

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 1 OF 2022

CASES ENROLLED FOR HEARING: 15 FEBRUARY 2022 – 31 MARCH 2022

1. Sandile Biyela v Minister of Police

(1017/2020)

Appealed from KZP

Date to be heard: 15 February 2022

Petse DP, Dlodlo JA, Musi AJA, Matojane AJA, Molefe AJA

Delict – damages – unlawful arrest – detention – whether the respondent had established that the appellant’s arrest and detention were lawful – whether the material contradiction in the respondent’s witnesses’ evidence compromised their probity – whether the quantum of damages awarded in the Durban Magistrate’s Court was appropriate.

2. Sibongile Lumphumlo Mpuqe v The State

(053/2021)

Appealed from WCC

Date to be heard: 15 February 2022

Molemela JA, Mbatha JA, Carelse JA, Smith AJA, Weiner AJA

Criminal law and procedure – fair trial – minimum sentence – 15 years sought by the State – whether the State erred in acceding to the trial judge’s request for a life sentence instead of a sentence of 15 years’ imprisonment as stated in the indictment – whether the full court misdirected itself by assuming that the appellant was fully apprised of the particulars contained in the indictment and the sentence he was facing.

AND

3. Lucky Thomas Khumalo v The State

(723/2020)

Appealed from GP

Date to be heard: 15 February 2022

Molemela JA, Mbatha JA, Carelse JA, Smith AJA, Weiner AJA

Criminal law and procedure – concurrent sentences – substantial and compelling circumstances – whether the trial court and the full court (Gauteng Division, Pretoria) erred in not ordering that some of the sentences imposed should run concurrently – whether this resulted in a disproportionate sentence.

4. Peermont Global (North West) (Pty) Ltd v Chairperson of the North West Gambling Review Tribunal, North West Gambling Review Tribunal, Chairperson of the North West Gambling Board, North West Gambling Board, Jonoforce (Pty) Ltd, Pioneer Bingo (North West) (Pty) Ltd, Latiano 560 (Pty) Ltd, Eliocube (Pty) Ltd and Metro Gaming and Entertainment (Pty) Ltd

(1040/2020)

Appealed from NWM

Date to be heard: 16 February 2022

Maya P, Makgoka JA, Plasket JA, Gorven JA, Musi AJA

Administrative law – review – legality – the appellants sought to review the decisions of the North West Gambling Board, in respect of granting or refusing bingo licences – the lawfulness and fairness of the licence application process – whether the licence application process was procedurally unfair, given that (a) the applicable Request for Applications was not provided to the appellant, and (b) incomplete copies of the bingo licence applications were made available for public inspection – whether the conventional electronic bingo terminals (EBTs) to be provided for play offered the game of ‘bingo’ as defined in the North West Gambling Act 2 of 2001 and whether the North West Gambling Board was required to consider this – whether the North West Gambling Board was obliged, but failed, to have regard to the adverse impact that the licence of bingo operations was likely to have on the appellant’s nearby casinos.

AND

5. Galaxy Bingo Moruleng (Pty) Ltd (previously called Metro Gaming and Entertainment (Pty) Ltd) and Galaxy Bingo North West (RF) (Pty) Ltd v North West Gambling Board, Chairperson of the North West Gambling Board, Chairperson of the North West Gambling Review Tribunal N O, Dennis Makhari N O, Amos Vilakazi N O, Jonoforce (Pty) Ltd and MEC for Finance, Economy & Enterprise Development, North West

(1055/2020)

Appealed from NWM

Date to be heard: 16 February 2022

Maya P, Makgoka JA, Plasket JA, Gorven JA, Musi AJA

Administrative law – review – legality – the appellants sought to review the decisions of the North West Gambling Board, to grant the application of the sixth respondent, Jonoforce (Pty) Ltd, for a bingo licence at Flamwood Walk, Klerksdorp – whether the impugned decisions were unlawful – whether because a portion of the sixth respondent’s application for a bingo licence was marked confidential and not publicly disclosed, this violated ss 32(3)(a) and 24(5)(d) of the North West Gambling Act 2 of 2001 and rendered the award pursuant thereto procedurally unfair – whether the impugned decisions were inter alia irrational, unreasonable and based on a failure to consider relevant considerations – whether a reasonable suspicion existed that the North West Gambling Board was biased against the appellants.

AND

6. Galaxy Bingo Moruleng (Pty) Ltd (previously called Metro Gaming and Entertainment (Pty) Ltd) v North West Gambling Board, Chairperson of the North West Gambling Board, Chairperson of the North West Gambling Review Tribunal N O, Dennis Makhari N O, Amos Vilakazi N O, Latiano 560 (Pty) Ltd t/a Goldrush Bingo North West - Mafikeng and MEC for Finance, Economy & Enterprise Development, North West

(1056/2020)

Appealed from NWM

Date to be heard: 16 February 2022

Maya P, Makgoka JA, Plasket JA, Gorven JA, Musi AJA

Administrative law – review – legality – appeal regarding the review of the decisions of the first respondent, the North West Gambling Board (the Board), to refuse the application of the appellant, Galaxy Bingo Moruleng (Pty) Ltd (previously called Metro Gaming and Entertainment (Pty) Ltd) (Metro), for a bingo licence at Mega City Mall, Mahikeng, and to grant the application of the sixth respondent, Latiano 560 (Pty) Ltd (Latiano), for a bingo licence at Mafikeng Crossing, Mahikeng – whether the impugned decisions were unlawful – whether the decisions were made on the basis of arithmetical error, in that the Board thought that Latiano had obtained a better score than Metro when the opposite was true – whether the reasons given by the Board did not reflect the decisions actually made, alternatively show that

the Board considered irrelevant considerations and failed to consider relevant ones – whether a reasonable suspicion existed that the Board was biased against Metro – whether the North West Gambling Review Tribunal’s, the third to fifth respondents together (the Tribunal), decision to refuse the internal review application brought by the appellant against the impugned decisions was unlawful, because the Tribunal inter alia committed material errors of law, considered irrelevant factors and failed to consider relevant ones – whether the impugned decisions should be reviewed and set aside, and whether they should be substituted with a decision granting Metro’s application.

7. Minister of Police v Xolile Mzingeli, Luthando Ndayi and Mpumezo Xabadiya (115/2021)

Appealed from ECM

Date to be heard: 16 February 2021

Petse DP, Van der Merwe JA, Hughes JA, Tsoka AJA, Makaula AJA

Delict – damages – quantum for unliquidated damages – no oral evidence – whether it was permissible for the court a quo to determine the quantum of the unliquidated damages without hearing oral evidence in light of the decision of *EFF and Others v Manuel* [[2020] ZASCA 172; [2021] 1 All SA 623 (SCA); 2021 (3) SA 425 (SCA)] – whether the stated case was properly formulated so as to be sufficient to enable the court a quo to determine the issue of the quantum of damages – whether the quantum of damages awarded to each of the plaintiffs was reasonable and justifiable.

8. David Papiki Komane v The State (051/2019)

Appealed from LP

Date to be heard: 16 February 2022

Zondi JA, Molemela JA, Mbatha JA, Matojane AJA, Smith AJA

Criminal law and procedure – evidence – appropriateness of the sentence – common purpose – whether the evidence (DNA analysis, confession and pointing out) relied on by the court a quo warranted conviction – whether the court a quo properly admitted the evidence of pointing out – whether it was correct to rule that the applicant’s confession was admissible – whether the DNA proved that the applicant was involved in the robbery – whether the applicant was part of the group that robbed the victims of their money – whether the applicant acted in the furtherance of a common purpose in committing robbery whether the applicant’s personal

circumstances and the circumstances of the offence did not constitute substantial and compelling circumstances, warranting deviation from the minimum sentence — whether the sentence imposed was appropriate.

9. Peermont Global (North West) (Pty) Ltd v Chairperson of the North West Gambling Review Tribunal, North West Gambling Review Tribunal, Chairperson of the North West Gambling Board, North West Gambling Board, Jonoforce (Pty) Ltd, Pioneer Bingo (North West) (Pty) Ltd, Latiano 560 (Pty) Ltd, Eliocube (Pty) Ltd and Metro Gaming and Entertainment (Pty) Ltd

(1040/2020)

Appealed from NWM

Date to be heard: 17 February 2022

Maya P, Makgoka JA, Plasket JA, Gorven JA, Musi AJA

Administrative law – review – legality – the appellants sought to review the decisions of the North West Gambling Board, in respect of granting or refusing bingo licences – the lawfulness and fairness of the licence application process – whether the licence application process was procedurally unfair, given that (a) the applicable Request for Applications was not provided to the appellant, and (b) incomplete copies of the bingo licence applications were made available for public inspection – whether the conventional electronic bingo terminals (EBTs) to be provided for play offered the game of ‘bingo’ as defined in the North West Gambling Act 2 of 2001 and whether the North West Gambling Board was required to consider this – whether the North West Gambling Board was obliged, but failed, to have regard to the adverse impact that the licence of bingo operations was likely to have on the appellant’s nearby casinos.

AND

10. Galaxy Bingo Moruleng (Pty) Ltd (previously called Metro Gaming and Entertainment (Pty) Ltd) and Galaxy Bingo North West (RF) (Pty) Ltd v North West Gambling Board, Chairperson of the North West Gambling Board, Chairperson of the North West Gambling Review Tribunal N O, Dennis Makhari N O, Amos Vilakazi N O, Jonoforce (Pty) Ltd and MEC for Finance, Economy & Enterprise Development, North West

(1055/2020)

Appealed from NWM

Date to be heard: 17 February 2022

Maya P, Makgoka JA, Plasket JA, Gorven JA, Musi AJA

Administrative law – review – legality – the appellants sought to review the decisions of the North West Gambling Board, to grant the application of the sixth respondent, Jonoforce (Pty) Ltd, for a bingo licence at Flamwood Walk, Klerksdorp – whether the impugned decisions were unlawful – whether because a portion of the sixth respondent’s application for a bingo licence was marked confidential and not publicly disclosed, this violated ss 32(3)(a) and 24(5)(d) of the North West Gambling Act 2 of 2001 and rendered the award pursuant thereto procedurally unfair – whether the impugned decisions were inter alia irrational, unreasonable and based on a failure to consider relevant considerations – whether a reasonable suspicion existed that the North West Gambling Board was biased against the appellants.

AND

11. Galaxy Bingo Moruleng (Pty) Ltd (previously called Metro Gaming and Entertainment (Pty) Ltd) v North West Gambling Board, Chairperson of the North West Gambling Board, Chairperson of the North West Gambling Review Tribunal N O, Dennis Makhari N O, Amos Vilakazi N O, Latiano 560 (Pty) Ltd t/a Goldrush Bingo North West - Mafikeng and MEC for Finance, Economy & Enterprise Development, North West

(1056/2020)

Appealed from NWM

Date to be heard: 17 February 2022

Maya P, Makgoka JA, Plasket JA, Gorven JA, Musi AJA

Administrative law – review – legality – appeal regarding the review of the decisions of the first respondent, the North West Gambling Board (the Board), to refuse the application of the appellant, Galaxy Bingo Moruleng (Pty) Ltd (previously called Metro Gaming and Entertainment (Pty) Ltd) (Metro), for a bingo licence at Mega City Mall, Mahikeng, and to grant the application of the sixth respondent, Latiano 560 (Pty) Ltd (Latiano), for a bingo licence at Mafikeng Crossing, Mahikeng – whether the impugned decisions were unlawful – whether the decisions were made on the basis of arithmetical error, in that the Board thought that Latiano had obtained a better score than Metro when the opposite was true – whether the reasons given by the Board did not reflect the decisions actually made, alternatively show that

the Board considered irrelevant considerations and failed to consider relevant ones – whether a reasonable suspicion existed that the Board was biased against Metro – whether the North West Gambling Review Tribunal’s, the third to fifth respondents together (the Tribunal), decision to refuse the internal review application brought by the appellant against the impugned decisions was unlawful, because the Tribunal inter alia committed material errors of law, considered irrelevant factors and failed to consider relevant ones – whether the impugned decisions should be reviewed and set aside, and whether they should be substituted with a decision granting Metro’s application.

12. Department of Labour: The Compensation Commissioner v Roebel Stephanus Botha (326/2020)

Appealed from GP

Date to be heard: 17 February 2022

Petse DP, Schippers JA, Nicholls JA, Carelse JA, Meyer AJA

Labour law – Compensation for Occupational Injuries and Diseases Act 130 of 1997 (the Act) – causation – injury on duty – whether the court a quo was correct in finding that the causation principle was applicable in the context of claims for compensation arising from injury on duty – whether the court a quo had erred in finding that the respondent was only 60 per cent disabled despite medical opinion that he was entirely disabled – whether the court a quo had correctly found that the respondent was not entitled to his costs on appeal – whether the causation principle was applicable in the context of claims for compensation arising from injury on duty.

13. Minister of Police and The National Director of Public Prosecutions v Edward Alberto Erasmus (366/2021)

Appealed from ECG

Date to be heard: 17 February 2022

Dambuza JA, Van der Merwe JA, Mocumie JA, Tsoka AJA, Weiner AJA

Delict – damages – unlawful arrest and detention – excessive award – whether the court a quo erred and misdirected itself in finding that the respondent’s subsequent detention from his first court appearance onwards until his release was unlawful – whether the award to the respondent was grossly excessive for an arrest and detention that lasted less than a day.

14. Marshall Alberts, Jerome Arnolds, Robert Atties, Thanduxolo Baatjies, Simphiwe Befile, Thombelani Bishini, Mabuthi Blaauw, Thembinkosi Sidwell Bless, Lucky Bokwana, Ndumiso Bongo and 128 others v Minister of Justice and Correctional Services (404/2021)

Appealed from ECP

Date to be heard: 18 February 2022

Saldulker JA, Zondi JA, Makgoka JA, Plasket JA, Gorven JA

Civil procedure – special plea – whether the respondent's special plea should have been upheld – whether the court a quo was correct in dismissing all of the appellants' claims affected by the said special plea – whether the appellants were at common law and in terms of the rules of court entitled to annex to a summons, 138 sets of particulars of claim, each of which related to the 138 individual appellants – whether the issues raised in all the particulars of claim annexed were substantially the same questions of law or fact in each case.

15. IGS Consulting Engineers CC and Turnmill Proquip Engineers (Pty) Ltd v Transnet SOC Ltd (198/2020)

Appealed from GJ

Date to be heard: 18 February 2022

Dambuza JA, Schippers JA, Nicholls JA, Tsoka AJA, Molefe AJA

Contract – s 217 of the Constitution – breach of contract – joint venture – whether the conduct of the respondent in respect of all contracts infringed s 217 of the Constitution – whether the joint venture contracts were merely agreements to co-operate or whether same constituted partnerships in the legal sense – whether the sole member of the first appellant, had the authority to contract with the respondent and bind either the second appellant or the alleged joint ventures/partnerships to such contract – whether the respondent proved any privity of contract between it and the second appellant – whether there were any grounds to interfere in the discretionary remedy deemed just and equitable by the court a quo, namely the duty to account and disgorge profits in respect of contracts one to four.

16. Rasimate Samuel Baloyi v The State (739/2021)

Appealed from LP

Date to be heard: 18 February 2022

Mocumie JA, Hughes JA, Makaula AJA, Smith AJA, Weiner AJA

Criminal law and procedure – premeditated murder – life imprisonment – appropriateness of sentence – whether the State established that the murder was premeditated – whether the imposition of life imprisonment was an appropriate sentence – whether there were substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence – whether the court a quo was correct in confirming the trial court’s decision that the murder was premeditated – whether the court a quo failed to deal with certain aspects of the matter – whether both courts disregarded the issue of murder being committed by a group acting in common purpose.

17. Yolanda Dyantyi v Rhodes University, Sizwe Mabizela N O and Wayne Hutchinson N O

846/2020 (ECG)

Appealed from ECG

Date to be heard: 21 February 2022

Saldulker JA, Van der Merwe JA, Nicholls JA, Hughes JA, Matojane AJA

Administrative law – review – unfairness – irrationality – internal disciplinary hearing – whether the right to legal representation in an internal hearing extended the meaning of such a right to include that the appellant was also entitled only to the services of one and the same chosen counsel even if the absence of that counsel, albeit without sound reasons, meant stalling the disciplinary hearing.

18. Astral Operations Ltd t/a County Fair Foods, Pioneer Foods (Pty) Ltd t/a Tydstroom Poultry and Bottelfontein Action Group v The Minister for Local Government, Environmental Affairs and Development Planning (Western Cape), The City of Cape Town and The Minister for Environmental Affairs, Forestry and Fisheries (1104/2020)

Appealed from WCC

Date to be heard: 21 February 2022

Zondi JA, Molemela JA, Dlodlo JA, Gorven JA, Musi AJA

Environmental law – Environmental Conservation Act 73 of 1989 (the Act) – civil procedure – declaratory orders – application for a declaratory order regarding the first or third respondents’ appeal powers in terms of s 35 of the Act when reconsidering a decision set

aside on review and remitted for consideration – whether the matter could be remitted to the first-instance decision-maker for reconsideration and a fresh decision.

19. HLB International (South Africa) (Pty) Ltd v MWRK Accountants and Consultants (Pty) Ltd
(113/2021)

Appealed from GP

Date to be heard: 22 February 2022

Petse DP, Zondi JA, Makgoka JA, Plasket JA, Meyer AJA

Civil procedure – company law – Companies Act 71 of 2008 (the Act) – winding-up – lease agreement – the appeal is against a clarification (second) judgment and order granted by the court a quo to remove uncertainty in respect of the court a quo’s first judgment and order and there is no appeal against the first judgment and order – whether the court a quo was empowered to clarify and alter the sense and substance of its previous order in terms of the common law and / or rule 42(1)(b) – whether it was necessary to join any further party to the (second) clarification application, in circumstances where there was no appeal against the first judgment and order.

20. Deidre Vanessa Le Hanie, Liebenberg Dawid Ryk van der Merwe, Marius Vermeulen, Keith Noel Kennedy, Steven James Mushet, Leslie William Lange, James Adriaan Vlok and Americo Carneiro v Roy Edward Glasson, Cynthia Arlene Glasson, Michael Bruce Heath, Linda Lewis and Eagle Canyon Golf Estate Home Owners Association NPC
(214/2021)

Appealed from GJ

Date to be heard: 22 February 2022

Dambuza JA, Mbatha JA, Tsoka AJA, Weiner AJA, Molefe AJA

Civil procedure – contempt of court – whether the appellants were in contempt of the court order – whether the Eagle Canyon Home Owners Association (HOA) did not comply with the court order – whether the appellants were wilful and *mala fide* in not complying with the court order – whether each of the appellants was personally responsible for the HOA complying with the court order.

21. Johannes G Coetzee & Seuns and Daniel Cornelius Coetzee v Pieter Paul Le Roux and Johanna Catharina Le Roux (969/2020)

Appealed from NCK

Date to be heard: 22 February 2022

Mocumie JA, Schippers JA, Dlodlo JA, Carelse JA, Hughes JA

Prescription Act 68 of 1961 (the Act) – invalidity – Alienation of Land Act 68 of 1981 – whether the appellants’ failure to comply with s 2(1) of the Alienation of Land Act 68 of 1981 and the resulting invalidity of the exercise of the option, are *‘facts from which the debt arises’* of which the respondents were required to be aware in order for the running of extinctive prescription to commence in terms of s 12(3) of the Act – whether the appellants were correct in their alternative contention that the respondents could have acquired such knowledge when their new attorneys were appointed on 22 June 2005 – whether the respondents were deemed to have such knowledge in terms of s 12(3) of the Act.

22. Sekoko Mametja Incorporated Attorneys v Fetakgomo Tubatse Local Municipality (60/2021)

Appealed from LP

Date to be heard: 23 February 2022

Petse DP, Van der Merwe JA, Dlodlo JA, Mbatha JA, Gorven JA

Local Government – administrative law – tender – review – legality – civil procedure – whether the appellant was entitled to payment for services rendered to the respondent, regardless of a successful legality review – whether the decision to award the tender to the appellant was flawed.

23. Susara Magrietha Strohmeier v Schalk Willem Victor and The Registrar of Deeds (1133/2020)

Appealed from NCK

Date to be heard: 23 February 2022

Saldulker JA, Makogka JA, Hughes JA, Matojane AJA, Molefe AJA

Contract – restitution – prescription – whether special circumstances existed for this Court to grant special leave of appeal – whether the appellant had to cross-appeal to argue prescription

on appeal – whether the first respondent’s claim had not prescribed – whether the first respondent had proved his claim and was entitled to relief in the circumstances.

24. Timothy Maluleke N O (In his capacity as trustee of the Hlaniki Trust, IT 1101/07) v Daniel Phellimo Sibanyoni, City of Tshwane Metropolitan Municipality and The Director-General: The Department of Rural Development and Land Reform (1012/2020)

Appealed from LCC

Date to be heard: 23 February 2022

Mocumie JA, Molemela JA, Carelse JA, Musi AJA, Smith AJA

Land – Extension of Security of Tenure Act 62 of 1997 (the Act) – eviction – whether the court a quo correctly found that the termination by the appellant of the first respondent’s right of residence on the farm was not just and equitable as required by s 8(1) of the Act – whether the requirements of s 9(2) of the Act had been complied with in a manner that justified the eviction order the appellant sought, if it was found that the termination was indeed just and equitable.

25. Central Energy Fund SOC Ltd and Strategic Fuel Fund Association NPC v Venus Rays Trade (Pty) Ltd, Glencore Energy (UK) Ltd, Taleveras Petroleum Trading DMCC, Contango Trading SA, Natixis SA, Vesquin Trading (Pty) Ltd, Vitol Energy (SA) (Pty) Ltd, Vitol SA, Minister of Energy and Minister of Finance (Organisation Undoing Tax Abuse as amicus curiae in court a quo)

(119/2021)

Appealed from WCC

Date to be heard: 24 February 2022

Maya P, Dambuza JA, Schippers JA, Plaket JA, Meyer AJA

Administrative law – review – legality – appeal against the just and equitable remedy granted by the court a quo, in a judicial review of transactions disposing of ten million barrels of South Africa’s emergency oil supply – whether compensation should have been granted – whether the costs order of the court a quo should stand – with respect to the third respondent (Taleveras): the appeal is opposed only to the extent that the appellants sought a costs order against it for the first time in this Court – whether ordering Taleveras to pay costs would be punitive, where it did not oppose the review relief – with respect to the fourth and fifth respondents (Contango

and Natixis): whether there was any basis to interfere with the court a quo's remedial discretion, in terms of which it awarded Contango and Natixis compensation for their out-of-pocket expenses – with respect to the Sixth, Seventh and Eighth Respondents' (Vitol) cross-appeal: whether in applying the *Gijima* principle (*State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Limited* [[2017] ZACC 40; 2018 (2) BCLR 240 (CC); 2018 (2) SA 23 (CC)], the court a quo ought merely to have declared the impugned decisions and contracts invalid, or whether it was correct also to have set them aside and granted consequential just and equitable relief – whether a just and equitable remedy entailed restitution to Vitol only of the purchase price and the storage fees it paid, plus interest, or also required that Vitol be repaid all out-of-pocket expenses (including hedging, insurance and other costs incurred) – whether the court a quo correctly awarded costs in Vitol's favour – whether, given the clear and undisputed unlawfulness of the impugned decisions and transactions, the court a quo erred in declaring the Vitol transaction unlawful notwithstanding the delay in the review being launched.

26. Mashao John Thepanyega N O, Ephraim Setlabane Ramohlale N O, Lesole Johannes Thepanyekga N O, Madumetsa Solomon Machete N O, Mosima Jeaneta Baloyi N O, Kgobodi Jackson Mankga N O, Ngwako Frans Mamaribe N O, Ngaletjane Claas Ramaphoko N O, Pheeha Frans Ramohlale N O, Chippha Daniel Ramohlale and Others (in their capacity as the Trustees for the time being of the Madibeng-Letupi Community Trust Registration Number: IT9094/2006) v Herman Letsoalo, Seja Letsoalo and Frans Kwete Ramotihane (73/2021)

Appealed from LP

Date to be heard: 24 February 2022

Saldulker JA, Zondi JA, Hughes JA, Musi AJA, Smith AJA

Civil procedure – contract – interdict – ejectment – whether the magistrates' court had jurisdiction to order ejectment in motion proceedings – whether the magistrates' court had jurisdiction to grant a final interdict in motion proceedings – whether the appellants pleaded and proved the requirements of an interdict – whether the respondents were correct in bringing an application for ejectment without cancelling the grazing agreement – whether there was a grazing agreement between the parties.

27. Kwinana Thabo Sindisa, Kwinana N O Thabo Sindisa and Mapipa N O Zolisile Mteleli v Ngonyama Lulama Smuts, Ngonyama N O Nokwazi Nokwazelela, Ngonyama N O Khanya Malungelo and Ngonyama N O Qhawe Hlomelo

(103/2021)

Appealed from GJ

Date to be heard: 24 February 2022

Van der Merwe JA, Nicholls JA, Carelse JA, Tsoka AJA, Matojane AJA

Civil procedure – rescission – rule 42 – cause of action – whether this Court ought to overturn the decision of the court a quo in which it refused to rescind the judgments obtained by the respondents – whether the court below exercised its discretion on a wrong principle or made a decision that was not reasonably open to it.

28. Municipal Employees Pension Fund and Akani Retirement Fund Administrators v Pandelani Midas Mudau and Vhembe District Municipality

(1159/2020)

Appealed from GP

Date to be heard: 25 February 2022

Dambuza JA, Van der Merwe JA, Carelse JA, , Smith AJA, Weiner AJA

Administrative law – Pension Funds Act 24 of 1956 (the PFA) – incorrect determination – case arose out of the decision of the Pension Funds Adjudicator to uphold a complaint brought against the first respondent against the calculation by the appellants of his withdrawal (determination) – whether the adjudicator had the power, in determining a complaint under ss 30J and 30M of the PFA, to invalidate the registered effective date of a rule amendment – whether a rule amendment could be given retroactive effect.

29. Frank Mhlongo, Riebs Khoza, Doctor Sibuyi and Patrick Jones v Tryphinah Mokoena N O, Nomsa Muhlawuri Manyike N O, Madoda Isaac Tjie N O, Tobani Michael Khoza N O, Themba Tibane N O, Master of the High Court, Gauteng Local Division, Pretoria, Attorney Richard Spoor of the firm Richard Spoor Attorneys Inc., Attorney Wiekus du Toit of the firm WDT Attorneys and Attorney Errol Goss of the firm Goss Attorneys and The Regional Land Claims Commissioner, Mpumalanga

(865/2020)

Appealed from GP

Date to be heard: 25 February 2022

Mocumie JA, Molemela JA, Makgoka JA, Mbatha JA, Musi AJA

Civil procedure – Superior Courts Act 10 of 2013 (the Act) – jurisdiction – whether the common law principles regarding jurisdiction and the provisions contained in s 21(1) of the Act were applicable to the sixth, ninth and tenth respondents, subject to the jurisdiction of the court a quo – whether as a consequence of the provisions of s 21(1) of the Act being applicable to the sixth, ninth and tenth respondents subject to the jurisdiction of the court a quo, the remainder of the respondents were as a result of the provisions contained in s 21(1) of the Act, subject to the jurisdiction of the court a quo – whether the court a quo should have dismissed the appellants’ application for want of jurisdiction – whether the court a quo should have struck the application from the roll – whether the Judge President, Gauteng Division had the power in terms of s 7(1) of the Act, when constituting circuit courts in Mpumalanga by way of notice, to exclude the jurisdiction of the Gauteng Division of the High Court in respect of matters arising in the area of jurisdiction of those circuit courts, prior to the promulgation by the Minister of Justice and Constitutional Development by notice in terms of s 6(3) of the Act in relation to the Mpumalanga Division of the High Court.

30. TMT Services and Supplies (Pty) Ltd t/a Traffic Management Technologies v The MEC: Department of Transport, Province of KwaZulu-Natal, The Premier of the Province of KwaZulu-Natal, The MEC: Department of Treasury, Province of KwaZulu-Natal, The Head of Department: Department of Transport, KwaZulu-Natal and MTM KZN Traffix (Pty) Ltd

(1059/2020)

Appealed from WCC

Date to be heard: 28 February 2022

Saldulker JA, Schippers JA, Plasket JA, Hughes JA, Matojane AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – review – jurisdiction – whether the court a quo had the competence to exercise jurisdiction in a review application under PAJA – whether the court a quo misdirected itself in declining to exercise jurisdiction under PAJA – whether the court a quo erred in interpreting ‘court’ in s 1 of PAJA.

31. Heidi Nicole Koch N O and Heidi Nicole Koch v The Ad Hoc Central Authority for the Republic of South Africa and Paul Graham Ball

(188/2021)

Appealed from WCC

Date to be heard: 28 February 2022

Zondi JA, Nicholls JA, Carelse JA, Weiner AJA, Molefe AJA

International law – Hague Convention on the Civil Aspects of International Child Abduction (the Convention) – permanent retention – whether the first respondent in the court a quo (Claire) wrongfully retained the minor (Emily) in South Africa in breach of the second respondent’s rights of custody as defined in the Convention – whether the second respondent consented to Emily being in South Africa with Claire – whether either or both of the appellant’s Article 13(b) defences should succeed, resulting in the court finding that Emily should not be returned to the UK.

32. Tee Que Trading Services (Pty) Ltd v Oracle Corporation South Africa (Pty) Ltd and South African Post Office

(65/2021)

Appealed from GP

Date to be heard: 28 February 2022

Dambuza JA, Mocumie JA, Dlodlo JA, Meyer AJA, Smith AJA

Contract – International Arbitration Act 15 of 2017 (IAA) – interpretation – whether the provision of the IAA and the UNICITRAL Model Law on International Commercial Arbitration adopted in terms of the Act, applied to the dispute between the appellant and the first respondent – whether the court a quo correctly applied article 1(2) of the Model Law – whether the arbitration clause in the licence agreement between the appellant and the first respondent should be enforced, given the appellant’s contention that it had become inoperative and that there were exceptional circumstances for not enforcing the agreement.

33. Advertising Regulatory Board NPC, Colgate-Palmolive (Pty) Ltd and Colgate-Palmolive Company v Bliss Brands (Pty) Ltd

(786/2021)

Appealed from GJ

Date to be heard: 1 March 2022

Petse DP, Schippers JA, Plasket JA, Hughes JA, Matojane AJA

Administrative law – civil procedure – whether it was lawful for the first appellant to consider complaints in respect of advertising of non-members for the benefit of its members –

whether the decision in *Advertising Standards Authority v Herbex (Pty) Ltd* [2017] ZASCA 132; 2017 (6) SA 354 (SCA) was determinative of the appeal herein – whether the court a quo’s judgment was in conflict with *Herbex*.

34. Rustenburg Platinum Mines Limited and Arm Mining Consortium Limited v Regional Manager, Limpopo Region: Department of Mineral Resources, Deputy Director General: Mineral Regulation Department of Mineral Resources, Minister of Mineral Resources, Genorah Resources (Pty) Ltd, Director-General: Department of Mineral Resources, Nkwe Platinum South Africa (Pty) Ltd, International Goldfields Limited, B M Sekhukhune N O, Bauba-A-Hlabirwa Mining Investment (Pty) Ltd and Nkwe Platinum Limited

(1109/2020)

Appealed from GP

Date to be heard: 1 March 2022

Dambuza JA, Van der Merwe JA, Nicholls JA, Mbahta JA, Meyer AJA

Mining law – Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) – review – civil procedure – whether the court a quo followed the proper approach when considering the issue of delay in prosecuting a review application – whether the appellants unreasonably delayed the prosecution of the review applications, as the court a quo found, with the result that the review applications fell to be dismissed – whether the mining right fell to be declared unlawful and set aside solely because the prospecting right decision was found to be irregular – whether the refusal decision by the court below was irrational, unfair, unlawful and invalid.

35. Minister of Cooperative Governance and Traditional Affairs and President of the Republic of South Africa v British American Tobacco South Africa (Pty) Ltd, JT International South Africa (Pty) Ltd, Melinda Ferguson, Keoagile Molobi, Limpopo Tobacco Processors (Pty) Ltd, South African Tobacco Transformation Alliance NPC, Black Tobacco Farmers Association, Suider Afrika Agri Inisiatief NPC, South African Informal Traders Alliance and LA Toscana Investments CC t/a JJ Cale Tobacconists

(309/2021)

Appealed from WCC

Date to be heard: 3 March 2022

Maya P, Zondi JA, Van der Merwe JA, Schippers JA, Molefe AJA

Constitutional law – administrative law – review – legality – appeal against the order of the full bench of the Western Cape Division of the High Court, Cape Town (the high court) declaring inconsistent with the Constitution and invalid regulation 45 made by the first appellant (the Minister) for COVID-19 Alert Level 3 in terms of s 27(2)(n) of the Disaster Management Act 57 of 2002 (DMA), which regulation 45 prohibited the sale of tobacco and vaping products to retailers and consumers in South Africa – cross-appeal by the respondents against the high court’s order that all parties pay their own costs – whether regulation 45 infringed the fundamental rights to human dignity, privacy, bodily and psychological integrity, the right to choose or practice a trade or occupation, and/or the fundamental right not to be deprived of property arbitrarily; and, if so, whether the infringement was reasonable and justifiable under s 36(1) of the Constitution – whether regulation 45 was *ultra vires* s 27(2)(n) of the DMA, more specifically whether it was ‘necessary’ as envisaged by that provision – whether regulation 45 was procedurally fair or irrational – whether, if unsuccessful, this Court should interfere with the costs order made by the high court.

36. Limpopo Economic Development Agency (LEDA) v Johannes Frederick Klopper N O, Christopher Raymond Rey N O, Liebenberg Dawid Ryk van der Merwe N O, Lebogane Mpakati N O, Dilokong Chrome Mine (Pty) Ltd (DCM), ASA Metals (Pty) Ltd (ASA), Eastern Asia Metal Investment Co Ltd (EAMI), Minister of Mineral Resources, Director-General: Department of Mineral Resources (DMR), Regional Manager, Limpopo Region of the DMR and Cheetah Chrome South Africa (Pty) Ltd (982/2020)

Appealed from GJ

Date to be heard: 3 March 2022

Petse DP, Plasket JA, Mbatha JA, Carelse JA, Musi AJA

Mineral law – mining – company law – Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) – Companies Act 71 of 2008 – interpretation – whether LEDA proved that clause 17 of the mining right meant that DCM was bound by the terms of the shareholders’ agreement concluded between LEDA and EAMI – whether LEDA proved that clause 17 of the mining rights meant that LEDA held a 40% stake in the mining right – whether LEDA proved that clause 17 of the mining right obliged DCM to conclude a new agreement with LEDA wherein LEDA would be given a 40% stake in the mining right without an

obligation to dilute – whether LEDA had a ‘title interest’ in the mining right as contemplated in s 134 of the Companies Act – whether LEDA proved that clause 17 meant that certain provisions of the shareholders’ agreement had been incorporated into the mining right as conditions – whether the relief sought by LEDA predicated on the consent of the Minister of Mineral Resources being obtained in terms of s 11 of the MPRDA was academic and moot since such consent had already been obtained.

37. Anthony Fay v Sharon Clare Fay

(788/2020)

Appealed from KZD

Date to be heard: 3 March 2022

Dambuza JA, Molemela JA, Makgoka JA, Makaula AJA, Weiner AJA

Family law – accrual – divorce – civil procedure – asset donation – condonation – whether condonation should be granted – whether the full court erred in dismissing the appellant’s application for leave to lead further evidence on appeal – whether there was a factual and legal basis for the trial court to take the value of the donation to the trust account for purposes of calculating the accrual.

38. RTS Industries, CGC Industries (Pty) Ltd, Christiaan Arnoldus Kurtz, Carl William Richter and C-Quiptech (Pty) Ltd v Technical Systems (Pty) Ltd and Lavirco Beleggings (Pty) Ltd

(145/2021)

Appealed from WCC

Date to be heard: 4 March 2022

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

Civil procedure – interdict – appeal against the grant of interdictory relief by the court a quo and the refusal of the appellants’ counter-application to set aside certain paragraphs of a pre-existing court order (2015 Order) – the probity of the court a quo’s order in circumstances where it granted relief beyond that which was sought and the enforcement of orders which are impossible of implementation – whether the court a quo could set aside the relevant paragraphs of the 2015 Order without the appellants having purged their breach of the 2015 Order –

whether the relief sought by the appellants could be entertained without them having placed the record of the 2014 application leading to the 2015 Order before court.

39. Suresh Chanderbhan Mirchandani v Unica Iron & Steel (Pty) Ltd

(802/2020)

Appealed from GP

Date to be heard: 4 March 2022

Saldulker JA, Mocumie JA, Mbatha JA, Tsoka AJA, Weiner AJA

Contract – breach of profit share agreement – damages – whether the appellant could be held liable *ex contractu* for the payment of damages allegedly suffered by the respondent in terms of the profit share agreement concluded between the parties – whether the respondent established that the appellant was liable for breach of contract which resulted in the respondent having to pay an administrative fine to the Department of Agriculture and Rural Development, Gauteng, and whether the appellant was accordingly obliged to make good that loss to the respondent – whether the respondent was entitled to rely on alternative causes of action not pleaded; namely, s 218(2) read with ss 76(2) and 77 of the Companies Act 71 of 2008 and the common law fiduciary duty that rested on the appellant *qua* director – if so, whether the appellant was liable in terms of the alternative causes of action for the damages allegedly suffered by the respondent

AND

Unica Iron & Steel (Pty) Ltd v Suresh Chanderbhan Mirchandani

(813/2020)

Appealed from GP

Date to be heard: 4 March 2022

Saldulker JA, Mocumie JA, Mbatha JA, Tsoka AJA, Weiner AJA

Contract – lease agreement – simulated agreements – whether the respondent, Suresh Chanderbhan Mirchandani, was entitled to be reimbursed for payments made in respect of electricity and municipal rates and taxes in respect of an immovable property he rented from a Mr Qasim, who was a director of the appellant, Unica Iron & Steel (Pty) Ltd – whether the two written lease agreements concluded between the respondent and Mr Qasim were valid and binding – whether the appellant’s directors resolved during a meeting held on 15 April 2010 to

adjust the respondent's loan account and to cap the percentage allowed for wastage in the appellant's books at 5% – whether, on the evidence, the respondent established his entitlement in regard to his claims for rent and utilities – whether, in light of case law, the respondent was entitled to raise his claims for the treatment of salaries and wastage in the income statement of the appellant – whether, on the evidence, the respondent established his entitlement in regard to his claims in respect of the treatment of salaries and wastage in the income statement of the appellant.

40. Imobrite (Pty) Ltd v DTL Boerdery CC

(1007/2020)

Appealed from NWM

Date to be heard: 3 March 2022

Van der Merwe JA, Molemela JA, Makgoka JA, Carelse JA, Musi AJA

Company law – Close Corporations Act 69 of 1984 – winding-up – secured debt – contract – whether, if a creditor who was unpaid, and whose claim was not disputed, had sufficient security for its claim, by virtue of a mortgage bond and a special and general bond, it was precluded from having recourse against its debtor by bringing an application for liquidation.

41. Ralph Farrel Lutchman N O, Cloete Murray N O, Tania Oosthuizen N O, Marianne Oelofsen N O (in their capacities as the joint provisional liquidators of African Global Operations (Pty) Ltd, in liquidation) and 35 Others, and Commissioner for the South African Revenue Service v African Global Holdings (Pty) Ltd, Sun Worx (Pty) Ltd and Kgwerano Financial Services (Pty) Ltd

(1088/2020)

Appealed from GJ

Date to be heard: 7 March 2022

Saldulker JA, Molemela JA, Gorven JA, Meyer AJA, Smith AJA

Company law – business rescue – liquidation – whether the provisional liquidators were authorised to instruct the thirty-ninth respondent (the auctioneers), in the business rescue application and the auction application, to proceed with the auction held over three days during December 2019 as part of the winding-up of the companies in liquidation – whether the business rescue application was made prior to the commencement of the auction of the assets and that the winding-up of the companies in liquidation were therefore suspended in terms of

s 131(6) of the Companies Act 71 of 2008, and the auction could not legally proceed – whether the provisional liquidators proceeded with the auction in conflict with para 3 of the order for the extension of the liquidators’ powers (the Bhoola order), properly interpreted – whether the provisional liquidators, in proceeding with the auction of the assets of Bosasa, had consulted with, and obtained the consent of, the boards of directors of Bosasa and the relevant companies and subsidiaries in liquidation, or if the provisional liquidators acted in contempt of the Bhoola order in proceeding with the auction – if the sale of the Bosasa assets by the provisional liquidators was authorised, what were the consequences ensuing upon such a finding for the purchasers of Bosasa’s immovable assets – whether the court a quo was correct in limiting the provisional liquidators’ costs to only 50%, whilst dismissing the business rescue application

AND

42. African Global Holdings (Pty) Ltd, Sun Worx (Pty) Ltd and Kgwerano Financial Services (Pty) Ltd v Ralph Farrel Lutchman N O, Cloete Murray N O, Tania Oosthuizen N O, Marianne Oelofsen N O (in their capacities as the joint provisional liquidators of African Global Operations (Pty) Ltd, in liquidation) and 35 Others (and Commissioner for the South African Revenue Service intervening)

(1135/2020)

Appealed from GJ

Date to be heard: 7 March 2022

Salduker JA, Molemela JA, Gorven JA, Meyer AJA, Smith AJA

Company law – business rescue – liquidation – appeal against portions of the judgment and certain of the orders by the court a quo in terms of which the appellants’ application to place six of its companies in business rescue was refused and certain costs orders were made against them – whether the appellants made out a proper case for the entities to be placed in business rescue under Chapter 6 of the Companies Act 71 of 2008 – if so, whether the entities should be placed in business rescue when the Business Rescue Application was considered on the version of the liquidators, together with the admitted version of the appellants – whether the Business Rescue Application was an abuse of process, and if so, whether it should have been dismissed on such basis alone – whether the six business rescue companies were capable of being rescued as envisaged in s 128 of the Companies Act 71 of 2008 – whether the appellants were correct to simply ignore SARS’ claims against the six business rescue companies, both for amounts

per assessments already raised and for quantified amounts – whether the court a quo erred by not giving due weight to the second of the two goals set out in s 128(1)(b)(i) of the Companies Act 71 of 2008, being a better return than would result from the immediate liquidation of those companies – whether the court a quo erred by failing to have found that a business rescue practitioner, using the opportunity to work with the directors in identifying appropriate clients over a period of time, reasonably should produce a better return than the forced sale or immediate liquidation of these assets within the general public context – whether the court a quo erred by not finding that given the complex group structure of the first appellant’s business entity, together with the rescue companies, the difference between the potential fees of business rescue practitioners and liquidators would be considerable – whether the court a quo erred by giving undue weight to the powers of investigation relevant to the office of a liquidator – whether the court a quo erred in not finding that the proper mechanism which should have been adopted, after an order declaring the auction of assets to be null and void, on the just and equitable basis, should have been to appoint an independent business rescue practitioner.

**43. Narius Moloto v The Pan Africanist Congress of Azania
(1176/2019)**

Appealed from GP

Date to be heard: 7 March 2022

Mocumie JA, Dlodlo JA, Hughes JA, Matojane AJA, Makaula AJA

Civil procedure – review application – interpretation of clause 14.2 of disciplinary code – *locus standi* – whether the deponent to the respondent’s answering affidavit had the *locus standi* to depose to the founding affidavit and replying affidavit on behalf of the respondent – whether the court a quo erred in its interpretation of clause 14.2 of the respondent’s disciplinary code – whether the respondent failed to exhaust internal remedies before approaching the court a quo.

**44. Minister of Health and South African Health Products Regulatory Authority v
Alliance of Natural Health Products (South Africa)
(256/2021)**

Appealed from GP

Date to be heard: 7 March 2022

Van der Merwe JA, Schippers JA, Nicholls JA, Tsoka AJA, Molefe AJA

Administrative law – review – legality – appeal regarding the regulation of complementary medicines in the form of health products, herbal medicines and supplements by the Department of Health and the South African Health Products Regulatory Authority – the respondent sought to review and set aside aspects of the General Regulations promulgated in terms of s 35 of the Medicines and Related Substances Act 101 of 1965 (Medicines Act) on 25 August 2017 under General Notice 859 in Government Gazette 41064 – whether the Minister was entitled to regulate complementary medicines in the manner that he did in terms of his powers under the Medicines Act – whether the suspension of the order of invalidity for a period of 12 months was a valid exercise of the court a quo’s discretion, and whether this Court ought to interfere with the suspension, should it uphold the judgment of the court a quo – whether the legislature empowered the Minister in the exercise of his regulation-making power to subject to regulation in terms of the Medicines Act products and substances that were not ‘medicines’ as defined in s 1 of the Medicines Act.

45. Nedbank Limited v Houtbosplaas (Pty) Limited and TBS Alpha Beleggings (Pty) Limited

(164/2021)

Appealed from GP

Date to be heard: 8 March 2022

Petse DP, Zondi JA, Gorven JA, Tsoka AJA, Makaula AJA

Company law – Financial Intelligence Centre Act 38 of 2001 (FICA) – statutory interpretation – whether the memoranda of incorporation of companies was properly interpreted – whether the court a quo was correct in finding that there was no provision of FICA that required clients of a bank to provide verification documents to the bank when requested

46. Johannes Brits v Kommandantsdrift CC, Nico le Roux and Registrar of Deeds, Cape Town

(143/21)

Appealed from WCC

Date to be heard: 8 March 2022

Saldulker JA, Dlodlo JA, Hughes JA, Musi AJA, Matojane AJA

Contract – prescription – Prescription Act 68 of 1969 – whether the court a quo correctly found that the applicant had failed to discharge the onus to prove its claim for the re-transfer and re-registration of the farm into its name was in terms of s 11 of the Prescription Act – whether the first respondent’s claim has prescribed in terms of s 11 of the Prescription Act – whether the court a quo correctly found that the deeds of sale entered into were void *ab initio* because of common error on part of the contracting parties relating to a material error – whether the first respondent discharged its onus to prove that the transfers of the farm were void, and concomitantly whether the first respondent was entitled to claim that the Deeds Office registries be amended to reflect it as the true and correct owner of the property and in respect of which the court a quo made no finding or order.

**47. Loskop Landgoed Boedery (Pty) Ltd, W A Pieters, Riaan Pieters v Petrus Moeleso, David M Mofokeng, Maki Moeleso and Nini Mabe
(390/2020)**

Appealed from LCC

Date to be heard: 8 March 2022

Van der Merwe JA, Mocumie JA, Nicholls JA, Mbatha JA, Carelse JA

Land – arbitrary deprivation of land – alternative land – Extension of Security of Tenure Act 62 of 1997 – eviction – whether the appellants acted unlawfully in moving the respondents’ cattle from an overgrazed camp on a farm to other land on the same farm diminishing the respondents’ grazing area, without judicial oversight – whether the court a quo erred in making an order that the appellants, who were the owners and persons in control of the farm, could be obliged to make available alternative land to the respondents in the stead of which had been overgrazed by the respondents’ cattle without the respondents having proved the entitlement to such alternative land – whether such an award of alternative land amounted to an arbitrary deprivation of the appellants’ rights in land – whether the court a quo correctly exercised the discretion to award a costs order against the appellants – whether the court a quo erred in making orders as per paragraphs 1, 2, 4 of the order of 2 December 2020

**48. Commissioner for the South African Revenue Service v Sasol Chevron Holdings Limited
(1044/2020)**

Appealed from GP

Date to be heard: 9 March 2022

Petse DP, Zondi JA, Mocomie JA, Hughes JA, Meyer AJA

Tax law – Value-Added Tax (VAT) – administrative law – Promotion of Administrative Justice 3 of 2000 — whether a review application was instituted within the prescribed period after SASOL Chevron was notified by SARS that it was not entitled to a VAT refund – did the respondent qualify for a VAT refund under the VAT export incentive scheme.

49. Petrus Johannes Bestbier (both in his personal capacity and in his representative capacity as trustee of the Goede Hoop Trust IT1333/94), Hanlie Bestbier N O, Carel Brink Bestbier N O and Frans Stefanus Botes N O v Nedbank Limited (150/21)

Appealed from WCC

Date to be heard: 9 March 2022

Saldulker JA, Molemela JA, Dlodlo JA, Weiner AJA, Molefe AJA

Civil procedure – default judgment – trust law – Uniform Rules of Court – whether rule 46A and practice directive 33A applied when property sought to be declared executable was owned by a trust but permanently occupied by trustees – whether rule 46A and practice directive 33A had been properly interpreted – whether the trust property constituted residential immovable property – whether rule 46A and practice directive 33A applied to property owned by a trust – whether rule 46A and practice directive 33A applied on the basis that Nedbank sought judgment against the first appellant in his personal capacity in terms of a suretyship agreement – whether Nedbank was obliged to give the trust beneficiaries and their employees notice of the application – whether the National Credit Act was applicable as applied by the court a quo – whether the protections envisaged in rule 46A and practice directive 33A operated in addition to the safeguards provided for in the Prevention of Unlawful Eviction and Unlawful Occupation of Land Act 19 of 1998 and the Extension of Security of Tenure Act 62 of 1997.

50. Kgoro Consortium (Pty) Ltd and Regiments Capital (Pty) Ltd (in liquidation) v Cedar Park Properties 39 (Pty) Ltd (in liquidation), Vantage Mezzanine Fund II Partnership and City of Johannesburg Metropolitan Municipality (935/2020)

Appealed from GJ

Date to be heard: 9 March 2022

Van der Merwe JA, Plasket JA, Mbatha JA, Carelse JA, Matojane AJA

Company law – business rescue – liquidation – appeal against the dismissal of an application to subject the first respondent to business rescue in terms of s 131 of the Companies Act 71 of 2008 – proper interpretation of the standard of proof imposed on an applicant in s 131(4) of the Companies Act – whether the court a quo applied the correct standard and approach in adjudicating the business rescue application – whether, on the application of the correct standard and approach, the court a quo ought to have granted the business rescue application – whether the first appellant’s application for the business rescue of the first respondent met the requirement of demonstrating that there was a ‘reasonable prospect’ of rescuing the first respondent – whether an order for costs *de bonis propriis* on the attorney and client scale was justifiably made against Smit Sewgoolam Inc.

51. The Premier, Province of the Eastern Cape, The executive council for the Province of the Eastern Cape The MEC for Cooperative Governance and Traditional Affairs, Province of the Eastern Cape, The MEC for Treasury, Economic Development and Tourism, Province of the Eastern Cape v The Unemployed People’s Movement, The National Council of Provinces, The Minister of Cooperative Governance and Traditional Affairs, The Minister of Finance, Makana Municipality, The Executive Mayor, Makana Municipality: Mr Mphalwa, Municipal Manager, Makana Municipality, The South African Local Government Association, The South African Municipal Workers Union, The Independent Municipal and Allied Trade Union and the President of the Republic of South Africa

(995/2020)

Appealed from ECG

Date to be heard: 10 March 2022

Maya P, Dambuza JA, Plasket JA, Meyer AJA, Smith AJA

Local government – Constitutional law – interpretation – constitutional validity – whether the court a quo should have granted an order that the conduct of Makana Municipality was inconsistent with and in breach of ss 152(2) and 153(a) of the Constitution and declared same to be invalid to the extent of those inconsistencies – whether the court a quo should have declared that all jurisdictional facts for mandatory intervention in Makana Municipality in terms of s 139(5) of the Constitution read with ss 139 and 140 of the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA) were present and had consistently

been present in the past, when the order sought by the applicant referred not to s 139(5) of the Constitution but to s 139(1)(c) – whether the court a quo should have directed the Provincial Executive, in terms of s 139(5)(a) of the Constitution, to implement a recovery plan aimed at securing the municipality’s ability to meet its obligation to provide basic services and to meet its financial commitments, with due regard to the existence and terms of the Financial Recovery Plan developed for the municipality, the purpose of which was to achieve the objective of the municipality’s financial and service delivery sustainability.

**52. Commissioner for the South African Revenue Service v Capitec Bank Limited
(94/2021)**

Appealed from Tax court

Date to be heard: 10 March 2022

Saldulker JA, Mocomie JA, Makgoka JA, Schippers JA, Musi AJA

Tax law – interpretation – s 16(3)(c) of the Value Added Tax Act 89 of 1991 (VAT) – ss 133(2)(b)(i) and 135(1) of the Tax Administration Act 28 of 2011 – whether a tax fraction of loan covered pay-outs qualified for deduction in terms of s 16(3)(c) of the VAT Act – whether the loan cover was a ‘taxable supply’ – was loan cover supplied in the course of furtherance of an ‘enterprise’ – whether the 10% penalty levied by the South African Revenue Service qualified for remission.

53. Lloyd Eugene Hendricks v The Church of the Province of Southern Africa, Diocese of Free State

(108/2021)

Appealed from FB

Date to be heard: 10 March 2022

Molemela JA, Nicholls JA, Mbatha JA, Matojane AJA, Weiner AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 – review – whether the court a quo erred in dismissing the appellant’s review application on the basis that the appellant had failed to impugn the decision of the respondent’s internal appeal tribunal – whether the court a quo erred in finding that the appellant’s review application was academic.

54. WK Construction (Pty) Limited v Moores Rowland, Mazars Moores Rowland and Mazars

(952/2020)

Appealed from KZD

Date to be heard: 15 March 2022

Petse DP, Nicholls JA, Gorven JA, Hughes JA, Tsoka AJA

Civil procedure – Prescription Act 68 of 1969 – special plea – whether the court a quo applied the correct test in terms of the knowledge required on the side of Mazars in terms of their contractual duties – whether there was a basis to find that WK Construction had sufficient knowledge for the basis of its claim against Mazars – whether the prescription claim against Mazars could commence before 03 December 2013 – whether the suspicion that a fraud had been perpetrated was sufficient in law to commence a running of prescription against auditors for negligence.

55. Simon Songo v Minister of Police, National Director of Public Prosecutions & Minister of Justice and Correctional Services

(220/2021)

Appealed from GP

Date to be heard: 15 March 2022

Saldulker JA, Molemela JA, Dlodlo JA, Makaula AJA, Molefe AJA

Delict – damages – civil procedure – cause of action – development of common law – whether the common law should be developed to create a cause of action for an innocent person who had been convicted by a court of law and incarcerated – whether the court a quo was correct in holding that the fourth and fifth special pleas of no cause of action had to be adjudicated separately – whether the court a quo was correct in upholding the sixth special plea of misjoinder – whether the court a quo was correct in denying the appellant the costs of two counsel – whether the court a quo failed to discharge the court's primary function of determining the disputes that were properly before it – whether this Court could determine the issues that the court a quo declined to determine as the court of first instance or remit the matter to the court a quo.

56. Waylan Abdullah v The State

(134/2021)

Appealed from WCC

Date to be heard: 16 March 2022

Mocumie JA, Schippers JA, Nicholls JA, Tsoka AJA, Meyer AJA

Criminal law and procedure – right to a fair trial – identification – Criminal Procedure Act 1977 (CPA) – whether the trial court was correct in finding that the State proved the appellant's guilt beyond reasonable doubt – single witness evidence in terms of s 208 of the CPA – whether the appellant's right to a fair trial was infringed due to the alleged failure by the trial court to place its observations at the inspection in loco, on record.