

**REPUBLIC OF SOUTH AFRICA**

**SUPREME COURT OF APPEAL**

**BULLETIN 4 OF 2021**

**CASES ENROLLED FOR HEARING: 2 NOVEMBER – 30 NOVEMBER 2021**

**1. The Minister of Police v Shawn Bosman, Anushka Dowson, Serano Dowson, Brenda Claassen, Cheslin Voster, Grant Markley, Denver Lackay, Chine Jass and Mornay Jass (1163/2020)**

Appealed from ECG

Date to be heard: 2 November 2021

Saldulker ADP, Mathopo JA, Molemela JA, Nicholls JA, Smith AJA

**Criminal law and procedure – Criminal procedure Act 51 of 1977 – sections 40(1)(b), (f) and (h) – unlawful arrest and detention – awards for damages** – whether the respondents’ arrest and detention was lawful in terms of ss 40(1)(b),(f), and (h) of the Criminal Procedure Act 51 of 1977 – whether the court a quo erred and misdirected itself by confirming the grossly excessive awards made by the trial court with regard to damages.

**2. Dave Pretorius v Kenneth Bedwell**

**(659/2020)**

Appealed from GP

Date to be heard: 2 November 2021

Van der Merwe JA, Mokgohloa JA, Hughes JA, Phatshoane AJA, Weiner AJA

**Contract – repudiation – prescription** – whether repudiation was a unilateral juristic act or a bilateral juristic act – whether the full court erred when it found that the respondent’s claim against the appellant had not prescribed – whether the issue of prescription should have been dealt with separately on the basis as formulated by the parties at the pre-trial conference.

**3. Mawanda Makhala and Velile Waxa v The State**

**(438/2020)**

Appealed from WCC

Date to be heard: 2 November 2021

Mocumie JA, Makgoka JA, Mothle JA, Meyer JA, AJA

**Criminal law and procedure – section 204 of the Criminal Procedure Act 51 of 1977 – section 204 witness’ right to legal representation – section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988 – hearsay evidence** – whether the court a quo’s failure to permit the s 204 witness legal representation during the procedure conducted to determine whether the witness was a hostile witness infringed on the witness’ right to legal representation – whether the court a quo was correct in admitting the s 204 witness’ statement notwithstanding an effective denial of the right to counsel by the police – whether the court a quo, in admitting such statement, subjected proof of a vital element of voluntariness to a reverse onus – whether the admission of the contents of such statement into evidence constituted non-compliance with numerous requirements as set out by the South African and Canadian authorities – whether the s 204 witness’ statement constituted hearsay evidence that was the only incriminating evidence against the appellants and was therefore significantly and decisively the foundation of the convictions.

**4. African Transformation Movement v The Speaker of the National Assembly, The President of the Republic of South Africa, African National Congress, Democratic Alliance and Economic Freedom Fighters**  
**(643/2021)**

Appealed from WCC

Date to be heard: 3 November 2021

Petse AP Nicholls JA, Gorven JA, Kgoele JA, Smith AJA

**Administrative Law** –the appeal relates to the review of the decision of the Speaker of the National Assembly in rejecting the request of the appellant to have the vote on motion of no confidence against the President of the Republic of South Africa by secret ballot – whether the court a quo erred in finding that there is no duty upon the person tabling the motion to prove that an open or a secret ballot is preferable – whether the Speaker arrived at the correct conclusion on the merits of a secret or open ballot.

**5. Tahilram Rajkumar v The Trustees for the time being of the Lukamber Trust and A & A Dynamic Distributors (Pty) Ltd**  
**(845/2020)**

Appealed from GJ

Date to be heard: 8 November 2021

Zondi JA, Dambuza JA, Plasket JA, Hughes JA, Meyer AJA

**Company law – change in valuation of shares** – whether the valuation conducted and communicated by the auditor as to the purchase price for the appellant’s shares to the respondents should have been considered final and binding – whether the parties were bound by the first valuation or whether the valuator could have varied his calculation to cater for an earlier error.

**6. Samancor Chrome Limited v North West Chrome Mining Proprietary Limited, Monageng Family Mining Services Proprietary Limited, Regional Manager, North West Region, Department of Mineral Resources, The Minister of Police, and The Sheriff of the High Court of South Africa, North West Division, Mankwe (30/2020)**

Appealed from NWM

Date to be heard: 4 November 2021

Petse AP, Dambuza JA, Van der Merwe JA, Makgoka JA, Mabindla-Boqwana JA

**Civil procedure – mining and mineral law – appeal – application for leave to appeal in terms of s 17(2) of the Superior Courts Act 10 of 2013 – application to adduce further evidence on appeal in terms of s 19(b) of the Superior Courts Act** – whether the appellant ought to be granted leave to appeal to the Supreme Court of Appeal – leave to appeal having been refused by the court a quo – whether the appellant ought to be granted leave to adduce further evidence – evidence relating to the endorsement of the appellant’s prospecting right and the process initiated by the Minister of Mineral Resources to cancel or suspend the appellant’s prospecting right – main application: the appellant argued that the respondents’ mining operations were being undertaken unlawfully.

**7. Edwin Hubert van der Merwe v Bonnievale Piggery (Pty) Ltd (749/2020)**

Appealed from WCC

Date to be heard: 4 November 2021

Saldulker ADP, Schippers JA, Nicholls JA, Mbatha JA, Hughes JA

**Contract – damages – counterclaim** – whether the court a quo was correct in dismissing the respondent’s claim and upholding the counterclaim by the appellant which was based on breach of contract – whether the appellant was entitled to damages having breached the existing agreement between the parties, alternatively.

**8. Macsteel Tube and Pipe, a division of Macsteel Service Centres SA (Pty) Ltd v Vowles Properties (Pty) Ltd**

**(680/2020)**

Appealed from GJ

Date to be heard: 4 November 2021

Mathopo JA, Mocumie JA, Molemela JA, Kgoele AJA, Molefe AJA

**Civil procedure – interlocutory application – contract – lease agreement** – application for amendment – the court a quo upheld an order of the magistrate’s court granting the respondent leave to amend its particulars of claim in an action against the appellant, which the appellant contends was fatally defective – whether despite the interlocutory nature of the matter, the magistrate’s court made final findings in respect of the issues, in particular the jurisdiction issue – whether clause 20 of the lease agreement vested the Kempton Park Regional Court with jurisdiction over the matter, and whether that jurisdiction was apparent from the amended particulars of claim – whether the respondent’s citation of the defendant as ‘a division’ rendered the original summons and particulars of claim fatally defective and, if not, whether the respondent should be permitted to alter the citation of the appellant in circumstances in which the respondent’s claim against the appellant has, but for the amendment, prescribed – whether the respondent should be permitted to amend its claims despite its failure to comply with an order of the magistrate’s court of July 2016 directing it to file its amended particulars, if any, within 20 days of the date of that order, and the inordinate delay in this matter.

**9. Willem Johannes Steyn N O (in his capacity as trustee of the Amorosa Protea Village Trust), Alminda Sophia Kruger N O (in her capacity as trustee of the Amorosa Protea Village Trust), Jarkie Trust Administrators (Pty) Ltd (in its capacity as trustee of the Amorosa Protea Village Trust), Bill Engelberg Steyn N O (in his capacity as trustee of the Monoline Investments 7 Trust), Willem Johannes Steyn N O (in his capacity as trustee of the Monoline Investments 7 Trust), Jarkie Trust Administrators (Pty) Ltd (in its capacity as trustee for the time being of the Monoline Investments 7 Trust), Bill Engelberg Steyn N O (in his capacity as trustee of the Monoline Investments 8 Trust), Alminda Sophia Kruger (in her capacity as trustee of the Monoline Investments 8 Trust), Jarkie Trust Administrators (Pty) Ltd represented by Johannes Antonie Roets (in its capacity as trustee of the Monoline Investments 8 Trust), Willem Johannes Steyn N O (in his capacity as trustee of the Mon Elmie Trust), Alminda Sophia Kruger (in her capacity as trustee of the Mon Elmie Trust) and Jarkie Trust Administrators (Pty) Ltd represented**

**by Johannes Antonie Roets (in its capacity as trustee of the Mon Elmie Trust) v Nedbank Limited and The Registrar of Deeds, Johannesburg (805/2020)**

Appealed from GJ

Date to be heard: 5 November 2021

Saldulker ADP, Mathopo JA, Plasket JA, Smith AJA, AJA

**Civil Procedure – interdicts – alienation of residential unit/right or interest in the residential unit – Housing Development Schemes for Retired Persons Act 65 of 1988 (the Act)** – the matter concerned the transfer of rights of occupation where the title deed of the mortgaged property had not been endorsed in terms of s 4C of the Act – whether the sale or re-sale by the Trusts of any ‘right of occupation’ in ‘the housing development scheme’ developed by the Trust ought to be interdicted pending the endorsement in terms of s 4C(1)(a) of the Act of the title deed on which the ‘housing development scheme’ had been developed – the issue turned on the correct interpretation of s 4C of the Act.

**10. Deltamune (Pty) Ltd, Red Meat Industry Forum, The Association of Meat Importers and Exporters, Federated Meats (Pty) Ltd, Curly Wee Boerdery (Pty) Ltd, Ibis Piggery (Pty) Ltd, Koo Roo Chickens CC t/a Marios Meat, Molare Investments (Pty) Ltd, New Style Pork (Pty) Ltd t/a Lynca Meats, Winelands Pork (Pty) Ltd and Others v Tiger Brands Limited, Enterprise Foods (Pty) Ltd and Tiger Consumer Brands Limited (847/2020)**

Appealed from GJ

Date to be heard: 5 November 2021

Zondi JA, Makgoka JA, Mokgohloa JA, Gorven JA, Meyer AJA

**Civil procedure – validity of subpoenas** – whether the subpoenas *duces tecum* to produce certain results of tests conducted for L monocytogenes in Deltamune’s and Aspirata’s laboratories on behalf of their customers should have been set aside by the court a quo – whether the subpoena and amended subpoena met the requirement of specificity – whether the respondent’s demands were relevant to their case in pursuit of the truth – whether the information was protected by law – whether the respondents conduct amounted to an abuse.

**11. Chairperson of the North West Gambling Board and The North West Gambling Board v Sun International (South Africa) Limited (1214/2019)**

Appealed from NWM

Date to be heard: 5 November 2021

Van der Merwe JA, Schippers JA, Mbatha JA, Phatshoane AJA, Weiner AJA

**North West Gambling Act 2 of 2001 – North West Gambling Regulations 2002 – regulation 73(3) – determination of gross gambling revenue** – whether free play, which was a credit given by the casinos to its most valuable customers, ought to be included or excluded from the calculation of Gross Gaming Revenue, which in turn has an bearing on the calculation of the correct amount of levy which a casino was obliged to pay for the benefit of the Provincial Revenue Fund.

**12. The Member of the Executive Council: Department of Education, Eastern Cape and Minister of Basic Education (intervening party) v Komani School & Office Suppliers CC t/a Komani Stationers**

**(1417/2018)**

Appealed from ECG

Date to be heard: 8 November 2021

Petse AP, Mocumie JA, Mbatha JA, Gorven JA, Weiner AJA

**Education – interpretation of s 60(1)(a) of the South African Schools Act 84 of 1996, as amended – prescription** – whether the court a quo failed to take into account the amendment of s 60(1)(a) of the South African Schools Act 84 of 1996 by way of the Basic Education Laws Amendment Act 15 of 2011 – whether the respondent’s claim against the State had prescribed.

**13. Phumlani Nicholas Khathide v The State**

**(840/2020)**

Appealed from KZP

Date to be heard: 8 November 2021

Molemela JA, Mokgohloa JA, Mothle JA, Phatshoane AJA, Molefe AJA

**Criminal law and procedure – sentencing** – whether the magistrate misdirected himself by taking into account factors which were not contained in the appellant’s plea of guilty, and which were simply submissions made by the State in address on sentence – whether the magistrate misdirected himself in several respects on sentence – whether the sentence of 15 years imposed induced a sense of shock – whether the learned magistrate ought to have taken into account in aggravation, the matter for which the appellant was convicted in November 2013 by the

KwaZulu-Natal Division of the High Court, which was not a previous conviction – whether the magistrate ought to have ordered that a portion of the aforementioned sentence run concurrently with the sentence imposed on 15 November 2013 – whether the time spent awaiting trial in custody ought to have been taken into account.

**14. Caxton and CTP Publishers and Printers Ltd v Novus Holding Limited**

**(219/2021)**

Appealed from WCC

Date to be heard: 9 November 2021

Petse AP, Molemela JA, Plasket JA, Hughes JA, Unterhalter AJA

**Civil procedure – rule 35(12) – privileged documents – abuse of court process** – whether the documents in the appellant’s rule 35(12) notice, which were all referred to but not attached to the respondent’s answering affidavit in the main application were relevant – whether one of those documents was privileged – whether this Court ought to order production of the documents as requested, subject to a confidentiality regime – whether the appellant’s application constituted an abuse of the court process.

**15. Director of Public Prosecutions v Mfanimpela Ntokozo Zulu**

**(1192/2018)**

Appealed from GP

Date to be heard: 9 November 2021

Saldulker JA, Mathopo JA, Nicholls JA, Mabindla-Boqwana JA, Kgoele AJA

**Criminal law and procedure – Criminal Law Amendment Act 105 of 1997 – section 311 of the Criminal Procedure Act 51 of 1977** – whether the court a quo correctly weighed the cumulative factors in aggravation of sentence against the accused’s criminal liability, in terms of the Criminal Law Amendment Act.

**16. Schenker South Africa (Pty) Ltd v Fujitsu Services Core (Pty) Ltd**

**(508/2020)**

Appealed from GJ

Date to be heard: 9 November 2021

Dambuza JA, Gorven JA, Mothle JA, Smith AJA, Phatshoane AJA

**Delict – limited liability – damages** – whether the court a quo was correct in finding that the theft was committed in the course and scope of the employment of the appellant’s employee

and, unless liability was excluded in terms of the contract, the appellant was vicariously liable for the loss suffered by the respondent.

**17. Graham Robert Herbert N O, Kevin Lawrence Cotterell N O, Dawn Earp N O, James Thokoana Motlatsi N O and Steward Straus Truswell v Senqu Municipality, Registrar of Deeds, Mthatha, Minister of Rural Development and Land Reform (742/2020)**

Appealed from ECM

Date to be heard: 9 November 2021

Zondi JA, Van der Merwe JA, Mokgohoa JA, Meyer AJA, Weiner AJA

**Property law – interpretation – Upgrading of Land Tenure Rights Act 112 of 1991 (the Act)** – whether the appellants, who are the holders of a Permission to Occupy (PTO) in respect of Erf 88, Sterkspruit, Eastern Cape registered in the name of the first respondent, could have sought an order declaring the PTO to be a land tenure right in terms of item 2 of Schedule 2 of the Act – whether the first respondent should have been directed to take the necessary steps to give effect to the conversion thereof into ownership in the manner contemplated in s 3 of the Act – whether the Trust was entitled to claim a conversion of rights under the Act – whether the Trust had *locus standi* and fell into a class or group of persons entitled to do so under the Act.

**18. Laurent de Hauwere v The Central Authority (The Republic of South Africa) and Priscilla Huet (803/2020)**

Appealed from GP

Date to be heard: 10 November 2021

Saldulker ADP, Mocumie JA, Plasket JA, Gorven JA, Hughes JA

**Convention on the Civil Aspects of International Child Abduction (the Convention) – international law – civil procedure** – the matter involved an application for the return of a child (Elisa) who was unlawfully removed from her place of habitual residence in Luxembourg to South Africa – whether the appellant discharged her *onus* and established an exception to the peremptory return of Elisa in terms of Article 13(b) of the Convention – whether, if such exception was proven, the Court ought to exercise its discretion for or against a return order – what conditions ought to be imposed to safeguard the short-term best interests of Elisa should a return be ordered.



AND

**The Central Authority (The Republic of South Africa) v Priscilla Huet and Laurent de Hauwere**

**(812/2020)**

Appealed from GP

Date to be heard: 10 November 2021

Saldulker ADP, Mocumie JA, Plasket JA, Gorven JA, Hughes JA

**Convention on the Civil Aspects of International Child Abduction (the Convention) – international law– civil Procedure** – the matter involved an application for the return of a child (Elisa) who was unlawfully removed from her place of habitual residence in Luxembourg to South Africa – whether the appellant met her *onus* and established an exception to the peremptory return of Elisa in terms of article 13(b) of the Convention – whether, if such exception was proven, the court ought to exercise its discretion for or against a return order – what conditions ought to be imposed to safeguard the short-term best interests of Elisa should a return be ordered. (See *Leworthy v Adhoc Central Authority for Republic of SA* [2021] ZASCA 107)

**19. Afriforum NPC v The Premier of the Gauteng Province, City of Tshwane Metropolitan Municipality, Mpho Kebitsamang Nawa NO, MEC of the Co-operative Governance and Traditional Affairs, Gauteng, The Executive Council, Gauteng Province and the Minister of Co-operative Governance and Traditional Affairs**

**(1000/2020)**

Appealed from GP

Date to be heard: 10 November 2021

Zondi JA, Van der Merwe JA, Makgoka JA, Mbatha JA, Meyer AJA

**Administrative law – legality and constitutionality of a decision** – the court a quo dismissed an application to declare the approval by the third respondent of the annual budget of the second respondent for the 2020/2021 financial year unconstitutional, unlawful and invalid and to set aside the approval of the budget by the third respondent – whether the appeal is moot – whether s 139(1)(c) and s 35(2) of the Municipal Finance Management Act 56 of 2003 restricted an Administrator to approve only temporary budgets – whether his appointment was valid and lawful at the time the Administrator approved the budget.

**20. Pauline Masib Masako v Molefe Stephens Masako and Elsepch Nomahlubi Belinda**

**Khwinana**

**(724/2020)**

Appealed from NWM

Date to be heard: 10 November 2021

Dambuza JA, Schippers JA, Mabindla-Boqwana JA

**Civil procedure – point in limine – locus standi – legal standing** – appeal against the decision of the North West Division of the High Court, upholding the decision of the regional court, not to rescind the court order previously granted by default against the appellant, and upheld the first respondent’s point in limine that the appellant’s attorney lacked legal standing – whether the appellant’s attorney was required to be authorised to depose to the affidavits in the appellant’s rescission application – whether the high court was correct to enquire into the legal standing of the appellant’s attorney – whether the appellant’s attorney had the authority to institute the rescission application on the appellant’s behalf.

**21. Post Office Retirement Fund V South African Post Office Soc Ltd, Minister Of Communications and Digital Technologies, South African Postal Workers Union and Democratic Postal And Communications Union**

**(1134/2020)**

Appealed from GP

Date to be heard: 11 November 2021

Petse AP, Makgoka JA, Plasket JA, Molefe AJA, Unterhalter AJA

**Pension fund – employer and employee contributions – rule 3.3 Post Office Retirement Fund’s Rules – payment due to retirement fund** – whether the appellant made out a case for the relief it sought – whether the South African Post Office was obliged to make payments to the appellant without fail, especially when considering prevailing circumstances and a constitutionally compliant interpretation of the relevant instruments – whether it was impossible for the South African Post Office to remit contributions to the Fund – whether the enforcement sought by the appellant was contrary to public policy and the Constitution, especially where the South African Post Office’s primary statutory obligations were to its employees and the public – whether the relief sought by the appellant constituted just and equitable relief.

**22. Condry Mawela and Paulos Mathibela v The State**

**(377/2021)**

Appealed from LP

Date to be heard: 11 November 2021

Mathopo JA, Mbatha JA, Motle JA, Kgoele AJA, Phatshoane AJA

**Criminal law and procedure – murder – culpable homicide – *dolus eventualis* – common purpose – section 204 of the Criminal Procedure Act 51 of 1977** – whether the court correctly applied the legal principle of *dolus eventualis* – whether on the finding by the trial court, the first appellant should have foreseen that his actions would have resulted in the death of the deceased and rendered him guilty of murder or culpable homicide – whether the State discharged the onus of proving its case beyond reasonable doubt – whether the trial court erred in finding that the s 204 witnesses were credible and reliable despite all the contradictions – whether the trial court correctly rejected the appellant’s version – whether the State had proven common purpose against the first appellant.

**23. Noxolo Victoria Nongogo v The State  
(852/2020)**

Appealed from ECM

Date to be heard: 12 November 2021

Saldulker ADP, Mocumie JA, Mokgohloa JA, Nicholls JA, Gorven JA

**Criminal law and procedure – right to a fair trial – separation of trial – conviction of murder and conspiracy to commit murder – sentencing** – whether it was in accordance with the Constitutional rights of the appellant to a fair trial to separate trials and commence *de novo* proceedings in order that accused 1 should be used as a witness against the appellant – whether the trial should commence *de novo* before another judge when the judge of the same court is seized with the same matter and there was no order nullifying the proceedings before that judge – whether the separation of trials at the last stage was not prejudicial to the appellant – whether the appellant’s right to a fair trial was not violated by the unreasonable delay – whether the appellant could be tried twice for the same cause – whether the respondent proved its case against the appellant beyond reasonable doubt – whether the sentence was appropriate – whether the court a quo erred in convicting the appellant on both conspiracy to commit murder as well as murder.

**24. Arthur Ryan Lucas and Zelna Lucas v Umhlathuze Municipality and Oceans Rest 3 Body Corporate**

**(785/2020)**

Appealed from KZD

Date to be heard: 12 November 2021

Van der Merwe JA, Molemela JA, Makgoka JA, Schippers JA, Molefe AJA

**Law of Delict – medical negligence – damages** – whether the first respondent, a municipality, who installed a municipal lock on a metal cage encasing a distribution kiosk on the common property of a sectional title residential complex, had a legal duty to ensure the metal cage was safe and remained safe – if so, whether it discharged its onus of proving on a balance of probabilities that it was not negligent in failing to take the necessary steps to ensure that the metal cage was safe and remained safe – whether the first respondent attracted a shared responsibility with the body corporate (second respondent) in respect of the maintenance and safety of such cage.

**25. Azwifaneli George Mphanana v The State**

**(1107/2020)**

Appealed from LP

Date to be heard: 15 November 2021

Zondi JA, Hughes JA, Weiner AJA, Molefe AJA, Unterhalter AJA

**Criminal law and procedure – fraud – obstructing the ends of justice** – whether the appellant was correctly convicted of fraud in respect of counts 15-18 and defeating or obstructing the ends of justice – whether the State proved its case beyond reasonable doubt – whether the evidence established beyond reasonable doubt that the appellant's decision in reducing the traffic summons amount constituted a case of defeating or obstructing the ends of justice despite the fact that the ticket was confirmed by another magistrate and considered binding.

**26. The City of Cape Town v The South African Human Rights Commission, The Housing Assembly, Bulelani Qolani, The Economic Freedom Fighters, The Persons Who Currently Occupy Erf 544, Portion 1, Mfuleni (Listed in Annexure B), The Minister of Human Settlements, The Minister of Cooperative Governance and Traditional Affairs, The National Commissioner of the South African Police Service, The Minister of Police and Western Cape Provincial Commissioner: South African Police Service**

**(144/2021)**

Appealed from WCC

Date to be heard: 15 November 2021

Mathopo JA, Schippers JA, Nicholls JA, Mbatha JA, Mabindla –Boqwana JA

**Civil procedure – interdict – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – interim interdict – demolition of informal structures – evictions – separation of powers** – whether the interim order was appealable – whether the court failed to follow established precedent on the interpretation and application of PIE – whether the court a quo erred in finding that the requirements for an interim interdict were satisfied – whether the interim interdict was overbroad – whether the interim interdicts granted by the court a quo were appealable – whether the respondents were entitled to an interim interdict preventing the City from demolishing any formal or informal structure, whether occupied or unoccupied for the duration of the state of national disaster without a court order – whether on the facts, the respondents had established a prima facie case that the City had engaged in unlawful evictions – whether in granting the interdictory relief, the court had due regard to the separation of powers and paid due regard to the appellant’s constitutional obligations – whether there was a need or a basis for interdicting the further implementation of the process in respect of tender 308S/2019/20 for the demolition of illegal and informal structures – whether the court granted final relief in the context of the Part A proceedings, in circumstances where the *Plascon-Evans* rule precluded the fourth and fifth respondents from obtaining the relief sought at that stage – whether the court a quo was correct in granting monetary compensation against the appellant – whether the cost order of the court a quo ought to be interfered with.

**27. Cipla Vet (Pty) Ltd v Merial, Merial Ltd and Merial South Africa (Pty) Ltd (1068/2020)**

Appealed from GP

Date to be heard: 15 November 2021

Mocumie JA, Molemela JA, Mokgohloa JA, Kgoele AJA, Phatshoane AJA

**Civil Procedure – costs** – whether the full court was correct in setting aside Baqwa J’s order, dismissing the respondents’ application to have the wasted costs order made by Murphy J in the Court of the Commissioner of Patents on 27 June 2014 clarified, and substituting Baqwa’s order with an order in terms of which Murphy J’s wasted costs order was indeed clarified, so as to declare that the wasted costs awarded by Murphy J should include the costs of two counsel and the qualifying fees of their expert witnesses.

**28. Purveyors South Africa Mine Services (Pty) Ltd v The Commissioner for the South African Revenue Service**

**(135/2021)**

Appealed from GP

Date to be heard: 16 November 2021

Petse AP, Mathopo JA, Schippers JA, Mokgohloa JA, Molefe JA

**Income tax – Tax Administration Act 28 of 2011 – voluntary relief disclosure** – whether the appellant’s application for voluntary disclosure relief in terms of Part B of Chapter 16 of the Tax Administration Act was voluntary – whether the appellant should have succeeded in its application to review and set aside the respondent’s decision taken on 09 May 2019 and for the declaratory relief sought by it.

**29. Daniël Francois Malan v Die Gerhard Labuschagne Family Trust & C and C Delwerye CC**

**(44/2021)**

Appealed from GP

Date to be heard: 16 November 2021

Saldulker ADP, Zondi JA, Dambuza JA, Gorven JA, Smith AJA

**Property law – contract – sale of immovable property – right to transfer of property – rectification of deed of sale – prescription – Prescription Act 68 of 1969 – ownership rights – eviction** – whether, at the time the appellant bought the immovable property, the purchaser of the back portion, Irene Nel, had validly exercised her option to purchase that portion from the first respondent – whether portion 3 (consisting of portion 1 and the back portion which Mr Malan bought) in fact came into existence before he bought the immovable property – what was the real agreement and the effect thereof between Mr Malan and the trustee of the insolvent estate of Irene Nel – whether the second respondent was the owner of the back portion and entitled to the eviction order granted by the full court against Mr Malan in its favour – whether Irene Nel’s claim transfer of the back portion into her name would have fallen to her trustee and became prescribed after a period of three years as envisaged by s 10 of the Prescription Act – whether Mr Malan could successfully claim rectification of the deed of sale concluded with Irene Nel’s trustee – whether Irene Nel obtained a so-called real right in respect of portion 3, which the appellant argued vested in her trustees and which was said could be legally disposed of to Mr Malan – whether Mr Malan was entitled to the rectification sought by him in the notice of motion.

**30. Former Way Trade and Invest (Pty) Ltd t/a Premier Services Station and Lee Bentz v Bright Idea Projects 66 (Pty) Ltd t/a All Fuels**

**(1140/2020)**

Appealed from KZP

Date to be heard: 16 November 2021

Van der Merwe JA, Makgoka JA, Plasket JA, Mbatha JA, Mabindla-Boqwana JA

**Civil procedure – contempt of court – sentencing** – whether the trial court was correct in finding and holding *inter alia* that the appellants acted in contempt of the court order granted on 22 April 2018 – whether the trial court was correct in committing the second appellant to prison.

**31. Ntombifuthi Monica Zitha obo Samkelisiwe Fikile Zitha v The Member of the Executive Council for Health and Social Development of the Mpumalanga Provincial Government**

**(1149/2020)**

Appealed from MM

Date to be heard: 17 November 2021

Zondi JA, Molemela JA, Hughes JA, Meyer AJA, Weiner AJA

**Prescription– requirements for condonation – damages – civil procedure** – whether the high court was correct in its finding that the appellant’s claim, in her personal capacity, had become prescribed – whether the court a quo was correct in its finding that the appellant had failed to satisfy the requirements for condonation to be granted owing to the late delivery of the letter of demand.

**32. Simon Roy Arcus v Jill Heneree Arcus**

**(004/2021)**

Appealed from WCC

Date to be heard: 18 November 2021

Dambuza JA, Mocumie JA, Hughes JA, Kgoele JA, Smith AJA

**Family law – maintenance – prescription period of a maintenance order in a divorce – Prescription Act 68 of 1969 – sections 11(a)(ii) and 11(d)** – whether an undertaking to pay maintenance in a divorce consent paper which was made an order of court gave rise to a ‘judgment debt’ as contemplated in s 11(a)(ii) of the Prescription Act, with a prescriptive

period of 30 years, or ‘any other debt’ as contemplated in s 11(d) of the Act, with a prescription period of three years.

**33. Golden Palace Site 3 (Pty) Ltd, Golden Palace Site 4 (Pty) Ltd and Golden Palace Site 1 (Pty) Ltd v Vukani Gaming Eastern Cape (Pty) Ltd, The Eastern Cape Gambling and Betting Board, Pioneer Slots (Pty) Ltd, Marshalls World of Sport Eastern Cape (Pty) Ltd, K2017440277 (South Africa) (Pty) Ltd, GSlots ISO EC (Pty) Ltd, K2017425418 (Pty) Ltd, Spin and Win Entertainment Mbizana (Pty) Ltd, GEC Gaming (Pty) Ltd and Another and in the application of K2017 440277 (South Africa) (Pty) Ltd and 3 Others v Vukani Gaming Eastern Cape (Pty) Ltd and 8 Others and in the application of The Chairperson, Eastern Cape Gambling and Betting Board, The Eastern Cape Gambling and Betting Board & Vukani Gaming Eastern Cape (Pty) Ltd.**

**(1338/2019/1366/2019 and 119/2020)**

Appealed from ECG

Date to be heard: 18 November 2021

Zondi JA, Schippers JA, Plasket JA, Molefe AJA, Unterhaltler AJA

**Interpretation of regulation 59(3) of the Eastern Cape Gambling and Betting Regulations – increase of Limited Pay-Out** – whether the court a quo correctly interpreted regulation 59(3) of the Eastern Cape Gambling and Betting Regulations – whether the second applicant had a reasonable basis to be satisfied that allowing more Limited Pay-Out Machines (LPM’s) in the province would not lead to oversaturation – whether the remedy granted by the court a quo was just and equitable relief – whether the appellants satisfied the requirement to introduce further evidence on appeal.

**34. The Trustees for the Time Being of the Burmilla Trust and Josias van Zyl v The President of the Republic of South Africa and Government of the Republic of South Africa**

**(064/2021)**

Appealed from GP

Date to be heard: 18 November 2021

Van der Merwe JA, Mbatha JA, Gorven JA, Mabindla-Boqwana JA, Meyer AJA

**Delict – damages – loss of profits – exception to particulars of claim – cost order** – whether the court a quo erred in finding that the court was bound by the *Van Zyl* judgments’ findings that no international delict had been committed by Lesotho against the appellant – whether the



court a quo erred in finding that no rights vested in the appellants' subsidiary under Lesotho law – whether the conduct of the Lesotho courts constituted a denial of justice – whether the appellants' SADC claim was purely for loss of profits – whether the appellants' claim was to compensate a non-South African national – whether Mr Van Zyl's claim for moral damages was inadequately pleaded – whether the arbitration-related costs were incurred because the appellants made a wrong legal decision, not because the respondents caused them to institute those proceedings – whether the appellants should bear the costs of the exception – whether the court a quo correctly upheld the respondents' eight grounds of exception to the appellants' particulars of claim – whether in terms of the grounds of exception, the appellants' constitutional damages claim, as pleaded, supported the damages sought.

**35. Mamolatelolo Alfred Selota v South African Legal Practice Council**

**(658/2020)**

Appealed from GP

Date to be heard: 19 November 2021

Saldulker ADP, Mathopo JA, Van der Merwe JA, Mokgohloa JA, Weiner AJA

**Civil procedure – professions – section 85 of the Legal Practice Act 28 of 2014 – fidelity fund certificate** – whether the appellant was entitled to an order declaring that the appellant was entitled to a Fidelity Fund Certificate for 2019, in terms of s 85 of the Legal Practice Act, as from 15 February 2019 – whether the appellant made out a case to adduce new evidence.

**36. Stella de Jager v Pieter Helgaard Marthinnus de Jager**

**(1098/2020)**

Appealed from LP

Date to be heard: 19 November 2021

Mocumie JA, Nicholls JA, Mothle JA, Meyer AJA, Unterhalter AJA

**Family Law– Divorce Act 70 of 1979 – maintenance – civil procedure** – whether the appellant had established a need to be maintained post-divorce – whether the court had a discretion in terms of s 7(2) of the Divorce Act to make a maintenance order.

**37. Eastern Cape Rural Development Agency and Member of the Executive Council for the Rural Development and Agrarian Reform, Province of the Eastern Cape v Agribee Fund (Pty) Ltd, Berlin Beef (Pty) Ltd and The respondents listed in schedule 1**

**(827/2020)**

Appealed from GP

Date to be heard: 22 November 2021

Saldulker ADP, Dambuza JA, Mathopo JA, Mocumie JA, Plasket JA

**Contract – review of agreement – administrative law – principle of legality** – whether an agreement concluded between the parties fell to be reviewed in terms of the principle of legality and if so, what was the appropriate remedy.

**38. Cornerstone Logistics (Pty) Ltd and Preston Cheslin Aitken v Zacpak Cape Town Depot (Pty) Ltd**  
**(879/2020)**

Appealed from WCC

Date to be heard: 22 November 2021

Zondi JA, Gorven JA, Mothe JA, Smith AJA, Phatshoane AJA

**Contract – indemnity against claim – suretyship – Customs and Excise Act 91 of 1964 – condonation** – whether the court a quo was correct when it ordered the first appellant to indemnify the respondent against the claim of the South African Revenue Service – whether the court a quo was correct in ordering the first and second appellants, jointly and severally, to pay the respondent such sum or sums which the respondent could be obliged to pay to SARS – whether the respondent was at fault or negligent in failing to carry out its legal obligations in terms of the Customs and Excise Act – whether the second appellant was liable in terms of a suretyship that he signed in respect of R30 000 business facility and whether he should be liable, *qua surety*, for the claim by SARS against the respondent in a sum exceeding R37 million – whether the court a quo should have heard the matter by way of urgency – whether the court a quo correctly granted condonation to the respondent who filed its replying affidavit two and a half months late without an application for condonation.

**39. The Premier of the Western Cape Province v The Public Protector and The Speaker of the Western Cape Provincial Legislature**  
**(771/2020)**

Appealed from GP

Date to be heard: 22 November 2021

Van der Merwe JA, Molemela JA, Schippers JA, Nicholls JA, Mabindla-Boqwana JA

**Civil Procedure – administrative law – review** – the appellant sought to review and set aside the findings in a report of the Public Protector, which concerned certain tweets about

colonialism Ms Helen Zille made in March 2017, when she was a Premier of the Western Cape Government – whether the Public Protector’s findings were reviewable and fell to be set aside on any of the grounds pleaded under the principle of legality – whether the punitive costs order the appellant sought for vexatious allegations made by the Public Protector in the answering affidavit was justified.

**40. William France Masinga, Rirhandzu Joy Khosa & 33 Others v The Chief of the South African National Defence Force, The Minister of Defence and Military Veterans, The Surgeon General of the South African National Defence Force & The Secretary of Defence**

**(051/2021)**

Appealed from GP

Date to be heard: 23 November 2021

Petse AP, Makgoka JA, Schippers JA, Nicholls JA, Mabindla –Boqwana JA

**Interpretation of statutes – section 59(3) of the Defence Act 42 of 2002 – dictional requirements for dismissal – validity of dismissal – right to fair hearing – reliance on unlawful decision** – the proper interpretation of s 59(3) of the Defence Act – whether the jurisdictional requirements for dismissal under s 59(3) were satisfied – whether the appellants’ dismissal was valid in the absence of a determination by a board of inquiry, convened under s 103(1) of the Defence Act, that the appellants had been absent without leave for more than 30 days – whether the appellants were entitled to a fair hearing and whether they were denied such hearing – whether the respondents were entitled to rely on s 59(3) to attempt to validate the allegedly unlawful decision taken by the Chief of the South African National Defence Force.

**41. Bool Smuts and Landmark Leopard and Predator Project – South Africa v Herman Botha**

**(887/2020)**

Appealed from ECP

Date to be heard: 23 November 2021

Zondi JA, Mathopo JA, Plasket JA, Mbatha JA, Unterhalter AJA

**Delict – defamation – defence of protected or fair comment – right to privacy** – whether the posting of comments relating to the respondent by the first appellant on the second

appellant's Facebook page amounted to defamation – whether the publication of photographs taken on a farm belonging to the respondent infringed his right to privacy.

**42. Eskom Holdings SOC Ltd v Lekwa Local Municipality, The National Energy Regulator of South Africa (NERSA), The Minister of Energy, The Premier of Mpumalanga and The MEC: COGTA, Mpumalanga**

**And**

**Eskom Holding SOC Ltd v Vaal River Development Association (Pty) Ltd, Ngwathe Local Municipality, The National Energy Regulator of South Africa (NERSA), The Minister of Energy, The Premier of the Free State and The MEC: COGTA, Free State (870/2020)**

Appealed from GP

Date to be heard: 23 November 2021

Dambuza JA, Van der Merwe JA, Gorven JA, Meyer AJA, Kgoele AJA

**Local government – Eskom's contractual and public law obligation to supply electricity – section 30 of the Electricity Regulations Act 4 of 2006 – increase in Notified Maximum Demand – increase in electricity supply – whether Eskom's contractual obligations in relation to a delinquent municipality ousted its public law responsibilities and obligations as an organ of state in respect of ordinary citizens who were also paying consumers of electricity – whether Eskom's decision to reduce or interrupt bulk supply to a delinquent municipality was a decision that affected the basic public law rights of ordinary citizens and was consequently subject to the Promotion of Administrative Justice Act – whether the court a quo when ordering Eskom to increase the amount of Notified Maximum Demand (NMD) to the municipality, impermissibly usurped the powers and functions of NERSA, which had the exclusive power to determine the rules of the NMD and was the appropriate, available and effective alternative remedy to deal with matters of this nature in terms of s 30 of the Electricity Regulations Act – whether it was competent for the court a quo to order Eskom to increase the NMD, in circumstances where the evidence before it was that an increase in NMD must be followed by the contemporaneous upgrading of the infrastructure which was mandatory and that any such costs were to be borne by the municipality in terms of the NMD Rules – whether the court a quo was correct in accepting, without more, that the municipalities could not pay for the upgrade and to make the assessment that the cost of the transformer was modest – whether the court a quo was entitled to decide that Eskom could supply more electricity and act as back up when it was not paid and owed in excess of R2 billion by the two municipalities**

– whether it was permissible for the municipalities to be excused from discharging their public law duties towards their residents, who were paying for services, and whether such duties statutorily and constitutionally vesting in the municipalities could be transferred to another state organ, Eskom, whose enabling Act mandated it to fund itself from revenue collected from electricity – whether the court a quo was correct in not following the precedent of the Supreme Court of Appeal concerning compelling Eskom to supply electricity where there was evidence of unlawful connections to the grid.

**43. Flower Foundation Pretoria Homes for the Aged NPC v Registrar of Deeds, Pretoria, Susanetta Danie Smith N O, Gertruida Magdalena Botha N O, Johannes Petrus Wilhelm Smith N O and Sybrand Albertus Tintinger N O**

**(942/2020)**

Appealed from GP

Date to be heard: 24 November 2021

Saldulker JA, Mocumie JA, Molemela JA, Mokgohloa JA, Meyer AJA

**Contract – civil procedure – interpretation of the Housing Development Schemes for Retired Persons Act 65 of 1988 (the Act) – repudiation – prescription** – the interpretation of the provisions of s 4B of the Act – whether the transaction between the appellant and DIY System & Projects (Pty) Ltd implicated and transgressed the provisions of s 4B - whether the court a quo ought to have disallowed the respondents their legal costs in respect of the preparation and drafting of their answering affidavit, and that of perusing the reply.

**44. Oppressed ACSA Minority 1 (Pty) Ltd (Formerly known as African Harvest Strategic Investments (Pty) Ltd and Up-Front Investments 65 (Pty) Ltd v Government of the Republic of South Africa, Minister of Transport, Airports Company of South Africa SOC Ltd, Pybus Thirty-Four (Pty) Ltd, Airports Management Share Incentive Scheme Company (Pty) Ltd, Lexshell 342 Investment Holdings (Pty) Ltd, Telle Investments (Pty) Ltd, ADR International Airports South Africa (Pty) Ltd, G10 Investments (Pty) Ltd and Minister of Finance**

**(898/2020)**

Appealed from GJ

Date to be heard: 24 November 2021

Dambuza JA, Makgoka JA, Schippers JA, Plasket JA, Gorven JA

**Civil procedure – Public Finance Management Act 1 of 1999 (the Act) – rescission** – whether the government could apply to rescind an order in which it did not have a direct and substantial interest, thus treating the underlying agreement as unlawful, but having brought no review application against it – whether s 172(1)(b) read with s 173 of the Constitution provided an additional basis for a court to rescind a judgment or order over and above those provided under the Uniform Rules of Court and common law – whether s 172(1)(b) gave a court a free-ranging authority to grant what it considered was ‘just and equitable relief’, even when the explicit precondition, a finding of inconsistency with the Constitution, had not been met.

**45. Mbemba Pierre Mahinga v Minister of Home Affairs and Director-General Home Affairs**

**(1027/2020)**

Appealed from GP

Date to be heard: 25 November 2021

Zondi JA, Gorven JA, Hughes JA, Meyer AJA, Molefe AJA

**Administrative Law – international law – Citizenship Act 88 of 1995 (the Act) – declaratory deprivation of citizenship – legality** – whether the court a quo was correct in overturning a judgment by Sardiwalla J, and finding that the second respondent lawfully deprived the appellant of his South Africa citizenship – whether the Minister’s decision to terminate the decision of the erstwhile Minister without a collateral challenge accorded with the principle of legality – whether the Minister erred in law in the interpretation of ‘by order’ in s 8(1) of the Act – whether the Minister’s decisions terminating the appellant’s citizenship and employment should be set aside in terms of s 6 of the Promotion of Administrative Justice Act 3 of 2000 – whether the respondent had made out a case for just and equitable remedies in terms of s 172(1)(b) of the Constitution.

**46. Sagadava Naidoo and Odora Trading CC v The Dube Tradeport Corporation, Sivaraj Naidoo and The Registrar of Deeds, Pietermaritzburg**

**(972/2020)**

Appealed from KZD

Date to be heard: 25 November 2021

Mocumie JA, Makgoka JA, Mothle JA, Manindla-Boqwana JA, Weiner AJA

**Company law – civil procedure – exception – rights of non-member of Close Corporation to sue on derivative action – Close Corporation Act 69 of 1984** – what were the rights of a

person, who was not a member of the Close Corporation, to sue on a derivative action and the effect of ss 49, 50 and 54 of the Close Corporation Act on the cause of action – whether the averments made by the appellants could sustain a cause of action.

**47. Eskom Holdings SOC Limited v Letsemeng Local Municipality, The National Energy Regulator of South Africa (NERSA), Minister of Energy, Minister of Public Enterprise and The MEC: Department of Cooperative Governance, Human Settlements and Traditional Affairs, Free State Province**

**(990/2020)**

Appealed from FB

Date to be heard: 26 November 2021

Saldulker ADP, Schippers JA, Plasket JA, Smith AJA, Phatshoane AJA

**Local government – civil procedure – Constitutional law – interdict** – whether the court a quo’s failure to hold the municipality accountable, thereby not protecting the ratepayers so as to ensure the municipality’s accountability, responsiveness and openness, as the Constitution requires in terms of s 1(d), was lawful – whether the court a quo was correct in accepting without more the municipality’s plea of resource constraints, in light of the loan received from Treasury, ostensibly to pay Eskom in order to avert the interruptions – whether the court a quo was correct in holding the municipality accountable for how it spent and allocated moneys meant for basic services like electricity and its failure to appreciate the import of s 27 of the Electricity Regulations Act 4 of 2004 – whether it was permissible for the court a quo to excuse and absolve the delinquent and recalcitrant municipality from discharging its public law duties towards its residents, who were paying for services, and whether such duties statutorily and constitutionally vesting in the municipality could simply be ignored without any consequences.

**48. City of Tshwane Metropolitan Municipality v Brooklyn Edge (Pty) Ltd and Pivot Property Development (Pty) Ltd**

**(928/2020)**

Appealed from GP

Date to be heard: 29 November 2021

Mathopo JA, Van der Merwe JA, Nicholls JA, Mbatha JA, Smith AJA

**Contract – local government – deed of sale – tacit term – tacit condition – Municipal Finance Management Act 56 of 2003 – doctrine of fictional fulfilment – purchase price –**

**Local Government Ordinance 17 of 1939** – whether the deed of sale contained resolute and / or suspensive conditions – whether the tacit term was complied with within a reasonable time – whether the doctrine of fictional fulfilment found application to decisions relating to the closing of the park and the rezoning of properties, which had to be made by a statutory body in terms of a statutory procedure entrenching public participation – whether there was evidence supporting a finding that it should find application – whether s 14 of the MFMA was applicable, and whether the municipality could transfer ownership of the property failing compliance with s 14(2) of the Act – whether the deed of sale contained a tacit condition that the closure and rezoning of the properties had to occur within a reasonable time – whether the purchase price was determined or determinable – whether there was compliance with s 79(18) of the Local Government Ordinance prior to the deed of sale having been entered into – whether the summons was issued prematurely – whether the rights claimed in terms of the summons had become prescribed.

**49. Frannero Property Investments 202 (Pty) Ltd v Clement Phutiselapa, Dimakatso Semela, Khensandi Mabunda, George Ngoveni, Freddy Rapao, Sylvia Mabunda, Unlawful Occupiers of Portion 35 of the Farm Waterval 306, Registration Division JQ, North West Province, Rustenburg Local Municipality, Department of Rural Development and Reform, The Department of Local Government and Human Settlement (222/2020)**

Appealed from NWM

Date to be heard: 30 November 2021

Dambuza JA, Mothe JA, Meyer AJA, Smith AJA, Weiner AJA

**Property law – eviction – The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) - Extension of Security of Tenure Act 62 of 1997 (ESTA)** – whether special leave to appeal should be granted in terms of s 16(b) of the Superior Courts Act 10 of 2013 – whether the application for eviction should have been brought under the provisions of ESTA or PIE – whether the respondents had discharged the onus of proving that they were occupiers and therefore entitled to occupy the property in terms of ESTA.