

**REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
BULLETIN 1 2015**

**CASES ENROLLED FOR HEARING: February to March**

**Price Waterhouse Coopers & others v Nasionale Aartappel Koöperasie Bpk & andere (451/2012)**

Appealed from GNP

Date to be heard: 9-13 February 2015

Wallis JA, Fourie AJA, Koen AJA

Delict – Auditor’s professional negligence – whether negligence proved – whether negligence causative of losses suffered – prescription.

**Medirite (Pty) Ltd v South African Pharmacy Council & another (197/2014)**

Appealed from GNP

Date to be heard: 16 February 2015

Mpati P, Maya JA, Leach JA, Pillay JA, Zondi JA

**Administrative law** – Dispute concerning the legality of the first respondent’s amendment of its rules of ‘good pharmacy practice’ purportedly in terms of its powers under the Pharmacy Act 53 of 1974 requiring pharmacies situated within another business to be physically separated from the other business by way of a permanent floor-to-ceiling construction – amendment materially affecting appellant’s pharmacies within supermarket premises – whether it diminishes public access to pharmacy services – whether amendments liable to be set aside on the basis that they are beyond the powers of the first respondent, are irrational and do not meet the standards of reasonable and lawful administrative decision making.

**First National Bank v Clear Creek Trading 12 (Pty) Ltd & another (1054/2013)**

Appealed from GNP

Date to be heard: 16 February 2015

Lewis JA, Willis JA, Mbha JA, Van der Merwe AJA, Gorven AJA

National Credit Act 34 of 2005 - appeal against judgment of the provincial court in terms of which it found that the provisions of the NCA were applicable to a loan agreement entered into between the appellant and the first respondent – agreement referring to provisions of the NCA – whether the NCA applies because it was said to be applicable in terms of the agreement rather than falling within its regulatory scheme.

**Minister of Home Affairs & others v Somali Association of South Africa Eastern Cape & another (831/2013)**

Appealed from ECP

Date to be heard: 16 February 2015

Ponnan JA, Shongwe JA, Majiedt JA, Schoeman AJA, Meyer AJA

**Administrative Law - Promotion of Administrative Justice Act 3 of 2000 (PAJA)** – appeal against a decision of the provincial court declaring the Director-General Department of Home Affairs’ (DG) decision to close the Port Elizabeth Refugee Reception Office unlawful and setting it aside, accompanied by a structural interdict relating to an order that the office be reopened and fully functional – whether DG’s decision constituted administrative action – whether closure lawful.

**Mantella Trading 310 (Pty) Ltd v Kusile Mining (Pty) Ltd (191/2014)**

Appealed from PAT

Date to be heard: 17 February 2015

Navsa ADP, Bosielo JA, Wallis JA, Schoeman AJA, Dambuza AJA

Patent Infringement – appellant claiming an infringement by respondent of a patent involving barriers or stoppings in underground passages, a method of erecting such barriers or stopping in an underground passage, and a kit for erecting a barrier or stopping in an underground passage – respondent in its counterclaim denied the infringement and pleaded that the patent is invalid on the following bases: (a) the invention claimed in each of the claims of the patent is not fairly based on matter disclosed in the specification; (b) all of the claims of the complete specification are unclear; (c) the complete specification does not sufficiently describe, ascertain, illustrate or exemplify the rigid material referred to in the claims of the patent; and (d) the invention claimed in claims 1 to 39 was not patentable for the reason that the invention lacks an inventive step – the Commissioner holding that

the patent was infringed but that it lacked an inventive step and accordingly found that the patent is invalid – appellant contending that Commissioner erred in his conclusion concerning the inventive step – there is no cross-appeal that the patent is infringed – whether invention comprises a novel combination of features of pre-existing art.

**Stupel & Berman Incorporated v Rodel Financial Services (Pty) Ltd (1075/2013)**

Appealed from GSJ

Date to be heard: 17 February 2015

Brand JA, Mhlantla JA, Willis JA, Fourie JA, Gorven AJA

**Contract** – proper construction of undertaking by appellant conveyancer – whether revocable – applicable principles – validity of related cessions – whether respondent waived its rights – whether estoppel applies.

**Trumper Trading 166 CC v Kouga Municipality (795/2013)**

Appealed from ECG

Date to be heard: 17 February 2015

Maya JA, Cachalia JA, Saldulker JA, Van der Merwe JA, Mayat AJA

Zoning scheme regulations/Local authority – whether the Jeffreys Bay Municipality Zoning Scheme Regulations properly interpreted, permit the operation of a bottle store from premises zoned as 'special business' without the further consent of the Kouga Municipality being required – whether appellant's appeal against an interdict granted by magistrate prohibiting the appellant from conducting business of a bottle store rightly dismissed.

**Shakawa Hunting & Game Lodge (Pty) Ltd v Askari Adventures CC (044/2014)**

Appealed from GNP

Date to be heard: 18 February 2015

Mpati P, Leach JA, Majiedt JA, Saldulker JA, Dambuza AJA

Contract – whether, in terms of specific clauses of a contract, the appellant company should pay over ten per cent of their gross proceeds derived from the sale of farms or whether it was entitled to deduct first, all the shareholders' loan accounts.

**Werner Erwee Taute & others v Karin Taute (933/2013)**

Appealed from GSJ

Date to be heard: 18 February 2015

Lewis JA, Bosielo JA, Pillay JA, Mbha JA, Mayat AJA

Family Law – trust assets - whether assets of a trust were rightly declared by the high court to be part of the joint estate – whether respondent proved the agreement on which she relied in relation to trust assets – whether conclusion of high court correct – whether circumstances justifying the lifting of the corporate veil in respect of the trust – applicability of s 7(3) of the Divorce Act 70 of 1979.

**Roman's Transport CC v Sisa Zihlwele & another (013/2014)**

Appealed from ECM

Date to be heard: 18 February 2015

Cachalia JA, Shongwe JA, Zondi JA, Fourie AJA, Meyer AJA

Delict - bus driven by appellant's employee careering off the road and overturning – whether driver negligent – whether high court's finding that the appellant is liable to compensate the respondent for personal injuries suffered in a motor vehicle accident is correct.

**The Minister of Transport & another v Prodiba (Pty) Ltd (20028/2014)**

Appealed from GNP

Date to be heard: 19 February 2015

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

Review/Cancellation of agreement to provide services – Cancellation by appellants of agreement concluded with the respondent for the upgrading of the existing driver's license card production facility – respondent applying in high court for an order reviewing and setting aside the decision by the appellants to cancel the agreement – counter application by appellants for an order declaring the decision to enter into the agreement unlawful and setting it aside – appellants contending that agreement concluded in conflict with treasury regulations and without following tender processes – high court ruling in favour of respondent holding that, at best for appellant there was want of compliance with internal management processes and that, in any event, the court was vested with the

discretion to grant the relief sought in the counter application and that the applicant, as an innocent party, should not be prejudiced by non-compliance with internal management processes – whether those conclusions warranted.

**City of Johannesburg Metropolitan Municipality & others v Philani Hlophe & others (1035/2013)**

Appealed from GSJ

Date to be heard: 19 February 2015

Brand JA, Maya JA, Willis JA, Schoeman JA, Van der Merwe AJA

Housing – appeal against an order of the high court (a) declaring that the Mayor, the Director of Housing and the City Manager of the City of Johannesburg are constitutionally and statutorily obliged to take all the administrative and other steps necessary to ensure the implementation of two court orders and directing the first appellant to provide accommodation to the 1<sup>st</sup> to 182<sup>nd</sup> respondents (b) directing the Mayor, City Manager and Director of Housing to take all the administrative and other steps necessary to cause the City to comply with the court orders and (c) directing the Mayor, the City Manager and the Director of Housing to report back to the court on a range of specific issues enumerated in the order – whether high court within its powers to make the orders.

**Deutsches Altersheim Zu Pretoria v Roland Heinrich Dohmen & others (034/2014)**

Appealed from GNP

Date to be heard: 19 February 2015

Ponnan JA, Mhlantla JA, Leach JA, Zondi JA, Mayat AJA

Constitutional Issue – Consideration of s 25(1) of the Constitution whereby no one may be deprived of property except in terms of the law of general application and s 26(3) providing that no person may be evicted from their home without an order of court. Property Law – appeal against an order of the high court sitting as a court of appeal overturning a magistrate's order evicting the first respondent from the appellant old-age home – whether appellant liable to eviction pursuant to the provisions of the Prevention of Illegal Evictions and Unlawful Occupation of Land Act 19 of 1998 – whether the provisions of the Older Persons Act 13 of 2006 find application – consideration of the first respondent's circumstances including his medical condition – consideration of the applicability of s 25 of the Constitution.

**Sophy Molusi & others v Francois Daniël James Voges NO & others (1008/2013)**

Appealed from LCC

Date to be heard 20 February 2015

Mpati P, Ponnan JA, Bosielo JA, Shongwe JA, Saldulker JA

Property Law – Eviction - Extension of Security of Tenure Act 62 of 1997 (ESTA) – appeal against a judgment of the Land Claims Court, Randburg, evicting the appellants from a farm in Rustenburg – application of ESTA – whether appellants rightly evicted.

**Ekurhuleni Metropolitan Municipality & another v Roadmac Surfacing (Pty) Ltd & others (950/2013)**

Appealed from GSJ

Date to be heard: 20 February 2015

Navsa ADP, Brand JA, Mhlantla JA, Willis JA, Van der Merwe AJA

Administrative Law - successful application in the high court to set aside a decision by the appellant (municipality) not to award the tender to the respondents – high court ordered tender to be awarded to the first two respondents – whether Bid Adjudication Committee made any recommendations – whether municipality bound by the recommendations – whether 'cancellation' of the tender lawful – whether court substituting its decision for that of the municipality correct – allied appeal against order granting leave to execute the order, notwithstanding the appeal.

**Claudio Ferrari & others v Quinton Gordon Thomas Gunner (1063/2013)**

Appealed from GSJ

Date to be heard 20 February 2015

Lewis JA, Cachalia JA, Majiedt JA, Pillay JA, Meyer AJA

Contract – appeal against an order of the high court in terms of which specific performance of an agreement for the sale of shares in the third appellant was compelled – appellant claiming that agreements were void or voidable – whether appellants were induced by material misrepresentation and/or undue influence to conclude agreements – whether order for specific performance justified.

**Greater Tzaneen Municipality v Andre Jean Jaques Le Grange (685/2013)**

Appealed from GNP

Date to be heard 23 February 2015

Brand JA, Leach JA, Willis JA, Zondi JA, Dambuza AJA

Contract/Labour Law – appellant municipality had sought an order from the high court declaring that respondent's employment had expired by effluxion of time and sought an interdict prohibiting the respondent from entering municipal premises – respondent opposed the application and sought an order for rectification of his employment contract – appellant's application dismissed – the rectification order granted – the appellant ordered to employ the respondent in a permanent position – whether rectification rightly granted.

**Euro Blitz 21 (Pty) Ltd & another v Secena Aircraft Investments CC (102/2014)**

Appealed from GSJ

Date to be heard: 23 February 2015

Maya JA, Majiedt JA, Pillay JA, Mbha JA, Mayat AJA

Court order/Interpretation of – appeal against the granting of a declaratory order that the following order of the Magistrate's Court constitutes compound rather than simple interest: *'Interest at prime plus 5% (five per cent) calculated daily with effect from 24<sup>th</sup> March 2006 to date of payment'*.

**Ian Kilburn v Tuning Fork (Pty) Ltd (211/2014)**

Appealed from GSJ

Date to be heard: 23 February 2015

Cachalia JA, Mhlantla JA, Saldulker JA, Gorven AJA, Meyer AJA

Suretyship – extent of suretyship – whether deed of suretyship executed by appellant covers only debt owed by the debtor to one division of the respondent or whether it covers debt owed to all of the respondent's trading divisions – high court finding the latter to be the case.

**Strata International (Pty) Ltd & another v Ekurhuleni Metropolitan Municipality (079/2014)**

Appealed from GNP

Date to be heard: 24 February 2015

Navsa ADP, Leach JA, Saldulker JA, Van der Merwe AJA, Meyer AJA

Local Government/Administrative Law – whether appellants have any enforceable rights based on such resolution – high court dismissing application seeking to enforce such rights.

**Clifton Dunes Investment 100 Ltd & another v City Capital SA Property Holdings Ltd (169/2014)**

Appealed from WCC

Date to be heard 24 February 2015

Lewis JA, Maya JA, Majiedt JA, Pillay JA, Zondi JA

**Property Syndication** – determination of loan amounts due – reliance on audited financial statements of first and second appellants – high court judgment premised on those statements – whether high court erred in that regard – whether loan amount rightly determined.

**Xstrata South Africa (Pty) Limited - Alloys Division v Escarpment Environment Protection Group & others (20010/2014)**

Appealed from GNP

Date to be heard 24 February 2015

Ponnan JA, Bosielo JA, Shongwe JA, Schoeman AJA, Gorven AJA

National Water Act 36 of 1998: interpretation – appeal against the decision of the high court declaring that the first and second respondents have standing to pursue an appeal before the Water Tribunal – whether the right to appeal to the Water Tribunal provided by s 148(1)(f) of the NWA is restricted to the applicant and persons who have lodged a written objection against an application for a water use license within the framework of the notice and objection procedure in terms of s 41(4)(a)(ii) of the NWA.

**KwaSani Municipality v Underberg/Himeville Community Watch Association & another (180/2014)**

Appealed from KZP

Date to be heard 25 February 2015

Mpati P, Lewis JA, Willis JA, Mbha JA, Gorven AJA

Administrative Law –Review - Legality of agreement entered into by appellant with first respondent – whether agreement between appellant municipality and first respondent for the latter to provide disaster management services in absence of supply chain management policy falls to be set aside – municipality applying to court to have the agreement set aside contending that agreement invalid because no tender process was followed and that provisions of s 217 of the Constitution requiring fair equitable transparent and cost effective systems in the procurement of services by any sphere of government – high court finding that since services were highly specialised, and considering the remoteness of the municipality, was not persuaded that the process adopted was necessarily against constitutional injunctions – high court held further that the undue delay in taking steps to have the agreement set aside militate against the granting of relief – whether conclusions by high court correct.

**The City of Johannesburg & others v The South African Local Authorities Pension Fund & others (20045/2014)**

Appealed from GSJ

Date to be heard 25 February 2015

Brand JA, Cachalia JA, Bosielo JA, Saldulker JA, Van der Merwe AJA

Administrative Law - Legality - decision of appellants as employers to withdraw from participation in the first respondent's pension fund reviewed and set aside by high court – whether members to whom the notice to terminate applies should have been joined – consideration of whether rules of pension fund read with relevant provisions of regulating statute permit unilateral withdrawal – whether Pension Funds Act applies – whether decision reviewable under the PAJA.

**National Health Laboratory Service v Mariana Magdalena Lloyd-Jansen van Vuuren (20044/2014)**

Appealed from GSJ

Date to be heard: 25 February 2015

Mhlantla JA, Shongwe JA, Wallis JA, Dambuza AJA, Mayat AJA

Contract – high court dismissing claim by appellant for payment of two million rand based on a penalty clause in employment contract - interpretation of employment agreements concluded between the parties – whether two agreements interdependent – consideration of essential terms.

**Firststrand Bank Limited v Raymond Clyde Kona & another (20003/2014)**

Appealed from GP

Date to be heard: 26 February 2015

Mpati P, Cachalia JA, Mbha JA, Van der Merwe AJA, Meyer AJA

Insolvency - National Credit Act 34 of 2005 – appeal against a decision of the high court in terms of which a provisional order of sequestration was set aside – whether, inter alia, an application for sequestration amounts to the exercise or enforcement of any right or security under the credit agreement, as envisaged in s 88(3) of the National Credit Act and whether, where an order is made rearranging the consumer's debt, is it necessary for the credit provider to first cancel, and/or set aside the order before launching sequestration proceedings – consideration of effect of rearrangement of debt contemplated in s 86(7)(c)(ii) of the National Credit Act.

**The Trustees of the Simcha Trust (IT 1342/93) v Madeleine de Jong & others (20001/2014)**

Appealed from WCC

Date to be heard: 26 February 2015

Navsa ADP, Brand JA, Mhlantla JA, Zondi JA, Schoeman AJA

Promotion of Administrative Justice Act 3 of 2000 - Claim for compensation in terms of s 8(1)(c)(ii)(bb) – whether the City of Cape Town is liable to pay compensation to the appellant in respect of an unlawful administrative act, namely the approval of a building plan contrary to the decision of the Constitutional Court in the matter of *Walele v City of Cape Town & others* 2008 (6) SA 129 (CC) – consideration of provisions of s 8(1)(c) of PAJA and full extent of remedies provided for under PAJA.

**Monyetla Property Holdings (Pty) Limited v IMM Graduate School of Marketing (Pty) Ltd & another (20023/2014)**

Appealed from GSJ

Date to be heard: 26 February 2015

Ponnan JA, Shongwe JA, Leach JA, Dambuza AJA, Mayat AJA

Prescription - Claim for damages for holding over in relation to a lease agreement – high court upholding respondents' special plea of prescription – consideration of whether claim became due on date of cancellation of the lease or otherwise.

**Sechaba Medical Solutions (Pty) Ltd & others v William Sekete & others (216/2014)**

Appealed from GNP

Date to be heard: 27 February 2015

Navsa ADP, Shongwe JA, Wallis JA, Dambuza AJA, Mayat AJA

Insolvency/Review of decision – application in high court to set aside a decision of a presiding officer at a meeting of creditors approving claims asserted by a service provider – high court dismissed application – whether high court is correct in concluding that s 9 of the Medical Schemes Act 131 of 1998 created a statutory entitlement on the part of a medical service provider to claim payment in respect of services that such provider had rendered to members of the scheme – whether high court erred in holding that there was sufficient evidence of a contractual entitlement to obtain payment from the scheme by the service provider in respect of medical and hospital services rendered to the scheme's members

**Atholl Developments (Pty) Ltd v The Valuation Appeal Board for the City of Johannesburg & another (209/2014)**

Appealed from GSJ

Date to be heard: 27 February 2015

Ponnan JA, Willis JA, Saldulker JA, Van der Merwe AJA, Meyer AJA

Administrative Law – Local Government - successful application for review of municipal valuation – high court remitting matter to the valuation appeal board for reconsideration of the objection by the appellant against the decision of the municipal valuator – appellant's basis for appeal is that the high court made several findings binding the appeal board which are contentious – only issue between the parties is whether that can properly provide a basis for an appeal.

**Maykent (Pty) Ltd v Trackstar Trading 20 (Pty) Ltd (1036/2013)**

Appealed from GNP

Date to be heard: 27 February 2015

Lewis JA, Maya JA, Bosielo JA, Majiedt JA, Pillay JA

Contract – appeal against a decision of the high court holding appellant liable for payment in terms of a final payment certificate in relation to a building contract as well as against the dismissal of a counter claim by the appellant for loss of profit arising from the respondent's alleged late performance of the building contract – whether summons premature – whether respondent entitled to payment on account of the final payment certificate – consideration of counter claim.

**A Z Gcam-Gcam v The State (1034/2013)**

Appealed from ECM

Date to be heard: 2 March 2015

Cachalia JA, Shongwe JA, Gorven AJA

Criminal Law – appellant convicted by high court of conspiracy to commit robbery, robbery with aggravated circumstances, five counts of murder and related offences and sentenced to an effective 15 years' imprisonment – appeal against conviction and sentence – appellant's conviction based on the evidence of an accomplice and a confession – whether confession rightly admitted – whether evidence of an accomplice properly received and evaluated.

**Johannes Windvogel v The State (20091/2014)**

Appealed from GSJ

Date to be heard: 2 March 2015

Mhlantla JA, Leach JA, Mayat AJA

Criminal Law – appellant convicted in Magistrates' Court on four counts of dealing in prohibited substances – sentenced to eight years' imprisonment on each count, ordered to run concurrently with a prior sentence of 20 years' imprisonment – sentence had, however, been set aside on appeal – on appeal to the high court the total sentence of 32 years' imprisonment was found to be appropriate but the court considered that the time already spent in prison in relation to the prior sentence that had been set aside was to be taken into account in appellant's favour, and the court antedated the 32 year sentence by three years – appellant contends that the antedating by the high court did not take into

account the full period spent in incarceration prior to the sentence of 32 years' imprisonment being imposed – whether that contention justified.

**Johannes Moya Mashigo & another v The State (20108/2014)**

Appealed from GNP

Date to be heard: 2 March 2015

Bosielo JA, Majiedt JA, Pillay JA

Criminal Law – Appeal by first appellant against sentence and by second appellant against conviction and sentence – whether identification evidence adequate – whether evidence by complainant reliable – whether life imprisonment justified.

**African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd & others (228/2014)**

Appealed from GSJ

Date to be heard: 3 March 2015

Mpati P, Mhlantla JA, Leach JA, Schoeman AJA, Dambuza AJA

Company Law - Business Rescue Provisions – interpretation and application of s 153(1)(b)(ii) of the Companies Act 71 of 2008 – proper construction of binding offer in that subsection – whether offer made in terms of that subsection is binding on a creditor once made irrespective of whether the creditor considers the offer to be disadvantages and destructive of its existing rights – consideration of related issues.

**Hansa Silver (Pty) Ltd & others v Obifon (Pty) Ltd t/a The High Street Auction Company (192/2014)**

Appealed from GNP

Date to be heard on: 3 March 2015

Navsa ADP, Shongwe JA, Saldulker JA, Van der Merwe AJA, Meyer AJA

Auction Sale – whether agreements pursuant to an auction liable to be set aside on the basis of an alleged fraud perpetrated by the auctioneer, namely, that the auctioneer proceeded to take further bids when no bids in fact being made – high court dismissing application to set aside the agreement – whether broker's commission is in the circumstances enforceable against the seller – conditional appeal in that regard – whether appellants can avoid the agreements by virtue of 'auctioneer's bids' or 'vendor bids' made by the auctioneer during the auction – whether matter should be referred back to the court below for trial – third party rights to be considered.

**Lancelot Stellenbosch Mountain Retreat (Pty) Ltd v Stephen Malcolm Gore NO & others (108/2014)**

Appealed from WCC

Date to be heard: 3 March 2015

Maya JA, Bosielo JA, Willis JA, Zondi JA, Gorven AJA

Winding-Up/Prescription – application by respondents in the Cape High Court in their capacities as liquidators of a company for winding up of the appellant– appellant contended that debt on which the respondents relied had prescribed – court concluded that appellant's failure to respond to demands made in terms of s 345(1)(a) of Act 61 of 1973 amounted, in the particular circumstances of the case, to a tacit acknowledgment of indebtedness in terms of s 14(1) of the Prescription Act 69 of 1969 thus having the effect of interrupting prescription – whether that conclusion correct.

**Gert van den Heever v The Minister of Minerals and Energy & others (150/2014)**

Appealed from NCK

Date to be heard: 4 March 2015

Brand JA, Lewis JA, Cachalia JA, Zondi JA, Dambuza AJA

Mining Law - Review/Refusal of permits to mine –high court dismissed an application by the appellant to review and set aside the refusal of his application for permits to mine diamonds in Richtersveld – the application for mining rights refused on the basis that the land in question had already been allocated to the third respondent years earlier: latter had thereafter ceded rights to the fourth respondent – central issue is whether third respondent had abandoned its right to mine diamonds on the properties in respect of which the appellant had applied for mining permits in terms of s 27 of the Mineral and Petroleum Resources Development Act 28 of 2002 in a letter dated 26 January 2001.

**Bothma-Batho Transport (Pty) Ltd & another v Nedbank Ltd (223/2014)**

Appealed from FB

Date to be heard: 4 March 2015

Ponnan JA, Leach JA, Willis JA, Saldulker JA, Meyer AJA

Contract – respondent bank applied in high court for an order compelling the respondents to reinstate a life assurance policy and to cede such policy as security for a loan on which the appellants had previously defaulted – order in those terms granted by high court – whether cancellation of the policy had extinguished the bank’s right of security – whether an agreement to cede had been proven.

**Lodhi 5 Properties Investments CC & others v Firstrand Bank Limited (170/2014)**

Appealed from GNP

Date to be heard: 4 March 2015

Maya JA, Majiedt JA, Pillay JA, Mbha JA, Schoeman AJA

Contract/Winding up – following on defaults on loans respondent bank applied in the high court for an order winding up the first two appellants – it proceeded against the third appellant on the basis of a suretyship – high court granted relief sought – appellants’ contending that high court erred in holding that loan and agency agreements in question had taken effect – that they were indebted to the respondent bank and that the respondents had not raised a defence – whether merit in those contentions.

**Moussa Sylla v The State & another (181/2014)**

Appealed from GSJ

Date to be heard: 5 March 2015

Navsa ADP, Ponnan JA, Mhlantla JA, Mbha JA, Zondi JA

Constitutional Law – National Prosecuting Authority – applicant applied in high court for an order declaring that a person from outside the ranks of the National Prosecuting Authority had no authority to prosecute him – argument before the high court was that s 38 of the National Prosecuting Authority Act 32 of 1998 is unconstitutional because it permits the appointment of a prosecutor outside the National Prosecution Authority’s normal staff complement and therefore does not give effect to s 174(9) of the Constitution, that requires the prosecuting authority to exercise its functions without fear, favour or prejudice – high court dismissed the application – whether contention justified.

**Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd (086/2014)**

Appealed from WCC

Date to be heard: 5 March 2015

Brand JA, Lewis JA, Pillay JA, Dambuza AJA, Mayat AJA

Company Law – proper construction of ss 82 and 83 of the Companies Act 71 of 2008 – whether the reinstatement of the appellant’s registration as a company had de jure retrospective effect in terms of section 82(4), and whether section 83(4) is available to provide such relief – whether arbitration proceedings between parties validated by appellant company’s reregistration under s 82 of the Act – whether s 83(4), which provides for a just and equitable order, can be invoked to that end.

**Andre Riekert Boshoff v The State (20285/2014)**

Appealed from ECG

Date to be heard: 5 March 2015

Shongwe JA, Majiedt JA, Schoeman AJA

Criminal Law – appellant, a former employee of the South African Police Services, pleaded guilty to and was convicted of eight offences in the Specialised Commercial Crimes Court, Port Elizabeth. Those offences were: four counts of fraud, a contravention of the Prevention and Combating of Corrupt Activities Act 12 of 2004, defeating or obstructing the course of justice, a contravention of the Riotous Assemblies Act 17 of 1956 and theft. He was sentenced to an effective prison term of seven years. The State appealed against sentence in term of s 210A(1) of the Criminal Procedure Act 51 of 1977. The Eastern Cape High Court set aside the trial court’s sentences and replaced them with an effective sentence of 15 years’ imprisonment – whether high court erred in holding that there were no substantial and compelling circumstances justifying departure from the minimum sentence.

**Antonio van Willing & another v The State (109/2014)**

Appealed from WCC

Date to be heard: 6 March 2015

Mpati P, Bosielo JA, Schoeman AJA, Van der Merwe AJA, Meyer AJA

Criminal Law – Appeal against murder conviction and sentence of life imprisonment – admissibility of a report made by deceased to someone else concerning the shooting that led to his death – admissibility of the evidence of a witness who overheard the deceased identifying the appellants as his assailants – sufficiency of evidence upon which conviction founded – whether life imprisonment justified.

**Sithembiso Sipehelele Mkhize v Department of Correctional Services & others (128/2014)**

Appealed from LAC

Date to be heard 6 March 2015

Navsa ADP, Lewis JA, Wallis JA, Pillay JA, Mayat AJA

Labour Law/Review of decision of arbitrator – Labour Court refused an application to review and set aside the decision of an arbitrator that appellant’s dismissal was procedurally and substantively fair – appellant was a correctional official – whether internal disciplinary enquiry was time-barred – whether right to pursue disciplinary action fell away – whether enquiry procedurally unfair – whether consideration of alleged irregularities in the arbitration – whether the sanction of dismissal is one a reasonable decision maker would make – whether contention that appellant was framed can be entertained.

**Firststrand Bank Ltd v Nomsa Nkata (213/2014)**

Appealed from WCC

Date to be heard: 6 March 2015

Maya JA, Cachalia JA, Majiedt JA, Willis JA, Saldulker JA

National Credit Act 34 of 2005 – appellant bank obtained default judgment on basis of prior default – negotiations and agreements in interim – later default – high court holding that mortgage loan agreements which appellant sought to enforce were reinstated in terms s 129 (3) of the National Credit Act – rescission was granted, writ of attachment was declared to have no force and effect, sale of property by public auction was set aside – whether credit agreement was reinstated – consideration of provisions of s 129 of the Act.

**Cloete Murray NO & another v First Rand Bank Ltd t/a Wesbank (20104/2014)**

Appealed from GNP

Date to be heard: 9 March 2015

Navsa ADP, Ponnann JA, Zondi JA, Schoeman AJA, Fourie AJA

Company Law/Contract – s 133(1) of the Companies Act 71 of 2008 – interpretation of section – whether cancellation of an agreement with the company during business rescue operations constitutes ‘enforcement action’ – alternatively put, once business rescue proceedings have commenced, can a creditor cancel an agreement with the company now under business rescue – high court refusing an application seeking a declaratory order that a letter of cancellation issued after the initiation of business rescue proceedings was contrary to the provisions of s 133 and thus invalid – whether conclusion correct.

**The South African Hang and Paragliding Association & another v Diane Elizabeth Bewick (1010/2013)**

Appealed from WCC

Date to be heard: 9 March 2015

Brand JA, Mhlantla JA, Leach JA, Saldulker JA, Mbha JA

Delict – paraglider experiencing wing-collapse and crashing into cliff-face with respondent sustaining severe injuries – action instituted against several defendants including the appellants – respondent settled claim against two of the defendants and proceeded only against the appellants – the first appellant is the governing and coordinating body for the sport of hang gliding and paragliding in the RSA – second appellant, the South African Civil Aviation Authority, is the juristic person having the statutory responsibility to control and regulate civil aviation in the RSA – high court concluding that respondent established that appellants owed her a duty of care, that they breached it, that their breach was wrongful and that it was causally related to the injuries she suffered – order made holding them jointly and severally liable for such damages as respondent may prove – whether the appellant’s owed the respondent a legal duty – whether tandem paragliding for reward is legally permissible – whether causation established.

**Malefane Kemuel Mahano & others v Road Accident Fund & another (20008/2014)**

Appealed from GNP

Date to be heard: 9 March 2015

Lewis JA, Shongwe JA, Willis JA, Gorven JA, Meyer AJA

Road Accident Fund – Interpretation of the regulations enacted in terms of the Road Accident Fund Act 56 of 1996 regulating the procedure for the assessment of serious injuries – consideration of s3(1)(b)(iv) of the Regulations – whether it is possible to apply the American Medical Association Guides (AMA Guides), in the assessment of serious injuries without the publication by the Minister of operational guidelines as set out in the Regulations – high court finding that the publication of operational guidelines is not a prerequisite for the application of the AMA Guides and/or the regulations – whether high court correct.

**Willem Gerhardus Werner v Florauna Kwekery BK & others (224/2014)**

Appealed from GNP

Date to be heard 10 March 2015

Mpati P, Majiedt JA, Pillay JA, Schoeman AJA, Van der Merwe AJA

Property Law - Servitude – appeal against an order of the high court in terms of which it was declared that a right of way exists in favour of the general public upon appellant's property – consideration of the basis for registration of a servitude in favour of the general public – whether prescription applicable.

**The Road Accident Fund v Elizabeth Jemma Sweatman (162/2014)**

Appealed from WCC

Date to be heard: 10 March 2015

Lewis JA, Maya JA, Zondi JA, Dambuza AJA, Mayat AJA

Road Accident Fund/Computation of loss – appeal against determination by high court of future loss of earnings in a claim by the respondent against the appellant – respondent struck by motor vehicle whilst crossing the road – application of limitation (cap) placed on compensation for loss of future earnings in terms of s 17 of the Road Accident Fund Act 56 of 1996.

**Wihan Posthumus NO & another v Road Accident Fund (20024/2014)**

Appealed from GNP

Date to be heard 10 March 2015

Mhlantla JA, Leach JA, Saldulker JA, Mbha JA, Gorven AJA

Road Accident Fund – whether deceased plaintiffs had failed to prove negligence on the part of a driver of a vehicle other than the one in which they were travelling – high court on appeal upholding trial court's decision that negligence had not been proven.

**Resimate Edwin Maringa & another v The State (20116/2014)**

Appealed from GNP

Date to be heard: 11 March 2015

Navsa ADP, Leach JA, Willis JA, Schoeman AJA, Meyer AJA

Criminal Law/Procedure – whether the regional court was correct in refusing a separation of trials – State contending that common purpose justified the order – refusal taken on appeal to the high court – high court dismissed the appeal.

**Calvin Muvhuso Ndwambi v Die Staat (611/2013)**

Appealed from FB

Date to be heard: 11 March 2015

Navsa ADP, Leach JA, Willis JA, Schoeman AJA, Meyer AJA

Criminal Law – appellant and co-accused convicted on a charge of fraud – sale of fake rhino horn – police trap – appellant sentenced to six years' imprisonment – appeal against conviction and sentence – whether in circumstances prejudice or potential prejudice could eventuate – whether State proved its case – whether sentence excessive.

**Thulamela Municipality & another v Thovehele Midiyavhathu Prince Kennedy Tshivhase & others (078/2014)**

Appealed from LT

Date to be heard: 11 March 2015

Ponnan JA, Shongwe JA, Majiedt Ja, Dambuza AJA, Gorven AJA

Customary Law – Limpopo High Court dismissing an objection to *locus standi* of persons purporting to represent a traditional community – primary question ought to be whether that decision is appealable.

**Yende: Mhlonishwa Lucky v Passenger Rail Agency of South Africa (039/2014)**

Appealed from GSJ

Date to be heard: 11 March 2015

Cachalia JA, Bosielo JA, Zondi JA, Van der Merwe AJA, Mayat AJA

Delict – appellant was injured at a train station suffering, inter alia, the loss of his right arm – appellant instituted action for the damages sustained, alleging that a guard on the train was negligent in operating the doors whilst he was attempting to board the train – held that the train guard was negligent but that it was not possible ‘to conclude that that negligence in regard to the procedure undertaken by the train guard was causally connected and on account of the absence of causality, it cannot therefore be a basis upon which to hold the defendant liable, even on a contributory basis’ – appeal directed against the latter conclusion – whether conclusion correct.

**Christopher Charles De Mowbray Niehaus v The Regional Land Claims Commissioner & others (116/2014)**

Appealed from LCC

Date to be heard: 12 March 2015

Mpati P, Maya JA, Cachalia JA, Bosielo JA, Van der Merwe AJA

Constitutional Law/Restitution of Land Rights Act 22 of 1994 – Right to property in terms of s 25 of the Constitution – land claims court dismissing an application by appellant for a declaratory order that no land claims had been lodged against his properties – court also making an order in terms of which the Land Claims Commissioner was required to publish a notice of a claim in terms of the provisions of s 11(1) of the Act – whether latter order competent – whether appellant had made out a case for a declaratory order – consideration of appellant’s property rights against the backdrop of the constitution.

**Petros Dumisane Jwara & others v The State (916/2013)**

Appealed from GSJ

Date to be heard: 12 March 2015

Brand JA, Ponnann JA, Willis JA, Dambuza AJA, Gorven AJA

Criminal Law/Drug Trafficking – appellants convicted on two counts of contravening provisions of s 2(1)(d) of the Prevention of Organised Crime Act 121 of 1998 (POCA), dealing in drugs and on a number of other counts – they were each sentenced to imprisonment in excess of 20 years – an application for condonation and reinstatement of the appeal has to be considered – whether evidence acquired pursuant to the provisions of the Interception and Monitoring Prohibitions Act 127 of 1992 rightly admitted – whether sufficient evidence on which to convict – whether minimum sentence rightly imposed – appeal against an order cancelling bail appears to be moot but is persisted in.

**Cornelia Strydom v The State (20215/2014)**

Appealed from GSJ

Date to be heard: 12 March 2015

Lewis JA, Pillay JA, Mbha JA

Criminal Procedure – appeal against a refusal to grant leave to appeal – appellant convicted on 36 counts of fraud committed whilst in the employ of the City of Johannesburg – amount involved was R375 816,92 – the court sentenced appellant to five years’ imprisonment and invoked s 276B of the Criminal Procedure Act 51 of 1977, ordering that the appellant serve three years of the five year sentence before becoming eligible for parole – appellant not heard before the court invoked s 276B – State concedes the appeal – whether an order setting aside the sentence referring the matter back to the high court is required.

**Meshack Kharivhe v The State (20083/2014)**

Appealed from LT

Date to be heard: 12 March 2015

Lewis JA, Pillay JA, Mbha JA

Criminal Law/Procedure – appeal against conviction and sentence – appellant convicted on four counts of murder (Hetisane J) and sentenced to life imprisonment – whether appellant fit to stand trial – whether appellant able to represent himself – consideration of whether court ought to have ensured

legal representation – contended that s 112(1)(b) of the Criminal Procedure Act 51 of 1977 not applied – whether sentence excessive.

**Etienne Terblanche v The Minister of Safety and Security & another (20006/2014)**

Appealed from GNP

Date to be heard: 13 March 2015

Navsa ADP, Pillay JA, Saldulker JA, Fourie AJA, Mayat AJA

Delict – the only dispute concerns the appellant's entitlement to compensation for future loss of earnings – whether trial court and high court on appeal were correct in concluding that appellant had failed to prove a loss of earning capacity.

**ABSA Bank Ltd v Hammerle Group (Pty) Ltd (205/2014)**

Appealed from GSJ

Date to be heard: 13 March 2015

Brand JA, Maya JA, Cachalia JA, Mhlantla JA, Mbha JA

Winding Up/Prescription of debt – appeal against dismissal of an application for the winding up of the respondent – whether appellant's first claim in terms of a loan agreement and notarial bond had prescribed – whether claim by appellant is premature – consideration of appellant's locus standi – whether order sought just and equitable.

**Jabulani Dlamini v The State (634/2013)**

Appealed from GNP

Date to be heard 13 March 2015

Bosielo JA, Leach JA, Majiedt JA

Criminal Law – appellant convicted in the regional court on four counts of theft of a motor vehicle, one count of robbery with aggravating circumstances and one count of assault with intent to cause grievous bodily harm – appellant sentenced to imprisonment of 28 years and to serve a maximum of 25 years' imprisonment – whether this is an appeal against conviction and sentence or an appeal against a refusal of a petition – procedural path to this court questionable.

**Kholile Jackson Tofa v The State (20133/2014)**

Appealed from FB

Date to be heard: 16 March 2015

Mpati P, Majiedt JA, Schoeman AJA

Criminal Law – appeal against rape conviction – alleged contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 – whether State proved its case – whether an application to lead further evidence should succeed – whether this court may adjudicate on an application to lead further evidence without that issue being adjudicated upon by the high court sitting as a court of appeal from the regional court.

**Busi Mike Machaba & Elvis Boy Mbuyane v The State (20401/2014)**

Appealed from GNP

Date to be heard: 16 March 2015

Mpati P, Majiedt JA, Shoeman AJA

Criminal Law – appellant convicted of one count of murder and one count of robbery with aggravating circumstances – sentenced to life imprisonment and to 15 years' imprisonment respectively – whether incomplete record (contended that reconstruction of vital parts not possible) is such that appeal should succeed – whether identification evidence reliable – whether State proved its case beyond reasonable doubt – whether documentary evidence rightly received – whether appellant advised of minimum sentence provisions – whether there were substantial and compelling circumstances justifying departure from the minimum sentence.

**Jimmy Sebone Seemela v The State (20508/2014)**

Appealed from GNP

Date to be heard: 16 March 2015

Ponnan JA, Maya JA, Mhlantla JA, Zondi JA, Meyer AJA

Criminal Law – Appeal against conviction and sentence – whether there was sufficient evidence identifying appellant as the person who killed both deceased satisfactorily – whether statements of witnesses who died before the trial commenced were properly admitted – both deceased died some

time after the shooting – whether conviction could follow – whether alibi evidence was correctly rejected – whether the sentences of life imprisonment were justified.

**Sipho Patrick Magwaza v The State (20169/2014)**

Appealed from KZP

Date to be heard: 16 March 2015

Ponnan JA, Maya JA, Mhlantla JA, Zondi JA, Meyer AJA

Criminal Law – appeal against conviction - appellant convicted on one count of murder and robbery with aggravating circumstances – sentenced to life imprisonment and 15 years' imprisonment respectively – conviction based on pointing out/confession – whether that evidence rightly admitted – whether State proved its case.

**X v The State**

Appealed from ECG

Date to be heard: 16 March 2015

Shongwe JA, Mbha JA, Gorven AJA

Criminal Law – appeal against refusal of an application for leave to appeal convictions on seven counts of indecent assault – appellant contends that evidence of the very young children involved was poor – whether reasonable prospects of success exist.

**Robert Frederick Brown v The State (988/2013)**

Appealed from GNP

Date to be heard: 17 March 2015

Navsa ADP, Leach JA, Saldulker JA

Criminal Law – appeal against refusal of an application for leave to appeal – whether appellant enjoys reasonable prospects of success in an appeal against his convictions on 30 counts of fraud – fraud alleged to be related to the provision of low cost housing.

**Gerhardus Ignatius Potgieter v The State (20109/2014)**

Appealed from FB

Date to be heard: 17 March 2015

Lewis JA, Ponnan JA, Bosielo JA, Willis JA, Van der Merwe AJA

Criminal Law – appeal against rape conviction and sentence of eight years' imprisonment – whether State proved the guilt of the appellant beyond reasonable doubt – whether sentence excessive.

**City of Cape Town v South African National Agency & others (20666/2014)**

Appealed from

Date to be heard: 18 March 2015

Ponnan JA, Saldulker JA, Zondi JA, Van der Merwe AJA, Gorven AJA

**Summary to follow.**

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

Appealed from KZP

Date to be heard: 19 March 2015

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 made the following order: 'The defendant is absolved from the instance' – whether respondent bound by an amendment to the rule increasing employers contribution.

**Nedank Limited v Aletta Petronella Susanna Steyn & others (20085/2014)**

Appealed from

Date to be heard: 20 March 2015

Brand JA, Lewis JA, Pillay JA, Mbha JA, Mayat AJA

**Summary to follow**

**Vincenzo Callegaro v Derbigum Manufacturing (Pty) Ltd (207/2014)**

Appealed from GSJ

Date to be heard 24 March 2015

Ponnan JA, Shongwe JA, Majiedt JA, Dambuzs AJA, Gorven AJa

Res judicata – high court dismissing a plea of res judicata – consideration of whether a claim in a second action, when considered against relief granted in the first action was res judicata – consideration of the ‘once and for all rule’ or issue estoppel.  
Contributions – whether amendment valid.