

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 3 OF 2022

CASES ENROLLED FOR HEARING: AUGUST – SEPTEMBER 2022

1. National Commissioner of Correctional Services and Another v Democratic Alliance and 05 Others

(033/2022)

Appealed from GP

Date to be heard: 15 August 2022

Dambuza JA, Makgoka JA, Plasket JA, Mabindla-Boqwana JA, Goosen AJA

Administrative law – Correctional Services Act 111 of 1998 – Promotion of Administrative Justice Act 3 of 2000 – whether the court a quo was correct in finding that the National Commissioner’s decision does not comply with a mandatory condition – whether the Board’s recommendation is binding on the National Commissioner – whether the National Commissioner impermissibly usurped the Board’s statutory functions – whether the National Commissioner’s reasons are not connected with legal requirements – whether the National Commissioner failed to consider section 79(1)(b) and (c) requirements – whether the fact that the second appellant was sentenced to direct imprisonment precluded him from placement on medical parole – whether revoking parole and recommitting the second appellant to prison without counting time served under medical parole as sentence served is legally permissible and will not have a negative legal impact and whether substitution was an appropriate decision by the court a quo.

2. Minister of Transport v The Road Accident Fund, Chairperson of the Board of the Road Accident Fund, Acting Chief Executive Officer of the Road Accident Fund, Fouriefismer Incorporated, LindsayKeller Attorneys, Pretoria Attorneys’ Association and Maponya Incorporated

(1082/2020)

Appealed from GP

Date to be heard: 15 August 2022

Zondi JA, Gorven JA, Musi AJA, Makaula AJA, Masipa AJA

Road Accident Fund Act 56 of 1996 – administrative law – whether the court a quo erred in setting aside the decision to cancel the tender for the appointment of a panel of attorneys –

whether the court a quo erred in directing that the panel of attorneys would continue representing the Road Accident Fund for six months – whether the court a quo could grant rule 42(1)(b) relief after it had given judgment.

AND

3. Road Accident Fund, The Chairperson of the Board of the Road Accident Fund and the Chief Executive Officer of the Road Accident Fund v FourieFismer Incorporated, LindsayKeller Attorneys, Pretoria Attorneys Association and Maponya Incorporated (1147/2020)

Appealed from GP

Date to be heard: 15 August 2022

Zondi JA, Gorven JA, Musi AJA, Makaula AJA, Masipa AJA

Civil Procedure – Uniform Rules of Court – rule 42 – Road Accident Fund – whether live controversy existed from the decision of the court a quo to be resolved by the Supreme Court of Appeal – whether the appellants’ application should be reinstated – whether the appellant should be granted leave to lead further evidence – whether the order of the court a quo should be set aside.

4. Nyamukamadi Mukumela Denga, Matidza Kutama (Born Mabirimisa), Mabirimisa Rudzani Polinah, Mabirimisa Nditsheni Ozious, Mabirimisa Masindi Constance, Mabirimisa Mawihangwisi Elsina, Mabirimisa Muvhulawa v Mabirimisa Tshililo Arnold N O, Estate Late Denga (Mabirimisa) Mudsielwane Josiah, Mabirimisa Bus Services (Pty) Ltd, Mabirimisa Ndivhudzannyi Silas, Denga Denga, Matsheketsheke Munyadziwa, Raphalalani Tshililo Salphina, Ramushuwana Anna, Mabirimisa Frans, Estate Officer Dzanani Magistrates Court N O, Magistrate Dzanani, Minister of Justice and Constitutional Development N O, Master of the High Court of South Africa, Limpopo Local Division, Thohoyandou N O Registrar of Companies (1296/2021)

Appealed from LP

Date to be heard: 15 August 2022

Van der Merwe JA, Molemela JA, Hughes JA, Daffue AJA, Chetty AJA

Law of Succession - intestate estate - Black Administration Act 38 of 1927 – whether the court a quo erred in finding that the intestate estate of the late J M Denga was finalised in terms of the Black Administration Act – whether the estate should be handed over to the Master of the High Court to be wound up under the provisions of the Administration of Estates Act 66 of 1965 as the Black Administration Act was repealed in toto in 2006 – whether the appellants should be declared as heirs of the late JM Denga.

5. Minister of International Relations and Cooperation, Director-General: Department of International Relations and Cooperation and Department of International Relations and Cooperation v Simeka Group (Pty) Ltd, Regiments Capital (Pty) Ltd, Lemascene (Pty) Ltd, Serendipity Investments SA LLC and Simeka Investment Group (Pty) Ltd (610/2021)

Appealed from GP

Date to be heard: 16 August 2022

Petse DP, Makgoka JA, Mothle JA, Kgoele AJA, Windell AJA

Administrative law – legality review – self-review by state organ – reasonableness of delay – self-review by Department of International Relations and Cooperation (DIRCO) under s 1 read with s 172(1) of the Constitution – DIRCO appealed, with the leave of the court a quo, against the decision of the court a quo refusing to declare unconstitutional and invalid the award of a tender by DIRCO to a joint venture consisting of Simeka Group (Pty) Ltd (Simeka) and Regiments Capital (Pty) Ltd (Regiments), the first and second respondents, and an agreement concluded thereafter without complying with any tender process, as well as appeal against the court a quo’s decision not to set aside the Project Preparation Agreement (PPA) – whether there was a delay in bringing the legality review – if so, whether such delay was unreasonable, and if so, whether it should be overlooked – question of just and equitable relief provided for in s 172(1)(b) of the Constitution – restitution.

6. Zurich Insurance Company South Africa Limited v Gauteng Provincial Government (734/2021)

Appealed from GJ

Date to be heard: 16 August 2022

Ponnan JA, Plasket JA, Basson AJA, Weiner AJA, Siwendu AJA

Contract – insurance – company law – insurance claim – prescription – contractor’s all risk policy – appeal against the court a quo judgment, in which it was declared that the

appellant, Zurich Insurance Company South Africa Limited, was obliged to indemnify the respondent, the Gauteng Provincial Government, in respect of the Gautrain Rapid Rail Link, Construction Project Insurance Policy (the insurance policy) – claim for damage caused to rock mass surrounding the void when constructing a tunnel – damage to rock mass resulting in increased water ingress into tunnel – whether the rock mass around the void formed part of the works included in the definition of ‘property insured’ in the insurance policy – whether the respondent’s claim against the appellant in terms of the insurance policy had become prescribed – whether the order of the court a quo was capable of practical enforcement.

7. Banele Bafo Nhlapo v The State

(835/2021)

Appealed from GP

Date to be heard: 17 August 2022

Petse DP, Mothe JA, Hughes JA, Chetty AJA, Siwendu AJA

Criminal law and procedure – sentence – appeal against the sentence imposed on the appellant for robbery with aggravating circumstances and for attempted murder, which sentence was upheld by the court a quo on appeal – whether the sentence imposed was inappropriate due to the mitigating factors not being taken into account – whether there were grounds for the sentence imposed to exceed the prescribed minimum sentence – the sentence in respect of count 2 (attempted murder) not wholly running concurrently with the sentence in count 1 (robbery with aggravating circumstances).

8. Cecilia Susanna Botha (born Cornelius, previously Combrink) v David Hercules Botha

(820/2021)

Appealed from GP

Date to be heard: 17 August 2022

Van der Merwe JA, Molemela JA, Kgoele AJA, Salie-Hlophe AJA, Masipa AJA

Family law – divorce – division of estate – whether a donation excluded by the respondent in favour of the appellant after the registration of their antenuptial contract but before the celebration of their marriage, was enforceable and could be read together with the antenuptial contract.

9. Earl Craig Classen and Ellister Alfredo Jansen v The State

(803/2021)

Appealed from GJ

Date to be heard: 17 August 2022

Makgoka JA, Manbindla-Boqwana, Musi AJA, Makaula AJA, Goosen AJA

Criminal law and procedure – murder – unlawful possession of firearm and ammunition

– appeal against the conviction in the court a quo of the appellants on the charges of murder and unlawful possession of a firearm and ammunition – whether Belinda Shortridge was correctly declared a hostile witness – admissibility and reliability of the recanted witness statements in terms of s 3(1) of the Law of Evidence Amendment Act 45 of 1988 and the probative value of such a statement – collusion by witnesses and the effect thereof on the fairness of the trial – adverse inference drawn by the failure of the State to call material witnesses – the evaluation and probative value of contradictory evidence by State witnesses – the evaluation of the appellants’ evidence.

10. Nivesh Sewlall v Jerusha Naidoo

(506/2021)

Appealed from GP

Date to be heard: 18 August 2022

Ponnan JA, Hughes JA, Mabindla-Boqwana JA, Musi AJA, Goosen AJA

Civil procedure – *pro non scripto* – family law – appeal against the judgment and order of the court a quo, which upheld an application to set aside orders granted by Sardiwalla J in the same division – whether the court a quo could have declared a previous judgment granted in the same division to be *pro non scripto* and of no force and effect and on that basis set the order aside – whether the applicant in the court a quo (Jerusha Naidoo) met the requirements of an application to have an order set aside – whether the order of Sardiwalla J suspended the order of Mosopa J – whether the order of Mosopa J on 2 October 2020 was final or interim in effect – whether the court a quo could have granted declaratory relief that the order of Mosopa J was interim in effect – whether the court a quo could have granted an order in terms of s 18(3) of the Superior Courts Act 10 of 2013, *mero motu*, without a formal application in terms of s 18(3) being before the court – whether the applicant in the court a quo met the requirements to be successful in an application in terms of s 18(3) of the Superior Courts Act – whether the respondent in the court a quo (Nivesh Sewlall) was entitled to the relief sought in his counter application, with specific reference to parental responsibilities and rights – whether the respondent in the court a quo (Nivesh Sewlall)’s counter application in the court a quo was *lis pendens* – whether the costs order which was granted on an attorney and client scale was

appropriate.

11. Sphelele Goodman v The State

(466/2021)

Appealed from KZP

Date to be heard: 18 August 2022

Zondi JA, Weiner AJA, Molefe AJA

Criminal law and procedure – conviction – sentence – special leave – appeal against an order by the KwaZulu-Natal Division, Pietermaritzburg, dismissing the appellant’s petition – whether the appellant had reasonable prospects of success on appeal in respect of his conviction and sentence – whether the court a quo was correct in dismissing the appellant’s petition.

12. Member of the Executive Council for Health of the Limpopo Provincial Government v LW Mokgotho obo D Mokgotho

(502/2021)

Appealed from GP

Date to be heard: 18 August 2022

Van der Merwe JA, Molemela JA, Gorven JA, Daffue AJA, Salie-Hlophe AJA

Delict – medical negligence – factual causation – whether the brain damage could have been avoided if the hospital staff had properly monitored the foetus and had acted appropriately on the results – whether the respondent (plaintiff) established causation on a balance of probabilities.

13. Paulus Lepekola Samuels v South African Legal Practice Council (formerly the Law Society of the Northern Provinces)

(1112/2021)

Appealed from GP

Date to be heard: 19 August 2022

Petse DP, Mothe JA, Daffue JA, Windell AJA , Siwendu AJA

Attorneys Act 53 of 1979 – striking from the roll of attorneys, notaries and conveyancers – whether the appellant should have been granted a postponement for the hearing in view of the extraordinary circumstances created by the national lockdown – whether the appellant’s fundamental right to a fair hearing was infringed – whether the court a quo considered the

answering affidavit in opposition of the application – whether the sanction imposed, namely striking-off, was a justified sanction.

14. Helen Suzman Foundation v The Speaker of the National Assembly, The President of the Republic of South Africa, The Cabinet of the Republic of South Africa, Chairperson of the National Council of Provinces and the Minister of Cooperative Governance and Traditional Affairs

(484/2021)

Appealed from GP

Date to be heard: 19 August 2022

Dambuza JA, Plasket JA, Mabindla-Boqwana JA, Basson AJA, Chetty AJA

Civil procedure - cost order – *Biowatch* principles – constitutional law – whether this Court erred in dismissing the applicant’s application for leave to appeal with costs – whether the *Biowatch* principle applied such that no adverse cost order should have been made.

15. Name of ship: MV ‘Tarik III’: Credit Europe Bank N V v The Fund Comprising the Proceeds of the sale of the MV Tarik III, Seven Seas Ship Chandlers L L C, Jupiter Shipping and Trading Ltd, Bilge Gida Kumanyacilik SAN. VE TIC, Arkas Petrol Urunleri VE Ticaret A S, Damen Schelde Marine Services B V, Marichem Marigases Limited, KPI Bridge Oil Limited, Bryval Co Ltd trading as Zeba Marine and Monjasa DMCC and Others

(1294/2021)

Appealed from KZD

Date to be heard: 22 August 2022

Ponnan JA, Zondi JA, Gorven JA, Makaula AJA, Chetty AJA

Admiralty law – constitutional law – property law – Admiralty Jurisdiction Regulation Act 105 of 1983 – whether the court was enjoined by s 39(2) of the Constitution to promote the spirit, object and purport of the Bill of Rights when interpreting legislation – whether the referee’s report should be further partially confirmed as described in paragraph 1 of the notice of appeal – whether the registrar of the court a quo should have been directed to make the payments from the fund in respect of the legal costs described in paragraph 2 of the notice of appeal – whether Credit Europe Bank (CEB) was entitled to payment of costs of this application from the fund on an unopposed basis as described in paragraph 3 of the notice of appeal – whether the fifth, eighth, tenth and seventeenth respondents should pay CEB’s costs occasioned

by their opposition to the application, jointly and severally, as described in paragraph 6 of the notice of appeal – whether the registrar of the court a quo should have been directed to make the further payments from the Fund to CEB, as described in paragraphs 4 and 5 of the notice of appeal – whether it was necessary for the claimants who relied upon the deeming provision in s 1(3) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Admiralty Act), in lodging a claim against the fund, to have arrested the Vessel in rem whilst the demise charter was still extant – whether in circumstances where the Vessel was arrested by CEB in terms of s 1(3) of the Admiralty Act whilst the demise charter was still extant and CEB subsequently obtained an order for the sale of the Vessel, which was sold pursuant thereto, other claimants were entitled to lodge claims against the fund in reliance on s 1(3) regardless of the termination of the demise charter subsequent to CEB’s arrest – whether each claimant against the fund bore the onus of proving the existence of the demise charter at the material time, on a balance of probabilities – whether in relation to the fifth respondent, the demise charter was still extant on 19 November 2014, when it arrested the vessel – whether in relation to the eighth respondent, the demise charter was still extant on 17 December 2014, when it arrested the vessel – whether in relation to the other relevant respondents, the demise charter was still extant at whichever of the aforesaid times the court found to be material.

16. N’wandlamhari Communal Property Association and MalaMala Game Reserve (Pty) Ltd v Helen Lynne Westcott, Caroline Clare Cormack, Rodrick Anton Beaumont and Michael Hemingford Beaumont
(401/2021)

Appealed from MMB

Date to be heard: 22 August 2022

Van der Merwe JA, Mothle JA, Musi AJA, Kgoele AJA, Weiner AJA

Record – English (Contents of the record which contains language other than English is stipulated on the front page of each volume)

Property law – use and occupation rights – Subdivision of Agricultural Land Act 70 of 1970 – contract – interpretation – shareholder agreements – appeal against the judgment and order of the full court (granted on appeal), in which it declared that the respondents hold certain rights of use and occupation on two properties owned by the first appellant, and in which the full court ordered the first and second appellants to do all things necessary to have these use and occupation rights registered as personal servitudes in favour of the respondents against the title deed of the properties in question – interpretation of two shareholder

agreements from which the respondents derived their rights of viewing and the exclusive use and occupation of two camps on the properties in question, and in particular whether these rights were registrable against the title deeds of the properties owned by the first appellant on the basis of the doctrine of notice and s 2(1) of the Alienation of Land Act 68 of 1981 – whether the agreements that gave rise to the respondents’ rights were invalid and unenforceable being contrary to the provisions of s 3 of the Subdivision of Agricultural Land Act 70 of 1970.

17. Commissioner for the South African Revenue Service v Medtronic International Trading S.A.R.L

(456/2021)

Appealed from GP

Date to be heard: 23 August 2022

Petse DP, Makgoka JA, Weiner AJA, Goosen AJA, Windell AJA

Tax law – Tax Administration Act 28 of 2011 (TAA) – ss 225-233 – Value Added Tax Act 89 of 1991 (VAT Act) – voluntary disclosure programmes (VDP) – request for the remission of interest – whether ss 225-233 of the TAA, relating to voluntary disclosure programmes, prohibited a request for remission of interest in terms of s 39(7)(a) of the VAT Act, subsequent to a taxpayer entering into a VDP Agreement with SARS and after both parties fully performing in terms of that VDP agreement – whether, notwithstanding a prior VDP agreement having been entered into, SARS had a statutory duty to consider, adjudicate and decide on a request for the remission of interest in terms of s 39(7)(a) of the VAT Act.

18. Dr F C Louw v Dr A S Patel

(245/2021)

Appealed from GJ

Date to be heard: 23 August 2022

Dambuza JA, Molemela JA, Gorven AJA, Basson AJA, Masipa AJA

Delict – negligence – causation – medical negligence – whether the appellant was negligent in his treatment of the respondent when acting in a situation where a general practitioner’s competing interests demanded simultaneous attention – whether there was at any stage a reasonable prospect of salvaging the respondent’s leg which was ultimately amputated – whether the appellant was negligent in his treatment of the respondent – whether the full court failed to apply the trite principles pertaining to medical negligence.

19. James Matodzi Nesongozwi v The Commissioner for the South African Revenue Service

(838/2021)

Appealed from GJ

Date to be heard: 24 August 2022

Ponnan JA, Makgoka JA, Plasket JA, Weiner AJA, Windell AJA

Tax law – capital gains tax – donations tax – application of ss 38(1)(a) and 31(3) of Schedule 8 to the Income Tax Act 58 of 1962 (ITA) – appeal under s 107 of the Tax Administration Act 28 of 2011 – determination of market value of unlisted shares for purposes of capital gains tax and donations tax – categorisation of mineral resources under the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves (the SAMREC Code) – appropriate remedy where market value had not been determined – appeal concerned the additional assessment for the 2010 year of assessment, issued by the South African Revenue Service (SARS) on 14 October 2014, in respect of James Matodzi Nesongozwi, the appellant – whether the appellant disposed of shares he held in Nesongozwi Mining Corporation (Pty) Ltd (NMC) to the Nesongozwi Family Trust during October 2009 at market value – whether the appellant was entitled to raise the valuation methodology applied by SARS to determine the market value of the NMC shares, where it was not placed in dispute in the appellant’s objection, pleadings or in cross-examination – whether clause 7 of the consultancy agreement should have been taken into account in valuing the NMC shares – whether the categorisation of Umthombo’s mineral resources were ‘inferred resources’ or ‘resource targets’.

20. Etienne Jacques Naude and Louis Pasteur Hospital Holdings (Pty) Ltd v Louis Pasteur Medical Investments (Pty) Ltd, First Clinic Properties One Limited and various other parties (third to 47th respondents)

(31/2021)

Appealed from GP

Date to be heard: 24 August 2022

Zondi JA, Molemela JA, Hughes JA, Goosen AJA, Siwendu AJA

Civil procedure – Companies Act 71 of 2008 – business rescue – whether the first respondent had locus standi to bring an application as a shareholder – whether the first respondent had locus standi to bring an application as a creditor – whether the second respondent had locus standi to bring an application as a creditor – whether the meeting of creditors arranged by the

first appellant could and should have proceeded – whether the court a quo could have overruled and amended the case management directives granted by Ranchod J – whether the court a quo should have lifted the general moratorium where the second appellant was under business rescue – whether a proper case was made out by the first and second respondents as applicants for an interim interdict – whether the application of the first and second appellants in terms of rule 47 should not have been heard first, before the merits of the application brought by the first and second respondents – whether all the relevant parties that should have been cited to the application were cited as respondents – whether there was proper service on all relevant and affected persons and parties of the application.

21. Morganambal Mannaru and Body Corporate of Kings Avenue No 1 v Robert McLennan-Smith, Paige McLennan-Smith, Leith Ross Cawcutt and Registrar of Deeds KwaZulu-Natal N O (271/2021)

Appealed from KZD

Date to be heard: 24 August 2022

Van der Merwe JA, Mothle JA, Mabindla-Boqwana JA, Molefe AJA Masipa AJA

Property law – local government – civil procedure – National Building Regulations and Building Standards Act 103 of 1977 – servitudes – whether the appellant was permitted to raise constitutional issues for the first time on appeal where they were not canvassed in the trial court – whether the appellant was permitted to rely on a defence (alleged illegality of the gate) which was not pleaded and in respect of which no admissible evidence was led – whether the respondents were prejudiced – whether the courts had a discretion to disregard municipal notices that cited illegality.

22. Imperial Logistics Advance (Pty) Ltd v Remnant Wealth Holdings (Pty) Ltd (326/2021)

Appealed from GP

Date to be heard: 25 August 2022

Zondi JA, Plasket JA, Mabindla-Boqwana JA, Daffue AJA, Siwendu AJA

Company law – winding-up – appeal against the decision of the court a quo, insofar as the judgment and orders relate to the winding-up application – the winding-up application was dismissed for want of urgency, and not determined and dismissed on its merits – whether the

finding that a winding-up application was not urgent, as a matter of course, lead to a dismissal of the winding-up application – whether the winding-up application, which was brought on an urgent basis, should have been struck from the roll for want of urgency or dismissed – whether the appellant (Imperial) had established the respondent’s (Remnant) commercial and factual insolvency – whether on the facts, the respondent had established a genuine dispute regarding its indebtedness to the appellant – whether on the facts it was just and equitable that the respondent be wound-up – whether the respondent ought to have been finally wound-up, alternatively provisionally wound-up.

23. MEC for Economic Development, Environment and Tourism: Limpopo v Sello Reuben Leboho

(87/2021)

Appealed from LP

Date to be heard: 25 August 2022

Gorven JA, Mothle JA, Hughes JA, Kgoele AJA, Makaula AJA

Labour law – jurisdiction – the respondent sued the appellant in the regional court, Polokwane for an amount of R400 000 allegedly owed to him in respect of leave credits he had at the time of his retirement from the public service. The regional court dismissed the claim, and the court a quo upheld his appeal against the judgment of the regional court – whether a dispute relating to payment of leave accruals provided for in clause 7(3)(a) of the PSCBC Resolution 7 of 2000 was about the interpretation or application of the agreement and should be resolved in accordance with the dispute resolution system of the Public Service Coordinating Bargaining Council (PSCBC) – if so, whether the court a quo had jurisdiction to entertain the dispute – whether the respondent was entitled at the time of his retirement to payment of 468 leave accruals earned prior to 1 July 2000 instead of 271 days paid to him by the appellant.

24. Siyangena Technologies (Pty) Ltd v Passenger Rail Agency of South Africa, Retired Justice Ezra Goldstein and Retired Justice Meyer Joffe and #Unitedbehind (*Amicus Curiae* admitted in the Gauteng Division of the High Court)

(487/2021)

Appealed from GP

Date to be heard: 26 August 2022

Ponnan JA, Van der Merwe JA, Plasket JA, Chetty AJA, Salie-Hlophe AJA

Administrative law – legality – just and equitable – whether PRASA delayed unreasonably in launching its self-review application and, if so, whether the delay ought to have been condoned – what was the correct approach regarding the witness affidavits – whether there was any basis for the full court to draw a ‘probable inference’ that Siyangena was a party to corrupt activities – what was the effect of PRASA’s continued insistence on enforcing the agreements with Siyangena by issuing work orders and demanding compliance with the contract – what were the merits of the application – what was just and equitable relief in the circumstances.

25. Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd, Richard Fani Bila, Thomas Time Bila, Phindile Precious Khumalo and Elisamina Sibiya (159/2021)

Appealed from GP

Date to be heard: 29 August 2022

Petse DP, Zondi JA, Mabindla-Boqwana JA, Daffue AJA, Salie-Hlophe AJA

Contempt of court – civil contempt – appeal against the portion of the judgment and order of Van der Westhuizen J, dated 30 September 2019, dismissing appellant’s prayers 3, 4 and 5 of the notice of motion relating to contempt with costs – whether the SCA should find the respondents to be in contempt of the order and judgment of Neukircher J, dated 1 July 2019 (the order) – should the SCA find, beyond a reasonable doubt, that the respondents were in contempt of the order, a suitable penalty to be imposed on the respondents – whether the court a quo erred in relying on the principles enounced in *Rex v Keyser* 1951 (1) SA 512 (A), and endorsed by the Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings Ltd and others; Mkhonto and others v Compensation Solutions (Pty) Ltd* 2017 (11) BCLR 1408 (CC) by finding that on the facts of this matter the appellant was not entitled to an order for contempt summarily against the respondents without them being granted an opportunity to be heard.

26. Southern Sky Hotel and Leisure (Pty) Ltd t/a Hans Merensky Hotel and Spa (In liquidation), Maryna Estelle Symes N O, Mustafa Mohamed N O, Johannes Zacharias Human Muller N O, Puleng Felicity Bodibe N O and Van Auctioneers Gauteng (Pty) Ltd v Southern Sky Food Enterprises (Pty) Ltd (617/2021)

Appealed from GJ

Date to be heard: 29 August 2022

Ponnan JA, Van der Merwe JA, Musi AJA, Basson AJA, Masipa AJA

Company law – liquidation – business rescue – whether the first and second business rescue applications as launched by the respondent invoked the provisions of s 131 of the Companies Act 71 of 2008 to such an extent that the provisional liquidators would not have been entitled to sell the immovable property to public auction, subject thereto that transfer of ownership could only be given upon the meeting of certain suspensive conditions and more particularly relating to the eventual dismissal and finalisation of the two business rescue applications.

27. Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd

(810/2021)

Appealed from GP

Date to be heard: 30 August 2022

Petse DP, Zondi JA, Mabindla-Boqwana JA, Daffue AJA, Salie-Hlophe AJA

Civil procedure – contempt of court – penalty to be imposed for contempt of court – whether this Court should set aside the judgment and order of Fourie J in the court a quo dated 21 September 2020 in terms of s 19(d) of Superior Courts Act 10 of 2013 - whether this Court should find the respondent in contempt of the order and judgment of Neukircher J in the court a quo, dated 1 July 2019 (the Interdict Order) and the order and judgment of Janse van Nieuwenhuizen J, dated 10 December 2019 (the NEMA Interdict Order) – suitable penalty to be imposed on the respondent should this Court find it in contempt of either or both of the orders.

28. Samsung Electronics SA (Pty) Ltd v The Commissioner for the South African Revenue Service

(764/2021)

Appealed from GP

Date to be heard: 30 August 2022

Ponnan JA, Plasket JA, Hughes JA, Molefe AJA, Siwendu AJA

Tax law – Customs and Excise Act 91 of 1964 - tariff classifications – the appellant is the importer of, inter alia, the Samsung Galaxy S7, which it contended was a multi-functional smart device, the product is colloquially known as a ‘smart phone’ – the correct tariff classification of products colloquially known as ‘smart phones’.

29. Member of the Executive Council for the Department of Health, Eastern Cape Province v Babalwa Mbokodi

(213/2021)

Appealed from ECM

Date to be heard: 30 August 2022

Dambuza JA, Molemela JA, Makgoka JA, Goosen AJA, Chetty AJA

Delict – damages – medical negligence – civil procedure – rule nisi – appeal against the confirmation of a rule *nisi* ordering the appellant (MEC: Department of Health, Eastern Cape) to pay damages and ancillary relief – in circumstances where it was not disputed that the parties’ legal representatives entered into unambiguous, binding and unconditional agreements during the pre-trial conference proceedings and that these agreements were premised on joint minutes and negotiations and compromises – merits conceded – where it was common cause that the appellant’s legal representatives did not have instructions to settle on any amount of damages – the interpretation of the mandate of a state attorney to agree to a rule *nisi* ordering the appellant to pay damages in a medical negligence matter where no instructions had been obtained to do so, and the interpretation of the whole order – whether the appellant established any basis in law to repudiate or resile from these agreements while seeking to establish good cause before the court a quo in respect of the confirmation of the rule *nisi*.

30. Roelof Louis Barry Slabbert N O, Joritha Welman N O and Helen Ruth Kroes N O (In their capacities as the duly appointed joint trustees of the Venezia Trust IT 1817/96) v Ma-Afrika Hotels (Pty) Ltd t/a Rivierbos Guest House

(772/2021)

Appealed from WCC

Date to be heard: 31 August 2022

Molemela JA, Makgoka JA, Gorven JA, Kgoele AJA, Goosen AJA

Contract – sale and lease – trust law – Covid-19 – whether it was objectively possible, during and subsequent to the lockdown periods imposed due to the Covid-19 pandemic, for the trust, represented by the appellants to provide the respondent with beneficial occupation of the premises – whether the lease agreement between the parties excluded reciprocity – whether the respondent was entitled to a remission of rent – whether remission was capable of prompt ascertainment – whether the lease agreement was validly cancelled – if respondent should be evicted from the premises.

31. Greater Tzaneen Municipality v Bravospan 252 CC

(428/2021)

Appealed from LP

Date to be heard: 1 September 2022

Zondi JA, Van der Merwe JA, Hughes JA, Molefe AJA, Chetty AJA

Prescription – s 3(2) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 – effect of application for leave to appeal – condonation – the date on which the claims of Bravospan arose – whether a notice was timeously delivered by Bravospan in terms of s 3(2) of the Institution of Legal Proceedings against Certain Organs of State Act (the Act) – the legal effect of the applications for leave to appeal launched by Bravospan – the consequence of non-compliance with s 3(2) of the Act in the absence of a condonation application.

32. Golden Fried Chicken (Pty) Ltd v Dino Vlachos and Soul Souvlaki (Pty) Ltd

(497/2021)

Appealed from GJ

Date to be heard: 2 September 2022

Petse AP, Makgoka JA, Gorven JA, Mabindla-Boqwana JA, Basson AJA

Intellectual Property – Trade Marks Act 193 of 1994 (the Act) – whether the respondents infringed the appellant’s registered SOUL and SOUL FOOD trademarks registered in relation to ‘meat; products made from meat; fast foods; cafes; fast food outlets; sale and distribution of foodstuffs’ by the use of the mark SOUL SOUVLAKI in relation to such good and services – whether the appellant proved that the respondents infringed its SOUL and SOUL Food trademarks in terms of ss 34(1)(a) and 34 (1)(c) of the Act.

33. The Commissioner for the South African Revenue Services v The Thistle Trust

(516/2021)

Appealed from Tax Court GP

Date to be heard: 2 September 2022

Dambuza ADP, Van der Merwe JA, Hughes JA, Goosen AJA, Daffue AJA

Tax law – Income Tax Act 58 of 1962 – capital gains tax – whether the respondent should be taxed for the capital gains that were distributed to it in its capacity as a beneficiary in circumstances where the respondent subsequently awarded and distributed the amounts of the

capital gains to its own beneficiaries – whether the appellant was correct in imposing an understatement penalty of 50% on the respondent together with interest.

34. Snowy Owl Properties 284 (Pty) Ltd v Mziki Share Block Limited

(886/2021)

Appealed from KZP

Date to be heard: 2 September 2022

Zondi JA, Mothle JA, Kgoele AJA, Makaula AJA, Windell AJA

Civil procedure – Arbitration Act 42 of 1965 – arbitration award – servitudes – whether there was an enforcement of an arbitrator’s award – whether the court a quo was correct in finding that the award should be made an order of court.

35. Compensation Solutions (Pty) Ltd v The Compensation Commissioner and The Director-General, Department of Labour of the National Government of the Republic of South Africa

(1175/2021)

Appealed from GP

Date to be heard: 5 September 2022

Ponnan JA, Van der Merwe JA, Mothle JA, Goosen AJA, Daffue AJA

Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) – cession of medical claims – interpretation of the 75-day order – *res judicata* principle – *stare decisis* – summons issued prematurely – prohibition of cession – Annexures ‘POC1’ and ‘POC2’ to the particulars of claim, the 75-day order: whether the agreement and court order contained in these annexures applied only to the accounts that formed the subject matter of that application (Case No: 35047/2009) or whether it also applied to accounts to be submitted in future such as those in these matters – summons issued prematurely: whether compliance with the so-called ‘W.Cl.20’ procedure as reflected in the applicable regulations issued pursuant to COIDA was mandatory and a jurisdictional prerequisite to the plaintiff proceeding with these actions, and whether non-compliance therewith constituted a bar to the plaintiff so proceeding – prohibition of cession: whether s 32 of COIDA, upon a proper interpretation thereof, prohibited the cession of medical aid accounts as relied upon by the plaintiff by medical service providers to any third party, and specifically the plaintiff – whether the prohibition of cession of compensation in terms of s 32(1) of COIDA included medical aids.

AND

36. The Compensation Commissioner, The Director-General of the Department of Labour of the National Government of the Republic of South Africa and the Minister of Labour v Compensation Solutions (Pty) Ltd

(997/2021)

Appealed from GP

Date to be heard: 5 September 2022

Ponnan JA, Van der Merwe JA, Mothle JA, Goosen AJA, Daffue AJA

Contract – settlement agreement – Compensation – Compensation of Occupational Injuries and Diseases Act 130 of 1993 – whether the respondent was entitled to use the 2009 settlement agreement as a cause of action for claims that occurred post 31 July 2009 – whether the respondent was not required to comply with the regulations of the Compensation of Occupational Injuries and Diseases Act 130 of 1993 (COIDA) – whether the court order constituted an ongoing contract relationship between the parties, bearing in mind that the appellants were an Organs of State and also the requirements of s 217 of the Constitution – whether the appellants were entitled to the declaratory order – did the 75-day order regulate the future conduct between the parties, or was it only intended for claims listed in Annexure JL12 (The interpretation of the Agreement) – if it was to be found that the 75-day order regulated the future conduct of parties, did it infringe and/or substitute any provision of COIDA or a regulation in terms thereof (lawfulness of 75-day order).

37. Coral Lagoon Investments 194 (Pty) Ltd and Ash Brook Investments 15 (Pty) Ltd v Capitec Bank Holdings

(887/2021)

Appealed from WCC

Date to be heard: 5 September 2022

Zondi JA, Gorven JA, Hughes JA, Windell AJA, Chetty AJA

Contract – consent agreement – interpretation of agreement – arbitration agreements – breach of agreement – specific performance agreement – whether the written agreement not to sue on which the court a quo decided the case was unenforceable and contrary to public policy or inconsistent with s 34 of the Constitution – whether the court a quo correctly interpreted the agreement not to sue as an undertaking by the appellants not to institute any

proceedings against the respondent in which they used or relied on a commercial transaction concluded during 2017 of which the agreement not to sue formed a part – whether the court a quo correctly found that by instituting the action against the respondent in the court a quo under case 7532/202 (2020 action) the appellants breached the agreement not to sue – whether the court a quo correctly found that neither the agreement not to sue nor its enforcement in this case was contrary to public policy – whether the court a quo correctly found that the respondent was entitled to specific performance of the agreement not to sue – whether the court a quo correctly found that the respondent was permitted to seek specific performance of the agreement not to sue by means of motion proceedings, instead of a special plea in the 2020 action – whether, in the alternative to the relief the respondent sought and obtained pursuant to the appellants breach of the agreement not to sue, the 2020 action was covered by two arbitration agreements between the parties – if so, whether the appellant had shown sufficient reason why the dispute arising from the 2020 action should not be referred to arbitration as envisaged by s 6 of the Arbitration Act 42 of 1965 – whether the court a quo properly interpreted the scope, nature and effect of the subject clause – whether Capitec had established that the appellants had lawfully waived their constitutional right of access to court in respect of future disputes – whether the subject clause stands or its enforcement in the circumstances ought to be declared unenforceable, contrary to public policy or inconsistent with s 34 of the Constitution – whether Capitec was entitled to enforce the subject clause by way of an application rather than by way of defence in the 2020 action – whether Capitec was entitled to the alternative relief sought in the form of a referral of the disputes raised in the 2020 action to arbitration.

38. Keyhealth Medical Scheme v Glopini (Pty) Ltd

(1265/2021)

Appealed from GP

Date to be heard: 5 September 2022

Molemela JA, Plasket JA, Mabindla-Boqwana JA, Weiner AJA, Masipa AJA

Contract – Medical Schemes Act 131 of 1998 – contract of mandate – contract services – revocation – termination – whether the contract between the appellant and the respondent constituted a contract of mandate – whether the appellant as the mandatory could unilaterally terminate the mandate of the respondent.

39. Dart Industries Incorporated and Tupperware Southern Africa (Pty) Ltd v Botle Buhle Brands (Pty) Ltd and the Companies and Intellectual Property Commission (636/2021)

Appealed from GP

Date to be heard: 6 September 2022

Dambuza ADP, Makgoka JA, Gorven JA, Goosen AJA, Masipa AJA

Intellectual property – Trade Marks Act 194 of 1993 – trade marks – whether the registered mark was capable of distinguishing the appellants’ goods from those of other traders – whether the mark was registered as a container mark – whether the mark fell to be expunged under ss 10(4) and 27(1)(a) of the Trade Marks Act on account of the fact that the appellants had no *bona fide* intention of using it as a container in relation to the goods for which it was registered – whether the trade mark had been infringed – whether the appellants had established a reputation in the Eco bottle which it sold to the public – whether the sale by the respondents of its bottle was likely to deceive or confuse the public into believing that the respondents’ product originated from the appellants.

40. Blucher Hauman Mellet N O, Hendrik Francois Mellet N O and Carolina Johanna Prinsloo N O (in their capacities as trustees of the Blucher Mellet Family Trust IT780/1998) v Marais Rocco Vermeulen and Evan Ernest Corbett (1049/2021)

Appealed from FB

Date to be heard: 7 September 2022

Petse AP, Makgoka JA, Plasket JA, Makaula JA, Masipa AJA

Close Corporation Act 69 of 1984 – civil procedure – contract – whether the majority of the full bench of the Free State Division of the High Court were correct to set aside the trial court’s order and replace same with orders that the application was dismissed with costs and the counter-application was granted with costs.

41. Land and Agricultural Bank of South Africa v The Minister of Rural Development and Land Reform, Mooville (Pty) Ltd, Willem Jansen van Vuuren, CPAD Farm Holdings, Mongesi Alfred Mde, The National Director of Public Prosecutions, Mike Timkoe Trustees CC, Donald George Duke Jackson, The Master of the High Court and Registrar of Deeds, Cape Town (1174/2021)

Appealed from ECG

Date to be heard: 7 September 2022

Ponnan JA, Van der Merwe JA, Mabindla-Boqwana JA, Molefe AJA, Siwendu AJA

Property law – the extent to which the appellant, which possessed a secured real right, should participate in the proceeds of a sale of a property within the landscape of the Prevention of Organised Crime Act 121 of 1998 – whether the appellant’s interest should be confined to its capital loss only – whether there should be proportional sharing – whether the pre-dated judgment took precedence over the forfeiture order – whether there was an infringement of the appellant’s constitutional right to property.

42. The Commissioner for the South African Revenue Service v Airports Company of South Africa

(785/2021)

Appealed from GJ

Date to be heard: 8 September 2022

Ponnan JA, Hughes JA, Basson AJA, Weiner AJA, Windell AJA

Tax law – Tax Administration Act 28 of 2011 – Tax Court rules –whether the amendment sought by the respondent pertaining to the objection of the additional assessment for 2011 was permissible in terms of s 104 of the Tax Administration Act, read with rule 7 of the Tax Court Rules, ss 100 and 106 of the Tax Administration Act, or rule 42(1) of the Tax Court rules.

43. The Democratic Alliance v Johann Wichardt Greyling Brummer

(793/2021)

Appealed from WCC

Date to be heard: 8 September 2022

Zondi JA, Molemela JA, Mothe JA, Musi AJA, Goosen AJA

Contractual damages – estoppel – whether the doctrine of estoppel precluded the respondent’s 2014 action for damages against the appellant.

44. Mobile Telephone Networks (Pty) Ltd v The Commissioner for the South African Revenue Service

(855/2021)

Appealed from GP

Date to be heard: 9 September 2022

Dambuza ADP, Makgoka JA, Gorven JA, Weiner AJA, Salie-Hlophe AJA

Tax law – Value-Added Tax Act 89 of 1991 – interpretation of ‘supply’ in terms of s 10(18)
– whether the appellant’s supply of airtime vouchers constituted a supply as envisaged in s 10(18) of the Value-Added Tax Act – whether the relief sought by the appellant was competent.

45. Peter John Kuttel v The Master of the High Court (Western Cape Division), Joy Kuttel N O, John Adrian Levin N O, Francois Paul Kuttel N O, Adrian Christopher Kuttel N O, Barry Lynton Adams N O (in their capacities as trustees for the time being of the Padjoy Trust Registration No T42/81), Grace Investments Thirty-Two (Pty) Limited and Southern Ropes (Pty) Limited (819/2021)

Appealed from WCC

Date to be heard: 9 September 2022

Van der Merwe JA, Molemela JA, Plasket AJA, Musi AJA, Kgoele AJA

Contract – property law – trust law – was the nature and scope of the common law requiring the court’s prior sanction for the purchase of immovable property by the trustees from the trust property – whether the *palam et bona fides* requirements gave rise to an obligation on the trustees to inform a beneficiary of their intention to sell a major asset of the trust to trustees who were also beneficiaries – to what extent did the right to be protected against unequal treatment and/or irrational exclusion from a benefit, limit the discretionary power the trustees.

46. Mazars Recovery & Restructuring (Pty) Ltd, Fenwick Neil Miller, Byron Norman Chevalier and Stuart Daniel Terblanche v Montic Dairy (Pty) Ltd (in Liquidation), Peter Charles Bothomley N O, Salim Ismail Ganie N O and Ethne Mary van Wyk N O (526/2021)

Appealed from WCC

Date to be heard: 12 September 2022

Ponnan JA, Makgoka JA, Gorven JA, Hughes JA, Chetty AJA

Company Law – Companies Act 61 of 1973 – business rescue – whether the payments made to the fourth appellant by the business rescue practitioners of the fourth respondent (the Company) were void in terms of s 341(2) read with s 348 of the Companies Act 61 of 1973 – whether the appellants were correctly ordered to repay the monies to the fourth respondent by the court a quo.

47. Datacentrix (Pty) Ltd v O-Line (Pty) Ltd

(891/2021)

Appealed from GP

Date to be heard: 12 September 2022

Zondi JA, Molemela JA, Plasket JA, Mabindla-Boqwana JA, Makaula AJA

Contract – cancellation – damages – validity of the cancellation of a contract – in the event of a valid cancellation, the appropriate relief – whether the respondent established the breaches contended for, and the quantum of damages which flowed from the breach – whether breach notice was required, and if so whether such a notice was delivered – whether the product was defective – whether a claim for restitution could not succeed, because of the failure to tender the return of the product received – breach: whether the appellant departed from a software implementation process designed to prevent configuration problems; whether the evidence established the warranty breach; and whether it was the appellant’s obligation to obtain adequate instructions from the respondent – whether damages were precluded by the inability to return the appellant’s performance – whether the appellant needed to plead and prove a reduction of quantum, so as to obtain same.

48. Van Wyk van Heerden Attorneys Incorporated v Stephen Malcolm Gore N O and Selby Musawenkosi Ntsibande N O (in their capacities as duly appointed joint liquidators of Brandstock Exchange (Pty) Ltd (in Liquidation) Master’s Reference No C428/2018)

(828/2021)

Appealed from WCC

Date to be heard: 13 September 2022

Van der Merwe JA, Makgoka JA, Gorven JA, Goosen AJA, Masipa AJA

Insolvency – Insolvency Act 24 of 1936 – setting aside of disposition – whether the court a quo was correct in setting aside dispositions without value to the appellant in terms of s 26(1) of the Insolvency Act 24 of 1936.

49. Modimolle-Mookgophong Local Municipality v CXMI (Pty) Ltd and Advocate G Malindi N O

(658/2021)

Appealed from GP

Date to be heard: 13 September 2022

Mothle JA, Hughes JA, Kgoele JA, Weiner AJA, Daffue AJA

Contract – Arbitration Act 42 of 1965 (the Act) – whether there was a valid and binding agreement concluded between the appellant and the first respondent – whether the appellant was entitled to raise the defence in arbitration proceedings that there was no valid and binding agreement between the parties which had the consequence that the arbitrator had no jurisdiction to hear the case – whether there was an agreement between the parties that a valid arbitration agreement existed – whether the arbitrator had to consider his own jurisdiction, based on the issues pertaining to the validity and enforceability of the agreements relied upon by the appellant – whether his failure to do so constituted a gross irregularity or an exceeding of his powers, as envisaged in s 33 of the Act – whether the Modimolle Local Municipality had already been disestablished when the award was granted against the disestablished municipality – whether the appellant, who was never substituted, was or could be bound by the award issued against the disestablished municipality.

50. Deon Nel v Petrus Jacobus de Beer and Pieter Hendrik Jacobus Burger N O (in his capacity as the duly appointed executor of the Estate of the late Bendine Adriana de Beer) (406/2021)

Appealed from GP

Date to be heard: 14 September 2022

Zondi JA, Molemela JA, Plasket JA, Mabindla-Boqwana JA, Musi AJA

Contract – lease agreements - pre-emptive right – sale of property – whether, on a proper interpretation of the two written lease agreements, Marius Nel was also a party to both lease agreements – whether the appellant signed both lease agreements as a nominee of himself and Marius Nel – whether the appellant had the capacity to exercise the pre-emptive right unilaterally – whether the appellant could only exercise such right together with his joint lessee – whether the pre-emptive right could be exercised in regard to certain of the properties jointly – whether the pre-emptive right was activated by the sale of certain of the properties concerned – whether the appellant had made a counter-offer to the lessor as a result of which his right to exercise the pre-emptive right had been obviated.

51. Izak Frederick Spangenberg, Maria Cornelia van der Westhuizen and Christina Aletta W LA Cock v Frankel Engelbrecht N O (717/2021)

Appealed from NCK

Date to be heard: 15 September 2022

Petse AP, Musi AJA, Kgoele AJA, Weiner AJA, Daffue AJA

Succession – wills – whether the unitary approach of interpretation applied to testamentary instruments – whether there was ambiguity in the will – whether there was justification for the use of extrinsic evidence in the interpretation thereof – whether the will conferred the right of *habitation* to the second respondent in the court a quo.

**52. Lebashe Financial Services (Pty) Ltd v The Prudential Authority, Bophelo Life Insurance Company Limited, Nzalo Insurance Services Limited, True South Actuaries and Consultants (Pty) Ltd, Francois Hugo N O, Paul Zondagh N O, The Financial Sector Conduct Authority and the Transport Sector Retirement Fund
(346/2021)**

Appealed from GJ

Date to be heard: 15 September 2022

Ponnan JA, Van der Merwe JA, Mothle JA, Basson AJA, Windell AJA

Company law – curatorship – liquidation – Insurance Act 18 of 2017 – appeal against the court a quo’s orders placing the second (Bophelo) and third (Nzalo) respondents into liquidation while they were still under curatorship as contemplated in the Insurance Act 18 of 2017 – the proper interpretation and application of s 54(5) of the Insurance Act – whether s 54(5) of the Insurance Act precluded the first respondent, the Prudential Authority (the PA), from making application for the liquidation of Bophelo and Nzalo – whether the PA lost its locus standi to apply for the liquidation order, through s 54(5) of the Insurance Act, as both Bophelo and Nzalo were under provisional curatorship – whether the liquidation applications and orders violated paragraph 5 of the provisional curatorship orders – whether the court a quo should have exercised its discretion to refuse the liquidation applications, where Bophelo and Nzalo were insolvent – whether or not it was in the interests of justice to liquidate Bophelo and Nzalo, or whether the curatorship was more appropriate.

**53. Cenprop Real Estate (Pty) Ltd and Naheel Investments (Pty) Ltd v Nicolene Holtzhauzen
(520/2021)**

Appealed from WCC

Date to be heard: 16 September 2022

Zondi JA, Molemela JA, Mabindla-Boqwana JA, Molefe AJA, Salie-Hlophe AJA

Delict – personal injury claim – negligence – liability – whether the appellants had taken adequate steps to prevent the respondent from slipping and falling by employing a professional cleaning company – whether an exemption clause absolved the second appellant from liability.

54. Louis Alan N O, Louis Brian William N O and Cloete Louis Jacobus N O v Glaum Trevor Phillip, Louis Group SA (Pty) Ltd (In business rescue), Companies and Intellectual Property Commission, Dole South Africa (Pty) Ltd, SAAD Fund Management (Pty) Ltd, The Trustees for the Time Being of the LGCF Trust, De Witt D J C, The Standard Bank of South Africa Ltd, Ukusola Trading & Investments (Pty) Ltd and Neethling A C

(598/21)

Appealed from WCC

Date to be heard: 16 September 2022

Van der Merwe JA, Plasket JA, Hughes JA, Basson AJA, Siwendu AJA

Company law – Companies Act 71 of 2008 – interpretation – business rescue – the interpretation and application of s 153(1)(b)(ii) of the Companies Act 71 of 2008, read with s 153(4) of the Act.

55. Madrasah Taleemuddeen Islamic Institute v Chandra Giri Ellaurie and eThekweni Municipality

(755/2021)

Appealed from KZD

Date to be heard: 19 September 2022

Dambuza ADP, Gorven JA, Hughes JA, Musi AJA, Daffue AJA

Constitutional law – right to freedom of religion – nuisance – interdict – appeal against the decision of the court a quo interdicting Madrasah Taleemuddeen Islamic Institute, the appellant, from emanating the Islamic call to prayer (the Azaan) that could be heard beyond the boundaries of its properties in Isipingo Beach – whether Chandra Giri Ellaurie, the first respondent, made out a cognisable case of nuisance in the court a quo, and in particular whether they established that the Islamic call to prayer (the Azaan) was an unreasonable interference with their property rights – whether the granting of the interdict by the court a quo in favour of the first respondent constituted an unreasonable and unjustifiable limitation of the constitutional right to religious freedom.