

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 1 2017**

CASES ENROLLED FOR HEARING: FEBRUARY – MARCH 2017

1. The Director of Public Prosecutions: Gauteng Division, Pretoria v Daniel Chaka Moabi (959/2015)

Appealed from GP

Date to be heard: 15 February 2017

Maya AP, Theron JA, Dambuza JA, Molemela AJA, Gorven AJA

Criminal law procedure and practice: Sentence: respondent was convicted and sentenced to life imprisonment for housebreaking with intent to rape and rape (involving the infliction of grievous bodily harm) in the Klerksdorp Regional Court: he appealed to the Gauteng Division, Pretoria against both conviction and sentence: Gauteng Division upheld the respondent's appeal on sentence, set aside the sentence of life imprisonment and substituted it for an antedated sentence of 14 years' imprisonment: whether the appeal is properly brought in terms of s 311 of the Criminal Procedure Act 51 of 1977: whether the appellant has properly raised a question of law and if so whether the court a quo's erroneous reasoning in law, by holding that s 51(1) and Schedule 2 Part 1 of the Criminal Law Amendment Act 105 of 1997 requires intent on the part of the accused, disturbs its decision to substitute sentence.

2. Director of Public Prosecutions, Gauteng Division, Pretoria v Kingsely Jafta Moloi (1101/2015)

Appealed from GP

Date to be heard: 15 February 2017

Maya AP, Theron JA, Dambuza JA, Molemela AJA, Gorven AJA

Criminal procedure and practice: State Appeal: Questions of law: appellant was convicted in the Nelspruit Regional Court for rape of a 13 year old child and sentenced to life imprisonment in terms of s 51 of the Criminal Law Amendment Act 105 of 1997: he was further declared unfit to work with children and that his name be entered into the register for sexual offenders: on appeal to Gauteng Division, Pretoria the conviction and sentence were set aside: whether the court a quo properly found that the trial court misdirected itself: whether the court a quo had evaluated the DNA evidence correctly in order to acquit the respondent: whether the court a quo was correct in requiring the State to give viva voce evidence despite the State's tender of evidence in terms of s 214(4) and (8) of the Criminal Procedure Act 51 of 1977: whether the State has properly formulated the questions of law.

3. Thabo Steven Mthimunye v The State (1186/2016)

Appealed from GP

Date to be heard: 15 February 2017

Ponnan JA, Zondi JA, Mathopo JA, Nicholls AJA, Coppin AJA

Criminal Procedure: applicant appeals against the refusal of his petition for leave to appeal against convictions and sentences of 25 and 20 years respectively for robbery with aggravating circumstances and murder: the State conceding that leave to appeal against the sentence on murder should be granted: whether leave to appeal against conviction and sentence should be granted: application for condonation for the late filing of the record.

4. Donovan Mazina v The State (494/2016)

Appealed from ECG

Date to be heard: 15 February 2017

Ponnan JA, Zondi JA, Mathopo JA, Nicholls AJA, Coppin AJA

Criminal Law and Procedure: Conviction: whether the court a quo erred in finding that there was a prima facie case of murder against the appellant: whether the appellant acted in private defence when he stabbed the deceased: the evidentiary value of informal admissions made in terms of s 115 of the Criminal Procedure Act 51 of 1977.

5. Khumbulani Collen Ndlovu v The State (925/2016)

Appealed from KZD

Date to be heard: 15 February 2017

Tshiqi JA, Petse JA, Mbha JA, Fourie AJA, Mbatha AJA

Criminal law and procedure: Sentence: appellant was convicted on his plea of guilty to undergo for one count of robbery with aggravating circumstances and one count of murder: sentenced 12 years' imprisonment in respect of the conviction for robbery and 20 years in respect of the conviction for murder, both sentences to run concurrently with a non-parole period of 13 years' imprisonment: whether the trial court in making an order in terms of s 276B of the Criminal Procedure Act 51 of 1977 in respect of the sentence on murder did so correctly.

6. Ndwambi Mudau & another v The State (1148/2016)

Appealed from LT

Date to be heard: 15 February 2017

Tshiqi JA, Petse JA, Mbha JA, Fourie AJA, Mbatha AJA

Criminal law and procedure: Conviction and Sentence: Evidence: Admissibility & Confessions: whether the confession made by the appellant was admissible as evidence as it was not freely and voluntarily made: whether guilt was proved beyond reasonable doubt: whether the sentence of life imprisonment is appropriate and whether substantial and compelling circumstances exist to deviate from imposing the minimum sentence of life imprisonment on the count of murder.

7. Niekara Harielall v University of KwaZulu-Natal (493/2016)

Appealed from KZP

Date to be heard: 16 February 2017

Cachalia JA, Swain JA, Molemela AJA, Gorven AJA, Mbatha AJA

Administrative law: Review: Promotion of Administrative Justice Act 3 of 2000: appropriate remedy: higher education: whether there are any material differences between the respondent's two admission policies and if so, which admission policy applies: whether the decision by the respondent not to admit the appellant to study medicine as a mature student should be reviewed and set aside under PAJA: the appropriate remedy in the event that the decision is reviewed and set aside.

8. Gert Petrus Jacobus Grobbelaar Kotze v The State (776/2016)

Appealed from GP

Date to be heard: 16 February 2017

Shongwe JA, Majiedt JA, Van der Merwe JA, Schippers AJA

Criminal law and procedure: Evidence: limited only to the appellant's conviction in Klerksdorp Regional Court for housebreaking with intention to commit indecent assault: whether the evidence in relation to these convictions proved the appellant's guilt beyond reasonable doubt: whether in relation to the conviction of indecent assault the trial court properly evaluated the identification evidence.

9. Francois Johan Joubert v The State (642/2016)

Appealed from GP

Date to be heard: 16 February 2017

Shongwe JA, Majiedt JA, Van der Merwe JA, Mocomie JA, Schippers AJA

Criminal law and procedure: Conviction and Sentence: appellant was convicted on 20 counts of fraud in the Nelspruit Regional Court: sentenced to seven years' imprisonment wholly suspended for five years on condition that he is not convicted of fraud or theft during the period of suspension and that he repay the amount of R425 843.33 to the South African Revenue Services: appeal against conviction and sentence: on appeal to the court a quo it mero motu substituted the sentence of the trial court with a sentence of seven years' imprisonment, four of which were suspended which left the appellant with an effective term of three years' imprisonment: whether it was competent and fair for the court a quo to substitute and aggravate the sentence in lieu of prior warning.

10. Asanda Mpinda v The State (673/2015)

Appealed from WCC

Date to be heard: 16 February 2017

Theron JA, Wallis JA, Willis JA, Mbha JA, Coppin AJA

Criminal Law and Procedure: Sentence: Court Practice: leave to appeal: whether appellant has prospects of success on leave to appeal: discrepancy between the sentence imposed upon the appellant on appeal and the sentence imposed on the appellant's co-accused on appeal: whether the court a quo erred in refusing to consider the merits of the appellant's conviction on appeal and whether the court a quo should have exercised its power of review in terms of s 304(4) of the Criminal

Procedure Act 51 of 1977 or common law power of review to set aside the conviction: whether a judge may determine a petition for leave to appeal against conviction, refuse it, and subsequently determine the appeal again.

11. Mpumalanga Tourism and Parks Agency & another v Barberton Mines (Pty) Ltd & others (216/2016)

Appealed from GP

Date to be heard: 17 February 2017

Ponnan JA, Tshiqi JA, Majiedt JA, Dambuza JA, Van der Merwe JA

Mining Law: Environmental Law: Interdict: the first respondent is the holder of a prospecting right granted in terms of s 17(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA): whether the prospecting right granted to the first respondent is unenforceable because the area to which it relates is a nature reserve or protected area in terms of the National Environmental Management: Protected Areas Act 57 of 2003: whether an interdict preventing the appellants from interfering with the prospecting operations of the first respondent ought to have been granted or, if granted, suspended: whether a final interdict ought to be refused because the process under s 54 of the MPRDA has not been exhausted: whether it is in the interests of justice to extend the 180 day period for the bringing of the counter-application for review of the decision to grant the prospecting right and, if so, if there is any merit to the review.

12. University of the Free State v Afriforum & another (1027/2016)

Appealed from FB

Date to be heard: 17 February 2017

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

Administrative law: Review: Promotion of Administrative Justice Act 3 of 2000:

whether the decision of the appellant's Council to adopt a new language policy to redress racial segregation is vitiated by a reviewable irregularity.

Constitutional law: Higher Education Act 101 of 1997: Language policy: whether racial desegregation is a consideration ulterior to s 29(2) of the Constitution: whether the high court's judgment and orders are correct in the light of the Constitution, the doctrine of separation of powers, and the constitutional imperative of racial transformation.

13. New Adventure Shelf 122 (Pty) Ltd v The Commissioner of the South African Revenue Services (310/2016)

Appealed from WCC

Date to be heard: 17 February 2017

Shongwe JA, Leach JA, Wallis JA, Mocomie JA, Nicholls AJA

Income Tax Act 58 of 1962: the Eighth Schedule of the Income Tax Act: the capital gains tax consequences of a situation where a previous disposal of an asset for proceeds was subsequently cancelled in such a manner that what had previously accrued to but had not been received by the seller by the date of cancellation, was no longer receivable by the seller due to cancellation of the relevant agreement and the asset previously disposed of was transferred back to the seller.

14. Ashley Brooks & another v The National Director of Public Prosecutions (855/2016)

Appealed from NCK

Date to be heard: 20 February 2017

Ponnan JA, Willis JA, Zondi JA, Mocomie JA, Schippers AJA

Constitutional law: Property: Prevention of Organised Crime Act 21 of 1998: whether the court a quo erred in declaring the property known as Erf 23285 be forfeited to the State in terms of s 50(1) of the Act.

15. Ntsieni Josephine Manukha v Road Accident Fund (285/2016)

Appealed from GP

Date to be heard: 20 February 2017

Leach JA, Tshiqi JA, Theron JA, Petse JA, Molemela AJA

Road Accident Fund: special plea of prescription against claim for general damages related to pain and suffering for appellant's failure to provide respondent with the RAF4 serious injury assessment

report timeously in terms of s 17(1)(b) of the Road Accident Fund Act 56 of 1996 and reg 3(3)(b)(i) and (ii): court a quo upheld the special plea with costs: whether the respondent is liable for general damages in circumstances where the required assessment report has been lodged outside the period set out in the regulation but before the expiry of the period for issuing a summons.

16. Ndivhuwo Catharine Phasha & others v Minister of Police (070/2016)

Appealed from GP

Date to be heard: 21 February 2017

Ponnan JA, Theron JA, Petse JA, Zondi JA, Van der Merwe JA

Delict: Wrongful arrest: whether the appellants, members of the South African police have a constitutional duty to prevent, combat and investigate crime against the right of workers to strike and participate in the activities of the trade union, the South African Municipal Workers' Union (SAMWU), have prospects of success in a claim for wrongful arrest against the respondent during a strike action: whether the arrest of the members was unconstitutional and violated their right to participate in union activities as enshrined in s 23 of the Constitution: whether the police acted within the ambit of s 40(1) of the Criminal Procedure Act 51 of 1977 when affecting the arrest.

17. Riversdale Mining Limited v Johannes Jurgens Du Plessis & another (536/2016)

Appealed from GJ

Date to be heard: 21 February 2017

Cachalia JA, Wallis JA, Dambuza JA, Mathopo JA, Coppin AJA

Arbitration Act 42 of 1965: Review: Share subscription and loan agreement: whether the Arbitrator committed a gross irregularity or exceeded his jurisdiction in granting an award upholding an exception that the appellant took to the first respondent's statement of claim: whether the court a quo erred in maintaining that issues of contractual interpretation and enforceability of written agreements could not be decided on exception.

18. Dr David Griesel & others v Piet Haasbroek (538/2016)

Appealed from NWM

Date to be heard: 21 February 2017

Leach JA, Willis JA, Mbha JA, Molemela AJA, Gorven AJA

Contract: Interpretation of agreement: claim for payment of the purchase price in respect of a buffalo sold and where the animal died during the darting/sedation operation: whether the express risk agreement concluded is qualified by the importation of an implied or tacit term to the effect that the risk agreement was subject to non-interference by the seller: if so qualified, whether the first appellant had interfered in the darting isolation: whether such interference had resulted in the death of the animal: whether the appellant had a fair trial in the court a quo.

19. Herbal Zone (Pty) Ltd & others v Infitech Technologies (Pty) Ltd & others (204/2016)

Appealed from WCC

Date to be heard: 22 February 2017

Cachalia JA, Shongwe JA, Wallis JA, Mbha JA, Schippers AJA

Intellectual Property: Defamation: whether the first appellant has established that the reputation in the original Phyto Andro For Him product ('the original Phyto Andro product'), which reputation the court a quo accepted had been established, vests in it: whether the statements made by the first appellant in correspondence with customers of the first and second respondents to the effect that the infringing product was counterfeit and its sale by those customers was illegal, were defamatory of the respondents.

20. The Premier of the Western Cape Provincial Government NO v Rochelle Madalyn Kiewitz obo Jaydin Kiewitz (158/2016)

Appealed from WCC

Date to be heard: 22 February 2017

Leach JA, Tshiqi JA, Majiedt JA, Swain JA, Nicholls AJA

Delict: Medical negligence: proceedings instituted by respondent in her personal capacity and well as her representative capacity as natural guardian of her son for the recovery of damages suffered as result of the child contracting retinopathy of prematurity shortly after his birth: liability not disputed: in separate proceedings in terms of Uniform rule 33(4) court a quo requested to determine issues raised

in appellant's plea in mitigation of damages: appellant's plea in mitigation dismissed by court a quo: whether in mitigation of damages appellant had discharged the onus of showing that the respondent's refusal to accept undertaking to provide for the child's future medical treatment in provincial government facilities at no cost is unreasonable: whether if found to be unreasonable the evidence shows that the appellant would be able to provide such future treatment.

21. Polokwane Local & Long Distance Taxi Association v Limpopo Permissions Board & others (490/2016)

Appealed from GP

Date to be heard: 23 February 2017

Maya AP, Willis JA, Mbha JA, Mocomie JA, Fourie AJA

Constitutional law: Judicial Review: Locus standi: whether the provisions of s 38(e) of the Constitution also find application to matters concerning an indirect application of the Bill of Rights ie in cases relating to judicial review: whether s 38(e) confers a statutory standing upon the association to institute proceedings in its own name on behalf of its members where an infringement is alleged.

22. Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality & another (894/2016)

Appealed from ECG

Date to be heard: 23 February 2017

Ponnan JA, Cachalia JA, Swain JA, Dambuza JA, Gorven AJA

Constitutional law: Municipality: Tender: whether the award of the Reeston contract to the appellant as a consequence of the appointment of the appellant as a turnkey implementing agent subsequent to its successful tender is regular in terms of s 217 of the Constitution: whether the Reeston contract is invalid and whether the declaration of its invalidity should be suspended in terms of s 172 of the Constitution: due to the implications of s 26 of the Constitution: whether a provisional sentence judgment should be granted.

Administrative law: Review: Promotion of Administrative Justice Act 3 of 2000: whether the respondent's counter application to review and setting aside a specified contract was correctly upheld by the court a quo: whether the respondent made out a case for extension of the stipulated period within which its application for the review and the setting aside of the contract had to be brought: whether the respondent has made out a case for final review.

23. Westminster Tobacco Company (Cape Town and London) (Pty) Ltd v Philip Morris Products SA & another (925/2015)

Appealed from GP

Date to be heard: 23 February 2017

Leach JA, Wallis JA, Petse JA, Zondi JA, Mbatha AJA

Intellectual Property: Trade Marks Act 194 of 1993: the appeal lies against the trial court's order directing the removal from the trade mark register of the appellant's trade mark registration numbers 1952/00688 and 1997/17613 'PARLIAMENT' both in class 34 on the basis of non-use: whether the court a quo was correct in finding that the use of the registered trademarks relied on by the appellant as constituting bona fide use cannot be described as statutorily authentic and therefore does not constitute bona fide use within the meaning of s 27(1)(b) of the Act.

24. Orica Mining Services SA (Pty) Ltd v Elbroc Mining Products (Pty) Ltd (233/2016)

Appealed from GP

Date to be heard: 24 February 2017

Maya AP, Swain JA, Dambuza JA, Nicholls AJA, Mbatha AJA

Intellectual property: Patent infringement: Interpretation: Proper construction of the word 'between': the construction of the word 'between' in the patent specification as it appears in the phrase 'a pair of spaced apart . . . telescopic props with a carriage between the' particularly the meaning of the word 'between' in the second of these integers: whether, for purposes of infringement, the respondent's drill rig has a carriage between a pair of spaced apart telescopic props.

25. Matthys Pieter Ruben De Villiers v Elspiek Boerdery (Pty) & another (1196/2015)

Appealed from WCC

Date to be heard: 24 February 2017

Shongwe JA, Majiedt JA, Mocomie JA, Fourie AJA, Schippers AJA

Subdivision of Agricultural Land Act 70 of 1979: Lease: the validity of a notarial lease agreement in respect of agricultural land for a period of 99 years executed on 25 January 2010, before a notary, on behalf of the appellant and first respondent by an agent: whether the agent was duly authorised by

the appellant to enter into the lease: whether the lease is void ab initio by virtue of subsecs 3(d) and 3(e)(ii) of Act 70 of 1979.

26. Hendrik Christoffel Marais NO & others v Varicor Nineteen (Pty) Ltd t/a BP Atlantic (843/2016)

Appealed from WCC

Date to be heard: 24 February 2017

Tshiqi JA, Theron JA, Mathopo JA, Van der Merwe JA, Coppin AJA

Contract: Sale and delivery: Trust: whether the court a quo erred in determining that a trust was responsible for the payment of the balance due on an account in respect of the sale of diesel in the instance where the defence was that it was not the trust but the third appellant personally who had contracted with the appellant: whether, pursuant to a contract concluded between the trust and the respondent, a different and new agreement was subsequently concluded between the third appellant and the respondent in terms of which the diesel was sold.

27. Moakohi Ansley Makgolo v Sandra Russel MacKenzie (207/2016)

Appealed from GP

Date to be heard: 27 February 2017

Ponnan JA, Wallis JA, Zondi JA, Molemela AJA, Mbatha AJA

Delict: Defamation: in a claim for defamation damages awarded against the appellant in favour of respondent in the amount of R65 000: whether the words used by the appellant were per se defamatory: whether he lacked the required animus inuriandi: whether the respondent proved defamation on a balance of probabilities: whether the costs of the action should not have been ordered to be paid on the magistrates' court scale due to the quantum of damages awarded.

28. Media 24 Limited & another v Bekker du Plessis (127/2016)

Appealed from GP

Date to be heard: 27 February 2017

Cachalia JA, Petse JA, Swain JA, Mbha JA, Gorven AJA

Delict: Defamation: whether the article published in the Daily Sun on 27 October 2010 was substantially true and in the public interest: whether the publication was reasonable in the circumstances: whether the quantum of damages should be interfered with.

29. MTO Forestry (Pty) Ltd v AH Swart NO (420/2016)

Appealed from WCC

Date to be heard: 27 February 2017

Leach JA, Willis JA, Mathopo JA, Mocumie JA, Coppin AJA

Delict: whether on a proper interpretation of the National Veld and Forest Fires Act 101 of 1998, the respondent was an 'owner' with statutory duties to prevent veld fires and subject to a presumption of negligence: whether the respondent was in control of the area in which the fire ignited: the liability in delict of the respondent for the damage. The quantum of the claim stands over.

30. Tihalefi Andries Mashamaite & others v Mogalakwena Local Municipality & others (548/2016 & 523/2016)

Appealed from GP

Date to be heard: 28 February 2017

Maya AP, Theron JA, Dambuza JA, Fourie JA, Schippers AJA

Administrative law: Review: review and setting aside of decision to convene a municipal council special sitting and resolutions taken at the special sitting on 6 November 2014: whether the court a quo was correct in reinstating the second respondent in circumstances where no order for reinstatement had been sought nor was a case made out therefor in the founding papers: whether it was academic to make an order setting aside the resolutions relating to the election of the fifth appellant as Speaker of the council, first appellant as Mayor and the election of the Executive Committee, the decision to place the second respondent on special leave as well as the decision to grant all powers of the running of the first respondent to the Executive Committee.

Practice: Locus standi: Joinder: whether the court a quo was correct in ruling that the second respondent had locus standi: whether the first respondent was properly joined to the proceedings.

31. Adendorffs Boerderye (Pty) Ltd v Fayindor Shabalala & others (997/2015)

Appealed from LCC

Date to be heard: 28 February 2017

Shongwe JA, Majiedt JA, Mathopo JA, Van der Merwe JA, Mbatha AJA

Land: Extension of Security of Tenure Act 62 of 1992: Conservation of Agricultural Resources Act 43 of 1983 (CARA): application for removal of first and second respondents' livestock from appellant's farm in order to implement land rehabilitation measures in terms of CARA: whether upon a proper analysis of the two Acts it was competent for the court a quo to direct the appellant to: (a) provide alternative grazing for the second and third respondents' livestock on the appellant's property, alternatively that the Minister secures suitable grazing for first and second respondents' livestock, (b) pay the costs of removal of the livestock to the alternative grazing, (c) pay the costs of transport to return the livestock, and (d) pay jointly with first and second respondents, the costs of leasing the alternative land.

32. Columbia Rylaan 14 Northcliff CC & another v Absa Bank Limited (665/2015)

Appealed from GJ

Date to be heard: 28 February 2017

Tshiqi JA, Swain JA, Mocomie JA, Molemela AJA, Nicholls AJA

Civil procedure and practice: Rescission: Summary judgment: rescission of summary judgment and setting aside of subsequent sale in execution of immovable property: whether the rescission application should have been granted and whether the sale in execution ought to have been set aside.

33. SA Metal Group (Pty) Ltd v The International Trade Administration Commission & another (267/2016)

Appealed from WCC

Date to be heard: 1 March 2017

Ponnan JA, Leach JA, Majiedt JA, Willis JA, Fourie AJA

Administrative law: Review application in terms of subsecs 6(2)(b) and 6(2)(d) of the Promotion of Administrative Justice Act 3 of 2000: International Trade Administration Act 71 of 2002: s 7(2)(a): whether the 'Policy directive on the export of ferrous and non-ferrous waste and scrap metal' published by the second respondent, the Minister of Economic Development on 10 May 2013 (the directive) and the 'Export control guidelines of the exportation of ferrous and non-ferrous waste and scrap' (the guidelines) published by the first respondent, the International Trade Administration Commission (ITAC), conflict with the General Agreement on Tariffs and Trade (GATT): whether ITAC's decision refusing to exempt export permit applications made by the appellant from measures imposed on applicants by the directive is vitiated by a material error of law: whether the remedy of substitution is appropriate.

34. Mothuloe Incorporated Attorneys v The Law Society of the Northern Province & another (213/2016)

Appealed from GP

Date to be heard: 1 March 2017

Cachalia JA, Shongwe JA, Wallis JA, Dambuza JA, Mbatha AJA

Attorneys Act 53 of 1979: whether the allegations of unprofessional, dishonourable or unworthy conduct levelled against the appellant warranted further inspection by the first respondent: whether the appellant was entitled to raise and rely on attorney and client privilege to resist a s 70 preliminary inspection into allegations of alleged unprofessional, dishonourable or unworthy conduct by the appellant.

35. Factaprops 1052 CC & another v Land and Agricultural Development Bank of South Africa t/a The Land Bank (353/2016)

Appealed from GP

Date to be heard: 1 March 2017

Tshiqi JA, Zondi JA, Van der Merwe JA, Nicholls AJA, Coppin AJA

Contract: Prescription Act 68 of 1969: the applicable prescription period in respect of a debt secured by a special mortgage bond registered in terms of the Security by means of Movable Property Act 57 of 1993: whether the court a quo erred in interpreting s 11(a)(1) of the Prescription Act to include a special notarial bond as being effectively the same as a mortgage bond.

36. ZNK Investment CC v Luckytso Transport and Construction CC & others (328/2016)

Appealed from GP

Date to be heard: 2 March 2017

Maya AP, Theron JA, Van der Merwe JA, Gorven AJA, Coppin AJA

Company Law: Companies Act 71 of 2008: what is the retrospective operation of an order in terms of s 83(4) of the Companies Act: whether the retrospective operation of an order in terms of s 83(4) of the Companies Act has the effect of validating the sale in execution of the first respondent's property.

37. Sentrachim Limited v A L Terblanche (237/2016)

Appealed from GP

Date to be heard: 2 March 2017

Leach JA, Majiedt JA, Mathopo JA, Mocumie JA, Schippers AJA

Prescription: Pension funds: Erroneous double payment: whether the substitution of a party after *litis contestatio* as a result of a cession of the debt gives rise to a valid plea of prescription: whether notice of substituting the plaintiff a quo with the cessionary was given within the prescription period, but effected outside the prescription period: the import of subsecs 15(1) and 15(4) of the Prescription Act 68 of 1969.

38. Martinus van Rooyen Friedrich & others v Adriaan Louw Smit NO in his capacity as the nominee of Stabilitas Board of Executors (Pty) Ltd & others (1028/2015)

Appealed from GP

Date to be heard: 2 March 2017

Tshiqi JA, Petse JA, Mbha JA, Fourie AJA, Molemela AJA

Administration of Estates Act 66 of 1965: Maintenance of Surviving Spouses Act 27 of 1990: the second respondent submitted a claim against the deceased estate of her late husband in terms of the Maintenance of Surviving Spouses Act, to which the appellant objected: the correct application of s 35(10) of the Administration of Estates Act: how claims under the Maintenance of Surviving Spouses Act and maintenance in general should be approached: oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013.

39. Andreas Panayiotou v Shoprite Checkers (Pty) Ltd & others (248/2016)

Appealed from GJ

Date to be heard: 3 March 2017

Ponnan JA, Shongwe JA, Petse JA, Zondi JA, Gorven AJA

Administrative law: Promotion of Administrative Justice Act 3 of 2000 (PAJA): Gauteng Liquor Act 2 of 2000: whether the decision of the second respondent, the Gauteng Liquor Board, is reviewable under s 6(2) of PAJA, where the first respondent had sought to and succeeded in setting aside the board's decision to refuse its application to trade as a liquor store. The appellant, who owns a nearby liquor store, was an objector in the proceedings before the board: whether the court a quo was correct to substitute the board's decision by granting the application for a licence instead of referring the matter back to the board for reconsideration.

40. Verulam Sawmills (Pty) Ltd v Samuel December Magagula and 158 others & another (322/2016)

Appealed from GP

Date to be heard: 3 March 2017

Cachalia JA, Wallis JA, Mathopo JA, Molemela AJA, Nicholls AJA

Labour Law: Labour Relations Act 66 of 1995: Jurisdiction of the high court: whether the individual respondents, dismissed employees, can be said to be on strike as envisaged in s 213 of the Labour Relations Act: if so, whether the high court had jurisdiction to determine the application: whether the appellant has made out a case for an interdict, and the competence of the high court to grant a final order.

41. Richard Du Plessis Barry v Clearwater Estates NPC (Clearwater Estates Homeowners Association) & others (187/2016)

Appealed from GJ

Date to be heard: 03 March 2017

Leach JA, Willis JA, Swain JA, Mbha JA, Schippers AJA

Company law: whether s 58(3)(c) of the Companies Act 71 of 2008 authorises a company, by way of an appropriate entry into its Memorandum of Incorporation (MOI), to impose a time requirement on a shareholder or his proxy, within which to deliver the instrument authorising the proxy to the company or another authorised person on behalf of the company, prior to the meeting where a vote stands to be exercised, in order for the vote to be exercisable by the proxy at such meeting: whether the effect of such an entry in the MOI is the unsanctioned alteration of the right created in terms of s 58(1) of the

Companies Act, rendering such entry in the MOI void as contemplated in s 15(1) of the Companies Act.

42. Lucas Moila v The City of Tshwane Metropolitan Municipality (249/2016)

Appealed from GP

Date to be heard: 06 March 2017

Cachalia JA, Willis JA, Zondi JA, Van der Merwe JA, Mbatha AJA

Local Government: whether consumer of municipal services entitled to statement of account and debatement thereof: whether the respondent is obliged to deliver accounts and debate the accounts with the appellant.

43. The Body Corporate of Empire Gardens v Nobuhle Gloria Sithole & another (240/2016)

Appealed from GP

Date to be heard: 06 March 2017

Tshiqi JA, Wallis JA, Petse JA, Mbha JA, Nicholls AJA

Sectional Title: Insolvency Act 24 of 1936: whether the body corporate of a sectional title scheme has to illustrate a pecuniary advantage to creditors when applying to sequester the estate of one of its members.

44. Brayton Carlswald (Pty) Ltd & another v Gordon Donald Brews (245/2016)

Appealed from GJ

Date to be heard: 06 March 2017

Theron JA, Majiedt JA, Dambuza JA, Mathopo JA, Coppin AJA

Civil procedure and practice: Substitution and locus standi: appeal against court a quo's granting of an application directing that the name of the respondent be substituted as execution creditor in all execution documentation in case No 2002/21149 in the court a quo: whether it is competent to effect cession of rights after the underlying obligation had been extinguished by payment: whether the appellants have locus standi to prosecute the appeal: if so, whether there is a valid *causa* for the appellant to claim substitution as execution creditor.

45. The Minister of Home Affairs & others v Cishahayo Saidi & others (294/2016)

Appealed from WCC

Date to be heard: 07 March 2017

Maya AP, Majiedt JA, Swain JA, Gorven AJA, Mbatha AJA

Administrative law: Refugees Act 130 of 1998: Interpretation: review of the decision of the third appellant, the manager of the Cape Town Refugee Facility, refusing to extend permits issued to the respondents (foreign nationals from various African countries seeking refugee status) in terms of s 22(3) of the Act and PAJA: court a quo granted order reviewing and setting aside decision and direction for extending respondents' permits: leave granted by the court a quo to the appellant to appeal and to the respondent to cross-appeal: whether the court a quo correctly interpreted s 22(3) of the Act to allow the Refugee Reception Officer to extend or re-issue permits when the respondents have exhausted internal remedies in terms of the Act: whether there is a legitimate expectation that the third respondent would extend or re-issue the permits of the respondents when her predecessor did so in contravention of the Act: whether a legitimate expectation can only be found to exist if the representation relied upon is one which was lawful and competent.

46. Catherine Claris Cilliers NO & others v Edward Ellis & another (200/2016)

Appealed from WCC

Date to be heard: 07 March 2017

Ponnan JA, Willis JA, Zondi JA, Fourie AJA, Nicholls AJA

Contract: the consequences of an election to cancel a written sale agreement for the sale of a timber house and claim restitution: what constitutes a latent defect and were there latent defects to the house: if so, whether the second appellant fraudulently failed to disclose these defects to the respondents.

47. Nelson Mandela Bay Municipality v Amber Mountain Investments 3 (Pty) Ltd (576/2016)

Appealed from ECP

Date to be heard: 07 March 2017

Cachalia JA, Theron JA, Dambuza JA, Mocumie JA, Molemela AJA

Local Government: Municipal Property Rates Act 6 of 2004: Local Government: Municipal Systems Act 32 of 2000: appeal against order sought in the court a quo to recover from appellant a portion of property rates paid by respondent to secure a rate clearance certificate in respect of the period after it had transferred the property to a third party purchaser: the date of transfer of the property to the purchaser: the date on which liability for payment of a property rate is fixed in terms of Act 6 of 2004 and the extent of such liability when fixed: whether, when an owner sells his or her immovable property, such owner is only liable to pay a portion of the annual property rate calculated to date of transfer of the property to the purchaser.

48. Cathay Pacific Airway Ltd & another v Hai Lin (In re: Hai Lin & another v Minister of Home Affairs & others (260/2016))

Appealed from GJ

Date to be heard: 09 March 2017

Maya AP, Majiedt JA, Van der Merwe JA, Molemela AJA, Gorven AJA

Court practice: whether the court was entitled to grant, by means of telephone, an oral order, prohibiting the first appellant airline from boarding two minor children who, upon arriving in South Africa from Hong Kong, were refused entry on the basis that they lacked the necessary residency permits, and where no written application for such order was made, and also in the absence of the appellants: whether a court having made the first oral order, was empowered to issue two further orders, for, amongst others, reasons to be provided to it on a return date, as well as an order for costs on an attorney and client scale: whether, in a subsequent urgent application for contempt of the mentioned orders, the court a quo correctly held the appellants to be in contempt of these orders: whether the counter application to declare the three orders, or parts thereof, null and void, should be granted.

49. The National Head of the Directorate for Priority Crime Investigation v Major General Johann Wessel Booyesen & another (062/2016)

Appealed from KZD

Date to be heard: 09 March 2017

Ponnan JA, Shongwe JA, Mocumie JA, Coppin AJA, Schippers AJA

Administrative law: Labour law: whether the suspension of the first respondent amounted to administrative action: whether the court a quo had jurisdiction to review the suspension and set it aside: whether the suspension of the first respondent could be reviewed by the high court under legality: whether the suspension is a matter which falls exclusively within the jurisdiction of the labour court: whether the court a quo was at liberty to make adverse findings against the appellant.

50. Steyn Lyell Maeyane Attorneys v Johan Oelofse (271/2016)

Appealed from GP

Date to be heard: 09 March 2017

Leach JA, Tshiqi JA, Wallis JA, Mbha JA, Fourie AJA

Attorney and client: Contract: Guarantee: Waiver: whether a letter by the appellant law firm constitutes an unconditional guarantee as between the appellant and respondent: whether the alleged guarantee was validly withdrawn by the appellant: whether the respondent has waived his right to claim a substantial portion, in the amount of R600 000, of his R1 million claim: whether the respondent is entitled to damages.

51. NO Oelofse Attorneys v Thakeli Thubaka Sidwell NO in re: Thakeli Thubaka Sidwell NO v Phillipus Marthinus Du Buisson NO & others (506/2016)

Appealed from FB

Date to be heard: 10 March 2017

Ponnan JA, Shongwe JA, Wallis JA, Van der Merwe JA, Schippers AJA

Property Law: Trust Property Control Act 57 of 1988: the number of trustees of TBS Farming Trust (the Trust) in office as at 20 November 2013: whether the court a quo was correct in setting aside the transfer of immovable property pursuant to a sale agreement: whether the statutory mechanism for the resignation of a trustee as provided in s 21 of the Trust Property Control Act is additional to the mechanism permitted by the trust instrument and must be complied with over and above the formalities specified in the trust instrument: whether a quorum was formed at the meeting of the trustees of the trust on 20 November 2013: whether the resolutions passed at the meeting were valid: whether the power of attorney to pass transfer of the immovable property was invalid and whether the

defect in the power of attorney invalidates the transfer of the property registered or whether the defect constitutes a formal defect as set out in s 100 of the Deeds Registries Act 47 of 1937.

52. Mount Amanzi Share Block Limited v The Body Corporate of Windsor Heights Sectional Title Scheme (537/2016)

Appealed from GP

Date to be heard: 10 March 2017

Cachalia JA, Swain JA, Nicholls AJA, Coppin AJA, Mbatha AJA

Property law: Spoliation: whether it was appropriate for the court a quo to grant a final interdictory relief with costs against the appellant and dismissing the counter application: whether the appellant was entitled in terms of the written deed of servitude to impose levies for the use of servitudinal rights on the respondents: whether the appellant was entitled to adjust the levies payable by the respondents without a court order: whether the declaratory is based on a claim for declaring the imposition of increased levies valid.

52. Afagri Operations Limited v Hamba Fleet (Pty) Ltd (542/2016)

Appealed from GP

Date to be heard: 10 March 2017

Leach JA, Theron JA, Petse JA, Willis JA, Dambuza JA

Insolvency Act: whether the court a quo was correct to refuse the appellant's application to wind-up the respondent on the basis that the respondent had a valid counterclaim against the appellant in circumstances where the insolvency of the respondent and the debt on which the winding-up application was based were established: whether reliance on English authorities by the court a quo was misplaced: whether the court in any event exercised its discretion incorrectly.

53. Home Talk Development (Pty) Ltd & others v Ekurhuleni Metropolitan Municipality (225/2016)

Appealed from GJ

Date to be heard: 14 March 2017

Ponnan JA, Cachalia JA, Majiedt JA, Willis JA, Schippers AJA

Delict: Pure economic loss: Town planning: s 82 of the Townships and Town Planning Ordinance of 1986: whether the respondent municipality ought to be held delictually liable for its City Manager withholding or delaying the issuing of the s 82 certificates in respect of township development: whether the appellants proved mala fide or an ulterior purpose: an order was made, in terms of Uniform rule 33(4) separating the merits from the quantum.

54. Jacobus Johannes Kitshoff v Fedsure Staff Pension Fund & others (597/2016)

Appealed from GJ

Date to be heard: 14 March 2017

Shongwe JA, Swain JA, Zondi JA, Mathopo JA, Gorven AJA

Pension funds: whether the first respondent, the fund, acted unlawfully and *ultra vires* in refusing to accept pension fund contributions from the second respondent, the employer, on behalf of the latter's employees and fund members (such as the appellant) after June 2002: whether the fund is liable for loss sustained by the appellant as a result of those contributions not being paid: whether the second respondent can be required to make good any shortfall in that amount which is not paid by the fund: whether the approval by the Registrar of Pension Funds of a subsequent transfer application, in terms of s 14 of the Pension Funds Act 24 of 1956, lodged after the appellant had been retrenched by the second respondent, precludes the appellant from obtaining relief against the fund and the second respondent.

55. Saamwerk Soutwerke (Pty) Ltd v Minister of Mineral Resources & another (1098/2015) and (206/2016)

Appealed from NCK

Leach JA, Theron JA, Van der Merwe JA, Fourie AJA, Nicholls AJA

Delict: Prescription: Court practice: Application to tender further evidence: whether the elements of delict have been proved: whether the claim of the appellant had prescribed due to the fact that the summons in this action was only served on the first respondent on 11 September 2011 and on the second respondent on 6 September 2011

Court practice: whether the application to tender further expert evidence on appeal ought to be granted.

56. Director Public Prosecutions, Gauteng Division Pretoria v Ferhat Benbelkacem (831/2016)

Appealed from GP

Date to be heard: 15 March 2017

Tshiqi JA, Mathopo JA, Van der Merwe JA, Mocumie 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 the respondent was convicted on with reference to s 280(1) of the Criminal Procedure Act 51 of 1977.

57. 15. Neotel (Pty) Ltd v Telkom SOC Ltd & others (605/2016)

Appealed from GP

Date to be heard: 20 February 2017

Maya AP, Majiedt JA, Fourie AJA, Gorven AJA, Coppin AJA

Administrative Law: Interpretation of the Electronic Communications Act 36 of 2005: Constitutional law: Independent Communication Authority of South Africa: Powers of: Jurisdiction of the SCA: whether the court should exercise its discretion in favour of hearing the merits of the appeal despite its mootness with regards to the Neotel - Vodacom transaction and despite the fact that it will not result in an alteration of the high court's order: the proper interpretation of s 13(6) of Act 36 of 2005, read with s 9(2)(6) thereof.

58. Mahaeane Mahaeane & another v Anglogold Ashanti Limited (085/2016)

Appealed from GJ

Date to be heard: 22 March 2017

Maya AP, Fourie AJA, Molemela AJA, Gorven AJA, Mbatha AJA

Interpretation: Promotion of Access to Information Act 2 of 2000: appellants seeking access to records to assess potential damages claims for having contracted silicosis: whether access should be excluded by the operation of s 7 of the Act in circumstances where a certification application for class actions proceedings has commenced: whether the request meets the threshold applicable to requests to private bodies in terms of s 50 of the Act: interpretation of subsections 7(1) and 50 (1) of the Act with reference to class actions.

