

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 4 OF 2022

CASES ENROLLED FOR HEARING: NOVEMBER 2022

1. Vincent Harold Esau v SJJMC Property (Pty) Ltd, Mark Harris Attorneys Incorporated, Sheriff of the High Court, Roodepoort North, City of Johannesburg and Registrar of Deeds, Johannesburg

(261/2020)

Appealed from GJ

Date to be heard: 1 November 2022

Molemela JA, Mothle JA, Basson AJA, Masipa AJA, Siwendu AJA

Property law – contract – sale agreement – cancellation – appeal against the judgment and orders of the court a quo, in terms of which the appellants’ application to set aside the cancellation of the agreement to sell him his residential property, an order restoring the property to him, an interdict against selling of it pending the outcome of the application, and damages under various categories were dismissed – whether the court a quo correctly interpreted and applied s 23(b) of the Electronic Communications and Transactions Act 25 of 2002 in the prevailing set of facts – whether the cancellation of the sale agreement by the first respondent was valid – whether the first respondent did not satisfy all cancellation requirements as concluded in the cancellation clauses of the sale agreement – whether the sale agreement between the appellant and the first respondent ought to be reinstated – whether the further sale and transfer of the property by the first respondent, whilst his matter with the appellant had not been fully ventilated before the court, ought to be found both unethical and unlawful – whether the eviction of the appellant from the property, after settling a considerable sum of money, was both unethical and unlawful.

2. Democratic Alliance v Ntombenhle Rulumeni

(88/2021)

Appealed from ECL

Date to be heard: 1 November 2022

Makgoka JA, Nicholls JA, Hughes JA, Goosen JA, Salie-Hlophe AJA

Delict – damages – liability – special damages – whether the appellant was liable for damages under the *actio iniurium* principle – whether the respondent succeeded in the claim for damages based on the infringement of *dignitas* under the *actio iniurium* – whether the court below was correct in finding that the actions of the DA’s agents were objectively hurtful or insulting.

3. Meshack Mapholisa N O v Adv K I A Phetoe N O, Prof S M Dawjee N O, Dr J Basson N O, Dr M N Mabasa N O, Ms Chokoe N O, Ms D P Mthimunye-Hluyo N O, Dr Miller, Health Professions Council of South Africa, Malinda Miller and Violet Gaolebalwe Senna (163/2021)

Appealed from GP

Date to be heard: 1 November 2022

Plasket JA, Mabindla-Boqwana JA, Windell AJA, Chetty AJA, Mali AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 – legality of the decision of the Professional Conduct Committee of the Medical and Dental Professions Board (the Committee) the Health Professions Act (the Act) – Regulations Relating to the Conduct of Inquiries into Alleged Unprofessional Conduct – civil procedure – Superior Courts Act 10 of 2013 – leave to appeal — *locus standi* of a complainant in disciplinary proceedings under the Act – whether leave to appeal should be granted on the basis of s 17(1)(a)(i) and/or (ii) of the Superior Courts Act – should leave to appeal be granted, the legality of the decision by the Committee and the interpretation and application of s 7(2) of Promotion of Administrative Justice Act 3 of 2000 in relation to disciplinary proceedings conducted under the Health Professions Act and the Regulations Relating to the Conduct of Inquiries into Alleged Unprofessional Conduct – consideration of *locus standi* of a complainant in disciplinary proceedings under the Act and the Regulations.

4. Thandi Caroline Dhlamini v Schumann Van Der Heever & Slabbert INC, Jakkie Supra, Izak Bosman, Azelle Kleinen, Jacobus Johannes Slabbert, The Legal Practice Council, The Road Accident Fund and All persons with claims against the seventh respondent prosecuted to finality by the first respondent within the 5 (five) years preceding this application (505/2021)

Appealed from GJ

Date to be heard: 2 November 2022

Dambuza ADP, Carelse JA, Mabindla-Boqwana JA, Basson AJA, Masipa AJA

Civil procedure – Anton Piller Order – whether the Anton Piller Order in this matter contained a resolute condition causing it to have lapsed – if it did, should the appellant have been ordered to pay costs – whether the court a quo was correct in finding that the rule nisi had lapsed.

5. Goldrush Group (Pty) Ltd v North West Gambling Board, Member of the Executive Council for Economy and Enterprise Development North West Province, Santosat (Pty) Ltd, Santoscan (Pty) Ltd, Goldrush Slots Gaming North West (Pty) Ltd, Sangro Holdings 1 (Pty) Ltd, Phokong Investments and Projects (Pty) Ltd, K201985410 (South Africa) (Pty) Ltd, Edith Mamotse Mphatse and Mpho Radikojana (648/21)

Appealed from GJ

Date to be heard: 2 November 2022

Ponnan JA, Gorven JA, Hughes JA, Mjali AJA, Goosen AJA

Company law– Companies Act 61 of 1973 – licence - whether the appellant can ask for a ‘declarator’, for relief which was in effect a review of administration action – whether the appellant’s complaint was not shareholder related, and whether the appellant should not have invoked other remedies to its disposal, in terms of the Companies Act, 61 of 1973, in particular s 163 thereof, to bring appropriate interdictory and other relief against conduct of the majority shareholder, which it contended was prejudicial to it and the companies in which the appellant was a shareholder – whether the appellant established in its papers that the condition imposed by the Gambling Board in the licenses violated the criteria for black economic empowerment as provided for in the Broad-Based Black Economic Empowerment Act 53 of 2003 (‘BBBEE Act’) read with the BBBEE Codes of Good Practice issued in 2003 (‘the Codes’) – whether there was a non-joinder in the sense that the relief will affect other shareholders in other licensee companies, and those other shareholders and other licensee companies had not yet been joined – whether the court should in the exercise of a discretion grant the declaratory relief requested.

6. Sabelo Vusumzi Macingwane v Isaac Ntshireletsa Masekwameng, Sonyosi Stephens Sikhosana, Sekwamo Gilbert Mosenana, Teme Emmanuel Letsoela, Motsepe Ramotse Donald Matlala, Persons appearing on Annexure SMV1 and National African Federated Chamber of Commerce and Industry

(626/2021)

Appealed from GJ

Date to be heard: 2 November 2022

Zondi JA, Van der Merwe JA, Molemela JA, Windell AJA, Chetty AJA

Commercial law – interpretation of company’s constitution – convening company meetings – who was constitutionally empowered to convene a meeting of NAFCOC’s Federal Council and under what circumstances – the interpretation of NAFCOC’s Constitution – whether the power to convene the meeting vested solely in the appellant – whether the principle of *audi alteram partem* rule was infringed – whether the removal of the applicant was without a hearing or right to representation – whether the meeting was conducted against the court order of Wanless J which therefore made the resolution invalid.

7. Margot Berzack v Huntrex 277 (Pty) Ltd, the Registrar of Deeds and City of Cape Town Municipality

(210/21)

Appealed from WCC

Date to be heard: 3 November 2022

Petse AP, Molemela JA, Plasket JA, Nhlangulela AJA, Goosen AJA

Property law – servitude – Deeds Registries Act 47 of 1937 – ownership – whether leave to appeal ought to be granted – if so, to which court – whether two affidavits, not before the court a quo, could be received and considered by this Court in the determination of the two issues.

8. Bosasa Youth Development Centres (Pty) Ltd (In liquidation), Ralph Farrel Lutchman N O, Cloete Murray N O, Ofentse Andrew Nong N O and Tshepo Harry Ngoyane N O v Lulama Smuts Ngonyama, Thundercats Investments 92 (Pty) Ltd, Ntsimbintle Holdings (Pty) Ltd and Jared Watson N O

(773/2021)

Appealed from GJ

Date to be heard: 3 November 2022

Ponnan JA, Zondi JA, Mabindla-Boqwana JA, Chetty AJA, Masipa AJA

Civil procedure – interdict – interlocutory relief – whether the first and second respondents were entitled to seek interlocutory relief wherein the third respondent was interdicted from paying dividends to the first appellant in circumstances where the first and second respondents

had withdrawn the relief they sought against the first appellant in the main application – whether the decision of the court below was appealable – the court below correctly granted the relief sought having regard to the requirements for final or interim interlocutory relief.

**9. Plattekloof RMS Boedery (Pty) Ltd v Dahlia Investment Holding (Pty) Ltd
(667/2021)**

Appealed from WCC

Date to be heard: 3 November 2022

Van der Merwe JA, Carelse JA, Mothle JA, Windell AJA, Mali AJA

Contract – sale of land – leased property – pre-emptive right – pre-emptive clause – whether a lessee was entitled to specific performance (in particular, to purchase at a specified purchase price) where leased property subject to a pre-emptive right was sold as part of a larger tract of properties (a so-called ‘package deal’), in the light of the interpretation of the pre-emptive clause in question.

**10. Vantage Goldfields SA (Pty) Ltd, Vantage Goldfields (Pty) Ltd (in business rescue) and Lombard Insurance Company Limited v Arqomanzi (Pty) Ltd
(1302/2021 and 1272/2021)**

Appealed from MMB

Date to be heard: 4 November 2022

Dambuza ADP, Molemela JA, Gorven JA, Windell AJA, Chetty AJA

Civil procedure – Companies Act 71 of 2008 – business rescue – whether there was any obligation on the business rescue practitioners to prepare a plan and submit it to creditors and affected parties for adoption – whether a provision in an adopted business rescue permit a business rescue practitioner to amend an adopted plan was competent – whether the respondent as applicant a quo made out a case for a final interdict, with particular reference to whether, absent the interdict, it would suffer irreparable harm.

**11. Constantia Insurance Company Limited v The Master of the High Court, Johannesburg, Van der Heever Wilhelm Theodore N O, Koka Jerry Sekete N O and The Minister of Trade and Industry
(512/2021)**

Appealed from GJ

Date to be heard: 4 November 2022

Van der Merwe JA, Plasket JA, Carelse JA, Basson AJA, Salie-Hlophe AJA

Company law – Companies Act 71 of 2008 – constitutionality of s 45 of the Companies Act – whether the indemnity was ‘financial assistance’ within the meaning of s 45(1)(a) of the Companies Act – if so, whether it was void for non-compliance with s 45 of the Companies Act – whether Constantia was entitled to rely on s 20(7) of the Companies Act as a shield against non-compliance by Protech with s 45 of the Companies Act – whether s 45(6) of the Companies Act was an unconstitutional deprivation of Constantia’s property within the meaning of s 25(1) of the Companies Act – the nature of the enquiry to be undertaken in expungement proceedings in terms of s 45(3) of the Insolvency Act 24 of 1936, and in the review of the Master’s decision in those expungement proceedings – whether the liquidators of the insolvent estate of Protech Investments had a reasonable belief based upon facts ascertained by them that the insolvent estate was not, in fact, indebted to the appellant.

12. The Road Accident Fund v Mpolokeng Mary Kedibone OBO, MK, MT and Centre for Child Law (Amicus Curiae)

1102/2021

Appealed from GJ

Date to be heard: 4 November 2022

Makgoka JA, Mothle JA, Hughes JA, Nhlangulela AJA, Mali AJA

Contract – settlement agreement – Contingency Fee Act 66 of 1997 – statutory interpretation – Road Accident Fund Act 56 of 1996 – payment without judicial oversight – whether the matter involved interpretation of inter alia the Contingency Fee Act 66 of 1997 and the Road Accident Fund Act 56 of 1996– whether the appellant was entitled to conclude a settlement agreement *inter partes* and without judicial oversight – whether the application and execution of the Road Accident Fund’s constitutional rights and obligations formed an integral part of the appellant’s appeal – whether the matter raised issues that implicated the constitutional and statutory duties of an organ of state, and social security provider, and the protection of fundamental rights – whether the specific sections of the Constitution implicated were ss 12 and 27 of the Constitution – did the appellant have the power to enter into settlement agreements *inter partes*, and to make payment in terms thereof, without judicial oversight – if the appellant could do so, what obligations did the appellant and other parties have when entering into a settlement agreement – whether the court a quo’s orders should be set aside.

13. Isedor Skog NO, Reinette Skog N O and Hendrik Collins Gerryts N O (in their capacity as trustees for the time being of the Rein Trust IT 2778/99) v Koos Agullus, Mathilda Agullus, Hano Agullus, Martonique Agullus, Richard Syster, Wilhelmien Syster, Richwell Syster, Regina Pietersen, Jeffrey Pietersen and Calvin Pietersen and Others
(797/2021)

5 vols – all relevant

Appealed from LCC

Date to be heard: 7 November 2022

Petse AP, Molemela JA, Makgoka JA, Basson AJA, Goosen AJA

Property law – Extension of Security of Tenure Act 62 of 1997 (ESTA) – blanket eviction – *res judicata* – irretrievable breakdown of the relationship between occupiers and owner
– what was the ambit and extent of ss 10(1)(c) and 10(3) of ESTA – what was the applicability or otherwise of the doctrine of *res judicata* – whether there was an ancillary issue of an order relating to costs granted in this matter by Carelse J in the Land Claims Court – what was the proper interpretation and application of ss 10(1)(c) read with section 8(4) of ESTA – whether a court could grant an order of mass or blanket eviction of all occupiers under ESTA based on the allegation of irretrievable breakdown of a relationship without attributing specific acts of wrongdoing to a specific occupier or families – whether the appellants had satisfied the prerequisites of the doctrine of common purpose to justify the blanket eviction of all the respondents – whether it was just and equitable to evict the respondents after the consideration of all relevant factors – whether the court a quo erred in dismissing the respondents’ special plea of *res judicata* – whether the respondents’ should be granted condonation for the late cross-appeal.

14. Martina Christina Catherina Wulffers v Boxer Dale Holdings (Pty) Ltd, Henry Anthony Klitsie and Anton Heinrich Genade
(1224/2021)

Appealed from ECP

Date to be heard: 7 November 2022

Ponnan JA, Plasket JA, Mabindla-Boqwana JA, Nhlangulela AJA Windell AJA

Property law – servitude for right of way – *rule nisi* – whether the court a quo erred in discharging the *rule nisi* of 17 December 2019, in circumstances where the court found at least a right of way in favour of the second respondent, which *rule nisi* precluded the appellant from obstructing access to the right of way by means of a gate and a fence – whether the court a quo erred in finding that the respondents did not have a right of servitude over the appellant’s property in absence of an agreement of the precise route in circumstances where a servitude, which was created in 1993, afforded the respondents such right of way, which servitude had not been cancelled by an order of court.

**15. Zwelithini Maxwell Zondi v the State
(1232/2021)**

Appealed from GJ

Date to be heard: 7 November 2022

Zondi JA, Nicholls JA, Mothle JA, Mjali AJA, Masipa AJA

Criminal law and procedure – conviction – sentence – whether the conviction and sentence imposed was suitable.

**16. Shoprite Checkers (Pty) Ltd v Cecil Tshepo Mokopane Mafate (in his capacity as curator ad litem to Mkwhanazi Nounga)
(903/2021)**

Appealed from GJ

Date to be heard: 8 November 2022

Petse AP, Mocumie JA, Carelse JA, Nhlangulela AJA, Chetty AJA

Prescription – delict – personal injury claim – whether s 13(1)(a) or s 12(3) of the Prescription Act 68 of 1969 applied in circumstances where a person suffered a head injury rendering that person of unsound mind.

**17. John Henry Steenhuisen, MP and Kevin Mileham, MP v David Douglas Des Van Rooyen, The Office of the Public Protector, The Public Protector and President of the Republic of South Africa
(611/2021)**

Appealed from GP

Date to be heard: 8 November 2022

Dambuza ADP, Zondi JA, Plasket JA, Gorven JA, Salie-Hlophe AJA

Administrative law – Executive Members’ Ethics Act 82 OF 1998 (EMEA) – Breach of Executive Ethics Code – misleading evidence – irrational and unlawful evidence – whether the court a quo erred in finding that the Public Protector’s findings and conclusions were irrational and in setting aside her report – whether the court a quo erred in substituting the findings and conclusions with a declaratory order that Mr van Rooyen did not deliberately mislead Parliament – whether the court a quo erred in directing the applicants to pay Mr van Rooyen’s costs, instead of the Public Protector, or at all – whether the applicants have made out a case that they had reasonable prospects of success in the appeal or that there were other compelling reasons for this Court to grant them leave to appeal – whether the court a quo was wrong or correct in holding that the Public Protector was irrational in finding that Mr van Rooyen deliberately [or wilfully] misled Parliament when he answered the Parliamentary question – if the court a quo was correct, whether it was wrong for it to dispose of the matter instead of remitting it to the Public Protector for a fresh investigation of the complaint.

18. Pioneer Foods (Pty) Ltd v Eskom Holdings SOC Ltd, Walter Sisulu Local Municipality and National Energy Regulator of South Africa
(325/2021)

Appealed from GJ

Date to be heard: 8 November 2022

Van der Merwe JA, Makgoka JA, Hughes JA, Basson AJA, Windell AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – Electricity Regulation Act 4 of 2006 – internal remedies – lawfulness, rationality and reasonableness of first respondent’s decision – Eskom’s duty to end-users of electricity – civil procedure – *locus standi* – whether the appellant had legal standing to pursue the application – whether the relevant decisions of the first respondent constituted administrative action for the purposes of PAJA – whether the first respondent owed constitutional and public law duties to end-users of electricity – whether the appellant failed to exhaust internal remedies for purposes of PAJA – whether s 30 of the Electricity Regulation Act (the ERA) was an internal remedy for purposes of s 7(2) of PAJA – whether s 30 of the ERA was an appropriate and effective remedy available to the appellant in the circumstances – whether, to the extent necessary, exceptional circumstances existed for purposes of s 7(3) of PAJA – whether the lack of any challenge of constitutionality of s 21(5) of the ERA disentitled the appellant from instituting the application – whether the relevant decisions of the first respondent were unlawful, irrational and/or unreasonable, and/or made in a procedurally unfair manner –

whether the appellant was entitled to interdictory relief – whether the relevant decisions made by the first respondent were akin to ‘load-shedding’.

19. Eden Crescent Share Block Limited v Olive Marketing CC, eThekweni Municipality, Shepstone & Wylie, Anthony Maurice Scott, Geoffrey Norman Oldfield, Darryl Martin Schou, Jonathan Neil Berger, William Michael Simpson, Eden Crescent Share Block and Registrar of Deeds: KwaZulu-Natal (1075/2020)

Appealed from KZD

Date to be heard: 9 November 2022

Dambuza ADP, Molemela JA, Plasket JA, Basson AJA, Siwendu AJA

Property law – Deeds Registries Act 47 of 1937 – Housing Development Schemes for Retired Persons Act 65 of 1988 – Share Blocks Control Act 59 of 1980 – servitudes – validity of notarial deed of servitude – whether the application involved the interpretation of social protection legislation (s 4B of the Housing Development Schemes for Retired Persons Act 65 of 1988) and s 8(1)(c) of the Share Blocks Control Act 59 of 1980, both of which implicate property rights as they required special majorities for the alienation of property – whether the interpretation of legislation was also a constitutional issue more broadly in the sense described in *Fraser v ABSA Bank CC* 2007 (3) SA 484 (CC) para 47 at 503 F-H – whether clause 15 of the deed of sale for an immovable property constituted an agreement for an unregistered parking general servitude over the applicant’s property, or was it an agreement to agree to the terms of a defined servitude that lacked specificity as to material terms and a deadlock breaking mechanism and was therefore unenforceable – if clause 15 did constitute an enforceable unregistered general servitude, was its subsequent registration over the property by notarial deed void due to lack of the consent of 75% of the holders of rights of occupation referred to in s 4B of the Housing Development Schemes for Retired Persons Act 65 of 1988 (the Retired Persons Act) and or for want of a special resolution of the shareholders of the applicant contemplated in s 8(1) of the Share Blocks Control Act 59 of 1980 – what was the nature of the servitude in question (general or defined) – whether the registered servitude was valid – whether the granting or registration of the servitude was authorised by Eden – whether Eden was obliged to provide to the first respondent (Olive) at least 250 parkings, under the servitude, or under the town planning scheme – if the servitude was invalid, and Eden was not otherwise obliged to provide the parking, whether the second respondent (eThekweni) was liable to Olive for damages in respect of the contract of sale between them that stipulated Olive

would have use of at least 250 bays – whether the registered servitude was valid and enforceable – whether, if the servitude was not now enforceable as currently registered, the second respondent was contractually entitled to enforce a new registration – if the servitude was not enforceable, whether the second respondent’s town planning scheme operated to achieve the same effect and was enforceable against the first respondent – whether any damages claim by the first respondent against the second respondent had prescribed – whether there was any claim for a contribution in favour of the second respondent against the first third party – whether granting leave to appeal would serve any practical purpose in that the ultimate dispute was about the provision of parking – whether the merits of the applicant’s challenge to the validity of a servitude were strong enough to warrant granting leave to appeal – if leave to appeal was granted, whether this should be in respect of the whole judgment or only the issue of the validity of the servitude – whether the appeal on the issue of the validity of the servitude should be determined by this Court – whether an appeal or cross appeal should be allowed and determined by this Court.

20. Enforced Investments (Pty) Ltd, Fatima Pereira Torres and John Robert Woodnut v Verifika Incorporated (Pty) Ltd and Bernard John Laferla (599/2021)

Appealed from GJ

Date to be heard: 9 November 2022

Ponnan JA, Makgoka JA, Gorven JA, Nhlangulela AJA, Salie-Hlophe AJA

Company law – contract – loan agreement – forfeiture of shares – winding-up – whether the first appellant was entitled to accelerate payment of all amounts owing in terms of the loan agreement – whether the second respondent should pay costs of the setting aside of the voluntary winding-up and dismissal of the conditional counter application for the winding up of the first respondent, in that he had omitted to disclose that he had been depositing the first respondent’s funds into a separate bank account – whether the breach notices were competent – whether the first appellant afforded the first respondent a sufficient period of notice within which to remedy its alleged breach – whether the first appellant was entitled to perfect the forfeiture of the second respondent’s shares in the first respondent, despite having not expressed this intention in the breach notices.

21. The Member of the Executive Council of Education: North West Province v Izak Boshoff Foster, Guillaume Henri Boshoff Foster, The Leopard Rugby Union and Kosh Sport & Trauma Services

(471/2021)

Appealed from GP

Date to be heard: 9 November 2022

Van der Merwe JA, Mocumie JA, Carelse JA, Goosen AJA, Masipa AJA

Delict – negligence – medical negligence – whether any of the grounds of negligence relied upon by the first and second respondents against the appellant were established – whether the appellant was guilty of wrongful and negligent conduct or omissions – whether it was possible to determine what degree of responsibility the first defendant should bear and in respect of which aggravation on the evidence adduced – whether the court a quo was correct in preventing the correctness of the second joint minute of experts from being explored given the particular facts and circumstances in this matter.

22. G Phadziri & Sons (Pty) Ltd v Do Light Transport (Pty) Ltd and The Department of Roads and Public Transport, Limpopo Province

(765/2021)

Appealed from LT

Date to be heard: 10 November 2022

Petse AP, Mocumie JA, Makgoka JA, Salie-Hlophe AJA, Siwendu AJA

Contract – void for vagueness – purpose of tacit term – whether the appeal was moot in that the agreement which the appellant sought to declare null and void had been overtaken by events subsequent to the Limpopo Provincial Regulatory Entity upholding the decision of the Operating Licensing Board of 21 October 2010 to transfer eight permits and the affected route (route 11) – whether the contract was void for vagueness as neither duration of contract nor routes to be ceded were adequately formulated, taking into consideration the provisions of the contract and contextual facts – whether a tacit term relating to duration of contract could be imported to save time clause from being void for vagueness – whether subsequent conduct could amend the contract to cause it to become valid if a non-variation clause required writing and signing by all parties.

23. Member of Executive Council Responsible for Local Government, Western Cape v Matzikama Local Municipality, Charl Strydom N O and Estelle Mynhardt N O (747/2021)

Appealed from WCC

Date to be heard: 10 November 2022

Plasket JA, Hughes JA, Mabindla-Boqwana JA, Basson AJA, Malie AJA

Local government – administrative law – interpretation and application of s 106(1) of the Local Government: Municipal Systems Act 32 of 2000 – the application of the judgment in the City of Cape Town v Premier, Western Cape and Others 2008 (6) SA 345 (C).

24. OCA Testing and Certification South Africa (Pty) Ltd v KCEC Engineering and Construction (Pty) Ltd and The Honourable Judge NP Willis N O (1266/2021)

Appealed from GJ

Date to be heard: 11 November 2022

Petse AP, Mocumie JA, Carelse JA, Mjali AJA, Masipa AJA

Remittal of Arbitration Award in terms of s 32 of the Arbitration Act 42 of 1965 – whether there was good cause for remitting the Arbitration Award in terms of s 32 of the Act – whether the award should have been remitted to a new Arbitrator.

25. Cloete Murray N O, Thomas Christopher van Zyl N O, Raphael Grant Brink N O, Caron-Ann Schroeder N O in their capacity as joint liquidators of Cape Concentrate (Pty) Ltd (in liquidation) v Humansdorp Co-operative Limited (1274/2021)

Appealed from ECG

Date to be heard: 11 November 2022

Dambuza ADP, Nicholls JA, Gorven JA, Basson AJA, Windell AJA

Insolvency Act 24 of 1936 – disposition – whether the payment by the respondent constituted a disposition in terms of s 2 of the Insolvency Act – whether the payment was ‘not made for value’ as contemplated in s 26 of the Insolvency Act – whether the respondent parted with the security or lost any right against another person, in return for the disposition – whether the respondent was entitled to be indemnified in terms of ss 33(1) and 33(2) of the Insolvency Act.

26. DRDGOLD Limited and East Rand Propriety Mines Limited v Bongani Nkala, Siporono Phahlam, Maphatsoe Kompi, Thembekile Mnaheni, Matona Mabea, Mokholofu Boxwell, Alloys Mncedi Msuthu, Myekelwa Mkenyane, Masiko Somi, Zwelendaba Mgidi and Others

(688/2016)

Appealed from GJ

Date to be heard: 11 November 2022

Ponnan JA, Van der Merwe JA, Molemela JA, Mothle JA, Salie-Hlophe AJA

Delict – class action – damages – s 34 of the Constitution – whether the court a quo ought to have joined the appellants to a single class action for damages, to be instituted jointly by the silicosis class and tuberculosis class and against parent companies – whether the court a quo was correct in recognising a single class in respect of silicosis concerning the relevant time period and category of workers, and in permitting the class representatives to institute proceedings against all defendants in a single action – whether the issues identified by the court a quo in its judgment as being common are common to all members of the putative classes, particularly with regard to the particular circumstances of the appellants – whether the court a quo correctly certified the 2-stage approach permitting a single action with claimants comprised of both silicosis and tuberculosis members, the automatic inclusion in the opt-out stage, the definition of the classes from a time perspective, the number of respondents against whom certification was sought and granted, and the number of mines on which the class representatives worked – whether the settlement agreement and the judgment confirming the settlement, on certification by the court a quo of the single 20 stage class action, and the resultant class action, was properly and lawfully certified – whether the court a quo was correct in developing the common law under the auspices of an application for certification of a class action to provide for the transmission of general damages prior to *litis contestation*.

27. South African Health Products Regulatory Authority and The Minister of Health v African Christian Democratic Party

(869/2021)

Appealed from GP

Date to be heard: 14 November 2022

Petse AP, Makgoka JA, Plasket JA, Windell AJA Mali AJA

Constitutional law – administrative law – court’s power to order judicial supervision – separation of powers – whether it was competent for the court a quo to issue an order directing

an organ of state to report back to court and be subject to judicial supervision in circumstances where the dispute between the parties had been settled; none of the parties sought the order in question; and there was no evidence to justify the order – whether it was competent for the court a quo to issue the supervisory orders without hearing the appellants – whether the supervisory orders breached the principles of the rule of law and the separation of powers, and s 165(2) of the Constitution – whether the judgment of Sardiwalla J of 25 June 2021 constituted written reasons for the supervisory orders.

28. City of Cape Town v Charnell Commando and ten respondents and others and Woodstock Hub (Pty) Ltd
(1303/2021)

Appealed from WCC

Date to be heard: 14 November 2022

Zondi JA, Nicholls JA, Mabindla-Boqwana JA, Goosen JA, Siwendu AJA

Constitutional law – property law – right to housing – eviction – whether the City of Cape Town’s Emergency Housing Programme was unconstitutional for its failure to make specific provision for persons who could be rendered homeless pursuant to their eviction in the inner city and its surrounds – whether the City of Cape Town bore a constitutional obligation to provide the respondents and the relevant dependents with temporary emergency accommodation or transitional housing in a feasible location.

29. Simon Maila v The State
(429/2022)

Appealed from LP

Date to be heard: 14 November 2022

Mocumie JA, Carelse JA, Mothle JA, Mjali AJA, Salie-Hlophe AJA

Criminal law and procedure – conviction and sentence – constitutional law – law of evidence – the constitutional validity or applicability of a common law rule – whether the contradictory evidence provided by the complainant was incorrectly regarded as immaterial – whether an incorrect procedure was followed by the State when tendering evidence and the court a quo misdirected itself by admitting such evidence – whether the court a quo incorrectly rejected the version of the appellant – whether the appellant’s personal circumstances and nature of offence were given adequate consideration – whether the court a quo incorrectly

found that there were no substantial and compelling circumstances justifying a lesser sentence than life imprisonment.

30. Member of the Executive Council for Health; Eastern Cape Province v Nompiliso Hosana obo Ayabulela Hosana
(513/2021)

Appealed from ECB

Date to be heard: 15 November 2022

Dambuza ADP, Mcoumie JA, Carelse JA, Chetty AJA, Salie-Hlophe AJA

Section 3 of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002 – prescription – what the creditor had to know before prescription could start to run – whether the respondent had failed to comply with s 3(4)(b)(i) of the Act since her debt had already been extinguished by prescription.

31. Pacific Solar Technologies (Pty) Ltd v The Commissioner for the South African Revenue Service
(715/2021)

Appealed from GP

Date to be heard: 15 November 2022

Ponnan JA, Gorven JA, Mabindla-Boqwana JA, Basoon AJA, Masipa AJA

Tax law – Customs and Excise Act 91 of 1964 (the Act) – s 47(9)(e) of the Act – whether the Solar Home System 20W and 100W had the essential character of an energy source and power generation device as contended for the appellant or that of a lighting kit as contended for the respondent – whether in the alternative, should the court have found that the tariff classification could not be made on the affidavits filed, the appellant requested that the matter be referred to the hearing of oral evidence.

32. The Thaba Chweu Rural Forum and the appellants listed in annexure ‘A’ to the notice of appeal v The Thaba Chweu Local Municipality, The Speaker of the Municipal Council of Thaba Chweu Local Municipality and The Minicipal Manager of the Thaba Chweu Local Municipality
(737/2021)

Appealed from MMB

Date to be heard: 15 November 2022

Molemela JA, Nicholls JA, Mothle JA, Mali AJA, Siwendu AJA

Constitutional law – Municipal Property Rates Act 6 of 2004 – local government – whether the impugned rates notices ought to be declared invalid – what further order should be made in terms of s 172(1)(b) of the Constitution – whether the appellants were entitled to the interdictory relief claimed.

33. South African Reserve Bank and National Treasury v Johnine Winsome Elisie Maddocks N O and Amerasan Pillay N O

(1268/2021)

Appealed from KZD

Date to be heard: 16 November 2022

Zondi JA, Mocumie JA, Gorven JA, Nhlangulela AJA, Basson AJA

Company law – Currency and Exchange Control Act 9 of 1933 – Exchange Control Regulations, 1961 – whether three forfeiture notices issued by the Deputy Governor of the Reserve Bank were null and void by virtue of the final liquidation of the companies against whom they were issued – whether, under the circumstances where a blocking order had been in respect of the banking account of a company under Regulations 22A and/or 22C of the Exchange Control Regulations, 1961 and the company was thereafter placed in liquidation, the power to declare the funds standing to the credit of the blocked accounts forfeited to the State in terms of Regulation 22B could still validly be exercised.

34. Doctor Sudhir Mohun and Doctors G Sanpersad R Maharaj and Associates v Advocate Brett Kingsley Phillips N O on behalf of David Robin Shearer and Justine Shearer in her personal capacity and on behalf of Declan Graham William Tindale and Keziah Rheeder

(1219/2021)

Appealed from KZP

Date to be heard: 16 November 2022

Van der Merwe JA, Pasket JA, Mabindla-Boqwana JA, Chetty AJA, Masipa AJA

Delict – medical negligence – how should a general practitioner have acted when monitoring a patient in a busy casualty unit and whether in such a case, the first appellant was negligent in his treatment of the patient – whether, given the proven facts and probabilities, the monitoring suggested by the respondents would have ultimately changed the outcome – whether there was negligence on the part of the second appellant by failing to render proficient and appropriate

emergency medical treatment to Mr Shearer in the circumstances – whether the factual findings of the trial court were based on false premises or where relevant facts had been ignored – whether any grounds existed to disregard the evidence of the expert witness, Professor Coetzee, who testified on behalf of the first respondent.

**35. Wattrus Cynthia Lorraine v Tempelhoff Gerrit Pieter
(867/2021)**

Appealed from GJ

Date to be heard: 16 November 2022

Molemela JA, Makgoka JA, Hughes JA, Mjali AJA, Siwendu AJA

Delict – family law – wrongfulness - fraudulent misrepresentation inducing marriage and wasted wedding expenses.

**36. Modikwa Platinum Mine, an unincorporated joint venture between Rustenburg Platinum Mines Limited and Arm Mining Consortium Limited v Nkwe Platinum Limited, Genorah Resources (Pty) Ltd, The Regional Manager, Limpopo Region, Department of Mineral Resources and Energy, The Director-General: Mineral Regulation, Department of Mineral Resources and Energy, Minister of Mineral Resources and Energy and Minister of Agriculture, Land Reform and Rural Development
(1333/2021)**

Appealed from LP

Date to be heard: 17 November 2022

Ponnan JA, Molemela JA, Carelse JA, Hughes JA, Chetty AJA

Property law – spoliation - Mineral and Petroleum Resources Development Act 28 of 2002 – civil procedure – whether the appellant made out a case for spoliation in the court a quo – whether the first respondent complied with s 5 of the Mineral and Petroleum Resources Development Act 28 of 2002.

**37. Commissioner for the South African Revenue Service v Coronation Investment Management SA (Pty) Ltd
(1269/2021)**

Appealed from Tax Court

Date to be heard: 17 November 2022

Makgoka JA, Nicholls JA, Nhlangulela AJA, Salie-Hlophe AJA, Mali AJA

Income Tax Act 58 of 1962 – Tax Administration Act 28 of 2011 – income tax – whether the respondent was entitled, for income tax purposes, to exclude in its 2012 year of assessment an amount equal to the entire ‘net income’ for the 2012 year of its ‘controlled foreign company’ on the basis that it qualified as a ‘foreign business establishment’ as defined in s 9D(9)(b) of the Income Tax Act.

38. In the ex parte application: Gaone Jack Siamisang Montshiwa (Identity number: 840826 5729 084) (672/2021)

Appealed from NWM

Date to be heard: 18 November 2022

Dambuza ADP, Van der Merwe JA, Nicholls JA, Chetty AJA, Siwendu AJA

Professions – Admission application – Legal Practice Act 28 of 2014 – Attorneys Act 53 of 1979 – Protection of Personal Information Act 4 of 2013 – Constitution of the Republic of South Africa, 1996 – admission to practice as a legal practitioner – enrolment as an attorney – sufficient time of articles of clerkship – misrepresentation of time served – whether the application for leave to appeal was properly before this Court – whether the court below was correct in dismissing the application for admission on the basis of the belated complaints made by Messrs Nkomo and Sithole – whether the applicant served sufficient articles of clerkship to invoke the court’s condonation to allow his admission – whether the applicant’s lack of temperament was decisive of the requirement of a fit and proper person – whether this Court should grant leave to appeal – whether this Court had jurisdiction to hear this matter – whether the applicant should be admitted as a legal practitioner and be enrolled as an attorney.

39. MEC for the Department of Public Works, Eastern Cape and MEC for the Department of Health, Eastern Cape v Ikamva Architects CC (544/2021)

Appealed from ECG

Date to be heard: 21 November 2022

Van der Merwe JA, Gorven JA, Basson JA, Windell AJA, Salie-Hlophe AJA

Constitutional and administrative law – Preferential Procurement Policy Framework Act 5 of 2000 – procurement – hearsay – whether the court erred in rejecting the evidence of the

appellants as hearsay – whether the court erred in accepting the evidence of the respondent that the roster system constituted an adequate and lawful procurement system in compliance with the Preferential Procurement Policy Framework Act and s 217 of the Constitution – whether the court erred in accepting the evidence of the respondent that no upfront budgetary allocation for the project was required prior to the award – whether the court erred in failing to find that in the absence of Tender Board approval invalidated the award – whether the court erred in finding that the failure to produce proof of Tender Board approval was the applicant’s fault.

40. Snowy Owl Properties 284 (Pty) Ltd v Norman Celliers and Mziki Share Block Limited

(1295/2021)

Appealed from KZP

Date to be heard: 21 November 2022

Mocumie JA, Hughes JA, Nhlangulela AJA, Mali AJA, Masipa AJA

Civil procedure – contempt of court – whether the respondents were in contempt of the order of the full Court of the KwaZulu-Natal Division of the High Court – whether the first respondent scandalized the judiciary and hence he was found to be in contempt of court.

41. Elrich Ruwayne Smith N O, Karin Fortuin N O and Maponya Lazarus Ledwaba N O (in their capacities as joint liquidators of BZM Transport (Pty) Ltd (in liquidation) Masters ref: B20/2019) v Wilhelm Frederik Engelbrecht

(1221/2021)

Appealed from FB

Date to be heard: 21 November 2022

Makgoka JA, Nicholls JA, Carelse JA, Mjali AJA, Siwendu AJA

Companies Act 61 of 1973 – s 417 – s 173 of the Constitution – statutory interpretation – whether the interpretation of s 417 of the Companies Act 61 of 1973 (the Act), on the basis that only the court or the master were confined to the enquiry, was to be conducted in terms of the above section – why s 417 of the Act should not have been interpreted on a purposive basis so as to have included and allowed the liquidators of a liquidated company to conduct the enquiry and pose questions to an examinee.

42. The Western Cape Gambling and Racing Board and The Provincial Minister of Finance, Western Cape v Sunwest International (Pty) Ltd t/a Grandwest Casino &

Entertainment World, Worcester Casino (Pty) Ltd t/a Golden Valley Casino & Lodge and The Eastern Cape Gambling Board (Amicus Curiae in the court a quo)

(1330/2021)

Appealed from WCC

Date to be heard: 22 November 2022

Dambuza ADP, Mocumie JA, Plasket JA, Goosen AJA, Mali AJA

Statutory interpretation – Western Cape Gambling and Racing Act 4 of 1966 – separation of powers – freeplay credits – computation of adjusted gross revenue – the interpretation of the provisions of the Western Cape Gambling and Racing Act 4 of 1966, read with schedule III – whether so-called Freeplay credits constituted part of ‘the drop’ for purposes of the computation of ‘adjusted gross revenue’ (AGR) in determining the respondents’ gambling taxes – whether the respondents were entitled to the consequential relief they seek, namely a refund of amounts paid on the basis that Freeplay must be included in the drop of the computation of AGR.

43. Lieutenant Colonel K B O’Brien N O v The Minister of Defence and Military Veterans, Chief of the South African National Defence Force, Secretary of Defence and Military Veterans, The South African National Defence Force, Staff Sergeant D T Mokoena and Lieutenant P Z Mabula

(1271/2021)

Ponnan JA, Nicholls JA, Gorven JA, Mabindla-Boqwana AJA, Chetty AJA

Administrative law – civil procedure – review – Defence Act 16 of 2002 – Military Discipline Supplementary Measures 16 of 1999 – procedure for investigations into conduct of military judges – removal of military judges – judicial independence – *locus standi* – whether the court a quo exercised its discretion judicially in condoning the Defence Force’s unreasonable delay in bringing the review application – whether the Defence Force established standing to bring the review application – whether the court a quo was correct in upholding the Defence Force’s grounds for review – whether it was constitutionally permissible to use executive-appointed boards of inquiry under ss 101 and 102 of the Defence Act 42 of 2002 to investigate military judges, their judgments and how their cases were conducted – whether the renewable assignment of military judges for short periods under s 15 of the Military Discipline Supplementary Measures Act 16 of 1999 (MDSMA) was compatible with the constitutional and statutory guarantees of judicial independence – whether it was

constitutionally impermissible to vest the Adjutant General and the Minister with the power to remove military judges, without the involvement of any independent body.

**44. Millenium Aluminium and Glass Services CC, Bridgenun Mohanlal and Fast Track Contracting Africa (Proprietary) Limited v Group Five Construction (Proprietary) Limited and Constantia Insurance Company Limited
(693/2021)**

Appealed from GJ

Date to be heard: 22 November 2022

Zondi JA, Mothle JA, Nhlangulela AJA, Salie-Hlophe AJA, Siwendu AJA

Contract – company law – whether the court erred in upholding the first respondent’s call on a demand guarantee issued by the second respondent in circumstances where the appellants contended that, that did not meet the requirements of the guarantee.

**45. Riccardo Paolo Spagni v The Acting Director of Public Prosecutions, Western Cape, The National Director of Public Prosecutions, The Minister of Justice and Correctional Services, The Director-General, Department of Justice and Correctional Services, The Minister in the Department of International Relations and Cooperation
(455/2022)**

Appealed from WCC

Date to be heard: 23 November 2022

Dambuza ADP, Mabindla-Boqwana JA, Mjali AJA, Chetty AJA, Siwendu AJA

Extradition – Sections 85,86 and 231(1) of the Constitution of the Republic of South Africa - whether the first respondent, the Acting Director of Public Prosecutions (DPP) made the extradition to the United States of America on behalf of South Africa on 21 September 2021; whether the Acting DPP had the power to make an extradition request to a foreign State on behalf of South Africa and whether it may be presumed that the extradition request was made by the Minister of Justice and that power was lawfully delegated and sub delegated – whether the appeal is moot and should be heard in the interest of justice.

**46. JVE Civil Engineers Inc v Blue Bantry Investments 235 (Pty) Ltd and Petrus Burton Fourie N O
(1016/2021)**

Appealed from WCC

Date to be heard: 23 November 2022

Van der Merwe JA, Mocumie JA, Hughes JA, Goosen AJA, Windell AJA

Arbitration – dispute resolution – Arbitration Act 42 of 1965 (the Act) – reviewability of the arbitration awards in terms of s 33(1)(b) of the Act – the appellant contended that the arbitrator as well as the appeal arbitrator exceeded their powers as contemplated in s 33(1)(b) of the Arbitration Act by basing their findings in respect of one part of the appellant’s claim, namely relating to external bulk infrastructure services, thereon that the agreement between the appellant and the first respondent had been amended by a subsequent services agreement.

47. Ezulwini Mining Company (Pty) Ltd v Minister of Mineral Resources and Energy, Minister of Environment, Forestry and Fisheries, Minister of Human Settlements, Water and Sanitation, Regional Manager, Mineral Regulation, Gauteng Region, Department of Mineral Resources, GFI Joint Venture Holdings (Pty) Ltd, Gold Fields Operation Limited and Lucky Farms Partnership (289/2021)

Appealed from GP

Date to be heard: 24 November 2022

Petse AP, Molemela JA, Makgoka JA, Basson AJA, Goosen AJA

Mining law – Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) – National Environmental Management Act 107 of 1998 (NEMA) – declaratory orders – whether a mining company such as Ezulwini Mining Company (Pty) Ltd, by virtue of it being the holder of a mining right, had the obligation, and therefore remained responsible for the pumping and treatment of extraneous water from the underground workings of its defunct mine until at least when the Minister had issued a closure certificate in terms of s 43 of the MPRDA, or for such longer period as contemplated in s 24R of NEMA – whether the court a quo erred in granting the fifth and sixth respondents’ counter application – whether ss 43 and 24R created obligations on the part of a holder of a mining right to pump and treat extraneous water – whether these sections prolonged an existing obligation to do so, should such obligation already exist.

48. Nathalion Matshaba, Kabelo Aubrey Mafane, Lucas Stakie Ramaila and Tumelo Jeffrey Makofane v The State (829/2019)

Appealed from LP

Date to be heard: 29 November 2022

Zondi JA, Noicholls JA, Carelse JA, Windell AJA, Masipa AJA

Criminal law and procedure – law of evidence – Criminal Procedure Act 51 of 1977 –
whether the State had proven its case beyond reasonable doubt – whether the appellants actively associated themselves with the murder of the deceased – whether the State hinged on the evidence of a single witness – whether the first and fourth appellants were correctly convicted in terms of the doctrine of joint possession – whether the trial court erred by declaring the accused unfit to possess firearms in terms of s 103 of the Firearms Control Act 60 of 2000.