

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL**

BULLETIN 4 OF 2020

CASES ENROLLED FOR HEARING: NOVEMBER 2020

1. Masibuyisane Services (Pty) Ltd v Eqstra Corporation (Pty) Ltd

(1245/2019)

Appealed from GP

Date to be heard: 2 November 2020

Maya P, Dlodlo JA, Nicholls JA, Matojane AJA, Sutherland AJA

Civil procedure – rescission of judgment – s 29D(1) of the Companies Act 61 of 1973 –

default judgment was granted in favour of the respondent – the surety upon which the judgment was granted was undertaken by Masibuyisane Services CC (the CC) – when the suretyship was undertaken, the CC had already been converted into a company, namely the appellant – the respondent submitted that the CC could not bind the appellant given that it was a company that was already in existence – the consequences of the conversion of a close corporation into a company in terms of s 29D(1) of the Companies Act – whether rescission of judgment should be granted.

2. Dwayne Esau, Neo Mkwane, Thami Jackson, Lindo Khuzwayo, Mikhail Manuel, Riaan Salie, Scott Roberts and Mpiyakhe Dlamini v Minister of Co-Operative Governance and Traditional Affairs, The President of the Republic of South Africa, The Minister of Trade, Industry and Competition, The President of the Republic of South Africa in his capacity as the Co-Chairperson of The National Coronavirus NCCC, The Minister of Co-Operative Governance and Traditional Affairs in her capacity as The Co-Chairperson of The National Coronavirus NCCC

(611/2020)

Appealed from: WCC

Date to be heard: 2 November 2020

Petse DP, Zondi JA, Van der Merwe JA, Plasket JA, Mabindla-Boqwana AJA

Constitutional Law – Disaster Management Regulations in terms of s 27(2) of the Disaster Management Act 57 of 2002 and published on 29 April 2020 by the Minister of Co-operative Governance and Traditional Affairs (COGTA Minister) – whether the regulations comply with Parliament’s constraints on the COGTA Minister’s regulation-making

powers in terms of ss 26 and 27 of the Act or whether it breached the doctrine of the separation of powers – was the Minister’s making of the regulations procedurally rational – did regulations 16(1)-(4), 28(1), 28(3) and 28(4) (alleged impugned regulations) of the regulations infringe the rights to dignity, family life, freedom of movement and freedom of trade, occupation and profession, and if so, whether it was saved under the s 36 limitation in the enquiry under the Constitution – were the Minister’s clothing directions constitutional.

3. Economic Freedom Fighters, Mbuyiseni Quintin Ndlozi, Julius Sello Malema v

Trevor Andrew Manuel

(711/2019)

Appealed from: GJ

Date to be heard: 2 November 2020

Navsa JA, Wallis JA, Saldulker JA, Mocumie JA, Poyo-Dlwati AJA

Delict - civil procedure – defamation – damages – interdict – application for leave to appeal was referred to oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 - the applicants published that, as Chair of a Panel to appoint the new Commissioner of SARS, the respondent conducted a corrupt and nepotistic process which led to the unlawful appointment of Mr Edward Kieswetter – the court a quo found the statement defamatory and awarded general damages of R500 000 to the respondent – whether the court a quo was correct in finding that the statement was defamatory, false and unlawful – whether the court a quo was correct in finding that the respondent met the requirements for interdictory relief – whether the court a quo was correct in ordering the applicants to remove the statement and issue a retraction and apology for the defamatory statements within 24 hours of granting the judgment – whether the court a quo materially misdirected itself in awarding the damages – whether leave to appeal ought to be granted – whether the court a quo properly considered the evidence before it – whether the court a quo afforded the applicants and opportunity to adduce evidence – whether the court a quo could make a determination in the absence of the applicants’ evidence – whether the court a quo was mistaken in granting the respondent’s relief.

4. Johannesburg Society of Advocates and The General Council of the Bar of South Africa v Seth Azwihangwisi Nthai, Pretoria Society of Advocates, Polokwane Society of Advocates and The South African Legal Practice Council

(879/2019 and 880/2019)

Appealed from: LP

Date to be heard: 2 November 2020

Ponnan JA, Cachalia JA, Dambuza JA, Molemela JA, Eksteen AJA

Civil procedure - interpretation of statutes – professions - Legal Practice Act 28 of 2014

– **Admission of Advocates Act 74 of 1964 – readmission of advocates** – the first respondent was struck off the roll of advocates in 2013 at the instance of the second respondent – in October 2018 the first respondent applied to be readmitted as an advocate – as the *custodes morum* of the advocates’ profession in terms of the Admission of Advocates Act and in the interest of the profession and the public generally, the appellants successfully applied to intervene in the first respondent’s readmission application – whether the high court applied the correct test for readmission – whether the high court erred in ordering the enforcement of the readmission order pending the appeal – whether the high court misdirected itself in relation to medical evidence that was before it, by making findings that went beyond what the evidence justified – whether the first respondent established that he was a fit and proper person for readmission as an advocate and whether he discharged the onus expressed in *Swartzberg v Law Society, Northern Provinces* 2008 (5) SA 322 (SCA) – whether the first appellant had the *locus standi* or jurisdiction in the first respondent’s application for readmission.

5. Global Environmental Trust, Mfolozi Community Environmental Justice

Organisation and Sabelo Dumisani Dladla v Tendele Coal Mining (Pty) Ltd, Minister of Mineral and Energy, MEC: Department of Economic Development, Tourism and Environmental Affairs, Minister of Environmental Affairs. Mtubatuba Municipality, Hlabisa Municipality, Ingonyama Trust, Ezemvelo KZN Wildlife, Amafa aKwaZulu-Natal Heritage Council Centre for Environmental Rights – Amicus Curiae (1105/2019)

Appealed from: KZP

Date to be heard: 3 November 2020

Ponnan JA, Schippers JA, Plasket JA, Nicholls JA, Ledwaba AJA

Environmental Law – interdict – statutory authorisation and interpretation – National

Environmental Management Act 107 of 1998 (NEMA) – s 24 of NEMA – whether the first respondent required an environmental authorisation issued under NEMA for its mining operations – whether there was proper interpretation of s 24 of NEMA.

6. 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: 3 November 2020

Cachlaia JA, Mocumie JA, Makgoka JA, Poyo-Dlwati AJA, Unterhalter AJA

Contract – interpretation of agreement – specific performance – company law – the appellants and the first respondent ran a housing project for the construction of low-cost housing as co-shareholders of the second respondent, – 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.

7. Lambertus von Wielligh Bester NO, Rynette Pieters NO and Barend Petersen NO (In their capacities as joint trustees of the RVAF Trust – IT 932/2004) v Anton Gouws, Schalk W J Steenkamp, Johan Joubert, Swartland Makelaars CC, Mark Eiserman, Mark Alexander Investments CC, Jannie Augustyn, Andrea Fredericka Moolman, Vaidro 172 CC, Hendrik Janse van Vuuren, Hendrik van Vuuren Makelaars CC

(851/2019)

Appealed from: WCC

Date to be heard: 4 November 2020

Ponnan JA, Wallis JA, Zondi JA, Dlodlo JA, Weiner AJA

Insolvency - administrative law – Prescription Act 68 of 1969 – ss 10 and 11 of the Prescription Act – the appellants submitted summonses against the respondents serviced more than three years after their appointment as trustees of a sequestrated trust and after they had knowledge of the debts in question – the appellants argued that their knowledge of the debts in question did not interrupt prescription – whether the court a quo was correct in finding that the trustees of a sequestrated trust had sufficient knowledge of the underlying facts as required by s 12 of the Prescription Act by 23 October 2012, the date their final appointment, for prescription of their claims against the respondents to start running (both under s 26 and 32 of the Insolvency Act of 1923 and in terms of common law (enrichment)) – whether the appellants’ claims against the respondents had prescribed.

**8. Bokoni Platinum Mines (Pty) Ltd v Abram Moropane
(1035/2019)**

Appealed from: LP

Date to be heard: 4 November 2020

Saldulker JA, Molemela JA, Nicholls JA, Sutherland AJA, Unterhalter AJA

Civil procedure – plea and counterclaim – res judicata – recusal – whether the appellant’s application for leave to amend its pleas and counterclaims was correctly dismissed as *res judicata* – whether the appeal high court, on appeal to it, could *mero motu* raise the issue of *res judicata* – whether it was appropriate for the appeal high court, on appeal to it, to raise the issue of *res judicata* – whether the appellant’s application had merit.

**9. Jose Aquino Monteiro and Autoglen Motors (Pty) Ltd v Kenneth Leonardo Diedrick
(1199/2019)**

Appealed from: GJ

Date to be heard: 4 November 2020

Dambuza JA, Schippers JA, Plasket JA, Goosen AJA, Mabindla-Boqwana AJA

Law of property – spoliation – civil procedure – the respondent left his vehicle in the possession of the second appellant for a routine service – the first appellant’s representatives then approached the second appellant with the vehicle registration certificates reflecting that the first appellant owned the vehicle – the second appellant released the vehicle to the representatives of the first appellant – it was alleged that the respondent’s founding affidavit failed to comply with the regulations governing the administration of oaths or affirmations – whether the respondent was in possession of the vehicle for the purposes of spoliation – whether restoration of possession was possible – whether the non-compliance of the founding affidavit with the regulations governing the administration of oaths or affirmations should be condoned.

**10. Bailey Casper Hendrik and Augustyn Sarel Louis v Bailey Hazel Johanna Cicelia
(1324/2019)**

Appealed from: LP

Date to be heard: 4 November 2020

Van der Merwe JA, Mocumie JA, Makgoka JA, Ledwaba AJA, Eksteen AJA

Family Law – divorce – Marriage Act 25 of 1961 – divorce settlement – whether a patently and erroneous maintenance order had lapsed because of a common law/Christian marriage

ceremony performed by an ordained minister – whether the respondent had entered into a valid unregistered common law / Christian marriage by ceremony causing the automatic lapsing of a maintenance order in ambiguous form – whether the appellant was guilty of a contempt of court order – whether court should order costs *de boniis propriis* against the second appellant

11. Anesh Rughanan v The State

(259/2018)

Appealed from: KZP

Date to be heard: 5 November 2020

Petse DP, Mbha JA, Dlodlo JA, Matojane AJA, Goosen AJA

Criminal law and procedure – application for special leave to appeal – appeal against conviction - s 17(2)(d) of the Superior Court Act 10 of 2013 – whether the evidence of the complainant as a single witness passed muster – whether the evidence led by the State in respect of the commission of the offences were clear and satisfactory in every material aspect – what the impact of the State’s failure to call and lead evidence of a crucial eye witness had in light of the negative inference that can be drawn therefrom – to what extent the State’s failure to timeously make available a crucial eye witness to the defence had on the appellant’s right to a fair trial – whether the magistrate materially misdirected himself and erred in his judgment by not dealing with glaring discrepancies and contradictions in the State’s case and by finding that the complainant was a credible witness – whether the magistrate materially misdirected himself in the application of law by allowing inadmissible evidence – whether the magistrate erred in not allowing the appellant’s attorney to cross examine the complainant in terms of s 227 of the Criminal Procedure Act 51 of 1977 – whether the court correctly found that the appellant was guilty beyond reasonable doubt.

12. Joao Rodrigues v National Director of Public Prosecutions of South Africa, Minister of Justice and Correctional Services, Minister of Police and Imitiaz Ahmed Cajee

(1186/2019)

Appealed from: GJ

Date to be heard: 6 November 2020

Maya P, Cachalia JA, Dlodlo JA, Ledwaba AJA, Poyo-Dlwati AJA

Criminal law and procedure – permanent stay of prosecution – delay in prosecution – the appellant is charged with the murder of Mr Ahmed Timol, who died in 1971 – in 1972 an inquest found that the deceased had committed suicide – charges against the appellant were

instituted after the reopening of an inquest in 2017, which found that the deceased was murdered – whether a permanent stay of prosecution should be granted – whether the appellant’s right to a fair trial was infringed by the 47-year delay in the institution of criminal proceedings and by alleged political interference – whether a presidential pardon or amnesty was granted preventing the prosecution.

13. Haitas Konstantinos v Gabriel Francois van Lingen Froneman, Maria Elpis Haitas, FWC Estate & Related Services (Pty) Ltd NO represented by Gabriel Francois van Lingen Froneman, Brand Kitchen Hospitality (Pty) Ltd, Mezepoli Holdings (Pty) Ltd, Mezepoli Camps Bay (Pty) Ltd, Mezepoli Melrose Arch (Pty) Ltd, Mezepoli Nicolway (Pty) Ltd, Plaka Holdings (Pty) Ltd, Plaka Menlyn (Pty) Ltd, Plaka Northcliff Restaurant (Pty) Ltd, Merchant Property Investments (Pty) Ltd, The Companies and Intellectual Property Commission and Master of the High Court of South Africa, Gauteng Division, Pretoria

(1158/2019)

Appealed from: GJ

Date to be heard: 6 November 2020

Petse DP, Zondi JA, Van der Merwe JA, Nicholls JA, Unterhalter AJA

Trust law – removal of trustees in terms of s 20(1) of the Trust Property Control Act 57 of 1998 and the common law – removal of trustees – appointment of additional trustees – the appellant was the sole income and capital beneficiary the KAM Trust (the Trust) – the second and third respondents are trustees of the Trust – the appellant’s letters of authority had not been issued at the time the application to the high court was made – the Trust holds shares in the fourth to twelfth respondents (the Trust companies) – the second and third respondents, by exercising the voting rights held by the Trust, appointed themselves as directors in the Trust companies in the absence of a sub-minimum of trustees in office – after a court order directing same, the second and third respondents granted the appellant access to the Trust’s annual financial statements – the appellant learnt of the poor performance of the Trust companies subsequent to the appointment of the second and third respondents as directors of the Trust companies – the appellant alleged breach of the second and third respondents duties as trustees – whether the second and third respondents were entitled to exercise the voting rights in the Trust companies in the manner they did – whether the second and third respondents should be removed as trustees – whether further trustees should be appointed.

14. Helen Suzman Foundation and Robert McBride v The Independent Police Investigative Directorate and Minister of Police and Portfolio Committee on Police: National Assembly

(1065/2019)

Appealed from: GP

Date to be heard: 6 November 2020

Navsa JA, Dambuza JA, Schippers JA, Plasket JA, Goosen AJA

Administrative Law – Independent Police Directorate Act 1 of 2011 – whether the court a quo was correct in making the settlement agreement entered into by the respondents an order of court, without having heard any oral argument on the legality of the terms of the settlement agreement and without considering any written argument on the interpretation of s 6(3)(b) of the Act by the respondents – whether the phrase ‘such appointment . . . which is renewable’ means that the Portfolio Committee decides whether to renew the IPID director’s term or whether the IPID director has an irrevocable option to renew his own term.

15. City Power (SOC) Limited v Commissioner for the South African Revenue Service (1147/2019)

Appealed from: Tax Court

Date to be heard: 6 November 2020

Ponnan JA, Saldulker JA, Makgoka JA, Matojane AJA, Sutherland AJA

Tax law – interpretation of s 10(1)(a) of the Income Tax Act 58 of 1962 – the appellant, a wholly-owned subsidiary of the City of Johannesburg, alleged that it was exempt from paying tax on its income by virtue of falling within the notion of ‘the government of the Republic in the . . . local sphere’ in terms of the s 10(1)(a) of the Income Tax Act (s 10(1)(b) prior to the amendment) – whether the appellant fell within the meaning of government in the local sphere – whether s 10(1)(a) of the Income Tax Act exempted the appellant from paying income tax.

16. Kurt Robert Knoop NO and Johan Louis Klopper NO v Chetali Gupta (115/2020 and 116/2020)

Appealed from: GP

Date to be heard: 6 November 2020

Wallis JA, Mbha JA, Mocumie JA, Eksteen AJA, Mabindla-Boqwana AJA

Company law – business rescue - on 13 December 2019 the Gauteng Division, Pretoria granted an order in favour of the respondent in terms of s 139(2) of the Companies Act 71 of 2008 removing the appellants as the joint business rescue practitioners (the appellants) of Islandsite Investments One Hundred and Eighty (Pty) Ltd; and the first appellant as the business rescue practitioner of Confident Concept (Pty) Ltd – on 7 February 2020 the high court granted the appellants leave to appeal against the order – the appellants had an automatic right of appeal in terms of s 18(4)(ii) of the Superior Courts Act 10 of 2013 – on 26 May 2020 the Deputy President of the SCA directed that both appeals should be heard together – whether the appellants had the requisite locus standi in judicio to prosecute the appeals as the respondent alleged that the appellants withdrew their notices of appeal to the SCA - whether the s 18 appeal was moot – whether the respondent authorised the application – whether the high court was correct in granting the order in terms of s 139(2) of the Companies Act – whether the appeal has been withdrawn by the appellants.

17. Cooperative Muratori & Cementisti CMC Di Ravenna Società Cooperativa a Responsabilita Limitata, Liebenberg Dawid Ryk van der Merwe NO and Christopher Raymond Rey NO v Companies and Intellectual Property Commission, Esor Construction (Pty) Ltd, Absa Bank Limited and Stefcor (Pty) Limited (1325/2019)

Appealed from: GP

Date to be heard: 9 November 2020

Ponnan JA, Wallis JA, Molemela JA, Eksteen AJA, Mabindla-Boqwana AJA

Company Law – business rescue – whether a foreign external company registered in terms of s 23 of the Companies Act 71 of 2008 could be placed under business rescue – whether the court should grant an order recognising and enforcing an order of the Court of Ravenna (Bankruptcy Office), in Italy.

18. FirstRand Bank Limited v The Spar Group Limited (1334/2019)

Appealed from: GP

Date to be heard: 9 November 2020

Cachalia JA, Dambuza JA, Makgoka JA, Sutherland AJA, Unterhalter AJA

Delict – duty of care - prescription – banking – the correct interpretation of the ratio in *Joint Stock Co Varvarinskoye v Absa Bank Ltd* 2008 (4) SA 287 (SCA) – whether appellant was

liable to respondent on the ground of unlawful appropriation arising from an alleged duty of care owed to the respondent to avoid pure economic loss – whether the appellant had knowledge of the alleged true ownership of money deposited into a certain bank account held by one of its customers – whether the respondent was also negligent and contributed to its damage – whether fourth claim should have been dismissed on prescription.

**19. MTN Service Provider (Pty) Ltd v Belet Industries CC t/a Belet Cellular
(1077/2019)**

Appealed from: GJ

Date to be heard: 9 November 2020

Zondi JA, Schippers JA, Nicholls JA, Weiner AJA, Goosen AJA

Contract – contractual damages – variation – repudiation – whether the respondent had a claim against the appellant on the basis of the limitation of liability clause and/or the damages – whether the damages claimed by the respondent were excluded in terms of certain clauses in the dealer agreement – whether the appellant’s cancellation of the dealer agreement constituted a repudiation and whether the agreement was lawfully cancelled – whether the respondent proved that that the parties amended the dealer agreement to replace its one dealer store for another – whether the respondent suffered any contractual damages based on the appellant’s alleged repudiation and respondent’s cancellation of the dealer agreement, if so, what the extent of damages were – whether the trial court correctly found that the appellant’s cancellation of the dealer agreement constituted a repudiation of the agreement – whether the trial court correctly held that the exemption clause did not preclude the respondent’s claim – whether the trial court correctly held that the non-variation clause did not have the effect of non-suiting the respondent.

**20. Municipality of Mhlontlo v TDH Tsolo Junction (Pty) Ltd
(1086/2019)**

Appealed from: ECM

Date to be heard: 9 November 2020

Van der Merwe JA, Mocumie JA, Plasket JA, Ledwaba AJA, Matojane AJA

Contract – suspensive condition – validity – whether the contract on which the respondent relied was concluded in view of the fact that the respondent did not fulfil the suspensive condition for its appointment – whether the letter of appointment which preceded the

conclusion of the written agreement concluded between the parties contained enforceable suspensive conditions which were not fulfilled and accordingly voided the agreement.

21. Nosipho Portia Ndabeni v The Municipal Manager (Owen Ngubende Hlazo) – O R Tambo District Municipality and O R Tambo District Municipality (1066/2019)

Appealed from: ECM

Date to be heard: 10 November 2020

Petse DP, Zondi JA, Dambuza JA, Eksteen AJA, Poyo-Dlwati AJA

Civil procedure – contempt of court proceedings – enforcement application – whether the respondents had discharged their evidential duty in relation to wilfulness and malafides – whether the judgment of Mjali J was a nullity as contended for by the respondents and supported by the judgment of the high court – whether the respondents were entitled to ignore the judgment on their accord by virtue of being a nullity according to them – whether the high court was entitled to pronounce the judgment as a nullity and in so doing non-suit the respondents without any form of application before court – whether the Motala judgment granted litigants a licence to ignore judgments of our courts based on their perception of such orders – whether the appellant established all the requirements for a contempt of court application.

22. Consol Glass (Pty) Ltd v The Commissioner for the South African Revenue Service (1010/2019)

Appealed from: Tax Court

Date to be heard: 10 November 2020

Navsa JA, Wallis JA, Makgoka JA, Sutherland AJA, Unterhalter AJA

Tax Law – VAT – ss 7(1)(c) and 16(3)(a) of the Value-Added Tax Act 89 of 1991 (the VAT Act) – whether Consol was entitled to a deduction, as ‘input tax’, of VAT charged to it by South African vendors on services supplied to Consol in the relevant tax periods in terms of s 16(3)(a) of the VAT Act – whether Consol was obliged to declare and pay output VAT on supplies received by Consol from non-resident suppliers in the relevant tax period, on the basis that these constituted ‘imported services’ in terms of s 7(1)(c) of the VAT Act.

23. Director of Public Prosecutions, Gauteng Division, Pretoria v Rethabile Amogelang

Pooe

(348/2019)

Appealed from: GP

Date to be heard: 10 November 2020

Saldulker JA, Mbha JA, Dlodlo JA, Ledwaba AJA, Mabindla-Boqwana AJA

Criminal law and procedure – s 317(5) of Criminal Procedure Act 51 of 1977 – application referred for oral argument in terms of s 17(2)(d) of Act 10 of 2013 – evaluation of evidence in a criminal trial – whether the trial court correctly applied itself in its approach to the evaluation of evidence placed before it – whether the trial court failed to evaluate the totality of the evidence in accordance with accepted legal principles – whether the trial court materially misdirected itself in failing to consider the objective probabilities and circumstantial evidence – whether the trial court’s error constitutes an error of law on which the trial court’s acquittal of the respondent stands to be set aside - whether the posed questions of law should have been reserved by the trial court as there was a reasonable possibility that an appeal against the respondent’s acquittal would succeed based on the alleged errors in law.

24. The National Minister of Transport v Brackenfell Trailer Hire (Pty) Ltd, Pascal Constance Sprague and Gerhardus Adriaan Odendaal

(707/2019)

Appealed from: WCC

Date to be heard: 11 November 2020

Petse DP, Dambuza JA, Van der Merwe JA, Weiner AJA, Goosen AJA

Statutory Law – interpretation and application of s 73 of the National Traffic Act 93 of 1996 (NRTA) – whether a trailer was excluded from the meaning of the word ‘vehicle’ in terms of s 73 of the NRTA – whether s 73 unjustifiably limited the rights of the owner of such a trailer as an accused person under s 35(3)(h) of the Constitution – whether the high court’s interpretation of s 73 was well reasoned, well founded and correct.

25. Charl Daniel Wilke NO, Theresa Wilke NO and T.Roos Independent Trustee (Pty) Ltd v Griekwaland Wes Korporatief Ltd

(1327/2019)

Appealed from: FB

Date to be heard: 11 November 2020

Navsa JA, Mocumie JA, Schippers JA, Dlodlo JA, Ledwaba AJA

Civil Procedure – interpretation – acknowledgement of debt - surety bond – whether this Court should afford a wide interpretation to the concept of ‘cause of action’ – whether judgment based on a cause of action entirely premised on the acknowledgement of debt rendered a claim based on the primary cause of action *res judicata* – whether the acknowledgement of debt was a novation of the primary cause of action – whether the cause of action based on acknowledgement of debt should be afforded a wide interpretation.

26. The Minister: Department of Home Affairs, Director General: Department of Home Affairs and District Manager of Operations – Johannesburg Department of Home Affairs v Jose Emmanuel Joseph and Jonathan Diabaka ‘Junior (169/2020)

Appealed from: GP

Date to be heard: 11 November 2020

Ponnan JA, Cachalia JA, Nicholls JA, Matojane AJA, Poyo-Dlwati AJA

Citizenship – administrative law - the appellants’ contended that s 4(3) of the Citizenship Act should not be interpreted to mean that Minister of Home Affairs has no discretion in applications brought under that portion of the Citizenship Act thereby, effectively excluding the need to have administrative decisions scrutinised in terms of the Promotion of Administrative Justice Act 3 of 2000 - whether the court a quo correctly ordered the Minister of Home Affairs to grant, as opposed to consider the respondents’ application for South African citizenship.

27. The Premier: Mpumalanga Province, MEC for Co-operative Governance and Traditional Affairs, The Chairperson: Commission on Traditional Leadership Disputes and Claims: Mpumalanga Province, Themba Michael Yende and AmaYende AsoGenyaneni Traditional Council v Felani Yende and AmaYende AsoGenyaneni Royal Family

(1128/2019)

Appealed from: GP

Date to be heard: 12 November 2020

Petse DP, Mbha JA, Zondi JA, Mocumie JA, Molemela JA

Customary law – traditional leadership - administrative law – the fourth appellant, with the support of the AmaYende AsoGenyaneni Royal Family, lodged an application to the

Commission on Traditional Leadership Disputes and Claims: Mpumalanga Province (the Commission) for the recognition of AmaYende AsoGenyaneni as a traditional community and his recognition as its senior traditional leader – Mr Mbulali Jospheh Yende lodged a competing application for his recognition as the senior traditional leader of AmaYende AsoGenyaneni – the Commission made a recommendation to the Premier of the Mpumalanga Province (the Premier) that the fourth appellant be appointed as the senior traditional leader – the Premier took the decision to recognise the fourth appellant – whether the decision of the Premier and the recommendation of the Commission was in compliance with ss 6(2)(c) and 6(2)(d) of the Promotion of Administrative Justice Act 3 of 2000 for failure to observe the *audi alteram partem* rule when it came to the first respondent and his sisters’ version – whether due regard was given to the Commission’s factual findings regarding AmaYende Royalty’s customary law of succession.

28. The Health Professions Council of South Africa, T Mafafo NO and S Ramasala NO v Dr David Stephen Grieve

(1356/2019)

Appealed from: GP

Date to be heard: 12 November 2020

Dambuza JA, Plasket JA, Nicholls JA, Weiner AJA, Sutherland AJA

Administrative law – civil procedure - whether the Gauteng Division of the High Court, Pretoria was correct in reviewing the decision of the appellants to proceed with the disciplinary proceedings having ruled that they had the necessary jurisdiction to hear the matter.

29. South African Legal Practice Council v Reeva-Joy Alves, Mitchell de Beer, Étienne Mentoer, Jandré Robbertze, Zelek Sing, Stacey Sundelson, Michael Muller van Staden, David Whitcomb and Adri Thiart

(1255/2019)

Appealed from: WCC

Date to be heard: 13 November 2020

Maya P, Saldulker JA, Plasket JA, Eksteen AJA, Unterhalter AJA

Legal Practice Act 28 of 2014 – Admission as Advocates – whether the respondents who were all attorneys were entitled to rely on s 115 of the Legal Practice Act in order to be enrolled as advocates – whether the conversion mechanism in s 32 of the Legal Practice Act should be

utilised by the respondent and not s 115 of the Legal Practice Act as s 115 only applies to people or applicants who had never been admitted as legal practitioners before.

30. Beyond Platinum (Pty) Ltd v Ellies Electronics (Pty) Ltd, Robridge Construction CC T/A Easy Store, The Minister of Trade and Industry, The Minister of Police, CY Anre and Muhammed Moolla Storage CC

(73/2020)

Appealed from: GP

Date to be heard: 13 November 2020

Navsa JA, Ponnan JA, Cachalia JA, Matojane AJA, Mabindla-Boqwana AJA

Intellectual property – Counterfeit Goods Act 37 of 1997 – whether the granting of the search and seizure warrants obtained by the appellants was lawful and consistent with the Act – whether the appellants were entitled to an interim interdict precluding the first respondent from trading in the goods in question.

31. National Union of Metal Workers of South Africa and Second to One Hundred and Sixty Third Appellants v Dunlop Mixing and Technical Services (Pty) Limited, Dunlop Belting Products (Pty) Limited and Dunlop Industrial Hose (Pty) Limited

(006/2020)

Appealed from: KZP

Date to be heard: 13 November 2020

Wallis JA, Molemela JA, Schippers JA, Dlodlo JA, Goosen AJA

Labour law - interpretation of statutes – Regulation of Gatherings Act 205 of 1963 – whether the Regulation of Gathering Act applied to a picket authorised by a registered trade union pursuant to s 69 of the Labour Relations Act 66 of 1995 – whether s 11 of the Regulation of Gatherings Act provided a remedy for damages alleged caused by persons participating in the picket.

32. Anita Julia Gent and Bonnox (Pty) Ltd v Pieter Daniél Jacobs du Plessis

1029/2019

Appealed from: GP

Date to be heard: 12 November 2020

Mbha JA, Van Der Merwe JA, Makgoka JA, Weiner AJA, Sutherland AJA

Company law – whether the respondent had made out a case for relief in terms of s 163 of the Companies Act 71 of 2008 – whether the respondent satisfied the requirements of s 163 – whether the court should exercise its discretion in favour of the respondent by granting relief in terms of s 163(2).

33. 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: 16 November 2020

Petse DP, Zondi JA, Nicholls JA, Eksteen AJA, Unterhalter 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.

34. United Democratic Movement and Holomisa Bantu v Lebeashe Investment Group (Pty) Ltd, Harith General Partners (Pty) Ltd, Harith Fund Managers (Pty) Ltd, Wheatley Warren Gregory, Mahloele Tshepo Duan and Moleketi Phillip Jabulani (1032/2019)

Appealed from: GP

Date to be heard: 16 November 2020

Cachalia JA, Mbha JA, Molemela JA, Makgoka JA, Sutherland AJA

Civil procedure – interdict – defamation – interim order – whether the interim order was appealable – whether the statements published by the appellants of and concerning the respondents were defamatory and injurious of them – whether the defences of (a) truth (or substantial truth) were in the public interest or (b) reasonableness should have succeeded – whether ss 16-19, 58 and/or s 96 of the Constitution should have been held to afford the appellants any defence – whether the discretion of the high court in granting the interim order should be disturbed by this Court – whether the respondents showed the balance of convenience was in their favour – whether the high court misdirected itself in granting costs against the appellants who were acting in the public interest.

35. M L Matlala v Minister of South African National Defence Force & South African National Defence Force

(1324/2018)

Appealed from: GP

Date to be heard: 16 November 2020

Wallis JA, Van der Merwe JA, Mocumie JA, Matojane AJA, Mabindla-Boqwana AJA

Administrative Law – fair labour practice – rule 6(5)(G) of the Uniform Rules – whether the appellant should have been appointed by the respondent to the rank of Major – whether the promotion and acting allowance should be granted – whether the appellant failed to make out a case for the relief sought – whether the court a quo failed to consider the merits of the matter and relied on technical aspects of the application.

36. Pelham Stephanus Bothma, S. Bothma & SeunTransport (Edms) Bpk, Merino Boerdery Belange (Edms) Bpk, Pelham Stephanus Bothma NO, Johanna Elizabeth Bothma NO, Jan F W Basson NO, Louis Bothma (Jnr) NO, Jan F W Basson NO, Pelham Stephanus Bothma NO and Mavis Cilliers NO v Tertius Bothma NO and Carine Bothma NO

(748/2019)

Appealed from: FB

Date to be heard: 16 November 2020

Dambuza JA, Schippers JA, Plasket JA, Goosen AJA, Poyo-Dlwati AJA

Contract – settlement agreement – the interpretation of two relevant clauses in the settlement agreement and whether the appellants duly performed in terms thereof – whether the appellants complied with their obligation to deliver 100 000 metres cubed ‘clean sand’ to the respondents.

37. Tongaat Hulett Limited, Tongaat Hulett Sugar Limited and Tongaat Hulett Acucareira de Xinavane SA v Hollard Insurance Company Limited, Global Alliance or Global Alliance Insurance, Hollard Mozambique Comphania de Seguros and Global Alliance Seguros Insurance

(926/2019)

Appealed from: KZD

Date to be heard: 17 November 2020

Navsa JA, Zondi JA, Makgoka JA, Goosen AJA, Unterhalter AJA

Civil procedure – jurisdiction – s 16(1)(a)(i) read with s 17(2)(a) of the Superior Courts Act of 2013 – the appellants were insured with two policies (the Works Policy and a Project Delay policy) in respect of plant, materials and works associated with the expansion project at the Xinavane Mill in Mozambique – pursuant thereto the plant was damaged and claims were made under both policies, inter alia, to the third and fourth respondents – the claims were rejected and as a result the appellants instituted action in the court a quo – the court a quo held that it did not have jurisdiction to determine the appellants’ claims against the third and fourth respondents in respect of claims arising under the project delay insurance policy – whether the high court had jurisdiction to determine the claims advanced in the action against the third and fourth respondents (both peregrine of the Republic) – whether it was permissible for a foreign *peregrinus* to sue a foreign *peregrinus* in a South African court in the absence of a *ratio jurisdictionis* (even if there was a submission to jurisdiction) – whether the submission to jurisdiction in the contract works policy was such as to constitute a submission to jurisdiction by the third and fourth respondents in respect of claims in the project delay insurance policy.

38. Zungu-Elgin Engineering (Pty) Ltd v Jeany Industrial Holdings (Pty) Ltd and Ian Laverne Donjeany and Lee Spencer Donjeany (1138/2019)

Appealed from: KZD

Date to be heard: 17 November 2020

Ponnan JA, Van der Merwe JA, Nicholls JA, Ledwaba AJA, Poyo-Dlwati AJA

Company Law – business rescue proceedings – the respondents’ claim against the appellant is for a right of recourse which it has arising out of it having paid amounts to a creditor of the appellant in terms of a deed of suretyship – the issue on appeal is a surety’s right of recourse against a principal debtor who has undergone business rescue.

39. Road Accident Fund v Zuko Busuku (1013/2019)

Appealed from: ECM

Date to be heard: 17 November 2020

Wallis JA, Mocumie JA, Dlodlo JA, Eksteen AJA, Weiner AJA

Delict – Road Accident Fund Act 56 of 1996 (the Act) – personal injuries – interpretation – whether the respondent complied, on a proper interpretation of the relevant provisions and

regulations of the Act, by attaching the hospital notes to a blank medical report that formed an integral part of the claim form, RAF1.

40. Silwane Community Development Trust v Regional Land Claims Commissioner, Kwazulu Natal, Commission on Restitution of Land Rights, Minister of Rural Development and Land Reform, Director General of the Department of Rural Development and Land Reform, The Charl Senekal Suiker Trust IT 855/1984, Mbongeni Zulu, Nomusa Mathe, Ntombifuthi Mathabela, Ndaba Gumbi, Muswenkosi Mathabela and Registrar of Deeds, KwaZulu-Natal (900/2019)

Appealed from: LCC

Date to be heard: 18 November 2020

Petse DP, Mbha JA, Dambuza JA, Nicholls JA, Matojane AJA

Land – Restitution of Land Rights Act 22 of 1994 (Restitution Act) – review of Regional Land Claims Commissioner’s (RLCC) decision regarding its publication in terms of s 11(1) of the Restitution Act – appeal against judgment of the LCC dismissing a review application in respect of a decision of the RLCC to publish a notice in the Government Gazette in terms of s 11(1) of the Restitution Act without including a number of farms that the appellant contended ought to have been included – whether the exclusion by the RLCC was unreasonable – whether the decision of the RLCC in publishing a notice in terms of s 11(1) of the Restitution Act should be reviewed and set aside with an order that the RLCC publish a fresh notice that includes the additional farms that the appellant contends were wrongly omitted – whether the review ought to have been excluded because the appellant delayed for 11 years in bringing the review application – whether costs should be awarded against the appellant and whether the attorney for the appellant should be deprived of any claims for costs in terms of s 29(4) of the Restitution Act.

41. Mahomed Mahier Tayob & Eugene January v Shiva Uranium (Pty) Limited, Christopher Kgashane Monyela & Juanito Martin Damons (336/2019)

Appealed from: GP

Date to be heard: 18 November 2020

Cachalia JA, Saldulker JA, Van der Merwe JA, Schippers JA, Poyo-Dlwati AJA

Company Law – business rescue – Companies Act 71 of 2008 – whether the resolution adopted by the first respondent’s board of directors appointing the appellants as business rescue practitioners was lawful – whether the appointment of additional business rescue practitioners by the board of directors had to be authorised and validated by the junior business rescue practitioner – whether the appointment of the third respondent, by the second respondent and subsequently confirmed by the Companies Tribunal, was lawful – whether the appellants complied with the requirements for obtaining an interim interdict – whether the appellants established a prima facie case – whether the court a quo erred in dismissing the appellants’ application for an interdict.

42. K2012076290 (South Africa) (Pty) Ltd v Oude Chardonnay Rusoord (Pty) Ltd & (642/2019)

Appealed from: WCC

Date to be heard: 19 November 2020

Navsa JA, Zondi JA, Mocumie JA, Eksteen AJA, Mabindla-Boqwana AJA

Mortgage and pledge contract – requirements for valid mortgage agreement – whether the mortgage agreement between the appellant and the first respondent identified immovable property which was mortgaged with sufficient certainty.

43. Madibeng Local Municipality v Public Investment Corporation Ltd (955/2019)

Appealed from: GP

Date to be heard: 19 November 2020

Ponnan JA, Saldulker JA, Plasket JA, Ledwaba AJA, Weiner AJA

Civil Procedure – prescription – contract – interpretation of Prescription Act 68 of 1969 - whether the appellant was in law liable to the respondent in the amount claimed – whether the respondent established the basis on which it claimed the interest against the appellant and whether it was entitled to interest at the rate it claimed by it – whether the respondent’s claims against the appellant had been extinguished by prescription – whether, in light of the evidence placed before the high court, the respondent was still in law entitled to proceed in terms of its original cause of action.

44. Koni Multinational Brands (Pty) Ltd v Beiersdorf AG

(553/2019)

Appealed from: GJ

Date to be heard: 19 November 2020

Cachalia JA, Makgoka JA, Schippers JA, Sutherland AJA, Unterhalter AJA

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.

45. Gobela Consulting CC v Makhado Municipality

(910/2019)

Appealed from: LP

Date to be heard: 19 November 2020

Wallis JA, Mbha JA, Molemela JA, Dlodlo JA, Poyo-Dlwati AJA

Local government – administrative law - civil procedure – damages as a result of alleged unlawful breach of contract – the appellant made a proposal to the respondent which was accepted by the respondent – an appointment letter was issued to the appellant and the appellant rendered services to the respondent – the appellant was appointed to review and develop the anti-corruption strategy for the respondent - the respondent refused to pay resulting in this action for payment – the appellant’s claim was dismissed on the basis that its appointment was unlawful in that the conduct offended the provision of s 217 of the Constitution and the Local Government Municipal Finance Management Act which required that when an organ of state contracted for goods or services, it must do so in accordance with a system which was fair, equitable and transparent – whether the court a quo was entitled to make an order that the appellant’s appointment was unlawful and invalid in the absence of an application to review and set aside the appointment – whether the letter of appointment remained valid though obtained unlawfully in the absence of an application to review and set aside the appointment – whether the appointment letter made in violation of the Constitution should be treated as valid

and the appellant must benefit from such an illegal and invalid appointment until it was set aside.

46. Mafemani Collett Vukeya v Shalate Nelly Ntshane, Registrar of Deeds, Johannesburg & Maringa Attorneys & Conveyancers

(518/2019)

Appealed from: GJ

Date to be heard: 20 November 2020

Maya P, Dambuza JA, Mocumie JA, Plasket JA, Goosen AJA

Family law – interpretation – Matrimonial Property Act 88 of 1984 – whether the transfer of immovable property by one spouse (married in community of property) to a third party, without the consent of the other, was valid – whether a third party was placed under a duty to inquire about the marital status of a spouse before conclusion of a property transfer agreement even where such spouse represented himself as unmarried and as the owner of the property to be sold – whether the court a quo misdirected itself by disregarding representations made to the appellant by the deceased – whether the court a quo misdirected itself in respect of s 15(9)(a) of the Matrimonial Property Act.

47. Fusion Properties 233 CC v Stellenbosch Municipality

(932/2019)

Appealed from: WCC

Date to be heard: 20 November 2020

Petse DP, Saldulker JA, Schippers JA, Matojane AJA, Sutherland AJA

Company Law – s 8 of the Close Corporations Act 69 of 1983 – interpretation – s 34 of the Constitution – right of access to court – the application was brought against an order of the high court ordering the applicant to furnish security for the respondent’s legal costs in the underlying action – the applicant denied that it was liable to furnish security under s 8 of the Close Corporations Act on the basis that it had no assets and would not be able to continue with the litigation against the respondent should it be forced to furnish security – the applicant argued that there was no reason to treat close corporations any different than companies and *incolae* in relation to security for costs – whether the applicant, a close corporation, was liable to furnish security for costs in terms of s 8 of the Close Corporations Act.

48. Municipal Employees' Pension Fund & Akani Retirement Fund Administrators (Pty) Ltd v Dineo Innolentia Mongwaketse (969/2019)

Appealed from: GJ

Date to be heard: 20 November 2020

Ponnan JA, Wallis JA, Molemela JA, Dlodlo JA, Weiner AJA

Administrative Law – Pension Funds Act 24 of 1956 – whether the adjudicator had the jurisdiction to adjudicate the complaint – whether the determination was correct, lawful and rational – whether the respondent was accepted as a member of the appellant – liability for costs of the main application and the counter application.

49. Morekwa Francinah Thobejane, Maseboti Simon Pholwane, Cedrick Pholoshi Mogoba, Molohlanye William Phala and Kgolane Daphney Thobejane v The Premier of the Limpopo Province and The Member of the Executive Committee for Traditional Affairs of the Limpopo Province (1108/2019)

Appealed from: LP

Date to be heard: 23 November 2020

Petse DP, Zondi JA, Makgoka JA, Mabindla-Boqwana AJA, Poyo-Dlwati AJA

Civil procedure - administrative law – judicial review of administrative action – customary law – recognition of traditional leadership – whether the high court was functus officio and therefore not entitled to alter, amend or supplement its ruling handed down on 17 April 2019 – if not, whether it correctly concluded that a real, genuine and bona fide dispute of facts existed - judicial review of the decision by the respondents not to recognise the appellants as chiefs and headmen/headwomen – appellants alleged they had been so recognised by the royal family of Tjate – respondents alleged misjoinder in the failure to join the Marota-Mohlaetsi Traditional Council (the Council), the institution that has authority over Tjate – the appellants alleged that the Council was not legally constituted – whether there was a misjoinder – whether the Council was legally constituted.

50. The MEC for Health, Western Cape v Mpumelelo Sidwell Coboza (1087/2019)

Appealed from: WCC

Date to be heard: 23 November 2020

Van der Merwe JA, Molemela JA, Dlodlo JA, Sutherland AJA, Unterhalter AJA

Delict – medical negligence – prescription – whether the respondent alleged medical claim against the appellant had prescribed – whether the high court correctly dismissed the appellant’s special pleas of prescription raised in terms of s 12(3) read with ss 11(*d*) and 12(1) of the Prescription Act 68 of 1969.

51. Timothy Gordon Marsland v The Additional District Court Magistrate Kempton Park and The Director of Public Prosecutions, Johannesburg (162/2020)

Appealed from: GJ

Date to be heard: 24 November 2020

Maya P, Van der Merwe JA, Makgoka JA, Eksteen AJA, Poyo-Dlwati AJA

International law – Extradition Act 67 of 1962 - interpretation of statutes – Interpretation of Article 10(5) of the SADC Protocol on Extradition as applicable between South Africa and Botswana as read with Article 6 of the Protocol and s 4(1) and 5(1)(*a*) and (*b*) of the Extradition Act 67 of 1962 – interpretation of what constituted ‘receival’ of formal extradition documentation – whether the Minister of Justice and Constitutional Development must issue a notification in terms of s 5(1)(*a*) of the Extradition Act within the prescribed time frame contained in Article 10(5) of SADC Protocol on Extradition in order to trigger the extradition enquiry envisaged in ss 9 and 10 of the Extradition Act.

52. GuardRisk Insurance Company Limited v Café Chameleon CC (632/2020)

Appealed from: WCC

Date to be heard: 24 November 2020

Cachalia JA, Saldulker JA, Mbha JA, Ledwaba AJA, Eksteen AJA

GuardRisk Insurance Company Limited v Café Chameleon CC

632/2020

3 vols – all relevant

WCC – Le Grange

Judgment – English

Application

Counsel for Appellant – To be filed 9 October 2020

Counsel for Respondent – To be filed 23 October 2020

Appellant’s Heads – English

Respondent’s Heads – English

Record – English

Administrative Law – interpretation of insurance policy – whether the Disease Extension in the Business Interruption Section of the insurance policy operated to indemnify the respondent for losses which arose since 27 March 2020 from the interruption of the respondent’s business as a result of the promulgation of regulations made by the Minister of Cooperative Governance and Traditional Affairs under the Disaster Management Act 57 of 2002 – whether COVID 19 was a notifiable disease as defined in the insurance policy – whether the respondent had established that the defined event in the Disease Extension Section of the insurance policy was the factual and legal cause of its indemnifiable loss – whether the court a quo ought to have granted relief, given that the respondent relied on an insurance policy that was not operative when the loss was alleged to have occurred – whether the court a quo ought to have granted the declaratory relief – whether the court a quo erred when it granted the relief that was abandoned by the respondent.