

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

BULLETIN 1 OF 2021

CASES ENROLLED FOR HEARING: FEBRUARY – MARCH 2021

1. Silostrat (Pty) Ltd, The Standard Bank of South Africa and Suidwes Landbou (Pty) Limited v Pieter Hendrik Strydom NO, Deon Marius Botha NO, Caroline Mmakgokolo Ledwaba NO (First respondent (three parties) - in their capacities as joint trustees of the Insolvent Estate of Frederick Barend Christoffel Kirsten), The Land and Agricultural Development Bank of South Africa and Technichem Oesbeskerming (Pty) Ltd (845/2019 & 898/2019)

Appealed from GP

Date to be heard: 15 February 2021

Ponnan JA, Dambuza JA, Nicholls JA, Gorven AJA, Mabindla –Boqwana AJA

Contract – counterclaim – contractual damages – banking law – whether the Bank’s cession, granted in 2011, properly interpreted was valid and enforceable – whether the rectification of the Bank’s cession post-concursus creditorum was permissible and competent – whether the first appellant has a counterclaim against the Bank – the interpretation of the work ‘unenforceable’ – whether the first appellant intended to claim damages either against the Bank or Suidwes, dependent upon which party had the preferent right to Mr Kirsten’s (the insolvent) 2015 maize crop.

2. Matshepo Ramakatsa, Themba Mvandaba and Shashapa Joshua Motaung v African National Congress and Members of the Free State Provincial Executive Committee of the African National Congress (724/2019)

Appealed from: FB

Date to be heard: 15 February 2021

Saldulker JA, Mocumie JA, Dlodlo JA, Carelse AJA, Weiner AJA

Civil procedure – review – lawfulness of the respondent’s Provincial Conference in the Free State in 2018 – whether the relevant audit requirements complied with, prior to the Provincial Conference – whether the necessary Branch General Meetings were held lawfully prior to the Provincial Conference – whether it was open to the applicants to attack BGMs which were not fulfilled by the Court order of 15 December 2017 – whether the court

a quo was correct in applying Plascon Evans rule – whether the applicants had established irregularities in the light of the rebuttals by the respondents in their answering affidavits.

**3. King Price Insurance Company Ltd v Concise Consulting Services (Pty) Ltd
(1067/2019)**

Appealed from: GP

Date to be heard: 15 February 2021

Mbha JA, Molemela JA, Nicholls JA, Kgoele AJA, Rogers AJA

Contract – insurance – repudiation – claim of indemnification – whether the false and misleading information provided by the respondent’s employee was attributable to the respondent – whether the respondent breached the agreement of insurance – whether the respondent’s breach was a material breach of the agreement of insurance – whether the appellant acquitted itself of its onus to justify repudiation of a claim prima facie within the four corners of the insurance contract.

**4. Eskom Holdings Limited v The Joint Venture of Edison Jehamo (Pty) Ltd and KEC International Limited, Symbion PNC (Pty) Ltd (In Liquidation), Johannes Zacharias Human Muller NO, Frans Langford NO, Hlaleleni Kathleen Dlepu NO, Elmarie Booyse NO, KEC International Limited and Justice LTC Harms NO
(177/2020)**

Appealed from: GJ

Date to be heard: 16 February 2021

Dambuza JA, Makgoka JA, Nicholls JA, Gorven AJA, Eksteen AJA

Arbitration – contract - whether the high court’s finding that the first respondent did not receive a full and fair hearing before the arbitrator in respect of the appellant’s special defence of time bar should be set aside.

**5. Johan Sebastiaan Eksteen v The Road Accident Fund
(873/2019)**

Appealed from: FB

Date to be heard: 17 February 2021

Petse AP, Makgoka KA, Dlodlo JA, Ledwaba AJA, Poyo-Dlwati AJA

Interpretation of Statutes – s 2(1)(e)(ii) of the Road Accident Fund Act 15 of 2012 – whether the high court was correct in dismissing the special plea of prescription of *lis alibi pendens* – whether the appellant was vexatious in instituting further proceedings.

6. Solidarity and Bereaved Families as per Annexure A v Black First Land First, Lindsay Maasdorp and Zwelakhe Dubasi (163/2020)

Appealed from: GJ

Date to be heard: 17 February 2021

Ponnan JA, Molemela JA, Nicholls JA, Goosen AJA, Unterhalter AJA

Constitutional law - Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 – civil procedure – whether the second and third respondents’ conduct amounted to hate speech – whether having handed down judgment the court had the authority to correct or nullify the judgment – whether in declaring the proceedings a nullity the court exercised its discretion properly.

7. Isaac Mlungisi Mhlambi v The State (593/20)

Appealed from: GP

Date to be heard: 17 February 2021

Zondi JA, Schippers JA, Mbatha JA, Carelse AJA, Mabindla-Boqwana AJA

Criminal law and procedure – appeal against sentence – whether the Gauteng Division, Pretoria was correct in imposing the sentence it did – whether the judge erred by over-emphasising the seriousness of the offence and the interests of society – whether the court a quo failed to balance the mitigating factors against the aggravating factors – whether the sentence was inappropriate and induced a sense of shock.

8. Acti-chem SA (Pty) Ltd v Commissioner for the South African Revenue Services (1228/2019)

Appealed from: KZP

Date to be heard: 18 February 2021

Navsa ADP, Wallis JA, Molemela JA, Ledwaba AJA, Weiner AJA

Tax law – s 47(9)(e) and (f) of the Customs and Excise Act of 1964 (the Act)– whether the requirement of use specified in s 75(1)(a), s 75(2)(a) and note 1 in Schedule 3 to the Act was

met only where the use was use by a rebate registrant in respect of the rebate item in terms of the Act and Rules promulgated thereunder – whether the requirement of use in connection with the production or manufacture of goods in the polishes and creams industry was met where the appellant used the imported products in the manufacture of Quecolin and then sold those products to third parties who used them in connection with the production or manufacture of goods in the polishes and creams industry – whether Quecolin, the product the appellant manufactured from the imported products, constituted a ‘good’ in the polishes and creams industry by virtue of its predominant use in the manufacture of floor polish by those who purchase Quecolin from the appellant – whether the appellant was only entitled to the rebate if the imported products were used exclusively for the production of the polishes and creams, or whether predominant use in the manufacture of polishes and creams sufficed – whether the rebate item only applied if the ultimate manufacturer of polishes and creams was, itself a rebate registrant.

9. Thetele Joseph Malatji v Maponya Lazarus Ledwaba NO, Gisela Stols NO, The Master of the High Court, Gauteng Division, Pretoria, The Minister for Rural Development and Land Reform, Provincial Shared Services Centre of the Department of Rural Development and Land Reform, Limpopo Province, The Regional Land Claims Commissioner, Limpopo Province, Refilwe Irene Letsoalo, Motlokwa Suzan Mojapelo, Zili Masetla, Phutiane Curry Letsoalo, Mankuroane Modiba, Ali Maake, Veronica Sebolawa Motswi, Frans Mokoena Kubjana, Jimmy Kubjana, David Mehlape-Malatji, Maite Moseri, Mary Ntoampe, Jane Mahasha and Mokopa William Monyama (1136/2019)

Appealed from: LP

Date to be heard: 18 February 2021

Saldulker JA, Mbha JA, Mbatha JA, Gorven AJA, Eksteen AJA

Civil procedure – compliance with prior court order – trusts – this Court ordered the independent trustees to convene a general meeting of the Mamphoku Makgoba Community Trust (the Trust) for the purposes of nominating and appointing a new board of trustees who were eligible to stand for election; and that only those beneficiaries who’s names appear on the list of beneficiaries were entitled to attend and vote at the general meeting – in the general meeting convened pursuant to this Court’s order, the independent trustees allowed the votes of deceased or absent beneficiaries to occur via proxy – merits of the application or remit the

application to the high court – whether the general meeting complied with the order of this Court and the Trust’s trust deed.

10. Petra Davidan v David Neville Polovin NO, Alan René Jean Proust NO and Jonathan Paizee NO

(167/2020)

Appealed from: WCC

Date to be heard: 18 February 2021

Dambuza JA, Mocumie JA, Dlodlo JA, Carelse AJA, Kgoele AJA

Property law – eviction – unlawful occupier – consent – a trust, the trustees of which are cited as the respondents, took ownership of residential property (the property) from Mr Mercure Paizee and his spouse – when Mr Paizee and his spouse separated he proceeded to live with the appellant on the property as husband and wife – when Mr Paizee passed away the appellant continued to live on the property with her mother and housekeeper – after Mr Paizee’s death the trust offered the appellant a monthly tenancy then requested her to vacate the premises – whether any right that the appellant may have had to occupy the property was lawfully terminated – whether the appellant’s mother and housekeeper ought to have been cited as respondents.

11. Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality

(916/2018)

Appealed from: GP

Date to be heard: 19 February 2021

Petse AP, Nicholls JA, Mbatha JA, Goosen AJA, Poyo-Dlwati AJA

Civil procedure – contract - damages – loss of profit – the appellant was allegedly dishonestly deprived of a contract which it otherwise would have been awarded and accordingly filed a claim for loss of profit – whether the appellant’s claim for damages was not extinguished or compromised by the high court’s order which refused substitution and the subsequent order of this court which refused substitution and ordered re-advertising of the tender – whether public policy exempted liability in circumstances where a party has been deprived of a contract by virtue of *inter alia* dishonest, *mala fide* and wrongful conduct – whether the fact that a court did not substitute an applicant as the successful bidder in a prior review application meant that the factual causation in a subsequent damages action was *res judicata* – whether the appellant had proven legal causation – whether there had been a *novus*

actus interveniens that had broken the chain of causation between the alleged wrongful conduct on the part of the municipality and the damage that the appellant has suffered.

12. Catherine May Churchill v The Premier Mpumalanga and Director-General: Office of the Premier, Mpumalanga (889/2019)

Appealed from: MMB

Date to be heard: 19 February 2021

Ponnan JA, Wallis JA, Saldulker JA, Carelse AJA, Kgoele AJA

Labour law – s 35(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 - the appellant, previously employed as the Chief Director of Policy and Research, performed duties of designing and implementing plans and or policies that had a direct effect on employees – a protest against one of these policies ensued – whether the alleged protest resulting in appellant being injured was causally connected to and arose out of the appellant’s employment position and duties.

13. Bruce Gordon McMillan v Bate Chubb & Dickson Incorporated (299/2020)

Appealed from: ECL

Date to be heard: 19 February 2021

Zondi JA, Mocumie JA, Schippers JA, Gorven AJA, Eksteen AJA

Family law – antenuptial contract – professional negligence – prescription – commencement of prescription and principles surrounding mitigation of damages, causation and rectification – the appellant appeals against the court a quo’s decision upholding the respondent’s special plea of prescription relating to the institution of a claim for damages by the appellant against the respondent for professional negligence arising out of the drafting of an antenuptial contract which was *void ab initio*, as a result of which the parties thereto were in law married in community of property, and the damages allegedly sustained by the appellant as a result thereof – whether the court a quo erred in upholding the special plea of prescription, contending inter alia that the appellant’s claim only arose when judgment declaring the antenuptial contract *void ab initio* was handed down by Plasket J on 18 October 2016 – whether the appellant’s claim prescribed prior to the institution of proceedings against the respondent for damages arising from professional negligence – whether the appellant was aware or ought to have been aware of the relevant facts from which the claim arose during May 2014 at the

latest – whether there was a causative link between the acts of the respondent and the damages sustained by the appellant.

14. City of Cape Town Metropolitan Municipality v Nu-way Housing Development (Pty) Ltd

(1139/2019)

Appealed from: WCC

Date to be heard: 22 February 2021

Navsa ADP, Molemela JA, Nicholls JA, Ledwaba AJA, Rogers AJA

Contract – whether the respondent had made out a proper case for a claim based on enrichment, alternatively based on contract – whether the appellant was entitled to payment in the sum of R2 109 009 as a development contribution by which the respondent paid under protest on 2 December 2014.

15. Ingosstrakh v Global Aviation Investments (Pty) Ltd, Global Aviation Investments Group (BVI) Ltd and Global Aviation Operations (Pty) Ltd

(934/2019)

Appealed from: GJ

Date to be heard: 22 February 2021

Mbha JA, Dambuza JA, Makgoka JA, Mabindla –Boqwana AJA, Unterhalter AJA

Civil Procedure – rules of court – whether the appellant was entitled to the upliftment of the bar or whether the respondents were entitled to the judgment in consequence of the failure of the appellant to plead.

16. Edward Mntambo v The State

(478/2020)

Appealed from: Verulam Regional Court

Date to be heard: 22 February 2021

Mocumie JA, Dlodlo JA, Mbatha JA, Weiner AJA, Poyo-Dlwati AJA

Criminal law and procedure – appeal against conviction and sentence – special leave granted by SCA - whether the failure by the magistrate to comply with s 93ter(1) of the Magistrate Courts Act 32 of 1944 meant that the court was not properly constituted – whether the appellant was afforded the opportunity to decide whether the presiding magistrate was to sit with or without assessors.

17. Merifon (Pty) Ltd v Greater Letaba Municipality and Housing Development Agency (1112/2019)

Appealed from: LP

Date to be heard: 23 February 2021

Petse AP, Makgoka JA, Schippers JA, Gorven AJA, Poyo-Dlwati AJA

Local government - contract – specific performance - whether the provisions of s 19 of the Municipal Finance Management Act 56 of 2003 were applicable to the agreement – whether s 19 rendered the agreement null and void – whether the first respondent’s municipal manager was properly authorised to conclude the agreement on its behalf.

18. Ronald Bobroff and Darren Rodney Bobroff v The National Director of Public Prosecutions (194/2020)

(194/2020)

Appealed from: GP

Date to be heard: 23 February 2021

Ponnan JA, Mbha JA, Molemela JA, Eksteen AJA, Weiner AJA

Prevention of Organised Crime Act 121 of 1998 (POCA) – preservation order in terms of s 26(1) of the POCA – forfeiture of assets in terms of s 48 of POCA – the respondent made an application for the preservation of amounts standing to credit foreign banks in Israel – the respondent thereafter made an application and was granted an order for the forfeiture of the aforesaid amounts – whether the high court had jurisdiction in respect of credit funds credit in foreign jurisdictions – whether the respondent made out a case for the preservation and forfeiture of the funds in the appellants’ foreign accounts.

19. FirstRand Bank Limited v Master of the High Court (Pretoria), Body Corporate of Victory Park, Cornelia Carolina Mienie NO, Ignatius Clement Mikateko Shirilele NO, Nedbank Limited, Minister of Justice and Constitutional Development and Minister of Rural Development and Land Reform (1120/2019)

(1120/2019)

Appealed from: GP

Date to be heard: 23 February 2021

Wallis JA, Saldulker JA, Dlodlo JA, Goosen AJA, Mabindla-Boqwana AJA

Insolvency – contestation of liquidation and distribution account – interpretation of s 14(3) of the Insolvency Act 24 of 1936 and s 15B(3)(a)(i)(aa) of the Sectional Titles Act 95

of 1986 – application to review and set aside decision of the first respondent dismissing the appellant’s objection to the first and final liquidation, distribution and contribution account of the insolvent estate of Joseph Zakes Msimango (the insolvent) – the insolvent owned a unit in Victory Park Sectional Title Scheme, which unit was bonded by the appellant; and a unit in another sectional title scheme, which unit was bonded by Nedbank – the Body Corporate of Victory Park (the Body Corporate) received judgment against the insolvent for arrear levies – the Body Corporate, as the petition creditor, placed the insolvent’s estate under final sequestration – the appellant and Nedbank proved their secured claims whilst the Body Corporate did not – whether a body corporate of a sectional title scheme, which is the sequestrating creditor, was obliged by way of contribution to make good the shortfall in an insolvent estate where the only other proven creditors were bondholders who had stated that they relied only on the proceeds of their security in satisfaction of their claim – the proper interpretation of s 14(3) of the Insolvency Act and s 15B(3)(a)(i)(aa) of the Sectional Titles Act 95 of 1986.

20. Democratic Alliance, Glynnis Breytenbach and Werner Horn v Busisiwe Mkhwebane and The Office of the Public Protector

(1370/2019)

Appealed from: WCC

Date to be heard: 24 February 2021

Navsa ADP, Dlodlo JA, Nicholls JA, Carelse AJA, Rogers AJA

Civil procedure - Uniform Rules of Court – request for the producing of documents – rule 30A application – production of documents requested under rule 35(12) – whether the documents referred to in annexure to an affidavit can be requested under rule 35(12) – whether the requested documents were relevant to the main application – whether the contention that the requested documents were not in the first respondent’s possession but could be obtained from the State Security Agency justified the failure to produce the documents.

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

(1320/2018)

Appealed from: GP

Date to be heard: 24 February 2021

Wallis JA, Mocumie JA, Makgoka JA, Gorven AJA, Unterhalter AJA

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.

22. BW Brightwater Way Props (Pty) Ltd v Eastern Cape Development Corporation (1235/2019)

Appealed from: ECL

Date to be heard: 24 February 2021

Zondi JA, Molemela JA, Schippers JA, Kgoele AJA, Eksteen AJA

Contract – lease agreement – administrative law – the appellant and the respondent entered into a lease agreement in respect of immovable property – the appellant alleged that the respondent failed to provide it with vacant and undisturbed possession of the property, which was unlawfully occupied – the respondent alleged that the appellant failed to comply with its obligations in terms of the lease – the respondent launched a counter-application to review and set aside its decision to conclude the lease agreement on the basis that the respondent’s signatory was not authorised to sign the lease agreement and the agreement was not in compliance with the statutory framework – the high court held in favour of the respondent in the counter-application – whether the appellant could retain its rights under the lease agreement notwithstanding that the lease was declared constitutionally invalid for non-compliance with the applicable regulatory framework.

23. Julius Sello Malema v Thembinkosi Rawula (139/2020)

Appealed from: ECP

Date to be heard: 25 February 2021

Petse AP, Dambuzza JA, Schippers JA, Ledwaba AJA, Rogers AJA

Law of Delict – defamation – interdict – arising out of alleged defamatory posts on facebook – whether the defamation interdict applications were permissible in law – whether the high court confused the evidentiary burden – whether the high court placed a false burden on the appellant to pre-emptively and conclusively disprove allegations that needed to be proved by the respondent – whether the court a quo misapplied the test in *Herbal Zone (Pty) Ltd v Infitech Technologies* [2017] 2 ALL SA 347 (SCA).

**24. Kubheka, Nhlanhla Arthur and Ngidi Armstrong v The State
(200/2020)**

Appealed from: GJ

Date to be heard: 25 February 2021

Navsa ADP, Dlodlo JA, Mbatha JA, Kgoele AJA, Weiner AJA

Criminal law and procedure – appeal against sentence – whether sentence in terms of s 276(1)(h) or s 276(1)(i) of the Criminal Procedure Act 51 of 1977 would have been appropriate – whether the sentenced imposed was so severe to induce a sense of shock.

**25. Information Technology Consultants (Pty) Ltd t/a Intecon, René Julia N.O (In her capacity as trustee of Stelland Finansies Trust IT No 3509/06 t/a Stelland Finansies) and Jacobus Odendaal Pietersen NO (In his capacity as trustee of Stelland Finansies Trust IT No 3509/06 t/a Stelland Finansies), Jan Prins, Merriman Mninawa Ndwalaza, Annie Jansen v the National Credit Regulator, the Minister of Trade and Industry, the South African Reserve Bank, The Payments Association of South Africa and Mercantile Bank
(286/2020)**

Appealed from: GP

Date to be heard: 25 February 2021

Ponnan JA, Makgoka JA, Nicholls JA, Eksteen AJA, Poyo-Dlwati AJA

Civil Procedure – s 91 of the National Credit Act 68 of 2008 (NCA) – National Consumer Tribunal – exhaustion of remedies in a tribunal – whether it was competent for the court a quo to deny the appellants a hearing on the basis that they ought to first have exhausted their remedies in the proceedings before the Tribunal, effectively holding that it did not have jurisdiction to entertain the application – whether the relief sought by the appellants would have been justiciable before the National Consumer Tribunal – whether the court a quo's jurisdiction was excluded by the NCA in favour of the National Consumer Tribunal.

**26. South African Navy and Minister of Defence v Tebeila Institute of Leadership, Education Governance and Training
(252/2019)**

27. Appealed from: LP

Date to be heard: 26 February 2021

Petse AP, Mbha JA, Mbatha JA, Goosen AJA, Unterhalter AJA

Constitutional Law – Military Skills Development System (MSDS) programme – the constitutionality of the age admission requirements of MSDS – whether the age requirement constituted unfair discrimination which limited the right to equality and the right to further education – whether the MSDS contravened s 7(2) of the Constitution.

27. Groundprobe (Pty) Ltd and Groundprobe South Africa (Pty) Ltd v Reutech Mining (Pty) Ltd, Reunert Applied Electronic Holdings (Pty) Ltd and Reutech (Pty) Ltd (1226/2019)

Appealed from: KZD

Date to be heard: 26 February 2021

Ponnan JA, Dambuza JA, Molemela JA, Ledwaba AJA, Gorven AJA

Intellectual property law – patent law – the first appellant was the patentee and the second appellant was a licensee under the patent – the patent related to a work area monitor in which a radar module and processor were mounted on a vehicle and stabiliser which eliminated disturbances caused by vehicle movement – the respondents introduced their own vehicle-mounted slope stability system – the respondents contended that the first appellant's product lacked novelty and inventiveness – whether the first appellant's patent was novel and inventive

28. Renault (Pty) Ltd – Zambezi (Motus Corporation (Pty) Ltd), Renault South Africa (Pty) Ltd v Abigail Wentzel (1272/2019)

Appealed from: GP

Date to be heard: 26 February 2021

Wallis JA, Saldulker JA, Zondi JA, Carelse AJA, Kgoele AJA

Consumer Protection Act 68 of 2008 (the CPA) – whether a consumer was obliged to exhaust all other remedies available in terms of legislation before approaching a competent court to enforce a right in terms of a transaction as provided for in s 69(d) of the CPA – whether partial fulfilment of the obligation to exhaust all other remedies available to a consumer in terms of CPA was sufficient compliance with s 69 of the CPA for a consumer to approach a court with jurisdiction – whether referral and subsequent pending proceedings before the Motor Industry Ombudsman of South Africa constituted partial fulfilment of the obligation flowing from s 69 of the CPA and whether it was sufficient in nature for the invocation of s 69(d) of the CPA – whether the factual dispute on papers was material, real and bona fide.

29. The Minister of Trade and Industry and The Director General: Department of Trade and Industry v Murendi Properties and Building Supplies (Pty) Ltd
(1293/2020)

Appealed from: GP

Date to be heard: 1 March 2021

Wallis JA, Makgoka JA, Mbatha JA, Weiner AJA, Rogers AJA

Contract – Black Industrialist Scheme – whether the appellants could resile from its obligation to pay the grant based on the reasons initially advanced for its refusal, alternatively on the reasons advanced after litigation was commenced by the respondent – whether the respondent had failed to submit a valid BEE certificate – whether appellant was entitled to refuse payment of the grant on the basis that the respondent had not met specified milestones – whether the approval of the grant was unconditional.

30. Attorneys Fidelity Fund Board of Control v Rodney Adrian Love
(170/2020)

Appealed from: GJ

Date to be heard: 1 March 2021

Zondi JA, Molemela JA, Nicholls JA, Carelse JA, Mabindla-Boqwana AJA

Attorneys Act 53 of 1979 (the Act) – damages for the theft of trust funds – civil procedure – the respondent instituted a claim against the appellant for the payment of a sum of money that had been paid into the trust account of an attorneys practice that was stolen by a practising attorney and/or his employee – the appellant repudiated the respondent’s claim on the basis that there was a failure to comply with s 48(1)(a) of the Act which required that claims be filed within three months from the date the client became aware that monies were stolen – whether the high court should have condoned the late filing of the application for leave to appeal – whether s 48(1)(a) of the Act had been complied with.

31. The National Credit Regulator v Getbucks (Pty) Ltd and The Minister of Trade and Industry
(140/2020)

Appealed from: GP

Date to be heard: 2 March 2021

Petse AP, Zondi JA, Mbatha JA, Gorven AJA, Weiner AJA

National Credit Act 34 of 2005 (the NCA) – validity of initial version of reg 44 of the regulations promulgated under the NCA (initial reg 44) – the first respondent, a credit provider under the NCA, faces prosecution for the alleged contravention of the initial reg 44, which pertained to the administration maximum monthly fee that could be charged by a credit provider – challenge to validity of regulations on the basis of failure to comply with the procedural requirements set out in s 171 of the NCA – whether the regulations were published in terms of s 171 of the NCA.

32. Neville James Chester v Snowy Owl Properties 142 (Pty) Ltd and Erica Ann Lefson (23/2020)

Appealed from: WCC

Date to be heard: 2 March 2021

Ponnan JA, Mocumie JA, Schippers JA, Eksteen AJA, Goosen AJA

Contract – contractual damages – sale agreement – transfer of properties and consequential damages for a delay in transfer pursuant to an agreement of sale concluded between the parties – whether clause 22.1 of the agreement constituted a suspensive condition and not executory obligations – whether the appellant proved fulfilment of the condition in clause 22.1 of the agreement – whether the word ‘signed’ in clause 22.1 required signature of the Undertaking Agreement by the HOA in order for the condition to be fulfilled – whether fulfilment of the condition in clause 22.1 was rendered impossible as a result of the HOA deciding not to sign – whether the condition was solely for the benefit of the appellant and therefore susceptible to waiver by him – whether the appellant proved waiver of the condition in clause 22.1 – whether the conduct of the second respondent resulted in the condition in clause 22.1 being fulfilled by way of fictional fulfilment – whether the appellant was vested with a claim for damages of the kind pleaded and the kind now pursued for the first time on appeal.

33. Impact Financial Consultants CC and Michal Johannes Calitz v Noluntu Nellisa Bam N.O, Yvonne Mokgoro NO, Lorendana Hansen, Natalina Natali, Hendrik Frederik du Plessis, Johannes Jacobus Matthys Coetzee, Jeanrich Hein Ehlers and Robert William Whitfield Jones and Others (856/2019)

Appealed from: GP

Date to be heard: 4 March 2021

Navsa ADP, Makgoka JA, Dlodlo JA, Goosen AJA, Unterhalter AJA

Civil procedure – commercial law – The Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act) – whether the first and/or second respondents’ decisions in dealing with complaints against financial advisors were materially influenced by an error of law – whether the first respondent had any jurisdiction in respect of matters not provided for in the FAIS Act.

34. The Commissioner for the South African Revenue Service v Levi Strauss South Africa (Pty) Ltd

(509/2019)

Appealed from: GP

Date to be heard: 4 March 2021

Wallis JA, Mbha JA, Mokgohloa JA, Eksteen AJA, Rogers AJA

Intellectual property – trademark - tax law – Customs and Excise Act 91 of 1964 – whether the imported goods purchased by the respondent through GSO qualified for the SADC preferential-duty rate to the SADC Trade Protocol – whether the value of the imported goods for customs duty purposes must include royalties payable under the Trademark Agreement – whether the value of the imported goods for customs duty purpose must include the 12% mark-up – fees paid under the Buying Agency Agreement by Levi South Africa in terms of s 67(1)(a)(i) of the Act.

35. Trademore (Pty) Ltd v Minister of Trade and Industry and NWK Agri-Services (Pty) Ltd

(208/2020)

Appealed from: GP

Date to be heard: 5 March 2021

Petse AP, Makgoka JA, Mbatha JA, Kgoele AJA, Eksteen AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – Protection of Businesses Act 99 of 1978 (the Act) s (1)(1) – review – whether the Minister’s decision to grant the second respondent permission to enforce a foreign judgment against the appellant in terms of s 1(1) of the Act was rational and otherwise lawful in terms of PAJA – what a just and equitable remedy would be.

36. The Competition Commission of South Africa v Group Five Construction Limited (195/2020)

Appealed from: GP

Date to be heard: 5 March 2021

Navsa ADP, Zondi JA, Dambuza JA, Rogers AJA, Mabindla-Boqwana AJA

Civil procedure – Competition Act 89 of 1998 (the Competition Act), s 62(2)(a) – review – whether it was competent for the Commission to rely on rule 30 to object to the court a quo’s jurisdiction to hear the respondent’s review application – whether the court a quo had the jurisdiction and more particularly whether the Commission’s alleged unlawful conduct in referring the complaint against Group Five was a matter within the contemplation of s 62(2)(a) of the Competition Act, in which case the court plainly had jurisdiction – whether it was competent for the Commission to raise a defence of *lis alibi pendens* by way of rule 30 – whether the defence of *lis alibi pendens* could be raised by the appellant simply on the basis that the complaint referral was pending before the Tribunal.

37. Massmart Holdings Limited v Commissioner for the South African Revenue Services (84/2020)

Appealed from: Tax court

Date to be heard: 8 March 2021

Ponnan JA, Mbha JA, Zondi JA, Mabindla-Boqwana AJA, Poyo-Dlwati AJA

Tax law – capital gains tax – income tax – Income Tax Act 58 of 1962 – s 135 of the Tax Administration Act 28 of 2011 – whether any issues arose in relation to the tax appeals dealing with the additional assessments raised by the respondent in relation to the appellant’s income tax liability for the 2007 to 2013 years of assessment – whether the appellant correctly claimed capital losses in terms of the Eighth Schedule to the Income Tax Act for the 2013 year of assessment and depending on the outcome of the issue, for the 2007 to 2012 years of assessment – whether an instruction by the appellant to the Massmart Holdings Limited Employee Share Trust (the Trusts) to offer specific share options to specific employees at specified prices constituted the acquisition of a right – whether the appellant incurred any expenditure in the acquisition of the right – whether the appellant’s right to require the Trust to offer specific quantities of share options to specified employees at stipulated strike prices was an ‘asset’ for capital gains tax purposes – whether such right was ‘disposed of’ by the appellant for capital

gains tax purposes when it was extinguished by performance on the part of the Trust – whether the expenditure incurred by the appellant in making good the commercial losses of the Trust in the course of the appellant’s share option scheme was the ‘base cost’ of such right for capital gains tax purposes – whether given that there were no ‘proceeds’, the amount of the ‘base cost’ constituted the appellant’s ‘capital loss’ for capital gains tax purposes.

38. The Member of the Executive Council for Health and Social Development of the Gauteng Provincial Government v Tendai Mashonganyika obo Mthabile Mashonganyika (380/2019)

Appealed from: GJ

Date to be heard: 8 March 2021

Saldulker JA, Nicholls JA, Mbatha JA, Ledwaba AJA, Rogers AJA

Delict - medical negligence – damages – vicarious liability – the respondent was admitted to a State hospital to deliver her baby – foetal distress was detected in the foetus and the decision was taken to deliver by caesarean section (CS) – the hospital’s maternity theatre only became available about 2 hours after the decision had been taken – the baby developed cerebral palsy – whether the appellant could be held liable in delict for omissions by staff of a State hospital, some of which allegedly occurred before the appellant’s duty of care arose – whether inefficient use of resources at a State hospital constituted negligent conduct for the purposes of imposing delictual liability.

39. Deeps Betting Grounds (Pty) Ltd v Desert Palace Hotel Resort (Pty) Ltd and The Northern Cape Gambling Board (142/2020)

Appealed from: NCK

Date to be heard: 9 March 2021

Petse AP, Mocumie JA, Mokgohloa JA, Ledwaba AJA, Carelse AJA

Civil procedure – gambling activities - interdict – the second respondent granted the first respondent, a casino operator, a gambling licence, which specified that the first respondent was only permitted to operate at designated premises – at the time of the application, the second respondent insisted that the premises be a minimum of 5 km from the main roads – the first respondent subsequently learned that another property (the premises in dispute) had been rezoned to accommodate gambling premises – the appellant’s attorney was advised that the second respondent had made the decision not to allow the appellant to operate a gambling

establishment at the premises in dispute – the appellant commenced operating from the premises in dispute although they were within range of two schools contrary to reg 7(c) of the Northern Cape Gambling Regulations – whether the appellant had acted unlawfully by beginning to conduct gambling activities at the premises in dispute.

40. Lakaje, Hluphekile Albertinah NO v The Member of the Executive Council for Health, Bloemfontein (1021/2019)

Appealed from: FB

Date to be heard: 9 March 2021

Wallis JA, Molemela JA, Makgoka JA, Rogers AJA, Unterhalter AJA

Law of Delict – damages – dispute of facts – negligence and causation – whether the appellant proved that Thebe Hospital’s personnel were negligent and if so whether such negligence caused the abnormalities in her child’s brain and type of cerebral palsy – whether the child’s brain injury occurred during the birth process.

41. Anthony Okey Nwafor v The Minister of Home Affairs, The Director-General: Department of Home Affairs and the Department of Home Affairs (1363/2019)

Appealed from: GP

Date to be heard: 9 March 2021

Mbha JA, Zondi JA, Mbatha JA, Gorven AJA, Poyo-Dlwati AJA

Administrative law - constitutional law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – citizenship – the appellant alleged that the second respondent had no delegated powers from the Minister to deprive him of citizenship in terms of s 8 of the South African Citizenship Act 88 of 1995 - whether the court a quo was correct in finding that the delegation point raised by the appellant, entertained as a point of law, was bad in law – whether the court a quo was correct in dismissing the collective citizenship ground – whether it was competent for the court a quo to depart from the order referring the matter to oral evidence.

42. Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd (121/2020)

Appealed from: MM

Date to be heard: 10 March 2021

Navsa ADP, Dambuza JA, Mocumie JA, Kgoele AJA, Goosen AJA

Contract – constitutional law – s 217(1) of the Constitution- administrative law – public procurement – the appellant commenced a tender process for the appointment of a debt collection and management services provider – the respondent was the successful tenderer and it proceeded to conclude an agreement with the appellant – the appellant then alleged that it was unaware that the terms and conditions contained in the agreement were in direct conflict with the information and evidence of the bidding process, s 217 of the Constitution, s 110(2) of the Local Government: Municipal Finance Management Act 56 of 2003 and regs 32 and 51 of the Municipal Supply Chain Management Regulations, 2005 (the applicable law) – the appellant made application for declaratory relief that the agreement was unconstitutional, invalid and void *ab initio*; alternatively, the review and setting aside of its decision to invoke reg 32 in terms of which it had procured the services from the respondent and the resultant agreement be set aside – whether the agreement was in compliance with the applicable law – whether the agreement was invalid, unlawful and void *ab initio*.

43. Timasani (Pty) Ltd (in business rescue) and Werner Cawood v Afrimat Iron Ore (Pty) Ltd

(91/2020)

Appealed from: GP

Date to be heard: 10 March 2021

Wallis JA, Schippers JA, Nicholls JA, Gorven AJA, Unterhalter AJA

Company law – proper interpretation of s 133 of the Companies Act 71 of 2008 – in a sale by public auction the respondent purchased the assets of the first appellant, a company in business rescue – the second appellant arranged for the sale of the assets which was conducted by a company known as Park Village Auctioneers – the respondent sought declaratory relief that s 133 of the Companies Act was not applicable to the present application; and an order that the appellants repay the purchase price – whether a dispute of fact existed and / or should have been foreseen by the respondent – whether the respondent notified the affected parties of the business rescue proceedings of the first appellant – whether there was a non-joinder.

44. Fidelity Security Services (Pty) Limited v The Minister of Police, The Minister of Justice and The Acting National Commissioner of SAPS: Lieutenant General J K Phahlane

(1349/2019)

Appealed from: GP

Date to be heard: 11 March 2021

Petse AP, Molemela JA, Schippers JA, Eksteen AJA, Poyo-Dlwati AJA

Constitutional law – s 21 of the Firearms Control Act 60 of 2000 – ss 22 and 25 of the Constitution – renewal of firearms licenses – whether the SCA should order the third respondent to accept the appellant’s late renewal of applications for firearms whose licenses had expired – whether the appellant had the right, should it not be able to submit an application to renew a firearm license, to submit a new application for such firearm that was previously licensed to it – whether the registrar of firearms had a duty to accept and process such new applications – whether the appellant had the right, to submit applications for temporary authorisations in terms of s 21 of the Firearms Control Act to possess the firearms listed in schedule B pending the processing and decision on applications to renew the firearms licenses or new applications for such licenses – whether the registrar of firearms had a duty to accept and process such applications for temporary authorisations in terms of s 21 of the Firearms Control Act to possess the firearms listed in schedule B – whether an interdict should be granted, preventing the respondents from confiscating the firearms.

45. Millennium Waste Management (Pty) Ltd v Sol Plaatjie Municipality

(99/2019)

Appealed from: NCK

Date to be heard: 11 March 2021

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 and in terms whereof the appellant rendered landfill operational services at the respondent’s landfill sites – whether or not the appellant proved the contract expressly pleaded by it.

46. Tramore Property Group (Pty) Ltd v Vosloorus Square CC

(235/2020)

Appealed from: GP

Date to be heard: 11 March 2021

Mbha JA, Nicholls JA, Mbatha JA, Gorven AJA, Goosen AJA

Contract - property law – transfer of immovable property – enforceability of a sale agreement concluded between the appellant and the respondent for the transfer of ‘municipal land’ – enforcement and enforceability of a land exchange agreement between a local authority and developer where the developer sold its right to a third party – whether the respondent had locus standi to compel performance and where there was no privity of contract between the respondent and the parties to the exchange agreement – whether the respondent was entitled to compel performance by the appellant of its obligations in terms of a sale agreement entered into with the respondent without the respondent first rendering performance of its obligations or tendering performance in terms thereof in accordance with the principle of reciprocity – whether there existed a statutory impediment or a contractual impediment in terms of a sale agreement concluded between the appellant and the respondent to the transfer of land, which was ‘undeveloped’ and without services – whether the appellant had lawfully cancelled the sale agreement.

47. 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: 15 March 2021

Navsa ADP, 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.

48. eThekweni Municipality and Stellenbosch Municipality v Independent Schools

Association of Southern Africa, The National Minister for Co-operative Governance & Traditional Affairs and The National Minister of Finance

(960/2019)

Appealed from: KZD

Date to be heard: 15 March 2021

Mbha JA, Dlodlo JA, Mbatha JA, Ledwaba AJA, Unterhalter AJA

Local government – municipal Law – Local Government Municipal Property Rates Act 6 of 2004 (MPRA) – whether the impugned regulations were promulgated without proper consultation as required in terms of s 84 of the Local Government Municipal Property Rates Act 6 of 2004 – whether the impugned Regulations were published pursuant to a court order – whether the municipality could make rates policies which were at odds with the MPRA and the regulations – whether the appellants made out a case for the unconstitutionality of s 19(1)(b) of the MPRA – whether the court a quo was correct in not reviewing and setting aside the impugned regulations.

49. In the matter between Jacob Gedleyihlekisa Zuma v Democratic Alliance and The President of the Republic of South Africa, The Director-General in the Office of the President of South Africa, The Minister of Justice and Correctional Services, The State Attorney and Jacob Gedleyihlekisa Zuma;

And in the matter between:

Economic Freedom Fighters v State Attorney, Jacob Gedleyihlekisa Zuma, Hulley & Associates Incorporated, The Minister of Justice and Constitutional Development and Director-General: Department of Justice and Constitutional Development, President of the Republic of South Africa and Chief Operations Officer: Presidency of the Republic of South Africa

(1028/2019)

Appealed from: GP

Date to be heard: 16 March 2021

Ponnan JA, Dambuza JA, Makgoka JA, Schippers JA, Gorven AJA

Administrative law – review – civil procedure – whether special leave could be granted to the appellant considering prospects of success and exceptional circumstances – whether it was in the interests of justice for the court to overlook the unreasonable delay by the Democratic Alliance in instituting the review application as contemplated in s 9 of the Promotion of Administrative Justice Act 3 of 2000, as amended – whether it was in the interests of justice for the court to overlook the unreasonable delay by the Democratic Alliance and the Economic Freedom Fighters in instituting their review applications under the principle of legality –

whether s 3 of the State Attorney Act 56 of 1957 and Treasury Regulation 12.2 permitted the decisions for the State to fund Mr Zuma's legal costs in the criminal trial and related litigation – whether the court a quo was justified in ordering costs against Mr Zuma.

50. The Member of the Executive Council for Health, Eastern Cape v Danene Levonia Lottering (obo Alberto Jeffton McDillen Luciano)

(117/2020)

Appealed from: ECB

Date to be heard: 16 March 2021

Mbha JA, Molemela JA, Nicholls JA, Goosen AJA, Poyo-Dlwati AJA

Law of Delict – medical negligence – whether the finding of liability, due to the negligence attributed to the staff of the Midlands Hospital in respect of the labour of the respondent and delivery of a baby who now suffers from cerebral palsy, was misdirected – whether there was bias, or a reasonable perception of bias, of the learned Judge in the court below to the extent that the appellant did not have a fair trial.

51. Engen Petroleum Limited v Rissik Street One Stop CC t/a Rissik Street Engen and Knoesen, Willem Johannes

(209/2020)

Appealed from: LP

Date to be heard: 16 March 2021

Zondi JA, Mocumie JA, Dlodlo JA, Kgoele AJA, Unterhalter AJA

Civil procedure – s 12B of the Petroleum Products Act 120 of 1977 – the court a quo having refused the application to evict the first respondent from the appellant's premises and instead having granted an order to stay the application pending the final conclusion of an arbitration convened in terms of s 12B of the Petroleum Products Act – whether the court a quo's order in the exercise of its discretion ought to be interfered with – whether an eviction order, if granted, would have any bearing on the issues and/or the powers of the arbitrator presiding over the s 12B arbitration especially where the termination of the first respondent's right to occupy does not form part of the terms of reference of the arbitration – equally under the circumstances where the first respondent does not seek re-instatement of the operating lease – whether it was open to the first respondent to unilaterally, post the referral made by the controller of petroleum products, to vary the terms of reference to the arbitration – whether the

first respondent waived the right to challenge the termination of its right to occupy the premises and to claim re-instatement of the operating lease – whether the possible financial ruin of the first respondent following upon the granting of an eviction order is relevant to the question of a stay – whether a case for such alleged ruin had been established by the first respondent – whether the convening of the s 12B arbitration served as an automatic stay of the eviction proceedings.

52. Alfred Jan Bezuidenhout v The State

(41/2020)

Appealed from: Vosloorus Regional Court

Date to be heard: 17 March 2021

Saldulker JA, Mocomie JA, Nicholls JA, Weiner AJA, Mabindla-Boqwana AJA

Criminal law and procedure – appeal against conviction of murder – special leave granted by the SCA - whether the magistrate failed to adequately assist undefended accused – whether the evidence of a single witness was ambiguous, contradictory, untruthful and unreliable.

53. Ferrostaal GmbH and Atlantis Marine Projects (Pty) Ltd v Transnet SOC Ltd t/a Transnet National Ports Authority and Ferromarine Africa (Pty) Ltd (in business rescue) (1194/2019)

Appealed from: WCC

Date to be heard: 17 March 2021

Dambuza JA, Molemela JA, Mbatha JA, Gorven AJA, Goosen AJA

Company law – business rescue – s 153(1)(b)(bb) of the Companies Act 71 of 2008 – the first appellant is the 80 per cent shareholder and loan account creditor of the second respondent who was in business rescue – the second appellant was a minor creditor of the second respondent – the only business and principal asset of the second respondent was the head lease over certain of the first respondent’s property, which it let out through subleases – when the second respondent was placed under business rescue the business rescue practitioner purported to suspend the monthly rental payable by the second respondent to the first respondent – the first respondent challenged this decision by arbitration, nonetheless, the initial business rescue plan proceeded – subsequently, the second respondent concluded a sublease agreement and the business rescue practitioner issued a revised business rescue plan that would take into consideration the additional income – the revised plan was considered at a meeting of creditors

then rejected by the first respondent who held the majority of the creditors voting interests – the appellants made an application to set aside the vote taken against the revised business rescue plan – whether the vote by the first respondent to reject a revised business rescue plan was inappropriate according to ss 153(1) and 153(7) of the Companies Act.

54. Ayanda Irvin Kunene, Kgosi Gustav Lekabe and Hassan Ebrahim Kajee v The Minister of Police (260/2020)

Appealed from: GJ

Date to be heard: 18 March 2021

Dambuza JA, Mocumie JA, Schippers JA, Eksteen AJA, Mabindla-Boqwana AJA

Law of Delict – damages – civil procedure – rules of court – appeal against granting of rescission – the rule of law and principles of legality – whether a State Attorney could settle his client’s case against the written instructions from the client whilst he did not act bona fide and/or in his client’s best interest – whether rescission should have been granted – whether the principle of legality was applicable to an application for rescission of an order/judgment – whether the respondent was entitled to rescission of an order based on a stated case under the circumstances where the State Attorney had authority whether actual or ostensible to bind the respondent – whether a court could rely on evidence extraneous to the issue raised in the application – whether the respondent should have been held bound by the ostensible authority of the second appellant in conceding liability – whether the adverse factual findings made against the second appellant should be upheld and he be ordered to pay the costs *de bonis propriis*.

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

Appealed from: KZP

Date to be heard: 16 February 2021

Wallis JA, Zondi JA, Mocumie JA, Schippers JA, Goosen 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 on both appeals – whether the appellant had failed to establish that ‘Pretty Scene’ was an associated ship within the meaning of ss 3(6) and 3(7) of the Act.

56. Rajivee Soni v The State

(465/2019)

Appealed from: KZP

Date to be heard: 29 March 2021

Navsa ADP, Saldulker JA, Mbha JA, Weiner AJA, Unterhalter AJA

Criminal law and procedure – appeal against convictions and sentences – whether common purpose between the appellant, Brian Treasurer, Sabelo Dlamini and Wiseman Nxumalo was proved beyond reasonable doubt – whether the evidence of Sugen Naidoo can be relied upon to prove a common purpose different to the one testified to by Sabelo Dlamini – whether the evidence of Naidoo was reliable – the trial judge’s failure to apply the cautionary rule to the evidence of Naidoo – whether the trial court misdirected itself in convicting the appellant on the incomplete evidence of Professor Sithebe – whether the sentence imposed was appropriate in light of substantial and compelling circumstances found to exist.