REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 3 OF 2024
CASES ENROLLED FOR HEARING: 15 August – 30 September 2024

1. Kgoshi Ngoako Isaac Lebogo and Bahananwa Traditional Council v Headman Enos Matome Kobe, Morukhu Matome Alfred, Phala Ntome Simon, Kgatla Mashilo Phillip, Kubu Ngoako Abram, Lebogo Moloko Courtly, Lekwara Matlou Albert, Mailula Kolobe Patrick, Manaka Nhlodi Samuel, Maboya Mkgodi Wilson and Others
(1204/2021)
Appealed from LP
Date to be heard: 16 August 2024
Mocumie JA, Schippers JA, Mothle JA, Weiner JA, Molefe JA
Customary law – traditional leadership – Limpopo Traditional Leadership and Institutions Act 6 of 2005 – proper identification of the royal family – relieving headmen/women from their royal duties – Administrative law – review application – undue delay – non-joinder – misconduct – non-compliance with procedure – ulterior motive/purpose – unfair procedure – whether condonation should be granted for the delay of more than five-and-a-half years in bringing the review application – whether there had been a fatal non-joinder of the Bahananwa Traditional Community – whether there was substance in the ground of review that the procedure for misconduct in Schedule 2 of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 (the Act) must have been followed in order to relieve the first to thirteenth respondents of their royal duties as headmen/women of the Bahananwa Traditional Community and/or whether that procedure contemplated the involvement of the alleged royal family of each of these respondents – whether the procedure in s 13 of the Act was followed in order to relieve the first to thirteenth respondents of their royal duties as headmen/women of the Bahananwa Traditional Community and/or whether that procedure contemplated the involvement of the alleged royal family of each of those respondents – whether the relieving the first to thirteenth respondents of their royal duties as headmen/women of the Bahananwa Traditional Community was for an ulterior purpose or motive (or in bad faith) – whether the procedure followed for the discharge of the first to thirteenth respondents from their royal duties as headmen/women of the Bahananwa Traditional Community was unfair, because those respondents were allegedly not afforded an opportunity to state their case – whether the premier of the Limpopo Province was authorised

to remove the respondents as headmen and headwomen of the Bahananwa Traditional Community – whether the grounds for removal of a traditional leader in terms of s 13(1) of the Act were established, alternatively whether s 13(1) of the Act was triggered – if the grounds existed, whether there was a decision of the royal family to remove the headmen and headwomen of the Bahananwa Traditional Community – if there was a decision from the royal family, whether the Premier complied with the provisions of s 13(3) of the Act – whether the Act provided for the establishment of the royal family of the headman and whether there were such royal families for the headmen and headwomen of the Bahananwa Traditional Community – whether the allegations contained in the regulation of the senior royal council fell within the ambit of Schedule 3, Part B, Item 2 of the misconduct of a traditional leader, and if so whether the Premier followed the procedure for misconduct as laid in Schedule 2, Part B, Item 2 of the procedure for misconduct – whether the court a quo erred in finding that there was no need for condonation – whether s 7(1)*(a)* of the Promotion of Administrative Justice Act 3 of 2000 found application in this matter and if so whether the internal remedies were exhausted – whether the affected headmen were given reasons or were aware of the reasons for the decision taken on 29 July 2013 and when did the clock for the 180-day period start ticking – whether the condonation was necessary, even if the parties had agreement to put all legal proceedings on hold to enable the Premier to resolve the matter internally.

2. Joyce Seaberry Britton v Minister of Justice and Correctional Services, Director of Public Prosecutions, Western Cape, Magistrate, Pretoria and Additional Magistrate, Cape Town

(548/2023)

Appealed from WCC

Date to be heard: 16 August 2024

Zondi ADP, Nicholls JA, Kgoele JA, Hendricks AJA, Masipa AJA

Criminal law and procedure – international law – s 5(1)*(a)* of the Extradition Act 67 OF 1962 (the Extradition Act) – whether the high court erred in failing to review and set aside the Minister's decision to issue the notice under s 5(1)*(a)* of the Extradition Act – whether the high court erred in failing to review and set aside the decision of the Magistrate to issue the warrant and Ms Brittion's arrest pursuant to the warrant – whether the high court erred in failing to find that since the Constitutional Court declared s 5(1)*(a)* of the Extradition Act unconstitutional , in *Smit v Minister of Justice and Correctional Services and Others* [2020] ZACC 29; 20201 (3) BCLR 219 (CC), Ms Britton was entitled to have the notice, the warrant

and her arrest declared unconstitutional, notwithstanding that the declaration of unconstitutionality only took effect from the date of the Constitutional Court's order – whether the high court erred in failing to appreciate that Ms Britton was currently arrested in terms of a warrant of arrest issued in terms of s 5(1)*(a)* of the Extradition Act, and that after the judgment in Smit, s 5(1)*(a)* of the Extradition Act could not be invoked as a justification for her arrest and that there was consequently no lawful basis for her arrest and continued remand – whether the high court ought to have found that although *Smit* did not apply to persons who had been, but no longer were, arrested under s 5(1)*(a)* prior to the judgment, the declaration of unconstitutionality in respect of s 5(1)*(a)* must be read as applying retrospectively to persons who, at the time that the order in *Smit* was granted, were still under arrest in terms of s 5(1)*(a)* – whether the high court ought to have found that *Smit* applied retrospectively, in a limited way, to extradition proceedings that had not yet been finalised – whether *Smit* applied to the extradition proceedings in respect of Ms Britton, that had not yet finalised, as there were no just and equitable interests that justified denying Ms Britton, being a person currently arrested under s 5(1)*(a)*, relief as there would be no large-scale harm to the administration of justice – whether the high court erred in failing to find that the Minister and the Magistrate's failure to consider the previous extradition requests, and the delay in making the requests rendered their respective decisions irrational, and in failing to set aside those decisions, along with the pursuant arrest of Ms Britton – whether the high court erred in failing to find that the Minister and the Magistrate rubberstamped what was placed before them, rendering their decisions irrational.

3. Seshin Naraidu v The State

(894/2023)

Appealed from GJ

Date to be heard: 16 August 2024

Mokgohloa JA, Smith JA, Unterhalter JA, Mjali AJA, Dippenaar AJA

Criminal law and procedure – sentence and conviction – whether the court *a quo* erred in its findings in respect of the onus and burden of proof in finding that the State proved its case beyond a reasonable doubt against the appellant – whether there were misdirections both in law and fact, which show that the court *a quo* as well as the appeal court, overlooked other facts and probabilities and that the above Honourable Court could come to its own conclusion on the totality of the evidence and the facts of the case – whether the court a quo erred in its

findings that the Appellant acted with common purpose with accused 2 – whether the appellant's version was reasonably possibly true.

4. Mfana Ignitius Kubai v The State

(923/2023)

Appealed from LT

Date to be heard: 16 August 2024

Mokgohloa JA, Smith JA, Unterhalter JA, Mjali AJA, Dippenaar AJA

Criminal law and procedure – sentence and conviction – Limpopo Environmental Management Act 7 of 2003 – whether the sentence imposed by the court *a quo* was appropriate in the circumstances, taking into account the period (2 years and 3 months) the appellant had been in custody awaiting trial and judgment in the matter.

5. Henque 3935 CC t/a PQ Clothing Outlet (in Business Rescue) v The Commissioner for the South Africa Revenue Service

(846/2023)

Appealed from GP

Date to be heard: 19 August 2024

Zondi ADP, Dambuza JA, Molefe JA, Koen AJA, Dolamo AJA

Company law – insolvency law – tax law – Insolvency Act 24 of 1936 – Companies Act 71 of 2008 – Income Tax Act 58 of 1962 – Tax Administration Act 28 of 2011 – South African Revenue Serve Act 34 of 1997 – Value Added Tax Act 1991 – Business Rescue – jurisdiction of court a *quo* – where the appellant commenced business rescue with a tax obligation to the respondent in terms of the Income Tax in respect of the 2017 year of assessment and value added tax in respect of VAT period January 2018, none of the tax debts had become liquid or were payable – whether the general principle that a debt, where there was a creation of the obligation, that was when the debt arised – whether a debt, based on the liquidity of the obligation, that was when the amount of the debt became fixed in monetary terms – whether the due date when the debt became payable beyond which the debtor was in mora – whether the tax debts were attributable to the tax period in which they arose, and the liability came into existence (the argument advanced by the appellant) or where the tax debts were attributable to the period when the assessment was raised and when the tax debt became liquid and payable (the argument advanced by the respondent) – whether the court a *quo* lacked

jurisdiction and should have entertained and adjudicated the main application – whether the non-competence of the court a *quo* required it to grant the appellant leave to appeal to this Court – whether the tax liability arising from an additional income tax assessment in a notice of assessment (ITA34) dated 4 April 2018, and the VAT liability arising from the appellant's self-assessment dated 19 March 2018, constituted pre-business rescue or post-business rescue debt, the appellant having gone into business rescue effective 31 January 2018.

6. Lindokuhle Percy Shongwe v The State
(991/2019)
Appealed from GJ
Date to be heard: 19 August 2024
Mabindla-Boqwana JA, Kgoele JA, Mantame AJA
Criminal law and procedure – sentence and conviction – murder – robbery with aggravating circumstances – whether the trial court misdirected itself in failing to consider certain exculpatory information in the statement that the appellant had made to the police – whether the trial court had correctly found that the appellant had intention to kill the deceased – whether the trial court had correctly found that the murder was premeditated – whether the trial court had correctly found that the appellant had killed/assaulted the deceased with the intention to rob him of his belongings.

7. Sahil Ramthal v The State
(704/2023)
Appealed from Regional Court KZN
Date to be heard: 19 August 2024
Mabindla-Boqwana JA, Kgoele JA, Mantame AJA
Criminal law and procedure – conviction and sentence – single witness – whether the appellant had reasonable prospects of success on appeal against his conviction and sentence – whether the State adduced any evidence proving that the appellant acted unlawfully or did not act in legitimate private defence – whether the 8 year' direct imprisonment imposed in the Regional Court was materially disproportionate to the appellant's wrongdoing and induced a sense of shock.

8. Nathalion Matshaba, Kabelo Aubrey Mafane, Lucas Stakie Ramaila and Tumelo Jeffrey Makofane v The State

(829/2019)

Appealed from LP

Date to be heard: 19 August 2024

Mocumie JA, Mothle JA, Weiner JA, Mjali AJA, Masipa AJA

Criminal law and procedure – law of evidence – Criminal Procedure Act 51 of 1977 – whether the State had proven its case beyond reasonable doubt – whether the appellants actively associated themselves with the murder of the deceased – whether the State hinged on the evidence of a single witness – whether the first and fourth appellants were correctly convicted in terms of the doctrine of joint possession – whether the trial court erred by declaring the accused unfit to possess firearms in terms of s 103 of the Firearms Control Act 60 of 2000.

9. Hanneré Cecile Jooste and Jan Louis Jordaan v Member of the Executive Council for Local Government Environmental Affairs and Development Planning: Western Cape, Director: Development Management (Region 1) of the Development of Environmental Affairs and Development Planning: Western Cape, Director: Waste Management of the Department of Environmental Affairs and Development Planning: Western Cape, South African Farm Assured Meat Group CC, Hendrik Johannes Swanepoel De Bod N O, Johannes Petrus Du Bois N O and Daniel Jacobus Van Staden N O.

(637/2023)

Appealed from WC

Date to be heard: 20 August 2024

Molemela P, Ponnan JA, Keightley JA, Baartman AJA, Dippenaar AJA

Constitutional law – National Environmental Management Act 107 of 1998 (NEMA) – Interpretation of the provisions of NEMA – powers of MEC under s 47C of NEMA authorisation – whether the granting of the environmental authorisation could be set aside – whether the dismissal by the MEC of the internal appeal against the decision could be set aside – whether the MEC's decision in terms of s 47C of NEMA was procedurally unfair and unlawful – whether the MEC was not empowered to take the MEC's condonation decision – whether commencement of activity in the absence of environmental authorisation was in breach of s 24F of NEMA.

10. Brain Gear Investments (Pty) Ltd, Sembcorp Silulumanzi (RF) (Pty) Ltd, Sembcorp Utilities (Netherlands) NV and The Municipal Manager: City of Mbombela Municipality, South African Water Works (Pty) Ltd, Sembcorp Utilities South Africa (Pty) Ltd, The

Chairperson: Council of the City of Mbombela Municipality and The City of Mbombela Municipality v Buhle Waste (Pty) Ltd and ZMG Scientific Services (Pty) (Ltd)
(102/23 & 103/23 & 108/23 & 110/23)

Appealed from MMB

Date to be heard: 20 August 2024

Mocumie JA, Schippers JA, Weiner JA, Molefe JA, Coppin AJA

Civil procedure – administrative law – review – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – whether the effect of the initial order made by the court *a quo* on the judgment contained a final determination of the fulfilment of the condition in the Municipality's resolution of 28 June 2028 and the status of the SPA – whether the so-called decision which the first respondent sought to review and which was set aside by the court *a quo* was the correct decision for purposes of the review, Brain Gear contends that it was not as the actual decision being the resolution of 28 June 2018 which was confirmed to be unconditional by the Municipal Manger on 19 September 2018 – whether the abovementioned decisions of the Municipality were in any event administrative action reviewable under PAJA – what was the effect of the first respondent's failure to exhaust internal remedies before instituting its review as required by s 7(2)*(a)* of PAJA – whether the first respondent's belated review should have been condoned under s 9 of PAJA – on the merits, whether the court *a quo* erred in its finding that there was a simulated transaction involving the use by Brain Gear of a wholly owned subsidiary – whether the court *a quo* erred in its finding that there were conflicts of interest which should have precluded the consideration of Brain Gear's bid – whether the court *a quo* erred in its finding that Brain Gear was incorrectly assessed as having the necessary technical expertise and experience – whether the August order should have been replaced with the order that was by the high court on 26 May 2022 following an agreement between Sembcorp Utilities (Netherlands) and the first respondent – if the Court determined not to replace the August Order with the May Order, whether the appeal should nonetheless by upheld because the first respondent applied to review and set aside a non-existent "decision" allegedly taken by the Municipality on 14 November 2018.

11. MEC: Free State Department of Police, Roads & Transport v Goldfields Logistics (Pty) Ltd
(540/2023)

Appealed from FB

Date to be heard: 20 August 2024

Makgoka JA, Mothle JA, Unterhalter JA , Mjali AJA, Masipa AJA

Civil procedure – Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 (the Act) – definition of 'debt' as defined in the Act – whether the term 'debt' as defined in the Act includes damages in the form of necessary and useful expenses incurred in the course of action of administration of the affairs of another – whether the respondent failed to send a proper notice of demand required by s 3 of the Act.

12. Absa Bank Limited v Johan Serfortein and Jacobus Hendrik Serfontein
(740/2023)

Appealed from FB

Date to be heard: 21 August 2024

Molemela P, Kgoele JA, Keightley JA, Koen AJA, Dolamo AJA

National Credit Act 34 of 2005 (the Act) – acknowledgement of debt and power of attorney declared void – whether the particular acknowledgment of debt and power of attorney was an unlawful "supplementary agreement" as envisaged in s 91 of the Act – whether the particular acknowledgment of debt and power of attorney was an unlawful credit agreement as envisaged in s 90 of the Act – whether the particular acknowledgment of debt and power of attorney was an unlawful supplementary agreement or document prohibited by section 91*(a)* – whether it was to be declared void by virtue of the provisions of s 89(5)*(a)* from date the agreement was entered into – whether provisions contained therein were unlawful as contained by s 90(2), and if so, whether the acknowledgment of debt and power of attorney was to be declared unlawful by virtue of the provisions of s 90(4) – whether the appellant was as a matter of law, entitled to have disregarded the provisions of s 123(2) of the National Credit Act considering the fact that the respondents were according to the appellant in default and by disregarding s 123(2) the appellant similarly did not comply with the provisions of part D of chapter 6 of the Act – what was the effect of the *ea quae lege fieri prohibentur, si fuerint facta, non solum inutilia, sed pro infectis habeantur; licet legislator fieri prohibuerit tantum, nec specialiter dixerit inutile esse debere quod factum est* doctrine in regard to the non-compliance with the provisions of ss 81, 91, and 92 of the Act and the effect thereof on the acknowledgment of debt and power of attorney – what was the effect of the non-compliance by the appellant of the legislation relating to the first respondent's primary residence determined by s 26(3) of the Constitution read with rule 46A of the Uniform Rules of Court and the effect thereof on the acknowledgment of debt and power of attorney – whether the acknowledgment of debt and power of attorney was to be regarded as *contra bono mores* and thus unlawful and/or illegal.

13. Boudewyn Homburg de Vries Smuts v Kromelboog Conservation Services (Pty) Ltd and Companies and Intellectual Property Commission

(511/2023)

Appealed from WCC

Date to be heard: 21 August 2024

Dambuza JA, Mabindla-Boqwana JA, Molefe JA, Hendricks AJA, Baartman AJA

Commercial law – Companies Act 71 of 2008 – declared delinquent director in terms of section 162 of the Companies Act – Plascon-Evans principles – what facts the court a *quo* should have found to be have been established on the papers, applying the Plascon-Evans principles, in the application which final relief was sought – on the facts, correctly found to have been established, whether there was sufficient evidence to reach the conclusion that: the appellant had engaged in intentional or grossly negligent conduct in harm to the first respondent in a manner that was contrary to s 76(2)(c)*(a)* of the Companies Act; the appellant had grossly abused his position as a director in terms of s 162(5)*(c)*(i) of the Companies Act; grounds for a declaration as set out in s 162(5) had been established; the appellant had breached the standard of conduct for a director as contemplated in s 76(3) of the Companies Act with the result that the court a *quo* was obliged to make a declaration of delinquency – whether on the facts contained in the papers, properly evaluated, the appellant either: abused his position, intentionally or with gross negligence inflicted harm on the company, acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust or acquiesced in the reckless carrying on of the business contrary to the provisions of s 162(5)*(c)* of the Companies Act.

14. David Neville Polovin v The Director of Public Prosecutions, Western Cape, Liesel Jane Green, The Regional Court President, Cape Town and The Clerk of the Regional Court, Cape Town

(1230/2022)

Appealed from WCC

Date to be heard: 21 August 2024

Mothle JA, Weiner JA, Smith JA, Coppin AJA, Naidoo AJA

Criminal law and procedure – private prosecution – review – whether leave to appeal should be granted in terms of s 17(2)*(b)* read with s 17(1)*(a)*(i) and (ii) and section 17(6)*(a)*(i) and (ii) of the Superior Courts Act 10 of 2013 – in relation to the merits: whether the jurisdictional requirements for the issue of a certificate *nolle prosequi* were met – whether the DPP was entitled to reissue the certificate *nolle prosequi* regarding the setting aside of the

summons – whether the DPP was entitled to reissue the certificate *nolle prosequi* regarding the application to interdict the second respondent from further proceeding with the private prosecution of the applicant – whether the DPP held the discretion to issue a certificate in terms of s 7 of the Criminal Procedure Act 51 of 1977 (a s 7 certificate) and whether the person requesting the certificate should have satisfied the DPP that they have sufficient standing to conduct the private prosecution – whether the issuing of s 7 certificate fell within 'administrative action' as defined in PAJA – whether the accused had a right to *audi* before the DPP issued a s 7 certificate – whether, after issuing one s 7 certificate, a subsequent second certificate may be issued – whether the s 7 certificate may include further charges than that originally charged by the State prosecutor – whether the late-lodging of security by the private prosecutor was a material on which the issuing of summons in the private prosecution may be reviewed and set aside – whether the second respondent had sufficient standing to pursue the private prosecution and whether that prosecution was in accordance with public policy.

15. Platinum Wheels (Pty) Ltd v National Consumer Commission and National Consumer Tribunal

(612/2023)

Appealed from GP

Date to be heard: 22 August 2024

Zondi ADP, Nicholls JA, Mothle JA, Baartman AJA, Naidoo AJA

Statutory interpretation – Consumer Protection Act 68 of 2008 (the CPA) – credit transactions excluded from the CPA – whether this Court lacks jurisdiction to entertain the appeal – whether the purchase and financing documents of the vehicle in question constitute a credit transaction that is excluded from the CPA through the provisions of s 5(2)*(d)* of the Act – whether the purchaser, on the facts, is precluded in terms of s 55(6) of the Act from asserting statutory rights as to the quality, fitness for purpose and use for a reasonable period of the vehicle – whether the right in s 55(2) of the Act can be enforced against the appellant as a dealer rather than as credit supplier or repairer.

16. The National Credit Regulator v The National Consumer Tribunal and Mercedes Benz Financial Services South Africa (Pty) Ltd. In re: The National Credit Regulator v The National Consumer Tribunal and BMW Financial Services (SA) (Pty) Ltd. In re: The National Credit Regulator v The National Consumer Tribunal and Volkswagen Financial Services South Africa (Pty) Ltd

(667/2023)

Appealed from GP

Date to be heard: 22 August 2024

Makgoka JA, Schippers JA, Molefe JA, Unterhalter JA, Masipa AJA

National Credit Act 34 of 2005 (NCA) – statutory interpretation – ss 90, 91, 100, 101 and 102 – payment of 'on the road' fee to credit providers – whether requiring a consumer to pay an 'on the road' fee in terms of an instalment agreement contravened the provisions of ss 100,101 and 102 of the NCA – whether the VWFS deceived consumers by the description given to the fees charges is in contravention of ss 90 and 91 of the NCA – what was the correct interpretation of ss 100, 101 and 102 of the NCA – in respect of the cross-appeal, whether Volkswagen was obliged to refund the 'on the road' fee to consumers, together with any interest levied thereon.

17. Member of the Executive Council responsible for the Economic Development, Gauteng, and Another v Sibongile Vilakazi and four others

(783/2023)

Appealed from GP

Date to be heard: 23 August 2024

Dambuza JA, Mocumie JA, Kgoele JA, Smith JA, Dolamo AJA

Company law – Companies Act 71 of 2008 – reinstatement of board of directors – interim relief pending judicial review proceedings – whether the court a *quo* failed (within the meaning of an omission) to properly tackle and dispose of the case presented by the parties for hearing – whether the court a *quo* usurped the function of the review court with the consequence that the findings of court a *quo* would bind the review application – whether, *ex facie* the judgment, that the court a *quo* considered the issues relevant to the determination of irreparable harm and balance of convenience in the appropriate context of the pleaded facts – whether the court a *quo* order granting the interlocutory in form, was in substance final in effect or had the hallmarks of a final order – whether the court a *quo* misdirected itself on the facts and usurped the functions of the review court – whether there were incorrect factual findings made by the court a *quo*.

18. Nthuseni Christinah Manwadu v Matodzi Joyce Manwadu, Master of the High Court: Thohoyandou, Minister of Home Affairs of South Africa, University of Venda and Sanlam Limited

(799/2023)

Appealed from LP

Date to be heard: 23 August 2024

Makgoka JA, Weiner JA, Molefe JA, Coppin AJA, Dippenaar AJA

Customary law – s 4(8) of the Recognition of Customary Marriage Act 120 of 1998 (Recognition of Customary Marriage Act) – validity of a customary marriage – declaratory order – validity of a civil marriage – whether the full court erred in admitting as real evidence the first respondent's uncertified copy of her then Republic of Venda identity documents – whether the customary marriage concluded between the respondent and the deceased on 13 March 1979 was valid or not – whether the uncertified copy of the first respondent's then Republic of Venda identity document constituted a prima facie proof of the existence of the customary marriage between the first respondent and the deceased in terms of s 4(8) of the Recognition of Customary Marriage Act– whether the identity book of the respondent issued by the then Republic of Venda in which details of alleged customary marriage to the deceased were endorsed or reflected constituted a valid marriage certificate or conclusive prima facie proof of the existence of the said customary marriage as allegedly concluded on 13 March 1979 – whether the first respondent on the evidence before the court proved the existence of customary marriage between herself and the deceased – whether the full court ought to have dealt with the appellant's conditional application – whether the civil marriage concluded between the deceased and the appellant on 23 December 1996 was valid or not.

19. East Asian Consortium B.V. v MTN Group Limited, MTN International (Mauritius) Limited, Mobile Telephone Networks Holdings (Pty) Ltd, Nhleko, Phuthuma Freedom and Charnley Irene

(225/2023)

Appealed from GJ

Date to be heard: 26 and 27 August 2024

Molemela P, Mocumie JA, Mabindla-Boqwana JA, Unterhalter JA, Koen AJA

International law – jurisdiction – delict – Act of State doctrine – whether the court a quo erred in its conclusion that Iranian law applied to the pleaded delict – whether the Iranian courts had exclusive jurisdiction to adjudicate this matter by virtue of Article 29 of the Tender Regulations and whether the court *a quo* might have, at any rate, exercised its discretion to assume jurisdiction – whether the provisions of the Foreign States Immunities Act, 1981, non-

suit the plaintiff on the basis that the property, rights or interests of Iran were affected – whether the court *a quo* lacked jurisdiction on the basis of the Act of State doctrine and whether the court *a quo* had, at any rate, exercised its discretion to assume jurisdiction.

20. The Commissioner for the South African Revenue Service (SARS) v Woolworths Holdings Limited

(863/2023)

Appealed from WCC

Date to be heard: 26 August 2024

Zondi ADP, Dambuza JA, Mothle JA, Naidoo AJA, Dippenaar AJA

Tax law – s 135(1) read with 133(2)*(b)* of the Tax Administration Act 28 of 2011 (the TAA) – whether the underwriting services provided to Woolworths by local suppliers (underwriting services) in relation to the Rights Offer were services acquired by Woolworths in its enterprise – whether the services by the non-resident suppliers were 'imported services' and the full amount liable to 'output tax' – whether the Commissioner was entitled to impose understatement penalties in terms of s 223 of the TAA – whether the Commissioner's late filing of its notice of appeal may be condoned and the appeal be reinstated – whether the services acquired by Holdings from local suppliers in respect of a rights issue to non-resident shareholders to raise capital for the acquisition of an investment were services acquired in the course of furtherance of Holdings' enterprise – whether the services acquired by Holdings from non-resident suppliers were 'imported services' and therefore liable to 'out tax' (it is common cause that to the extent the costs were incurred in the course of furtherance of Holdings' enterprise, they do not meet the definition of 'imported services') – whether the Commissioner was obliged to remit an understatement penalty levied in terms of 223 of the TAA – whether the Commissioner's late filing of its notice of appeal may be condoned and the appeal be reinstated.

21. Elmir Property Projects (Pty) Ltd t/a Elmir Projects and Emalahleni Local Municipal Council v Bakenveld Homeowners Association NPC (Reg No. 2001/012106/08)

(522/2023 and 524/2023)

Appealed from MB

Date to be heard: 26 August 2024

Ponnan JA, Schippers JA, Nicholls JA, Smith JA, Mantame AJA

Property law – environmental law – town-planning – National Environmental law Act 107 of 1998 – whether the requisites of an interdict were established – whether the conditions in-principle approval of Bakenveld Extension 11 fell away with the establishment of Bakenveld Extensions 12-33 – whether there was *vinculum iuris* between Elmir and the Municipality as basis for the joint and/or several liability – whether Elmir had obligation as contemplated in the order, to apply for environmental authorisation under the Water Act and NEMA where the Municipality was obligated to operate and maintain the Bankenveld wastewater treatment plan for which levies were collected by the Municipality – whether there was a basis in law for Elmir , as a private developer to be responsible for budgeting, implementation, monitoring, upgrading and maintenance of such sewer services and whether the imposition on Elmir relating to that obligation was constitutionally valid.

22. The City of Johannesburg Metropolitan Municipality, The Executive Mayor, City of Johannesburg, The City Manager, City of Johannesburg, The Director of Housing, City of Johannesburg v Occupiers of [Portion 971 of the Farm Randjesfontein No 405], Rycklof-Beleggings (Pty) Ltd and The International Commission of Jurists (*Amicus Curiae*)

(636/2023)

Appealed from GJ

Date to be heard: 27 August 2024

Makgoka JA, Schippers JA, Mothle JA, Hendricks AJA, Naidoo AJA

Property law – eviction of unlawful occupiers – Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE) – emergency temporary accommodation (ETA) –whether the appellants were obliged to consider an unlawful occupier's right to earn a living when determining the location of ETA to be provided – whether s 28 of the Constitution found application in considering where ETA ought to be located, and/or a factor to be considered under s 4(7) of PIE.

23. Nkomazi Local Municipality v The Valuation Appeal Board for the District of Ehlanzeni, The Municipal Valuer for the Nkomazi Local Municipality and Leopard Creek Share Block Limited

(615/2023) (MMB)

Appealed from MMB

Date to be heard: 27 August 2024

Mokgohloa JA, Nicholls JA, Weiner JA, Coppin AJA, Mjali AJA

Administrative law – **statutory interpretation** – what was the applicability and interpretation of the words 'recognised valuation practices, methods and standards' as it appears from s 45(1) of the Municipal Property Rates Act 6 of 2004 (MPRA), with special reference to Global Standards 2017 (RICS 2017), issued by the Royal Institute of Chartered Surveyors (RICS) and the International Valuation Standards Committee (IVSC) – what was the confirmation of the principle of the 'highest and best use', informing the highest value, as was prescribed by RICS 2017 and IVS 2017 as a cornerstone for the determination of value in terms of s 45(1) of the MPRA – what was the content of the market value concept – what was the interpretation of the notional transaction, notionally entered into between a notional buyer and a notional seller for purposes of market value, and identifying the market facts to be taken into account by the notional parties to the notional transaction – whether in the absence of directly comparable sales, share block prices achieved in respect of the subject property could be served as a basis for determination of the market value of the subject property.

24. Minister of Environmental Affairs v The Trustees for the time being of Groundwork Trust, Vukani Environmental Justice Alliance Movement In Action, National Air Quality Officer, The President of the Republic of South Africa, Member of Executive Council for Agricultural and Rural Development Gauteng Province, Member of the Executive Council for Agriculture, Rural Development, Land and Environmental Affairs, Mpumalanga Province, The UN Special Rapporteur on Human Rights and the Environment (First *Amicus Curiae*), Centre for Child Law (Second *Amicus Curiae*) (549/2023)

Appealed from GP

Date to be heard: 28 August 2024

Molemela P, Zondi ADP, Dambuza JA, Hendricks AJA, Dolamo AJA

Statutory interpretation – National Environmental Management: Air Quality Act 39 of 2004 (the Air Quality Act) – ministerial powers to enact regulations under the Act – revision of a court in absence of an appeal – whether the regulation-making power of s 20 of the Air Quality Act vested the appellant with a discretion to prescribe regulations or whether it imposed a duty to do so – whether there existed any grounds to interfere with the high court's discretion in granting a just and equitable remedy.

25. The Public Protector of South Africa v The Chairperson of the Section 194(1) Committee, Kevin Mileham, The Speaker of the National Assembly and All Political Parties Represented in the National Assembly

(627/2023)

Appealed from WCC

Date to be heard: 28 August 2024

Ponnan JA, Nicholls JA, Mothle JA, Masipa AJA, Dippenaar AJA

Civil law and procedure – whether the failure by the court *a quo* to have determined the merits of the application and only opting to have dealt with the superficial technical point of *in medias res* constituted a gross misdirection and amounted to a breach of ss 34,38 and/or 172 of the Constitution – whether the court a quo was correct in finding that the appellant in the present matter had improperly approached the issues of *in medias res* and failed to properly engage with what was required to pass the test – did the principle of *in media res* only apply to reviews or also to the separate declaratory relief – if in the event that this Honourable Court was inclined to and/or found it necessary to have reached the merits of the review grounds, the adjudication of the following: the grounds for recusal advanced by the applicant against the First and Second respondents and/or – whether the court *a quo* was correct in finding that the applicant had sown the existence of grave injustice or that any harm which may have been suffered by her were material and irreversible if the committee was permitted to proceed with its work.

26. 28 Esselen Street Hillbrow CC, 10 Fifth Avenue Berea (Pty) Ltd, 68 Wolmarans Street Johannesburg (Pty) Ltd, Hillbrow Consolidated Investment CC and Mark Morris Farber v TUFH Limited

AND

TUFH Limited v 28 Esselen Street Hillbrow CC, 266 Bree Street Johannesburg (Pty) Ltd, 10 Fife Avenue Berea (Pty) Ltd, 68 Wolmarans Street Johannesburg (Pty) Ltd, Hillbrow Consolidated Investment CC and Mark Morris Farber

(606/2023)

Appealed from GP

Date to be heard: 29 August 2024

Zondi ADP, Molefe JA, Kgoele JA, Koen AJA, Coppin AJA

Company law – law of contracts – specific performance – loan agreement – section 45 of the Companies Act 71 of 2008 – money judgment – Local Government Systems Act 3 of

2003 – whether, at the time that the respondent (TUHF) purported to make demand of the first appellant and at the time TUHF instituted its application , there were any rates, taxes, water, electricity and sanitation charges in fact payable by the applicant to the City of Johannesburg which had not been paid – whether appellant failed to provide to TUHF certified copies of municipal accounts – whether the loan agreement was breached due to an event of default entitling TUHF to enforce the loan agreement and mortgage bond – whether TUHF's application was an abuse of process and whether the enforcement of the particular provisions of the loan agreement (and mortgage bond) sought to be enforced by TUHF would be contrary to public policy – whether rule 46A was applicable and was complied with – whether the suretyships were void for non-compliance with section 45 of the Companies Act – whether the appeal was moot – whether there were reasonable prospects of success on appeal – whether there were special circumstances that justify the granting of leave to appeal – whether it would be in breach of a contractual term of the loan agreement and mortgage bond if it failed to pay all rates, taxes, water and electricity charges – whether there was any dispute as contemplated in the Local Government Systems Act 3 of 2003 and the City of Johannesburg Debt Collection By-Laws in relation to municipal accounts – whether it was entitled to specific performance of the loan agreement and mortgage bond and to accelerate payment in terms of the loan agreement – whether enforcing the provisions in the loan agreement was unconscionable or contrary to public policy.

27. Robert Paul Serne NO; Aloysius Joannes Marius Reijns NO; Gert Albertus Van Rhyn NO v Mzamomhle Educare; Bongeka Mqolombeni; Siphokazi Mqolombeni; All other persons who unlawfully occupy erf 22933 Kraaifontein; The City of Cape Town (588/2023)

Appealed from WCC

Date to be heard: 29 August 2024

Ponnan JA, Makgoka JA, Mokgohloa JA, Mjali AJA, Naidoo AJA

Property Law – eviction application – the appellants are the registered owners of immovable property which is occupied by the first to fourth respondents, being used as an educare centre – whether the appellants are the true owners of the property – whether the appellants had a lease agreement with the first respondent and whether the respondents' occupation of the property could continue after the termination of the lease agreement or in the absence thereof.

28. Adv W S Coughlan NO v The Health Professions Council of South Africa; The Registrar of the Health Professions Council of South Africa; The Road Accident Fund; Professor S Rataemane; Dr M L Mathey; Dr H Lekalakala; Professor Basil J Pillay
(397/2023)

Appealed from WCC

Date to be heard: 29 August 2024

Mocumie JA, Weiner JA, Hendricks JA, Baartman AJA, Masipa AJA

Administrative law– review – leave to appeal against an unopposed application brought in terms of section 6(2) of the Promotion of Administrative Justice Act 3 of 2000 – to review and set aside a determination made by the Road Accident Fund Appeal Tribunal in terms of Regulation 3(8) of the RAF Regulations 2008 – whether the appellant has a third party claim against the RAF for compensation for non-patrimonial loss as a result of an alleged serious injury which he sustained in a motor vehicle collision – whether the appeal tribunal exceeded its powers in determining a causation issue which is beyond its remit and is a decision to be made by the court – whether the court a quo erred in dismissing the claim.

29. Mashwayi Projects (Pty) Ltd, Phahlani Lincoln Mkhombo N O and Arnot Opco (Pty) Ltd (in Business Rescue) v Wescoal Mining (Pty) Ltd, Salungano Group Ltd, Ndalamo Coal (Pty) Ltd, IWIRC Southern Africa Network NPC (Registration No: 2022/622714/08) (Amicus Curiae) and Industrial Development Corporation of SA (Registration No: 1940/014201/06)
(1157/23)

Appealed from GJ

Date to be heard: 30 August 2024

Makgoka JA, Smith JA, Keightley JA, Hendricks AJA, Dippenaar AJA

Company law – civil procedure – business rescue – Chapter 6 of the Companies Act 71 of 2008 (the Act) – whether a post-commencement creditor was entitled to vote on a business rescue plan, such a question was a legal one to be determined on a purposive interpretation of Chapter 6 of the Act – whether the order had the effect of amending the business rescue plan – whether there was reverse engineering of the vote cast at a s 151 meeting – whether a declaratory order was incorrectly granted absent a specific prayer for such relief.

30. Mpilo Sakile Mbambisa, Mhleli Mlungisi Tshamase, Trevor Harper, Mzwake Clay, Walter Shaidi, Erastyle (Pty) Ltd, Roland Williams and Mamisa Chabula-Nxiweni v Nelson Mandela Bay Metropolitan Municipality

(272/2023)

Appealed from ECB

Date to be heard: 30 August 2024

Schippers JA, Mokgohloa JA, Nicholls JA, Baartman AJA, Masipa AJA

Statutory interpretation – Local Government: Municipal Finance Management Act 56 of 2003 (the Act) – liability of irregular expenditure under the Act – whether the high court correctly interpreted s 32 of the Act by finding that a municipal official is liable for unauthorised or irregular expenditure – whether the respondent should have been precluded from complying with its obligations in terms of s 32(2) of the Act – whether the respondent's claim for declaratory relief should have been dismissed on the basis of the inordinate delay.

31. South Durban Community Environmental Alliance and The Trustees of the Groundwork Trust v The Minister of Forestry, Fisheries and the Environment, Chief Director: Integrated Environmental Authorisations, Department of Forestry, Fisheries and the Environment and Eskom Holdings SOC LTD

(479/2023)

Appealed from GP

Date to be heard: 30 August 2024

Dambuza JA, Kgoele JA, Unterhalter JA, Koen AJA, Dolamo AJA

Environmental law – administrative law – review – National Environmental Management Act 107 of 1998 (NEMA) – Promotion of Access to Justice Act 3 of 2000 (PAJA) – whether the decision under review should have been reviewed and set aside – whether the appellants could force government to make a policy choice of using renewable energy for this specific power plant, as opposed to gas, without firstly attacking the approved policy of government which authorized the use of gas as part of the energy mix, that on the back of the urgent need by government to address crippling energy shortage afflicting the country – whether it was correct to argue that before building a new power plant that would rely on fossil fuels, the respondents should have always considered the use of renewable energy despite the fact that the use of those fossil fuels was already part of the energy mix approved in the published and adopted Integrated Resource Plan of the government, to which once more there had been no

challenge – whether the court *a quo* was correct in exercising its wide discretion by declining to review and set aside the impugned decision even after finding an imperfection in the decision-making process, as opposed to firstly declaring the impugned conduct unlawful before exercising its discretion.

32. The Minister of International Relations and Co-operation NO and The Department of International Relations and Co-operation NO v Neo Thando/Elliot Mobility (Pty) Ltd and Advocate M C Erasmus SC NO
(444/2023)
Appealed from GP
Date to be heard: 2 September 2024
Zondi ADP, Mocumie JA, Weiner JA, Hendricks AJA, Dippenaar AJA
Arbitration law – **Arbitration Act 42 of 1965** – whether the arbitrator had jurisdiction to entertain Neo Thando's claim against the department, bearing in mind the Appellants' contentions that (a) there was no dispute at the time the matter was referred to Arbitration, (b) the dispute pleaded was not the same as the dispute referred to Arbitration and (c) the referral to Arbitration was not in accordance with the agreement relied upon by Neo Thando.

33. Veliswa Ngqobongo obo Princess Ngqobongo v Member of the Executive Council for Health, Eastern Cape
(1032/2022)
Appealed from ECP
Date to be heard: 2 September 2024
Nicholls JA, Kgoele JA, Smith JA, Coppin AJA, Mjali AJA
Delict – medical negligence – damages – whether the court a quo erred by not giving any or any sufficient attention to the evidence and submissions of the applicant in respect of the following areas – signs of foetal stress were missed in the first active stage of labour – excessive forceful fundal pressure was applied to the applicant's pregnant abdomen during the second stage of labour, which caused an obstruction of blood flow through the placenta and umbilicus – the first ten minutes of resuscitation of Princess was negligently performed in that the nurse intermittently halted the oxygen bagging to Princess for a cumulative 5 minutes and also did not perform cardiac compressions.

34. Zander Divan Els v Ceyanne Els

(1011/2022)

Appealed from GP

Date to be heard: 2 September 2024

Mabindla-Boqwana JA, Molefe JA, Keightley JA, Baartman AJA, Dolamo AJA

Family law – matrimonial property law – court's discretion towards validity of settlement agreement – whether the high court correctly exercised its discretion in accepting or rejecting the settlement agreement **–** whether high court's order serves the minor child's best interest – whether the 'special trial', emanating from a settled, unopposed divorce, that the parties were subjected to was fair and reasonable.

35. Tobias Casparus Du Plessis v Donovan Majiedt NO, Nicky De Klerk NO, Registrar of Deeds, Bloemfontein, Master of the High Court, Mahikeng, Master of the High Court, Bloemfontein, Nicolaas Daniel De Klerk NO and Susanna Johanna Elizabeth De Klerk NO

(841/2023)

Appealed from FB

Date to be heard: 3 September 2024

Dambuza JA, Molefe JA, Smith JA, Mjali AJA, Naidoo AJA

Contract law – validity of lease agreement – effect of provisional sequestration on appellant's *locus standi* – prerequisites for interim interdict – whether the agreement relied upon by the appellant was void due to it being concluded in the absence of the prior written consent of the bondholder – whether the appellant lacked *locus standi* (in his personal capacity and capacity as trustee) to institute the application owing to his provisional sequestration when the application was launched – whether the appellant successfully proved the requirements for an interim interdict against the first respondent – whether the first respondent was correctly cited and/or whether legal relief could only be claimed against the first respondent.

36. Tersia Jooste NO and Jens Lievens NO v Jana Annalise Pretorius, Jana Annalise Pretorius NO, Rhino Pride Foundation and Master of the High Court, Johannesburg

(695/2023)

Appealed from GP

Date to be heard: 3 September 2024

Schippers JA, Nicholls JA, Mothle JA, Unterhalter JA, Baartman AJA

Trust law – removal of trustee – s 20(1) of the Trust Property Control Act 57 of 1988 (the TPCA) – were trustees capable of being removed from their office as trustees by virtue of and in terms of the provisions of a trust deed – did clause 11 of the trust deed permit Jooste and Lievens, as the remaining trustees, to unanimously have agreed in writing that Pretorius' office as trustee was vacated thereby removing her as a trustee of the trust – was Pretorius validly removed as trustee by virtue of the resolution taken in terms of clause 11.1.5 of the trust deed – were the resolutions, which were taken by a majority of the trustees, valid and enforceable – if the resolutions were not valid and enforceable, should have Pretorius been removed as a trustee in terms of s 20(1) of the TPCA ie was her removal in the interest of the trust and its beneficiaries.

37. Chapman's Bay Estate Homeowners' Association v Willem Adriaan Lotter, Community Schemes Ombud Services and Mninawa Bangilizwe

(525/2022)

Appealed from WCC

Date to be heard: 3 September 2024

Mokgohloa JA, Weiner JA, Kgoele JA, Dolamo AJA, Dippenaar AJA

Community Schemes Ombud Service Act 9 of 2011 – dispute resolution – setting aside of adjudication order – whether an adjudication order made by an adjudicator can be set aside on appeal or review to determine an application brought by the first respondent against the appellant for dispute resolution proceedings under the Community Schemes Ombud Service Act 9 of 2011.

38. Lunesh Singh v The Body Corporate of St Tropez

(386/2023)

Appealed from GP

Date to be heard: 4 September 2024

Ponnan JA, Mokgohloa JA, Keightley JA, Hendricks AJA, Naidoo AJA

Civil procedure – right to a fair trial – failure to disclose conflict of interest – whether the appellant's right to a fair hearing was infringed by the 'conflict of interest' of the honourable Judge Mokose, a breach of the Code of Judicial Conduct, adopted in terms of S 12 of the Judicial Service Commission Act 9 of 1994 – whether the law was applied impartially without

fear, favour or prejudice – whether the failure of the honourable Mokose J, to disclose her ownership of two Upper Houghton apartments, the very same building as the appellant's apartment, prevented the appellant's right to a fair hearing – whether the failure of the honourable Mokose J to disclose a recent application where the Upper Houghton Body Corporate issued an application against the appellant for identical prayers as requested by the Respondent, prevented the appellant's right to a fair hearing – whether the failure of the honourable Mokose J to allow the appellant's Rule 30 and 30A application to be dealt with prior to continuing with the main application, prevented the applicant's right to a fair trial – whether interference by the honourable Mokose J prevented the appellant's right to a fair trial.

39. The Commissioner for the South African Revenue Service v Diageo SA (Pty) Ltd
(1063/2023)

Appealed from GP

Date to be heard: 4 September 2024

Mocumie JA, Schippers JA, Smith JA, Coppin AJA, Mantame AJA

Statutory interpretation – Customs and Excise Act 91 of 1964 (the Act) – proper classification of tariffs applicable under Additional Note 4*(b)* of Schedule No 1 to the Act – whether the correct tariff classification for an alcoholic beverage manufactured by the respondent was classifiable under tariff heading 2208.70.22 as contended for by appellant or tariff 2208.70.21 as contended for by the respondent.

40. The Spar Group Limited, The Spar Guild of Southern Africa NPC (Registration no. 1962/004186/08), Spar South Africa (Pty) Ltd v Twelve Gods Supermarket (Pty) Ltd, Monothendre Trading (Pty) Ltd and Vamvakou Supermarket (Pty) Ltd
(1100/2022)

Appealed from KZP

Date to be heard: 4 September 2024

Mabindla-Boqwana JA, Kgoele JA, Baartman AJA, Dolamo AJA, Masipa AJA

Contract law – interpretation – discretionary power – did the *arbitrio bono viri* standard have application to SPAR's alteration of the credit and dropshipment terms offered to the Giannacopoulos Group – if the first question was in the affirmative, did SPAR meet that standard on the facts of this case – whether the power in clause 5 of the Terms of Sale of the first applicant (Spar Group) to vary the credit facilities terms between it and each of the first to

thirteenth respondents (the Giannacopoulos Group) was a contractual discretionary power that was subject to the *arbitrio bono viri* standard – whether the Spar Group exercised that power reasonably, honestly and for a proper purpose.

41. Sishen Iron Ore Company (Pty) Ltd v The Commissioner for the South African Revenue Service
(550/2023)
Appealed from GJ
Date to be heard: 5 September 2024
Molemela P, Dambuza JA, Koen AJA, Coppin AJA, Dippenaar AJA
Tax law – deductibility and expenditure – statutory interpretation – ss 222 and 223 of the Tax Administration Act 28 of 2011 (TAA) – s 187(1) of the TAA – s 189*quat*(2) of the Income Tax Act 58 of 1962 (as amended) (ITA) – what was the proper interpretation of s 36(11)*(e)* and the meaning of the words 'in terms of a mining right' and 'infrastructure' as contemplated therein and whether the expenditure incurred in respect of the Relocation Project was deductible under s 36(11)*(e)*, properly interpreted – what was the proper interpretation of s 36(11)*(a)* and the meaning of the words 'mine equipment' and whether Sishen's 66KV lin was deductible as mine equipment under s 36(11)*(a)* – whether the requirements for deductibility under s 11(a) of the ITA and in particular, whether the expenditure incurred by Sishen for the Relocation Project was capital or revenue in nature – whether Sishen was entitled to a deduction in respect of legal costs in terms of s 11*(c)* read with s 11*(a)* of the ITA – whether SARS ought to have imposed understatement penalities and interest thereon in terms of ss 222 and 187(1) of the TAA, and s 89quat(2) of the ITA.

42. Akani Retirement Fund Administrators (Pty) Ltd (Appellant in case no 1125/2022) v Chris Legakwa Moropa , Esau Frans Makamola, Shalimane Richard Nkosi, Vusi Johannes Selepe, Shirely Mathapelo Rambau, Dineo Pricilla Gamede, Christopher Mazwisikhwebu, Jack Tema Nkgapele, NBC Holdings (Pty) Ltd, NBC Fund Administration Services (Pty) Ltd and 29 Others

Chemical Industries National Provident Fund (First Appellant in case no 1129/2022), Reginald Sema, Ayanda Sithole, Lucas Mashego, John Baloyi, Poppy Mtlakeng, Caswell Z Makhaba, Dan Tjiane, Monde Dyonta, Zwelihle Reginald Ngonyama and 15 Others v Chris Legakwa Moropa, Esau Frans Makamola, Shalimane Richard Nkosi, Vusi

Johannes Selepe, Shirely Mathapelo Rambau, Dineo Pricilla Gamede, Christopher Mazwisikhwebu, Jack Tema Nkgapele, NBC Holdings (Pty) Ltd, NBC Fund Administration Services (Pty) Ltd and 4 Others
(1125/2022 &1129/2022)
Appealed from GJ
Date to be heard: 6 September 2024
Zondi ADP, Ponnan JA, Makgoka JA, Baartman AJA, Masipa AJA
Administrative law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – **constitutional law** – **review** – whether the termination of a contract by a pension fund was susceptible to review on public law grounds under PAJA or legality review – whether a court could take over the power of the Financial Sector Conduct Authority to remove a trustee of a pension fund from office when that authority had assumed the duty to investigate the conduct of such trustee – whether the decision of the fund to terminate the NBC suit of contracts was administrative action in terms of PAJA or did it constitute public power for purposes of legality review – whether the Fund exercised public power when it terminated the NBC suite of contracts – whether the intractable disputes of fact on the allegations of fraud from both sides could be resolved on the papers – whether the review was moot.

43. Luxolo Fono, Caguba Tribal Authority v Port St Johns Municipality
(1271/2022)
Appealed from ECM
Date to be heard: 5 September 2024
Mocumie JA, Mabindla-Boqwana JA, Smith JA, Mjali AJA, Mantame AJA
Statutory interpretation – National Building Regulations and Building Standards Act 103 of 1977 (NBRSA) – **Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA)** – whether the NBRSA applies to the property in question – whether respondent was entitled to rely on s 33(1) of the SPLUMA in the matter – whether full court erred in exercising its discretion to grant a demolition order.

44. Shaan Nordien and Tavia Nordien v Kidrogen RF (Pty) Ltd and City of Cape Town
(149/2023)
Appealed from WCC
Date to be heard: 6 September 2024
Makgoka JA, Weiner JA, Kgoele JA, Hendricks AJA, Naidoo AJA

Special leave to appeal – eviction proceedings – rectification of lease agreement – whether leave ought to be granted – whether rectification of the lease agreement sought by the respondent could be granted in the circumstances – whether, absent rectification, the respondent proved that the applicants were unlawful occupiers – whether terms of sale agreement of property purchased by first applicant precluded respondent from cancelling lease agreement.

45. Jennifer Emily Hutchinson Wild v Legal Practice Council, Eastern Cape Society of Advocates, Bisho Society of Advocates and General Council of the Bar of South Africa (956/2023)

Appealed from GP

Date to be heard: 6 September 2024

Mokgohloa JA, Keightley JA, Baartman AJA, Coppin AJA, Dolamo AJA

Principles relating to academic relief – requirements for reviewability of decisions under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) – statutory interpretation of the Legal Practice Act 20 of 2014 (the LPA) – whether the relief sought by the appellant was academic and should not be entertained – whether the decision which the appellant wished to have reviewed and set aside constituted 'administrative action' for purposes of PAJA – whether, on the interpretation of s 116 of the LPA, the second and fourth respondents were still entitled to bring disciplinary proceedings against legal practitioners – whether s 116(2) of the LPA directed the first respondent to take over from the second respondent in the striking application – whether the first respondent lawfully authorised the second respondent to complete the striking proceedings.

46. Alexia Kobusch, Wayne Kobusch and Woodmore Kobusch v Wendy Whitehead (515/2023)

Appealed from KZP

Date to be heard: 6 September 2024

Mothle JA, Molefe JA, Unterhalter JA, Mjali AJA, Mantame AJA

Civil procedure – barring of party to proceedings – exception based on lack of averments – whether the respondent raised a valid exception based on claim that the particulars lack averments to sustain a cause of action – whether the exception was delivered after the respondent was barred.

47. MV "SMART" Minmetals Logistics Zhejiang Co Ltd v The Owners and Underwriters of the MV "SMART" and The National Ports Authority, A Division of Transnet

(573/2023)

Appealed from KZD

Date to be heard: 9 September 2024

Ponnan JA, Dambuza JA, Mocumie JA, Nicholls JA, Koen AJA

Joinder of a foreign party to a discovery application – s 5(1) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Act) – application to compel – whether the first respondent satisfied the requirements of s 5(1) of the Act permitting joinder – whether the court can order/compel discovery of documents alleged to be privileged and confidential.

48. T Noyila on behalf of B Noyila v The Member of the Executive Council for the Department of Health: Eastern Cape Province

(383/2023)

Appealed from EB

Date to be heard: 9 September 2024

Makgoka JA, Schippers JA, Weiner JA, Dolamo AJA, Naidoo AJA

Delict – medical negligence – did the current law of damages allow a defendant to undertake to provide services in kind, at a reasonable standard at a public health facility, rather than pay damages for future medical expenses upfront in one lump sum – did the current law of damages allow a defendant to give an undertaking to procure the medical services or supplies directly from the private healthcare sector whenever it was required or – did the current law of damages allow a defendant to reimburse the plaintiff for reasonable expenses incurred in procuring medical services or supply within 30 days of presentation of an invoice – and if not, should the common law have been developed to allow such an undertaking in this case – where a defendant raised the development of the common law as a special defence against a delictual claim, was there an onus on the defendant to place sufficient evidence before the trial court to justify the development of the common law – what was the correct test to measure the standard of care that a defendant can provide when raising the public healthcare defence.

49. Willem Tobias Hanekom NO, Lourens Hermanus Taljaard NO, The Community Scheme Ombud Service and Zama Matayi NO v Nuwekloof Private Game Reserve Farm Owners' Association

(502/2023)

Appealed from WCC

Date to be heard: 10 September 2024

Ponnan JA, Makgoka JA, Weiner JA, Mantame AJA, Masipa AJA

Contract law – interpretation of statutory and contractual provisions – clauses offending public policy – whether an appeal in terms of s 57 of the Community Schemes Ombud Service Act 9 of 2011 constitutes judicial review of a civil appeal – whether clause 5.13 in the respondent's constitution is against public policy and invalid

50. Die Nederduitsch Hervormde Kerk van Afrika, Die Nederduitsch Hervormde Kerk van Afrika Gemeente Meyerspark, Die Nederduitsch Hervormde Kerk van Afrka Gemeente Pretoria Tuine, Die Nederduitsch Hervormde Kerk van Afrika Gemeente die Wilge Potchefstroom and Die Nederduitsch Hervormde Kerk van Afrika Gemeente Koster v Die Wilge Hervormde Gemeente, Die Wilge Vereeniging, Hervormde Gemeente Grootvlei, Die Gemeenskap van Gelowiges Grootvlei, Hervormde Gemeente Koster, Die Diamant Vereniging, Hervormde Gemeente Meyerspark, Meyerspark Christelike Vereniging, Hervormde Gemeente Noordelike Pietersburg, Ysterberg Vereniging and 15 Others

(1089/2022)

Appealed from GP

Date to be heard: 10 September 2024

Schippers JA, Mabindla-Boqwana JA, Smith JA, Keightley JA, Hendricks AJA

Contract law – rule 33(4) of the Uniform Court Rules – mootness – whether the finding by the trial court that the issues between the parties became moot under circumstances where the parties expressly agreed that a separated issue be heard in terms of rule 33(4) of the Uniform Court Rules and that the intervention of the original owners of the properties, relevant to the dispute, be held over, was correct – whether the original owners of the relevant properties were entitled to intervene in the present proceedings – and whether they should be joined as co-applicants in the application for leave to appeal as co-appellants in the appeal – whether the congregation respondents could have severed their contractual ties with the Nederduitsch

Hervormde Kerk van Afrika (NHKA) and continued to exist as separate legal *personae* outside the auspices of the NHKA – whether the current members of the congregation respondents had lost their membership of the alleged concomitant congregation functioning within the auspices of the NHKA currently – whether the four other applicants in fact and in law existed or not, and whether they should be allowed to intervene in the application for leave and the appeal itself.

51a. Transasia 444 (Pty) Ltd v The Minister of Mineral Resources, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region, Umsobomvu Coal (Pty) Ltd and Transasia Minerals SA (Pty) Ltd
In re:
Umsobomvu Coal (Pty) Ltd v The Minister of Mineral Resources and Energy, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region
(702/2023)

52a. Transasia Minerals (SA) (PTY) Ltd v The Minister of Mineral Resources and Energy, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region, Umsobomvu Coal (Pty) Ltd and Transasia 444 (Pty) Ltd
In re:
Umsobomvu Coal (Pty) Ltd v The Minister of Mineral Resources and Energy, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region
(707/2023)
Appealed from GP
Date to be heard: 11 and 12 September 2024
Molemela P, Zondi ADP, Unterhalter JA, Mantame AJA, Dippenaar AJA
Civil procedure – rescission application – whether it was competent for the high court to vacate a final order of another judge in the same division and in the same case without rescinding or varying the order – whether the high court's order is valid – whether the default judgment should be rescinded.

53. Maree & Bernard Attorneys and Nicolas Petrus Maree v The South African Legal Practice Council and The Attorneys Fidelity Fund
(914/2023)
Appealed from FB
Date to be heard: 11 September 2024
Dambuza JA, Molefe JA, Kgoele JA, Hendricks AJA, Mjali AJA
Issuance of Fidelity Fund Certificate by the Legal Practice Council – s 85 of the Legal Practice Act 28 of 2014 (the Act) – applicability of the requirements of s 85 of the Act in relation to other investment accounts opened by legal practitioners – whether the accounts in question were trust accounts as contemplated in s 78(1) of the Attorneys Act (equivalent to s 84 of the Act) – whether the high court correctly found that the accounts mentioned in the appellant's notice of motion had to be audited and reported upon in order for the second appellant to qualify for a fidelity fund certificate.

54. JR 209 Investments (Pty) Ltd, Idlewild Farm (Pty) Ltd, Liberini 112 CC, Hy-Line South Africa (Pty) Ltd and Maluvha Kwekery (Pty) Ltd v Homeless People Housing Co-operative Limited, Samuel Mandhla Songo, Kolobe Virginia Kgomo, Selo Sharon Lehong, Madumetsa Thomas Mojela, Kedibone Johannes Sibanyoni and Unlawful Invaders of Portion 8, 10 and 38 of the Farm Witkoppies 393, Ekurhuleni
(746/2023)
Appealed from GP
Date to be heard: 11 September 2024
Mocumie JA, Makgoka JA, Mothle JA, Dolamo AJA, Masipa AJA
Property law – company law – subdivision of Agricultural Land Act 70 of 1970 – land invasion – s 72(1) of the Cooperatives Act 14 of 2005 – Companies Act 71 0f 2008 – contempt of court – liquidation relief – application to strike out – whether the strike out application should have been granted by the court a *quo* – whether the subdivision of Agricultural Land Act 70 of 1970 still found application – whether the business of the first respondent (Homeless People Housing Co-operative – HPH), or what it sought to do in providing housing to its members on the first respondents properties, was unlawful – liquidation relief - whether the appellants were 'interested person(s)' as intended by s 72(1) of the Cooperatives Act 14 of 2005 – whether the first respondent was liable to be wound-up as intended by s 72(1) and, to that end, whether the evidence established the requirements legislated under ss *(a)* to *(c)* – contempt relief – whether the evidence established that there

was a breach of the imminent land invasion and threatened unlawful establishment of an informal township order, the contempt of court order and the winding-up of the first respondent orders either one, more or all of the respective respondents – whether the main application (strike out application) was not an abuse of process – whether the relief striking out paragraphs in the founding affidavit are warranted – whether the main application could be determined on motion, in light of the prevalence of *bona fide* material factual disputes – whether the appellants established contempt, either on a balance of probabilities, or beyond reasonable doubt – whether any contempt relief competently be considered/granted against the second to sixth respondents – whether the appellants were vested with *locus standi* to pursue the liquidation of the Homeless People housing Cooperative Ltd (HPH) – whether the liquidation relief was incompetent, based on the doctrine of *res judicata*, issue *estoppel*, or *lis alibi pendens* – whether a case was made out the HPH was susceptible for winding up, on the basis of justice and equity.

51b. Transasia 444 (Pty) Ltd v The Minister of Mineral Resources, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region, Umsobomvu Coal (Pty) Ltd and Transasia Minerals SA (Pty) Ltd

In re:

Umsobomvu Coal (Pty) Ltd v The Minister of Mineral Resources and Energy, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region

(702/2023)

52b. Transasia Minerals (SA) (PTY) Ltd v The Minister of Mineral Resources and Energy, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region, Umsobomvu Coal (Pty) Ltd and Transasia 444 (Pty) Ltd

In re:

Umsobomvu Coal (Pty) Ltd v The Minister of Mineral Resources and Energy, The Director-General: Department of Mineral Resources and Energy, The Regional Manager: KwaZulu-Natal Region

(707/2023)

Appealed from GP

Date to be heard: 11 and 12 September 2024

Molemela P, Zondi ADP, Unterhalter JA, Mantame AJA, Dippenaar AJA

Civil procedure – rescission application – whether it was competent for the high court to vacate a final order of another judge in the same division and in the same case without rescinding or varying the order – whether the high court's order is valid – whether the default judgment should be rescinded.

55. South African Legal Practice Council v Kgetsepe Revenge Kgaphola and Kgaphola Incorporated Attorneys
(795/2023)
Appealed from GP
Date to be heard: 12 September 2024
Makgoka JA, Mothle JA, Mabindla-Boqwana JA, Hendricks AJA, Baartman AJA
Legal practice law – Legal Practice Act 28 of 2014 – whether the first respondent's conduct had been established on a preponderance of the probabilities – whether or not the court *a quo* judicially exercised its discretion in determining, first that the first respondent remained a fit and proper person to continue to practice as an attorney and, second in determining that no sanction ought to have been imposed on the first respondent.

56. Christoffel Petrus Wolmarans N O, Emerentia Wolmarans N O, Tella Harris N O, Van Wyk Wolmarans N O (First-Fourth Appellants in their capacity as Trustees of the Wolmarans Kinder Trust, IT962/1998), Christoffel Petrus Wolmarans and Emerentia Wolmarans v The Standard Bank of South Africa Ltd
(416/2023)
Appealed from FB
Date to be heard: 13 September 2024
Ponnan JA, Schippers JA, Koen AJA, Coppin AJA, Mantame AJA
National Credit Act 34 of 2005 – credit agreement – settlement agreement – suretyship agreement – whether the credit providers undermined and circumvented or subverted the provisions of the National Credit Act 34 of 2005 (the Act or the NCA), including the peremptory debt enforcement provisions contained in Chapter 6, Part C of the NCA – whether a registered credit provider may conclude a settlement agreement with a consumer (which was made an order of court by virtue of the debtor agreeing thereto in the settlement agreement) when a consumer was in default in terms of a credit agreement governed by the Act, without the credit provider complying with the peremptory provisions of the debt enforcement provisions contained in Chapter 6, part C of the NCA and in addition where the settlement

agreement provides for provisions that would be unlawful if included in a credit agreement – whether such a settlement agreement constituted a supplementary agreement or document as envisaged in ss 89(2)*(c)*, 90(2)(f) and 91(2) and if so, whether the specific settlement agreement(s) constituted unlawful supplementary agreement(s) or document(s) as envisaged in ss 89(2)*(c)*, 90(2)(f) and 91(2) – whether the NCA was applicable to a settlement agreement where the underlying agreement was a credit agreement to which the NCA was applicable – whether the settlement agreements, if they were credit agreements to which the NCA applied, contained unlawful provisions in terms of ss 90(1) and (2) of the NCA – whether a juristic person, who stood surety for a consumer regarding a credit agreement that was governed by the NCA, was excluded from the provisions of s 129 read with 130 of the NCA because it was a juristic person and not a natural person – whether the court a *quo* was correct in finding that the credit provider was entitled to conclude the settlement agreements outside the ambit of the NCA and in turn was entitled to judgment as prayed for against the sureties for payment of a debt which originated from an underlying credit agreement to which the NCA applied – rescission of the court orders whereby the settlement agreements were made orders of court – whether the settlement agreements stood to be declared void and set aside – whether there was a non-disclosure of the underlying credit agreements – whether settlement agreements entered into between the appellants and the respondents, which were made orders of court on 21 February 2019 and 12 November 2020 must be regarded to be subject to the Act – whether the settlement agreements (which were made orders of the court) must be regarded as supplementary agreements for purposes of ss 89, 90 and 91 of the Act – whether the settlement agreements were governed by the provisions of the Act – whether s 129 read with s 130 of the Act were applicable.

57. Casadobe Props 60 (Pty) Ltd v Fratelli Martini Secondo Luigi SPA
(759/2023)

Appealed from WCC

Date to be heard: 13 September 2024

Dambuza JA, Mokgohloa JA, Nicholls JA, Dolamo AJA, Naidoo AJA

Intellectual property law – s 34(1)*(a)* of the Trade Marks Act 194 of 1993 – trade mark infringement – whether the use of the CANTO mark in relation to wines and sparkling wines and as part of its domain name, was likely to cause deception or confusion with Fratelli's CANTI mark and thus constituted trade mark infringement in terms of s 34(1)*(a)* of the Trade

Marks Act 94 of 1993 – whether the CANTO trade mark was visually, aurally, phonetically or conceptually similar to the registered CANTI trade mark.

58. Roadmac Surfacing (Pty) Ltd v MEC for the Department of Police, Roads and Transport, Free State Province and Tau Pele Construction (Pty) Ltd
(461/2023)

Appealed from FB

Date to be heard: 13 September 2024

Hughes JA, Mabindla-Boqwana JA, Molefe JA, Keightley JA, Mjali AJA

Administrative law – preferential procurement regulations – rejection of tender – whether the court *a quo* erred in holding that the Regulations found application and was in full force and effect in respect of Tender No: PR&T18/2021/22 – whether the court *a quo* erred in holding that the appellant has failed to meet the pre-qualifying criteria set out in Regulation 4(2) of the Regulations, and as a result, the appellant's bid was 'correctly' rejected – whether the first respondent was entitled to migrate with its reasons – whether the first respondent could rely on Regulation 9 of the Regulations as a prequalification criteria – whether the court *a quo* erred in holding that the appellant failed to submit a complete and compliant bid – whether the court *a quo* erred in holding that the 'tender documentation was clear, both in relation to the duty to fill in the required documents completely and fully, as well as the subcontracting requirements' – whether the court a quo erred in not dealing with reserved costs of the urgent application for an interim interdict which stood over for adjudication by the court hearing the review and which were argued in the review.

59. African Centre for Biodiversity NPC (NPO Registration No: 2004/025137/08) v Minister of Agriculture, Forestry and Fisheries, Director-General: Department of Agriculture, Forestry and Fisheries, Executive Council for Gentically Modified Organisms, Appeal Board, Genetically Modified Organisms, Monsanto South Africa (Pty) Ltd (Reg No: 1968/0001485/08) and Bayer (Pty) Ltd
(934/23)

Appealed from GP

Date to be heard: 19 September 2024

Molemela P, Ponnan JA, Nicholls JA, Koen AJA, Coppin AJA

Environmental law – s 5(1)*(c)* of the Genetically Modified Organisms Act 15 of 1997 (the GMO Act) – what was the manner in which expert opinions should have been evaluated and

whether disputes between experts were to be resolved in accordance with the well-established *Plascon-Evans* rule – what was the application of the precautionary principle and the consequences of the failure by the Executive Council (EC), the Appeal Board and the Minister to apply the precautionary principle – what was the existence of an obligation on the Executive Council to make a determination as to whether an environmental impact study as contemplated in s 5(1)*(c)* of the GMO Act and the consequences of a breach of that obligation – whether or not a risk assessment as to the potential risks associated with the general release of MON87460 had been conducted, and the consequences of the failure to conduct a risk assessment – whether the EC decision was procedurally fair – whether the EC decision, the Appeal Board decision and the Minister's decision were rational and/or reasonable.

60. Gerda Ruth Pringle v Joseph Matome Mailula

(773/2023)

Appealed from LP

Date to be heard: 19 September 2024

Mokgohloa JA, Mabindla-Boqwana AJA, Keightley JA, Baartman AJA, Masipa AJA

Protection from Harassment Act 17 of 2011 (the Act) – protection order – whether the court a *quo* had powers to consider evidence in terms ss 9(2) and (3) of the Protection from Harassment Act 17 of 2011 – whether the court a *quo* was bound by the normal civil application procedure and its limitation on the exchange of affidavits in adjudication applications issued in terms of the Act notwithstanding the inquisitive nature envisaged by the Act and the provisions of ss 9(2) and (3) of the Act – whether different procedures and principles applied in the acceptance of evidence introduced by the parties when a party was represented by a legal practitioner opposed to a party that was not represented as suggested by the court of appeal – whether the replying affidavit of the appellant constituted the introduction of new evidence which should not have been considered by the court a *quo* at the hearing of the application in spite of the court a *quo*'s powers in terms of ss 9(2) and (3) of the Act – whether the court of appeal erred in failing to have any regard to the merits of the appellants application based on the specific allegations of harassment regarding the appellants persistent electronic communication and threats by the respondent to the appellant, the respondents persistent communication with the appellant notwithstanding requests not to communicate with the appellant directly, and the threats against and racial *innuendo* by the respondent to the appellant by pointing the respondent's finger to the appellant stating that he '*…will deal with Verwoerd's kids*', upon which the appellant's application for a protection order was inter alia founded and

which allegations were supported by the evidence of the appellant's witness during the hearing in the court a *quo* and never disputed by the respondent – whether the respondent was prejudiced in presenting his case in the court a *quo* at the hearing notwithstanding that – the respondent was invited to apply for a postponement after the respondent objected to the introduction of the appellant's replying affidavit claiming that the respondent did not have an opportunity to respond to the appellant's replying affidavit; the respondent never disputed the specific allegations made by the appellant as were stated in her application and supplemented in her replying affidavit and which allegations were testified to by the appellant's witness; the respondent declined the opportunity to present any evidence at the hearing to dispute the appellant's totality of evidence, save for the respondent's answering affidavit which basically constituted a bare denial – whether the court of appeal erred in not considering whether the undisputed evidence presented by the appellant indeed constituted acts of harassment by the respondent *vis-à-vis* the appellant – whether the court a *quo* could exercise its discretion in allowing new allegations in reply in the absence of exceptional circumstances. Having allowed new allegations to stand, the court a quo erred in not guarantying the respondent the right to reply – whether the court a quo, placed undue reliance on the 'uncontested' and unqualified victim impact report of one Rhona van Niekerk in finding that the respondent caused the appellant harm that is required to complete the harassment allegations – whether the court a quo erred in finding that my alleged utterance during the meeting, constituted a single act that was sufficiently 'overwhelmingly oppressive' so as to achieve consequences akin to physical stalking of a victim – whether court a quo failed to test my conduct, at all relevant times, against the elements of harassment as provided in the Act, including important considerations such as the statutory functions and duties of an SGB member pursuant to which it is submitted to have been acting under oath – whether in allowing the oral evidence during the proceedings, the court emasculated the force of the cross-examination by prohibiting me from establishing the context informing the atmosphere of the 'extra-ordinary' meeting of 1 June 2021 – whether the court *a quo* failed to recognise that the appellant was not without alternative remedies and final interdict ought to be refused – whether final relief ought in any event ought to be refused on the grounds of the appellant's dishonesty in her founding affidavit, in breach of her duty of the utmost good faith in ex parte proceedings.

61. Andrew Merryweather v Oliver Scholtz and Gerard David Peter Scholtz (447/2023)

Appealed from WCC

Date to be heard: 23 September 2024

Ponnan JA, Smith JA, Unterhalter AJA, Koen AJA, Mantame AJA

Civil procedure – whether onus was considered by the trial court and reported in *Merryweather v Scholtz and Another* 2020 (3) SA 230 (WCC) – whether the full bench applied the proper approach for permissible interference with the trial court's factual findings – whether there were demonstrable or material misdirections by the trial court or that the trial court's factual findings were clearly wrong – on cross appeal: whether the second respondent should be held jointly and severally liable with the first respondent for the appellants costs.