

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 1 2016**

CASES ENROLLED FOR HEARING: February/March 2016

1A. The Minister of Justice and Constitutional Development & 11 others v The Southern African Litigation Centre & others (867/2015)

Appealed from GP

Date to be heard: 12 February 2016

Lewis JA, Ponnann JA, Shongwe JA, Majiedt JA, Wallis JA

Constitutional law – appeal against a decision of the full court - whether the declaratory orders issued by the court below, that the failure by the State to take steps to arrest and or detain the President of the Republic of Sudan, Omar Al Bashir, was inconsistent with the Constitution and that the State take reasonable steps to arrest President Bashir, are now moot: whether these orders violate national legislation and customary international law – whether these orders expose South Africa to adverse international legal and diplomatic consequences.

International law – whether customary international law has been developed to exclude personal immunity from arrests of a serving head of a State, despite a warrant for arrest on account of allegedly committing crimes against humanity - whether any such immunity exists under national law.

1. Baaitse Elizabeth Nkabinde & another v The Judicial Service Commission & others (20857/2014)

Appealed from GJ

Date to be heard: 15 February 2016

Navsa ADP, Lewis JA, Leach JA, Pillay JA, Swain JA

Constitutional Law – whether ss 21-23 of the Judicial Service Commission Act 9 of 1994 are unconstitutional - whether s 24(1) of the JSC Act are unconstitutional on the ground that they impermissibly introduce other role players to the removal of a judge from office and are accordingly invalid. **Administrative Law - Judicial Service Commission Act 9 of 1994** – whether the decisions of the JSE reversing its earlier decision of 22 July 2009 to hold preliminary enquiry in terms of rule 3(1) of the old rules of the JSE should be reviewed and set aside and to start the process de novo by applying the new procedure in terms of the new amendment – whether the establishment of the Tribunal is unlawful and unconstitutional and therefore invalid.

2. Rudolph Johan du Toit v Magistrate Johanna Ntshinghila & others (733/2015)

Appealed from GNP

Date to be heard: 15 February 2016

Ponnann JA, Cachalia JA, Petse JA, Mbha JA, Victor AJA

Criminal Law and Procedure - the issue on appeal is whether the appellant, charged with illegal possession of child pornography is entitled to be provided with copies of the pornographic images for purpose of preparing for trial, as opposed to merely being granted access to the pornographic material - the correctness or otherwise of a decision of the first respondent – whether – s 24(b)(1) of the Films and Publication Act 65 of 1996 should be declared inconsistent with the Constitution.

3. Sinethemba Ntlanyeni v The State (015/2012)

Appealed from SCA

Date to be heard: 15 February 2016

Tshiqi JA, Wallis JA, Dambuza JA, Plasket AJA, Tsoka AJA

Criminal Procedure - Reconsideration of dismissal of the appellant's petition—application in terms of section 17(2)(f) of Superior Courts Act 10 of 2013 - whether this court should grant the applicant leave to appeal against his conviction and whether this court may and should grant the appellant condonation for the late filing of his application for re-consideration and if necessary variation.

4. Rumdel Cape/Exr Holdings / Mazcon Joint Venture v South African National Roads Agency Soc Ltd (234/2015)

Appealed from KZD

Date to be heard: 16 February 2016

Maya AP, Seriti JA, Pillay JA, Mathopo JA, Fourie AJA

Contract – Interpretation - whether the employer or the contractor must bear the extraordinary costs of securing civil works being constructed, from deliberate attempts to damage and sabotage the works – proper interpretation of the contract concluded between the parties.

5. The Commissioner for the South African Revenue Service v Klüh Investments (Pty) Ltd (115/2015)

Appealed from WCC

Date to be heard: 16 February 2016

Ponnan JA, Leach JA, Willis JA, Zondi JA, Kathree-Setlhoane AJA

Income Tax Act 58 of 1962 - Interpretation of section 26(1) and the First Schedule – whether the proceeds of the disposal of a plantation by the respondent in the 2004 year of assessment constitutes gross income by virtue of s 26(1) of the Income Tax Act 58 of 1962 read with the provision in paragraph 14(1) of the First Schedule to the Act - whether the said proceeds are subject to capital gains tax or income tax where the respondent did not carry out the physical plantation farming activities, but contracted Steinhoff Southern Cape (Pty) Limited.

6. Minister of Police v Dlwathi Steve (20604/2014)

Appealed from GJ

Date to be heard: 16 February 2016

Cachalia JA, Majiedt JA, Swain JA, Saldulker JA, Baartman AJA

Delict – Evidence – whether the court a quo erred in ruling that rule 36(9) required that the person who made the report should be the one who testified - whether unsworn evidence should be admissible and the reliance on reports of experts not qualified and not called to give evidence – whether the respondent failed to prove his past loss of earnings and future earning capacity.

7. Khangale Marshall Nndanduleni & another v The State (084/2014)

Appealed from LT

Date to be heard: 17 February 2016

Tshiqi JA, Zondi JA, Plasket AJA

Criminal law – Conviction - Sentence – the appellants' were convicted of murder, attempted murder and robbery with aggravating circumstances. The issue on appeal was whether the State proved its case beyond reasonable doubt and whether the State succeeded in proving common purpose between the first and second appellants - whether the trial court correctly rejected the versions of the appellant.

8. Antoinette Nkhesani Masuku v The State (574/2014)

Appealed from GNP

Date to be heard: 17 February 2016

Lewis JA, Tshiqi JA, Petse JA, Willis JA, Saldulker JA

Criminal Law – Conviction - Sentence – whether the State proved its case beyond reasonable doubt against the appellant on the evidence of a single witness who was an accomplice – whether the decision not to acquit the appellant in terms of s 174 of the Criminal Procedure Act 51 of 1977 was proper and lawful - whether the appellant had a fair trial on the quality of legal representation during the trial – whether the conduct of the trial judge constituted an irregularity that deprived the appellant of a fair trial.

9. Daniël Johannes Stephanus van der Bank v Die Staat (245/2015)

Appealed from GP

Date to be heard: 17 February 2016

Majiedt JA, Pillay JA, Fourie AJA, Victor AJA, Baartman AJA

Criminal Law - Evidence – the appellant appeared before the regional court on charges of rape and indecent assault, allegedly committed during 1999 and was convicted of both counts in June 2005. The issues on appeal are the appointment of an intermediary in accordance with the provisions of s

170A(1) of the Criminal Procedure Act 51 of 1977 even though the complainant was 18 years of age at the time – whether the trial court erred in accepting the evidence of the complainant who was a single witness.

10. South African Municipal Workers' Union & others v Mohau Williams Mokgatla & others (20810/2014)

Appealed from GJ

Date to be heard: 18 February 2016

Maya AP, Wallis JA, Mbha JA, Dambuza JA, Mathopo JA

Labour law and procedure – Jurisdiction of High Court – appeal against order of the High Court setting aside decision by a trade union to suspend, expel or 'remove' members – leave to appeal granted by court below – whether the High Court lacked jurisdiction and the Labour Court had sole jurisdiction in terms of ss 157 and 158 of the Labour Relations Act 66 of 1995 – whether the first appellant breached its constitution.

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

Appealed from WCC

Date to be heard: 18 February 2016

Navsa ADP, Swain JA, Zondi JA, Tsoka AJA, Kathree-Setiloane AJA

Delict - claim for damages – whether the court a quo erred in finding a causal link between the appellant's driver's undisputed negligence and the damages sustained as well as the apportionment of damages between the parties in convention and reconvention.

12. Cornelius Johannes Alexander Lourens v The Speaker of the National Assembly of Parliament of the Republic of South Africa & others (20827/2014)

Appealed from WCC

Date to be heard: 18 February 2016

Lewis JA, Ponnann JA, Seriti JA, Fourie AJA, Plasket AJA

Constitutional Law - Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 - whether the failure by the respondents to publish all legislation in all eleven languages amounted to unfair discrimination – whether the respondents had a duty to publish all national legislation in each of the eleven languages to ensure that all existing legislation was translated to each of the official languages – whether the failure to do so constituted unfair language discrimination and whether the present practice and procedure as encapsulated in Parliament's Joint Rules 220, 221 and 222 constituted unfair language discrimination.

13. Nicolaas Johannes Swart v Conrad Alexander Starbuck & others (20785/2014)

Appealed from GP

Date to be heard: 19 February 2016

Navsa ADP, Tshiqi JA, Wallis JA, Victor AJA, Baartman AJA

Contract - Insolvency Act 24 of 1936 – whether agreements for the sale of immovable property in the appellant's insolvent estate signed by the respondents prior to them being appointed as provisional trustees of the insolvent estate were valid – whether or not the respondents had the necessary authority to sell the immovable property in terms of the provisions of s 80 of Insolvency Act 24 of 1936 and whether the conduct of the respondents was contrary to the provisions of s 82(1) of the Act – whether the appellant proved damage as contemplated in terms of s 82(8) of the Insolvency Act.

14. Feedpro Animal Nutrition (Pty) Ltd v Reada Anna Nienaber NO & another (20866/14)

Appealed from FB

Date to be heard: 19 February 2016

Lewis JA, Petse JA, Willis JA, Saldulker JA, Kathree-Setiloane AJA

Prescription Act 68 of 1969 – Appeal against dismissal of special plea of prescription – leave to appeal granted by court below – contract for purchase of fertilizer for agricultural purposes – late

delivery of fertilizer by appellant, constituting breach of contract – respondent allegedly under some uncertainty as to whether breach caused harvest failure and loss – summons served more than three years after date of breach – whether debt became due on date of breach or upon confirmation that loss had been suffered – whether appellant discharged onus of proving knowledge or deemed knowledge of facts giving rise to debt – whether debt prescribed – whether s 13(2) of the Prescription Act relating to reciprocal contracts was applicable.

15. The Salem Party Club & others v The Salem Community & others (20626/201421)

Appealed from LCC

Date to be heard: 19 February 2016

Cachalia JA, Seriti JA, Pillay JA, Mbha JA, Dambuza JA

Constitutional Property Law - Land reform - Restitution in Land Rights Act 22 of 1994 - claim for restitution of right in land in terms of Restitution Act by respondent community - found by court a quo to be a community as defined in the Restitution Act, that it had indigenous rights to the Salem Commonage after 1913, and that they were dispossessed of such rights as a result of institutionalised State discriminatory practices - whether the respondent community had proved that it qualified as a community in terms of the Act.

16. MV “Shark Team” & others v Sarah Tallman (190/2015)

Appealed from WCC

Date to be heard: 22 February 2016

Cachalia JA, Willis JA, Zondi JA, Plasket AJA, Kathree-Setiloane AJA

Delict – Merchant Shipping Act 57 of 1951 – Appeal against order declaring appellants jointly and severally liable for damages arising from death of respondent’s husband by drowning following capsizing of shark cage diving vessel – leave to appeal granted by court below – whether the first respondent (the skipper of the vessel) was negligent and his negligence caused the death of the deceased – whether there was limitation of liability in respect of the third respondent (skipper’s employer) in terms of s 261 of the Merchant Shipping Act.

17. Dines Chandra Manilal Gihwala & others v Grancy Property Limited & others (20760/14)

Appealed from WCC

Date to be heard: 22 February 2016

Lewis JA, Leach JA, Seriti JA, Wallis JA, Tsoka AJA

Company law – Constitutional law – Contract law – Civil Procedure – This matter arises from a consolidation of two action proceedings brought against the first and second appellants, who were directors of a company in which inter alia the first respondent was a shareholder. The causes of action were numerous and overlapping, and range from breach of contract to breach of fiduciary duties. The case before the court is an appeal and cross-appeal against an order by the court below inter alia (i) declaring the first and second appellants liable to the first respondent as a result of breach of contract; (ii) requiring the first and second appellants (and the third defendant in the court below) to deliver certain books of accounts and financial records to the first appellant; (iii) an order relating to certain statements of account to be provided by the appellants (including the third to seventh appellants in their capacity as trustees of a family trust), and ancillary relief; (iv) declaring the first and second appellants to be delinquent directors in terms of s 162(5)(c) of the Companies Act 71 of 2008 (2008 Act); and (v) as to costs – leave to appeal was granted by the court below.

Company law – Constitutional law – Whether s 162(5) of the 2008 Act is constitutional – whether s 162(5) is unconstitutional and invalid insofar as it fails to afford a court any discretion whether to grant a declaration of delinquency; whether s 162(5) operates retrospectively to conduct that took place before the effective date of the 2008 Act – if so, whether this infringes the rule of law – whether the impugned sections infringe the rights to dignity, and/or freedom of trade, occupation and profession, and/or access to courts – whether s 162(6)(b)(ii) is unconstitutional and invalid to the extent that it requires a court to grant a delinquency order for no less than seven years.

Company law – Contract law – Whether the nature of the relationship between the appellants and the first and second respondents was a partnership, as shareholders in a company, parties to a joint

venture, or some other contract – whether the court below was correct in finding an agreement between the parties outside of the company’s memorandum of incorporation.

Company law – whether the first appellant may be held liable under s 424 of the Companies Act 61 of 1973 (1973 Act), and whether this section is applicable to actions instituted after the coming into effect of the 2008 Act – whether the first appellant may be held liable under s 77 of the 2008 Act, and may be invoked by the first and second respondents – whether the rule in *Foss v Harbottle* is applicable, and whether the first and second respondents are entitled to recover amounts paid by a company (of which they are shareholders) to the appellants where the company itself would have a claim for recovery – whether an order of delinquency is available and/or compelled against the first appellant under s 162(5) of the 2008 Act – whether the court below was correct in ordering the third to seventh appellants to render a statement of account to the respondents.

Civil Procedure – whether the court below was correct in respect of various factual findings, and the effect of the decision by the appellants not to give evidence – whether the costs order of the court below, including as to scale, was correct.

18. Renasa Insurance Company v Christopher Brian Watson & another (32/2015)

Appealed from WCC

Date to be heard: 22 February 2016

Ponnan JA, Tshiqi JA, Saldulker JA, Mbha JA, Fourie AJA

Insurance contract-indemnity under short-term insurance policy – action in the high court of claim for losses in excess of approximately R17 million under a written agreement of insurance following repudiation of insurance claim by appellant – it being common cause that the fire at the first respondent’s business premises was caused by arson-whether the appellant had established on a balance of probabilities that the respondent’s claim for indemnity under its short-term insurance policy with the appellant were precluded in that the claims were allegedly fraudulent, in that the damage was caused by the first respondent’s wilful act or by virtue of the first respondent’s failure to take reasonable steps and precautions to prevent such damage occurring - high court finding on the merits that the appellant had not discharged the onus and that the first respondent’s claim were not precluded by the policy - whether the appellant had established on a balance of probabilities that the respondent’s claim for indemnity under its short-term insurance policy with the appellant was precluded.

19. Roviana Property (Pty) Ltd & another v Ismail Suliman Dadabhay & others (20606/2014 and 20607/2014)

Appealed from GP

Date to be heard: 23 February 2016

Navsa ADP, Majiedt JA, Pillay JA, Swain JA, Victor AJA

Civil Practice and Procedure – Company Law - Reconsideration of dismissal of application for special leave to appeal - two applications for special leave to appeal to this Court in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 - the two applications for special leave to appeal were against the full bench of the Gauteng Provincial Division, Pretoria to this Court were dismissed (Cachalia and Willis JJA) - decisions by the Justices referred to the President for reconsideration and if necessary vary the terms of s 17(2)(f) of the Act - the issue in the proposed appeals is whether the full bench had the powers to base its decision on issues appellants contend had not been adequately pleaded and supported by evidence during the trial, and the full bench's power to make findings in favour of an onus bearing party in respect of a cause of action absent supporting evidence - whether special leave to appeal should be granted - on the merits (a) whether the full bench decided issues beyond those pleaded and proved during the trial; (b) whether on the basis of the pleaded issues the plaintiff in the trial court discharged the onus of proving that the defendants held shares in certain companies as nominees and whether certain transactions constituted simulated transactions.

[17]. Dines Chandra Manilal Gihwala & others v Grancy Property Limited & others (20760/14)

Appealed from WCC

Date to be heard: 23 February 2016

Lewis JA, Leach JA, Seriti JA, Wallis JA, Tsoka AJA

Company law – Constitutional law – Contract law – Civil Procedure – This matter arises from a consolidation of two action proceedings brought against the first and second appellants, who were directors of a company in which inter alia the first respondent was a shareholder. The causes of action were numerous and overlapping, and range from breach of contract to breach of fiduciary duties. The case before the court is an appeal and cross-appeal against an order by the court below inter alia (i) declaring the first and second appellants liable to the first respondent as a result of breach of contract; (ii) requiring the first and second appellants (and the third defendant in the court below) to deliver certain books of accounts and financial records to the first appellant; (iii) an order relating to certain statements of account to be provided by the appellants (including the third to seventh appellants in their capacity as trustees of a family trust), and ancillary relief; (iv) declaring the first and second appellants to be delinquent directors in terms of s 162(5)(c) of the Companies Act 71 of 2008 (2008 Act); and (v) as to costs – leave to appeal was granted by the court below.

Company law – Constitutional law – Whether s 162(5) of the 2008 Act is constitutional – whether s 162(5) is unconstitutional and invalid insofar as it fails to afford a court any discretion whether to grant a declaration of delinquency; whether s 162(5) operates retrospectively to conduct that took place before the effective date of the 2008 Act – if so, whether this infringes the rule of law – whether the impugned sections infringe the rights to dignity, and/or freedom of trade, occupation and profession, and/or access to courts – whether s 162(6)(b)(ii) is unconstitutional and invalid to the extent that it requires a court to grant a delinquency order for no less than seven years.

Company law – Contract law – Whether the nature of the relationship between the appellants and the first and second respondents was a partnership, as shareholders in a company, parties to a joint venture, or some other contract – whether the court below was correct in finding an agreement between the parties outside of the company’s memorandum of incorporation.

Company law – whether the first appellant may be held liable under s 424 of the Companies Act 61 of 1973 (1973 Act), and whether this section is applicable to actions instituted after the coming into effect of the 2008 Act – whether the first appellant may be held liable under s 77 of the 2008 Act, and may be invoked by the first and second respondents – whether the rule in *Foss v Harbottle* is applicable, and whether the first and second respondents are entitled to recover amounts paid by a company (of which they are shareholders) to the appellants where the company itself would have a claim for recovery – whether an order of delinquency is available and/or compelled against the first appellant under s 162(5) of the 2008 Act – whether the court below was correct in ordering the third to seventh appellants to render a statement of account to the respondents.

Civil Procedure – whether the court below was correct in respect of various factual findings, and the effect of the decision by the appellants not to give evidence – whether the costs order of the court below, including as to scale, was correct.

20. The Body Corporate of Riverview Sectional Title Scheme v The City of Tshwane Metropolitan Municipality (30/2015)

Appealed from GP

Date to be heard: 23 February 2016

Ponnan JA, Petse JA, Zondi JA, Dambuza JA, Mathopo JA

Sectional titles-water-local government– appellant had instituted an urgent application in the high court in which it sought an order directing the respondent to restore full water supply to it with immediate effect – common cause that the appellant had not been served with a notice of the respondent’s intention to restrict the appellant’s water supply – high court finding that the respondent acted within its rights in restricting the water supply thus making spoliation action inappropriate in the circumstances – whether the respondent was lawfully entitled to restrict the appellant’s water supply – whether notice to the appellant was required – whether water can be restricted whilst dispute with respondent still pending – did the municipality comply with the provisions of s 3 of the Water Service Act 108 of 1997.

21. Mzwanele Lubando v The State (347/2015)

Appealed from ECM

Date to be heard: 24 February 2016

Maya AP, Petse JA, Dambuza JA

Criminal Law and Procedure – Conviction and Sentence - whether the court a quo applied the correct legal principles in convicting and sentencing the appellant and whether there was sufficient and material corroboration of the complainant's evidence.

22. Ronson Pillay v The State (453/2015)

Appealed from KZP

Date to be heard: 24 February 2016

Tshiqi JA, Swian JA, Zondi JA

Criminal Law and Procedure - Conviction and sentence in terms of s 276(1)(i) of the Criminal Procedure Act 51 of 1977 – the issue on appeal turns on the credibility of the complainant and the appellant respectively and more specifically the fact that the complainant was a single juvenile witness - whether the trial court erred in imposing a direct sentence of two (2) years imprisonment instead of correctional supervision.

23. Director of Public Prosecutions v Molefe Joseph Mphaphama (20450/2014)

Appealed from GP

Date to be heard: 24 February 2016

Majiedt JA, Willis JA, Baartman AJA

Criminal Law – rape – minimum sentence – whether the rape for which the respondent was convicted warranted the imposition of a minimum sentence as the rape pertained to a person under the age of 16 years and the complainant having being raped more than once - whether the court a quo erred in law by failing to measure and cumulatively consider the ultimate impact of all the circumstances relevant to sentencing.

24. Zenzele Clerence Mndebele v The State (173/2015)

Appealed from GP

Date to be heard: 24 February 2016

Majiedt JA, Willis JA, Baartman AJA

Sentence – whether the sentence imposed by the trial court was shockingly harsh and inappropriate and whether it ought to be reduced.

25. Adcock Ingram Intellectual Property (Pty) Ltd & another v Actor Holdings (Pty) Ltd (20625/2014)

Appealed from GP

Date to be heard: 25 February 2016

Maya AP, Tshiqi JA, Wallis JA, Saldulker JA, Mbha JA

Intellectual Property - Trade mark - whether the Registrar of Trade marks had the power to provide an extension of the opposition term in circumstances where such extension was only requested subsequent to the expiry of the opposition term - whether the respondent could claim to be the bona fide proprietor of the mark in circumstances where the mark was adopted in full knowledge of the appellant's extensive use of reputation subsisting in the mark in relation to some goods in respect of which the respondent was seeking registration - whether the registration of the mark in the name of the respondent is likely to result in deception or confusion and thus contrary to law and the boni mores - interpretation of s 10(3), (7) and (12) of the Trade Marks Act 193 of 1994 - whether evidence by the registrar is admissible in this appeal and whether application to introduce such evidence should be granted - whether ancillary relief sought by the appellants relating to the putative trade mark ought to be granted - whether the trade mark opposition proceedings, in the event the appeal succeeds, should be sent back to the court below for determination on granting of condonation and the merits.

26. Riaan Anton Swart v Charlene Heine & others (192/2015)

Appealed from GP

Date to be heard: 25 February 2016

Lewis JA, Pillay JA, Willis JA, Mathopo JA, Plasket AJA

Insolvency – Companies Act 61 of 1973 – Appeal against order dismissing an application for rescission of an order granting the first to third respondents leave to hold a commission of enquiry into the affairs of a company in voluntary liquidation (of which the appellant was a director and shareholder) in terms of s 417 of the Companies Act 61 of 1973 read with the Companies Act 71 of 2008 – leave to appeal granted by the court below – whether the application was brought in terms of s 388 of the Act – whether the requirements of that section were complied with.

Civil procedure – Whether application for condonation for late supplementing of appeal record by respondents should be granted.

27. Mine2Market SARL v Benoryn Investment Holdings (Pty) Ltd (126/2015)

Appealed from GJ

Date to be heard: 25 February 2016

Cachalia JA, Seriti JA, Petse JA, Dambuza JA, Fourie AJA

Company law – Contract law – Appeal against order directing delivery and transfer of shares from appellant to the respondent – leave to appeal granted by the court below – appellant purchased certain shares from respondent – appellant advising respondent that it believed that the agreement had lapsed – respondent taking this as a repudiation and cancelled agreement – respondent obtained order attaching certain property of appellant to found jurisdiction – respondent applying for order directing return of shares – whether agreement proved in court below – whether court below correct in directing return of shares in absence of a tender by respondent to pay restitution – whether court below correct in finding that respondent's attachment *ad confirmandam jurisdictionem* for purposes of the application was valid – whether court below ought to have declined to hear the application on basis of arbitration clause in agreement – whether court below correct in finding that appellant was responsible for costs of a counter-application that was struck off the roll.

Civil Procedure – Whether condonation for late filing of Notice of Appeal should be granted.

28. A C Brookstein v J Brookstein (20808/2014)

Appealed from GJ

Date to be heard: 26 February 2016

Maya AP, Swain JA, Tsoka AJA, Baartman AJA, Kathree-Setiloane AJA

Family law – Divorce - Arbitration in terms of Arbitration Act 42 of 1965 – the marriage between the appellant and respondent who were married out of community of property with the accrual system was dissolved by means of divorce, and a settlement agreement was signed and made an order of court – whether the dispute that was referred to arbitration by the parties was a matter which was incidental to their matrimonial cause about the proprietary consequences of their marriage and accordingly prohibited by s 2 of the Arbitration Act - the claim is in fact a edictal claim – whether lit is contestation is the operative moment when the value of the respective estates of the parties are to be determined – whether the arbitrators had misconceived the nature of the proceedings – depict - whether the appellant induced the respondent by way of a edictal claim based on an alleged fraudulent misrepresentation which caused the respondent to enter into the agreement of settlement.

29. Linah Ntombi Madalane obo Clericia Masuku v Izak Daniel van Wyk (87/2015)

Appealed from GP

Date to be heard: 26 February 2016

Ponnan JA, Zondi JA, Plasket AJA

Civil procedure – Appeal against an order dismissing the appellant's claim on the basis that she lacked locus standi – leave to appeal granted by this court – appellant's daughter involved in a motor vehicle accident in 2003 while she was still a minor – appellant instituted action against the respondent in 2010, purporting to act in her capacity as guardian of her minor daughter – however, by this time her daughter was no longer a minor – respondent raised a special plea of locus standi – whether the appellant could validly substitute her daughter as the plaintiff in terms of Uniform rule 15

– whether the appellant was entitled to act on her daughter’s behalf notwithstanding the fact that her daughter was a major at the time of the institution of the action – whether the court below was entitled to, and should have, allowed the appellant to amend her particulars of claim to identify her daughter as the plaintiff – whether this court is entitled to, and should, allow the appellant to amend her papers at this stage to identify her daughter as the plaintiff.

30. Navin Naidoo v The Standard Bank of South Africa (20595/2014)

Appealed from GP

Date to be heard: 26 February 2016

Majiedt JA, Mbha JA, Mathopo JA, Fourie AJA, Victor AJA

Civil Procedure-special plea-section 129 of the National Credit Act 34 of 2005 – respondent instituted action proceedings against appellant in the high court for payment of approximately R3 million allegedly due by the respondent in terms of a mortgage bond which was registered over the appellant’s property, as security for a loan advanced by the respondent to the appellant - in the high court, appellant applied for postponement of the trial which was refused, upon this refusal, the appellant’s counsel excused herself, which led to the matter being heard on an unopposed basis - high court proceeded to deliver default judgment against the appellant, without dealing with the appellant’s two special pleas raised in his plea being that the respondent did not send the notice in terms of s 129 of the National Credit Act 34 of 2005 (NCA) to the appellant’s chosen domicile and that the loan granted to him amounted to reckless credit lending in terms of the NCA and further on the merits, that the certificate which certifies the outstanding balance owing was not a proper certificate as contemplated in the mortgage bond – special leave was granted by this court only in respect of the appellant’s special plea regarding the alleged failure by the respondent to comply with the requirements of s129 of the NCA – whether high court was correct in refusing postponement – whether respondent complied with the requirements of s 129 of the NCA.

31. The CADAC Pension Fund & others v The Executive Officer of the Financial Services Board (20106/2014)

Appealed from GJ

Date to be heard: 29 February 2016

Navsa ADP, Sertiti JA, Petse JA, Dambuza JA, Fourie AJA

Civil Procedure - Order for costs - Financial Institutions Act 28 of 2001-Pension Funds Act 24 of 1956 – The first appellant pension fund was placed under provisional curatorship in terms of s 5(1) of the Financial Institutions Act in 2010 - the order was obtained ex parte and in camera - in December 2013, the provisional order was confirmed, and pursuant to a Rule 42 application by the respondent, the order of December 2013 was clarified/substituted – respondent applied to high court for an order confirming the provisional order to place the first appellant fund under curatorship – the respondent trustees lodged an urgent counter application contesting the appointment of the curator and sought an order to set aside the curator’s appointment – the appellant trustees also applied to join the curator to the proceedings in his personal capacity, this was lodged a year after the provisional order of curatorship was granted – essentially, the high court confirmed the appointment of the curator, dismissed the counter application with costs against the third to tenth respondents in that application, ordered costs against the first, second, fifth, sixth and seventh respondents, and dismissed the application to join the curator in his personal capacity and ordered costs against the third to tenth respondent – in this court, the appellants challenge the confirmation order - first respondent appeals against the order confirming the appointment of the curator - first, third, fourth, fifth, eighth and ninth appellants appeal against the cost orders granted against them in their personal capacities – sixth and seventh appellants appeal against the costs order granted against them – second respondent appeals against the costs order granted against him in his personal capacity despite the fact that he was party to the proceedings– whether the appointment of the curator ought to

have been confirmed – whether the curator should have participated in the litigation in the high court in his official capacity – whether the court ought to have joined the curator in his personal capacity – whether there was a conflict of interest pertaining to the curator’s participation in the legal proceedings – whether the curator’s conduct in relation to the use of the first appellant’s funds was appropriate.

32. Sino West Shipping Co. Limited v Nyk-Hinode Line Limited (16/2015)

Appealed from KZD

Date to be heard: 29 February 2016

Ponnan JA, Wallis JA, Willis JA, Mathopo JA, Baartman AJA

Admiralty law – Section 5(3), 3(6) and 3(7) of the Admiralty Jurisdiction Regulation Act 105 of 1983 – Appeal against dismissal of an application to set aside a deemed arrest of a ship (Sino West) – leave to appeal granted by this court – whether the appellant’s ship was correctly found to be an ‘associated ship’ as contemplated in ss 3(6) and 3(7) of the Act – whether the court below was correct in finding that there was no genuine dispute of fact.

33. Mervyn Mohapi v De Beers Pension Fund & another (64/2015)

Appealed from GP

Date to be heard: 29 February 2016

Cachalia JA, Tshiqi JA, Pillay JA, Swain JA, Victor AJA

Pension Funds Act 24 of 1956 – Appeal against an order reviewing and setting aside the order of the Pension Funds Adjudicator in terms of s 30P of the Act – Adjudicator had upheld a complaint against the first respondent (the De Beers Pension Fund), which had rejected the appellant’s application to ill-health retirement benefits, and replaced that decision with a decision accepting the appellant’s application – whether the appellant was entitled for ill-health retirement benefits in terms of the Pension Fund Rules at the time when the trustees reconsidered the appellant’s application – whether the second respondent (the employer) had found that the appellant was no longer capable of carrying on working as a result of medical infirmity – whether the Adjudicator should have interfered with the Fund’s trustees’ decision, and what degree of deference should be shown to decisions of the trustees of a Pension Fund where the Pension Fund Rules specify that the decision is at their ‘sole discretion’ – whether the court below was correct in overturning the Adjudicator’s decision.

34. Nova Property Group Holdings Ltd & others v Julius Peter Cobbett & another (MandG Centre for Investigative Journalism as *amicus curiae*) (20815/2014)

Appealed from GP

Date to be heard: 01 March 2016

Maya AP, Majiedt JA, Mbha JA, Plasket AJA, Kathree-Setiloane AJA

Civil Procedure – Companies Act 71 of 2008 – Appeal against refusal by court below to compel respondents to provide certain documentation to appellants in terms of Uniform rules 35(11),(13) and (14) – leave to appeal granted by court below – main application in court below was an application by respondents (investigative journalists) for access to appellants’ securities registers in terms of s 26(2) of the Companies Act 71 of 2008 as part of an on-going investigation into suspected financial impropriety – appellants responded by launching requests for documentation in terms of Uniform rule 35(12), which was granted, as well as Uniform rules 35(11),(13) and (14), which was refused – whether order appealable – whether requirements of Uniform rule 35(13) and (14) were complied with – whether request overly broad – whether documentation relevant to main application – whether court below correct in opinion that s 26(2) request may be refused where request is for improper purpose – whether amicus entitled to adduce new evidence.

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

Appealed from KZD

Date to be heard: 01 March 2016

Lewis JA, Cachalia JA, Wallis JA, Saldulker JA, Zondi JA

Intellectual Property - Trademark and Passing off-s34(1)(a) of the Trade Marks Act 194 of 1993-Infringement – whether the respondent's mark 'BLACK KNIGHT' in relation to whisky nearly resembles either or both of the appellant's registered 'KNIGHTS' and 'KNIGHTS GOLD' trademarks that it was likely to deceive or cause confusion as contemplated in s 34(1)(a) of the Trade Marks Act – Passing off – whether the reputation of the appellant existed as at and prior to 2002 – whether the public would be confused or deceived into believing that the respondent's whisky was or is connected with the whisky of the appellant – whether the appellant failed to establish the requisite reputation.

36. Nurcha Finance Company (Pty) Ltd v Oudtshoorn Municipality (20821/2014)

Appealed from WCC

Date to be heard: 01 March 2016

Ponnan JA, Pillay JA, Petse JA, Fourie AJA, Tsoka AJA

Contract – the appellant had instituted an action against the respondent arising from an alleged breach of contract by the respondent in failing to pay the third party approximately R2 million in terms of an alleged agreement between the parties – whether the appellant is entitled to damages for the respondent's breach of their agreement in not making certain payments under the building contract into the designated bank account of the third party contractor - whether damages are due and payable in terms of the alleged undertaking and whether claim can lie against respondent despite the fact that the third party contractor can no longer enforce its claim.

37. Thembani Mabaso v The State (200/2015)

Appealed from KZP

Date to be heard: 02 March 2015

Leach JA, Zondi JA, Fourie AJA

Criminal Law - Evidence – whether the pointing out evidence was admissible against the appellant and whether the trial court ought to have found this evidence inadmissible on the grounds that the appellant was denied legal representation before the pointing out; the pointing out was not freely and voluntarily made and that the pointing out notes were inaccurate and not read over to the appellant.

38. Shamduth Singh & others v The State (862/2015)

Appealed from KZD

Date to be heard: 02 March 2016

Tshiqi JA, Swain JA, Mbha JA, Tsoka AJA, Victor AJA

Constitutional Law – whether the constitutional rights of the appellant were infringed in terms of s 35(5) of the Constitution. **Criminal Law – evidence** – whether the evidence gathered during the undercover operation was admissible – sentence – whether the cumulative sentence of 86 ½ years' imprisonment imposed on the first appellant is out proportion to his punishable conduct – whether the trial judge erred and/or misdirected himself when failing to identify substantial and compelling circumstances in the first appellant's favour.

39. Ernest Vusi Majazi Zwane v The State (700/2015)

Appealed from KZD

Date to be heard: 02 March 2016

Majiedt JA, Seriti JA, Plasket AJA

Criminal Law and Procedure – Evidence – whether the trial court erred in admitting the contents of a warning statement obtained in the alleged infringement of the appellant's constitutional rights – the impact of the contradictory evidence and whether the trial court erred in applying the minimum sentence legislation, where the appellant was a first offender and youthful.

40. Elizabeth Aletta Magdalena van Niekerk v Gert Abraham Kruger & others (20632/2014)

Appealed from GJ

Date to be heard: 03 March 2016

Navsa ADP, Leach JA, Saldulker JA, Tsoka AJA, Baartman AJA

Interpretation – Wills Act 7 of 1953 - authenticity and legal validity - Administration of Estate's Act 66 of 1965 Will - whether the contested will of the late deceased was a true copy of the deceased's last will and testament and if so – whether the deceased had testamentary capacity when the original will was signed - whether the appellant unreasonably influenced the deceased to change her will.

41. Kosmos X6 Homeowners Association v Leopont 64 Properties (Pty) Ltd & another (20546/2014)

Appealed from GP

Date to be heard: 03 March 2016

Lewis JA, Willis JA, Dambuza JA, Mathopo JA, Plasket AJA

Contract-Prescription – the appellant took cession of certain claims that certain owners allegedly had against the respondents and lodged an action against the first respondent for damages as a result of the first respondent's alleged breach of contract – the respondent pleaded amongst others, prescription – whether the claim had in fact prescribed – whether valid contracts of sale were concluded – whether contracts were validly ceded to the appellant..

42. BSB International Link CC v Readam South Africa (Pty) Ltd & another (279/2015)

Appealed from GJ

Date to be heard: 03 March 2016

Ponnan JA, Majiedt JA, Swain JA, Victor AJA, Kathree-Setiloane AJA

Administrative Law – Local Government – National Building Regulations and Building Standards Act 103 of 1977 (NBSA) – Application in the court below for review and setting aside of an approval by a municipality of certain building plans submitted by the appellant, together with ancillary relief including a demolition order – municipality compelled in terms of Uniform rule 53 to provide full record of proceedings for purposes of review application – municipality providing only limited documentation and participating minimally in application proceedings – appeal against dismissal by court below of appellant's application to compel municipality to discover certain documents in terms of Uniform rule 35, and appellant's counter-application to stay review proceedings pending finalisation of an application for rezoning of the property concerned – appeal with leave of this court. **Civil Procedure** – Whether the court below was correct in dismissing an application by the appellant to discover certain documents in terms of Uniform rule 35 – whether, if an administrator fails to provide a full record of a decision for purposes of Uniform rule 53, a private person who has benefitted from the decision, and who is a party to the proceedings, may compel discovery of those documents for purposes of defending the administrator's decision. **Land use and planning law** – Whether the court below was correct in concluding that the municipality had validly cancelled the building plan in question – whether the building plan was unlawful and in contravention of the Sandton Town Planning Scheme, 1980, and/or the National Building Regulations and Building Standards Act (NBSA) – whether construction of the building was in contravention of s 4(4) of the NBSA – whether the court below was justified in ordering a partial demolition order – whether the order of the court below was correct insofar as it effectively prohibited the municipality from ordering a temporary certificate of occupancy in terms of s 14(1A) of the NBSA.

43. Compensation Solutions (Pty) Ltd v The Compensation Commissioner & others (072/2015)

Appealed from: GP

Date to be heard: 04 March 2016

Maya AP, Cachalia JA, Pillay JA, Petse JA, Dambuza JA

Civil Procedure - Non-compliance with consent order – whether non-compliance can amount to contempt of court – whether the order properly construed is *ad factum praesfandum* or *ad pecuniam solvendum* – whether evidence exist which raises a reasonable doubt as to whether the Commissioner's non-compliance was wilful and mala fide.

44. The Commissioner for the South African Revenue Service v Coltrade International CC (054/2015)

Appealed from GP

Date to be heard: 04 March 2016

Navsa ADP, Leach JA, Tshiqi JA, Zondi JA, Kathree-Setiloane AJA

Interpretation - Customs and Excise Act 91 of 1964 - Section 47(a)(e) of the Act -Tariff interpretation– the respondent is an importer of coconut milk, coconut cream and coconut powder. Section 47(9)(e) of the Act provides a tariff classification for products under two contending tariff headings namely 20.08 and 21.06. The Commissioner contends that the Tariff heading 20.08 provides only for prepared or preserved products which are whole in pieces or crushed. The issue on appeal is the proper interpretation of section 47(9)(e) and whether the products are classifiable under Tariff Heading 20.08.

45. Bernard Geoffrey Fisher v Natal Rubber Compounders (Pty) Ltd (20640/2014)

Appealed from KZD

Date to be heard: 04 March 2016

Lewis JA, Wallis JA, Willis JA, Saldulker JA, Mathopo JA

Prescription Act 68 of 1969 – cession – action instituted against the appellant in the high court for an amount in excess of R1 million flowing from an agreement signed by the respondent as a surety for a debt on behalf of a company for sale of goods – amended pleadings were filed in which the respondent, after lit is contestation, substituted the erstwhile plaintiff, following an out-and-out cessation of rights by the erstwhile plaintiff to the respondent – special plea raised by the appellant that the respondent's claim had prescribed upon cessation of the claim to the appellant and was thus extinguished - high court dismissed the plea of prescription – application of ss 15(1),(2) and (6) of the Prescription Act to out-and-out cession of a right of action after lit is contestation and the substitution of the cessionary for the cedent, as plaintiff in the action where such cession and substitution occurred after the date on which the original debt would have prescribed, but for the institution of the action in question by the cedent – whether respondent's claim had become prescribed.

46. Christian Herodemus Botha NO v The Governing Body of Eljada Institute (20530/2014)

Appealed from WCC

Date to be heard: 07 March 2016

Cachalia JA, Majiedt JA, Willis JA, Fourie AJA, Baartman AJA

Administrative Law - applicability of the Promotion of Administrative Justice Act 3 of 2000 – whether the decision taken by the respondents to terminate the permanent residency of Miss Potgieter at Eljada Institute for mentally disabled persons comprises an administrative action and whether the respondents acted in a lawful and procedurally fair manner.

47. Ian David Mitchell NO v Sandra Jane Wren & others (153/2015)

Appealed from ECP

Date to be heard: 07 March 2016

Leach JA, Seriti JA, Petse JA, Mbha JA, Kathree-Setiloane AJA

Succession - Section 2(3) of the Wills Act 7 of 1953 - Valid Codicil – whether the court a quo erred in finding that a hand written note by the late Carolyn Ellen de Villiers on the night of her suicide was a valid codicil to her will - whether the note in question and a similar note written by the deceased are indeed incompatible and contradictory.

48. Nomvula Effie Chiliza v Ashendran Govender & another (20837/2014)

Appealed from KZD

Date to be heard: 07 March 2016

Tshiqi JA, Pillay JA, Swain JA, Dambuza JA, Tsoka AJA

Insolvency – Rescission - Interpretation – appellant lodged an application in high court for rescission of a final order of sequestration on the ground that the provisional order of sequestration was not served on the Commissioner for the South African Revenue Service – whether the

requirement to serve a copy of the provisional sequestration order on SARS in terms of s 11(2A)(c) of the Insolvency Act 24 of 1936 is peremptory – whether rescission application ought to have succeeded – second respondent was not been granted leave to intervene.

49. Viking Inshore Fishing (Pty) Ltd v Mutual & Federal Insurance Company Ltd (041/2015)

Appealed from WCC

Date to be heard: 08 March 2016

Maya AP, Wallis JA, Saldulker JA, Swain JA, Victor AJA

Contract - Maritime Law - Admiralty - interpretation of a warranty in a marine hull insurance policy - the court a quo found that the appellant breached a warranty in the insurance policy and therefore not entitled to indemnity under it - the court a quo exercised a discretion to admit the hearsay evidence of eye-witnesses on board the appellant's - whether the appellant's claims are precluded by two breaches on the insurance policy, namely whether the appellant's loss of a fishing vessel resulted from 'want of due diligence' as envisaged in standard form clauses published by the Institute of London Underwriters, and the admissibility of hearsay evidence in a Court of Admiralty.

Constitutional Law – in event that the Merchant Shipping Act warranty contained in the policy is found to have application against the appellant's claim, whether the preclusion of the appellant's claim as result of the breach of the warranty which played no causative role in the loss is unconstitutional.

50. Merial & others v Cipla Vet (Pty) Ltd (20772/2014)

Appealed from Court of the Commissioner of Patents

Date to be heard: 08 March 2016

Navsa ADP, Leach JA, Petse JA, Dambuza JA, Kathree-Setiloane AJA

Intellectual property - Patent infringement – the appellants had instituted an action against the respondent in which they alleged that the respondent's was infringing various claims of Patent No 96/8057 entitled 'Anti parasitic composition for the treatment and protection of pets' of which the first appellant was the patentee and the second and third appellants the licensees – common cause that the respondent has since 2008 made, used, sold, offered for sale and imported a composition for the treatment and protection of domestic animals under the trademark 'Fiprotec' which like the appellants' product 'Frontline' is used to protect animals infected with parasites – court a quo finding that the appellants had failed to discharge the burden of proving that the respondent's product infringed upon the appellants' patent – in so far as the infringement was concerned, whether the use by the appellant of its own active ingredient rather than that used by the respondent meant that the appellants had failed to discharge the burden of proof - in so far as the issue of invalidity was concerned, whether patent was rendered unclear or insufficient by the fact that the patent showed that certain chemicals could fulfil more than one function in a particular composition falling within the scope of the claim of the patent.

51. The Road Accident Fund v Francois Petrus Kotze (20587/2014)

Appealed from WCC

Date to be heard: 08 March 2016

Lewis JA, Ponnann JA, Zondi JA, Mathopo JA, Tsoka AJA

Delict - Section 17 of the Road Accident Fund Act 56 of 1996 – respondent instituted action for damages against the appellant – majority of the full bench overturned the judgment, finding that the insured driver had been negligent, and awarding damages – minority of the full bench holding that the full court did not consider the contradictions between the evidence of the respondent and his wife, and that there was no evidence to support a finding that the insured driver had been negligent – whether special leave to appeal was granted by this court – in this court, respondent raises a preliminary point that the appellant's notice of appeal is a nullity in that it does not meet the requirements of rule 7(3)(a) and (b) of the SCA Rules - whether respondent discharged the onus of proving that the insured driver was negligent – if negligence was correctly found to have been established, whether the full bench was empowered to determine the issue of quantum and whether quantum was correctly determined, having regard to the common cause fact that the respondent did not wear a seat belt.

52. Muzi Gonya v The State (891/2015)

Appealed from GP

Date to be heard: 09 March 2016

Lewis JA, Leach JA, Pillay JA, Willis JA, Victor AJA

Criminal Law and Procedure - the issues on appeal concern the clarity on the validity of the order granting leave to appeal, where the petition or appeal was dismissed before the provisions of the Superior Courts Act 10 of 2013 came into operation - whether the State proved beyond reasonable doubt that the complainant was raped by the appellant and whether the trial court erred in law and fact in rejecting the appellant's version.

53. Raymond Daniel de Villiers v The State & another (20732/20145)

Appealed from FB

Date to be heard: 09 March 2016

Majiedt JA, Fourie AJA, Baartman AJA

Criminal Procedure - Plea of guilty - Section 112(2) of the Criminal Procedure Act 51 of 1977 - whether a fatal irregularity took place ex facie curiae impacting on the conviction and sentence - appellant contending that his legal team deprived him of the opportunity to make the ultimate choice regarding his plea - whether the appellant's legal team was duty-bound to withdraw if tension between the appellant's instructions and their advice to plead guilty could not be resolved - whether the court a quo was correct in denying the relief sought by the appellant on review - whether a proper case for review and setting aside the conviction and sentence had been made.

Constitutional Law - right to fair trial - Section 35(3)(f), (h), (i) and (j) of the Constitution - whether the appellant's constitutional right to a fair trial was infringed.

54. Cornelius Marthinus Jansen v The State (236/2015)

Appealed from GJ

Date to be heard: 09 March 2016

Seriti JA, Saldulker JA, Mathopo JA

Criminal Law – Conviction – Sentence – whether the appellant contravened s 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 – whether the appellant had committed the crime of rape in terms of s 3 of the Act – whether the sentences imposed were just and proper.

55. Umso Construction (Pty) Ltd v MEC of the Government of the Province of the Eastern Cape responsible for Roads and Transport & others (20800/20144)

Appealed from ECB

Date to be heard: 10 March 2016

Maya AP, Cachalia JA, Pillay JA, Mbha JA, Victor AJA

Administrative Law - Tender review - finding by court a quo that notwithstanding the appellant not having complied with the reasonable tender conditions having regard to the alleged flaws in the procurement process, declared the appellant to be non-responsive - whether the pre-qualification criteria imposed by the first respondent in respect of previous experience were contradictory, arbitrary and irrational - whether the court a quo's findings were correct that the stipulations by the first and second respondents that the pre-qualifying criteria of 10km of road construction in the previous seven years were permissible because it constituted 'a category of preference in the allocation of contracts' - whether the tender pre-qualification criteria resorted to was a category of preference for the procurement process - whether the appellant's tender was non-responsive in respect of the previous experience criteria set by the first and second respondents - whether exceptional circumstances had been established justifying a substitution of the tender award in favour of the appellant, on third respondent's cross-appeal - whether the tender awarded to the third respondent should have been set aside by the court a quo solely on the basis of an alleged material non-disclosure.

56. Pro Tempo Academy CC v CS van der Merwe obo Hercules van der Merwe (20853/2014)

Appealed from: GP

Date to be heard: 10 March 2016

Navsa ADP, Wallis JA, Saldulker JA, Zondi JA, Kathree-Setiloane AJA

Delict - accident occurring on appellant school grounds - appellant in loco parentis - duty of school towards minor learner – respondent had instituted action on behalf of her minor son who had been injured when he was impaled by a metal dropper through his rectum at the appellant school where he was a learner – court below upheld the respondent’s claim and found that appellant had created a dangerous situation – whether essential elements for delictual liability correctly considered by court below – whether court below failed to draw distinction between wrongfulness and negligence – whether respondent contributarily negligent.

57. Jacobus van Schalkwyk v The State (680/2015)

Appealed from NCK

Date to be heard: 10 March 2016

Lewis JA, Tshiqi JA, Willis JA, Plasket AJA, Baartman AJA

Criminal Law – Conviction – Murder – *dolus eventualis* – whether the State proved beyond reasonable doubt that the appellant acted with the requisite *dolus eventualis* to sustain a conviction for murder as opposed to one of culpable homicide – whether the court below erred in finding that the appellant foresaw that the fatal injury could have occurred and caused the deceased’s death – whether the correct test for *dolus eventualis* was applied by the magistrate and whether the court below was correct in finding the appellant had the necessary intention to kill the deceased

58. Windor Trade and Invest 129 CC v Unit 14 Dijon CC & others (20660/2014)

Appealed from GP

Date to be heard: 11 March 2016

Maya AP, Majiedt JA, Mbha JA, Plasket AJA, Victor AJA

Contract - Quasi negotiorum gestio - unjustified enrichment – the appellant lodged an application in the court below, for an order that the first and second respondents were liable, jointly and severally, for payments, together with interest thereon, made by the appellant to procure registration of transfer of the immovable property in its name, in respect of debts owed by the first respondent, the previous owner, to the municipality and body corporate - whether payment made by appellant constituted payment of another’s debt – whether appellant failed to disclose cause of action – whether appellant can rely on *quasi negotiorum gestio* and on the grounds of unjustified enrichment to reclaim the sum paid from the first and second respondents—whether appellant was impoverished and whether such impoverishment/enrichment took place sine causa.

59. Hannes Geldenhuys NO & others v Susan Romao-Duarte Daniels (20848/2014)

Appealed from KZP

Date to be heard: 11 March 2016

Ponnan JA, Wallis JA, Petse JA, Dambuza JA, Tsoka AJA

Contract - offer and purchase – action in the high court for payment of damages pursuant to the purported sale of immovable property – whether clause 15 of the offer rendered the offer to have lapsed at midnight on 18 January 2008 prior to its purported acceptance on 29 January 2008 - whether the offer was merely irrevocable until 24h00 on 18 January 2008 - whether at the time of the respondent’s acceptance of the offer on 29 January 2008, the appellant had not revoked the offer - whether a Deed of Alienation was concluded in compliance with s 2(1) of the Alienation of Land Act 68 of 1981.

60. The MEC for the Department of Public Works, Road and Transport v Loretta Botha (20811/2014)

Appealed from ECP

Date to be heard: 11 March 2016

Leach JA, Swain JA, Fourie AJA

Delict - fatal accident on public road – whether appellant acted negligently and wrongfully by not timeously removing the fallen tree, such having been positioned outside the road reserve before it fell – whether the road by virtue of adverse weather conditions on that particular evening should have been closed to the public – whether a duty rested on the appellant not to allow trees to grow outside

the road reserve (trees that are potentially dangerous) and to ensure that trees are removed if, potentially, they appear to be unstable – condonation application for late filing of heads of argument by appellant.

61. Estee Bunton & another v W A Coetzee & another (20794/2014)

Appealed from GP

Date to be heard: 14 March 2016

Navsa ADP, Tshiqi JA, Seriti JA, Swain JA, Fourie AJA

Civil Procedure and Procedure - joinder of plaintiff in reconvention by agreement concluded between the parties during a pre-trial conference in an action for the recovery of motor vehicle damages due to a collision –

Delict – short-term insurance policy – damages – the joined party, plaintiff in reconvention and second appellant is the father of the defendant in convention and comprehensive motor collision insurance policy holder - defendant and plaintiff in reconvention sought indemnification from a third party for the damages claimed - whether appellants were non-suited purely on procedural grounds - whether the second appellant was joined properly to the proceedings through Uniform rule 13 taking into account rule 24(5).

62. Nedbank Limited v Gordon Ndzimande Radebe & another (20776/2014)

Appealed from GJ

Date to be heard: 14 March 2016

Lewis JA, Wallis JA, Petse JA, Dambuza JA, Mathopo JA

Contract and Property law – Estoppel – appeal against order of the court a quo invalidating an agreement and transfer of immovable property and mortgage bond being rendered invalid on the basis that respondent had not intended to sell their home - whether it was correct to do so - whether respondents adduced admissible evidence for the order of the court a quo invalidating the transfer and mortgage bond - whether respondents were misled in relation to the true nature of the contracts they concluded with Brusson Finance (Pty) Ltd - whether respondents are estopped from relying on invalidity of transfer and mortgage bond - whether respondents would be unjustly enriched in the transfer of the property and the mortgage bond in favour of the appellant is declared void and restitution of the home is ordered - whether the court a quo should, mero motu, have referred the application to trial for oral evidence in the circumstances.

63. Christos Koukoudis & another v Abrina 1772 (Pty) Ltd & another (20747/2014)

Appealed from GP

Date to be heard: 14 March 2016

Leach JA, Majiedt JA, Pillay JA, Victor AJA, Baartman AJA

Delict-Doctrine of abuse of right-right to object in terms of Town-planning and Townships Ordinance 15 of 1986 – action instituted in the high court for damages arising from an objection and appeal lodged by the first appellant in terms of Ordinance 15 of 1986 against an application for township establishment by second respondents – high court finding that the appeal and objection was an abuse of right and holding appellant delictually liable – whether causation was proved regard being had to the common cause fact that the building activities started before the township was declared an approved township – whether respondent proved on a balance of probabilities that it would have been able to obtain authority to start building activities to approve the building plans - whether, if causation was so proved, quantum was correctly determined – whether the costs incurred in respect of ablution facilities were caused by the building activities which started before the township was declared an approved township – whether the second respondent incurred the expenses for the amount of legal costs awarded to it as damages – whether the common law doctrine of abuse of rights applies to the exercise of statutory right to object, if so, what the applicable test is to determine whether there has been an abuse of rights.

64. First National Bank (A Division of First Rand Bank Limited) & another v Scenematic One (Pty) Ltd (20832/2014)

Appealed from GP

Date to be heard: 15 March 2016

Navsa ADP, Majiedt JA, Mbha JA, Zondi JA, Tsoka AJA

Prescription - claim to recover sum of money deducted through unauthorised debit order payments made from the respondent's bank account - respondent claiming that second appellant was not authorised to make debit order payments to first appellant in respect of the vehicle instalment sale agreement concluded between first and second appellant - both appellants raised special plea of prescription against the respondent's claim - court a quo dismissed both appellants' special pleas with costs - whether the respondent's claim had prescribed - whether or not the respondent's failure to take action to ascertain the origin of the debit order transactions reflected on its bank statements were reasonable under the circumstances - interpretation of ss 11 and 12(3) of the Prescription Act 68 of 1969.

65. Eravin Construction CC v Jacobus Nicolaas Bekker NO & others (20736/2014)

Appealed from NWM

Date to be heard: 15 March 2016

Lewis JA, Tshiqi JA, Swain JA, Dambuza JA, Plasket AJA

Company Law - Companies Act 71 of 2008 - Business Rescue - in a claim by the respondents (joint liquidators) for the recovery of an amount paid by a company, Ditona Construction (Pty) Ltd, to the appellant while such former company was under liquidation - whether the date upon which the appellant's debt was due was date immediately before the beginning of business rescue proceedings in terms of s 154(2) of the Companies Act 71 of 2008 - whether the failure by the appellant to comply with s 129(3) and (4) of the Companies Act 71 of 2008 has had the effect envisaged in s 129(5) that the business rescue proceedings were a nullity - whether the respondents' claim against the appellant is precluded by s 154(2) of the Companies Act - whether the respondents' debt qualifies as a pre-commencement debt.

66. Gary Itzikowitz v Absa Bank Limited (20729/2014)

Appealed from GJ

Date to be heard: 15 March 2016

Ponnan JA, Cachalia JA, Willis JA, Saldulker JA, Fourie AJA

Delict - Civil Procedure and Practice - Exception - Counter-claim failure to disclose cause of action - legal duty relied upon in delictual claim for pure economic loss unsustainable or non-existent - court a quo upheld the exception on the delictual claim - issue in the main appeal is whether the Aquilian liability for pure economic loss extends to permit shareholders to recover the reflective loss consequent on a wrong committed against the company and whether it makes a difference whether the wrong was intentional or negligent - appealability of the cross-appeal against the dismissal of an exception on an issue other than jurisdiction - ss 16 and 17(1) of the Superior Courts Act 10 of 2013 and the exercise of this court's discretion under s 17(6)(b).

Company Law - Shareholder's claim for reflective loss - issue on cross-appeal is whether s 218(2) of the Companies Act 71 of 2008 provides a shareholder with a claim for reflective loss and whether such reflective loss was too remote - interpretation of s 22(1) of the Companies Act prohibiting a company from carrying on its business recklessly.

67. Foxlake Investments (Pty) Ltd t/a Foxway Developments (Pty) Ltd v Ultimate Raft Foundation Design Solutions CC t/a Ultimate Raft Design & another (144/2015)

Appealed from GP

Date to be heard: 17 March 2016

Maya AP, Seriti JA, Pillay JA, Willis JA, Victor AJA

Civil Procedure and Practice - appealability against judgment granting amendment to citation of the appellant and whether such amendment amounted to a substitution of a defendant or correction.

Prescription - whether claim has been extinctively prescribed in view of the initial incorrect citation of the defendant or whether the service of the summons interrupt prescription – whether the summons served on the appellant communicated the respondent's intention to claim payment of the alleged debt from the appellant as required by s 15(1) of the Prescription Act 68 of 1969.

68. Grainco (Pty) Ltd v Jacobus Alewyn van der Merwe & others (20693/2014)

Appealed from WCC

Date to be heard: 17 March 2016

Ponnan JA, Wallis JA, Mbha JA, Mathopo JA, Plasket AJA

Contract Law - Restraint of trade - whether the sale of business which included goodwill gave rise to respondents being bound to an implied prohibition against competing for former customers - whether

the implied restraint applied to all the of the sold business's customers at 1 June 2013 or only to those who were customers prior to the sale as at 1 October 2006 - whether respondents as distinct from the sold business were bound by the implied prohibition.

69. Khomoeng Jane Mothupi v MEC, Department of Health Free State Province (20598/2014)

Appealed from FB

Date to be heard: 17 March 2016

Cachalia JA, Leach JA, Majiedt JA, Zondi JA, Kathree-Setiloane AJA

Civil Procedure and Practice - Condonation - Section 3 of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 - whether the court a quo exercised its discretion judicially in setting aside the trial court's decision to condone the appellant's late service upon the respondent, of the notice in terms of s 3 of the Act - whether the court a quo was correct in finding that the appellant failed to show good cause for the granting of condonation - whether court a quo was correct in finding that the appellant failed to substantially explain the various relevant periods of delay - whether the remissness of the attorney for the appellant in issuing the notice late should be attributed to the appellant.

70. Trustco Group International (Pty) Ltd v Vodacom (Pty) Ltd & another (82/2015)

Appealed from GP

Date to be heard: 18 March 2016

Navsa ADP, Wallis JA, Petse JA, Tsoka AJA, Kathree-Setiloane AJA

Intellectual Property - Patent - interpretation of reg 83 and s 16(2) of the Patents Act 57 of 1978 - whether that regulation authorises the Registrar of patents to grant an extension of time for the filing of a counterstatement in an opposed application for the restoration of a lapsed patent in terms of s 47 of the Act, where such extension was sought after the time for filing had already elapsed.

71. Suzette Deacon v Planet Fitness Holdings (Pty) Ltd (028/2015)

Appealed from GP

Date to be heard: 18 March 2016

Lewis JA, Pillay JA, Willis JA, Plasket AJA, Victor AJA

Delict - appellant instituted action for damages against respondent in the court a quo which she suffered as result of several personal injuries sustained when the appellant tripped and fell at the exit gate of the respondent's gym - by agreement between the parties, the merits and quantum were separated in terms of Uniform rule 33(4) and the matter proceeded in respect of the merits alone in the court a quo - the court a quo dismissed appellant's delictual claim - whether appellant has established delictual liability on the part of the respondent - whether the exemption clause relied on by the respondent is void for vagueness - whether on a proper interpretation the exemption clauses only apply in respect of harm suffered as result of use of the respondent's equipment not the entrance or exit gates at the gym. **Constitutional Law** - constitutional question - whether the exemption clauses contained in the membership agreement are contrary to public policy and whether they should be enforced in the circumstances.

72. The Minister of Safety and Security & another v Tembop Recovery CC & others (006/2015)

Appealed from GJ

Date to be heard: 18 March 2016

Leach JA, Saldulker JA, Dambuza JA, Mathopo JA, Baartman AJA

Civil Procedure - whether it was competent for the court a quo to order the striking out of the appellant's defence - the respondents had lodged an interlocutory application seeking an order to strike out the appellant's defence in the main application - the respondents had requested discovery of certain documents, it is alleged that no order to compel discovery was obtained by the respondents - the notice to compel discovery was followed by the interlocutory application to strike out the appellants' defence - whether the respondents were required to obtain an order to compel the appellants to discover - whether the legal points raised in the interlocutory application should be upheld - whether the appellant could lawfully refuse to discover documents in light of the alleged pending criminal proceedings - whether the high court was competent to grant the interlocutory application where such grant would affect the criminal prosecutions - the interpretation to be afforded to rule 35(12) of the Uniform Rules of court - whether the appellants were entitled to raise all the legal points set out in the rule 6(5)(d)(iii) notice.

