

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 1 2018
CASES ENROLLED FOR HEARING: FEBRUARY – MARCH 2018**

1. H Ras v The State (1207/2017)

Appealed from GP

Date to be heard: 14 February 2018

Leach JA, Van der Merwe JA, Mocumie JA

Criminal law and procedure – bail application – whether the court a quo erred in dismissing the applicant's appeal against the refusal of bail – whether it is in the interest of justice that the applicant should be held in custody pending the interlocutory application in the court a quo.

2. Sohahle Macinezela (aka Macimela) v The State (550/2017)

Appealed from ECM

Date to be heard: 15 February 2018

Navsa JA, Majiedt JA, Dambuza JA, Mocumie JA, Hughes AJA

Criminal Law and procedure – conviction and sentence – the appellant was convicted of rape and sentenced to life imprisonment – appeal against conviction and sentence dismissed by the court a quo – special leave to appeal granted by the SCA – whether the trial court infringed the appellant's right to a fair trial by amending the charge sheet – whether the complainant was proven to be a person that was incapable of consent for being mentally disabled – whether the sentence of life imprisonment was appropriate.

3. Lonwabo Tete v The State (663/2017)

Appealed from ECG

Date to be heard: 15 February 2018

Navsa JA, Majiedt JA, Dambuza JA, Mocumie JA, Hughes AJA

Criminal law and procedure – conviction – the appellant was convicted in the regional court, Port Elizabeth on a charge of rape and sentenced to ten years' imprisonment – the appellant appealed unsuccessfully to the court a quo – special leave to appeal was granted by the SCA on 30 May 2017 – whether the court a quo misdirected itself in disregarding the evidence of the witness Sofisa – whether the medical evidence corroborated the complainant's version that she was assaulted by the appellant – whether the court a quo misdirected itself in finding that the appellant never put it to the complainant that they agreed to sexual intercourse and that they were in a love relationship – whether the evidence of the complainant was reliable – whether the court a quo misdirected itself in making adverse credibility findings.

4. The State v Noel Chauke & another (826/2017)

Appealed from GJ

Date to be heard: 15 February 2018

Lewis JA, Seriti JA, Saldulker JA, Van der Merwe JA, Makgoka AJA

Criminal Law and procedure – sentence – the respondents were indicted on two counts of murder and aggravated robbery, found guilty as charged and sentenced to 20 years' imprisonment on each count of murder and to ten years' imprisonment on the robbery count, ordered to run concurrently – effective sentence 20 years' imprisonment - whether the sentence imposed was appropriate.

5. Sente Joseph Thakeli & another v The State (231/2017)

Appealed from FB

Date to be heard: 15 February 2018

Lewis JA, Seriti JA, Saldulker JA, Van der Merwe JA, Makgoka AJA

Criminal law and procedure – sentence – the appellants were convicted of murder by the regional court, Welkom and sentenced to 28 years' imprisonment - special leave to appeal was granted by the SCA on 6 March 2017 – whether the appellants' right to a fair trial was infringed – whether the trial court was correct to amend the charge sheet at the end of the trial – whether the sentence induces a sense of shock.

6. The Director of Public Prosecutions, Eastern Cape (Grahamstown) v Winston Booyen (580/2017)

Appealed from ECG

Date to be heard: 15 February 2018

Bosielo JA, Wallis JA, Pillay D AJA

Criminal law and procedure – sentence - the respondent was convicted on two counts of murder and one count of robbery with aggravating circumstances – whether the court a quo erred in not imposing a sentence in excess of the minimum prescribed sentence on count 1 – whether the court a quo erred in not imposing the prescribed minimum sentence on counts 2 and 3.

7. Patrick Vusumuzi Ngcobo v The State (1344/2016)

Appealed from KZP

Date to be heard: 15 February 2018

Bosielo JA, Wallis JA, Pillay D AJA

Criminal Law – sentence – whether the trial court erred in finding that no substantial and compelling circumstances existed to warrant a deviation from the prescribed minimum sentence – whether the minimum sentence was disproportionate in the circumstances of the matter.

8. The Director of Public Prosecutions, Eastern Cape (Grahamstown) v Willie Themba Yoyo (581/2017)

Appealed from ECG

Date to be heard: 16 February 2018

Maya P, Swain JA, Mbha JA, Mothle AJA, Hughes AJA

Criminal law and procedure – sentence - attempted rape – the respondent pleaded guilty and was convicted of attempted rape in terms of s 55(a) read with s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 – sentenced to six years' imprisonment, half of which was suspended for three years – whether the sentence imposed was inappropriate and a lengthier sentence warranted in the circumstances.

9. The Director of Public Prosecutions, Eastern Cape (Grahamstown) v Mzukisi Peli (533/2017)

Appealed from ECG

Date to be heard: 16 February 2018

Maya P, Swain JA, Mbha JA, Mothle AJA, Hughes AJA

Criminal law and procedure – sentence - whether the respondent's sentence for rape of a six year old child should be increased on appeal.

10. Tebogo Patrick Ledwaba Phetoe v The State (1361/2016)

Appealed from GJ

Date to be heard: 16 February 2018

Shongwe ADP, Leach JA, Mocumie JA, Plasket AJA, Pillay D AJA

Criminal Law and procedure - appellant's convictions on eight counts of common law rape upheld by the full court and replaced with a conviction of being an accomplice - appeal against remainder of his convictions and sentences dismissed and a sentence of life imprisonment imposed by the full court for the offences - whether full court erred in applying the doctrine of common purpose in convicting the appellant - whether full court misdirected itself in dismissing the appeal of the remainder of the convictions and the sentence of life imprisonment.

11. Thengimpilo Maqebhula v The State (284/2017)

Appealed from ECG

Date to be heard: 16 February 2018

Ponnan JA, Willis JA, Mathopo JA, Davis AJA, Rogers AJA

Criminal Procedure - conviction and sentence - application for leave to appeal against the dismissal of petition by the court a quo - whether the Supreme Court Act 59 of 1959 was in fact applicable to the petition - whether the court a quo erred in refusing to grant the applicant leave to appeal convictions and sentence.

12. Johannes van den Heever v Louis Marius Taljaard N O & others (289/2017)

Appealed from GP

Date to be heard: 19 February 2018

Navsa JA, Bosielo JA, Leach JA, Mocumie JA, Makgoka AJA

Company Law - Insolvency law – interpretation - whether the disposition of the immovable property of a CC to the appellant after the effective date of the winding-up of the CC was tantamount to a void disposition as contemplated in s 348, read with s 341 (2) of the Companies Act of 1973 - whether the disposition was in compliance with an order of court - whether the definition of 'disposition' in s 2 of the Insolvency Act 24 of 1936 applied to the term 'disposition' as contained in s 341(2) of the Companies Act.

13. Waymark Infotech (Pty) Ltd v Road Traffic Management Corporation (440/2017)

Appealed from GP

Date to be heard: 19 February 2018

Lewis JA, Seriti JA, Mathopo JA, Davis AJA, Plasket AJA

Contract – Public Finance Management Act 1 of 1999 – administrative law – tender -whether an agreement concluded by the parties without ministerial authorisation constituted a 'future financial commitment' that fell within the ambit of s 66 of the PFMA – whether the court a quo was correct in upholding the respondent's counterclaim against the appellant in circumstances where the respondent did not bring judicial review proceedings to challenge the binding effect of its decision to accept the appellant's tender and to conclude the agreement in issue – whether ss 66 and 68 of the PFMA applied to ordinary public procurement contracts such as the agreement in question

14. Auction Alliance (Pty) Ltd v Wade Park (Pty) Ltd (342/2016)

Appealed from KZP

Date to be heard: 19 February 2018

Ponnan JA, Majiedt JA, Swain JA, Dambuza JA, Mothle AJA

Contract - suspensive condition – the respondent in the court a quo was unsuccessful in its attempt to reclaim commission paid to the appellant arising out of an auction for the sale of immovable property, on the basis that a suspensive condition in the agreement of sale had not been fulfilled because the seller had failed to comply with s 228 of the Companies Act 61 of 1973 – on appeal the full court set aside the court a quo's order and substituted it with one in favour of the respondent for payment of R3 021 000 with interest – whether the suspensive condition was fulfilled.

15. The Director-General, Department of Home Affairs & another v Nurul Islam & others (459/2017)

Appealed from WCC

Date to be heard: 20 February 2018

Maya P, Majiedt JA, Mbha JA, Van der Merwe JA, Rogers AJA

Civil procedure – interim interdict – Immigration Act 13 of 2002 – whether a prohibited person can be granted admission into the Republic of South Africa – whether the appellants can be ordered to issue visas to persons who are prohibited in terms of s 29(1)(f) of the Immigration Act – whether an interim interdict can be granted in circumstances where the applicant has a pending internal review.

16. Ocean Echo Properties 327 CC & another v Old Mutual Life Assurance Company (South Africa) Ltd (288/2017)

Appealed from WCC

Date to be heard: 20 February 2018

Ponnan JA, Willis JA, Saldulker JA, Mothle AJA, Hughes AJA

Contract - civil procedure - lease agreement - whether a lease agreement entered into between the appellant and the respondent was validly cancelled before the respondent's claim for outstanding rental arose - whether tacit cancellation of written agreement containing non-variation clause is possible - whether an informal vacating of premises without prior written consent was a cancellation of agreement in terms of the prescribed clause - whether the acceptance of payment of rental and other rates constituted acknowledgement of tacit lease - whether the amended plea contained sufficient averments to sustain a defence to the respondent's claim for arrear rental.

17. Anton Loggenberg N O & others v Nicolaas Petrus Maree (286/2017)

Appealed from FB

Date to be heard: 20 February 2018

Bosielo JA, Seriti JA, Wallis JA, Swain JA, Pillay D AJA

Law of Contract: Alienation of Land Act 68 of 1981 - whether an oral agreement concluded between first appellant, in his personal capacity, constitutes an alienation of land as described by s 2(1) of the Alienation of Land Act 68 of 1981 - whether s 2(1) finds application where the appellant concluded an agreement with the respondent for the benefit of a third party, a Trust, for purposes of transferring certain immovable property to such Trust - whether such agreement was void.

Constitutional Law - whether the development of the common law to make provision for an enforceable agreement to negotiate bona fide is necessary – whether it is reasonable to conclude a further agreement in the absence of a deadlock breaking mechanism.

18. Christopher Fortuin v The State (838/2017)

Appealed from GP

Date to be heard: 21 February 2018

Shongwe ADP, Saldulker JA, Dambuza JA, Van der Merwe JA, Pillay D AJA

Criminal law and procedure – special leave to appeal to the SCA limited to conviction – whether the court a quo erred in dismissing the applicant's petition for leave to appeal against his conviction in the regional court on a charge of attempted rape – whether the regional court erred in finding that the appellant's actions constituted the crime of attempted rape.

19. Road Accident Fund v Mogamat Ridaa Abrahams (276/2017)

Appealed from WCC

Date to be heard: 21 February 2018

Navsa JA, Lewis JA, Willis JA, Makgoka AJA, Hughes AJA

Road Accident Fund – delict - action for damages – interpretation - whether the respondent was entitled to compensation from the appellant in terms of the relevant provisions of the Road Accident Fund Act 56 of 1997 in circumstances where the respondent was the driver in a single vehicle collision - whether the respondent was entitled to claim for compensation where the injuries sustained by him were due to the wrongful act of the owner of the motor vehicle who failed to properly maintain the insured vehicle - whether the court a quo correctly interpreted the provisions of the relevant legislation.

20. Tshamuhau Maphaha & another v The State (174/2017)

Appealed from GJ

Date to be heard: 21 February 2018

Leach JA, Mbha JA, Mocomie JA, Plasket AJA, Mothle AJA

Criminal Law and procedure – the appellants were convicted with eight others on one charge of robbery with aggravating circumstances and sentenced to 15 years' imprisonment – the appeal is against the refusal by the court a quo to grant leave to the appellants to appeal against their conviction on a charge of robbery with aggravating circumstances and sentence – whether there are reasonable prospects that another court will reach a different conclusion in respect of either conviction or sentence – whether the State proved that the appellants actively took part in the robbery, having regard to their defence that they simply obeyed official instructions – whether the appellants received a fair trial in view of the presiding officer's conduct during the trial – whether the sentence imposed was appropriate.

21. The Director of Home Affairs & others v Ntumba Guella Nbaya & others (227/2017)

Appealed from WCC

Date to be heard: 22 February 2018

Maya P, Majiedt JA, Mbha JA, Van der Merwe JA, Rogers AJA

Refugee Law - Refugee Act 130 of 1998 - interim order granted by court below requiring the first appellant to issue regular extensions of asylum-seeker permits to existing asylum-seekers in Cape Town - interim order was of limited duration and applied only to existing asylum-seekers - whether the order of the court a quo was a final order - whether court a quo erred in granting interim relief pending the finalisation of the Scalabrini review application.

22. John Anthony Shaw & another v Glenn William Mackintosh & another (267/2017)

Appealed from GJ

Date to be heard: 22 February 2018

Shongwe ADP, Wallis JA, Dambuza JA, Mathopo JA, Davis AJA

Suretyship - National Credit Act 34 of 2005 - whether acknowledgement of debt constituted a suretyship agreement concluded between the appellants and the first respondent in favour of the second respondent - whether acknowledgement of debt constituted a credit agreement as contemplated by the National Credit Act 34 of 2005 - whether non-registration of the second respondent as a registered credit provider rendered the agreement void.

23. Stu Davidson and Sons (Pty) Ltd v Eastern Cape Motors (Pty) Ltd (260/2017)

Appealed from ECG

Date to be heard: 22 February 2018

Lewis JA, Ponnann JA, Bosielo JA, Seriti JA, Pillay D AJA

Contract – delict - breach of warranty - claim for contractual damages, alternatively delictual damages, arising out of the purchase of a motor vehicle - the respondent sued on the basis that the appellant breached two warranties contained in a trade-in arrangement entered into between the parties - whether there was a material misrepresentation on the part of the appellant in relation to whether or not the vehicle had been involved in a substantial or major car accident as contained in clause 7 of the trade-in the declaration signed by the parties.

24. John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (in liquidation) & another (245/2017)

Appealed from KZP

Date to be heard: 23 February 2018

Shongwe ADP, Willis JA, Mocumie JA, Mothle AJA, Rogers AJA

Contract – eviction - whether second respondent was acting as the agent for the first respondent when it concluded a written lease agreement with the appellant - whether the appellant had any right to occupy the property concerned in light of a termination of agreement between the first respondent and the second respondent - whether the first respondent was entitled to an eviction order against the appellant.

25. Patmar Explorations (Pty) Ltd & others v The Limpopo Development Tribunal & others (1250/2016)

Appealed from GP

Date to be heard: 23 February 2018

Navsa JA, Wallis JA, Mathopo JA, Davis AJA, Hughes AJA

Interpretation – constitutional - property law – land development - Development Facilitation Act 67 of 1995 – whether a Development Tribunal established in terms of the Development Facilitation Act 67 of 1995 retained the power to approve land development applications after midnight and after the expiry of the suspension order made by the Constitutional Court – whether the Development Tribunal had jurisdiction to consider the pending applications – whether it is just and equitable to set aside the order made by the Development Tribunal.

26. Mobile Telephone Networks (Pty) Ltd & another v Spilhaus Property Holdings (Pty) Ltd & others (208/2017)

Appealed from WCC

Date to be heard: 23 February 2018

Ponnann JA, Saldulker JA, Swain JA, Plasket AJA, Makgoka AJA

Interdict - Law of Property - locus standi - Sectional Titles Act 95 of 1986 - zoning regulations - whether the owners of units in a sectional title scheme had the locus standi to sue or be sued in their individual capacities having regard to the relevant provisions of the Sectional Titles Act 95 of 1986 - whether the erection by the respondents of telecommunications infrastructure on a roof building was in compliance with the zoning scheme regulations and the relevant title deed restrictions - whether the respondents satisfied the requirements for a permanent interdict.

27. Fikiswa Fesi & another v The Trustees Elect of the Ndabeni Communal Property Trust (IT1056/98) and Master of the Eastern Cape High Court, Cape Town & another v The Trustees Elect of the Ndabeni Communal Property Trust (IT1056/98) (412/2017 and 411/2017)

Appealed from WCC

Date to be heard: 26 February 2018

Navsa JA, Bosielo JA, Swain JA, Mbha JA, Pillay D AJA

Trust law - administrative law - Master of the High Court – Trust Property Control Act 57 of 1998 – whether a person's right of access to court in terms of s 23 of the Trust Property Control Act may be exercised in the absence of an application for the review and setting aside of the Master's decision in terms of the Promotion of Administrative Justice Act 3 of 2000 - whether the court a quo was empowered to direct the Master to issue letters of authority in the absence of a substantive application for review – whether the court a quo erred in finding that the Master's decision not to issue letters of authority to the respondents constituted administrative action.

Constitutional law – whether a person's right of access to court in terms of s 23 of the Trust Property Control Act 57 of 1988 may be exercised in the absence of an application for the review and setting aside of the Master's decision in terms of the Promotion of Administrative Justice Act 3 of 2000 not to appoint the respondents as trustees of the Ndabeni Communal Property Trust (IT1056/1998).

28. PG Group (Pty) Ltd & others v National Energy Regulator of South Africa & another (150/2017)

Appealed from GP

Date to be heard: 26 February 2018

Lewis JA, Ponnann JA, Leach JA, Davis AJA, Makgoka AJA

Administrative Law – Promotion of Administrative Justice Act 3 of 2000 (the PAJA) – the appeal is against the order of the court a quo dismissing the appellants' application to review and set aside (in terms of various provisions of the PAJA, alternatively the principle of legality) two decisions of the National Energy Regulator of South Africa (NERSA), the first respondent, to approve Sasol's maximum price application and its transmission tariff application – whether the court below materially erred in holding that the bringing of the application had been unreasonably delayed such that it was not to be entertained – whether the appellants had made out a proper case for the review and setting aside of NERSA's two decisions, on the basis that they were irrational, in breach of the rule of law framed in s 1(c) of the Constitution, and unreasonable within the meaning of s 6(2)(h) of the PAJA.

29. Husband v Wife (1224/2016 and 144/2017)

Appealed from WCC

Date to be heard: 26 February 2018

Majiedt JA, Saldulker JA, Dambuza JA, Plasket AJA, Rogers AJA

Family law - divorce – antenuptial contract - accrual award - maintenance – issues whether the waiver of spousal maintenance in an ante-nuptial contract was unenforceable on grounds of public policy – whether the court a quo erred in its credibility findings – whether the court a quo has an overriding discretion to award maintenance in terms of s 7 of the Divorce Act 70 of 1979 – whether the calculation by the court a quo of the accrual in the estate of the appellant was correct – whether the appellant should prove that an asset in his estate as at date of divorce is derived from an excluded asset – whether the court a quo should have regarded an asset held in the name of a company, where the beneficial interest in the company was found to be held by the appellant, as the appellant's asset – whether the amount of the appellant's estate for accrual purposes before the date of dissolution of the marriage can be measured on dissolution, without a special plea.

Constitutional law – the respondent contends that the invalidity and unenforceability of the waiver of spousal maintenance contained in the parties' ante-nuptial raise constitutional issues.

30. Pietermaritzburg and District Council for the Care of the Aged (PADCA) v Redlands Development Projects (Pty) Ltd & others (184/2017)

Appealed from KZP

Date to be heard: 27 February 2018

Navsa JA, Wallis JA, Willis JA, Mathopo JA, Pillay D AJA

Civil Procedure – interdict – the appellant instituted an action against the respondents for an interdict to stop the run-off of water from the properties that form part of the Redlands Estate at 1 George MacFarlane Lane, Pietermaritzburg in excess of the natural flow when the said Redlands Estate was in a pristine condition (before 1996) – the court a quo found that the action had to fail because the appellant and the respondents' properties were not contiguous and dismissed the action on this basis alone – whether the appellant established a case for an interdict, in particular a clear right and a harm actually suffered or reasonably apprehended.

31. K2014/49699/07 t/a Tiekiedraai Eiendomme (Pty) Ltd v Shell South Africa Marketing (Pty) Ltd & others (1206/2016)

Appealed from GP

Date to be heard: 27 February 2018

Bosielo JA, Swain JA, Mbha JA, Mothle AJA, Hughes AJA

Contract – interpretation – lease agreement - appeal against the interpretation of a clause contained within a lease agreement concluded between the first and second respondent – whether the notice of offer made by the appellant to the second respondent to purchase the leased property triggered respondent's right of pre-emption contained in the lease agreement.

32. Dinnermates (TVL) CC v Piquante Brands International (Pty) Limited & another (401/2017)

Appealed from GP

Date to be heard: 28 February 2018

Maya P, Wallis JA, Mathopo JA, Davis AJA, Rogers AJA

Intellectual Property - trade mark – whether the trade mark PEPPAMATES offended the provisions of s 10(14) of the Trade Marks Act 194 of 1993 – whether the use of the PEPPAMATES & Device trademark by the appellant in relation to goods for which registration was sought is likely to lead to deception or confusion – whether the trademark PEPPAMATES & Device was confusingly similar to the mark PEPPADEW device.

33. Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd t/a Crown River Safari & another (816/2016)

Appealed from ECG

Date to be heard: 28 February 2018

Navsa JA, Bosielo JA, Seriti JA, Saldulker JA, Swain JA

Property Law – ownership – Game Theft Act 105 of 1997 – whether a certificate in terms of s 2(2)(a) of the Game Theft Act is the sole prerequisite for the operation of s 2(1)(a) of that Act – whether the common law must be developed in terms of s 8(1) and 39(2) and/or s 173 of the Constitution of the Republic of South Africa to promote the spirit, purport and object of the Bill of Rights in the Constitution, specifically s 24(b)(ii), to provide that wild animals which are sufficiently contained in a protected area managed by an organ of state are *res publicae* owned by such organ of state.

34. Minister of Home Affairs & another v The Public Protector of the Republic of South Africa (308/2017)

Appealed from GP

Date to be heard: 28 February 2018

Lewis JA, Majiedt JA, Willis JA, Plasket AJA, Mothle AJA

Administrative Law –jurisdiction – judicial review - whether the court a quo erred in dismissing the application for judicial review of the Public Protector's Report regarding an unfair labour practice – whether the Public Protector had jurisdiction to consider a labour matter – whether the Public Protector failed to exercise her discretion in terms of ss 6(1) and 6(3) of the Public Protector Act 23 of 1994 – whether the court's discretion was exercised rationally and whether the Public Protector ought to have referred the complainant to his legal remedies under applicable labour legislation or pursued an alternative dispute resolution process.

35. South African National Parks v MTO Forestry (Pty) Ltd & another (446/2017)

Appealed from WCC

Date to be heard: 01 March 2018

Navsa JA, Leach JA, Dambuza JA, Davis AJA, Rogers AJA

Administrative Law – Promotion of Administrative Justice Act 3 of 2000 – whether the appellant's decisions to approve accelerated felling of commercial alien timber in a part of the Table Mountain National Park deviated from a document called the Tokai and Cecilia Management Framework 2005 – whether this was a contractual issue between the appellant and the first respondent only or – whether it constitutes administrative action attracting public law duties – whether the legal framework was a statutory constraint on its consent under the lease.

36. Brompton Court Body Corporate SS 119/2006 v Christina Fundiswa Khumalo (398/2017)

Appealed from GJ

Date to be heard: 01 March 2018

Ponnan JA, Van der Merwe JA, Mocumie JA, Pillay D AJA, Makgoka AJA

Prescription – arbitration award – the application arose out of a claim against the respondent for alleged arrears and unpaid levies during 2009 to 2011, as well as a major structural defect on the respondent's property which the appellant refused to repair – the dispute was referred to arbitration and set down for hearing on 25 September 2011 – the arbitration award was published by the arbitrator on 21 December 2012 – the litigation between the parties was instituted in the magistrates' court before the arbitration took place and is still pending – whether the arbitration award prescribed in terms of s 13 (1)(f) of the Prescription Act .

37. Nokulunga Primrose Sonti & another v The Minister of Justice and Correctional Services & others and General Alfred Moyo & another v The Minister of Justice and Constitutional Development & others (386/2017 and 387/2017)

Appealed from GP

Date to be heard: 02 March 2017

Maya P, Wallis JA, Mbha JA, Van der Merwe JA, Makgoka AJA

Constitutional Law – These appeals raise the scope and application of the right to freedom of expression in s 16 of the Constitution, and the fair trial rights to be presumed innocent, not to be compelled to make self-incriminating admissions and to remain silent in ss 35(3)(h) and (h) of the Constitution – whether sections 1(1)(b) and 1(2) of the Intimidation Act 72 of 1982 are consistent with the rights entrenched in ss 16 and 35(3)(h) and (j) of the Constitution – whether, if they are inconsistent with any of those rights, they were justifiable limitations of those rights.

38. Ndabenhle Business Enterprises CC v Vodacom (Pty) Ltd (441/2017)

Appealed from GJ

Date to be heard: 02 March 2017

Shongwe ADP, Swain JA, Mocumie JA, Mothle AJA, Hughes AJA

Civil Procedure – exception – jurisdiction - whether the court a quo erred in the adjudication of the exception – whether the appellant's notice of appeal is a valid notice and whether it complies with the provisions of rule 7(3) of the Supreme Court of Appeal Rules – whether this Court has jurisdiction to hear the appeal – if so, whether an idea is property – whether s 25 of the Constitution operates between private actors – whether a juristic entity enjoys any of the benefits of s 10 of the Constitution.

39. Nokuthula Nomsa Khoza obo Zamokuhle Khoza v The MEC for Health of the Gauteng Provincial Government (216/2017)

Appealed from GJ

Date to be heard: 02 March 2017

Lewis JA, Majiedt JA, Willis JA, Dambuza JA, Pillay D AJA

Delict - award of general damages - whether court a quo erred in holding that awarding a higher amount for general damages would constitute a duplication of compensation - whether court a quo misdirected itself in applying the respective percentage of contingency deduction to the amount awarded for future loss of earnings - whether the court a quo properly determined the quantum of damages.

40. Budge, Jonathan Stuart & others v Glyn-Cuthbert Russel & others (1046/2016)

Appealed from GJ

Date to be heard: 05 March 2018

Shongwe ADP, Willis JA, Saldulker JA, Mbha JA, Van der Merwe JA

Contract Law – repudiation and enrichment – whether the court a quo erred in finding that the first respondent had not repudiated the dissolution agreement – whether the court a quo erred in directing the first respondent to render an accounting to the first appellant when the partnership had terminated and no assets remained for distribution - whether variations to the dissolution agreement are precluded by the non-variation clause and the practical application of the dissolution agreement.

41. Overstrand Municipality v Water and Sanitation Services South Africa (Pty) Ltd & another (143/2017)

Appealed from WCC

Date to be heard: 05 March 2018

Navsa JA, Leach JA, Mocumie JA, Davis AJA, Makgoka AJA

Administrative Law – review – tender award – appeal against an order of the court a quo setting aside a tender award of the appellant at the instance of Water and Sanitation Services South Africa (WSSA) – whether WSSA's failure to exhaust an available alternative remedy should have resulted in its review application being dismissed – whether WSSA's review grounds, in particular its contention that the successful tender, Veolia Water Solutions and Technologies South Africa (Pty) Ltd, did not comply with the tender specifications, were well-founded – whether, even if WSSA's review application was competent and well-founded, the relief granted by the court a quo was just and equitable in the light of the changed circumstances and the ramifications of setting aside the tender award.

42. Glenn Marc Bee v The Road Accident Fund (093/2017)

Appealed from WCC

Date to be heard: 05 March 2018

Bosielo JA, Seriti JA, Mathopo JA, Rogers AJA, Hughes AJA

Road Accident Fund – claim for damages – past and future loss of earnings - appellant awarded damages for past and future loss of earnings, with costs – whether full court's finding that appellant proved that he suffered loss of earnings/ earning capacity correct.

43. Ludidi Ludidi v Nolitha Ludidi & others (658/2017)

Appealed from ECM

Date to be heard: 06 March 2018

Maya P, Dambuza JA, Mathopo JA, Mocumie JA, Rogers AJA

Customary law - Transkei Constitution Act 15 of 1976 – appointment of traditional leader -regional authority – review of the decision of the Member of Executive Council responsible for Cooperative Governance and Traditional Affairs: Eastern Cape Province – whether the first respondent was to be recognised and appointed pursuant to the provisions of s 18 of the Eastern Cape Traditional Leadership and Governance Act 5 of 2005.

44. The Commissioner for the South African Revenue Service v The Executors of Estate Late Sidney Ellerin (142/2017)

Appealed from the Tax Court

Date to be heard: 06 March 2018

Navsa JA, Wallis JA, Mbha JA, Davis AJA, Hughes AJA

Tax – company – laws – valuation of certain preference shares – deceased held 112000 7 percent redeemable non-cumulative preference shares of R1 each in the company - whether the deceased, at the date of his death and by virtue of the articles of association of the Trust could attach the voting rights to the preference shares held by the deceased in the company – whether the deceased was entitled to convert such shares into ordinary shares or whether the deceased was precluded from converting the preference shares into ordinary shares in terms of the Memorandum of Association and the Articles of the Company.

45. Bannister's Print (Pty) Limited v D & A Calendars CC & another (1078/2016)

Appealed from GJ

Date to be heard: 06 March 2018

Lewis JA, Willis JA, Swain JA, Pillay D AJA, Mothle AJA

Civil Procedure – settlement – contract agreement - fraud – whether an agreement of settlement which was fraudulently created by an employee of the respondents' attorney can be enforced – whether fraudulent agreement of settlement is null and void – whether the respondents were estopped from denying their signature to the settlement agreement and whether the court a quo erred in dismissing the appeal.

46. Nomgcobo Jiba & another v The General Council of The Bar of South Africa and The General Council of the Bar v Sibongile Mzinyathi (141/2017)

Appealed from GP

Date to be heard: 07 March 2018

Shongwe ADP, Leach JA, Seriti JA, Van der Merwe JA, Mocumie JA

Civil Procedure – contempt of court – costs – Admission of Advocates Act 74 of 1964 – appeal against whole judgment of court a quo in terms of which the second appellant, Mr Lawrence Sithembiso Mrwebi, was struck off the Roll of Advocates – whether the court a quo materially misdirected itself on the issues that it was called upon to determine – whether the respondent established the misconduct on a balance of probabilities – whether first appellant’s conduct as a litigant sued in her representative capacity as Acting National Director of Public Prosecutions objectively renders her no longer fit and proper to continue practicing as an advocate – **cross-appeal** – whether the court a quo erred in awarding costs against the respondent consequent to dismissing the cross- appeal.

47. Bryan James de Klerk v Minister of Police (329/2017)

Appealed from GP

Date to be heard: 08 March 2018

Shongwe ADP, Leach JA, Majiedt JA, Rogers AJA, Hughes AJA

Delict – unlawful arrest – appellant unsuccessfully brought action against respondent based on an alleged unlawful arrest – whether appellant’s arrest and detention unlawful – whether respondent was liable to compensate appellant for his entire detention of 8 days or only up to his appearance in court and the quantum of such damages.

48. Automated Office Technology (Pty) Ltd t/a AOT Finance v International Colleges Group (Pty) Ltd (385/2017)

Appealed from WCC

Date to be heard: 08 March 2017

Navsa JA, Seriti JA, Swain JA, Pillay D AJA, Makgoka AJA

Contract – cession – whether the appellant has proven that the rights, title and interests in rental addenda concluded between the respondent and a company called Katlego Solutions (Pty) Ltd were ceded to the appellant – whether the appellant made out a case for its claim against the respondent which was based on the aforesaid rental addenda and the alleged cessions of the rental addenda from Katlego Solutions (Pty) Ltd to the appellant.

49. Palabora Copper (Pty) Ltd v Motlokwa Transport & Construction (Pty) Ltd (298/2017)

Appealed from GP

Date to be heard: 08 March 2017

Bosielo JA, Wallis JA, Dambuza JA, Van der Merwe JA, Plasket AJA

Arbitration Award – review – s 33 of the Arbitration Act 42 of 1965 – whether the arbitration award ought to be reviewed and set aside on the basis that the arbitration proceedings and the conduct of the arbitrator were grossly irregular and unlawful – whether the arbitrator exceeded his powers within the meaning of s 33(1)(b) of the Arbitration Act – whether the arbitration proceedings were irregular and unlawful due to a failure by the arbitrator to consider fully or at all or hear the evidence on the quantum and the quantum agreement and the defences raised by the appellant in its plea to the counter-claim.

50. The Commissioner for the South African Revenue Service v Daikin Air Conditioning South Africa (Pty) Ltd (185/2017)

Appealed from GP

Date to be heard: 09 March 2018

Maya P, Majiedt JA, Mbha JA, Van der Merwe JA, Davis AJA

Customs and Excise Act 91 of 1964 – interpretation – condonation – application for condonation for the late filing of the notice of appeal and the application to widen the basis of the appeal to include all the grounds set out in the application for leave to appeal – whether the words ‘windows or wall types, self-conditioned or split-system’ which appear in tariff subheading 8415.10 in Part 1 of Schedule 1 of the Customs and Excise Act include air conditioning machines which are neither windows nor wall types, but are ceiling types – the proper tariff classification in terms of s 47(8)(a) of the Act of indoor and outdoor components.

51. Bonita Marieta Steenkamp v Pieter Steenkamp (291/2017)

Appealed from ECG

Date to be heard: 09 March 2018

Lewis JA, Willis JA, Swain JA, Mathopo JA, Mocomie JA

Family Law – Divorce – whether the court a quo was correct in finding that there should be a partial forfeiture of the benefits of the marriage in the respondent's favour in terms of s 9(1) of the Divorce Act 70 of 1979 – whether the court a quo was correct in finding that the pension interest in favour of the appellant should be deferred until such time as the full pension accrues to the respondent.

52. Vincorp (Pty) Ltd v Trust Hungary ZRT (61/2017)

Appealed from WCC

Date to be heard: 09 March 2018

Ponnan JA, Bosielo JA, Saldulker JA, Plasket AJA, Mothle AJA

Contract Law – whether the appellant was the purchaser of wine barrels – whether the principle of quasi-mutual assent applies, making Vincorp liable to Trust Hungary for the payment of the barrels delivered to it.

53. Leonie Logie Kelbrick & others v Nelson Attorneys & another (302/2017)

Appealed from ECP

Date to be heard: 12 March 2018

Shongwe ADP, Wallis JA, Dambuza JA, Van der Merwe JA, Makgoka AJA

Prescription – damages – contract – whether the appellants' claim against the first respondent for professional negligence arising out of an alleged breach of duty of care prescribed in terms of s 12(3) of the Prescription Act 68 of 1969

54. The National Consumer Commission v Univision Services Association NPC & others (618/2017)

Appealed from GP

Date to be heard: 12 March 2018

Navsa JA, Leach JA, Seriti JA, Mocumie JA, Hughes AJA

Consumer Protection Act 68 of 2008 (CPA) – interpretation – whether s 147 of the National Credit Act 34 of 2005 (NCA) limits the tribunal's power to make a costs order in an application to a complaint referred in terms of s 141(1) of the NCA and s 75(1)(b) of the CPA - whether Regulations 19 and 25(7) give the tribunal the power to make a costs order where an applicant withdraws an application before it has been finalised or where a frivolous or vexatious application was brought.

55. Ekurhuleni Metropolitan Municipality v NCP Chlorchem (Pty) Ltd & others (119/2017)

Appealed from GJ

Date to be heard: 12 March 2018

Majiedt JA, Saldulker JA, Swain JA, Plasket AJA, Mothle AJA

Constitutional Law – whether the court a quo correctly reviewed and set aside the decision by the National Energy Regulator of South Africa (NERSA) – whether the court a quo correctly declined to condone the filing of the appellant's answering affidavit approximately two and half years late – whether the court a quo correctly dismissed the appellant's counter-application – whether the first respondent was entitled to contract directly with Eskom – whether there was a reasonable apprehension of bias on the part of the court a quo – whether s 156(1) of the Constitution read with Part B of Schedule 4 of the Constitution gave the appellant the exclusive right to supply electricity to consumers within its territory.

56. Lion Match Company (Pty) Ltd v Commissioner for the South African Revenue Service (301/2017)

Appealed from the Tax Court

Date to be heard: 13 March 2018

Ponnan JA, Mbha JA, Dambuza JA, Mathopo JA, Davis AJA

Tax Law – whether the Commissioner may change the amount and the basis for an additional assessment and make a new determination of the appellant's tax liability in the pleadings before the Tax Court without issuing a further additional or revised agreement – whether the Commissioner's statement of grounds of assessment complied with the provisions of Tax Court Rule 31(3).

57. B S Nkola v Argent Steel Group (Pty) Ltd t/a Phoenix Steel (406/2017)

Appealed from ECG

Date to be heard: 13 March 2018

Lewis JA, Saldulker JA, Swain JA, Pillay D AJA, Makgoka AJA

Uniform Rules of Court – Interpretation – execution of default judgment - whether a judgment creditor is entitled to an order declaring immovable property executable in circumstances where the judgment creditor is not possessed of a sheriff's *nulla bona return* – whether the judgment creditor is entitled to an order declaring immovable property executable where it is common cause that the judgment debtor is possessed of incorporeal movable property and the judgment debtor had not sought to execute its judgment – the requirements for execution against immovable property, particularly against the residential home of the appellant.

58. The Director-General for the Department of Rural Development and Land Reform & another v Bhekindlela Mwelase & others and Bhekindlela Mwelase & others v The Director-General for the Department of Rural Development and Land Reform & another (306/2017 and 314/2017)

Appealed from Land Claims Court

Date to be heard: 13 March 2018

Bosielo JA, Leach JA, Seriti JA, Willis JA, Mocumie JA

Civil Procedure – whether it was appropriate for the Land Claims Court to order the appointment of a special master to oversee the work of the first appellant in processing labour tenant applications for the acquisition of land in terms of Chapter 3 of the Land Reform (Labour Tenants) Act 3 of 1996.

59. David Carl Mostert & others v FirstRand Bank Limited t/a RMB Private Bank & another (198/2017)

Appealed from WCC

Date to be heard: 15 March 2018

Shongwe ADP, Bosielo JA, Van der Merwe JA, Rogers AJA, Hughes AJA

Contract – National Credit Act 34 of 2005 (NCA) – interpretation – whether the credit agreement between the principal debtor and creditor was reinstated under s 129(3) of the NCA – whether payment must be made by the consumer or principal debtor to reinstate a credit agreement under s 129(3) of the NCA – whether a surety can rely on reinstatement of the principal debt under s 129(3) after judgment has been granted – whether the parties agreed that RMB would refrain from executing the judgment.

60. The Commissioner for the South African Revenue Service v Danwet 202 (Pty) Ltd (399/2017)

Appealed from the Tax Court

Date to be heard: 15 March 2018

Lewis JA, Majiedt JA, Mbha JA, Davis AJA, Mothle AJA

Tax Law – the power of the Tax Court to extend the period prescribed in s 107 of the Tax Administration Act 28 of 2011 for filing an appeal against an assessment after expiry of the prescribed period and in the absence of any request for an extension during the time allowed for filing an appeal – if appeal relief was competent – whether the respondent brought the application within the prescribed time period and, if so – whether the respondent satisfied the criteria for the grant of an indulgence.

61. BMW Financial Services (SA) (Pty) Ltd v DD Tabata (445/2017)

Appealed from GP

Date to be heard: 15 March 2018

Ponnan JA, Wallis JA, Willis JA, Mathopo JA, Pillay D AJA

Contract Law – suretyship agreements - whether the court a quo erred in granting the defence of estoppel raised by the respondent - whether the respondent succeeded in establishing the tacit term that would result in his release from suretyships.

62. Adv A J du Toit N O obo Ntsikelelo Mafanya v Road Accident Fund (140/2017)

Appealed from WCC

Date to be heard: 16 March 2018

Maya P, Saldulker JA, Swain JA, Dambuza JA, Makgoka AJA

Road Accident Fund – the appellant, in his representative capacity as duly appointed curator ad litem to Mr Ntsikelelo Mafanya (the patient), lodged a claim with the Road Accident Fund (RAF) pursuant to a collision in which the patient was seriously injured – whether the patient was capable of providing his

legal representative with valid instruction pertaining to the settlement agreement – whether the settlement was grossly unfair to the patient, and should be set aside in light of the undisputed medical evidence.

63. Devi Rajah & another v Oreste Balduzzi (076/2017)

Appealed from GJ

Date to be heard: 16 March 2018

Navsa JA, Leach JA, Wallis JA, Mothle AJA, Hughes AJA

Prescription Act 68 of 1969 - special plea – jurisdiction - whether the court a quo erred in upholding the respondent's special plea of prescription against the claim of the second appellant for the registration of transfer of certain immovable property – whether the second appellant's claim for the transfer of the property from the nominee registered owner (the respondent) constituted a debt for purposes of the Prescription Act – whether the court a quo had jurisdiction to adjudicate the special pleas in light of the provisions of s 3 as read with s 22 of the Restitution Land Rights Act 22 of 1994.