

**REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
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NO 1**

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**JUDGMENTS RESERVED**

**Ingonyama Trust v Ethekwini Municipality (149/11)**

Appealed from KZD

Date heard: 8 November 2011

Mthiyane JA, Ponnan JA, Bosielo JA, Theron JA, Petse AJA

Property – whether respondent’s application to have land held by appellant declared rateable in respondent’s area should have been granted – contention that trust land not rateable because it is exempted in terms of Rating of State Property Act 79 of 1984, s 3(3) (prior to its repeal).

**Jacob Mashinini v The State (502/11)**

Appealed from GNP

Date heard: 22 November 2011

Ponnan JA, Mhlantla JA, Bosielo JA

Criminal law – appellants pleaded guilty to rape and sentence of life imprisonment imposed – imposition of minimum sentence of life imprisonment in terms of Criminal Law Amendment Act 105 of 1997, s 51(2) – whether sentences of life imprisonment shockingly inappropriate.

**Francois Stephanus Cloete v The State (317/11)**

Appealed from GNP

Date heard: 23 November 2011

Mthiyane JA, Maya JA, Malan JA, Wallis JA, Petse AJA

Criminal law – appeal against conviction and sentence – whether appellant had a legal duty to prevent assault on complainant – whether appellant could have exercised such legal duty under circumstances – whether injuries induced by appellant caused or contributed to death of deceased – whether appellant acted with common purpose – whether appellant should have been charged with assault instead of murder.

**CASES ENROLLED FOR HEARING**

**Democratic Alliance and others v The Acting National Director of Public Prosecutions and others (288/11) (GNP)**

Appealed from GNP

Date to be heard: 15 February 2012

Mpati P, Navsa JA, Bosielo JA, Tshiqi JA, Plasket AJA

Administrative law – review – Promotion of Administrative Justice Act 3 of 2000 – standing of appellants to review NDPP’s decision to discontinue prosecution of

third respondent – whether review record would be produced under Rule 53 and what scope of record should be – whether second and third appellants should be allowed to intervene as co-applicants.

**Nthabeleni Daniel Rathumbu v The State (369/11)**

Appealed from LT

Date to be heard: 15 February 2012

Mthiyane DP, Cloete JA, Mhlantla JA, Leach JA, Ndita AJA

Criminal law – appeal against conviction on one count of murder – sentenced to 15 years' imprisonment – whether court erred by drawing an adverse inference against appellant as he elected not to testify – whether court erred in admitting hearsay evidence – whether evidence of pointing out constitutional.

**Susanna Magdalena Pienaar v The State (564/11)**

Appealed from GNP

Date to be heard: 15 February 2012

Mthiyane DP, Cloete JA, Mhlantla JA, Leach JA, Ndita AJA

Criminal law – appeal against sentence of five years' imprisonment for 42 counts of fraud – factual basis on which sentence should be considered regarding difference between accepted pleas and evidence led in aggravation of sentence – whether shockingly inappropriate – whether there was prejudice in sentencing process – whether correctional supervision a suitable sentencing option.

**Beulah Evelyn Bonguli & another v The Standard Bank of South Africa Ltd (266/11)**

Appealed from WCC

Date to be heard: 15 February 2012

Farlam JA, Cachalia JA, Malan JA, Wallis JA, Petse AJA

Contract – whether court erred in finding it had jurisdiction to entertain claim – whether court erred in not granting rectification of guarantee – whether signatory to guarantee had necessary authority – whether court erred in determining quantum of claim.

**BBS Empangeni CC (formerly ZTC Cash build CC) v Phoenix Industrial Park (Pty) Ltd & another (203/10) (KZD)**

Appealed from KZD

Date to be heard: 16 February 2012

Brand JA, Heher JA, Van Heerden JA, Cachalia JA, Boruchowitz AJA

Contract – prescription – Prescription Act 68 of 1969 – whether claim had prescribed when property was transferred with result that there was no repudiation or that it gave rise to no rights of cancellation – whether right to cancel contract arising from repudiation prescribed before it was exercised – whether appellant estopped from asserting any contractual rights after having failed to give any indication of its continued interest in property for some 11 years.

**Soul Ramokata Daddy Motsisi v The State (513/11)**

Appealed from NWM

Date to be heard: 16 February 2012

Navsa JA, Tshiqi JA, Wallis JA, Petse AJA, Ndita AJA

Criminal law – appeal against conviction on charge of rape – whether sexual intercourse between complainant and appellant occurred – whether complainant mentally retarded.

**Sanele Zondo v The State (541/11)**

Appealed from KZP

Date to be heard: 16 February 2012

Navsa JA, Tshiqi JA, Wallis JA, Petse AJA, Ndita AJA  
 Criminal law – appeal against effective sentence of 20 years on counts of robbery with aggravating circumstances and attempted robbery with aggravating circumstances – whether sentence for count 2 should be ordered to run concurrently with that of count 1.

**New Balance Athletic Shoe Inc v Abdullah Mohamed Dajee NO and others (251/11)**

Appealed from GNP

Date to be heard: 16 February 2012

Nugent JA, Snyders JA, Malan JA, Bosielo JA, Majiedt JA

Trade marks – whether appellant discharged its onus in relation to relevant use of its trade marks – whether court's application of *Plascon-Evans* rule to evidence correct – whether appellant's witnesses had attempted deliberately to mislead court – whether court correctly interpreted appellant's evidence on use of trade mark – whether Registrar's exercise of his discretion to remove trade mark is vitiated by misdirection – whether manner in which trade mark was used was likely to cause deception or confusion – whether deceased could have claimed to be bona fide proprietor of trade mark.

**Gert Thomas van der Merwe and others v Simon Molefe Pitje & another (232/11)**

Appealed from GNP

Date to be heard: 17 February 2012

Mpati P, Nugent JA, Heher JA, Leach JA, Plasket AJA

Property – Eviction – Appeal against interlocutory order in terms of Rule 49(11) suspending execution of eviction order pending application for rescission thereof – whether order appealed against is appealable – whether exercise of discretion to suspend implementation of eviction order can be overturned.

**Christodoulos Demetriades v Ioannis Demetrios Perivoliotis (231/10)**

Appealed from GNP

Date to be heard: 17 February 2012

Mthiyane DP, Brand JA, Cloete JA, Mhlantla JA, Boruchowitz AJA

Contract – written agreement of sale – whether agreement validly cancelled by appellant – whether appellant had proved that respondent had repudiated agreement – whether respondent entitled to be paid for shares which he sold to appellant as appellant was given ownership and placed in position to take transfer.

**Dlamini v The State (362/11)**

Appealed from KZP

Date to be heard: 17 February 2012

Farlam JA, Van Heerden JA, Cachalia JA, Snyders JA, Majiedt JA

Criminal law – appeal against sentence of 40 years on three counts of armed robbery – whether concurrency should be ordered in respect of sentences imposed on appellant.

**Vincent Matome v The State (565/11)**

Appealed from Circuit Court (Polokwane)

Date to be heard: 17 February 2012

Farlam JA, Van Heerden JA, Cachalia JA, Snyders JA, Majiedt JA

Criminal law – appeal against conviction on charge of rape and sentence of life imprisonment – whether State proved beyond reasonable doubt that appellant raped complainant – whether court erred in finding no substantial and compelling

circumstances which would justify lesser sentence than prescribed minimum sentence – whether sentence of life imprisonment shocking and inappropriate under circumstances.

**Keith Long & another v Tanie Megan Jacobs (145/11)**

Appealed from WCC

Date to be heard: 20 February 2012

Mthiyane DP, Cloete JA, Van Heerden JA, Leach JA, Petse AJA

Delict – liability – quantum of damages – whether conduct of first appellant and one of his fellow educators unlawful, negligent and causally related to harm suffered by respondent – whether respondent negligent – contributory negligence – whether assessment of award of damages fair and reasonable – whether appeal court should interfere with award for damages.

**R Roestoff & another v Johannesburg Municipal Pension Fund and others (235/11)**

Appealed from GSJ

Date to be heard: 20 February 2012

Navsa JA, Nugent JA, Heher JA, Cachalia JA, Tshiqi JA

Prescription – Prescription Act 68 of 1969 – Pension Funds Act 2 of 1956, interpretation of – whether appellants' complaint to Pension Fund Adjudicator was time-barred and had prescribed – whether Pension Fund Adjudicator had jurisdiction to consider complaint.

**Nelson Mandela Metropolitan Municipality v Ngonyama Okpanum Hewitt-Coleman & others (765/10)**

Appealed from ECP

Date to be heard: 20 February 2012

Brand JA, Malan JA, Bosielo JA, Majiedt JA, Boruchowitz AJA

Unjustified enrichment – *condictio indebiti* – whether the appellant proved whether and to what extent the respondents have been enriched - whether the excusability requirement still forms part of our law – whether the court had correctly characterised the conduct of the relevant municipal officials as being grossly negligent – limitation of issues.

**Northern Metropolitan Local Council v Company Unique Finance (Pty) Ltd & others (36/11)**

Appealed from GSJ. 2011 (1) SA 440 (GSJ)

Date to be heard: 21 February 2012

Mpati P, Cloete JA, Snyders JA, Bosielo JA, Ndita AJA

Contract – Authority – whether respondents justified in acting on resolution of appellant without enquiry from appellant – whether appellant estopped from denying authority of third respondent to conclude agreement.

**The owners of the MV 'Banglar Mookh' v Transnet Ltd (842/10)**

Appealed from WCC

Date to be heard: 21 February 2012

Farlam JA, Cachalia JA, Tshiqi JA, Wallis JA, Plasket AJA

Damages – legal succession to South African Transport Services Act 9 of 1989 - interpretation of Item 10(7) of Schedule to Act – whether pilot's exemption from liability pursuant to Item 10(7) excludes liability from gross negligence and/or recklessness on part of pilot – whether destruction of respondent's vessel tracking records should result in it being non-suited and/or drawing of adverse inference against it.

**Joubert Scholtz Inc & others v Elandsfontein Beverage Marketing (Pty) Ltd (307/11)**

Appealed from GSJ

Date to be heard: 21 February 2012

Brand JA, Heher JA, Mhlantla JA, Malan JA, Majiedt JA

Mandate – terms of mandate provided to attorney – whether breach of such mandate – whether Goosen entitled to furnish first appellant with instructions on behalf of respondent regarding disbursement of funds deposited in trust with it by/or behalf of respondent – whether respondent estopped from denying authority of Goosen.

**R K Pollock NO & others v Elandsfontein Beverage Marketing (Pty) Ltd (765/11)**

Appealed from GSJ

Date to be heard: 21 February 2012

Brand JA, Heher JA, Mhlantla JA, Malan JA, Majiedt JA

**Kay Rachel Greenley v Colin Stephen Bliss & others (748/11)**

Appealed from GSJ

Date to be heard: 22 February 2012

Mthiyane DP, Van Heerden JA, Leach JA, Boruchowitz AJA, Plasket AJA

Family law – Hague Convention on Civil Aspects of International Abduction Act 72 of 1996 – removal of child from UK – whether child wrongfully removed without consent and being retained unlawfully in Republic – application for reinstatement of appeal and condonation for late filing.

**Diale Phillip Lekgau v S (13/12)**

Appealed from GNP

Date to be heard: 22 February 2012

Farlam JA, Cachalia JA, Ndita AJA

Criminal law – bail application – Criminal Procedure Act 51 of 1977, s 65(4) – whether court a quo exercised its discretion rightly.

**Minister of Correctional Services v Dudley Lee (316/11)**

Appealed from WCC

Date to be heard: 23 February 2012

Mpati P, Navsa JA, Nugent JA, Snyders JA, Ndita AJA

Delict – vicarious liability – whether appellant's servants had by their conduct, either with dolus eventualis or negligently, caused respondent to become infected with TB.

**Natal Joint Municipal Pension Fund v Endumeni Municipality (920/11)**

Appealed from KZP

Date to be heard: 23 February 2012

Farlam JA, Van Heerden JA, Cachalia JA, Leach JA, Wallis JA

Pension fund – regulations – interpretation to definition of 'pensionable emoluments' in regulation 1(xxi)(h) of regulations promulgated by appellant – whether rule valid at material times and whether retrospectively validated – whether on proper interpretation rule applied – whether jurisdictional facts that had to be in place before appellant could exercise its rights under rule were in place.

**Danny Pillay v The State (570/11)**

Appealed from GNP

Date to be heard: 23 February 2012

Cloete JA, Mhlantla JA, Bosielo JA, Tshiqi JA, Petse AJA

Criminal law – appeal against convictions on charges of rape and indecent assault – credibility – whether court applied its mind to merits of State's case and defence witnesses as well as probabilities of case – whether evidence of appellant

can be accepted as reasonably possibly true – whether evidence of complainants dealt with by court under cautionary rules.

**Thulani D Thwala v The State (679/11)**

Appealed from GNP

Date to be heard: 23 February 2012

Cloete JA, Mhlantla JA, Bosielo JA, Tshiqi JA, Petse AJA

Criminal law – appeal against sentence of 25 years' imprisonment on charge of robbery with aggravating circumstances – whether appellant warned of provisions of Criminal Law Amendment Act 105 of 1997 – whether court misdirected itself in finding no substantial and compelling circumstances justifying imposition of sentence less than 15 years' imprisonment – whether court misdirected itself in not comparing facts of case to similar cases in order to impose proportional sentence and avoid any disparity.

**Mulalo Justice Manyikane v The State (542/11)**

Appealed from LT

Date to be heard: 24 February 2012

Mthiyane DP, Heher JA, Majiedt JA, Wallis JA, Ndita AJA

Criminal law – rape – appeal against conviction and sentence – whether sexual intercourse with appellant proved – whether court a quo exercised cautionary rule in evaluation of evidence given by children – whether complainant contradicted herself and other state witnesses – whether appellant's version reasonably possibly true – whether sentence of life imprisonment so grossly inappropriate as to induce sense of shock and outrage – whether any substantial and compelling circumstances as envisaged in Criminal Law Amendment Act 105 of 1997, s 52.

**Eugene Ralph Morgan v The State (680/11)**

Appealed from GNP

Date to be heard: 24 February 2012

Mthiyane DP, Heher JA, Majiedt JA, Wallis JA, Ndita AJA

Criminal law – appeal against conviction on charge of attempted murder – whether trial magistrate erred in finding that State's witnesses were honest – whether trial was fair.

**Hentiq 1320 (Pty)Ltd v Mediterranean Shipping Company SA Geneva (166/11)**

Appealed from KZD

Date to be heard: 24 February 2012

Farlam JA, Navsa JA, Snyders JA, Malan JA, Plasket AJA

Shipping - damages – whether appellant has claim against respondent for misstatement either fraudulent or negligent in bills of lading issued by respondent which describe goods shipped or by reason of omission of essential aspect of such description.

**Gutsche Family Investments (Pty) Ltd & others v Mettle Equity Group (Pty) Ltd and others (115/11)**

Appealed from GSJ

Date to be heard: 24 February 2012

Brand JA, Nugent JA, Mhlantla JA, Boruchowitz AJA, Petse AJA

Arbitration – Arbitration Act 42 of 1965 – whether court correctly dismissed application to review and set aside decision made by second to fourth respondents sitting as Arbitration Appeal Tribunal.

**Mokala Beleggings (Pty) Ltd & another v Minister of Rural Development and Land Reform and others (276/11)**

Appealed from LCC

Date to be heard: 27 February 2012

Mpati P, Navsa JA, Snyders JA, Majiedt JA, Wallis JA

Interest – Restitution of Land Rights Act 22 of 1994 - interest *a tempore morae* – whether purchaser who deliberately delays transfer of properties and payment of purchase prices, could be held liable for interest on purchase price *a tempore morae*.

**Rinaldo Investments (Pty) Ltd v Giant Concerts CC & others (311/11)**

Appealed from KZP

Date to be heard: 27 February 2012

Mthiyane DP, Cloete JA, Cachalia JA, Malan JA, Plasket AJA

Sale of immovable property – review application – whether respondent's sale of public asset to appellant by private treaty and at price substantially below market value is lawful – whether first respondent has locus standi to review decision.

**City of Johannesburg & another v Ad Outpost (Pty) Ltd (55/11)**

Appealed from GSJ

Date to be heard: 27 February 2012

Farlam JA, Van Heerden JA, Mhlantla JA, Leach JA, Ndita AJA

Administrative law – review – whether review and setting aside of administrative decision which had been taken in terms of a law that has been repealed and replaced should be reconsidered in terms of repealed law or in terms of law as it stands at time of reconsideration – whether decision should be reviewed and set aside in circumstances where matter cannot be remitted to decision-maker as law has changed, rendering issue moot.

**Douglas Edward Barrows v Ian David Benning (67/11)**

Appealed from GNP

Date to be heard: 28 February 2012

Mthiyane DP, Brand JA, Cloete JA, Snyders JA, Majiedt JA

Jurisdiction – doctrine of effectiveness – whether doctrine of effectiveness postulates independent requirement for determination of jurisdiction – whether *Bid Industrial Holdings (Pty) Ltd v Strang* abolished requirement of effectiveness for jurisdiction or merely limited it in certain circumstances in case of claims for judgments sounding in money – whether law requires abolition of doctrine of effectiveness.

**City of Johannesburg Metropolitan Council v Patrick Ngobeni (314/11)**

Appealed from GSJ

Date to be heard: 28 February 2012

Navsa JA, Heher JA, Mhlantla JA, Tshiqi JA, Wallis JA

Delict – wrongful shooting – civil procedure – whether calling of witness by trial court in civil proceedings irregular – approach to be followed and principles to be applied when dealing with two mutually exclusive versions – whether trial court biased.

**Hendrik Johannes Pitzer v Eskom (336/11)**

Appealed from GSJ

Date to be heard: 28 February 2012

Nugent JA, Cachalia JA, Bosielo JA, Boruchowitz AJA, Petse AJA

Negligence – whether respondent negligent or alternatively contributorily negligent in regard to electrical shock sustained by appellant in a live chamber of an electrical sub-station – whether respondent had proved its defence of voluntary assumption of risk.

**Margaret Water Company v Eagles Greek Golf Club (Formerly Stilfontein Golf Club) & another (310/11)**

Appealed from GNP

Date to be heard: 29 February 2012

Farlam JA, Nugent JA, Bosielo JA, Plasket AJA, Petse AJA

Water rights – whether respondents are entitled to supply of free water by appellant – whether 8M permit issued under Water Act 54 of 1956 entitles respondents to a supply of free water – whether appellant entitled to charge for water.

**La Lucia Sands Share Block Ltd v Flexi Holiday Club & others (171/11)**

Appealed from KZD

Date to be heard: 1 March 2012

Mpati P, Heher JA, Malan JA, Boruchowitz AJA, Ndita AJA

Company – property time-share – Companies Act 61 of 1973, ss 30 and 31, interpretation of – whether Property Time-Sharing Control Act 75 of 1983 trumps application of ss 30 and 31 of Companies Act.

**New Foodcorp Holdings (Pty) Ltd & another v Minister of Agriculture, Forestry and Fisheries and others (82/11)**

Appealed from WCC

Date to be heard: 1 March 2012

Navsa JA, Van Heerden JA, Mhlantla JA, Leach JA, Wallis JA

Fishing rights - Marine Living Resources Act 18 of 1998 - Commercial Fishing rights - Whether paras 6.2 and 6.3 of Policy for the Transfer of Commercial Fishing Rights which require approval of Minister for certain share-sale transactions in entities which hold commercial fishing rights – whether transfer policy violates aspects of doctrine of rule of law in s 1 of the Constitution, and falls to be set aside.

**Oceana Group Limited & another v The Minister of Water and Environmental Affairs and others (507/11)**

Appealed from WCC

Date to be heard: 1 March 2012

**Navsa JA, Van Heerden JA, Mhlantla JA, Leach JA, Wallis JA**

**Elze Scholtz v Theodorus Ernest Scholtz (209/11)**

Appealed from WCC

Date to be heard: 1 March 2012

Brand JA, Cloete JA, Cachalia JA, Tshiqi JA, Plasket AJA

Property law - donation – deed of donation – whether deed of donation must specify in what manner donor is to settle any balance outstanding on mortgage bond registered over property on transfer of property pursuant to donation.

**Andrew Lionel Phillips v South African Reserve Bank & others (221/11)**

Appealed from GNP

Date to be heard: 2 March 2012

Mthiyane DP, Farlam JA, Majiedt JA, Petse AJA, Ndita AJA

Costs – Uniform Rules of Court – Rule 16A, interpretation of – whether findings and order for appellant to pay respondents' wasted costs appealable – whether appropriate for an organ of state to raise any purported non-compliance with Rule 16A at a time and manner that precludes defect being corrected.

**Counter Point Furnishers CC v S M Fraser Salica (896/11)**

Appealed from GSJ

Date to be heard: 2 March 2012

Brand JA, Snyders JA, Bosielo JA, Leach JA, Wallis JA



Jurisdiction – provisional sentence – whether provisional sentence judgment appealable – whether provisional sentence correctly granted on document relied on for provisional sentence.

**Eveready (Pty) Ltd v The Commissioner for South African Revenue Services (195/11)**

Appealed from Tax Court (PE)

Date to be heard: 2 March 2012

Nugent JA, Heher JA, Malan JA, Tshiqi JA, Boruchowitz AJA

Tax – whether trading stock acquired by appellant from Gillette Group South Africa (Pty) Ltd during the 2004 year of assessment was acquired for no consideration as contemplated in Income Tax Act 58 of 1962, s 22 – whether court in re-hearing issue pertaining to imposition of interest in terms of s 89*quat*(3) correct in ruling that no interest should have been levied.

**Beweging vir Christelike-volkseie Onderwys en andere v Minister van Onderwys en andere (308/11)**

Appealed from GNP

Date to be heard: 5 March 2012

Mpati P, Farlam JA, Snyders JA, Majiedt JA, Plasket AJA

Public law – National Education Policy – National Education Policy Act 27 of 1996 – Schools Act 84 of 1996 – whether curriculum and assessment procedures for schools determined by Minister binding upon independent schools and home educators – whether those parts of government notices in which Minister required independent schools and home educators to phase in curriculum and assessment policy are ultra vires – whether applicants should be non-suited because of alleged delay in bringing and finalising application.

**Minister of Safety and Security & another v Johannes Francois Swart (194/11)**

Appealed from WCC

Date to be heard: 5 March 2012

Mthiyane DP, Brand JA, Cloete JA, Bosielo JA, Ndita AJA

Unlawful arrest – damages – whether respondent's arrest and detention lawful – quantum of damages.

**Glenville Mervin Kogana v SSV Services (Pty) Ltd (384/11)**

Appealed from ECP

Date to be heard: 5 March 2012

Navsa JA, Nugent JA, Cachalia JA, Tshiqi JA, Petse AJA

Delict – damages – whether respondent has proved on balance of probabilities that appellant's actions negligent and/or wrongful – whether appellant's actions caused respondent's damages – extent of respondent's damages.

**Elwyn Dale Harlech-Jones v Shirley Margaret Harlech-Jones (188/11)**

Appealed from ECP

Date to be heard: 6 March 2012

Mthiyane DP, Cloete JA, Mhlantla JA, Leach JA, Boruchowitz AJA

Family law – divorce – maintenance – whether husband obliged to pay maintenance to former wife after divorce, where latter is living together with another man as husband and wife and is supported by such man.

**Beaufort West Minerals (Pty) Ltd v Leon Roelof Eybers NO & others (275/11)**

Appealed from WCC

Date to be heard: 6 March 2012

Farlam JA, Navsa JA, Van Heerden JA, Wallis JA, Ndita AJA

Contract – sale of immovable property – whether respondent has locus standi to bring application – whether appellant entitled to and did cancel agreement of sale.

**Etienne Zeeman v Danie de Wet NO & others (325/11)**

Appealed from WCC

Date to be heard: 6 March 2012

Brand JA, Heher JA, Snyders JA, Malan JA, Plasket AJA

Property law – servitude – interpretation – whether servitude can be interpreted to include right of access as claimed by appellant.

**Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd & others (363/11)**

Appealed from GNP

Date to be heard: 7 March 2012

Mpati P, Mhlantla JA, Bosielo JA, Majiedt JA, Plasket AJA

Civil procedure – application – when an application is initiated – condition of interdict that review application be initiated on or before certain date – review application only served on following day – whether interdict lapsed.

**National Scrap Metal (Cape Town) (Pty) Ltd & another v Murray & Roberts and another (809/11)**

Appealed from WCC

Date to be heard: 7 March 2012

Mthiyane DP, Cloete JA, Leach JA, Tshiqi JA, Wallis JA

Property – eviction – whether applicants made out case on papers – whether respondents' answering affidavit adequately raised genuine dispute of fact – whether eviction should have been ordered in view of respondents' reliance on lien.

**Adcock Ingram Intellectual Property (Pty) Ltd & another v CIPLA Medpro (Pty) Ltd & another (265/11)**

Appealed from GNP

Date to be heard: 8 March 2012

Farlam JA, Nugent JA, Malan JA, Wallis JA, Petse AJA

Trade marks – Trade Marks Act 194 of 1993 – whether trade marks ZEMAX and ZETOMAX are confusingly similar for purposes of Trade Marks Act 194 of 1993, s 10(14) when used in respect of certain pharmaceutical products.

**H S Mathewson & another v M F Van Niekerk & others (260/11)**

Appealed from GNP

Date to be heard: 8 March 2012

Navsa JA, Cloete JA, Van Heerden JA, Leach JA, Boruchowitz AJA

Jurisdiction – Whether the court a quo had concurrent jurisdiction in this matter – Whether the appellants did in fact repudiate their contract with the first and second respondents and whether the latter are entitled to the relief claimed.

**A K Butters v N V Mncora (181/11)**

Appealed from ECP

Date to be heard: 8 March 2012

Brand JA, Heher JA, Cachalia JA, Mhlantla JA, Tshiqi JA

Contract law – whether appellant able to establish on a balance of probabilities that parties tacitly concluded contract of universal partnership.

**Mohammed Azeem Gaffoor NO & another v Vangate Investments and others (330/11)**

Appealed from WCC

Date to be heard: 9 March 2012

Mthiyane DP, Van Heerden JA, Leach JA, Tshiqi JA, Ndita AJA

Shares – rectification – whether appellants prevented by operation of prescription or delay in bringing application from claiming relief.

**Shaukat Alli Moosa & another v Mahomed Rafik Osman Siddi Akoo NO (134/11)**

Appealed from GNP

Date to be heard: 9 March 2012

Nugent JA, Cachalia JA, Bosielo JA, Majiedt JA, Petse AJA

Trust law – whether co-trustee, authorised by other trustees, have capacity to institute proceedings purportedly on behalf of trust without joining other trustees – whether trustees actually have power to authorise respondent by delegation to institute proceedings on behalf of trust – whether trustees did in fact authorise respondent to institute proceedings on behalf of trust – whether respondent discharged onus by adducing sufficient evidence entitling him to judgment on merits.

**Standard Bank of South Africa v ECHO Petroleum CC (192/11)**

Appealed from GNP

Date to be heard: 9 March 2012

Heher JA, Snyders JA, Malan JA, Wallis JA, Boruchowitz AJA

Banking law – whether account held by Sky Petroleum with appellant was a 'warehouse' account – whether Sky Petroleum held account in its own name and was only party entitled to deal with funds in that account – whether mere existence of 'warehouse' account could have constituted misrepresentation to general public, including to respondent, on manner in which any money deposited into that account could be used.

**XSTRATA South Africa (Pty) Ltd & others v SFF Association (326/11)**

Appealed from GSJ

Date to be heard: 12 March 2012

Mpati P, Brand JA, Heher JA, Mhlantla JA, Wallis JA

Mineral and Petroleum Resources Development Act 28 of 2002 – effect of Act on pre-existing mineral rights and mineral leases as well as notarial exchange agreements – interpretation of a notarial exchange agreement between respondent and second and third appellants and notarial mineral lease between respondent and second appellant.

**City of Cape Town v Marcel Mouzakis Strümpher (104/11)**

Appealed from WCC

Date to be heard: 12 March 2012

Mthiyane DP, Van Heerden JA, Bosielo JA, Majiedt JA, Ndita AJA

Contract – spoliation – whether relationship between appellant and respondent premised in contract and as such renders mandament van spolie inapplicable in claim for restoration of water supply.

**Commissioner for the South African Revenue Service v Tradehold Ltd (132/11)**

Appealed from Tax Court (Cape Town)

Date to be heard: 12 March 2012

Nugent JA, Cachalia JA, Malan JA, Tshiqi JA, Boruchowitz AJA

Tax – income tax assessment – Income Tax Act 58 of 1962 – whether Commissioner correctly included taxable capital gain in Tradehold's income for the 2003 year of assessment on basis there was a deemed disposal by Tradehold of its shares in Tradegro Holdings Ltd.

**Enviroserve Waste Management (Pty) Ltd v Wasteman Group (Pty) Ltd and others (378/11)**

Appealed from WCC

Date to be heard: 13 March 2012

Farlam JA, Heher JA, Van Heerden JA, Snyders JA, Petse AJA

Arbitration – Arbitration Act 42 of 1965 – whether award of Appeal Tribunal falls to be set aside on grounds that it committed gross irregularity as contemplated in s 33(1)(b).

**South African Commercial Catering & Allied Workers Union & another v Growthpoint Properties Ltd & another (46/11)**

Appealed from KZD. [2011] 1 All SA 537 (KZD)

Date to be heard: 13 March 2012

Navsa JA, Nugent JA, Bosielo JA, Majiedt JA, Wallis JA

Delict - interdict – nuisance – whether interpretation of Labour Relations Act 1995, s 67(2)(b) and (6) as incorporated in s 69(7) means that such picketers do not commit a delict in form of nuisance against landlord of shopping centre – whether such landlord entitled to institute civil proceedings to limit rights of pickets – whether these sections reasonably limit landlord's right to property, to trade and to a healthy environment.

**Minister of Home Affairs v T Maboho & 117 related cases (233/11)**

Appealed from LT

Date to be heard: 13 March 2012

Cloete JA, Malan JA, Leach JA, Tshiqi JA, Plasket AJA

Identification Act 68 of 1997 – identity documents – whether appellant should issue identity documents to the respondents – whether appellant having filed a Rule 49(1)(c) notice calling for reasons for order an entitlement which is enjoyed at common law or alternatively did not constitute an irregularity – whether court's failure to indicate reasons for deviating from rule that costs follow result means that exercise of judicial discretion absent.

**Nicolaas Marthinus Prinsloo NO and other v Goldex 15 (Pty) Ltd & others (243/11)**

Appealed from GNP

Date to be heard: 14 March 2012

Brand JA, Cachalia JA, Mhlantla JA, Wallis JA, Boruchowitz AJA

Civil procedure – res judicata – whether defence of res judicata in form of issue estoppel can succeed – whether considerations of equity and fairness indicated that appellants should be afforded opportunity to dispute allegations and to present evidence.

**Sagren Perumal & others v The National Director of Public Prosecutions (356/11)**

Appealed from KZD

Date to be heard: 15 March 2012

Mpati P, Heher JA, Snyders JA, Majiedt JA, Plasket AJA

Prevention of organised crime – forfeiture – Prevention of Organised Crime Act 121 of 1998 – whether National Director of Public Prosecutions had proven assets forfeited to be proceeds of unlawful activities – whether asset forfeited an instrumentality of offence in terms of Chapter 6.

**Primedia (Pty) Ltd t/a Primedia Instore v Radio Retail (Pty) Ltd & others (354/11)**

Appealed from WCC

Date to be heard: 15 March 2012

Mthiyane DP, Cloete JA, Cachalia JA, Malan JA, Leach JA

Contract – whether respondents had established contractual rights vis-à-vis certain Spar franchisees – whether such contractual rights were interfered with by appellant – whether existence of pre-existing contractual rights between appellant and certain Spar franchisees precluded conduct of appellant from constituting unlawful interference in respondent's contractual rights.

**City of Tshwane v BDG International (Pty) Ltd (335/11)**

Appealed from GNP

Date to be heard: 15 March 2012

Navsa JA, Mhlantla JA, Tshiqi JA, Petse AJA, Ndita AJA

Interdict – suspension of interdict – whether interdict could be suspended as its suspension amounted to condonation of crime and allowed to continue.

**Michael George Burgess and others v Wonderhoek Farms (Edms) Bpk (449/11)**

Appealed from FB

Date to be heard: 16 March 2012

Mpati P, Brand JA, Van Heerden JA, Boruchowitz AJA, Plasket AJA

Property – option – whether option had been cancelled – whether agreement of sale was entered into – reasonable notice.

**APPEALS DISPOSED OF WITHOUT WRITTEN JUDGMENT IN 2011**

DPI Plastics (Pty) Ltd v Incledon Cape (Pty) Ltd (154/10) – 25 February 2011  
Diliza Themba Mncedi Mbete v HT & H Construction and another (209/10) – 3 March 2011

Gerrit Grobler NO v Mobile Telephone Networks (Pty) Ltd & others (465/10)  
- 4 May 2011

Thomas Mudau v The State (103/11) – 23 May 2011

Joseph Mohloko Kudu Sithole v The State (593/10) – 23 May 2011

F Booyesen & others v The State (35/11) – 25 August 2011

Munier Effendi v The State (66/11) – 30 August 2011

Eastern Cape Gambling and Betting Board v Ekuphumleni Resort (Pty) Ltd & others (676/10) – 31 October 2011

Nico Jagga v BMW Financial Services (SA) (PTY) Ltd (807/10) – 3 November 2011

Master of the High Court (KwaZulu-Natal) v P de Viliers Berrange NO and another (291/11) – 7 November 2011

Canteen & Mine Hostel Supplies (Pty) Ltd t/a CMH Construction & another v Emile Burger (813/10) – 18 November 2011

MEC for Social Development: Free State v National Association of Welfare Organisations and Non-Governmental Organisations and others (557/11) – 24 November 2011