

**REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
BULLETIN 1 2014**

**CASES ENROLLED FOR HEARING**

**The President of South Africa and others v Machiel Frederick Reynecke  
(210/2013)**

Appealed from GNP

Date to be heard: 17 February 2014

MPATI P, WALLIS JA, PETSE JA, SALDULKER JA, VAN ZYL AJA

Damages – respondent alleged that a Chief Magistrate and members of the Magistrates' Commission made continued employment intolerable which compelled him to resign – resignation conditional in that he was prepared to resume his duties in the event that a grievance he initiated was upheld – the grievance, related to benefits he believed he was entitled to not being paid to him, not upheld – claim in the court below was computed on the basis of what he would have earned had he remained employed as an additional Magistrate until retirement – the court awarded him damages in the amount of R9,460,270.00. Appellants argue that the circumstances surrounding the respondent's employment did not warrant a resignation and contend that the grievance procedure ought first to have been exhausted and in the event of an unfavourable outcome for the respondent he ought to have taken the decision on review – also contend that the respondent did not have a cause of action justifying the award by the court below and that the amount awarded was in any event unjustified.

**National Association of Broadcasters v South African Music Performance Rights  
Association and another  
(119/2013)**

Appealed from Copyright Tribunal

Date to be heard: 17 February 2014

NAVSA JA, SHONGWE JA, SWAIN AJA , LEGODI AJA, MATHOPO AJA

Intellectual Property – Copyright – Dispute involving radio stations on the one hand and record companies on the other - Determination of an appropriate royalty in terms of s 9(A) of the Copyright Act and s 5 of the Performance Protection Act – determination of formula and the date from which such royalties are payable – whether this court can interfere with the discretion exercised by the Copyright Tribunal.

**Bapedi Marota Mamone v The Commission of Traditional Leadership Disputes and Claims  
and others  
(260/2013)**

Appealed from GNP

Date to be heard: 17 February 2014

MAYA JA, LEACH JA, THERON JA, WILLIS JA, MOCUMIE AJA

Traditional Leadership – whether a determination by the first respondent, The Commission of Traditional Leadership Disputes and Claims, concerning the leadership of the Bapedi reviewable by high court which dismissed application by the appellant concerning dispute in respect of kingship.

**The City of Johannesburg Metropolitan Municipality v The Chairman of the Valuation  
Appeal and another  
(282/2013 )**

Appealed from GSJ

Date to be heard: 18 February 2014

MTHIYANE DP, MAYA JA, LEACH JA, WILLIS JA , MOCUMIE AJA

Administrative Law – review – whether upon the Municipal Valuer’s categorisation of the properties of the Second Respondent as ‘multiple purposes’ (which is not in dispute) he was correct to enter a single market value for each erf, as required by the Appellant’s rates policy or whether he was bound to apportion the market value for each erf between ‘residential’ use and ‘business’ use as the First Respondent and the court a quo held – whether the Appellant was empowered by section 8 of the Local Government: Municipal Property Rates Act 6 of 2004 to determine a category of properties for ‘multiple permitted use’ which differs from the category in section 8(2)(r) of the Act – if so, whether the category so determined by the Appellant is to be rated in terms of s 9 of the Act.

**Africast (Pty) Ltd v Pangbourne Properties Limited  
(359/2013 )**

Appealed from GSJ

Date to be heard: 18 February 2014

LEWIS JA, MHLANTLA JA, BOSIELO JA, THERON JA, MATHOPO AJA

Interpretation of a suspensive condition in a contract – whether agreement lapsed due to alleged non-fulfilment of the condition – estoppel and waiver.

**Commissioner for the South African Revenue Service v Mobile Telephone Network Holdings (Pty) Ltd  
(966/2013)**

Appealed from GSJ

Date to be heard: 18 February 2014

PONNAN JA, SHONGWE JA, WALLIS JA, VAN ZYL AJA, LEGODI AJA

Income Tax – the deductibility of audit and professional fee expenditure – Commissioner issued additional income tax assessments in respect of MTN’s 2001-2004 years of assessment in which he disallowed part of the expenditure incurred by MTN – whether the disallowed expenditure was incurred – Commissioner contends that the audit fees are not deductible in terms of the Act as they are not sufficiently closely related to the production of the taxpayer’s income – alternatively the fees are to be apportioned as per the assessment – the professional fees are not deductible as they constitute expenditure of a capital nature related to the establishment of particular accounting system – MTN contends that the expenditure was incurred in the production of income, alternatively that there must a fair and reasonable apportionment of the disallowed expenditure – court below largely decided the issues in MTN’s favour.

**Fintech (Pty) Ltd v Awake Solutions (Pty) Ltd and others  
(218/2013)**

Appealed from GSJ

Date to be heard: 19 February 2014

MPATI P, BOSIELO JA, LEACH JA, SALDULKER JA, SWAIN AJA

Companies Act - as a result of failure to file annual financial returns company deregistered in terms of the Companies Act 61 of 1973 – years thereafter deregistration ‘cancelled’ in terms of the Companies Act 71 of 2008 – the validity and effect of actions taken by the company including litigation during the deregistration period – court below holding that there was no reason why it should not be able to exercise its inherent jurisdiction to validate anything done by or against the affected company in the period between deregistration and reinstatement.

**Dean Gillian Rees and another v Investec Bank Limited  
(330/2013)**

Appealed from GSJ

Date to be heard: 20 February 2014

MTHIYANE DP, LEWIS JA, PONNAN JA, MAYA JA, SALDULKER JA

Civil Procedure – whether deponent to the affidavit could swear positively to the facts and verify cause of action, whether bona fide defence is disclosed in the affidavit and whether court a quo correctly exercised discretion in granting summary judgment.

**Dean of the Law Faculty of the University of North West and others v Moramang Simon Masisi (Higher Education South Africa NPC as *Amicus Curiae*) (297/13)**

Appealed from NWM

Date to be heard: 20 February 2014

NAVSA JA, MHLANTLA JA, PETSE JA, VAN ZYL AJA, SWAIN AJA

Constitutional Law – unfair discrimination – appeal against a finding and order of equality court relating to unfair discrimination – whether discrimination occasioned by the general academic rules of the North West University and the Joint Statute of the Universities of the RSA – whether the court misdirected itself in deciding questions at odds with directions relating to the issues.

**Capricorn District Municipality and another v The South African National Civic Organisation (237/2013)**

Appealed from GNP

Date to be heard: 21 February 2014

MTHIYANE DP, LEWIS JA, BOSIELO JA, PETSE JA, WILLIS JA

Constitutional Law – principle of legality – challenge by the South African National Civic Organisation to the correctness of the water usage billing system by the first and second respondents – high court ordering the first and second respondents to replace and/or repair all leaking water pipes within its area of jurisdiction and to replace and/or repair defective water metres – pending final replacement and/or repair as set out earlier, municipalities ordered to charge water consumers a flat rate in specified amounts – appellants contend that the order granted by the high court has the effect of requiring the appellants to charge tariffs for water against the principle of legality and offends against the doctrine of the separation of powers – contended further that the evidence is to the effect that the water metering system is generally reliable and that the order by the high court should be overturned in its entirety.

**Cameron Stewart Malcolm v Premier of the Western Cape Provincial Government NO (207/2013)**

Appealed from WCC

Date to be heard: 21 February 2014

NAVSA JA, SHONGWE JA, THERON JA, WALLIS JA, LEGODI AJA

Prescription – the impact of s 17 of the Children’s Act 38 of 2005 on the appellant’s claim vis-à-vis summons served on 15th December 2008 within one year of the Appellant attaining the age of 21, but more than one year after the Children’s Act reduced the age of majority to 18 – whether prescription on Appellant’s right of action ran its course in terms of s 13(1) of the Prescription Act one year after the Children’s Act took effect or one year after the Appellant reached the age of 21.

**Royal Anthem Investments 129 (Pty) Ltd v Yuen Fan Lau and another (941/2012)**

Appealed from GNP

Date to be heard: 21 February 2014

PONNAN JA, MHLANTLA JA, LEACH JA, MATHOPO AJA, MOCUMIE AJA

Contract – interpretation of contract of sale, more particularly the meaning of the word ‘immediately’ in a suspensive condition – whether respondents prevented the suspensive condition from being fulfilled.

**Brashville Properties 51 (Pty) Ltd v Jean-Phillippe Colmant and others**

**(154/2013)**

Appealed from WCC

Date to be heard: 24 February 2014

MPATI P, MAYA JA, WILLIS JA, SALDULKER JA

Review – Whether respondents had locus standi in in the court below in seeking and obtaining a review of a local authority’s decision to approve building plans – whether court below was correct in reviewing and setting aside decisions made by the local authority.

**Harry Mark Deon Bath v Juanita Bath****(952/2012)**

Appealed from GNP

Date to be heard: 24 February 2014

LEWIS JA, SHONGWE JA, THERON JA, SWAIN AJA, MOCUMIE AJA

Family Law – Interpretation of an antenuptial contract – whether certain clauses of the antenuptial contract entered into by the parties are so irreconcilable as to render the entire contract void ab initio – whether the parties are then, as a consequence, married in community of property - whether the respondent is entitled to an order for rectification of the contract.

**Geoffrey Mark Steyn v The State****(100/2013)**

Appealed from GSJ

Date to be heard: 24 February 2014

MHLANTLA JA, BOSIELO JA, VAN ZYL AJA

Criminal Law- Appeal against sentence imposed in respect of convictions of fraud, theft and assault - lengthy delay between sentencing and eventual hearing of appeal – contended that court a quo misdirected itself in imposing a sentence disproportionate to those previously imposed by the SCA in similar instances.

**Van de Wetering Engineering (Pty) Ltd v Regent Insurance Company Limited****(383/2013)**

Appealed from GNP

Date to be heard: 25 February 2014

MTHIYANE DP, LEACH JA, PETSE JA, VAN ZYL AJA, LEGODI AJA

Insurance – appellant obtained an insurance policy from the respondent insurance company insuring it against the eventuality of having to award a prize in a golf competition when participating golfers achieved a hole-in-one – not by putting conventionally but landing a ball in a trailer – before competition the company insured announced that its employees were not eligible for the prize – employee achieving a hole-in-one – insurance company refusing to pay out – court below holding in favour of insurance company on the basis of the communication by the company that employee not entitled to receive prize – appeal against the correctness of that decision.

**Asla Construction (Pty) Ltd and others v The Minister of Human Settlements, Western Cape Government and others****(712/2013)**

Appealed from WCC

Date to be heard: 25 February 2014

NAVSA JA, WALLIS JA, SALDULKER JA, MATHOPO AJA, MOCUMIE AJA

Administrative Law – appeal against a refusal of an application to review and set aside the award of three tenders by the Head of the Department of Human Settlements, Western Cape Government – whilst holding that an error of law was made by the decision maker in respect of tender requirements as a basis for disqualifying competing bid the court below found that in any event there had been a basis for the disqualification – no material mistake of law found – judicial deference should be given to the administrative functionary with

expertise to determine bid requirements and not in any event equitable to set aside the administrative decision – whether the decision of the court below is justified.

**Warren Bowles Corporate Communication CC v Rheinmettal Denel Munition Ltd  
(130/2013)**

Appealed from GSJ

Date to be heard: 25 February 2014

PONNAN JA, MHLANTLA JA, THERON JA, WILLIS JA, SWAIN AJA

Contract - Claim in the court below for a full accounting and a debatement of the account – alternatively an amount claimed as damages – court below granted relief in the form of payment of the amount due upon debatement and granted an order that alternatively to a debatement of the account and payment, payment should be made to the plaintiff in an amount of R1 438 086 for damages – competence of the court order.

**MTN International (Mauritius) Limited v The Commissioner for the South African Revenue Service  
(275/2013)**

Appealed from GNP

Date to be heard: 26 February 2014

MPATI P, LEWIS JA, PONNAN JA, MAYA JA, WALLIS JA

Income Tax – Application in high court to review a revised income tax assessment – revised assessment pending in Tax Court – The validity of the respondent's revised assessment of the appellant's tax liability in March 2011 for the 2006 year of assessment – Whether the revised assessment should be set aside as a nullity – Whether additional assessment issued subsequently is void due to prescription – whether assessment date manipulated.

**Cobra Plating CC and others v Silverton Plating CC  
(208/2013)**

Appealed from GNP

Date to be heard: 27 February 2014

NAVSA JA, LEACH JA, THERON JA, VAN ZYL AJA, LEGODI AJA

Civil Procedure – Whether the grant by the court of first instance of an Anton Piller order on an ex parte in camera basis was justified – whether the court a quo should have set aside the court of first instance's order – whether the interdicts granted against the appellants relating to unlawful competition were justified.

**Sixtus Nhlanhla Mkhize v The State  
(016/2013)**

Appealed from KZP

Date to be heard: 27 February 2014

MAYA JA, SHONGWE JA, WILLIS JA, SALDULKER JA, MOCUMIE AJA

Criminal Law – Appeal against conviction and sentence – common cause that appellant shot the deceased – plea of not guilty on the basis of self defence/putative self defence – submitted that evidence against appellant was suspect and that the court below ought not to have accepted that the State had proven the appellant's guilt beyond a reasonable doubt – whether sentence of 12 years' imprisonment – was, having regard to the circumstances of the case and where non-custodial sentence was recommended by the Probation Officer and the Correctional Supervision Officer, was too severe.

**Thuthukani Ndlanzi v The State  
(318/2013)**

Appealed from GSJ

Date to be heard: 27 February 2014

MHLANTLA JA, BOSIELO JA, PETSE JA, SWAIN AJA, MATHOPO AJA

Criminal Law – Appeal against conviction – Whether the appellant had a fair trial with particular reference to the manner in which an erstwhile legal representative conducted his

case – whether the appellant’s defence of acting in a state of emergency, alternatively private defence, should have succeeded, resulting in an acquittal on all 5 counts – alternatively, whether the conviction on the charge of murder should rather have been one of culpable homicide – appeal against sentence – whether substantial and compelling circumstances justified a lesser sentence.

**Dula Investments (Pty) Ltd and another v Woolworths (Pty) Ltd  
(291/2013)**

Appealed from WCC

Date to be heard: 28 February 2014

MPATI P, PONNAN JA, BOSIELO JA, LEACH JA, LEGODI AJA

Contract – appeal against declaratory order granted by court that the First Appellant does not have a right to renew a franchise agreement for a Woolworths store and must cease operating – whether franchise holder had committed breaches of a kind disqualifying it from enforcing an extension of franchise agreement – whether fairness, good faith, Ubuntu, waiver and estoppel affected the contract.

**Spenmac (Pty) Ltd (formerly Bobcart (Pty) Ltd) and another v Tatrims CC  
(216/2013)**

Appealed from ECP

Date to be heard: 28 February 2014

MTHIYANE DP, LEWIS JA, SHONGWE JA, PETSE JA, MOCUMIE AJA

Contract law – court below set aside an agreement of sale based on an innocent misrepresentation in the face of an exemption clause disentitling a party from resiling from a contract upon any misrepresentation – appellant contends that court below erred in finding that there had been a misrepresentation – reliance also placed on exemption clause.

**Glen Morare v SA Rail Commuter Corporation Limited  
(585/2013)**

Appealed from GSJ

Date to be heard: 28 February 2014

NAVSA JA, THERON JA, WALLIS JA, SWAIN AJA, MATHOPO AJA

Delict – Appellant assaulted on and thrown out of a moving train – instituted a claim for damages against the respondent based on negligence alleging that it had failed to ensure the safety of commuters in its trains - whether the respondent negligently breached its duty to commuters using its trains – whether the respondent’s negligent conduct caused the appellant’s injuries – whether the measures taken by the respondent to protect commuters from harm were reasonable.

**Mohau Jackson Moropane v Elizabeth Southon  
(755/2012)**

Appealed from GSJ

Date to be heard: 3 March 2014

MTHIYANE DP, MAYA JA, BOSIELO JA, THERON JA, VAN ZYL AJA

Customary Law – respondent had instituted proceedings against the appellant in the high court for an order, inter alia, declaring that they were married by customary law – court below held that the requirements for the recognition of a marriage in terms of the Recognition of Customary Marriages Act 120 of 1998 were met and issued an order to that effect and granted the respondent consequential relief – whether the requirements for a customary marriage had been properly established and whether court below erred in its conclusion.

**Pioneer Foods (Pty) Ltd v Bothaville Milling (Pty) Ltd  
(215/2013)**

Appealed from FB

Date to be heard: 3 March 2014

NAVSA JA, WALLIS JA, WILLIS JA, SWAIN AJA, MOCUMIE AJA

Passing Off – appellant had sought interdictory relief against the respondent complaining that the latter was passing off its business and products as those of the appellant – it sought to interdict the respondents from using a particular make-up so as to connect it with the appellant’s business – the application was dismissed by the court below – whether the appellant met the requirements for relief based on passing off, more particularly whether it established a likelihood of confusion or deception in the minds of the purchasing public that the respondent’s super maize meal product emanated from or was associated with the appellant as a result of the STAR get-up used – whether the use by the respondents of its STAR get-up has caused damage or is likely to cause damage to the appellant’s goodwill – whether the appellant is estopped from claiming interdictory relief due to its inaction or unequivocal failure to take any steps for over nine years.

**Grancy Property Limited and another v Seena Marena Investments (Pty) Ltd and others (244/2013)**

Appealed from WCC

Date to be heard: 3 March 2014

LEWIS JA, MHLANTLA JA, PETSE JA, SALDULKER JA, LEGODI AJA

Civil Procedure – high court considered four related applications and counter-applications relating to statements and debatement of accounts – court below determined a procedure for debatement of the relevant accounts – appellants contend that there ought to have been a two-stage judicially controlled procedure dealing with both the adequacy and accuracy of the accounts – whether judgment and order of the court below is appealable – whether grounds have been established warranting an interference by this court in the exercise of the court below of its discretion to determine the appropriate procedure.

**André Francois Paulsen & another v Slip Knot Investments 777 (Pty) Ltd (434/2013)**

Appealed from WCC

Date to be heard: 4 March 2014

MPATI P, SHONGWE JA, WALLIS JA, WILLIS JA, MATHOPO AJA

National Credit Act 34 of 2005 – Validity of a loan agreement – whether the respondent was required by the Act to register as a credit provider in order to enter into a valid loan agreement – effect of the respondent’s non-registration on the validity of a loan agreement falling outside of the ambit of the Act – interpretation of clause 6 of the agreement which bears on interest and whether it is contra bonos mores or in contravention of the in duplum rule.

**Esorfranki Pipelines (Pty) Ltd and another v Mopani District Municipality and others (040/2013)**

Appealed from GNP

Date to be heard: 4 March 2014

MTHIYANE DP, LEWIS JA, BOSIELO JA, VAN ZYL AJA, LEGODI AJA

Review of award of Tender - Application in the court below by first appellant to review and set aside decision of the first respondent, a municipality, to award a tender for the construction of a welded steel bulk water pipeline from Nandoni Dam to Nsami Dam in Mopani and Vhembe District Municipalities in the Limpopo Province to a joint venture consisting of second and third respondents – contended on behalf of the appellant that the municipality was biased in favour of the joint venture and that there had been collusion – the second appellant, another unsuccessful tenderer, had issued a parallel review application and the two were consolidated and heard at the same time – the second appellant, however, considered that the tender had to be awarded to the first appellant and that the joint venture ought to have been eliminated from the tender adjudication process for failure to have possessed the minimum contractor grading designation – the court below declared the tender process illegal and invalid and set it aside – in addition it ordered the municipality to verify that all the joint venture’s work had been done according to

specifications and that remedial work was completed – each party was ordered to pay its own costs – the appellants appeal against the orders – appealability.

**Express Model Trading 289 CC v Dolphin Ridge Body Corporate  
(656/2013)**

Appealed from WCC

Date to be heard: 4 March 2014

PONNAN JA, LEACH JA, PETSE JA, SALDULKER JA, MOCUMIE AJA

Insolvency – Appeal against a final winding-up order – whether the respondent retained its locus standi after the provisional winding-up order was granted – whether appellant was unable to pay its debts – whether it was just and equitable for appellant to be wound up.

**Tshakwata Gerson and another v The State  
(522/2013)**

Appealed from LT

Date to be heard: 5 March 2014

NAVSA JA, THERON JA, PETSE JA

Criminal Law – appeal against convictions and sentences – appellants convicted on the basis of common purpose – appellants contend that there was no basis for that conclusion – sentence of life imprisonment said, in the circumstances, to be too severe – whether court a quo misdirected itself by convicting the appellant on account of common purpose and drawing an inference of murder. Whether court a quo misdirected itself in applying minimum sentencing legislation.

**William Munyai v The State  
(546/2013)**

Appealed from LT

Date to be heard: 5 March 2014

NAVSA JA, THERON JA, PETSE JA

Criminal Procedure – appeal against sentence – appellant, 55-years old at the time of the conviction, convicted of rape of a 13-year old girl and sentenced to life imprisonment – contended that life imprisonment to severe under the circumstances - whether the court a quo erred in imposing life imprisonment and finding that there were no substantial and compelling circumstances justifying a lesser sentence.

**Maposa Frans Madiba v The State  
(497/2013)**

Appealed from LT

Date to be heard: 5 March 2014

PONNAN JA, SWAIN AJA, MATHOPO AJA

Criminal Law – appeal against convictions and sentences – appellant convicted of attempted rape, kidnapping, rape and murder and sentenced to ten years' imprisonment, 15 years' imprisonment, life imprisonment and 35 years' imprisonment respectively with the sentences to run concurrently – appellant granted leave to appeal against his convictions of attempted rape and rape and against all the sentences imposed – whether, in respect of the attempted rape conviction the complainant was a credible witness – whether the court irregularly entered the arena by interfering during cross-examination with defence counsel's cross-examination – in respect of the rape conviction, it is contended by the appellant that there was no evidence of penetration – whether the orders in relation to sentence were ambiguous or uncertain and whether, in any event, sentences were too harsh.

**Nyadzani Samuel Mudau v The State  
(547/2013)**

Appealed from LT

Date to be heard: 5 March 2014

PONNAN JA, SWAIN AJA, MATHOPO AJA

Criminal Procedure – sentence – appellant, who was 49-years old at the time of conviction, was convicted on one count of murder and was sentenced to 40 years’ imprisonment – State concedes that the sentence is extreme.

**Peter Mashudu Nevilimadi v The State  
(545/2013)**

Appealed from LT

Date to be heard: 5 March 2014

MHLANTLA JA, WALLIS JA, SALDULKER JA

Criminal law and procedure – appeal against a conviction on a charge of rape and against a related sentence of 39 years’ imprisonment – whether the evidence proved the appellant’s guilt beyond reasonable doubt – whether complainant was a credible witness – whether trial court committed irregularities by entering into the arena – whether proper sentencing procedures were followed rendering the sentence liable to be set aside – whether sentence of 39 years’ imprisonment is unduly harsh.

**Lutendo Life Mulaudzi v The State  
(544/2013)**

Appealed from LT

Date to be heard: 5 March 2014

MHLANTLA JA, WALLIS JA, SALDULKER JA

Sentence – appeal against sentence only - Whether the sentences of 24 years’ imprisonment for the crime of murder and 4 years’ imprisonment for the crime of assault by threat, ordered to run concurrently, were in the circumstances shockingly inappropriate and induce a sense of shock – whether the court a quo erred in over emphasising the previous convictions of the appellant and not considering other forms of sentence – whether substantial and compelling circumstances exist.

**The Manok Family Trust v Blue Horison Investments 10 (Pty) Ltd and others  
(220/2013)**

Appealed from LCC

Date to be heard: 6 March 2014

MPATI P, MAYA JA, BOSIELO JA, LEACH JA, MOCUMIE AJA

Restitution of Land Rights Act 22 of 1994 – appeal against judgment in the Land Claims Court in terms of which it set aside a decision of the Regional Land Claims Commissioner to ‘resurrect’ a claim that had previously been precluded – whether the Commissioner is *functus officio* after coming to conclusion that land claim is precluded under s 11(1)(b) of the Act – whether the later revisitation of that decision and acceptance of a land claim should be set aside.

**GB Mining and Exploration SA (Pty) Ltd v The Commissioner for the South African Revenue Service  
(903/2012)**

Appealed from Tax Court

Date to be heard: 6 March 2014

NAVSA JA, SHONGWE JA, THERON JA, WALLIS JA, SWAIN AJA

Income Tax – whether travel expenditure was rightly disallowed by the Commissioner – whether there were disposals of assets resulting in capital gains – was an amount of R2 638 070 deductible in terms of the Act – constitutional challenge to s 82 of the Act which

requires a taxpayer to prove that an administrative decision was wrong – not raised in the court below nor relevant Minister joined.

**Avonmore Supermarket CC v Christina Petronella Venter**

**(211/2013)**

Appealed from KZD

Date to be heard: 6 March 2014

PONNAN JA, MHLANTLA JA, PETSE JA, WILLIS JA, VAN ZYL AJA

Delict – respondent slipped and fell in appellant’s supermarket – whether respondent established negligence – appellant contends that the respondent failed to discharge the onus of establishing that the appellant’s negligent conduct caused her to slip and fall – appellant contends that it took reasonable steps to ensure that the premises were reasonably safe for use by its customers.

**Nick Christelis NO and others v Victoria Lena Meyer N.O. and others**

**(916/2012)**

Appealed from GSJ

Date to be heard: 7 March 2014

MTHIYANE DP, MHLANTLA JA, WALLIS JA, LEGODI AJA, MATHOPO AJA

Succession – whether the appellants, as executors in a deceased estate, proved the existence of specified assets, the quantities of those assets, and whether any of those assets had been either stolen or disposed of with the knowledge of rights of the estate by the respondents.

**Moses Moshe Litako and others v The State**

**(584/2013)**

Appealed from NWM

Date to be heard: 7 March 2014

NAVSA JA, PONNAN JA, LEACH JA, PETSE JA, SWAIN AJA

Criminal Law – appeal against conviction and sentence – whether first appellant’s statement was a confession and whether properly admitted – whether without it there would be sufficient evidence on which to justify conviction – whether it could in any event be used against the other appellants – whether there was sufficient evidence for a conviction.

**Benesh Dewnath v The State**

**(269/2013)**

Appealed from KZP

Date to be heard: 7 March 2014

MAYA JA, WILLIS JA, SALDULKER JA, VAN ZYL AJA, MOCUMIE AJA

Criminal Law – appeal against a murder conviction – court a quo convicted appellant on the basis of common purpose – whether comment made by the appellant during negotiations between another person and the eventual hired assassin constituted sufficient active association to warrant a conviction on common purpose.

**Comwezi Security Services (Pty) Ltd and another v Cape Empowerment Trust Limited**

**(182/2013)**

Appealed from WCC

Date to be heard: 10 March 2014

MPATI P, LEWIS JA, BOSIELO JA, WALLIS JA, VAN ZYL AJA

Contract law – whether a settlement agreement concluded between the parties remains valid and binding – a due diligence investigation to be completed within a specified time was a resolute condition of the settlement agreement – period extended from time to time – application to court to have documentation made available in order to perform the due diligence – that application was granted – applicant applied to the court below to have the settlement agreement declared valid – respondents resisted the application on the basis

that the settlement agreement lapsed by virtue of the non-fulfilment of the resolute condition – court below declared the settlement agreement to be valid – on appeal on question whether agreement lapsed due to failure to extend period or because of extended parallel litigation.

**George Magwabeni v Christopher Liomba  
(198/2013)**

Appealed from LT

Date to be heard: 10 March 2014

MTHIYANE DP, MHLANTLA JA, THERON JA, SWAIN AJA, MOCUMIE AJA

Delict – in addition to instituting an action for damages against the Minister of Safety and Security for unlawful arrest and detention, the respondent also instituted an action against the appellant for malicious prosecution alleging that he had wrongfully and maliciously set the law in motion by laying a false criminal charge with the police in Thohoyandou and provided them with false information – respondent succeeded in the court below – contended on behalf of the appellant that the respondent had failed to prove that the prosecution against him had failed and for that reason alone the appeal should succeed.

**Absa Bank Limited and others v Elizabeth Francina Maree and another  
(228/2013)**

Appealed from WCC

Date to be heard: 10 March 2014

MAYA JA, SHONGWE JA, LEACH JA, SALDULKER JA, MATHOPO AJA

**Civil Procedure** – claim for default judgment in the court below refused on the basis that underlying credit agreement not attached to mortgage bond – whether court below correct.

**Perapanjakam Naidoo and another v E P Projects (Pty) Ltd and others  
(444/2012)**

Appealed from WCC)

Date to be heard: 12 March 2014

MPATI P, LEWIS JA, PONNAN JA, BOSIELO JA, WILLIS JA

Arbitration award – appeal arises following on decisions of the high court involving four applications, *inter alia*, to make an arbitration award an order of court – remaining applications are related to the arbitration award – high court making the award an order of court – counter application for the review and setting aside of the award was dismissed – whether requirements for a valid award was proved – whether a fugitive from justice in the form of an alter ego could approach the court for award – whether the arbitrator lacked jurisdiction – whether the arbitrator’s conduct constitutes misconduct which justifies the setting aside of the award – whether publication of an arbitration award by email was contrary to the provisions of the Arbitration Act 42 of 1965 and thereby vitiates the award.

**Gavin Cecil Gainsford NO and others v Tanzer Transport (Pty) Ltd and others  
(076/2013)**

Appealed from GSJ

Date to be heard: 12 March 2014

NAVSA JA, MHLANTLA JA, LEACH JA, THERON JA, SWAIN AJA

Company Law – in one case in the court below the applicants, who are the liquidators of Costa Logistics, sought an order authorising them to bring an application in terms of the Companies Act 61 of 1973 for payment of amounts paid by the liquidated company to the respondents, totalling approximately R 14 million – in the second case before the court below the respondents sought an order against the liquidators, setting aside the winding up of the liquidated company and discharging the liquidators from office – common cause that payments were made by the liquidated company to Tanzer Transport who were the respondents in the first case and the applicants in the second case – the application for repayment was dismissed with costs *de bonis propriis* – the application for the winding up of

the company was sent to trial – both decisions on appeal – whether the liquidators were entitled to institute the application for repayment without obtaining the consent of creditors of the liquidated company – whether it was necessary for the appellant to have instituted the application for the repayment in the name of the company in liquidation – whether appellants ought to have proceeded by way trial rather than motion – whether the winding up of the company was valid – whether Tanzer Transport had *locus standi* to challenge the liquidator's authority and institute the application for repayment – whether Tranzer had *locus standi* to bring the application to set aside the winding up – whether there was any basis to undo the winding up.

**Roshcon (Pty) Ltd v Anchor Auto Body Builders CC and others  
(049/2013)**

Appealed from LT

Date to be heard: 12 March 2014

MAYA JA, SHONGWE JA, WALLIS JA, PETSE JA, SALDULKER JA

Property law – appellant had applied for an order in the court below declaring it to be the lawful owner of 11 Nissan trucks – first respondent instituted a counter application in terms of which it claimed delivery of two trucks in appellant's possession – hearing limited to the dispute between the appellant and the second respondent – application was dismissed and the second respondent's counter application was granted – ownership of a number of trucks in dispute – whether a supplier agreement between the bank and a supplier operated to reserve ownership in favour of the bank – whether transactions were simulated transactions – estoppel.

**Adams & Adams Attorneys and another v Pointer Fashion International  
(324/2013)**

Appealed from GNP

Date to be heard: 13 March 2014

MTHIYANE DP, MHLANTLA JA, WALLIS JA, VAN ZYL AJA, MOCUMIE AJA

Civil Procedure – appeal against an interdictory order granted by the court below pending a final determination concerning the attachment and sale in execution of right to a trademark – whether the order is appealable – whether the court below had jurisdiction over the second appellant in respect of the final relief sought – if the order is appealable, whether the relief should have been granted.

**Johanna Christina Pithey v Road Accident Fund  
(319/2013)**

Appealed from GNP

Date to be heard: 13 March 2014

NAVSA JA, THERON JA, PETSE JA, SWAIN AJA, LEGODI AJA

Road Accident Fund Act 56 of 1996 – claim form incompletely completed – RAF contended that a valid claim had not been lodged – contended that information about whether the insured driver's identity is known or not is essential – court of first instance upheld RAF's contention – an appeal to the full court was dismissed – whether the contention that there was substantial compliance was justified.

**Johann Izak Frederick Pistorius v Die Staat  
(253/2013)**

Appealed from GNP

Date to be heard: 13 March 2014

BOSIELO JA, SHONGWE JA, LEACH JA

Criminal Law – an appeal on the merits against conviction on charges of assault with intent to do grievous bodily harm and *crimen injuria* – whether the court a quo erred in not finding that the trial court erred in fact and in law by not finding that the State case relied on the

evidence of a single witness only, whose evidence should have been approached with caution – contended that evidence of the single witness was contradictory and at odds with the medical evidence – because of all the contradictions with his own evidence and the evidence of the medical doctor, and the inherent improbabilities in the complainant's evidence.

**Ahmed Asmal v MHN Essa**

**(038/2013)**

Appealed from KZD

Date to be heard: 14 March 2014

MPATI P, LEWIS JA, MAYA JA, SHONGWE JA, MATHOPO AJA

National Credit Act 34 of 2005 – whether the Respondent, a holder for value of cheques, was obliged when suing the appellant for provisional sentence to comply with the provisions of sections 40(1), 129 and 130 of the National Credit Act.

**Mugwedi Makhondelele Jonathan v The State**

**(694/2013)**

Appealed from LT

Date to be heard: 14 March 2014

NAVSA JA, LEACH JA, SALDULKER JA

Criminal Procedure – appeal against rape conviction and related sentence – whether child complainant was competent – whether accused positively identified – whether State proved its case beyond reasonable doubt – whether there were substantial and compelling circumstances justifying a lesser sentence.

**Piet Nekuvule v The State**

**(828/2013)**

Appealed from LT

Date to be heard: 14 March 2014

NAVSA JA, LEACH JA, SALDULKER JA

Criminal Procedure – appeal against life sentences imposed in respect of two counts of rape perpetrated against children, one being the accused's daughter – contended that charge sheet did not indicate that the State would rely on the minimum sentencing regime – whether sentence imposed was justified.

**Takalani Eric Nthabalala v The State**

**(829/2013)**

Appealed from LT

Date to be heard: 14 March 2014

PONNAN JA, PETSE JA, LEGODI AJA

Criminal Procedure – appeal against sentences of 16 years and 45 years' imprisonment for culpable homicide and rape ordered to run concurrently – whether the sentences imposed by the trial court are too harsh.

**The State v Sonele Percival Bhengu**

**(452/2013)**

Appealed from KZP

Date to be heard: 14 March 2014

PONNAN JA, PETSE JA, LEGODI AJA

Criminal Procedure – respondent was convicted on 14 July 2010 in the Port Shepstone district court on a charge of housebreaking with intent to steal and theft and sentenced to 3 years' imprisonment – matter sent to high court for review in terms of s 304 of the Criminal Procedure Act 51 of 1977 – reviewing court set aside conviction and sentence on the basis that the right to legal representation should not be within the discretion of an accused person – held that, where an accused person was likely to be sentenced to a period of

imprisonment without the option of a fine, legal representative of his/her choice be appointed at the expense of the State – held it was necessary to receive comment from the Magistrate – also referred to DPP for a review opinion – whether the review court erred in not referring it for argument in terms of s 304(3) of the Act – submitted that on the facts respondents right to legal representation at the State’s expense was explained to him – legal representative had been appointed but that the respondent had terminated the services – contended that legal representation cannot be imposed on an accused if he chooses to conduct his own defence.

**Nicolette Erasmus NO v Estate Late B C Booysen  
(192/2013)**

Appealed from GNP

Date to be heard: 17 March 2014

MTHIYANE DP, PETSE JA, WILLIS JA, SALDULKER JA, LEGODI AJA

Succession – interpretation of wills – two testators each completed a will in terms of which the deceased inherited property subject to *fideicommissa* in favour of his children, and upon the children’s death in favour of grandchildren – deceased had two sons, one who had predeceased him – predeceased son was survived by a daughter who is still a minor – whether *fideicommissa* multiplex were created in the two wills – whether on a proper interpretation of the will surviving daughter referred to could inherit.

**Michael Robarts v Stefan Okreglicki Antoni NO and others  
(327/2013)**

Appealed from WCC

Date to be heard: 17 March 2014

MAYA JA, LEACH JA, THERON JA, VAN ZYL AJA, MOCUMIE AJA

Contract – appeal against an order granting an application in which an order of specific performance of a contract was sought – whether binding agreement was proved – whether the Alienation of Land Act applied – significance of various versions of written instruments exchanged between the parties.

**Bigboy Cyril Ngobeni v The State  
(741/2013)**

Appealed from GNP

Date to be heard: 17 March 2014

BOSIELO JA, SHONGWE JA, MATHOPO AJA

Criminal Procedure – appeal against conviction on account of attempted murder and against a sentence of 4 years’ imprisonment - whether the inferences drawn by the courts a quo are supported by the facts – whether the trial court could rely on ambiguous medical evidence, without clarification – the rejection of an independent medical expert’s opinion – whether the trial court’s credibility findings are supported by the record and the probabilities – whether the trial court misdirected itself in imposing a sentence of imprisonment, in view of the appellant’s age and the unique circumstances of this case.

**Minister of Safety and Security v Ntombenkosi Hlomza  
(374/2013)**

Appealed from ECM

Date to be heard: 18 March 2014

MPATI P, LEWIS JA, MHLANTLA JA, SALDULKER JA, LEGODI JA

Delict – claim for loss of support – whether the appellant can be held factually and legally liable for a claim for loss of support arising from the deceased’s suicide where the police were aware that the deceased had assaulted the respondent and threatened to shoot the respondent and were not aware that the deceased had suicidal tendencies.

**City of Cape Town v Arjun Property Developments (Pty) Ltd  
(943/2012)**

Appealed from WCC

Date to be heard: 18 March 2014

NAVSA JA, PONNAN JA, THERON JA, WILLIS JA, MATHOPO AJA

Land Use Planning Ordinance 15 of 1988 – application of *City of Cape Town v Helderberg Park Development (Pty) Ltd* – interpretation – whether the respondent is entitled to claim compensation from the appellant in terms of s 28 of the Ordinance in respect of certain portions of public streets upon the confirmation of a subdivision – the appropriate basis on which to determine compensation.

**Barend Rudolph Honiball v The State  
(662/2013)**

Appealed from GNP

Date to be heard: 18 March 2014

SHONGWE JA, LEACH JA, WALLIS JA

Criminal Law – section 309(1)(a) of the Criminal Procedure Act 51 of 1977, which provides an adult person who has been sentenced to life imprisonment by a regional court the right to appeal without having to apply for leave to appeal in terms of section 309B, was amended by section 99(1) of the Child Justice Act 75 of 2008 – whether a vested right in relation to automatic appeal vested in the appellant.

**Ellerine Bros (Pty) Ltd v McCarthy Ltd  
(245/2013)**

Appealed from GNP

Date to be heard: 19 March 2014

NAVSA JA, MHLANTLA JA, LEACH JA, PETSE JA, VAN ZYL AJA

Insolvency law – whether, on a proper interpretation of s 37 of the Insolvency Act 24 of 1936 a lessor can exercise a right of cancellation after the commencement of the liquidation – whether the concursus creditorum freezes the creditors' rights, precluding a lessor from exercising a right of cancellation thereafter, even in circumstances where the lessor has given notice of an intention to cancel before the commencement of winding up, but has not yet exercised that right because the notice period has not expired.

**The Director of Public Prosecutions North Gauteng, Pretoria v Sikhosiphi Gcwala & others  
(295/2013)**

Appealed from GNP

Date to be heard: 19 March 2014

LEWIS JA, SHONGWE JA, SALDULKER JA

Criminal Procedure – Sentence – appeal by the DPP against sentence of 12 years' imprisonment imposed by the trial court in respect of a pre-meditated murder - weight to be given to period of detention awaiting trial.

**Tshavhungwe Mbengeni Murabi v Naledzani Caroline Murabi and others  
(893/2012)**

Appealed from LT

Date to be heard: 20 March 2014

MTHIYANE DP, PETSE JA, SALDULKER JA, VAN ZYL AJA, LEGODI AJA

Validity of Customary Law Marriage – common cause that the appellant and deceased were married by customary union during 1979 – also agreed that first respondent was married to deceased by customary law in 1975 and that they later concluded a civil marriage on 2 August 1995 – whether the customary marriage between the appellant and the deceased during 1979 was valid – whether 'marriage' in terms of s 22(1) of the Black Administration Act 38 of 1927 refers to a civil marriage and excludes any customary marriage or union.

**Mbengeni David Tshilowa v The State  
(548/2013)**

Appealed from LT

Date to be heard: 20 March 2014

NAVSA JA, SHONGWE JA , LEACH JA

Sentence - appeal against sentences imposed in respect of a rape conviction – sentence of life imprisonment – biological daughter raped – contended by the State that there were no substantial and compelling circumstances justifying a lesser sentence – appellant contends the contrary.

**Leeroy Benson v The State  
(300/2013)**

Appealed from WCC

Date to be heard: 20 March 2014

PONNAN JA, MAYA JA, WILLIS JA

Criminal Law – appeal against a murder conviction – whether the appellant had a fair trial, with particular reference to the manner in which the Magistrate regulated the trial – whether he was adequately represented during the trial.

**Colin Macrae and another v The State  
(093/2013)**

**Appealed from GNP**

Date to be heard: 24 March 2014

MHLANTLA JA, WALLIS JA, MOCUMIE AJA

Criminal Law – appellants were convicted in the Cullinan District Court on charges of (1) obstructing or defeating the ends of justice (2) theft of a baboon – on the count of defeating the ends of justice, fines were imposed and on the count of theft they were each sentenced to 6 months' imprisonment, conditionally suspended for five years – contended that on the charge of obstructing or defeating the ends of justice the police were rightly resisted by the appellants on a second occasion because a search warrant earlier executed had run its course – contended that appellants were right to insist on a valid and current warrant – on the theft charge contended that the appellants had been in lawful possession of the baboon.