

**REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
BULLETIN 4 2015  
CASES ENROLLED FOR HEARING: NOVEMBER 2015**

**1. The South African Dental Association NPC v The Minister of Health & others (20556/2014)**

Appealed from GP

Date to be heard: 02 November 2015

Navsa JA, Shongwe JA, Willis JA, Swain JA, Zondi JA

**Administrative Law** - Health Professions Act 56 of 1974 – whether the court a quo was correct in finding that the delay rule in terms of the Promotion of Administrative Justice Act 3 of 2000 applied – whether the five sets of regulations identified in the application are ultra vires the Health Professions Act – whether the appellant's delay in challenging the 2008 regulations ought to be condoned.

**2. City of Tshwane Metropolitan Municipality v Uniqon Wonings (Pty) Limited (20771/2014)**

Appealed from GP

Date to be heard: 02 November 2015

Lewis JA, Cachalia JA, Theron JA, Wallis JA, Saldulker JA

**Local Government: Municipal Property Rates Act 6 of 2004** – whether an unsold erf in a township property is 'property' as defined in the Municipal Systems Act 32 of 2000 and can attract municipal rates: these questions depend on an interpretation of the provisions of the Municipal Property Rates Act and the Municipal Systems Act.

**3. Uniqon Wonings (Pty) Ltd v City of Tshwane Metropolitan Municipality (20789/2014)**

Appealed from GP

Date to be heard: 02 November 2015

Lewis JA, Cachalia JA, Theron JA, Wallis JA, Saldulker JA

**Local Government – municipal rates:** appellant instituted an action in the court below for repayment of certain amounts which were paid to respondent whilst not owing and/or without lawful course – this follows this court's judgment in Kungwini Local Municipality (now City of Tshwane Metropolitan Municipality) in which it held that the increase in property rates for 2004/2005 financial year of appellant was invalid, and set aside the increased property rate payable for 2004/2005 financial year – whether property rates which have been levied by municipality in terms of section 10G(7)(a)(i) of the Local Government Transition Act 209 of 1993 automatically lapsed at the end of the financial year during which it was levied – whether no effective property rate was applicable for the 2004/2005 financial year or whether the property rate of R 0.02 per rand value was applicable.

**4. Ralph Werner Köster v Archibald Norval**

Appealed from WCC

Date to be heard: 02 November 2015

Ponnan JA, Majiedt JA, Pillay JA, Van der Merwe AJA, Baartman AJA

**Contract and Property law** – Appeal against order for payment of purchase price for game in terms of contract of sale – two related contracts of sale concluded by parties – one for purchase of shares in a company owning a game farm (with appellant nominating a family trust to substitute him as party), and one purchasing the game on the game farm separately (no nominations) – subsequently discovered that the game in fact belonged to the company, and not to the respondent – appellant therefore alleges that the respondent is and was unable to deliver the game to him, and so refuses to pay the purchase price for the game – whether the game was ever delivered – whether ownership of the game transferred – whether the appellant was deprived of his use and enjoyment of the game.

**5. Director of Public Prosecutions, Gauteng v Oscar Leonard Carl Pistorius (96/2015)**

Appealed from GP

Date to be heard: 03 November 2015

Mpati P, Mhlantla JA, Leach JA, Majiedt JA, Baartman AJA

**Criminal Procedure** – whether the principles of *dolus eventualis* were correctly applied to the accepted facts and the conduct of the accused, including error as to identity– whether the court below correctly conceived and applied the legal principles pertaining to circumstantial evidence and/or pertaining to multiple defences by an accused – whether the court was correct in its construction and reliance on an alternative version of the accused and that this alternative version was reasonably possibly true.

#### **6. Alan Louis Allschwang v Tracy-Lee Allschwang (20735/2014)**

Appealed from GP

Date to be heard: 03 November 2015

Maya ADP, Theron JA, Swain JA, Mbha JA, Dambuza JA

**Contract** – Interpretation of settlement agreement concluded by couple after divorce –relevance of context and interests of minor children, and whether permissible to depart from unambiguous language in the light thereof.

**Family law** – Interests of minor children in remaining in family home – obligations of parties to act in good faith when implementing settlement agreements – whether *actio communi dividundo* available.

#### **7. Tinky Sophie Mojapelo & another v The State (574/2014)**

Appealed from GP

Date to be heard: 03 November 2015

Lewis JA, Tshiqi JA, Saldulker JA

**Criminal Law and procedure – Evidence** – single witness – conviction on charges of murder and sentenced to life imprisonment – appeal against conviction and sentence – trial court found State to have proved *prima facie* case – negative inference drawn from appellant's election to remain silent – whether trial court was correct to draw such inference.

#### **8. Daniel Johannes Stephanus van der Bank v The State (245/2015)**

Appealed from GP

Date to be heard: 04 November 2015

Navsa JA, Wallis JA, Willis JA, Zondi JA, Baartman AJA

**Criminal law** - Appeal against convictions of rape and indecent assault – leave to appeal granted by this court – limited to whether complainant's evidence was inadmissible on the basis that it was given through an intermediary in conflict with the provisions of s 170A of the Criminal Procedure Act 51 of 1973 as applicable at the time she gave that evidence.

#### **9. Mathews Sipho Lelaka v The State (409/2015)**

Appealed from NWM

Date to be heard: 04 November 2015

Ponnan JA, Shongwe JA, Petse JA, Mathopo JA, Van der Merwe AJA

**Criminal Law** – whether full court erred in setting aside trial proceedings where there was no irregularity – whether State was bound to accept conviction on assault with intent to do grievous bodily harm – whether the full court was correct in setting aside the proceedings so as to allow the State to charge the appellant with the more serious offence of murder – is the State entitled to substitute a lesser or minor charge with a more serious charge.

#### **10. Thabiso Prince Montsho v The State (20572/2014)**

Appealed from GP

Date to be heard: 04 November 2015

Ponnan JA, Shongwe JA, Petse JA, Mathopo JA, Van der Merwe AJA

**Criminal Law - Criminal Law Amendment Act 105 of 1997** – whether trial court interpreted and applied concept of ‘planned and premeditated murder’ in terms of s 51(1) of the Criminal Law Amendment Act 105 of 1997 read with Part 1 of Schedule 2 correctly for a sentence of life imprisonment – whether trial court erred in concluding that there are no substantial and compelling circumstances present to justify a deviation from the prescribed minimum sentence.

**11. Rainier Hildebrand v The State (424/2015)**

Appealed from GP

Date to be heard: 04 November 2015

Bosielo JA, Tshiqi JA, Swain JA

**Criminal Law – Sentence** – appeal against effective sentence of 30 days’ imprisonment for two counts of assault with intent to inflict grievous bodily harm imposed by Benoni Regional court and confirmed by Gauteng Division of the High Court, Pretoria – whether trial court having found substantial and compelling circumstances exist was at liberty to impose suspended sentence or correctional supervision in terms of s 276 of the Criminal Procedure Act 51 of 1977 – whether the sentence imposed is shockingly inappropriate.

**12. Gino Luigi Selli v The State (220/2015)**

Appealed from GNP

Date to be heard: 4 November 2015

Bosielo JA, Tshiqi JA, Swain JA

**Criminal law** - Appeal against effective sentence of 15 years’ imprisonment for robbery with aggravating circumstances and unlawful possession of a firearm and ammunition - magistrate fixing non-parole period for four-fifths of sentence - leave to appeal granted by this court - whether s 276B of the Criminal Procedure Act was correctly applied - whether substantial and compelling circumstances exist - whether the sentence was vitiated by misdirection - whether sentence shockingly inappropriate.

**13. City of Tshwane Metropolitan Municipality v Peregrine Joseph Mitchell (038/2015)**

Appealed from GP

Date to be heard: 05 November 2015

Mpati P, Bosielo JA, Saldulker JA, Zondi JA, Baartman AJA

**Local Government: Municipal Systems Act 32 of 2000** – Municipality – Statutory hypothec – interpretation of s 118(3) of the Act – whether statutory hypothec created by provision is extinguished by sale in execution and subsequent transfer – whether successor in title may be held liable for payment of historical municipal debts incurred by predecessor in title – whether municipality may refuse services to owner of property for outstanding debt.

**14. Anglo Platinum Management Services (Proprietary) Limited v The Commissioner for the South African Revenue Service (20725/2014)**

Appealed from Tax Court

Date to be heard 05 November 2015

Cachalia JA, Leach JA, Tshiqi JA, Pillay JA, Mbha JA

**Income Tax Act 58 of 1962** – whether for the year of assessment 2004 to 2008, the use of the appellant’s motor vehicles by its employees was a taxable benefit of employment to be taxed in accordance with paragraph (i) of the Income Tax Act, read with the relevant provisions of the seventh schedule, or whether employees were to be taxed on the basis that the use and benefit of vehicles forms part of the employees’ gross income as defined in paragraph (c) of the definition of ‘gross income’ in the Income Tax Act – whether the appellant withheld and paid employees’ tax to SARS

correctly and whether it could be liable for additional employees' tax on the basis assessed by the Commissioner.

**15. Vusi Samuel Vilakazi v The State (636/2015)**

Appealed from GNP

Date to be heard: 05 November 2015

Mhlantla JA, Shongwe JA, Theron JA, Dambuza JA, Mathopo JA

**Criminal law** - Appeal against conviction of rape resulting in sentence of 18 years' imprisonment – whether case proved beyond reasonable doubt – whether cautionary rules applied correctly in respect of single witness testimony, minor witnesses, and allegedly coerced testimony by complainant against appellant – whether evidence of complainant reliable and sufficiently corroborated – whether appellant's version correctly rejected.

**16. Elphas Elvis Lubisi v The State (230/2015)**

Appealed from GP

Date to be heard: 05 November 2015

Mhlantla JA, Shongwe JA, Theron JA, Dambuza JA, Mathopo JA

**Criminal law** - Appeal against conviction of murder – whether appellant had a fair trial – magistrate calling witnesses to prove the State's case before the State's case was closed – whether evidence of State witnesses reliable and correctly accepted – whether appellant's version was correctly rejected – whether a causal chain linking appellant to a recovered bullet cartridge was proved.

**17. Law Society of the Northern Provinces & another v Louw De Witt Le Roux & others (185/2015)**

Appealed from GP

Date to be heard: 06 November 2015

Maya ADP, Shongwe JA, Majiedt JA, Petse JA, Mathopo JA

**Attorneys Act 53 of 1979** - Renewal of Fidelity Fund Certificate – the requirements of the Law Society for the issue of fidelity fund certificates under s 42(3)(a) of the Attorneys Act.

**18. Lagoon Beach Hotel (Pty) Ltd v Christopher D Lehane NO & others (235/2015)**

Appealed from WCC

Date to be heard: 06 November 2015

Navsa JA, Cachalia JA, Leach JA, Tshiqi JA, Willis JA

**Insolvency Act 24 of 1936** - foreign trustee –whether the court a quo should have reconsidered the provisional order granted in the court below in favour of the first respondent and whether the court a quo should have granted a final order and the appealability of the order of the court a quo – whether a foreign trustee has authority to bring an application for interim relief and whether such trustee can administer an insolvent estate.

**19. Absa Bank Limited v Christina Martha Moore & others [Note: Naming inconsistent.] (20719/2014)**

Appealed from GJ

Date to be heard: 06 November 2015

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

**Contract and Property law** - Appeal against order invalidating an agreement and transfer of immovable property, with consequence that a mortgage bond was also rendered invalid - respondent effectively lent money from B by entering into a complex and legally questionable arrangement involving a sale and re-sale of certain immovable property - B then obtained a loan from appellant subject to a mortgage bond being registered over the immovable property (which had by then been registered in B's name) - B defaulted on the loan and appellant attached the property - respondent in the court a quo successfully challenged the validity of the mortgage bond on the basis that there had

not been a valid transfer of ownership of the immovable property to B - whether valid transfer of ownership from respondent to B - whether mortgage bond valid - whether appellant's constitutional right to property had been violated - whether fraud by B proven - whether respondents estopped from denying validity of transfer - whether inordinate delay by respondents in seeking relief.

#### **20. Lanel Breda NO v The Master of the High Court, Kimberley & others (20537/2014)**

Appealed from NCK

Date to be heard: 9 November 2015

Maya ADP, Theron JA, Wallis JA, Swain JA, Mathopo JA

**Insolvency Act 24 of 1936** - Review procedure – whether the Master of the High Court should have allowed an affidavit in terms of s 44 of the Insolvency Act where the Commissioner of Oaths who attested to the affidavit, had an interest in the matter, and if so, whether such affidavit is null and void with reference to regulation 7(1) of the regulations published in Government Notice R1258 of 1972 - whether the claim by the third respondent should in any event be allowed since the claim has on the face of it prescribed and whether the Master of the High Court, Kimberley should not have referred the claim to an interrogation in terms of s 44(7) read with s 44(8) of the Insolvency Act, *mero motu* in order to determine on evidence whether such claim has prescribed or not.

#### **21. Plover's Nest Investments (Pty) Ltd v Jacques Willem De Haan & another (20590/2014)**

Appealed from WCC

Date to be heard: 09 November 2015

Lewis JA, Mhlantla JA, Leach JA, Tshiqi JA, Majiedt JA

**Local Government** – Municipality - Land Use Planning Ordinance 15 of 1985 – Opposed application - first respondent as the owner of Erf 5636, Plettenberg Bay instituted action against the appellant and the second respondent for an order reviewing and setting aside the approval by the municipality of building plans for extensions and additions to the buildings on the neighbouring Erf 12702, which is owned by the appellant. The court a quo upheld the first respondent's contentions that the municipality's approval of the building plans was inconsistent with s 39(1)(a) and (c) of the Land Use Planning Ordinance 15 of 1985 (LUPO) and hence with s 7(1)(a) and (b)(i) of the National Building Regulations and Building Standards Act 103 of 1977 because the approved building work is incompatible with the provisions of a notarial deed of servitude concluded between the first respondent and appellant's predecessor-in-title. Conditions 5 and 6 imposed by the municipal council of the municipality's predecessor-in-law, approved an application for consolidation and re-subdivision of several erven, including Erven 5636 and 12702 – whether the findings are correct.

#### **22. Tina Goosen & others v The Mont Chevaux Trust (IT 2012/28) (148/2015)**

Appealed from LCC

Date to be heard: 09 November 2015

Bosielo JA, Petse JA, Willis JA, Mbha JA, Van der Merwe AJA

**Extension of Security Tenure Act 62 of 1997** – automatic review application in the LCC of order granted in the magistrates' court to evict the appellants - whether collective eviction order should have been granted in light of the fact that ESTA only provides for individual eviction orders – whether the LCC erred in finding that the respondent had complied with the requirements for a just and equitable termination of the appellants' rights of residence in terms of s 8 of ESTA.

#### **23. Newton Global Trading (Pty) Ltd (Under Business Rescue) v Eddie Da Corte (104/2015)**

Appealed from GP

Date to be heard: 10 November 2015

Mpati P, Lewis JA, Cachalia JA, Salduker JA, Dambuza JA

**Companies Act 71 of 2008** - Business Rescue – whether the provisions of s 129(5)(a) of the Companies Act 71 of 2008 had the effect that the resolution to commence business rescue proceedings had lapsed and become a nullity without a substantive application in terms of s 130 or s 139 of the Act being launched or granted - whether a person other than an ‘affected person’ may as a defense raise the non-compliance with s 129(3) and (4) without invoking the provisions of s 130 and s 139, taking into account the provisions of s 157 – whether the business rescue practitioner had the necessary locus standi.

**24. Bushveld Chrome Resources (Pty) Ltd & another v Niemcor Africa (Pty) Ltd (In Liquidation) (20687/2014)**

Appealed from GP

Date to be heard: 10 November 2015

Navsa JA, Mhlantla JA, Pillay JA, Swain JA, Mathopo JA

**Company law** – Contract – validity of a share sale agreement – whether the sale is void – if so, whether seller owns the merx or if valid, whether purchaser owns it. **Civil Procedure** – Whether leave should be granted to introduce further evidence on appeal in terms of s 19(b) of the Superior Courts Act, 2013. **Insolvency** – Interpretation of s 341(2) of the Companies Act 61 of 1973 – whether a ‘disposition’ in terms of this section occurs at the time of conclusion of a sale of shares, or upon registration of the transfer of the shares – whether, if s 341(2) is applicable, the court should interfere with the court a quo’s refusal to exercise its discretion in terms of that section to uphold the validity of the agreement and transfer of shares. **Mineral and Petroleum Resources Development Act 28 of 2002** – (Assuming the further evidence is allowed) – Interpretation of s 11(1) of MPRDA – whether sale / cession of shares is void for failure to obtain minister’s approval.

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

Appealed from GP

Date to be heard: 10 November 2015

Ponnan JA, Theron JA, Wallis JA, Petse JA, Willis JA

**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 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.

**26. Freddy Chauke v The State (578/2015)**

Appealed from LT

Date to be heard: 11 November 2015

Maya ADP, Mhlantla JA, Theron JA, Van der Merwe AJA, Baartman AJA

**Criminal law and procedure** - Appeal against conviction of two counts of murder and resulting sentence of life imprisonment on each count – whether appellant was fit to stand trial – whether psychiatric report qualified to be recognised in terms of s 77 of Criminal Procedure Act 51 of 1977 – whether court correct in calling witness to testify as to appellant’s mental capacity – whether State’s case was proved beyond reasonable doubt – whether knowledge of wrongfulness proven – whether sentence shockingly inappropriate – whether court followed correct sentencing procedure – whether s 274 of Criminal Procedure Act correctly applied – whether court correctly applied minimum sentence provisions without making a determination regarding substantial and compelling circumstances.

**27. December Mdluli v The State (229/2015)**

Appealed from GP

Date to be heard: 11 November 2015

Maya ADP, Mhlantla JA, Theron JA, Van der Merwe AJA, Baartman AJA

**Criminal law** - Appeal against conviction of rape resulting in sentence of 18 years' imprisonment – whether State proved case beyond a reasonable doubt – whether evidence of complainant reliable and correctly accepted – whether court correctly relied on medical evidence – whether evidence of appellant correctly rejected – whether sentence shockingly inappropriate.

**28. Lentikile Michael Mocumi v The State (323/2015)**

Appealed from NWM

Date to be heard: 11 November 2015

Navsa JA, Cachailia JA, Shongwe JA, Tshiqi JA, Dambuza JA

**Criminal Law and procedure – Evidence** – cautionary rule – appeal against conviction on the charge of rape in the Regional Court, Taung – confirmed on appeal by North West Division of the High Court full bench - complainant was 14 years old at time she testified in open court – after becoming emotional court appointed intermediary in terms of s 107A of the Criminal Procedure Act 51 of 1977 – trial court found that State witnesses corroborated each other's evidence materially – full bench satisfied that trial court dealt with the discrepancies raised by the appellant – whether trial court erred in finding that State had proven guilt beyond reasonable doubt – whether trial court erred in not giving appellant benefit of doubt where there had been material contradictions in State evidence and whether trial court properly applied cautionary rule in assessing evidence of child complainant.

**29. Bushy Vincent Kekana v The State (498/2015)**

Appealed from GP

Date to be heard: 11 November 2015

Navsa JA, Cachalia JA, Shongwe JA, Tshiqi JA, Dambuza JA

**Criminal Law - Sentence** – when crime committed appellant had been 17 years old – appellant was convicted on two counts of murder, sentenced to life imprisonment for each count; convicted for unlawful possession of a firearm, sentenced to three years imprisonment; and convicted for unlawful possession of ammunition and sentenced to one year imprisonment – whether sentence is appropriate – whether trial court justified in finding that there were no substantial and compelling circumstances.

**30. Samson Given Masike v The State (20565/2014)**

Appealed from GP

Date to be heard: 11 November 2015

Ponnan JA, Bosielo JA, Leach JA, Petse JA, Zondi JA

**Criminal Law and procedure – Evidence** – conviction for robbery with aggravating circumstances - appellant sentenced to 15 years' imprisonment and convicted of two counts of culpable homicide and sentenced to 5 years' imprisonment with effective sentence being 15 years – whether trial court erred by rejecting appellant's evidence as reasonably possibly true whilst it was never put to the appellant during the trial that he lied or contradicted himself.

**31. Lucas Duze v The State (272/2015)**

Appealed from GJ

Date to be heard: 11 November 2015

Ponnan JA, Bosielo JA, Leach JA, Petse JA, Zondi JA

**Criminal Law – Evidence** – Identification – conviction on charges of robbery, kidnapping and attempted murder – identification of the appellant as one of the three people who robbed and kidnapped complainant – whether his identification of the appellant in the circumstances was sufficiently reliable for conviction.

**32. South African Local Authorities Pension Fund v Simangele Eunice Mthembu & another (20649/2014)**

Appealed from KZD

Date to be heard: 12 November 2015

Mpati P, Shongwe JA, Tsiqi JA, Wallis JA, Baartman AJA

**Pension Funds Act 24 of 1956** – appellant sought an order in the court below that the determination by the second respondent that the appellant reinstate and pay a child pension to the first respondent's daughter, which had been terminated two years and five months after she reached 18 years, be substituted with an order dismissing the first respondent's claim on the basis that first respondent's daughter was not a full-time student as contemplated by the appellant's rules – interpretation of the words 'full-time student' contained in the definition of dependent child in appellant's rules – whether termination of child's pension by appellant was lawful.

**33. Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd & another (20711/2014)**

Appealed from GP

Date to be heard: 12 November 2015

Maya ADP, Leach JA, Theron JA, Majiedt JA, Zondi JA

**Contract and Delict** - Unlawful interference with contractual relations - appeal against final interdict granted against appellant - appellant and first respondent each lease premises in a shopping centre from second respondent - appellant interdicted by court a quo from interfering in contractual relationship between first respondent and second respondent by operating a general food supermarket in the shopping centre - whether requirements for delictual claim for unlawful interference in contractual relations met - whether appellant bound by limitations on business activities - whether appellant's business activities were in breach of its lease rights - whether, even if not in breach, appellant's business activities could still form the basis of claim for unlawful interference.

**34. Motor Industry Staff Association v Ian Anthony Macun NO & others (20819/2014)**

Appealed from GP

Date to be heard: 12 November 2015

Navsa JA, Lewis JA, Pillay JA, Petse JA, Dambuza JA

**Administrative Law** – whether the decisions of the first respondent should be set aside.

**Labour** – collective agreement – jurisdiction – appellant sought order for review in Gauteng Division of High Court, Pretoria declaring invalid the decision of first respondent to extend the period of the Motor Industry Bargaining Council (MIBCO) Main Collective Agreement to 31 August 2014 and further to 31 January 2015 – MIBCO raised point in *limine* on the High Court's lacking jurisdiction – there being conflicting high court judgments on meaning of s 157(1) and (2) of the Labour Relations Act 66 of 1995 (LRA) relating to the concurrent jurisdiction of the high court – whether high court has jurisdiction to determine appellant's review of Minister's decision under s 32 of the LRA extending period of application of collective agreement – whether the dispute is moot since the period for both main and administrative collective agreements has since lapsed.

**35. Joseph Pompo Goqwana v The Minister of Safety and Security & others (20668/2014)**

Appealed from GP

Date to be heard: 13 November 2015

Mpati P, Petse JA, Willis JA, Swain JA, Zondi JA

**Criminal Procedure** - search and seizure warrant– appellant launched an urgent application in the high court for an order to return various items seized on the strength of a search and seizure warrant issued by the fifth respondent - whether warrant was valid – whether warrant complies with principle of intelligibility – whether for these shortcomings, warrant falls to be declared invalid.

**36. Blair Atholl Homeowners Association & others v The City of Tshwane Metropolitan Municipality (20634/2014)**

Appealed from GP

Date to be heard: 13 November 15

Lewis JA, Cachalia JA, Tshiqi JA, Pillay JA, Dambuza JA

**Administrative Law** – Local Government - levying of rates by local government – appeal against refusal by court a quo to set aside a draft property rates policy and draft by-laws adopted by municipality (respondent) - appellant is a homeowners' association in respect of a development which has contracted with the municipality to privately provide its own services (including water, sewerage



and road infrastructure and maintenance), and so receives limited municipal services from the municipality – draft rates policy and by-laws do not differentiate between erven in this development and erven which receive full municipal services – whether rates policy inequitable and in violation of the Municipal Property Rates Act 6 of 2004 – whether rates policy violates principle of legality – appropriate remedy – whether appellant also has locus standi and properly made out a case seeking a prohibitory interdict relating to rates claimed for the period prior to July 2008, where valuation roll disputed.

**Civil Procedure** – Whether appellants properly raised issues and laid basis for order in founding papers.

**37. The Commissioner for the South African Revenue Service v Capstone 556 (Pty) Ltd (20844/2014)**

Appealed from WCC

Date to be heard: 13 November 2015

Ponnan JA, Bosielo JA, Wallis JA, Mbha JA, Van der Merwe AJA

**Income Tax Act 58 of 1962** – appeal, cross-appeal and conditional cross-appeal against judgment of the court below – whether for income tax purposes, proceeds of the sale of shares were of a capital nature - whether payment made by respondent in relation to an ‘equity kicker’ is part of the ‘base cost’ of the shares for purposes of capital gains tax – whether the payments are deductible for income tax purposes in terms of s 11(a) and s 23(g) of the Income Tax Act.

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

Appealed from WCC

Date to be heard: 16 November 2015

Navsa JA, Wallis JA, Pillay JA, Dambuza JA, Van der Merwe 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 –the following issues arise: 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 *peregrini* is required for a court to exercise jurisdiction where there is sufficient connection between the suit and area of jurisdiction of the court.

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

Appealed from KZP

Date to be heard: 16 November 2015

Lewis JA, Ponnan JA, Theron JA, Willis JA, Mathopo JA

**Civil Procedure** – Procedure - Practice - Absolution from the instance - Pension Funds Act 24 of 1956 – whether the amendment to the appellant’s rules were done in accordance with s 12 of the Pension Funds Act 24 of 1956 and whether non-compliance with the time periods in the Act, in respect of the amendment process, were complied with and if not, whether this renders any amendment invalid - whether the respondent is entitled to invoke a ‘collateral defence’ to a claim by the appellant – whether the court a quo was correct in granting the respondent absolution from the instance with costs.

**40. Annie Hendricks v Margaret Hendricks & others (20519/2014)**

Appealed from WCC

Date to be heard: 16 November 2015

Mhlantla JA, Leach JA, Tshiqi JA, Majiedt JA, Saldulker JA

**Eviction** - Appeal against refusal to grant eviction order - appellant sold immovable property to first and second respondent, but retained right of *habitatio* - respondents refused her demand that they vacate the property and allow her to reside there - whether appellant's right of *habitatio* entitles her to

evict respondents - whether the respondents are unlawful occupiers for the purposes of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998.

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

Appealed from GP

Date to be heard: 17 November 2015

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

**Intellectual Property - Copyrights – Royalties** – 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.

**42. The City of Tshwane Metropolitan Municipality & others v Nambiti Technologies (Pty) Ltd (20580/2014)**

Appealed from GP

Date to be heard: 17 November 2015

Maya ADP, Boesielo JA, Wallis JA, Petse JA, Dambuza JA

**Administrative Law** – Review – Tender – whether the City of Tshwane acted unfairly or with no justification in cancelling the tender – whether the City of Tshwane could proceed to adjudicate the cancelled tender in light of the fact that even the stage of evaluating the bids did not take place and there were no short-listed candidates.

**43. Terence John Rossitter & others v Nedbank Ltd (96/2014)**

Appealed from: KZP

Date to be heard: 17 November 2015

Navsa JA, Shongwe JA, Mbha JA, Mathopo JA, Baartman AJA

**Rescission of judgment** – Whether rescission of judgment in terms of rule 42(1)(a) of the Uniform Rules was correctly refused – respondent failed to comply with rule 31(5)(a) when seeking default judgment against applicant – default judgment was granted notwithstanding this non-compliance – whether this was sufficient grounds to have judgment rescinded – alternatively, whether a bona fide and substantial defence is required to exist, and if so, whether it was proved.

**44. Engen Petroleum Limited v The Business Zone 1010 CC t/a Emmarentia Convenience Centre & others (20513/2014)**

Appealed from GP

Date to be heard: 18 November 2015

Ponnan JA, Leach JA, Theron JA, Majiedt JA, Swain JA

**Administrative Law** – Contract - Petroleum Products Act 120 of 1977– whether the controller and/or the Minister correctly interpreted the provisions of s 12B(4)(a) of the Petroleum Products Act 120 of 1977 - whether the decision of the controller and the Minister constitute administrative action as contemplated by the provisions of the Promotion of Administrative Justice Act 3 of 2000 and the circumstances under which it was appropriate for the court a quo to correctly substitute the controller's decision on review.

**45. Reuben Somiah v The State (385/2015)**

Appealed from GP

Date to be heard: 18 November 2015

Cachalia JA, Tshiqi JA, Saldulker JA

**Criminal Law - Sentence** – conviction on charges of murder, two counts of attempted murder and malicious damage to property – suitability of effective sentence of 15 years' imprisonment – whether viva voce evidence evaluated correctly by the trial court given that the witnesses who incriminated the appellant were members of the family who had an acrimonious relationship with appellant's family – whether further evidence that appellant wished to present meets requirements of s 309B(5)(b) of the Criminal Procedure Act 51 of 1977.

**46. Sithembiso Ronald Ngculu v The State (438/2015)**

Appealed from LT

Date to be heard: 18 November 2015

Bosielo JA, Zondi JA, Mathopo JA, Van der Merwe AJA, Baartman AJA

**Criminal Law** – appeal against conviction and sentence of life imprisonment on charges of murder, assault with intent to do grievous bodily harm – appellant charged with six other accused – defence counsel's conflict of interest became apparent during cross-examination of first State witness – whether defence counsel was conflicted and ought to have withdrawn from representing appellant and whether failure to withdraw constituted gross irregularity – appellant was ill-advised not to testify at trial and court failed to warn appellant of implications of not testifying – whether that constituted gross irregularity capable of being cured by special entry in terms of s 317 of the Criminal Procedure Act 51 of 1977 and whether appellant must be given leave to present further evidence – whether proper case made for leave to adduce further evidence.

**47. Maria Johanna Prinsloo & others v The State (827/2011)**

Appealed from GNP

Date to be heard: 18 November 2015

Brand AJA, Fourie AJA, Eksteen AJA

**Criminal Law** – Appeal against conviction and sentences imposed - whether the State proved beyond reasonable doubt that the appellants acted with criminal intention and are guilty as charged.

**48. National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development & another (20781/2014)**

Appealed from GP

Date to be heard: 19 November 2015

Maya ADP, Petse JA, Saldulker JA, Mbha JA, Van der Merwe AJA

**Criminal Procedure Act 51 of 1977** - constitutionality of Section 7(1)(a) of the Criminal Procedure Act – appellant lodged an appeal in the high court to declare section 7(1)(a) of the Criminal Procedure Act unconstitutional in so far as it does not permit juristic persons to also institute private prosecutions – whether appellant has locus standi - whether section 7(1)(a) of the Criminal Procedure Act is unconstitutional – whether, if granted, permission to institute private prosecution, meeting the requirements set out in s 7(1)(a), this would not be in contravention of s 179 of the Constitution.

**49. Probest Projects (Pty) Ltd v The Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund (20761/2014)**

Appealed from WCC

Date to be heard: 19 November 2015

Cachalia JA, Shongwe JA, Tshiqi JA, Swain JA, Baartman AJA

**Attorney's Act 53 of 1979** - Special Plea - theft of funds – whether the appellant gave proper notice in terms of s 48(1)(a) of the Attorneys Act of its claim against the respondent based on the theft of funds entrusted with an attorney and whether the appellant had knowledge of the theft of the funds on 23 July 2009 - whether the court a quo was correct in finding that the appellant had knowledge of the theft of funds.

**50. Abraham Snyers & another v Mgro Properties (Pty) Ltd & another (20816/2014)**

Appealed from LCC

Date to be heard: 19 November 2015

Mhlantla JA, Leach JA, Willis JA, Zondi JA, Mathopo JA

**Property Law** - Extension of Security of Tenure Act 62 of 1997 - Eviction –whether the respondents have satisfied the requirements for an eviction order in terms of s 9(2) of the Extension of Security of Tenure Act 62 of 1997.

**51. Avhaphani Daniel Khavhadi & others v The State (459/2015)**

Appealed from LT

Date to be heard: 20 November 2015

Navsa JA, Lewis JA, Pillay JA, Mbha JA, Zondi JA

**Criminal Law – Evidence of accomplice** – appellants convicted of murder and sentenced to life imprisonment – conviction based on evidence of accomplice – whether accomplice’s evidence was satisfactory in all material respects – whether State had proven its case beyond reasonable doubt – whether the court a quo was justified in sentencing the second appellant to life imprisonment without considering other forms of punishment.

**52. Director of Public Prosecutions, Western Cape v Branham Dale Kock (20841/2014)**

Appealed from WCC

Date to be heard: 20 November 2015

Navsa JA, Lewis JA, Pillay JA, Mbha JA, Zondi JA

**Criminal law** - Appeal against sentence – respondent convicted of 27 counts of fraud – involving actual prejudice to the South African Revenue Service in amount of approximately R780 000 – sentenced to four years’ imprisonment, wholly suspended, subject to condition that respondent repay SARS and perform community service – leave to appeal against sentence granted by this court – whether there is a basis for interference with the sentence – whether there were material misdirections – whether a custodial sentence should have been imposed.

**53. Minister of Water and Environmental Affairs v Kloof Conservancy & others (106/2015)**

Appealed from KZD

Date to be heard: 20 November 2015

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

**Constitutional Law** – principles of legality, separation of powers and co-operative government – whether it was appropriate for the high court to make declaratory orders in respect of the Minister in light of these principles

**Environmental law – National Environmental Management: Biodiversity Act 10 of 2004** – failure on the part of relevant authorities to publish a national list of invasive alien species (IAS) and regulations as required by s 70 of National Environmental Management: Biodiversity Act (NEMBA) – Minister published the requisite IAS regulations – whether publication of requisite IAS list and regulations by Minister rendered issues before high court moot.

**54. The Isibaya Fund v Ernstus Jacobus Visser & another (20278/2014)**

Appealed from GP

Date to be heard: 20 November 2015

Shongwe JA, Tshiqi JA, Majiedt JA, Willis JA, Swain JA

**Prescription – s 424 of Companies Act 61 of 1973** - appellant lodged an application in the court below to hold, inter alia, the respondents liable for contravening s 424 of the Companies Act 61 of 1973 and to hold the respondents personally liable to make payment in the amount of R80 million, jointly and severally owed to appellant for losses in the affairs of respondents’ company – respondents raised prescription as special plea on basis that the appellant had knowledge of conduct of respondents for approximately 7 years – whether the appellant’s claim has prescribed – when appellant acquired sufficient knowledge to formulate claim under s 424 of the Companies Act – whether alleged acknowledgment of debt is inadmissible - whether appeal had lapsed due to late filing of appeal record.

**55. Patrick Thabang Kgotlagomang v Petrus Johannes Joubert (20820/2014)**

Appealed from FB

Date to be heard: 23 November 2015

Bosielo JA, Wallis JA, Pillay JA, Willis JA, Van der Merwe AJA

**Summary Judgment** – defence – appeal against the granting of summary judgment by the magistrates' court in terms of which appellant was directed to pay the sum of R55 264 to the respondent for outstanding municipal rates and taxes in terms of a lease agreement – appellant denying his signature on lease agreement and further denying knowledge of existence of contract – summary judgment granted by magistrates' court on basis that appellant's opposing affidavit fell short of level of detail required – summary judgment upheld by the full bench – whether appellant's defence disclosed fully the nature and grounds of the defence and the material facts relied upon.

#### **56. Tasima (Pty) Ltd v Department of Transport & others (792/15)**

Appealed from GP

Date to be heard: 23 November 2015

Brand AJA, Cachalia JA, Majiedt JA, Saldulker JA, Mbha JA

**Administrative Law – Review – Constitutionality and Legality of Contract** – the appellant was awarded a tender in 2001 to develop, maintain and operate the electronic national traffic information system (eNaTIS). The appellant contends that the eNaTIS system is its principal source of income and business and the Department of Transport (DOT) refuses to pay for work performed. On 3 December 2001, the applicant and the DOT concluded a turnkey agreement, in terms of which the duration of the appellant's services was five years, which was extended in 2007 and 2010. In 2010 the director general of the DOT then purported to extend the agreement for a further five years to 30 April 2015. The DOT sought to declare that extension unlawful – the appellant alleges that as far back as 2012, the DOT had been attempting to unlawfully transfer the eNaTIS system away from them, resulting in a dispute concerning the duration and status of the agreement – the appellant launched an urgent application under rules 6(11) and 6(12) for an order declaring the DOT and Road Traffic Management Corporation and others to be in contempt of court and granting relief to ensure that the previous court orders and the agreement were complied with. The DOT & others launched a counter-application seeking to review and set aside the extension of the agreement in 2010 by the DG - whether the letters dated 24 and 25 February 2015 and 4 March 2015 constitute a breach of the turnkey agreement for the purpose of the eNaTIS system (contract RT1194KA) dated 3 December 2001 - whether the instructions contained therein are unlawful and should be set aside – clarity on the legal status of the agreement, subsequent court orders and the provisions governing the operation and transfer of the eNaTIS system.

#### **57 Westinghouse Electric Belgium Société Anonyme v Eskom Holdings (Soc) Ltd & another**

Appealed from GJ

Date to be heard: 23 November 2015-10-01

Lewis JA, Ponnann JA, Theron JA, Petse JA, Mathopo JA

**Administrative Law** – whether the appellant has locus standi to review the decision of the Board Tender Committee (BTC) – whether the BTC was not authorised in law to invoke a clutch of 'strategic considerations' listed by it in a letter to the Minister of Public Enterprises stating the reasons for its decision to adjudicate the tender – whether the first respondent's actions in its assessment of any one or more of the 'strategic considerations' to adjudicate the tender were reviewable – whether the first respondent acted on a further reason itself not stated in the letter to the minister as included in the strategic considerations as a basis to award the tender to the second respondent – whether the BTC's decision, if reviewed and set aside, is substituted, or whether it should be remitted for reconsideration.

**58. Tellumat (Proprietary) Limited v Appeal Board of the Financial Services Board (221/2015)**

Appealed from GNP

Date to be heard: 24 November 2015

Mpati P, Leach JA, Wallis JA, Willis JA, Baartman AJA

**Administrative Law** – whether the Financial Services Board’s finding that the transfer scheme failed to recognise the right of certain members of the Tellumat Pension Fund to a three per cent pension increase involved a material mistake of fact, demonstrated a failure to take into account all relevant considerations and was unreasonable in the sense contemplated in s 6(2)(h) of the Promotion of Administrative Justice Act 3 of 2000 – whether the FSB appeal board’s finding that the transfer scheme was not ‘reasonable and equitable’ because it did not accord with s 151(a) of the Pension Funds Act 24 of 1956 was materially influenced by an error of law, involved a material mistake of fact, demonstrated a failure to take into account all relevant considerations and was unreasonable in the sense contemplated in s 6(2)(h) of the PAJA.

**59. Registrar of Pension Funds v Howie C T & others (222/2015)**

Appealed from GNP

Date to be heard: 24 November 2015

Mpati P, Leach JA, Wallis JA, Willis JA, Baartman AJA

**Administrative Law** – Pension Funds Act 24 of 1956 – whether or not the Financial Services Board Appeal Board constituted in terms of s 26 of the Financial Services Board Act 97 of 1990 was correct in holding that the registrar should not have been satisfied that the Tellumat Pension Fund’s scheme dated 24 May 2011 for the transfer of fund owned annuity policies to the individual members complied with the provisions of s 14 of the Pension Funds Act.

**60. Ethekewini Municipality v Mike Sellick Trust (Pty) Ltd (20672/2014)**

Appealed from KZD

Date to be heard: 24 November 2015

Maya ADP, Shongwe JA, Majiedt JA, Swain JA, Mathopo JA

**Contract** – Prescription - special plea - return of equipment hired – action was instituted by the respondent in the court a quo for the return of certain plant and earth moving equipment, which was let to the appellant after agreements were concluded in 1993 - court a quo dismissed the special plea on the ground that the debt has been extinguished by prescription - whether a claim by an owner for the return of its movable property constitutes a debt in terms of the Prescription Act 68 of 1969 and is accordingly extinguished by prescription after a period of three years.

**61. Minister of Basic Education & others v Basic Education for All & others (20793/2014)**

Appealed from GNP

Date to be heard: 24 November 2015

Navsa JA, Lewis JA, Cachalia JA, Petse JA, Dambuza JA

**Constitutional Law** – the appeal raises the constitutional issue of the right to basic education enshrined in s 29(1)(a) of the Constitution and the standard of compliance imposed on the appellants by the correlative obligation.

**Education** – whether the right to basic education includes the right of each learner to a textbook for each subject in time for the commencement of teaching of the curriculum – what standard is required of the appellants to fulfil its obligations in terms of s 29(1)(a) of the Constitution – whether the appellants infringed the right to a basic education of learners in the Limpopo Province – whether the court a quo had the authority to order the appellants to disclose details of their budgeting process in circumstances where such relief was not specifically applied for.