

**REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
BULLETIN 4 OF 2018  
CASES ENROLLED FOR HEARING: NOVEMBER 2018**

**1. Swifambo Rail Leasing (Pty) Ltd v Passenger Rail Agency of South Africa (1030/2017)**

Appealed from GJ

Date to be heard: 01 November 2018

Lewis JA, Ponnann JA, Zondi JA, Makgoka JA, Schippers JA

**Administrative Law – PAJA – contract – Companies Act 71 of 2008** – the appeal concerns a review by Prasa of two of its decisions to award a tender to and conclude a contract of sale with the appellant – whether there was a delay by the respondent in launching the application – whether the contract concluded between the two parties was valid – whether the impugned contract for the sale and purchase of locomotives was invalid.

**2. Leonard Thandlibufile Ntuli v The State (457/2018)**

Appealed from GP

Date to be heard: 01 November 2018

Tshiqi JA, Swain JA, Dambuza JA, Mokgohloa AJA, Mothle AJA

**Criminal Law and Procedure – sentence** – appeal against refusal of a petition for leave to appeal against the sentence on six counts – whether the magistrate erred in sentencing the appellant in terms of s 51(2) of the Criminal Law Amendment Act 105 of 1997 in that the State failed to set out in the charge sheet that the minimum sentences legislation would be relied upon – whether the cumulative effect of the sentences and the imposition of a sentence of 30 years' imprisonment upon the appellant was shockingly inappropriate.

**3. The Director of Public Prosecutions, Limpopo v Koketso Motloutsi (527/2018)**

Appealed from LP

Date to be heard: 01 November 2018

Tshiqi JA, Swain JA, Dambuza JA, Mokgohloa AJA, Mothle AJA

**Criminal Law and Procedure – sentence** – appeal against sentence on the charge of rape – whether the question of law can be reserved in favour of the Director of Public Prosecution – whether the court a quo erred in law as opposed to the facts in finding that there were substantial and compelling circumstances which entitled the court a quo to deviate from the prescribed minimum sentence – whether the reasons provided by the court a quo for imposing a sentence of five years' imprisonment in terms of s 276(1)(i) of the Criminal Procedure Act 51 of 1977 were as a result of the incorrect interpretation of the law – whether the court a quo misdirected itself in respect of the sentence imposed.

**4. Kusaga Taka Consulting (Pty) Ltd v The Minister of Environmental Affairs (1279/2017 and 187/2018)**

Appealed from WCC

Date to be heard: 02 November 2018

Cachalia JA, Saldulker JA, Van der Merwe JA, Molemela JA, Rogers AJA

**Company Law – winding up – interpretation of s 157 of the Companies Act 71 of 2008** – the Minister acting in the public interest applied for the liquidation of two associate companies and the court a quo granted the liquidation of the companies – whether s 157(1)(d) of the Act, read together with s 81(1)(c)(ii) and s 81(1)(d)(iii) of the Act, confers standing on the Minister to seek leave to apply to wind up a solvent company in the public interest on the grounds that it is just and equitable to do so – whether the court a quo erred in granting the Minister leave under s 157 to apply to wind up the solvent company and ought to have discharged the provisional winding-up order and dismissed the Minister's application with costs.

**5. Recycling and Economic Development Initiative of South Africa v The Minister of Environmental Affairs (1260/2017 and 188/2017)**

Appealed from WCC

Date to be heard: 02 November 2018

Cachalia JA, Saldulker JA, Van der Merwe JA, Molemela JA, Rogers AJA

**Company Law – winding up** – whether the court a quo misdirected itself by granting the Minister, acting in the public interest, extended locus standi in terms of s 157(1)(d) of the Companies Act 71 of 2008 to apply for the winding up of Redisa and Kusaga Taka in terms of s 81(1)(d)(iii) of the Act, on the basis that it is just and equitable and in public interest to do so – whether the court a quo was correct in granting orders to wind up Redisa and Kusaga.

**6. The Provincial Government of The Western Cape: Department of Social Development v Craig Charles Barley & others (1220/2017)**

Appealed from WCC

Date to be heard: 02 November 2018

Navsa ADP, Wallis JA, Mbha JA, Dambuza JA, Nicholls AJA

**Constitutional Law – Delict – legal duty of care** – wrongful death of a minor whilst in the care of the appellant – whether there was a causal link between the omissions committed by the appellant’s employees and the harm suffered by the first and second respondent – remoteness of the omissions committed and the harm suffered – whether the harm suffered was reasonably foreseeable – s 28 of the Constitution - the right of children – whether the appellant owed the first and second respondents a duty in law.

**7. Kusaga Taka Consulting (Pty) Ltd v The Minister of Environmental Affairs (1279/2017 and 187/2018)**

Appealed from WCC

Date to be heard: 02 November 2018

Cachalia JA, Saldulker JA, Van der Merwe JA, Molemela JA, Rogers AJA

**Company Law – winding up – interpretation of s 157 of the Companies Act 71 of 2008** – the Minister acting in the public interest applied for the liquidation of two associate companies and the court a quo granted the liquidation of the companies – whether s 157(1)(d) of the Act, read together with s 81(1)(c)(ii) and s 81(1)(d)(iii) of the Act, confers standing on the Minister to seek leave to apply to wind up a solvent company in the public interest on the grounds that it is just and equitable to do so – whether the court a quo erred in granting the Minister leave under s 157 to apply to wind up the solvent company and ought to have discharged the provisional winding-up order and dismissed the Minister’s application with costs.

**8. Recycling and Economic Development Initiative of South Africa v The Minister of Environmental Affairs (1260/2017 and 188/2017)**

Appealed from WCC

Date to be heard: 02 November 2018

Cachalia JA, Saldulker JA, Van der Merwe JA, Molemela JA, Rogers AJA

**Company Law – winding up** – whether the court a quo misdirected itself by granting the Minister, acting in the public interest, extended locus standi in terms of s 157(1)(d) of the Companies Act 71 of 2008 to apply for the winding up of Redisa and Kusaga Taka in terms of s 81(1)(d)(iii) of the Act, on the basis that it is just and equitable and in public interest to do so – whether the court a quo was correct in granting orders to wind up Redisa and Kusaga.

**9. The Community of Grootkraal & others v Jacobus Du Plessis NO & others (1219/2017)**

Appealed from WCC

Date to be heard: 05 November 2018

Lewis JA, Wallis JA, Swain JA, Mathopo JA, Mocumie JA

**Property Law – public servitude – acquisitive prescription – Prescription Act 68 of 1969** – whether the appellants have acquired a public servitude under the doctrine of *vetustas* – whether the appellants have acquired a servitude of use and occupation over the land of the respondents through acquisitive prescription – whether the doctrine of notice applies – whether the common law of acquisitive prescription should be developed in terms of s 39(2) of the Constitution in order to recognise a real right to the appellants.

**10. Micawber 838 (Pty) Ltd v D D B South Africa (Pty) Ltd & another (1326/2017)**

Appealed from GJ

Date to be heard: 05 November 2018

Ponnan JA, Cachalia JA, Saldulker JA, Mbha JA, Zondi JA

**Contract law – interpretation – shares** – whether the appellant, upon a proper interpretation of the Shareholders' Agreement and the Share Purchase Agreement is entitled to the unpaid dividends – whether the court a quo correctly upheld an exception to the appellant's particulars of claim on the ground that it did not disclose a cause of action – whether the non-variation clauses 11 and 12 of the Share Purchase Agreement are applicable to the dispute in casu - whether it was appropriate for the court to entertain the exception in the absence of an express provision to the contrary that shares are sold cum dividend.

**11. Attwell Sibusiso Makhanya v Minister of Water Affairs and Sanitation & others (796/2017)**

Appealed from KZP

Date to be heard: 05 November 2018

Tshiqi JA, Makgoka JA, Schippers JA, Mokgohloa AJA, Mothele AJA

**Civil Procedure – mootness** – whether the proposed appeal against the suspension of invalidity has become moot – whether it is appropriate for disciplinary proceedings to be conducted by the firm of attorneys that represented the invalid Board throughout the proceedings, and conducted the investigation in respect of which the disciplinary enquiry pursued – whether the applicant has perempted his right to appeal against the judgment of the court a quo.

**12. The Milnerton Estates Limited v The Commissioner for the South African Revenue Services (1159/2017)**

Appealed from Tax Court

Date to be heard: 06 November 2018

Navsa ADP, Wallis JA, Mathopo JA, Matojane AJA, Nicholls AJA

**Tax law – Income Tax – s 24(1) of the Income Tax Act 58 of 1962** – the issue is whether the proceeds from a sale of immovable property had, on general tax principles, accrued to the appellant during the 2013 year of assessment when the registration of transfer of ownership into the purchaser's names only occurred in the following year of assessment – whether the said proceeds were deemed to have accrued to the appellant during the 2013 year assessment in terms of s 24 of the Income Tax Act.

**13. Freedom Stationery (Pty) Ltd & others v Mahomed Zukeria Hassam & others (921/2017)**

Appealed from KZD

Date to be heard: 06 November 2018

Ponnan JA, Tshiqi JA, Van der Merwe JA, Schippers JA, Carelse AJA

**Civil Procedure – Companies Act 61 of 1971** – proceedings in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 - leave to appeal against judgment and order of the court a quo rescinding an order granted by Swain J in terms of s 252 (3) of the Companies Act.

**14. The City of Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association (106/2018)**

Appealed from GP

Date to be heard: 07 November 2018

Navsa ADP, Swain JA, Dambuza JA, Makgohloa AJA, Mothele AJA

**Local Government – Engineering Services Agreement** – the issue is the correct interpretation of clause 6.16.1 of the Engineering Services Agreement in relation to the determination of the applicable rate (tariff) at which the appellant supplies bulk water to the respondent.

**15. Dark Fibre Africa (Pty) Ltd v City of Cape Town (195/2018)**

Appealed from WCC

Date to be heard: 07 November 2018

Lewis JA, Cachalia JA, Seriti JA, Molemela JA, Rogers AJA

**Constitutional law –Municipal System Act 32 of 2000 – Electronic Communications Act 36 of 2005** – validity of conditions imposed by the City of Cape Town on service providers installing fibre optic telecommunication cables which (a) require the service provider to pay non-refundable deposits and comply with the trenching prevention conditions (b) take the form of upfront payment to the City or an undertaking to make payment to the City of Cape Town (c) conditions are imposed pursuant to a wayleave/work-permit system.

**16. Joey Haarhoff & another v The State (1192/2017)**

Appealed from ECG

Date to be heard: 08 November 2018

Navsa ADP, Mocumie JA, Molemela JA, Mokgohloa AJA, Nicholls AJA

**Criminal Law and Procedure – conviction and sentence** – the appellants were each convicted of rape and sentenced to 20 years' imprisonment – whether the complainant's evidence was properly before the court – if so, whether it was sufficiently reliable to convict upon – whether the sentence imposed was appropriate.

**17. Sanele Selby v The State (1262/2017)**

Appealed from GP

Date to be heard: 08 November 2018

Ponnan JA, Seriti JA, Saldulker JA, Mbha JA, Mothle JA

**Criminal Law and Procedure – conviction** – whether the State proved beyond reasonable doubt that the appellant was found in possession of a semi-automatic firearm – whether the State proved beyond reasonable doubt that the appellant was aware of the live ammunition in the firearm and therefore intentionally and unlawfully possessed the ammunition.

**18. Renio Moyo v The State (848/2018)**

Appealed from GJ

Date to be heard: 08 November 2018

Cachalia JA, Wallis JA, Makgoka JA, Matojane AJA, Carelse AJA

**Criminal law and Procedure** – sentence – appeal against sentence of 15 years' imprisonment and an order that the appellant should serve two third of his sentence before he can be considered for release on parole – whether the sentence is inappropriate in the circumstances – whether there are substantial and compelling circumstances warranting a departure from imposition of the minimum sentence.

**19. Sandile Maerio Molefe v The State (676/2018)**

Appealed from KZP

Date to be heard: 08 November 2018

Cachalia JA, Wallis JA, Makgoka JA, Matojane AJA, Carelse AJA

**Criminal law and Procedure – sentence** – appeal against imposition of a non-parole period imposed in terms of s 276B of the Criminal Procedure Act 51 of 1997 – whether imposition of a non-parole period rests within the discretion of the sentencing court – whether the full court misdirected itself in imposing a non-parole period in circumstances where such provisions were never canvassed with the appellant.

**20. Minister of Home Affairs & another v Miriam Ali & others (1289/2017)**

Appealed from WCC

Date to be heard: 09 November 2018

Lewis JA, Seriti JA, Wallis JA, Mathopo JA, Molemela JA

**Administrative Law – interpretation of statute – South African Citizenship Act 88 of 1995** – the issues hinge on the proper interpretation of s 4(3) of the Act – the court a quo held that the respondents have a statutory right to apply for citizenship – the appellants contend that the court a quo exceeded its powers in granting an order directing the appellants to process applications for citizenship – infringes on the doctrine of separation of powers – whether the Department’s reliance on the separation of powers was appropriate.

**21. Lungisa Gwababa v The State (1290/2016)**

Appealed from GP

Date to be heard: 09 November 2018

Cachalia JA, Saldulker JA, Mbha JA, Matojane AJA, Rogers AJA

**Criminal Law and Procedure – conviction** – application for condonation and re-enrolment of the appeal - applicant and his co-accused were convicted in the court a quo on a single charge of murder and sentenced to 15 years’ imprisonment – whether the applicant established circumstances warranting variation of the order refusing him special leave to appeal his conviction – whether the applicant has reasonable prospects of success on appeal.

**22. Benny Betlane & others v Unlock Properties 15 (Pty) Limited (208/2018)**

Appealed from GJ

Date to be heard: 09 November 2018

Tshiqi JA, Dambuza JA, Van der Merwe JA, Makgoka JA, Nicholls AJA

**Property law – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998 (‘PIE Act’)** – the appeal concerns the eviction of the second to eighty-seventh appellants from a residential block of flats situated in Johannesburg in terms of the PIE Act – the issues are whether the respondent was entitled to an order for the eviction of the appellants from the property – whether the respondent’s application for eviction stands to be dismissed with costs or remitted to the court a quo – whether the City of Johannesburg should be joined as a further respondent.

**23. Seaspan Holdco Limited & others v Ms Mare Trace Schiffarts Gmbh & Co, Kg & another (376/2018)**

Appealed from KZD

Date to be heard: 12 November 2018

Maya P, Wallis JA, Molemela JA, Makgoka JA, Schippers JA

**Maritime law – Admiralty Jurisdiction Regulation Act 105 of 1983** – whether an admiralty action in rem for the arrest of an associated ship commences with the mere issue of the admiralty writ of summons in rem or on service of the admiralty writ of summons in rem.

**24. Louis Pasteur Holdings (Pty) Ltd & others v Absa Bank Limited & others (1119/2017)**

Appealed from GP

Date to be heard: 12 November 2018

Navsa ADP, Swain JA, Mathopo JA, Mocumie JA, Matojane AJA

**Civil Procedure – Companies Act 71 of 2008 – material irregularity – Uniform Rule 33 (4) – right of access to court as enshrined in s 34 of the Constitution** – whether a material irregularity occurred in the proceedings in the court a quo – whether the court a quo failed to adjudicate and make an order on a separated issue.

**25. Louis Pasteur Holdings (Pty) Ltd & others v Absa Bank Limited & others (1120/2017)**

Appealed from GP

Date to be heard: 12 November 2018

Navsa ADP, Swain JA, Mathopo JA, Mocumie JA, Matojane AJA

**Civil Procedure - material irregularity - Uniform Rule 33(4) - right of access to court as enshrined in s 34 of the Constitution** - whether a material irregularity occurred in the proceedings in the court a quo – whether the court a quo failed to adjudicate and make an order on a separated issue.

**26. Jacobus Stephanus Meyer v Kenny Cooney NO & others (047/2018)**

Appealed from ECG

Date to be heard: 12 November 2018

Ponnan JA, Seriti JA, Zondi JA, Carelse AJA, Nicholls AJA

**Constitutional law** – whether the provisions of s 297 of the Criminal Procedure Act 51 of 1977 (CPA) are unconstitutional – appellant’s review application dismissed in the court a quo – whether the court a quo was correct in dismissing the applicant’s review application against the first respondent’s decision to put the appellant’s suspended sentence into operation.

**Criminal law and Procedure – review of suspended sentence** – the regional court convicted the appellant of contraventions of the Banking Act 94 of 1990 and sentenced the appellant to a fine as well as five years’ imprisonment, suspended for five years and/or repayment of money to investors – appellant failed to repay the money.

**27. Andrew Walter Stow v Regional Magistrate, P E NO & others (911/2017)**

Appealed from ECG

Date to be heard: 12 November 2018

Ponnan JA, Seriti JA, Zondi JA, Carelse AJA, Nicholls AJA

**Administrative Law – review** – whether the court a quo was correct in dismissing the appellant’s review application against the regional magistrate’s decision to put the appellant’s suspended sentence into operation – whether the Regional Magistrate complied with the requisites in s 297 of the Criminal Procedure Act 51 of 1977 to determine whether the appellant’s non-compliance with the compensation order was through circumstances beyond the appellant’s control.

**28. Bongani Masuku & another v South African Human Rights Commission (1062/2017)**

Appealed from GJ

Date to be heard: 13 November 2018

Lewis JA, Wallis JA, Zondi JA, Dambuza JA, Matojane AJA

**Constitutional law – Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 – interpretation** – whether statements made by the first appellant constituted hate speech –whether these statements demonstrated a clear intention to advocate hatred and incite violence against Jewish people – whether the court a quo ought to have made a cost order against the appellants.

**29. Purlish Holdings (Pty) Ltd v Commissioner, South African Revenue Services (076/2018)**

Appealed from Tax Court

Date to be heard: 13 November 2018

Ponnan JA, Mathopo JA, Van der Merwe JA, Molemela JA, Rogers AJA

**Constitutional law** – whether the assessment which was issued without consideration of the prescribed facts offended the principle of legality.

**Tax law – Tax Administration Act 28 of 2010** – whether the respondent proved that it is entitled to impose understatement penalties against the appellant in terms of s 222 of the Act - whether the court had the power to increase the penalties.

**30. James King NO & others v Cornelius Albertus De Jager & others (1180/2017)**

Appealed from WCC

Date to be heard: 13 November 2018

Cachalia JA, Tshiqi JA, Saldulker JA, Mokgohloa AJA, Mothle AJA

**Law of Estates – wills - Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000**

– whether clause 7 of the will, that limits the *fideicommissary* beneficiaries to the male gender, is unconstitutional – whether a court can amend the wording of a clause in a private will containing a clause discriminating against female descendants – whether the words ‘*male descendants*’ in the will should be interpreted to be limited only to the first generation (sons) or to the descendants of further generations, which includes grandsons.

**31. City of Tshwane Metropolitan Municipality & another v Roodepoort Grondeienaars Vereniging & others (024/2018 and 046/2018)**

Appealed from GP

Date to be heard: 14 November 2018

Navsa ADP, Wallis JA, Saldulker JA, Swain JA, Makgoka JA

**Property law – Eviction** – whether some members of the first appellant are considered as ‘occupiers’ in terms of s 3(5) of the Extension of Security Tenure Act 62 of 1997 (ESTA) – whether the court a quo had jurisdiction to determine the eviction of the community – whether the City can be compelled to evict the community – whether the order of the court a quo precludes the State from exercising its legislative powers.

**32. Allen Targhi Tavakoli & another v Bantry Bay Hills (Pty) Ltd & another (1251/2017)**

Appealed from WCC

Date to be heard: 14 November 2018

Lewis JA, Zondi JA, Dambuza JA, Makgohloa AJA, Rogers AJA

**Administrative law – review – National Building Regulations and Building Standards Act No. 103 of 1977** – whether condonation should be granted – review and set aside of approval of building plans for sectional title development in Sea Point – whether the appellants have locus standi for the review relief they seek – whether the building plans contravene s 40(c) of the Development Management Scheme – proper interpretation of s 40(c) – whether the City of Cape Town’s decision to approve the plans had adversely affected the rights of the appellants – whether the first respondent should be given leave to adduce further evidence on appeal.

**33. Rahim Khan NO & another v Maxprop Holdings (Pty) Ltd & another (084/2018)**

Appealed from KZP

Date to be heard: 14 November 2018

Cachalia JA, Tshiqi JA, Mbha JA, Mathopo JA, Van der Merwe JA

**Insolvency Law – Trust – Insolvency Act 24 of 1936** – whether the right to impugn a disposition in terms of s 26 of the Act is confined to transactions involving property owned by the insolvent’s estate which are transferred to the recipient - whether the trustees’ claim for repayment of monies on loans under the pyramid scheme disclosed a cause of action under s 26 of the Act if the money at no stage vested in or was directly controlled by the disposer - whether the claim should have been dismissed.

**34. Mr R P Jacobs v Communicare, a Non Profit Company & another (942/2017)**

Appealed from WCC

Date to be heard: 15 November 2018

Tshiqi JA, Mbha JA, Zondi JA, Dambuza JA, Nicholls AJA

**Property Law – Eviction** – appeal against judgment and order of the court a quo dismissing the appellants appeal from the magistrates’ court against the granting of an eviction order in terms of PIE – whether the order for eviction was just and equitable.

**35. Thupane Joseph Makgoba & others v Maponya Lazarus Ledwaba & others (054/2018)**

Appealed from GP

Date to be heard: 15 November 2018

Seriti JA, Wallis JA, Swain JA, Mocumie JA, Rogers AJA

**Law of Estates - Trust – Trust Property Control Act 57 of 1988** – whether s 23 of the Act empowers the court to make orders that deviate from the provisions of the Trust Deed – whether the court a quo can act *mero motu* and make an order it deems fit – whether the trust deed requires a majority of trustees to be community members – whether the Master was correct in removing the trustees and appointing independent trustees.

**36. Colchester Zoo SA Properties (Pty) Limited v Mantombi Maurine Mdakane & others (1108/2017)**

Appealed from LCC

Date to be heard: 16 November 2018

Maya P, Mathopo JA, Van der Merwe JA, Makgoka JA, Carelse AJA

**Land - Extension of Security of Tenure Act 62 of 1997** - whether the second respondent established that he was an occupier as set out in the Act.

**37. Phillipus Marthinus du Buisson NO & others v Thakeli Thubaka Sidwell NO In Re: Thakeli Thubaka Sidwell NO v Phillipus Marthinus du Buisson NO & others (134/2018)**

Appealed from FB

Date to be heard: 16 November 2018

Ponnan JA, Saldulker JA, Swain JA, Mokgohloa AJA, Matojane AJA

**Trust Property Control Act 57 of 1998 – s 21 interpretation** – appeal against the decision and order of the court a quo in terms of which the respondent's application for the cancellation and setting aside of the transfer and registration of immovable property from the TBS Farming Trust to the trustees of Doringboom Trust was upheld by the court a quo – whether a trustee must, for his or her resignation to be valid and effective, comply with the statutory formalities prescribed in s 21 of the Trust Property Control Act over and above the formalities as prescribed in the trust instrument – whether the agreement regarding the transfer of the immovable property from the TBS Farming Trust was defective.

**38. GCC Engineering (Pty) Ltd & others v Lawrence Maroos & others (901/2017 and 988/2017)**

Appealed from GP

Date to be heard: 16 November 2018

Cachalia JA, Seriti JA, Molemela JA, Schippers JA, Mothle AJA

**Company Law – business rescue – Companies Act 71 of 2008** – issues on appeal are whether the control and management of a company or close corporation (placed in winding-up) can validly and legally be re-vested in the director of that company in circumstances where all of the property of the company or close corporation is deemed to be in the custody and under control of the Master of the High Court in terms of s 361 of the old Companies Act (as amended) – whether the appointment and/or powers of the duly appointed joint liquidators are suspended in terms of s 131(6) of the Act – whether paragraphs 2 to 6 of the order granted by the court a quo is legally tenable and competent.

**39. Starways Trading 21 CC (CK 2005/010427/23) v Pearl Island Trading 714 (Pty) Ltd & another (205/2017)**

Appealed from WCC

Date to be heard: 19 November 2018

Lewis JA, Wallis JA, Zondi JA, Van der Merwe JA, Matojane AJA

**Contract law** – whether the sugar contract, more particularly the phrase 'ex warehouse' imputed an agreement – whether there was sufficient contractual privity between the second respondent and other parties to render it liable – right to specific performance of a written agreement – interpretation of a written contract – whether there exists a tripartite-repudiation and cancellation of written contract.

**40. The Commissioner for the South African Revenue Service v Big G Restaurants (Pty) Ltd (157/2017)**

Appealed from Tax Court

Date to be heard: 19 November 2018



Ponnan JA, Mbha JA, Mathopo JA, Schippers JA, Rogers AJA

**Tax Law – Income Tax Act 58 of 1962 – interpretation of s 24C of the Act** – appeal against the whole judgment and order of the Tax Court upholding the tax appeal of the respondent against assessment raised by the appellant – whether the court a quo was correct in holding that the income received by the taxpayer from operating its franchise business included or consisted of any amount received or accrued to it in terms of relevant franchise agreements – whether the court a quo was correct in holding that the expenditure required to refurbish or upgrade was incurred by the taxpayer in the performance of the taxpayers obligation under such contract as envisaged.

**41. Madzivhandile Royal Council v Khosi Vho-Tshimbiluni Madzivhandila (1205/2017)**

Appealed from LT

Date to be heard: 19 November 2018

Cachalia JA, Tshiqi JA, Seriti JA, Swain JA, Dambuza JA

**Administrative law – locus standi** – whether it was open for the court a quo to revisit the locus standi of the applicant where the full bench of the same division had already pronounced upon the issue.

**42. Pexmart CC & others v H Mocke Construction (Pty) Limited & another (159/2018)**

Appealed from GP

Date to be heard: 20 November 2018

Navsa ADP, Lewis JA, Mocumie JA, Molemela JA, Makgoka JA

**Intellectual Property – unlawful competition** – whether the pipe lines deforming process used by the appellants is dissimilar or identical to a pipe line deforming process used under licence by the respondent – application for interdict founded in an alleged unlawful competition – protection of confidential information.

**43. Tembu Convenience Centre CC & another v City of Johannesburg & others (270/2018)**

Appealed from GJ

Date to be heard: 20 November 2018

Ponnan JA, Tshiqi JA, Saldulker JA, Mokgohloa AJA, Rogers AJA

**Delict – damages – Local Government Ordinance 17 of 1939** – appeal against the order of the court a quo for damages alleged to have been suffered by the first appellant resulting from a closure and/or diversion of portions of Mooki Street by the first to third respondents – whether the respondents were obliged to give notice as prescribed under the ordinance – whether s 67 of the ordinance found application in respect of the construction effected in relation to the Bus Rapid Transport System (BRT) – whether the notifications published by the respondents constituted proper and adequate notice under s 67 of the ordinance.

**44. Arthur Pul Malebane v Albert Dykema & another (1054/2017)**

Appealed from GP

Date to be heard: 20 November 2018

Wallis JA, Swain JA, Dambuza JA, Schippers JA, Mothle AJA

**Administrative Law – repealed Development Facilitation Act 67 of 1995 - Spatial Land Use Management Act 16 of 2013 - town planning - status of land development applications** – whether on a proper interpretation of s 60 of the Spatial Land Use Management Act a municipality was obliged to entertain and dispose of land development applications submitted in terms of chapters V and VI of the Development Facilitation Act when the suspension period of the declaration of constitutional invalidity expired on 17 March 2012 – whether such applications lapsed or not.

**45. Jan Johannes Oranje (Johnny) & others v Rouxlandia Investments (Pty) Ltd (915/017 and 86/2018)**

Appealed from LCC

Date to be heard: 21 November 2018

Maya P, Swain JA, Mathopo JA, Carelse AJA, Nicholls AJA

**Property Law – relocation – Extension of Security of Tenure Act (ESTA) 62 of 1997** – appeal against the judgment and order granted by the LCC directing the appellants to relocate from one house to the other situated on the same farm – whether the respondents satisfied the requirements for an order evicting the appellants from their home – first appellant is a long term occupier in terms of s 8(4) of ESTA – proper interpretation of ss 25 and 26 of the Constitution read with ss 5 and 6 of ESTA.

**46. The Law Society of the Northern Provinces v Pule Abram Morobadi (1151/2017)**

Appealed from GP

Date to be heard: 21 November 2018

Navsa ADP, Mbha JA, Zondi JA, Molemela JA, Makgoka JA

**Attorney's Act 53 of 1979 – Attorneys Act 53 of 1979** – striking off an attorney – whether the court a quo misconstrued the nature of the proceedings – whether the court exercised its discretion correctly and judicially – whether the dismissal of the application was appropriate.

**47. Elan Boulevard (Pty) Ltd v FNYN Investments (Pty) Ltd (228/2018)**

Appealed from GP

Date to be heard: 22 November 2018

Ponnan JA, Dambuza JA, Mocumie JA, Schippers JA, Mothle AJA

**Civil Procedure – Damages** – judgment of the Supreme Court of Queensland awarding damages for sum comprising difference between the agreed price for two property units and their furniture purchased by the Australian Trust for the appellant and a lesser market price – issues whether the foreign judgment was final and conclusive, provided for joint and several liability against the second and third respondents and should therefore have been recognized and enforced by the court a quo.

**48. The Dombo Community v Tshakhuma Community Trust & others (1078/2017)**

Appealed from LCC

Date to be heard: 22 November 2018

Tshiqi JA, Seriti JA, Mbha JA, Zondi JA, Nicholls JA

**Civil Procedure – application for rescission** – whether the appellant established good cause for the application for rescission to be granted – whether the appellant brought the application for leave to appeal in terms of the common law – whether the application was brought within reasonable time – whether condonation should be granted.

**49. Viziya Corporation v Collaborit Holdings (Pty) Ltd & others (1189/2017)**

Appealed from GP

Date to be heard: 22 November 2018

Wallis JA, Saldulker JA, Mathopo JA, Van der Merwe JA, Rogers AJA

**Civil Procedure – Anton Piller Order** – application for leave to appeal which has been referred for oral argument – whether the appellant had a reasonable apprehension that the respondents may hide, destroy or fail to discover vital evidence.

**50. Sandvleit Boerdery (Pty) Ltd v Maria Mampies & another (107/2018)**

Appealed from LCC

Date to be heard: 23 November 2018

Maya P, Zondi JA, Dambuza JA, Makgoka JA, Rogers AJA

**Constitution law – Property law – Extension of Security of Tenure Act 62 of 1997 (ESTA)** – whether the respondents were entitled to bury a deceased family member on land which belonged to the appellant in terms of s 6(2)(dA) of ESTA – the respondents were not occupiers of the appellant's land and the deceased did not reside on the appellant's land at the time of her death – whether the respondents have the right to bury the deceased in terms of ESTA – whether the common law should be developed to grant the respondents the right.

**51. De Sousa, Sharon Ann Vas v De Sousa, Luis Manuel Rito Vas & others (617/2017)**

Appealed from GP

Date to be heard: 23 November 2018

Navsa ADP, Ponnann JA, Swain JA, Carelse AJA, Mothle AJA

**Civil Procedure – application to intervene** – appeal against judgment and order of the court a quo dismissing the appellant's application to intervene and to be joined as a defendant in the trial action proceedings against the third respondent (Technology Corporate Management (Pty) Ltd) of which her husband is a 30% shareholder.

**52. Dumisane Dlamini v The State (72/2018)**

Appealed from Regional Court, KZN

Date to be heard: 01 November 2018

Seriti JA, Mathopo JA, Van der Merwe JA, Mocomie JA, Matojane AJA

**Criminal Law and Procedure – conviction and sentence** – the appellant and with his erstwhile co-accused were convicted in the Verulam Regional Court on one count of robbery with aggravating circumstances involving the robbery of a motor vehicle and sentenced to 15 years' imprisonment – whether the appellant was properly identified after the commission of the offence at the relevant police station – whether there were substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence.

**53. Director of Public Prosecutions, Limpopo v Mohale Ramalekana (528/2018)**

Appealed from LP

Date to be heard: 26 November 2018

Maya P, Mocomie JA, Schippers JA, Carelse AJA, Nicholls AJA

**Criminal Law and Procedure – conviction** – the respondent was acquitted on a charge of rape in the Tzaneen Regional Court – the appellant lodged an appeal in the Limpopo Division, Polokwane against the acquittal of the respondent – whether the court below erred in law by incorrectly interpreting the concept of 'accounting for the evidence' – whether the court below erred in removing the appeal from the roll on the ground that the appellant's appeal was not based on questions of law.

**54. Masindi Clementine Mphephu v Regent Toni Peter Mphephu-Ramabulana & others (948/2017)**

Appealed from LT

Date to be heard: 02 November 2018

Maya P, Swain JA, Mathopo JA, Mocomie JA, Mothle AJA

**Customary Law – Traditional Leadership and Governance Framework Act 41 of 2003** – appeal against the judgment and order of the court a quo dismissing the appellant's application to review the decisions of the second and eighth respondents to recognise the first respondent as the King of the Vhavenda – whether the customary law rule of male primogeniture is in violation of s 9 of the Constitution – whether the appellant failed to follow internal dispute and claims processes under ss 21 and 25 of the amended Traditional Leadership and Governance Framework Act.