

**REPUBLIC OF SOUTH AFRICA**

**SUPREME COURT OF APPEAL**

**BULLETIN 4 OF 2024**

**CASES ENROLLED FOR HEARING: 1 NOVEMBER – 30 NOVEMBER 2021**

**1. Adriaan Willem Van Rooyen N O (in the capacity nomine officio as the duly appointed joint liquidator in the insolvent estate of Tumi Mokwena Incorporated) and MMabatho Shelly Motimele N O (in the capacity nomine officio as the duly appointed joint liquidator in the insolvent estate of Tumi Mokwena Incorporated) v Mokgadi Francina Mokwena N O (in her capacity as trustee of the Dikwenanyana Trust: IT255/2017L) and The Trustees from Time to Time of the Dikwenanyana Trust IT255/2017L**

**(063/2023)**

Appealed from LP

Date to be heard: 1 November 2024

Dambuza JA, Kgoele JA, Keightley JA, Makume AJA, Chili AJA

**Law of Trusts – insolvency and sequestration of trust – piercing of the trust veneer –** whether the appellants possess locus standi to apply for the sequestration of the Dikwenanyana Trust IT255/2017L (the Trust) – whether the Trust should be sequestrated – whether the Trust is the alter ego of Tumi Mokwena Incorporated and/or Mr Mokwena – whether in the facts of the matter the trust veneer ought to be pierced.

**2. Melusi Emmanuel Ncala v Park Avenue Body Corporate, Community Scheme Ombud Services and Dombolo Makgomo Masilela N O**

**(813/2023)**

Appealed from GP

Date to be heard: 1 November 2024

Makgoka JA, Nicholls JA, Mbatha JA, Koen AJA, Dolamo AJA

**Constitutional Law – right to equality and dignity – s 9(c) Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (“PEPUDA”) – adjudication order – s 57 Community Schemes Ombud Service Act 9 of 2011** – whether the Community Schemes Ombud Service (CSOS) ought to have issued an order directing the first respondent, Park Avenue Body Corporate (“Body Corporate”), to take steps to reasonably accommodate the appellant as a person living with a visual disability – whether CSOS could have issued an order

that would protect a party's human rights and if so, should the CSOS have made an order declaring that the appellant's human rights to equality and dignity have been infringed – whether the high court and the adjudicator failed to properly analyse the right to equality – whether the high court should have made an order of costs against the appellant – whether the high court was empowered to condone the late filing of a statutory appeal in terms of s 57 of the Community Schemes Ombud Service Act 9 of 2011 (“the Act”) against the adjudication order delivered by the CSOS, which source of the high court's power to condone flows – whether the high court ought to have granted condonation to the appellant for the late filing of its appeal of the adjudicator order – whether the appeal from the CSOS ought to have been upheld by the high court – whether the appellant had made out any case to appeal the dismissal of condonation and whether the high court should have condoned the late filing of his appeal – whether the appellant had made out any case for a “need” which required reasonable accommodation in terms of s 9(c) of PEPUDA and the nature and extent of which PEPUDA and the Act intersected – whether the appellant's relief was competent in terms of the Act.

### **3. Vincent Japhta v The State**

**(1016/2023)**

Appealed from WCC

Date to be heard: 1 November 2024

Mothle JA, Smith JA, Unterhalter JA, Molopa-Sethosa AJA, Molitsoane AJA

**Criminal Law – credibility of a single witness – cautionary rule** – whether the trial court considered inadmissible evidence – whether the version of the Applicant was reasonably possibly true and whether the trial court was correct to accept the complainant's testimony – whether the trial court was misdirected in the application of the cautionary rule and the state failed to discharge the required burden of proof.

### **4. Ian Julian Smith v The Legal Practitioners' Fidelity Fund Board**

**(541/2023)**

Appealed from GP

Date to be heard: 4 November 2024

Mocumie JA, Mothle JA, Mabindla-Boqwana JA, Molopa-Sethosa AJA, Molitsoane AJA

**Attorneys Act 53 of 1979 – Attorneys Fidelity Fund – entrustment** – whether in the circumstances of the matter the appellant satisfied all the requirements of s 26(a) of the Attorneys Act 53 of 1979 in regard to the appellant’s four claims against the Fund.

**5. Siyabonga Gugulethu Galela (Identity number: 95 1220 0079 080) and For her admission to the Legal practioner and authorisation to the Legal Practice Council to enrol the Applicant as a legal practitioner of the abovementioned Honourable Court in terms of section 24, read with section 30 of the Legal Practice Act 28 of 2014, as amended.**

**(1294/2023)**

Appealed from GP

Date to be heard: 4 November 2024

Nicholls JA, Molefe JA, Smith JA, Unterhalter JA, Dolamo AJA

**Civil procedure – Admission – Legal Practice Act 28 of 2014 (LPA)** – Whether the court *a quo* erred in finding that the appellant is not a fit and proper person to be admitted as a legal practitioner under the LPA.

**6. Dinga Rammy Nkhwashu, Dingamanzi Ka Dinga Inc. t/a Masephule Dinga Attorneys v The State**

**(974/23)**

Appealed from GP

Date to be heard: 4 November 2024

Meyer JA, Weiner JA, Kathree-Setiloane JA, Coppin AJA, Makume AJA

**Criminal Law – Prevention of Organised Crime Act 121 of 1998– sentence** – whether the sentence imposed by the trial court and confirmed by the high court is appropriate and whether the sentence should be reduced.

**7. MacNeil Plastics (Pty) Ltd v Van Den Heever, Theodor Wilhelm N O, Pema, Jayant Daji N O, Stander, Monique N O and Ronnie Dennison Agencies (Pty) (Ltd) t/a Africa Systems (Pty) Ltd (in Liquidation)**

**(906/2023)**

Appealed from GP

Date to be heard: 5 November 2024

Zondi DP, Kgoele JA, Gorven AJA, Makume AJA, Chili AJA

**Company Law – Insolvency Law – business rescue – Insolvency Act 24 of 1936 and Companies Act 61 of 1973 (old Companies Act) – liquidation order** – whether an order placing a company into business rescue merely suspended or wholly superseded or terminated an antecedent liquidation order – whether an order placing a company into business rescue wholly superseded, rather than suspended, an antecedent liquidation order, whether provisions in the court order placing the company into business rescue that provided for the suspension or the liquidation order during the business rescue process, were valid and enforceable – whether payments made after the final winding-up order of the fourth respondent were void where the fourth respondent was subsequently placed in business rescue.

**8. Jacobus Herculaas De La Rey and Adam Johannes Barnard  
(029/2023)**

Appealed from MP

Date to be heard: 5 November 2024

Mocumie JA, Makgoka JA, Meyer JA, Molopa-Sethosa AJA, Molitsoane AJA

**Law of Contract – agreement – counter-offer** — whether Annexure ‘C’ to the Particulars of Claim was a deed of suretyship or an original undertaking – whether Annexure ‘C’ contained a suspensive condition and whether the respondent’s late acceptance of the offer contained in Annexure ‘C’ constituted a counter-offer which the appellant accepted – whether the high court erred in considering a defence which was not pleaded by the respondent.

**9. Shiraz Sabdia N O: The joint Executor of the Estate of the late Mahamed Faruk Sabdia and Riaz Sabdia N O: The Joint Executor of the Estate of the late Mahamed Faruk Sabdia v Aniel Kanjee Soma and The Taxing Master of the High Court: Gauteng Division, Pretoria  
(845/2023)**

Appealed from GP

Date to be heard: 5 November 2024

Mbatha JA, Hughes JA, Keightley JA, Unterhalter JA, Coppin AJA

**Constitutional Law – deceased estate – ss 51(1)(a) and 51(3)(a) Administration of Estates Act 66 of 1965 (Administration of Estates Act) – freedom of testation – review in terms of rule 48 of the Uniform Rules of Court** – whether the court *a quo* was correct in finding in favour of the taxing master and the application to the present matter of previous judgments such as *Nedbank Limited v Gordon N O and Others* and *Estate Fawcus v Van Boeschoten and*

*Lorentz* 1934 TPD 94 where the general principle was applied that “executor who is an attorney and acts in his professional capacity on behalf the estate in a lawsuit was not entitled to remuneration as an attorney, notwithstanding that his co-executor approved of his doing so” – whether the court a *quo* was correct in finding that the provisions of the will *in casu* did not permit the executors to charge professional fees through the firm of the first appellant (of which he was a director) for the extra work performed in litigation on behalf the estate and that reliance by the appellants on certain provisions of the will and ss 51(1)(a) and 51(3)(a) of the Administration of Estates Act did not assist them and that consequently the appellants were not entitled to the fee component of the bill of costs presented for taxation to the taxing master – whether the application of the relevant provisions of the will, as the court a *quo* reasoned, would create a conflict of interest and be *contra bones mores*.

**10. Sishen Iron Ore Company (Pty) Ltd v The Commissioner for the South African Revenue Service**  
**(550/2023)**

Appealed from GJ

Date to be heard: 6 November 2024

Molemela P, Dambuza JA, Gorven AJA, Koen AJA, Coppin 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 189quat(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 penalties and interest thereon in terms of ss 222 and 187(1) of the TAA, and s 89quat(2) of the ITA.

**11. Loyiso Ludidi, Thando Chwayi, Sivuyile Shasha v The State**  
**(983/2022) and (056/2024)**

Appealed from WCC

Date to be heard: 6 November 2024

Nicholls JA, Mothle JA, Hughes JA, Molefe JA, Dolamo AJA

**Criminal Law – Criminal Procedure Act 51 of 1977 – sentencing** – whether the long period of pre-sentence incarceration be considered on its own as a substantial and compelling factor to deviate from a prescribed minimum sentence of life imprisonment.

## **12. Mzwandile Ronald Magasela v The State**

**(1257/23)**

Appealed from GP

Date to be heard: 6 November 2024

Mabindla-Boqwana JA, Weiner JA, Keightley JA, Chili AJA, Molitsoane AJA

**Criminal Law – evaluation of evidence – single witness – sentence – cautionary rule** – whether the trial court erred in the evaluation of the evidence by accepting the evidence of a single witness – whether the trial court erred in convicting the appellant on a charge of murder as opposed to a charge of culpable homicide – whether the trial court erred in finding that there was no substantial and compelling circumstances that justified the imposition of a lesser sentence – whether a non-custodial sentence should have been imposed.

And

## **13. Siyabonga Ngcobo v The State**

**(115/2024)**

Appealed from KZP

Date to be heard: 6 November 2024

Mabindla-Boqwana JA, Weiner JA, Keightley JA, Chili AJA, Molitsoane AJA

**Criminal law – conviction and sentence - Criminal Procedure Act 51 of 1977 (CPA)** — whether the court a quo failed to follow the dictum of this Court in *Zwelithini Maxwell Zondi v The State* (1232/2021) [2022] ZASCA 173 (1 December 2022) which emphasised that the identification of a known person must be credible and reliable – whether the court a quo failed to apply the relevant cautionary rules – single evidence without any corroboration – whether the court wrongly evaluated and rejected the appellant’s alibi – whether the court a quo erred

by failing to consider the provision of s 276(l)(i) of the CPA and failed to take the personal circumstances of the appellant into consideration to justify a lesser sentence.

**14. Nandipha Magudumana v The Director of Public Prosecutions, Free State; The Minister of Police; Captain Tieho Jobo Flyman; The Presiding Magistrate N O (case number 20A/113/2023); The Head of Bizzah Makhate Correctional Centre: Kroonstad and The Minister of Home Affairs (1196/2023)**

Appealed from FB

Date to be heard: 7 November 2024

Zondi DP, Makgoka JA, Kathree-Setiloane JA, Gorven AJA, Molopa- Sethosa AJA

**Criminal law – Extradition – Jurisdiction** - whether the appellant was unlawfully arrested by members of the South African Police Service in Tanzania – whether the South African criminal courts have jurisdiction to try the appellant for the criminal offences - whether the high court erred in finding that the appellant disguised extradition from the United Republic of Tanzania to South Africa on 12 April 2023 was unlawful – whether the disguised extradition is inconsistent with both the Constitution of the Republic of South Africa and international law.

**15. Dayalan Munsami v The Standard Bank of South Africa Ltd, The Sheriff Randburg South West, The Registrar of Deeds Johannesburg and Hazel Irene Knowler (122/2023)**

Appealed from GJ

Date to be heard: 7 November 2024

Dambuza JA, Mocumie JA, Mbatha JA, Smith JA, Makume AJA

**Civil Procedure – special leave to appeal – requirements of rule 46A of the Uniform Rules of Court (rule 46A) – effect of special executability without reserve price in sale of execution** – whether applicant ought to be granted special leave to appeal – whether judicial officers were obligated to set a reserve price in terms of rule 46A where primary residence of the debtor was sold on authority of special executability order – whether such executability order rendered subsequent sale in execution void *ab initio* – whether the sale of immovable property below its market value justified an inference of *mala fides* and collusion rendering the sale and transfer void *ab initio*.

**16. Ntjanyana Daniel Masiteng v The Minister of Police**

**(944/23)**

Appealed from RC – FS

Date to be heard: 7 November 2024

Nicholls JA, Molefe JA, Kgoele JA, Koen AJA, Dolamo AJA

**Law of Delict – special leave to appeal – general damages – Superior Courts Act 10 of 2013**

– emphasis placed on the status of an individual when claiming general damages in instances of unlawful arrest – whether special leave to appeal should be granted against the decisions of lower courts – if so, whether the amounts awarded in general damages by the court below, was fair and reasonable in the circumstances.

And

**17. Phenyio Sethosa v The State**

**(679/2023)**

Appealed from RC-GJ

Date to be heard: 7 November 2024

Nicholls JA, Molefe JA, Kgoele JA, Koen AJA, Dolamo AJA

**Criminal Law – Criminal Law amendment Act 105 of 1997 – Criminal Procedure Act 51 of 1977 – Criminal Law Sexual and Related Matters Amendment Act 32 of 2007 –**

**conviction – sentence** – whether the appellant raped the complainant or whether the complainant consented to the sexual intercourse – whether the court a quo erred in finding that the appellant would have no reasonable prospect of success on appeal against his conviction and sentence of 10 years effective imprisonment – whether substantial and compelling circumstances existed to impose a lesser sentence.

**18. GP Case no: 2905/2022 Municipal Workers Retirement Fund v South African Local Government Bargaining Council, South African Local Government Association, Independent Municipal and Allied Trade Union, South African Municipal Workers' Union, Minister of Employment and Labour Financial Sector Conduct Authority**

**GP Case no: 4580/2022 Municipal Retirement Organisation, Germiston Municipal Retirement Fund, Municipal Gratuity Fund and Pieter Johannes Venter v South African Local Government Association, South African Local Government Bargaining Council, Independent Municipal and Allied Trade Union and South African Municipal Workers' Union**



**GP Case no: 30396/22 Municipal Employees' Pension Fund, Akani Retirement Fund Administrators (Pty) Ltd and Kennyatta Chomane v South African Local Government Bargaining Council, South African Local Government Association, Independent Municipal and Allied Trade Union, South African Municipal Workers' Union and Financial Sector Conduct Authority**  
**(770/2023)**

Appealed from GP

Date to be heard: 8 November 2024

Molemela P, Kathree-Setiloane JA, Smith JA, Keightley JA, Coppin AJA

**Collective Agreements – lawfulness – pension emoluments – terms and conditions of employment/matters of mutual interest – review – Promotion of Administrative Justice Act 3 of 2000 (PAJA) and/or legality** – whether the collective agreement was a valid agreement in terms of the provisions of s 213 of the Labour Relations Act 66 of 1995 (the LRA), and more particularly whether the accreditation scheme provided for in the collective agreement rendered it unlawful as not being a valid collective agreement in terms of the provisions of s 213 of the LRA and/or liable to be set aside on review in terms of PAJA or on the basis of a legality review.

**19. Lumka Oliphant, Virginia Petersen and Bathabile Olive Dlamini v South African Social Security Agency (SASSA)**  
**(1053, 1106, 1139/2023)**

Appealed from GP

Date to be heard: 8 November 2024

Makgoka JA, Mbatha JA, Weiner JA, Kgoele JA, Unterhalter JA

**Administrative Law – Self-review – Prescription Act 68 of 1969 – Social Security Law – Intergovernmental Relations Framework Act 13 of 2005** – whether the high court erred in overlooking the unreasonable delay in the launching of the self-review by the respondent – whether the court erred in finding that the Prescription Act was not applicable as the ‘debt’ had not arisen – whether the high court erred in its determination of the merits of the review and determining a just and equitable remedy – whether the respondent made out a case for the grant of condonation for the late prosecution of the review – whether the respondent’s claim for payment of money from the appellants’ had prescribed in terms of the Prescription Act 68 of 1969 – whether the applicant should have availed itself of the provisions of s 40(1)(b) and s 14(2) of the Intergovernmental Relations Framework Act 13 of 2005.

**20. The State v Jacob Kwindia**

**(266/2023)**

Appealed from LP

Date to be heard: 8 November 2024

Hughes JA, Mabindla-Boqwana JA, Meyer JA

**Criminal Law – Criminal Procedure Act 51 of 1977** – whether the court a quo erred in finding that the state did not prove the age of the complainant and that there are substantial and compelling circumstances entitling the sentencing court to deviate from the prescribed minimum sentence – whether the reasons given by the court a quo for reducing the sentence of the trial courts is justified – whether the court a quo misdirected itself on the current reduced sentence and committed an error of law entitling the Director of Public Prosecutions to appeal directly.

**21. Superior Macadamias (Pty) Ltd, Emvest Evergreen (Pty) Ltd, Emvest Foods (Pty) Ltd, Emvest Barvale (Pty) Ltd and Kwikbuild Corporation Ltd v Emvest Agricultural Corporation (Mauritius) Ltd and Emvest Food Products (Mauritius) Ltd**

**(865/2022)**

Appealed from GP

Date to be heard: 11 November 2024

Zondi DP, Mbatha JA, Mabindla-Boqwana, Weiner JA, Gorven AJA

**Company law – Companies Act 61 of 1973** – whether the first respondent is a creditor of the first to fourth appellants – whether the first to fourth appellants dispute the claims against them on bona fide and reasonable grounds – whether the first to fourth appellants are commercially insolvent – whether it is just and equitably that the second to fourth appellants be finally wound up.

**22. The Road Accident Fund, C P Letsoalo (Chief Executive Officer of the Road Accident Fund), The Board of the Road Accident Fund and Dumisani Elvis Hlatswayo, Mzwandile Modcay Masilela, The South African Legal Practice Council, The General Bar Council of South Africa, Pretoria Society of Advocates**

**(724/2023) and (724B/2023)**

Appealed from MP

Date to be heard: 11 November 2024

Mocumie JA, Hughes JA, Smith JA, Dolamo AJA, Molitsoane AJA

**Law of Delict – Road Accident Fund Act 56 of 1996, as amended – Road Accident Fund Board (RAF Board) – late settlement of claims** – whether or not it was competent/proper to refer two fee inquiries to a full court in light of the questions that the court asked – whether the court *a quo* erred to seek costs *de bonis propriis* against the RAF Board in the midst of an inquiry – whether or not it was proper for the court to order costs *de bonis propriis* against the RAF Board where the Board was not joined to the proceedings – whether costs should have been granted against the first and third Appellants in light of s 15(3) of the Road Accident Fund Act, 1996, as amended, where the facts of the case do not show that the RAF or the RAF Board acted with any malice – whether the court failed to consider itself bound by the Supreme Court of Appeal’s decision in *Road Accident Fund and Others v Mabunda Incorporated and Others* 2023 1 All SA 595 (SCA) – whether the court *a quo* erred in not applying the principle of *novus actus interveniens* to the facts of this case – whether the court *a quo* was correct in finding that the Appellants were responsible for the ‘late settlement’ due to non-compliance with court orders issued by the court *a quo*.

**23. Kidrogen RF (Pty) Ltd v Andre Jacobus Erasmus, Big Boy Ncube, Lionel Murray Schwormstedt & Louw Inc and Adv R D McClarty SC**  
**(815/2023)**

Appealed from WCC

Date to be heard: 11 November 2024

Makgoka JA, Meyer JA, Kgoele JA, Coppin AJA, Chili AJA

**Arbitration proceedings – powers of a court with regards to arbitration agreements – applicability of s 8 of the Arbitration Act 42 of 1965 (the Act) on arbitration agreements** – whether it was competent for a court to grant an extension of a time-bar agreed upon by the parties in an arbitration agreement – whether s 28 of the Act precluded the application of s 8 of the Act given that a final arbitral award was already made prior to the institution of the application – whether undue hardship would be cause to the applicant because it was time-barred.

**24. The Board of Governors of the Mitchell House School, The Mitchell House School and Stephen Lowry v Tsundzuka Kevin Maluleke obo Khatisa Khanani and Yinhla Kevin Junior Maluleke**

**(748/2023)**

Appealed from LP

Date to be heard: 12 November 2024

Makgoka JA, Mothle JA, Gorven AJA, Coppin AJA, Chili AJA

**Civil procedure – re-adjudication of concluded application by the same court – *Res judicata* principles – *functus officio* principles** – whether a judge may re-adjudicate the same application on the same cause of action after an order had been issued on that application by another judge of that division – whether the matter was *res judicata* by the time it was heard by the second judge – whether the high court was *functus officio* by the time the second judge adjudicated the same application.

## **25. Amore Van Der Merwe v The Road Accident Fund**

**(584/2023)**

Appealed from GP

Date to be heard: 12 November 2024

Nicholls JA, Mabindla-Boqwana JA, Molefe JA

**Civil procedure – delictual damages – *quantum*** – whether the appellant proved the *quantum* of damages on a balance of probabilities – whether a *novus actus interveniens* which justified an order of absolution from the instance existed.

## **26. Nqwenelwa Piyo v Road Accident Fund**

**(484/2023)**

Appealed from ECB

Date to be heard: 12 November 2024

Hughes JA, Weiner JA, Unterhalter JA

**Statutory interpretation – Road Accident Fund Act 56 of 1996 (the RAF Act) – implication of Constitutional rights to human dignity and equality before the law on impugned sections of the Act** – whether ss 17(4)(c), 19 and 21 of the RAF Act offended the rights to equality and human dignity as contained in the Bill of Rights – whether the limitations imposed by s 17(4)(c) of the RAF Act constituted an indirect discrimination which violated ss 7, 8 and 9 of the Bill of Rights – whether the high court failed to apply the relevant evaluation and shield from its obligation in terms of s 173 of the Constitution – whether the claim for loss a loss of support in respect of the loss of her husband should have been upheld.

**27. Minister of Social Development, Member of the Executive Council for Social Development, Gauteng and Head of Department, Gauteng Department of Social Development v TT, BM and Sinah Phiri, Livhuwani Mufamadi-Malaka, Pearl Hlatshwako, Member of the Executive Council for Health, Gauteng, Evelyn Mahlangu, Goitsewang Botes, South African Council for Social Service Professions, MBC, TLC, MT, BAT and Centre for Child Law (Amicus Curiae)**

**(862/2023)**

Appealed from GJ

Date to be heard: 13 November 2024

Dambuza JA, Kathree-Setiloane JA, Smith JA, Koen AJA, Chili AJA

**Family Law – Children’s Law – domestic adoption – Constitutional Law – chapters 9 and 15 of the Children’s Act 38 of 2005 (the Act) – statutory interpretation** – whether the letter of non-recommendation issued by the Department of Social Development (the Department) in terms of s 239(1)(d) of the Act on 21 July 2020 in respect of the application for the adoption of BT (“B”) ought to be reviewed, set aside and substituted with a decision recommending B’s adoption by the Eleventh and Twelfth Respondents – whether or not the pending review proceedings launched by the First, Second and Third Appellants under case number 2021/41955, to review its decision and the issuing of a letter of recommendation of the adoption of LM (L) under s 239(1)(d) of the Act, dated 23 November 2020, was correctly, permanently stayed by Honorable Judge Dippenaar – whether the Practice Guidelines on National Adoption ought to be reviewed and set aside – whether the conduct of the Department, the social workers in its employ and the social workers in the employ of the Gauteng Department of Health in relation to the application for the adoption of B and the circumstances surrounding that application, ought to have been declared to be in breach of the first applicant’s rights in terms of ss 10, 12 and 14 of the Constitution, as well as B’s rights in terms of s 28(2) of the Constitution – whether the conduct of the Department, the social workers in its employ and the social workers in the employ of the Gauteng Department of Health in relation to the application for the adoption of L and the circumstances surrounding that application, ought to have been declared in breach of the Second Respondent’s rights in terms of ss 10, 12 and 14 of the Constitution, as well as L’s rights in terms of s 28(2) of the Constitution – whether the conduct of the Department, the social workers in its employ and the social workers in the employ of the Gauteng Department of Health in relation to the applications for the adoption of B and L and the circumstances surrounding the applications, ought to be declared to be in breach of the First and Second Respondent’s rights in terms of ss 10, 12 and 14 of the Constitution, as well as B

and L's rights in terms of s 28(2) of the Constitution – whether ss 7(1)(f), 231(3) and 231(8) of the Children's Act were capable of an interpretation that was consistent with ss 10, 12, 1 and 28(2) of the Constitution, and if not, whether these provisions ought to have been declared to be constitutionally invalid and set aside.

**28. Zilta Miles v The Minister of Defence and Military Veterans, Secretary for Defence, Chief of the South African National Defence Force and Surgeon General of the South African National Defence Force**

**AND**

**Edgar Davids v The Minister of Defence and Military Veterans, Secretary for Defence and Chief of the South African National Defence Force**

**(854/2023)**

Appealed from GP

Date to be heard: 13 November 2024

Makgoka JA, Molefe JA, Unterhalter JA, Molopa-Sethosa AJA, Makume AJA

**Statutory interpretation – Military Ombud Act 4 of 2012 (the Act) – effect of the term 'recommend' as encapsulated in the Act** – whether recommendations of the Military Ombud as contemplated in s 6(8) of the Act had legal force and effect – whether the first respondent could have ignored the Military Ombud's recommendations.

**29. MEC for Health, Eastern Cape v Aphilisiwe Sikota obo Sanelisiwe Sikota**

**(842/2023)**

Appealed from ECB

Date to be heard: 13 November 2024

Nicholls JA, Weiner JA, Keightley JA, Dolamo AJA, Molitsoane AJA

**Law of Delict – claim for delictual damages – proof of causal negligence – operation of rule 49 of the Uniform Rules of Court (the Rules)** – whether the appellant failed to comply with rule 49 of the Rules in prosecuting the appeal to the full bench of the high court – whether the full court correctly found that the respondent had proved causal negligence by the appellant's staff to the minor child.

**30. Vantage Goldfields SA (Pty) Ltd v Siyakhula Sonke Empowerment Corporation (Pty) Ltd and Flaming Silver Trading 373 (Pty) Ltd**

**(853/2023)**

Appealed from MMB

Date to be heard: 14 November 2024

Zondi DP, Nicholls JA, Mothle JA, Meyer JA, Coppin AJA

**Company Law – Companies Act 71 of 2008 – sale of shares agreement** – whether the third addendum (in terms of which the first respondent paid the appellant) revived the sale of shares agreement that had lapsed due to the non-fulfilment of a condition precedent.

**31. The Body Corporate of San Sydney v Shivani Singh, Zamaphemba Ntuli, Firststrand Bank Limited, Nedbank Limited, SB Guarantee Company (RF)(Pty) Limited, ABSA Home Loans 101 (RF) Limited and Changing Tides 17 (Pty) Limited N O (779/2023)**

Appealed from KZP

Date to be heard: 14 November 2024

Dambuza JA, Smith JA, Koen AJA, Molopa-Sethosa AJA, Molitsoane AJA

**Statutory interpretation – Sectional Titles Act 95 of 1986 (the STA) and Sectional Titles Schemes Management Act 8 of 2011 (the STSMA) – effect of the provisions of the STA and STSMA on written agreement** – whether the sale agreement concluded between the appellant and HF Property Investments (Pty) Ltd (HF) was an exercise and sale/cession of the appellant's vested rights of extension under s 25(6) of the STA which only required consent as set out in s 5(1)(b) of the STSMA – whether the sale agreement also included the sale/alienation of the appellant's 'common property' which required consent as set out in s 17(1) of the STA – whether the first respondent had a 'good cause in law' for refusal of consent under s (1)(b) of the STSMA.

**32. Minister of Forestry, Fisheries and the Environment, Chief Director: Integrated Environmental Authorities, Department of Environment, Forestry and Fisheries, Highlands South Wind Energy Facility RF (Pty) Ltd, Highlands Central Wind Energy Facility RF (Pty) Ltd, Highlands North Wind Energy Facility RF (Pty) Ltd and Heinrich Jacobus Badenhorst N O, Federic Johannes Badenhorst N O, Etienne Frans Badenhorst N O, Tertius Nicolaas van der Walt N O, Flemming Georg Jensen N O (1004/2023)**

Appealed from ECG

Date to be heard: 14 November 2024

Mocumie JA, Mbatha JA, Kathree-Setiloane JA, Gorven AJA, Makume AJA

**Administrative Law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – National Environmental Management Act 107 of 1998 (NEMA) – judicial review – administrative action** – whether by virtue of the provisions of s 7(2) of the PAJA, the court a quo was precluded from reviewing the impugned decisions on grounds of review not advanced before the Minister in the appellants’ internal appeal in terms of s 43 of NEMA – whether an Environmental Management Programme (“EMP”) must either be approved prior to or at the same time when the environmental authorisation (“EA”) is granted and whether failure to do so invalidates an EA – whether factually, the EA granted in respect of the North EA, complied with the provisions of regulation 26(c)(vi) of the Environment Impact Assessment Regulations, 2014 (the “EIA regulations”), in essence whether factually, the location of the activities to be undertaken were described in the EA – whether the Chief Director’s alleged failure to comply with the requirements of regulation 26(c)(vi) of the EIA regulations is a reviewable irregularity in terms of PAJA on which a decision to grant an EA can be reviewed and set aside – whether the provisions of regulation 11(3) of the EIA regulations are peremptory and whether the First Appellant’s alleged non-compliance therewith invalidated the EAs – whether regulation 26(d)(iv) of the EIA regulations necessarily implies that an environmental authorisation must be accompanied by an approved environmental management programme, in essence an EMP approved by the competent authority before or when granting the environmental authorisation; and if it does, whether the Chief Director’s non-compliance with this requirement was material thus rendering EAs reviewable – whether the granting of EAs for the WEFs was inconsistent with regulation 11(3) of the EIA Regulations because it occurred pursuant to applications by the Highlands companies made separately from their applications for environmental authorisations in terms of NEMA for the Eskom grid connections associated with each WEF(the Trusts), and if it was, whether the inconsistency was material thus rendering the EAs reviewable.

**33. Drakenstein Municipality v Eric Lolo, Berenice Fransman, The Member of the Executive Council for Human Settlements, Western Cape, The Minister of Human Settlements and Green Willows Properties 2 (Pty) Ltd  
(625/2023)**

Appealed from WCC

Date to be heard: 15 November 2024

Dambuza JA, Mothle JA, Smith JA, Koen AJA, Coppin AJA



**Constitutional Law – Municipality Policy – Emergency Housing** – whether the appellant breached its constitutional and statutory obligations in relation to the provision of emergency housing – whether the municipality may rely ‘primarily’ on funding received from the provincial government and whether it should first exhaust its own resources before relying on external sources to fund emergency housing – whether the 20% quota in favour of rural applicants for housing in terms of s 5.2.2 of the Municipality’s Housing Selection Policy is unconstitutional – whether the high court misconstrued the judgment in *Mazibuko v City of Johannesburg* 2010 (4) SA 1 (CC) by placing an onus on an organ of state to show that the applicant’s claim is ‘frivolous’ – whether Minister of Rural Development and Land Reform ought to have been joined as a party to the proceedings – whether the high court’s supervisory order was appropriate.

**34. Kangra Coal (Pty) Limited (Appellant) And The Trustees of Time Being of the Corneels Greyling Trust (First Respondent), Mooi Bank Boerdery (PTY) Limited (Formerly Ukuchuma Farming Proprietary Limited) (Second Respondent), The Minister of Water and Sanitation (Third Respondent), The Chief Director: Water use Licensing Management-Department of water and sanitation (Fourth Respondent).**

**(1052/2023)**

Appealed from GJ

Date to be heard: 15 November 2024

Mocumie JA, Hughes JA, Weiner JA, Molefe JA, Chili AJA

**Civil procedure – interdict –National Environmental Management Act 107 of 1998 (NEMA)- Water Act 36 of 1998 (Water Act) – Water License –separation of issues** – whether the first and second respondents are clothed with the requisite standing to maintain an application for a final interdict, which is predicated on s 148(2)(b) of the Water Act - whether the judgment in *Witzenberg Properties (Pty) Ltd v Bokveldskloof Boerdery (Pty) Ltd* 2018 6 SA 307 (WCC) is distinguishable based on s 32 of NEMA - whether there was a valid appeal before the Water Tribunal that triggered the suspension of the water use licence in terms of s 148(2)(b) of the Water Act – whether a clear right was established by reliance on s 48(1) of the Water Act in the absence of unlawfulness and actual harm and the statutory remedy in s 148(2)(b) of the Water Act read in the light of s 155 conferring standing on the Minister-whether the requisites of a final interdict were established.

**35. MEC for Health: Gauteng Province and Dr Regan Shane Solomons**

**(1089/2023)**

Appealed from GJ

Date to be heard: 15 November 2024

Mabindla-Boqwana JA, Kgoele JA, Keightley JA, Makume AJA, Molitsoane AJA

**Law of Delict – claim for damages - The National Health Act 61 of 2003 – confidential information** – whether the respondent could resist compliance with the *subpoena duces tecum* issued by the appellant on the ground that the documentation sought in terms of the subpoena, relates to patient information that is confidential.

**36. Msibithi Investments (Pty) Ltd, Tshira Consolidated Investments (Pty) Ltd, Women in Capital Growth (Pty) Ltd, Phambili Investment Corporation (Pty) Ltd, The Trustees For The Time Being Of The Mbazeni Trust, Mashudu Elphas Tshivhase, Webec Ltd, Mashudu Elias Ramano, Akhona Tade and Investment (Pty) LTD v African Legend Investment (Pty) Ltd, Off the Shelf Investments Fifty Six (RF) (Pty) Ltd, The Directors of African Legend Investment (Pty) Ltd, The Directors Of Off The Shelf Investments Fifty Six (RF) (Pty) Ltd, The Trustees for the time being of the Astron Energy Employee participation plan Trust, Glencore South Africa Oil Investments (Pty) Ltd, Astron Energy (Pty)Ltd, The Shareholders of African Legend Investment (Pty) Ltd, BDT Chartered Accountants Inc**

**(628/2023)**

Appealed from GJ

Date to be heard: 18 November 2024

Molemela P, Kathree-Setiloane JA, Keightley JA, Gorven AJA, Dolamo AJA

**Company Law – Companies Act 71 of 2008 – Share Subscription Agreement** – whether the directors of Ali complied with their duties under the Companies Act and Ali's Memorandum of Incorporation when ALI decided to enter the share subscription agreement with Astron Trust – whether it was part of a conspiracy inter alia by the ALI directors - whether the directors were afforded notice or reasonable notice of the resolution to enter the share subscription agreement; the directors entered the share subscription agreement for an improper purpose, namely, to avoid removal as directors and ensure the removal of the eight appellant as a director; and the directors decided to enter the share subscription agreement in the best interest of the company and with reasonable care, skill, and diligence – whether the high court's order dismissing the first counterapplication for foreseeable disputes of fact is appealable – whether the high court judiciously exercised its true discretion in dismissing the

first counterapplication for disputes of fact – whether the high court judiciously exercised its true discretion when it granted an order in terms of s 97 of the old Companies Act validating ALI’s share issue in 1998 – whether Ramano should have been declared delinquent or placed under probation for directorial misconduct – whether the effect of Romano’s conduct was oppressive or unfairly prejudicial to the respondents for the purposes of relief under s 163 of the 2008 Companies Act (read with the s1 definition of “related person”) – whether the court a quo, having found ALI’s issues of shares to its directors (accounted for in its 2000 financial statements) to have been invalid, erred by validating the same in terms of s 97 of the 1973 Companies Act.

**37. Logik Group Africa (Pty) Ltd t/a Fire Logik v Fire Logic (Pty) Ltd  
(882/2023)**

Appealed from ECG

Date to be heard: 18 November 2024

Zondi DP, Mothle JA, Molefe JA, Molopa-Sethosa AJA, Koen AJA

**Civil procedure – passing off proceedings – onus in relation to requirement of proving established reputation for passing off application** – whether this Court possessed jurisdiction to entertain the appeal in relation to the Fancy Name finding – whether the respondent discharged its onus in relation to the establishment of its reputation – whether high court correctly found that the respondent proved the requirements of passing off and was thus entitled to interdictory relief against the appellant.

**38. Basfour 3327 (Pty) Ltd v Robert Thwala, Lucy Thwala, Minewhle Mahlangu, Fezeka Thomo, South African Police Services, Volksrust and the Department of Agriculture, Rural Development and Land Reform  
(1008/2023)**

Appealed from LCC

Date to be heard: 18 November 2024

Makgoka JA, Kgoele JA, Unterhalter JA

**Land Claim – construction of dwelling without consent and in contravention of previous court order prohibiting such conduct – declaratory order** – whether a dwelling constructed by the first to third respondents on the appellant’s farm without consent and in contravention of a previous court order prohibiting such, should be declared unlawful – if so, whether the first to third respondents should be ordered to demolish the partially completed dwelling.

**39. The Haze Club (Pty) Ltd (Registration No. 2019/096535/07), Neil Tristan Liddell (ID No. 840113 5136 085) and Ben Adam Von Houten (ID No. 871119 5020 080) v Minister of Police, Minister of Justice and Correctional Services, National Director of Public Prosecutions, Minister of Trade, Industry and Competition, The Regional Magistrate, Wynberg and Minister of Health.**

**(1233/2022)**

Appealed from WCC

Date to be heard: 19 November 2024

Mocumie JA, Mothle JA, Hughes JA, Kgoele JA, Dolamo AJA

**Constitutional Law – Drugs and Drug Trafficking Act 140 of 1992** – whether the criminalisation of the use, possession and cultivation of cannabis by adult persons, in private as part of the Grow Club Model limited the rights to freedom to choose a trade, occupation or profession in terms of s 22 of the Constitution – whether it limited the right to bodily and psychological integrity, including the right to bodily control in terms of s 12(2)(b) of the Constitution – whether it limited the right to dignity in terms of s 10 of the Constitution – whether it limited the right not to be unfairly discriminated against in terms of s 9(3) of the Constitution – if so, whether the opposing state respondents had justified the limitations in terms of s 36(1) of the Constitution – if not, what was the appropriate, just and equitable remedy in terms of ss 38 and 172(1)(a) and (b) of the Constitution.

**40. Tedorin Nguema Obiang v Daniel Welman Janse Van Rensburg, Sheriff, Cape Town West, The Registrar of Deeds: Western Cape**

**(714/2023)**

Appealed from WCC

Date to be heard: 19 November 2024

Nicholls JA, Meyer JA, Kathree-Setiloane JA. Coppin AJA, Chili AJA

**Civil procedure – High Court Rules – rescission** – the main issue in the appeal is whether the appellant, an unrepresented foreigner at all material times was properly served with legal processes when the respondent admittedly effected service on the appellant's attorneys of record after their mandate had been terminated and after they had filed a Notice of Withdrawal – whether the court of first instance and the full court were correct in dismissing the Appellant's application for rescission of the orders and judgment of: (i) Dolamo J (where the Appellant's defence was struck); and (ii) Lekhuleni AJ (as he was then) ( in terms of which the First

Respondent ( “the respondent”) was awarded damages) – whether the respondent failed to adhere to the Rules of Court.

**41. Eskom Holdings SOC Ltd and Mbombela Local Municipality v Sonae Arauco SA (PTY) LTD**  
**(1018 and 1125/2023)**

Appealed from MP

Date to be heard: 19 November 2024

Mbatha JA, Weiner JA, Smith JA, Molopa-Sethosa AJA, Koen AJA

**Administrative Law — interim interdict** – whether the interim interdict was correctly granted in favour of the respondent prohibiting the appellants from interrupting electricity supply to its grid area – whether Eskom may unilaterally interrupt electricity supply – whether the respondent established a prima facie right that entitled it to be exempt from loadshedding and established that it will suffer irreparable harm if the interdict was not granted - whether the respondent has alternative remedies available to them – whether Eskom may circumvent the Municipality’s constitutional and statutory duties to its constituents/end-users without invoking s 21(5) of the Electricity Regulation Act, 4 of 2006 – whether the respondent has a right of direct supply of electricity by Eskom.

**42. Independent Communications Authority of South Africa, Dr Charley Lewis N O and Mketsheni Gidi N O v Open Heaven Community Radio**  
**(1133/2023)**

Appealed from GP

Date to be heard: 20 November 2024

Dambuza JA, Mocumie JA, Kgoele JA, Makume AJA, Dolamo AJA

**Electronics Communications Act 36 of 2005 – Standard Terms and Conditions Regulations for Class Licenses, 2010** – whether Independent Communications Authority of South Africa (CASA) has statutory powers to entertain an application to condone non-compliance with s 19 of the Electronics Communications Act 36 of 2005 – whether the respondent’s class broadcasting license was retrospectively and automatically extended by a period of two years by an amendment to the Standard Terms and Conditions Regulations for Class Licenses, 2010 which came into effect on 25 March 2021 – whether the high court exercised its discretion correctly by awarding costs against the respondent.

**43. Phozisa Tosholo v The Road Accident Fund**

**(875/2023)**

Appealed from WCC

Date to be heard: 20 November 2024

Mbatha JA, Mabindla-Boqwana JA, Molefe JA, Keightley JA, Gorven AJA

**Civil procedure – special plea of settlement – special plea of prescription** – whether the high court was correct in upholding two special pleas, namely that there was a prior settlement between the parties and a plea of prescription – 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 was valid – whether the default judgment should be rescinded.

**44. Zeal Health Innovations (Pty) Ltd v Minister of Defence and Military Veterans, Acting Director-General: Department of Military Veterans**

**(967/2023)**

Appealed from GP

Date to be heard: 21 November 2024

Zondi DP, Makgoka JA, Mabindla-Boqwana JA, Weiner JA, Makume AJA

**Law of Contract –health service provider – specific performance – counter-application – interim contract** – whether the respondents were entitled to follow the process provided for in Rule 53 of the Uniform Rules of Court in pursuing the counter-application for the review and setting aside of the interim contract and final tender awarded to ZHI for the provision of health and wellness services to military veterans – whether any irregularities occurred in the processes adopted and followed by DMV in awarding the interim contract and final tender for the provision of health and wellness services to military veterans, that constitute a breach of the principle of legality – whether the court a quo erred in dismissing ZHI main application, despite upholding the relief claimed in DMV’S counter-application – whether the court a quo erred in declining to grant ZHI just and equitable remedy under the auspices of being an innocent party.

**45. Equistock Properties 8 (Pty) Ltd and Hendrik Andre Coetzee v Willem Nicolaas Saaiman Oosthuizen, Karen Oosthuizen, Laduma Biscuits (Pty) Ltd, Ali Iftikhar t/a Pan**

**African Furnishers, Bananaworld (Pty) Ltd, Lucas Van Vuuren t/a MFG and Gerhardus Martinus Oosthuizen t/a DC Motors  
(738/2023) and (739/2023)**

Appealed from LP

Date to be heard: 21 November 2024

Dambuza JA, Hughes JA, Coppin AJA

**Property Law – lease – interdict relating to entitlement of first appellant’s rental income – mootness – costs order** – whether the appeal had become moot due to the termination of the lease contract by the fourth to seventh respondents – if not, whether the deponent of the founding affidavit had the right to act on behalf of the first appellant – whether the first appellant was entitled to receive its rental income – whether the first appellant established the requirements of a final interdict – whether the high court correctly granted a personal costs order against the second appellant.

**46. The Minister of the Department of Rural Development and Land Reform, Director General of Development of Rural Development and Land Reform, Chief Land Claims Commissioner, Regional Land Claims Commissioner Eastern Cape Province, Office of the Valuer General and Thamsanqa Davis Bisset  
(982/2023)**

Appealed from LCC

Date to be heard: 21 November 2024

Meyer JA, Kathree-Setiloane JA, Unterhalter JA, Molopa-Sethosa AJA, Molitsoane AJA

**Administrative Law – review – settlement agreement - Restitution of Land Rights Act 22 of 1994** - whether the court a quo misdirected itself when it found that the settlement offer, which the court held to be a settlement agreement amounted to an administrative action as defined in s 1 of Promotion of Administrative Justice Act 3 of 2000 to be reviewable – whether the court erred when it granted condonation for the respondents unreasonable delay in launching the review application without any reasonable explanation for the delay.

**47. Altech Radio Holdings (Pty) Ltd v Aeovova360 Management Services (Pty) Ltd, Retired Justice BR Southwood  
(1079/2023) and (1080/2023)**

Appealed from GJ

Date to be heard: 22 November 2024

Molemela P, Zondi DP, Meyer JA, Kathree- Setiloane JA, Gorven AJA

**Recusal Appeal - Civil Procedure – Arbitration Act 42 of 1965 – irregularity issue –** whether the presumption of Judicial impartiality applies to arbitrators – whether Altech’s apprehension of bias is reasonable in circumstances where the Arbitrator elected not to recuse himself before affording Altech an opportunity to be heard on this issue – whether Altech’s apprehension of bias is reasonable in light of the Arbitrator’s conduct following it’s initiation of review proceedings – whether the arbitrator, by issuing the memorandum and by following the process committed a gross irregularity contrary to s 33(1)(b) of the Arbitration Act - whether the appeal is moot.

**48. Glencore Operations South Africa (Pty) Ltd and Letlhongonolo Obed Segadikana Tshikane Tebogo Reneilwe Motheo Mamogale and Master of the High Court, North West Province, Rebone Eugene Morebodi, Patrick Motsamai Mogotsi, Motlalepule Christine Mathibedi, Machake Lucas Mosane, Daniel Makena, Nicky Joseph Lebethe, Jim Matsho N O, Bakwena-Ba-Mogopa Traditional Council, Lawrance Mashigo (945/2023) and (1081/2023)**

Appealed from NWM

Date to be heard: 22 November 2024

Dambuza JA, Mocumie JA, Mbatha JA, Smith JA, Koen AJA

**Law of Trusts – Declaratory order – appointment of trustees – Trust Property Control Act 57 of 1988-** -whether the second to seventh respondents were lawfully appointed as trustees to the Trust – whether the high court had the power to authorise the second to seventh respondents to act as trustees if they were not lawfully appointed – whether the counter-application was vitiated by lack of standing - whether the jurisdiction prerequisites to the amendment of a trust deed, laid down by s 13 of the Trust Property Control Act 57 of 1988 were complied with.

**49. The IPA Foundation (NPC) and South African Pharmacy Council (1024/2023)**

Appealed from GP

Date to be heard: 22 November 2024

Makgoka JA, Nicholls JA, Hughes JA, Unterhalter JA, Chili AJA



**Administrative Law – review - Promotion of Administrative Justice Act 3 of 2000 -**

whether the court a quo correctly granted the striking out application brought by the respondent  
- whether the appellant's right to just administrative action, procedural fairness and procedural rationality has been infringed through the respondent's elected process of notification, as well as through its impugned decision - whether the Council's decision to implement PIMART constituted by the scope of practice, competency standards and criteria for accreditation as published in Board Notice 101 of 2021 should be reviewed and set aside.