

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 4 2016
CASES ENROLLED FOR HEARING: NOVEMBER 2016**

1. Fourcee Infrastructure Equipments PVT Ltd v Welfit Oddy (Pty) Ltd (1026/2015)

Appealed from ECP

Date to be heard: 01 November 2016

Lewis JA, Pillay JA, Mathopo JA, Potterill AJA, Schippers AJA

Contract: Specific performance: appeal against an order for specific performance by the appellant of its obligations in terms of a contract concluded with the respondent, in terms of which the appellant was to take delivery of and pay for certain tank containers manufactured by the respondent: whether the court a quo was correct in exercising its discretion to grant specific performance: alternatively, whether the respondent, having tendered delivery of certain tank containers manufactured in terms of the agreement and thereafter selling same to a third party, is to be deemed to have accepted the appellant's repudiation of the agreement such that its claim is now limited to one of damages.

2. Consortium for Refugees and Migrants in South Africa v President of the Republic of South Africa & others (075/2016)

Appealed from GP

Date to be heard: 01 November 2016

Cachalia JA, Wallis JA, Zondi JA, Fourie AJA, Dlodlo AJA

International Law: Immigration: Refugee: Refugees Act 130 of 1998: the proper interpretation and administration of the Act in accordance with South African international law and international criminal law obligations: whether the rigorous legal and procedural standards required of an exclusion analysis in terms of s 4(1)(a) of the Act were properly applied by the officer responsible for granting refugee status: whether the court a quo was correct to hold that the respondents must have taken the allegations against the applicant for refugee status into consideration when making their decision: whether the evidence the respondent provided was necessary to justify or to sustain the court a quo's findings: whether the respondents were correct to raise confidentiality as a basis for refusing to disclose all reasons for granting refugee status: whether the applicant for refugee status was correctly granted refugee status and whether he ought to have been deported or extradited.

3. Serengeti Rise Industries (Pty) Ltd & another v Tayob Nazeer Aboobaker NO & others (845/2015)

Appealed from KZD

Date to be heard: 01 November 2016

Bosielo JA, Swain JA, Dambuza JA, Van der Merwe JA, Schoeman AJA

Administrative Law: Local Government: whether it was appropriate for the court a quo to review the administrative actions in terms of the principle of legality and not in terms of the Promotion of Administrative Justice Act 3 of 2000: whether the respondents complied with the requirements of the PAJA and in particular the provisions of s 7(1) and (2) relating to delay and the obligation to exhaust internal remedies: whether there were irregularities in meeting the public notice requirements of s 74*ter* of the Ordinance and if so, whether the irregularities were sufficiently material to constitute a ground of review to set aside the rezoning approval: whether the court a quo was correct in finding that neither of the appellants could convincingly show that the rezoning was rational or lawful.

4. Shoprite Checkers (Pty) Ltd v Member of the Executive Council for Economic Development and Environmental Affairs: KwaZulu-Natal & others (078/2016)

Appealed from KZP

Date to be heard: 02 November 2016

Maya AP, Petse JA, Swain JA, Zondi JA, Schippers AJA

Constitutional and Administrative Law: Regulations to the KwaZulu-Natal Liquor Licensing Act 6 of 2010: the issue on appeal is the constitutional and administrative validity of regulation 47 of the KwaZulu-Natal Liquor Licensing Act 6 of 2010: whether the Act prohibits or renders unlawful the continued sale of liquor at the affected premises, by virtue of their proximity to learning and/or religious institutions: liquor licences for such premises were granted in terms of the National Liquor Act 27 of 1989: whether the affected holders of pre-existing liquor licences should apply for temporary amnesty in accordance with regulation 47 and at the same time apply for the removal of the licences to other premises.

5. Wishart, Grant Logan NO & others v BHP Billiton Energy Coal South Africa Ltd & others (162/2016)

Appealed from GJ

Date to be heard: 02 November 2016

Lewis JA, Cachalia JA, Mathopo JA, Mocomie JA, Makgoka AJA

Company Law: Liquidation of a company: Insolvency Act 24 of 1936: appeal against court a quo's decision to uphold two exceptions to the appellants' cause of action: whether in the winding-up of a company a court may grant leave to prove a late claim in terms of the proviso to s 44(1) of the Insolvency Act 24 of 1936: whether a court may adjust a liquidation and distribution account in circumstances other than where an aggrieved person takes a decision of the Master on review in terms of s 407 of the Companies Act 61 of 1973.

6. Nuance Investments (Pty) Ltd v Maghilda Investments (Pty) Ltd & others (032/2016)

Appealed from GP

Date to be heard: 02 November 2016

Tshiqi JA, Seriti JA, Willis JA, Van der Merwe JA, Nicholls AJA

Prescription: claim in unjustified enrichment for recovery of moneys paid for land: contracts void for illegality under the Subdivision of Agricultural Land Act 70 of 1970 and the Alienation of Land Act 68 of 1981: whether claim has prescribed: when knowledge of the facts giving rise to the claim is deemed to have occurred: whether knowledge (actual or deemed) of the facts underlying both grounds of illegality are necessary: or whether knowledge of either set of facts is sufficient, for prescription to have occurred.

7. University of the Free State v AfriForum and Solidarity (929/2016)

Appealed from FSP

Date to be heard: 03 November 2016

Cachalia JA, Swain JA, Mathopo JA, Fourie AJA, Schippers AJA

Constitutional law: Interpretation: Section 29 (2) of the Constitution of the Republic of South Africa Act: whether the implementation of the main judgment, setting aside a decision by the Council of the University of the Free State to adopt a new language policy, complies with s 18(3) of the Superior Courts Act 10 of 2013 and the doctrine of separation of powers. **Practice: Interpretation: Section 18(3) of the Superior Courts Act 10 of 2013:** whether the requirements for the grant of a s 18(3) implementation order had been satisfied before the court a quo and whether the requirements for the grant of relief in terms of section 18(3) had been met for the purposes of the s 18(4) appeal: whether the decision of the court a quo was correct: whether the respondents have established the jurisdictional facts for implementing a judgment pending an appeal.

8. Moses Tshoga v The State (635/2016)

Appealed from GSJ

Date to be heard: 03 November 2016

Bosielo JA, Tshiqi JA, Dambuza JA, Schoeman AJA, Nicholls AJA

Criminal Law and Procedure: Sentence: whether s 51(2) of the Criminal Law Amendment Act 105 of 1997 (minimum sentence Act) is applicable: whether the sentence imposed upon the appellant was appropriate.

9. Zamuxolo Kaywood v The State (394/2016)

Appealed from NCK

Date to be heard: 03 November 2016

Bosielo JA, Tshiqi JA, Dambuza JA, Schoeman AJA, Nicholls AJA

Criminal and Procedure: Sentence: Section 271A of the Criminal Procedure Act 51 of 1977: appeal against sentences of life imprisonment following conviction for rape and sixteen years' imprisonment following conviction for attempted murder: whether s 271A of the CPA is applicable: whether sentencing court misdirected itself by taking into account previous convictions even though these had occurred more than 10 years previously.

10. Sydwell Langa v The State (640/2016)

Appealed from GSJ

Date to be heard: 03 November 2016

Shongwe JA, Van der Merwe JA, Mocumie JA, Dlodlo AJA, Potterill AJA

Criminal Law and Procedure: Conviction and Sentence: the issues on appeal are whether the court a quo misdirected itself in confirming the conviction and sentence of the appellant and that the appellant was proven guilty beyond reasonable doubt: whether the trial court committed a fatal irregularity in refusing to hear an application for discharge in terms of s 174 of the Criminal Procedure Act 51 of 1977: whether the evidence implicating the appellant was contradictory and unreliable and whether the trial court failed to appropriately mitigate the cumulative effect of the sentences.

11. Daniël Mahlalela v The State (396/2016)

Appealed from GP

Date to be heard: 03 November 2016

Shongwe JA, Van der Merwe JA, Mocumie JA, Dlodlo AJA, Potterill AJA

Criminal Law and Procedure: Sentence: the issue on appeal is whether the State has proved beyond reasonable doubt that the appellant is guilty of murder and robbery with aggravating circumstances: whether the evidence tendered is adequate to prove that the appellant was one of the assailants of the deceased and whether the appellant's failure to testify was fatal to his case: whether the trial court erred in ruling that there were no substantial and compelling circumstances justifying a lesser sentence than life imprisonment.

12. Head of Department, Mpumalanga Department of Education v Valozone 268 CC & others (837/2015)

Appealed from GP

Date to be heard: 04 November 2016

Maya AP, Bosielo JA, Van der Merwe JA, Schoeman AJA, Fourie AJA

Administrative Law: Public Procurement: tender for school nutrition programme: appeal against court a quo's order reviewing and setting aside a decision by Education HOD to re-advertise the tender and not to award it to any of the bidders: HOD previously awarding tender to eighth respondent, but award set aside in prior litigation: following that litigation, HOD ordered to reconsider and re-adjudicate tender: HOD, in purported compliance, deciding not to award the tender to any of the original bidders, but instead re-advertised, while in the interim implementing a month-to-month contract with previously successful bidders: whether the HOD complied with the previous court order to reconsider and re-adjudicate: whether HOD entitled to abandon and restart tender process: whether the HOD is entitled to conclude month-to-month contracts in the interim: and whether the HOD's decisions were rational and lawful: whether the relief sought is academic.

13. Minister of Justice and Correctional Services & others v Estate Late Stransham-Ford, Robert James (531/2015)

Appealed from GP

Date to be heard: 04 November 2016

Lewis JA, Seriti JA, Wallis JA, Dambuza JA, Schippers AJA

Appeal Procedure: Further evidence: application to adduce further evidence by third amicus curiae: application to adduce further evidence by fourth appellant: application by fourth amicus curiae to respond to fourth appellant's application to adduce further evidence: whether the requirements are met.

Constitutional Law: Right to life: Voluntary euthanasia or assisted suicide by medical practitioner: whether a patient has a constitutional right in circumstances of imminent death due to painful terminal illness, to euthanasia: whether common law crimes of murder and culpable homicide are unconstitutional to the extent that they absolutely prohibit assisted suicide by medical practitioners: whether a medical practitioner who cooperates in an assisted suicide acts unethically and is subject to sanction by the Health Professions Council of South Africa (HPCSA): whether the court a quo was correct in absolving a physician supporting an assisted suicide from prosecution or disciplinary proceedings by the HPCSA.

14. Dale Lonsdale Hohne v Super Stone Mining (Pty) Ltd (831/2015)

Appealed from NCK

Date to be heard: 04 November 2016

Shongwe JA, Leach JA, Petse JA, Willis JA, Nicholls AJA

Evidence: admissibility of evidence in a civil trial: evidence obtained from appellant after he was threatened with prosecution for alleged theft of diamonds: whether evidence was obtained in violation

of the appellant's constitutional and/or common law rights: if so, whether the evidence was nevertheless admissible pursuant to the trial court's discretion.

Delict: Quantum of damages: whether the court a quo's finding on quantum is correct: whether challenge to quantification properly before this court.

15. Macassar Land Claims Committee v Maccsand & another (201/2016)

Appealed from LCC

Date to be heard: 07 November 2016

Maya AP, Wallis JA, Fourie AJA, Dlodlo AJA, Potterill AJA

Land: Restitution of Land Rights Act 22 of 1994: Mineral and Petroleum Resources Development Act 28 of 2002: appellant seeking restitution of land in terms of Restitution of Land Rights Act 22 of 1994: first respondent holding a mining right in terms of the Mineral and Petroleum Resources Development Act 28 of 2002: whether Land Claims Court has the power to order expropriation of the mining right, and thereafter award unencumbered ownership of the claimed land to the appellant.

16. Brodsky Trading 224 CC t/a Platinum Unlimited Estates v Cronimet Chrome Mining SA (Pty) Ltd & others (039/2016)

Appealed from GP

Date to be heard: 07 November 2016

Cachalia JA, Petse JA, Swain JA, Mathopo JA, Mocumie JA

Company Law: Sale of shares: appellant claiming commission from second respondent (the purchaser): purchaser had not been in existence at time of alleged commission agreement: whether a commission agreement was concluded: whether a joint venture was formed, which culminated in the incorporation of the purchaser: whether the joint venture was in existence at time of alleged commission agreement: whether rights and obligations of joint venture transferred to purchaser upon incorporation: alternatively, whether the alleged commission agreement had been subsequently ratified by the purchaser: alternatively, whether alleged commission agreement ratified by the joint venture parties, and the obligation to pay commission had been assumed by the purchaser: alternatively, whether the purchaser accepted a *stipulation alteri* which included an obligation to pay commission: whether directors of the purchaser had authority (actual or ostensible) to represent it.

Estate agent: Commission: Estate Agency Affairs Act 112 of 1976: ss 26 and 34A: whether the appellant substantially complied with obligation to hold a fidelity fund certificate: if not, whether the alleged commission agreement was invalid.

Civil procedure: Evidence: whether the court a quo was correct in drawing an adverse inference from the appellant's failure to call certain witnesses, who were associated with the respondents (including two former directors of the second respondent).

Property Law: Statutory illegality: contract for sale of land illegal in terms of the Subdivision of Agricultural Land Act 70 of 1970: whether ownership of land passed on registration, or whether transfer was prohibited.

17. FirstRand Bank Ltd t/a First National Bank v Makaleng, Modingwana Harry (034/2016)

Appealed from GJ

Date to be heard: 07 November 2016

Shongwe JA, Tshiqi JA, Seriti JA, Willis JA, Makgoka AJA

Credit Agreement: National Credit Act 34 of 2005: whether the court a quo erred in not declaring the respondent's bonded immovable property specially executable: whether the court a quo erred in not granting the appellant the money judgment sought by default: whether a court possesses a general discretion to refuse the relief claimed upon a contract and whether considerations applicable to execution against primary residence alter this proposition.

18. Rand Water Board v Big Cedar Trading 22 (Pty) Ltd (1038/2015)

Appealed from GP

Date to be heard: 08 November 2016

Cachalia JA, Seriti JA, Wallis JA, Pillay JA, Potterill AJA

Administrative and Constitutional law: Property law: Servitude: appeal against an order which requires the appellant to register a servitude in respect of two underground pipelines on the respondent's property, and to pay to the respondent an amount in excess of R32 million as just and equitable compensation (instead of a removal order after the requirements for a *rei vindicatio* were established), together with mora interest and a punitive cost order and cross-appeal by the

respondent against the 'implied' dismissal of the claim for removal of the pipelines and the dismissal of the claim for compensation for use of the property by the appellant: whether the appellant has established a defence of statutory authorisation against the *rei vindicatio* and against the claim for compensation in respect of the alleged unlawful use of the property of the respondent since 2003 under s 24(j) of the Rand Water Board Statutes (Private) Act 17 of 1950 read with s 84(6) of the Water Services Act 108 of 1997, and with ss 39(2) or 33 of the Constitution: whether the Rand Water Board acted rationally in exercising that power: whether the court has a discretionary power to make a compensation order instead of a removal order: if not, whether there is a necessity to develop the common law in respect of the court's discretionary power to award just and equitable compensation in lieu of removal order.

19. Zephan (Pty) Ltd & others v Anne-Marie Leonie De Lange (1068/2015)

Appealed from GP

Date to be heard: 08 November 2016

Bosielo JA, Dambuza JA, Van der Merwe JA, Schoeman AJA, Nicholls AJA

Civil Procedure: Summary judgment: Contract Law: appeal against an order for summary judgment against appellants in favour of respondent in an action for specific performance for payment in respect of a buy-back agreement in which the appellants have allegedly undertaken to purchase the respondent's shares after five years. There are 45 other identically pleaded actions against the appellants in excess of R29 million, and the parties have agreed that the current matter will be dispositive of those actions: whether the court a quo correctly applied the principles applicable to evaluating the appellants' defence as set out in their affidavit resisting summary judgment: whether the appellants' affidavit disclosed a bona fide defence: whether the court a quo erred in granting summary judgment.

20. The Member of the Executive Council: Department of Education North West Province & another v FEDSAS (021/2016)

Appealed from NWM

Date to be heard: 09 November 2016

Maya AP, Wallis JA, Swain JA, Fourie AJA, Dlodlo AJA

Constitutional Law: Education: Public schools hostels regulation: appeal relates to the manner in which any conflict between national legislation and provincial legislation ought to be dealt with and the equitable remedy where the regulations are held to be invalid: whether the MEC has the power to make regulations relating to the administration of public schools hostels in light of the provisions of the South African School Act 84 of 1996 and the relevant provisions of the North West Schools Education Act 3 of 1998 read with the relevant provisions of the Constitution particularly ss 28 and 29.

21. Urban Hip Hotels (Pty) Ltd v K Carrim Commercial Properties (Pty) Ltd (1177/2015)

Appealed from GP

Date to be heard: 09 November 2016

Lewis JA, Shongwe JA, Petse JA, Willis JA, Van der Merwe JA

Contract: Interpretation of terms of agreement: appeal against an order for payment of operational expenses in excess of R2 million that were allegedly unlawfully deducted by the appellant from the rental income due to the respondent in terms of an a contract that comprised three Memoranda of Understanding: proper interpretation of clause 4.3 of the agreement: whether the appellant was entitled in law to deduct operational expenses from the rental pool income that was to be paid to the respondent.

22. FirstRand Bank Ltd v Normandie Restaurants Investments (Pty) Ltd & another (189/2016)

Appealed from WCC

Date to be heard: 10 November 2016

Lewis JA, Cachalia JA, Tshiqi JA, Willis JA, Dambuza JA

Company Law: Business rescue: Company liquidation: Companies Act 71 of 2008: appeal against order placing first respondent under supervision and commencing business rescue proceedings in terms of s 131(1) and (4) of the Act and dismissing an application by the appellant for the winding-up of the first respondent: whether in view of the nature of the first respondent and its business, the court a quo was correct to have granted a business rescue order which contemplated a lengthy period of supervision and significant prejudice to creditors and dismissing the winding-up application: and whether the second respondent (applicant a quo) had established a reasonable prospect for rescuing the company as contemplated in s 131(4) of the Act.

23. Minister of Safety and Security v Elsa Booysen (035/2016)

Appealed from ECG

Date to be heard: 10 November 2016

Bosielo JA, Leach JA, Schoeman AJA, Makgoka AJA, Potterill AJA

Delict: Vicarious liability of an employer: appeal against an order granted in favour of the respondent in an action brought by her after she allegedly suffered damages after she was shot by a reservist constable in the employ of the appellant, the court a quo having found that the appellant is vicariously liable: whether the appellant is vicariously liable for the respondent's damages in accordance with the objective deviation test.

24. Rodney Ernest Mills v Vanessa Mills (332/2015)

Appealed from GP

Date to be heard: 10 November 2016

Shongwe JA, Swain JA, Mathopo JA, Mocomie JA, Dlodlo JA

Family Law: Divorce: Antenuptial Contract: whether the respondent is entitled to invoke a clause in the antenuptial contract which obliges the appellant to purchase an immovable property for the respondent, should it be found that the appellant entered into an adulterous relationship which caused the divorce between the parties.

Trust Law: Trust Property Control Act 57 of 1988: whether certain assets which vest in trusts are excluded from the provision of an antenuptial contract or whether they can be taken into consideration for determination of an accrual claim where a party avers that the trust is the alter ego of the other party: whether certain assets in a trust constitute a contribution to the trust and should be taken into consideration for determination of the accrual of the parties' respective estates in terms of the antenuptial contract.

25. Juda Joseph Plekenpol v The State (772/2015)

Appealed from GP

Date to be heard: 11 November 2016

Bosielo JA, Pillay JA, Petse JA, Swain JA, Potterill AJA

Criminal Law and Procedure: Sentence: whether s 51(2) of the Criminal Law Amendment Act 105 of 1997 (minimum sentence Act) was applicable: whether the sentence was unduly harsh and induced a sense of shock.

26. Mzuvikile Radebe v The State (1163/2015)

Appealed from ECP

Date to be heard: 11 November 2016

Bosielo JA, Pillay JA, Petse JA, Swain JA, Potterill AJA

Criminal Law and Procedure: Sentence: appeal against the refusal by the high court to grant leave to appeal against conviction and sentence, brought by way of special leave: whether the appellant, a SAPS captain and station commander, has shown that there are special circumstances which merit an appeal on a single count of stock theft and sentence of 18 months' imprisonment: whether the provisions of s 276(1)(i) of the Criminal Procedure Act 51 of 1977 are applicable: appellant currently on bail pending the appeal: whether leave to appeal should have been granted.

27. Lebogang Phillips v The State (370/2016)

Appealed from GP

Date to be heard: 11 November 2016

Leach JA, Tshiqi JA, Zondi JA, Schoeman AJA, Schippers AJA

Criminal Law and Procedure: Sentence: Prevention and Combating of Corrupt Activities Act 12 of 2004 (POCA): appeal against sentence of seven years' imprisonment, two of which are suspended, on a charge of contravening s 4(1)(a)(i)(aa) of POCA, the appellant having been employed as a SAPS constable at the time, and having pleaded guilty as charged after he had solicited and accepted a bribe in the amount of R900: whether the trial court misdirected itself by not having regard to the sentencing provisions in the Act, particularly s 26(1)(a)(ii): whether the trial court misdirected itself in not imposing a fine as punishment, periodical imprisonment and correctional supervision instead of direct imprisonment: whether the trial court imposed the appropriate sentence, having regard to the appellant's personal circumstances: appellant on bail pending appeal.

28. Bongokwakhe Bonginkosi Mvubu v The Director of Public Prosecutions, KwaZulu-Natal (518/2015)

Appealed from KZP

Date to be heard: 11 November 2016

Leach JA, Tshiqi JA, Zondi JA, Schoeman AJA, Schippers AJA

Criminal Law and Procedure: Sentence: appeal against sentence of 45 years' imprisonment on ten counts of attempted murder and robbery with aggravating circumstances, and an order in terms of s 276 B(2) of the Criminal Procedure Act 51 of 1977, imposed by the full court on appeal after it granted leave to appeal against the cumulative effect of sentence: whether the order made in terms of s 276 B(2) was incorrectly made and ought to be set aside: whether the court imposed the appropriate sentence, having regard to the circumstances.

29. Vusumuzi Christopher Mthimkhulu v The State (1135/2015)

Appealed from KZP

Date to be heard: 11 November 2016

Seriti JA, Mathopo JA, Van der Merwe JA, Mocomie JA, Nicholls AJA

Criminal Law and Procedure: Conviction: whether the appellant's petition for leave to appeal was correctly refused.

30. Director Public Prosecutions, Gauteng Province v Ferhat Benbelkacem (831/2016)

Appealed from GP

Date to be heard: 11 November 2016

Seriti JA, Mathopo JA, Van der Merwe JA, Mocomie JA, Nicholls AJA

Criminal Law and Procedure: Sentence: Whether a term of twelve years' imprisonment is appropriate in the circumstances and whether the sentence is a competent sentence on each of the charges on which the respondent was convicted, with reference to s 280(1) of the Criminal Procedure Act 51 of 1977.

31. Louistef (Pty) Ltd v C W A Snyders NO as trustee of: Louis Snyders Familie Trust (1060/2015)

Appealed from GP

Date to be heard: 14 November 2016

Lewis JA, Pillay JA, Zondi JA, Mocomie JA, Fourie AJA

Contract: Sale of Site licence: Petroleum Products Act 120 of 1977: Petroleum Products Amendment Act 58 of 2003: Regulations Regarding Petroleum Products Site and Retail Licences, 2006: appeal against judgment of the court a quo holding that site licences under the Act as amended and regulations do not have commercial value and cannot be sold; and consequently that the sale between the parties in respect of the site licence was invalid: whether the appellant possessed rights flowing from the site licence which constituted a *res vendita* or *merx*: if so, whether the appellant is entitled to repayment and the relief sought in respect of the appellant's counter-claim in the court a quo.

32. Pantelis Kaknis v Absa Bank Limited (008/2016)

Appealed from ECP

Date to be heard: 14 November 2016

Shongwe JA, Willis JA, Mathopo JA, Van der Merwe JA, Nicholls AJA

Credit: National Credit Act 34 of 2005: whether s 126B(b) of the NCA operates retrospectively to prevent the respondent from continuing the collection of the debts owed to it by the appellant by relying on an acknowledgment of debt in terms of which he renounced his reliance on prescription.

33. Sable Hills Waterfront Estate CC v Sable Hills Waterfront Estate Home Owners' Association NPC (199/2016)

Appealed from GP

Date to be heard: 14 November 2016

Wallis JA, Petse JA, Makgoka AJA, Potterill AJA, Schippers AJA

Property: Liability for levies: Township: appeal against the judgment of the court a quo holding that the appellant as owner and developer of the Sable Hills Waterfront Estate is liable to pay levies subsequent to the establishment of the township: whether the appellant should be held liable to pay levies in respect of one property only, ie the remaining extent, or for each of the erven as set out in the General Plan which have not yet been transferred to third parties: whether the Articles of Association of a home owners' association can be interpreted to extend the liability to pay levies to it as a land developer.

34. Usman Ismail Patel v The Director of Public Prosecutions: Johannesburg (838/2015)

Appealed from GJ

Date to be heard: 15 November 2016

Maya AP, Pillay JA, Swain JA, Van der Merwe JA, Schippers AJA

International Law: Extradition Act 67 of 1962: whether the offences for which the appellant's extradition was sought to the USA are extraditable offences for the purposes of the Act: whether the certificate which was issued in terms of s 10(2) of the Act, was issued in accordance with it: whether there was sufficient evidence in the USA to warrant prosecution for the offences sought there in terms of s 10(1) of the Act.

35. Nuberry Holdings Limited & others v Kruger Investments Group Limited & others (1203/2015)

Appealed from WCC

Date to be heard: 15 November 2016

Cachalia JA, Bosielo JA, Seriti JA, Dambuza JA, Mathopo JA

Civil Procedure: Company Law: whether the fact that the shares and loan accounts in the second and third appellants are located in the area of jurisdiction of the court a quo was sufficient to vest that court with jurisdiction over the application to found and confirm jurisdiction: if not, whether the respondents' contention that the transfer of the shares and claims to the first appellant was unlawful, should be taken to mean that the property sought to be attached to found and confirm jurisdiction is not owned by the relevant appellants and is thereby incapable of being attached as property belonging to the debtor: whether the common law requires to be extended so as to permit the attachment of one's own property to confirm jurisdiction: whether the court a quo had jurisdiction in respect of the claim sounding in money.

36. Freshvest Investments (Pty) Ltd v Marabeng (Pty) Ltd (1030/2015)

Appealed from FB

Date to be heard: 15 November 2016

Shongwe JA, Leach JA, Willis JA, Fourie AJA, Nicholls AJA

Company Law: Liquidation of companies: appeal against an order dismissing an application for the provisional winding up of the respondent company: whether the appellant's claim and its locus standi in the liquidation application are disputed on bona fide and reasonable grounds.

37. The Member of the Executive Council for Health and Social Development of the Gauteng Provincial Government v Dumile Judith Zulu obo Wandile Maqhawe Zulu (1020/2015)

Appealed from GJ

Date to be heard: 16 November 2016

Maya AP, Swain JA, Fourie AJA, Dlodlo AJA, Potterill AJA

Constitutional Law: Legislation validity: Contingency Fees Act 66 of 1997: whether the court a quo erred in refusing to direct the MEC to pay medical expenses in respect of minor child instead of monetary compensation: whether the Act makes provision for the exclusion of an award of damages for future hospital and medical expenses from the contingency fee agreement for purpose of determining the legal practitioner's fee and if not, whether this court should do so having regard to s 28 of the Constitution: whether there is any basis in our common law to find that an award of damages can be made on any other basis than in monetary terms: whether the respondent should have been awarded damages in the form of services and whether the monetary compensation in respect of prospective medical expenses should have been excluded from the contingency agreement.

38. South African Broadcasting Corporation SOC Limited v Masstores (Pty) Limited (914/201)

Appealed from GJ

Date to be heard: 16 November 2016

Lewis JA, Wallis JA, Zondi JA, Schoeman AJA, Schippers AJA

Interpretation: Broadcasting Act 4 of 1999: whether the word 'sells' in s 27(4) of the Act should be given a wide or narrow interpretation: whether the word 'sells' includes delivery: whether the respondent had the intention to sell, even if the word 'sell' is interpreted in the narrow sense of only including the formal elements of a sale, prior to the procurement of a valid television licence.

39. Jacques Smalle & another v Southern Palace Investments 440 (Pty) Ltd & another (121/2016)

Appealed from GP

Date to be heard: 16 November 2016

Leach JA, Tshiqi JA, Pillay JA, Mathopo JA, Nicholls AJA

Defamation: Quantum of damages: whether the appellants should have been found liable for defamation in respect of a press statement and a newspaper article issued and published by them: whether the quantum of damages awarded should be reconsidered.

40. Credit Guarantee Insurance Corporation of Africa Limited v Kristabel Developments (Pty) Ltd (1178/2015)

Appealed from GJ

Date to be heard: 17 November 2016

Lewis JA, Swain JA, Mocomie JA, Makgoka AJA, Nicholls AJA

Building contract: Credit guarantee: Settlement agreement: appeal against judgment by the High Court granting an application by the respondent for payment in excess of R12 million based on a demand guarantee issued by the appellant in favour of the respondent: whether the parties concluded a settlement agreement which novated the respondent's claim against the appellant under a guarantee: whether the respondent's demand for payment under the guarantee complied with the requirements of the guarantee: whether the appellant waived its right to rely on the respondent's compliance with the requirements of the guarantee.

41. MEC for Health, Eastern Cape v Ongezwa Mkhitha & another (1221/2015)

Appealed from ECM

Date to be heard: 17 November 2016

Cachalia JA, Bosielo JA, Seriti JA, Dlodlo AJA, Schippers AJA

Delict: Road Accident Fund Act 50 of 1996: appeal against judgment of court a quo pertaining to a special plea that was raised by the MEC in relation to the interpretation of s 17(1) of the Act, that the respondent was obliged to sue the RAF exclusively having arisen from a motor vehicle accident: whether the MEC can be held liable for injuries sustained in a motor vehicle accident for the *sequelae* negligent treatment of the injuries.

42. Mobile Telephone Networks (Pty) Ltd v Carl Henricus Beekman NO & others (1139/2015)

Appealed from WCC

Date to be heard: 17 November 2016

Leach JA, Petse JA, Dambuza JA, Mathopo JA, Van der Merwe JA

Administrative Law: Building plans approval: appeal against an order reviewing and setting aside the City of Cape Town's decision to grant plan approval to the appellant in terms of the National Building Regulations and Building Standards Act 103 of 1977 in respect of a cellular base station and mast proposed to be built on a specified erf in Constantia, Cape Town: the proper construction of the requirements of Regulation A23 of the National Building Regulations: and whether or not the cellular base station and mast qualified for planning approval as a 'temporary building'.

43. Deez Realtors CC t/a Firzt Realty Company & others v South African Securitisation Programme (Pty) Ltd & others (175/2016)

Appealed from GJ

Date to be heard: 18 November 2016

Bosielo JA, Seriti JA, Petse JA, Fourie AJA, Makgoka AJA

Civil Procedure and Practice: Amendment: Plea of prescription: appeal against the court a quo's dismissal of an application for amendment in which the appellants sought to introduce a special plea of prescription following the amendment by the respondents of their particulars of claim: whether the appellants should be permitted to introduce a special plea of prescription to their plea: and whether an amendment by the respondents to their particulars of claim introduced a new debt or right of action.

44. Christiaan Johannes Basson & others v Tyrone Paul Hanna (037/2016)

Appealed from GJ

Date to be heard: 18 November 2016

Shongwe JA, Willis JA, Zondi JA, Dambuza JA, Mathopo JA

Contract: Damages: whether the respondent's claim for damages in lieu of specific performance is competent: whether the respondent has discharged the onus of proving the terms of the agreement between the parties with specific reference to the interest to be charged on the repayments: whether the judgment of the court a quo was correct in respect of the capital amount and mora interest.

45. Church of Scientology Flag Service Organisation v Warwick James Goosen & another (051/2016)

Appealed from GJ

Date to be heard: 18 November 2016

Tshiqi JA, Swain JA, Mocomie JA, Schoeman AJA, Potterill AJA

Civil procedure: Jurisdiction: Attachment to found and confirm jurisdiction: Funds in bank account to credit of *peregrinus*: appeal against the judgment of the court a quo in terms of which it dismissed the appellant's application for reconsideration of an order granted in favour of the respondent, on an ex parte basis, to attach funds standing to the credit of the appellant in order to found and confirm the jurisdiction on the appellant, which is a *peregrinus*: consideration of the onus and resolution of dispute of fact in an application to reconsider an order granted on an ex parte basis to attach assets to found and confirm jurisdiction against a *peregrinus*: whether the respondents have established, on a balance of probabilities, that the asset which has been attached is an asset of the appellant: whether the asset could be an asset of the appellant: whether the order granted ex parte to found and confirm jurisdiction against the appellant was erroneously sought in terms of Uniform rule 42(1)(c): whether the order granted to found and confirm jurisdiction against the appellant ought to be set aside under the common law.

46. Minister of Rural Development and Land Reform & another v Ivor Leroy Phillips (052/2016)

Appealed from LCC

Date to be heard: 21 November 2016

Leach JA, Tshiqi JA, Zondi JA, Makgoka AJA, Schippers AJA

Land: Restitution of Land Rights Act 22 of 1994: whether the respondent was entitled to financial compensation and the extent thereof: whether the court a quo erred and failed to exercise its discretion judicially by emphasising the provisions of s 25(3) of the Constitution instead of ss 25(7) and 33 of the Act: whether the court a quo applied the wrong principle in considering the value of the disposed land.

47. Nordien Spekkies Williams v The State (634/2016)

Appealed from GP

Date to be heard: 22 November 2016

Cachalia JA, Petse JA, Willis JA, Dlodlo AJA, Makgoka AJA

Criminal Law and Procedure: whether the court a quo was correct in dismissing the appeal against conviction and sentence: whether the reconstructed trial record is sufficient for proper adjudication in order to dispense justice, ensuring the appellant has a fair trial: whether the non-parole period in terms of s 276B of the Criminal Procedure Act 51 of 1977 is just: whether the sentence of 18 years' imprisonment is just and in accordance with the law.

48. Victor Lesego Asele v The State (014/2016)

Appealed from NCK

Date to be heard: 22 November 2016

Cachalia JA, Petse JA, Willis JA, Dlodlo AJA, Makgoka AJA

Criminal Law and Procedure: Sentence: whether the trial court and the court a quo erred in having made adverse factual findings in conflict with the appellant's s 112(2) statement, which unduly aggravated the appellant's moral blameworthiness: whether there were any substantial and compelling circumstances present justifying a departure from the minimum sentence.

49. The National Director of Public Prosecutions v Ishwarlall Ramlutchman (677/2015)

Appealed from KZP

Date to be heard: 22 November 2016

Bosielo JA, Seriti JA, Zondi JA, Mathopo JA, Van der Merwe JA

Prevention of Organized Crime Act 121 of 1998: Confiscation order: Interpretation: meaning of benefit: appeal against an order dismissing an appeal by the appellant against the refusal by the regional magistrate of the special commercial crimes court to grant a confiscation order in favour of the appellant: whether the meaning of the word 'benefit' as defined in s 12(3) of POCA should be truncated to mean net profit: the nature of the enquiry under s 18 of POCA with particular reference to the sufficiency of evidence to make an order for an appropriate amount: accordingly, whether the regional magistrate correctly refused the application for the grant of a confiscation order in favour of the appellant.

50. Pasadena Leather Products CC t/a Pasadena Products & another v Franco Resca & another (137/2016)

Appealed from CCP

Date to be heard: 23 November 2016

Leach JA, Seriti JA, Dambuza JA, Mathopo JA, Makgoka AJA

Intellectual Property: Patent: Infringement: appeal against court a quo's finding that the appellants' fire-arm holsters infringe claims 1 and 7 of the respondents' South African Patent ZA98/6778 titled 'a lockable holster' and the order accordingly interdicting the appellants from infringing such claims: whether the appellants' fire-arm holsters infringe the respondents' patent: interpretation in the context of the specification of the patent of the meaning of the 'first and second camming surfaces' and whether the appellants' holsters incorporate such 'first and second camming surfaces'.