

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 3 OF 2021

CASES ENROLLED FOR HEARING: 15 AUGUST – 30 SEPTEMBER 2021

1. Joy Elizabeth Leworthy v The Ad hoc Central Authority for the Republic of South Africa (as delegated in terms of section 277 of Act 38 of 2005) and timothy Christopher Leworthy and The Minister of Police and The Station Commander: Goodwood Police Station.

(1143/2021)

Appealed from WCC

Date to be heard: 26 July 2021

Saldulker JA, Mocumie JA, Plasket JA, Gorven JA, Carelse JA

Family Law - Hague Convention on the Civil Aspects of International Child Abduction (1980) - International Abduction Act 72 of 1996 – whether the court a quo erred by failing to properly consider Article 12 and 13(b) of The Hague Convention – whether it is in the best interest of the minor children to be returned to Thailand.

2. Bassani Mining (Pty) Ltd v Sebosat (Pty) Ltd, Mashala Resources (Pty) Ltd, Herman Kurt and Anderson Andrea Avril

(835/2020)

Appealed from: GJ

Date to be heard: 16 August 2021

Navsa JA, Mathopo JA, Molemela JA, Plasket JA, Mothle JA

Civil procedure – common law remedy – anti-dissipation interdict – whether it was a requirement for an anti-dissipation interdict for an applicant to prove that the dispositions were made with the intention of thwarting an applicant’s pending damages claim or whether there were exceptional circumstances where a lesser threshold requirement applied – whether the appellant satisfied the requirements of an interim anti-dissipation interdict – whether this Court should develop the requirements for an anti-dissipation interdict – whether the appellant’s application was limited solely to coal mined by the appellant.

3. The MEC for Health and Social Development, Gauteng Province v Maria Makua obo

Ofentse Makua

(697/2020)

Appealed from: GP

Date to be heard: 16 August 2021

Wallis JA, Mbha JA, Mbatha JA, Gorven JA, Hughes JA

Law of Delict – medical negligence – damages – the appellant appeals the liability finding by the court a quo in respect of a minor born with brain damage who now suffers from cerebral palsy – whether medical negligence liability existed and there were conflicting views by the respective experts on the effect of placental histology on the outcome of the minor.

4. Jason Thomas Rohde v The State

(815/2019)

Appealed from: WCC

Date to be heard: 16 August 2021

Saldulker JA, Van der Merwe JA, Mocumie JA, Mokgohloa JA, Potterill AJA

Criminal Law – conviction and sentence – evidence of a single witness – whether the evidence of the single witness was correctly accepted by the trial court – whether the evidence of the appellant was correctly regarded by the trial court as not reasonably possibly true – whether the State succeeded in establishing the guilt of the appellant beyond reasonable doubt – whether the trial court’s decision not to allow a psychiatrist called by the defence to complete her evidence-in-chief, resulted in an unfair trial in terms of s 35(3)(i) of the Constitution, alternatively – whether it constituted a fatal irregularity – whether the trial court misdirected itself in imposing the sentences and whether the sentences imposed were shockingly inappropriate.

5. Director of Public Prosecutions v Johannes Mokati

(440/2019)

Appealed from FB

Date to be heard: 16 August 2021

Makgoka JA, Mabindla-Boqwana JA, Kgoele AJA, Phatshoane AJA, Unterhalter AJA

Criminal law and procedure – conviction and sentence – murder – rape – causation – expert evidence – mens rea – dolus eventualis – sentencing – whether the trial court correctly found that there was no causal link between the rape and/or aggravated robbery and the death of the deceased – whether the trial court correctly evaluated the testimony of the expert

witnesses relied upon by the State – whether the principles of *dolus eventualis* were correctly applied in respect of culpable homicide – whether the sentence on the rape charge was shockingly inappropriate.

6. Mluleki Martin Chithi, Ernest Sandile Cele and Sinama and Associates Inc (and in re Luhlwini Mchunu Community as Claimant) v Lawrence Hancock, Peter Goble, Buckstone CC, Michael Roberts, Halliwell Property Trust, Arthur James Arathoon, Amanda Jane Campbell, John Norman Campbell, Willem Jan Schortemeijer, Beth Susan Shaw and Others

(423/2020)

Appealed from: LCC

Date to be heard: 17 August 2021

Petse DP, Molemela JA, Carelse JA, Mothle JA, Molefe AJA

Land – civil procedure – costs order – repayment of legal fees already paid – whether the land claims court was entitled to disallow the appellants’ legal fees in full for the entire matter – whether the land claims court was correct in ordering that the appellants repay the fees already paid by the relevant entity which funded the litigation in relation to the matter on behalf of the State.

7. The Commissioner for the South African Revenue Service v Spur Group (Pty) Ltd (320/2020)

Appealed from: WCC

Date to be heard: 17 August 2021

Navsa JA, Mbha JA, Mathopo JA, Gorven JA, Kgoele AJA

Tax Law – Tax Administration Act 28 of 2011 (the Act) – income tax – whether the respondent was entitled, for income tax purposes, to deduct the sum of R48 471 714 over its 2005 to 2012 years of assessment – whether in terms of tax administration, there was limitation of a right to re-open assessments in terms of s 91 of the Act – whether the amount deducted by the respondent was qualified as expenditure in the production of income for purposes of s 11(a) of the Income Tax Act 58 of 1962.

8. LA Group (Pty) Ltd v Stable Brands (Pty) Ltd and The Registrar of Trade Marks (650/2020)

Appealed from: GP

Date to be heard: 17 August 2021

Ponnan JA, Makgoka JA, Schippers JA, Plasket JA, Phatshoane AJA

Intellectual property law – trade mark – appeal is against the judgment and most of the orders made by the court a quo in terms of which it directed the removal from the register of trademarks of 46 trade mark registrations belonging to the appellant – whether the appellant’s POLO trade mark registrations were liable to be removed from the register of trade marks in terms of s 24 read with ss 10(2)(a), (b) and (c), s 10(13) and ss 27(1)(a) and (b) of the Trade Marks Act 194 of 1993 (TMA) – interpretation of the relevant provisions of the TMA in accordance with s 39(2) of the Constitution.

9. Rapholo Edwin Manyaka v The State

(434/2020)

Appealed from: GP

Date to be heard: 18 August 2021

Mocumie JA, Schippers JA, Carelse JA, Mabindla-Boqwana JA, Phatshoane AJA

Criminal law and procedure – sentence – whether the sentence imposed upon the appellant should be wholly suspended.

10. Somali Association of South Africa, AB, CD, EF, GH, IJ, KL, MN and OP v Refugee Appeal Board, Chairperson: Refugee Appeal Board, Minister of Home Affairs, Director General of the Department of Home Affairs, The Tshwane Interim Refugee Reception Office, The Pretoria Refugee Reception Office and The Standing Committee for Refugee Affairs

(585/2020)

Appealed from: GP

Date to be heard: 19 August 2021

Navsa JA, Van der Merwe JA, Molemela JA, Mbatha JA, Hughes JA

Administrative law – refugee law – whether the appellants had established grounds on which to review and set aside the Refugee Appeal Board’s decisions – whether it was just and equitable to grant substitution of the Refugee Appeal Board’s decisions – whether it was just and equitable to grant further remedies to address the systemic problems demonstrated in this application – whether the Refugee Appeal Board misinterpreted and misapplied ss 3(a) and 3(b) tests for refugee status under the Refugees Act 130 of 1998 – whether the Refugee Appeal Board’s decisions were procedurally unfair.

11. UPS SCS South Africa (Pty) Ltd v Hendrik Cornelis van Wyk t/a Skydive Mossel Bay (421/2020 and 422/2020)

Appealed from: WCC

Date to be heard: 19 August 2021

Ponnan JA, Wallis JA, Saldulker JA, Mokgohloa JA, Mabindla-Boqwana JA

Contract – delict – cause of action – quantum – whether the respondent proved its claim that the appellant did not comply with the provisions of the Consumer Protection Act 68 of 2008 – whether the respondent proved its quantum – whether a sustainable cause of action was pleaded – whether the claim was contractual or delictual – whether the merits of the claim were proved – whether the clauses in a written contract were to be severed.

12. Multichoice Support Services (Pty) Ltd v Calvin Electronics t/a Batavia Trading and Mudumela Calvin Thitovhelwi (296/2020 and 226/2021)

Appealed from: LP

Date to be heard: 19 August 2021

Mbha JA, Schippers JA, Potterill AJA, Phatshoane AJA, Molefe AJA

Civil procedure - interpretation – ss 18(1) and 18(3) of the Superior Courts Act 10 of 2013 – whether the court a quo correctly applied the test for ‘exceptional circumstances’ as contemplated in section 18 of the Superior Courts Act so as to put its order into operation pending the appeal process.

13. Pride Milling Company (Pty) Ltd v Marthinus Jacobus Bekker N O and Edward Gnanapargarsum Sebastian N O 393/2020

Appealed from: GP

Date to be heard: 20 August 2021

Petse DP, Ponnan JA, Wallis JA, Mokgohloa JA, Carelse JA

Company Law – Companies Act 61 of 1973 (the Act) – liquidation – procedure – whether s 341(2) of the Act authorises a court to validate dispositions of a company’s property after the date on which a winding-up order was issued – whether the authority to do so was limited to a period after the application was issued, but before an actual order was granted – whether there were any factors that should be considered and what the weight should be to attach to the

individual factors when a court was asked to validate payments made after the effective date of a company's winding-up.

14. Canton Trading 17 (Pty) Ltd t/a Cube Architects v Fanti Bekker Hattingh N O (479/2020)

Appealed from: FB

Date to be heard: 20 August 2021

Salduker JA, Mathopo JA, Mocumie JA, Phatshoane AJA, Unterhalter AJA

Civil procedure – administrative law – ultra vires – contract – contractual cause of action
 – whether the court a quo entered the arena of conflict between the parties, in that it granted relief not sought by any of the parties and as such acted ultra vires – whether the court a quo was vested with discretion either to refer the question of the existence of an arbitration agreement or otherwise to be adjudicated by an arbitrator or to adjudicate such question itself in light of rule 6(5)(g) of the Uniform Rules of Court – whether the court a quo ignored and/or violated trite legal principles applicable to the adjudication of motion proceedings – whether the court a quo erroneously applied a reverse onus of proof when a contractual cause of action was relied upon.

15. Casper Jacobus Lotter N O, Jacobus Andreas du Plessis N O, Johannes Cornelius Heunis N O v The Minister of Water and Sanitation, The Minister of Water and Environmental Affairs, The Director General: Department of Water and Sanitation, 2. South African Association for Water User Associations, Eagle's Nest Investment 3 CC, Thusano Empowerment Farm (Pty) Ltd v The Minister of Water and Sanitation, The Director General: Department of Water and Sanitation, Sifiso Mkhize N O, Deputy Director-General Water Sector Regulation, Department of Water and Sanitation, Deputy Director-General: Special Project, Department of Water and Sanitation, 3. Francois Gerhardus Johannes Wiid, Torqhoff Boerdery (Pty) Ltd, Francois Gerhardus Johannes Wiid N O, Reinette Jeppe Wiid N O, Carel Jacobus van Pletzen N O v The Minister of Water and Sanitation, The Minister of Environmental Affairs, The Director General: Department of Water and Sanitation, Gabriel Petrus Viljoen N O, Anton Andre Strydom N O, Anton Stephanus Viljoen N O (725/2020)

Appealed from: GP

Date to be heard: 20 August 2021

Makgoka JA, Plasket JA, Gorven JA, Hughes JA, Kgoele AJA

Environmental law – interpretation – s 25 of the National Water Act 36 of 1998 – whether the court a quo erred in its interpretation of s 25 of the National Water Act 36 of 1998 (NWA) – whether s 25 of the NWA allowed for an authorised water user to temporarily transfer his/her water use entitlement to a third party – whether in the event that a water use entitlement could be transferred to a third party, such transfer may be effected by means of a sale agreement – whether an authorised water user could permanently surrender his/her water use entitlement to a third party for the purpose of facilitating the third party’s application for a licence in terms of s 25(2) of the NWA.

16. Minister of Police v Mphale Albert Khoeli

(241/2020)

Appealed from: FB

Date to be heard: 23 August 2021

Petse DP, Mathopo JA, Mbatha JA, Carelse JA, Mothle JA

Criminal procedure – search and seizure – Criminal Procedure Act 51 of 1977 – section 32 – Animal Diseases Act 35 of 1984 – whether the decision to forfeit to the State, in terms of s 32 of the Criminal Procedure Act and subsequent sale of the cattle was irregular and unlawful – whether the fact that the Animal Diseases Act was repealed on 30 July 2002 by the Animal Health Act 7 of 2002 rendered the conclusion reached by the court a quo correct.

17. Federation Internationale De Football Association v Kgopotso Leslie Sedibe and South African Football Association.

(303/2020)

Appealed from: GP

Date to be heard: 23 August 2021

Navsa JA, Mbha JA, Mocomie JA, Gorven JA, Mabindla-Boqwana JA

Civil procedure – review application – whether the ex parte order was erroneously granted on the mistaken assumption that it was possible to grant an order attaching assets to find jurisdiction against a foreign defendant in a review application of a decision taken by that defendant outside South Africa – whether the ex parte order was valid – whether the ex parte order ought not to have been granted – whether the court a quo ought to have set aside the ex parte order on the application of FIFA.

18. The National Prosecuting Authority v PSA obo Meintjies and 55 others, The Minister of Justice and Correctional Services, Director-General; Department of Justice and Constitutional Development, Minister of Public Service and Administration, Minister of Finance and Government Employees Pensions Fund

And

The Minister of Justice and Correctional Services and Director-General; Department of Justice and Constitutional Development v PSA obo Meintjies and 55 others, Minister of Public Service and Administration, National Prosecuting Authority, Minister of Finance and Government Employees Pensions Fund

(353/2020 and 354/2020)

Appealed from: GP

Date to be heard: 23 August 2021

Saldulker JA, Van der Merwe JA, Molemela JA, Mokgohloa JA, Hughes JA

Civil procedure – National Prosecuting Authority Act 32 of 1998 (the Act) – Uniform Rules of Court – whether the court a quo erred in assuming jurisdiction over the first respondents' application – whether the court a quo erred in granting the first respondents relief, on the basis that the first respondents were prosecutors in terms of s 16 of the Act – whether the orders by the court a quo were vague and not implementable.

19. Michael Raju Padayachee v The State

(679/2020)

Appealed from: KZP

Date to be heard: 24 August 2021

Petse DP, Mathopo JA, Mocumie JA, Makgoka JA, Molefe AJA

Criminal law and procedure – conviction and sentence – special leave granted by the SCA – reasonable prospects of success on appeal – whether the appellant's explanation for delay satisfied the requirements for condonation – whether the appellant had reasonable prospects of success on appeal against his convictions and sentences.

20. Sunnidhew Sookai Jugwanth v Mobile Telephone Networks (Pty) Ltd

(529/2020)

Appealed from: GJ

Date to be heard: 24 August 2021

Navsa JA, Gorven JA, Hughes JA, Kgoele AJA, Phatshoane AJA

Civil procedure – Section 11 of the Prescription Act 68 of 1969 – exception – whether a prescription defence raised by way of exception was, for that reason alone, bad – whether a potential defence of prescription was to be addressed when the contractual claim for payment for services rendered was pleaded – whether the question of prescription for pleading to disclose a cause of action and avoid an exemption being held should be addressed when it was clear from the summons that the debt arose 3 years before the date on which the summons was signed.

21. South African National Roads Agency SOC Ltd v Fountain Civil Engineering (Pty) Ltd and Lombard Insurance Company Ltd
(395/2020)

Appealed from: GP

Date to be heard: 24 August 2021

Ponnan JA, Schippers JA, Mokgohloa JA, Mothle JA, Mabindla- Boqwana JA

Contract – interdicts – right to specific performance – whether the contractor was entitled (on the basis of an alleged right to specific performance to interdict the employer from making demand on a performance guarantee before the employer had established an entitlement to payment in terms of the underlying construction contract) pending ‘confirmation’ of the employer’s right to make such claim in the dispute resolution proceedings – whether the contract contained such a right – whether the relief sought by the appellant was interim or final in effect – whether the contractor satisfied the requirements of an interim or final interdict.

22. Lungisa Grifhs v The State
(433/2020)

Appealed from: ECM

Date to be heard: 24 August 2021

Van der Merwe JA, Molemela JA, Mbatha JA, Carelse JA, Potterill AJA

Criminal law and procedure – s 208 of the Criminal Procedure Act 51 of 1977 – evidence of a single witness – identification – whether the evidence of a single witness provided a sufficient basis to sustain a conviction of murder – whether the cautionary rule was correctly applied – whether the identification of the appellant was correct.

23. Christiaan Brits v The Minister of Police and Colonel James Espach
(759/2020)

Appealed from: LP

Date to be heard: 25 August 2021

Petse DP, Mathopo JA, Mocumie JA, Molemela JA, Mothle JA

Criminal law and procedure – Schedule 1 – delict – lawfulness of arrest and detention – whether the Limpopo Division of the High Court, Polokwane (the high court) was correct that the arresting officer had a reasonable suspicion that the appellant had committed an offence in terms of Schedule 1 of the Criminal Procedure Act 51 of 1977 – whether the high court was correct in finding that it was known to the appellant that the content of the bag brought onto the business premises of the appellant was stolen property – whether the high court was correct in finding that the appellant was in possession of or in control of the suspected stolen property – whether the high court was correct in finding that the respondent proved the lawfulness of the appellant’s arrest and detention – whether the court of appeal erred in dismissing the appellant’s appeal.

24. Solidarity obo Members v The Minister of Small Business Development, The Minister of Trade & Industry, The Minister of Tourism, The Office of the Presidency, The Director-General of the Department of Small Business Development, The Director-General of the Department of Trade & Industry and the Director-General of the Department of Tourism

(498/2020)

Appealed from: GP

Date to be heard: 25 August 2021

Wallis JA, Schippers JA, Plasket JA, Potterill AJA, Phatshoane JA

Administrative law – review – appeal against the court a quo’s decision to dismiss the appellant’s application to review and set aside all and/or any race-based criteria used by the Minister of Tourism in considering whether to award financial assistance in terms of the Tourism Relief Fund for SMMEs as being irrational, arbitrary and/or unreasonable – whether the conduct of the Minister amounted to administrative action for the purposes of a review under the Promotion of Administrative Justice Act 3 of 2000 – whether limited to an assessment of rationality – whether the Minister was lawfully empowered by the Disaster Management Act 57 of 2002 to make relief funding subject to the Tourism Code’s BBEEE provisions – whether the status or nature of the Tourism Relief Fund amounted to an ‘awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment’ – whether the Minister was obliged to apply the Tourism Code in the provision

of the relief funding – whether the conduct of the Minister passed constitutional muster under a s 9(2) enquiry, with particular emphasis on ‘fair’ discrimination.

AND

25. Afriforum NPC v The Minister of Tourism, Department of Tourism and Director- General of the Department of Tourism (499/2020)

Appealed from: GP

Date to be heard: 25 August 2021

Wallis JA, Schippers JA, Plasket JA, Potterill AJA, Phatshoane JA

Civil Procedure – Disaster Management Act 57 of 2002 (the Act) – Broad-Based Black Economic Empowerment level (B-BBEE) – review – whether the Tourism Department could enact a large relief fund without a formal publication in the Government Gazette – whether Afriforum should be granted leave to appeal – whether an appeal would have any practical effect – whether the fund’s use of the Tourism Code and B-BBEE levels was required by statute – whether using the Tourism Code and B-BBEE levels to give tailored remedial preference was a rational exercise of policy and a lawful remedial measure.

26. The Trustees for the time being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd and Pam Golding Property Management Services (Pty) Ltd (304/2020)

Appealed from: WCC

Date to be heard: 26 August 2021

Petse DP, Mbha JA, Makgoka JA, Potterill AJA, Phatshoane AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – property – whether the appellant’s exercise of its powers in resolving to prohibit the first respondent from operating at the scheme in terms of rule 37.3 of its rules amounted to an administrative action for purposes of PAJA – whether the resolution taken amounted to the exercise of a public power or the performance of a public function – whether the court a quo was correct in reviewing and setting aside the resolution by the appellant – if PAJA applied, whether the resolution of the appellant was subject to judicial review in terms of common law – if common law did not apply, whether it was appropriately developed by the court a quo having regards to ss 22 and 33 of the Constitution.

27. Traxys Africa Holdings Limited (formerly Metmar Limited) (Pty) and Traxys Africa Trading Limited (formerly Metmar (Pty) Limited) v Westbrook Resources Limited (509/2020)

Appealed from: GJ

Date to be heard: 26 August 2021

Ponnan JA, Van der Merwe JA, Mokgohloa JA, Plasket JA, Molefe AJA

Contract law – interpretation of terms and conditions of the contract – whether the terms and conditions of the partly written and partly oral purchase agreement concluded between the parties provided for the following obligations: (a) whether the appellants were obliged to commission the equipment sold by it to the respondent in Croatia; (b) whether the respondent and/or de Beer (the third party that commissioned the jigs on behalf of the appellants) attended to the commissioning of the equipment at their own cost and risk without any assistance from or involvement of the appellants and; (c) whether the respondent and/or de Beer commissioned the equipment on site at their own cost and risk without any assistance from or involvement of the appellants.

28. Santam Limited a division of which is Hospitality and Leisure Insurance v Ma-Afrika Hotels (Pty) Ltd and The Stellenbosch Kitchen (Pty) Ltd (255/2021)

Appealed from: WCC

Date to be heard: 27 August 2021

Navsa JA, Mbha JA, Makgoka JA, Gorven JA, Mabindla-Boqwana JA

Contract – insurance policies – insurance policies relevant to the business interruption losses suffered in consequence of the Covid-19 pandemic and the government response to it – whether the applicable indemnity period was 18 months (as the court a quo found) or three months as the appellant contended.

29. Augustinus Petrus Maria Kouwenhoven v The Minister of Police, The Director of Public Prosecutions (Western Cape), The Minister of Justice and Correctional Services, The Magistrate: Pretoria, The Additional Magistrate: Cape Town (888/2020)

Appealed from: WCC

Date to be heard: 27 August 2021

Ponnan JA, Wallis JA, Schippers JA, Hughes JA, Kgoele AJA

Extradition Act 67 of 1962 – ss 8(1) and 5(1)(a) – constitutional validity of warrant of arrest – whether the appellant’s warrant of arrest and his arrest were constitutional – whether the appellant was given a legally enforceable undertaking that he will not be arrested – whether public officials acted lawfully in breaching the undertakings given to the appellant – whether a junior police officer may act as a commissioner of oaths for a superior police officer in the same office – whether the Pretoria Magistrate rubber-stamped and failed to apply her mind to the application for the arrest of the appellant – whether the Magistrate’s non-compliance with section 8(1) of the Extradition Act was material – the consequences of a finding that the arrest was invalid – the validity of a notification issued by the Minister under section 5(1)(a) of the Extradition Act.

AND

Augustinus Petrus Maria Kouwenhoven v Director of Public Prosecutions, Western Cape AND in the review application between: Augustinus Petrus Maria Kouwenhoven v Director of Public Prosecutions, Western Cape, The State, The Minister of Justice and Correctional Services, and The Additional Magistrate Magistrates’ Court for the District Court of Cape Town

(288/2021)

Appealed from: WCC

Date to be heard: 27 August 2021

Ponnan JA, Wallis JA, Schippers JA, Hughes JA, Kgoele AJ

Criminal law and procedure – extradition – whether s 310 of the Criminal Procedure Act 51 of 1977 applied to an extradition discharge – whether the appellant was liable to be extradited in terms of s 3(1) of the Extradition Act 62 of 1962 in circumstances where he was convicted of offences which were not committed within the territory of the requesting state – whether the DPP was entitled to appeal at all against the magistrate’s judgment in terms of s 310 of the CPA – whether the prosecution of the appeal was procedurally fair – whether the Extradition Act permitted extradition for offences committed outside the territory of the requesting state.

30. Parte: National Director of Public Prosecutions

(669/2020)

Appealed from: MMB

Date to be heard: 27 August 2021

Saldulker JA, Plasket JA, Mbatha JA, Molefe AJA, Unterhalter AJA

Prevention of Organised Crime Act 121 of 1998 – ss 26 and 38 – Uniform Rules of Court – seizure order - preservation order of property – urgency – whether the appellant must prove urgency when applying for a seizure order, failing which the application must be enrolled on the unopposed roll – whether, when exercising her right to seek a seizure order on an *ex parte* basis, the NDDP was entitled to require that the application be heard and determined by a judge as soon as reasonably possible and on an urgent basis after such application had been filed – whether the appellant established urgency in her preservation application papers – whether the court a quo erred in striking the matter from the roll and in not granting the preservation order.

31. Mukuru Africa (Pty) Ltd v The Commissioner for the South African Revenue Service 520/2020

Appealed from: Tax Court

Date to be heard: 30 August 2021

Ponnan JA, Mbha JA, Mathopo JA, Makgoka JA, Hughes JA

Tax law - interpretation – s 17(1)(iii) of the Value Added Tax Act 89 of 1991 (Act) – whether the court a quo erred in finding that the standard-turn base meted out was the only ratio applicable and that the Act expressly precluded the South African Revenue Services (SARS) from issuing a ruling that had effect from a date before 1 March 2016 – whether SARS was precluded by proviso (iii) to s 17(1) of the Act from granting approval for the use of the transaction count base method of apportionment for the period 1 March 2014 to 29 February 2016, having regard to the apportionment ratio determined by SARS in the Binding General Ruling 16 issued 25 March 2015 and updated on 30 March 2015.

32. Vukani Gaming Free State (Pty) Ltd v Mr D Pillay, the Chairperson: Free State Gambling, Liquor & Tourism Authority, Mr KA Dichabe, The Chief Executive Officer: Free State Gambling, Liquor & Tourism Authority, The Free State Gambling, Liquor & Tourism Authority, Restivox (Pty) Ltd, The Member of the Executive Council for the Department of Economic, Small Business Development, Tourism & Environmental Affairs: Free State Province, The Entities Listed in Annexure ‘A’ to the Notice of Motion (Sixth to 103rd Respondents)

(577/2020)

Appealed from: FB

Date to be heard: 30 August 2021

Wallis JA, Saldulker JA, Mbatha JA, Mabindla-Boqwana JA, Unterhalter AJA

Administrative law – review – appeal against the decision of the court a quo which dismissed with costs an application by the appellant for the review and setting aside of a decision taken by the Free State Gambling, Liquor & Tourism Authority (the Authority), to grant a limited gambling machine operator licence in the Free State Province to the fourth respondent – whether the report of Gobodo Forensic Investigative Accounting (Pty) Ltd which was included by the Authority in the rule 53 record was a genuine document, or was instead altered and backdated – whether the version of the report produced by Gobodo, which was considered by the Authority at its board meeting of 31 May 2017 when it decided to grant a limited gambling machine route operator licence to Restivox (Pty) Ltd, was the final version – whether the Authority’s decision to grant the licence was vitiated by bias and/or bad faith, or whether there was a reasonable perception that the Authority was biased in favour of Restivox – whether the Authority’s board members failed to apply their minds properly, and to consider all relevant issues, prior to making the impugned decision – whether the impugned decision was unreasonable – whether reasons were furnished, and whether or not the presumption in s 5(3) of the Promotion of Administrative Justice Act 3 of 2000 applied – whether, in the event of the appeal being upheld, the court should substitute its own decision for that of the Authority, in the light of the Authority’s alleged bad faith and delay – whether there should have been a punitive costs order against the appellant.

33. The Clicks Group Ltd, New Clicks South Africa (Pty) Ltd, Unicorn Pharmaceuticals (Pty) Ltd, Clicks Investments (Pty) Ltd and Clicks Retailers (Pty) Ltd v The Independent Community Pharmacy Association, The Minister of Health, The Chairperson of the Section 22(11) Appeal Committee and The Director-General of the Department of Health (644/2020)

Appealed from: WCC

Date to be heard: 31 August 2021

Petse DP, Mathopo JA, Makgoka JA, Plasket JA, Kgoele AJA

Administrative law – review – appeal against the court a quo’s decision reviewing and setting aside the decisions of the Director-General of the Department of Health and the Appeal Committee, which dismissed an application by the first respondent to revoke the retail and

manufacturing licences held by the appellants – whether the Director-General had the power to revoke the licences – whether the appellants contravened regulation 6(d) of the Ownership and Licencing of Pharmacies Regulations promulgated under s 22A of the Pharmacy Act 53 of 1974 – whether the Pharmacy Act jeopardised the rights of patients by allowing a conflict of interest between financial considerations and healthcare, and was thus inconsistent with the Constitution.

34. Lonwabo Hlakanyane v Ziyanda Hlakanyane

(775/2020)

Appealed from: ECB

Date to be heard: 31 August 2021

Mbha JA, Mocumie JA, Schippers JA, Gorven JA, Hughes JA

Civil procedure - interpretation – s 18(a) of the Matrimonial Property Act 88 of 1984 – whether money received or acquired as a result of compensation for damages suffered as a result of a motor vehicle accident (non-patrimonial loss) before she got married to the appellant, formed part of the joint estate – whether monies for non-pecuniary loss by one of the spouses was excluded in terms of s 18(a) of the Act.

35. The owners and underwriters of the MV ‘MSC Susanna’ and the Demise Charterers of the MV ‘MSC Susanna’ v Transnet (SOC) Ltd-The National Ports Authority of South Africa and the Ministère Des Armées and SAUDI Basic Industries Corporation (SABIC) **(1039/2020)**

Appealed from: KZP

Date to be heard: 1 September 2021

Navsa JA, Wallis JA, Schippers JA, Mbatha JA, Gorven JA

Maritime Law – Merchant Shipping Act 57 of 1951 (the Act) – interpretation – an appeal on the proper interpretation of s 261 of the Act (the limitation provisions) read with s 3(6) of the same Act which provided for the exclusion of foreign naval vessels from the ambit of the Act – whether the Owners and Demise Charterers of a merchant ship may, in circumstances where a merchant ship caused damage to a ship belonging to a defence force as contemplated in s 3(6) of the Act, could seek a limitation of liability in terms of s 261 of the Act in respect of the claim of that defence force.

36. The Magistrates Commission, Zola Mbalo N O (Chairperson of the Appointments

Committee of the Magistrates Commission), The Minister of Justice and Correctional Services and Cornelius Mokgobo NO (Acting Chief Magistrate: Bloemfontein Cluster ‘A’) v Richard John Lawrence [The Helen Suzman Foundation as amicus curiae] (388/2020)

Appealed from: FB

Date to be heard: 1 September 2021

Ponnan JA, Saldulker JA, Van der Merwe JA, Molemela JA, Potterill AJA

Administrative law – review – constitutional law – unfair discrimination – appeal against the court a quo’s judgment declaring the shortlisting proceedings chaired by the Chairperson of the Appointments Committee of the Magistrates Commission for the vacancies of magistrates for the Free State relating to the districts of Bloemfontein, Botshabelo and Petrusburg unlawful and unconstitutional; and reviewing and setting aside the shortlisting process, and the recommendations of the Appointments Committee and the appointments made by the Minister of Justice of magistrates for the districts of Bloemfontein, Botshabelo and Petrusburg – point in limine: whether there had been material non-joinder – whether the Appointments Committee, which sat for the Bloemfontein shortlisting process was quorate having regard to s 5(4) read with s 6(7) of the Magistrates’ Courts Act 32 of 1944 – whether the Appointments Committee in its shortlisting process complied with and correctly applied the framework for the appointment of magistrates as set out in s 174(2) of the Constitution, read with regulation 5 of the Regulations for Judicial Officers in Lower Courts, 1994 and the Magistrates Commission Procedure of Appointments Committee for shortlisting, giving rise to a reviewable irregularity under the Promotion of Administrative Justice Act 3 of 2000 – constitutionality of the Magistrates Commission’s decision to disregard applications by white candidates for appointment as permanent magistrates in Bloemfontein, Botshabelo and Petrusburg.

37. Dr Hubert Adendorff N O (in his capacity as the executor of the estate of Elizabeth Susara Adendorff) and Dr Hubert Adendorff v Daniel Phentula Khubheka and The Director-General for the Department of Rural Development and Land Affairs (463/2020)

Appealed from: LCC

Date to be heard: 2 September 2021

Petse DP, Mbha JA, Carelse JA, Phatshoane AJA, Molefe AJA

Land – labour tenancy – whether the first respondent was a labour tenant as defined in s 1 of the Land Reform (Labour Tenants) Act 3 of 1996 – whether a legitimate s 16 application had been lodged by the first respondent – whether land use by the first respondent and his family as at 2 June 1995 including two grazing camps ought to have been awarded – whether just and equitable compensation ought to have been paid to the appellants in lieu of the land awarded to the first respondent in terms of ss 22 and 23 of the Land Reform (Labour Tenants) Act.

38. The Ombud for Financial Services Providers v CS Brokers CC, Emile Storm, His Lordship Retired Mr Justice of Appeal, LTC Harms N O, Z Mabhoza N O, G Madlanga N O and J B Wallace

(781/2020)

Appealed from: GP

Date to be heard: 2 September 2021

Ponnan JA, Mathopo JA, Molemela JA, Mbatha JA, Gorven JA

Law of Evidence – Financial Advisory and Intermediary Services Act 37 of 2002 (the Act) – procedure – whether the appellant was entitled to decline to admit expert evidence on the nature of the impugned investment scheme – whether the appellant was entitled to exercise her discretion, on reasonable grounds, declining to refer the matter to court or to hold a trial-type hearing – whether the appellant’s decision to follow a procedure which entailed considering and determining the complaints on written evidence and written material because of considerations of expedition, economy and efficiency, accorded with s 27 of the Act read with s 34 of the Constitution – whether the court was the only competent forum for determining complaints where expert evidence concerning the nature of the impugned investment scheme was sought to be admitted – whether the court a quo was obliged to follow precedent of that court’s earlier decision on the nature of the Ombud’s discretion and this Court’s decision and findings on the unlawfulness of the impugned investment scheme.

39. Mapatle Kgatla v Masedi Ronny Mashala

(382/2020)

Appealed from: LP

Date to be heard: 2 September 2021

Mocumie JA, Mokgohloa JA, Mothle JA, Mabindla-Boqwana JA, Unterhalter AJA

Civil procedure – interdict – appeal against granting of interdict by the Limpopo Division of the High Court (high court) – the high court set aside the decision of the magistrate wherein

the application for an interdict was dismissed on points in limine – the appellant was interdicted from inter alia erecting a fence around or entering stand number 195 at Ga-Molai, Senopelwa Village, District of Letaba – validity of permission to occupy issued in 2002 to the respondent – locus standi of the respondent to bring application for interdict against the appellant.

40. Auditor-General of South Africa v Member of the Executive Council for Economic Opportunities: Western Cape and The National Treasury (671/2020)

Appealed from: WCC

Date to be heard: 3 September 2021

Navsa JA, Saldulker JA, Van der Merwe JA, Molemela JA, Mothle JA

Administrative law – review – appeal against the court a quo’s order which reviewed and set aside audit reports, on the basis inter alia, that the accounting standard that was relied upon by the Auditor-General when conducting the audits (Modified Cash Standard) was not legally binding as it was not prescribed by regulation or issued as an instruction in terms of s 76 of the Public Finance Management Act 1 of 1999 – whether the audit reports found that payments that were made by the first respondent (the Department) to two entities were wrongly classified as transfers in the Department’s annual financial statements, when instead they should have been classified as payments for goods and services – whether the Auditor-General’s decisions constitute administrative action in terms of the Promotion of Administrative Justice Act 3 of 2000 – whether the Department was legally bound to comply with the Modified Cash Standard when preparing its financial statements – the proper interpretation of the Modified Cash Standard, and whether the relationship between the Department and the two entities was a principal-agent relationship.

41. NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators (Pty) Ltd (399/2020)

Appealed from: GJ

Date to be heard: 3 September 2021

Wallis JA, Makgoka JA, Schippers JA, Plasket JA, Carelse JA

Civil procedure – interpretation – publication – defamation – publication of defamatory letter – qualified privilege – defence of fair reporting – adducing new evidence on appeal – whether the letter in issue was covered by the qualified privilege of a fair report of judicial proceedings – whether publication of the letter was covered by the qualified privilege of

privileged occasion – whether the publication of the letter constituted a true statement for public benefit – whether application to adduce new evidence should be allowed – whether certain portions of the respondent’s replying affidavit should be struck out.

42. Ronel Noleen Smit v Calvin Kleinhans

(917/2020)

Appealed from: ECG

Date to be heard: 6 September 2021

Petse DP, Molemela JA, Mbatha JA, Kgoele JA, Potterill AJA

Property law – possession of movable property – *actio rei vindicatio* – whether the respondent breached the agreement between the parties by failing to pay the instalment due to the appellant in respect of July 2018 – whether the court a quo erred in finding that the appellant, not being the common law owner of the vehicle, but entitled to its possession, was entitled to utilise the *actio rei vindicatio* remedy to recover the vehicle and to claim possession of the vehicle from the respondent.

43. Pick n Pay Retailers (Pty) Ltd v Cherylene Sarah Pillay

(900/2020)

Appealed from: KZP

Date to be heard: 6 September 2021

Navsa JA, Mocumie JA, Makgoka JA, Schippers JA, Gorven JA

Law of Delict – damages – negligence – the issue on appeal was whether the appellant should reasonably have foreseen that the respondent could suffer injury when a traffic boom struck the respondent on the head in a busy parking lot of the supermarket – whether the court a quo erred in finding that the appellant should have foreseen harm.

44. Park 2000 Development 11 (Pty) Ltd v Johan Mouton, Van Schalkwyk Vervoer CC, Companies and Intellectual Property Commission, Smoke Consulting (Pty) Ltd and Kenneth Logan Stewart N O

(684/2020)

Appealed from: WCC

Date to be heard: 6 September 2021

Wallis JA, Mbha JA, Plasket JA, Carelse JA, Mabindla – Boqwana JA

Company Law – Companies Act 71 of 2008 (the Act) – business rescue – resolutions – whether courts, when considering an application to set aside a resolution to commence business rescue, ought to have regard to the interests of the general body of creditors so as to avoid one creditor gaining an advantage over the other – whether the creditors of the appellant had to be joined and/or served in the proceedings a quo – how the word ‘initiated’, as used in s 129(2)(a) of the Act should be defined – whether there was a simple majority of the board that passed the resolution – whether the resolution adopted complied with the requirements contemplated in s 128 of the Act.

45. Moipone Moroka v The Premier of the Free State Province, The Commission on Traditional Leadership Disputes and Claims, The President of the Republic of South Africa, The Minister of Co-operative Governance and Traditional Affairs, The Free State House of Traditional Leaders, Moroka Sehunelo Kingsley and Moroka Lebogang Hilary (295/2020)

Appealed from: FB

Date to be heard: 7 September 2021

Petse DP, Mbha JA, Mokgohloa JA, Mothle JA, Hughes JA

Traditional Leadership and Governance Framework Act 41 of 2003 – authority to review and determine a dispute under the Act – the lawfulness of the report of the second respondent and the decision of the first respondent to accept and implement the recommendations in the report – the extent of the authority of the second respondent in terms of the Traditional Leadership and Governance Framework to investigate and determine the dispute in light of the provisions of s 25(2)(a)(viii) of the Act.

46. Bayport Securitization RF LTD and Law Society of South Africa v University of Stellenbosch Law Clinic, Summit Financial Partners (Pty) Ltd, Jenina Mary Matthys, Skhumbuzo Richard Khumalo, Frans Saulus, Albert Robert Kleinsmith, Gladys Seikgotla Jantjies, Ester Kordom, Sarah Felicity Visser, Edgar Arnold and Others (507/2020)

Appealed from: WCC

Date to be heard: 7 September 2021

Ponnan JA, Makgoka JA, Gorven JA, Phatshoane AJA, Molefe AJA

National Credit Act 34 of 2005 – interpretation of “collection costs” – legal costs incurred in enforcing credit agreement – interpretation of “collection costs” in section 1 of the

National Credit Act – whether collection costs as referred in section 101(1)(g) subject to the statutory limitation in section 103(5), includes all costs, legal or otherwise, incurred in enforcing the monetary obligations of a credit agreement.

**47. Noel Patrick McCrane v Cape Royale The Residence (Pty) Ltd
(831/2020)**

Appealed from: WCC

Date to be heard: 7 September 2021

Saldulker JA, Mathopo JA, Plasket JA, Kgoele AJA, Potterill AJA

Contract – agreement of sale – suspensive condition – the enforceability of an agreement of sale in respect of immovable property – whether the court a quo correctly interpreted the agreement of sale and declared an agreement of sale null and void, due to the non- fulfilment of a suspensive condition – whether a suspensive condition was correctly applied to the agreement.

**48. Rand West City Local Municipality v Quill Associates (Pty) Ltd and The Registrar of the High Court, Gauteng Division, Pretoria
(497/2020)**

Appealed from: GP

Date to be heard: 9 September 2021

Navsa JA, Mathopo JA, Molemela JA, Mokgohloa JA, Gorven JA

Civil procedure – writ of execution – rule 45 of Uniform Rules of Court – interest – Copyright Act 98 of 1978 – Prescribed Rate of Interest Act 55 of 1975 – whether the issuing of a writ of execution in terms of rule 45 of the Uniform Rules of Court was an act that could be reviewed and set aside in terms of the provisions of the Promotion of Administrative Justice Act 3 of 2000 – the date when interest started to accrue on a judgment in terms of s 24(1A) of the Copyright Act, for payment of an amount in lieu of damages, as provided by s 2A of the Prescribed Rate of Interest Act.

**49. Leeuw Mining and Exploration (Pty) Limited v Keaton Energy Holdings Limited
(784/2020)**

Appealed from: GJ

Date to be heard: 9 September 2021

Ponnan JA, Wallis JA, Schippers JA, Hughes JA, Mabindla-Boqwana JA

Company Law – suretyship – Companies Act 71 of 2008 (the Act) – solvency and liquidity test – an appeal against the order of the court a quo that granted the respondent specific performance against the appellant in respect of the memorandum of agreement and suretyship to register mortgage bonds over certain immovable property – whether the deed of suretyship, executed by the appellant in favour of the respondent, pursuant to the memorandum of agreement, was valid and enforceable in terms of ss 45 and 46 of the Act, based on substantial compliance with the underlying principles of those sections and the doctrine of unanimous assent, as it applied in the case of a single shareholder – whether the appellant satisfied its evidentiary burden to prove that the respondent did not meet the solvency and liquidity test at the relevant time – whether a genuine and bona fide dispute of material facts existed in respect of the appellant satisfying the solvency and liquidity test – whether the deed of suretyship was properly authorised.

**50. Masibulele Rautini v Passenger Rail Agency of South Africa
(853/2020)**

Appealed from: WCC

Date to be heard: 9 September 2021

Mbha JA, Carelse JA, Mothle JA, Phatshoane AJA, Molefe AJA

Law of Evidence – admissibility – misdirection – credibility – whether the evidence of discovered documents in the absence of the author testifying was admissible – whether there was a demonstrable or material misdirection by the trial court or that the trial court’s findings were clearly wrong – whether the full court drew inferences from evidence which was not properly proven – whether the appellant was a credible witness and whether the full court was correct in rejecting his version of events.

**51. Nandi Jacobs v The Minister of Justice and Correctional Services
(431/2020)**

Appealed from: GP

Date to be heard: 10 September 2021

Mathopo JA, Van der Merwe JA, Molemela JA, Mothle JA, Mabindla – Boqwana JA

Delict – Correctional Services Act 11 of 1998 – appeal against the court a quo’s judgment granting absolution from the instance in favour of the Minister of Justice and Correctional Services at the end of the appellant’s case – whether on a level marginally lower than the prima

facie test, it was found that the appellant did not prove the required elements of delict, specifically related to the action of pain and suffering.

52. Framatome v Eskom Holdings SOC Limited

(357/2021)

Date to be heard: 13 September 2021

Mathopo JA, Molemela JA, Makgoka JA, Mbatha JA, Mothele JA

Contract law – the issue on appeal is whether the respondent legitimately raised any grounds that would justify a court declining to enforce the adjudication award – whether the adjudication award in question should be enforced because an earlier, unchallenged award by the same adjudicator had allegedly exceeded the adjudicator’s jurisdiction – whether a quotation provided by the appellant in a submission to the adjudicator constituted a ‘quotation’ as contemplated *stricto sensu* under the contract between the parties – whether the adjudicator changed the terms of the contract when he granted the relief - the question on appeal is what a court’s discretion is in regard to ascertaining whether adjudicator answered a question outside of the dispute referred to him and whether that would constitute a ground for declining to enforce the adjudication award.

53. Rapholo Edwin Manyaka v The State

(434/2020)

Appealed from: GP

Date to be heard: 18 August 2021

Mocumie JA, Schippers JA, Carelse JA, Mabindla-Boqwana JA, Phatshoane AJA

Criminal law and procedure – sentence – whether the sentence imposed upon the appellant should be wholly suspended.

54. JP Markets SA Pty Ltd v The Financial Sector Conduct Authority

(460/2021)

Appealed from: GJ

Date to be heard: 21 September 2021

Petse DP, Van der Merwe JA, Mbatha JA, Hughes JA, Molefe AJA

Company law – Financial Advisory and Intermediary Services Act 37 of 2002 – Financial Markets Act 19 of 2012 – whether the respondent had standing to seek the liquidation of the

appellant under s 38B of the FAIS Act and s 96 of the FMA Act prior to investigation being concluded by it – whether the respondent had standing under s 38B of the FAIS Act for purposes of winding-up the appellant, a solvent company – if, the respondent has standing, whether a final winding-up order should have been granted.

55. Director of Public Prosecutions v Johannes Mokati

(440/2019)

Appealed from FB

Date to be heard: 16 August 2021

Makgoka JA, Mabindla-Boqwana JA, Kgoele AJA, Phatshoane AJA, Unterhalter AJA

Criminal law and procedure – conviction and sentence – murder – rape – causation – expert evidence – mens rea – dolus eventualis – sentencing – whether the trial court correctly found that there was no causal link between the rape and/or aggravated robbery and the death of the deceased – whether the trial court correctly evaluated the testimony of the expert witnesses relied upon by the State – whether the principles of dolus eventualis were correctly applied in respect of culpable homicide – whether the sentence on the rape charge was shockingly inappropriate.