

REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 3 2015

CASES ENROLLED FOR HEARING: AUGUST and SEPTEMBER 2015

1. Sasol Limited & others v Chemical Industries National Provident Fund (20162/2014)

Appealed from GJ

Date to be heard: 17 August 2015

Mpati P, Cachalia JA, Mhlantla JA, Gorven AJA
Baartman AJA

Pension Fund – Transfer of members – Interpretation and application of rules of fund and Pension Funds Act 24 of 1956 – this appeal concerns the validity of the transfer of members from the respondent to various other funds and the obligation of the appellants to pay contributions to the respondent – court below held that affected members were not validly transferred and remained members of the respondent – held further that the appellant remained obliged to pay contributions to the respondent in respect of the affected members – the court below dismissed the first appellant's counter application in terms of which it sought an order, essentially, that there had been a valid transfer – the central issue is whether there was compliance with the respondent's rules and the Pension Funds Act 24 of 1956.

2. Sanela Dlanjwa v The Minister of Safety and Security (20217/2014)

Appealed from ECM

Date to be heard: 17 August 2015

Maya DP, Bosielo JA, Leach JA, Tshiqi JA, Mbha JA

Delict – Legal duty – Vicarious Liability – appeal against a decision of the full court overturning a judgment of the court below which held the respondent, The Minister of Safety and Security, liable for the death by suicide of the appellant's husband – appellant's case was that she had reported to the police that her husband had threatened to shoot her with a firearm belonging to the South African Police Service and that she had urged them to seize and remove it – it does not appear to have been proved that the firearm had been officially issued – the trial court accepted the appellant's version of events – it held that members of the South African Police Service owed the appellant a legal duty and went on to find the Minister liable for damages that the appellant alleged she sustained. The full court, by majority, overturned that decision and substituted the trial court's order with an order dismissing the appellant's claims with costs – whether court below's conclusions were justified.

3. Strix Limited v Nu-World Industries (Pty) Ltd (20453/2014)

Appealed from PAT

Date to be heard: 17 August 2015

Navsa JA, Saldulker JA, Swain JA, Dambuza JA, Van der Merwe AJA

Patents – Alleged infringement of – whether respondent's kettles infringed claim 1 of appellant's patent entitled 'Liquid heating vessel' – the Commissioner dismissed appellant's claims – whether all the integers of claim 1 of the patent are present in respondent's kettles – whether claim 1 of the patent is inventive – whether latter defence had been properly raised and properly adjudicated.

4. Novartis South Africa (Pty) Ltd v Maphil Trading (Pty) Ltd (20229/2014)

Appealed from GJ

Date to be heard: 18 August 2015

Lewis JA, Majiedt JA, Pillay JA, Zondi JA, Mathopo JA

Contract – Conclusion of – Authority of contracting party – court below upheld respondent's claim for damages for breach of contract – whether agreement alleged to be partly written and partly

oral was concluded – whether parties representing appellant authorised to do so – whether agreement enforceable.

5. Merck Sharp Dohme Corp & another v Cipla Agrimed (Pty) Ltd (20282/2014)

Appealed from PAT

Date to be heard: 18 August 2015

Ponnan JA, Theron JA, Petse JA, Willis JA, Gorven AJ

Intellectual Property – patent revoked by Commissioner on grounds that the claims were not novel and had been disclosed in the prior art – whether the claims in the patent in suit lacked novelty – whether invention is not patentable in terms of s 61(1)(1)(c) read with s 25 of the Patents Act 57 of 1978.

6. Transdeco GTMH (Pty) Ltd & others v Noluthando Madimabe (20294/2014)

Appealed from GJ

Date to be heard: 18 August 2015

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

Companies Act 61 of 1973 – Notice to liquidator of pending claim in terms of s 359(1) and exercise of court's discretion when notice not timeously given – s 359(2)(b) – appeal against a decision of the court below in terms of which it declared that the respondent had not abandoned a claim in pending proceedings against the first appellant in the labour court and granted her leave to continue therewith – whether the court properly exercised its discretion in terms of s 359(2)(b) of the Companies Act – timeous notice not having been given in terms of s 359(1) of the Companies Act – whether time delay such as to militate against the court granting the relief sought in the court below

7. Douglas Shikwambana v The State (125/2015)

Appealed from GP

Date to be heard: 19 August 2015

Mhlantla JA, Tshiqi JA, Dambuza JA

Criminal Law – Conviction and Sentence – whether, on a charge of rape, the appellant was properly identified as the perpetrator – whether sentence of 25 years' imprisonment appropriate.

8. Mandla Sithole v The State (20393/2014)

Appealed from GP

Date to be heard: 19 August 2015

Mhlantla JA, Tshiqi JA, Dambuza JA

Criminal Law – Appeal against a refusal of application for leave to appeal – whether application rightly refused – appellant convicted on two counts of murder which arose from the driving of a motor vehicle by the appellant.

9. Wanga Monqo & another v The State (20308/2014)

Appealed from ECB

Date to be heard: 19 August 2015

Bosielo JA, Saldulker JA, Swain JA

Criminal Law – appeal against conviction and sentence – Eastern Cape High Court, Bisho dismissing appeal from magistrates' court – whether evidence sufficient to sustain conviction – whether Magistrate entered the arena – whether minimum sentence legislation applicable.

10. Christina Mangena v The State (92/2015)

Appealed from GJ

Date to be heard: 19 August 2015

Bosielo JA, Saldulker JA, Swain JA

Criminal Law – Sentence – whether sentence imposed in respect of a conviction of dealing in drugs in contravention of the provisions of the Drugs and Drug Trafficking Act 140 of 1992 - 18 years' imprisonment (2960,30 grams of cocaine) – was appropriate.

11. Yusuf Mohamed Asmal v The State (20465/2014)

Appealed from KZP

Date to be heard: 19 August 2015

Shongwe JA, Theron JA, Majiedt JA

Criminal Law - Sentence – whether the minimum sentence of 15 years' imprisonment for possession of a fully automatic firearm was warranted – whether it should be ordered to run concurrently with sentences imposed in respect of associated offences.

12. Kabelo Melvin Shole v The State (20716/2014)

Appealed from NWM

Date to be heard: 19 August 2015

Shongwe JA, Theron JA, Majiedt JA

Criminal Law – Appeal against conviction – whether trial court erred in relying on an admission made by the appellant to two state witnesses – whether such statements made.

14. The MEC: Department of Police, Roads and Transport, Free State Provincial Government v Terra Graphics (Pty) Ltd t/a Terra Works & another (483/2013)

Appealed from FB

Date to be heard: 20 August 2015

Navsa JA, Ponnann JA, Leach JA, Saldulker JA, Zondi JA

Road construction services – Contract for – first respondent had rendered environmental services in respect of the construction and rehabilitation of roads in the Free State with various other private contractors as part of a R1,7 billion project – the first respondent had sued the appellant for payment for work done – the appellant had raised a number of defences – first that the application was premature, as the agreement provided for arbitration; second, that there had been no prescribed statutory notice given; third that there was no privity of contract between the first respondent and appellant; fourth that the agreement was not statutorily compliant and lastly, the main agreement in relation to the construction of roads was invalid and therefore subsidiary agreements were invalid – the first two defences were abandoned – the high court held that there was privity of contract – in respect of the appellant's reliance on non-compliance with ss 66 and 68 of the Public Finance Management Act 1 of 1999 and that the expenditure had not been budgeted for, thereby rendering the main and subsidiary agreements invalid, the high court held that since that issue was the subject of a pending case it was unable to make a decision in that regard, but nonetheless ordered the appellant to pay the first respondent an amount of R1 540 123,54 – whether there was contractual privity – whether contract invalid.

15. Suidwes Landbou (Pty) Ltd v Wynlandi Boerdery CC & others (20312/2014)

Appealed from NWM

Date to be heard 20 August 2015

Cachalia JA, Willis JA, Mbha JA, Mathopo JA, Van der Merwe AJA

Liquidation – Business Rescue – appellant had launched an application in the court below for, inter alia, the liquidation of the first respondent, a declaratory order declaring an offer made by the third respondent void, to have the approval of a business rescue plan set aside – having regard to ss 30 and 133 of the Companies Act 71 of 2008 which relate to business rescue proceedings – the court below decided that the appellant had no locus standi, was time barred and in addition that the

application was devoid of merit – whether appellant had *locus standi* – whether application ought to have succeeded.

16. The South African Music Rights Performance Association v Foschini Retail Group (Pty) Ltd (050/2015)

Appealed from GP

Date to be heard: 21 August 2015

Mpati P, Mhlantla JA, Pillay JA, Swain JA, Zondi JA

Copyrights – Royalties – this case concerns the determination of royalties payable by South African retailers for communicating sound recordings to the public in their stores – appeal against the determination by the Copyright Tribunal of the amount of the royalty payable in terms of s 9A(1)(a) of the Copyright Act 98 of 1978 for playing background music in their stores – the Tribunal declined to uphold the royalty tariff proposed by the appellant as reasonable – the Tribunal did not adopt the tariff proposed by the retailers – it determined a tariff between the two proposals – whether there was an onus on the retailers to prove that the tariff set by the appellant was unreasonable – whether onus discharged – whether, in the absence of proof of the unreasonableness of tariffs, the Tribunal had the power to interfere with the appellant's tariff.

17. Aurecon South Africa (Pty) Ltd v City of Cape Town (20384/2014)

Appealed from WCC

Date to be heard: 21 August 2015

Maya DP, Lewis JA, Bosielo JA, Petse JA, Willis JA

Tender – Local Government/Municipal Finance Management Act 56 of 2003 – appeal against judgment of Western Cape Division in terms of which an award by the respondent's bid adjudication committee in favour of the appellant, of a tender for the provision of professional services pertaining to the decommissioning of the Athlone power station, was set aside – whether review application was brought within a reasonable time and within the prescribed period in terms of the PAJA – whether proper case has been made out for an extension of the time period – interpretation and application of the municipal supply chain's regulations and the respondent's supply chain management policy – whether setting aside of tender justified.

18. The Director of Public Prosecutions Free State v Paulinah Sibongile Mnguni & others (20494/2014)

Appealed from FB

Date to be heard: 21 August 2015

Navsa JA, Ponnar JA, Dambuza JA, Mathopo JA, Baartman AJA

Criminal Law – State's right to appeal/application of principles of the law of evidence – whether the appeal involves conclusions of fact which are not appealable at the instance of the State – whether doctrine of recent possession correctly applied – whether principles in relation to fingerprint evidence correctly applied – whether ballistic evidence correctly considered – whether principle in relation to identification evidence correctly applied – effect of failure of an accused to lead further evidence after an application for a discharge in terms of s 174 of the Criminal Procedure Act 51 of 1977 – whether court erred in applying the principles in relation to the assessment of the totality of evidence – whether misdirection by trial court on the necessity for trial-within-a-trial – whether court erred in regard to the admissibility of a pointing out and a confession.

19. Buyelekhaya Dalindyabo v The State (090/2014)

Appealed from ECM

Date to be heard: 21 August 2015

Navsa JA, Ponnar JA, Saldulker JA, Mathopo JA, Baartman AJA

Criminal Law – Sufficiency of evidence – Fair trial rights – whether appellant rightly convicted of committing arson and whether conviction on other offences justified – whether there was a splitting of charges – whether delay in prosecution was such that it implicated appellant's fair trial rights – whether trial judge descended into the arena.

20. Casper Hendrik Minnaar v A W van Rooyen NO (20407/2014)

Appealed from GP

Date to be heard: 24 August 2015

Lewis JA, Tshiqi JA, Majiedt JA, Dambuza JA, Baartman AJA

Date to be heard: Rescission – Default judgment – application for rescission of default judgment in which it was declared that appellant was liable without any limit of liability for the debts of a mining company in liquidation by virtue of the provisions of s 424(1) of the Companies Act 61 of 1973 – whether appellant had shown good cause for rescission – whether the declaration referred to above was competent without the hearing of oral evidence.

21. Shamla Chetty t/a Nationwide Electrical v O Hart NO & another (20323/2014)

Appealed from KZD

Date to be heard: 24 August 2015

Cachalia JA, Willis JA, Saldulker JA, Mathopo JA, Gorven AJA

Business Rescue – Companies Act 71 of 2008 – whether the expression 'legal proceedings' in s 133 of the Companies Act embraces arbitration proceedings – whether arbitration proceedings are covered by moratorium against legal proceedings.

22. Non-Detonating Solutions (Pty) Ltd v M J Durie & another (20440/2014)

Appealed from WCC

Date to be heard: 24 August 2015

Mhlantla JA, Theron JA, Petse JA, Mbha JA, Van der Merwe AJA

Anton Pillar – degree of specificity required when identifying items that are to be the subject of search and seizure orders – discharge of an Anton Pillar order on the basis that the descriptions of the items to be searched for electronically had been framed too widely – whether that conclusion justified.

23. Member of the Executive Council, for Education, Gauteng & another v FEDSAS (20420/2014)

Appealed from GJ

Date to be heard: 25 August 2015

Mpati P, Navsa JA, Shongwe JA, Dambuza JA, Van der Merwe AJA

Education – Admission of learners to public schools – appeal against a decision of the court below declaring invalid certain parts of the Gauteng Regulations for admission of learners to public schools – whether lengthy delay in prosecuting the appeal should be condoned – whether regulation 2(2A) was adopted in a procedurally fair manner – whether regulation 3(7) was invalid on the grounds that it is not reasonable and justifiable – whether a number of other regulations are *ultra vires* – the appropriateness of the remedy is also in issue.

24. Minister of Correctional Services & others v Tony Phakiso Segano (20507/2014)

Appealed from GJ

Date to be heard: 25 August 2015

Maya DP, Leach JA, Pillay JA, Zondi JA, Mathopo JA

Correctional Services Act 111 of 1998 – Parole – Determination of – whether eligibility for placement on parole should be determined with reference to the parole regime applicable at the time of the commission of the offences or at the time of sentencing – interpretation and application of s 136 of the Correctional Services Act 111 of 1998 – consideration and application of judgments of the Constitutional Court and of this court – conflicting high court decisions.

25. Muldersdrift Sustainable Development Forum v The Council of Mogale City Local Municipality & others (20424/2014)

Appealed from GP

Date to be heard: 25 August 2015

Ponnan JA, Tshiqi JA, Petse JA, Willis JA, Baartman AJA

Principle of legality – Appointment of municipal manager – Constitutional Law – Local Government – appellant applied unsuccessfully in the court below for an order declaring that the third respondent had not been properly appointed as municipal manager for the Mogale City Municipality in terms of the provisions of the Local Government: Municipal Systems Act 32 of 2000 – whether appellant had locus standi – whether there ought to have been an application for review of the decision to appoint the municipal manager rather than an application for a declaratory order – whether the court below's conclusion correct.

26. Nicole Romey de Villiers v The State (20367/2014)

Appealed from GJ

Date to be heard: 26 August 2015

Lewis JA, Mhlantla JA, Petse JA,

Criminal Law – Sentence – Interests of convicted person's children – appellant was convicted of 31 counts of fraud and one count of a contravention of s 4(b)(i) of the Prevention of Organised Crime Act 121 of 1998 (POCA) – she was sentenced by the regional court to 8 years' imprisonment, part of which was suspended – the effective sentence was one of five years' imprisonment – an appeal to the court below against sentence proved unsuccessful – the court below held that the trial court, in imposing the sentence referred to, had acted meticulously and in a balanced way – the court below considered the appellant's contention that she was the primary care-giver to her two minor children and that they would be prejudiced in the event of a sentence of direct imprisonment – the court below took the view that the magistrate considered the care of the children and alternative measures – whether direct imprisonment justified.

27. Terrence Marota v The State (300/2015)

Appealed from GJ

Date to be heard: 26 August 2015

Lewis JA, Mhlantla JA, Petse JA

Criminal Law – Sentence – whether 21 years' imprisonment, following on a conviction of rape and kidnapping is excessive – whether sentences in respect of the two convictions should have been ordered to run concurrently.

28. Madoda Doplá Nube v The State (091/2015)

Appealed from ECP

Date to be heard: 26 August 2015

Bosielo JA, Pillay JA, Dambuza JA, Van der Merwe AJA, Gorven AJA

Criminal Law – Conspiracy and common purpose – whether trial court had erred in convicting the appellant of robbery with aggravating circumstances, attempted murder and murder, even though, at some stage, he had disassociated himself from the commission of the offences – he had, in fact, not participated in the robbery – whether his guilt was properly determined on the basis of a prior agreement to commit the offences and the existence of a continuing common purpose.

29. Gilbert Ngwako Tlhako v The State (129/2015)

Appealed from GJ

Date to be heard: 26 August 2015

Bosielo JA, Pillay JA, Dambuza JA, Van der Merwe AJA, Gorven AJA

Criminal Law – Sentence – whether an effective sentence of 30 years' imprisonment imposed upon the appellant pursuant to a conviction on two counts of robbery with aggravating circumstances was appropriate – whether minimum sentence provisions appropriately applied.

30. Lorraine Du Preez v Tornel Props (Pty) Ltd (20714/2014)

Appealed from GP

Date to be heard: 26 August 2015

Shongwe JA, Saldulker JA, Swain JA, Mbha JA, Baartman AJA

Contract – Repudiation – whether building contract had been repudiated – whether the principles in *BK Tooling (Pty) Ltd v Scope Precision Engineering (Pty) Ltd* 1979 (1) SA 391 (A) rightly applied – court below concluded that there had been a repudiation on the basis that the appellant had failed to make a scheduled payment to the respondent in terms of a building contract – court below held that the respondent was entitled to remuneration on the basis of the application of the principles set out in the aforesaid case – whether court should have found that appellant had proved a counter-claim in respect of the reasonable costs of completing the house.

31. Off-Beat Holiday Club & another v Sanbonani Holiday Spa Shareblock Limited & others (20231/2014)

Appealed from GP

Date to be heard: 27 August 2015

Maya DP, Cachalia JA, Leach JA, Tshiqi JA, Zondi JA

Companies – Prescription – an application for leave to appeal referred for oral argument – against a finding by the court below that a number of claims by the appellants in terms of the sections in question had prescribed – claims related to the Articles of Association of the first respondent and are directed at recovering VAT inputs – the court below did, however, authorise a curator to institute action against one of the respondents based upon an alleged breach of fiduciary duties towards the first respondent – whether claims under ss 252 and 266 of the Companies Act 61 of 1973 are susceptible to prescription – s 252 of the Companies Act provides a remedy for a member of a company who complains of oppressive or unfairly prejudicial conduct – s 266 provides that, where a company has suffered damages or loss, or has been deprived of any benefit as a result of any wrong, breach of trust or breach of faith committed by a director or officer of that company, a member may initiate proceedings on behalf of the company against such director or officer.

32. Clive Samuel Harding v Wirth Asia Pacific Limited & another (20036/2014)

Appealed from WCC

Date to be heard: 27 August 2015

Navsa JA, Pillay JA, Dambuza JA, Van der Merwe AJA, Gorven AJA

Edictal Citation – Application for consolidation – matter is before court pursuant to an order by the President of the Supreme Court of Appeal in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 – in effect the applicant seeks an order for reconsideration of his application for leave to appeal – in adjudication of the matter the following ought to be considered – whether an application for rescission which set aside an order for edictal citation in terms of which the appellant instituted proceedings against respondents who are foreign *peregrini* should have been dismissed – whether an application for consolidation should have been granted – whether the common law should be developed to abolish the rule that attachment of property of a foreign *peregrinus* is required for a court to exercise jurisdiction where there is sufficient connection between the suit and area of jurisdiction of the court.

33. Nkosana Sibeko v The State (20642/2014)

Appealed from GP

Date to be heard: 27 August 2015

Ponnan JA, Theron JA, Swain JA, Mbha JA, Baartman AJA

Criminal Law - Constitutionality of the provisions of s 16(1)(b) of the Superior Courts Act 10 of 2013 requiring special circumstances for leave to appeal to be granted as well as the constitutionality of Rule 6(5) of the SCA Rules – whether the proper procedure for a challenge to the constitutionality of legislation and the rules of court was followed and whether the application ought to be entertained at all – whether s 16(1)(b) is constitutional – whether the implicated rule of court is constitutionally flawed for not requiring a full record of proceedings to be filed before the judges considering an application for leave to appeal.

34. George Magwabeni v Christopher Liomba (198/2013)

Appealed from LT

Date to be heard: 28 August 2015

Cachalia JA, Majiedt JA, Zondi JA

Delict - Malicious prosecution – matter enrolled for hearing during March 2013 and was postponed, apparently because there was no appearance by the respondent – the respondent's whereabouts appear still to be unknown – the respondent had succeeded in the court below in a claim for damages – the appellant insisted that the matter be re-enrolled – whether the criminal proceedings against the respondent were 'terminated' when charges against him were provisionally withdrawn – whether, in those circumstances the claim was sustainable – whether appellant's conduct in placing facts before the police officers concerned was tantamount to putting the law in motion.

35. Maurico Arendse v The State (089/2015)

Appealed from WCC

Date to be heard: 28 August 2015

Shongwe JA, Theron JA, Saldulker JA

Criminal Law – Sufficiency of evidence – whether murder conviction warranted – whether the appellant had been properly identified – whether single witness evidence had been properly assessed – whether appellant's fair trial rights were impinged.

36. Richard Negondeni v The State (093/2015)

Appealed from LT

Date to be heard: 28 August 2015

Leach JA, Willis JA, Mathopo JA

Criminal Law – Constitutional Law – Fair trial rights – appeal against conviction and sentence – appellant pleaded guilty in the court below and was convicted of murder, robbery and two counts of rape – the custodial sentences he received in respect of the rape and robbery counts would be subsumed by the sentence of life imprisonment imposed in respect of his conviction on murder – the appellant appeals on the basis of a breach of fair trial rights commencing with the questioning by the magistrate in relation to his plea of guilty, which he criticised as being inadequate – a further ground for appeal is that the indictment did not disclose the sentences the State intended to apply for – the quality of his legal representation is yet another ground of appeal.

37. Thomani Reckson Mukona v The State (97/2015)

Appealed from LT

Date to be heard: 28 August 2015

Leach JA, Willis JA, Mathopo JA

Criminal Law – conviction and sentence – appellant convicted of murder, arson and three counts of attempted murder (in the Limpopo Local Division, Hetisani J) – the appellant was sentenced to life imprisonment in respect of the murder charge and received lengthy custodial sentences in respect of the remaining charges – whether sufficient evidence for a conviction – whether sentences excessive.

38. Charmaine Naidoo v Minister of Police & others (20431/2014)

Appealed from GJ

Date to be heard: 31 August 2015

Maya DP, Lewis JA, Petse JA, Mbha JA, Mathopo JA

Delict - Claim for damages by appellant premised on conduct of police officers, following on complaints against appellant's husband being lodged with the police – appellant's claims dismissed by court below – whether the provision of the Domestic Violence Act 116 of 1998 are implicated – whether appellant's constitutional rights were infringed.

39. Marie Elizabeth Neethling v Kirsty Elizabeth Fiona Boonzaier & another (20592/2014)

Appealed from WCC

Date to be heard: 31 August 2015

Navsa JA, Ponnar JA, Theron JA, Saldulker JA, Baartman JA

Family Law – Maintenance – appeal against an order of the court below which held that a maintenance directive issued against a grandparent was in order – whether the court below ought to have found that it was incumbent upon the maintenance officer, before issuing the directive, to consider whether the parents were able to maintain the minor children and whether in the totality of circumstances the grandparent had an obligation to maintain the children – the first respondent abides the decision of this court.

40. Henry Mayo NO & others v Alain Rivalz Chevreau de Montlehu (20504/2014)

Appealed from GJ

Date to be heard: 31 August 2015

Bosielo JA, Leach JA, Majiedt JA, Willis JA, Zondi JA

Insolvency – Winding up – section 44(1) of the Insolvency Act 24 of 1936 – Section 366(2) of the Companies Act 61 of 1973 – against the setting aside on review by the court below of the admission to proof by the Master of a claim – whether proviso to s 44(1) of the Insolvency Act is applicable to companies in winding up – whether s 366(2) of the Companies Act implicated.

41. Desmond Etienne Doman v Kgabo Gabriel Selomo (20455/2013)

Appealed from LCC

Date to be heard: 01 September 2015

Navsa JA, Theron JA, Swain JA, Mbha JA, Baartman AJA

Right to bury in terms of s 6(2)(a) of the Extension of Security of Tenure Act 62 of 1997 (ESTA) – concerns the respondent's entitlement to bury his daughter on the farm belonging to the appellant – the burial has already occurred – contended that a re-burial is a possibility and that the matter is for that reason not moot – whether requirements of s 6(2)(dA) of ESTA were met – whether high court erred in deciding the application in favour of the respondent on the basis of a labour tenancy – not relied upon by the respondent.

42. Werner Rudolph van Rhyn NO & others v Upstars Trade 22 (Pty) Ltd & others (20283/2014)

Appealed from WCC

Date to be heard: 01 September 2015

Lewis JA, Cahalia JA, Bosielo JA, Tshiqi JA, Dambuza JA

Spoliation – Water supply – whether appellants were in quasi possession of water rights – whether there was in existence a *precarium* that fell to be protected under the mandament – the court below dismissed the application for a spoliation order.

43. Jonathan Brian Griffiths v Jacobus Hendrikus Janse van Rensburg NO & another (20269/2014)

Appealed from ECP

Date to be heard: 01 September 2015

Shongwe JA, Pilay JA, Petse JA, Saldulker JA, Gorven AJA

Insolvency – voidable dispositions – whether certain dispositions made to the appellant were ‘made in the ordinary course of business’ as contemplated in s 29 of the Insolvency Act 24 of 1936 – whether interest could be ordered on dispositions sounding in money when they have been impeached in terms of s 32(3) of the Insolvency Act.

44. Johanna Andriette Grundlingh v Die Staat (20616/2014)

Appealed from GP

Date to be heard: 02 September 2015

Cachalia JA, Majiedt JA, Pillay JA

Criminal Law – Sentence – the appellant was convicted in the regional court on 30 charges of a contravention of s 59(1)(a) of the Value Added Tax Act 89 of 1991 and sentenced to an effective 10 years’ imprisonment – on appeal the sentence was reduced to 8 years’ imprisonment – the amount involved appears to be close to R30 million – whether sentence appropriate.

45. Steven Ofentse Dipholo v The State (094/2015)

Appealed from NWM

Date to be heard: 02 September 2015

Bosielo JA, Petse JA, Van der Merwe AJA

Criminal Law – Sentence – appellant convicted of rape, robbery with aggravating circumstances and sexual assault – received an effective sentence of 40 years’ imprisonment – whether minimum sentence regime properly applied – whether sentence excessive.

46. Randburg Mangement District v West Dunes Properties 141 (Pty) Ltd & another (451/2013)

Appealed from GJ

Date to be heard: 02 September 2015

Leach JA, Tshiqi JA, Theron JA, Willis JA, Mathopo JA

Local Authority – Powers of – Imposition of levies – whether decision by court below, that the appellant had not been properly established in terms of the Gauteng City Improvement Districts Act 12 of 1997 and that the imposition of increased levies was invalid, was correct – first respondent’s attorneys of record withdrew – the first respondent appears to be untraceable.

47. Unica Iron and Steel (Pty) Ltd & another v Suresh Mirchandani (20461/2014)

Appealed from GP

Date to be heard: 03 September 2015

Lewis JA, Shongwe JA, Leach JA, Zondi JA, Baartman AJA

Contract – Interpretation – whether document constitutes a binding agreement – whether subject to suspensive condition – whether party entitled to demand specific performance.

48. K Snyders & others v L F de Jager (20469/2014)

Appealed from LCC

Date to be heard: 03 September 2015

Ponnan JA, Saldulker JA, Dambuza JA, Mathopo JA, Van der Merwe AJA

Extension of Security of Tenure Act 62 of 1997 (ESTA) – appeal against an order by the Land Claims Court confirming an eviction order granted by the magistrates' court – whether respondent satisfied the requirements for an eviction order in terms of the provisions of ESTA – whether eviction order was in terms more extensive than that sought – whether termination of right of residence just and equitable.

49. Johannes Jacobus Bezuidenhout v Pam Golding Properties (Pty) Ltd & others (20433/2014)

Appealed from WCC

Date to be heard: 03 September 2015

Mhlantla JA, Majiedt JA, Pillay JA, Mbha JA, Gorven AJA

Companies Act 71 of 2008 – appeal against order reinstating the registration of a company and a concomitant declaration that assets are reinvested in company and furthermore that all steps taken in legal proceedings between the parties are declared to be legal and valid with retrospective effect – whether reinstatement of the registration has the effect of retrospectively reviving a company's activity prior to the deregistration, more particularly in relation to an action instituted against the company.

50. The National Treasury & another v Phumlani Kubukeli (20567/2014)

Appealed from ECM

Date to be heard: 04 September 2015

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

Administrative Law – Review – Setting aside of Investigative report – whether person investigated in relation to alleged labour related misconduct ought to have been afforded an opportunity to be heard in relation to the investigation.

51. Maarten Opperman v The Minister of Defence and Military Veterans (20752/2014)

Appealed from GP

Date to be heard: 04 September 2015

Maya DP, Cachalia JA, Zondi JA, Dambuza JA, Gorven AJA

Defence force – Contractual right to specified remuneration – appeal against a dismissal of an application for a declarator that the appellant, a Brigadier-General in the National Defence Force, was entitled to be remunerated on a specified professional basis – whether being deprived of remuneration at a particular salary level was lawful – whether application precluded by not pursuing internal remedies – whether regulations provide such internal right of appeal – whether performance agreement concluded with Surgeon-General.

52. Oudtshoorn Municipality & others v The Democratic Alliance & others (20673/2014)

Appealed from WCC

Date to be heard: 04 September 2015

Navsa JA, Ponnan JA, Shongwe JA, Tshiqi JA, Swain JA

Municipality – Powers of disciplinary committee – whether disciplinary committee has the power to remove municipal councillors – whether decision subject to review under the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

53. Shanaaz Stemmet v Changing Tides 17 (Pty) Ltd (20342/2014)

Appealed from WCC

Date to be heard: 07 September 2015

Maya DP, Tshiqi JA, Theron JA, Van der Merwe AJA, Baartman AJA

Civil Procedure – Rescission of judgment – constitutionality of Uniform Rule 46 – whether appellant’s application for rescission of judgment ought to have been granted – whether court ought to have held that the order of the registrar of the court below declaring appellant’s home executable should not have been granted – test for condonation.

54. Sarah Johanna Benadè v The Minister of Justice and Constitutional Development & another (20581/2014)

Appealed from NWM

Date to be heard: 07 September 2015

Lewis JA, Bosielo JA, Willis JA, Pillay JA, Mathopo JA

Compensation of Occupational Injuries and Diseases Act 30 of 1993 (COIDA) – appeal against order upholding a special plea in terms of s 35(1) of the Act – whether a regional court magistrate, for the purposes of the Act, is an employee of the Minister of Justice and Constitutional Development – magistrate having instituted an action against the respondents for damages as a result of being injured when she slipped and fell in her office.

55. The Council for Medical Schemes & another v Genesis Medical Scheme & others (20518/2014)

Appealed from WCC

Date to be heard: 07 September 2015

Leach JA, Petse JA, Willis JA, Mbha JA, Zondi JA

Review – Medical Council appeal board – whether court below correct to review and set aside the appeal board’s decision in respect of the first respondent’s obligation to pay for a prosthesis – whether error of law on part of appeal board – whether other bases for setting aside the decision.

56. UWE Dominick & others v Nedbank Limited (20463/2014)

Appealed from WCC

Date to be heard: 08 September 2015

Mpati P, Cachalia JA, Petse JA, Dambuza JA, Gorven AJA

Suretyship – whether respondent bank’s dealings with principal debtor were such that sureties were entitled to be released – whether dealings between bank and principal debtor prejudicial.

57. The Commissioner for the South African Revenue Service v Stepney Investments (Pty) Ltd (20192/2014)

Appealed from Tax Court

Date to be heard: 08 September 2015

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

Income Tax – disposal by tax payer of shares – determination of base cost of the shares for capital gains tax purposes – dispute about methodology.

58. Four Arrows Investments 68 (Pty) Ltd v Abigail Construction CC & another (20470/2014)

Appealed from GP

Date to be heard: 08 September 2015

Lewis JA, Mhlantla JA, Willis JA, Saldulker JA, Swain JA

Sub-Division of Agricultural Land Act 70 of 1970 – interpretation and application of an agreement of sale – whether an agreement of sale is in breach of the provisions of the Act – whether the agreement was enforceable at the time the litigation was commenced.

59. Thabo Macbeth Nkosi v The State (20727/2014)

Appealed from GP

Date to be heard: 09 September 2015

Mpati P, Shongwe JA, Majiedt JA

Criminal Law – Robbery – appellant member of a gang of robbers – co-perpetrator shot and lawfully killed by victim of robbery – whether appellant could in those circumstances rightly be convicted of murder.

60. Tsubakwane Elias Mothwa v The State (124/2015)

Appealed from NWM

Date to be heard: 09 September 2015

Maya DP, Theron JA, Mathopo JA

Criminal Law – whether conviction on one count of robbery with aggravating circumstances was warranted – whether explanation that motor vehicle he was found in possession of three days after the robbery justifies the conclusion that appellant committed the robbery.

61. Philane Sihle Mchunu v The State (20770/2014)

Appealed from GP

Date to be heard: 09 September 2015

Mpati P, Shongwe JA, Majiedt JA

Criminal Law – Duplication of charges – whether trial court erred in convicting the appellant on charges of both robbery and malicious damage to property – whether sentence affected.

62. The Director of Public Prosecutions, Gauteng Division v Denise Cindy-Lee Jansen & another (20043/2014 & 229/2014)

Appealed from GP

Date to be heard: 09 September 2015

Maya DP, Theron JA, Mathopo JA

Criminal Procedure – Plea and sentence agreements – whether trial court erred in imposing a sentence upon both appellants, contrary to that contained in the plea agreement in terms of s 105A of the Criminal Procedure Act 51 of 1977, whether error compounded by failure of the court to inform the State and the respondents that, in its view, the agreed sentence was unjust as contemplated in s 105A(9) of the Criminal Procedure Act – the Director of Public Prosecutions had requested the trial judge to reserve a question of law in terms of s 319(1) of the Act – common cause between the parties that there was a failure by the trial judge to apply the provisions of s 105A(9) of the Act – whether sentencing proceedings should be set aside altogether – whether the plea agreement should be implemented.

63. Keith Larry Brouze & others v Wenneni Investments (Pty) Ltd & another (20427/2014)

Appealed from GP

Date to be heard: 09 September 2015

Lewis JA, Leach JA, Pillay JA, Willis JA, Dambuza JA

Sale – Misrepresentation – Duty to disclose – whether misrepresentations made by appellants to the respondents concerning the performance and prospects of a company – whether misrepresentations caused respondents to exit the company on specified terms – whether appellants ought to have made certain disclosures – court below had found for the respondents.

64. Nedbank Limited v Hendrik Petrus Goosen Thompson & another (20354/2014)

Appealed from GJ

Date to be heard: 10 September 2015

Maya DP, Bosielo JA, Tshiqi JA, Zondi JA, Gorven AJA

National Credit Act 34 of 2005 – Agency – payments after debt review through payment distribution agency – whether default due to payment distribution agency – whether distribution agency consumer's agent – in court below payment sought from debtor – in unopposed appeal, bank no longer seeks judgment for payment but seeks a declaratory order concerning the question of agency.

65. Distell Limited v KZN Wines and Spirits CC (20291/2014)

Appealed from KZD

Date to be heard: 10 September 2015

Navsa JA, Theron JA, Mbha JA, Mathopo JA, Baartman AJA

Trademark infringement – Section 34 of the Trademarks Act 194 of 1993 – Passing off – whether alleged infringing mark is confusingly similar – whether aspects of the get-up of the respondent's product are sufficient to distinguish that product from the appellant's product – respondent's attorneys have withdrawn.

66. Bombenero Investments (Pty) Ltd v Hennie Lambrechts Architects (187/2014)

Appealed from FB

Date to be heard: 10 September 2015

Ponnan JA, Leach JA, Majiedt JA, Swain JA, Dambuza JA

Security for costs – application for leave to appeal referred for oral argument – whether, in the absence of a provision similar to the repealed s 13 of the Companies Act 61 of 1973, common law should be applied to an *incola* company – whether, on the facts, the order for security for costs was warranted.

67. Green Willows Properties 215 (Pty) Ltd v Rogalla von Biberstein Investment Company (Pty) Ltd (20436/2014)

Appealed from KZP

Date to be heard: 11 September 2015

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

Contract – Interpretation of – whether condition complied with – whether refusal for an application for recusal vitiated proceedings.

68. Minister of Water and Environmental Affairs v IM Karan T/C Karan Beef Feedlot (20563/2014)

Appealed from GP

Date to be heard: 11 September 2015

Navsa JA, Theron JA, Petse JA, Saldulker JA, Van der Merwe AJA

Water Rights – whether court below, in deciding the rate at which the respondent is to pay for water usage, was dealing with a challenge in terms of the Promotion of Administrative Justice Act 3 of 2000 or whether it was merely interpreting and applying a statutory provision.

69. Du Marc CC v The Commissioner for the South African Revenue Services & another (20479/2014)

Appealed from KZD

Date to be heard: 14 September 2015

Maya DP, Shongwe JA, Pillay JA, Mbha JA, Van der Merwe AJA

Tax Administration Act 28 of 2011 – whether the ‘pay now complain later’ principle in terms of ss 164 and 179 of the Act was properly applied – whether SARS should have given prior notice of its intention to invoke the sections – whether SARS ought to have given the appellant an opportunity to make representations – whether SARS disregarded appellant’s entitlement to a fair and expeditious disposal of a tax appeal – whether adequate alternative remedy – whether appellant’s rights to carry on its commercial trade and occupation infringed.

70. DPP Valuers (Pty) v Madibeng Local Municipality (233/2015)

Appealed from GP

Date to be heard: 15 September 2015

Mpati P, Lewis JA, Mhlantla JA, Bosielo JA, Swain JA

Administrative Law – Tender Review – Interpretation and application of s 7(2) of the Promotion of Administrative Justice Act 3 of 2000 – duty to exhaust internal remedies prior to instituting judicial review proceedings - whether the dispute resolution mechanism created by regulation 50 of the Municipal Supply Chain Management Regulations constitutes an internal remedy as contemplated in s 7(2) of the PAJA.

71. Centre for Child Law v The Governing Body of Hoërskool Fochville & another (156/2015)

Appealed from GP

Date to be heard: 28 September 2015

Ponnan JA, Theron JA, Majiedt JA, Mbha JA, Gorven AJA

Child Law – Rights of the child – right to access to information and right to fair hearing – whether appeal academic – the appellant appeals against an order of the court below directing it to deliver to the first and second respondents original questionnaires completed by children of the 5th to 52nd respondents in the main application in terms of rule 35(12) of the Uniform Rules of Court – the main application having been settled, the first question is whether the appeal is of academic interest only – whether the questionnaires are privileged – scope of the privilege – whether appellants had waived privilege by making accusations against the respondents – whether respondents have a right to the disclosure – whether court below erred in ordering costs against the appellant.

72. South African Broadcasting Corporation & 2 others v Democratic Alliance (00393/2015)

Appealed from WCC

Date to be heard: 18 September 2015

Mpati P, Navsa JA, Ponnan JA, Swain JA, Dambuza JA

73 (formerly 13) Premier Foods (Pty) Ltd v Norman Manoim NO & others (20147/2014)

Appealed from GP

Date to be heard: 29 September 2015

Maya DP, Shongwe JA, Petse JA, Gorven AJA, Baartman AJA

Competition Law – Certificate in terms of section 65(6)(b) of the Competition Act 85 of 1998 – whether, in the absence of a referral by appellant by way of a complaint to the Competition Tribunal the Tribunal has jurisdiction to issue a s 65 certificate – such a certificate is a precursor to a claim for damages flowing from a prohibited practice.