

REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 2014

CASES ENROLLED FOR HEARING

National African Federated Chamber of Commerce and Industry & others v Veronica Pinky Nomaswazi Mkhize and others (805/2013)

Appealed from GJ

Date to be heard: 3 November 2014

Mpati P, Majiedt JA, Willis JA, Mbha JA, Schoeman AJA

Interpretation and application of Constitution of Voluntary Association – dispute arising because of factional clashes within an organisation – whether a meeting affecting the appellants was lawfully convened – whether resolutions passed at the meeting were valid – question of who could convene a meeting.

Société des Produits Nestlé SA & another v International Foodstuffs & others (100/2014)

Appealed from GP

Date to be heard: 3 November 2014

Navsa ADP, Theron JA, Swain JA, Zondi JA, Dambuza AJA

Intellectual property – alleged trademark infringement and passing off – subject also of an allied expungement application – whether first and second respondents' use of its chocolate, in relation to its TIFFANY BREAK product constitutes trademark use – whether the respondents' BREAK trade mark and the shape of its chocolate product are confusingly similar to the first appellant's HAVE A BREAK, HAVE A KIT KAT and TWO WAFER FINDER and FOUR WAFER FINGER trademarks – whether the use and shape of the TIFFANY BREAK chocolate and the mark BREAK is likely to result in an unfair advantage or be detrimental to the distinctive character and repute of the appellant's trade mark – whether it constitutes an infringement of those marks – in relation to passing off, whether or not the use of the shape of the respondents' chocolate and the mark BREAK is likely to confuse or deceive consumers into believing that its product is that of or is associated with the first appellant's product.

Regent Insurance Company Ltd v King's Property Development (Pty) Ltd (005/2014)

Appealed from GP

Date to be heard: 3 November 2014

Lewis JA, Wallis JA, Pillay JA, Fourie AJA, Meyer AJA

Insurance – whether there was material non-disclosure by the respondent – the respondent had instituted an action against the appellant, an insurer, for payment of loss of rental and cost of repairs to certain premises in Johannesburg which were destroyed by a fire – in its plea the appellant raised a non-disclosure defence that the premises were being let to a tenant that conducted business as manufacturers of fibre-glass products which it contended were flammable – insurer contending that it would not have assumed the risk had it been aware of that fact – insured asserting that there had been no material non-disclosure and that prior to the issue of the insurance policy the insurer was aware that the premises related to offices and a warehouse, which included the risk of the presence of flammable material – alleged waiver of the right to rely on non-disclosure by the conducting of a survey prior to the assumption of the risk – estoppel raised by insured - high court dismissed insurer's defence and upheld the plaintiff's replication of an estoppel.

Tyco International (Pty) Ltd & another v Golden Mile Trading 547 CC (949/2013)

Appealed from WCC

Date to be heard: 4 November 2014

Brand JA, Cachalia JA, Bosielo JA, Willis JA, Mocumie AJA

Delict – negligence - appellants instituted an action for damages arising from a collision between a truck-and-trailer and a refrigeration unit and respondent's vehicle – high court found a causal link between appellants' driver's undisputed negligence and the collision and ordered an apportionment – whether apportionment justified – discretionary nature of apportionment raised.

Passenger Rail Agency of South Africa v Irvine Van Sam Mashongwa (966/2013)

Appealed from GP

Date to be heard: 4 November 2014

Ponnan JA, Majiedt JA, Pillay JA, Zondi JA, Dambuza AJA

Delict – negligence – the respondent instituted action for damages sustained as a result of being thrown out of a moving train – whether doors of the coach malfunctioned and were open – whether the appellant was negligent by not ensuring that the train doors were closed when the train departed the last station – whether appellant took sufficient steps to protect commuters by placing guards on the train or coach – high court holding appellant negligent on both bases and held the appellant's liable for 100 per cent of the plaintiff's proven damages – factual disputes – whether high court's conclusions warranted.

Basil A Holford v Carleo Enterprises (Pty) Ltd & others (977/2013)

Appealed from GP

Date to be heard: 4 November 2014

Maya JA, Shongwe JA, Salduker JA, Mathopo AJA, Gorven AJA

Arbitration – review of an award of an appeal arbitration panel that reversed an award of an arbitrator – subsequent to the commencement of litigation in which the appellant had claimed damages from the first respondent for failing to procure a shareholding in the second respondent and after an alleged oral agreement to that effect – parties agreed to refer the matter to arbitration – arbitrator dismissed the action with costs holding that the appellant had failed to prove the oral agreement – arbitration appeal panel reversed the arbitrator's finding and awarded appellant damages – in the high court respondents succeeded in setting aside the panel's award on the basis that it had exceeded its powers and had committed a gross irregularity – whether on the facts the high court was correct.

South African Sports Confederation and Olympic Committee v Laraine Lane (1016/2013)

Appealed from GJ

Date to be heard: 5 November 2014

Mpati P, Lewis JA, Maya JA, Bosielo JA, Fourie AJA

Administrative Law – Suspension of a member of the board of Athletics South Africa and SASCOC – high court holding that respondent had been unlawfully suspended from the board of ASA and setting aside such suspension – whether respondent resigned – whether that rendered suspension moot – whether decision to suspend constituted administrative action – whether PAJA complied with.

State v Joseph Arthur Walter Brown (681/2013)

Appealed from WCC

Date to be heard: 5 November 2014

Navsa ADP, Brand JA, Ponnan JA, Theron JA, Zondi JA

Criminal Law – Fraud – appeal against sentence – respondent convicted on two counts of fraud where the collective loss ran into hundreds of millions of rands – trial court sentenced respondent to a fine of R75 000 or 18 months' imprisonment as well as a further 18 months' imprisonment, the latter suspended for a period of four years, on each of the two offences – State appeals the sentence on the basis that it was startlingly and inappropriately lenient and that the trial court misdirected itself in a number of ways.

M K Nkomo v State (979/2013)

Appealed from FB

Date to be heard: 5 November 2014

Cachalia JA, Mbha JA, Gorven AJA

Criminal Law - Rape – appeal against confirmation of conviction by high court sitting as a court of appeal and against its refusal to have further evidence led – appellant convicted of rape of a 13-year

old – whether sufficient evidence to justify the conviction – whether application to lead further evidence should have been granted.

Company Secretary of Arcelormittal & others v Vaal Environmental Justice Alliance (069/2014)

Appealed from **GSJ**

Date to be heard: 6 November 2014

Navsa ADP, Majiedt JA, Saldulker JA, Mathopo AJA, Mocomie AJA

Constitutional Law – Access to information – Promotion of Access for Information Act 2 of 2000 – appeal against decision of the high court directing the first appellant to supply the respondent with copies of records – respondents allege copies of records they require in relation to the environment – approach to applications under PAIA involving private bodies – interpretation and application of s 50 of PAIA – the high court had found that the respondents required the requested records for the protection of rights under s 24 of the Constitution – the right to environment that is not harmful to health and well-being.

The Commissioner of the South African Revenue Service v Mariana Bosch & another (485/2013)

Appealed from WCC

Date to be heard: 6 November 2014

Brand JA, Shongwe JA, Wallis JA, Pillay JA, Dambuza AJA

Revenue Law – whether certain gains realised by employee participants in the Foschini 1997 share option scheme in the 2005 and 2006 years of assessment, were taxable under either s 8A of s 8C of the Income Tax Act 58 of 1962 – whether they fell outside the income tax net.

Alfred Levin & others v Paul Joseph Khourie (624/2013)

Appealed from GJ

Date to be heard: 6 November 2014

Cachalia JA, Bosielo JA, Mbha JA, Schoeman AJA, Meyer AJA

Civil Procedure/Prescription – summons issued in March 1995 for damages based on an alleged breach of an oral agreement – matter sat down for trial in 1999 – when it was part-heard, parties reached a settlement agreement in terms of which there was a concession of the merits of the respondent's claim and a separation of merits and quantum – settlement agreement made an order of court on 8 June 1999 – between June 1999 and April 2004 no communication between the parties or their respective attorneys – in April 2004 respondent's attorneys advised that an amendment would shortly be delivered in respect of quantum – appellants objected to the proposed amendment and this occasioned an application for leave to amend – in 2012 appellants launched an application to dismiss respondent's action on the basis that reviving the action after a lapse of 13 years since the matter was last in court, was an abuse of process – alternatively that the claim had prescribed – high court dismissing application – whether delay in the prosecution of the matter constitutes an abuse of process which warrants dismissal of the action – whether settlement agreement amounted to an admission of liability within the meaning of s 15(3) of the Prescription Act 68 of 1969.

Sithembile Valencia Mkhize In re: Zwelibhekile Sibusiso Mbuyazi v The Premier of the Province of Kwazulu-Natal (822/2013)

Appealed from KZP

Date to be heard: 7 November 2014

Mpati P, Maya JA, Swain JA, Schoeman AJA, Fourie AJA

Succession/Customary Law – whether death of a deposed Inkosi puts an end to right of review of the decision of the Premier of a province – whether his minor son has a right to claim that he should be appointed Inkosi and that to effect such deposal an executrix be appointed a regent until such time as he has reached majority – whether executrix could claim the salary that would have been paid to the deposed Inkosi from the time of his removal to the time of his death – high court held that right of succession under customary law involved the right to succeed as head of the household together with the responsibilities – deceased was appointed as Inkosi in terms of the provision of the KwaZulu – Natal Act No. 5 of 2005 (Natal Act), he was deposed in circumstances claimed to justify a review in terms of PAJA – high court holding that right of succession does not involve the right to be appointed Inkosi in terms of the Natal Act – held that the right to set aside the decision by the Premier was a personal right that terminated when the deposed Inkosi died – high court dismissed application for the executrix to be substituted in the application for review.

Mogale City Local Municipality v Fidelity Security Services (Pty) Ltd and others (823/2013)

Appealed from GJ

Date to be heard: 7 November 2014

Navsa ADP, Wallis JA, Saldulker JA, Mbha JA, Zondi JA

Administrative Law – appeal against a decision reviewing and setting aside the decision by Mogale City Municipality to award a contract for security services to the second respondent – whether contract wrongly awarded to second respondent on the basis that it had not mustered sufficient points on a particular aspect – whether admissible evidence showed that an adjustment had subsequently been properly made – whether applicant for review itself had complied with tender requirements.

PMG Motors Kyalami (Pty) Ltd (in liquidation) & another v Firstrand Bank Ltd, Wesbank Division (866/2013)

Appealed from GJ

Date to be heard: 7 November 2014

Lewis JA, Ponnann JA, Willis JA, Mathopo AJA, Gorven AJA

Insolvency – jurisdiction of high court – liquidation order granted by the Pietermaritzburg High Court – application in South Gauteng High Court by the respondent for orders confirming cancellation of three agreements concluded with the appellant companies prior to their liquidation and for repayments of amounts paid by the respondent – appellants contended that the South Gauteng High Court had no territorial jurisdiction – contended that only Pietermaritzburg High Court had jurisdiction – South Gauteng High Court holding that it did have jurisdiction on the basis that two of the three companies in liquidation had their principal place of business in Gauteng and that the liquidators were within its area of jurisdiction – **high court** granted the order sought by the respondent – whether it was correct in its conclusion on jurisdiction – interpretation and application of s 84 of the Insolvency Act in relation to the merits of the return of the property in the event of termination of an agreement.

Roodezandt Ko-Operatiewe Wynmakery Bpk v Robertson Winery (Pty) Ltd & another (503/2013)

Appealed from GP

Date to be heard: 10 November 2014

Brand JA, Maya JA, Shongwe JA, Theron JA, Meyer AJA

Intellectual property/Trademarks – application by first respondent in high court for rectification of the trade mark register in terms of the provisions of s 24(1) of the Trade Marks Act 194 of 1993, on the basis that applicant has a reputation reflected in the trade mark Robertson Winery and other related trademarks – that first respondent's registration of Robertson Hill was contrary to the relevant provisions of the Act in that it is likely to deceive or cause confusion – high court holding in favour of the first respondent – present appeal is against the grant of the order of expungement – whether first respondent is attempting to get exclusive rights in relation to the geographical area of Robertson – whether complaint rightly directed at distinctiveness of first respondent's wine.

Spring Forest Trading 599 CC v Wilberry (Pty) Ltd t/a Ecowash & another (725/2013)

Appealed from KZD

Date to be heard: 10 November 2014

Lewis JA, Cachalia JA, Bosielo JA, Swain JA, Mocomie AJA

Contract – non-variation clause – whether exchange of e-mails satisfies variation requirements – interpretation and application of provisions of the Electronic Transactions and Communications Act 25 of 2002 – considerations of public policy in relation to non-variation clause.

MEC for Health: Gauteng Provincial Government v Lungile Ntsele obo Ayanda (675/2013)

Appealed from GJ

Date to be heard: 10 November 2014

Ponnann JA, Leach JA, Saldulker JA, Mbha JA, Mathopo AJA

Medical Negligence/Application of *res ipsa loquitur* maxim – respondent had instituted action against the doctors and nurses who attended to the respondent for negligently causing her child to contract cerebral palsy by the manner in which they acted whilst assisting her in giving birth to her child – whether finding of high court that appellant is fully liable for respondent's proven damages warranted – whether true basis of conclusion is the application of the maxim *res ipsa loquitur* – whether there was a basis for the application of the maxim.

Cecilia Goliath v The Member of the Executive Council for Health in the Province of the Eastern Cape (085/2014)

Appealed from ECG

Date to be heard: 10 November 2014

Ponnan JA, Leach JA, Saldulker JA, Mbha JA, Mathopo AJA

Medical Negligence/*res ipsa loquitur* maxim – high court dismissing plaintiff's claim for damages based on the negligence of medical staff in relation to a hysterectomy – an abdominal swab had been left in appellant's pelvic cavity which subsequently had to be removed – high court holding that appellant failed to discharge the onus of establishing negligence of either surgical or nursing staff – held *res ipsa loquitur* maxim inapplicable – whether conclusions justified.

Meadowglen Homeowners Association & others v City of Tshwane Metropolitan Municipality & another (767/2013)

Appealed from GNP

Date to be heard: 11 November 2014

Cachalia JA, Wallis JA, Zondi JA, Schoeman AJA, Dambuza AJA

Contempt of Court – high court dismissed an application to put into effect a suspended sentence imposed on the second respondent – in an earlier application second respondent was committed to imprisonment for a period of one month for non-compliance by the first respondent, the City of Tshwane Metropolitan Municipality, with a court order – that sentence was suspended on condition that the first respondent comply with the court order – before the high court the appellants alleged that the respondents failed to comply with the conditions of the suspended sentence – second respondent appears to be an official of the first respondent – high court holding, with reference to a decision of this court, that the criminal standard of proof is required when committal to prison for contempt is sought – high court holding that it could not be said beyond a reasonable doubt that the municipality had not complied with the relevant court order – whether municipality failed to comply with conditions of suspended sentence – whether high court correct in its ultimate conclusion.

Denvor Paul Fielies v The State (851/2013)

Appealed from WCC

Date to be heard: 11 November 2014

Bosielo JA, Majiedt JA, Willis JA

Criminal Law – Procedure – appellant charged with 39 counts of corruption in terms of the provisions of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 (POCCA) – in relation to procurement processes by a municipality – appellant sentenced by magistrates' court to a fine of R60 000.00 payment whereof was deferred to 31 December 2010 in terms of s 297(5) of the Criminal Procedure Act 51 of 1977, or 2 years imprisonment in default of payment – in addition he was sentenced to twelve months imprisonment suspended for 5 years on condition that he was not convicted of fraud, theft or any contravention of POCCA during the period of suspension – the Director of Public Prosecution sought and obtained leave to appeal against the sentence – high court upheld the appeal and substituted the sentence – appellant sentenced to 5 years imprisonment of which 2 years is suspended for a period of 5 years, on condition that he is not convicted of fraud, theft or any contravention of POCCA during the period of suspension, all such counts being taken together for purposes of sentencing – whether sentence just – whether court had adequate information – whether matter ought to have been remitted for the hearing of further evidence.

Raphael Machongo v The State (20344/2014)

Appealed from NWM

Date to be heard: 11 November 2014

Shongwe JA, Mathopo JA, Gorven AJA

Criminal Procedure – Sentence – appeal against sentence – whether trial court erred in invoking minimum sentence legislation in imposing life sentences – circumstances in which appellant not warned about minimum sentence provisions.

Bakgatla-Ba-Kgafela Tribal Authority & another v Bakgatla-Ba-Kgafela Communal Property Association (939/2013)

Appealed from LCC

Date to be heard: 12 November 2014

Navsa ADP, Majiedt JA, Wallis JA, Pillay JA, Dambuza AJA

Property – Communal Properties Association Act 28 of 1996 – entitlement to be registered as an association in relation to land claims – competing claims to entitlement – high court declaring respondent an association established in terms of the Communal Properties Association Act – whether order justified.

The Competition Commission v Computicket (853/2013)

Appealed from CAC

Date to be heard: 12 November 2014

Brand JA, Ponnann JA, Theron JA, Zondi JA, Fourie AJA

Competition Commission/Application for leave to appeal – against an order of the Competition Court, directing the Competition Commission to discover the record of its decision to refer various complaints against the respondent to the Competition Tribunal for determination – whether decision by the Commissioner to refer a complaint is subject to unconstrained review, irrespective of the nature of that decision – whether this court has jurisdiction to entertain the appeal – consideration of the entitlement of a respondent in complaint referral proceedings to the record of the decision where the legality of the complaint referral is challenged.

Elizabeth Coetzee v Financial Planning Institute of South Africa & others (1079/2013)

Appealed from WCC

Date to be heard: 12 November 2014

Lewis JA, Leach JA, Saldulker JA, Swain JA, Mocumie AJA

Review of the finding of a professional Appeal Tribunal – appellant carries on business as a provider of financial services – first respondent is a voluntary association of financial service providers, with its own code of conduct and discipline – the other respondents are members of an appeal tribunal of the first respondent – appellant provided advice to a Mrs Wagener in respect of the investment of proceeds of a sale of shares – R30 000 000 – first respondent subsequently received a complaint from Mrs Wagener about services rendered by appellant – disciplinary proceedings against appellant – first respondent's disciplinary committee found appellant guilty on a number of charges and imposed certain sanctions – appeal to appeal tribunal which overturned findings of the disciplinary committee but found that advice given was so poor that it did not merit the amount of the commission and found appellant guilty of failing to exercise reasonable and prudent professional judgment and furthermore failed to have acted in the interest of the complainant in that she failed to execute the mandate of the complainant properly, diligently and professionally – unsuccessful review by appellant in high court of appeal tribunal's findings – whether appellant had received a fair hearing on the one point that the appeal tribunal found her guilty – appellant contends that the hearing was unfair as she was found guilty on a count that had not been put to her and against which she had not been given an opportunity to defend herself.

Charter Developments (Pty) Ltd v Waterkloof Marina Estates (Pty) Ltd & another (1025/2013)

Appealed from GP

Date to be heard: 13 November 2014

Navsa ADP, Theron JA, Wallis JA, Mbha JA, Dambuza AJA

Insolvency Law – appeal against a decision on a stated case – interpretation and application of s 82(8) of the Insolvency Act 24 of 1936 – whether provisions apply to a company which is wound up on the basis of an inability to pay its debts by virtue of the provisions of s 339 of the Companies Act 61 of 1973 – whether the sale of shares authorised at a meeting of creditors was valid – whether provision of the Companies Act require the authority of members.

Belet Industries CC t/a Belet Cellular v MTN Service Provider (Pty) Ltd (936/2013)

Appealed from GJ

Date to be heard: 13 November 2014

Lewis JA, Cachalia JA, Bosielo JA, Saldulker JA, Meyer AJA

Contract – Upholding of exception to particulars of claim as disclosing no cause of action – whether clause in an agreement precluded appellants claim – high court upholding exception to particulars of claim and granted appellant 20 days to amend the particulars.

Helen Nokubonga Jili v Firstrand Bank Limited t/a Wesbank (National Credit Regulator as Amicus Curiae) (763/2013)

Appealed from KZD

Date to be heard: 13 November 2014

Maya JA, Shongwe JA, Leach JA, Willis JA, Mocumie JA

National Credit Act/Summary judgment – interpretation and application of provisions of the National Credit Act 34 of 2005 – default by purchaser in paying for a motor vehicle purchased in terms of an

instalment sale agreement – debt restructured – default on restructured agreement – bank sought and obtained summary judgment – whether default entitles the credit provider to enforce its right under a credit agreement without rescinding, varying or setting aside the re-arrangement order – whether the high court properly exercised its discretion in granting summary judgment.

Ansafon (Pty) Ltd & another v The Master of the Northern Cape Division of the High Court, South Africa and others (513/2013)

Appealed from NCK

Date to be heard: 14 November 2014

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

Insolvency – unsuccessful application in the high court for declaratory relief following upon a failure by first appellant to meet an undertaking to pay liquidators' costs after obtaining the release of the second appellant from liquidation – appellant sought an order interdicting the Master from confirming the accounts of second to fifth and sixth to seventh respondents and from determining their administration fees and expenses and other associated relief – consideration of a prior court order – whether the Master has any power to determine the fees due to liquidators of a company taken out of liquidation in terms of s 354 of the Companies Act 61 of 1973.

The Minister of Safety and Security NO and another v Leonard Charles Schubach (437/2013)

Appealed from GP

Date to be heard: 14 November 2014

Navsa ADP, Shongwe JA, Zondi JA, Schoeman AJA, Meyer AJA

Delict/Malicious prosecution – appeal against decision of the high court in favour of the respondent – appellants ordered to pay respondent an amount of R213 000. as damages sustained in respect of an alleged malicious prosecution – whether there was probable cause for the prosecution.

Mtuba Shopping Mall (Pty) Ltd & another v The Vildev Group (Pty) Ltd (846/2013)

Appealed from GJ

Date to be heard: 14 November 2014

Brand JA, Ponnann JA, Leach JA, Mbha J, Mathopo AJA

Revenue/VAT – respondent, which abides the order of this court applied in the high court for an order that the first appellant pay it the sum of R3 300 000 plus interest – the appellant counter-applied for an order that the respondent provide a tax invoice in respect of the amount to be paid – respondent's relief was conceded – in deciding the counter-application, the high court considered whether the respondent was obliged in terms of the Value Added Tax Act 89 of 1991 to provide a tax invoice – high court held that a compromise entered into between the parties, which formed the basis for the application in the high court did not constitute a 'supply of service' as contemplated in the VAT Act and on that basis dismissed the counter application – the second appellant, the South African Revenue Service, is an intervening party, entering the fray only at the time when leave to appeal was sought – whether respondent was obliged, in terms of s 20(1) of the VAT Act, to provide a tax invoice in respect of the settlement amount – whether respondent obliged to provide a tax invoice to the first appellant in respect of the underlying service agreement.

World Hope Ministries & another v Die Volle Evangelie Kerk van God in Suidelike Afrika (758/2013)

Appealed from WCC

Date to be heard: 17 November 2014

Mpati P, Cachalia JA, Swain JA, Fourie AJA, Gorven AJA

Property/Rei vindicatio – claim in high court for ejectment of persons from immovable property in terms of rei vindicatio – dispute between former members of church – dispute arising after schism – high court granting respondents relief sought – appeal against that order – whether appellants and respondents have legal status and locus standi – whether former affiliates can retain property which they were in possession of prior to division – whether constitution of church implicated – whether Bill of Rights implicated.

Minister of Education for the Western Cape & another v Beauvallon Secondary School & others (865/2013)

Appealed from WCC

Date to be heard: 17 November 2014

Brand JA, Maya JA, Leach JA, Willis JA, Mathopo JA

Administrative and Constitutional Law – appeal against an order of the Western Cape High Court setting aside the decision of the MEC for Education in the Western Cape to close a number of schools in the province – whether the decision to close the schools was lawful – whether there ought to have been consultation rather than just an opportunity to make representations – whether s 33(2) of the South African Schools Act 84 of 1996 is unconstitutional – whether decision irrational – whether decision is reviewable on narrower grounds because of its nature – cross-appeal concerning the court's refusal to declare s 33(2) of the Act unconstitutional.

Sakhiwo Health Solutions (Limpopo) (Pty) Ltd v MEC of Health, Limpopo Provincial Government (908/2013)

Appealed from GP

Date to be heard: 17 November 2014

Lewis JA, Bosielo JA, Wallis JA, Schoeman AJA, Dambuza AJA

Contract: interpretation of – appeal against a decision declaring a written agreement terminated due to effluxion of time – whether court below was correct in its interpretation of contractual provision – whether a request for proposal incorporated into agreement, affecting duration thereof.

MEC Local Government and Traditional Affairs v Joachim Hendrik Botha NO & others (887/2013)

Appealed from KZP

Date to be heard: 18 November 2014

Navsa ADP, Shongwe JA, Theron JA, Swain JA, Fourie AJA

Local Government – interpretation and application of s 80 of the Local Government: Municipal Property Rates Act 6 of 2004 (MPRA) – respondents are liquidators of an insolvent estate – respondents applied in the high court for the setting aside of a valuation of immovable property, alternatively, for an order granting them condonation for non-compliance with time frames set by the Ethekwini Municipality for lodging an objection to the valuation roll – an application for the setting aside of the valuation was dismissed – application for condonation referred to second respondent for consideration and decision – appeal by second respondent and cross-appeal by the respondents – whether provisions of s 80 of the MPRA grant to ratepayers and owners a right to seek condonation from the MEC, or whether the section is limited to municipalities – appellant contends that the provisions of s 80 of the MPRA applies only to municipalities and does not afford a right to landowners or ratepayers to seek condonation from the MEC – respondents contend for condonation from the non-compliance of any provision of the MPRA, in relation to any act that should be performed within a specified time period – respondents seek a substituted order in the following terms: 'That condonation be granted to the applicants in terms of s 80(1) of Act 6 of 2004 and that the applicant be permitted to file with the First Respondent an objection against the 2008 municipal valuation of the immovable property in terms of s 50(1)(c) of Act 6 of 2004, within a period of 30 (thirty) days from the date of the order.'

The Owners of the MV "Silver Star" v Hilane Limited (082/2014)

Appealed from ECP

Date to be heard: 18 November 2014

Ponnan JA, Wallis JA, Pillay JA, Zondi JA, Gorven AJA

Admiralty – appeal against decision by high court refusing to set aside arrest of the MV "Silver Star" – whether foreign arbitration award can be relied on as the basis for an arrest of a vessel – whether a claim based on 'indemnities' related to a charter party justifiable – whether s 3(7)(c) of the Admiralty Jurisdiction Regulation Act 105 of 1993 implicated – whether there was a misdirection by high court on the facts.

X-Procure Software SA (Pty) Ltd v Sutherland TL (882/2013)

Appealed from GJ

Date to be heard: 18 November 2014

Maya JA, Leach JA, Willis JA, Saldulker JA Mocomie AJA

Contract Law – respondent sued appellant company for payment of commissions allegedly due in respect of advertising agreements concluded with appellant's customers – action based on the express terms of a written agreement concluded between the parties – high court found in favour of

respondent and ordered appellant to pay an amount of R447 873 – appeal turns on interpretation of the written agreement and whether respondent proved entitlement to payment.

Maghandheran Pillay v The Hollard Insurance Company Limited (749/2013)

Appealed from GJ

Date to be heard: 19 November 2014

Mpati P, Cachalia JA, Bosielo JA, Majiedt JA, Mbha JA

Insurance – interpretation of policy document – whether losses claimed within policy – whether appellant proved his claim – whether claim forfeited for failure to comply with provisions of policy in respect of notice and reporting requirements.

Bayer Pharma AG (formerly Bayer Schering Pharma AG) v Pharma Dynamics (Pty) Ltd (1066/2013)

Appealed from PAT

Date to be heard: 19 November 2014

Brand JA, Lewis JA, Theron JA, Schoeman AJA, Dambuza AJA

Intellectual property – Patent – appeal from a decision of the Court of the Commissioner of Patents refusing to grant an amendment in respect of a particular patent – an application to amend the 2002 patent was made by the appellant pursuant to s 51(1) of the Patents Act 57 of 1978 – whether amendment sought to be made render claim unclear – whether amendment sought introduces new matter or matter not fairly based on the specification prior to amendment – whether there was a culpable delay in bringing the amendment – whether there was reprehensible conduct on the part of the appellant justifying the refusal to grant the amendment.

B Braun Medical (Pty) Ltd v Ambasaam CC (757/2013)

Appealed from GP

Date to be heard: 19 November 2014

Ponnan JA, Shongwe Ja, Swain JA, Mathopo AJA, Meyer AJA

Contract/Repudiation – appeal against a high court order declaring the appellant to be liable to the respondent for such damages as the latter may prove consequent upon the appellant's repudiation of an agreement of carriage – whether evidence established that contract repudiated.

Director of Public Prosecutions, Western Cape v Fransisca Malan (997/2013)

Appealed from WCC

Date to be heard: 20 November 2014

Navsa ADP, Leach JA, Majiedt JA, Pillay JA, Mocomie AJA

Criminal Law – Fraud – Value Added Tax – Income Tax – appeal by Director of Public Prosecutions on point of law – whether failure to register a Close Corporation as a VAT vendor and non-submission of income tax returns of CC was a representation and constituted fraud – high court sitting as court of appeal set aside regional court convictions of appellant on fraud charges – whether high court erred in so doing.

South African Local Authorities Pension Fund v Msunduzi Municipality (994/2013)

Appealed from KZP

Date to be heard: 20 November 2014

Maya JA, Bosielo JA, Wallis JA, Saldulker JA, Meyer AJA

Pension Fund/Increase in employer contributions – appellant instituted action against the respondent, claiming in terms of the provisions of the Pension Fund Act 24 of 1956, certain additional contributions it alleges are due – high court granted absolution from the instance – whether respondent bound by an amendment to the rule increasing employers contributions – whether amendment valid.

Ruth Christine Visser v 1Life Direct Insurance Limited (1005/2013)

Appealed from GJ

Date to be heard: 20 November 2014

Cachalia JA, Willis JA, Swain JA, Fourie AJA, Mathopo AJA

Insurance – Non-disclosure – appeal against judgment of the high court in terms of which it dismissed a claim by the appellant for payment of benefits in respect of a life policy – claim dismissed on basis of material non-disclosure by deceased concerning her state of health - whether there was material non-disclosure.

Daniel Johannes Jacobs Vlok NO & others v Sun International South Africa Ltd & others (040/14)

Appealed from GJ

Date to be heard: 21 November 2014

Navsa ADP, Theron JA, Mbha JA, Mathopo AJA, Gorven AJA

Companies Act 71 of 2008 – interpretation of s 124(2) – the appeal arises from a dismissal by the high court of an application to amend particulars of claim and the dismissal of an exception – section 124(2) of the Companies Act provides that a minority shareholder may, ‘within 30 business days’ after receiving a notice for the acquisition of its shares, apply to court for an order blocking the acquisition or altering the terms upon which it is made – appellants instituted action more than two months late, contending that the court could condone their failure to institute the action within 30 business days – high court holding it didn’t have the power to do so – appellants appeal against that finding – whether high court has the power to condone late institution of proceedings – whether s 124(2) only permits proceedings to take place by way of application or also by way of action.

Director of Public Prosecutions, Western Cape v Mohamed Shakiel Parker (103/2014)

Appealed from WCC

Date to be heard: 21 November 2014

Brand JA, Shongwe JA, Leach JA, Pillay JA, Willis JA

Criminal Law – whether VAT vendors who do not comply with statutory duties to pay VAT collected by them to SARS are guilty of theft – whether high court correct in holding that State erred in charging the appellant with theft – high court setting aside regional court’s conviction of the appellant of theft, despite his plea of guilty.

Laeveld Agrochem (Pty) Ltd v City of Tshwane (941/2013)

Appealed from GP

Date to be heard: 21 November 2014

Lewis JA, Ponnann JA, Zondi JA, Fourie AJA, Meyer AJA

Property Law – *Mandament van Spolie* – appeal against an order of the North Gauteng High Court, in terms of which the court refused to confirm a rule *nisi* ordering the respondent to restore the electricity supply to the appellant’s property - whether the relief sought by the appellant is premised on the principles of the *mandament van spolie* – consideration of City of Tshwane’s by-laws – whether appellant entitled to a spoliation order.

National Minister of Social Development & another v Marta Drive & others (1026/2013)

Appealed from WCC

Date to be heard: 24 November 2014

Mpati P, Cachalia JA, Leach JA, Schoeman AJA, Meyer AJA

Administrative Law/Internal appeals – appeal against an order of the high court directing the National Minister of Social Development to consider and decide the respondents’ appeals against refusal of their application for drought relief – whether high court erred in ordering the Minister to adjudicate the appeals – whether appeal competent.

State Bank of India & another v Denel Soc Ltd & others (947/2013)

Appealed from GJ

Date to be heard: 24 November 2014

Brand JA, Bosielo JA, Theron JA, Mbha JA, Fourie AJA

Performance guarantees/Counter guarantees – appeal against decision by high court to grant an interdict precluding second respondent from making payment in terms of counter guarantees in favour of the appellants, pending finalisation of arbitration proceedings in India pertaining to the principal guarantees – relationship between principal guarantee, counter guarantee and underlying contract – whether guarantees tainted by fraud – whether requirement for an interdict established.

Yair Shimansky & another v Browns the Diamond Store Proprietary Limited (009/2014)

Appealed from WCC

Date to be heard: 24 November 2014

Lewis JA, Majiedt JA, Wallis JA, Dambuza AJA, Mocumie AJA

Intellectual Property/Trademark – appeal against a decision of the Western Cape High Court in terms of which the appellants’ application for an interdict for alleged trade mark infringement was dismissed, with costs – whether use by the respondent of the mark EVOLVE in relation to men’s wedding bands infringes the first appellant’s registered trade mark no 2009/17927 EVOLYM in class 14 – whether appellant’s trade mark is likely to cause deception or confusion.

New Port Finance Company (Pty) Ltd & another v Nedbank (030/2014)

Appealed from WCC

Date to be heard: 25 November 2014

Navsa ADP, Majiedt JA, Wallis JA, Saldulker JA, Zondi JA

Insolvency – Stay of execution of judgment – whether debts owed altered by business rescue plans – judgments obtained against the appellants on the basis of suretyships – application in the high court for a stay of execution of orders granted in favour of the respondent – basis of application is that the two companies in respect of which the suretyships were signed were taken out of final liquidation and put under business rescue – high court refusing to stay execution – whether adoption of business rescue plan resulted in compromise or fundamental alteration of debt owed by the companies to respondent – whether liability of sureties affected – whether stay of execution ought to have been granted.

Marine 3 Technologies Holdings (Pty) Ltd v Afri-group Investments (Pty) Ltd & another (0018/2014)

Appealed from PAT

Date to be heard: 25 November 2014

Ponnan JA, Swain JA, Mathopo AJA, Mocumie AJA, Gorven AJA

Intellectual Property – Patents – appeal against finding that claim 1 in a South African Patent issued for ‘*surface active ingredient composition*’ is inutile and against an order revoking the patent – respondent abiding decision – whether claim in the patent is inutile in the sense that the invention cannot be performed or that ‘*the composition of the creation cannot be created*’ as held by the court below.

Bradley Syster & another v State (126/2014)

Appealed from WCC

Date to be heard: 25 November 2014

Bosielo JA, Schoeman AJA, Fourie AJA

Rape/Assault – appeal against conviction on charges of rape and indecent assault – whether trial court erred in relying on the evidence of a single witness.

Henry Emomotimi Okah v The State (019/2014)

Appealed from GJ

Date to be heard: 26 November 2014

Navsa ADP, Ponnan JA, Pillay JA, Dambuza JA, Gorven AJA

Criminal Law – appeal against convictions on charges of terrorism – appellant a Nigerian citizen charged with contraventions of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 in relation to two incidents that occurred in Abuja, Nigeria – constitutional validity of that Act to be considered – jurisdiction of trial court to be considered – consideration of international instruments related to the War Against Terrorism.

Schalk Willem Du Plooy v State (940/2013)

Appealed from GP

Date to be heard: 26 November 2014

Brand JA, Willis JA, Meyer AJA

Criminal law – appeal against sentence – 17 year old murdered his adoptive parents pleading guilty to two counts of murder – sentenced to 12 years’ imprisonment on each count ordered to run concurrently – whether in light of appellant’s youthfulness and his exposure to intoxicating substances and all the other circumstances of the case the sentence was appropriate.

Lukas Vusi Mahlamuza & another v State (20288/2014)

Appealed from GP

Date to be heard: 26 November 2014

Brand JA, Willis JA, Meyer AJA

Attempted murder - appellants convicted on attempted murder counts and counts of robbery with aggravating circumstances – first appellant sentenced effectively to a period of 48 years' imprisonment and second appellant to an effective period of 33 years' imprisonment – appeal from regional court to high court unsuccessful - leave granted to appeal against certain counts and certain sentences – whether there was a duplication of convictions – whether sentences were too severe and disproportionate.

Hendrik Frederick Delport & other v State (861/2013)

Appealed from GP

Date to be heard: 26 November 2014

Cachalia JA, Leach JA, Theron JA, Majiedt JA, Schoeman AJA

Criminal Law/Procedure – challenge to appointment of prosecutors – belated plea in terms of s 106(1)(h) of the Criminal Procedure Act 51 of 1997, that prosecutor has no title – magistrate upholding challenge – high court overturning decision and remitting the matter for trial to be proceeded with – at what stage can a challenge in terms of s 106(1)(h) be raised – consequences of upholding plea – whether prosecutors duly appointed – whether fair trial rights infringed.

Thabang Sidwell Zono v State (962/2013)

Appealed from LT

Date to be heard: 26 November 2014

Cachalia JA, Leach JA, Theron JA

Criminal Law/Sentencing – whether substituted recommendation by high court concerning parole competent or appropriate.

Themani Bamba v The State (20089/2014)

Appealed from WCC

Date to be heard: 27 November 2014

Shongwe JA, Swain JA, Mocomie AJA

Criminal Law – Murder – appeal against confirmation of conviction by the high court sitting as a court of appeal even though it altered the basis of the regional court's finding of *dolus directus* to *dolus eventualis* and referred the matter back for sentencing – conviction contested on the basis that the State had failed to prove appellant's guilt beyond a reasonable doubt – sufficiency of forensic evidence also questioned – application for leave to lead further evidence to be considered.

The State v Mudau Muvhulawa Erick & others (631/2013)

Appealed from LT

Date to be heard: 27 November 2014

Maya JA, Wallis JA, Dambuza AJA

Criminal law - appeal by the State on a point of law and by respondents in respect of conviction and sentence – appeal by the appellant from the regional court to the Limpopo High Court against conviction and sentence – high court holding that sentences imposed by the regional court were not competent and set them aside and the matter was remitted to the regional court – accepted by the parties that the high court erred in holding that the sentences were not competent, particularly because it did not take into account that, when the respondents were sentenced, the provisions of the Criminal Law Amendment Act 105 of 1997, regarding referral/committal of an accused for sentencing in the high court after conviction in magistrate's court were not applicable – whether evidence sufficient to found the conviction – whether sentences imposed in respect of the rape and robbery charges were appropriate.

