

**REPUBLIC OF SOUTH AFRICA**

**SUPREME COURT OF APPEAL**

**BULLETIN 1 OF 2023**

**CASES ENROLLED FOR HEARING: 15 FEBRUARY – 31 MARCH 2023**

**1. Jakob Marius Wallage v David Howard Williams-Ashman N O (in his capacity as executor of the estate of the late Nicola Jean Wallage), Master of the High Court, Gauteng Division, John Burton Chaplin, Isabelle Noel Ferreira, The Speaker of the National Assembly, Chairperson of the National Council of Provinces, Minister of Justice and Correctional Services and The Trustees for the Time Being of the Basic Rights Foundation of South Africa (*Amicus Curiae*)**

**(823/2020)**

Appealed from WCC

Date to be heard: 15 February 2023

Saldulker JA, Mbatha JA, Molefe JA, Kathree-Setiloane AJA, Unterhalter AJA

**Constitutional challenge – section 2B of the Wills Act 7 of 1953 – freedom of testation – public policy – deprivation of property** – whether s 2B of the Wills Act violated the appellant’s rights under s 25(1) and/or s 34 of the Constitution – whether s 2B of the Wills Act was contrary to public policy – whether s 2B violated the freedom of testation of the deceased – whether s 2B arbitrarily deprived the deceased of her right to dispose of her property in accordance with her express wishes as set out in her will – whether s 2B created a fiction that arbitrarily deprived the appellant of the right to receive the deceased’s property in terms of the will, in breach of his rights under s 25(1) of the Constitution – whether s 2B had the effect of nullifying *in toto* the appellant’s constitutional right to approach the court to show that the statutory fiction was in fact false, not from the text of the will, but from the evidence outside the will, in breach of s 34 of the Constitution – whether s 2B in its current formulation, not the rule itself or its underlying rationale, was contrary to public policy.

**2. Mashinini Nomgqibelo Nellie v The Member of the Executive Council for Health and Social Development, Gauteng Provincial Government**

**(335/2021)**

Appealed from GJ

Date to be heard: 15 February 2023

Zondi JA, Schippers JA, Gorvcen JA, Mali AJA, Siwendu AJA

**Delict – damages** – whether the court a quo erred in ordering that the appellant, instead of being paid damages for agreed future treatment, would be provided with such treatment at Charlotte Maxeke Johannesburg Academic Hospital, as and when required, at the same or better level of service than in private healthcare.

**3. Adrian John Samuels v Gayaat Salie-Hlophe**

(771/2021)

Appealed from WCC

Date to be heard: 15 February 2023

Molemela JA, Nicholls JA, Mothle JA, Meyer JA, Olsen AJA

**Civil procedure – validity of court order** – the validity of the order granted by Kubushi J handed down on 2 March 2021 which declared the appellant to be in contempt of Justice Samela’s order of 29 July 2013, committing the appellant to a period of three months’ imprisonment and authoring the issuing of a warrant of arrest in respect of the appellant.

**4. Shepstone & Wylie Attorneys v Abraham Johannes De Witt N O, Raymond Ernst Volker N O, Sebastian Sylvo Volker N O and Thomas Pascal Volker N O**

(1270/2021)

Appealed from KZP

Date to be heard: 16 February 2023

Zondi JA, Mocumie JA, Mbatha JA, Weiner JA, Kathree-Setiloane AJA

**Contract – validity of deed of suretyship – interpretation of trust deed** – whether the decisions by two out of three trustees had the effect of binding the trust to a deed of suretyship in favour of the appellant – whether the deed of suretyship signed in favour of the appellant for the beneficiary’s legal fees was authorised by the trust deed.

**5. Giftwrap Trading (Pty) Ltd v Vodacom (Pty) Ltd, Mobile Telephone Networks (Pty) Ltd, Telkom SA Limited and Cell C (Pty) Ltd**

(1009/2020)

Appealed from GP

Date to be heard: 16 February 2023

Van der Merwe JA, Gorven JA, Mabindla-Boqwana JA, Olsen AJA, Siwendu AJA

**Constitutional law – electronic data protection – disclosure of information – Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (RICA)** – appeal against the court a quo’s judgment, which dismissed the appellant’s application seeking an order that the respondents be obliged to provide certain information to the appellant to enable the appellant to identify wrongdoers (which information was regulated by the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (RICA)) – whether s 42(1)(c) of RICA constituted an unjustifiable limitation on the appellant’s constitutional rights (particularly s 34 of the Constitution) – interpretation and constitutionality of s 42(1)(c) of RICA – whether necessary to develop the common law in order to recognise a general disclosure remedy as recognised in *Nampak Glass (Pty) Limited v Vodacom (Pty) Limited and Others* [2018] ZAGPJHC 481; 2019 (1) SA 257 (GJ) – whereby an applicant can require the disclosure of information in order to identify wrongdoers.

**6. The South African Municipal Workers’ Union National Provident Fund v Dihlabeng Local Municipality, Municipal Employees Pension Fund and The South African Municipal Workers’ Union National Provident Fund and Others (First to Thirty-third party)**

**(65/2022)**

Appealed from FB

Date to be heard: 17 February 2023

Saldulker JA, Molemela JA, Mabindla Boqwana AJA, Molefe JA, Siwendu AJA

**Labour law – employee pension fund – prescription – contract** – whether certain employees of the municipality validly remained contributory members of the appellant fund with a statutory contribution obligation – whether those employees were re-employed or re-instated in terms of the settlement agreement concluded between the first respondent and the employees on 8 October – whether the issue that the employees were re-instated or re-employed was *res judicata* based on the finding made by the Pension Funds Adjudicator during December 2012 – whether the appellant’s claim (up to and including 7 September 2010) had prescribed.

**7. Unica Iron and Steel (Pty) Ltd and Mohamed Asif Qasim v Minister of Trade and Industry and The Manufacturing Development Board**

**(1332/2021)**

Appealed from GP

Date to be heard: 17 February 2023

Van der Merwe JA, Schippers JA, Mothle JA, Weiner JA, Goosen JA

**Public law – State Attorneys Act 56 of 1957 – power of the State Attorney to appoint attorney from the private sector** – whether the State Attorney, pursuant to the State Attorneys Act 56 of 1957, had the power and authority to appoint and instruct an attorney from the private sector, in the same district as that in which the State Attorney was based and had an office, to act as the primary attorney in a matter involving the State or organ of state.

**8. Matodzi Annah Magwala v Chief Rudzani Harold Sinthumule, Nyamukamadi Mukondi Mukhuba and The Gogobole Royal Family (744/2021)**

Appealed from LP

Date to be heard: 17 February 2023

Mocumie JA, Nicholls JA, Carelse JA, Matojane JA, Nhlangulela AJA

**Customary law – traditional leadership – Limpopo Traditional Leadership and Institutions Act 6 of 2005 – Traditional Leadership and Governance Framework Act 41 of 2003 – requirement for recognition of headwoman – functions of a traditional leader – Constitutional law – the right to dignity – the right to equality** – whether the respondents had *locus standi* to institute the court proceedings – whether the applicant was, in law, entitled to act as a headwoman without recognition by the Premier as a headwoman – whether the applicant was precluded from performing the function of a traditional leader, which was not clearly defined in the Limpopo Traditional Leadership and Institutions Act 6 of 2005 and Traditional Leadership and Governance Framework Act 41 of 2003 – if the applicant was not so precluded, whether the interdict violated the applicant’s right under s 211 of the Constitution, the right to dignity and the freedom of association – what was the correct legal meaning of the definition of a traditional leader and the meaning of recognition – whether the full court breached the applicant’s right to access to court – whether the full court breached the applicant’s right to be heard – whether, by not considering the applicant’s ground of appeal, the full court violated the applicant’s right to equality – whether the trial court ought to have dismissed the respondent’s action on the basis of unreasonable delay – whether the order pertaining to condonation was competent – whether the respondent had met the requisites of a final interdict – whether the full court and the trial court encroached on the terra in of the executive and Royal Family – whether the full court and trial court violated the doctrine of

precedent by not following this Court's decision in *Netshimbupfe and Another v Mulaudzi and Others* [2018] ZASCA 98 (SCA) and *Shilubane and Others v Nwamitwa* [2018] ZACC 9 (CC) – whether the trial court and full court costs order constituted a misdirection – whether special leave to appeal should be granted.

**9. Minister for Transport and Public Works: Western Cape, Premier of the Western Cape Province, The Provincial Government of the Western Cape, Minister of Human Settlements: Western Cape and City of Cape Town v Thozama Angela Adonisi, Phumza Ntutela, Sharone Daniels, Selina La Hane, Reclaim The City, Trustees of Ndifuna Ukwazi Trust; and Premier of the Western Cape Province, Minister for Transport and Public Works: Western Cape and City of Cape Town v Minister of Human Settlements, National Department of Human Settlements and Social Housing Regulatory Authority (522/2021) and (523/2021)**

Appealed from WCC

Date to be heard: 20 February 2023

Dambuza AP, Zondi JA, Schippers JA, Molefe JA, Unterhalter AJA

**Property law – constitutional law – Government Immovable Asset Management Act 19 of 2007 – Western Cape Land Administration Regulations 6 of 1998** – whether the Western Cape Government was obliged to consult and engage with the Minister before disposing of the properties in question – whether the Government Immovable Asset Management Act and the Western Cape Land Administration Act was properly interpreted – whether the impugned regulations were unconstitutional or *ultra vires* – whether the Western Cape Government and the City of Cape Town were in breach of their obligation to redress spatial apartheid in central Cape Town – whether there should be a structural interdict against the Western Cape Government and the City of Cape Town in respect of complying with their obligations – whether the impugned Western Cape Land Administration Act Regulations are unconstitutional – whether there were restructuring zones under the Social Housing Act in Cape Town and whether Sea Point fell within a restructuring zone.

**10. South African Forestry Company Soc Ltd v Collins Sebola Financial Services (Pty) Ltd, Tsepo Monaheng (in his capacity as the Chief Executive Officer of the First Respondent), Clement Nhuvunga (in his capacity as Senior Manager of Supply Chain Management of the First Respondent), The Chairperson of the Bid Specification Committee of the First Respondent in respect of the RFB 011/2019, The Chairperson of**

**the Bid Adjudication Committee of the First Respondent in respect of the RFB 011/2019, Phepha MV Security Service, The Chairperson of the Audit Committee of the First Respondent, The Chairperson of the Financial Committee of the First Respondent and Phuthadichaba Trading Enterprise CC**

**(1293/2021)**

Appealed from GP

Date to be heard: 20 February 2023

Ponnan ADP, Gorven JA, Mothe JA, Weiner JA, Goosen JA

**Administrative law – tender – constitutional law** – whether the appellant complied with its constitutional obligations in terms of s 217(1) of the Constitution when it awarded the tender to both the first and seventh respondents – whether the order of substitution granted by the court below was a just and equitable order in terms of s 172(1)(b) of the Constitution read with s 8(1) of PAJA – whether the terms of the Request for Proposal (RFP) conferred powers on the appellant to award the tender to more than one bidder, namely the first and seventh respondents – whether the first respondent established its pleaded grounds of review to successfully challenge the appellant’s decision to award part of the tender to the seventh respondent – whether the court below correctly upheld the first respondent’s grounds of review – whether the order of substitution granted by the court below was appropriate – whether the costs order imposed by the court below was appropriate – whether the seventh respondent should have been allowed to submit a new tender after the tender invitation had closed – whether the conduct of the appellant was lawful.

**11. The Road Accident Fund, Taylor Marilyn Doris, Mathonsi Hlengani Victor, De Broglio Attorneys Inc, De Swardt Zandeele, Kramer Ivan Barry and Van den Barselaar Michael v In re GJ Case No 37986/2018 Taylor Marilyn Doris, The Road Accident Fund and In re GJ Case No 13753/2019 Mathonsi Hlengani Victor and The Road Accident Fund**

**(1136/2021, 1137/2021, 1138/2021, 1139/2021 and 1140/2021)**

Appealed from GJ

Date to be heard: 20 February 2023

Saldulker JA, Van der Merwe JA, Meyer JA, Kathree-Setiloane AJA, Olsen AJA

**Road Accident Fund – constitutional law** – right to a fair hearing prescribed in s 34 of the Constitution – whether the court could rely on the evidence of another court on the facts of a separate and unrelated matter which could be elevated to findings of fact – whether the court’s

raising of express and implicit findings of dishonest and/or fraudulent conduct on the part of the appellant and its employees was done in a manner consistent with s 34 of the Constitution – whether there was a settlement of the respondents’ case – whether the appellant was entitled to settle the matter without judicial approval of the settlement – whether there were any limitations or requirements in relation to a settlement of a claim by the appellant – whether the fact that a matter was on the roll, before a judge, was an indicator that the court could exercise judicial oversight to determine if a settlement was proper – whether the appellant was obliged to employ legal representatives in a settlement it could conclude with a respondent – whether in *In re GJ Case No 37986/2018 Taylor Marilyn Doris*, the court a quo should have ordered that the matter be removed from the roll, as it had become settled – whether in *In re GJ Case No 13753/2019 Mathonsi Hlengani Victor*, the court a quo should have made a draft order presented to it an order of court – whether the rights enshrined in ss 10, 23, 9(1) and 38 of the Constitution have been infringed – whether the court a quo should have made adverse findings and orders referring to professionals affected as dishonest without forewarning or hearing them – whether these professionals had a right to intervene.

**12. Stay At South Point Properties (Pty) Ltd v Abulele Mqulwana, Akhona Ntotho, Amanda Msaba, Andile Phakade, Andisiwe Sityata, Aphiwe Masebeni, Asemahle Dangisa, Avile Giyama, Avumile Mzantsi, Avuyile Somagagu and Others (1335/2021)**

Appealed from WCC

Date to be heard: 21 February 2023

Saldulker JA, Zondi JA, Mabindla-Boqwana JA, Mali AJA, Unterhalter AJA

**Property law – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – eviction – definition of ‘home’** – whether a student residence should be considered as a ‘home’ for purposes of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

**13. Kgoshi Ngoako Isaac Lebogo and Bahananwa Traditional Council v Headman Enos Matome Kobe, Morukhu Matome Alfred, Phala Ntome Simon, Kgatla Mashilo Phillip, Kubu Ngoako Abram, Lebogo Moloko Courtly, Lekwara Matlou Albert, Mailula Kolobe Patrick, Manaka Nhlodi Samuel, Maboya Mkgodi Wilson and Others (1204/2021)**

Appealed from LP

Date to be heard: 21 February 2023

Mocumie JA, Molemela JA, Mothle JA, Matojane JA, Weiner JA

**Customary law – traditional leadership – Limpopo Traditional Leadership and Institutions Act 6 of 2005 – proper identification of the royal family – relieving headmen/women from their royal duties – Administrative law – review application – undue delay – non-joinder – misconduct – non-compliance with procedure – ulterior motive/purpose – unfair procedure** – whether condonation should be granted for the delay of more than five-and-a-half years in bringing the review application – whether there had been a fatal non-joinder of the Bahananwa Traditional Community – whether there was substance in the ground of review that the procedure for misconduct in Schedule 2 of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 (the Act) must have been followed in order to relieve the first to thirteenth respondents of their royal duties as headmen/women of the Bahananwa Traditional Community and/or whether that procedure contemplated the involvement of the alleged royal family of each of these respondents – whether the procedure in s 13 of the Act was followed in order to relieve the first to thirteenth respondents of their royal duties as headmen/women of the Bahananwa Traditional Community and/or whether that procedure contemplated the involvement of the alleged royal family of each of those respondents – whether the relieving the first to thirteenth respondents of their royal duties as headmen/women of the Bahananwa Traditional Community was for an ulterior purpose or motive (or in bad faith) – whether the procedure followed for the discharge of the first to thirteenth respondents from their royal duties as headmen/women of the Bahananwa Traditional Community was unfair, because those respondents were allegedly not afforded an opportunity to state their case – whether the premier of the Limpopo Province was authorised to remove the respondents as headmen and headwomen of the Bahananwa Traditional Community – whether the grounds for removal of a traditional leader in terms of s 13(1) of the Act were established, alternatively whether s 13(1) of the Act was triggered – if the grounds existed, whether there was a decision of the royal family to remove the headmen and headwomen of the Bahananwa Traditional Community – if there was a decision from the royal family, whether the Premier complied with the provisions of s 13(3) of the Act – whether the Act provided for the establishment of the royal family of the headman and whether there were such royal families for the headmen and headwomen of the Bahananwa Traditional Community – whether the allegations contained in the regulation of the senior royal council fell within the ambit of Schedule 3, Part B, Item 2 of the misconduct of a traditional leader, and if so whether

the Premier followed the procedure for misconduct as laid in Schedule 2, Part B, Item 2 of the procedure for misconduct – whether the court a quo erred in finding that there was no need for condonation – whether s 7(1)(a) of the Promotion of Administrative Justice Act 3 of 2000 found application in this matter and if so whether the internal remedies were exhausted – whether the affected headmen were given reasons or were aware of the reasons for the decision taken on 29 July 2013 and when did the clock for the 180-day period start ticking – whether the condonation was necessary, even if the parties had agreement to put all legal proceedings on hold to enable the Premier to resolve the matter internally.

#### **14. Brannon Jonathan Petersen v The State**

**(295/2020)**

Appealed from WCC

Date to be heard: 21 February 2023

Nicholls JA, Mbatha JA, Goosen JA, Nhlangulela AJA, Siwendu AJA

**Criminal law and procedure – sentencing – Criminal Procedure Act 51 of 1977 – procedure for reconsideration of sentence** – whether the court a quo misdirected itself by, on the evidence presented to court by the prosecution, confirming that the appellant was a ‘dangerous criminal’ and that the appellant posed a danger to the physical or mental well-being of other persons and that the community should be protected against him – whether the court a quo, by extending the appellant’s term of imprisonment for a further five years, imposed a sentence that could be described as ‘shocking’ and ‘disturbingly inappropriate’ – whether the court followed the prescribed and proper procedure when reconsidering the sentence in terms of s 286B(4) of the Criminal Procedure Act 51 of 1977.

#### **15. Commissioner for the South African Revenue Service v Free State Development Corporation**

**(1222/2021)**

Appealed from Tax court

Date to be heard: 22 February 2023

Dambuza AP, Zondi JA, Weiner JA, Mali AJA, Unterhalter AJA

**Tax law – Value-Added Tax Act 86 of 1991 – Tax Administration Act 28 of 2011 – withdrawal of statements – new amended statement – Tax Court’s discretion to make amendments** – whether the court a quo was correct to grant the respondent leave to withdraw

its statement of grounds of appeal and to grant the respondent leave to file an amended statement.

**16. United Manganese of Kalahari (Pty) Ltd v Commissioner for the South African Revenue Service**

**(1231/2021)**

Appealed from GP

Date to be heard: 22 February 2023

Ponnan ADP, Salduker JA, Mothle JA, Goosen JA, Kathree-Setiloane AJA

**Tax law – Income Tax Act 58 of 1962 – Tax Administration Act 28 of 2011 (TAA) – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – review of additional income tax assessment – legal interpretation – declaratory relief** – whether any of SARS’s points *in limine* should be upheld – whether there were ‘internal remedies’ that United Manganese of Kalahari (Pty) Ltd (UMK) ought to have exhausted – whether the tax court had jurisdiction to grant the relief sought by UMK – whether s 105 of the TAA limited the court a quo’s jurisdiction to grant the relief sought by UMK and, if so, whether UMK had shown ‘exceptional circumstances’ to enable the court to allow a deviation – whether there were material disputes of fact that should be ventilated in the tax court – whether the additional assessment became final and conclusive for purposes of s 100 of the TAA and that, by reason of that finality, the relief could not be granted – whether UMK had made out a case for the review and setting aside relief brought in terms of the provisions of the PAJA – whether UMK had made out a case for the declaratory relief sought by it in terms of s 21(1)(c) of the Superior Courts Act – whether SARS in issuing the additional assessments complied with the procedural requirements set out in s 42(2)(b) of the TAA.

**17. The Special Investigating Unit v Phomella Property Investments (Pty) Ltd and Reboasis Property Fund Limited**

**1329/2021**

Appealed from GP

Date to be heard: 22 February 2023

Van der Merwe JA, Nicholls JA, Gorven JA, Matojane JA, Molefe JA

**Contract law – lease agreement – administrative law – breach of procurement prescripts – failure to follow open bidding process – no proper needs assessments conducted** – whether an open bidding process was imperative – whether the DPW lease was entered into

without compliance with a prior needs assessment as prescribed – whether compensation was payable to DPW commensurate to the excessive areas leased – if so, whether the second respondent was liable therefor jointly and severally with first respondent – whether there was any basis to interfere with the court a quo’s remedial discretion, in terms of which it declined to set aside the lease agreement, or to direct the respondents to repay any rental amounts.

**18. Commissioner for the South African Revenue Service v Rappa Resources (Pty) Ltd (1205/2021)**

Appealed from GJ

Date to be heard: 23 February 2023

Ponnan ADP, Molemela JA, Gorven JA, Meyer JA, Mali AJA

**Tax law – Value-Added Tax Act 89 of 1991 – Tax Administration Act 28 of 2011 (TAA) – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – jurisdiction – assessment review – disclosure of record** – whether the judgment and order given by the court a quo was appealable – whether the court a quo had the power to order the production of the record of decision under review unless it had jurisdiction in the review – whether the court a quo must first determine whether it had jurisdiction in the review before making a compelling order – whether the court a quo made an order under s 105 of the TAA and had jurisdiction to review the assessment – whether rule 53 conferred an unqualified right on an applicant for review to have access to review proceedings, especially where a PAJA review was instituted in the court a quo – whether s 105 of the TAA was of any application at all, in circumstances where a review was brought under the aegis of the PAJA – whether s 105 of the TAA was necessary to create jurisdiction in the court a quo’s review proceedings, which were brought under the PAJA, or whether such jurisdiction was inherent and reinforced by the provisions of the PAJA itself.

**19. Democratic Alliance v Minister of Home Affairs and Director-General of the Department of Home Affairs**

**(67/2022)**

Appealed from GP

Date to be heard: 23 February 2023

Zondi JA, Shippers JA, Matojane JA, Kathree-Setiloane AJA, Unterhalter AJA

**Constitutional law – Constitution of the Republic of South Africa, 1993 (Interim Constitution) – South African Citizenship Act 44 of 1949 – South African Citizenship Act**

**88 of 1995 (the Act) – South African Citizenship Amendment Act 17 of 2004 – the right to citizenship** – did s 6(1)(a) of the Act infringe any right in the Bill of Rights – could such infringement be justified under s 36 of the Constitution – was s 6(1)(a) of the Act inconsistent with the Constitution, due to its irrationality.

**20. Director of Public Prosecutions, Gauteng Division, Pretoria v Dikeledi Maria Sithole and Andries Oupa Leso**

**(069/2022)**

Appealed from GP

Date to be heard: 24 February 2023

Saldulker JA, Molemela JA, Meyer JA, Molefe JA, Mali AJA

**Criminal law – sentencing** – whether the imposed sentence either induces a sense of shock or was tainted by misdirection which warrants interference on appeal.

**21. James William Thomas and Middelplaas-Suid Landgoed (Edms) Bpk v Barend Johannes Thomas**

**(1223/2021)**

Appealed from NCK

Date to be heard: 24 February 2023

Van der Merwe JA, Mocumie JA, Nicholls JA, Mothle JA, Matojane JA

**Insolvency law – Insolvency Act 24 of 1936 – sequestration of insolvent estate – assets of insolvent estate – abandonment of assets not economically monetised** – what was the nature of the right of action (the claim) instituted by the respondent against the appellants under case number 202/2003 – whether such right perished when the trustees failed to continue the action after the sequestration of the respondent’s insolvent estate – what were the consequences of the sequestration of the respondent’s insolvent estate – what was the effect of the rehabilitation of the respondent, specifically in the light of the provisions of s 129(3)(c) of the Insolvency Act read with the provisions of s 25(1) thereof – whether the respondent was entitled to apply for a declaratory order that his right, title and interest in the action should not be deemed to form part of his insolvent estate – whether or not the respondent’s right, title and interest in the action formed part of his insolvent estate – whether the respondent’s trustees abandoned (renounced) the respondent’s right, title and interest in the action by failing to lay claim thereto.

**22. Govender Prenashan v The State**

**(221/2022)**

Appealed from GJ

Date to be heard: 24 February 2023

Schippers JA, Carelse JA, Nhlangulela AJA, Unterhalter AJA, Siwendu AJA

**Criminal law – conviction and sentence – common purpose - Firearms Control Act 60 of 2000** – whether the full court and the trial court interpreted and/or applied the principles of the doctrine of common purpose correctly to the facts of the matter – whether the full court and court trial applied and/or interpreted the legal principles relating to circumstantial evidence correctly to the facts of the appeal, especially when it applied the doctrine of common purpose – whether the full court and trial court were correct in finding that the appellant had handed his firearm voluntarily to accused 1 in contravention of s 120(10)(a) of the Firearms Control Act 60 of 2000 – what were the implications of the appellant’s failure to testify on the merits of the case against accused 1 and outcome of the appeal – whether the adverse finding against the appellant in this regard by the full court and trial court was correct and justified – whether the courts a quo were correct in finding that there were no substantial and compelling circumstances present which justified a departure from the prescribed minimum sentence, being life imprisonment – whether the courts a quo interpreted and/or applied the legal principles applicable to minimum sentences correctly.

**23. Strategic Partners Group (Pty) Ltd, Njilo Capital Investments (Pty) Ltd, Mzolisi Diliza, David Moshapalo and Ephraim Sibanda v The Liquidators of Ilima Group (Pty) Ltd (in liquidation), The Magistrate, Krugersdorp and The Master of the High Court**  
**(1291/2021)**

Appealed from GJ

Date to be heard: 27 February 2023

Dambuza AP, Gorven JA, Weiner JA, Goosen JA, Kathree-Setiloane AJA

**Company law – Companies Act 71 of 2008 (the 2008 Act) – Companies Act 61 of 1973 (the 1973 Act) – proper interpretation of legislation – subpoenas – access to documents** – whether the orders of the court below enforcing the various subpoenas issued by the first respondent were unjustified and/or inexecutable – whether the court below correctly found that the amendment sought to be introduced by clause 27 of the first appellant’s memorandum of incorporation (MOI) amounted to conduct contemplated in s 163(1) of the 2008 Act – if the amendment sought to be introduced by clause 27 of the first appellant’s MOI amounted to

conduct contemplated in s 163(1) of the 2008 Act, whether the court below correctly exercised its remedial jurisdiction in terms of s 163(2) of the 2008 Act – if the court below did not correctly exercise its jurisdiction in terms of s 163(2) of the 2008 Act, what was a fitting order this Court should grant in the exercise of its remedial jurisdiction in terms of s 163(2) of the 2008 Act – whether the court below correctly found that the liquidators of the first respondent were entitled to access more documents than those provided for in ss 26 and 31 of the 2008 Act either generally or on the facts of this case – whether the court below correctly granted a punitive costs order against the appellants.

**24. CEPPWAWU Investments (Pty) Ltd v Chemical, Energy, Paper, Printing, Wood and Allied Workers’ Union (CEPPWAWU), Thulisile Njapa Mashanda, Master of the High Court, Pretoria and Registrar of Labour Relations**

(1177/2021)

Appealed from GP

Date to be heard: 27 February 2023

Ponnan ADP, Zondi JA, Mbatha JA, Carelse JA, Meyer JA

**Civil procedure – interpretation of court order – interpretation of statute – Labour Relations Act 66 of 1995 (LRA)** – appeal against the decision of the court a quo, pursuant the court order of the Labour Court granted on 4 June 2020 issued under s 103A of the LRA, and in terms of which the second respondent, Thulisile Njapa Mashanda, was appointed as administrator of the first respondent, the Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (CEPPWAWU) (the Union) – whether the appellant, CEPPWAWU Investments (Pty) Ltd, lacked the required *locus standi* in relation to the result sought in the appeal – whether the second respondent had the power to revoke the nominations made by the National Executive Council of the Union – whether there was substantial compliance with the provisions of s 6(1) of the Trust Property Control Act 57 of 1988 in respect of the deed of assumption appointing professional trustees – interpretation of the Labour Court Order granted on 4 June 2020 – interpretation of s 103A of the LRA – interpretation of s 6(1) of the Trust Property Control Act.

**25. Krugel Heinsen Incorporated v Catherine Helen Thompson and Couples Investment CC**

(41/2022)

Appealed from GP

Date to be heard: 27 February 2023

Saldulker JA, Van der Merwe JA, Mabindla-Boqwana JA, Nhlangulela AJA, Olsen AJA

**Contractual damages – settlement agreement – breach of contract of mandate** – appeal against the decision of the full court, in which a claim for damages due to the breach of mandate by the appellant, Krugel Heinsen Incorporated (KHI), as an attorney, was upheld on appeal against the judgment of Nair AJ, whereby KHI was held to be liable to compensate the respondents for claimed damages – whether FirstRand Bank had repudiated the settlement agreement between the respondents and FirstRand Bank, dated 5 December 2014 – whether it was open to the respondents to rely on a claim for damages due to the appellant’s breach of mandate, where no such claim was formulated in the founding affidavit – whether the respondents alleged and proved that they suffered damages due to the appellant’s breach of mandate and that such damages were causally connected to the breach – whether the full court misdirected itself by finding that the respondents were entitled to the costs of two counsel in respect of the appeal in the full court and the application in the court a quo, in circumstances where they were represented by senior counsel only.

**26. Commissioner for the South African Revenue Service and Chairperson, Excise Appeal Committee v Richards Bay Coal Terminal (Pty) Ltd  
(1299/2021)**

Appealed from KZD

Date to be heard: 28 February 2023

Ponnan ADP, Mocumie JA, Gorven JA, Goosen JA, Unterhalter AJA

**Tax law – Customs and Excise Act 91 of 1964 (CEA) – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – tariff determination – demand to produce documents** – whether an aggrieved taxpayer, seeking to challenge a tariff determination under the CEA, was confined to the remedy of a wide appeal under s 47(9)(e) of the CEA, or whether it could also challenge the tariff determination by way of judicial review – if an aggrieved taxpayer was limited to an appeal, the next issue was whether it could seek production of the same documents comprising the record by means of Uniform rule 35(11).

**27. Prevanca Bonds (Pty) Ltd v Voltex (Pty) Ltd, First Strut (RF) Ltd (in liquidation) and Master of the High Court, Pretoria  
(58/2022)**

Appealed from GP

Date to be heard: 28 February 2023

Zondi JA, Schippers JA, Mbatha JA, Carelse JA, Meyer JA

**Insolvency law – cession** – appeal against an order of rectification of a security cession after insolvency, enabling a creditor to establish a secured claim – whether rectification of the document reflecting the security cession could have taken place after the advent of the *concursum creditorum* – whether or not rectification was permissible after *concursum creditorum* by altering the rights of creditors and prejudice to third parties – whether or not the first respondent, Voltex (Pty) Ltd (as the applicant in the court a quo), disclosed sufficient evidence in its founding papers to make out a case for rectification.

**28. Minister of Police, National Commissioner of SAPS and Provincial Commissioner of SAPS v Umbhaha Estates (Pty) Ltd, Roy Clifford Plath, Dean Plath, Shane Plath, Joshua Grimm, Alida Mkhabela, Kenny Mandlhope, Friday Makhubela, Miguel Cossa, Zecharia Tamela and 43 Others**

(1281/2021)

Appealed from GP

Date to be heard: 28 February 2023

Van der Merwe JA, Molemela JA, Nicholls JA, Mothle JA, Nhlangulela AJA

**Delict – duty of care of state organ – civil procedure – postponement – withdrawal as attorney of record** – appeal against the judgment of the court a quo, whereby the appellants were found to be liable to pay damages of the first and sixth respondents as a result of the appellants' alleged wrongful and negligent conduct arising from a strike that took place in July 2007 – whether the conduct of the part of SAPS was negligent and wrongful – whether the appellants breached their duty of care and were liable for consequent damages suffered by the first and sixth respondents – whether the awarding of costs by the court a quo associated with the relocations of the trial to the premises of the respondents' attorneys of record were justified.

**29. Ruth Eunice Sechoaro v Patience Kgwadi**

(896/2021)

Appealed from GP

Date to be heard: 1 March 2023

Dambuza AP, Schippers JA, Nicholls JA, Kathree-Setiloane AJA, Siwendu AJA

**Civil procedure – family law – wills and estates – variation agreement** – appeal against the judgment of the court a quo, in which it was declared that the variation agreement of the divorce

order between the respondent and her deceased husband was not enforceable against her and also not enforceable against the deceased estate – whether the court a quo erred in not following the Plascon-Evans rule in resolving factual disputes in motion proceedings – whether the court a quo failed to apply the *pacta sunt servanda* principle, and if so the consequences of such failure – whether the court a quo erred in finding that the variation agreement signed by the respondent was null and void on the ground of a reasonable mistake – whether there was no real dispute of fact, because the relevant evidence was that of the respondent only.

**30. Wentzel Lindsay Oaker, Global Pact Trading 151 (Pty) Limited, Wentzel Lindsay Oaker N O, Rochelle Deidre Oaker N O, Clint Brent Oaker, Daren Pillay v Pierre du Plessis Kriel N O**

**(118/2021)**

Appealed from WCC

Date to be heard: 1 March 2023

Ponnan JA, Gorven JA, Mabindla-Boqwana JA, Nhlangulela AJA, Olsen AJA

**Company law – shares – contract – property law** – whether a commercial opportunity was one which could properly be taken up by the investment funds – the valuation of immovable property and the sand deposits on the property – whether there was a breach (or otherwise) of fiduciary duties – quantification of claims – whether a corporate opportunity that was available to the *bewind* trusts was diverted – whether there was an overpayment for shares – whether it was appropriate to have ascribed value to an alleged sand resource – whether there was liability for repayment of excess management and performance fees, and liability for other fees irregularly charged.

**31. Lufuno Muravha v Minister of Police**

**(179/2022)**

Appealed from LT

Date to be heard: 1 March 2023

Saldulker JA, Mocumie JA, Molemela JA, Carelse JA, Weiner JA

**Criminal law and procedure – absence of the appeal transcribed record – fair trial rights – right of access to court – claim for damages** – whether the full court failed to consider all the issues raised by the appellant – whether the absence of the appeal transcribed record prevented the full court’s proper and just consideration of the appeal – whether the appellant’s right to appeal was violated as a result of the missing records – whether the high court

committed an error by not deciding the matter on the pleaded facts of intention – whether the full court misdirected itself by deciding the issue of intention as if it was a court of first instance – whether the full court, in deciding the appeal, gave due regard to the appellant’s right to equality before the law – whether the trial court erred in finding that there was conflicting versions between the appellant’s version and that of the respondent – whether the high court misdirected itself on whether the appellant was 150km away from where the Nyala police vehicle was – whether the trial court failed to consider the evidence with reference to ss 7(2), 205 and 39(2) of the Constitution – whether the trial court proceedings should be set aside on the basis that the appellant’s right to fair hearing in terms of s 34 of the Constitution was infringed as a result of the missing records of the proceedings – whether the trial court costs order awarded against the appellant in respect of the merits and application for leave was justified – whether the appellant’s inability to appeal the factual findings made by the high court infringed his right to access to court as enshrined in s 34 of the Constitution – whether the matter should start *de novo* – whether this Court should consider the appeal and make an order that the respondent is liable for the damages that the appellant may prove.

**32. Loyiso Ndodomzi Godlwana v Gary Ronald van Wyk, Master of the High Court, Mthatha, Nosipho Temperance Godlwana and Hermanus Johannes Roodt (45/2021)**

Appealed from ECM

Date to be heard: 2 March 2023

Ponnan ADP, Nicholls JA, Gorven JA, Nhlangulela AJA, Unterhalter AJA

**Administrative law – review – wills and estates – validity of will** – appeal against the decision of the full bench reviewing and setting aside the decision of the second respondent, the Master of the High Court, Mthatha, to revoke its earlier acceptance of the testator’s will, dated 27 February 2017, as well as the finding that the will was valid – whether the appellant bore an onus that the testator was mentally unsound at the time of making the 2017 will – whether, in motion proceedings, the question of onus did not arise, as the matter fell to be decided on the respondent’s version unless it was fanciful or unworthy of belief – whether it was for the first respondent, Gary Ronald van Wyk, to have realised that a serious dispute of fact was bound to develop at the time the application was launched – whether the evidential requirements for either a declaration of unsound mind or incapacity of managing one’s affairs was the same in rule 57(3), and rules 57(1), (2) and (3) must be met before a *curator bonis* was appointed.

**33. Chavonnes Badenhorst St Clair Cooper N O and Sumiya Abdool Gafaae Khammisa N O v Curro Heights Properties (Pty) Ltd  
(1300/2021)**

Appealed from WCC

Date to be heard: 2 March 2023

Zondi JA, Mocumie JA, Mothle JA, Meyer JA, Molefe JA

**Property law – sale of immovable property – validity of sale agreement – contract** – appeal against the decision of the court a quo to dismiss the appellant’s application for declaratory relief seeking order declaring the sale agreement between the appellant and respondent in respect of four properties invalid, alternatively that it had been cancelled – whether an agreement of sale of immovable property was invalid for lack of consensus and/or failure to comply with s 2(1) of the Alienation of Land Act 68 of 1981 and/or had been validly cancelled.

**34. The Butcher Shop and Grill CC v Trustees for the time being of the Bymyam Trust  
38/2022**

Appealed from WCC

Date to be heard: 2 March 2023

Van der Merwe JA, Mbatha JA, Carelse JA, Weiner JA, Goosen JA

**Contract – lease agreement** – appeal against the judgment of the court a quo dismissing the appellant’s counter-application for the remission of rental as a consequence of the national lockdown regulations imposed in terms of the Disaster Management Act 57 of 2002 – whether a commercial tenant was entitled to withhold payment of rental to the landlord payable in terms of a lease agreement during the period of national lockdown and whether it was entitled to claim a rental remission, wholly or in part, as a result of the legislative restrictions caused by the imposition of the regulations – whether a written lease agreement concluded by the parties, properly interpreted in the context of the common law, precluded the appellant from claiming any rent remission in circumstances where the use and enjoyment of the leased premises had been affected by *vis major* in the form of the Covid-19 lockdown regulations – if not, whether an addendum to the lease concluded between the appellant, the respondent and a company called Apoldo Trading (Pty) Ltd precluded the appellant from claiming any rent remission in respect of the leased premises – if so, whether there was a basis to disregard the corporate personalities of the appellant and Apoldo Trading (Pty) Ltd for the purposes of the rent remission relief sought in the appellant’s counter-application.

**35. Minister of Police v Vuyani Goodman Gqamane**

**(226/2022)**

Appealed from ECG

Date to be heard: 3 March 2023

Dambuza AP, Molemela JA, Mbatha JA, Goosen JA, Siwendu AJA

**Criminal law and procedure – unlawful arrest and detention – exercise of discretion to arrest – calculation of interest for damages awarded** – whether the issue of the exercise of discretion to arrest was regarded as an issue before the trial court and whether it was fully canvassed by both parties during the trial – whether the learned judges erred and misdirected themselves in finding that, even though the issue of the exercise of discretion was not pleaded, they had a right to decide it and find that the respondent’s arrest was unlawful and consequently also his detention, due to the failure on the part of the arresting officer to exercise discretion – whether the learned judges erred and misdirected themselves by awarding general damages in the sum of R160 000 to the respondent in respect of his detention from 17 February 2017 until 20 February 2017 – whether the learned judges erred and misdirected themselves by ordering the appellant to pay interest calculated at the legal rate, from date of demand to date of payment, whereas, the respondent claimed interest from date of service of summons to date of final payment.

**36. Outdoor Investment Holdings (Pty) Ltd and Inyathi Sporting Supplies (Pty) Ltd v Minister of Police and National Commissioner for the South African Police Service**

**(344/2022)**

Appealed from GP

Date to be heard: 3 March 2023

Saldulker JA, Carelse JA, Nhlangulela AJA, Kathree-Setiloane AJA, Unterhalter AJA

**Criminal law – licencing – Firearms Control Act 60 of 2000 – Firearms Control Regulations, 2004 – interpretation of reg 67(2)** – whether the word ‘person’ in regulation 67(2) of the Firearms Control Regulations included a dealer of firearms or ammunitions, and therefore entitled them to store firearms and/or ammunition at the premises of another dealer.

**37. Reneal Allan Francis v The State**

**(1301/2021)**

Appealed from ECG

Date to be heard: 3 March 2023

Van der Merwe JA, Mabindla-Boqwana JA, Meyer JA, Weiner JA, Molefe JA

**Criminal law – sentencing** – whether the sentence imposed on the appellant was appropriate or whether the sentence was severe and so shocking that it was disproportionate to the offence.

**38. Member of the Executive Council for the Department of Education for the Province of Natal v Mayadevi Singh**

**(1188/2021)**

Appealed from KZD

Date to be heard: 6 March 2023

Ponnan ADP, Carelse JA, Meyer JA, Goosen JA, Olsen AJA

**Delict law – negligence – legal causation – Employment of Educators Act 76 of 1998 – Personnel Administrative Measures: Chapter H: Grievance Procedure (PAM) – Policy and Procedure on Incapacity Live Leave and Ill-Health Retirement (PILIR)** – whether the MEC was liable in delict for the loss suffered by Singh for taking early retirement, the loss being what she would have earned had she not retired early and had instead worked until the age of 65 – whether Singh proved negligence and causation – whether the respondent was entitled to sue in delict or whether the respondent was bound to comply with the Personnel Administrative Measures: Chapter H: Grievance Procedure (PAM); and the Policy and Procedure on Incapacity Live Leave and Ill-Health Retirement (PILIR).

**39. Raymond Daniel de Villiers v The State**

**(996/2021)**

Appealed from FB

Date to be heard: 6 March 2023

Zondi JA, Molemela JA, Mothle JA, Nhlangulela AJA, Siwendu AJA

**Criminal law and procedure – compensation order – appeal** – whether a court of appeal could impose an order in terms of s 300 of the Criminal Procedure Act 51 of 1977 absent an application by the complainant or prosecutor on the complainant's behalf.

**40. Mystic River Investments 45 (Pty) Ltd and Karim Issa Mawji v Zayeed Paruk Inc, Naushad Mahomed Ismail (Gora) Abdoola, Shaukat Ali Moosa, Salim Mahomed Moosa and Goolam Hoosen Moosa**

**432/2022**

Appealed from KZP

Date to be heard: 6 March 2023

Van der Merwe JA, Schippers JA, Gorven JA, Matojane JA, Kathree-Setiloane AJA

**Civil procedure – security for costs** – whether the second appellant should be ordered to pay security for costs in the underlying main application.

**41. Member of the Executive Council for Health and Social Development of the Gauteng Provincial Government v Fiselani Beauty Mathonsi (obo Luyanda Philani Mathonsi) (272/2022)**

Appealed from GJ

Date to be heard: 7 March 2023

Dambuza AP, Salduker JA, Nicholls JA, Carelse JA, Mabindla-Boqwana JA

**Delict – medical negligence – causation** – whether the full court was correct in finding that the appellant was negligent by failing to apply the appropriate level of nursing care – whether the cerebral palsy outcome was the direct result of such negligence – whether the appellant was liable to pay damages.

**42. Close-up Mining (Pty) Ltd, Willem Pieter Tenner and Close-up Machinery and Plant Hire (Pty) Ltd v The Arbitrator, Judge Phillip Boruchowitz and Lutzkie Group of Companies (Pty) Ltd (286/2022)**

Appealed from GP

Date to be heard: 7 March 2023

Van der Merwe JA, Mocumie JA, Meyer JA, Matojane JA, Unterhalter JA,

**Administrative law – review – arbitral award – grounds of review – gross irregularity** – appeal against the order of the court a quo dismissing the appellants' application to review and set aside an arbitral award in terms of s 33(1) of the Arbitration Act 42 of 1965, and granting the second respondent's, Lutzkie Group of Companies (Pty) Ltd, application to make the award an order of court – whether the arbitration agreement between the parties vested the Arbitrator with a discretion to adjudicate an issue between the parties not raised in the pleadings – whether the decision of the Arbitrator that the second appellant, Willem Pieter Tenner, was a party to an agreement resulted in him committing a gross irregularity and exceeding his jurisdiction, as contemplated in s 33(1)(b) of the Arbitration Act.

**43. KGA Life Limited v Multisure Corporation, Q Link Holdings (Pty) Ltd and African Unity Life Limited**

**(304/2022)**

Appealed from ECP

Date to be heard: 7 March 2023

Molemela JA, Mbatha JA, Weiner JA, Olsen AJA, Mali AJA

**Contract law – insurance – Insurance Act 18 of 2017 – cancellation** – whether, on a proper construction of the intermediary agreement and the master policy, a contractual relationship was established between KGA and the individual policyholders – whether, on a proper construction thereof, the termination of the intermediary agreement performed brought about the termination of the master policy – whether Multisure, in the wake of the changes as to what constitutes a ‘group scheme’ under the Insurance Act 18 of 2017, had standing to terminate the master policy – whether Multisure complied with its obligations framed in clause 8.2.7 of the intermediary agreement to inform ‘each and every policyholder on the book of [Multisure] that the underwriting agreement with KGA is cancelled’ – whether any obligation rested upon KGA Life to inform Q Link that KGA Life consented to the transfer of the policies to African Unity Life – whether there was any bar in law to giving effect to the order as framed by Schoeman J.

**44. Commissioner for the South African Revenue Service v Absa Bank Limited and United Towers Proprietary Limited**

**(596/2021)**

Appealed from ECP

Date to be heard: 8 March 2023

Dambuza AP, Schippers JA, Matojane JA, Goosen JA, Mali AJA

**Tax law – Tax Administration Act 28 of 2011 – Income Tax Act 58 of 1962 – Promotion of Administrative Justice Act 3 of 2000** – whether the court a quo ought to have determined the merits of the review applications – whether the court a quo was correct in finding that the decisions fell to be reviewed and set aside on the grounds of substantive errors of law – whether the South African Revenue Service’s refusal to withdraw the s 80J notices and the amendments were reviewable.

**45. Commissioner for the South African Revenue Service v Litha Mveliso Nyhonyha, Magdeline Sekgopi Nyhonyha N O (in her capacity as trustee of the Nyhonyha Family Trust IT 11919/96), Magandheran Pillay, Magandheran Pillay N O (in his capacity as**

**trustee of the Pillay Family Trust IT 9190/03), Indheran Pillay N O (in his capacity as trustee of the Pillay Family Trust IT 9190/03), Coral Lagoon Investments 194 (Pty) Ltd, Ash Brook Investments 15 (Pty) Ltd, K2019495062 (South Africa) (Pty) Ltd, Regiments Fund Managers (Pty) Ltd, Marcytouch (Pty) Ltd and 21 Others (1150/2021)**

Appealed from GJ

Date to be heard: 8 March 2023

Ponnan ADP, Van der Merwe JA, Weiner JA, Molefe JA, Unterhalter AJA

**Company law – insolvency – winding-up** – appeal against the court a quo’s judgment setting aside the winding-up of Regiments Capital (Pty) Ltd (Regiments) in terms of s 354 of the Companies Act 61 of 1973 – whether the exercise of the discretion by the court a quo to set aside the winding-up of Regiments could be faulted, and if so whether this Court could interfere with the exercise of such discretion on appeal – whether this Court ought to interfere in the exercise of the court a quo’s discretion to set aside the winding-up of Regiments with conditions on the basis that the court a quo exercised its discretion on a wrong principle or made a decision that was not reasonably open to it – whether the continuation of winding-up was unnecessary or undesirable in circumstances where: (1) Regiments was unable to meet current demands upon it in the ordinary course of business; and (2) the full extent of Regiment’s liabilities was uncertain and there may have been substantial additional liabilities not presently known or quantified – whether the evidence before the court a quo justified its assessment of the realisable value of Little River Trading 191 (Pty) Ltd and Kgoro Consortium (Pty) Ltd – whether Regiments’ alleged factual insolvency (even if this was found to have been proved) was a valid basis for the setting aside of its winding-up – whether the court a quo had the power to order the South African Revenue Service (SARS) to issue assessments within a prescribed period contrary to s 92 of the Tax Administration Act 28 of 2011 – whether the order of the court a quo provided for the effective winding-up of Regiments, but was outside the ambit of the winding-up provisions of the Companies Act, 1973 and the Insolvency Act 24 of 1936 – if so, whether the power to set aside the winding-up ‘on such terms and conditions as the Court may deem fit’ included the power to impose a court-controlled winding-up of a company’s business outside the ambit of the winding-up provisions of the Companies Act, 1973 and the Insolvency Act, 1936.

**46. Maxwele Royal Family and Asiphe Solanga Maxwele v Premier: Eastern Cape, MEC for Cooperative Governance and Traditional Affairs: Eastern Cape, Baxolele Maxwele and Sangoni Royal Family**

(1176/2021)

Appealed from ECM

Date to be heard: 9 March 2023

Dambuza AP, Nicholls JA, Carelse JA, Nhlangulela AJA, Mali AJA

**African customary law – administrative law – review– powers to appoint headman or headwoman – Traditional Leadership and Governance Framework Act 41 of 2003 – Eastern Cape Traditional Leadership and Governance Act 1 of 2017** – appeal in respect of the identification and recognition of the successor to the position of headman – interpretation of s 21(6) of the Eastern Cape Traditional Leadership and Governance Act 1 of 2017 – whether the identification of the third respondent, Baxolele Maxwele, by the fourth respondent, the Sangoni Royal Family, as acting headman of Zimbane Administrative Area was legally valid – whether the first and second respondents’ appointment and recognition of the third respondent, as acting headman of Zimbane Administrative Area was legally valid – whether the appellants had *locus standi* to bring the review application – whether the headmanship had a royal family of its own or was subject to the royal family of the senior traditional leader under whose jurisdiction it falls.

**47. De La Rey Pieter Jacobus v P H De La Rey Family Trust, Chris De La Rey Trust, Koos De La Rey Trust, Marita Scholtz Trust, Jaco De La Rey Kindertrust, Marianne Hill Trust, De La Rey Christiaan (in his representative capacity as Trustee of the first, second, third and fifth respondents), De La Rey Christiaan (in his personal capacity), Ferreira Dawid (in his representative capacity as trustee of the first, second, third and fifth respondents), Ferreira Dawid (in his personal capacity) and Others**

(084/2021)

Appealed from GP

Date to be heard: 9 March 2023

Ponnan ADP, Saldulker JA, Gorven JA, Mbaindla-Boqwana JA, Matojane JA

**Wills and estates – trusts – discrimination on the listed ground of ‘birth’ – authority to create further trust – curatorship** – whether the Equality Court had jurisdiction, given the subject matter of the appellant’s complaint – the effect of the concessions and payments by the respondents (excluding the fifteenth respondent) – whether the court a quo found that the

appellant had proved discrimination on the listed ground of birth – whether the court a quo was correct in its finding that discrimination against children born out of wedlock was no serious matter and therefore permissible – whether the respondents’ failure to satisfy their burden of proof entitled the appellant to a finding that the appellant had been unfairly discriminated against on one or more prohibited grounds – whether the will created a *fideicommissum simplex* – whether the will or the trust deed was the governing deed of the trust – whether the first respondent lost its discretionary nature at the death of the testator – whether the trustees became mere administrators to distribute the inheritance – whether the trustees had the power to create a further trust for the distribution of inheritance – whether the distribution of inheritance through the further trust was permissible or *ultra vires* – whether the *dies cedit* arrived at the death of the testator – whether the premature distribution of the farm to the seventh and eighth respondents was permissible or whether there was any discriminatory effect thereon – whether the eighth/ninth respondent with his co-trustees was entitled to their self-appointment as *curatores bonis* over the appellant as a married adult person without any authorising court order – the role and co-liability of the fifteenth respondent as privy to the trustees for *inter alia* having created unauthorised further trusts through which the unauthorised curatorship had been facilitated.

**48. FirstRand Bank Ltd trading as FNB v DLX Properties (Pty) Ltd  
(161/2022)**

Appealed from WCC

Date to be heard: 9 March 2023

Zondi JA, Schippers JA, Mothle JA, Kathree-Setiloane AJA, Siwendu AJA

**Company law - Companies Act 61 of 1973 – winding-up** – whether the court a quo correctly refused the appellant’s application for winding-up of the respondent.

**49. PUTCO (Pty) Ltd v City of Johannesburg Metropolitan Municipality, The South African National Taxi Council, Alexandra, Randburg, Midrand, Sandton Taxi Association, Alexandra Taxi Association, Ivory Park Taxi Association, Midrand Taxi Association, Rabie Ridge Taxi Association, Randburg Local and Long Distance Taxi Association and MEC for Roads and Transport, Gauteng  
(252/2022)**

Appealed from GJ

Date to be heard: 10 March 2023

Saldulker JA, Schippers JA, Mbatha JA, Molefe JA, Unterhalter AJA

**Alternative dispute resolution – National Land Transport Act 5 of 2009 – interim interdict – admission of new evidence on appeal – remedy** – whether s 46 of the National Land Transport Act 5 of 2009 applied to disputes between PUTCO and the City of Johannesburg, and if so, whether PUTCO was entitled to an interim interdict – whether the evidence sought to be introduced by PUTCO should be admitted – whether the remedy sought has become moot.

**50. eThekweni Municipality v CMC Di Ravenna South Africa Branch (in liquidation) (181/2022)**

Appealed from KZD

Date to be heard: 10 March 2023

Van der Merwe JA, Mocumie JA, Matojane JA, Weiner JA, Olsen AJA

**Contract law – specific performance – discretion not to enforce adjudicative awards** – whether, in respect of two of the adjudication awards, the obligation to make payment was overtaken by subsequent events – whether a court has a discretion to decline to enforce adjudication awards – and if so, how was such discretion to be exercised – whether, in the factual circumstances of this case, the court a quo ought to have exercised its discretion not to enforce the adjudication awards.

**51. Lafarge Mining South Africa (Pty) Ltd v Maqhawe Xolani Zondo N O and Ntwashini Community Trust (1297/2021)**

Appealed from KZD

Date to be heard: 10 March 2023

Molemela JA, Meyer JA, Goosen JA, Mali AJA, Siwendu AJA

**Contract law – authority to cancel agreement – judicial discretion** – whether the first respondent had the authority to cancel all the agreements between the appellant and the second respondent – whether the nomination agreement is binding on the trustees for the time being of the second respondent – whether the learned Justice exercised her discretion properly in dismissing the declaratory relief.

**52. Enviroserv Waste Management (Pty) Ltd v Commissioner for the South African Revenue Service**

**(154/2022)**

Appealed from Tax Court

Date to be heard: 13 March 2023

Dambuza AP, Zondi JA, Nicholls JA, Gorven JA, Mali AJA

**Income tax – Income Tax Act 58 of 1962 – claim for capital allowances – understatement penalty** – whether the taxpayer was entitled to claim capital allowances in respect of cells constructed on its landfill sites at a rate as provided for in terms of s 12C of the Income Tax Act 58 of 1962 – whether the appellant’s failure to disclose interest from a Ugandan subsidiary in circumstances where such interest had been impaired for accounting purposes amounted to a *bona fide* inadvertent error.

**53. Minister of Justice and Constitutional Development, Minister of Police and Minister of Home Affairs v Franklin D Pennington and Gail Jackson Pennington**

**(162/2022)**

Appealed from GP

Date to be heard: 13 March 2023

Ponnan ADP, Mocumie JA, Weiner JA, Goosen JA, Kathree-Setiloane AJA

**Delict – National Prosecuting Authority Act 33 of 1998 – Prescription Act 68 of 1969 – causation – unlawful arrest – malicious prosecution – dismissal of a special plea of prescription – non-joinder** – whether the court a quo erred in dismissing the appellants’ special plea of prescription of the respective causes of action relied upon by the respondents in the action – whether the court a quo erred in dismissing the first appellant’s plea of mis/non-joinder, in that neither the National Prosecuting Authority nor the Director of Public Prosecutions were joined in the action in a case where both the respondents relied on malicious prosecution as a cause of action against the first appellant – whether the court a quo was correct in finding that the ‘alleged causation which is the subject of [the respondents’ claim] is an accumulation of causes by different defendants . . .’ and also finding that ‘[w]hat is definitive in this matter is the fact that [the respondents] are not relying on a single self-standing claim based on unlawful arrest. What is clear is that there was a chain of events that followed the initial arrest, and which culminated in the appeal being upheld’ – whether the court a quo was correct in finding that the first appellant remained liable for the conduct as complained of in the particulars of claim, ie that the first appellant remained responsible for the conduct of employees of the National Director of Public Prosecutions, as provided for in s 179 of the Constitution, and employees in the Department of Justice.

**54. Ronica Ragavan, Ravindra Nath and Ashu Chawla v Optimum Coal Terminal (Pty) Ltd (in business rescue), Juanito Martin Damons N O, Kurt Robert Knoop N O (2<sup>nd</sup> and 3<sup>rd</sup> respondents cited in their capacities as joint business rescue practitioners of the 1<sup>st</sup> respondent), All Affected Parties of Optimum Coal Terminal (Pty) Ltd as per annexure A to the notice of motion, Tegeta Exploration and Resources (Pty) Ltd (in business rescue), Johan Louis Klopper N O, Kurt Robert Knoop N O (6<sup>th</sup> and 7<sup>th</sup> respondents cited in their capacities as joint business rescue practitioners of the 5<sup>th</sup> respondent) and All Affected Parties of Tegeta Exploration and Resources (Pty) Ltd as per annexure B to the notice of motion**

**(136/2022)**

Appealed from GJ

Date to be heard: 13 March 2023

Van der Merwe JA, Mothle JA, Mabindla-Boqwana JA, Moelefe JA, Unterhalter AJA

**Company Law – Companies Act 71 of 2008 – business rescue** – when a company in business rescue (company A) is a creditor of another company in business rescue (company B) and company B is a wholly owned subsidiary of company A, does the right to cast a vote on any matter contemplated under ss 151 and 152 of the Companies Act 71 of 2008 vest in company A's business rescue practitioners or its board of directors.

**55. Muslim Lawyers Association, Ermelo Muslim Jamaat and Muhammed Faiyazz Dendar v South African Police Service, Minister of Police and Minister of Co-operative Governance and Traditional Affairs (Hereinafter referred to as 'Muslim Lawyers Association')**

And

**Solidariteit Helpende Hand NPC, Afriforum NPC, Die Instituut vir Christelike, Grondslagstudies NPC, Die Gereformeerde Kerk Innesdal, Hervormde Kerk Premiermyn, Gereformeerde Kerk Wilropark, Vrye Gereformeerde Kerk Pretoria, Gereformeerde Kerk Oranjerivier, Hervormde Kerk Oostelike Pietersburg and Groot, Dawid Benjamin v The Minister of Co-operative Government and Traditional Affairs (Hereinafter referred to as 'Solidariteit Helpende 1')**

And

**Solidariteit Helpende Hand NP, The South African National Christian Forum (SANCF), Muslim Lawyers Association and Freedom of Religion South African NPC v The Minister**

**of Co-operative Governance and Traditional Affairs (Hereinafter referred to as ‘Solidariteit Helpende 2’)**

And

**South African National Christian Forum, Cornerstone Church Ministry and Antioch Bible Church v The Minister of Co-operative Governance and Traditional Affairs (Hereinafter referred to as ‘South African National Christian Forum’)**

**(104/2022)**

Appealed from

Date to be heard: 14 March 2023

Saldulker JA, Nicholls JA, Mabindla-Boqwana JA, Weiner JA, Olsen AJA

**Administrative law – executive action – Promotion of Administrative Justice Act 3 of 2002 – Disaster Management Act 57 of 2002 – lawfulness of impugned regulations – freedom of religion – mootness** – whether regulation-making by the Minister in terms of s 27(2) of the Disaster Management Act 57 of 2002 (the DMA) constituted administrative action for the purposes of the Promotion of Administrative Justice Act 3 of 2002 or executive action – whether the appeal was moot, given that the impugned regulations were long since repealed and no longer in force or in existence before the adjudication of the matter in the court a quo – if the enquiry was not moot, whether the impugned regulations should be reviewed and set aside as being unlawful and of no force and effect – whether the absolute ban on faith-based gatherings in terms of the impugned regulations issued under the DMA placed an unjustifiable limitation on constitutionally protected religious freedom and association rights, and were *ultra vires* on account of not being ‘necessary’ as contemplated in s 27(3) of the DMA – whether the court a quo expressed itself correctly on the applicable review standard.

**56. Makwenda Delina Mashola v Tsietsi Philemon Mashola**

**(22/2022)**

Appealed from LP

Date to be heard: 14 March 2023

Molemela JA, Mbatha JA, Carelse JA, Matojane JA, Siwendu AJA

**Family law – divorce – partial forfeiture of the benefits of the marriage in community of property – pension benefits** – whether the applicant was entitled to a partial forfeiture order in respect of the benefits of the marriage in community of property – whether the respondent’s prolonged extra-marital relationship and accompanying mismanagement of the parties’ cash loan business to the detriment of the joint estate justified an order for partial forfeiture of the

pension benefit – whether the applicant condoned the respondent’s extra-marital relationship in circumstances where it was raised *mero motu* for the first time by the full court and same was not pleaded nor ventilated during the trial.

**57. Member of the Executive Council for Health, Eastern Cape Province v Yoleka Nohiya obo Endinalo Nohiya**

**(56/2021)**

Appealed from ECM

Date to be heard: 14 March 2023

Schippers JA, Gorven JA, Goosen JA, Kathree-Setiloane AJA, Unterhalter AJA

**Delict – medical negligence** – appeal against the decision of the full court, which dismissed an appeal against the order of the court a quo, whereby the respondent succeeded in her claim for damages against the appellant for medical negligence which led to her child suffering cerebral palsy – whether condonation should be granted to the appellant for the late filing of the appeal record and the appeal be reinstated – whether the respondent had made out a case for medical negligence – whether the court may have regard to the scientific features and mechanism of an acute profound injury as opposed to a partial prolonged injury, as pronounced by the court in judgments prior and subsequent to the hearing a quo, and whether such judgments have binding and/or persuasive value.

**58. The Body Corporate of Marsh Rose v Arno Steimmuller, Standard Bank of South Africa Limited, The Sherriff of Halfway House and Haasbroek & Boezaart Attorneys Inc**  
**(149/2022)**

Appealed from GJ

Date to be heard: 15 March 2023

Dambuza AP, Zondi JA, Molemela JA, Carelse JA, Molefe JA

**Property law – Sectional Titles Act 95 of 1986 – sectional titles** – whether it was competent and reasonable for the appellant to rely on the embargo established by s 15B(3)(a)(i)(aa) of the Sectional Titles Act, as amended – if so, to what extent and under what circumstances would security tendered by the first respondent oblige the appellant to issue clearance figures.

**59. TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Christian Arnold Hiestermann**

**(273/2022)**

Appealed from MM

Date to be heard: 15 March 2023

Ponnan ADP, Meyer JA, Weiner JA, Nhlangulela AJA, Unterhalter AJA

**Company law – s 164 of the Companies Act 71 of 2008 – protection remedy – effects of amendments to memorandum of incorporation** – appeal against a portion of the order of the full court, which upheld an appeal against the order of the court a quo, and dismissed with costs an exception taken by the appellant to the respondents' particulars of claim on the basis that it disclosed no cause of action – the appellant did not appeal against the dismissal of its exception on the basis that the particulars of claim were vague and embarrassing – whether the shareholder protection remedy in s 164 of the Companies Act 71 of 2008 should be interpreted in such a manner as to render that remedy unavailable to shareholders of a company that only have one class of shares – whether the amendments to the appellant's memorandum of incorporation altered the preferences, rights, limitations or other terms attaching to the shares in a manner materially adverse to the rights or interests of holders of the appellant's shares.

**60. Nompumelelo Sellina Siphola obo Asanda Siphola v MEC for Health, Eastern Cape Province**

**(017/2022)**

Appealed from ECM

Date to be heard: 15 March 2023

Van der Merwe JA, Schippers JA, Gorven JA, Olsen AJA, Mali AJA

**Delict – medical negligence – applicability of s 15 of the Civil Proceedings Evidence Act 25 of 1965** – whether a medico-legal report of a plaintiff's expert witness inexorably binds the expert, or any other expert/s the plaintiff intends to call, to what was stated in the medico-legal report.

**61. Top Lay Egg Co-op Limited and George Schwartzel Boerdery (Pty) Limited v Minister of Agriculture, Forestry and Fisheries, Executive Officer: Agricultural Products Standards, Department of Agriculture: Food Safety and Quality Assurance, Food Safety Agency (Pty) Ltd, Agency for Food Safety and Quality (Pty) Ltd and Agency for Food Safety**

**(400/2022)**

Appealed from GP

Date to be heard: 16 March 2023

Saldulker JA, Carelse JA, Mothle JA, Matojane JA, Nhlangulela AJA

**Administrative law – Promotion of Administrative Justice Act 3 of 2000 – late institution of review proceedings – application for condonation – Agricultural Product Standards Act 119 of 1990 – appointed assignee – power of inspections – inspection fees** – whether the third respondent (FSA) was the appointed assignee – whether the assignee whoever it might be had the power to inspect, in terms of s 3A of the Agricultural Product Standards Act 119 of 1990 (APS Act), by necessary implication – whether the assignee complied with the process of public participation pertaining to the determination of the fees, and furthermore whether the determination of the fee was rational and not arbitrary – whether the third respondent was entitled to re-issue the invoices generated by the fourth respondent, who was not the appointed assignee, which were set aside by the court a quo – whether the court a quo erred in dismissing the declaratory order that the Minister had not assigned the powers set out in ss 1(1A)(a) and (b)(ii), 3A, 4A, 7 and 8 of the APS Act – whether an appeal on the ground that the notice and comment procedure adopted by the third respondent in determining the fee was procedurally unfair and should be precluded on the basis that the cause of action for relief in terms of s 6(2)(c) of PAJA was never canvassed in the affidavits serving before Davis J – whether the application was instituted outside the 180 days as prescribed in s 7(1) of PAJA, and whether condonation was to be granted in respect of both appellants – whether the appellants were obliged to exhaust the internal remedy set forth in s 10 of the APS Act.

**62. Jacolien Barnard N O and Beatrice Linda Mills N O (in their capacity as joint provisional liquidator of CMR Group (Pty) Ltd (in liquidation, Masters Ref No: T1072/2019) v National Consumer Tribunal and National Credit Regulator 940/2021**

Appealed from GP

Date to be heard: 16 March 2023

Mocumie JA, Mbatha JA, Mabindla-Boqwana JA, Kathree-Setiloane AJA, Siwendu AJA

**Company law – Companies Act 61 of 1973 – National Credit Act 34 of 2005 – Insolvency Act 24 of 1936 – voluntary liquidation – *concursum creditorum* – Superior Courts Act 10 of 2013 – application for special leave to appeal** – whether the applicant has satisfied the requirements for special leave as stipulated in s 16(1)(b) of the Superior Courts Act 10 of 2013 – whether the principle of *concursum creditorum* had the effect that once a company was placed in liquidation, the Tribunal was then prevented from issuing orders against such company as provided for in terms of the National Credit Act 34 of 2005, including ss 83(2) and 150 –

whether the Tribunal, erroneously, granted certain orders against CMR after it had gone into liquidation, which the applicants contend it could not competently have granted against an insolvent company.

**63. Super Group Holdings (Pty) Ltd v Pop-up Trading 39 (Pty) Ltd, Zustonelli Limited BVI, Anthony Richard Pinfold and Kevin Trisk SC N O (as arbitrator) (285/2022)**

Appealed from GJ

Date to be heard: 16 March 2023

Nicholls JA, Gorven JA, Meyer JA, Molefe JA, Olsen AJA

**Alternative dispute resolution – Arbitration Act 42 of 1965 – arbitral award** – whether the arbitrator, in not determining an issue that was not pleaded, acted in a manner that triggered the provisions of s 33(1)(b) of the Arbitration Act 42 of 1965 and rendered the award susceptible to review and being set aside.

**64. Liberty Group Limited v Mohammed Shaaz Moosa (126/2022)**

Appealed from KZP

Date to be heard: 17 March 2023

Ponnan ADP, Mbatha JA, Mothle JA, Meyer JA, Molefe JA

**Civil law and procedure – insolvency – Insolvency Act 24 of 1936 – implied repeal of s 150(5) of the Insolvency Act – joinder – rules 10 and 16A of the Uniform Rules of Court** – whether this Court has jurisdiction to entertain an appeal against a non-appealable order – whether there has been an implied repeal of s 150(5) of the Insolvency Act 24 of 1936 – whether the appellant failed to raise the issue of constitutionality at the first possible opportunity – whether the appellant’s failure to join the Minister under rule 10 of the Uniform Rules of Court (the rules) was detrimental to its appeal – whether the appellant failed to comply with rule 16A of the rules.

**65. Leon Howard Cohen N O, Gregory William Deans N O, Jonathan Shawn Rabie N O, Johnathan Alfred Leonard Chapman N O, Colin William Green N O and Colin Anderson N O (Appellants are cited in their capacities as trustees for the time being of the Century City Property Investment Trust) v Michelle Deans (368/2022)**

Appealed from WCC

Date to be heard: 17 March 2023

Saldulker JA, Mcoumie JA, Nicbolls JA, Mali AJA, Siwendu AJA

**Civil procedure – Superior Courts Act 10 of 2013 – Uniform Rules of Court** – the test to be applied in summary judgment proceedings under the amended rule 32 and what was required of both plaintiff and defendant.

**66. ICollege (Pty) Ltd v Xcellence Skills Development and Mentorship CC and ZA Central Registry NPC**

**(106/2022)**

Appealed from GP

Date to be heard: 17 March 2023

Schippers JA, Carelse JA, Mabindla –Boqwana JA, Maotjane JA, Olsen AJA

**Intellectual property law – trade mark – passing off – interdictory relief in terms of s 34(1)(a) or (c) of the Trade Marks Act 194 of 1993** – appeal against decision of the court a quo to dismiss the appellant's, iCollege (Pty) Ltd, application to restrain the first respondent, Xcellence Skills Development, from infringing the appellant's rights acquired through the registration of its ICOLLEGE trade mark – whether the appellant proved that the first respondent was infringing its ICOLLEGE trade mark in terms of s 34(1)(a) or (c) of the Trade Marks Act 194 of 1993 – whether the appellant proved that the first respondent was passing off its services as those of the appellant.

**67. 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: 22 March 2023

Petse AP, Mbatha JA, Matojane JA, Weiner JA, Mali 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 *habitatio* to the second respondent in the court a quo.

