was unsuccessful in its attempt to reclaim commission paid to the appellant arising out of an auction for the sale of immovable property, on the basis that a suspensive condition in the agreement of sale had not been fulfilled because the seller had failed to comply with s 228 of the Companies Act 61 of 1973 – on appeal the full court set aside the high court's order and substituted the order with an order in favour of the respondent for payment of R3 021 000 with interest – whether the suspensive condition was fulfilled.

18. Baphelile Piet Molawa v Road Accident Fund (1356/2016)

Appealed from GP

Date to be heard: 6 November 2017

Cachalia JA, Leach JA, Mathopo JA, Makgoka AJA, Rogers AJA

Road Accident Fund Act 56 of 1996 - negligence and liability – the appellant instituted action for damages resulting from injuries sustained by him as a result of a collision between two trucks – court a quo held that the appellant had failed to establish that the insured driver had been negligent – whether the court a quo's conclusion was correct – consideration of evidence of expert and eyewitnesses.

19. The Minister of Home Affairs v Alex Ruta (030/2017)

Appealed from LCC

Date to be heard: 7 November 2017

Bosielo JA, Seriti JA, Willis JA, Mocumie JA, Schippers AJA

Administrative law – interpretation and application of the Refugees Act 130 of 1998 – whether exclusionary provisions in s 4 of the Refugees Act has the effect of prohibiting a person from applying for refugee status in circumstances where they committed offences listed in that section irrespective of where the offence was committed – whether possession of fraudulent asylum seeker permit was relevant – asserted offences to be weighed against the evidence.

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

Appealed from GP

Date to be heard: 7 November 2017

Leach JA, Saldulker JA, Swain JA, Lamont AJA, Rogers 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.

21. Roazar CC v The Falls Supermarket CC (232/2017)

Appealed from GP

Date to be heard: 7 November 2017

Tshiqi JA, Majiedt JA, Plasket AJA, Mokgohloa AJA, Mbatha AJA

Contract - lease – the appellant owns a building known as the Falls Shopping Centre – the respondent leases premises from which it conducts the business of a Spar supermarket – the appellant applied, unsuccessfully, in the court a quo for an eviction order – the eviction order was sought on the basis that the lease agreement had terminated – the respondent's defence was that it was lawfully in possession of the premises as the lease agreement allowed for a right to renew – lease agreement provides for a renewal period to be negotiated and discussed at least one month prior to the expiry of the lease period – it also provides for the parties to endeavour to reach agreement on the monthly rental – a schedule to the lease agreement provided that the renewal period is to be agreed in writing and to be negotiated between the parties – there are also ancillary agreements that have a bearing on the relationship between the parties – the court a quo considered all the clauses of the lease agreement and the effect of the ancillary agreements and held that the lease agreement did not require the exercise of the right to renew to be in writing and that the writing occurred after the negotiation was concluded – in the interim a monthly lease on the old terms would prevail – the application was dismissed – whether the lease agreement in terms of which the respondent occupies the premises has terminated – whether the respondent brought itself under the terms of the lease so as to trigger the entitlement to renew – whether the appellant was duty-bound to negotiate in good faith on the terms of an extension of the lease.

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

Appealed from GP

Date to be heard: 8 November 2017

Navsa ADP, Cachalia JA, Petse JA, Makgoka AJA, Ploos v Amstel AJA

Contract – respondent instituted action in the court a quo 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 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 – whether the court erred in ordering interest from 1 December 2010.

23. Pan African Mineral Development Company (Pty) Ltd & others v Aquila Steel (S Africa) (Pty) Ltd (179/2017)

Appealed from ECP

Date to be heard: 8 November 2017

Ponnan JA, Bosielo JA, Willis JA, Mathopo JA, Tsoka AJA

Administrative law - Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) – the respondent applied in the court a quo to review and set aside the decisions made by the Minister in terms of s 96 of the MPRDA in respect of an internal appeal involving mining rights – the respondent was successful – whether the court a quo correctly interpreted the provisions of the MPRDA – whether it acted against existing authority – whether the court erred in granting the relief sought by the respondent.

24. South African Stud Book and Animal Improvement Association v Agricultural Research Council (089/2017)

Appealed from FB

Date to be heard: 9 November 2017

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

Interpretation of statute - Animal Improvement Act 62 of 1998 – the respondent instituted action in the court a quo against the appellant for declaratory and interdictory relief as well as for payment of an amount of R90 million – there was an agreement to separate issues which was made an order of court – the appellant is a registering authority and a breeders society or group of breeders societies as defined in the Act – central issue was whether the appellant's members were obliged to submit certain information to a national database relating to activities regulated under the Act – that question was answered in favour of the respondent – whether that conclusion was correct.

25. Volkswagen South Africa (Pty) Ltd v The Commissioner for the South African Revenue Service (1123/2016)

Appealed from WCC

Date to be heard: 9 November 2017

Leach JA, Petse JA, Saldulker JA, Plasket AJA, Meyer AJA

Tax – whether amounts received by or accrued to the appellant in the 2008–2010 years as government grants pursuant to the productive asset allowance scheme were of a capital or revenue nature and accordingly whether these government grants are to be included in the appellant's gross income for purposes of the Income Tax Act 58 of 1962 – tax court held that the grants were to be included in the appellant's gross income.

26. Chinaz Septoo obo J M Septoo v Road Accident Fund (058/2017)

Appealed from FB

Date to be heard: 9 November 2017

Tshiqi JA, Majiedt JA, Mocumie JA, Mbatha AJA, Rogers AJA

Road Accident Fund - claim for loss of support – the appellant instituted an action against the respondent for loss of support she and her two minor children sustained as a result of the death of her husband in a motor collision – the deceased's negligence was the sole cause of the collision – after considering the authorities and submissions in relation to the development of the common law the court a quo held that in the circumstances set out above that the respondent was not liable to compensate the appellant – whether that conclusion is correct.

27. Esquire Consulting and Marketing CC & others v Sea Glades holdings (Pty) Ltd & others (1315/2016)

Appealed from GP

Date to be heard: 10 November 2017

Ponnan JA, Bosielo JA, Leach JA, Mathopo JA, Ploos v Amstel AJA

Zoning – the seventeen appellants applied in the court a quo for an interdict against the first and second respondents from conducting any business on Erf 3306 Sea Vista, which was located in the municipal area of the third respondent – the appellants also sought an order interdicting the fourth respondent from issuing a liquor licence to the first and second respondents – court a quo identifying the central issue – whether rezoning of Erf 3306 to a Business II use zone in terms of the relevant zoning scheme had lapsed – if in the affirmative, the applicants would be entitled to their interdict – it was contended on behalf of the appellants that the rezoning had lapsed by reason of non-utilisation – for this they relied on the provisions of s 16(2)(a)(i) of Land Use Planning Ordinance 15 of 1985 (LUPO) – the court a quo held that the rezoning was part of a substitution scheme in which event the zoning was permanent – furthermore, the court a quo held that there was utilisation and that the zoning had for that reason too not lapsed – whether those conclusions are correct.

28. The Minister of Finance v The South African Red Cross Air Mercy Service Trust (1409/2016)

Appealed from GP

Date to be heard: 10 November 2017

Cachalia JA, Tshiqi JA, Seriti JA, Swain JA, Mokgohloa AJA

Interim interdict - requirements for appealability – this is an appeal by the Minister of Finance against an interim interdict granted by the court a quo restraining him from implementing the cancellation of a contract between the respondent and the State in relation to a tender that pertained to the provision of Aero Medical Services in three Provinces – the respondent, in seeking the relief in the court a quo, pointed to the massive capitalisation and acquisition exercise it had embarked on – the appellant contended that the tender process resulting in the contract was flawed because incorrect criteria had been applied and thus the contract was consequently unlawfully concluded – the court a quo held that the above issue was for a review court to consider – it found that the requirements for an interim interdict had been met and granted the relief sought – whether decision appealable – whether interdict requirements were met – whether alternative remedy ought to have been resorted to.

29. Red Coral Investments (Pty) Ltd v Cape Peninsula University of Technology (498/2017)

Appealed from ECP

Date to be heard: 10 November 2017

Majiedt JA, Willis JA, Saldulker JA, Mocomie JA, Schippers AJA

Exception – the appellant instituted action in the court a quo for payment of an amount of R2 186 052.67 from the National Student Financial Aid Scheme (NSFAS) and an amount of R758 630.12 from the respondent in relation to accommodation provided to students enrolled with the respondent – exception was taken to the particulars of claim principally on the basis that the agreement was ultra vires the provisions of the National Student Financial Aid Scheme Act 56 of 1999 and accordingly void – in short, the point taken in the exception is that NSFAS had no authority in terms of the Act to enter into an agreement with the appellant because it was not a higher education designated institution – whether that finding is correct – the appellant conceded that the court a quo was correct to uphold but persists with the appeal – whether appeal should have been persisted in light of certain concessions made by the appellant.

30. Ludwig Wilhelm Diener N O v Minister of Justice & others (926/2016)

Appealed from GP

Date to be heard: 13 November 2017

Navsa ADP, Bosielo JA, Majiedt JA, Plasket AJA, 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.

31. HMI Healthcare Corporation (Pty) Ltd v Medshield Medical Scheme & others (1213/2016)

Appealed from GP

Date to be heard: 13 November 2017

Ponnan JA, Petse JA, Tsoka AJA, Lamont AJA, Mbatha AJA

Procedure - rescission application – ex parte application launched by appellant in December 2012 purportedly in terms of ss 387(4) and 388 of the Companies Act 61 of 1973 to defend an action against a company of which the appellant was the sole member – the action was one instituted by the first respondent for payment in an amount of approximately R40 million, made up of nine claims – in the ex parte application leave was also sought to lodge a counter-claim on behalf of that company – the ex parte application was launched on the basis that the second and third respondents, the joint liquidators of that company, had not taken any steps to defend the action against it – the order was granted ex parte – this led to an application by the first respondent seeking to rescind that order – the application for rescission was opposed with the appellant contending that the first respondent was not a party affected by the order and that the order had not been erroneously sought or erroneously

granted – the court a quo rescinded the order – an appeal to the full bench of the high court was unsuccessful – the majority found that notice should have been given to the first respondent as an affected party – whether first respondent was a party so affected – whether there had been material non-disclosure in the ex parte application – whether the order had been erroneously sought and granted – whether order appealable.

32. Road Accident Fund v Rebecca Mohohlo (882/2016)

Appealed from GP

Date to be heard: 13 November 2017

Leach JA, Meyer AJA, Mokgohloa AJA, Makgoka AJA, Rogers AJA

Road Accident Fund Act 56 of 1996 - dependent's action - loss of support and indigence – respondent was the maternal aunt of a person who had died as a result of a motor collision – she instituted a claim against the fund for loss of support claiming that she had raised and supported the deceased until he had become self-supporting and he, in turn, then supported her – the court a quo determined in the respondent's favour that she was indigent and that the deceased had a duty to support her – whether the respondent was indigent and whether amounts paid by the deceased constituted maintenance and support – whether there was a legal duty on the deceased to maintain the respondent.

33. MEC for Local Government, Environmental Affairs and Development Planning, Western Cape & another v Hans Ulrich Plotz N O & another (495/2017)

Appealed from WCC

Date to be heard: 14 November 2017

Shongwe AP, Swain JA, Mathopo JA, Meyer AJA, Mokgohloa AJA

Administrative Law - review of decision made in terms of the National Environmental Management Act 107 of 1998 (NEMA) – the first respondent acting in his capacity as trustee of a trust applied in the court a quo for an order reviewing and setting aside the decision of the second appellant to impose an administrative fine in an amount R475 000 in terms of s 24G(2) of the NEMA, payable by the trust before its application for environmental authorisation of certain listed activities under s 24G of the NEMA would be considered – the first respondent also sought an order reviewing and setting aside a decision of the first appellant refusing to consider an internal appeal against a decision to levy the fine – the fine was imposed in relation to work done by the trust on certain land for which it sought ex post facto rectification – the court a quo condoned the trust's failure to exhaust internal remedies – it also condoned the delay in instituting review proceedings – the court a quo set aside the decision to impose a fine of R475 000 and substituted its own decision by determining an administrative fine in an amount of R75 000 – it dismissed the application in relation to the MEC and in the end ordered each party to pay its own costs – whether condonation for failure to exhaust internal remedies should have been granted – whether the delay in launching the review application should have been condoned – whether the other conclusions were correct.

34. The Road Accident Appeal Tribunal & others v L Gouws & another (056/2017)

Appealed from GP

Date to be heard: 14 November 2017

Navsa ADP, Saldulker JA, Mocomie JA, Tsoka AJA, Makgoka AJA

Road Accident Fund Act 56 of 1996 - interpretation and application of Act and regulations – this appeal concerns interpretation of the regulations made under the Act – whether the first appellant, the Road Accident Appeal Tribunal has authority to consider and pronounce upon the question whether a claimant's injury arose from the accident relied upon and described in the prescribed form – whether power of Tribunal is limited to deciding whether identified injuries are serious – whether respondent should have been afforded an opportunity to be heard on the question of causation.

35. The Commissioner for the South African Revenue Service v Reunert Ltd (971/2016)

Appealed from Income Tax Court

Date to be heard: 14 November 2017

Cachalia JA, Tshiqi JA, Seriti JA, Willis JA, Ploos v Amstel AJA

Income Tax – interpretation of a sales promoter agreement concluded between the respondent and various companies in the Nokia Siemens Networks Groups – whether the gross or the nett commission under the agreement accrued to Reunert for tax purposes – whether a clause of the agreement providing for the declaration of a dividend to the respondent qualified the right to the commission – whether there was an unconditional right to the gross commission.

36. The Minister of Defence and Military Veterans & another v Jonas Molefe Mamasedi (622/2017)

Appealed from GP

Date to be heard: 15 November 2017

Ponnan JA, Majiedt JA, Plasket AJA, Mbatha AJA, Schippers AJA

Defence Act 42 of 2002 – respondent applied in the court a quo to set aside a decision of the Chief of the South African National Defence Force (SANDF) to dismiss him as a member of the SANDF because of his continued absence for a period exceeding 30 days – the evidence reveals that a board of enquiry was convened and made a recommendation that the respondent be discharged – the court a quo had regard to s 102 of the Defence Act which requires that the board of enquiry hear oral testimony – it was common cause that the respondent had not been called to testify – the court a quo held that the board was obliged to notify the respondent of its findings and to make recommendations to the second appellant and to afford him an opportunity to make representations before the board's recommendations were accepted – the court a quo held that this was procedurally unfair and ordered the appellants to reinstate the respondent as a member of the SANDF – whether s 102(9) of the Defence Act is applicable – whether s 103 applied and the extent of the board's powers and duties.

37. Geoffrey Stedall & another v Clint Patrick Aspeling & another (1326/2016)

Appealed from WCC

Date to be heard: 15 November 2017

Cachalia JA, Leach JA, Petse JA, Mocomie JA, Ploos v Amstel AJA

Delict - negligence – the respondent instituted action in the court a quo for damages sustained as a result of the drowning of their two and a half year old daughter in the swimming pool at the residence of the appellants – the respondents alleged a number of grounds of negligence including failure by the appellants to take reasonable steps to ensure that the gate to the swimming pool was properly secured – after hearing evidence the court a quo held that the appellants were negligent and found that the damages recoverable by the second respondent in her representative capacity was to be reduced by one third in terms of the Apportionment of Damages Act 34 of 1956 – whether trial court's conclusions on the liability of the owner of a residential property on which there is a swimming pool and on negligence were correct.

38. Nomzamo Winifred Zanyiwe Madikizela Mandela v The Executors, Estate Late Neslon Rolihlahla Mandela & others (131/2017)

Appealed from ECM

Date to be heard: 16 November 2017

Shongwe AP, Swain JA, Mathopo JA, Mokgohloa AJA, Rogers AJA

Review application - effective delay/condonation – on 16 November 1997 the Minister of Land Affairs took a decision to donate property situated at Qunu to the late former president of the Republic, Mr Mandela – during 2014 the appellant sought to review and set aside the Minister's decision on the basis that the decision to donate the property was taken in disregard of her rights to the property and that her rights under customary law continued to exist despite a civil divorce and that the consent of the community of Qunu ought to have been obtained – the court a quo dismissed the application on the basis of undue delay (nearly 17 years) – whether court's finding on undue delay was proper – whether the Minister had the power to make the decision in question - whether a case had been made out for condonation for the late bringing of the application.

39. City Power Johannesburg (Pty) Ltd v National Union of Metalworkers of South Africa (970/2016)

Appealed from GJ

Date to be heard: 16 November 2017

Ponnan JA, Leach JA, Saldulker JA, Tsoka AJA, Mbatha AJA

Access to Information - internal appeal procedure – this is an application for leave to appeal referred to oral argument – respondent applied in the court a quo, in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA), to compel certain information relating to the content of solar geysers provided in terms of a tender awarded by the appellant – the court a quo having regard to the history of the matter unimpressed by the attitude of the appellant in failing to respond to requests for information – that notwithstanding, it held that its information officer had not properly

given notice to third parties and thus frustrated the application for information – the court a quo held that it had no option other than to postpone the matter to enable further procedures in terms of PAIA to be complied with – the appellant contends that it was ordered to pay wasted costs, notwithstanding that the respondent had been premature in bringing the application in that it had failed to first exhaust internal remedies – the respondent concedes that it was obliged to exhaust its internal remedies prior to launching the application in the court below – neither party had sought a postponement – in respect of costs the respondent contends that the question costs on the merits were not decided and that the appellant was ordered to pay wasted costs for justifiable reasons – whether the application ought to have been dismissed – whether the costs order should have been granted.

40. The Electoral Commission of South Africa v Khaima Onafhanklike Kandidate Koalisie & others and The Electoral Commission of South Africa v The Cape Party (1233/2016 and 1268/2016)

Appealed from Electoral Court

Date to be heard: 16 November 2017

Bosielo JA, Willis JA, Plasket AJA, Meyer AJA, Makgoka AJA

Electoral Act - Decision by Electoral Commission – application for leave to appeal against decision of the Electoral Court referred for oral argument – the respondent successfully applied in the Electoral Court to review and set aside the commissions failure to entertain its objection to its exclusion from the Namakwa District Municipality ballot paper – the Electoral Court set aside the result of the elections in that district – whether there had been unlawful conduct on the part of the appellant – whether the second order referred to above was appropriate – whether leave to appeal should first be sought from the Electoral Court or whether an application lies to this Court – whether this Court in any event has jurisdiction – there is no appearance on behalf of the respondent.

41. The Cadac Pension Fund & others v The Executive Officer of the Financial Services Board & another (20106/2014)

Appealed from GJ

Date to be heard: 17 November 2017

Navsa ADP, Seriti JA, Petse JA, Mocomie JA, Meyer AJA

Failure of settlement agreement - unwillingness by curator to take up appointment – at a prior hearing in this Court the dispute between the parties which has an acrimonious history was settled and made an order of court – one of the curators appointed in terms of the settlement agreement was unwilling to take up his appointment – parties failed to agree a substitute – matter re-enrolled – whether appeal on the merits should be heard – whether failure of the settlement agreement should be addressed and adjudicated – whether members of the pension fund should be given a hearing – further affidavits filed.

42. G S van der Westhuizen v W J Burger (204/2017)

Appealed from GP

Date to be heard: 17 November 2017

Ponnan JA, Majiedt JA, Swain JA, Mokgohloa AJA, Mbatha AJA

Strict liability - wild animal – the respondent had sued the appellant for damages for injuries sustained as a result of an attack by an ostrich owned by the appellant – this occurred on a farm owned by the appellant and the respondent was there at the invitation of the former – after hearing evidence the court below held the appellant liable and dismissed defences such as voluntary assumption of risk and provocation – whether there should be strict liability – whether defences rightly dismissed – whether there was negligence on the part of the respondent – whether that question should intrude.

43. Drake Flemmer & Orsmond Inc. & another v Giteshkumar Gajjar N O (021/2017)

Appealed from ECP

Date to be heard: 17 November 2017

Cachalia JA, Tshiqi JA, Makgoka AJA, Ploos v Amstel AJA, Rogers AJA

Damages - attorneys acting in breach of mandate – the respondent sued on behalf of a person injured in a motor vehicle collision – the appellants appeal against an order by the court a quo that they are liable in damages to the respondent in his representative capacity in an amount of R6 480 818.84 – as against the first appellant the claim was based on a breach of mandate in that it had under settled his claim – as against the second appellant that it had allowed the claim to

prescribe – whether date for calculation of damages should be the date of the breach of the mandate or the date of trial – cross-appeal in relation to court’s reduction of damages by 43,69 per cent.

44. Omega Risk Solution (Pty) Ltd v Josia Alexander De Witt (149/2017)

Appealed from GP

Date to be heard: 20 November 2017

Navsa ADP, Majiedt JA, Willis JA, Swain JA, Lamont AJA

Extinctive prescription – appellant and a partnership had instituted action against the respondent for loss suffered as a result of an alleged breach of his fiduciary duties towards the appellant – the court below adjudicated upon a special plea of extinctive prescription in relation to the claims by the appellant and held in favour of the respondent – whether the appellant had actual or constructive knowledge for purposes of prescription – whether court correctly upheld special plea.

45. The Chemical Industries National Provident Fund v Tristar Investments (Pty) Ltd (960/2016)

Appealed from GP

Date to be heard: 20 November 2017

Cachalia JA, Bosielo JA, Tshiqi JA, Mathopo JA, Makgoka AJA

Contract – authority - interpretation and application thereof – the appeal involves an investment consulting agreement concluded between the parties during December 2007 – in terms of the agreement the respondent was appointed by the appellant, a provident fund, to provide a range of investment consulting services – a few months after the conclusion of the contract the respondent terminated the agreement on the basis that the persons who represented the fund in concluding it lacked the requisite authority in terms of the rules of the fund, rendering the agreement void and unenforceable – the respondent successfully brought an application in the court below requiring the fund to comply with its obligations – that order was overturned on appeal with the appeal court referring the matter to trial – trial court held that the agreement was valid and enforceable and upheld the respondent’s claim for its basic fee in the sum of approximately R15 million with interest – the present appeal is directed against those orders – whether the agreement is valid and enforceable for want of compliance with the rules – whether the respondent proved its case.

46. City Capital SA Property Holdings Limited v Chavonnes Badenhorst St Clair Cooper N O & others (085/2017)

Appealed from WCC

Date to be heard: 20 November 2017

Leach JA, Saldulker JA, Plasket AJA, Tsoka AJA, Schippers AJA

Company law - appointment of liquidator - competence of court order – court a quo at the instance of the respondents issued an order in terms of which five separate companies were declared to be a single entity and that persons already appointed as liquidators in the winding up of two of the five companies would now be the liquidators of the single entity – this was done purportedly in terms of s 20(9) of the Companies Act 71 of 2008 – the appeal concerns the interpretation of the order – the effect of the order is to be considered – whether order competent, particularly in relation to the question of the liquidators – whether master’s certificate of appointment affected.

47. Mohamed’s Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd (183/2017)

Appealed from GJ

Date to be heard: 21 November 2017

Shongwe AP, Willis JA, Mathopo JA, Meyer AJA, Ploos v Amstel AJA

Lease agreement – eviction - constitutional values – the appellant applied in the court a quo, following upon the cancellation of the lease agreement, for the eviction of the respondent from premises from which it conducted a hotel business known as Garden Court Nelson Mandela Boulevard, Cape Town – initially the respondent denied the appellant’s entitlement to cancel and further that it was in arrears with rentals – those were not persisted in – the respondent, in its plea, sought a relaxation of the *pacta sunt servanda* – the court a quo considered whether the implementation of the cancellation clause would in the circumstances be manifestly unreasonable and offend against public policy – the court a quo found that the lease agreement itself did not offend against public policy nor was the term in relation to cancellation unreasonable or otherwise objectionable – it went on to hold that it was the implementation of the cancellation clause that has to be subjected to constitutional scrutiny – it had regard to the respondent’s hotel business and the activities of the group as a whole – the court had regard to the respondent’s submissions that its ejection would cause untold damage to its reputation and that it would effectively sign as the death

knell for this hotel – the court considered that the bank was to blame for the late payment of the October rental and had regard to the prospect of the respondent suffering ‘disproportionate’ prejudice in the event of eviction – the court took into account constitutional values, including Ubuntu, and concluded that it would be constitutionally offensive to evict the respondents and dismissed the application – whether those conclusions are correct.

48. Glenwin Frieslaar N O & others v Petrus Andre Ackerman & another (1242/2016)

Appealed from NWM

Date to be heard: 21 November 2017

Ponnan JA, Seriti JA, Petse JA, Mocumie JA, Mokgohloa AJA

Contract Law - Prescription – the appellants instituted action against the respondents in terms of which they sought orders declaring that the cancellation of agreements of sale of certain properties were not valid and that the respondents be ordered to take steps to give transfer of ownership to them – in the alternative they sought payment of an amount of approximately R2 million – the claims were met by a special plea of prescription which the court a quo dismissed – that order was overturned on appeal to the full court, substituting the order with an order that the special plea of prescription be upheld and that the appellant’s claims be dismissed – the commencement of the period of prescription is in issue – whether the time for the payment of transfer costs constituted part of the debt that was to be recovered – the full court held that the payment of transfer costs did not delay the running of prescription and that the appellants had acquired a complete cause of action on that date that the written agreement was concluded – whether that conclusion is correct.

49. Media 24 (Pty) Ltd v E/L Deon Jean du Plessis & another (169/2017)

Appealed from WCC

Date to be heard: 21 November 2017

Bosielo JA, Saldulker JA, Plasket AJA, Lamont AJA, Mbatha AJA

Commercial law - valuation of share by accountant upon joint mandate – the court a quo described the application before it as follows: ‘This application involves the question of whether the value of shares, namely, a chartered accountant and auditor, who is the second respondent and who was jointly appointed by applicant and first respondent and acting in terms of a jointly agreed upon mandate, committed a manifest error in his determination of the net profit after tax of the Daily Sun Newspaper Division of the first respondent – the court a quo concluded that the accountant’s report contained no manifest errors and held that the parties were bound by his determination and recommendations – whether the parties are bound by the second respondent’s findings and determination – whether there was a manifest error in the report – whether court a quo’s conclusions were correct.

50. Cochrane Steel Products (Pty) Ltd v M-Systems Group (Pty) Ltd (1272/2016)

Appealed from GP

Date to be heard: 22 November 2017

Navsa ADP, Ponnan JA, Bosielo JA, Tsoka AJA, Schippers AJA

Trademarks - s 15 of the Trademarks Act 194 of 1993 – whether court below was correct in directing the entry of endorsements as a condition of registration of the appellants trademark – endorsements limit the protection of a trademark and are in the form of a so-called disclaimer and admission – appellant had sought registration of a trademark in two classes – they were opposed by the respondent and referred by the Registrar to the high court for adjudication – the basis for opposition being that the mark was not worthy of registration as it did not satisfy the distinctiveness criteria – the court a quo dismissed the objection and ordered the marks to be registered, but acceded to the respondent’s contention in the alternative for the entry of a disclaimer and admission – the explanation for the endorsement is contained in a brief paragraph of the judgment.

51. Wierda Road West Property v Sizwentsalubagobodo Inc. (1156/2016)

Appealed from GJ

Date to be heard: 22 November 2017

Cachalia JA, Majiedt JA, Plasket AJA, Meyer AJA, Mbatha AJA

Lease agreement – appellant instituted action against the respondent in the court a quo relying on a lease agreement and claiming payment of close to eight million rand for rental and municipal charges for the period July 2014 to March 2016 – the respondent raised several defences and lodged a counter-claim for an order declaring the agreement void ab initio – defendant contended that the

agreement was in contravention of s 14 of the National Building Regulations and Building Standards Act 103 of 1977, in that no occupancy certificate had been issued prior to occupation, that the plaintiff had made a fraudulent misrepresentation by failing to inform the defendant of that fact and that the building was not suitable for the purpose for which it was let and it would thus have constituted an offence for the defendant to remain in occupation – after hearing evidence and having regard to the applicable legislation the court below held that the lease agreement was not invalid or a nullity but held that the claim was unenforceable – the appellant’s action was dismissed with costs – there is also a cross-appeal in relation to the finding that the lease agreement was valid – whether the lease agreement was void ab initio – whether premises were fit for the purpose for which it was leased – whether lease enforceable.

52. Merchant Commercial Finance (Pty) Ltd v Katana Foods CC (1238/2016)

Appealed from GJ

Date to be heard: 22 November 2017

Leach JA, Tshiqi JA, Swain JA, Makgoka AJA, Ploos v Amstel AJA

Delict - fraudulent misrepresentation – appellant instituted action against respondent for damages it alleged is sustained as a result of false representations made to it over a period of almost a year by a member of the respondent in the course and scope of his employment – the trial court granted absolution from the instance on the basis that it could not find that the appellant was induced to make payments on material occasions – trial court held that there was no evidence before it on the role of a series of misrepresentations by the person concerned in decisions made by the respondent – that decision was appealed to the full court which held that the appellant had failed to prove that it was induced by any representation and that the loss was too remote to be recovered from the respondent as there was not a sufficiently close connection between the representations and the loss – the appeal was dismissed with costs – whether the findings by the trial and appeal courts were correct.

53. Head of Department, Western Cape Education Department & others v M Saffer (1209/2016)

Appealed from WCC

Date to be heard: 23 November 2017

Navsa ADP, Tshiqi JA, Seriti JA, Saldulker JA, Makgoka AJA

Constitutional Law - education – in 2013, the respondent who is the mother of a child who was then a learner at Fish Hoek High School, approached the court a quo for relief which involved the liability of parents of learners at fee charging public schools in the Western Cape to pay annual school fees as determined by the schools’ governing bodies in terms of s 39 of the South African Schools’ Act 84 of 1996 (SASA) – respondent had sought an order setting aside a decision of the first appellant dismissing the appeal against a decision of the school governing body to refuse her partial exemption from the payment of the 2013 school fees in terms of s 40(2) of SASA – the respondent also sought an order declaring that she and the father of her child, the sixth respondent, and all other divorced or separated biological parents, are jointly, rather than jointly and severally liable for the payment of the school fees of their children attending state schools – in the court below the respondents conceded that the decision dismissing the respondents’ appeal against the decision to refuse her partial exemption should be reviewed and set aside – the court a quo had regard to the provisions of SASA and stated that it was accepted that both parents were burdened with the responsibility to pay school fees and that it was consistent with s 28 of the Constitution – it held that joint and several liability is not provided for in s 40(1) of SASA and that there was nothing to infer that liability by parents is a liability as joint debtors jointly and severally – it held that this would impose too heavy a burden on divorced parents and the circumstances of the respondent – the court issued the declaratory order set out above – whether the principal conclusion of the court below was correct – whether regulations that offend against that finding are inconsistent with the Constitution and invalid – whether the appellants have failed to comply with their Constitutional and statutory duties regarding the requirements of SASA with relation to exemptions.

54. Dr Wouter Basson v Prof. J F N Hugo & others (968/2016)

Appealed from GP

Date to be heard: 24 November 2017

Shongwe AP, Seriti JA, Swain JA, Mokgohloa AJA, Schippers AJA

Administrative Law – review - members of a disciplinary body refusing to recuse themselves – third respondent, the Health Professions Council of South Africa, instituted disciplinary proceedings against the appellant, Dr Wouter Basson for unprofessional conduct relating to the South African Defence Force’s past programme of developing a chemical warfare capacity – a recusal application

was brought at a time after the disciplinary panel had already found the appellant guilty of unprofessional conduct – a sanction had to be determined – the basis for the recusal was that the chairperson of the disciplinary enquiry, the first respondent, and the second respondent who was also a member of the professional conduct committee that conducted the enquiry were members of organisations which had been critical of the appellant's conduct and had advocated for his removal from the register of medical practitioners – the application for recusal was brought on the basis that the first and second respondents are or might be biased towards the appellant – the application was dismissed – this led to an application in the court a quo seeking to review and set aside the refusal by the first and second respondents to recuse themselves – that application was unsuccessful – the basis for dismissing the application was that the appellant had an internal remedy of appeal and that there was no reason to conclude that the appellate body would not give fair consideration to an appeal brought by the appellant - the court a quo held that the appellant was under a duty to exhaust this remedy in terms of s 7 of the Promotion of Administrative Justice Act 3 of 2000 – whether those conclusions were correct – whether appellant could have been exempted by the court from following the internal remedy.