

REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 1 2016
CASES ENROLLED FOR HEARING: MAY 2016

1. The City of Johannesburg v Dladla Ellen Nomsa & others (403/2015)

Appealed from GJ

Date to be heard: 03 May 2016

Mpati P, Leach JA, Pillay JA, Willis JA, Mbha JA

Constitutional Law: Property Law: the respondents occupy the Ekhutuleni Temporary Emergency Accommodation facility in Johannesburg, pursuant to the Constitutional Court's order in *City of Johannesburg Metropolitan Municipality v Moonlight Properties* 2012 (2) SA 104 (CC): the Constitutional Court ordered the appellant to provide the respondents with temporary accommodation: whether the appellant can separate families by gender and lock residents out during the day in accommodation it provides to people evicted from their homes.

2. David Lichtenstein v The State (1094/2015)

Appealed from NWM

Date to be heard: 03 May 2016

Maya DP, Tshiqi JA, Seriti JA

Criminal Law: Sentence: life imprisonment imposed by high court in respect of a charge of murder and 15 years' imprisonment in respect of robbery with aggravating circumstances: full court dismissing appeal against sentence: appeal against that decision: prescribed minimum sentence applicable in respect of both sentences: whether there were substantial and compelling circumstances justifying a lesser sentence.

3. Robert Anthony John Hewitt v The State

Appealed from GP

Date to be heard: 03 May 2016

Maya DP, Tshiqi JA, Seriti JA

Criminal law: Sentence: Appellant, 72 years old at time of sentencing, convicted of two counts of rape (which occurred during the 1980s) and one count of indecent assault (which occurred in 1994): victims were three women who at the relevant times were minors: appeal against sentence an effective period of six years imprisonment: part of sentence suspended on condition that appellant pay the sum of R100 000 to Department of Justice to be utilised to further the Department's campaign against the abuse of women and children: whether trial court guilty of misdirection, justifying interference.

4. Rufuno Radzilane v The State (127/2015)

Appealed from GJ

Date to be heard: 03 May 2016

Lewis JA, Zondi JA, Baartman AJA

Criminal Procedure: Sentence: application for special leave to appeal referred for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013: whether leave should be granted: full court upholding appeal by State against sentence considered too lenient: seven years' imprisonment wholly suspended for theft in excess of R500 000: sentence wholly suspended on condition that amount be repaid on specified terms: terms not met: sentence altered by trial court to three years' imprisonment in terms of s 276(1)(i) of the Criminal Procedure Act 51 of 1977: that sentence served: whether it precluded the full court from upholding State's appeal: whether the sentence imposed by the trial court was appropriate:

5. SAAB Grintek Defence (Pty) Ltd v South African Police Service & others (316/2015)

Appealed from GP

Date to be heard: 04 May 2016

Mpati P, Cachalia JA, Theron JA, Wallis JA, Victor AJA

Administrative Law: Public procurement: Appeal against order dismissing an application for review of a decision to cancel a tender: appeal with leave of court below: State Information Technology Agency (Pty) Ltd (second respondent) conducted a tender on behalf of the South African Police Service (first respondent): first respondent deciding to cancel the tender: who was the competent authority to award the tender: did the second respondent make a decision to award or not award the tender to the appellant: whether decision to cancel tender should be set aside: whether court below correct in dismissing application on basis that tender had automatically expired as the period had not been extended in writing: whether court below correct in deciding application on this basis when it was not raised in any party's affidavit: whether the decision of the first respondent was procedurally unfair or procedurally irregular: whether tender cancelled for unlawful reasons: whether substantive reasons existed to cancel: whether it was appropriate to set aside the decision to cancel the tender, and order that the tender be awarded to the appellant.

6 The National Director of Public Prosecutions & another v Matthews Tuwani Mulaudzi & others (210/2015)

Appealed from WCC

Date to be heard: 04 May 2016

Ponnan JA, Swain JA, Mathopo JA, Tsoka AJA, Kathree-Setiloane AJA

Civil Procedure: a rule nisi was granted incorporating a provisional restraint order in terms of the Prevention of Organised Crime Act 121 of 1998 against the first and other respondents: whether, consequently, in deciding to discharge the rule nisi, the court wrongly approached the matter on the basis that its task was to decide the veracity of the evidence: whether the court erred in finding that there was no reasonable prospect that the first respondent would be convicted of fraud, theft or money laundering: whether the Judge President erred in allocating the case to himself, after it had already been allocated to other judges as the attorney representing the respondents was also his personal attorney, representing him in other matters: whether there was a reasonable apprehension of bias.

7 Matthews Tuwani Mulaudzi v Old Mutual Life Assurance Co SA Limited & others (095/2016)

Appealed from GP

Date to be heard: 04 May 2016

Ponnan JA, Swain JA, Mathopo JA, Tsoka AJA, Kathree-Setiloane AJA

Cession: Unlawful Enrichment: whether the court a quo was correct in finding that the appellant ceded an investment to Nedbank and that the appellant failed to disclose to Old Mutual that he was no longer the owner of the said policy: that he failed to disclose that he had sold such policy and his rights under such policy to Nedbank in consideration for payment and effected an outright cession of his rights to the proceeds under such policy: whether the court a quo was correct in finding that the appellant was not entitled to the proceeds of the said policy and that the appellant was unduly enriched and that Old Mutual is entitled to recover the money under *condictio indebiti*.

8 Mfundo Nontshinga & others v The State (770/2015)

Appealed from ECP

Date to be heard: 04 May 2016

Leach JA, Saldulker JA, Dambuza JA

Criminal law: Superior Court's Act 10 of 2013: Special leave to appeal to the SCA in terms of s16(1)(b): Appeal against the high court's order refusing leave to appeal against convictions and sentence against the four appellants for unlawful possession of a firearm and ammunition where co-accused was granted leave to appeal against his convictions and was acquitted: whether leave to appeal to the high court should have been granted on petition to the high court: whether there are reasonable prospects that another court could reasonably acquit the appellants – on the merits the issue is whether the appellants intended to poses a firearm with a co-accused.

9 Charles Vuyo Gayiya v The State (1018/2015)

Appealed from GP

Date to be heard: 05 May 2016

Mpati P, Wallis JA, Pillay JA, Mathopo JA, Tsoka AJA

Procedure: Condonation for late filing of record and appellant's heads of argument: reinstatement of appeal. **Criminal law: Conviction and sentence:** Appeal against conviction and sentence: kidnapping, assault with intent to do grievous bodily harm, murder and unlawful possession of a firearm and ammunition: appellant convicted in regional court: matter referred to high court for sentencing: life imprisonment imposed by high court and other determinate sentences: leave to appeal granted on the limited basis that trial court failed to comply with the provisions of s 93 *ter* of the Magistrates Court Act 32 of 1944 which relates to the appointment of assessors: conflicting high court decisions on the issue.

10 Helen Suzman Foundation & another v Judicial Service Commission (145/2015)

Appealed from WCC

Date to be heard: 05 May 2016

Maya DP, Majiedt JA, Mbha JA, Dambuza JA, Fourie AJA

Administrative Law: Review: Civil Procedure: Constitutional law: interlocutory application in the high court for an order under Rule 6(11) and 30A directing the respondent to comply with Rule 53(1)(b) of the Uniform Rules of Court and to deliver the full recording of the proceedings sought to be reviewed in the main application, including the audio recording and any transcript of the deliberations of the Judicial Services Committee (JSC) after the interviews on 17 October 2012: s 174(6) of the Constitution: whether decision taken by the respondent advising the President of the RSA which candidates should be appointed as judges was unlawful and invalid: fourth amicus raising an issue that the members of the JSC and judicial candidates were not joined: whether the recording of the deliberations forms part of the record: whether there is a legal basis for the respondent to withhold the recordings: whether full disclosure should be ordered: whether the court if not inclined to order that the recording or deliberations be made public, could make a qualified disclosure order.

11 Marcus Ndateni Mulaudzi v The State (768/2015)

Appealed from LT

Date to be heard: 05 May 2016

Theron JA, Petse JA, Willis JA

Criminal Law: Evidence: conviction on murder and robbery with aggravating circumstances: whether sufficient evidence to justify conviction.

12 David Willoughby Abbott v Overstrand Municipality & others (099/2015)

Appealed from WCC

Date to be heard: 06 May 2016

Lewis JA, Cachalia JA, Tshiqi JA, Fourie AJA, Baartman AJA

Administrative Law: National Environmental Management Act 107 of 1998: causation, legitimate expectation and the powers of superior courts: whether first respondent should have taken steps to prevent damage from being occasioned to the appellant's home where such damage is as a result of flooding of the Klein River.

13. Chairperson of the National Council of Provinces v J Malema & another (535/2015)

Appealed from WCC

Date to be heard: 06 May 2016

Ponnan JA, Leach JA, Petse JA, Saldulker JA, Swain JA

Administrative Law: Rules of Parliament: First Respondent expelled by appellant from joint sitting of National Assembly and National Council of Provinces for contempt: whether court a quo correct in setting aside appellant's order: whether conduct of first respondent justified expulsion: whether court a quo correct in interfering with decision of the appellant.

14. Hibiscus Coast Municipality v Hume Housing (638/2015)

Appealed from KZP

Date to be heard: 06 May 2016

Majiedt JA, Seriti JA, Zondi JA, Victor AJA, Kathree-Setiloane AJA

Civil Procedure: Contract: whether a court hearing an interlocutory application finding that an order awarding compensation to the respondent meant that s 12(5) of the Expropriation Act applied when determining compensation and thus whether compensation payable to the respondent should include or exclude improvements: whether the cause of action in the court of first instance was the same cause of action relied upon by the respondent in an application to have an agreement between the parties to be bound by a valuation performed by an agreed expert, made an order of court.

15. e.tv (Pty) Ltd & others v Minister of Communications & others (1039/2015)

Appealed from GP

Date to be heard: 09 May 2016

Lewis JA, Saldulker JA, Swain JA, Mbha JA, Baartman AJA

Constitutional law: legality of Minister's actions: Promotion of Administrative Justice Act 3 of 2000: Administrative law: Judicial review: Interpretation of s 3(5)(a) of the Electronic Communications Act 36 of 2005: Appeal against an order dismissing a review application. Appellants applied to high court to review and set aside first respondent's decision to make an amendment to the Broadcasting Digital Migration Policy for South Africa. The review application was based on legality and PAJA. Whether the first respondent's decision is administrative action in terms of PAJA or an executive and policy decision: whether the first respondent was required to consult with the public, ICASA and USAASA before enacting the amendment and if so, whether she complied with this requirement: whether the first respondent acted ultra vires in enacting the amendment: whether the decision by the first respondent is procedurally unfair and unreasonable: proper construction of s 3(5)(a) of the Electronic Communications Act regarding consultation.

16. National Tertiary Retirement Fund v A T Mokadi & another (419/2015)

Appealed from GJ

Date to be heard: 09 May 2016

Ponnan JA, Theron JA, Petse JA, Zondi JA, Kathree-Setiloane AJA

Pension Funds Act 24 of 1956: Appeal against an order dismissing an application to set aside a determination of the Pension Funds Adjudicator in terms of s 30P of the Act: whether the Pension Funds Adjudicator may, as part of her determination that a pension fund is obligated to pay pension

benefits to a person, order that interest accrues as from a date prior to the date of determination in terms of s 30N of the Act.

17. The State v Oupa Motloung (182/2015)

Appealed from GJ

Date to be heard: 09 May 2016

Cachalia JA, Majiedt JA, Victor AJA

Criminal Procedure: Sentence: Appeal by State: effective sentence of eight years' imprisonment for murder and unlawful possession of a firearm and ammunition: whether the sentence imposed on the respondent was appropriate: whether the Criminal Law Amendment Act 105 of 1997 (the minimum sentencing legislation) was applicable: the appropriateness of an order relating to the duration of parole: whether the Firearms Control Act 60 of 2000 was applicable.

18. City of Cape Town v Khaya Projects (Pty) Ltd & others (158/2015)

Appealed from WCC

Date to be heard: 10 May 2016

Maya DP, Majiedt JA, Seriti JA, Willis JA, Victor AJA

Constitutional Law: Duty to provide adequate housing: Section 26(1) of the Constitution: first respondent a private building contractor engaged to build houses as part of the appellant's government programmes to provide housing for the poor: houses built by first respondent found to be unsafe and unfit for human habitation and would cost R17 million to remedy: whether first respondent incurred a constitutional obligation to ensure that the houses they built were 'adequate' by virtue of contracting to build low cost housing on behalf of the appellant: if so, whether or not first respondent met such constitutional obligation. **Costs:** whether the appellant should pay the costs of the amicus curiae in the court a quo. **Arbitration:** lapsing in terms of s 23(a) of the Arbitration Act 42 of 1965: whether the appellant had the necessary locus standi to claim any relief in respect of the arbitration: whether the arbitration between first and second respondent had lapsed in terms of the provision of the Arbitration Act.

19. Lucky Star Ltd v Lucky Brands (Pty) Ltd & others (164/2015)

Appealed from WCC

Date to be heard: 10 May 2016

Ponnan JA, Petse JA, Swain JA, Dambuza JA, Kathree-Setiloane AJA

Intellectual Property: Trade Marks Act 194 of 1993: trade mark infringement: interdict based on infringement by use of identical marks - under s 34(1)(a), (b) and (c) of Trade Mark Act 194 of 1993: to prohibit respondents from infringing appellant's trade mark by using marks 'Lucky Fish & Chips', 'Lucky Fish': order declaring respondent companies' names to be in contravention of s 11 of Companies Act 71 of 2008: whether or not there is likelihood of confusion or deception when the trade marks are applied to goods in respect of appellant's trade mark registered in 29 classes including in relation to fish products.

20. O Thorpe Construction & others v Minister of Labour & others (033/2015)

Appealed from WCC

Date to be heard: 11 May 2016

Mpati P, Leach JA, Pillay JA, Zondi JA, Baartman AJA

Administrative and Constitutional Law: Labour Law: application in court a quo to review the exercise by Minister of Labour of her powers in terms of s 32 of the Labour Relations Act 66 of 1995 to extend a collective agreement to non-parties on constitutional grounds: whether the Western Cape Division of the High Court had concurrent jurisdiction to review the Minister of Labour's exercise of administrative and/or legislative powers under the LRA on constitutional grounds of legality and

administrative justice in view of s 157(2) of the LRA, or whether the Labour Court has exclusive jurisdiction to determine the matter by virtue of s 157(1) of the LRA.

21. Educated Risk investments 165 (Pty) Ltd & others v Ekurhuleni Metropolitan Municipality & others (308/2015)

Appealed from GJ

Date to be heard: 11 May 2016

Lewis JA, Theron JA, Wallis JA, Mathopo JA, Victor AJA

Constitutional law: whether the first respondent may disregard the principle of legality and a binding town-planning scheme, when purporting to give effect to the right to access to adequate housing: first respondent establishing an informal settlement on its property. **Administrative Law:** whether the first respondent acted unlawfully in taking a decision to subdivide its property and to approve of the subdivision: whether the first respondent may disregard the Springs Town Planning Scheme, 1996 applicable to land it intends to develop on the basis that it was giving effect to the right of access to adequate housing: whether the first respondent must be interdicted from its intended unlawful conduct on the basis that the proposed usage of the property does not qualify as 'residential 1' in terms of the town planning scheme and whether the proposed usage would breach the conditions imposed on the property.

22. The Registrar of Medical Schemes & another v Genesis Medical Scheme (238/2015)

Appealed from WCC

Date to be heard: 11 May 2016

Cachalia JA, Seriti JA, Willis JA, Dambuza JA, Tsoka AJA

Administrative Law: Medical Schemes Act 131 of 1998: Appeal against order reviewing and setting aside decision by the Registrar of Medical Schemes (first appellant) to reject the financial statements of respondent for the 2012 financial year: appeal with leave of court below: first respondent rejecting financial statements on basis that members' personal medical savings accounts are 'trust property' for purposes of the Financial Institutions (Protection of Funds) Act 28 of 2001, and accordingly must be reflected separately from the assets of the medical scheme, which was not done: whether court below correct in rejecting that interpretation and setting aside the first appellant's decision

23. Gert Renier van Rooyen v The Hillandale Homeowners Association (132/2015)

Appealed from FB

Date to be heard: 12 May 2016

Mpati P, Cachalia JA, Leach JA, Theron JA, Pillay JA

Civil Procedure and Practice: Mandament van spolie: Interim interdict - restoration of appellant's access to the respondent's website to enable the appellant to purchase prepaid water and electricity, and to sell prepaid water and electricity to the appellant, an order restraining the respondent from taking any steps to prohibit or frustrate the appellant from purchasing prepaid water and electricity or in any manner interfering with appellant's provision of or consumption of water and electricity at 15 Wildehond Street, Woodland Hills Wildlife Estate, Bloemfontein: court a quo discharged rule nisi: appeal against discharge: whether the respondent, a home owners' association, had a right to enter into agreement with its members to limit prepaid water and electricity supply to a residence of a member of the association who owed money to the association in relation to any debt: whether the appellant had any right to access water and electricity to enforce against the respondent.

Constitutional Law: whether the constitutional question was properly raised: if so, whether home owners' associations had a right to refuse to make prepaid water and electricity available in order to enforce an unrelated aesthetic fine.

24. Palala Resources (Pty) Ltd v Minister of Mineral Resources and Energy & others (479/2015)

Appealed from GP

Date to be heard: 12 May 2016

Maya DP, Tshiqi JA, Majiedt JA, Wallis JA, Zondi JA

Mineral and Petroleum Resources Development Act 28 of 2002: Mineral right: Deregistration of company affecting grant of mineral rights: Interpretation of s 56(c) of MPRDA and s 73(6A) of the Companies Act 61 of 1973-Administrative law: appellant had lodged a review application in the high court for the review and setting aside of a decision of the first respondent, the Minister, to uphold an appeal lodged by the third respondent in terms of s 96(b) of the MPRDA. In that appeal, the Minister overturned the decision of the Acting Director General to accept the appellant's application to renew its prospecting rights for gold and pyrite after the appellant had revived its registration: high court finding that upon deregistration of the company, appellant's prospecting rights ceased to exist and that the prospecting rights were rendered void, and were not capable of retrospective revival when the appellant's registration was restored: high court holding that the review application should fail: whether the prospecting rights granted to the appellant prior to its deregistration were irretrievably invalidated when the appellant was deregistered or whether the rights were revived when the appellant's registration was restored a few months later.

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

Appealed from GP

Date to be heard: 12 May 2016

Ponnan JA, Seriti JA, Dambuza JA, Mathopo JA, Fourie 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.

26. Mutual & Federal Insurance Company Ltd & another v KNS Construction (Pty) Ltd (in liquidation) & another (208/2015)

Appealed from GJ

Date to be heard: 13 May 2016

Lewis JA, Tshiqi JA, Willis JA, Fourie AJA, Tsoka AJA

Contract: Appeal against order directing first and second appellant to make payment to first respondent under a performance guarantee together with interest: cross-appeal against date from which interest ordered to run: leave to appeal granted by court below: first appellant provided a performance guarantee for construction work to be performed by second appellant, who had been subcontracted by first respondent in the building of a road: first respondent placing itself under voluntary liquidation and then calling on performance guarantee: whether subcontract validly concluded and if so, whether validly cancelled: whether demand for payment validly made: whether the guarantee is in the nature of a demand guarantee or a conditional guarantee: whether first appellant entitled to refuse to effect payment of guarantee on basis that demand not compliant with guarantee, *mala fides* or tainted by fraud: whether first respondent was under a duty to disclose to first appellant financial position prior to entering into guarantee: whether court below was correct in ordering relief against second appellant when no such relief was sought: whether interest should be calculated as from date of delivery of demand for payment, or whether the calculation of interest was

delayed by an interdict obtained by second appellant preventing first appellant from effecting payment pending resolution of proceedings in respect of that payment.

27. The Standard Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd & another (187/2015)

Appealed from GJ

Date to be heard: 13 May 2016

Leach JA, Saldulker JA, Swain JA, Mbha JA, Baartman AJA

Contract: Prescription: Appeal against an order upholding a defence of prescription against a claim based on a mortgage bond: Loan facility given by appellant to a debtor for R13 million, repayable in instalments over 240 months: loan facility secured by respondents, who stood as sureties, and who also registered mortgage bonds over immovable property: application in court below for cancellation of the mortgage bonds on the basis that the appellant's claim against the debtor had prescribed, and thus there was no valid principal debt that they were accessory to: whether appellant's claim against the debtor had prescribed.

28. Russel Hangar & others v John Robertson (211/2015)

Appealed from KZD

Date to be heard: 16 May 2016

Lewis JA, Leach JA, Pillay JA, Petse JA, Dambuza JA

Contract: the proper interpretation of a layman's contract: whether on a proper interpretation of the clause the respondent was entitled to the declaratory order that was granted.

29. Caine Jason Herr v Innomet Projects (Pty) Ltd (394/2015)

Appealed from GJ

Date to be heard: 16 May 2016

Ponnan JA, Majiedt JA, Saldulker JA, Swain JA, Zondi JA

Contract: Lease: Appeal against order directing appellant to pay damages to respondent for breach of lease agreement: leave to appeal on limited grounds granted by this court: appellant leased immovable property from respondent, which he later repudiated: court below upheld claim for breach of contract and granted damages calculated over entire remaining nine months of the agreement: whether, in terms of the principle *favorabiliores rei potius quam actores habentur*, damages ought to have been limited to the notice period required to validly cancel the lease agreement: whether respondent fulfilled duty to mitigate losses.

30. Michael Mmathomo Masilo & others NNO v Betterbridge (Pty) Ltd (37/2015)

Appealed from GP

Date to be heard: 16 May 2016

Cachalia JA, Seriti JA, Willis JA, Mbha JA, Victor AJA

Prescription: benefit of additional one year for prescription in terms of s 13(1)(g) of the Prescription Act 68 of 1969: in an action against the appellant liquidators by a creditor, the company under liquidation, to recover an amount loaned and advanced, a special plea of prescription was raised by the liquidators that the claim had prescribed and the issue was separated from the remaining issues in the court a quo: whether a creditor gains the benefit of an additional one year for prescription in terms of s 13(1)(g) of the Prescription Act if a creditor lodges a claim for proof in terms of s 44 of Insolvency Act 24 of 1936, but subsequently withdraws the claim before the presiding officer can make a decision to admit or reject the claim: the court a quo held that the mere lodging of the claim delayed the extinctive prescription within the meaning of s 13(1)(g) of the Prescription Act thus dismissing the appellants' special plea with costs: whether court a quo's decision is correct or whether the claim lodged under s 44 of the Insolvency Act must be exposed to the scrutiny of the decision of the presiding officer before prescription can be delayed in terms of s 13(1)(g) of the Prescription Act.

31. Minister of Social Development, Western Cape & others v Justice Alliance of South Africa & another (1054/2015)

Appealed from WCC

Date to be heard: 17 May 2016

Mpati P, Saldulker JA, Mbha JA, Fourie AJA, Victor AJA

Children's Act 38 of 2005: Appeal against the entire order of the court a quo, in terms of which (a) the National and Provincial Strategies referred to in sections 192(1) and 192(2) of the Children's Act 38 of 2005, respectively, must be produced within a specified time; (b) declarations were granted that certain youth centres were to be retrospectively regarded as having been established in terms of s 195 of the Children's Act as child and youth care centres providing programmes referred to in ss 191(2)(i) and 192(2)(j) of the Children's Act; (c) it was declared that certain youth centres retrospectively became the responsibility of the Second Respondent, with specified attendant duties; (d) the Second Respondent was directed to reconsider the placements of certain children who had been placed in terms of ss 156(1)(h) and 158 of the Children's Act at secure care child and youth care centres; and (e) no order was made as to costs. Cross-appeal against the no-costs order.

32. Shakira Malani & others v Natalia Financial Brokers CC (20850/2014)

Appealed from KZP

Date to be heard: 17 May 2016

Maya DP, Theron JA, Wallis JA, Mathopo JA, Tsoka AJA

Delict and Contract Law: alleged negligent breach of duty of care by the respondent insurance brokers to submit nomination of beneficiary form signed by deceased in terms of which appellants were appointed beneficiaries: whether it is necessary, where a life insurance policy provides that a nomination of a beneficiary or its amendment be in writing and received by the insurance company, that those requirements be met for the nomination or amendment to be effective; and if answered in the affirmative whether the requirements for a successful delictual action for patrimonial loss have been met by the appellants.

33. Debbie Mahlaku Masemola v Road Accident Fund (256/2015)

Appealed from GP

Date to be heard: 17 May 2016

Tshiqi JA, Swain JA, Dambuza JA, Baartman AJA, Kathree-Setiloane AJA

Delict: Road Accident Fund-premorbidity contingencies: the appellant had applied in the high court for an order determining the quantum in respect of premorbidity contingency on the aspect of future loss of earnings: the high court having been furnished with the actuarial report the basis of which was allegedly agreed between the parties, departed from the quantum contained in the actuarial report and imposed its own quantum: whether the high court was empowered to determine the quantum despite the parties' alleged agreement.

34. Roelof Ernst Botha v Road Accident Fund (463/2015)

Appealed from GP

Date to be heard: 18 May 2016

Leach JA, Saldulker JA, Dambuza JA, Fourie AJA, Victor AJA

Civil Procedure: Appellant involved in a motor vehicle accident: respondent (the Road Accident Fund) conceded merits and entered into order by consent in respect of quantum of damages, which included amounts for medical and hospital expenses, based on hospital invoices: subsequently discovered that due to filing error by appellant's attorney, these expenses had been significantly underestimated: appeal against dismissal of application for variation or rescission of judgment by consent relating to quantum of damages: leave to appeal granted by the court below: whether appellant entitled to have judgment in respect of quantum varied or rescinded in terms of Uniform rule

42(1)(c): whether appellant entitled to have judgment in respect of quantum varied in terms of common law: whether order can be set aside on the basis of *iustus error*.

35. Blue Chip 2 (Pty) Ltd t/a Blue Chip 49 v Cedrick Dean Reyneveldt & others (499/2015)

Appealed from FB

Date to be heard: 18 May 2016

Theron JA, Wallis JA, Pillay JA, Petse JA, Willis JA

Civil Procedure: National Credit Act 34 of 2005: whether in an application for judgment by consent in accordance with the provisions of s 58 of the Magistrates' Court Act 32 of 1944, and specifically in instances in terms of which 28(1)(d) of the Magistrates' Court Act is applicable, specifically where the whole cause of action arose within the court's jurisdiction, the delivery and receipt of a notice in terms of s 129 of the National Credit Act constitutes a jurisdictional element of the whole cause of action, which would confer jurisdiction on a specific magistrates' court.

36. Absa Bank Ltd v Knysna Auto Services CC (266/2015)

Appealed from WCC

Date to be heard: 18 May 2016

Majiedt JA, Seriti JA, Swain JA, Zondi JA, Mathopo JA

Contract and Property Law: *Rei vindicatio*: delivery of motor vehicle: appellant bank is the owner of the two motor vehicles financed under a written floor plan agreement (FPA) which was concluded between the appellant and a corporation: in terms of the FPA the corporation acknowledged that the appellant would remain owner of the financed vehicles until appellant's receipt of payment and being notified by the dealership: a dealership which did not pay the appellant for the vehicles obtained them from the corporation: appellant applied in the court a quo for an order in terms of which the respondent was to return the vehicles: court a quo dismissed the application with costs: whether the appellant is the owner of the vehicles concerned: whether the appellant was estopped from asserting ownership and that in the representations made to the respondent by the dealership had acted as appellant's agent.

37. Dr S Chapeikin & another v Loretta Charmaine Mini (103/2015)

Appealed from WCC

Date to be heard: 19 May 2016

Mpati P, Cachalia JA, Wallis JA, Tsoka AJA, Kathree-Setiloane AJA

Delict and Professional negligence: whether the respondent succeeded in proving a delictual claim for professional medical negligence against the appellant doctors in the court a quo in relation to their diagnosis, prognosis and treatment: and if so, whether the respondent succeeded in proving that but for the appellants' alleged wrongful and negligent conduct in breach of their professional duties, the harm to her would not have ensued.

38. Johanna Dorothea Gowar & another v Reginald David Gowar & another (149/2015)

Appealed from ECG

Date to be heard: 19 May 2016

Maya DP, Majiedt JA, Petse JA, Victor AJA, Baartman AJA

Trust Law: removal of trustees by court: common law requirements and requirements in term of s 20(1) of the Trust Property Control Act 57 of 1988: appeal and cross-appeal concerning the correct interpretation, meaning and effect of the provision: circumstances in which a trustee may be removed from office by order of court on grounds other than misconduct or incapacity in circumstances where various of the trust deeds entrench the trustee's position: whether or not requirements of s 13 of the Trust Property Control Act had been satisfied in so far as appellant's sought order terminating the trusts.

39. Cochrane Steel Products (Pty) Ltd v M-Systems Group (Pty) Ltd & another (227/2015)

Appealed from GJ

Date to be heard: 19 May 2016

Ponnan JA, Mbha JA, Zondi JA, Mathopo JA, Fourie AJA

Intellectual property: Unlawful Competition: Passing off: appellant lodged an application in the high court for a final interdict restraining the respondents from using the trademark 'ClearVu' as a keyword in the Google AdWords System or as a metatag: there being no registered trademark for ClearVu, the relief claimed by the appellant in the high court was based on the common law of unlawful competition: high court finding that the appellant could not avail itself of a common law action independent of passing off or statutory registration: with regard to passing off, the high court found that the appellant had failed to establish two prerequisites of passing off, being confusion and deception: high court also rejected appellant's contention that an interim order be granted pending the registration of the ClearVu trademark: accordingly, application was dismissed: whether the use by one competitor of another competitor's trade name as a keyword in Google's AdWords service amounts to unlawful competition: alternatively, whether passing off has occurred: whether an advertisement demonstrating particular unauthorised use of the trade mark ought to be admitted as evidence: whether the circumstances warrant the joinder of the respondent's managing director.

40. Leigh William Roering No & another v Qedani Mahlangu & others (581/2015)

Appealed from GJ

Date to be heard: 20 May 2016

Mpati P, Wallis JA, Willis JA, Saldulker JA, Tsoka AJA

Civil Procedure: company law: whether the first respondent should testify at an insolvency enquiry into the affairs of the 3P Consulting (Pty) Ltd (in liquidation): whether the first respondent established that the summons requiring her to testify at the enquiry constituted a clear case of abuse: whether the appellants as liquidators of 3P Consulting (Pty) Ltd (in liquidation) were entitled to interrogate the first respondent to investigate her allegations of fraud and impropriety and to decide whether to continue with the 'judgment application': whether the application to set aside the summons should have been dismissed.

41. Caine Bros (Pty) Ltd t/a Triple A Beef v The Development Tribunal for KwaZulu-Natal & others (471/2015)

Appealed from KZP

Date to be heard: 20 May 2016

Lewis JA, Leach JA, Tshiqi JA, Seriti JA, Pillay JA

Administrative Law: whether two administrative tribunals which dealt with a land use application should have their decisions set aside on the basis of procedural unfairness, substantive unfairness and unlawfulness: whether the court a quo erred in not doing so: whether the decision by the first respondent to permit the service station with a quick shop and other uses as provided for in the amended site development plan was not substantively unfair, irrational and illogical: whether cost orders in respect of interlocutory applications should be set aside.

42. B J du Toit NO v Errol Thomas NO & others (635/2015)

Appealed from WCC

Date to be heard: 20 May 2016

Ponnan JA, Majiedt JA, Mathopo JA, Fourie AJA, Victor AJA

Insolvency: Deceased Estate: Maintenance Act 99 of 1998: whether the maintenance court has jurisdiction to make a maintenance order in terms of s 16(1)(a) of the Maintenance Act against a

deceased estate and if so, whether the maintenance court has jurisdiction to make an order for the payment of expenses which were incurred for purposes of a maintenance enquiry

43 . Dr HC Avenant v The Commissioner for the South African Revenue Service (367/2015)

Appealed from Tax Court of South Africa – Cape Town

Date to be heard: 23 May 2016

Ponnan JA, Theron JA, Saldulker JA, Swain JA, Mbha JA

Income Tax 58 of 1962: whether the appellant, who had delivered harvested grapes to Namaqua Wines Limited between the beginning of February 2009 and 28 February 2009 was obliged to include in his income an amount representing the value, if any, of what was in the process being made into wine by Namaqua at midnight on 28 February 2009, on the basis that such pulp constituted ‘produce held and not disposed of by him’ and if so whether the amount of R789 338 included in the appellant’s 2009 income by the respondent was a fair and reasonable value.

44. Innovent Rental and Asset Management Solutions (Pty) Ltd v Absa Bank Ltd (439/2015)

Appealed from GJ

Date to be heard: 24 May 2016

Maya DP, Petse JA, Zondi JA, Dambuza JA, Kathree-Setiloane AJA

Contract: identity of the ceded goods: whether in terms of the main cession agreement the subject-matter to be delivered is generators as contended by respondent or engines as contended by appellant: if found that ‘the goods’ means engines ,respondent’s claim must fail, conversely if found that it means generators the appellant concedes that warranty was breached.

45. The Minister of Human Settlements, Western Cape Provincial Government v The Penhill Residents Small Farmers Co-operative Ltd & others (429/2015)

Appealed from WCC

Date to be heard: 24 May 2016

Lewis JA, Cachalia JA, Saldulker JA, Mathopo JA, Tsoka AJA

Property Law: Eviction: whether the land was unlawfully occupied: whether the occupiers had tacit consent to occupy the whole property: whether the occupiers had a legitimate expectation of occupying the whole property: whether tacit consent or a legitimate expectation would have required the appellants to consult with the occupiers before instituting the interdict application: whether the order sought by the Provincial Government was practical.

46. Karin Britz v The State (889/2015)

Appealed from GJ

Date to be heard: 24 May 2016

Tshiqi JA, Theron JA, Fourie AJA

Criminal Procedure: Sentence: appellant convicted of 81 counts of theft from employer to the total value of R3 925 350.29 committed over four years: sentenced to 15 years’ imprisonment: whether the sentence imposed on the appellant is appropriate: whether the order in terms of s 276B of the Criminal Procedure Act 51 of 1997 pertaining to a minimum sentence of 10 years to be served before eligible for parole, is appropriate.

47. Northern Endeavour Shipping (Pty) Ltd v The Owners of the ‘Nyk Isabel’ & another (972/2015)

Appealed from KZD

Date to be heard: 25 May 2016

Leach JA, Theron JA, Seriti JA, Wallis JA, Kathree-Setiloane AJA

Maritime Law: Section 5(2) of Admiralty Jurisdiction Regulation Act 105 of 1983: whether the second respondent, NYK Line, was entitled to intervene in the action *in rem* not as a party but as an intervening applicant solely for the purpose of seeking an order directing the appellant to furnish security for a claim pending in Brazil: whether the court *a quo* had jurisdiction to grant the order sought by the respondents in terms of s 5(2)(b) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Act): whether the respondents have on a balance of probabilities proved a genuine and reasonable need for the security sought: whether the court *a quo* should in any event have exercised its discretion to order that the security sought by the respondents be furnished by the appellant: what is an appropriate sanction for the appellant should it be unable or fail to timeously comply with the order to furnish security.

48. Golden Dividend 339 (Pty) Ltd & another v Absa Bank Limited (569/2015)

Appealed from GP

Date to be heard: 25 May 2016

Tshiqi JA, Swain JA, Tsoka AJA

Business Rescue: Companies Act 71 of 2008: Respondent applying to set aside adoption of business rescue plan: whether non-joinder of other creditors fatal to relief sought, in light of this court's decision in *Absa Bank Ltd v Naude NO* [2015] ZASCA 97.