

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 2013
NO 1**

Compiled by the Supreme Court of Appeal Library

- BULLETINS
- JUDGMENTS RESERVED
- CASES ENROLLED FOR HEARING
- APPEALS DISPOSED OF WITHOUT WRITTEN REASONS

JUDGMENTS RESERVED

BHP Billiton plc Incorporated & another v Jan George de Lange & others (189/12)

Appealed from GSJ

Date heard: 8 November 2012

Mthiyane DP, Cloete JA, Mhlantla JA, Leach JA, Petse JA

Access to information – whether first and second respondents brought application out of time in terms of Promotion of Access to Information Act 2 of 2000, s 78 – whether first appellant demonstrated information sought ought to be refused in terms of sections 36(1) and 37(1)(a) – whether grounds of refusal justified – whether public interest override in s 46 applicable – test to be adopted in applying s 46 – access to information sought not granted – whether sections 37(1)(a) and 46 unconstitutional.

Provincial Commissioner, Gauteng: South African Police Service & another v Merriman Cyprian Xolani Mnguni (890/11)

Appealed from GNP

Date heard: 13 November 2012

Mpati P, Lewis JA, Malan JA, Petse JA, Mbha AJA

Jurisdiction – whether court a quo had jurisdiction – whether to be dealt with in terms of Labour Relations Act 66 of 1995 and fell within exclusive jurisdiction of labour court – whether proceedings before disciplinary tribunal and subsequent appeal quasi-judicial and therefore reviewable by high court in terms of High Court Rules, rule 53.

Adidas AG & another v Pepkor Retail Limited (187/12)

Appealed from WCC. [2012] 1 All SA 636 (WCC)

Date heard: 19 November 2012

Brand JA, Heher JA, Petse JA, Southwood AJA, Erasmus AJA

Intellectual property – trade marks – whether respondent's use of two and four parallel stripe marks on footwear amounts to trade mark infringement and passing-off.

Werner van Kets v The Commissioner for the South African Revenue Service (81/12)

Appealed from WCC

Date heard: 20 November 2012

Brand JA, Mhlantla JA, Bosielo JA, Wallis JA, Saldulker AJA

Income tax – Income Tax Act 58 of 1962 – proper interpretation of term 'taxpayer' – whether respondent has power to require appellant to furnish requested information relating to a certain individual, who is not a South African taxpayer.

Imvula Quality Protection (Pty) Ltd v Licinio Loureiro & others (130/12)

Appealed from GSJ

Date heard: 21 November 2012

Mthiyane DP, Cloete JA, Mhlantla JA, Bosielo JA, Mbha AJA

Contract law – delict – security company's liability for damages arising out of robbery – whether contract alleged had been proved – terms of contract – whether cession alleged had been proved – whether respondent committed culpable acts – whether proved to be causally linked to losses pleaded – whether conduct of guard on duty unlawful and negligent.

CASES ENROLLED FOR HEARING**Simon Peter Mugridge v The State (657/12)**

Appealed from ECP

Date to be heard: 15 February 2013

Mthiyane DP, Maya JA, Shongwe JA, Erasmus AJA, Swain AJA

Criminal law – rape, indecent assault, *crimen injuria* – whether trial court erred in convicting appellant – whether sentence shockingly inappropriate.

AllPay Consolidated Investment Holdings (Pty) Ltd & others v The Chief Executive Officer of the South African Social Security Agency & others (678/12)

Appealed from GNP

Date to be heard: 15 February 2013

Nugent JA, Ponnar JA, Theron JA, Petse JA, Southwood AJA

Review – whether court a quo erred in its second order not to set aside award of tender, despite its first order declaring that tender process was illegal and invalid – whether court a quo's second order should be set aside and replaced with order set out in appellants' notice of appeal – Cross-appeal.

Burlyn Roux Vos & others v The State (512/12)

Appealed from WCC

Date to be heard: 15 February 2013

Malan JA, Schoeman AJA, Van der Merwe AJA

Evidence – single witness – whether direct evidence of a single witness and circumstantial evidence enough to justify appellants' conviction.

King Sabata Dalindyebo Municipality v Landmark Mthatha (Pty) Ltd & another (Two Third Parties intervening) (136/11)

Appealed from ECM

Date to be heard: 18 February 2013

Mpati P, Maya JA, Majiedt JA, Pillay JA, Erasmus AJA

Contract law – whether appellant breached lease and development agreement by failing to afford first respondent vacant possession of property located on portion of remainder of Erf 912, Mthatha – whether both appellant and first respondent aware that property was subject to land claims – whether factors rendering it impossible for appellant to perform in terms of lease agreement – quantum of damages and interest thereon – cross-appeal against date when mora interest commences.

General Council of the Bar & another v Urmilla Roshnee Devi Mansingh & others (417/12)

Appealed from GNP

Date to be heard: 18 February 2013

Brand JA, Shongwe JA, Leach JA, Southwood AJA, Saldulker AJA

Constitutional law – Constitution, s 84(2)(k), interpretation of – whether President's power to confer honours in section includes power to confer status of senior counsel on practising advocates – if high court's order is upheld, whether it should be supplemented with appropriate remedial orders.

Picbel Groep Voorsorgfonds (in Liquidation) v William Vass Graham Somerville & three similar Cases (405/12)

Appealed from GSJ

Date to be heard: 18 February 2013

Ponnan JA, Cachalia JA, Petse JA, Plasket AJA, Mbha AJA

Apportionment of Damages Act 34 of 1956, interpretation of – whether s 2(13) applies to appellant's claims (and not s 2(12) read with s 2(6)(a)) – if s 2(13) does apply, whether appellants' claims had to fail because they did not make out allegations such as to set out a cause of action in terms of s 2(13) – whether order appealable.

Independent Outdoor Media (Pty) Ltd & others v The City of Cape Town (222/12)

Appealed from WCC

Date to be heard: 19 February 2013

Mthiyane DP, Leach JA, Theron JA, Erasmus AJA, Saldulker AJA

Constitutional law – whether by-law is in whole or, alternatively, in part unconstitutional – whether respondent and court a quo interpreted by-law, and various other allegedly applicable laws, in manner consistent with rights and values of Constitution – whether National Building Regulations and Building Standards Act 103 of 1977, and Roads Ordinance 19 of 1976, apply to impugned signs – whether signs encroach unlawfully upon land owned by respondent – whether respondent satisfied element of interdictory relief, that there be no suitable alternative remedy to the relief prayed for in its notice of motion.

Minister of Mineral Resources of the Republic of South Africa & others v Sishen Iron Ore Company (Pty) Ltd & another (394/12)

Appealed from GNP

Date to be heard: 19 February 2013

Band JA, Lewis JA, Cachalia JA, Southwood AJA, Swain AJA

Mines and minerals – Mineral and Petroleum Resources Development Act 28 of 2002 – whether act permits continued existence of undivided shares in "mining rights" – whether court a quo erred in applying principle in *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* 2004 (6) SA 222 (SCA) – whether second respondent entitled to declaratory relief – whether conditional appeal/cross-appeal should be allowed – whether costs orders against appellants should be upheld.

The Department of Correctional Services & another v Police and Prisons Civil Rights Union & others (107/12)

Appealed from LAC (2011) 32 ILJ 2629 (LAC)

Date to be heard: 19 February 2013

Nugent JA, Maya JA, Pillay JA, Plasket AJA, Mbha AJA

Labour law – whether respondents' dismissal automatically unfair within meaning of Labour Relations Act 66 of 1995, s 187(1)(f) – whether employer unfairly discriminated against respondents on grounds of gender, religion, conscience,

belief and/or culture – interpretation of first appellant’s dress code in conformity with Constitution, s 39(2) – whether s 36 of Constitution applies to present case, if so, whether it constitutes a reasonable and justifiable limitation on respondents’ rights – whether cross-appeal necessary before Labour Appeal Court – whether respondents required to obtain leave to cross-appeal.

Toya-Lee van Wyk & others v The State (575/11)

Appealed from WCC

Date to be heard: 20 February 2013

Mpati P, Pillay JA, Mbha AJA

Criminal law – doctrine of common purpose – whether second appellant, turned state witness in terms of Criminal Procedure Act 51 of 1977, s 204, acted with common purpose with other accused in killing deceased.

Robert Cheng-Litsung & another v Industrial Development Corporation of South Africa Limited & another (173/12)

Appealed from WCC

Date to be heard: 20 February 2013

Lewis JA, Cachalia JA, Theron JA, Schoeman AJA, Van der Merwe AJA

Company law – Companies Act 61 of 1973 – whether appellants should be declared personally liable for any debts in terms of s 424 – whether appellants, if so liable, should be directed to pay full amount to second respondent, plus interest – liability for costs occasioned by postponement of trial.

Dulce Vita CC v Chris van Coller & others (192/12)

Appealed from GNP

Date to be heard: 20 February 2013

Malan JA, Tshiqi JA, Majiedt JA, Petse JA, Southwood AJA

Banking law – Banks Act 94 of 1990 and Consumer Affairs (Unfair Business Practices) Act 71 of 1988 – contravention of – property syndication scheme – whether declaration of illegality of property syndication scheme and declaration voiding agreements should be sustained.

The Law Society of the Cape of Good Hope v Michael Wharton Randell (341/12)

Appealed from ECG 2012 (3) SA 207 ECG

Date to be heard: 21 February 2013

Mthiyane DP, Majiedt JA, Van der Merwe AJA, Swain AJA, Mbha AJA

Constitutional law – whether right to silence and right against self-incrimination violated by rule that a court considering an application for a stay of non-criminal proceedings pending finalization of criminal proceedings does not have ‘true’ discretion to suspend civil proceedings – whether concurrence of application to strike off and criminal proceedings resulted in prejudice or potential prejudice sufficient to warrant stay of main application.

Dirk Johannes Crafford v The South African National Road Agency Limited (215/12)

Appealed from GNP

Date to be heard: 21 February 2013

Brand JA, Leach JA, Schoeman AJA, Plasket AJA, Saldulker AJA

Delict – whether evidence established causation – whether respondent’s contention that evidence of appellant’s witness, as to position of stationary vehicle after accident, was to effect that it was not partially on and partially off tarred road.

Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Limited & others (619/12)

Appealed from GNP

Date to be heard: 21 February 2013

Nugent JA, Ponnann JA, Shongwe JA, Theron JA, Erasmus AJA

Review – whether appellant’s non-compliance with rules and time periods should be condoned – whether lapsed appeal should be reinstated – whether prospecting right expired prior to application for renewal and, if so, whether appeal is moot – whether open to appellant to withdraw concession of relief in form of judicial review claimed against it and to revive preliminary points which were expressly abandoned in court a quo – whether appeal against order reviewing and setting aside its prospecting right can succeed despite it having been accepted and granted in face of interdict which explicitly prohibited departmental officials concerned from doing so – whether appellant’s application lodged in wrong region and, if so, whether it can be remitted to a different region or decision maker – whether appellant can appeal against any order other than order which was granted against it and in terms of which its prospecting right was reviewed and set aside.

Imperial Bank Limited v Norman Klein NO & others (349/12)

Appealed from GSJ

Date to be heard: 22 February 2013

Mpati P, Cachalia JA, Pillay JA, Schoeman AJA, Saldulker AJA

Civil procedure – whether order of court a quo granting respondent leave to amend its pleadings appealable – whether application for amendment of pleadings a substitution of parties or whether it merely involved correction of misdescription of plaintiffs, correctly granted.

Tshirangwana Masotsha Tshilidzi v The State (650/12)

Appealed from LT

Date to be heard: 22 February 2013

Lewis JA, Shongwe JA, Majiedt JA, Van der Merwe AJA, Swain AJA

Criminal law – sentence – whether substantial and compelling circumstances warranted deviation from sentence of life imprisonment.

Jacob Mashike and Wilhelm Christian Ross NNO & another v Senwesbel Limited & another (253/12)

Appealed from GNP

Date to be heard: 22 February 2013

Ponnann JA, Maya JA, Malan JA, Petse JA, Plasket AJA

Company law – Companies Act 61 of 1973, s 38, interpretation and application of – whether, if direct object of financial assistance envisaged by s 38, purchases of shares in question by first respondent and provision of financial assistance by second respondent, constituted single composite transaction – whether purchases of shares separate and distinct from provision of financial assistance – interpretation of legal principles pertaining to disputes and application of *Plascon-Evans* rule – appellants’ entitlement to obtain rectification of second respondent’s share registered in terms of s 115 – whether the Respondents contravened section 85 of the Act – the applicability of legal principles pertaining to joinder of parties to contracts of sale to which appellants were not parties, but in respect whereof declarations of invalidity were sought.

Lykes Lines Limited, LCC v Vereeniging Meat Packers (Pty) Ltd (279/12)

Appealed from KZP

Date to be heard: 25 February 2013

Mthiyane DP, Brand JA, Petse JA, Schoeman AJA, Erasmus AJA

Contract law – breach of – damages – whether contract which rendered respondent liable to appellant for loss – whether appellant proved quantum of damages – whether particular provisions of bill of lading provided for liability in respect of loss occasioned by failure to return container.

Lagoonbay Lifestyle Estate (Pty) Ltd v The Minister for Local Government, Environmental Affairs and Development Planning of the Western Cape & seven others (320/12)

Appealed from WCC

Date to be heard: 25 February 2013

Nugent JA, Ponnann JA, Tshiqi JA, Majiedt JA, Saldulker AJA

Constitutional law – whether appellant's application for condonation should be granted – whether judgment by this court will have any practical effect – whether appellant can challenge first respondent's decision without directly challenging conditions in prior decision, and/or provisions of Land Use Planning Ordinance 15 of 1985 – whether first respondent had power to decide rezoning and subdivision application as this is a 'municipal' planning function which falls within exclusive sphere of local government by virtue of s 156(10) read with Schedule 4B of the Constitution – whether first respondent's decision to refuse application for rezoning and subdivision should be reviewed and set aside.

Trapel Farms CC & others v Rodel Financial Services (Pty) Ltd (352/12)

Appealed from KZP

Date to be heard: 25 February 2013

Maya JA, Leach JA, Theron JA, Southwood AJA, Mbha AJA

Civil procedure – rescission of judgment – whether a judgment which was granted in absence of appellants should be set aside by virtue of the fact that judgment amount in contravention of *in duplum rule* – whether court a quo correctly held that appellants had acquiesced in judgment.

Absa Technology Finance (Pty) Ltd v Michael's Bid a House cc & another (212/12)

Appealed from GSJ

Date to be heard: 26 February 2013

Lewis JA, Theron JA, Petse JA, Plasket AJA, Swain AJA

Contract law – whether master rental agreement, properly interpreted, falls within s 8(4)(e) of (f), or within definition of incidental credit agreement, of National Credit Act 34 of 2005.

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

Appealed from GSJ

Date to be heard: 26 February 2013

Cachalia JA, Leach JA, Tshiqi JA, Majiedt JA, Pillay JA

Contract law – purchase and sale – whether order that amount of respondent's claim must be paid into attorney's trust account pending outcome of appellant's counterclaim correctly made – cross-appeal – whether notice of default furnished by appellant as seller sufficient to justify appellant's cancellation of sale agreement.

The Steve Tshwete Local Municipality v Fedbond Participation Mortgage Bond Managers (Pty) Ltd & another (409/12)

Appealed from GNP

Date to be heard: 26 February 2013

Malan JA, Shongwe JA, Van der Merwe AJA, Saldulker AJA, Mbha AJA
 Local government law – relevant time at which taxes on immovable property within area of jurisdiction should be paid before local authority is obliged to issue clearance certificate - provisions of Insolvency Act 24 of 1936, s 89 and Local Government: Municipal Systems Act 32 of 2000, s 118(1), (2) and (3).

Sadhasivan Nolan Chetty v The State (742/12)

Appealed from KZP

Date to be heard: 27 February 2013

Mpati P, Mthiyane DP, Plasket AJA

Criminal law – sentence – whether magistrate misdirected himself in sentencing of appellant in absence of probation officer’s report – whether appellant primary caregiver of minor child – whether magistrate paid due attention to best interests of appellant’s minor child in arriving at conclusion that most appropriate sentence was a term of imprisonment.

Pierre André Nel v Oudtshoorn Municipality (247/12)

Appealed from WCC

Date to be heard: 28 February 2013

Mpati P, Nugent JA, Pillay JA, Schoemen AJA, Mbha AJA

Review – Promotion of Administrative Justice Act 3 of 2000 – whether decision taken by municipal council to re-appoint municipal manager who had been dismissed for financial misconduct, and thereby settle a dispute pending before Commission for Conciliation, Mediation and Arbitration, constituted administrative action.

Charles Robert Roger Macleod v Babalwa Kweyiya (365/12)

Appealed from WCC

Date to be heard: 28 February 2013

Mthiyane DP, Tshiqi JA, Majiedt JA, Plasket AJA, Saldulker AJA

Prescription – whether respondent could reasonably have known identity of debtor and facts on which alleged debt forming basis of action against appellant arose – whether respondent knew or could reasonably have known basic facts between 1997/1998 and 2006.

Cape Empowerment Trust Limited v Fisher Hoffman Sithole (200/11)

Appealed from WCC [2005] All SA 654 (C)

Date to be heard: 28 February 2013

Brand JA, Maya JA, Cachalia JA, Shongwe JA, Swain AJA

Delict – claim for damages – whether respondent’s misstatements wrongful in context of delictual claim for economic loss – whether respondent’s misstatement induced appellant to implement sale of business agreement – whether appellant suffered any loss on transaction, having regard to its own financial misstatements recorded that it made a substantial profit on transaction – if so, whether appellant met requirements of legal and factual causation in respect of such loss – whether such loss attributable to appellant’s failure to mitigate its damages – quantum of loss.

The Trustees of the Insolvent Estate of Grahame Ernest John Whitehead v Leon Jean Alexandre Dumas & another (323/12)

Appealed from GNP

Date to be heard: 1 March 2013

Lewis JA, Ponnann JA, Cachalia JA, Theron JA, Petse JA

Insolvency law – whether pre-sequestration payment by first respondent into account held by insolvent with second respondent forms part of insolvent estate – whether amount in issue subject to *commixtio* or remained an identifiable fund.

Kadoma Trading 15 (Pty) Ltd v Noble Crest CC (452/12)

Appealed from WCC

Date to be heard: 1 March 2013

Maya JA, Shongwe JA, Pillay JA, Erasmus AJA, Swain AJA

Close corporations – Close Corporations Act 69 of 1984, s 26(7), interpretation of – whether deeming provision of section validates void agreements entered into during close corporation's deregistration.

Master Currency (Pty) Ltd v The Commissioner for the South African Revenue Service (155/12)

Appealed from Tax Court (Johannesburg)

Date to be heard: 1 March 2013

Malan JA, Leach JA, Southwood AJA, Schoeman AJA, Van der Merwe AJA

Tax - Value-Added Tax Act 89 of 1991, interpretation of – whether currency exchange services supplied by appellant in 'duty free area' of airport subjected to value-added tax (VAT), at standard rate in terms of s 7(1)(a) – whether on proper construction of paragraph 11(2)(l), services should have been zero rated.

Telkom SA Ltd v ZTE Mzansi (Pty) Ltd & others (383/12)

Appealed from GNP

Date to be heard: 4 March 2013

Nugent JA, Leach JA, Petse JA, Schoeman AJA, Saldulker AJA

Arbitration – whether arbitrable dispute exists.

First Rand Bank Ltd v Brera Investments CC (385/12)

Appealed from GSJ

Date to be heard: 4 March 2013

Lewis JA, Ponnar JA, Malan JA, Theron JA, Plasket AJA

Contract law – whether appellant liable to pay respondent – whether appellant's obligation to pay demanded sum terminated when principal agent issued payment certificate in terms of which he certified payment of a lesser amount than demanded by respondent.

The Baphiring Community & others v Tshwaranani Projects & others (806/12)

Appealed from LCC

Date to be heard: 4 March 2013

Cachalia JA, Shongwe JA, Majiedt JA, Van der Merwe AJA, Mbha AJA

Restitution – Restitution of Land Rights Act 22 of 1994 – whether restoration of various portions to first appellant feasible as required by s 33(cA).

Alfred Mbalakwa Mnisi v The State (531/12)

Appealed from GNP

Date to be heard: 5 March 2013

Mpati P, Tshiqi JA, Pillay JA, Southwood AJA, Mbha AJA

Criminal law – murder – whether appellant had acted in self-defence – whether substantial and compelling circumstances justifying imposition of lesser sentence than prescribed minimum of 15 years' imprisonment.

Mudau Samson Mawela v The State (764/12)

Appealed from LT

Date to be heard: 5 March 2013

Mthiyane DP, Cachalia JA, Majiedt JA, Erasmus AJA, Saldulker AJA

Criminal law – rape – whether substantial and compelling circumstances exist warranting deviation from imposition of prescribed minimum sentence of life imprisonment.

Leon Smith v The State (595/12)

Appealed from GNP

Date to be heard: 5 March 2013

Nugent JA, Shongwe JA, Schoeman AJA

Criminal law – theft – whether appellant correctly convicted and sentenced on charge of theft and contravention of Credit Agreements Act 75 of 1980 – whether court a quo correct in refusing application for leave to appeal.

The Minister of Police v Frederik Barnard van der Vyver (861/11)

Appealed from WCC

Date to be heard: 7 March 2013

Brand JA, Leach JA, Theron JA, Majiedt JA, Pillay JA

Delict – action for malicious prosecution – whether requirements have been proved – whether Minister can be held liable – whether necessary animus iniuriandi proved – whether necessary causal link established.

Constitutional law – whether constitutional action for malicious prosecution – whether proved in this instance.

Raymond Banda & another v Frank Johannes van der Spuy & another (781/11)

Appealed from GSJ

Date to be heard: 7 March 2013

Lewis JA, Maya JA, Cachalia JA, Erasmus AJA, Swain AJA

Contract law – whether respondents had knowledge of latent defects – whether fraudulent misrepresentation made by respondents prior to sale caused appellants damage – whether voetstoots clause protects seller from fraudulent misrepresentation – whether appellants proved reasonable cost of repair as reduction of purchase price on *actio quanti minoris*, alternatively, as damages for fraudulent misrepresentation.

Food & Allied Workers Union v L Ngcobo NO (M Ndlela) & another (353/12)

Appealed from KZD

Date to be heard: 7 March 2013

Ponnan JA, Malan JA, Tshiqi JA, Southwood AJA, Plasket AJA

Contract law – damages – claim for damages arising from alleged breach of contract, alternatively, terms of appellant's constitution, in context of appellant agreeing to provide respondents with legal assistance to pursue unfair dismissal claims, including reference to Labour Court, as consequence of respondents' membership of appellant.

Vuyani Maselani & another v The State (511/12)

Appealed from WCC

Date to be heard: 8 March 2013

Mpati P, Tshiqi JA, Pillay JA, Southwood AJA, Swain AJA

Criminal law – robbery with aggravating circumstances – whether trial court misdirected itself in finding that death of victim which occurred during robbery constitutes grievous bodily harm within meaning of Criminal Procedure Act 51 of 1977, s 1 – sentence – whether court erred in finding no substantial and compelling circumstances justifying deviation from prescribed sentences.

The Chairperson, Medical and Dental Professions Board & others v L Vambe (75/12)

Appealed from GNP

Date to be heard: 8 March 2013

Mthiyane DP, Lewis JA, Erasmus AJA, Plasket AJA, Van der Merwe AJA

Review – whether appellants, being statutory bodies, precluded from pursuing complaint of unprofessional conduct against respondent before professional conduct committee in respect of those aspects of complaint that *pro forma* complainant withdrew at commencement of inquiry.

Muziwenhlanhla Smanga Mthimkhulu v The State (547/12)

Appealed from KZP

Date to be heard: 8 March 2013

Maya JA, Shongwe JA, Leach JA, Petse JA, Mbha AJA

Criminal law – sentence – whether exceptional circumstances justified determination of non-parole period – whether determination of non-parole period amounted to misdirection.

Jacob Humphreys v The State (424/12)

Appealed from WCC

Date to be heard: 11 March 2013

Brand JA, Cachalia JA, Leach JA, Erasmus AJA, Van der Merwe AJA

Criminal law – murder – attempted murder – whether trial court erred in finding state witnesses unreliable – whether version of appellant having no recollection of events immediately prior to accident false – whether appellant guilty of murder and not culpable homicide – whether sentences imposed just.

Leadtrain Assessments (Pty) Ltd & others v Leadtrain & others (427/12)

Appealed from GSJ

Date to be heard: 11 March 2013

Nugent JA, Ponnann JA, Tshiqi JA, Swain AJA, Saldulker AJA

Arbitration – Arbitration Act 42 of 1965 – whether remittal under s 32 may be used to achieve appeal by party who is aggrieved by order of costs against such party in arbitration proceedings – whether other grounds by which appeal against arbitrator's costs award can be achieved.

Nelson Sepuru Makgatho v The State (732/12)

Appealed from GNP

Date to be heard: 11 March 2013

Maya JA, Malan JA, Shongwe JA, Majiedt JA, Mbha AJA

Criminal law – murder – whether proved beyond reasonable doubt that appellant guilty of murder on basis of *dolus eventualis* – whether appellant's version reasonably possibly true – whether sentence appropriate – whether court a quo erred in finding no substantial and compelling circumstances justifying lesser sentence.

Michael Mafoho v The State (149/12)

Appealed from GNP

Date to be heard: 12 March 2013

Mthiyane DP, Shongwe JA, Schoeman AJA, Swain AJA, Mbha AJA

Criminal law – whether sentences imposed on appellant constitute cruel, inhuman and degrading punishment – introduction of further evidence on appeal.

Sandile Patrick Radebe & another v The State (726/12)

Appealed from GNP

Date to be heard: 12 March 2013

Lewis JA, Leach JA, Erasmus AJA
Criminal law – sentence – whether sentence appropriate.

Given Mabunda v The State (765/12)

Appealed from LT

Date to be heard: 12 March 2013

Lewis JA, Leach JA, Erasmus AJA

Criminal Law – sentence – whether trial court erred in sentencing the appellant to 15 years' imprisonment on each count and not ordering sentences to run concurrently – whether sentences proportionate to the offences of robbery with aggravating circumstances – whether court erred in not finding substantial and compelling sentences justifying imposition of lesser sentence than prescribed minimum.

Morné Barnard v The State (891/12)

Appealed from FB

Date to be heard: 12 March 2013

Malan JA, Theron JA, Pillay JA, Petse JA, Southwood AJA

Criminal law – rape – whether sexual intercourse took place without consent of complainant – whether substantial and compelling circumstances justifying imposition of lesser sentence than prescribed minimum.

David Sithole v The State (604/12)

Appealed from GNP

Date to be heard: 14 March 2013

Mpati P, Majiedt JA, Plasket AJA, Southwood AJA, Saldulker AJA

Criminal law – whether trial of accused substantially fair – whether identity of accused proved beyond reasonable doubt – whether minimum term of 15 years imprisonment an appropriate sentence.

Sibongumusa Henry Zondo v The State (627/11)

Appealed from GNP

Date to be heard: 14 March 2013

Maya JA, Shongwe JA, Leach JA, Swain AJA, Mbha AJA

Criminal law – sentence – whether sentence excessive – whether sentence of 14 years' imprisonment should be ordered to run concurrently with sentence of 25 years' imprisonment.

Mbekezeli Mafu v The State (644/12)

Appealed from GNP

Date to be heard: 14 March 2013

Cachalia JA, Erasmus AJA, Van der Merwe AJA

Criminal law – murder – robbery with aggravating circumstances – unlawful possession of firearm – unlawful possession of ammunition – appeal against convictions and sentences.

Eugene Bernhard de Klerk & another v Steven-Lee Properties (Pty) Ltd & another (297/12)

Appealed from GSJ

Date to be heard: 15 March 2013

Mthiyane DP, Brand JA, Lewis JA, Van der Merwe AJA, Saldulker AJA

Contract law – whether clause 15.1 of sales agreements constitutes suspensive condition – whether clause effectively obliged first respondent after transfer of immovable properties in names of appellants to make arrangements to

satisfaction of Rand Water for provision of essential services to street border of properties – whether alleged suspensive condition fulfilled – whether tacit term can be implied in agreements – whether appellants entitled to cancel two lease agreements due to alleged breach of alleged tacit term.

Justice Khakhathi Nevhuthalu v The State (692/12)

Appealed from GNP

Date to be heard: 15 March 2013

Ponnan JA, Tshiqi JA, Majiedt JA, Pillay JA, Petse JA

Criminal law – sentence – contravention of provisions of Arms and Ammunition Act 75 of 1969 – whether trial court overemphasized seriousness of offence – whether court failed to have proper regard to personal circumstances of appellant – whether court misdirected itself in not considering correctional supervision as alternative to direct imprisonment.

Themba Aaron Nkosi v The State (470/12)

Appealed from GNP

Date to be heard: 15 March 2013

Cachalia JA, Malan JA, Theron JA, Schoeman AJA, Plasket AJA

Criminal law – murder – whether common purpose between appellant and co-accused in respect of all three counts were proved – whether trial court and court a quo properly evaluated evidence – whether sentence shocking and disproportionate.

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 Mahomed 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

Nenzhelele Tshitereke v The State (304/12) – 17 September 2012

Quipmar Business Finance (Pty) Ltd t/a Capital Fortys and others v B Langton Construction CC and others (183/12) – 13 November 2012

Welcome Bila v The State (546/12) – 22 November 2012