

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 2 2015

CASES ENROLLED FOR HEARING: MAY 2015

1 The Law Society of the Northern Provinces v Christopher Mabaso (20252/2014)

Appealed from GP

Date to be heard: 4 May 2015

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

Attorneys Act 53 of 1979 – appellant law society had applied in the high court for an order striking the respondent from the roll of attorneys – high court, whilst recording the respondent’s numerous transgressions, which included misappropriation of trust funds, were serious, held that he was not guilty of dishonesty and ordered that he be suspended for a period of one year – law society contended that order applied for was warranted.

2 The Workforce Group (Pty) Ltd v Motor Industry Bargaining Council & others (20076/2014)

Appealed from GP

Date to be heard: 4 May 2015

Navsa JA, Ponnan JA, Shongwe JA, Wallis JA, Zondi JA

Constitutional/Labour Law – application in high court to have certain provisions contained in the Motor Industry Bargaining Council agreement, aimed at amending the agreement, known as the Main Agreement and extended by the Minister by ministerial proclamation under s 32 of the Labour Relations Act 66 of 1995 to non-parties in the industry declared unlawful – grounds relied on by the appellant in the court below were as follows: first that the impugned provisions were unlawful at common law as they constituted a trade boycott, second that they were void for vagueness, third, that they went beyond the ambit of a permissible collective agreement and that they were *ultra vires* the Bargaining Council’s constitution, fourth, that they breached constitutional rights set out in ss 18, 22, 23 and 33 of the Constitution (freedom of association, of trade, occupation and profession, labour relation and just administrative action) – high court rejected the arguments and dismissed the application with costs – whether s 32 of the LRA is unconstitutional to the extent that it endows bargaining councils with the power to impose an agreement containing terms and conditions of employment on non-parties within the operative industry or section of the industry over which it exercises jurisdiction.

3 Attachmate Corporation v Minister of Water and Environmental Affairs (20071/2014)

Appealed from GP

Date to be heard: 4 May 2015

Brand JA, Bosielo JA, Majiedt JA, Petse JA, Mbha JA

Contract/Software licence fees – appellant sued the Minister for payment of licensing fees it alleged were due under a written licensing agreement – the appellant gave the Minister’s department the right to copy, install and use a suite of software owned by it – it appears that the department made hundreds of unauthorised copies of the software programme which it utilised – the high court saw the primary question to be the determination of the number of copies in excess of those authorised and whether the written agreement rendered the department liable for the use of those copies – high court scrutinised the license agreement – high court found there were 1564 unauthorised copies of the client’s software – high court held however that there was no provision in the maintenance agreement

that the department was liable to pay a maintenance fee for an unlicensed copy of the software – high court granted judgment in favour of the appellant in an amount of R1 168 495 – two issues for consideration in the appeal: was the court below correct in its determination of the applicable license fee and on its conclusion in relation to the appellant’s maintenance claim.

4 African Mining Exploration and Finance Corporation (Pty) Ltd & another v Minister of Mineral Resources & another (20058/2014)

Appealed from GP

Date to be heard: 5 May 2015

Lewis JA, Willis JA, Saldulker JA, Meyer AJA, Gorven AJA

Mineral and Petroleum Resources Development Act 28 of 2002/Review – application in high court for an order reviewing and setting aside the Minister’s or the Director General’s decisions to convert fourth respondent’s old-order mining right of the fourth respondent into a mining right under the Act – whether high court correct in holding that first appellant lacked standing to bring the review – whether it was correct in finding that the appellants had failed to exhaust internal remedies and that there were no exceptional circumstances justifying the exemption from the requirement to exhaust internal remedies – whether high court erred in holding that the review application was brought too far out of time for it to be condoned – whether on the merits the review application ought to have succeeded.

5 African Information Technology Bridge 1 (Pty) Ltd v The Member of the Executive Council for Infrastructure Development (formerly part of Public Transport, Roads and Works) Gauteng Province (134/2014)

Appealed from GP

Date to be heard: 5 May 2015

Maya JA, Bosielo JA, Schoeman AJA, Fourie AJA, Mayat AJA

Contract/Tender – in this appeal the court is asked to determine what constitutes the contract in relation to three tenders – the respondent had instituted action against the defendant for payment of approximately thirteen million rand arising from three tenders for the development of multi-purpose community centres – the court below held for the appellant on only one of its claims and awarded it an amount of R617 894.40 – the issues on appeal are whether there was an agreement in relation to certain tenders and what the terms were of those agreements – whether there was a repudiation of any of the contracts by the respondent – there appears to be a constitutional question in terms of which the appellant raises the question of discrimination against it.

6 South African Land Arrangements CC & others v Nedbank Ltd (20063/2014)

Appealed from WCC

Date to be heard: 5 May 2015

Mhlantla JA, Majiedt JA, Pillay JA, Mbha JA, Van der Merwe AJA

Civil Procedure/Summary judgment – summary judgment was granted by a magistrate in favour of Nedbank against the three appellants based on a breach of a series of agreements between the parties over a period of time – an appeal to the high court by the appellants proved unsuccessful – preliminary issue of whether or not there had been an unconditional agreement between the parties that leave to defend be granted – whether appellants set out sufficient facts to establish a defence on the merits – whether appellants should be granted leave to adduce further evidence in support of their defences.

7 Nicholus Thembokwakhe Blose v Ethekwini Municipality (20053/2014)

Appealed from KZP

Date to be heard: 6 May 2015

Mpati P, Maya JA, Pillay JA, Zondi JA, Van der Merwe AJA

Practice and Procedure/Absolution from the instance/considering and deciding only one issue considered to be dispositive, after refusing an application to reopen a case to deal with issue decided against party seeking reopening – appellant had instituted a damages action against the respondent municipality for damages arising from unlawful, arrest, search and detention – one of the issues was whether there had been compliance with s 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 – evidence led in relation to the merits of appellant's case – at conclusion of case when the issue of compliance with s 3 of the aforesaid Act was raised, appellant sought leave to reopen its case – trial magistrate refused the application for reopening – trial court granted absolution from the instance in favour of respondent – an appeal to the high court proved unsuccessful – whether absolution from the instance was warranted – whether matter should be remitted for reopening on the question of compliance with s 3 of the Act.

8 Marianne Alet Pauw v Getruida Elizabeth Du Preez (20197/2014)

Appealed from WCC

Date to be heard: 6 May 2015

Brand JA, Leach JA, Saldulker JA, Dambuza AJA, Gorven AJA

Delict/Contributory negligence – respondent successful in a claim for damages instituted against the appellant based on negligence in relation to a flight of stairs on the property of which appellant is owner – Western Cape High Court held the appellant wholly liable for the damages sustained – held no contributory negligence on the part of the respondent – an appeal to the full court was unsuccessful – special leave granted by this court – sole issue whether there was contributory negligence on the part of the respondent.

9 The Commissioner for the South African Revenue Service v Candice-Jean van der Merwe (20152/2014)

Appealed from GP

Date to be heard: 6 May 2015

Ponnan JA, Wallis JA, Mbha JA, Fourie AJA, Mayat AJA

Tax Administration Act 28 of 2011/Preservation orders/Section 163 of the Act – high court considered confirmation of a provisional order made against the respondent in terms of which she had been interdicted from dealing with, disposing of, encumbering or removing from the Republic any of a number of assets – the provisional order preserved certain assets described therein – SARS' case against the respondent was that she held assets on behalf of her father and others against which it was entitled to execute in the collection of taxes – respondent's father had been the first respondent in the high court - SARS' case against him was that he had engaged in questionable conduct in relation to Value-added Tax – there had been an agreement between SARS and respondent's father in terms of which one million rand was released from the operation of the provisional order – the high court confirmed the provisional order but omitted to include relief relating to the appointment of a curator as requested by SARS – whether the preservation order should be amended accordingly – whether the respondent's delay in prosecuting a cross-appeal should be condoned – whether respondent's assets could be disposed of to pay the tax debts of other parties who were also respondents – whether the order obtained by SARS ought to have been granted at all.

10 Minister of Mineral Resources & others v Mawetse (SA) Mining Corporation (Pty) Ltd (20069/2014)

Appealed from GP

Date to be heard: 7 May 2015

Navsa JA, Leach JA, Majiedt JA, Zondi JA, Meyer AJA

Mineral and Petroleum Resources Act of 2002/Prospecting rights – application in the high court to review and set aside the grant of a prospecting right to fifth appellant – high court declaring that fifth appellant did not hold a valid prospecting right in relation to chrome and that the decision refusing the respondent's application for a prospecting right be remitted for reconsideration – whether high court

was correct in declaring that fifth appellant did not hold a valid prospecting right either because it had failed to comply with the conditions under which that right had been granted or that it had lapsed – whether high court was correct in setting aside the refusal of the respondent's application and remitting it for reconsideration.

11 Absa Bank Ltd v Joseph Frederick Snyman & others

Appealed from WCC

Date to be heard: 7 May 2015

Brand JA, Cachalia JA, Shongwe JA, Wallis JA, Petse JA

Sale in execution/setting aside for failure to comply with 63 of the Magistrates' Courts Act 32 of 1944

- first respondent and his wife had defaulted on their obligations in terms of a mortgage bond held by appellant bank – on 18 December 2007 default judgment for payment of an amount of approximately R89 690 together with interest and costs, and an order declaring the property executable granted in Magistrates' Court – warrant of execution against property issued by clerk of court on same day – not acted upon for three years – warrant reissued on 18 December 2010 – application by first respondent in high court to have, inter alia, warrant of execution set aside – high court (Davis AJ and Blignault J) finding that warrant of execution against property issued more than three years after the date that it was pronounced and without further sanction of a court – this was held to be in contravention of s 63 of the Act – sale in execution and eviction order set aside.

12 Panamo Properties 103 (Pty) Ltd v Land and Agricultural Development Bank of South Africa (20051/2014)

Appealed from GJ

Date to be heard: 7 May 2015

Lewis JA, Pillay JA, Willis JA, Schoeman AJA, Gorven AJA

Contract – whether a loan agreement is in contravention of ss 3 and 23(2) of the Land and Agricultural Development Bank Act 15 of 2002 – whether mortgage bond was enforceable notwithstanding the invalidity of the loan agreement – whether loan agreement and mortgage bond a composite agreement – whether estoppel could be applied – high court heard matter as a stated case – the issues to be determined required an interpretation of the Act – it concerns the powers of the Land Bank – high court considered the main question to be whether the Act empowered the Land Bank to finance an agreement with the appellant for the purchase of agricultural properties with the object of establishing a township and executing engineering services thereon – whether loan agreement is unauthorised for want of compliance with regulatory statutes – whether the Land Bank can be estopped from relying on the invalidity of the agreement – high court concluded that the agreement was void *ab initio* but that the mortgage bond registered over the properties was nevertheless enforceable and that Land Bank could not be estopped – whether those conclusions were correct.

13 Dr F Kluever & others v Michael Jacobus de Goede (20198/2014)

Appealed from GNP

Date to be heard: 8 May 2015

Navsa JP, Mhlantla JA, Leach JA, Mbha JA, Zondi JA

Delict/Professional negligence – respondent had been injured in a high school rugby game during 2007 – sustained a rupture of the infra patellar tendon on the right knee and received treatment at a Military Hospital due to the fact that his father was a member of the South African National Defence Force – the first two appellants are the orthopaedic surgeons who conducted surgery and treated him – action instituted in the high court – Minister sought to be held vicariously liable for surgeons' alleged negligence resulting in the respondent being unable to play rugby and not being able to regain proper function of his right knee – several experts testified – high court held that initial surgery had been improperly performed and that the first and second appellants ought thereafter to have identified a high-riding patellar as a hindrance to proper rehabilitation – the high court dismissed the Minister's

plea of contributory negligence – it held the Minister liable to compensate the plaintiff – whether high court's conclusions correct.

14 AR Diphoko obo N Diphoko v Road Accident Fund

Appealed from GJ

Date to be heard: 8 May 2015

Brand JA, Shongwe JA, Wallis JA, Willis JA, Schoeman AJA

Delict/Road Accident Fund/Sufficiency of award – appellant had instituted action on behalf of his minor daughter who had been run down by a motor vehicle during July 2008 in Orlando East, Soweto – it was agreed between the parties that the RAF is liable for 80 per cent of appellant's proven damages – appellant's daughter was 13 years old at the time of the accident and had sustained serious injuries, including a head injury – high court awarded R500 000 for future loss of earning capacity and R400 000 in respect of general damages – award upheld on appeal by a full court – this court granted special leave only in respect of the claim for loss of earnings – whether an agreement between the parties in respect of the child's pre-morbid intellectual ability and projected career path had been wrongly disregarded – whether agreements recorded by expert witnesses discounted – whether expert witness reports had wrongly been disregarded and whether there were material concessions made by experts on behalf of the RAF that ought to have been taken into account by the courts below – record in this matter was filed in June 2014.

15 Miles Plant Hire (Pty) Ltd v The Commissioner for the South African Revenue Service (20430/2014)

Appealed from GP

Date to be heard: 8 May 2015

Ponnan JA, Maya JA, Petse JA, Van der Merwe AJA, Meyer AJA

Insolvency/Winding-up order – interpretation of s 177(3) of the Tax Administration Act 28 of 2011 which entitles SARS to institute proceedings for the winding up of a person for a tax debt – appellant had submitted objections against assessments raised by SARS – objections were disallowed and an appeal was pending – appellant submitted in the high court that the provisions of s 177(3) properly construed required SARS to seek a court's leave to institute winding up proceedings prior to the winding up proceedings being instituted – appellant contended that the winding-up application was premature and stood to be dismissed on that basis alone – high court granted leave to institute the winding-up proceedings and placed the appellant under final winding up – whether high court was correct in rejecting appellant's contention.

16 Frederica ZA v André Frederick Smith (20134/2014)

Appealed from WCC

Date to be heard: 11 May 2015

Brand JA, Cachalia JA, Petse JA, Fourie AJA, Mayat AJA

Delict/Legal duty/Private Nature Reserve – appellant instituted action against the two respondents in her capacity as mother and guardian of her three minor children for damages suffered by them as the result of the death of her husband who fell to his death at a time when there was snow in the area during June 2009 in the vicinity of Conical Peak in the Matroosberg mountains near Ceres – the appellant's case was based on the wrongful and negligent failure by the first and second respondents to take reasonable steps to avoid foreseeable harm to the deceased – the high court dismissed the appellant's claim – the first respondent is the owner of the farm and the second respondent conducts the business of a private nature reserve on the property – whether in the treacherous conditions prevailing it was reasonable to expect the respondents to warn the deceased of the danger inherent in

the activities, in particular, of traveling near to the summit of a mountain – wrongfulness, negligence and causation in issue.

17 Standard Bank of South Africa Limited v Gerhardus Joshua Seanepoel NO & another (20062/2014)

Appealed from GP

Date to be heard: 11 May 2015

Lewis JA, Mhlantla JA, Pillay JA, Schoeman AJA, Dambuza AJA

Exception/Upholding of/Citation of Trust – high court upholding an exception that appellant bank's particulars of claim failed to disclose a cause of action – in particulars of claim appellant bank relied upon two written agreements of loan as well as on a suretyship agreement – the borrower in the loan agreement is described as the Harne Trust and not its trustees acting on its behalf – high court upheld an exception that the loan and suretyship agreements were invalid because a trust is not a person in law and has no contractual capacity to conclude a loan agreement or be a principal debtor for the purposes of a suretyship – held that the loan and surety agreements were invalid and the claim was struck out and dismissed – appellant contends that the high court erred in that there is nothing to prevent a trust from being referred to in a contract as such, notwithstanding its absence of a separate personality, provided that it was therein represented by its trustee duly authorised to do so – appellant referred to the express allegation in the particulars of claim that the loan agreements were concluded on behalf of and for Harne Trust by its duly authorised trustee – whether high court erred in its conclusions – leave to appeal granted by high court.

18 ABSA Bank Ltd v André Keet (817/2013)

Appealed from GP

Date to be heard: 11 May 2015

Maya JA, Bosielo JA, Wallis JA, Zondi JA, Meyers AJA

Prescription/instalment sale agreement/commencement of the running of prescription – appellant bank had sought an order in the North Gauteng High Court for confirmation of the cancellation of an instalment sale agreement and for repossession – only special plea of prescription adjudicated – agreement concluded on 26 September 2003 – purchase price to be paid by a number of instalments commencing on 1 November 2003 and final payment to be made on 1 November 2007 – in terms of the agreement ownership of the tractor was retained by the appellant bank pending full payment by the respondent – summons served on the respondent on 14 December 2011 – high court holding that since the summons was served more than four years after the termination date of the instalment sale agreement respondent entitled to have special plea upheld – whether conclusion correct – whether action was vindicatory – respondent has withdrawn opposition to the appeal – appellant bank contends important matters of principle require adjudication.

19 David Naidoo & others v Shirishkumar Jivan Kalianjee NO & others (20345/2014)

Appealed from GP

Date to be heard: 12 May 2015

Mpati P, Leach JA, Petse JA, Willis JA, Mayat AJA

Insolvency Act 24 of 1936/validity of search and seizure warrants – whether search and seizure warrants granted by a magistrate in terms of s 69(3) of the Insolvency Act 24 of 1936 were valid and properly executed – application by parties with an interest in an insolvent entity in the high court to set aside warrants of search and seizure granted at the behest of liquidators – appeal turns on the interpretation and application of s 69(3) of the Insolvency Act – whether substantive distinction between search and seizure powers in terms of the Insolvency Act and Criminal Procedure Act 51 of 1977 – high court dismissed application holding that there was a fundamental difference – whether high court correct in that conclusion.

20 Minister of Safety and Security v Mapula Pauline Morudu & others (1084/2013)

Appealed from GP

Date to be heard: 12 May 2015

Navsa JA, Brand JA, Saldulker JA, Mbha JA, Dambuza AJA

Delict/Vicarious liability/SAPS – respondent had instituted an action against the appellant for loss of support as result of the unlawful killing of her husband during December 2001 at his home at Seshego – the court held the Minister of Safety and Security liable for the act of an employee who worked at the local crime record centre – the employee had shot the deceased with his private firearm whilst on stand-by duty and after using an unmarked police vehicle to travel to the deceased’s residence – whether high court in these circumstances was correct in holding the Minister vicariously liable – the respondent abides the court’s decision.

21 Red Dunes of Africa CC v Masingita Property Investment Holdings (Pty) Ltd & others (159/2014)

Appealed from GP

Date to be heard: 12 May 2015

Ponnan JA, Shongwe JA, Pillay JA, Fourie AJA, Gorven AJA

Interdict/Property owned by Minister and under the jurisdiction of Tribal Council/Land Rights Act 31 of 1996 – at first respondent’s instance high court interdicted appellant from constructing a shopping centre and ordered it to demolish structures it had already erected – land on which shopping centre erected vested in the third respondent, the Minister of Rural Development and Land Reform and fell under the jurisdiction of the second respondent, Zebediela Ndebele Tribal Council – rights to occupy appeared to be regulated by the Interim Protection of Informal Land Rights Act 31 of 1996 – dispute hinges on whether rights properly cancelled and or transferred – whether appellant had a right to develop a shopping centre – whether Tribal Council properly invalidated that right.

22 Mokunna Farms CC v Absa Bank Limited (901/2013)

Appealed from GJ

Date to be heard: 13 May 2015

Lewis JA, Leach JA, Majiedt JA, Pillay JA, Schoeman AJA

Insolvency/Winding-up/Business Rescue – high court placed appellant under final winding up despite the fact that appellant’s sole member had launched an application to place the appellant under supervision and commence business rescue proceedings in terms of the Companies Act 71 of 2008 – interpretation of s 131(6) of the Companies Act – whether a court is precluded from granting a final winding up order in the face of an application for business rescue – whether punitive costs order against appellant’s attorney was justified.

23 Boost Sports Africa (Pty) Ltd v The South African Breweries (Pty) Ltd (20156/2014)

Appealed from GP

Date to be heard: 13 May 2015

Ponnan JA, Mhlantla JA, Mbha JA, Fourie AJA, Gorven AJA

Practice and Procedure/Security for Costs – respondent, an *incola*, applied in the high court for an order compelling the appellant to provide security for its costs in an action in which the appellant claimed payment of twelve million rand – the claim appears to have been based on the alleged unlawful use by the respondent of an advertising concept owned by the appellant – the high court, after considering the relevant circumstances, ordered the appellant to furnish security in an amount to

be determined by the Registrar – whether the respondent’s demand for security 19 months after the action was instituted militated against the grant of the order – whether an *incola* plaintiff has an unimpaired legal right to pursue legal proceedings – criteria for ordering security for costs – whether on the merits the order was justified.

24 Simon Modiga v The State (20738/2014)

Appealed from GP

Date to be heard: 13 May 2015

Bosielo JA, Saldulker JA, Van der Merwe AJA

Criminal Law – appeal against conviction on two counts of robbery with aggravating circumstances and against convictions on a number of associated charges – whether appellant was a member of a group of robbers – trial court faced with mutually destructive versions – appellant contends that evidence of a single witness unreliable.

25 Baobab Agencies CC v Stephanus Antonio Ferreira & others

Appealed from ECP

Date to be heard: 14 May 2015

Mpati P, Mhlantla JA, Saldulker JA, Van der Merwe AJA, Meyer AJA

Zoning scheme and special consent – respondent had applied in the high court for an interdict against the appellant contending that it conducted the business of a wedding and conference venue and chapel, contrary to the applicable zoning scheme and special consent granted to it under the zoning scheme – the high court granted the interdict – the issue in this appeal is whether the high court correctly found that the appellant conducted a business in conflict with the zoning scheme and the special consent granted to it.

26 Panamo Properties (Pty) Ltd & another v Jan Hendrik Nel NO & others (035/2014)

Appealed from GP

Date to be heard: 14 May 2015

Navsa JA, Majiedt JA, Wallis JA, Zondi JA, Dambuza AJA

Companies Act 71 of 2008 /Business Rescue – consideration of the provisions of ss 129 and 130 of the Companies Act 71 of 2008 – whether the sole shareholder of a company placed under business rescue at its instance can later rely on non-compliance with the necessary procedural steps in passing a resolution to voluntarily begin business rescue proceedings and later apply for that resolution to be declared a nullity – whether abuse of business rescue process – whether shareholder is seeking to benefit from its own wrongdoing to the prejudice of other persons in the business rescue process – high court setting aside the resolution to voluntarily commence business rescue and declaring it a nullity – high court also ordered first appellant to be placed under final winding up – whether decision is correct.

27 Lesley Niewenhuizen v The State (20339/2014)

Appealed from NCK

Date to be heard: 14 May 2015

Shongwe JA, Leach JA, Mayat AJA

Criminal Law/Appeal against sentence – appellant convicted on five counts of fraud –involving an amount of approximately R130 000 – sentenced to six years’ imprisonment, two years of which were suspended – appeal dismissed by high court – leave to appeal against sentence granted by this court – loss suffered by complainant amounted to approximately R86 000 – whether there is a basis for interference with the sentence.

28 Medox Limited v The Commissioner for the South African Revenue Service (20059/2014)

Appealed from GP

Date to be heard: 15 May 2015

Brand JA, Cachalia JA, Bosielo JA, Willis JA, Fourie AJA

Income Tax/Jurisdiction – appellant company had approached high court for an order declaring income tax assessments issued in respect of years of assessment following its 1997 year of assessment null and void – high court holding that it had no jurisdiction to entertain the dispute between the tax payer and SARS and that the dispute ought to have been pursued by way of an objection lodged with the Commissioner and thereafter appealed to the Special Tax Court – whether conclusion correct.

29 Dormell Properties 282 CC v Alwyn Gideon Bamberger (20191/2014)

Appealed from WCC

Date to be heard: 15 May 2015

Lewis JA, Shongwe JA, Majiedt JA, Schoeman AJA, Mayat AJA

Contract/Suretyship – appellant had obtained judgment in the Magistrates’ Court against a company as principal debtor and the appellant as surety for an amount of R723 485,27 – principal debt flowed from a lease agreement in relation to a shopping centre – the lease agreement provided that the person signing the lease on behalf of the tenant guaranteed his obligations to the lessor – the lease was cancelled and the aforesaid order was sought and obtained from the Magistrates’ Court – the respondent appealed that order to the high court – the high court considered that, since the lease agreement was not signed by the lessor it was not binding upon the parties – it noted that the suretyship was not attached to the lease ‘agreement’ – the high court did not consider itself bound by an earlier full bench decision in respect of an associated dispute that there was a valid suretyship agreement – high court concluded that since the lease agreement was unsigned by the landlord it had not come into effect and reasoned that since no principal debt existed there could be no valid suretyship – the appeal against the magistrate’s order was upheld – appellant presently contends that since the respondent signed the offer to lease he guaranteed the companies obligations to Dormell – the argument is that the suretyship is an independent undertaking by the respondent – there was no express reference to the suretyship clause in the particulars of claim – the appellant contends that this was not a bar to success on appeal as there was no prejudice – whether the respondent should be held liable in terms of the suretyship clause in the lease agreement.

30 Mark Krok & another v The Commissioner for the South African Revenue Service (20230/2014 and 20232/2014)

Appealed from GP

Date to be heard: 15 May 2015

Maya JA, Mhlantla JA, Wallis JA, Dambuza JA, Meyer AJA

Preservation orders/Tax Administration Act 28 of 2011 – appeal against judgment of Fabricius J confirming a provisional preservation order – whether agreement between South Africa and Australia for the avoidance of double taxation and the prevention of fiscal evasion, read with sections 163 and 185 of the Act, can be invoked in respect of taxes owed by the first appellant to the Australian Tax

Authority which arose before 1 July 2009 – whether second appellant has shown that it is the beneficial owner of the assets subject to a preservation order and that the preservation order should therefore, in any event, be discharged.

31 Rooyendal (Pty) Ltd & others v The Minister of Land Affairs & another (20049/2014)

Appealed from LCC

Date to be heard: 18 May 2015

Mpati P, Lewis JA, Bosielo JA, Van der Merwe AJA, Gorven AJA

Contract/Land Claim/Alleged oral agreement in relation to land claims negotiations - the appellants were farm owners who farmed in the name of juristic persons – they sued the Minister of Rural Development and Land Reform and the Regional Land Claim Commissioner, KwaZulu-Natal for payment of certain input and development costs which they alleged were agreed to during the course of negotiations in relation to land claims – high court holding that appellants failed to prove the agreements alleged by them – whether that conclusion is correct – whether the oral agreements are in any event precluded by non-variation clauses in the sale agreements – whether the provisions of the Alienation of Land Act 68 of 1981 are implicated.

32 Abdul Rahim & others v The Minister of Home Affairs (965/2013)

Appealed from ECP

Date to be heard: 18 May 2015

Navsa JA, Majiedt JA, Mbha JA, Zondi JA, Meyer AJA

Delict/Unlawful arrest and detention/Immigration Act 13 of 2002 – appeal against an order of the high court in terms of which the claims of the appellants for unlawful arrest and detention were dismissed – the issues on appeal concern the lawfulness of the arrest and detention of foreigners in term of the Immigration Act 13 of 2002 and the quantum of damages.

33 Dawid Jacques Richter v Absa Bank (20181/2014)

Appealed from GP

Date to be heard: 18 May 2015

Mhlantla JA, Leach JA, Pillay JA, Fourie AJA, Dambuza AJA

Rescission application – appeal against dismissal of an application for rescission – whether a business rescue application can be launched after a final liquidation order – at respondent bank's instance a close corporation, of which the appellant was a member, was finally liquidated – appellant subsequently launched a business rescue application – respondent bank sought to have the business rescue application set aside – in absence of opposition by the appellant the business rescue application was dismissed – appellant applied in the high court for a rescission of that judgment and sought an order entitling him to proceed with the business rescue operation – high court held that business rescue is not possible after a final liquidation order – application for rescission was dismissed with costs – whether that conclusion was warranted.

34 Financial Services Board v Percy George Edward Barham & another (20207/2014)

Appealed from GP

Date to be heard: 19 May 2015

Navsa JA, Leach JA, Saldulker JA, Dambuza AJA, Gorven AJA

Financial Services Board/Financial Advisory and Intermediary Services Act 37 of 2002 – appeal and cross-appeal – interpretation of ss 13,14 and 14A of the Act – whether a financial services provider in debarring a representative in terms of s 14(1) of the Act is entitled only to debar such representative from rendering financial services in relation to that financial services provider – FSB contending that such debarment precludes a representative from acting as a representative industry wide – high court held that such representative only debarred from rendering financial services in respect of that provider and not in relation to a new employer – whether the second appellant ought to have been disbarred at all.

35 Fedgroup Participation Bond Managers (Pty) Ltd v Trustee of the Capital Property Trust Collective Investment Scheme Property (20165/2014)

Appealed from GJ

Date to be heard: 19 May 2015

Ponnan JA, Cachalia JA, Mhlantla JA, Pillay JA, Willis JA

Immovable property/Transfer of portion of adjacent land – appellant sold a number of properties to the respondent, including an adjacent erf – at the time of the sale the parties were mistaken as to the cadastral boundary – appellant discovered later that an existing fence was in the wrong position and that it was in fact encroaching on what was now the respondent's property – an uncompleted but substantial office building on the appellant's property encroaches onto a portion of the respondent's property – appellant sought transfer against payment of compensation so that it may obtain the necessary approvals for the partially built office building it intended to complete – appellant approached the high court for an order directing the respondent to take the necessary steps to facilitate and allow the subdivision of a triangular piece of land from the respondent's properties against payment of compensation – high court dismissing appellant's application – whether transfer of the disputed triangle of land against payment of compensation is justified – extent of court's discretion in encroachment cases – whether appellant had a cause of action at all.

36 Merafong City Local Municipality v Anglogold Ashanti Limited (20265/2014)

Appealed from GP

Date to be heard: 19 May 2015

Maya JA, Majiedt JA, Mbha JA, Schoeman AJA, Van der Merwe AJA

Municipality/Water Services Act 108 of 1997 – the respondent had appealed to the responsible Minister against the imposition of a water surcharge by the appellant Municipality – Minister set aside the surcharge – Minister's ruling ignored by the Municipality – high court application by the appellant to compel Municipality to comply with minister's ruling successful – appeal against that decision – whether an appeal to the Minister in terms of the Water Services Act was competent – division of powers and functions within spheres of government implicated – extent of Municipality's pleaded case in issue.

37 Etraction (Pty) Ltd v Tyrecor (Pty) Ltd (20185/2014)

Appealed from WCC

Date to be heard: 20 May 2015

Mpati P, Brand JA, Wallis JA, Saldulker JA, Mayat AJA

Intellectual Property/Trademark – appeal against the refusal of an interdict to prevent alleged trademark infringement and also against the granting of a counter application expunging a part of the

specification of the appellant's trademark by removing the word 'tyres' from the goods specification – appellant had applied in the high court for an interdict restraining respondent from infringing its registered trademark – the appellant asserted that respondent was infringing its rights by using in relation to tyres and/or in relation to wheels and/or in relation to tyre and wheel combinations, the trade mark INFINITY or a mark so nearly resembling the appellant's aforementioned mark as to be likely to deceive and/or to cause confusion – respondent's primary defence was that its predecessor in title commenced use of the mark during 2006, predating the date of registration of the appellant's mark and as such it was a viable defence in terms of s 36(1) of the Trademarks Act 94 of 1993 – the respondent made a counter application for partial expungement of the mark in respect of tyres – high court upheld respondent's defence and granted the counter application for partial expungement – whether there was infringement of the appellant's mark – whether the partial expungement was justified.

38 Absa Bank Ltd v Etienne Jacques Naude N O & others (20264/2014)

Appealed from GP

Date to be heard: 20 May 2015

Ponnan JA, Pillay JA, Willis JA, Schoeman AJA, Fourie AJA

Companies Act 71 of 2008/Business rescue/Moratorium in terms of s 133(1)(b) – two related appeals – in the first, appellant bank had sought a declaratory order that a decision taken at a meeting of creditors of the second respondent to approve a business rescue plan was unlawful and invalid – it also sought the removal of a business rescue practitioner – the bank contended that the business rescue plan was not published as required, that it was an amended version of what had been previously submitted, it did not comply with the requirement and strictures of certain sections of the Act – that no proper notice was given in terms of s 151(2) of the Act and that the voting was fatally flawed – in the related appeal the bank also sought an order setting aside a resolution in terms of which a company was placed under business rescue and sought the removal of the same business rescue practitioner – the bank contended that the business rescue practitioner failed to afford the bank a voting interest equal to the value of its claim – in dismissing the bank's application the high court held that creditors ought to have been joined – the high court also found that s 133(1) of the Act provided a moratorium precluding any litigation against a company under business rescue except in six prescribed instances – in a cross-application an order was sought that certain suretyships were void by virtue of the provisions of s 226 of the Companies Act 61 of 1973 – whether, in the circumstances, the bank was obliged to join effected persons, especially creditors – whether the high court misconstrued s 133 of the Act – whether the business rescue plans were lawfully and properly voted on – whether the business rescue practitioner ought to be removed – whether a resolution placing the company under voluntary business rescue falls to be set aside – whether a cross-suretyship in favour of the bank by both companies is void by virtue of s 226 of the Companies Act of 1973.

39 Juan Hattingh v Die Staat (20099/2014)

Appealed from FB

Date to be heard: 20 May 2015

Cachalia JA, Majiedt JA, Petse JA, Zondi JA, Gorven AJA

Criminal Law/Fraud, theft and money laundering/Sentence – appellant convicted of 65 counts of fraud, one count of theft and one of money laundering and sentenced to an effective term of 20 years' imprisonment – unsuccessful appeal against sentence to the Free State Division – leave to appeal against sentence granted by this court – whether minimum sentence statutory provisions are applicable – whether there are material misdirections.

40 P Reddy v Absa Bank Ltd & others (20096/2014)

Appealed from KZD

Date to be heard: 21 May 2015

Lewis JA, Ponnann JA, Saldulker JA, Van der Merwe AJA, Mayat AJA

Winding up orders granted subsequent to deregistration of closed corporation – appellant sought an order in the high court declaring that a close corporation was deregistered, due to non-submission of annual returns, with effect from 29 July 2011 and declaring further that provisional and final liquidation orders granted on 31 May 2012 and 27 August 2012 were void *ab origine* and of no force and effect from the beginning – it is common cause that the close corporation was re-registered subsequently – the high court saw the issue for determination to be whether the re-instatement of the registration of a formerly deregistered close corporation in terms of s 82(4) of the Companies Act 71 of 2008 operated prospectively from the date it was reinstated or retrospectively from the date of its deregistration – high court held that it was entitled to exercise a discretion to make a just and equitable order validating the winding-up of a close corporation and the actions taken by the liquidators pursuant thereto and granted a counter-application in those terms – whether court was entitled to validate the winding-up orders in terms of s 83(4) of the Companies Act 2008.

41 UTI South Africa (Proprietary) Limited v Triple Option Trading 29 CC (20157/2014)

Appealed from GJ

Date to be heard: 21 May 2015

Maya JA, Shongwe JA, Leach JA, Zondi JA, Gorven AJA

Prescription – appellant had instituted action in the Magistrates' court initially for payment of service rendered – an amended cause of action relied on an assignment or a cession – magistrate upheld respondent's plea of prescription – on appeal to the high court appeal dismissed and the Magistrate's order confirmed – the high court held that the introduction of the cessionary occurred at a time when the cause of action sought to be enforced for the first time by the appellant had prescribed – whether high court's reliance on authorities misplaced.

42 L E Thom (Pty) Ltd v Ba-Phalabrwa Municipality (20236/2014)

Appealed from GP

Date to be heard: 21 May 2015

Bosielo JA, Wallis JA, Willis JA, Dambuza AJA, Meyer AJA

Mandamus/municipal access to property to clear nuisance – respondent municipality had applied in the high court on an urgent basis to be granted access to the appellant's property to remove a nuisance caused by the blocking and silting of a storm water drainage canal between two streets in Phalaborwa – the municipality sought to remove soil, silt, foliage and any other material obstructing flow of storm water and sought an order that the appellant be ordered to remove a wall or fence obstructing the municipality's access – an order had earlier been granted in terms of which the Municipality was ordered to clean that storm water drainage canal – dispute arose whether the appellant had itself cleared the canal and whether it had incurred costs in that regard – high court found that the appellant had in fact not itself cleared the canal and had acted unlawfully in denying the Municipality access – the Municipality alleged that respondent had erected a fence which made it impossible to access the area – high court ordered the appellant to grant the municipality access to the storm water drainage canal and to remove any fence or obstruction which prevented access – whether high court was correct in concluding that the appellant had itself not cleared the drainage – whether there was a dispute that could not be resolved on the papers.

43 Anna Susanna van Greune v Frederik Welhelmus van Greune NO & another (20173/2014)

Appealed from GP

Date to be heard: 22 May 2015

Cachalia JA, Wallis JA, Mbha JA, Schoeman AJA, Meyer AJA

Matrimonial property/Trust assets – appellant had instituted an action for a decree of divorce in the high court and sought an order, inter alia, that the trust be declared her husband's alter ego – the first and second respondents, trustees of the trust in question noted an exception, contending that the particulars of claim did not disclose a cause of action against the trustees – it was submitted that the appellant as a trustee could not institute an action declaring the trust invalid – high court held that a court has limited jurisdiction to vary or terminate a trust – the court held that in divorce proceedings the court could not declare that the trust assets and liabilities no longer belong to the trust – the exception was upheld – whether in a divorce action a spouse, who is a trustee of a trust, is entitled to claim that a trust be declared a spouse's alter ego.

44 Nedbank Limited v Colin Peter Spannenberg & another (20333/2014)

Appealed from WCC

Date to be heard: 22 May 2015

Shongwe JA, Willis JA, Saldulker JA, Fourie AJA, Van der Merwe AJA

Companies Act – whether underlying scheme giving rise to a loan (bond agreement) in which appellant bank sued respondents was void as being in contravention of s 38 of the Companies Act 61 of 1973 – section prohibits a company from providing any financial assistance for the purpose of or in connection with the purchase of the company shares – high court finding that an initial loan agreement and a later restructured agreement was prohibited and thus void – high court holding that agreements inextricably linked – whether conclusions correct.