

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 1 OF 2020

CASES ENROLLED FOR HEARING: FEBRUARY – MARCH 2020

1. Ekurhuleni West College v Stanley Harold Segal & another

(1287/2018)

Appealed from GP

Date to be heard: 17 February 2020

Ponnan JA, Van der Merwe JA, Molemela JA, Dlodlo JA Nicholls JA

Administrative law – civil procedure – JBCC building contract – adjudication – natural justice – the appellant is the employer and the second respondent is the contractor of a building contract – the second respondent submitted a claim to the first respondent (the adjudicator) concerning a dispute in terms of a building contract – statements of claim and defence and subsequent statements were exchanged between the appellant and the second respondent – the second respondent objected to the appellant’s rejoinder and the adjudicator rejected the rejoinder without a hearing – the adjudicator handed down an award in favour of the second respondent – the appellant sought to review and set aside the adjudicator’s award; the second respondent brought a counter-application to make the adjudication award an order of court – whether an adjudication award could be reviewed and set aside for failure to consider common law and natural justice.

2. South African Express Limited v Bagport (Pty) Limited

(160/2019)

Appealed from GJ

Date to be heard: 17 February 2020

Swain JA, Mokgohloa JA, Plasket JA, Koen AJA, Gorven AJA

Contract – settlement agreement – the validity of a settlement agreement concluded pendente lite – whether ‘dubious circumstances’ warranted the settlement agreement to be declared invalid and unenforceable – whether the appeal should be re-instated – whether the appellant was bound by the terms of the agreement of terms of the turquand rule and the pronouns of the Companies Act 71 of 2008.

3. Sable Hills Waterfront Estate CC v Body Corporate Sable Hills 4 (Sectional Title Scheme No. SS650/2004

(1297/2018)

Appealed from GP

Date to be heard: 17 February 2020

Wallis JA, Mbha JA, Dambuza JA, Mojapelo AJA, Eksteen AJA

Civil procedure – rescission of judgment – the appellant is the developer of a sectional title scheme – the appellant made an ex parte application for and was granted the extension of its right to extend the sectional title scheme – after eight and a half years the respondent was granted a rescission of the judgment and the order under rule 42(1)(a) of the Uniform Rules of Court – whether the rescission of the judgment and the order was appealable.

4. Thembinkosi Khulekani Rudolph Jiyana & another v Absa Bank Limited & others

(1424/2018)

Appealed from WCC

Date to be heard: 18 February 2020

Petse DP, Wallis JA, Makgoka JA, Schippers JA, Mbatha JA

National Credit Act 34 of 2005 – res judicata – contract – legality challenge – Constitutional review – whether a credit provider in terms of a credit agreement could opt out of debt enforcement and debt procedures – whether the underlying dispute was res judicata as a result of a settlement agreement that was concluded – whether the full court correctly upheld the court a quo’s decision – whether the appellants were pre-empted from pursuing this appeal.

5. The Director of Public Prosecutions, Grahamstown v Thembelani Mantashe

(131/2019)

Appealed from ECG

Date to be heard: 18 February 2020

Ponnan JA, Nicholls JA, Ledwaba AJA

Criminal law and procedure – appeal against sentence – section 316B of the Criminal Procedure Act 51 of 1977 – whether the court a quo erred in regarding the respondent’s age, absence of previous convictions, lack of education, and habitual consumption of alcohol as cumulatively constituting substantial and compelling circumstances warranting a departure from the prescribed minimum sentence – whether the court a quo overemphasised the personal

circumstances of the accused while overlooking or downplaying the seriousness of the offence and its impact on the complainant, and the interests of society – whether the effective sentence of 22 years was ‘shockingly lenient’ and induces a sense of shock – whether the court a quo misdirected itself in the exercise of its sentencing discretion.

6. Lungisani Brian Nxele v The State

(271/2019)

Appealed from KZP

Date to be heard: 18 February 2020

Ponnan JA, Nicholls JA, Ledwaba AJA

Criminal law and procedure – appeal against sentence – Criminal Law Amendment Act 105 of 1997 – whether the trial court misdirected itself in imposing a sentence of life imprisonment when it failed to warn the appellant of the minimum sentencing provisions – whether the trial court erred in holding that the cumulative effect of the mitigating factors submitted by the appellant did not constitute substantial and compelling circumstances warranting a departure from the prescribed minimum sentence – whether the sentence imposed by the trial court was startlingly inappropriate and induced a sense of shock.

7. Tyrone Venter v The State

(945/2018)

Appealed from GP

Date to be heard: 18 February 2020

Saldulker JA, Swain JA, Zondi JA, Van der Merwe JA, Mokgohloa JA

Criminal law and procedure – appeal against sentence – section 276(1)(h) of the Criminal Procedure Act 51 of 1977 – whether the appellant’s expression of shame and embarrassment was indicative of him appreciating the wrong committed and a demonstration of remorse – whether the relationship between the appellant and the complainant was consensual and mutual and not of abuse for sexual gratification – whether wrongdoers who do not admit to their wrongdoing were capable of rehabilitation and may only be sentenced to imprisonment – whether the court a quo misdirected itself in sentencing the appellant to four years’ imprisonment – whether it would be appropriate in the circumstances of this case to impose the non-custodial sentence of correctional supervision.

8. Danie Klue v The State

(537/2018)

Appealed from FB

Date to be heard: 19 February 2020

Navsa JA, Dambuza JA, Molemela JA, Mbatha JA, Mojapelo AJA

Criminal law and procedure – application for special leave to appeal – s 17(2)(d) of the Superior Courts Act 10 of 2013 – whether special leave to appeal should be granted – whether there was compliance with s 162 read with ss 163 and 164 of the Criminal Procedure Act 51 of 1977 regarding the evidence of the complainant who gave evidence whilst 13 years old – whether the complainant was a credible witness regarding the fact that she was raped by the appellant.

9. Director of Public Prosecutions: Limpopo v Lasabatha Lucas Molohe and Jack Letsoalo

(1109/2019)

Appealed from LP

Date to be heard: 19 February 2020

Cachalia JA, Saldulker JA, Dlodlo JA

Criminal law and procedure – appeal by the State against a discharge of both respondents in terms of s 174 of the Criminal Procedure Act 51 of 1977 – whether the question of law could be reserved in favour of the appellant in terms of s 319 of the CPA - whether there was a prima facie case against the respondents despite the presence of contradictions in the State's case – whether the contradictions in the evidence of the State witnesses were material.

10. Guiseppe Canelli v Jeannie Canelli, The Minister of Safety and Security and The National Prosecuting Authority of South Africa

(205/2019)

Appealed from WCC

Date to be heard: 20 February 2020

Cachalia JA, Van der Merwe JA, Schippers JA, Dlodlo JA, Nicholls JA

Criminal law – malicious prosecution – unlawful arrest, detention and prosecution – whether the first respondent honestly believed that the appellant was her attacker when she laid the charges against him – whether the appellant's arrest, detention and prosecution were lawful

and with just cause despite allegedly clear evidence from the outset that he was innocent and had an alibi.

**11. Wilma Petru Kooij & others (in their capacities as trustees of the Daleen Kruger Trust) v Middleground Trading 251 CC & another
1249/2018**

Appealed from GP

Date to be heard: 20 February 2020

Mbha JA, Zondi JA, Molemela JA, Ledwaba AJA, Koen AJA

Contract – interpretation of contract – *vis major* – the appellant and the first respondent entered into a written agreement which granted the first respondent the right to prospect for and mine peat in property owned by the appellant in exchange for a monthly payment – the Department of Environmental Affairs issued a compliance notice under the National Environmental Management Act 107 of 1999 requiring the appellant to cease with the extraction of peat until certain statutory conditions were met – whether the compliance note constituted *vis major*.

**12. The Minister of Environmental Affairs & Deputy Director-General Legal Authorisations, Compliance and Enforcement v Arcelormittal South Africa Limited
(342/2019)**

Appealed from GP

Date to be heard: 21 February 2020

Petse DP, Swain JA, Mokgohloa JA, Mbatha JA, Koen AJA

Civil procedure – review procedure – interpretation of the National Environmental Management Act 59 of 2008 – whether the court a quo was correct in its interpretation of the facts at hand and various sections in the National Environmental Management: Waste Act 59 of 2008 (NEMWA), NEMA, in upholding the grounds of review raised by AMSA in respect of the decisions made by the DDG and the Minister – the effect of the court a quo’s order to dismiss the bulk of AMSA’s declaratory relief on the basis that it will be incompatible with the contents of the Waste Management License (WMLs), whilst ignoring the contents of the WMLs – whether the respondent was entitled in terms of s 80(4) of NEMWA to apply for a WML in absence of an invitation by the first appellant, to continue to dispose BOF slag at the disposal site that it had operated since 1970s, and to sell recycled BOF slag to downstream customers for use in the agricultural and road construction sectors – whether the downstream

customers to whom the respondent sold recycled BOF slag required to be in possession of a WML in order for the sale to be lawful under the Act.

13. Bo-Kaap Civic and Ratepayers Association, 35 on Rose Body Corporate & The Executors of the Estate of the Late Fabio Todeschini v City of Cape Town, Municipal Planning Tribunal of the City of Cape Town, Mayor of Cape Town, Buitengracht Properties (Pty) Ltd & Heritage Western Cape (112/2019)

Appealed from WCC

Date to be heard: 21 February 2020

Navsa JA, Saldulker JA, Makgoka JA, Plasket JA, Eksteen AJA

Administrative law – local government – National Heritage Resources Act 25 of 1999 – City of Cape Town Municipal Planning By-law of 2015 – Promotion of Administrative Justice Act 3 of 2000 – application to develop in a Heritage Protected Overlay Zone – whether the developer’s application to develop in an HPOZ ought to have been supplemented by a heritage impact assessment as well as a visual impact assessment – whether the City conducted the twofold enquiry imposed by s 99 of the by-law correctly and/or completely – whether the City ought to have considered each of the developer’s four applications separately – whether the decisions of the Municipal Planning Tribunal and the Mayor were irrational and unreasonable for failing to consider all relevant considerations – whether procedural fairness required the Heritage Statement to have been re-advertised to be brought to the attention of all interested persons and objectors – whether the City committed a reviewable irregularity by not requiring and obtaining a visual impact assessment – whether the City failed to apply its mind and acted irrationally and unreasonably by not adequately taking into account the traffic impact assessment.

14. Global & Local Investments Advisors (Pty) Ltd v Nickolaus Ludick Fouché (71/2019)

Appealed from GJ

Date to be heard: 24 February 2020

Navsa JA, Saldulker JA, Makgoka JA, Nicholls JA, Mojapelo AJA

Contractual damages – Electronic Communications and Transactions Act 25 of 2002 – whether the appellant acted in breach of the mandate agreement concluded with the respondent

– whether the court a quo was correct in concluding that the mandate agreement made no provision for electronic signatures.

**15. Auckland Park Theological Seminary & another v University of Johannesburg
(1160/2018)**

Appealed from GJ

Date to be heard: 24 February 2020

Ponnan JA, Van der Merwe JA, Molemela JA, Dlodlo JA, Ledwaba AJA

Contract – lease agreement – whether the lease agreement concluded imposed an obligation to use the leased premises for a specific purpose – whether the court was correct in granting the respondent’s cancellation of the lease agreement and ordering the eviction of the appellants from the leased premises – whether the lease between the parties was *delectus personae* – whether the first appellant repudiated the lease agreement.

**16. Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd
(982/2018)**

Appealed from GJ

Date to be heard: 25 February 2020

Cachalia JA, Wallis JA, Nicholls JA, Dlodlo JA, Koen AJA

Company Law – contract – whether or not an agreement for a success fee was concluded between a business rescue practitioner and a creditor of the company in business rescue – whether the agreement was prohibited by the Companies Act 71 of 2008 – whether the agreement was contrary to public policy and enforceable in law.

**17. Ruskopoint (Pty) Ltd t/a The Old Mill Gaming Centre v The National Director of
Public Prosecutions
(258/2019)**

Appealed from ECG

Date to be heard: 25 February 2020

Mbha JA, Molemela JA, Plasket JA, Mbatha JA, Gorven AJA

Prevention of Organised Crime Act 121 of 1998 – seizure warrant – whether POCA may be utilized in illegal gambling – whether items seized by an invalidated warrant should be forfeited.

18. Tusk Construction Support Services (Pty) Ltd & Joint Equity Investments in Housing (Pty) Ltd v Independent Development Trust (364/2019)

Appealed from GP

Date to be heard: 26 February 2020

Petse DP, Zondi JA, Dlodlo JA, Mbatha JA, Gorven AJA

Civil procedure – citation of parties – trust law – appeal against application for leave to amend appellants’ summons and particulars of claim to substitute the respondent’s trustees in their representative capacities – whether proceedings instituted against a trust without citing its trustees in their representative capacities are a nullity – whether the high court misdirected itself in refusing leave to amend – whether the appellants should be granted leave to amend.

19. Khuthala Property Consortium (Pty) Ltd v Mtubatuba Municipality & others (1299/2018)

Appealed from KZP

Date to be heard: 26 February 2020

Navsa JA, Saldulker JA, Dambuza JA, Plasket JA, Ledwaba AJA

Local government – municipal tender – contract – notarial deed of lease – authority – the first respondent granted the appellant and sixth respondent conflicting development rights in respect of the same piece of municipal-owned land – the appellant acquired its right through a notarial lease signed by the acting municipal manager of the first respondent – the authority to sign the lease was conferred to the municipal manager by the first respondent’s municipal executive council – the municipal manager delegated his authority to sign the lease to the chief financial officer who signed the notarial deed of lease in his capacity as the acting municipal manager – whether the notarial bond of lease was valid.

20. Medihelp Medical Scheme v The Minister of Finance (1387/2018)

Appealed from GP

Date to be heard: 26 February 2020

Ponnan JA, Van der Merwe JA, Mokgohloa JA

Civil procedure – locus standi in iudicio– dismissal of appellant’s claim for want of locus standi in iudicio – the procedural and substantial question of locus standi in iudicio – whether the court was correct in refusing to hear evidence with regards to the claim.

21. Diageo South Africa (Pty) Ltd v The Commissioner for the South African Revenue Service

(330/2019)

Appealed from Tax court

Date to be heard: 27 February 2020

Petse DP, Swain JA, Mbha JA, Makgoka JA, Mbatha JA

Value Added Tax Act 89 of 1991 – interpretation and application – the interpretation and application of s 8(15) of the Value Added Tax Act 89 of 1991 in the context of rendering advertising and promotional services by the appellant to various non-resident brand owners.

22. Leslie Bergh, Bulls Eye Consulting, Benguelasoft CC, Tim Pauw & Naomi Havenga v The Agricultural Research Council

(93/2019)

Appealed from WCC

Date to be heard: 28 February 2020

Navsa JA, Wallis JA, Van der Merwe JA, Schippers JA, Mojapelo AJA

Intellectual property – Copyright Act 98 of 1978 – unlawful competition under the common law – interdict against copy right infringement – the respondent alleged that the appellants infringed its copyright and unlawfully competed with it in respect of a computer programme created by the respondent – the high court granted the interdict – whether the high court correctly granted the interdict in spite of material disputes of fact.

23. Mtec Rustenburg CC & others v Capricorn District Municipality

(743/2018)

Appealed from GP

Date to be heard: 28 February 2020

Ponnan JA, Saldulker JA, Mokgohloa JA, Gorven AJA, Eksteen AJA

Reconsideration of application in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 – whether upon reconsideration the court should vary the refusal of leave to appeal – whether the condonation application should succeed.

24. Staufen Investments (Pty) Ltd v The Minister of Public Works, Eskom Holdings SOC Ltd & Registrar of Deeds, Cape Town

(200/2019)

Appealed from ECP

Date to be heard: 28 February 2020

Cachalia JA, Swain JA, Nicholls JA, Ledwaba AJA, Koen AJA

Property law – expropriation – administrative law – unlawful occupation by second respondent of private property owned by the appellant – the first respondent granted the second respondent the right to expropriate – the appellant made application to review and set aside the first respondent’s decision to expropriate – the high court dismissed the review application but varied the expropriation decision to limit the rights expropriated – whether the high court should have reviewed and set aside the expropriation decision – whether the first respondent acted in breach of the provisions on procedural fairness and bias in the Promotion of Administrative Justice Act 3 of 2000.

25. The Minister of Police v Andisiwe Kawa

(403/2019)

Appealed from ECP

Date to be heard: 2 March 2020

Maya P, Zondi JA, Dlodlo JA, Koen AJA, Gorven AJA

Delict – vicarious liability – whether the court a quo was correct in finding that certain omissions by members of the appellant had caused psychiatric damage to the respondent – whether the respondent had discharged the onus of proving factual causation, legal causation, wrongfulness and negligence – whether members of the SAPS failed to take reasonable measures in attempting to locate her whereabouts – was the Judge a quo incorrect in finding that the Minister was liable for 40 per cent of the damages proved by the respondent.

26. Nativa (Pty) Limited v Austell Laboratories (Pty) Limited

(1289/2018)

Appealed from GP

Date to be heard: 2 March 2020

Navsa JA, MOLEMELA JA, Schippers JA, Mojapelo AJA, Eksteen AJA

Intellectual property - copyright law – unlawful competition – interim interdictory relief
– whether the appellant made out a case for the grant of an interdict – whether respondents advertisements for PIASCLEDINE were disparaging under the law of unlawful competition – whether the use of the appellant’s OSTEOEZE GOLD package in the PIASCLEDINE advertisements constituted copyright infringement.

27. Lomon Maré, Hester Aletta Paulina Maré NO & PP Maré (Hoëveld) Boerdery (Pty) Ltd v Trudie Maré

(343/2019)

Appealed from GP

Date to be heard: 2 March 2020

Cachalia JA, Wallis JA, Saldulker JA, Van der Merwe JA, Makgoka JA

Family law – settlement agreement – interpretation – appellants and respondent entered into a settlement agreement whereby appellants were to pay the amount of R5 500 000 to respondent – whether the clause in a settlement agreement made an order of court, provided for payment to the respondent out of specified fund, and if indeed, what the consequences were when the fund did not materialise – whether clause 2 of the settlement agreement provided for payment out of a fund and the coming into existence and sufficiency of which was a pre-requisite to the obligation to make payment.

28. Nature’s Choice Farms (Pty) Ltd v Ekurhuleni Metropolitan Municipality

(463/2019)

Appealed from GJ

Date to be heard: 3 March 2020

Petse DP, Swain JA, Dlodlo JA, Nicholls JA, Eksteen AJA

Prescription Act 68 of 1969 – local government – debt for water services – whether prescription began to run when the appellant’s account could not be rectified – when does a debt become due for purpose of prescription – whether the rendering of an invoice to the appellant interrupted the running of prescription – whether concession made in the high court by counsel to the effect that the invoice did interrupt prescription should be binding on the appellant.

29. Marina Petropulos and Nik Moroff & Associates CC v Artur Fernando Perreira Dias
(1055/2018)

Appealed from WCC

Date to be heard: 3 March 2020

Ponnan JA, Saldulker JA, Van der Merwe JA, Makgoka JA, Mokgohloa JA

Damages – breach of duty of lateral support – the respondent instituted a damages action against the first appellant and the second defendant who is not party to the appeal, for damages allegedly caused to the respondent’s immovable property due to the appellant’s breach of duty of lateral support in the form of a strict liability claim – whether the first appellant as the neighbour and owner of the property from which the lateral support previously provided to the respondent’s property was removed was strictly liable to the respondent for the damage caused by the removal of that lateral support – whether there was a legal duty owed by the Naumann and Venter properties under the common-law to provide lateral support to the Dias property – whether such duty was breached by the excavations carried out on each of the Venter and Naumann properties in about May or June 2008 – whether there was legal causation in the sense that there was a breach of a duty of lateral support which was the proximate cause of the mobilization and subsiding of the scree slope on which the Dias property was situated.

30. The South African History Archive Trust v The South African Reserve Bank and The Governor of the South African Reserve Bank, L Kganyago (17/2019)

Appealed from GJ

Date to be heard: 3 March 2020

Cachalia JA, Mbha JA, Schippers JA, Mojapelo AJA, Gorven AJA

Administrative law - Promotion of Access to Information Act 2 of 2002 (PAIA) - whether the first respondent was required to disclose the information requested by the appellant in terms of PAIA – whether the first respondent was entitled to issue a blanket refusal to access to records which amounted to a contention that PAIA did not apply to the first respondent – whether the PAIA request was unreasonably vague – whether Messrs Palazzolo and Hill ought to have been joined to the proceedings – whether rule 10 of the Uniform Rules was applicable in PAIA applications – whether costs ought to have been ordered against the appellant.

31. Parks Tau v Herman Mashaba, African National Congress Woman’s League and Congress of South African Trade Unions (335/2019)

Appealed from GJ

Date to be heard: 4 March 2020

Maya P, Zondi JA, Molemela JA, Schippers JA, Gorven AJA

Constitutional law – defamation – civil procedure – the right to dignity in terms of s 10 of the Constitution – political rights in terms of s 19 of the Constitution – right to freedom of expression in terms of s 16 of the Constitution – whether the court a quo correctly granted a final interdict in an application for interim relief pending the outcome of a defamation action – whether the appellant’s right to freedom of expression in terms of s 16 of the Constitution was unduly limited by virtue of the granting of the final interdict – whether the appellant was denied the opportunity to plead defences to the claim for defamation and whether the pleaded defences were properly given regard to – whether there was harm or an apprehension of harm justifying the granting of the interdict – whether the application of rule 33(4) was limited to action proceedings or whether it may also be invoked in motion proceedings – whether rule 33(4) could be invoked *mero motu* after argument and the reserving of judgment without hearing submissions on the issue – whether it was convenient to invoke rule 33(4) and whether there was a legal issue dispositive of the issues before the court a quo.

32. Manfred Stock & others v The Persons Unlawfully Occupying Erven 145, 152, 156, 418, 3107 Philliphi & Portion 0 Farm 597, Cape Rd & others
701/2018

Appealed from WCC

Date to be heard: 4 March 2020

Navsa JA, Dambuza JA, Plasket JA, Mbatha JA, Ledwaba AJA

Constitutional Property Law – land expropriation – deprivation of property by large scale land occupation – claim for constitutional damages – whether the Minister of Police breached the appellants’ constitutional rights to property – whether the Minister of Police must pay the appellants’ constitutional damages.

And

Copper Moon Trading 203 (Pty) Ltd v The Persons Unlawfully Occupying Erven 145, 152, 156, 418, 3107 Philliphi and Portion 0 Farm 597, Cape Rd & others
(653/2018)

Constitutional Property Law – land expropriation – deprivation of property by large scale land occupation – alternative occupation – whether the appellants’ rights were violated – whether the respondents were responsible for the appellants being unlawfully deprived of their

properties by unlawful occupiers – whether the City of Cape Town and the Minister had a constitutional obligation to protect the appellants’ private property rights – the nature and extent of the City’s obligation in respect of the appellants’ rights in terms of s 25 and the occupiers right in terms of s 26 of the Constitution – whether constitutional damages constituted an effective, reasonable and lawful remedy – whether the appellants should have been granted costs of three counsel.

And

City of Cape Town v Iris Arrilda Fischer & others

(708/2018)

Constitutional Property Law – land expropriation – deprivation of property by large scale land occupation – whether the City of Cape Town violated the rights of the landowners and the occupiers in terms of ss 25 and 26 of the Constitution.

And

The Provincial Minister of Housing Western Cape v Iris Arrilda Fischer

(821/2018)

Constitutional Property Law – land expropriation – deprivation of property by large scale land occupation – whether the court a quo identified the obligation of the respective State entities in relation to the protection of the rights in terms of s 25 of the Constitution – whether the conduct of the Provincial Government contributed to the infringement of the landowners rights – whether the court a quo’s findings had any factual basis.

33. Telkom SA SOC Limited v The Commission for the South African Revenue Service

(239/2019)

Appealed from Tax Court

Date to be heard: 4 March 2020

Cachalia JA, Swain JA, Mbha JA, Mokgohloa JA, Koen AJA

Income Tax Act 58 of 1962 – s 24I of the Income Tax Act – foreign exchange – whether consideration for the sale of a loan account was determined using *spot rate* – whether consideration was determined with value of loan – whether exchange rate was correctly calculated – cross-appeal against cash incentive bonus – cash incentive bonus – whether Telkom received the benefits in respect of the amounts paid to Velociti (Pty) Ltd.

**34. Vishnu Nohour & another v The Minister of Justice and Constitutional Development
NB – Supplementary heads filed by the appellants.**

(1136/2018)

Appealed from KZP

Date to be heard: 5 March 2020

Petse DP, Van der Merwe JA, Dlodlo JA

Delict – damages – damages arising from wrongful conviction – whether wrongful conviction proved - whether the evidence established on a balance of probabilities that the State would not have secured a conviction against the appellants if an irregularity had not been committed by the prosecutor – whether the appellants’ proved that the conduct of the prosecutor was the cause of their conviction – whether the court a quo was correct in applying the principle of *ex turpi causa*.

35. Manfred Stock & others v The Persons Unlawfully Occupying Erven 145, 152, 156, 418, 3107 Phillphi & Portion 0 Farm 597, Cape Rd & others
(701/2018) (653/2019) (708/2018) (821/2018)

Appealed from WCC

Date to be heard: 5 March 2020

Navsa JA, Dambuza JA, Plasket JA, Mbatha JA, Ledwaba AJA

Constitutional Property Law – land expropriation – deprivation of property by large scale land occupation – claim for constitutional damages – whether the Minister of Police breached the appellants’ constitutional rights to property – whether the Minister of Police must pay the appellants’ constitutional damages.

36. Osman Tyres and Spares CC & another v ADT Security (Pty) Ltd
(1174/2018)

Appealed from NWM

Date to be heard: 5 March 2020

Ponnan JA, Saldulker JA, Mokgohloa JA, Nicholls JA, Koen AJA

Contract – civil procedure – clause limiting liability for negligent acts caused by security service provider – Private Security Industry Regulation Act 56 of 2001 and the Code of Conduct for Security Service Providers 2003 – whether clause 6.2 of the Service Agreement between the first appellant and the respondent resulted in liability for all forms of negligence – whether case was proved on a balance of probability – whether the court a quo was correct in granting absolution from the instance.

**37. Tsambo Robert v Sengadi Lerato Rubeta *In re* Tsambo Jabulani
(244/2019)**

Appealed from GJ

Date to be heard: 6 March 2020

Maya P, Mbha JA, Zondi JA, Molemela JA, Mojapelo AJA

Customary law – Recognition of Customary Marriages Act 120 of 1998 – whether s 3(1)(b) had been complied with – whether a valid customary marriage was concluded – whether the handing over of the bride was a requirement for a valid customary marriage.

**38. South Durban Community Environmental Alliance v MEC for Economic Development, Tourism and Environmental Affairs: KwaZulu-Natal & Capital Property Fund
(231/2019)**

Appealed from KZD

Date to be heard: 6 March 2020

Petse DP, Ponnann JA, Swain JA, Makgoka JA, Nicholls JA

Administrative law – judicial review of administrative action – National Environmental Management Act 107 of 1998 – the first respondent took a decision to grant authorisation for the construction of a logistics park by the second respondent – the first respondent dismissed the appellant's internal appeal in terms of s 43 of the National Environmental Management Act – whether an association has standing – whether there was unreasonable delay in instituting a judicial review in terms of the Promotion of Administrative Justice Act 3 of 2000 – whether the high court was correct to dismiss the application for the judicial review of the appeal.

**39. Manfred Stock & others v The Persons Unlawfully Occupying Erven 145, 152, 156, 418, 3107 Phillphi & Portion 0 Farm 597, Cape Rd & others
(701/2018) (653/2019) (708/2018) (821/2018)**

Appealed from WCC

Date to be heard: 6 March 2020

Navsa JA, Dambuza JA, Plasket JA, Mbatha JA, Ledwaba AJA

Constitutional Property Law – land expropriation – deprivation of property by large scale land occupation – claim for constitutional damages – whether the Minister of Police breached

the appellants' constitutional rights to property – whether the Minister of Police must pay the appellants' constitutional damages.

**40. Hlumisa Investment Holdings (RF) Ltd & another v Leonidas Kirkinis & others
(1423/2018)**

Appealed from GP

Date to be heard: 9 March 2020

Navsa JA, Molemela JA, Schippers JA, Mojapelo AJ, Koen AJA

Companies Act 71 of 2008 – shareholder – whether the principle that no cause of action lies at the suit of a shareholder suing in that capacity to make good a diminution in the value of the shareholder's shares where that merely reflected the loss suffered by the company, as confirmed and applied in *Itzokowitz v Absa* 2016 (4) SA 432 (SCA), applied to reflective losses claimed in terms of s 219(2) of the Companies Act 71 of 2008.

**41. Barend Christiaan Greyling v Susanna Cornelia Greyling
(318/2019)**

Appealed from GP

Date to be heard: 9 March 2020

Ponnan JA, Dambuza JA, Ledwaba AJA

Family Law – divorce – antenuptial contract – whether the provisions of clauses 4 and 5 of the antenuptial contract were so vague and /or inconsistent so as to render the antenuptial contract void ab initio.

**42. J Motloug & another v The Sheriff of Pretoria East & others
(1394/2018)**

Appealed from GP

Date to be heard: 9 March 2020

Saldulker JA, Swain JA, Makgoka JA, Gorven AJA, Eksteen AJA

Civil procedure – summons – whether a summons which had not been signed by the registrar in compliance with Uniform rule 17(3) constituted a nullity.

**43. Ephenia Mogogodi Broodie NO v Kgomotso Comfort Maposa (Nee Ledwaba),
Kgothatso Theodor Ledwaba, Mokgohu Martha Ledwaba, Seepunt Eiendomme CC, The
Registrar of Deeds, Cape Town and Companies and Intellectual Property Commission**

(642/2018)

Appealed from WCC

Date to be heard: 10 March 2020

Petse DP, Mbha JA, Van der Merwe JA, Plasket JA, Nicholls JA

Family Law – Matrimonial Property Act 88 of 1984 – non-compliance with s 15 consent requirements – whether the court a quo erred in dismissing the appellant’s claim based on the deceased’s non-compliance with the consent requirements in terms of s 15 of the Matrimonial Property Act 88 of 1984 – whether the version of the respondents could be rejected in accordance with the exceptions to the Plascon-Evans rule – what test was required in terms of s 15(9)(a) of the Matrimonial Property Act.

44. Defries NO Louis Edward v Goldman Maxwell & others

(238/2018)

Appealed from GJ

Date to be heard: 10 March 2020

Cachalia JA, Zondi JA, Mbatha JA, Mojapelo AJA, Koen AJA

Insolvency Act 24 of 1936 – powers of a liquidator appointed by the court – whether the parties to a joint estate could agree in a subsequent settlement agreement to terminate the mandate of the liquidator – whether the applicant was entitled to an indemnity upon release – whether the applicant was entitled to professional fees and costs incurred post conclusion of the agreement.

45. André McGregor & another v The MEC for Health, Province of Western Cape

(1258/2018)

Appealed from WCC

Date to be heard: 10 March 2020

Wallis JA, Swain JA, Molemela JA, Mokgohloa JA, Dlodlo JA

Delict – medical negligence – exercise of reasonable care and skill – the appellants are parents to a minor child who suffered a head injury – the child was admitted to a hospital under the respondent’s jurisdiction – the appellants alleged that the doctor and nurses failed to sufficiently assess the minor’s head injuries and advise the appellants on how to observe the condition of the minor after leaving the hospital – whether the employees of the respondent failed to discharge their medical duties to the minor.

46. Liberty Group Limited t/a Liberty Life v K & D Telemarketing & others

(1290/2018)

Appealed from GP

Date to be heard: 11 March 2020

Navsa JA, Van der Merwe JA, Ledwaba AJA

Civil procedure – absolution from the instance – the appellant instituted trial proceedings against the respondents that culminated in an order for absolution from the instance – whether, after an order of absolution from the instance was granted, the appellant was entitled to reopen the case against the respondents on the same summons with fresh evidence – whether the appellant’s claim had prescribed.

47. Hugo, Kirsten & Kirsten (Pty) Ltd v Collotype Labels RSA (Pty) Ltd

(323/2019)

Appealed from WCC

Date to be heard: 11 March 2020

Cachalia JA, Zondi JA, Plasket JA, Dlodlo JA, Mbatha JA

Contract law – commercial lease agreement – interpretation — interpretation of contracts and the effect of the invalidity of the option clause in a commercial lease agreement on the remainder of the lease agreement – the effect of an (admittedly) void option clause in a commercial lease agreement.

48. Mazinini Community v Minister of Rural Development and Land Reform & others

(1310/18)

Appealed from LCC

Date to be heard 11 March 2020

Wallis JA, Mbha JA, Dambuza JA, Mojapelo AJA, Eksteen AJA

The Restitution of Land Rights Act 22 of 1994 – land restitution dispute – whether the court a quo disregarded evidence regarding the occupation by the appellant community of the claimed land – whether the court a quo erred in declaring the second respondent as a community disposed of land rights by law of the apartheid government – whether the appellant was entitled to have the subject land restored to it.

**49. Griekwaland Wes Korporatief Beperk v Standard Bank of South Africa
(396/2019)**

Appealed from FB

Date to be heard: 12 March 2020

Navsa JA, Molemela JA, Plasket JA, Ledwaba AJA, Gorven AJA

Civil procedure – company law – contract – declaratory order – Anton Piller order –

whether the appellant, as intermediary between various sellers and a purchaser of calves, acquired ownership in own right – even if appellant acquired ownership of such cattle, whether the appellant could identify same in the light of the perfection and liquidation of the company who was in possession of the cattle – even if appellant acquired ownership before date of liquidation of the company in possession of such cattle, whether the appellant lost its ownership in terms of s 84 of the Insolvency Act 24 of 1936

50. FirstRand Bank Limited v Minetta Cecilia Petronella McLachlan, Roshen Maharaj, Komarie Maharaj, ABSA Bank Limited, Standard Bank of South Africa & Wesbank Limited

(394/2019)

Appealed from GJ

Date to be heard: 12 March 2020

Saldulker JA, Swain JA, Schippers JA, Mbatha JA, Eksteen AJA

National Credit Act 34 of 2005 – debt review – rescission of order for debt review granted in favour of the appellant in the magistrate's court based on recent precedent that provided that the debt review order was void – the second and third respondents successfully appealed to the high court on the basis that rescission of judgments orders were appealable and the precedent was not law at the time the rescission order was granted – whether the rescission order was appealable – whether the debt review order was void from inception.

51. Commissioner for the South African Revenue Service v United Manganese of Kalahari (Proprietary) Limited

(264/2019)

Appealed from GP

Date to be heard: 13 March 2020

Cachalia JA, Wallis JA, Mbha JA, Dambuza JA, Schippers JA

Tax law – Tax Administration Act 28 of 2011 – Mineral and Petroleum Resources Royalty Act 28 of 2008 (Royalty Act) – interpretation of statutes – whether the court a quo correctly determined that it had the requisite jurisdiction to adjudicate the application – whether the court a quo correctly exercised its discretion in favour of the granting of declaratory relief to the respondent with regard to the provisions of s 21(1)(c) of the Superior Courts Act 10 of 2013 and whether the court correctly held that the bespoke dispute resolution provisions of the Tax Administration Act 28 of 2011 (as amended) did not find application – whether the court a quo correctly interpreted and applied the provisions of s 6(3)(b) of the Royalty Act.

52. Liberty Group Limited v Warren Patrick Broughton Illman (1334/2018)

Appealed from GP

Date to be heard: 13 March 2020

Swain JA, Makgoka JA, Mokgohloa JA, Nicholls JA, Koen AJA

Suretyship Agreements – law of surety – Prescription Act – special plea of prescription – the consequences of a surety binding himself as a co-principal debtor jointly and severally *in solidum* – whether a surety becomes a co-debtor with the principal debtor and co-sureties – whether the service of summons on a surety and co-principal debtor *in solidum* will interrupt the running of prescription in favour of the principal debtor, co-surety and co-principal debtors.

53. Phillipa Susan van Zyl NO v The Road Accident Fund (263/2019)

Appealed from ECG

Date to be heard: 16 March 2020

Maya P, Zondi JA, Mokgohloa JA, Koen AJA, Eksteen AJA

Delict – damages – prescription – Prescription Act 68 of 1969 – Road Accident Fund Act 56 of 1996 – seven years after the injury of Koos Jacobs in a motor vehicle accident, the appellant lodged a claim for damages with the respondent – the high court held that the claim had prescribed under the Prescription Act and the Road Accident Fund Accident Act – the appellant argued that it was impossible for Jacobs to institute a claim for damages as he was of unsound mind – whether the appellant’s claim had prescribed.

54. Quad Africa Energy (Pty) Ltd v The Sugarless Company (Pty) Ltd & another (1176/2018)

Appealed from GJ

Date to be heard: 16 March 2020

Ponnan JA, Wallis JA, Makgoka JA, Schippers JA, Mbatha JA

Intellectual property – trademark – passing off – copyright – whether the appellants packaging constituted copyright infringement, passing off and counterfeit goods – whether the appellant’s trade mark constituted trade mark infringement of a registered trade mark – whether the respondents’ registered trade mark should be the subject of a disclaimer of exclusive rights in the use of certain words.

55. Rajivee Soni v The State (149/2020)

Appealed from KZP

Date to be heard: 19 March 2020

Navsa JA, Swain JA, Dambuza JA, Makgoka JA, Mojapelo AJA

Criminal law and procedure – conviction and sentence – whether the court a quo erred in its finding that it was not implicit in the ruling of the trial judge that the amount of bail tendered for bail pending appeal being too low at R200 000, that an amount higher than R200 000 tendered for bail by the appellant would provide sufficient inducement to prevent the appellant from absconding – whether the trial judge was under a duty in terms of s 60(2B) of the Criminal Procedure Act 51 of 1977 to enquire into appellant’s ability to pay an amount of bail exceeding R200 000 – whether appellant was in a position to pay an amount that would provide sufficient inducement to prevent him absconding – whether evidence that appellant was not a flight risk is more compelling than that found to be in *Rhode v S* [2019] ZASCA 193 – whether exceptional circumstances exist – whether sentence imposed of 25 years on count 1 appropriate.

56. Jacob Gedleyihlekisa Zuma v The Office of the Public Protector, The Public Protector, Economic Freedom Fighters, The United Democratic Movement, The Congress of the People, The Democratic Alliance, Mabel Petronella Mentor and the Council for the advancement of the South African Constitution.

(1447/2018)

Appealed from GP

Date to be heard: 26 March 2020

Maya P, Swain JA, Dambuza JA, Schippers JA, Mojapelo JA

Civil Procedure – personal costs order on an attorney and client scale – court’s discretion

– whether the court a quo erred in dismissing the applicant’s application for condonation for the late-filing of the appeal – whether there were exceptional circumstances for the adjudication of the appeal on the issue of costs alone – whether the court a quo was correct in refusing leave to appeal – whether the appeal bears prospects of success and whether the costs order was proper – whether it was reckless for the appellant, in his capacity as the Head of State, faced with remedial action whose constitutionality was doubted, to approach a court of law for the review of remedial action contained in the State Capture Report.