

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 3 OF 2023

CASES ENROLLED FOR HEARING: 15 August – 30 September 2023

**1. Stephanus Petrus Lategan, Johannes Retief Lategan v Director of Public Prosecutions
Western Cape, Regional Magistrate, Wynburg
(314/2022)**

Appealed from WCC

Date to be heard: 15 August 2023

Molemela P, Hughes JA, Weiner JA, Windell AJA, Keightley AJA

Delict – indecent assault – Criminal Law (Sexual Offences and Related Matters) Amendment (32 of 2007) – whether the first respondent should have instituted the proceedings by way of an appeal in terms of s 310 of the Criminal Procedure Act 51 of 1977 (CPA) – whether ss 58 – 60 of the CPA apply retrospectively to common law sex-related crimes committed before the commencement of the Act.

**2. Minister of Agriculture, Land Reform and Rural Development, Chief Land Claims Commissioner, Director-General of the Department of Agriculture, Land Reform and Rural Development and Regional Claims Commissioner: KwaZulu-Natal v Bongani Cyprian Ndumo (obo Emdwebu Community)
(577/2022)**

Appealed from LCC

Date to be heard: 15 August 2023

Zondi JA, Carelse JA, Mothle JA, Matojane JA, Siwendu JA

Land claim – Restitution of Land Rights Act 22 of 1994 – family or community claim – procedure – urgency – appeal against the decision of the court a quo, which held that the matter was urgent and that the appellants were allowed to condone a land claim lodged by the respondent as a family claim to a community claim – whether the matter was urgent – whether the second and fourth appellants with their actions granted condonation to receive a family land claim as a community claim and whether they can, by law, do so – whether the community was disentitled to receive compensation due to the claim being lodged by the respondent in his own name, and there being no reference in such claim to it being a community claim – whether

referral to court in terms of s 14(1)(b) of the Restitution of Land Rights Act 22 of 1994 was necessary.

3. Chairperson of the Western Cape Gambling and Racing Board, Western Cape Gambling and Racing Board, Vukani Gaming Western Cape (Pty) Ltd t/a VSlots and Grand Gaming Western Cape (RF) (Pty) Ltd t/a Grand Slots v Goldrush Group Management (Pty) Ltd and MEC for Finance, Western Cape (660/2022)

Appealed from WCC

Date to be heard: 15 August 2023

Makgoka JA, Mabindla-Boqwana JA, Meyer JA, Goosen JA, Molefe JA

Administrative law – review – gambling board decision – appeal against judgment of the court a quo, which set aside on review the decision of the first and second appellants, the Western Cape Gambling Board and its Chairperson (the Board), to allocate an additional 1000 limited pay-out machines (LPMs) proportionally to the third and fourth appellants (VSlots and Grand Slots respectively) – whether the court a quo erred in reviewing and setting aside the Board’s decision, despite the findings that Goldrush had failed to establish standing and that it had delayed in bringing the review – whether there were grounds of review in law – whether Goldrush has established own interest or public interest standing to review the Board’s decision – whether Goldrush’s review application was instituted within the 180-day period prescribed in s 7(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) – whether the court a quo granted additional relief (paras 2 and 3 of the order) that is unworkable and offends the separation of powers.

4. Mantis Investment Holdings (Pty) Ltd and Adrian John Faulkner Gardiner v Werner de Jager N O and Carol-Ann Schröder N O

(696/2022)

Appealed from ECG

Date to be heard: 16 August 2023

Ponnan JA, Mbatha JA, Kathree-Setiloane AJA, Keightley AJA, Unterhalter AJA

Company law – company in liquidation – Insolvency Act 24 of 1936 – collusive disposition – appeal against the judgment of the court a quo, in which a separated issue in terms of rule 33 was found in favour of the respondents, where the respondents sought the court a quo to set aside a purportedly collusive disposition – whether or not the appellants are lawfully entitled

to revisit the indebtedness of a company in liquidation as against the creditor when sued in terms of s 31 of the Insolvency Act – whether the appellants are entitled to revisit and dispute the claim of another creditor, notwithstanding the failure of the appellants to review and set aside the proof of such claim (accepted by the Master), whether in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) or s 151 of the Insolvency Act.

5. Mavis McAllister (obo Ethan Liso McAllister) v Member of the Executive council for Health, Eastern Cape

(580/2022)

Appealed from ECB

Date to be heard: 16 August 2023

Saldulker JA, Mocumie JA, Hughes JA, Goosen JA, Mali AJA

Delict – medical negligence – damages – appeal concerns the dismissal of the appellant’s, acting on behalf of her minor son, claim against the MEC for Health, Eastern Cape (the respondent) for damages arising out of the alleged medical negligence of Frere Hospital officials – whether the appellant proved that the respondent failed to perform a blood exchange transfusion on 20 October 2010 or at any time at all – whether the respondent should be held liable for the damages suffered by the appellant’s son as a result of the respondent’s actions or omissions.

6. Ba-Gat Motors CC t/a Gys Pitzer Motoring and Gybertus Pitzer v Kempster Sedgwick (Pty) Ltd

(511/2022)

Appealed from GP

Date to be heard: 16 August 2023

Dambuza JA, Carelse JA, Mabindla-Boqwana JA, Meyer JA, Nhlangulela AJA

Summary judgment – sub-lease agreement – *Shifren* principle – estoppel – appeal against the decision of the court a quo, which granted summary judgment in favour of the respondent against the appellants for payment of R938 952 based on a written contract of sub-lease – whether the appellants are entitled to be granted leave to defend the action – application of the *Shifren* principle and the question of whether, and under which circumstances, the enforcement of a non-variation clause contained in a written sub-lease agreement could be defeated based upon the doctrine of estoppel by representation – whether the appellants disclosed a defence

against the respondent's claim which is *bona fide* and good in law – whether the appellants have established that the respondent is, based upon the doctrine of estoppel, not entitled to enforce a written sub-lease agreement against the appellants in light of an oral cancellation agreement, despite the fact that such oral cancellation agreement does not comply with the requirements of the non-variation clause contained in the written sub-lease agreement.

7. Democratic Alliance v Minister of Cooperative Governance and Traditional Affairs, Speaker of the National Assembly, Chairperson of the National Council of Provinces and President of the Republic of South Africa

(700/2022)

Appealed from GP

Date to be heard: 17 August 2023

Molemela P, Petse DP, Makgoka JA, Mbatha JA, Molefe JA

Constitutional law – constitutional validity – s 27 of the Disaster Management Act 57 of 2002 – appeal against the majority judgment of the high court, which dismissed the appellant's application to declare s 27 of the Disaster Management Act 53 of 2005 (DMA) unconstitutional and invalid – whether s 27 of the DMA is unconstitutional and invalid on the following grounds: first, for being an impermissible delegation of plenary legislative power by Parliament; second, for permitting the creation of a *de facto* state of emergency without following the requirements for the creation of an actual state of emergency in s 37 of the Constitution; and third, for failing to require the National Assembly to exercise the oversight role required by ss 42(3) and 55(2) of the Constitution – if s 27 of the DMA is unconstitutional and invalid, what an appropriate remedy would be.

8. Buyiswa Grace Pasiya, Thandi Veronica Mohale, Xoliswa Ntobongwana, Keely Canca, Primrose Pasiya, Yoliswa Qangule, Sharon Mmqandi, Koleka Makhongolo, Pumla Mdleleni, Ouma Ramatlodi and Thembi Zungu v Lithemba Mining (Pty) Ltd, Yoliswa Balfour, Siphokazi Nyamakazi, Vuyolwethu Ntombekhaya Ncwaiba, Sive Yibanati Stofile, Nkosi Yawo Gugushe, Nosinda Tena, Zodwa Enid Mahlangu, Ntombizakhe Madala, Nomfanelo Magwentshu, Lithemba Investments (Pty) Ltd and Companies and Intellectual Property Commission

(264/2022 with 206/2022)

Appealed from ECG

Date to be heard: 17 August 2023

Saldulker JA, Zondi JA, Mothle JA, Matojane JA, Kathree-Setiloane AJA

Company law – s 218(1) of the Companies Act 71 2008 – lawfulness of resolution regarding loan agreements and shareholders – appeal against the decision of the court a quo, which dismissed the appellants’ application to declare as unlawful and the setting aside (in terms of s 218(1) of the Companies Act 71 2008) of the two resolutions that, inter alia, permitted a loan agreement to be entered into between the first respondent (Lithemba Mining (Pty) Ltd) and the eleventh respondent (Lithemba Investments (Pty) Ltd); and consequent thereto, diluted the appellants’, who are eleven shareholders of the first respondent, shareholding in the first respondent in favour of the eleventh respondent in satisfaction of the loan debt – whether the loan agreement, which resulted in the dilution of the appellants’ shareholding, was lawful – whether the court a quo correctly exercised its discretion to withhold declaratory relief from the appellants – whether the relief sought has prescribed – whether the appellants acquiesced in the conduct now complained of – whether the appellants waived their rights – whether the appellants should be estopped from pursuing the claims – question of costs (the fourth, fifth, sixth and eleventh respondents cross-appealed in respect of the costs order only).

9. LottoStar (Pty) Ltd and Mpumalanga Gambling Board v Ithuba Holdings (Pty) Ltd (RF), National Lotteries Commission and Betting World (Pty) Ltd (and National Gambling Board intervening)

(624/2022 with 630/2022)

Appealed from MMB

Date to be heard: 18August 2023

Ponnan JA, Saldulker JA, Weiner JA, Goosen JA, Unterhalter AJA

Administrative law – Lotteries Act 57 of 1997 – procedure – point *in limine* – alternative dispute resolution mechanism – appeal against the decision of the court a quo, which upheld the point *in limine* raised by the Mpumalanga Gambling Board (the second respondent) and directed the parties to take necessary steps, as contemplated in s 41(3) of the Constitution read with the provisions of the Intergovernmental Relations Framework Act 13 of 2005, to resolve the dispute in consultation with the Minister of Trade and Industry – whether the Provincial Governments ought to have been joined in the proceedings – the applicability of the intergovernmental dispute resolution procedures, as set out in the Intergovernmental Relations Framework Act 13 of 2005, to the parties to the appeal – the proper interpretation of various provisions of the gambling statutes, more specifically, whether the taking of bets by a licensed

bookmaker on ‘any contingency’ as authorised by the Mpumalanga Gambling Act 5 of 1995 constitutes a criminal contravention of s 57(1) or s 57(2) of the Lotteries Act 57 of 1997 – whether the phrase ‘any contingency’, as used in the provisions of the Mpumalanga Gambling Act 5 of 1995, means ‘any contingency except the outcome of a lottery’ – if the Mpumalanga Gambling Act 5 of 1995 does authorise a licenced bookmaker to take bets or wagers on any contingency in the wide sense (ie also on the outcome of a lottery), whether doing so constitutes a criminal contravention of s 57(1) or s 57(2) of the Lotteries Act 57 of 1997 – the lawfulness of the appellant’s (LottoStar (Pty) Ltd) acceptance of bets on the outcome of lottery draws.

10. Siyabonga Mthanti v The State

(859/2022)

Appealed from KZP

Date to be heard: 18 August 2023

Dambuza JA, Hughes JA, Matojane JA, Windell AJA, Mali AJA

Criminal law and Procedure – Criminal Law Amendment Act 105 of 1997 – single offence – duplication of convictions and punishment – rape – whether separate charges in counts 2 and 3 which were arising from essentially a single offence did not constitute a duplication of convictions and subsequently an improper duplication of punishment – whether the appellant when committing the rape in count 6 had already been convicted of any two or more offences of rape or compelled rape, but had not yet been sentenced in respect of such convictions – whether the rape in count 4 involved the infliction of grievous bodily harm as contemplated in item (c) of Part 1, Schedule 2 of the Criminal Law Amendment Act 105 of 1997 read with s 51(1) – whether the appellant’s personal circumstances which were placed before the trial court in mitigation of sentence, cumulatively did not constitute substantial and compelling circumstances to justify the imposition of lesser sentences than those which were imposed in respect of all counts.

11. Minister of Police v Mabhaso Nontsele

(547/2022)

Appealed from ECM

Date to be heard: 21 August 2023

Dambuza JA, Mothle JA, Goosen JA, Molefe JA, Siwendu AJA

Criminal law and Procedure- inadequacy of evidence- Criminal Procedure Act (51 of 1977 (the Act)) – whether the trial court had grossly misdirected itself by holding that the appellant is pleading a new case not canvassed in the plea – whether the trial court grossly erred and misdirected itself by not having regard or adequately having regard to the provisions of s 60(3) of the Act which place a legal duty upon the bail magistrate when it does not have reliable or sufficient information or evidence at its disposal or lacks certain important information to reach a decision on bail the application, that the bail magistrate is required by law to order that such information or evidence be placed before the court – whether the trial court grossly erred or misdirected itself by not having regard or adequately having regard to the case of *S v Mporofana* 1998 (1) SACR 40 (TK).

12. The Member of the Executive Council for Health & Social Development of the Gauteng Provincial Government v Elizabeth Mamanthe Motubatse and Andries Mokganyetsi Motubatse (182/2021)

Appealed from GJ

Date to be heard: 21 August 2023

Mocumie JA, Makgoka JA, Weiner JA, Nhlangulela AJA, Windell AJA

Application for condonation and special leave – applicant seeking leave to re-instate the leave to appeal granted – condonation of the late filing of the record and re-instatement of the appeal – whether the full court erred in upholding the appeal and setting aside the judgment and the rescission order of the court a quo.

13. Kurt Robert Knoop N O (in his capacity as business rescue practitioner of Optimum Coal Mine (Pty) Ltd), Johan Louis Klopper N O (in his capacity as business rescue practitioner of Optimum Coal Mine (Pty) Ltd), Kgashane Christopher Monyela N O (in his capacity as business rescue practitioner of Optimum Coal Mine (Pty) Ltd), Juanito Martin Damons N O (in his capacity as business rescue practitioner of Optimum Coal Mine (Pty) Ltd), Optimum Coal Mine (Pty) Ltd (in business rescue), Kurt Robert Knoop N O (in his capacity as business rescue practitioner of Tegeta Exploration & Resources (Pty) Ltd), Johan Louis Klopper N O (in his capacity as business rescue practitioner of Tegeta Exploration & Resources (Pty) Ltd), Tegeta Exploration & Resources (in business rescue), Kurt Robert Knoop N O (in his capacity as business rescue practitioner of Optimum Coal Terminal (Pty) Ltd), Kgashane Christopher Monyela N O (in his capacity

as business rescue practitioner of Optimum Coal Terminal (Pty) Ltd, Optimum Coal Terminal (Pty) Ltd (in business rescue), National Union of Mineworkers, Templar Capital Ltd and Liberty Coal (Pty) Ltd v National Director of Public Prosecutions (657/2022 with 694/2022)

Appealed from GP

Date to be heard: 22 August 2023

Mocumie JA, Meyer JA, Matojane JA, Kathree-Setiloane AJA, Keightley AJA

Criminal law and procedure – organised crime – Prevention of Organised Crime Act 121 of 1998 (POCA) – preservation orders – appeal against the decision of the Gauteng Division of the High Court, Pretoria (the court *a quo*) to grant the respondent (the National Director of Public Prosecutions (NDPP)) a preservation order in terms of s 38 of POCA on 23 March 2022 (the Order) – the Order was granted in relation to the following property: all the shares held in Optimum Coal Mine (Pty) Ltd (in business rescue) (OCM); the business of OCM as defined in the business rescue plan, including a variety of OCM’s assets; and all the shares held in Optimum Coal Terminal (Pty) Ltd (in business rescue) (OCT) – whether the NDPP was entitled to invoke the provisions of s 61 of POCA and whether the application was urgent – whether the NDPP was required to join OCM and OCT’s affected persons, and whether the cases of *Absa Bank Limited v Naude N O and Others* [2015] ZASCA 97; 2016 (6) SA 540 (SCA) and *Economic Freedom Fighters and Others v Speaker of the National Assembly and Others* [2015] ZAWCHC 184 (WCC); [2016] 1 All SA 520 (WCC) were distinguishable from the current matter – whether the NDPP made out a case to institute the proceedings in terms of s 133(1)(b) of the Companies Act 71 of 2008 in light of the elements identified in *SA Airlink v SAA (SOC) Limited and Others* [2020] ZASCA 156 (SCA) and *Murray N O and Another v Firstrand Bank Ltd t/a Wesbank* [2015] ZASCA 39; 2015 (3) SA 438 (SCA) – whether the NDPP made out a case to preserve Tegeta’s shares in OCM and OCT – whether the NDPP made out a case to preserve the business of OCM – whether the NDPP used the preservation application for the ulterior purpose of creating a new, extra-statutory State-controlled business rescue regime – whether the Order was competent – the twelfth appellant (the National Union of Mineworkers (NUM)) appealed against paras 5.2, 6 to 16B and 35 of the Order (paras in relation to the business of OCM) – whether the court *a quo* erred in granting an order preserving the business of OCM – whether the NDPP made out any *prima facie* case that the business of OCM constituted the proceeds of crime, alternatively an instrumentality – whether the Order was *ultra vires* the provisions of the Companies Act and POCA – whether the preservation put an end to the business rescue of OCM and whether the same was dispositive of the rights of the

employees in the business rescue – whether the court *a quo* was required to undertake a proportionality enquiry in terms of s 36 of the Constitution – whether the preservation application was brought for an ulterior purpose, being to scupper the business rescue plan – the thirteenth appellant (Templar) and fourteenth appellant (Liberty) appealed against paras 5.2, 7.2, 16A and 16B of the Order (paras in relation to the business of OCM) – whether paras 7.2 and 16A of the Order contravened s 25(1) of the Constitution by arbitrarily depriving them and OCM’s creditors of their rights in terms of OCM’s business rescue plan, and s 34 of the Constitution by depriving them of their rights and interests under the business rescue plan without disputes in that regard having first been determined by a court – Templar and Liberty have interests and rights in OCM’s business – whether on a proper interpretation of Chapter 6 of POCA, the preservation order was not appealable and the matter fell to be struck from the roll – whether implementation of the existing business rescue plan would be illegal and amount to the commission of offences under ss 5 and 6 of POCA – whether the NDPP had reason to believe that the shares in OCM and OCT were the proceeds of crime – whether the NDPP had reason to believe that the business of OCM was acquired with proceeds of crime – whether the NDPP had reason to believe that the business of OCM was the instrumentality of money laundering offences – whether it was permissible to apply POCA to the business of a company in business rescue.

14. Pieter Cornelius De Klerk v The State

(718/2022)

Appealed from: Regional Court Boksburg

Date to be heard: 22 August 2023

Makgoka JA, Carelse JA, Mothle JA

Criminal law and Procedure- sentencing and conviction – Criminal Procedure Act, (51 of 1977) – whether the state’s version of the events that the Appellant went to his house to collect his firearm, and then upon his return, shot the deceased without any reason, was to be preferred above the version provided by the Appellant – whether on the acceptance of the Appellant’s version of the events, he acted with the required intent justifying a conviction on a charge of murder or if his actions were negligent causing the death of the deceased.

15. Pindile Joseph Junior Ntshongwana v The State**(1304/2021)**

Appealed from KZP

Date to be heard: 23 August 2023

Molemela P, Ponnann JA, Mocumie JA, Mbatha JA, Windell AJA

Criminal law and Procedure- conviction and sentence- Criminal Procedure Act, 51 of 1977 (the Act) – whether the Appellant was capable of acting in accordance with his appreciation of wrongfulness in terms of s 78(1)(b) of the Act in circumstances where it is common cause that the Appellant suffered from a severe pathological mental illness at the time of the commission of the offences – whether the Appellant’s severe mental illness, coupled with his abnormal and bizarre behaviour when committing the offences in question, constituted diminished responsibility. The further issue was the extent to which the Appellant’s diminished responsibility constituted substantial and compelling circumstances justifying sentences less than the prescribed minimum sentences.

16. Fleet Africa (Pty) Limited v Polokwane Local Municipality**(720/2022)**

Appealed from LP

Date to be heard: 23 August 2023

Saldulker JA, Hughes JA, Matojane JA, Keightley AJA, Siwendu AJA

Contract Law – arbitration – Superior Courts Act 10 of 2013 – whether the Polokwane High Court has jurisdiction over the Polokwane Municipality which is situated in Polokwane – whether the court a quo has jurisdiction to hear and determine whether the parties entered into a written agreement containing an arbitration clause – whether the parties explicitly agreed that the North Gauteng High Court would have jurisdiction in the event of relief sought in respect of arbitration – whether the parties should be kept to the aforesaid agreement based on the principle of *pacta sunt servanda* – whether this Court has jurisdiction to act as a court of first instance to determine the merits of the application where the court a quo has made no previous decision.

17. Malala Geophrey Ledwaba v Minister of Justice and Constitutional Development, National Director of Public Prosecutions and Head of the Specialised Commercial Crimes Court Unit, Pretoria

(947/2022)

Appealed from GP

Date to be heard: 23 August 2023

Dambuza JA, Makgoka JA, Carelse JA, Nhlangulela AJA, Kathree-Setiloane AJA

Delict – unlawful arrest and detention – malicious prosecution – appeal against the judgment of the Gauteng Division of the High Court, Pretoria (the high court), which dismissed the appellant’s claim for payment of compensation arising from malicious prosecution – whether the high court’s reference to malice and *animus iniuriandi* as opposed to malice or *animus iniuriandi* constituted a mischaracterisation of the requirements of malicious prosecution proceedings – if so, whether such mischaracterisation in any way led the high court to arrive at an incorrect conclusion that the appellant failed to prove the existence of malice and/or *animus iniuriandi* – whether it was of any legal significance and/or consequence that the jurisdictional requirements for malicious prosecution should be determined sequentially as suggested by the appellant – whether on the facts of this case there existed no reasonable or probable cause for the prosecution of the appellant, and if so, whether this ought to have been inferred by the high court – whether the decision to withdraw the charges against the appellant at the commencement of the second trial of necessity implied that the prosecution was instituted without reasonable and/or probable cause, and that consequently malice ought to be inferred.

18. Cloete Murray N O, Gert Louwrens Steyn De Wet N O and Magda Wilma Kets N O (in their capacities as joint liquidators of Phehla Umsebenzi Trading 48 CC (in liquidation) with Registration Number: 2004/054809/23) v Madala Louis David Ntombela, Sefora Hixsonia Ntombela and Hugo & Terblanche Auctioneers

(729/2022)

Appealed from FB

Date to be heard: 24 August 2023

Petse DP, Mocumie JA, Mabindla-Boqwana JA, Molefe JA, Kathree-Setiloane AJA

Company law – uniform rules of court – whether the liquidators’ election to terminate an executory contract which was concluded by a liquidated close corporation, prior to its winding-up in relation to certain immovable property owned by it, reviewable – whether the court was correct in ordering the appellants to comply with Rule 35 – whether the court a quo should have dealt with the ‘jurisdictional point’.

19. Frank Nabolisa v The Regional Court Magistrate Ms Syta Prinsloo N O and The Director of Public Prosecutions: Gauteng Local Division, Johannesburg (568/2022)

Appealed from GJ

Date to be heard: 24 August 2023

Zondi JA, Mokgohloa JA, Nhlangulela AJA

Criminal law and Procedure – Constitutional law – review application – whether the appellant’s right to a fair trial was infringed – whether the fair trial rights infringement was of such a serious nature that it vitiated the proceedings.

20. Forestry South Africa v The Minister of Human Settlements, Water and Sanitation, The Director-General: Department of Water and Sanitation, Inkomathi-Usuthu Catchment Management Agency and The Chairman of the Water Tribunal AND

The Minister of Human Settlements, Water and Sanitation, The Department of Human Settlements, Water and Sanitation, Inkomathi-Usuthu Catchment Management Agency, Breede-Gouritz Catchment Management Agency and The Chairman of the Water Tribunal v Forestry South Africa

(777/2022 and 824/2022)

Appealed from WCC

Date to be heard: 24 August 2023

Mocumie JA, Mothle JA, Weiner JA, Windell AJA, Unterhalter AJA

Statutory Interpretation – Interpretation of s 32 of the National Water Act 36 of 1998 read with ss 4, 21, 22, 33, 34, 35 and 26 – whether lawfulness is a requirement for the verification of an existing lawful use contemplated in s 32(1)(a)(ii) read with s 36(1) of the National Water Act – correct interpretation of the concept ‘existing lawful water use’ in relation to a ‘stream flow reduction activity’ as defined and referred to in s 32 of the National Water Act.

21. Thobile Mucavele obo Mpho Mucavele and VZLR Inc v The MEC for Health, Mpumalanga Province

(889/2022)

Appealed from MPM

Date to be heard: 25 August 2023

Ponnan JA, Saldulker JA, Zondi JA, Carelse JA, Siwendu AJA

Contingency Fees Act of 1997 – fees agreement between appellants – settlement agreement constituting contingency agreement – whether fee agreement between appellants constitutes contingency fees agreement as contemplated under the Contingency Fees Act – if so, whether the fees agreement is unenforceable – whether the settlement agreement between the first appellant and respondent is unenforceable – whether high court was empowered to make orders it made relating to the agreements.

22. MEC for the Department of Public Works, MEC for the Department of Health and MEC for Finance, Eastern Cape v Ikamva Architects CC, The Sheriff of the High Court, King William’s Town and The Sheriff of the High Court, District of Zwelitsha, Mdantsane and Stutterheim
(867/2022)

Appealed from ECB

Date to be heard: 25 August 2023

Dambuza JA, Mbatha JA, Mabindla-Boqwana JA, Windell AJA, Unterhalter AJA

Administrative law – review – legality – whether the order of Majiki AJ should have been rescinded *mero motu* by the Court – whether as a consequence of rescinding the order of Majiki AJ, the judgment of Malusi AJ is invalid and must be set aside – whether movable property in s 3 of the State Liability Act (the Act) excludes incorporeal property – whether s 3 of the Act excludes the attachment of a State Bank account – whether the Sheriff’s notice of attachment dated 11 March 2016 be set aside – whether any further attachment of the first and second appellants’ movable property is stayed pending the outcome of the application for leave to appeal – with respect to the cross-appeal: – whether the court *a quo* erred in granting an interim stay of execution preventing entirely execution in respect of a final judgment – whether court *a quo* erred in not considering at all whether the applicants for the stay had established a *pima facie* right or reasonable prospect of success in the review, and in failing to apply established requirements for such an interim stay – whether the applicants had established an entitlement in law or in fact to interim stay – whether it was in the interest of justice to grant an interim stay in respect of a final judgment – whether the court *a quo* erred in its consideration of the balance of prejudice and in failing to have regard to the irremediable prejudice to the first

respondent constituted the in *duplum* rule – whether the court a quo misdirected itself in the exercise of its direction to mulct the first respondent in costs.

23. Gideon Jakobus Stemmet and Elaine Stemmet v Tselisa James Mokhehi and Mmakweleng Naomi Mokhehi
(681/2022)

Appealed from FB

Date to be heard: 25 August 2023

Makgoka JA, Matojane JA, Weiner JA, Molefe JA, Mali AJA

Civil law and procedure – prescription – appeal against part of the majority judgment of the high court, sitting as a court of appeal, which dismissed an appeal by the appellants against the dismissal by the court a quo of the appellants’ special plea of prescription – whether the respondents’ claim against the appellants has prescribed or not.

24. Transet SOC Ltd v Tipp-Con (Pty) Ltd; SA Fence and Gate (Pty) Ltd; Gordian Fence SA (Pty) Ltd; Siyanoku (Pty) Ltd; Sinoville Fencing SA (Pty) Ltd; Cochrane Projects (Pty) Ltd and Securemesh CC
(797/2022)

Appealed from GP

Date to be heard: 28 August 2023

Petse DP, Meyer JA, Windell AJA, Keightley AJA, Siwendu AJA

Constitutional law – Preferential Procurement Policy Framework Act 5 of 2000 – tender – whether the award of Transnet’s tender number CRAC-CDR-28468 and the resultant agreement were constitutionally invalid – whether the High Court was correct in holding that the award of the tender was constitutionally valid – whether Transnet unreasonably delayed instituting its self-review application in the High Court.

25. Dinkwanyane Kgalema Mohuba v The University of Limpopo
(730/2022)

Appealed from LP

Date to be heard: 28 August 2023

Zondi JA, Mothle JA, Weiner JA, Goosen JA, Unterhalter AJA

Contract law – Higher Education Act 101 of 1997 – repudiation – special plea – whether the special plea ought to have been upheld – whether the right to confer a degree is an administrative action that underpins the validity of the special plea.

26. Advocate C Bisschoff NO on behalf of Denzil John Reyners v Passenger Rail Agency of South Africa

(727/2022)

Appealed from WCC

Date to be heard: 28 August 2023

Mbatha JA, Mabindla-Boqwana JA, Matojane JA, Nhlangulela AJA, Kathree-Setiloane AJA

Delict – extinctive prescription – whether prescription applies to a person under disability or impediment.

27. Mphaphuli Consulting (Pty) Ltd v Special Investigating Unit (SIU), Advocate Jan Lekhoa Mothibi, Fetakgomo- Greater Tubatse Municipality, President of the Republic of South Africa, Minister of Justice and Correctional Services, Minister of Finance, Minister of Mineral Resources and Energy, Eskom Holdings, MEC: Department of Cooperative Governance, Human Settlement and Traditional Affairs Limpopo Provincial Government

(405/2022)

Appealed from LT

Date to be heard: 29 August 2023

Ponnan JA, Mabindla-Boqwana JA, Weiner JA, Kathree-Setiloane AJA, Chetty AJA

Administrative law – review- legality – Promotion of Administrative Justice Act, (3 of 2000 PAJA) – whether the report of the Special Investigating Unit (SIU) constituted administrative action for the purpose of a review under PAJA, – whether the SIU acted *ultra vires* its powers when it investigated the contract that was concluded between the Fetakgomo Tubatse Local Municipality and the Applicant – whether costs orders in reviews of the SIU's decisions should follow the principle from *Biowatch Trust v Registrar, Genetic Resources* 2009 (6) SA 232 (CC).

28. Tina Majope and Abednego Machabe v The Road Accident Fund

(663/2022)

Appealed from MMB

Date to be heard: 29 August 2023

Zondi JA, Dambuza JA, Carelse JA, Molefe JA, Nhlangulela AJA

Road Accident Fund Act 56 of 1996 – recovery of damages arising out of negligent driving of a motor vehicle – contingency fee agreement – whether the attorney and own client fee agreement constituted a contingency fee agreement – whether the attorney and won client agreement was properly interpreted – whether the appellants were entitled to an award of party and party costs – whether the attorneys are forced to enter into a contingency fee agreement in third party litigation matters.

29. Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service (728/2022)

Appealed from GP

Date to be heard: 31 August 2023

Molemela P, Ponnann JA, Meyer JA, Keightley AJA, Mali AJA

Value added tax – interpretation – Value Added Tax Act 89 of 1991 – zero rating of unwrought gold – whether s 11(1)(f) of the VAT Act excludes unwrought gold that was previously (historically) refined or manufactured gold-containing goods or material, prior to being refined and manufactured in the state and condition of the gold being supplied to the aforesaid recipients.

30. Ergomode (Pty) Ltd v Craig Dereck Jordaan NO, Brett Leslie Holding NO, Sakhile Contract Mining (Pty) Limited (in business rescue), Gideon Mining and Beneficiation (Pty) Ltd, Independent Coal Marketing Company (Pty) Ltd, Commissioner of the South African Revenue Service, Aradom (Pty) Ltd, Gary Mazaham, Abaphumeleli Trading 115 CC T/A Portaloo, Renttech South Africa (Pty) Ltd, Siboniswe Coal Laboratory Services CC, Stallion Security (Pty) Ltd, Coal Procurement SA (Pty) Ltd, Darryl Hendricks, Street Spirit Trading 131 (Pty) Ltd, Veralogix (Pty) Ltd, Keenan Hendricks, F E Skosana, J Maome, M X Zulu, T M Zitha, J P Mathe, S G Mathe, N E Nefefe, M J Mathonsi, S Sifundza, K J Malope, L P Makabane, R J Khanye, M E Helepe, N S Mokoena, M E Twala (Elias) M Twala, J G Joubert, Voice of Workers of South Africa Civil Rights Union and the National Union of Metalworkers of South Africa (643/2022)

Appealed from MM

Date to be heard: 31 August 2023

Petse DP, Mocumie JA, Weiner JA, Molefe JA, Windell AJA

Company Law – Property law – Companies Act 71 of 2008 – Landlord’s Hypothec – business rescue – whether the appellant is entitled to the relief set out in s 133 of the Companies Act – whether the court can grant condonation for the failure to approach the court to have a determination in respect of a non-independent creditor set aside within 5 days of becoming aware of such determination – whether the appellant had a Landlord’s hypothec over the third respondent’s property in light of the fact that the property and hypothec was transferred to Veralogix, which Veralogix subsequently relinquished to the appellant – whether the Landlord’s hypothec exists over the property of the third respondent without an order of court and attachment – whether the extension of the time period for the publication of the business rescue plan was done validly adopted – whether a business rescue plan was approved at a meeting in terms of section 151 of the Companies Act and whether the landlord hypothec should be perfected – whether costs should be awarded.

31. James R Lindsey; The Lindsey Family Trust; William Buck Johns; Marc van Antro and Wymont Services Limited v African Wireless Inc. and Alieu Badara Mohamed Conteh (substituted by Brigette van Geesbergen Conteh in her capacity as *Curatrix Bonis*) (774/2022)

Appealed from GJ

Date to be heard: 1 September 2023

Saldulker JA, Hughes JA, Mabindla-Boqwana JA, Matojane JA, Unterhalter AJA

Superior Courts Act 10 of 2013 – Uniform Rules of Court – jurisdiction – international law – whether the judgment relied upon by the appellants constituted a liquid document – whether the via media test formulated in *Society of Lloyd’s v Price; Society of Lloyd’s v Lee* 2006 (5) SA 393 (SCA) (the Lloyds judgment) was applicable to the appellants’ case in casu – whether a series of orders and a writ of execution in a foreign court constituted a liquid document for purposes of provisional sentence in South Africa.

32. AfriForum v Economic Freedom Fighters, Julius Sello Malema and Mbuyiseni Quintin Ndlozi (1105/2022)

Appealed from EQ

Date to be heard: 4 September 2023

Saldulker JA, Matojane JA, Molefe JA, Nhlangulela AJA, Keightley AJA

Constitutional law – freedom of expression – s 16 of the Constitution – hate speech – Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) (Equality Act) – appeal against the judgment of the Equality Court, which dismissed a complaint by AfriForum (the appellant) that the impugned songs ‘Kiss the boer / Kiss the farmer’ and ‘Bizan’ifire brigade / Call the fire brigade’ constituted hate speech and unfair discrimination – whether the singing of the songs ‘Dubula ibhunu / Kiss the boer’ and ‘Bizani iFire brigade (with a central lyric being, burn the boer) by the respondents constituted hate speech in terms of s 10(1) of the Equality Act.

33. Hulisani Viccel Sithagu v Capricorn District Municipality

593/2022

Appealed from LT

Date to be heard: 4 September 2023

Zondi JA, Makgoka JA, Carelse JA, Mothle JA, Hughes JA

Delict – claim for damages – negligence – whether the appellant proved on a balance of probabilities that an employee/s of the respondent negligently cut into or removed his right heel pad – whether the injury sustained by the appellant was due to the motor vehicle accident itself or the negligent conduct on the part of the firefighters who allegedly afflicted his foot injuries.

34. The National Credit Regulator v National Consumer Tribunal; Elevation Trading CC t/a Xcelsior Financial Services and Xcelsior Financial Services (Pty) Ltd.

(707/2022)

Appealed from GP

Date to be heard: 5 September 2023

Ponnan JA, Mbatha JA, Hughes JA, Weiner JA, Nhlangulela AJA

Commercial law – National Credit Act 34 of 2005 – whether the National Consumer Tribunal was empowered to grant condonation in respect of a process or procedure which was a deviation from the ordinary processes – whether the court a quo erred in reviewing the decision to grant condonation as such decision was interlocutory in nature and ultimately the main application was still pending – whether the consideration of fairness, public interest and

the nature of the proceedings were given far too little consideration by the court a quo in coming to its decision that the National Credit Regulator had not made out a case for the condonation it sought – whether the court a quo was correct in ignoring and ordering the National Credit Regulator to be held liable for the costs of the main application on the strength of the Tribunal’s finding that its failure to order costs was arbitrary – whether a decision by the National Consumer Tribunal was administrative in nature – whether the rules governing proceedings before the National Consumer Tribunal empowered it to condone the filing of a supplementary founding affidavit – whether the appellant illustrated good cause in terms of rule 34(2) of the tribunal rules, justifying its departure from the rules.

35. Alice Mary Parry v Rosalene Sybil Dunn-Blatch, International Trade Institute of Southern Africa NPC (ITRISA) and TRADSA (Pty) Ltd

(394/2022)

Appealed from GJ

Date to be heard: 6 September 2023

Molemela P, Saldulker JA, Makgoka JA, Hughes JA, Mali AJA

Company law – licence agreement – royalties – s 163(2)(h) of the Companies Act 71 of 2008 – application for special leave to appeal the judgment of the full court, which upheld the respondents appeal in respect of the appellant’s (a former director and shareholder of the second respondent (ITRISA) and presently a director and shareholder of the third respondent (TRADSA) together with the first respondent (Ms Dunn-Blatch)) application for, inter alia, the terms of the licence agreement between the third and second respondents to be deleted – whether there are special circumstances which merit the appeal to the SCA – whether the full court erred in not engaging in the correct interpretive exercise of the licence agreement regarding the issue of royalties – whether the licence is royalty-free or not – whether TRADSA is entitled to royalties from ITRISA for the use of the copyright material – whether the full court was correct in finding that the court a quo had effectively concluded a new licence agreement for the parties – alternatively, whether the court a quo varied the licence agreement between the parties in accordance with the powers afforded to it in terms of s 163(2)(h) of the Companies Act 71 of 2008.

36. The State v Xolani Ndlovu

(888/2021)

Appealed from KZP

Date to be heard: 6 September 2023

Petse DP, Zondi JA, Mocumie JA, Mabindla-Boqwana JA, Siwendu AJA

Criminal law and Procedure – rape – Criminal Law Amendment Act (105 of 1997) – whether the high court was correct in holding that it was bound by Mahlase *dictum* [2013 JDR 2714 (SCA)] is legally binding authority for the proposition that in gang-rape/ multiple rape cases all the perpetrators must be before court and convicted before the provisions of s 51(1) read with Part 1 of Schedule 2 of the Act can be triggered.

**37. Integrity Forensic Solutions CC v Amajuba District Municipality
(662/2022)**

Appealed from KZP

Date to be heard: 7 September 2023

Ponnan JA, Mabindla-Boqwana JA, Goosen JA, Windell AJA, Keightley AJA

Wills and Estates – interpretation – whether there was a valid and binding agreement concluded between the parties in terms of which the appellant was to provide litigation support services to the respondent – whether the court a quo ought to have granted a just and equitable remedy, in terms of s 172(1)(b) of the Constitution, for payment of services rendered before the declaration of invalidity.

**38. Amina Irankunda and Arava Niyonkuru v The Director of Asylum Seeker Management: Department of Home Affairs, The Cape Town Refugee Reception Office Manager, Home Affairs, The Director-General of the Department of Home Affairs and The Chairperson of the Standing Committee for Refugee Affairs
(821/2022)**

Appealed from WCC

Date to be heard: 7 September 2023

Zondi JA, Malgoka JA, Molefe JA, Kathree-Setiloane AJA, Unterahlter AJA

Statutory interpretation – Refugees Act 130 of 1998 – Re-application by asylum seekers – whether and under what circumstances asylum seekers who have unsuccessfully applied for asylum under Act 130 of 1998 may re-apply.

39. Vincent Harold Esau v SJJMC Property (Pty) Ltd, Mark Harris Attorneys Incorporated, Sheriff of the High Court, Roodepoort North, City of Johannesburg and Registrar of Deeds, Johannesburg

(261/2020)

Appealed from GJ

Date to be heard: 7 September 2023

Mocumie JA, Mbatha JA, Mothe JA, Nhlangulela AJA, Siwendu AJA

Property law – contract – sale agreement – cancellation – appeal against the judgment and orders of the court a quo, in terms of which the appellants’ application to set aside the cancellation of the agreement to sell him his residential property, an order restoring the property to him, an interdict against selling of it pending the outcome of the application, and damages under various categories were dismissed – whether the court a quo correctly interpreted and applied s 23(b) of the Electronic Communications and Transactions Act 25 of 2002 in the prevailing set of facts – whether the cancellation of the sale agreement by the first respondent was valid – whether the first respondent did not satisfy all cancellation requirements as concluded in the cancellation clauses of the sale agreement – whether the sale agreement between the appellant and the first respondent ought to be reinstated – whether the further sale and transfer of the property by the first respondent, whilst his matter with the appellant had not been fully ventilated before the court, ought to be found both unethical and unlawful – whether the eviction of the appellant from the property, after settling a considerable sum of money, was both unethical and unlawful.

40. Petronella De Nysschen v Government Employees Pension Fund, Chairperson: Board of Trustees of the Government Employees Pension Fund, Government Pensions Administration Agency, Chief Executive Officer: Government Pensions Administration Agency, Department of Education North West Province, Head of Department: Department of Education North West Province

(864/2022)

Appealed from NWM

Date to be heard: 11 September 2023

Dambuza JA, Mocumie JA, Makgoka JA, Weiner JA, Siwendu AJA

Pension deduction order – unlawful withholding of appellant’s pension exit documents by fifth to seventh respondents – order by court a quo constituting judicial overreach –

whether the court a quo erred in making a factual finding that appellant is indebted to the fifth respondent in amount of R5 194 418.72 – whether the pension deduction order is practically capable of implementation.

41. Henque 1838 CC v Maxprop Holdings (Pty) Ltd; The Body Corporate of Kirtlington Park; The Body Corporate of Kirtlington Green; The Body Corporate of Kirtlington Park 2; The Body Corporate of Kirtlington Park 3; Kirtlington Park Home Owners Association; Lindsay Shaun Tragott Vorwerg; Enid Helena Aylward N O; Adele Jones N O and Neville Aylward N O and Others
(759/2022)

Appealed from KZD

Date to be heard: 11 September 2023

Ponnan JA, Meyer JA, Goosen JA, Molefe JA, Mali AJA

Property law – Sectional Titles Schemes Management Act 8 of 2011 (Management Act) – *locus standi* – whether the court a quo was correct in finding that the Appellant’s claim was precluded because it had (knowingly) failed to follow the mandatory processes in s 9 of the Management Act– whether s 9 of the Management Act was engaged on facts – whether s 9 read with s 2(7) of the Management Act deprived the owner of a unit in sectional title scheme of own interest *locus standi* to claim relief in respect of matters listed in s 2(7) against third parties and a body corporate of which it was a member because their combined effect was that only a body corporate may litigate in respect of such matters – whether the appellant had *locus standi* in respect of the relief claimed.

42. Willem Francois Bouwer NO (in his capacity as the appointed co-curator bonis of JHJ Van Dyk with reference MC751/2017) and Annali Christelle Basson NO (in her capacity as the appointed co-curator bonis of JHJ Van Dyk with reference MC751/2017) v The Master of the High Court, Pretoria
(916/2022)

Appealed from GP

Date to be heard: 12 September 2023

Saldulker JA, Mbatha JA, Carelse JA, Nhlangulela AJA, Windell AJA

Statutory interpretation – Section 83 of the Administration of Estates Act 66 of 1965 read with regulation 7 of the Regulations – Section 84 of the Administration of Estates Act 66

of 1965 read with regulation 8 of the Regulations – whether within the regulatory dispensation under the Administration of Estates Act 66 of 1965, the proceeds received from the realisation of assets during a particular year of administration in order to cover the monthly expenditure of a patient and not again invested are to be accounted for under regulation 7 of the Regulations as an asset of a capital nature or as income actually collected reflecting the source from which it is derived – whether such amount received from realisation of assets would be income collected for purposes of applying the tariff of remuneration for curators as contemplated in regulation 8(3)(a) of the Regulations.

43. Minister of Justice and Correctional Services, National Commissioner of Correctional Services and Head of Leeuwkop Medium C Correctional Centre v Mbalenhle Sidney Ntuli

(539/2020 (to be heard with 440/2022))

Appealed from GJ

Date to be heard: 13 September 2023

Dambuza JA, Meyer JA, Matojane JA, Goosen JA, Unterhalter AJA

Constitutional law – unfair discrimination – Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) – appeal against the judgment of the Gauteng Division of the High Court, Johannesburg (the full court), which declared a paragraph of the Policy Procedures on Formal Education Programmes (the Policy) of the Department of Correctional Services dated 8 February 2008 that prohibited incarcerated persons who were registered students from using personal computers for studying in their cells – whether the Policy constituted unfair discrimination in terms of PEPUDA as against the respondent – whether the Policy constituted a limitation of the right to further education of incarcerated persons and was therefore inconsistent with the Constitution

44. Minister of Justice and Correctional Services, National Commissioner of the Department of Correctional Services and Head of Zonderwater Correctional Centre v Wilhelm Pretorius, Dr Johan Pretorius and Dr Johan Lets Pretorius

440/2022 (to be heard with 539/2020)

Appealed from GJ

Date to be heard: 14 September 2023

Dambuza JA, Meyer JA, Matojane JA, Mali AJA, Unterhalter AJA

Constitutional law – unfair discrimination – Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) – appeal against the judgment of the full court of the Gauteng Division of the High Court, Johannesburg (the full court), which dismissed an appeal against the decision of the court *a quo*, which declared the Policy Procedures on Formal Education Programmes of the Department of Correctional Services, which limited access by sentenced prisoners to personal computers, to constitute unfair discrimination – whether the limited access by sentenced prisoners to personal computers adversely affected their equal enjoyment of their right to human dignity and right to education and further study – whether the limitation imposed, insofar as the use of personal computers in cells was restricted, severely hampered the respondents’ educational performance – whether the use of personal computers in cells posed a security risk – whether the appeal had become moot, as the respondents were all paroled by 29 March 2022.

45. 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: 15 September 2023

Petse DP, Mothe JA, Meyer JA, Siwendu 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.

46. Abel Sekoala v The State

(579/2022)

Appealed from GP

Date to be heard: 18 September 2023

Mbatha JA, Carelse JA, Mabindla-Boqwana JA, Nhlangulela AJA, Siwendu AJA

Criminal law and Procedure –increase of sentence – whether the evidence of the complainant, a single witness, was correctly accepted as credible – whether the appellant’s version is reasonably possibly true – whether the State proved the guilt of the appellant beyond reasonable doubt – whether the offence warranted an increase of sentence on appeal.

47. Michelle Armitage N O v Valencia Holdings 13 (Pty) Ltd, Shaun Michael Green, Mark Douglas Smith, Ronald James Hoy and Derek Norman Stanbridge (638/2022)

Appealed from GJ

Date to be heard: 26 September 2023

Dambuza JA, Meyer JA, Goosen JA, Kathree-Setiloane AJA, Siwendu AJA

Company law – s 163 of the Companies Act 71 of 2008 – oppressive conduct and conduct that is unfairly prejudicial to shareholder – appeal against paras 1 and 3 of the order of full court of the Gauteng Division of the High Court, Johannesburg (the full court), which upheld the respondents’ appeal concerning the proper application of s 163 and s 45 of the Companies Act 71 of 2008 – whether the granting of interest-free loans to other shareholders and treating them as advance dividends constituted conduct that was oppressive or unfairly prejudicial to, or that unfairly disregarded the interests of a shareholder that was an executrix and therefore no longer a director and did not receive the benefits of such loans – whether the alleged consent of the late spouse to the interest-free loans prior to his death could bind the executrix after his death – whether the provisions of s 45 of the Companies Act, which applied to loans made to directors of a company, could be rendered inapplicable simply by designating the loans ‘shareholder loans’, where the shareholders were also directors.

48. Jacob Gedleyihlekisa Zuma v William John Downer and Karyn Maughan (788/2023)

Appealed from KZP

Date to be heard: 28 September 2023

Molemela P, Ponnar JA, Saldulker JA, Mocumie JA and Mothle JA

Automatic appeal in terms of s 18(4)(ii) of Superior Courts Act – points in limine regarding application before full court – failure on the part of the respondents to establish statutory requirements – in limine: whether there is no nexus between the alleged harm and the relief sought – whether the respondent’s failure to plead or establish good prospects of

success on appeal is fatal to the application – whether, on the merits, the respondent’s failed to establish the three key statutory requirements – whether the respondents failed to establish the additional requirement in respect of the prospects of success in the key findings of law and/or fact – whether the judgment of the full court falls short of the requirements of s 18(4)(i).