

**REPUBLIC OF SOUTH AFRICA**

**SUPREME COURT OF APPEAL**

**BULLETIN 4 OF 2023**

**CASES ENROLLED FOR HEARING: 1 November 2023 – 30 November 2023**

**1. Technology Corporate Management (Pty) Ltd, Andrea Cornelli, Antonio Jose Garrido da Silva, Iqbal Hassim N O, Barry Kalmin N O v Luis Manuel Rito Vaz de Sousa and Jose Manuel Garcia Diez**

**(613/2017)**

Appealed from GJ

Date to be heard: 30 October 2023

Wallis JA, Mbha JA, Van der Merwe JA, Plasket JA, Dlodlo JA

**Company law – Companies Act 61 of 1973 – order to purchase shares** – whether the respondents established an entitlement to an order, in terms of s 252 of the Companies Act 61 of 1973, that the first applicant (TCM) purchase the respondents' shares in TCM.

**1. Technology Corporate Management (Pty) Ltd, Andrea Cornelli, Antonio Jose Garrido da Silva, Iqbal Hassim N O, Barry Kalmin N O v Luis Manuel Rito Vaz de Sousa and Jose Manuel Garcia Diez**

**(613/2017)**

Appealed from GJ

Date to be heard: 31 October 2023

Wallis JA, Mbha JA, Van der Merwe JA, Plasket JA, Dlodlo JA

**Company law – Companies Act 61 of 1973 – order to purchase shares** – whether the respondents established an entitlement to an order, in terms of s 252 of the Companies Act 61 of 1973, that the first applicant (TCM) purchase the respondents' shares in TCM.

**2. Chaim Cohen v Absa Bank Limited**

**(1280/2021)**

Appealed from GJ

Date to be heard: 01 November 2023

Mocumie JA, Nicholls JA, Meyer JA, Chetty AJA, Keightley AJA

**Insolvency law – Insolvency Act 24 of 1936 – collusion – locus standi** – whether the appellant entitled to raise the defence that he had been released as surety on the basis that the

respondent, as creditor, had colluded with the principal debtor, an insolvent company, to dispose of R25.8 million of the latter's assets to a third party, which collusion caused respondent's claim to be forfeited – whether the words 'such collusive disposition' in s 31(2) of the Insolvency Act is capable of more than one meaning, being a collusive disposition which had been set aside in terms of s 31(1) of the Insolvency Act, or a collusive disposition as defined in s 31(1), irrespective of whether it had been set aside or not – whether the respondent, as creditor, had colluded with the principal debtor to dispose of R25.8 million to a third party.

### **3. Ryan Syce and Sebastian Carl Blignaut v Minister of Police**

**(1119/2022)**

Appealed from ECG

Date to be heard: 01 November 2023

Makgoka JA, Carelse JA, Weiner JA, Goosen JA and Tokota AJA

**Constitutional law – s 12 Right to freedom and security of the Constitution of the Republic of South Africa 108 of 1996** – whether the first appellant was lawfully arrested and detained – whether upholding the appeal on the issue of interest, was supportable in the face of the appeal in relation thereto having been earlier abandoned by the appellants – whether the awarding of a cost order against the second appellant is sustainable considering that he had abandoned the issue of interest and therefore no longer a party to the appeal.

### **4. Vumani Oscar Ntuli v The State**

**(1025/2022)**

Appealed from GJ

Date to be disposed of in terms of Section 19(a): 01 November 2023

Gorven JA, Hughes JA, Matojane JA, Koen AJA, Masipa AJA

**Criminal law and procedure – sentence** – whether the trial court failed to give proper weight to the appellant's personal circumstances – whether the court considered the cumulative effect of the sentences – whether the high court erred in refusing the appellant's petition seeking leave to appeal against his sentence.

### **5. Andrew Barney August v The State**

**(962/2022)**

Appealed from NCK

Date to be heard: 02 November 2023

Molemela P, Carelse JA, Matojane JA, Musi AJA, Binns-Ward AJA

**Criminal law and procedure – evidence** – whether condonation should be granted for the late filing of the notice of appeal – whether leave to appeal should have been granted by the high court – if leave to appeal is granted whether the appellant should be allowed to adduce further evidence.

## **6. Jerome Cupido v The State**

**(1257/2022)**

Appealed from WCC

Date to be heard: 02 November 2023

Mokgohloa JA, Mbatha JA, Goosen JA, Keightley AJA, Tokota AJA

**Criminal law and procedure – conviction and sentence** – whether non-compliance with s 37(6)(iii) and the subsequent inclusion of a photograph in a photo ID parade violates the right to privacy in terms of s 14 of the Constitution.

## **7. Gerhardus Smit v The State**

**(1256/2022)**

Appealed from NWM

Date to be disposed of in terms of Section 19(a): 02 November 2023

Nicholls JA, Mothle JA, Mabindla-Boqwana JA, Meyer JA, Kathree-Setiloane AJA

**Criminal law and procedure – evidence** – whether circumstantial evidence was sufficient to sustain a conviction – whether the undefended appellant was provided with sufficient assistance by the court a quo.

## **8. Themba Justice Ximba v The State**

**(957/2022)**

Appealed from GJ

Date to be heard: 02 November 2023

Nicholls JA, Mothle JA, Mabindla-Boqwana JA, Meyer JA, Kathree-Setiloane AJA

**Criminal law and Procedure – law of evidence – appeal against sentence and conviction** – whether the courts a quo erred in not finding appellant’s version reasonably possibly true – whether the courts a quo erred in not correctly evaluating the evidence of two conflicting versions – whether the conviction and guilty findings of the trial court were correct.

**9. Lufuno Muravha v Minister of Police****(179/2022)**

Appealed from LT

Date to be heard: 03 November 2023

Mocumie JA, Carelse JA, Hughes JA, Goosen JA, Tokota AJA

**Criminal law and procedure – absence of the appeal transcribed record – fair trial rights**

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

**10. Islandsite Investments 180 (Pty) Ltd v The National Director of Public Prosecutions, Iqbal Meer Sharma, Nulane Investments 204 (Pty) Limited, Kurt Robert Knoop N O, Johan Louis Klopper N O, Issar Global Limited, Issar Capital Limited and Tarina Patel-Sharma****(894/2022)**

Appealed from FB

Date to be heard: 03 November 2023

Gorven JA, Mothle JA, Meyer JA, Kathree-Setiloane AJA, Unterhalter AJA

**Company law – business rescue** – whether the board of directors of a company in business rescue or the appointed business rescue practitioners have the right to litigate on behalf of a company, in opposition to proceedings instituted against a company in business rescue proceedings brought pursuant to the provisions of the Prevention of Organised Crime Act 121 of 1998 and to instruct attorneys of their choice to take all necessary steps in the institution and prosecution of their opposition - whether the board of directors of a company in business rescue or the appointed business rescue practitioners have the right to litigate on behalf of a company in opposition to a restraint application instituted against the company in terms of the Prevention of Organised Crime Act where the business rescue practitioners have elected to do so, where the business rescue practitioners have not authorised the board of directors to do so and where the decision of the business rescue practitioners has not been set aside – whether the responsibility to bring and defend litigation on behalf of a company in business rescue is one that lies with the company’s business rescue practitioners who may, in their discretion, delegate such responsibilities wholly or in part to a company’s pre-existing management.

**11. Secona Freight Logistics CC v Koobendran Samie The Trustees of Cato Manor Indian Cemetery Chinsamy Naicker N.O., Ethekewini Municipality (Head of Department: Economic Development, Tourism and Environmental Affairs KwaZulu-Natal), MEC for Economic Development, Tourism and Environmental Affairs: KwaZulu-Natal, Chief Director: KwaZulu-Natal Department of Water and Sanitation, Minister of Water and Sanitation, Amafa AkwaZulu-Natal, South African Heritage Resources Agency.**

(1074/2022)

Appealed from KZD

Date to be heard: 06 November 2023

Mocumie JA, Mokgohloa JA, Goosen JA, Musi AJA, Masipa AJA

**Constitutional Law – s 15 (Freedom of Religion, Belief and Opinion), s 24 (Right to an environment not harmful to health or well-being), s 31 (Right to practice cultural, religious and linguistic beliefs) and s 38 (Enforcement of rights) of the Constitution of the Republic of South Africa (108 of 1996) – dumping site near a cemetery – whether the first respondent had the locus *standi in iudicio* to claim any of the relief set out in his notice of motion in the court *a quo*.**

**12. Danny Joseph Sibiya, Du Toit-Smuts Attorneys and Reuben Jado Krige v Road Accident Fund**

**(1067/2022)**

Appealed from MMB

Date to be heard: 06 November 2023

Mbatha JA, Carelse JA, Hughes JA, Koen AJA, Chetty AJA

**Administrative Law – Legal Practice Act 28 2014 – Contingency Fees Act 66 of 1997** – whether the court a quo failed to uphold the audi alteram partem rule – whether its ruling met the benchmark of fairness, rationality and reasonableness – whether the invalidation of the fee agreement and disentitling practitioners’ fees were reasonable.

**13. King Price Insurance Company Limited v Sizwe Antonio Mhlongo**

**(1016/2022)**

Appealed from: GNP

Date to be heard: 06 November 2023

Gorvern JA, Mabindla-Boqwana JA, Weiner JA, Binns-Ward JA, Keightley AJA

**Insurance Law – Delict** – whether the court a quo erred in its judgment or order – whether the insured proved the quantum of his claim.

**14. BP Southern Africa (Pty) Ltd v Commissioner for the South African Revenue Service**

**(801/2022)**

Appealed from GNP

Date to be heard: 07 November 2023

Molemela P, Nicholls JA, Matojane JA, Goosen JA, Musi AJA

**Civil Procedure – Tax Law – Tax Administration Act 28 of 2011 Value Added Tax Act 89 1991** – whether BP should have been granted an interim interdict – whether BP should have been permitted to file a supplementary founding affidavit in the review proceedings – whether the Commissioner’s application in terms of Rule 30 should have been granted.

**15. Ciba Packaging (Pty) Ltd t/a CIBAPAC v Timelink Cargo (Pty) Ltd**

**(1156/2022)**

Appealed from GSJ

Date to be heard: 07 November 2023

Makgoka JA, Hughes JA, Mabindla-Boqwana JA, Binns-Ward AJA, Tokota AJA

**Company Law – Companies Act 71 of 2008 – Uniform Rules of Court – Superior Courts Act** – whether an order dismissing an exception is appealable – whether the respondent’s particulars of claim are expiable on the basis that they do not disclose a cause of action.

**16. African National Congress v Ezulweni Investments (Pty) Ltd**  
**(979/2022)**

Appealed from GSJ

Date to be heard: 07 November 2023

Gorven JA, Meyer JA, Weiner JA, Chetty AJA, Unterhalter AJA

**Law of Contract – Estoppel** – whether an oral agreement was concluded at the meeting held on the 20<sup>th</sup> February 2019 – whether Mabaso or Nkholise were duly authorized to conclude the alleged agreement and whether they conveyed to Ramdas that they did not have authority – whether the materials were delivered, installed and removed in the quantities as alleged in the purported oral agreement.

OR

Whether the parties concluded the oral agreement contended for by the respondent – whether the requirements for contracting during elections were laid down in the appellant’s ‘Supply Chain Policy’ – whether the appellant’s contracting officials had authority to bind it – whether the high court and the full court ought to have decided the application on the papers – whether the matter should be referred to trial.

**17. Grupo Bimbo S.A.B DE C.V. v Takis Biltong (Pty) Ltd**  
**(293/2022)**

Appealed from GNP

Date to be heard: 08 November 2023

Molemela P, Nicholls JA, Meyer JA, Koen AJA, Kathree-Setiloane AJA

**Intellectual Property Law – Trademarks – Trade Marks Act 194 of 1993** – whether a trade mark registered in the name of the appellant is liable to be expunged at the instance of the respondent. The respondent is the registered proprietor of a trade mark in class 29 which contains the word ‘Takis’ and registered and used primarily for biltong. The trade mark of the appellant is registered in class 30 for products which are, in the main, corn based crisps. It also contains the word ‘Takis’ – whether the trademarks and goods, respectively, are so similar that there will be a likelihood of deception and confusion.

**18. Allied Steelrode (Proprietary) Limited v Dreyer: Paul and Dreyer: Aletia Yvette  
(1120/2022)**

Appealed from GJ

Date to be heard: 08 November 2023

Mocumie JA, Carelse JA, Goosen JA, Masipa AJA, Tokota AJA

**Law of civil procedure – National Credit Act 34 of 2005 (NCA) – acknowledgment of debt – separation of issues** – whether the loan as pleaded in paras 4, 6 and 7 of the particulars of claim read together with annexure A (AOD) was subject to NCA – whether it was at arm’s length as contemplated in s 4 of the Act – whether it was unlawful as contemplated in s 40(4) of NCA – whether the loan that constituted the appellant’s cause of action was subject to the NCA – whether it was a credit agreement as contemplated in s 8 of the NCA and – whether it was concluded at arm’s length or not as contemplated in section 4 of the NCA – whether the appellant was obliged to register as a credit provider and if so, whether the loan advanced to the respondents was void.

**19. Mashisane:Moses Muxe v Mhlaudi : Nosiphiwe Linda  
(903/2022)**

Appealed from GJ

Date to be heard: 08 November 2023

Mbatha JA, Mothle JA, Hughes JA, Weiner JA, Keightley AJA

**Family law – Recognition of Customary Marriages Act 12 of 1998 (RCMA) – Matrimonial Property Act 88 of 1984 (MPA) – Section 89 of Deeds Registries Act 47 of 1937 (DRA) – constitutional law** – whether black Africans who participated in rituals and customs required to be observed prior to, during and after traditional wedding celebrations, but who intended to enter into civil marriages, in/out of community of property, are deemed to have consented to be married in terms of customary law (in community of property) as envisaged in RCMA – whether they have expressly consented to a customary marriage – whether civil marriage expressly intended by the parties in terms of the MPA, which followed the observance of the African customs and rituals has a potential of being declared *void ab initio* if this judgment remained extant –whether validly concluded and binding legal documents in the form of a registered ante nuptial contract can be invalidated without reason or justifiable basis, where the parties have expressly consented thereto – did the court a quo err in finding favour of the respondent when the application was rife with material disputes of fact and ought to reasonably have been referred to oral evidence, referred to trial or dismissed,

because it was not the province of the motion court to deal with material disputes of fact if this nature – and whether the court was not required to render advisory legal opinions, which was precisely what the respondent sought to achieve.

**20. BG Bojosinyane & Associates v Sheriff: Michael Smith and South African Board for Sheriffs**

**(1072/2022)**

Appealed from NWM

Date to be heard: 09 November 2023

Makgoka JA, Matojane JA, Weiner JA, Koen JA, Chetty AJA

**Civil procedure – Magistrate Court Rules – Magistrates Court Act 32 of 1944 – sheriff fees** – whether a sheriff of the Magistrates Court was entitled to demand upfront payment – whether such a demand was in conflict with the provisions in the relevant rules and statutory provisions which required that service of court process should be effected without unreasonable delay.

**21. Emonic Investments (PTY) LTD v Bothomley, Peter Charles N O, Ganie, Salim Ismail N O, Van Wyk, Ethne Mary N O, Montic Dairy (Pty) Ltd (in Liquidation), Kopano Auctioneers (Pty)Ltd and The Master of the High Court, Pretoria**

**(1123/2022)**

Appealed from GP

Date to be heard: 09 November 2023

Nicholls JA, Mothle JA, Meyer JA, Kathree-Setiloane AJA, Masipa AJA

**Law of civil procedure – insolvency law – s 83(10) of the Insolvency Act 24 of 1936 – s 339 of the Companies Act 61 of 1973** – what was the correct interpretation of the insolvency Act – whether a landlord who relied on a common law hypothec as security for pre-liquidation claim in respect of arrear rent, may deduct post-liquidation rent from the proceeds generated by the sale of movable assets when determining the net-proceeds generated by an auction conducted in terms of s 83 – whether the court a quo correctly concluded that the appellant’s counter application should be dismissed but ignoring that the joint liquidators are to remove the lessee’s remaining movable assets from the premises.

**22. City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd (Registration No 2001/05148/07), The Body Corporate of Zambezi Retail Park, Zambezi Retail Park**

**Investments (Pty) Ltd, Thumos Properties (Pty) Ltd and ZRJ Properties (Pty)Ltd. In Re: Vresthena (Pty) Ltd (Registration No 2001/05148/07) v The City of Tshwane Metropolitan Municipality, The Body Corporate of Zambezi Retail Park, Zambezi Retail Park Investments (Pty) Ltd, Thumos Properties (Pty) Ltd and ZRJ Properties (Pty)Ltd. (1346/2022)**

Appealed from GP

Date to be heard: 10 November 2023

Mocumie JA, Mbatha JA, Hughes JA, Kathree-Setiloane AJA, Keightley AJA

**Civil procedure – uniform rules of court – constitutional law** – whether the order handed down on 20 June 2022 was final in effect or interim and therefore not appealable – whether it was correct to grant the first respondent’s application to have the electricity supply to the property in question restored – whether the right of a municipality to disconnect electricity served as a form of credit control measures where an account was in arrears – whether the high court’s costs order should be confirmed – whether the implementation of the credit control measures by appellant complicates certain constitutional rights of the respondents.

**23. Michael Jantjies v The State**

**(532/2022)**

Appealed from WCC

Date to be disposed of in terms of Section 19(a): 10 November 2023

Nicholls JA, Carelse JA, Matojane JA, Musi AJA, Tokota AJA

**Criminal law and procedure – evidence – single witness** – whether the appellant committed the offence with the complainant on the date, time and place as alleged – whether the evidence of the single witness was clear and satisfactory – whether the appellant was falsely implicated.

**24. Ubuhlebezwe Municipality v Hiralall Ramsunder**

**(873/2022)**

Appealed from KZP

Date to be heard: 10 November 2023

Gorvern JA, Meyer JA, Weiner JA, Chetty AJA, Unterhalter AJA

**Property law – National Building Regulation and Building Standards Act 103 of 1977** – whether a person who rebuilds, re-erects and/or repairs any part of a structural system of a building requires prior approval for that remedial work from the local authority in terms of

s 4(1) of the Act – whether an existing plan approved many years previously in relation to the original building work suffices if the remedial work is based on that plan.

**25. Queen Sibongile Winnifred Zulu v Queen Buhle Mathe, Executor of the Estate late Queen Shiyiwe Mantfombi Dlamini, Queen Thandelike Jane Ndlovu, Queen Nompumelo Mchiza; Queen Zola Zeluliwe Mafu, Princess Thembi Ndlovu, Prince Mbonisi Zulu, Prince Thulani Zulu; Princess Lindi Zulu and Prince Vulindlela Zulu and Others (1062/2022)**

Appealed from KZP

Date to be heard: 13 November 2023

Molemela P, Makgoka JA, Mbatha JA, Musi AJA, Koen AJA

**Family law – administration of deceased estate – Black Administration Act 30 of 1927 – Marriage Act 25 of 1961** – whether the late King Goodwill Zwelithini Zulu’s marriage to the appellant was valid – whether the consequences of that marriage precluded the late Isilo from concluding further marriages with other persons – whether this Court should or may interfere with the High Court’s discretion not to grant declaratory relief.

**26. Remo Ventures (Pty) Ltd, Ekuzeni Supplies (Pty) Ltd and Nthabiseng Segoale v Cecile Van Zyl, Susan Leonora Meintjies and Suceco Partnership (1262/2022)**

Appealed from GP

Date to be heard: 13 November 2023

Mocumie JA, Mokgohloa JA, Carelse JA, Goosen JA, Tokota AJA

**Arbitration agreement – proper interpretation thereof** – whether the purported arbitration agreement concluded between the parties and the resultant steps and proceedings are void as a result of the share agreement being a nullity.

**27. Kouga Local Municipality v St Francis Bay (ward 12) concerned Residents’ Association and St Francis Property Owners NPC (1056/2022)**

Appealed from ECG

Date to be heard: 13 November 2023

Nicholls JA, Mabindla-Boqwana JA, Binns-Ward AJA, Masipa AJA, Unterhalter AJA

**Administrative law – property rates by-laws – s 22 of the Local Government: Property Rates Act 6 of 2004 (Rates Act)** – whether the decision by the appellant’s council to declare a special ratings area (SRA) should be reviewed and set aside for want of compliance with s 22 of the Rates Act – whether the decision by the appellant’s council to permit the third respondent (as management body) to conduct and manage the SRA should be reviewed and set aside – whether the appellant’s municipal rates by-law, being the property rates policy and part A, should be declared unconstitutional as being in conflict with s 22 of the Rates Act – if so, does the extent of the declaration of invalidity by the court a quo offend s 172 of the Constitution – should disputes of fact being the appellant’s R3 million contribution towards the SRA, be referred for the hearing of oral evidence.

**28. Director of Public Prosecutions: Eastern Cape, Grahamstown v Loyiso Coko (Women’s Legal Centre Trust, Initiative for Strategic Litigation in Africa as amici curiae) (248/2022)**

Appealed from ECG

Date to be heard: 14 November 2023

Petse DP, Zondi JA, Mocomie JA, Mbatha JA, Mabindla-Boqwana JA

**Criminal law – rape – appeal against conviction and sentence** – appeal in terms of s 311 of the Criminal Procedure Act 51 of 1977 (CPA) against the judgment of the full court of the Gauteng Division of the High Court, Pretoria (the full court), on appeal, which set aside the conviction and sentence of the respondent for 7 years’ imprisonment for rape, whereby the full court held that the respondent had the genuine, albeit mistaken, belief that the complainant consented to sexual intercourse – whether the complainant had tacitly consented to the penetration where she had consented to oral sex or foreplay – whether the full court failed to take into consideration concessions made by the respondent – whether the respondent’s right to a fair trial was affected – whether the full court failed to have regard to all the evidentiary material which was presented before the trial court – whether the full court failed to properly apply the provisions of ss 1(2), (3)(c)(ii) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA) to the facts of the case – whether the full court’s judgment constituted a setback in the development of the law on rape – whether the full court’s judgment would adversely affect prosecutors’ decisions to prosecute similar cases – whether, on a proper assessment of the facts, the magistrate in the trial court materially misdirected themselves in their assessment of the evidence and the facts before them, and whether such misdirection vitiated the conviction and sentence – whether, on a proper

assessment of the facts, the high court failed to meet its due diligence obligations under international and foreign law – whether the decision of the high court, in developing the common law, took into account the interests of justice and the public interest implications of the judgment delivered.

**29. Mpho Mauwane (on behalf of Goitsemodimo Wauwane) v Member of the Executive Council for the Department of Health, North West Province (782/2022)**

Appealed from NWM

Date to be heard: 14 November 2023

Makgoka JA, Hughes JA, Matojane JA, Musi AJA, Chetty AJA

**Delict – claim for damages – medical negligence** – whether the full court and the court of first instance were correct in finding that the negligence of the defendant's employees were not the proximate cause of damage suffered by the minor child – trial court found that there were various grounds of negligence but nevertheless found that the appellant failed to prove that the negligence causally contributed to the cerebral palsy of the child – the correct approach to finding causality in medical negligence matters.

**30. Nedbank Limited, Nedgroup Private Wealth Stockbrokers (Pty) Ltd v Mohammed Iqbal Survé and Sekunjalo Investment Holdings (Pty) Ltd (160/2023)**

Appealed from WCC

Date to be heard: 14 November 2023

Govern JA, Meyer JA, Weiner JA, Binns- Ward, Keightley AJA

**Constitutional law – discrimination – Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act)** – whether the interim interdict was correctly granted – whether the Sekunjalo entities established a prima facie right that Nebank discriminated against them on the basis of race – whether the Sekunjalo entities would suffer irreparable harm if the interdict was not granted and the main complaint was upheld – whether the Sekunjalo entities have alternative remedies available to them.

**31. Featherbrooke Homeowners' Association NPC (Registration Number 2000/006729/08) v Mogale City Local Municipality (1106/22)**

Appealed from GJ

Date to be heard: 15 November 2023

Makgoka JA, Mothle JA, Meyer JA, Kathree-Setiloane AJA, Masipa AJA

**Administrative law – Constitutional law** – whether Mogale City Local Municipality (MCLM) had the constitutional obligation and function to remediate the river in question as ordered by the court of first instance – whether MCLM had the statutory obligation to repair state owned infrastructure owned by the city of Johannesburg – whether it was appropriate to single out MCLM as the only party to remediate the river where other parties/factors have different roles to play in terms of the principle of corporative government – whether or not upholding the judgment and order of the court of first instance will interfere with the constitutional functions and obligations of other spheres of government – whether the appellant's direct reliance on s 24 of the Constitution goes against the principle of constitutional subsidiarity.

**32. Percy Suli Mosuetsa v Derick Thabo Mosuetsa, Master of the High Court Southern Gauteng High Court, Johannesburg, Registrar of Deeds, Johannesburg, Gary Sefako Mosuetsa, Tshepo Reuben Mosuetsa**

(746/2022)

Appealed from GJ

Date to be disposed of in terms of Section 19(a): 15 November 2023

Gorven JA, Hughes JA, Matojane JA, Weiner JA, Chetty AJA

**Civil procedure – deceased's estates – definition of "descendant" in Intestate Succession Act 81 of 1987** – whether the appellant is entitled to an order setting aside the Master's appointment of the first respondent as the representative of the deceased estates of his parents – whether the order given on 10 October 2013 renders *res judicata* the appellant's application to have set aside a donation by his late father, of an immovable property to the first respondent – whether the appellant had *locus standi* to claim the relief sought in his application.

**33. Absa Bank Limited v Marc Christopher Rosenberg and Terrence Rosenberg**  
(1255/2022)

Appealed from KZP

Date to be heard: 16 November 2023

Petse DP, Mokgohloa JA, Binns-Ward AJA, Masipa AJA, Tokota AJA

**Civil procedure – proper interpretation of the guarantee undertaken by respondents in favour of the appellant – contention that guarantee was provided for a purpose that did not materialise** – whether court a quo should have granted relief in terms of the counter-application for rectification of the guarantee to record that respondents provided the guarantee on condition that the appellant increase the facility of the borrower – whether guarantee is void or if respondents were able to resile from it due to mistake.

**34. Polokwane Municipality v Double Four Properties and Broadlands Home Owners Association NPC**

**AND**

**Broadlands Home Owners Association NPC v Double Four Properties and Polokwane Municipality**

**(879/2022 and 913/2022)**

Appealed from LT

Date to be heard: 16 November 2023

Mocumie JA, Nicholls JA, Goosen JA, Koen AJA, Unterhalter AJA

**Special circumstances as required for leave to appeal – statutory interpretation of By-Laws – granting of interim interdict** – whether the first respondent could have established any right to a sewer connection by only relying on circumstantial evidence without having applied for and obtained approval for utilising of the municipal sewage disposal system in terms of the provisions of s 4(1) of the Bylaws – whether the approved building plans of the Office Park indicate a direct sewer connection from the Office Park to the municipal sewer - whether the first respondent showed a prima facie right, irreparable harm and that the balance of convenience favours it – whether an interim interdict can be granted against a party who is not party to the main dispute between two other parties – manner in which a discretion should be exercised by a court when ordering payment of compensation instead of the removal of the encroachment of properties.

**35. Iain Sinclair and Sunshine Street Investments 65 (Pty) Ltd v Mothi Evelina Zuma (1195/2022)**

Appealed from LCC

Date to be heard: 16 November 2023

Gorvern JA, Hughes JA, Matojane JA, Musi AJA, Kathree-Setiloane AJA

**Statutory interpretation – Land Reform (Labour Tenants) Act 3 of 1996 (the Act) – declaration and differentiation of “labour tenant” and “farm worker” as contained in ss 1 and 3 of the Act** – whether the respondent is or was a labour tenant or farm worker – whether the respondent or appellant bore the onus of establishing the respondent’s status as a labour tenant or farm worker.

**36. Gary Rabinowitz v Colin Levy, Daniel Mpande, Triton Pharmacare (Pty) Ltd and Hilton Epstein SC N O**

**(1276/2022)**

Appealed from GJ

Date to be heard: 17 November 2023

Mbatha JA, Mothle JA, Mabindla-Boqwana JA, Koen AJA, Masipa AJA

**Arbitration award – interpretation of agreement between the parties on aspect of arbitration procedure** – application of s 33 of the Arbitration Act 42 of 1965 – whether there was a gross irregularity in the proceedings through the failure of the Arbitrator to have convened an agreed separate hearing on the quantification of a stock counterclaim of the first to third respondents that the arbitrator upheld – whether the Arbitrator strayed beyond the pleadings in upholding and awarding damages on the stock counterclaim on the basis of an innocent misrepresentation – whether the Arbitrator had failed to adjudicate the counterclaim and whether this amounted to gross irregularity in the proceedings and/or the denial of the right of the first to third respondents to a fair hearing.

**37. Veliswa Ngqobongo obo Princess Ngqobongo v Member of the Executive Council for Health, Eastern Cape**

**(1032/2022)**

Appealed from ECP

Date to be heard: 20 November 2023

Mocumie JA, Hughes JA, Meyer JA, Binns-Ward AJA, Tokota AJA

**Delict – medical negligence** – appeal against the judgment and orders of the court *a quo*, which dismissed the appellant’s claim for damages, on behalf of her minor daughter, for brain injuries suffered during her birth and in the immediate aftermath, which the appellant alleged was negligently caused by the nurses in the employ of the Department of Health, Eastern Cape – whether the court *a quo* gave any or sufficient attention to the evidence and submissions of the appellant in respect of the following issues: whether signs of foetal stress were missed in the

first active stage of labour; whether excessive forceful fundal pressure was applied to the appellant's abdomen during the second stage of labour, causing an obstruction of blood flow through the placenta and umbilicus; and whether the first ten minutes of resuscitation of the baby was negligently performed – whether there was causal negligence on the part of the respondent's midwifery staff in their handling of the labour and birth of the appellant's child.

### **38. City of Cape Town v Nqulelwa Mtyido**

**(1272/2022)**

Appealed from WCC

Date to be heard: 20 November 2023

Gorvern JA, Weiner JA, Goosen JA, Koen AJA, Kathree-Setiloane AJA

**Delict – damages** – appeal against the judgment (except against the finding as to contributory negligence) of the court *a quo*, sitting as a court of appeal, which upheld the decision of the high court, which held the City of Cape Town (the appellant) liable for damages, if any, that the respondent suffered in consequence of the accident on 17 October 2013 when she fell into an open manhole in Mfuleni – whether the elements for delictual liability were satisfied.

### **39. South African Municipal Workers' Union National Medical Scheme v City of Ekurhuleni, Moso Consulting Services (Pty) Ltd, Registrar of Medical Schemes, Financial Sector Conduct Authority, South African Local Government Association, South African Municipal Workers' Union, Independent Municipal and Allied Workers Union, Bonitas Medical Fund, Hosmed Medical Scheme, Key Health Medical Scheme, LA Health Medical Scheme, Employees of the City of Ekurhuleni and South African Local Government Bargaining Council**

**(1297/2022)**

Appealed from GJ

Date to be heard: 20 November 2023

Nicholls JA, Matojane JA, Chetty AJA, Masipa AJA, Unterhalter AJA

**Insurance – Medical Schemes Act 131 of 1998 – broker agreement – labour – collective bargaining agreement – civil law and procedure – interdict** – appeal against the judgment and orders (save for para 1) of the court *a quo*, which dismissed the appellant's (SAMWUMed) application for declaratory relief, specific performance of contractual obligations and interdictory relief, based on the fact that it was a party to a collective bargaining agreement, and due to the appointment of the second respondent, Moso Consulting Services (Pty) Ltd

(Moso), as sole broker for the employees of the first respondent, the City of Ekurhuleni (CoE) – whether SAMWUMed lacked *locus standi* and whether it had derived nothing more than a ‘privilege’ (as opposed to a right) from its accreditation in terms of a collective agreement – whether the provisions of a broker agreement allowed Moso to perform broker services to SAMWUMed’s members outside of the defined geographical area stipulated in the broker agreement and to demand payment of broker fees from SAMWUMed, despite the provisions of regulation 28 of the Medical Scheme Act 131 of 1998 – whether Moso’s appointment as broker by the CoE was the subject of public procurement and was lawful – whether SAMWUMed’s conduct of ‘broker noting’ members through its own internal consultants was unlawful and precluded the granting of relief – whether SAMWUMed was allowed to market its products, or whether it had been denied this ‘privilege’ – whether a case for an interdict had been made – whether a provision purporting to limit territory in a mandatory agreement required by statute (s 65 of the Medical Schemes Act) was permitted by the provisions pertaining to brokers of the Medical Schemes Act and the Financial Advisory and Intermediary Services Act 37 of 2002; were enforceable (or contrary to public policy); and was waived by the appellant.

**40. Kapeel Becham and Bechan Consulting (Pty) Ltd v SARS Customs Investigations Unit, SARS Tactical Investigations Unit, Tanya Potgieter – SARS Illicit Economy Unit, Lindiwe Shibindi – SARS Illicit Economy Unit, Minister of Police and Hawks Special Investigation Unit**

**(1196/2022)**

Appealed from GP

Date to be heard: 21 November 2023

Petse DP, Mbatha JA, Matojane JA, Kathree-Setiloane AJA, Keightley AJA

**Statutory interpretation – Tax Administration Act 28 of 2021 (the Act) – interpretation of a search and seizure warrant issued under Part D of Chapter 5 of the Act** – whether the *court a quo* correctly interpreted the terms of the warrant to permit SARS’ officials to search anywhere at the premises identified – whether the *court a quo* correctly found that even if the warrant was not wide enough to cover the property, s 62 of the Act entitled SARS to open vehicle and take possession of the taxpayer’s information in it – whether the *court a quo* properly exercised its discretion in granting a punitive costs order against appellants.

**41. Thabo Makwakwa, Independent Media (Pty) Ltd and Independent Online SA (Pty) Ltd v Minister of State Security**

**(1316/2022)**

Appealed from GP

Date to be heard: 21 November 2023

Makgoka JA, Weiner JA, Goosen JA, Chetty AJA, Masipa AJA

**Constitutional law – freedom of press and media – access to information – national security – protection and classification of sensitive information – legal status of documents classified by State Security Agency** – appeal against the judgment of the court *a quo*, which interdicted the appellants from publishing a document titled ‘US interest in ANC party dynamics’ (the report) that was classified as ‘secret’ by the State Security Agency (SSA) – constitutional issues: legal status of documents classified by the State Security Agency (SSA); right to freedom of expression, of the press and other media, and to receive or impart information (s 16(a) and (b) of the Constitution) – whether the classification of the report by the SSA stood until set aside – whether the onus was on the Minister of State Security (the respondent) to show that the report should not be published, and whether the Minister discharged that onus – whether the Promotion of Access to Information Act 2 of 2000 (PAIA) was applicable, in circumstances where the appellants did not seek ‘access’ to the report as it was already in their possession – whether the Minister failed to comply with the prescripts of utmost good faith and full disclosure as was required when a matter was brought on an *ex parte* basis.

**42. Legal Practice Council v Bulelani Rubushe**

**(1004/2022)**

Appealed from ECM

Date to be heard: 22 November 2023

Petse DP, Mbatha JA, Musi AJA, Binns-Ward AJA, Kathree-Setiloane AJA

**Legal practice – attorney’s conduct – suspension from practicing as attorney** – appeal against the judgment and order of the court *a quo*, which suspended the respondent from practicing as an attorney for a period of two years, and after expiry of the suspension period he may make a substantive application to be permitted to return to practice as an attorney – whether the court *a quo* correctly exercised its discretion in imposing the sanction that it did – whether exceptional circumstances existed, as there was a finding of dishonesty, to warrant a suspension rather than a sticking off the roll of attorneys.

**43. Hough Bremner Inc and Anita Ernesto Chiau v Road Accident Fund  
(1024/2022)**

Appealed from MMB

Date to be heard: 22 November 2023

Mocumie JA, Weiner JA, Koen AJA, Chetty AJA, Keightley AJA

**Legal practice – contingency fee agreements – non-compliance with Contingency Fees Act 66 of 1997** – appeal against the judgment of the court *a quo*, which set aside a fee agreement entered into between attorneys (the first appellant) and their client (the second appellant) on the basis that it did not comply with the requirements in terms of the Contingency Fees Act 66 of 1997 (CFA) – whether the fee agreement between the first and second appellants constituted a contingency fee agreement within the ambit of the CFA – whether the fee agreement was in substance an unlawful contingency fee agreement not complying with the formal requirements for such agreements.

**44. South African Legal Practice Council v Lebohang Michael Mokhele  
(1138/2022)**

Appealed from FB

Date to be heard: 22 November 2023

Nicholls JA, Mabindla-Boqwana JA, Goosen JA, Masipa AJA, Tokota AJA

**Legal practice – suspension of legal practitioner – s 43 of the Legal Practice Act 28 of 2014 – precautionary measure pending disciplinary proceedings** – appeal against the decision of the court *a quo*, which dismissed the appellant’s application to have the respondent (an attorney) suspended from practice as a precautionary measure pending the finalisation of disciplinary proceedings against him or an application to have his name struck off the roll of legal practitioners – whether the matter should be heard despite the relief having become academic – whether or not the court *a quo* was correct in dismissing the application on the basis that disciplinary proceedings against the respondent had not been finalised.

**45. Deon Marais Botha N.O, Johannes Sacharias Human Muller N.O., and Louisa Sibiya N.O., v Louis Jonker, Johanna Jacoba Jonker and Mustang Chemicals  
(1003/2022)**

Appealed from FB

Date to be heard: 23 November 2023

Petse DP, Matojane JA, Goosen JA, Keightley AJA, Unterhalter AJA

**Company Law – Insolvency Act (24 of 1936), Close Corporation Act (69 of 1984)** – whether the failure of the Appellants, as liquidators of Jonker Products, to summon a meeting of creditors and a meeting of members of a Close Corporation within one month from the final winding-up order and without the prior consent of the Master, visits the meeting with nullity – whether the failure to comply with s 78(1) of the Close Corp. Act may be condoned in terms of the provisions of s 157 of the Insolvency Act – whether the rule nisi was correctly confirmed – whether paras 1.1, 1.2 and 1.3 of the Appellants’ counter-application were correctly dismissed – whether the cost of the application, the cost of the application for leave to appeal and the cost of the appeal should be costs in the winding-up of Jonker Products.

**46. Mhlontlo Local Municipality, Speaker: Mhlontlo Local Municipality and Municipal Manager: Mhlontlo Local Municipality v Gcinikhaya Ngcangula and Malibongwe Nqeketho**

(1154/2022)

Appealed from ECB

Date to be heard: 24 November 2023

Nicholls JA, Carelse JA, Matojane JA, Chetty AJA, Tokota AJA

**Jurisdiction – High Court’s jurisdiction to entertain matters brought under s 34 of the Basic Conditions of Employment Act 75 of 1997 – breach of employment contract** – whether the high court had jurisdiction to entertain or hear matters brought under s 34 of the Basic Conditions of Employment Act 75 of 1997 – whether the respondent established a breach of their contract of employment by the Municipality.