

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 2 OF 2024

CASES ENROLLED FOR HEARING: 1 May 2024 – 31 May 2024

1. The Commissioner for the South African Revenue Service v Tunica Trading 59 (Pty) Ltd

1252/2022

Appealed from WCC

Date to be heard: 2 May 2024

Molemela P, Mocumie JA, Schippers JA, Meyer JA, Tlaletsi AJA

Review – dismissal of application in terms of Customs and Excise Act 91 of 1964 (the Act) – compliance with provisions of the Act governing payment of refunds – whether it is open to the appellant to request this Court to grant substituted relief in terms of s 8(1)(c)(ii)(aa) of PAJA refusing the refund application in circumstances in which the appellant failed to cross-appeal – whether it is open to the appellant to request this Court to grant substituted relief in circumstances in which the appellant did not give indication in its notice of appeal that it would seek such relief – whether the full bench misdirected itself in remitting the decisions which it overturned on review to the appellant for reconsideration – whether exceptional circumstances warranting an order of substituted relief exist in the matter – subject to the Court’s conclusion on the above, whether on the law and facts, the fuel was ‘exported’.

2. Snowy Owl Properties 284 (Pty) Ltd, Anton Louw, Michael Kirkinnis, Derek Woodhouse, Tara Getty, Zuka Properties (Pty) Ltd, Mun-Ya-Wana Conservancy and Simon Naylor v Mziki Shareblock (Pty) Ltd

642/2022

Appealed from KZP

Date to be heard: 2 May 2023

Ponnan JA , Mothle JA, Weiner JA, Goosen JA, Coppin AJA

Civil law and procedure – rule nisi – interdict – arbitral award – appeal against the decision of the court a quo, which confirmed the rule *nisi* granted by Seegobin J on 20 October 2020, in terms of which the first to fifth appellants were interdicted from, inter alia, denying the respondent and its members access to certain roads (the River roads) in pursuit of their servitudal right – enforceability of arbitration awards – relevance and application of *res*

judicata and issue estoppel in the context of successive proceedings before an arbitration tribunal and the high court – whether a party to an arbitration in which a final award has been handed down is entitled to seek a decision of the court on the very matter referred to arbitration – whether a successful party to an arbitration is entitled to enforce the arbitration award by first seeking to make it an order of court in terms of s 31 of the Arbitration Act 42 of 1965 and also attempt to enforce the award in terms of the common law – whether the appellants were obliged to close the roads which they did – whether it would be unlawful for the appellants to reinstate and reopen the roads.

**3. Michelle Jacqueline Scholtz, Michelle Jacqueline Scholtz N O v Leon De Kock N O, The Master of the High Court and Legal Practice Council
312/2023**

Appealed from WCC

Date to be heard: 2 May 2024

Makgoka JA, Nicholls JA, Hughes JA, Molefe JA, Mbhele AJA

Civil procedure – fiduciary duty of executor to render an account to principal beneficiaries – whether first appellant in her personal capacity was subject to the accounting sought – whether the first respondent was entitled to the relief sought when the application was launched.

**4. Sanoj Jeewan (“Mark”) v Transnet SOC Ltd and Ernest & Young (EY)
696/2023**

Appealed from WCC

Date to be heard: 3 May 2024

Molemela P, Weiner JA, Molefe JA, Koen AJA, Seegobin AJA

Civil procedure – prescription – whether the High Court was correct in at least finding that the appellant’s claim had become prescribed – whether the appellant can be allowed to plead new facts and contentions on appeal that were not part of the special case that was submitted before the High Court for adjudication – whether the *Biowatch* principle on costs in constitutional litigation is applicable in this case.

5. Herold Gie & Broadhead NO v Richard Timothy Harris NO, Phyllis Mary Early, Oscar Walter & Alan Leonard Havrey Broadhurst NNO, Annelise Jansen Van

Rensburg-Hattingh NNO, Clifford Owen Keet & Michelle Ann Wallis NNO and Edgar Grondel

602/2023

Appealed from WCC

Date to be heard: 3 May 2024

Dambuza JA, Nicholls JA, Mabindla-Boqwana JA, Tolmay AJA, Mbhele AJA

Statutory interpretation – Housing Development Schemes for Retired Persons Act 65 of 1998 (the Act) – whether s 6(4) of the Act can found an action by a purchaser against a practitioner for repayment of purchase consideration if such consideration had already been paid over to the developer prior to the developer’s insolvency – if s 6(4) does not apply, whether the averments in the particulars of claim, read with those of the appellant’s plea are sufficient to sustain an action.

6. National Director of Public Prosecutions v Sijoyi Robert Mdhlovu

194/2023

Appealed from WCC

Date to be heard: 3 May 2024

Hughes JA, Matojane JA, Goosen JA, Dawood AJA, Baartman AJA

Criminal law and procedure – oral argument in terms of section 17(2)(d) - the issue in this appeal is whether the appellant has demonstrated that the appeal will have a reasonable prospect of success or whether there are compelling reasons to hear the appeal – whether the court a quo erred in finding that there was no reasonable and probable cause to prosecute the respondent; that the requirements of *animo inuiriandi* were satisfied.

7. Elmarie Van Jaarsveld v Wynand Jacobus Van Jaarsveld and Capitec Bank Holdings Ltd

358/2023

Appealed from FB

Date to be heard: 6 May 2024

Mocumie JA, Mokgohloa JA, Weiner JA, Kgoele JA, Tolmay AJA

Civil procedure – interference of discretion not to stay proceedings for arbitration – permissibility of arbitration in dispute regarding arrear maintenance – whether the high court justifiably interfered with maintenance court’s exercise of discretion not to stay proceedings for arbitration – whether a dispute regarding arrear maintenance is arbitrable.

**8. Leon De Kock v Wanda Luus Du Plessis, Andre Du Plessis, Du Plessis (Boland)
Wellington Attorneys and City of Cape Town Municipality**

284/2023

Appealed from WCC

Date to be heard: 6 May 2024

Makgoka JA, Mabindla-Boqwana JA, Goosen JA, Baartman AJA, Seegobin AJA

Law of property – eviction – defence under the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE) – whether the high court erred in refusing to admit a supplementary replying affidavit put up by the appellant – whether the first respondent extinguished her defence in the PIE application after cancelling the agreement between herself and the appellant.

9. Goedverwachting Farm (Pty) Ltd v Adriaan Johannes Roux, Any and All Unlawful Occupiers of the Property, the City of Johannesburg Metropolitan Municipality and the Minister of Agriculture and Land Affairs

641/2023

Appealed from LCC

Date to be heard: 6 May 2024

Nicholls JA, Meyer JA, Matojane JA, Coppin AJA, Mbhele AJA

Property law – Extension of Security of Tenure Act 62 of 1997 – definition of ‘occupier’ – whether the court a quo was correct in raising a new legal issue not traversed in affidavits, without reference to the parties – whether the First and Second Respondents fall within the exclusion or inclusion in subsection (*b*) of the definition of ‘occupier’ with reference to the affidavits and the probation officer’s report.

10. The Commissioner for the South African Revenue Service v Mining Pressure Systems (Pty) Ltd

565/2023

Appealed from GP

Date to be heard: 7 May 2024

Ponnan JA, Molefe JA, Tlaletsi AJA, Smith AJA, Seegobin AJA

Tax law – Customs and Excise Act 91 of 1964 (the Act) – correct tariff classification of goods under the Act – whether goods described as ‘carbon steel seamless pipes API 5LX42 PSLI MLS’ are steel pipes classified under TH7304.1 or TH7304.3.

11. The City of Cape Town v The South African Human Rights Commission, The Housing Assembly, Bulelani Qolani, The Economic Freedom Fighters, The Persons Who Currently Occupy ERF 544, Portion 1 Mfuleni (listed in annexure B), The Minister of Human Settlements, The Minister of Cooperative Governance and Traditional Affairs, The National Commissioner for the South African Police Service, The Minister of Police The Western Cape Provincial Commissioner: South African Police Service and The Premier of the Western Cape (Abahlali Basemjondolo Movement SA as *amicus curiae*) 1337/2022 and 368/2023

Appealed from WCC

Date to be heard: 7 May 2024

Mocumie JA, Mothle JA, Meyer JA, Koen AJA, Coppin AJA

Property law – common law defence of counter-spoliation – ambit and requirements of counter-spoliation and its relationship with right to housing and the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 – whether the narrow interpretation of counter-spoliation adopted by the high court is constitutionally compliant – whether, in the circumstances, the appellant had a right to counter-spoliate.

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

Appealed from FB

Date to be heard: 7 May 2024

Hughes JA, Mabindla-Boqwana JA, Weiner JA, Dawood AJA, Baartman AJA

Administrative law – Preferential Procurement Regulations – rejection of tender – whether the court a quo erred in holding that the Regulations found application and was in full force and effect in respect of Tender No: PR&T18/2021/22 – whether the court a quo erred in holding that the appellant has failed to meet the pre-qualifying criteria set out in Regulation 4(2) of the Regulations, and as a result, the appellant’s bid was ‘correctly’ rejected – whether the first respondent was entitled to migrate with its reasons – whether the first respondent could rely on Regulation 9 of the Regulations as a prequalification criteria – whether the court a quo

erred in holding that the appellant failed to submit a complete and compliant bid – whether the court a quo erred in holding that the ‘tender documentation was clear, both in relation to the duty to fill in the required documents completely and fully, as well as the subcontracting requirements’ – whether the court a quo erred in not dealing with reserved costs of the urgent application for an interim interdict which stood over for adjudication by the court hearing the review and which were argued in the review.

13. Edward Nathan Sonnenberg Inc v Judith Mary Hawarden

421/2023

Appealed from GJ

Date to be heard: 8 May 2024

Ponnan JA, Dambuza JA, Goosen JA, Tlaletsi AJA, Dawood AJA

Delict – whether ENS was liable to Ms Hawarden in delict for pure economic loss caused by omission – whether ENS was negligent – whether ENS’ conduct, if wrongful and negligent, caused Ms Hawarden’s loss – whether Ms Hawarden was contributory negligent.

14. Chicco Masango and Hendrique Muaiinga v The State

203/2022

Appealed from GJ

Date to be heard: 8 May 2024

Mokgohloa JA, Kgoele JA, Tolmay AJA

Matter will be disposed of in terms of S19(a) of the Superior Courts Act 10 of 2013

Criminal law and procedure – conviction and sentence – whether the State proved its case beyond reasonable doubt – whether the dock identification of the first appellant was admissible – whether the evidence of a single witness was satisfactory in all material respects – whether an accused’s previous conviction of more than a decade previously ought to be taken into consideration thereby possibly rendering sentencing proceedings unfair – whether there were circumstances justifying deviation from the prescribed minimum sentence.

15. AIG South Africa Limited v 43 Air School Holdings (Pty) Ltd, 43 Air School (Pty) Ltd, PTC Aviation (Pty) Ltd and JET Orientation Centre (Pty) Ltd

640/2023

Appealed from GJ

Date to be heard: 9 May 2024

Dambuza JA, Mokgohloa JA, Matojane JA, Coppin AJA, Tolmay AJA

Insurance law – indemnity – whether the 43 Air School was entitled to indemnity under the insurance policy for the period during which its business was interrupted due to the lockdown but where the outbreak of Covid-19 only occurred within the radial limit measured from the 43 Air School’s premises at a later date and thus could not have been a cause of the Governments earlier response – whether 43 Air School was entitled to indemnity under the insurance policy by relying on the covid-29 outbreak that was not within the radial limit of its premises, but within the radial limit of another insured’s (PTC’s) premises – whether the PTC was under the insurance policy – whether the 43 Air School, PTC and JOC were entitled to claim indemnity by way of litigation when they had not previously submitted those claims and had not followed the terms of the insurance policy in relation to the submission of claims – whether the respondents were entitled to the relief sought in para 2 of the notice of motion.

16. Sand Hawks (Pty) Ltd and Seacrest Investments 129 (Pty) Ltd v Labonte 5 (Pty) Ltd, the Minister of Mineral Resources and Energy, the Director-General: Department of Mineral Resources and Energy, the Deputy Director-General: Department of Mineral Resources and Energy and the Regional Manager: Mineral Regulation: Limpopo Region, Department of Mineral Resources and Energy

190/2023

Appealed from GP

Date to be heard: 9 May 2024

Mocumie JA, Meyer JA, Goosen JA, Koen AJA, Seegobin AJA

Administrative law – review – principle of legality – whether the high court was correct to review and set aside the Director-General’s appeal decision – whether the Regional Manager was entitled in law to correct his previous mistake – whether the Director-General applied his mind to the granting of condonation for the late filing of Sand Hawks’ internal appeal – whether the High Court was correct to review and set aside the Director-General’s failure to decide Labonte’s appeal, and remit the appeal to the Director-General for determination.

17. Khrone (Pty) Ltd v Strategic Fuel Fund Association

476/2023

Appealed from GJ

Date to be heard: 9 May 2024

Nicholls JA, Mothle JA, Molefe JA, Smith AJA, Mbhele AJA

Arbitration law – whether the appellant’s claim, based on the enforcement of an arbitral award, which empowers a third party expert to determine the arbitrable dispute, without recourse to the arbitrator, is founded on a valid cause of action – whether the trigger event in the arbitral award has occurred – whether the paragraphs of the appellant’s replying affidavit, as set out in the respondent’s strike-out application falls to be struck out.

**18. Tholo Energy Services CC v Commissioner for the South African Revenue Service
378/2023**

Appealed from GJ

Date to be heard: 10 May 2024

Schippers JA, Hughes JA, Weiner JA, Kgoele JA, Tolmay AJA

Tax law – Customs and Excise Act 91 of 1964 – nature of tariff appeal – whether it is a requirement of the Customs and Excise Act that a licensed distributor of fuel must collect levy goods from a customs and excise manufacturing warehouse itself or whether the fuel levy goods may be collected from the duty-paid stocks of a licensee of a manufacturing warehouse anywhere in the Republic of South Africa – whether an export permit issued by the International Trade Administration Commission was required to have been issued to the appellant for it to be entitled to a refund of duties and levies in terms of the Customs and Excise Act – whether a licensed fuel distributor is obliged to prove the origin of fuel – whether fuel was wholly or directly removed for delivery to Lesotho – whether diesel was transported and removed to Lesotho by the appellant – whether a licensed distributor of fuel is required to make payment of the DAS to be entitled to a refund.

19. Marelize Botha v Ruark Botha

259/2023

Appealed from NW

Date to be heard: 10 May 2024

Nicholls JA, Mothle JA, Molefe JA, Dawood AJA, Mbhele AJA

Family law – Divorce settlement – mistake – determination of leave to appeal – whether special leave to appeal the order of the full bench of the North West Division of the High Court should be granted – whether the respondent could rely on and prove common mistake

20. Jacaranda Haven (Pty) Ltd (in Liquidation) and The Barrel Foundation (Pty) Ltd v JJP Propco (Pty) LTD, JJP Propco Medical (Pty) Ltd, Pieter Hendrik Strydom N O, Marthinus Jacobus Bekker N O and Amanda Lindokuhle Vilakazi N O

551/2023

Appealed from GP

Date to be heard: 13 May 2024

Dambuza JA, Matojane JA, Tlaetsi AJA, Dawood AJA, Coppin AJA

Insolvency law – company law – winding up – whether the high court correctly granted the final winding-up order in the face of factual disputes – whether the robust approach found application – whether the first and second respondents had *locus standi in iudicio* to pursue the winding-up of the first appellant – whether the first appellant was insolvent – whether it was just and equitable for the first appellant to be finally wound up.

21. Estelle Roux and Marthinus Van Der Spuy Le Roux v Dielemaar Holdings (Cape) (Pty) Limited and IPIC Properties (Pty) Limited

414/2023

Appealed from WCC

Date to be heard: 13 May 2024

Mothle JA, Meyer JA, Kgoele JA, Tolmay AJA, Mbhele AJA

Contract law – contractual claim involving issues of suretyships – special plea of prescription and *res judicata* – whether the claim against the applicants in the high court applicants’ claim had prescribed – whether the reliance of a surety on a counterclaim of the principal debtor is available despite prescription and *res judicata* – whether leave ought to be granted to the applicants.

22. Ubisi MK and Nel, Van Der Merwe & Smalman Inc v Road Accident Fund

711/2023

Appealed from GP

Date to be heard: 13 May 2024

Mabindla-Boqwana JA, Molefe JA, Baartman AJA

Civil Procedure – effect of unchallenged settlement agreement – powers of the court in awarding and disallowing damages in a claim – effect of settlement agreement on the existence of a *lis* and jurisdiction – whether the high court was entitled to set aside a settlement agreement which neither party challenged – whether the high court was justified in making

adverse findings and order of referring the professionals affected without hearing them – whether the high court had the power to find that the first respondent was not entitled to be compensated for general damages – whether the high court had the authority to dismiss the first appellant’s claim for loss of earnings and past hospital and medical expenses costs.

23. Jorge Alexandre Da Costa Bonifacio and Sergio Rui Da Costa Bonifacio v Lombard Insurance Company Limited

247/2023

Appealed from GJ

Date to be heard: 14 May 2024

Ponnan JA, Nicholls JA, Matojane JA, Koen AJA, Seegobin AJA

Company law – Insurance law – guarantee – whether the appellants, as third parties in the main application, could be held liable to the respondent based on a performance guarantee which the respondent had issued in favour of the applicant in circumstances where the calling up of the guarantee was fraudulent and further in circumstances where the appellants had been deprived of an opportunity to present their defences to the respondent’s claim on account of the matter having become settled as between the respondent and the applicant in the court a quo.

24. Trustco Group Holdings Limited v Financial Services Tribunal and JSE Limited

471/2023

Appealed from GP

Date to be heard: 14 May 2024

Dambuza JA, Schippers JA, Weiner JA, Smith AJA, Mbhele AJA

Commercial law – Financial Sector Regulation Act 9 of 2017 – whether s 220(2) read with s 224(4) and 225(2)(a) was properly interpreted with regards to the panel composition – whether the FST panel was correctly constituted when it heard and determined the appellant’s reconsideration, because the panel lacked any person with financial or accounting qualification and experience – whether the JSE had the power to issue the directive that it did, directing the appellant to ‘restate’ its financial statements by making corrections to the manner in which the transactions were recorded – whether the JSE’s power in Listing Requirement 8.65, to direct an entity to ‘re-issue, also includes the power to ‘restate’.

25. George Hlaudi Motsoeneng v South African Broadcasting Corporation Soc Ltd, Special Investigating Unit and South African Broadcasting Corporation Pension Fund 64/2023

Appealed from GP

Date to be heard: 15 May 2024

Ponnan JA, Hughes JA, Meyer JA, Tlaletsi AJA, Mbhele AJA

Administrative law – Pension Fund Act 24 of 1956 – whether the applicant has made out a case that he has reasonable prospects of success in the appeal on the merits, remedy or costs – whether there are any compelling reasons or reasons for leave to appeal to be granted – whether the court a quo was correct in holding that the decision of the Governance and Nominations Committee to adopt the success fee policy which led to the applicant being paid the success fee was unauthorized, unlawful and beyond prescripts of its mandate – whether jurisdictional requirements of s 37D(1)(b)(ii)(bb) of the Pension Fund Act 24 of 1956 were established and no sound reasons have been advanced on why the court a quo was wrong in concluding that the applicant was dishonest – whether the court a quo was correct in ordering the applicant to pay costs without considering the *Biowatch* principle.

26. IRD Global Limited v The Global Fund to Fight AIDS, TB and Malaria 504/2023

Appealed from GJ

Date to be heard: 15 May 2024

Mocumie JA, Schippers JA, Koen AJA, Dawood AJA, Baartman AJA

Civil procedure – interim interdictory relief – jurisdiction – whether the appellant was entitled to interim interdictory relief as sought in the high court – whether the high court correctly found that it lacked jurisdiction to entertain the main application – whether the high court correctly determined that the appellant was liable for furnishing security for costs pursuant to the security application.

27. Ruanda Snyman v Brendan Christiaan de Kooker NO, Robert Wessel Robbertse NO and Louis Theodore Adendorff NO

400/2022

Appealed from GJ

Date to be heard: 16 May 2024

Mocumie JA, Makgoka JA, Goosen JA, Molefe JA, Koen AJA

Trust law – whether the respondents failed to account in good faith to the appellant – whether the respondents’ conduct as trustees imperilled the trust estate or its proper administration – whether removing the trustees would be in the best interest of the trust or its beneficiaries – whether the trust deed’s provisions brought about consequences, which in the opinion of the court, the founder of the trust did not contemplate and which hamper the achievement of the objects of the founder, prejudice the interests of the beneficiaries or are in conflict with public interest – whether the court should remove the trustees and terminate the trust.

28. Maria Luisa Palma Codevilla v Paula Jane Kennedy-Smith NO, Dingley Marshall Inc, Carl Frederich Wessel and Simone Danielle Borcharding
493/2023

Appealed from WCC

Date to be heard: 16 May 2024

Schippers JA, Weiner JA, Kgoele JA, Baartman AJA, Tolmay AJA

Contract law – deed of alienation concluded in terms of the Alienation of Land Act 68 of 1981 – sale agreement with suspensive conditions in respect of land – whether an addendum to a contract which had failed due to non-fulfilment of a suspensive condition had the effect of reviving a ‘dead contract’ – whether the parties’ agreement of sale was validly extended in terms of the first and second addenda.

29. Dinesh Moodley and Ugresen Perumaal v The State
475/2023

Appealed from GJ

Date to be heard: 16 May 2024

Hughes JA, Mabindla-Boqwana JA, Smith AJA

Matter will be disposed of in terms of S19(a) of the Superior Courts Act 10 of 2013

Criminal law and procedure – appeal against conviction – murder - whether the court a quo erred in finding that the appellants were involved in the shooting of the deceased – whether the irregularities were properly considered by the court and whether the court a quo failed to take the contradictions of state witnesses into account – whether the state has proven its case beyond reasonable doubt and that the evidence supports a conviction on murder.

30. National Nuclear Regulator & Another V Peter Becker & Another
Peter Becker v Minister Of Mineral Resources And Energy & 2 Others

Minister Of Mineral Resources And Energy v Peter Becker & 2 Others

966/23 & 1013/23 & 1199/23

Appealed from WCC

Date to be heard: 17 May 2024

Molemela P, Schippers JA, Meyer JA, Tlaletsi AJA, Koen AJA

Administrative law – review – minister’s decision - whether the second respondent’s decision to discharge the First Respondent from his position as a Director of the Board of the First Appellant (‘the Minister’s decision’), on the basis of misconduct in terms of section 9(1)(c) of the National Nuclear Regulator Act 47 of 1999 (The NNR Act) was unlawful, unconstitutional and invalid – whether the Minister’s decision taken on 25 February 2022 falls to be reviewed and set aside – in the event that the court finds in favour of Mr Becker, whether the date of expiry of the First Respondent’s term of office as Director of the Board of the Second Appellant should be extended by the number of days equivalent to those between 25 February 2022 and the date of this Court’s order, in terms of sections 28 and 172(1)(b) of the Constitution.

31. Minister of Mineral Resources and Energy and Shell Exploration and Production South Africa B.V v Sustaining the Wild Coast NPC

58/2023, 71/2023 & 351/2020

Appealed from ECMK

Date to be heard: 17 May 2024

Ponnan JA, Mocumie JA, Matojane JA, Smith AJA, Seegobin AJA

Administrative law – environmental law – Section 24 National Environmental Management Act 107 of 1998 (NEMA) – whether the court a quo correctly found itself not bound by this Court’s judgment in the matter of *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd*, in finding that there was no unreasonable delay in instituting the Review Application – whether the court a quo erred in reviewing and setting aside the decision taken by the Minister on 29 April 2014 to grant Exploration Right 12/3/252 to Impact to explore for oil and gas in the Transkei and Algoa Exploration areas and the decision taken by the Minister on 20 December 2017 and 26 August 2021 to renew the Exploration Right – whether the second and fourth appellants (Shell) required an Environmental Authorisation in terms of s 24 of NEMA, before they could commence with the seismic survey, under circumstances where the Exploration Right was granted under the now repealed s 79(4) of the Mineral and Petroleum Resources Development Act 28 of 2002

(MPRDA) or whether such requirement would have retrospectively divested them of a limited real right.

32. Charles Phogolo v The State

370/2023

Appealed from GJ

Date to be heard: 20 May 2024

Makgoka JA, Mokgohloa JA, Mothele JA

Criminal law and procedure – appeal against conviction and sentence – special leave to appeal granted in terms of section 16(1)(b) of the Superior Courts Act 10 of 2013 – whether the high court failed to apply the cautionary rule when dealing with the evidence of a single witness who was also a child witness – whether the high court failed to consider the facts relevant to the appellant’s case and to consider the time awaiting trial.

Appealed from ECMK

Date to be heard: 17 May 2024

33. Vusi Mabenda v The State

709/2022

Appealed from GJ

Date to be heard: 20 May 2024

Meyer JA, Weiner JA, Kgoele JA

Criminal law and procedure – appeal against sentence – special leave to appeal granted in terms of section 16(1)(b) of the Superior Courts Act 10 of 2013 – whether the high court erred in failing to consider the facts relevant to the appellant’s case and to consider the issue of concurrency of sentences; whether the high court failed to take into account the personal circumstances of the appellant and the time awaiting trial.

34. Eamonn Courtney v Izak Johannes Boshoff N O (cited in his capacity as the appointed joint trustee in the insolvent estate of Eamonn Courtney with Master’s ref: G5062020), Winnie Gladness Gumede N O (cited in her capacity as the appointed joint trustee in the Insolvent estate of Eamonn Courtney with Master’s reference: G506/2020), ABSA Bank Ltd and The Master of the High Court, Johannesburg.

483/2023

Appealed from GJ

Date to be heard: 21 May 2024

Ponnan JA, Mocumie JA, Nicholls JA, Matojane JA, Tolmay AJA

Insolvency law – sequestration – whether a final order of sequestration could validly be issued without a preceding provisional sequestration order – if not, whether a provisional order could be issued instead – whether such provisional order could be deemed to be effective from 4 May 2020 – whether it was appropriate to direct that the trustees pay the estate’s costs of the application personally.

35. Collins Letsoalo and Road Accident Fund v Mothusi Lukhele

332/2023

Appealed from GP

Date to be heard: 21 May 2024

Dambuza JA, Goosen JA, Molefe JA, Kgoele JA, Tlaletsi AJA

Application for reconsideration – Rule 6(12)(c) of the Uniform Rules of Court – *audi alteram partem principle* – whether the respondent in any matter in which relief is sought against him or her has the right to be properly and timeously served and given the opportunity to oppose the relief – whether the appellants were denied that right and whether their constitutional right in terms of section 34 of the Constitution was violated – whether the urgent application should have been struck off the roll at the outset for failure to comply with the court rules – whether the court a quo erred in granting both the impugned order and judgment in the absence of the appellants.

36. Polo Susan Pitso obo Likano John Pitso, Polo Susan Pitso, Lipalesa Pitso, Tlotliso Pitso, Master of the High Court, Pretoria and Seleka Attorneys v Chabeli Molatoli Attorneys Incorporated

420/2023

Appealed from GP

Date to be heard: 21 May 2024

Dambuza JA, Goosen JA, Molefe JA, Kgoele JA, Tlaletsi AJA

Law of succession – removal of executor – whether the court a quo failed to make factual findings on unlawful termination of the respondent’s mandate by the second appellant – whether the court a quo failed to make a factual and judicial finding on the removal of the first appellant as executrix.

37. Mawecro (Pty) Ltd v J L Sithole, EI M Nitwane, E J Naude, J P Koekemoer, J L Bouwer and Mawewe Communal Property Association

322/2022

Appealed from WCC

Date to be heard: 22 May 2024

Ponnan JA, Matojane JA, Kgoele JA, Dawood AJA, Baartman AJA

Company law – removal of directors – whether the shareholders of the appellant company are entitled to remove its directors in terms of its Memorandum of Incorporation and/or shareholders’ agreement – whether the first and second respondents were ‘lawfully’ removed as directors by the shareholder (sixth respondent) of the appellant – whether the failure to invoke s 71 of the Companies Act 71 of 2008 when removing a director constitutes an ‘unlawful’ removal – whether the removal of directors is allowed in terms of the Memorandum of Incorporation and/or shareholders’ agreement, as empowered by s 15, 66 and/or 69 of the Companies Act 71 of 2008.

38. Manyaku Maria Thulare v Morwamohube Ernest Thulare, Thoromet Jane Deborah Thulare, The Premier, Limpopo Province, The Minister of Co-operative Governance and Traditional Affairs, The President of the Republic of South Africa and Limpopo House of Traditional Leaders

470/2023

Appealed from LP

Date to be heard: 22 May 2024

Makgoka JA, Nicholls JA, Mothle JA, Tolmay AJA, Mbhele AJA

Customary law – dispute of kingship – Traditional and Khoi-San Leadership Act 3 of 2019 – Traditional Leadership and Governance Framework Act 41 of 2003 – Limpopo Traditional Leadership and Institutions Act 6 of 2005 – whether there were any compelling reasons for the appeal to be granted – whether the meeting of 28 February 2021 was a meeting of a properly constituted Royal Family – whether the meeting of 21 February 2021 was a meeting of a properly constituted Royal Family – whether the first respondent was a member of the Royal Family and whether he was eligible to be appointed as Acting King and seed-raiser – whether the appellant could introduce a new issue in an appeal stage.

39. Gannet Works (Pty) Ltd, IARC CC, Unmanned SA (Pty) Ltd, CDS Angling Supplies CC and CEG Projects (Pty) Ltd v Middleton, Sue NO and Minister of Forestry, Fisheries and the Environment

492/2023

Appealed from GP

Date to be heard: 22 May 2024

Mokgohloa JA, Hughes JA, Meyer JA, Weiner JA, Coppin AJA

Environmental law –Marine Living Resources Act 18 of 1998 – whether the use of remote-controlled motorised equipment for purposes of recreational angling is authorised by the relevant section 13 permit for recreational fishing endorsed for angling.

40. Giles Buswell, James Francis Howard and Purple Fountain Properties 82 (Pty) Ltd v Michael Murray Lewis

218/2023

Appealed from WCC

Date to be heard: 23 May 2024

Dambuza JA, Nicholls JA, Molefe JA, Tlaletsi AJA, Seegobin AJA

Property law – servitudes– prescription – Section 6 of chapter II of the Prescription Act 68 of 1969 – what were the legal requirements for the acquisition of a servitude by prescription – whether the plaintiffs and their predecessors in title had used the servitude – whether that use had been open – whether that open use was as though they were entitled to it – whether the use had been for a period of 30 years – whether that period had been uninterrupted – and if that period had been involuntarily interrupted was it regained by means of legal proceedings instituted within six months or was it lawfully regained in any other way within one year of such loss.

41. Minister of Police v Thandekile Sabisa and Lawrence Nzimeni Mambila

725/2023

Appealed from ECM

Date to be heard: 23 May 2024

Mocumie JA, Mabindla-Boqwana JA, Koen AJA, Coppin AJA, Smith AJA

Criminal law and procedure – arrest – whether the first and second respondent were unlawfully arrested – whether the first and second respondent were unlawfully detained – whether during the arrest and detainment the first and second respondent were assaulted.

42. The MEC for Health, Gauteng Provincial Government – A A Shongwe obo C M M Shongwe

401/2023

Appealed from GP

Date to be heard: 23 May 2024

Makgoka JA, Goosen JA, Kgoele JA, Dawood AJA, Baartman AJA

Medical negligence – award of damages – whether the minor was unaware of his loss of amenities of life and/or his pain and suffering or whether he experienced a ‘twilight zone’ and the amount of damages that should be awarded to him.

43. Minister of Police v Nontsele

547/2022 (ECM)

Appealed from ECM

Date to be heard: 24 May 2024

Dambuza JA, Makgoka JA, Mabindla-Boqwana JA, Tolmay AJA, Smith AJA

Criminal law and procedure – arrest - detention – whether the respondent was unlawfully arrested for rape – Whether partial damages awarded to respondent were incorrect and whether damages ought to be awarded for full period of arrest - whether the respondent was unlawfully detained – appellant argues that the respondent did not apply for bail based on new facts which he could have done as he was legally represented and the duty rested upon him to re-apply for bail based on the new facts – appellant argues there was a prima facie case against the respondent from arrest to conclusion of trial – appellant prays for dismissal of trial court Judgment with costs. – Appellant argues cross appeal was not duly noted – whether respondent has an obligation to seek leave to cross appeal – Whether appellant had reasonable suspicion of crime – Whether members of the appellant opposed bail maliciously

44. Steinhoff International Holdings N V v Tiso Blackstar Group (Pty) Ltd, Rob Rose, The Amabhungane Centre for Investigative Journalism NPC and Karabo Mpho Letta Rajuli

862/2022

Appealed from WCC

Date to be heard: 27 May 2024

Molemela P, Zondi ADP, Schippers JA, Hughes JA, Tlaletsi AJA

Law of Civil Procedure – disclosure of the PwC report – Promotion of Access to Information Act 2 of 2000 – striking-out order – whether the appellant adduced sufficient evidence to bring it within the privilege exemption in s 67 of Promotion of Access to Information Act 2 of 2000(PAIA), was there a waiver of privilege – whether s 70(b) public interest override in PAIA applied severability – whether a judicial peek at the PwC report was warranted – what was the implications of the General Data Protection Regulation 2016/679 if the appeal fails and the disclosure of the PwC report is ordered – whether the alternative relief proposed by the appellant, if the appeal fails, should be granted – and whether the paragraphs struck-out constituted inadmissible hearsay.