

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
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JUDGMENTS RESERVED

City of Tshwane v BDG International (Pty) Ltd (335/11)

Appealed from GNP

Date heard: 15 March 2012

Navsa JA, Mhlantla JA, Tshiqi JA, Petse AJA, Ndita AJA

Interdict – suspension of interdict – whether interdict could be suspended as its suspension amounted to condonation of crime and allowed to continue.

Irwing 514 CC v Mngani Property 4 (Pty) Ltd (428/11 and 297/11)

Appealed from GSJ

Date heard: 30 April 2012

Mpati P, Snyders JA, Majiedt JA

Contract – purchase and sale – whether notice of default furnished by appellant sufficient and adequate to found appellant's cancellation of sale agreement – whether an order that amount of respondent's claim must be paid into an attorney's trust account pending outcome of appellant's counterclaim was correctly made.

British American Tobacco South Africa (Pty) Ltd v Minister of Health & another (463/11)

Appealed from GNP

Date heard: 30 April 2012

Mthiyane DP, Farlam JA, Malan JA, Tshiqi JA, McLaren AJA

Tobacco Products Control Act 83 of 1993, s 3(1)(a), interpretation of – whether section should be interpreted as extending to one-to-one communications between tobacco manufacturers, importers, wholesalers and retailers, on the one hand, and consenting adult tobacco consumers, on the other hand – if so, whether interpretation limits right of freedom of expression contained in s 16 of Constitution and whether such limitation justified in terms of s 36(1) of Constitution.

Cipla Medpro (Pty) Ltd v Aventis Pharma SA (138/12 and 139/12)

Appealed from Commissioner of Patents

Date heard: 15 May 2012

Nugent JA, Heher JA, Snyders JA, Tshiqi JA, McLaren AJA

Patents – appeal against order in interim interdict application – setting aside of order in application brought by appellant in terms of Patents Act 57 of 1978 for setting aside of amendment of South African Patent Number 93/8936.

CASES ENROLLED FOR HEARING

Tulip Diamond Fze v Minister of Justice and Constitutional Development (810/11)

Appealed from GSJ

Date to be heard: 15 August 2012

Mthiyane DP, Brand JA, Cachalia JA, Leach JA, Wallis JA

Constitution – International Co-operation in Criminal Matters Act 75 of 1996 – whether ss 7 & 8 consistent with Constitution – whether decisions of first and second respondents to accede to letter of request and decision of third respondent thereafter to issue subpoena should be reviewed and set aside – whether foreign *peregrinus* has standing to assert rights under South African Constitution.

Farjas (Pty) Ltd v Minister of Agriculture and Land Affairs of RSA and others (753/11)

Appealed from LCC

Date to be heard: 15 August 2012

Navsa JA, Lewis JA, Ponnann JA, Mhlantla JA, Erasmus AJA

Land Claims – Restitution of Land Rights Act 22 of 1994 – determination of proper compensation for expropriation of properties – determination of amount to be awarded today for an expropriation in 1991 – costs.

Sentinel Mining Industry Retirement Fund & another v Waz Props (Pty) Ltd & another (779/11)

Appealed from GSJ

Date to be heard: 15 August 2012

Cloete JA, Malan JA, Shongwe JA, Tshiqi JA, Southwood AJA

Contract law – whether tacit term should be incorporated into written agreement, which tacit term is destructive of primary contractual obligation agreed between parties – whether release of certain types of security in event of late completion of project does not justify introduction of tacit term to effect that respondent would be released of its primary obligation in event of late completion.

Sheryl Cwele and another v The State (671/11)

Appealed from KZP. 2011 (1) SACR 409 (KZP)

Date to be heard: 16 August 2012

Mpati P, Heher JA, Ponnann JA, Bosielo JA, Erasmus AJA

Criminal law – first appellant: appeal against conviction – second appellant: appeal against conviction and sentence – whether trial court correctly convicted appellants by way of inferential reasoning from circumstantial evidence – whether sentence imposed on second appellant just and equitable.

The Judicial Service Commission and another v The Cape Bar Council (818/11)

Appealed from WCC

Date to be heard: 16 August 2012

Brand JA, Cloete JA, Snyders JA, Mhlantla JA, Petse JA

Constitutional law – whether proceedings of first appellant inconsistent with Constitution, unlawful and invalid – whether failure by first appellant to fill two judicial vacancies on Bench of Western Cape High Court unconstitutional and unlawful – whether first appellant should be directed to reconsider afresh applications.

Bihati Solutions (Pty) Ltd and another v Telkom SA Ltd (491/11 & 497/11)

Appealed from GNP

Date to be heard: 16 August 2012

Nugent JA, Lewis JA, Cachalia JA, Pillay JA, Southwood AJA

Administrative law – Promotion of Administrative Justice Act 3 of 2000 – applicability of s 7(1) where an organ of state applies for review of its own decision – legal consequences of failure by an organ of state to accept, within stipulated validity period, acceptance of tender proposals.

Raditshego Godfrey Mashilo & another v Jacobus Michael Prinsloo (576/11)

Appealed from GNP

Date to be heard : 17 August 2012

Mpati P, Navsa JA, Nugent JA, Tshiqi JA, Theron JA

Procedure – jurisdiction of high court to release arrested person when no bail application heard by magistrates' court after magistrate designated to hear bail application had recused himself – principles relating to costs order *de bonis propriis* against a policeman.

Martin James Brossy v Deborah Greer Brossy (602/11)

Appealed from WCC

Date to be heard: 17 August 2012

Mthiyane DP, Van Heerden JA, Snyders JA, Malan JA, Pillay JA

Family law – maintenance – whether correct order for high court made where appeal record incomplete and did not comply with provisions of Uniform Rules of Court, rule 50(7) – whether court should have postponed hearing until such time as record was in order instead of referring matter back for trial *de novo* as was ordered.

Firststrand Bank Bpk v Siegfried Venter (829/11)

Appealed from GNP

Date to be heard: 17 August 2012

Heher JA, Shongwe JA, Leach JA, Wallis JA, Petse JA

Banking – loan agreement – whether court below should have granted absolution from instance because appellant failed to prove that respondent owed it money – whether court erred in granting respondent damages for cheques respondent unlawfully and without valid reason dishonoured.

Road Accident Fund v Oupa William Lebeko (802/11)

Appealed from GSJ

Date to be heard: 21 August 2012

Mpati P, Brand JA, Heher JA, Bosielo JA, Pillay JA

Damages – Road Accident Fund Act 56 of 1996 – whether respondents failed to comply with provisions of regulation 3 – whether AMA6 method of assessment of serious injury relevant or *ultra vires* – whether regulations 3(4) to 3(14) relevant to enquiry or unconstitutional and *ultra vires* – whether appellant's right to reject serious injury assessment report qualified by substance of reason to be afforded therefore and time within which such right can be exercised.

City of Johannesburg v Changing Tides 74 (Pty) Ltd and others (735/11)

Appealed from GSJ

Date to be heard: 21 August 2012

Mthiyane DP, Lewis JA, Tshiqi JA, Wallis JA, Petse JA

Eviction – whether court erred in granting order against appellant in circumstances where it was joined as party but no relief sought against it and where appellant not afforded opportunity to file answering affidavits – whether as a consequence of Constitutional Court decision in *Blue Moonlight* appellant is a necessary party to applications for eviction of unlawful occupiers from private

property – whether landowner has right to seek relief against local authority in form of order to provide alternative accommodation to evictees.

The Wilds Home Owners Association and others v Francois Johannes van Eeden and others (780/11)

Appealed from GNP

Date to be heard: 21 August 2012

Navsa JA, Cloete JA, Mhlantla JA, Southwood AJA, Erasmus AJA

Company law – Companies Act 61 of 1973, s 252 – interpretation of – whether court empowered in terms of section to grant relief sought.

Nirvana Drive West Community Musjid Firdous & another v City of Joburg Property Co. Ltd & another (255/12)

Appealed from GSJ

Date to be heard: 22 August 2012

Navsa JA, Van Heerden JA, Leach JA, Tshiqi JA, Theron JA

Procedure – lawfulness of grant of mandatory interdict in terms of National Building Regulation and Buildings Standards Act 103 of 1977 – consequence of refusal of postponement.

Hanuscke Beleggings BK v Kungwini Plaaslike Munisipaliteit (512/11)

Appealed from GNP

Date to be heard: 22 August 2012

Brand JA, Snyders JA, Malan JA, Shongwe JA, Leach JA

Contract law – whether reasonable time for fulfilment of suspensive conditions elapsed, thereby rendering contract between parties automatically discharged – whether appellant's claim prescribed.

The Minister of Defence & others v South African National Defence Force & another (161/11)

Appealed from GNP

Date to be heard: 22 August 2012

Nugent JA, Lewis JA, Ponnann JA, Cachalia JA, Mhlantla JA

Labour law – leave to appeal – whether notice of dismissal of provisional discharge as result of illegal march unconstitutional – legality and fairness of disciplinary procedures – proper construction of Defence Act 42 of 2002, s 59(2)(e).

Minister of Public Service and Administration v Mirriam Jabulile Ngwenya (645/11)

Appealed from GNP

Date to be heard: 23 August 2012

Mpati P, Nugent JA, Ponnann JA, Malan JA, Wallis JA

Collective agreement – whether court a quo had jurisdiction to entertain matter involving interpretation and application of collective agreement and/or determination by Minister of Public Service and Administration – whether court a quo had power to interfere with agreement in absence of one of parties to agreement – whether court a quo had jurisdiction to entertain application involving application and/or interpretation of collective agreement – whether court a quo had power to amend collective agreement and/or determination by Minister in terms of the Public Service Act Proclamation No. 3 of 1994, s 3(3)(c) so as to include what was not envisaged by parties to collective agreement.

Foize Africa (Pty) Ltd v Foize Beheer BV & others (752/11)

Appealed from GNP

Date to be heard: 23 August 2012

Mthiyane JA, Cloete JA, Heher JA, Shongwe JA, Leach JA

Licensing agreement – whether licensing agreement grants exclusive jurisdiction to courts of Holland to determine matter – whether licensing agreement compels appellant to pursue relief it claims in arbitration in Netherlands – whether appellant can rely on presumption that South African law same as law of Holland – whether appellant can rely on principle of piercing corporate veil where other procedural relief available – whether finding can be made that first and second respondents deemed to be parties to licensing agreement – whether 4th, 5th and 8th respondents interfering with contractual rights accorded to appellant in terms of licensing agreement – whether order of court a quo appealable.

Monwabisi Morris Njemla v KSD Local Municipality (583/11)

Appealed from LCC

Date to be heard: 23 August 2012

Navsa JA, Van Heerden JA, Snyders JA, Bosielo JA, Southwood AJA

Restitution of Land Rights Act 22 of 1994 – whether respondent could bring application for rescission challenging costs order when court had not given reasons for costs order – whether respondent entitled to direct attention of appellant to specific cause of action based on provisions of Land Claims Court Rules, rule 35(11), read with section 64 of Act at hearing of application, abandoning basis founded on provisions, and rely on common law basis of rescission not relied on in respondent's founding affidavit.

Philip Gideon Roos v Wilhelmina Magdalena Roos and another (412/11)

Appealed from GNP

Date to be heard: 24 August 2012

Brand JA, Snyders JA, Malan JA, Pillay JA, Erasmus AJA

Divorce – settlement agreement – pension – interpretation of term 'pension interest' – whether provident fund of appellant forms part of pension interest – whether parties entitled to include funds in settlement agreement – whether settlement agreement must be amended as result of misrepresentation.

Crooks Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga and others (590/11)

Appealed from GNP

Date to be heard: 24 August 2012

Cloete JA, Ponnann JA, Cachalia JA, Wallis JA, Southwood AJA

Property – mora interest – claim for interest on purchase price – liability for mora interest in terms of Prescribed Rate of Interest Act 55 of 1975, s 1 – whether appellant entitled to interest based on respondents' failure to provide undertaking to pay purchase price.

Donald & Richard Currie (Pty) Ltd v Growthpoint Properties Ltd (572/11)

Appealed from GSJ

Date to be heard: 24 August 2012

Lewis JA, Mhlantla JA, Bosielo JA, Leach JA, Tshiqi JA

Contract – Iustus error – whether mistakes on form of acceptance and election fall to be classified as iustus error – whether such mistakes relevant in light of stipulated method of acceptance made in alleged mass offer – lack of authority – appropriate relief being found that there was iustus error or lack of authority.

The Law Society of the Northern Provinces v Sipiwe Freeman Dube (874/11)

Appealed from GNP

Date to be heard: 27 August 2012

Mthiyane DP, Heher JA, Mhlantla, Pillay JA, Petse JA

Attorneys – Attorneys Act 53 of 1979 – whether sanction measured against seriousness of respondent's unprofessional conduct appropriate – whether

respondent's name should have been struck from roll of attorneys – whether court *a quo* misdirected itself in exercising its discretion in relation to appropriate sanction – whether normal principle relating to costs should have been applied.

Conrad Fourie v First Rand Bank Limited & another (578/11)

Appealed from GNP

Date to be heard: 27 August 2012

Brand JA, Lewis JA, Bosielo JA, Shongwe JA, Theron JA

Company law – Companies Act 61 of 1973 – proof of liability in terms of s 424, including whether causation needs to be shown – proof of delictual liability of auditor, notably questions of factual causation and harm suffered.

The Republic of Zimbabwe v Louis Karel Fick & others (657/11)

Appealed from GNP

Date to be heard: 27 August 2012

Nugent JA, Van Heerden JA, Malan JA, Southwood JA, Erasmus AJA

Civil procedure – jurisdiction – whether court *a quo* had jurisdiction over appellant as foreign state – whether appellant waived any sovereign immunity by entering into SADC Treaty and Protocol and by entering opposition in court *a quo* without claiming sovereign immunity – whether there exists any basis to interfere with court *a quo*'s exercise of its discretion giving effect to rulings made by SADC Tribunal.

National Commissioner of Police & another v Jack Coetzee (649/11)

Appealed from GNP. 2011 (2) SA 257 (GNP) ; 2011 (1) SACR 132 (GNP).

Date to be heard: 28 August 2012

Mpati P, Cloete JA, Ponnann JA, Bosielo JA, Petse JA

Criminal law – bail – whether high court has jurisdiction to release on bail, alternatively on his own cognisance, a person who has not applied to be released to magistrate's court or SAPS for bail.

Costs – *de bonis propriis* – against functionary or government employee – whether such person must be given due notice that court is considering such order.

L Von Bester NO & others v Schmidt Bou Ontwikkelings BK (696/11)

Appealed from WCC

Date to be heard: 28 August 2012

Brand JA, Snyders JA, Leach JA, Theron JA, Wallis JA

Property law – rectification of deed of transfer – whether respondent's claim to rectify deed of transfer has prescribed – whether respondent estopped from asserting its rights in respect of immovable property.

Royal Hotel Riversdal (Pty) Ltd v Nachley Simon NO and another (713/11)

Appealed from WCC

Date to be heard: 28 August 2012

Heher JA, Cachalia JA, Malan JA, Tshiqi JA, Pillay JA

Property – servitude – interpretation of – whether court erred in finding that servitude granted rights to dominant tenement with regards to so-called 'gray area' – whether appellant prohibited from erecting planned structure on property.

Hano Trading CC v JR 209 Investments (Pty) Ltd & another (650/11)

Appealed from GNP

Date to be heard: 30 August 2012

Mthiyane DP, Van Heerden JA, Mhlantla JA, Bosielo JA, Erasmus AJA

Contract law – agreement of sale – whether appellant addressed a proper Notice of Demand – whether appellant lawfully cancelled agreement – whether

necessary for and if so, whether first respondent made proper tender of payment – whether contents of further affidavits after reply are to be considered.

South African Property Owners Association v The Council of the City of Johannesburg Metropolitan Municipality & others (648/11)

Appealed from GSJ

Date to be heard: 30 August 2012

Navsa JA, Lewis JA, Shongwe JA, Petse JA, Southwood AJA

Local Government: Municipal Property Rates Act 6 of 2004 – whether s 19(1)(b) precludes 1st to 3rd respondents from imposing property rates on business, commercial and industrial properties which exceed ratio of 1:1 – whether respondents failed to comply with prescribed procedures with regard to public participation in increasing rates applicable.

Agri Wire (Pty) Ltd & another v The Commissioner of the Competition Commissioner & others (660/11)

Appealed from GNP

Date to be heard: 30 August 2012

Nugent JA, Snyders JA, Tshiqi JA, Wallis JA, Pillay JA

Competition law – application to review and set aside grant of conditional immunity in cartel conduct that violates Competition Act 89 of 1998, s 4(1)(b) – whether high court had jurisdiction to consider and determine review – whether appropriate forum to consider and determine review – competence of grant of conditional immunity – lawfulness of obtaining evidence from third respondent.

Transman (Pty) Ltd v South African Post Office Ltd and another (778/11)

Appealed from GNP

Date to be heard: 31 August 2012

Brand JA, Ponnann JA, Tshiqi JA, Petse JA, Southwood AJA

Labour – employment service agreement – quantum – interpretation of order on merits to determine quantum pursuant to agreement between parties.

Don Toubie v The State (635/11)

Appealed from GSJ. 2004 (1) SACR 530 (W)

Date to be heard: 31 August 2012

Heher JA, Mhlantla JA, Bosielo JA, Shongwe JA, Erasmus AJA

Criminal law – appeal against sentence – whether full bench correct in setting aside sentence of 20 years' imprisonment imposed by trial court and substituting it with sentence of life imprisonment.

Comwezi Security Services (Pty) Limited & another v Cape Empowerment Trust Limited (759/11)

Appealed from WCC

Date to be heard: 31 August 2012

Cloete JA, Cachalia JA, Leach JA, Theron JA, Wallis JA

Contract – whether settlement agreement lapsed by virtue of non-fulfilment of resolutive condition well before respondent applied for relief – whether respondent could unilaterally extend time – if so, whether valid.

General Bar Council of SA v Geach (277/12, 273/12, 275/12, 280/12, 281/12, 274/12, 278/12)

Appealed from GNP. 2011 (6) SA 441 (GNP)

Date to be heard: 3 - 4 September 2012

Mpati P, Nugent JA, Ponnann JA, Leach JA, Wallis JA

African National Congress v Willem Harmse & another (392/11)

Appealed from GSJ. 2011 (5) SA 460 (GSJ)

Date to be heard: 3 September 2012

Mthiyane DP, Brand JA, Heher JA, Theron JA, Pillay JA

Constitutional law – whether leave to appeal be granted to appellant as interested party or in public interest – whether first respondent's direct reliance on Constitution, s 9(3) and 16(2)(c), permissible – whether first respondent ought to have complied with Rules of the High Court, Rule 16A.

The Director of Public Prosecutions & another v Andrew Lionel Phillips (803/11)

Appealed from GSJ

Date to be heard: 3 September 2012

Navsa JA, Cloete JA, Snyders JA, Shongwe JA, Tshiqi JA

Criminal procedure – whether single judge can determine application for stay of prosecution of appeal – what record should consist of when DPP appeal on point of law – whether court *a quo* correct in finding that respondent's right to fair trial infringed by delay in prosecution of appeal – whether merits of appeal should have been considered by court *a quo*.

Metcash Trading Africa (Pty) Ltd v Henry Gerhard de Villiers (604/11)

Appealed from WCC

Date to be heard: 4 September 2012

Lewis JA, Van Heerden JA, Mhlantla JA, Shongwe JA, Southwood AJA

Contract – franchise Agreement - suretyship – *iustus error* – whether respondent has discharged requisite onus.

Robert Du Plooy v Victor Zikole & Others (417/11)

Appealed from KZN

Date to be heard: 4 September 2012

Mthiyane DP, Heher JA, Snyders JA, Bosielo JA, Petse JA

Property – whether first respondent acquired immovable properties as nominee of or in trust for appellant – respondents granted joint ownership of properties owned and registered in first appellant's name – set aside sale and transfer to second appellant based on common law trust and customary law of inheritance.

Diane Jean Theart v Hans-Peter Wolfgang Scheibert & others (630/11)

Appealed from WCC

Date to be heard: 5 September 2012

Cloete JA, Cachalia JA, Malan JA, Tshiqi JA, Erasmus AJA

Law of succession – interpretation of joint will – whether court *a quo* erred in its interpretation of joint will of two co-testators – whether provision suggested *fidei commissary* substitution of appellant for surviving co-testator as heir – whether joint will had contemplated massing of estates of co-testators – whether surviving co-testator had adiated benefits.

Azwihangwisi Mmboi v The State (167/12)

Appealed from LT

Date to be heard: 6 September 2012

Mpati P, Ponnar JA, Mhlantla JA, Petse JA, Erasmus AJA

Murder and robbery – whether state successfully proved beyond reasonable doubt that appellant acted in common purpose with intention to kill and forcefully rob deceased.

Armgold/Harmony Freegold Joint Venture (Pty) Ltd v Commissioner SARS (703/11)

Appealed from Tax Court

Date to be heard: 6 September 2012

Navsa JA, Cloete JA, Heher JA, Leach JA, Pillay JA

Restitution – whether application of consumer price index to agreed amounts of historical under-compensation constitutes just and equitable compensation.

City of Johannesburg v Cantina Tequila and another (775/11)

Appealed from GSJ

Date to be heard: 6 September 2012

Brand JA, Lewis JA, Cachalia JA, Bosielo JA, Theron JA

Land – whether town planning scheme permitted additional primary use rights not specified – whether appellant granted first respondent right to conduct business from premises – whether appellant should be estopped from enforcing its own town planning scheme – whether court has any discretion to suspend interdict where wrong complained of amounts to on-going commission of offence.

Mobile Telephone Networks (Pty) Ltd v SMI Trading CC (603/11)

Appealed from GSJ

Date to be heard: 7 September 2012

Mthiyane DP, Snyders JA, Malan JA, Tshiqi JA, Pillay JA

Electronic Communications Act 35 of 2006 – whether monthly tenancy created by parties – whether s 22(1) authorises appellant to occupy respondent's property without concluding lease agreement with respondent – whether appellant lawfully exercised right under s 22 having regard to s 25 of the Constitution and Promotion of Administrative Justice Act 3 of 2000 – whether s 22 unconstitutional by virtue of s 25 of Constitution.

Jacobus Johannes Liebenberg NO & others v Bergrivier Municipality (737/11)

Appealed from WCC

Date to be heard: 7 September 2012

Nugent JA, Lewis JA, Bosielo JA, Theron JA, Wallis JA

Constitutional law – correctness of appellants' challenges to legality and validity of respondent's rural levies for 2002/3 municipal financial year and its property rates on rural property for 2004/5, 2005/6, 2006/7, 2007/8 and 2008/9 financial years.

Zakhele Thekiso v The State (73/12)

Appealed from GNP

Date to be heard: 7 September 2012

Van Heerden JA, Shongwe JA, Erasmus AJA

Criminal law – appeal against refusal of petition for leave to appeal against cumulative sentence of 45 years' imprisonment – whether reasonable prospects of success in appeal against sentence – whether cumulative effect of sentence imposed appropriate.

Maria Angelina Paixao and another v Road Accident Fund (640/11)

Appealed from GSJ

Date to be heard: 10 September 2012

Mthiyane DP, Cachalia JA, Tshiqi JA, Petse JA, Southwood AJA

Delict – duty of support – whether agreement to marry between first appellant and deceased gives rise to duty of support – whether appellants established legally binding agreement to support between first appellant and deceased – whether agreement enforceable against third parties such as respondent – whether existence of permanent life partnership between first appellant and

deceased gives rise to legally enforceable duty of support which is enforceable against third parties such as respondent.

Ex Parte BOE Trust Ltd & 2 others (846/11)

Appealed from WCC

Date to be heard: 10 September 2012

Cloete JA, Malan JA, Shongwe JA, Pillay JA, Erasmus AJA

Trusts – Trust Property Control Act 57 of 1988 – whether appellants entitled to apply for deletion of word ‘white’ on public policy or constitutional grounds without first having to make out a case under section 13.

Khayakhulu Ngqula v SAA (701/11)

Appealed from GSJ

Date to be heard: 10 September 2012

Heher JA, Ponnann JA, Mhlantla JA, Leach JA, Wallis JA

Jurisdiction – Interim Rationalisation of Jurisdiction of High Courts Act No 41 of 2001, s 3 (1), interpretation of – transferred actions instituted by appellant transferred from South Gauteng High Court to North Gauteng High Court.

Edson Ndou v The State (93/11)

Appealed from LT

Date to be heard: 11 September 2012

Mpati P, Lewis JA, Van Heerden JA, Shongwe JA, Erasmus AJA

Criminal law – appeal against sentence of life imprisonment on charge of rape – whether sentence imposed by trial court appropriate in view of evidence lead in mitigation of sentence.

Johan Rutgert Herselman v Khayaletu Eric Geleba (717/11)

Appealed from ECG

Date to be heard: 11 September 2012

Navsa JA, Nugent JA, Ponnann JA, Wallis JA, Petse JA

Equality – whether appellant contravened Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, s 10 – whether respondent’s intention relevant – whether provisions of s 10 transgressed – whether s 10(1)(a), (b) and (c) disjunctive or conjunctive, relevant in determining whether breach of provisions.

Alex Roux v Ryand Karel Hattingh (636/11)

Appealed from WCC. 2011 (5) SA 135 (WCC)

Date to be heard: 11 September 2012

Brand JA, Snyders JA, Theron JA, Pillay JA, Southwood AJA

Delict – claim for damages sustained during a schoolboy rugby match – merits – whether respondent proved delictual claim – whether appellant’s conduct caused respondent’s injuries – whether appellant acted deliberately and unlawfully.

ABSA Bank v Lombard Insurance Company Ltd (629/11)

First Rand Bank Ltd v Lombard Insurance Co. Ltd (684/11)

Appealed from GSJ

Date to be heard: 13 September 2012

Mthiyane DP, Cloete JA, Malan JA, Pillay JA, Petse JA

Unjustified enrichment – whether enrichment action lies against bank where stolen funds found to have been credited to thief’s bank accounts in reduction of debit balance.

National Director of Public Prosecutions v Johannes Erasmus van Staden & others (730/11)

Appealed from WCC

Date to be heard: 13 September 2012

Nugent JA, Snyders JA, Bosielo JA, Wallis JA, Erasmus AJA

Prevention of Organised Crime Act 121 of 1998 – whether NDPP acted in accordance with requirements of fairness as regards information obtained orally and in writing from respondent's co-accused – whether reasonable grounds to believe that first respondent may be convicted of offences – whether reasonable that trial court will find first respondent benefited financially from offences – whether reasonable grounds to believe that remaining respondents holding assets on first respondent's behalf.

Christopher Redden Daffy v Stephen Redden Daffy (659/11)

Appealed from GSJ

Date to be heard: 13 September 2012

Lewis JA, Van Heerden JA, Cachalia JA, Leach JA, Southwood AJA

Domestic violence – whether dispute between appellant and respondent falls within ambit of Domestic Violence Act 106 of 1998 – appellant and respondent involved in civil/labour/business dispute with regard to ownership in an entity – whether court a quo misdirected itself in granting domestic violence order in prevailing circumstances relying on "domestic relationship" between appellant and respondent – whether "domestic relationship".

Corpclo 2290 cc t/a U-Care & another v The Registrar of Banks (755/11)

Appealed from KZP

Date to be heard: 14 September 2012

Mpati P, Lewis JA, Malan JA, Leach JA, Southwood AJA

Banking law – Banks Act 94 of 1990, s 11 – interpretation of 'business of a bank'.

Khula Enterprise Finance Limited v Leon Geldenhuys & another (745/11)

Appealed from GNP

Date to be heard: 14 September 2012

Mthiyane DP, Navsa JA, Heher JA, Cachalia JA, petse JA

Suretyship – whether appellant required to place principal debtor in mora prior to suing for full amount – whether respondents can as sureties escape their undertakings on grounds of prejudice pleaded.

Olive Rose Govender v Road Accident Fund (731/11)

Appealed from KZP

Date to be heard: 14 September 2012

Brand JA, Ponnann JA, Mhlantla JA, Shongwe JA, Theron JA

Road Accident Fund Act 56 of 1996 – whether appellant forfeits claim for not complying with s 19(f)(i) – whether s 24(5) overrides s19(f)(i) – whether deliberate and blameworthy withholding of s 19(f)(i) affidavit – whether substantial compliance by appellant with provisions of s 19(f)(i) – whether respondent waived its right contained in s 19(f)(i).

Nenzhelele Tshitereke v The State (304/12)

Appealed from LT

Date to be heard: 17 September 2012

Mthiyane DP, Mhlantla JA, Shongwe JA, Wallis JA, Erasmus AJA

Rape – conviction – whether evidence adduced by state proved rape or indecent assault.

Chauke Ronny and another v The State (70/12)

Appealed from LT

Date to be heard: 17 September 2012

Navsa JA, Malan JA, Bosielo JA, Tshiqi JA, Petse JA

Murder – conviction and sentence – whether premeditated.

MAPP Healthcare (Pty) Ltd v LA VUE Investments (Pty) Ltd & others (452/11)

Appealed from GNP

Date to be heard: 17 September 2012

Brand JA, Cloete JA, Heher JA, Theron JA, Southwood AJA

Arbitration – Arbitration Act 42 of 1965 – whether Arbitration Appeal Tribunal exceeded powers as referred to in s 33(1)(b) by finding that payments should be excluded from statement of account.

The Head of Department: Department of Education, Free State Province v Welkom High School & another (766/11)

The Head of Department: Department of Education, Free State Province v Harmony High School & another (767/11)

Appealed from FS. 2011 (4) SA 531 (FB)

Date to be heard: 18 September 2012

Mpati P, Cloete JA, Snyders JA, Mhlantla JA, Theron JA

Education policy – adoption of policy – whether school governing body competent to adopt pregnancy policy for school – constitutionality of respondents' pregnancy policies and of decisions taken in terms of these policies – powers and obligations flowing from employment relationship between Head of Department and principal.

Patrick Clive Bailey v The State (454/11)

Appealed from ECG

Date to be heard: 18 September 2012

Brand JA, Heher JA, Malan JA, Bosielo JA, Pillay JA

Criminal law – appeal against sentence of life imprisonment – convicted of rape of minor – whether substantial and compelling circumstances exists justifying deviation from minimum sentence of life imprisonment.

Nomfusi Nompumza Seyisi v The State (117/12)

Appealed from ECB

Date to be heard: 18 September 2012

Nugent JA, Ponnann JA, Cachalia JA, Leach JA, Tshiqi JA

Criminal procedure – whether evidentiary burden on appellant in terms of Criminal Procedure Act 51 of 1997, s 212(4)(a) consistent with Constitution – whether section infringes upon right to fair trial of Constitution, s 35(3) – whether evidence of expert witness, which has status of prima facie proof in terms of section, sufficient for conviction.

APPEALS DISPOSED OF WITHOUT WRITTEN JUDGMENT IN 2012

D P Lekgau v The State (18/12) – 22 February 2012

Eugene Ralph Morgan v The State (680/11) – 24 February 2012

Beaufort West Minerals (Pty) Ltd v Eybers and others (275/12) – 6 March 2012

Shaukat Alli Moosa & another v Mahpomed Rafik Osman Siddi Akoo NO (134/11)
– 9 March 2012

SA Commercial Catering & Allied Workers Union & another v Growthpoint
Properties Ltd & another (46/11) – 13 March 2012

Michael George Burgess and others v Wonderhoek Farms (Edms) Bpk (449/11) –
16 March 2012

C L Carstens NO & others v B M Carstens NO (409/11) – 10 May 2012