

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL**

BULLETIN 2 OF 2021

CASES ENROLLED FOR HEARING: MAY 2021

1. Harry Mark Deon Bath v Van Heerden & Brummer Incorporated

(356/2020)

Appealed from GP

Date to be heard: 3 May 2021

Petse DP, Mbha JA, Zondi JA, Kgoele AJA, Phatshoane AJA

Prescription – breach of contract – whether the respondent’s claim for damages against the appellant had prescribed – establishment of date on which the three-year period of prescription commenced – s 12 of the Prescription Act 68 of 1969 – contractual damages due to breach of mandate, alternatively professional negligence, in failing to draft a valid antenuptial contract.

2. Special Investigating Unit and The Acting National Commissioner of the National Department of Correctional Services v Engineered Systems Solutions (Pty) Ltd

(216/2020)

Appealed from: GP

Date to be heard: 3 May 2021

Navsa JA, Saldulker JA, Dlodlo JA, Rogers AJA, Mbindla-Boqwana AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – review – legality – whether two tenders awarded to the respondent should be set aside – whether condonation should be granted to the appellants in terms of PAJA – whether there was undue delay in the institution of the legality review – whether the court should grant just and equitable relief – whether the appellants made out a clear and undisputed case that the alleged irregularities occurred.

3. Philippus Arnoldus Venter du Plessis v Road Accident Fund

(138/2020)

Appealed from: ECG

Date to be heard: 4 May 2021

Navsa JA, Dambuza JA, Mocumie JA, Potterill AJA, Eksteen AJA

Law of Delict – Road Accident Fund – whether the appellant failed to establish on a balance of probability that the insured driver negligently caused the collision – whether the trial court erred in not accepting the appellant’s point of impact – the admissibility of an extra-curial statement made by the driver, dealing with two irreconcilable versions as to when the collision occurred and whether a credibility finding should be made against the driver.

4. The Black Eagle Project Roodekrans v The MEC: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government, The Head of Department: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government, Landev (Pty) Ltd & Netrac Investments No 72 (Pty) Ltd (542/2019)

Appealed from: GJ

Date to be heard: 4 May 2021

Ponnan JA, Zondi JA, Schippers JA, Carelse AJA, Mabindla-Boqwana AJA

Constitutional law - Administrative law – interpretation – ss 22 and 28A of the Environment Conservation Act 73 of 1989 – National Environmental Management Act 107 of 1998 – appeal against a decision of the Gauteng Division of the High Court, Johannesburg (in an application for the judicial review of the MEC’s decision) – whether the Head of Department (HOD) was *functus officio* when he authorised Landev to proceed with the remainder of the development – whether the HOD and the MEC committed material errors of law in purporting to make decisions under the incorrect statutory provision – whether the decisions of the HOD and the MEC were irrational, alternatively unreasonable – whether the HOD and the MEC took into account irrelevant considerations and/or failed to take into account relevant considerations in the decision-making process .

5. Gert Louwrens Steyn de Wet, Johan Francois Engelbrecht and The Master of the High Court, Gauteng Division, Johannesburg v Sumaiya Abdool Gafaar Khammissa, Bethuel Billyboy Mahlatsi, Keheditse Desiree Judith Masege, Gurwantral Laxman Bhikha and Albert Ivan Surmany (358/2020)

Appealed from: GJ

Date to be heard: 4 May 2021

Maya P, Makgoka JA, Mbatha JA, Gorven AJA, Goosen AJA

Insolvency law – administrative law – company law – review of decision of Master to appoint a party as liquidator of a liquidated company – whether, once Master decided not to appoint appellants as liquidators to a company, she was *functus officio* – whether another Master can still decide to appoint appellants as additional liquidators after the first decision – whether respondents had *locus standi* – whether s 151 of the Insolvency Act 24 of 1936 applied – whether the Promotion of Administrative Justice Act 3 of 2000 applied – whether respondents should have exhausted their internal remedies – whether s 371 of the Companies Act 61 of 1973 precluded the review application.

6. Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd, the National Consumer Tribunal and the National Credit Regulator

(314/2020)

Appealed from: GP

Date to be heard: 5 May 2021

Ponnan JA, Wallis JA, Mocumie JA, Dlodlo JA, Eksteen AJA

National Consumer Tribunal – National Credit Regulator – self-referral of complaint in terms of s 141 of the National Credit Act 34 of 2005 – test to be applied when National Consumer Tribunal considers application by complainant in terms of s 141(1)(b) of the National Credit Act – whether complainant required to have material interest in outcome of that complaint – whether complainant required to have consent to act in a representative capacity for someone who has a material interest in outcome of that complaint – whether decision of the National Consumer Tribunal granting permission to complainant to self-refer its complaint was appealable.

7. City of Johannesburg Metropolitan Municipality v Zibi: Yanga and Zibi: Lindizwe
(234/2020)

Appealed from: GJ

Date to be heard: 5 May 2021

Saldulker JA, Mbha JA, Schippers JA, Carelse AJA, Poyo-Dlwati AJA

Local government – municipal law – Local Government: Municipal Property Rates Act 6 of 2004 (the Rate’s Act) – tariffs – municipality’s rates policy – whether the Municipality failed to comply with the Rates Act and its Property Rates Policies in applying an illegal use/unauthorised use tariff to the respondents’ property without first changing the category to reflect the illegal use/unauthorised category – whether the court order directing the

Municipality to apply the rating tariff for the residential category instead of the penalty tariff, as defined in the rates policy, was possible without a challenge to the validity of the Municipality's Rate Policy.

8. Willem Grobler v Clara Phillips, Johan Venter N O and Helderberg Municipality (446/2020)

Appealed from: WCC

Date to be heard: 6 May 2021

Petse DP, Mocumie JA, Dlodlo JA, Phatshoane AJA, Goosen AJA

Land – eviction – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) – Extension of Security of Tenure Act 62 of 1997 – the appellant commenced motion proceedings in the Magistrate's Court, Somerset West against the first respondent for an order of eviction from the residential property, which was granted – the first respondent then appealed to the high court successfully – whether an oral right of *habitatio* was a valid defence – eviction from residential property – validity of life-long *habitatio* within the context of PIE and ESTA.

9. Samancor Holdings (Pty) Ltd, BHP Billiton SA Limited and Anglo South Africa Capital (Pty) Ltd v Samancor Chrome Holdings (Pty) Ltd and Samancor Chrome Limited (357/2020)

Appealed from: GJ

Date to be heard: 6 May 2021

Navsa JA, Saldulker JA, Mbatha JA, Ledwaba AJA, Rogers AJA

Arbitration – s 8 of the Arbitration Act 42 of 1965 – contract – enforceability of a time-bar provision for commencing arbitration proceedings contained in the agreement – discretionary power of court to extend the time period stipulated in a time-bar clause for commencing arbitration proceedings if the court 'is of the opinion that in the circumstances of the case undue hardship would otherwise be caused' – interpretation of the words 'undue hardship' and application of the provision – factors to be taken into account in considering whether or not to exercise the discretionary power.

10. Maxrae Estates (Pty) Ltd v The National Minister of Agriculture, Forestry and Fisheries and Delegate of the Minister of Agriculture, Forestry and Fisheries: Land Use and Soil Management

(407/2020)

Appealed from: GP

Date to be heard: 6 May 2021

Wallis JA, Dambuza JA, Makgoka JA, Gorven AJA, Unterhalter AJA

Administrative law – review – Subdivision of Agricultural Land Act 70 of 1970 – refusal of application for the subdivision of appellant’s property in terms of the Subdivision of Agricultural Land Act – whether the Minister’s decision refusing the appellant’s application for subdivision and change in land use rights should be reviewed and set aside – whether the decision of the Minister was arbitrary, irrational and unreasonable; or taken absent of any satisfactory evidence demonstrating that the subdivision of the subject property was inimical to the Subdivision of Agricultural Land Act; or taken without evidence showing that the subdivision will lead to the fragmentation of agricultural land into small uneconomic units which will not be viable.

11. Discovery Life Limited v Michael William Hogan and Joan Hazel Hogan

(389/2020)

Appealed from: GJ

Date to be heard: 7 May 2021

Petse DP, Wallis JA, Potterill AJA, Rogers AJA, Poyo-Dlwati AJA

Contract – insurance – refusal of insurer to pay out policy proceeds – insurance claim denied on basis of repudiation by beneficiaries of life insurance policy – whether the conduct of the insured party in deliberately stopping payment of premiums constituted repudiation – whether clause in life insurance policy requiring the insurer to give the insured notice of non-payment and to afford the insured a thirty-day notice period before suspending cover applied.

12. The Commissioner for the South African Revenue Service v Tourvest Financial Services (Pty) Ltd

(435/2020)

Appealed from: Tax Court

Date to be heard: 7 May 2021

Ponnan JA, Mbha JA, Schippers JA, Gorven AJA, Kgoele AJA

Tax law – value-added tax – deductibility of input tax by vendor – remission of interest – interpretation of s 2(1)(a) of the Value-Added Tax Act 89 of 1991, read with proviso thereto – whether the tax paid by the respondent in respect of its branches was fully deductible as input tax from the VAT charged as output tax by the respondent in the course of making taxable supplies at the branches, by virtue of the commissions plus VAT charged by the respondent at its branches for the exchange of currencies.

13. Mxolisi Mananga, Tando Ngqoyi and Mava Mananga v Minister of Police (342/2020)

Appealed from: ECM

Date to be heard: 7 May 2021

Maya P, Zondi JA, Eksteen AJA

Criminal law and procedure – delict – unlawful arrest and detention – the appellants were arrested on a charge of assault GBH and were in custody for three days – whether the appellants’ arrest and detention was lawful in terms of s 40(1)(b) of the Criminal Procedure Act 51 of 1977 – whether the respondent discharged its duty to justify that the arrest and detention of the appellants was lawful.

14. eThekweni Municipality v Crimson Clover Trading 17 (Pty) Ltd t/a Island Hotel (280/2020)

Appealed from: KZD

Date to be heard: 7 May 2021

Dambuza JA, Makgoka JA, Mbatha JA, Goosen AJA, Unterhalter AJA

Civil procedure – condonation - Institution of legal proceedings against organ of state – constitutional law – appeal against decision of court a quo granting condonation for delay in serving notice in terms of s 3(1) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 – statutory requirements for condonation in terms of s 4(b) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 – whether good cause shown – whether organ of state was prejudiced.

15. Bertie van Zyl (Pty) Ltd t/a ZZ2, Tomato Producers’ Organisation, Noordelike UIE Komitee and Fresh Produce Importers’ Association NPC v The Minister of Agriculture, Forestry and Fisheries, Product Control for Agriculture, Leaf Services (Pty) Ltd, Nejamogul Technologies & Agric Services, Agency for Food Safety (Pty) Ltd, Impumelelo

Agribusiness Solutions (Pty) Ltd, Perishable Products Export Control Board and South African Meat Industry Company

(549/2020)

Appealed from: GP

Date to be heard: 10 May 2021

Petse DP, Saldulker JA, Makgoka JA, Goosen AJA, Unterhalter AJA,

Administrative law – review – constitutionality of s 3(1A)(b)(ii) of the Agricultural Product Standards Act 119 of 1990 – declaratory order sought that s 3(1A)(b)(ii) of the Agricultural Product Standards Act is not in accordance with the rule of law and/or s 195(3) of the Constitution and/or permits the arbitrary deprivation of property contrary to s 25(1) of the Constitution – whether the assignee was lawfully appointed by the first respondent – validity of the appointment of the second respondent in terms of s 2(3)(a) of the Act – whether the second respondent’s determination of its fees falls to be reviewed and set aside with appropriate relief – whether s 10 of the Act provided the appellants with an internal remedy which they ought to have exhausted.

16. The Commissioner for the South African Revenue Service v Tonleria Nacional RSA (Pty) Ltd

(445/2020)

Appealed from: WCC

Date to be heard: 10 May 2021

Navsa JA, Wallis JA, Mbatha JA, Rogers AJA, Poyo-Dlwati AJA

Tax Law – Customs and Excise Act 91 of 1964 - tariff classification – whether the correct tariff classification of treated oak products had been applied by the appellant in the usage of wine making – whether the court a quo was correct in applying the same tariff classification, referred to above, to goods imported in containers which did not form the subject-matter of the determination sought to be set aside.

17. The Member of the Executive Council Department of Health, North West Province v Nthombizile Annah Mthombeni N O

(035/2020)

Appealed from: NWM

Date to be heard: 10 May 2021

Zondi JA, Dambuza JA, Mocumie JA, Gorven AJA, Eksteen AJA

Delict – medical negligence – damages – vicarious liability of state organ – whether nurses of the Makgobistad Clinic were negligent in the medical treatment of the respondent’s baby – whether the acute profound hypoxic ischemic injury suffered by the infant was caused by the negligence of the staff or whether the staff could have taken steps to avoid the harm suffered.

18. Ingquza Hill Local Municipality and Bambezakhe Goya v Jongintaba Mdingi (1110/2019)

Appealed from: ECM

Date to be heard: 11 May 2021

Petse DP, Zondi JA, Dlodlo JA, Ledwaba AJA, Mabindla-Boqwana AJA

Civil procedure – Municipal Structures Act 117 of 1998 – motion of no confidence – removal from office – whether the doctrine of *audi altarem partem* should contain an investigative process before council moves a motion to dismiss based on misconduct prior to moving a motion of no confidence against a mayor – whether, the establishment of an ad hoc committee to investigate and hold an enquiry for guilt of a mayor should first be held/ followed when a motion of no confidence against a mayor is to be moved where there is no statutory provision setting out such prescriptive procedure – whether the court a quo had the ability to make a determination on an issue (*mero motu*) which was not called for determination on – whether the notice given in terms of s 53 of the Municipal Structures Act 117 of 1998 was sufficient in terms of the *audi altarem partem* doctrine.

19. Oakbay Investments (Pty) Ltd v Tegeta Exploration and Resources (Pty) Ltd (In Business Rescue), Johan Louis Klopper N O, Kurt Robert Knoop N O and The Companies and Intellectual Property Commission (CIPC) (1274/2019)

Appealed from: GP

Date to be heard: 11 May 2021

Ponnan JA, Wallis JA, Saldulker JA, Goosen AJA, Unterhalter AJA

Company Law – business rescue – appointments – whether the second and third respondents were in a conflicted position as business rescue practitioners (BRPs) in the first respondent *vis-a-vis* their appointments in related entities with diverging claims and interests between them – whether the business rescue practitioners’ appointments as BRPs of Tegeta and its three subsidiaries, created a conflict of interest that justified their removal as practitioners in terms of s 139(2)(e) of the Companies Act 71 of 2008, at the instance of the applicant *mero motu*.

20. Teresa Fortunate Mabasa v The State

(677/2020)

Appealed from: GP

Date to be heard: 12 May 2021

Mbha JA, Mbatha JA, Carelse AJA, Phatshoane AJA, Mabindla-Boqwana AJA

Criminal law and procedure – conviction – contradicting statements – whether the appellant had a fair trial – whether the evidence of a single witness was reliable and acceptable considering that the witness was declared a hostile witness – whether the trial court could consider and utilise extra-curial confessions and admissions of a co-accused as corroboration.

21. Aadiel Essop v The State

(432/2020)

Appealed from: GP

Date to be heard: 12 May 2021

Dambuza JA, Dlodlo JA, Goosen AJA

Criminal law and procedure – sentence – whether the imposed sentence either induced a sense of shock or was tainted by a misdirection which warranted interference on appeal – whether the sentence was appropriate after a plea of guilty on a charge of contravening s 24B(1)(a) of The Films and Publications Act 65 of 1996.

22. Zola Cedric Machi v The State

(256/2020)

Appealed from: GJ

Date to be heard: 13 May 2021

Zondi JA, Mocumie JA, Makgoka JA, Kgoele AJA, Eksteen AJA

Criminal law and procedure – conviction and sentence – common purpose – whether the State successfully discharged the onus – whether the judge erred in convicting the appellant – whether the court a quo misdirected itself on proved facts, which did not lead to the inference it drew – whether the appellant was at the scene and acted in common purpose.

23. Hirt and Carter Pty (Ltd) v IT Arnsten N O, Big Concerts International (Pty) Ltd, Alliance Safety CC t/a Alliance Safety Management, Glaxosmithkline (Pty) Ltd, Maxwell 137 CC t/a Bothma Signs, Vertex Scaffolding CC, The City of Cape Town, BLK OPS

(Pty) Ltd, The Minister of Safety and Security, Leslie James Heaven and National Director of Public Prosecutions

(277/2020)

Appealed from: WCC

Date to be heard: 14 May 2021

Navsa JA, Mocumie JA, Dlodlo JA, Potterill AJA, Poyo-Dlwati AJA

Administrative law – review – Inquests Act 58 of 1959 – whether the court a quo was correct in dismissing the appellant’s application seeking to review and set aside certain decisions made by the first respondent, IT Arntsen NO, in terms of s 16(2)(d) of the Inquests Act – whether the first respondent committed a material error of law in reaching her findings – whether the findings of the first respondent, as they pertain to the appellant, should be reviewed and set aside.

24. The Minister of Police v Underwriters at Lloyd’s of London

(1212/2019)

Appealed from: Gauteng Division

Date to be heard: 14 May 2021

Wallis JA, Makgoka JA, Kgoele AJA, Phatshoane AJA, Goosen AJA

Civil procedure – plea amendment – whether the *ex turpi causa* defence pleaded in the proposed amendment was explicable for lack of necessary averments to sustain a defence – whether the court a quo erred in refusing an application for leave to amend the appellant’s plea prior to the commencement of the trial.

25. Nimble Investments (Pty) Ltd (formerly known as Tadvest Industrial (Pty) Ltd) v Johanna (Elsie) Malan, Dorothy Malan, Charmaine Malan, Moses Malan, Jacobus Malan, Liza Plaatjies, Redewaan Botha, Ashley Malan, Those Persons Unlawfully Occupying Cottage No. 5, Topshell Park, Baden Powell Road, Lynedoch, Stellenbosch, with, or under, First to Eighth Respondents, Stellenbosch Municipality and Department of Rural Development and Land Reform

(556/2020)

Appealed from: LCC

Date to be heard: 14 May 2021

Maya P, Dambuza JA, Schippers JA, Carelse AJA, Eksteen AJA

Land – eviction – Extension of Security of Tenure Act 62 of 1997 – whether there was a material breach of trust in terms of s 10(1)(c) of the Extension of Security of Tenure Act – whether the eviction of the respondents was just and equitable in terms of s 8(1) of ESTA.

**26. Elias Thapelo Tshepe and Victoria Tshepe v Rustia Feed (Pty) Ltd
(90/2020)**

Appealed from: NWM

Date to be heard: 17 May 2021

Petse DP, Mbha JA, Zondi JA, Kgoele AJA, Phatshoane AJA

Civil procedure – surety – credit agreement – application for special leave to appeal to SCA – whether applicants/appellants and/or respondent did validly consent in their personal capacity to the increased monetary jurisdiction of the magistrates’ court in terms of s 45 of the Magistrates’ Courts Act 32 of 1944 – whether the applicants were entitled to rescind the personal suretyship clause in the credit application on the basis of *iustus error* – whether the respondent had a duty to draw the attention of the applicants to the existence of the suretyship clause.

**27. Simon John Nash, Cadac (Pty) Ltd, Antoinette Cronje, Iris Rose Schoeman and Samantha Mays v The Cadac Pension Fund (In Curatorship, Registration Number 12/8/0020425), Anton Louis Mostert N O, Johan Esterhuizen N O, Karen Keevy N O and NMG Administrators (Pty) Ltd
(545/2020)**

Appealed from: GJ

Date to be heard: 17 May 2021

Dambuza JA, Makgoka JA, Mbatha JA, Ledwaba AJA, Unterhalter AJA

Civil procedure – interlocutory application – intervention application – right of access to court – interdict – appeal against dismissal of urgent interdict by court a quo – whether first and second appellants were required to first seek and obtain the leave of the court before instituting proceedings against the first and second respondents – whether the first and second appellants were required to launch a separate application for such leave, or whether it could be granted in the interim application – whether appellants made out a case for the interdict sought and were thus entitled to the interim relief – whether the court a quo ought to have considered the third to fifth appellants’ intervention application first before considering the merits of the interlocutory application.

28. Capitec Bank Holdings Limited and Capitec Bank Limited v Coral Lagoon Investments 194 (Pty) Ltd, Ash Brook Investments 15 (Pty) Ltd, The Transnet Second Defined Benefit Fund, Rorisang Basadi Investments (Pty) Ltd and Lemoshanang Investments (Pty) Ltd
(470/2020)

Appealed from: GJ

Date to be heard: 18 May 2021

Ponnan JA, Makgoka JA, Mbatha JA, Goosen AJA, Unterhalter AJA

Company law – interpretation of a share agreement – duty to act in good faith – whether clause 8.3 of a subscription of shares agreement concluded between the first appellant, Capitec and the first respondent, Coral, and the second respondent, Ash Brook, required Capitec’s consent prior to the sale of shares in Capitec by the first and second respondents – whether Capitec owes an enforceable duty of good faith and/or reasonableness exists to Coral and Ash Brook under the common law or contractually under the subscription agreement, particularly clauses 13.7 or 13.11 – whether if such duty existed, Capitec acted unreasonably or in bad faith in refusing to waive its contractual rights in relation to the sale of shares by Coral to the third respondent, the Transnet Second Defined Benefit Fund, which was not a ‘qualifying black person’ as contemplated in clause 8.3.

29. Martin van Zyl v Auto Commodities (Pty) Ltd
(279/2020)

Appealed from: NCK

Date to be heard: 18 May 2021

Wallis JA, Mbha JA, Schippers JA, Phatshoane AJA, Rogers AJA

Company law - suretyship – business rescue – whether surety was released when a business rescue plan, which released principal debtor from its obligations to the creditor, was approved and implemented.

30. Sasol South Africa (Pty) Ltd v Murray & Roberts Limited
(425/2020)

Appealed from: GJ

Date to be heard: 18 May 2021

Saldulker JA, Zondi JA, Ledwaba AJA, Gorven AJA, Potterill AJA

Contract – arbitration – whether the adjudicator appointed in terms of the NEC3 Engineering and Construction Contract of June 2005 (with amendments dated June 2006) had the power to enforce an arbitration award which the adjudicator had previously determined – whether the adjudicator had the power to pronounce on the award thereby changing his previous decision – whether the adjudicator gave his decision outside of the time period prescribed.

31. Abraham Paulus Bisschoff; Abraham Paulus Bisschoff N O (in his capacity as representative of the trustees of the Paul Bisschoff Trust), Rietvlug Landgoed (Pty) Limited, David Eduard Bisschoff and David Eduard Bisschoff N O (in his capacity as representative of the trustees of the David Bisschoff Trust) v Welbeplan Boerdery (Pty) Ltd

(815/2016)

Appealed from: NWM

Date to be heard: 19 May 2021

Wallis JA, Dambuza JA, Schippers JA, Dlodlo JA, Mabindla-Boqwana AJA

Property law – *mandament van spolie* – whether the issuing of a ‘written demand’ on its own, to the effect that the respondent must no longer enter the properties of the appellants, failing which an application for relief would be made to the high court, constituted a deprivation of possession as required for reliance on the *mandament van spolie* remedy.

32. South African Reserve Bank v Renette Leathern N O, William David Leathern N O, Jerifanos Mashamba N O (in their capacities as duly appointed trustees of the insolvent estate of Ahmed Dawood Bhorat (T2450/16)) and Grobank

(854/2020)

Appealed from: GP

Date to be heard: 20 May 2021

Maya P, Mbha JA, Makgoka JA, Gorven AJA, Unterhalter AJA

Trust law – insolvency – sequestration – exchange control regulations – whether the relief sought, as formulated by the first to third respondents, namely the trustees of the insolvent estate, was competent – whether the South African Reserve Bank laid a basis for a reasonable suspicion that Mr Bhorat might have been involved in the contravention of the Exchange Control Regulations – whether the money in the Grobank account vested in the trustees of the insolvent estate of Mr Bhorat – whether the sequestration order has the effect that the blocking order was nullified or invalidated.

**33. Harbour Arch Investment Holdings (Pty) Ltd v Capital Propfund 4 (Pty) Ltd
(437/2020)**

Appealed from: WCC

Date to be heard: 20 May 2021

Petse DP, Dambuza JA, Mbatha JA, Potterill AJA, Poyo-Dlwati AJA

Contract – sale and lease – lease assignment agreement – property law – whether certain obligations that arose under the lease assignment agreement between the parties remained enforceable after appellant obtained ownership of the leased property.

**34. Jared Michael Watson N O (in his capacity as executor of the estate of the late Gavin Joseph Watson) v Lulama Smuts Ngonyama and Thunder Cats Investments 92 (Pty) Ltd
(453/2020)**

Appealed from: GJ

Date to be heard: 20 May 2021

Navsa JA, Zondi JA, Kgoele AJA, Goosen AJA, Rogers AJA

Company law – contract – shares – misrepresentation – whether the respondents proved a misrepresentation by the late Mr Gavin Watson in that he induced the respondents into donating shares to Bosasa Youth Development Centres (Pty) Ltd on the basis that it was a BBBEE company whereas it was beneficially owned by Mr Gavin Watson and his interests – whether the respondents were entitled to demand transfer of shares held by Bosasa Youth Development Centres (Pty) Ltd in view of the Fluxmans Agreement.

**35. Germa Beukes v Ten Four Consulting (Pty) Ltd, Fourth Dimension Financial Services (Pty) Ltd and The Honourable Justice Barend Rudolph du Plessis
(570/2020)**

Appealed from: GP

Date to be heard: 20 May 2021

Ponnan JA, Saldulker JA, Mocumie JA, Schippers JA, Eksteen AJA

Arbitration – alternative dispute resolution – conduct of arbitrator – whether the arbitrator, retired Judge B R du Plessis committed a gross irregularity in the conduct of the arbitration proceedings or exceeded his powers as contemplated in s 33(1)(b) of the Arbitration

Act 42 of 1965 by making an award dismissing the respondents' claim for damages in the sum of R3 129 078 and by reserving the costs.

36. Passenger Rail Agency of South Africa v Johanna Dipuo Sithuse

(569/2020)

Appealed from: GP

Date to be heard: 21 May 2021

Wallis JA, Zondi JA, Ledwaba AJA, Carelse AJA, Rogers AJA

Delict – negligence and causation – law of evidence – credibility of witnesses – whether the court a quo was justified in upsetting the credibility and probability findings of the trial court a quo in respect of the appellant's witnesses – whether the *dictum* in *Aegis Insurance Company Limited v Consanino* 1996 (4) SA 1 (A) establishing a presumption against suicide has application in the present matter – whether the respondent had established a causal nexus between her injuries sustained on account of conduct of fellow commuters and any negligent omission or commission on the part of the appellant.

37. K2013046547/07 South Africa (Pty) Ltd, Investec Bank Limited and Blue Cloud Investments 40 (Pty) Ltd v Hyde Construction CC and The Registrar of Deeds Cape Town

(513/2020)

Appealed from: WCC

Date to be heard: 24 May 2021

Ponnan JA, Mocumie JA, Dlodlo JA, Gorven AJA, Rogers AJA

Contract – property law – interpretation and application of Insolvency Act 24 of 1936 – whether the third appellant, Blue Cloud, was considered a trader in 2014 as contemplated by s 2 of the Insolvency Act, when it disposed of a shopping centre being run as a letting enterprise to the first appellant, K Company – whether the third appellant, being considered a trader, would invoke the provisions of s 34(3) of the Insolvency Act and have the mortgage bond registered in favour of the second appellant, Investec, declared void by a court purely by operation of said provisions – whether the appellants entered into a contrived and unlawful scheme in respect of the sale and transfer of the property – whether the court a quo correctly decided certain evidentiary issues relating to the onus and the admission of a supplementary affidavit and the confirmatory affidavits submitted.

38. Blendrite (Pty) Ltd and Manivasan Palani v Dhramalingum Moonisami and Global Networks Systems (Pty) Ltd

(227/2020)

Appealed from: KZD

Date to be heard: 25 May 2021

Navsa JA, Mocumie JA, Dlodlo JA, Ledwaba AJA, Gorven AJA

Property law – spoliation – contract – the first respondent was a director of the first appellant – when the first respondent retired he was denied email and internet access (server access) by the first appellant – the first respondent instituted an application against the first appellant for the restoration of server access – whether the first respondent met the requirements for spoliatory relief of non-servitural incorporeals under the *mandament van spolie* – whether specific performance of a contract of employment was allowed under the *mandament van spolie* – whether there were policy considerations in favour of the extension of the *mandament van spolie* to protect server access.

39. Minister of Cooperative Governance v Reyno Dawid de Beer, Liberty Fighters Network and Hola Bon Renaissance Foundation

(538/2020)

Appealed from: GP

Date to be heard: 26 May 2021

Navsa JA, Ponnann JA, Mbatha JA, Rogers AJA, Unterhalter AJA

Constitutional law - administrative law – review – constitutional validity of disaster management regulations – whether the regulations promulgated by the Minister of Cooperative Governance in terms of s 27(2) of the Disaster Management Act 57 of 2002 were constitutionally valid – whether the rationality test was applied correctly in assessing the regulations in issue – whether the requirements for a valid court order were fulfilled.

40. The Commissioner for the South African Revenue Services v Glencore Operations (Pty) Ltd

(462/2020)

Appealed from: GP

Date to be heard: 27 May 2021

Petse DP, Mbha JA, Gorven AJA, Rogers AJA, Mabindla-Boqwana AJA

Tax law – Customs and Excise Act 91 of 1964 – whether the word ‘include’ used in Note 6(f)(iii) of Part 3 of Schedule 6 to the Customs and Excise Act 91 of 1964 covered activities conducted by the respondent on its mining site and whether in the context in which it was used would allow for an interpretation that activities not listed in Note 6(f)(iii)(aa) – (tt) qualified for a diesel refund.