

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 2 OF 2022

CASES ENROLLED FOR HEARING: MAY 2022

1. Lebohang Peter Mashilo v The State

(1129/2019)

Appealed from GP

Date to be heard: 3 May 2022

Ponnan JA, Makgoka JA, Carelse JA, Makaula AJA, Savage AJA

Criminal Law and procedure – application for special leave to appeal – sentence – robbery with aggravating circumstances – kidnapping – minimum sentencing regime – failure of justice – whether leave to appeal should have been granted by the Gauteng Division of the High Court, Pretoria – whether the failure to have advised the appellant of the applicable minimum sentencing regime amounted to a failure of justice – whether the cumulative sentence was excessive.

2. Alfred Mzebenzi Nhlapo v The State

(933/2020)

1 vol – all relevant

Appealed from GP

Date to be heard: 3 May 2022

Ponnan JA, Makgoka JA, Carelse JA, Makaula AJA, Savage AJA

Criminal law and procedure – sentence imposed on appellant – attempted murder – whether the appellant held the view that the sentence of 10 years' imprisonment was shockingly disproportionate – whether the trial court did not give enough weight to the personal circumstances of the appellant and the circumstances under which the offences occurred – provocation and intoxication where pleaded in defence.

3. Jovan Evraud Maree v The State

(422/2021)

Appealed from WCC

Date to be heard: 3 May 2022

Dambuza JA, Molemela JA, Schippers JA, Nicholls JA, Phatshoane AJA

Criminal law and procedure – conviction and sentence – rape – incitement – consent – whether the appellant’s guilt was proven beyond a reasonable doubt – whether the appellant’s version was reasonably possibly true – whether the trial court misdirected itself.

4. Rennies Travels (Pty) Limited v Commissioner for the South African Revenue Service (207/2021)

Appealed from GJ

Date to be heard: 3 May 2022

Van der Merwe JA, Plasket JA, Hughes JA, Tsoka AJA, Musi AJA

Tax law – Value-Added Tax Act 89 of 1991 (VAT Act) – whether certain expenses paid on account of meeting revenue targets qualified for zero-rating in terms of s 11(2)(d) of the VAT Act – whether the incentives earned in terms of incentive agreements earned from sales of air tickets exceeded specified monetary thresholds and constituted consideration for ‘arranging of transport passengers’ as contemplated by s 11(2)(d) of the VAT Act – whether the sale of air tickets was sufficient to serve as *quid pro quo* or was there a further condition to be fulfilled before earning the incentive.

5. Wezizwe Feziwe Sigcau and Lombekiso Makhosatsini Sigcau v President of the Republic of South Africa, Commission on Traditional Leadership Disputes and Claims, Chairperson of the Commission on Traditional Leadership Disputes and Claims, Zanozuko Tyelovuyo Sigcau, Minister of Local Government and Traditional Affairs, Premier: Eastern Cape Province, National House of Traditional Leaders, Eastern Cape House of Traditional Leaders and Ikumkani amaMpondo Asenyandeni (961/2020)

Appealed from GP

Date to be heard: 4 May 2022

Maya P, Dambuza JA, Makgoka JA, Gorven JA, Makaula AJA

Administrative law – review – customary law – appeal against dismissal of the appellants’ application to review and set aside the determination by the Commission on Traditional Leadership Disputes and Claims, the second respondent, of 21 January 2010, that Zanozuko Tyelovuyo Sigcau, the fourth respondent, was the rightful successor to the throne of amaMpondo, in terms of s 25(2) of the Traditional Leadership and Governance Framework Act 41 of 2003 (before its amendment by the Traditional Leadership and Governance

Framework Amendment Act 23 of 2009), as well as the decision of the President, the first respondent, of November 2018, to appoint Zanozuko Tyelovuyo Sigcau as the king of amaMpondo – whether the determination by the Commission should be reviewed and set aside – whether the decision of the President should be reviewed and set aside – if the aforementioned decisions were reviewed and set aside, what just and equitable remedy should be granted.

6. Pieter Hendrik Strydom N O and Amelia Strecker N O v Snowball Wealth (Pty) Ltd, Leo Chih Hao Chou, W Zhang and Julian David Rabinowitz

(356/2021)

Appealed from WCC

Date to be heard: 4 May 2022

Ponnan JA, Van der Merwe JA, Hughes JA, Musi AJA, Smith AJA

Insolvency law – Insolvency Act 24 of 1936 (the Act) – interpretation – whether the words ‘not made for value’ in s 26(1) of the Act were correctly interpreted – whether the court a quo erred in upholding the exceptions.

7. Rosemary Ann Zeelie v Johanness Andries Zeelie

(556/2021)

Appealed from ECP

Date to be heard: 4 May 2022

Schippers JA, Nicholls JA, Carelse JA, Meyer AJA, Matojane AJA

Family law – divorce – section 6 of Divorce Act 70 of 1979 – maintenance – *locus standi* – the interpretation of s 6 of the Divorce Act to determine whether the court a quo was correct to find that the appellant did not have *locus standi* to seek maintenance in the divorce action for adult dependent children – whether the children must be joined as parties to the divorce action.

8. National Energy Regulator of South Africa v Eskom Holdings SOC Ltd, Minister of Mineral Resources and Energy, Minister of Finance and South African Local Government Association

(953/2020)

Appealed from GJ

Date to be heard: 5 May 2022

Petse DP, Van der Merwe JA, Makgoka JA, Schippers JA, Savage AJA

Administrative law – review – legality – civil procedure – appeal regarding a review application in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) for the review and setting aside of a decision taken by the appellant, National Energy Regulator of South Africa, in relation to an application made by the first respondent, Eskom Holdings SOC Ltd, on 14 September 2018 for the approval of allowable revenue that would be reflected in electricity tariffs for the financial years of 2019/2020, 2020/2021 and 2021/2022 – whether the court a quo was justified in finding that this was an exceptional case in which it was appropriate, ie just and equitable, to grant substitutionary relief – the appropriate prospective remedy to be granted in the event of this Court dismissing the appeal.

9. Luke M Tembani, LMT Estates (Pvt) Limited, Wynand Hart, Queensdale Enterprises (Pty) Limited, Madoda Enterprises (Pvt) Limited, Klipdrift Enterprises (Pvt) Limited, Mike Campbell (Pvt) Limited, Richard Thomas Etheridge, Andrew Kockott, Tengwe Estates (Pvt) Limited and others v President of the Republic of South Africa and the Government of the Republic of South Africa
(167/2021)

Appealed from GP

Date to be heard: 5 May 2022

Ponnan JA, Molemela JA, Musi AJA, Meyer AJA, Phatshoane AJA

Delict – civil procedure – exception based on causation – wrongfulness/legal duty – whether the court a quo was correct in upholding the exception based on causation – whether the court a quo’s dismissal of the exception based on wrongfulness/legal duty was appealable and, if it was, whether the court a quo correctly dismissed the exception – whether the court a quo correctly concluded that the conditional condonation application under the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 was redundant, rendering an order permitting the institution of the proceedings otiose.

10. The National Director of Public Prosecutions v Timothy Frans Moyane
(474/2021)

Appealed from GP

Date to be heard: 5 May 2022

Zondi JA, Gorven JA, Hughes JA, Matojane AJA, Smith AJA

Forfeiture order – Prevention of Organised Crime Act 121 of 1998 (POCA) – whether the appellant satisfied the required onus for the forfeiture order – whether the respondent created a genuine and bona fide dispute of fact.

11. Govan Mbeki Local Municipality and Emalahleni Local Municipality v Glencore Operations South Africa (Pty) Ltd, Duiker Mining (Pty) Ltd, Tavistock Collieries (Pty) Ltd, Umcebo Properties (Pty) Ltd and Izimbiwa Coal (Pty) Ltd
(334/2021)

Glencore Operations South Africa (Pty) Ltd, Duiker Mining (Pty) Ltd, Tavistock Collieries (Pty) Ltd, Umcebo Properties (Pty) Ltd and Izimbiwa Coal (Pty) Ltd v Govan Mbeki Local Municipality and Emalahleni Local Municipality
(338/2021)

Appealed from MM

Date to be heard: 6 May 2022

Maya P, Dambuza JA, Plasket JA, Musi AJA, Salie-Hlophe AJA

Municipal law – Local Government Municipal Systems Act 32 of 2000 (the Act) – administrative law – whether the impugned provisions of the by-law fell within the legislative competence of a municipality – whether the impugned provisions were in conflict with national legislation, namely s 118(1) of the Act – whether the impugned provisions infringed s 25(1) of the Constitution.

12. Earl Rensburg v Minister of Police and the National Director of Public Prosecutions
(557/2021)

Appealed from ECG

Date to be heard: 6 May 2022

Molemela JA, Carelse JA, Mothle JA, Tsoka AJA, Phatshoane AJA

Criminal Law and procedure – Criminal Procedure Act 51 of 1977 – unlawful arrest and detention – delict – whether the court a quo misdirected itself in finding the arrest and detention of the appellant lawful – whether the court a quo misdirected itself by depriving the appellant’s counsel of a substantial portion of their fees.

13. Exxaro Coal Mpumalanga (Pty) Ltd v TDS Projects Construction and Newrak Mining JV (Pty) Ltd and ABSA Bank Limited
(169/2021)

Appealed from GJ

Date to be heard: 6 May 2022

Schippers JA, Nicholls JA, Gorven JA, Mabindla-Boqwana JA, Meyer AJA

Civil procedure – interdict – non-compliance with terms of guarantee – whether the court a quo was correct in granting the interdict sought by the first respondent on the basis that the demand made by the appellant was non-compliant with the terms of the guarantee.

14. Mokgadi Sarah Sefiti, Pherephere Amos Komane, Temosho Donald Mabilu, Merrium Mogalakwena Komane, Matiele Evelyn Komane, Doctor Komane, Obed Komane and Moses Semanyane Moshe Komane v The State

(048/2021)

Appealed from LP

Date to be heard: 9 May 2022

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

Criminal law and procedure – murder – malicious injury to property – doctrine of common purpose – s 17(2)(f) application – whether the doctrine of common purpose was incorrectly applied in convicting the appellants.

15. Benedict Moagi Peloeole v The Director of Public Prosecutions and Director of Public Prosecution v Benedict Moagi Peloeole

(740/2021)

Appealed from GP

Date to be heard: 9 May 2022

Molemela JA, Makgoka JA, Mothle JA, Tsoka AJA, Smith AJA

Criminal law and procedure – sentence – murder – minimum sentence – whether the minimum sentence of life imprisonment was applicable in terms of s 51(1) of the Criminal Law Amendment Act 105 of 1997 – whether the murders were premeditated – whether the sentence imposed was appropriate.

16. Dion Rademeyer v Thomas Ignatius Ferreira

(343/2021)

Appealed from ECP

Date to be heard: 10 May 2022

Petse DP, Makgoka JA, Plasket JA, Matojane AJA, Smith AJA

Civil procedure – prescription – contract – agreement of sale – whether the respondent’s claim instituted by action proceedings in April 2016 had prescribed as contended by the appellant – whether the service of the application papers under case no: 239/2021 (which included a claim for cancellation and consequential damages) interrupted prescription.

**17. Saleem Qurashi, Farhan Ullah and Shabbir Gullam v The State
(1166/2018)**

Appealed from FB

Date to be heard: 10 May 2022

Ponnan JA, Van der Merwe JA, Carelse JA, Makaula AJA, Phatshoane AJA

Criminal law and procedure – conviction – Prevention of Organised Crime Act 121 of 1998 – Riotous Assemblies Act 17 of 1956 – robbery with aggravating circumstances – murder – kidnapping – attempted extortion – whether the admissibility of evidence obtained was in violation of a constitutional right – whether the admissibility of hearsay evidence amounted to admissions made by an accomplice – whether credibility findings were made in favour of the State witnesses and against the appellants.

**18. Isak Cornelius Malherbe v The State
(692/2021)**

Appealed from GP

Date to be heard: 10 May 2022

Dambusa JA, Nicholls JA, Tsoka AJA, Musi AJA, Salie-Hlophe AJA

Criminal law and procedure – conviction – rape – sexual assault – whether the State proved the guilt of the appellant beyond a reasonable doubt.

**19. Afriforum NPC v Nelson Mandela Foundation Trust, The Minister of Justice and Correctional Services, The Department of Justice and Correctional Services, The South African Human Rights Commission, Johannesburg Pride NPC (first amicus curiae) and Federasie van Afrikaanse Kultuurvereniginge NPC
(371/2020)**

Appealed from GJ

Date to be heard: 11 May 2022

Maya P, Schippers JA, Plasket JA, Mabindla-Boqwana JA, Savage AJA

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act) – hate speech – unfair discrimination – harassment – right to privacy – freedom of expression – whether the Equality Court had the power to grant the relief sought by the first respondent – whether the matter was ripe for hearing – whether public displays of the 1928 Flag were protected by the right to privacy – whether, subject to the proviso in s 12 of the Equality Act, public and private displays of the flag constituted hate speech, unfair discrimination, and/or harassment – whether the right to freedom of expression was unduly limited – whether the rights to dignity, assembly and privacy were implicated – what were the ramifications of the Equality Court’s order if it was not turned down.

20. Mmabasotho Christinah Olesitse N O and Tebogo Patrick Olesitse v The Minister of Police

(470/2021)

Appealed from GP

Date to be heard: 11 May 2022

Zondi JA, Dambuza JA, Nicholls JA, Makaula AJA, Salie-Hlophe AJA

Delict – unlawful arrest and detention – malicious prosecution – whether the plaintiffs’ case which was based on unlawful arrest and detention and their subsequent case based on malicious prosecution, rendered the ‘once and for all’ rule or the other principles relating to the avoidance of a multiplicity of actions applicable, as was found by the court below.

21. Thembinkosi Mekuto v The State

(1120/2020)

Appealed from WCC

Date to be heard: 11 May 2022

Molemela JA, Gorven JA, Hughes JA, Tsoka AJA, Musi AJA

Criminal law and procedure – sentence – murder – robbery with aggravating circumstances – right to fair trial – whether there was a duty to have informed the appellant that the minimum sentence prescribed by s 51(1) of the Criminal Law Amendment Act 105 of 1997 would be applied in relation to the offence for which he was convicted on.

22. Capital Appreciation Limited v First National Nominees (Pty) Limited, Nedbank Limited and Rozendal Partners (Pty) Limited

(280/2021)

Appealed from GJ

Date to be heard: 12 May 2022

Ponnan JA, Plasket JA, Nicholls JA, Tsoka AJA, Phatshoane AJA

Company law – s 163 of the Companies Act 71 of 2008 – interpretation – whether s 164 was a substantive provision containing an exhaustive category of transactions in respect of which the appraisal remedy could be granted – whether the circumstances in which, and the transactions contemplated in respect of appraisal rights granted, were those identified in s 164, as contemplated by ss 112, 113 and 114 of the Companies Act – whether s 48(8) created any substantive right of appraisal as provided for in s 164 read with ss 114 and 115 – whether reference to ss 114 and 115 in s 48(8) resulted in a share buy-back passing the threshold provided for in s 48(8).

23. Naka Diamond Mining (Pty) Limited v Johannes Frederick Klopper N O, Rynette Pieters N O and Southernera Diamonds (Pty) Limited
(277/2021)

Appealed from GJ

Date to be heard: 13 May 2022

Dambuza JA, Gorven JA, Mothle JA, Mabindla-Boqwana JA, Savage AJA

Contract – company law – Companies Act 71 of 2008 (the Act) – business rescue – joint ventures – whether the Klipspringer joint venture agreement correctly interpreted maintained in place residual obligations notwithstanding its termination – whether residual obligations were to be cancelled by court in terms of s 136(2)(b) of the Act – whether the appeal and cross-appeal could be heard where an assumption was made as to the existence of a fact.

24. Minister of Police, Gezani Michael Chabalala, Sello Chauke and Simphiwe Lawrence Danti v Samuel Molokwane
(730/2021)

Appealed from GP

Date to be heard: 13 May 2022

Van der Merwe JA, Makgoka JA, Schippers JA, Musi AJA, Makaula AJA

State Liability Act 20 of 1957 – state liability – whether the purpose of s 2(2) of the State Liability Act 20 of 1957 was to ensure the State Attorney received notice and bore knowledge of all proceedings instituted against an organ of state – whether there were any consequences for non-compliance with the peremptory statutory requirement pertaining to service – whether

there was substantial compliance with the State Liability Act or the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 – whether the respondent’s claim had prescribed.

25. Frederick Cornelius Botha v The State

(546/2021)

Appealed from GP

Date to be heard: 13 May 2022

Molemela JA, Carelse JA, Hughes JA, Meyer AJA, Salie-Hlophe AJA

Criminal law and procedure – sentence – indecent assault – sexual assault – rape – whether the cumulative effect of the sentences imposed by the court a quo on appeal rendered the effective sentence of 36 years’ imprisonment inappropriate – whether the sentence was shockingly and disturbingly inappropriate – whether the court a quo erred in not according due weight to the mitigating factors that led it to impose a lesser effective sentence – whether this Court could interfere and order the sentences imposed to be served concurrently in terms of s 280(2) of the Criminal Procedure Act 51 of 1977.

26. Avril Edith Diljan v The Minister of Police

(746/2021)

Appealed from GP

Date to be heard: 16 May 2022

Petse DP, Gorven JA, Mabindla-Boqwana JA, Makaula AJA, Phatshoane AJA

Criminal Law and procedure – Criminal Procedure Act 51 of 1977 – unlawful arrest and detention – delict – whether the respondent was liable to compensate the appellant for her arrest and detention for a period of three days – quantum of damages.

27. A Penglides (Pty) Ltd and Tuna South Africa (Pty) Ltd v The Minister of Agriculture, Forestry and Fisheries and The Deputy Director General of the Fisheries Branch of the Department of Agriculture, Forestry and Fisheries

(298/2021)

Appealed from WCC

Date to be heard: 16 May 2022

Ponnan JA, Dambuza JA, Schippers JA, Nicholls JA, Mothle JA

Administrative law – Marine Living Resources Act 18 of 1998 (the Act) – review – whether the appellants appeal to the first respondent in terms of s 80(1) of the Act, read with regulation 5(1) of the regulations promulgated under the Act was submitted late – whether the first respondent’s decision to refuse the first appellant’s vessel change application was reviewable on the grounds of review invoked by the appellants – whether certain conditions forming part of the commercial fishing right granted to the first appellant had been lawfully included in the grant of the right.

28. Tshioma Matamela v David Masilo Mulaudzi
(475/2021)

Appealed from LT

Date to be heard: 16 May 2022

Zondi JA, Carelse JA, Hughes JA, Tsoka AJA, Savage AJA

Civil procedure – removal of appeal – access to justice – whether the appeal should, in the interest of justice, be heard and upheld – whether the removal of the appellant’s appeal in the court a quo was inconsistent with access to justice, fairness and the rule of law – whether the effect and impact of the removal of the appellant’s appeal in the court a quo was inconsistent with the administration of justice – whether the appellant should be granted the relief sought.

29. Cochrane Steel Products (Pty) Limited v Jumalu Fencing (Pty) Limited
(166/2021)

Appealed from GJ

Date to be heard: 17 May 2022

Maya P, Makgoka JA, Gorven JA, Meyer AJA, Matojane AJA

Intellectual property law – trade mark – whether use of the mark CLEAR VIEW by the respondent, in relation to fencing and fencing installation services, infringed the appellant’s rights in the trade mark CLEAR VU registered in classes 6 and 37 in terms of ss 34(1)(a) or 34(1)(c) of the Trade Marks Act 194 of 1993 – whether the respondent’s use of the mark CLEAR VIEW could shelter behind endorsements entered against registrations or whether the use was in good faith – whether enforcement of such an endorsement would result in arbitrary deprivation of property – whether the respondent’s use of the mark CLEAR VIEW amounted to passing-off.

30. The Commissioner for the South African Revenue Service v Candice-Jean van der Merwe

(211/2021)

Appealed from WCC

Date to be heard: 17 May 2022

Van der Merwe JA, Molemela JA, Plasket JA, Musi AJA, Salie-Hlophe AJA

Tax law – Tax Administration Act 28 of 2011 (the Act) – whether the finding by the court a quo that the question whether an interlocutory order by the Tax Court with specific provisions regarding appeals to its orders provided for in terms of the Act, must be answered ignoring these provisions and by having regard to the interests of justice, was in law correct – whether the court a quo was correct in its approach in limiting its judgment to the interlocutory applications, which according to it was dispositive of the appeal – whether, on the merits of the application, the taxpayer should have succeeded in her appeal before the court a quo – whether the application by the taxpayer before the Tax Court was an abuse of process and warranted a punitive cost order.

31. Open Horizon Ltd v Carnilinx (Pty) Ltd

(225/2021)

Appealed from GP

Date to be heard: 18 May 2022

Ponnan JA, Zondi JA, Makgoka JA, Mabindla-Boqwana JA, Meyer AJA

Intellectual property law – Trade Marks Act 194 of 1993 (the Act) – unlawful competition – review – whether the various ATLANTIC trade marks used by the respondent were confusingly or deceptively similar to the appellant’s registered PACIFIC trade marks – whether the respondent’s use of its PACIFIC trade marks was likely to deceive or cause confusion – whether the appellant’s adoption and use of the infringing trade marks and get-up constituted unlawful competition *vis-à-vis* the appellant.

32. Dumisani Voyisile Tsobo v Bridgitta Matseliso Tsobo

(287/2021)

Appealed from FB

Date to be heard: 18 May 2022

Dambuza JA, Nicholls JA, Hughes JA, Smith AJA, Savage AJA

Domestic violence – entitlement to protection order – whether the respondent committed any acts of domestic violence – whether the appellant was entitled to a domestic violence protection order.

33. Adrian Paul Barnes v Mangaung Metropolitan Municipality and Ketsebae Israel Kgamanyane

(996/2020)

Appealed from FB

Date to be heard: 18 May 2022

Van der Merwe JA, Molemela JA, Schippers JA, Gorven JA, Makaula AJA

Administrative law – review – appointment of Chief Metro Police – South African Police Service Act 68 of 1995 – reasonable and fair procedure – lawfulness of appointment – fit and proper qualifications/requirement – whether the second respondent’s appointment was lawful in that the second respondent did not meet the minimum competency levels – whether, by failing to assess the second respondent’s competencies, the Municipality in fact followed a reasonable and fair procedure – whether the second respondent could satisfy the ‘fit and proper qualification/requirement’ contained in s 64D of the South African Police Service Act if he did not satisfy the entry level qualifications as advertised for all aspirant candidates applying for the position – whether regulation 11 enjoined the second respondent to be a member of the metro police before he could be appointed as the Chief Metro Police – whether the appointment as Chief Metro Police was subject to the provisions of regulation 11(1)(a) and if so, whether the requirements could be waived by the National Commissioner of the South African Police Service *ex post facto* the decision to appoint.

34. Minister of Police v Pierre Christo van der Watt and The Sherriff, Pretoria Central (1009/2021)

Appealed from GP

Date to be heard: 19 May 2022

Petse DP, Plasket JA, Mothle JA, Tsoka AJA, Salie-Hlophe AJA

Criminal law and procedure – Criminal Procedure Act 51 of 1977 – unlawful arrest and detention – assault by members of the South African Police Service – whether the Gauteng Division of the High Court, Pretoria, correctly dismissed the appellant’s application for rescission of two court orders – whether the respondent impermissibly augmented its cause of action after the merits of the case had been settled in terms of the first court order – whether

the second court order was wrongfully granted outside of the pleadings on account of the respondent's legal representatives having improperly added the claims of the crime scene, cleaning services and legal expenses with the appellant's erstwhile legal team unlawfully agreeing thereto – whether such claims were independent of the first respondent's initial claim and therefore constituted separate causes of action which could not be legally added and consented to after the merits of the first respondent's claim had been settled in terms of the first court order as such claims were not pleaded in the first respondent's initial and amended particulars of claim – whether there was a basis for finding that the first respondent's legal representatives were unaware of the illegality and opprobrious nature of the settlement – whether the decision of the state attorney violated the principle of legality as it was irrational and consequently deprived the appellant of the opportunity to defend the claim or settle it on a rational basis – whether the arrest and detention of the respondent was legally justifiable in terms of s 40(1) of the Criminal Procedure Act 51 of 1977 – whether the full court committed a number of misdirections and errors in its findings on *iustus error*.

35. Marthinus Jacobus Koen, Marthinus Jacobus Koen N O, Johan van Rooyen N O (As Trustees of Koens Besigheids Trust), Marthinus Jacobus Koen N O, Johan van Rooyen N O (As Trustees of Koens Familie Trust), Marthinus Jacobus Koen N O, Johan van Rooyen N O, Iris Ismay Koen N O (As Trustees of Bulhoek Trust) and Olivia Wildplaas CC v Iris Ismay Koen (nee Bennet)

(360/2021)

Appealed from FB

Date to be heard: 19 May 2022

Zondi JA, Schippers JA, Mabindla-Boqwana JA, Matojane AJA, Smith AJA

36. Imbuko Wines (Pty) Ltd v Reference Audio CC

(405/2021)

Appealed from GJ

Date to be heard: 19 May 2022

Dambuza JA, Makgoka JA, Nicholls JA, Carelse JA, Phatshoane AJA

Contract – cession agreement – whether a valid cession agreement had been concluded and proved between the appellant and a third party, 'Dipole' – whether the respondent proved payment to Dipole.

37. Minister of Social Development, MEC for Social Development, Eastern Cape, MEC for Social Development, Gauteng, MEC for Social Development, Free State, MEC for Social Development, KwaZulu-Natal, MEC for Social Development, Limpopo, MEC for Social Development, Mpumalanga, MEC for Social Development, Northern Cape, MEC for Social Development, North West v SA Childcare (Pty) Ltd, Centre for Early Childhood Development NPC, Reverend Tembela Magadla, Busy Bee Creche and Play School, Soshanguve for Early Childhood Development Forum, Bonang Day Care Centre, Communities, Children and Responsible Care Organisation, Feed the Babies Fund and Minister of Finance

(71/2021)

Appealed from GP

Date to be heard: 20 May 2022

Ponnan JA, Plasket JA, Hughes JA, Tsoka AJA, Savage AJA

Administration law - public law – duty to pay subsidies to non-operational Partial Care Facilities and Early Childhood Development Centres – whether the Minister withheld payment of subsidies to Partial Care Facilities and Early Childhood Development Centres (jointly, ECDs) – whether ECDs that were operational before 31 March 2020 were entitled to subsidies, regardless of whether or not they were operational after that date – whether the Minister was in breach of her constitutional and statutory duties to ensure that subsidies were paid – whether the *Oudekraal* [[2004] 3 All SA 1 (SCA)] principle was contravened.

38. MAL Frantzen v Road Accident Fund

(331/2021)

Appealed from GP

Date to be heard: 20 May 2022

Zondi JA, Carelse JA, Mabindla-Boqwana JA, Meyer AJA, Phatshoane AJA

Delict – Road Accident Fund – personal injury claim – whether the accident of 8 April 2007 caused the appellant’s movement disorder – whether Dr Smith was the only expert qualified to testify on the causation of the movement disorder – whether factual causation was proved.

39. Alert Steel (Pty) Limited (In Liquidation) v Mercantile Bank Limited

(165/2021)

Appealed from GJ

Date to be heard: 20 May 2022

Van der Merwe JA, Molemela JA, Schippers JA, Musi AJA, Matojane AJA

Company law – liquidation – winding-up – insolvency – whether the appellant was entitled to the recovery of moneys paid to the respondent erroneously or without cause during the winding-up of the appellant – whether the liquidators acted *ultra vires* – whether the respondent was unjustifiably enriched at the appellant's expense.

**40. Engen Petroleum Limited v Flotank Transport (Pty) Limited
(876/2020)**

Appealed from NCK

Date to be heard: 23 May 2022

Maya P, Zondi JA, Makgoka JA, Meyer AJA, Savage AJA

Contract – cession – interpretation – discretion – whether the court a quo erred in not construing that the cession was a *pactum fiduciae* as opposed to a pledge type cession – whether this Court's decision in *Grobler v Oosthuizen* 2009 (5) SA 500 (SCA), foreclosed the possibility of contracting parties to conclude a *pactum fiduciae* type cession – whether the court a quo correctly interpreted the cessions as being common cause between the parties, being *in securitatem debiti* – whether the court a quo failed to exercise its discretion judicially when it refused to condone the appellant's late filing of its replying affidavit – whether this Court should condone the short delay in the appellant's filing of application for leave to appeal in this Court.

**41. The Memorable Order of Tin Hats (M.O.T.H) v Kenneth Paul Els
(488/2021)**

Appealed from GJ

Date to be heard: 23 May 2022

Plasket JA, Carelse JA, Hughes JA, Makaula AJA, Smith AJA

Delict – unlawfulness – negligence – whether the appellant's failure to provide an additional handrail at the steps in question, and a ramp, was unlawful and negligent and had caused the respondent to fall.

42. Tsogo Sun Caledon (Pty) Limited, West Coast Leisure (Pty) Limited, Garden Route Casino (Pty) Limited and Vukani Gaming Western Cape (Pty) Limited v Western Cape

Gambling and Racing Board and the Chairperson of the Western Cape Gambling and Racing Board

(89/2021)

Appealed from WCC

Date to be heard: 24 May 2022

Petse DP, Zondi JA, Gorven JA, Mabindla-Boqwana JA, Musi AJA

Administrative law – review – Broad-Based Black Economic Empowerment Act 53 of 2003 – National Gambling Act 7 of 2004 (NGA) – Western Cape Gambling and Racing Act 4 of 1996 (WCA) – whether the first respondent had the power in terms of the NGA or the WCA to impose a requirement of maintaining a level 4 broad based black economic empowerment certification – whether the Board had been so empowered and whether the jurisdictional facts of this power were satisfied – whether the Board’s decisions to impose level 4 conditions took into regard the appellants’ specific conditions, thereby founding a ground of review – whether the Board’s decisions were reasonable.

43. The Commissioner for the South African Revenue Service, The Minister of Trade, Industry and Competition, The South African Apparel Association, Apparel and Textile Association of South Africa and the Southern African Clothing and Textile Workers Union v Dragon Freight (Pty) Ltd, Tian Le Trading Enterprise CC, New Feeling Fashion Design (Pty) Ltd, Tingting Secret Beauty (Pty) Ltd, Hiq Pacific Trading CC, FFB Import-Export and Calla Trading (Pty) Ltd

(751/2021)

Appealed from GP

Date to be heard: 24 May 2022

Schippers JA, Plasket JA, Hughes JA, Tsoka AJA, Salie-Hlophe AJA

Tax law - Export declarations – Section 96 of the Customs and Excise Act 91 of 1964 – this appeal concerns the widespread practice by importers in South Africa of under-declaring imported goods from the People’s Republic of China – South African Revenue Service took a decision to seize 19 containers which had been imported by the respondents – whether the court a quo erred in relying on the export declarations – whether the export declarations was of poor quality – whether the quantities in the export declarations did not accord with the quantities that were imported in the earlier containers – whether the Commissioner had the right to request information from the importers.

44. The National Credit Regulator v Dacqup Finances CC t/a ABC Financial Services – Pinetown and The National Consumer Tribunal (382/2021)

Appealed from GP

Date to be heard: 25 May 2022

Makgoka JA, Nicholls JA, Gorven JA, Phatshoane AJA, Savage AJA,

National Credit Act 23 of 2005 – National Credit Regulator – reasonable grounds of suspicion – cost order – whether, prior to initiating its investigation, the National Credit Regulator (the NCR) had a reasonable suspicion that the first respondent had contravened or was contravening the National Credit Act – whether the Tribunal had the power to direct the first respondent to appoint an independent auditor to determine the total quantum of overpaid fees and charges to be repaid to consumers – whether the court a quo erred in granting a costs order against the NCR.

45. City of Ekurhuleni Metropolitan Municipality v Takubiza Trading & Projects (registration no. 2009/019471/23), Zutari (Pty) Ltd (registration no. 1977/003711/07) and Ntiyiso Consulting (Pty) Ltd (registration no. 2018/560868/07) (846/2021)

Appealed from GJ

Date to be heard: 26 May 2022

Ponnan JA, Mabindla-Boqwana JA, Meyer AJA, Matojane AJA, Phatshoane AJA

Local government – tender – administrative law – the appellant invited bids for the appointment of finance meter management consultants to manage the appellant's water and electricity meter readings and credit control processes from 1 July 2020 until 30 June 2023, the closing date for the tender was 24 April 2020, which closing date was further extended – whether the tender validity period was properly extended and the award was not invalid for the reason that the tender had not lapsed by the time the awards were made – whether the appellant properly disqualified the first respondent's bid in the functionality assessment – whether the Bid Evaluation Committee performed the valuation of the bids in the procurement process.

46. Numacon (Pty) Ltd, Michael Ioannou, Adam Bhayat N O, Rashida Bhayat N O, Ruchsana Bhayat N O, Gadija Bhayat N O, Hyman Bruk N O (in their capacities as Trustees for the time being of Bhayat Mohammed Family Trust No IT 3110/94), Vrees Investments (Pty) Ltd, and 15 Others v Herwig Tillo Cornelius Leleu N O and Marleen Augusta Marie Leleu (in their capacities as Co-trustees of the HTC Leleu Family Trust No IT2711/03)

(321/2021)

Appealed from GJ

Date to be heard: 26 May 2022

Zondi JA, Dambuza JA, Plasket JA, Mothle JA, Salie-Hlophe AJA

Company law – appeal against the judgment and orders of the court a quo, in terms of which it was ordered that the second to twenty-second appellants (being the majority shareholders of the first appellant, or their representatives) to purchase the minority share in the first appellant held by the respondents, the HTC Family Trust, at fair value – in respect of the main relief in terms of s 163(1)(a) of the Companies Act 71 of 2008, whether the first appellant (Numacon) was a ‘quasi-partnership’ based on an initial understanding or agreement in late 1999 or early 2000 that each of the shareholders who ventured their capital would be entitled to participate in the management of Numacon, so as to ensure that each shareholder would always have a say in the management of its capital and interest in Numacon – if so, whether the respondents (the HTC Leleu Family Trust) had been offered a reasonable opportunity to withdraw its capital on reasonable terms – whether Numacon’s majority shareholders had conducted themselves in a manner that was unfairly prejudicial towards the HTC Leleu Family Trust by having deprived it of its representation on Numacon’s board without granting it a fair opportunity to remove its share capital from Numacon – in relation to the alternative relief (the winding-up of Numacon in terms of s 81(1)(d)(iii)), whether it would have been just and equitable for Numacon to be wound up as a solvent entity – whether it would have been otherwise just and equitable to wind up Numacon so that the HTC Leleu Family Trust may remove its share capital from Numacon as a liquidation dividend.

47. Minister of Justice and Correctional Services, The National Commissioner of Correctional Services and The Head of Correctional Centre, Johannesburg ‘Medium C’ v Mbalenhle Sidney Ntuli

(539/20)

Appealed from GJ

Date to be heard: 12 May 2022

Dambuza JA, Molemela JA, Gorven JA, Meyer AJA, Matojane AJA,

Constitutional law – civil procedure – rules of the court – condonation – whether the applicants had a reasonable prospect of success in the lapsed appeal – whether the non-compliance of court rules (for the second time before this court) should have been indulged on the basis of their attorney’s failure – whether the student inmates suffered prejudice in the interim due to the applicants’ unlawful refusal to comply with the order – whether it was in the interest of justice and administration of justice for condonation and reinstatement to be granted – whether the policy procedures on the formal education programmes were inconsistent with the Constitution.

48. Advocate Lindon Clifford Leysath v The Legal Practitioners’ Fidelity Fund Board of Control on behalf of the Legal Practitioners’ Fidelity Fund previously known as the Attorneys Fidelity Fund Board of Control and the Attorneys Fidelity Fund

(770/2021)

Appealed from GP

Date to be heard: 12 May 2022

Petse DP, Zondi JA, Mabindla-Boqwana JA, Smith AJA, Savage AJA

Civil procedure – Legal Practice Act 28 of 2014 (the Act) – trust – ancillary relief – whether funds held by an attorney in trust as ‘cover’ for counsel fees constituted an entrustment on behalf of such counsel – whether the appellant had met the onus of establishing that any funds were held as an entrustment on his behalf by attorneys M F Martins Costa – whether the court a quo correctly characterised the dispute at paragraph 8 of the judgment at volume 3 page 296 line 10 – whether the appellant proved and/or provided sufficient evidence in respect of the quantification of his claim – whether the respondent was permitted to rely upon a different ground of repudiation for the appellant’s claim in the answering affidavit – whether the respondent should be estopped from raising issues pertaining to whether the appellant indeed

was able to demonstrate that an amount was owing to the appellant in respect of the matter – whether the appellant was liable for costs.