

REPUBLIC OF SOUTH AFRICA**SUPREME COURT OF APPEAL****BULLETIN 2 OF 2020****CASES ENROLLED FOR HEARING: MAY 2020**

1. Carel Wynand Roux NO, Niel Fick NO & Andronikus Griessel NO v Theunis Christoffel Botha NO, Theunis Christoffel Botha (Jnr) NO, Hilde Botha NO, Minister of Water and Sanitation & MEC Environmental Affairs and Development Planning, Western Cape (427/2019)

Appealed from WCC

Date to be heard: 4 May 2020

Navsa JA, Mocumie JA, Makgoka JA, Ledwaba AJA, Gorven AJA

Contract Law – interpretation – servitude – whether the court a quo correctly interpreted the servitude agreement as contained in the title deeds – whether the court a quo erred in refusing to grant the applicants the various final interdicts it sought against the respondents, including the interdict compelling them to immediately demolish the emergency weir and waterworks they constructed – whether the court erred in refusing to afford the appellants relief in circumstances where the uses on the part of the 7C Botha Trust amount to ongoing contraventions of the National Water Act 36 of 1998 as well as the National Environmental Management Act 107 of 1998.

2. The Black Eagle Project Roodekrans v The MEC: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government, The Head of Department: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government, Landev (Pty) Ltd & Netrac Investments No 72 (Pty) Ltd (542/2019)

Appealed from GJ

Date to be heard: 4 May 2020

Ponnan JA, Zondi JA, Dambuza JA, Schippers JA, Nicholls JA

Constitutional law - Administrative law – interpretation – ss 22 and 28A of the Environment Conservation Act 73 of 1989 – National Environmental Management Act 107 of 1998 – appeal against a decision of the Gauteng Division of the High Court, Johannesburg (in an application for the judicial review of the MEC’s decision) – whether the Head of Department (HOD) was *functus officio* when he authorised Landev to proceed with the remainder of the development – whether the HOD and the MEC committed material errors of law in purporting to make decisions under the incorrect statutory provision – whether the decisions of the HOD and the MEC were irrational, alternatively unreasonable – whether the HOD and the MEC took into account irrelevant considerations and/or failed to take into account relevant considerations in the decision-making process .

**3. Minister of Safety and Security v André Edward Lincoln
(682/2019)**

Appealed from: WCC

Date to be heard: 4 May 2020

Cachalia JA, Saldulker JA, Van der Merwe JA, Dlodlo JA, Eksteen AJA

Delict – malicious prosecution – respondent instituted a claim for damages as a result of the egregious conduct of the appellant’s employees – whether the employees, acting in the course and scope of their employment, maliciously set in motion an investigation of the respondent without having reasonable and probable cause to do so.

**4. The Member of the Executive Council for Health, Eastern Cape v Zimbini Mpetsheni
obo Luyanda Mpetsheni
(576/2019)**

Appealed from: ECB

Date to be heard: 5 May 2020

Petse DP, Makogka JA, Mbatha JA, Matojane AJA, Eksteen AJA

Delict – medical negligence – whether the medical staff at Madwaleni Hospital were negligent in regard to the labour and delivery of the respondent’s baby – whether causation was proved – whether the negligence caused the baby to suffer from cerebral palsy – whether the court erred in finding the appellant liable for damages.

**5. Valor IT v The Premier, North West Province, The Member of Executive Council
Department of Sports, Arts and Culture North West Province & Department of Sports,
Arts and Culture North West Province
(322/2019)**

Appealed from: NWM

Date to be heard: 5 May 2020

Wallis JA, Molemela JA, Mokgohloa JA, Plasket JA, Koen AJA

Contract – civil procedure – administrative law – the appellant and the third respondent concluded a service delivery agreement and ancillary agreements for the rendering of information technology services – the third respondent failed to make payment to the appellant and prevented the appellant from implementing the remaining work – whether the high court was correct to condone the late filing of the respondents’ papers – whether the high court correctly dismissed the application.

Constitutional law – whether an organ of state that had concluded a contract inconsistent with applicable procurement measures was entitled to conclude a settlement agreement to regularise or legalise the contract – whether a party to that agreement could rely on the doctrine of *res judicata* if the agreement was made an order.

**6. Vincent Chauke v The State
(807/2019)**

Appealed from: GJ

Date to be heard: 5 May 2020

Saldulker JA, Mbha JA, Van der Merwe JA, Schippers JA, Boqwana AJA

Criminal law and procedure – sentence – whether the appellant was in fact serving a sentence at the time he was sentenced in the current matter – whether the magistrate erred in failing to obtain confirmation of the sentence that the appellant was already serving at the stage – whether the cumulative effect of the sentence imposed should run concurrently wholly or partially with the sentence that the appellant is currently serving.

**7. Moamogoe, Ofentse Lofentse v The State
(191/2019)**

Appealed from: GJ

Date to be heard: 5 May 2020

Saldulker JA, Mbha JA, Van der Merwe JA, Schippers JA, Boqwana AJA

Criminal law and procedure – sentence – whether the appellant was in fact serving a sentence at the time he was sentenced in the current matter – whether the magistrate erred in failing to obtain confirmation of the sentence that the appellant was already serving at the stage – whether the cumulative effect of the sentence imposed should run concurrently wholly or partially with the sentence that the appellant is currently serving.

**8. Iveco South Africa (Pty) Ltd v Centurion Bus Manufacturers (Pty) Ltd
(183/2019)**

Appealed from: GP

Date to be heard: 6 May 2020

Navsa JA, Zondi JA, Dlodlo JA, Mbatha JA, Koen AJA

Contact – damages – breach of contract - interpretation of contract – the respondent sued the appellant for alleged damages arising from alleged breach of contract – whether party complied with reciprocal obligation in order to succeed with claim for damages.

**9. Mlungisi Ndoda Sontsele v 140 Main Street Kokstad Properties CC and Nedbank Limited
(328/2019)**

Appealed from: ECM

Date to be heard: 6 May 2020

Ponnan JA, Mbha JA, Mokgohloa JA, Plasket JA, Ledwaba AJA

Contract law – lease agreement – whether a renewal clause in a lease had been given effect to – whether the terms and conditions applicable to the option to renew as depicted in the notarial agreement of lease were correctly interpreted – whether the first respondent exercised the option to renew the lease – whether the acceptance of the rental by the appellant for the renewal period established a tacit agreement as to the quantum of the rental to be paid – whether the description of a non-existing body as a deadlock breaking mechanism rendered the renewal

clause unenforceable – determination of when the contracting parties required to reach consensus on the determination of the renewal consideration given the absence of any time periods provided for in the conditions applicable to the renewal option – establishment of when in the absence of an agreement on the rental determination applicable to the renewal period were the parties required to refer the determination of the rental consideration applicable to the renewal period to the third party for determination – the nature, scope and extent of the parties obligations to negotiate in good faith towards each other in the absence of a deadlock-breaking mechanism having due regard to the constitutional values enshrined in the Constitution of the Republic of South Africa – whether there was compliance with the conditions captured in the clauses 2.2.2 and 2.2.3 of the notarial agreement of lease insofar as the renewal option was concerned – whether the deadlock-break mechanism was enforceable – whether the option to renew had been sufficiently exercised to ensure that the notarial agreement of lease had been renewed in the manner envisaged under clause 2.2 of the notarial agreement of lease.

10. Umgungundlovu District Municipality v Amaraka Investments 37 (Pty) Ltd (921/2019)

Appealed from: KZP

Date to be heard: 6 May 2020

Cachalia JA, Dambuza JA, Mocumie JA, Nicholls JA, Boqwana AJA

Contract – civil procedure – the court a quo interpreted an order of the high court as implying that the respondent was entitled to claim amounts under an invalid contract - court declared the contract between the parties unlawful and suspended the order of invalidity in terms of s 172(1)(b) of the Constitution – the respondent sued for services rendered and the appellant defended alleging incorrect interpretation of the court order — whether the court a quo correctly interpreted the order.

11. The Director of Public Prosecutions, Northern Cape v Ashley Mark Brooks, Patrick John Mason, Manojkumar Dayabhai Detroja, Komalin Packirisamy, Ahmed Ishabhai Khorani, Antonella Natascia Florio-Poone, Keny Aditswe McDonald Visser, Willem Jank Weenink, Joseph Sarel van Graaf, Carel Steve van Graaf, Kevin Trevor Urry, Trevor Pikwane & Frank Samuel Perridge (505/2019)

Appealed from: NCK

Date to be heard: 7 May 2020

Petse DP, Mocumie JA, Molemela JA, Ledwaba AJA, Eksteen AJA

Criminal law and procedure – permanent stay of prosecution – whether the court a quo was correct in finding that there was indeed an unreasonable delay – whether the respondents’ right to a fair trial has been compromised – whether it will be appropriate for the trial to commence de novo – whether the constitutional right to a fair trial (a trial that begins and ends without unreasonable delay) was denied to respondents.

12. Associated Portfolio Solutions (Pty) Ltd & Pentagon Financial Solutions (Pretoria) (Pty) Ltd v Pieter Willem Basson, Registrar of Financial Service Providers & Moonstone Compliance (Pty) Ltd

(554/2019)

Appealed from: WCC

Date to be heard: 7 May 2020

Ponnan JA, Dambuza JA, Plasket JA, Gorven AJA, Matojane AJA

Administrative law – Financial Advisory and Intermediary Services Act 37 of 2002 – whether an employee’s disciplinary inquiry could in appropriate circumstances form the basis of a debarment of a financial representative, without the necessity of a further independent hearing or a referral to the second respondent in terms of a concurrent jurisdiction – whether the second respondent played any role in a financial representative’s reappointment, aside from the recording thereof – whether the court a quo erred in reviewing and setting aside the appellant’s debarment decisions on the grounds that they did not comply with the constitutional requirements of procedural fairness – whether the range of declaratory orders sought were moot – whether the declaratory orders fell to be granted on the merits.

13. Skyscape Investments 110 CC v Livinafrica (Pty) Ltd, Jos Balk, The Body Corporate of the Victory Sectional Title Scheme & The City of Cape Town

(433/2018)

Appealed from: WCC

Date to be heard: 7 May 2020

Wallis JA, Mbha JA, Makgoka JA, Koen AJA, Boqwana AJA

Civil procedure – final interdict – Sectional Title Schemes Management Act 8 of 2011 – the second respondent commenced construction work in a sectional title scheme without the consent of the third respondent and the approval of the fourth respondent – the appellant approached the high court to interdict the first respondent from continuing the construction work without the necessary consent and approval and to declare the first respondent in contempt of court – the high court held that the appellant lacked *locus standi* in respect of the interdict and the contempt applications – whether the appellant had *locus standi* – whether the appellant was entitled to interdictory relief.

14. Fraai Uitzicht 1798 Farm (Pty) Limited v Raymond Michael McCullough, Susan Marie Cashin, Graham Blair MacMillan, Kranskop Wyne (Pty) Limited, Harry Cecil Seftel, The Registrar of Deeds, Cape Town, Klaasvoogds Water Users Association, Department of Transport and Public Works, Western Cape, Department of Environmental Affairs & Department of Water and Sanitation

(118/2019)

Appealed from: WCC

Date to be heard: 8 May 2020

Petse DP, Saldulker JA, Van der Merwe JA, Nicholls JA, Mbatha JA

Civil procedure – property law – rescission of judgment and order – appellants contends that court order granted in 2011 should be rescinded on grounds of fraudulent misrepresentation by respondents and their witnesses – alternatively, rescission of order based on *iustus error* – whether a court judgment and order granted by consent can be rescinded based on fraudulent misrepresentation or *justus error* that induced consent.

**15. Koni Multinational Brands (Pty) Ltd v Beiersdorf AG
(553/2019)**

Appealed from: GJ

Date to be heard: 8 May 2020

Navsa JA, Wallis JA, Zondi JA, Molemela JA, Schippers JA

Intellectual Property – interdict – unlawful competition – passing-off – whether the respondent had established a residual reputation in a combination of its historical get-ups – whether the respondent had established a protectable reputation in its NIVEA get-up of the predominant colour combination blue, white and silver through many years of extensive use – whether relying on parts of a trader’s discontinued get-ups could suffice to prove a residual reputation and create the necessary confusion – whether the appellant’s get-up as a whole caused, or was likely to cause, a substantial number of the public to be confused or deceived into believing that its get-up was that of the respondent or connected to the respondent.

**16. Mmereki Welcome Mathekga & Johannes Thulani Mngomezulu v The State
717/2019**

Appealed from: GJ

Date to be heard: 8 May 2020

Cachalia JA, Mocumie JA, Makgoka JA, Mokgohloa JA, Dlodlo JA

Criminal law and procedure – appeal against conviction and sentences – s 49 of the Criminal Procedure Act 51 of 1977 (the CPA) – whether the appellants objectively and/or subjectively believed that their actions were justified by s 49 of the CPA – whether the appellants must have been aware that the deceased was a police officer in order for s 51(1) of the General Law Amendment Act 105 of 1997 to be applicable on sentencing – whether an effective sentence of 15 years’ imprisonment imposed on the appellants was appropriate in the circumstances.

17. Carl Frank Hattingh v Darryl Furman NO, Gregory Paul Weinbren NO, Dean Adam Weinbren NO & Rowan Furman NO

388/2019

Appealed from: GJ

Date to be heard: 11 May 2020

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

Company Law – Close Corporation Act 69 of 1984 – whether the appellant had withdrawn as a member of Air & Allied Technologies CC (A&AT), thus terminating the Buy and Sell Agreement (BSA) between the appellant and Weinbren (now deceased and represented by the first to fourth respondents) – whether the formal removal of the appellant as a member in A&AT’s Founding Statement comprised the withdrawal from the business – whether transfer of the shares from the appellant to Weinbren pursuant to a real agreement comprised withdrawal from the business – whether the addendum (the causal agreement) was illegal and contrary to public policy or an illegal simulated transaction – whether this had any effect on the real agreement.

18. Swatch AG (Swatch SA) v Apple Inc.

(1320/2018)

Appealed from: GP

Date to be heard: 11 May 2020

Wallis JA, Dambuza JA, Makgoka JA, Schippers JA, Plasket JA

Trade Marks Act 194 of 1993 – opposition of registration of trade mark – whether trade mark was confusingly similar – sections 10(12), 10(14) and 10(17) of the Trade Marks Act 194 of 1993 – whether the appellant was entitled to an order refusing the registration of the respondent’s IWATCH trade mark.

19. Mhlangabezi Raymond Mgijima v The Premier of the Eastern Cape Province, The Member of the Executive Council for Local Government and Traditional Affairs, Eastern Cape Province, The Chairperson, Eastern Cape Provincial Committee of the Commission on Traditional Leadership Disputes and Claims and Xabiso Zulu

(949/2018)

Appealed from: ECB

Date to be heard: 12 May 2020

Maya P, Dambuza JA, Plasket JA, Ledwaba AJA, Eksteen AJA

Constitutional law – interpretation of s 140(2) of the Constitution – review of the decision of the first respondent declaring that the fourth respondent had a hereditary claim to the chieftainship of the Zulu Traditional Council at Seshegu, Alice– whether the decisions of both the first and third respondents were irrational – whether relevant factors were taken into account and irrelevant matters taken into consideration– whether the affidavits or certain paragraphs thereof that were submitted as evidence were admissible in law – whether the creation of the new chieftainship and appointment in consequence thereof were unlawful – whether the court a quo erred in rejecting the application for condonation of the late delivery of the appellant’s replying affidavit.

20. Beadica 231 CC v Sale’s Hire CC

(1191/2018)

Appealed from: WCC

Date to be heard: 12 May 2020

Petse DP, Mbha JA, Mokgohloa JA, Nicholls JA, Gorven AJA

Civil procedure – contract – enforcement of franchisor’s right to audit and inspect franchisee’s business and records in terms of a franchise agreement – whether the high court correctly applied the *Plascon-Evans* rule to determine whether there was a material dispute of fact – whether the right to audit and inspect under the franchise agreement was unconstitutional and/or contrary to public policy.

21. Sekepe Investments (Pty) Ltd, The Alchamy (Pty) Ltd & Marobalo Investments (Pty) Ltd v Government Employees Pension Fund & Magae Makhaya Housing (RF) (Pty) Ltd
(110/2019)

Appealed from: GP

Date to be heard: 12 May 2020

Cachalia JA, Mocumie JA, Makgoka JA, Schippers JA, Koen AJA

Contract – interpretation of agreement – specific performance – company law – as co-shareholders of the second respondent, the appellants and the first respondent ran a housing project for the construction of low-cost housing – the first respondent was the financier of the project and the appellants borrowers in separate loan agreements with the first respondent as lender – whether the appellants’ notice of appeal complied with rule 7(3) of the Rules of the Supreme Court of Appeal – whether the appellants were entitled to claim specific performance for payment of the loan amounts – whether the appellants should have instituted litigation under the derivative action in terms of s 165(2) Companies Act 71 of 2008.

22. Namasthethu Electrical (Pty) Ltd v City of Cape Town & James Robert Garner NO (201/2019)

Appealed from: WCC

Date to be heard: 13 May 2020

Navsa JA, Mbha JA, Molemela JA, Plasket JA, Nicholls JA

Administrative law – contract – the appellant concluded an agreement with the first respondent after a successful tender bid — cancellation of agreement by the first respondent based on allegation of fraudulent misrepresentation by appellant in the tender process – adjudication of dispute by second respondent who made a determination in favour of the appellant – whether the first respondent validly terminated the agreement – whether the dispute clause in the agreement survived cancellation – whether the adjudicator’s determination could be reviewed and set aside by a court.

23. Madibeng Local Municipality v DDP Valuers & Activa Valuation Services (Pty) Limited (1284/2017)

Appealed from: GP

Date to be heard: 13 May 2020

Ponnan JA, Van der Merwe JA, Mokgohloa JA, Gorven AJA, Matojane AJA

Local government – administrative law – procurement law – judicial review of administrative action – the appellant’s decision to review and award a tender was set aside and the matter was remitted to the appellant for reconsideration – the successful bidder had completed the main component of the work and only residual work remained – the appellant decided not to proceed with the adjudication of the tender but elected to cancel it and procure the residual services through regulation 32 of the Municipal Supply Chain Management Regulations – whether a municipality that had been ordered to reconsider a matter was prevented from cancelling a tender – whether a tender can be cancelled even though there was a need for the procured services – the interpretation of regulation 8(4) and 32 of the regulations.

24. Micaren Exel Petroleum Wholesaler (Pty) Ltd v Stella Quick Stop (Pty) Ltd & Elegant Fuel (Pty) Ltd (471/2019)

Appealed from: NWM

Date to be heard: 13 May 2020

Wallis JA, Dambuza JA, Mbatha JA, Ledwaba AJA, Eksteen AJA

Civil procedure – contract – final interdict – appellant and first respondent concluded a dealer agreement where the appellant undertook to install equipment necessary to operate a fuel station and the first respondent undertook to purchase fuel exclusively from the appellant – after installation, the first respondent purchased fuel from the second respondent and stored it in the installed equipment – the appellant made application to interdict the first respondent – the high court dismissed the application as the dealer agreement had been cancelled and the appellant failed to prove it had a *prima facie* right – whether the appellant was entitled to interdictory relief.

25. Abraham Johannes van Huyssteen, Bernard Eugene Mostert, Michael Brown, Gert Christoffel Claassens & David van Niekerk v Pepkor Speciality (Pty) Ltd & Pepkor Holdings Limited (334/2019)

Appealed from: WCC

Date to be heard: 14 May 2020

Petse DP, Cachalia JA, Van der Merwe JA, Makgoka JA, Mbatha JA

Civil procedure – interim interdict – contract – enforcement of restraint of trade agreement – restraint of trade in appellants' employment agreements with their employer Tekkie Town (Pty) Ltd – the appellants created a business complementary to Tekkie Town – the second respondent applied for interdictory relief – the high court held that the appellants were interdicted and restrained from breaching the restraint of trade – whether the interim order is appealable – whether the restraint of trade was triggered.

26. Johannes Theobalt Hattingh van Niekerk v Liberty Group Limited (1392/2018)

Appealed from: LP

Date to be heard: 14 May 2020

Navsa JA, Zondi JA, Mocomie JA, Schippers JA, Dlodlo JA

Contract – unjustified enrichment – cession – the appellant took out a life insurance policy on the life of his mother and ceded the right to receive a portion of this amount to his brother – on the death of his mother the appellant claimed the full benefit of the policy – the respondent mistakenly paid a further amount to the appellant's brother – the respondent made a claim for the repayment of the amount under the *condictio indebiti* – whether the respondent has proven that its error was excusable – whether the money was owing to the cessionary at the time of payment.

27. Systems Applications Consultants (Pty) Ltd t/a Securinfo v System Applications Products AG, Ungani Investments (Pty) Ltd and Vhonani Mufamadi (1371/2018)

Appealed from: GJ

Date to be heard: 14 May 2020

Wallis JA, Molemela JA, Mokgohloa JA, Koen AJA, Boqwana AJA

Civil Procedure – security for costs – interpretation of a 2012 order of the full bench of the high court – whether the court had the power to reconsider and discharge an order for security for costs – whether the change in the facts and the law warranted the court to reconsider and discharge an order for security of costs.

28. Kgomotso S Tshaka NO, Margaret Mapaseka Monnakagotla NO, Jabulani Ben Gumbi NO and Wenliang MA NO v Standard Bank of South Africa Limited and Bakubung Economic Development Unit (141/2019)

Appealed from: GJ

Date to be heard: 15 May 2020

Ponnan JA, Mbha JA, Mocumie JA, Nicholls JA, Matojane AJA

Contract – breach of contract – trusts – a contract of mandate came into existence when the Trust opened a bank account with the first respondent – the trustees contended that the first respondent breached its agreement of mandate with the trust in permitting the transfer of two amounts instructed by authorised signatories of the trust’s bank account held with the bank – whether the first respondent acted in breach of its obligations towards the trust when it made the aforesaid payments to the second respondent – whether the first respondent was liable to the trust in the aforesaid amounts.

29. The City of Tshwane Metropolitan Municipality and The Municipal Manager of the City of Tshwane Metropolitan Municipality: Dr Moeketsi Emmanuel Mosola v Moipone Fleet (Pty) Ltd (57/2019)

Appealed from: GP

Date to be heard: 15 May 2020

Cachalia JA, Zondi JA, Dlodlo JA, Ledwaba AJA, Boqwana AJA

Local Government – contract – contempt of court order – Davis AJ issued an order prohibiting the first respondent from appointing and/or concluding any other agreement with any other service provider rendering services that the applicant was to obliged to provide in terms of an agreement pending the final determination of the validity or valid cancellation of the agreement – the appellant procured 103 vehicles from a third party – whether the first appellant in purchasing vehicles from a third party contravened the order of Davis AJ – whether the appellants were in contempt of the order of Davis AJ.

30. Passenger Rail Agency of South Africa v Sbahle Fire Services CC (230/2019)

Appealed from: GP

Date to be heard: 18 May 2020

Petse DP, Mbha JA, Mocumie JA, Dlodlo JA, Boqwana AJA

Contract law – the appellant and the respondent entered into an agreement in respect of which the respondent rendered Health and Safety Consultancy services to the appellant for a prescribed fee – whether the appellant breached the contract between the respondent and itself

– whether the appellant was liable to pay the amount claimed by the respondent together with costs of suit – whether the court erred in dismissing the appellant’s claim in reconvention.

**31. The School Governing Body Grey College, Bloemfontein v Deon Scheepers & South African Teachers’ Union (SAOU)
(506/2019)**

Appealed from: FB

Date to be heard: 18 May 2020

Navsa JA, Schippers JA, Nicholls JA, Koen AJA, Eksteen AJA

Administrative Law – review proceedings – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – South African Schools Act 84 of 1996 (Schools Act) – whether the intervention of the South African Teacher’s Union (SAOU) as an applicant in the proceedings ought to have been granted – review of a decision taken by the School Governing Body (SGB) of Grey College to strip principal of the school (Mr Scheepers) of all his powers – whether the impugned decisions of the Grey SGB constituted administrative actions reviewable under PAJA – whether the decision to withdraw certain powers from Mr Scheepers constituted the purported exercise of power by the Grey SGB in circumstances where the Grey SGB did not enjoy such power – whether the process Mr Scheepers was subjected to was procedurally fair – whether, if Mr Scheepers had usurped certain powers of the SGB, a counter-application by the Grey SGB to set that aside would be upheld – whether, on a proper interpretation of the Schools Act and other applicable legal instruments a SGB must utilise the principal as the office and conduit for the execution, where necessary, of the exercise of its powers – whether the Grey SGB pressed the counterclaim in the court a quo – whether the application is sustainable.

**32. Vanessa Ingrid Moureau & Iprolog (Pty) Ltd v Cloete Murray NO, Mabatho Shirley Motimele NO & Jerry Sekete Koka NO
(251/2019)**

Appealed from: GP

Date to be heard: 18 May 2020

Ponnan JA, Dambuza JA, Van der Merwe JA, Makgoka JA, Mbatha JA

Insolvency law – unlawful dispositions – the first appellant received payment of a pension fund benefit from a divorce settlement – whether the payment is excluded from an insolvent estate – whether the disposition by an insolvent of provident fund moneys constituted a disposition capable of being set aside in terms of s 32 of the Insolvency Act 24 of 1936.

**33. Phillipa Susan Van Zyl NO v Keitz Getz
(548/2019)**

Appealed from: WCC

Date to be heard: 19 May 2020

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

Law of Succession – development of the common law – deceased estate – whether this court should make an order in terms of s 172(1)(a) of the Constitution declaring that the common-law rule articulated in *Barnard NO v Miller* 1963 (4) SA 426 (C) that the deceased estates of

grandparents are not liable to maintain the deceased's grandchildren 'the common-law rule' is inconsistent with the Constitution and invalid – whether the court should make an order in terms of ss 8(2)(a) and 173 of the Constitution declaring that under the common-law when the deceased estate is unable to support the deceased children, one of the parents does not support or both parents do not support the children, the duty falls on the grandparents' deceased estate, if able to do so.

34. Samancor Chrome limited v VDH Holdings (Pty) Ltd, Absolute Group Management (Pty) Ltd, Deputy Director General, Minister of Mineral Resources Minister of Mineral Resources, Director-General: Department of Mineral Resources, Regional Manager, Limpopo Region: Department of Mineral Resources, Minister of Environmental Affairs, Kopanong Shopping Centre (Pty) Ltd, Minister of Public Works & Limpopo Headmen's Association (344/2019)

Appealed from GP

Date to be heard: 19 May 2020

Cachalia JA, Saldulker JA, Mbha JA, Van der Merwe JA, Matojane AJA

Administrative Law – judicial review – s 22(4)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) – whether the court a quo erred in setting aside the Minister's decision to grant Samancor a mining right on the basis that Samancor did not consult adequately in relation to its application with 'interested and affected persons', in particular the communities that will be affected by the mining – whether the court a quo was correct in finding that Samancor was obliged to consult with the Kgoshi Kgolo of the Bapedi Kingdom as part of the consultation process – whether the court a quo was correct in setting aside the Minister's decision to uphold Samancor's appeal and setting aside the decision of the Director-General refusing Samancor's application for a mining right – whether the court a quo was correct to remit Samancor's appeal to the Minister for reconsideration or whether it should have substituted the Minister's decision with its own decision.

35. Segp Southern Africa (Pty) Limited v Engala Africa (Pty) Limited, Basil Read Limited, Basil Read Holdings Limited and Lombard Insurance Company Limited (1338/2016)

Appealed from: GJ

Date to be heard: 19 May 2020

Wallis JA, Molemela JA, Mokgohloa JA, Ledwaba AJA, Eksteen AJA

Civil procedure - interdict – whether the grant of an interim interdict precluding the payment of a performance guarantee pending the outcome of an arbitration was justified.

36. Matsatsi Dinah Tiny Monyepao v Mokgaetji Maria Ledwaba, The Master of the High Court, Polokwane, Elmarie Bierman and Matuba Maponya (1368/2018)

Appealed from: LP

Date to be heard: 20 May 2020

Petse DP, Saldulker JA, Plasket JA, Nicholls JA, Koen AJA

Customary Law – ss 1(a) and 1(b) of the Marriage and Matrimonial Property Law Amendment Act 3 of 1988 – s 3(2) and s 10(1) of the Recognition of Customary Marriages Act 120 of 1998 – the appellant argued in the court a quo that the first respondent’s patrimonial benefits be forfeited to the estate of the deceased due to the misconduct during the subsistence of the marriage - whether the full court erred in setting aside the order of the court a quo in terms of which the patrimonial benefits of the first respondent were forfeited to the estate of the deceased – whether the full court erred in concluding that the civil marriage between the first respondent and Mr Kwele was a nullity that did not dissolve the customary marriage between the first respondent and the deceased – whether the full court erred by concluding that applying s 9(1) of the Divorce Act in circumstances unrelated to divorce proceedings between the parties was incorrect.

37. Galsworthy Ltd v Pretty Scene Shipping SA & MT ‘Pretty Scene’ (684/2019)

Appealed from KZP

Date to be heard: 20 May 2020

Navsa JA, Wallis JA, Dambuza JA, Molemela JA, Matojane AJA

Maritime law - arrest of shipping vessel ‘Pretty Scene’ – appeal against the order of the full court of KwaZulu-Natal Division of the High Court, Pietermaritzburg, exercising its admiralty jurisdiction in terms of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Act) – full court hearing two consolidated appeals relating to the parties – court finding in favour of the respondents in both appeals – whether the appellant failed to establish that ‘Pretty Scene’ was an associated ship within the meaning of ss 3(6) and 3(7) of the Act.

38. Millennium Waste Management (Pty) Ltd v Sol Plaatjie Municipality (99/2019)

Appealed from: NCK

Date to be heard: 20 May 2020

Ponnan JA, Mocumie JA, Makgoka JA, Dlodlo JA, Ledwaba AJA

Contract law – repudiation of a contract – claim for payment for services rendered to the respondent and damages following a repudiation of the contract concluded – whether a written agreement was concluded between the parties which was alleged by the appellant to have consisted of the acceptance of a tender that was issued by the respondent – whether the award letter constituted a written agreement in terms of which the appellant rendered landfill operational services at the respondent’s landfill sites – whether or not the appellant proved the contract expressly pleaded by it.

39. The Road Accident Fund v Thandiswa Linah Mbele (555/2019)

Appealed from: WCC

Date to be heard: 21 May 2020

Maya P, Zondi JA, Plasket JA, Nicholls JA, Eksteen AJA

Law of Delict – Road Accident Fund Act 56 of 1996 (the Act) – personal injuries – an appeal against an order which declared that a ‘Reach Stacker’ was a motor vehicle as

contemplated and defined in s 1 of the Act – whether the full court erred – whether the full court did not properly apply the applicable test as enacted in *Chauke v Santam Limited* 1997 (1) SA 178 (SCA).

40. Signature Real Estate (Pty) Ltd v Charles Edwards Properties, Charles Edwards Properties CC, Atlantic Seaboard Realty (Pty) Ltd and the Estate Agency Affairs Board (415/2019)

Appealed from: WCC

Date to be heard: 21 May 2020

Navsa JA, Cachalia JA, Dambuza JA, Makgoka JA, Schippers JA

Administrative Law – Estate Agency Affairs Act 112 of 1976 – commission – interpretation – whether not having been issued a fidelity fund certificate as contemplated in s 34A was an absolute bar to an entitlement to commission – the failure was due to oversight by the Estate Agency Affairs Board – whether an estate agent was entitled to claim commission on the strength of a fidelity fund certificate which had been backdated by the Estate Agency Affairs Board.

41. Oranje Watersport CC v Dawid Kruiper Local Municipality, Upington Hotel (Pty) Limited & The Registrar of Deeds, Vryburg (397/2019)

Appealed from: NCK

Date to be heard: 21 May 2020

Ponnan JA, Mocomie JA, Mbatha JA, Koen AJA, Gorven AJA

Constitutional Law – Municipal Law – Local Government: Municipal Finance Management Act 56 of 2003 (MFMA) – review – appeal against a dismissal of an application to review and set aside a decision of the Municipality that a property is not needed for the ‘minimum level of basic Municipal services’ – whether the municipality had complied with the provisions of s 14 of the MFMA as amended and the Asset Transfer Regulations issued in terms thereof – whether the municipality was obliged to undertake a public participation process as envisioned in terms of s 124 of the Local Government Ordinance 20 of 1974 – whether the ordinance was impliedly repealed – whether the appellant’s tender was correctly disqualified.

42. The National Commissioner of Police & The Minister of Police v Gun Owners of South Africa (Gun Free South Africa as amicus curiae) (561/2019)

Appealed from: GP

Date to be heard: 22 May 2020

Maya P, Zondi JA, Schippers JA, Plasket JA, Eksteen AJA

Constitutional law – whether the order of the court a quo resulted in a violation of the doctrine of the separation of powers – and an impermissible restraint on the exercise of statutory powers – Firearms Control Act 60 of 2000 – period of validity for and renewal of firearm licences – whether it was in the interests of justice to permit the appellants to appeal against the interim interdict – whether the order of the court a quo gave rise to intolerable and

irrational anomalies – whether the final relief sought by Gun Owners of South Africa had any reasonable prospect of success – whether the court a quo erred in relying on Form SAPS 518(a), annexed to the regulations issued under the Act - whether the court a quo erred in granting relief on the basis of hearsay and generalised assertions.

**43. Resultant Finance (Pty) Ltd v The Head of Department for the Department of Health KwaZulu-Natal and MEC for the Department of Health, KwaZulu-Natal
62/2019**

Appealed from: KZP

Date to be heard: 22 May 2020

Petse DP, Cachalia JA, Wallis JA, Mbha JA, Molemela JA

Administrative Law - contract – whether a contract under a Bid was extant and valid – whether the cancellation of the Bid award was valid – counter application to have the contract cancelled based on breach – specific performance in terms of contract – whether the award of the tender should be reviewed and set aside including the contract which came about.

**44. Andre Pretorius v The State
(705/2019)**

Appealed from: GP

Date to be heard: 22 May 2020

Ponnan JA, Saldulker JA, Van der Merwe JA, Mokgohloa JA, Matojane AJA

Criminal law and procedure – special leave to appeal in terms of s 309C of the Criminal Procedure Act 51 of 1977 – conviction based on the evidence of two child witnesses – whether the child witnesses were properly put under oath/admonished – whether their testimony can be regarded as evidence for the purposes of the trial – whether the state witnesses were reliable – whether the trial court was correct in rejecting the appellant’s evidence – whether the appellant should be granted leave to appeal against his convictions to the high court.

**45. Mpho Robinson Tshiki v The State
(358/2019)**

Appealed from: NWM

Date to be heard: 25 May 2020

Petse DP, Mocomie JA, Mokgohloa JA, Dlodlo JA, Mbatha JA

Criminal law and procedure – appeal against convictions and sentence – whether the trial court erred in failing to discharge the appellant in terms of s 174 of the Criminal Procedure Act 51 of 1977 – whether the State proved the guilt of the appellant beyond reasonable doubt – whether the evidence of an accomplice who was a single witness was adequate – whether a sentence of life imprisonment the appropriate.

**46. MEC for Education, Western Cape & Western Cape Education Department v School Governing Body of Uitzig Secondary School & Utzig Senior Secondary School
(477/2019)**

Appealed from: WCC

Date to be heard: 26 May 2020

Maya P, Dambuza JA, Mokgohloa JA, Nicholls JA, Boqwana AJA

Administrative Law – civil procedure – whether the implementation of an impugned administrative decision was automatically suspended pending the outcome of an application for leave to appeal – s 18(1) of the Superior Courts Act 10 of 2013 – whether an administrative decision which had been upheld by a court was suspended pending an appeal against the decision by the court – whether the closure decision was accordingly suspended pending the appeal against the dismissal of the review application.

47. Phakama Ngalonkulu obo Edinayo Ngalonkulu v The Member of the Executive Council for Health of the Gauteng Division Government (217/2019)

Appealed from: GJ

Date to be heard: 27 May 2020

Navsa JA, Saldulker JA, Dlodlo JA, Koen AJA, Matojane AJA

Civil Procedure – delict – damages – Public Finance Management Act – interpretation – whether the court a quo’s interpretation of the order of Moshidi J and the provisions of s 66 of the PFMA and regulation 8.2.3 was correct – whether the court a quo was correct in holding that neither the terms of the order nor the statutory or regulatory measures precluded the court a quo from considering the cogency of the respondent’s special defences based on MEC for *Health Gauteng v DZ obo WZ 2018 (1) SA 335 (CC)*.