

**REPUBLIC OF SOUTH AFRICA**

**SUPREME COURT OF APPEAL**

**BULLETIN 2 OF 2023**

**CASES ENROLLED FOR HEARING: 1 May 2023 – 31 May 2023**

**1. The South African Nursing Council v Khanyisa Nursing School (Pty) Ltd, Minister of Health**

**835/2022**

Appealed from GP

Date to be heard: 2 May 2023

Dambuza ADP, Gorven JA, Meyer JA, Daffue JA, Unterhalter AJA

**Statutory Interpretation – Promotion of Administrative Justice Act 3 of 2000 – Regulations promulgated under the Nursing Act 33 of 2005** – whether the correct interpretation and application of Regulation 5(3) of the Regulations applicable to two nursing programmes, i.e. R 169 and R 171, for which the First Respondent was fully accredited by the Appellant – whether the Appellant has the authority in terms of the applicable legislation to grant permission to a Nursing Education Institution (“NEI”) to present the relevant nursing programmes spanning over two different calendar days – whether the First Respondent had a legitimate expectation that, upon being awarded full accreditation, it would be able to immediately commence with the accredited programs during the 2022 academic year – whether the Court a quo properly exercised its discretion in awarding costs on a scale between attorney and client against the Appellant – whether the appeal is rendered moot due to the effluxion of time.

**2. Rolston Pillay v The State**

**451/2022**

Appealed from GP

Date to be heard: 2 May 2023

Saldulker JA, Carelse JA, Hughes JA, Nhlangulela AJA, Masipa AJA

**Criminal law and procedure – conviction and sentence** – evidence – single witness – self-defence – whether the court a quo erred in accepting the evidence of a single witness and rejecting the evidence of the appellant by not finding that he had acted in self-defence – whether the appellant exceeded the boundaries of self-defence – whether the appellant should be

convicted of culpable homicide – whether the court a quo erred in not finding substantial and compelling circumstances allowing deviation from the prescribed minimum sentence.

### **3. Natasha Tanya Evans v The State**

**171/2022**

Appealed from GP

Date to be heard: 2 May 2023

Saldulker JA, Carelse JA, Hughes JA, Nhlangulela AJA, Masipa AJA

**Criminal law and procedure – Minimum Sentence Act 105 of 1997** – whether the learned magistrate misdirected himself in believing the Minimum Sentence Act was applicable to the facts and that there were no substantial and compelling factors to deviate from the minimum sentence of 15 years’ imprisonment – whether the sentence confirmed by the high court was appropriate.

### **4. Silverback Technologies CC, Omnico (Pty) Ltd and Cytek Cycle Distributors CC v Commissioner for the South African Revenue Service**

**301/2022**

Appealed from GP

Date to be heard: 3 May 2023

Petse AP, Mabindla-Boqwana JA, Weiner JA, Mali AJA, Masipa AJA

**Tax law – import duties – Customs and Excise Act 91 of 1964 – tariffs determination** – whether the products, as presented upon importation, were as a fact bicycles or parts and accessories of bicycles.

### **5. Summermania Eleven (Pty) Ltd v William Henry Hattingh N O**

**316/2022**

Appealed from ECG

Date to be heard: 3 May 2023

Dambuza ADP, Schippers JA, Mbatha JA, Mothle JA, Goosen JA

**Civil procedure – evidence of single witness** – whether the evidence of the appellant’s expert witness, Mr van Niekerk, a single witness, should have been accepted.

**6. Association for Voluntary Sterilization of South Africa v Standard Trust Limited, Professor Mushi Matjila N O, Associate Professor Lionel Green-Thompson N O, Edward Leslie Haynes-Smart N O, University of Cape Town and The Master of the High Court 325/2022**

Appealed from WCC

Date to be heard: 3 May 2023

Petse AP, Mabindla-Boqwana JA, Weiner JA, Mali AJA, Masipa AJA

**Wills and estates – interpretation** – meaning of the word ‘planning’ in the phrase ‘Family limitation and planning’ in clause 4.3.2.1 of the deceased’s will.

**7. Public Investment Corporation SOC Ltd and Government Employees Pension Fund v Trencon Construction (Pty) Ltd and GVK-Siya Zama Building Contractors (Pty) Ltd 365/2022**

Appealed from GP

Date to be heard: 4 May 2023

Ponnan JA, Mbatha JA, Gorven JA, Kathree-Setiloane AJA, Mali AJA

**Constitutional law – s 239(b)(ii) of the Constitution – definition of ‘organ of state’** – whether the Government Employees Pension Fund is an organ of state in terms of s 239(b)(ii) of the Constitution ‘for the purposes of the present application’.

**8. City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and The Body Corporate of Zambezi Retail Park and Zambezi Retail Park Investments (Pty) Ltd and Thumos Properties (Pty) Ltd and ZRJ Properties (Pty) Ltd 1124/2022**

Appealed from GJ

Date to be heard: 4 May 2023

Saldulker JA, Mothle JA, Matojane JA, Molefe JA, Daffue AJA

**Administrative law - Section 18(4) of the Superior Court’s Act – interpretation** – What is the meaning of ‘next higher court?’ – whether the appellant has a second right to an automatic appeal to approach the next higher court in terms of s 18(4) of the Act where a full court already heard an appeal in terms of s 18(4) – whether the order dated 10 November 2022 is enforceable in light of the fact that Vresthena failed to meet the basic requirements set out in s 18(4) of the Act – whether the order made is in contradiction to prevailing laws in South Africa.

**9. Mosselbaai Boeredienste (Pty) Ltd t/a Mosselbaai Toyota v OKB Motors CC t/a Bultfontein Toyota**

**1216/2021**

Appealed from FB

Date to be heard: 4 May 2023

Mocumie JA, Schippers JA, Carelse JA, Meyer JA, Goosen JA

**Civil law and procedure – condonation** – application for special leave to appeal against the exercise of a discretion by the Free State Division of the High Court, Bloemfontein, sitting as a court of appeal (the high court), in dismissing the applicant's application for condonation for its failure to timeously prosecute an appeal to the high court – the appeal to the high court was directed against the judgment granted in the Magistrate's Court for the district of Bultfontein dismissing the applicant's claim against the respondent for payment of the purchase price of a motor vehicle in terms of an agreement of sale concluded between the parties – the principles regarding the exercise of a discretion by the court to grant or refuse condonation – doctrine of estoppel by representation.

**10. The Director of Public Prosecutions KwaZulu-Natal v Brian Munsamy Pillay**

**706/2022**

Appealed from KZD

Date to be heard: 5 May 2023

Dambuza ADP, Schippers JA, Mothle JA, Matojane JA, Goosen JA

**Criminal law and procedure – Criminal Procedure Act 51 of 1977 – automatic right of appeal in terms of s 311** – whether the trial court complied with the provisions of s 93ter of the Magistrates Court Act 32 of 1944 *when* a company in business rescue (company A) was a creditor of another company in business rescue (company B) and company B was a wholly owned subsidiary of company A, did the right to cast a vote on any matter contemplated under ss 151 and 152 of the Companies Act 2008, vest in company A's business rescue practitioners or its board of directors.

**11. East Rand Member District of Chartered Accountants and Jaroslav Cerny v Independent Regulatory Board for Auditors, Chairperson of the Independent Regulatory Board for Auditors and Chief Executive Officer of the Independent Regulatory Board for Auditors**

**113/2022**

Appealed from LP

Date to be heard: 5 May 2023

Ponnan JA, Nicholls JA, Mabindla-Boqwana JA, Weiner JA, Siwendu AJA

**Administrative law –Auditing Professions Act 26 of 2005 – Mandatory Audit Firm Rotation Rule (MAFR)** – whether the applicants were obliged to institute their review application within 180 days of two preparatory decisions which preceded the promulgation of the MAFR rule on 5 June 2017 – whether the court a quo was entitled to refuse to entertain the review application on the grounds of undue delay and to consider its merits because the application was filed 179 days after the applicants had received reasons from IRBA for the promulgation of the MAFR rule on 1 December 2017 – whether the promulgation of the MAFR rule was ultra vires otherwise unlawful and vitiated by further irregularities including procedural unfairness, irrationality and unreasonableness – whether the MAFR rule constitutes an unjustifiable infringement of ss 18 and 22 of the Constitution – whether the setting aside of the MAFR rule constitutes just and equitable relief – whether IRBA should pay the applicants’ costs on a punitive scale if they are successful.

## **12. Daniel Malebadi Motladile v Minister of Police**

**414/2022**

Appealed from NWM

Date to be heard: 5 May 2023

Mbatha JA, Gorven JA, Nhlangulela AJA, Kathree-Setiloane AJA, Mali AJA

**Delict – damages – unlawful arrest** – whether the award of damages granted by the high court was manifestly unreasonable.

## **13. Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys, Chupjana Lekoloana Chueu, Thabo Milton Chueu, Brian Kingley Keabetsoe Koopedi, Charles Kgomotso Tsoku, Sekgapinye Tsetsewa Pheladi Raesibe Gwangwa, Pascalia Nothlanhla Matibela and Tsoku Chueu Incorporated Attorneys**

**459/2022**

Appealed from LP

Date to be heard: 8 May 2023

Saldulker JA, Nicholls JA, Carelse JA, Nhlangulela AJA, Mali AJA

**Civil procedure – Legal Practice Act 28 of 2014** – whether any evidence presented in the founding papers were proven on a balance of probabilities – whether misconduct was proven with reference to the relevant respondents – whether the court *a quo* misdirected itself in dismissing the appellant’s application with costs – whether the respondents should have been suspended pending the investigation of the affairs of the first respondent – whether s 40(3) of the Legal Practice Act 28 of 2014 finds application where no disciplinary steps were taken or completed against the relevant respondents.

**14. Gerard Vosloo N O (administrator of the South African Medical Association Trade Union) and The South African Medical Association Trade Union (under administration) v The South African Medical Association NPC and The Registrar of Labour Relations 490/2022**

Appealed from GP

Date to be heard: 8 May 2023

Gorven JA, Meyer JA, Goosen JA, Molefe JA, Masipa AJA

**Company Law – liquidation – s 345 of Companies Act 61 of 1973 – threshold of the Badenhorst rule – interpretation of court order** – whether the appellants have made out a case for the winding-up of the first respondent on any of the grounds in s 345 of the Companies Act 61 of 1973 – whether the court *a quo* correctly dismissed the appellants’ winding-up application against the first respondent – the correct interpretation of the order of the Labour court delivered by Van Niekerk J – whether the dispute raised by the first respondent meets the threshold of the Badenhorst rule.

**15. National Student Financial Aid Scheme v Samantha Lettie Moloi and Linda Makhaza and Keabetswe Motaung and University of the Witwatersrand and Minister of the Department of Higher Education and Training 574/2022 and 194/2022**

Appealed from

Date to be heard: 9 May 2023

Dambuza ADP, Hughes JA, Mabindla-Boqwana JA, Goosen JA, Molefe JA

**Constitutional Law – Section 29(1)(b) of the Constitution – interpretation – right to further education** – Whether the court *a quo*’s decision, in failing to dismiss the application for review before it, can be sustained on appeal – whether on proper assessment of the facts the respondents could be said to have met the eligibility criteria to qualify for funding of the

undergraduate degrees by the NSFAS – whether on a proper assessment of the facts, the determination of the funding eligibility criteria for the 2021 academic year and corresponding budget allocation by the NSFAS as a state organ and the corresponding government departments, does not constitute a policy decision and policy formulation that is excluded from judicial review – whether the decision of the court a quo constituted judicial overreach and encroached the terrain of another branch of government, offending the common law doctrine of separation of powers and the rule of law.

**16. Vodacom (Pty) Ltd v Kenneth Nkosana Makate and Shameel Joosub N O**  
**401/2022**

Appealed from GP

Date to be heard: 9 May 2023

Mocumie JA, Schippers JA, Mothle JA, Nhlangulela AJA, Kathree-Setiloane AJA

**Delict – compensation** – good faith determination of compensation amount – whether the decision of an expert valuer was correct – whether the decision of the high court referring the matter back to the CEO was correct – whether the standard of review agreed upon by the parties was correctly applied in terms of the *Bekker* test.

**17. Golden Core Trade and Invest (Pty) Ltd v Merafong City Local Municipality and Minister of Water and Sanitation**

**338/2022**

Appealed from GP

Date to be heard: 9 May 2023

Carelse JA, Meyer JA, Matojane JA, Weiner JA, Unterhalter AJA

**Administrative law – Constitutional law – delay – principle of legality – constitutionality of the Water Services Act 108 of 1977** – whether the court a quo erred in condoning the first respondent's belated review of the Minister's decision – whether the Minister's decision dated 18 July 2005 violates the principle of legality and thus constitutionally invalid – whether s 8(9) of the Water Services Act 108 of 1997 (Water Services Act) provides the Minister with authority to interfere with the appellant's determination and or levying of surcharges in respect of water supplied to AngloGold - the constitutional validity of s 8(9) of the Water Services Act.

**18. Discovery Insure Limited v Tshamunwe Masindi**

**534/2022**

Appealed from GP

Date to be heard: 10 May 2023

Petse AP, Saldulker JA, Mabindla-Boqwana JA, Weiner JA, Masipa AJA

**Insurance – interpretation of fraud clause — enforceability of fraud clause – Conventional Penalties Act 15 of 1962 – court’s discretion to reduce penalty** – whether fraud in respect of an otherwise valid claim results in the forfeiture of the entire claim – whether clause 5.13 of the Plan Guide entitled the appellant to claim back all payments made to the respondent subsequent to the insured event if the respondent submitted a partly fraudulent claim – whether the doctrine of accrued rights mean that the fraud clause cannot operate to deprive the respondent of the genuine portions of his claim – whether the court *a quo* was correct to characterise the fraud clause as a penalty clause and to refuse to enforce the clause on the basis of the court’s discretion to reduce a penalty under the Conventional Penalties Act 15 of 1962.

**19. Corub Property (Pty) Ltd v Paul Gancalves Barbuzano**

**427/2022**

Appealed from GJ

Date to be heard: 10 May 2023

Dambuza ADP, Nicholls JA, Gorven JA, Meyer JA, Goosen JA

**Contract law - insolvency – interpretation of lease agreement** – the interpretation of clause 18.1 of the lease agreement – whether the lease agreement made provision for payment of electricity, water usage and sewer as per meter readings - whether the appellant provided the respondent with proper monthly invoices in compliance with the lease agreement – whether the appellant proved its claim on a balance of probabilities – whether the amounts due are as per the schedule of the appellant.

**20. Vantage Goldfields SA (Pty) Ltd and Vantage Goldfields Ltd v Arqomanzi (Pty) Ltd and Vantage Goldfields (Pty) Ltd (in business rescue) and Barbrook Mines (Pty) Ltd (in business rescue) and Makonjwaan Imperial Mining Company (Pty) Ltd (in business rescue) and Robert Charles Devereux NO and Daniel Terblanche NO and The Standard Bank of South Africa Ltd and Minister of Mineral Resources and Energy and KPMG South Africa Inc. and Lomshiyo Traditional Authority**



**733/2023**

Appealed from MP

Date to be heard: 10 May 2023

Ponnan JA, Mocumie JA, Mbatha JA, Matojane JA, Mali AJA

**Contract law – interpretation of two subordination agreements** - whether the appellants' in limine point on non-joiner should be upheld – whether it was competent for the seventh respondent to 'sell' two claims on loan account ceded to it in *securitatem debiti* to the first respondent – whether the agreement in terms of which the seventh respondent 'sold' the claims on loan account to the first respondent failed in terms of a resolutive condition – interpretation of two subordination agreements – whether s 11 of the Mineral and Petroleum Resources Development Act 28 of 2002 applies to a change in the shareholding of the holding company of a holding company of the company that holds the mining right.

**21. Freedom Under Law (RF) NPC v Judicial Service Commission and Nkola John Motata**

**550/2022**

Appealed from GJ

Date to be heard: 11 May 2023

Ponnan JA, Mocumie JA, Schippers JA, Kathree-Setiloane AJA, Masipa AJA

**Administrative law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – powers of the Judicial Service Commission (JSC)** – whether the judgment and orders of the high court should be set aside – whether the decision constitutes administrative action that is reviewable in terms of PAJA, alternatively an exercise of public power reviewable under the principle of legality – what is the standard of conduct and applicable test applicable to judges in determining gross misconduct – what were the powers of the JSC in relation to the complaint lodged by Pretorius SC after certain facts became known to it – whether the JSC is bound by the findings and recommendations of the Judicial Conduct Tribunal – whether the applicable standards of judicial conduct were taken into account when the JSC made its decision – whether the decision of the JSC was influenced by a material error of law – whether the JSC acted irrationally or unreasonably – whether the JSC acted arbitrarily or capriciously – whether the decision taken by the JSC was unconstitutional and unlawful – whether the decision of the JSC should be reviewed and set aside and substituted with a decision finding Judge Motata guilty of gross misconduct remitted to the JSC - consideration of the condonation application by the JSC for the late filing of the cross-appeal.

**22. The Municipal Manager: City of Johannesburg Metropolitan Municipality, City of Johannesburg Metropolitan Municipality and Johannesburg Water (SOC) Ltd v San Ridge Heights Rental Property (Pty) Ltd**

**517/2022**

Appealed from GJ

Date to be heard: 11 May 2023

Nicholls JA, Carelse JA, Mabindla-Boqwana JA, Weiner JA, Molefe AJA

**Administrative law – principle of legality – just and equitable remedy – competence of court’s order** – whether the City’s impugned decision was liable to be reviewed and set aside in terms of the Promotion of Administrative Justice Act 3 of 2000 or the principle of legality – what remedy would be just and equitable in the circumstances of the case – whether para 3.6.2 of the judgment resulted in an amendment of the City’s Budget by creating a class of ‘block of flats’ when such is not defined or recognised in the 2019/2020 Tariff of Charges – whether it was competent for the court *a quo* to make an order of substitution.

**23. Kunene Ramapala Inc v The Department of Education and Sport Development, North West Provincial Department**

**460/2022**

Appealed from NWM

Date to be heard: 11 May 2023

Mbatha JA, Mothle JA, Hughes JA, Matojane JA, Mali AJA

**Contract law – validity of contract – s 217 of Constitution - Public Finance Management Act 1 of 1999 and National Treasury Regulations** - whether the contract in question was concluded in contravention of the applicable regulatory measures such as s 217 of the Constitution, the Public Finance Management Act 1 of 1999 and National Treasury Regulations – whether the court *a quo* was entitled to uphold the respondent’s defence even though the respondent did not counter-claim for the impugned contract to be set aside or apply for it to be reviewed.

**24. Member of the Executive Council: Police, Roads and Transport (Free State Provincial Government) v Bovicon Consulting Engineers CC and P Roodt N O (Sheriff, Bloemfontein East)**

**278/2022**

Appealed from FB

Date to be heard: 12 May 2023

Petse AP, Gorven JA, Mabindla-Boqwana JA, Kathree-Setiloane AJA, Masipa AJA

**Civil procedure – Prescribed Rate of Interest Act 55 of 1975** – whether the judgment debt plus interest had been satisfied in full - *in duplum* rule – whether the court a quo erred in finding the amount the respondent quantified to be correct.

**25. Estate Late Goolam Murtuza Hafiz, Mohamed Iqbal Essop and Sayed Hoosen Ahmed v Ahmed Zakir Hafiz, Akhmed Raza Wahab, Sayed Mukthar Mohammed, Shakeel Ahmed Hafiz, Aneez Ahmed Hafiz, Master of the High Court, Pietermaritzburg, Registrar of Deeds, KwaZulu-Natal and eThekweni Metropolitan Municipality**

**804/2022**

Appealed from

Date to be heard: 12 May 2023

Dambuza ADP, Goosen JA, Mali JA, Siwendu JA, Unterhalter AJA

**Trusts – deed of trust – validity** – appeal against the decision of the court a quo, which upheld the validity of the Memorandum of Trust agreement (the Deed of Trust) of the Goolam Murtuza Hafiz Trust (the Trust) and declared Ahmed Zakir Hafiz (the first respondent), Akhmed Raza Wahab (the second respondent) and Sayed Mukthar Mohammed (the third respondent) to be the trustees of the Trust – validity of a deed of trust – whether the court a quo correctly declared a deed of trust to be valid and the first, second and third respondents to be the trustees – whether the plain meaning of clause 4.1 of the Deed of Trust resulted in an absurdity – if so, whether the court should alter the meaning of the clause to avoid the absurdity.

**26. Anthony Robert de Graaf N O v Christine Susan Camilleri**

**565/2022**

Appealed from WCC

Date to be heard: 12 May 2023

Saldulker JA, Mocumie JA, Meyer JA, Nhlangulela AJA, Daffue AJA

**Family law – divorce – interpretation and enforceability of consent paper** – appeal against the judgment of the court a quo, which upheld the consent paper that the respondent concluded with the late Raymond Camilleri for (i) payment of an amount of R3 225 302.66 (being 50% of the value of the deceased's pension retirement benefits less an amount that the pension fund previously paid to the respondent directly); (ii) payment of the sum equivalent to one half of the net entitlement to the deceased as at date of his withdrawal from his Sanlam Retirement

Annuity Fund less an amount previously paid directly to the respondent – the respondent issued summons against Raymond Camilleri (who was later substituted by the appellant as executor of his deceased estate) arising from the divorce order incorporating the consent paper – the interpretation and enforceability of clauses 9.4 and 9.7 of the consent paper governing the respondent’s entitlement to (i) the deceased’s pension with his previous employer; and (ii) the deceased’s Sanlam Retirement Annuity – whether the impugned clauses of the consent paper should be interpreted to mean that the deceased agreed to pay to the respondent half of his entire retirement benefits.

## **27. Sigalo Foods (Pty) Ltd v Clover SA (Pty) Ltd**

**425/2022**

Appealed from GP

Date to be heard: 15 May 2023

Ponnan JA, Carelse JA, Matojane JA, Daffue AJA, Siwendu AJA

**Trade laws – Agricultural Products Standards Act 119 of 1990 – product label misrepresentation – unlawful competition** – whether the word ‘BUTTER’ on the appellant’s label for its ‘STORK BUTTER SPREAD’ product misrepresents that it is pure butter and not a modified butter product – whether the appellant’s ‘STORK BUTTER SPREAD’ product is in contravention of s 3 and 6 of the Agricultural Products Standards Act 199 of 1990 (the Act) and the Regulations Relating to the Classification, Packing and Marking of Dairy Products and Imitation Dairy Products intended for sale in the Republic of South Africa published under the Act – whether the product label misrepresent or is likely to misrepresent and create a misleading impression – whether the appellant’s conduct (if found to trade in contravention of the these statutory prohibitions), constitute unlawful competition.

## **28. PFC Properties (Pty) Ltd v The Commissioner for the South African Revenue Service, Tianjin Pengbo Weiye SA (Pty) Ltd, The Registrar of Deeds, Pretoria, Cloete Murray N O and Roselyn Chantal Noel N O**

**543/21**

Appealed from GP

Date to be heard: 15 May 2023

Schippers JA, Mbatha JA, Hughes JA, Weiner JA, Unterhalter AJA

**Company law – statutory interpretation – Companies Act 71 of 2008** – business rescue – whether business rescue proceedings had commenced – whether the court a quo had the authority to grant a liquidation order despite pending business rescue proceedings.

**29. Brita de Robillard N O and Clifford Edward Alexander N O v PFC Properties (Pty) Ltd, The Companies and Intellectual Property Commission, The Commissioner for the South African Revenue Service, Cloete Murray N O and Roselyn Chantal Noel N O**  
**409/21**

Appealed from KZP

Date to be heard: 15 May 2023

Schippers JA, Mbatha JA, Hughes JA, Weiner JA, Unterhalter AJA

**Company law – statutory interpretation – Companies Act 71 of 2008** – business rescue – whether the court a quo correctly dismissed the postponement proceedings – whether the court a quo erred in hearing and dismissing the business rescue application – whether the dismissal of the business rescue application where the appellants were not present in court precludes an appeal on the grounds that the judgment was by default and may only be rescinded.

**30. Dis-Chem Pharmacies Limited v Dainfern Square (Pty) Ltd, Mpilo Winston Dlamini Noble Spectatus Funds (Pty) Ltd in re: Dainfern Square (Pty) Ltd v Mpilo Winston Dlamini and Dis-chem Pharmacies Limited**  
**648/2022**

Appealed from GP

Date to be heard: 12 May 2023

Nicholls JA, Mothle JA, Molefe JA, Kathree-Setiloane AJA, Mali AJA

**Alternative dispute resolution – jurisdiction of arbitrator – unjustified enrichment** – whether the application by the first respondent for an order declaring that the arbitrator did not have jurisdiction to determine a claim in unjustified enrichment referred to him by the appellant was premature – whether an arbitrator has jurisdiction over the appellant's claim in unjustified enrichment – whether the arbitrator erred in dismissing a special defence of jurisdiction as raised by the first respondent.

**31. Municipal Gratuity Fund v The Pension Funds' Adjudicator and Mutsila, Tshifhiwa Shembry**  
**364/2022**

Appealed from GP

Date to be heard: 16 May 2023

Dambuza ADP, Mocumie JA, Mbatha JA, Nhlangulela AJA, Daffue AJA

**Pension Funds Act 24 of 1956 – determination by adjudicator – *audi alteram partem*** – whether the second respondent violated the *audi* rule when she lodged her complaint directly with the adjudicator and not with the first respondent as required by section 30A(1) of the Act – whether the adjudicator had made its finding after having given all parties the opportunity to make representations with the benefit of all the facts

**32. De Beers Marine (Pty) Ltd v Harry Dilly (Pty) Ltd**

**413/2022**

Appealed from WCC

Date to be heard: 16 May 2023

Schippers JA, Gorven JA, Hughes JA, Mabindla-Boqwana JA, Weiner JA

**Maritime Law of Salvage – International Convention on Salvage, 1989 – salvage reward** – whether the services rendered by the respondent in towing an autonomous underwater vehicle (AUV) belonging to the appellant from the position where it had run aground to a safe place alongside in the port of Simons Town on 27 October 2017 were rendered voluntarily or in pursuance of the respondent's obligations under an agreement concluded between the appellant and the respondent in terms of which the respondent undertook to render assistance while the AUV was undergoing sea trials. If the services are found not to exceed what could be reasonably considered as due performance of the agreement, then in terms of article 17 of the Salvage Convention, no payment ought to fall due to the respondent – whether the salvage reward of R5 525 288.23 is warranted, having regard to the criteria set out in Article 13 of the International Convention on Salvage.

**33. Ilse Becker, Eugene Becker and Fusion Guarantees (Pty) Ltd v The Financial Services Conduct Authority, the honourable Minister Enoch Godongwana in his capacity as Minister of Finance, the National Credit Regulator and the Prudential Authority of South Africa**

**454/2022**

Appealed from GP

Date to be heard: 17 May 2023

Petse AP, Mothle JA, Meyer JA, Masipa AJA, Unterhalter AJA

**Constitutional law – constitutionality – ss 22, 33 and 34 of the Constitution – financial services regulation – ss 154, 167 and 231 of the Financial Sector Regulation Act 9 of 2017 (FSRA)** – appeal against the judgment of the court a quo, which dismissed the application by the appellants for an order declaring ss 154, 167 and 231 of the Financial Sector Regulation Act 9 of 2017 (FSRA) unconstitutional and invalid, and that it should be set aside – whether the impugned sections are unconstitutional, in that they violate ss 22, 33 and 34 of the Constitution – application of the principle of constitutional subsidiarity.

**34. National Brands Limited v Cape Cookies CC and the Registrar of Trade Marks  
309/2022 and 567/2022**

Appealed from GP

Date to be heard: 17 May 2023

Ponnan JA, Gorven JA, Hughes JA, Goosen JA, Siwendu AJA

**Trade mark law – Trade Marks Act 194 of 1993** – whether the Cape Cookies had the *bona fide* intention of using the SNACKCRAX trade mark, either itself or through a permitted user, in respect of the goods covered by the relevant trade mark application – whether the relevant trade mark application was made *mala fide* – whether National Brands has established a protectable reputation in its SALTICRAX and SNACKTIME trade marks – whether Cape Cookies’ SNACKCRAX trade mark is confusingly similar to National Brands’ SALTICRAX and SNACKTIME trade marks – whether the use of the SNACKCRAX mark by Cape Cookies constitutes a misrepresentation to members of the public that its SNACKCRAX product emanates from the applicant or is associated with it – whether Cape Cookies’ use of the SNACKCRAX trade mark is likely to result in deception or confusion – whether the SNACKCRAX trade mark is identical or so similar to the applicant’s registered SALTICRAX and SNACKTIME trade marks, that use thereof in relation to savoury biscuits would be likely to deceive or cause confusion – whether National Brands’ SALTICRAX trade mark is well-known in the Republic – whether Cape Cookies’ SNACKCRAX trade mark is identical or similar to the well-known SALTICRAX and SNACKTIME trade marks – whether the use of the SNACKCRAX mark sought to be registered is likely to take unfair advantage of, or be detrimental to, the distinctive character or repute of the registered SALTICRAX and SNACKTIME trade marks.

**35. Jan Pieter le Roux v Christiaan Frederik Zietsman and Ester Petronella Zietsman  
330/2022**

Appealed from LP

Date to be heard: 17 May 2023

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

**Delict – damages – fraud** – whether the respondents proved that the appellant committed a fraudulent non-disclosure in respect of structural defects in the roof of the property sold by the appellant to the respondents *viz* impermissible inferences drawn between the findings of the respondent's expert and imputing the findings as such onto a man brought by the appellant to fix the leaks of the roof – whether the respondents had to comply with the inspection clause in the agreement – whether the matter was properly adjudicated in terms of the correct principles – whether the respondents were obligated to inspect the property more than they did – whether the magistrate descended into the arena.

**36. Legal Practitioners' Fidelity Fund v Carla Marshall Guilherme  
702/2022**

Appealed from WCC

Date to be heard: 18 May 2023

Dambuza ADP, Salduker JA, Mothle JA, Matojane JA, Daffue AJA

**Attorneys Fidelity Fund – claims against the Fund under s 26 of Attorneys Act 53 of 1979 – monies paid into firm of attorneys' trust account and subsequently stolen** – appeal against the majority judgment in the high court, in which the respondent successfully claimed payment from the appellant in respect of monies stolen from her by an attorney, premised on s 26 of the (now repealed) Attorneys Act 53 of 1979 – the appellant rejected the respondent's claim on the ground that there was no entrustment as contemplated in s 26 of the Attorneys Act – whether the respondent is entitled to be reimbursed by the appellant – whether a deposit of monies (*depositum*) into an attorney's trust account for safekeeping constitutes an entrustment of such monies for the purposes of the Attorneys Act – whether a deposit of monies into an attorney's trust account for the purposes of hiding it from creditors can be construed as an entrustment which enjoys protection as monies entrusted for the purposes of the Attorneys Act.

**37. Emalahleni Local Municipality v Lehlaka Property Development (Pty) Ltd  
600/2022**

Appealed from MM



Date to be heard: 18 May 2023

Mocumie JA, Nicholls JA, Hughes JA, Weiner JA, Siwendu AJA

**Administrative law – consumer agreement for the supply of electricity – termination** – appeal against the decision of the court a quo, which granted in favour of the respondent a declaratory order that the respondent has validly terminated the consumer agreement for the supply of electricity that existed between the parties in respect of certain properties owned by the respondent but occupied by unlawful invaders, and was not responsible for payment for any electricity consumed on the properties after termination, effective from 15 May 2020 – whether the respondent, as the owner of certain properties, within the municipal jurisdiction of the appellant, has any legal obligation to pay for the consumption of electricity by unlawful occupiers on the properties outside of the obligations imposed on it under the by-laws as party to consumer agreements with the Municipality for the supply of electricity – whether the respondent was obliged to bring an application under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) in order to obtain any relief against the appellant in respect of the appellant’s conduct in continuing to charge the respondent for electricity consumed on its properties after the respondent had terminated its consumer agreements – whether the respondent ought to have joined the unlawful occupiers as parties to the application.

### **38. Daniel Nel Pretorius v Agricultural Research Council**

**250/2022**

Appealed from GP

Date to be heard: 18 May 2023

Schippers JA, Carelse JA, Mabindla-Boqwana JA, Goosen JA, Molefe JA

**Contract law – lease agreement – civil law and procedure – prescription** – appeal against the decision of the court a quo, which upheld the respondent’s claim based on a dishonoured cheque for payment in respect of a lease agreement, and dismissed the appellant’s counterclaim pursuant to a special plea of prescription – whether the appellant’s renewal of a written lease agreement was lawful – if so, whether the appellant’s counterclaim based on the respondent’s repudiation of the lease agreement has become prescribed – the *iusta causa* of a cheque drawn on the respondent – whether the appellant’s counterclaim has prescribed in terms of s 10(1) read with s 11(d) of the Prescription Act 68 of 1969 – whether the respondent’s claim based on the dishonoured cheque should have succeeded.

**39. Firm-O-Seal CC v Wynand Prinsloo & Van Eeden Incorporated and Derick van Wyk  
483/2022**

Appealed from MM

Date to be heard: 19 May 2023

Ponnan JA, Meyer JA, Matojane JA, Kathree-Setiloane AJA, Siwendu AJA

**Civil law and procedure – *locus standi* – prescription – company law – business rescue** – appeal against the decision of the court a quo, which upheld a special plea on *locus standi* based on s 137(4) of the Companies Act 71 of 2008 and dismissed all four claims against the respondent in respect of alleged overreach and professional legal negligence – interpretation of s 137(4) of the Companies Act 71 of 2008 – whether a business rescue practitioner has the authority to sanction an action taken by the directors of the company *ex post facto*, or whether an action taken by the directors in the absence of prior approval by the business rescue practitioner is void *ab initio* and remains so void – whether the SCA can pronounce on whether the four special pleas of prescription raised in connection with each of the four claims, and upon which the court a quo did not adjudicate, were proven.

**40. Ndidzulafhi Nemangwela v Road Accident Fund  
437/2022**

Appealed from LT

Date to be heard: 19 May 2023

Mocumie JA, Molefe JA, Nhlangulela AJA, Daffue AJA, Masipa AJA

**Delict – Road Accident Fund claim – interpretation of Road Accident Fund Act 56 of 1996** – appeal against the judgment of the court a quo, which dismissed the appellant's claim against the Road Accident Fund (the respondent) for damages arising out of a collision involving a forklift at the appellant's workplace – whether or not the forklift in issue is a motor vehicle as defined in terms of s 1 of the Road Accident Fund Act 56 of 1996.

**41. Media 24 (Pty) Ltd v Nkosinathi Nhleko and Dr Nomcebo Mthembu  
109/2022**

Appealed from WCC

Date to be heard: 19 May 2023

Nicholls JA, Gorven JA, Hughes JA, Goosen JA, Unterhalter AJA

**Defamation – freedom of expression** – whether the high court correctly dismissed the application – whether a defendant in a defamation action was required to address and justify all of the allegations contained in the published material.

**42. 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**

Appealed from LP

Date to be heard: 22 May 2023

Mocumie JA, Mothle JA, Matojane JA, Weiner JA, Molefe AJA

**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.

**43. Narius Moloto v The Pan Africanist Congress of Azania**

**1176/2019**

Appealed from GP

Date to be heard: 24 May 2023

**Civil procedure – review application – interpretation of clause 14.2 of disciplinary code – *locus standi*** – whether the deponent to the respondent’s answering affidavit had the *locus standi* to depose to the founding affidavit and replying affidavit on behalf of the respondent – whether the court a quo erred in its interpretation of clause 14.2 of the respondent’s disciplinary code – whether the respondent failed to exhaust internal remedies before approaching the court a quo.

**44. FirstRand Bank Limited t/a inter alia RMB Private Bank and FNB v Envergale Property Development (Pty) Ltd and Kim Sheena Cooper**

**543/2022**

Appealed from GJ

Date to be heard: 29 May 2023

Saldulker JA, Nicholls JA, Carelse JA, Meyer JA, Molefe JA

**Contact law – credit facility – waiver of a right in contract** – appeal against the decision of the court a quo, which dismissed the appellant’s claim against the respondents for payment in respect of a credit facility agreement on the ground that the appellant’s conduct constituted a waiver of its right to enforce the contract – waiver of a contractual right to demand the payment of a shortfall arising from a credit facility – test to determine the intention to waive a right in contract – conflicting precedent requires adjudication, a uniform approach and finality – two tests: (1) the decision of the party who is said to have waived his right is decisive to establish the intention of the party; or (2) what the party asserting the waiver was entitled to infer from the conduct of the party said to have waived a right was decisive to establish the intention of the other party – whether the appellant waived its right to enforce a loan agreement against the first respondent as principal debtor, and the second debtor as surety – whether the test to determine a waiver is objective and must be inferred from the outward manifestations of a party’s conduct – whether the subjective intention of a party should not play a significant role.