

**REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
BULLETIN 2 2017  
CASES ENROLLED FOR HEARING: MAY 2017**

**1. Solly Ramoba v The State (1301/2016)**

Appealed from GP

Date to be heard: 2 May 2017

Shongwe JA, Mbha JA, V/D Merwe JA, Molemela AJA, Coppin AJA

**Criminal law and procedure: evidence: conviction and sentence:** Appellant convicted on three counts of possession of firearms.

**Issues:** 1 Whether conviction justified on basis of doctrine of common purpose. 2 Whether cumulative effect of sentence excessive.

**2. Anthony Zimila v The State (1179/2016)**

Appealed from GP

Date to be heard: 2 May 2017

Shongwe JA, Mbha JA, V/D Merwe JA, Molemela AJA, Coppin AJA

**Criminal law and procedure: sentence:** Appellant was convicted on four counts of robbery with aggravating circumstances, possession of a firearm, and one count of attempted murder and sentenced to 75 years' imprisonment, of which 11 years was to run concurrently, giving an total of 64 years imprisonment. On appeal this was reduced to a total sentence of 49 years imprisonment. The present appeal is with the special leave of this court and restricted to the issue of the cumulative effect of the sentence.

**Issue:** Was the cumulative effect of the sentences imposed excessive?

**3. Lucky Vincent Shange v The State (613/2016)**

Appealed from KZD

Date to be heard: 2 May 2017

Lewis JA, Petse JA, Mathopo JA, Gorven AJA, Mbatha AJA

**Criminal law and procedure: evidence: conviction:** Appellant convicted on one count of murder and one count of armed robbery. Sentenced to life imprisonment on both counts.

**Issues:** 1 Whether the identity of deceased was proven. 2 Whether court erred in admitting the accused's confession into evidence. 3 Whether State proved its case beyond reasonable doubt. 4 Whether the court a quo properly evaluated the evidence before it in reliance on the doctrine of recent possession.

**4. The Director of Public Prosecutions: Gauteng Division, Pretoria v Morne Grobler (006/2017)**

Appealed from GP

Date to be heard: 2 May 2017

Lewis JA, Petse JA, Mathopo JA, Gorven AJA, Mbatha AJA

**Criminal Law and procedure: appeal by NDPP against sentence:** Accused convicted of rape, sexual assault, using children for child pornography, exposing or displaying pornography to children and possession of child pornography. Sentenced to 10 years imprisonment with five years suspended.

**Issues:** 1 Whether the State may appeal against sentence imposed by a full bench sitting on appeal: whether this sentence is a proper sentence in the circumstances. 2 Whether the court erred in law by taking all the counts together for purpose of sentence whilst count 1 fell within the ambit of the Criminal Law Amendment Act 105 of 1997 and carried a minimum sentence, whereas the remaining counts did not carry a minimum sentence.

**5. The State v Nkonketsang Elliot Pilane (1362/2016)**

Appealed from NWM

Date to be heard: 3 May 2017

Cachalia JA, Wallis JA, Molemela AJA, Gorven AJA, Mbatha AJA

**Criminal procedure: Oath administered by or through an interpreter.** Accused convicted of rape in regional court and sentenced to 10 years imprisonment. Conviction set aside on appeal on ground that the oath was administered to the complainant and two other state witnesses by the interpreter on the instructions of the magistrate and not by the magistrate.

**Issues:** 1 Proper interpretation of s 165 of the Criminal Procedure Act 51 of 1977 (read with ss 162 and 192 of this Act) where evidence given through an interpreter. 2 Whether the oath was properly administered to the witnesses in this case

**Court practice:** whether the appeal should be reinstated where the appeal lapsed due to the appellant's failure to lodge the record timeously.

#### **6. Thulani Ncube Khumalo v The State (062/2017)**

Appealed from GJ

Date to be heard: 22 May 2017

Tshiqi JA, Saldulker JA, Zondi JA, V/D Merwe JA, Schippers AJA

**Criminal Law and procedure:** Appeal by special leave of this court against refusal by court in terms of s 309C of the Criminal Procedure Act 51 of 1977 of leave to appeal against conviction of robbery with aggravating circumstances and sentence to 15 years imprisonment by magistrate.

**Issue:** Whether the appellant has reasonable prospects of success in an appeal against his conviction or sentence.

#### **7. Martha Susanna Broodryk v The State (959/2016)**

Appealed from GP

Date to be heard: 22 May 2017

Tshiqi JA, Saldulker JA, Zondi JA, V/D Merwe JA, Schippers AJA

**Criminal Law and procedure: sentence:** Appellant convicted on her plea of guilty of theft of R 63 300 from her employer and was sentenced to serve 5 years' imprisonment in terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977. Four years of this sentence were to run concurrently with a previous suspended sentence of 6 years imprisonment for theft 'indien daardie vonnis in werking stel'. An appeal to the full court was dismissed and the appeal is with the special leave of this court.

**Issues:** 1 Whether a sentence of correctional supervision in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977 should have been imposed. 2 Whether the existence of a pending suspended sentence precluded a sentence of correctional supervision. 3 Whether the sentence of five years direct imprisonment for theft of R 63 300.00 was shockingly inappropriate.

#### **8. Minister of Safety and Security v Raymond Augustine & others (811/2016)**

Appealed from GP

Date to be heard: 4 May 2017

Lewis JA, Shongwe JA, Petse JA, Mbha JA, Gorven AJA

**Delict: damages: quantum:** Police raid on home of the respondents in mistaken belief that a heavily armed criminal was hiding there. Treatment of respondents constituting an *injuria*. Appeal court increased trial court's award of general damages from R25 000 per person to R200 000 for the first three respondents and R250 000 for the fourth respondent and awarded attorney and client costs. Minority judge would have awarded R100 000 per person.

**Issue:** Whether the amount awarded was shockingly disproportionate to the injuries sustained by the respondents.

#### **9. The National Energy Regulator of South Africa & another v Borbet SA (Pty) Ltd & others (1288/16 & 1309/16)**

Appealed from GP

Date to be heard: 23 May 2017

Navsa JA, Ponnann JA, Wallis JA, Dambuza JA, Mbatha AJA

**Review:** Review of decision by the National Energy Regulator of South Africa in relation to the tariffs chargeable by the appellant for the supply of electricity under the third Multiyear Price Determination (MYPD3) Year 1 (2013/2014). Decision set aside and applicants granted declaratory relief in regard to the basis for determination of future tariffs. Appeal against decision.

**Issues:** 1 Whether the fact that Eskom had not submitted quarterly reports was irrational, unfair and unlawful. 2 Whether the court correctly held that the audited financial statements of Eskom for 2013/2014 should have been submitted and assessed for tariff purposes in the 2013/2014 tariff year and that consequential tariff adjustments should have been made in the subsequent financial year. 3 Whether the court correctly held that Eskom's approach to the MYPD methodology was flawed. 4 Whether the court correctly held that the RCA application did not deal with efficiency in an adequate manner and that this was irrational. 5 Whether the remedy was appropriate in the circumstances.

**10. Leshay Klassen v The State (057/2017)**

Appealed from GP

Date to be heard: 4 May 2017

Leach JA, Saldulker JA, Zondi JA, Mathopo JA, Coppin AJA

**Criminal Law and procedure: sentence: section 276B of the Criminal Procedure Act 51 of 1977:**

Accused convicted of murder and sentenced to 15 years imprisonment of which 10 years was said to be a non-parole period. Appeal dismissed in 2009 but appeals with special leave of this court.

**Issues:** 1 Were there substantial and compelling circumstances present justifying the imposition of a lesser sentence than the statutory minimum? 2 Was it proper for the trial court to fix a non-parole period in the manner in which it did?

**11. The Director of Public Prosecutions: Gauteng Division, Pretoria v Portia Thulisile Tsotetsi**

**(170/2017)**

Appealed from GP

Date to be heard: 4 May 2017

Leach JA, Saldulker JA, Zondi JA, Mathopo JA, Coppin AJA

**Criminal law and procedure: sentence:** The appellant was convicted of two counts of murder in circumstances where she had hire people to kill, first her husband and, second one of the original killers. A sentence of 20 years imprisonment imposed by the trial court. In an appeal by the NDPP.

**Issues:** Whether the trial court was correct in finding that substantial and compelling circumstances existed, entitling it to deviate from the prescribed minimum sentence of life imprisonment: whether the imposition of 20 years' imprisonment was appropriate in the circumstances: whether the court's finding that substantial and compelling circumstances existed in respect of one count should be applied to other counts.

**12.**

**13. August Nthako Ndubu & others v First Rand Bank Limited t/a Wesbank (1113/2016)**

Appealed from GJ

Date to be heard: 5 May 2017

Lewis JA, Tshiqi JA, Majiedt JA, Swain JA, Coppin AJA

**Insolvency Law: Contract: Suretyship:** Appellants were sued as sureties in respect of the balance owing by the insolvent principal debtor on four vehicles. The vehicles had been realised in the course of liquidation of the principal debtor.

**Issues:** 1 Whether there had been compliance with ss 83 and 84 of the Insolvency Act in the realisation of the vehicles. 2 Whether the bank's conduct in the course of realisation of the assets prejudiced the sureties and resulted in their being released from liability. 3 Whether the suretyship was subject to an implied term that any assets realised would be realised to best advantage. 4 Whether the bank repudiated the suretyship agreement. 5 Whether it is against public policy to enforce the suretyship in the circumstances of this case.

**14. Mhlanganisi Gcaza v The State (1400/2016)**

Appealed from ECG

Date to be heard: 8 May 2017

Maya AP, Zondi JA, Dambuza JA, Gorven AJA, Mbatha AJA

**Criminal law and procedure: Evidence: conviction: cross-appeal against sentence:** whether the trial court properly assessed the circumstantial evidence as a basis for the conviction of the appellant: cross-appeal: whether the trial court was correct in finding that compelling and substantial circumstances existed to deviate from the prescribed minimum sentence of life imprisonment

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

Appealed from LCC

Date to be heard: 8 May 2017

Ponnan JA, Shongwe JA, Petse JA, Mbha JA, V/D Merwe JA

**Property Law: Extension of Security of Tenure Act 62 of 1997** – The appellants were in occupation of the farm Silveroaks in the Paarl area when it was purchased by the respondent. A magistrates' court ordered their eviction and this was confirmed on automatic review by the Land Claims Court (LCC). The appeal is against that judgment with leave of this court.

**Issues:** 1 Whether a collective eviction order should have been granted in light of the fact that ESTA only provides for individual eviction orders and the judgment of the Constitutional Court in *Klaase*. 2 Whether the LCC erred in finding that the respondent had complied with the requirements for a just and equitable termination of the appellants' rights of residence in terms of s 8 of ESTA.

### **16. Moraitis Investments (Pty) Ltd & others v Montic Dairy (Pty) Ltd & others (799/2016)**

Appealed from GP

Date to be heard: 8 May 2017

Leach JA, Tshiqi JA, Wallis JA, Saldulker JA, Fourie AJA

**Trusts: Contract:** The business relationship between two individuals conducted through various corporate entities and trusts had broken down. Litigation ensued. In the course of one action the parties concluded a settlement agreement. This agreement was concluded on behalf of various entities and two trusts by the two individuals without any company resolutions or resolutions by the trusts authorising them to act on their behalf. It was then made an order of court. An application for an order declaring the settlement agreement to be null and void succeeded in the court of first instance but that judgment was overturned by the full court in a majority judgment.

**Issues:** 1 Whether the settlement agreement was void ab initio by virtue of the lack of authority on the part of the signatory on behalf of one of the trusts. 2 Whether the agreement was invalid because it involved the disposal by a company of the whole or greater part of its business without the necessary resolution having been taken. 3 Whether the agreement was invalid by virtue of a personal financial interest of the directors in the conclusion of the agreement. 4 Whether the *Turquand* rule could be invoked to overcome the lack of authority. 5 Whether the agreement was nonetheless valid because it had been made an order of court.

### **17. NMB Bank Limited v David Capsopoulos & another (505/2016)**

Appealed from KZD

Date to be heard: 9 May 2017

Ponnan JA, Shongwe JA, Leach JA, Molemela AJA, Gorven AJA

**Contract: exchange control regulations: damages:** A Zimbabwean company, controlled by the respondents, needed foreign exchange to pay its suppliers for the importation of goods into Zimbabwe. The plaintiff bank alleged that they entered into a scheme in terms of which employees of the bank forged documents in order to secure the payment of some US\$ 6 million from the bank's holdings of US Dollars to a company controlled by the respondents, from which the suppliers were paid. The scheme was unlawful and the bank suffered a loss as a result. It claimed that the respondents were complicit in the unlawful scheme and sued them in delict. The respondents contended that they were unaware of the scheme and believed that they were purchasing US Dollars held by one Tome via the black market which was the principal means of procuring foreign exchange in Zimbabwe at that time.

**Issues:** 1 Whether the court correctly found that the respondents were not aware of and complicit in the fraudulent scheme. 2 Whether the court correctly held that Tome was not the respondents' agent.

### **18. KLD Residential CC v Empire Earth Investments17 (Pty) Ltd(1135/2016)**

Appealed from WCC

Date to be heard: 9 May 2017

Lewis JA, Tshiqi JA, Mbha JA, Fourie AJA, Schippers AJA

**Civil Procedure: prescription:** A claim by the appellant for the payment of commission was met with a plea of prescription. The parties prepared a stated case dealing with this as a separate issue. The plea of prescription was upheld.

**Issue:** Whether the running of prescription had been interrupted by a letter written by the respondent's attorneys containing an offer of payment in full and final settlement

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

Appealed from GJ

Date to be heard: 9 May 2017

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

**Civil procedure and practice: Substitution and locus standi:** Brayton Carlswald (Pty) Ltd and the second appellant's former husband were indebted to Firstrand Bank and a judgment was taken against them with leave to execute against the immovable property owned by the company. The respondent paid that judgment on 3 May 2005. On 9 September 2008 he took cession of the bank's right, title and interest in the judgment. The present appeal arises out of an application he brought to be substituted for the bank for the purpose of executing on the judgment. The appellants resisted the application on the basis that the judgment was discharged by the payment to the bank and accordingly that nothing remains upon which the respondent could execute. The application was dismissed by the court of first instance but that decision was overturned on appeal to the full court. The appeal is with special leave of this court.

**Issues:** 1 Is the first appellant properly before the court, in as much as when it opposed the application in the court below it had been deregistered and was deregistered at the time the second appellant was appointed as a director. 2 Does the second appellant have locus standi in her own right to resist the application? 3 In the absence of a formal order granting the second appellant's application to intervene, is she a party with a right of appeal? 4 Did the payment made on 3 May 2005 discharge the judgment?

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

Appealed from KZD

Date to be heard: 10 May 2017

Ponnan JA, Shongwe JA, Dambuza JA, Coppin AJA, Schippers AJA

**Administrative Law: review:** The first appellant has erected a high rise block of flats on the Berea in Durban in such a way as to be in close proximity to the flats on the adjacent property and to interfere with their privacy and other amenities. The respondent trust, owner of a unit in the adjacent property, challenged the approval by the local authority (the second appellant) of the rezoning of the property from GR 1 to GR 5 and the approval of the building plans. The challenge succeeded and Steyn J ordered the demolition of the development to the extent that it exceeded the permissible, ie the original, zoning for the area.

**Issues:** 1 Whether the proper basis for a review of the rezoning decision was under PAJA or the principle of legality. 2 If the review lay under PAJA, whether there had been compliance with the time limits in s 7 of PAJA and whether this should have led to the application being dismissed. 3 Whether the public notices in relation to the rezoning application substantially complied with the requirements of the Ordinance. 4 Whether the approval of the building plans was in accordance with the requirements of the National Building Regulations and Building Standards Act 103 of 1977. 5 If the review succeeded what relief should have been given? In this regard the second appellant appears for the purpose of arguing that the applications should have been referred back to it, as the local authority, to take the decisions afresh and that the court approached the issue of relief on an incorrect basis.

### **21. Lazarus Mbethe v United Manganese of Kalahari (Pty) Limited (503/2016)**

Appealed from GJ

Date to be heard: 10 May 2017

Navsa JA, Theron JA, Swain JA, Gorven AJA, Mbatha AJA

**Company Law: Derivative action:** The appellant, a former director of the respondent, sought leave in terms of s 165(5) of the Companies Act 71 of 2008 to institute a derivative action in the name of the respondent. (The statutory demand does not identify the target of the action and nor do the judgment or the heads of argument.) Leave was refused.

**Issues:** 1 What are the requirements that must be established in order to justify the grant of an order in terms of s 165(5)? 2 What is the meaning of the good faith requirement of an applicant in s 165(5)(b)(i) of the Companies Act 71 of 2008? 3 Was the court correct in ruling that the onus to prove good faith consists of two distinct elements: good faith and an absence of collateral purpose. 4 Should leave have been granted?

### **22. Joyina Jim Mahlangu & another v Mkhambi Petros Mahlangu & others (341/2016)**

Appealed from GP

Date to be heard: 10 May 2017

Cachalia JA, Majiedt JA, Petse JA, Zondi JA, Mathopo JA

**Traditional Leadership and Governance Framework Amendment Act 23 of 2009: Customary Law:** The first appellant sought to review and set aside the decision by the second and third respondent that the first respondent is the Senior Traditional Leader of the Sokhulumi community and not the first appellant.

**Issue:** 1 Whether the appeal has been rendered moot by the first appellant's death. 2 Whether the relevant statute governing the issue was the Traditional Leadership and Governance Framework Act 23 of 2009 or the Traditional Leadership and Government Act 41 of 2003. 3 Whether the appellants have locus standi to challenge the first respondent's appointment as Senior Traditional Leader. 4 Was the court correct in its approach to the review.

### **23. Transalloys (Pty) Ltd v Mineral-Loy (Pty) Ltd (781/2016)**

Appealed from GP

Date to be heard: 11 May 2017

Navsa JA, Theron JA, Wallis JA, Petse JA, Zondi JA

**Civil procedure: Res judicata and the 'once and for all' rule:** Respondent sued the appellant for payment of certain commissions and for damages arising from a distribution agreement and its alleged repudiation. By consent a number of discrete factual and legal issues were separated for determination and a judgment was delivered on those issues. Thereafter the respondent amended its claim by adding several new and much larger claims. In response appellant amended its plea to allege a variation of the agreement, alternatively a waiver. Respondent pleaded that this was impermissible as the terms of the agreement were *res judicata* and the amendments would infringe the 'once and for all' rule. This was upheld by the court and the appeal is with its leave.

**Issues:** 1 Whether the issues in the plea of an amendment of the agreement, alternatively waiver, had been resolved by the earlier judgment and that the principle of *res judicata* prevented that decision from being reopened. 2 Whether the appellants were precluded by the 'once and for all' rule from raising the issues in the amended plea.

### **24. Primat Construction CC v Nelson Mandela Bay Metropolitan Municipality (1075/2016)**

Appealed from ECG

Date to be heard: 11 May 2017

Lewis JA, Tshiqi JA, Saldulker JA, Swain JA, Molemela AJA

**Contract:** Appellant sued the respondent for damages for repudiation of a contract for the upgrading and surfacing of roads. The issue of the merits was separated from quantum at the trial. On 17 January 2012 respondent cancelled the contract. It is common cause that this constituted a repudiation of the contract, which the appellant did not accept. When the respondent persisted in its attitude the appellant cancelled the contract on the basis of the repudiation and sued for damages. It succeeded in the court but the judgment was overturned on appeal. The appeal is with special leave of this court.

**Issue:** Whether the appellant's refusal to accept the original repudiation constituted an election to abide by the contract, precluding it from thereafter accepting the repudiation and cancelling.

### **25. July Joseph Magubane & another v Twin City Developers (Pty) Ltd & others (981/2016)**

Appealed from LCC

Date to be heard: 11 May 2017

Ponnan JA, Mbha JA, Dambuza JA, V/D Merwe JA, Fourie AJA

**Property Law: Eviction: Extension of Security of Tenure Act 62 of 1997 (ESTA):** The appellants and their families occupied a farm owned by the respondents. It is common cause that they were not employed by the owners and that their rights of occupation had been properly terminated in terms of s 8 of ESTA. A probation officer's report had been called for in terms of s 9(3) of ESTA but was not to hand when the application for eviction was argued on 20 November 2015. The report was filed on 8 December 2015 but it is common cause that the acting judge did not have regard to it before delivering judgment on 13 January 2016 ordering the eviction.

**Issues:** 1 Whether the LCC was precluded from proceeding to judgment until after it had received and considered the probation officer's report. 2 Whether as a result of such failure the LCC failed to discharge its obligations in terms of s 26(3) of the Constitution. 3 Whether, if the appellants arguments

are upheld this court should itself decide the merits of the eviction application in the light of the probation officer's report or refer the case back to the LCC.

**26. Joseph Joshua Wilkinson v The Law Society of the Northern Provinces (783/2016)**

Appealed from GP

Date to be heard: 12 May 2017

Lewis JA, Wallis JA, Saldulker JA, Zondi JA, Coppin AJA

**Attorneys Act 53 of 1979:** Attorney removed from the roll of attorneys as a result of there being a deficit in his trust account and his having failed to account to a client for funds due to it.

**Issues:** 1 Whether the court correctly approached the evidence in the light of the Plascon-Evans rule. 2 Whether the court exercised its discretion judicially on the second and third elements of the enquiry into the appellant's fitness to practice. 3 Whether removal from the roll of attorneys was an excessive sanction and the court should have suspended the appellant from practice for a period

**27. Matthews Tuwani Mulaudzi v Old Mutual Life Assurance Company & others (095/2016)**

Appealed from GP

Date to be heard: 12 May 2017

Ponnan JA, Cachalia JA, Theron JA, Mathopo JA, Mbatha AJA

**Application for reinstatement of lapsed appeal:** Application for reinstatement of appeal 139/2015, which lapsed for non-prosecution.

**Issues:** 1 Whether explanation for lapsing of appeal adequate. 2 Whether an appeal has prospects of success when appellant allegedly obtained some R48 million from respondent by fraud and existence of an alleged cession. 3 Whether application a mala fide attempt to delay execution on judgment.

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

Appealed from WCC

Date to be heard: 12 May 2017

Ponnan JA, Cachalia JA, Theron JA, Mathopo JA, Mbatha AJA

**Prevention of Organised Crime:** Rule nisi granted in favour of NDPP incorporating a provisional restraint order in terms of the Prevention of Organised Crime Act 121 of 1998 against the first respondent and other respondents. Rule discharged on the return day after second appellant refused leave to intervene.

**Issues:** 1 Whether Hlophe JP should not have allocated the case to himself and sat in the light of the fact that the respondents' attorney is his personal attorney in acrimonious litigation. 2 Whether second appellant should have been granted leave to intervene. 3 Whether on the evidence it was likely that the first respondent would be convicted of fraud and other offences. 5 Whether the rule nisi should have been confirmed.

**29. Willem Albertus Rossouw v ABSA Bank Limited (549/2016)**

Appealed from GP

Date to be heard: 15 May 2017

Shongwe JA, Tshiqi JA, Majiedt JA, Swain JA, Gorven AJA

**Contract: National Credit Act 34 of 2005 (NCA):** Appellant defaulted on his payments in terms of an instalment sale agreement in respect of a tractor. The respondent bank cancelled the agreement and claimed repossession of the tractor and other relief.

**Issue:** 1 Whether before cancelling the bank had to give notice in terms of clause 19 of the agreement. 2 Whether the delivery of a notice in terms of ss 127, 129, 130 and 130(3) after cancellation retrospectively validated the cancellation.

**30. Advocate Alexander Politisi NO v MEC for Health, Limpopo (792/2016)**

Appealed from GP

Date to be heard: 15 May 2017

Navsa JA, Theron JA, Wallis JA, Mbatha AJA, Schippers AJA

**Delict: Negligence:** Appellant is the curator to two minor children whose mother died after being injured in a motor accident, having been admitted to the Philadelphia Hospital, Limpopo and then

discharged in consequence of a strike at the hospital. Appellant alleged that the hospital was negligent in its treatment of the deceased and in the manner in which she was discharged.

**Issue:** 1 Whether the hospital was negligent in its treatment of the deceased either while she was a patient or in the circumstances in which she was discharged. 2 Whether any negligence on its part caused the deceased's death so as to render it liable for the loss of support suffered by the minor children.

### **31. Nobantu Gloria Mpahla v The Road Accident Fund (698/2016)**

Appealed from WCC

Date to be heard: 15 May 2017

Lewis JA, Ponnann JA, Petse JA, Mathopo JA, Coppin AJA

**Road Accident Fund Regulations: Interpretation:** The plaintiff was injured in a motor collision and after instituting action against the Fund delivered a serious injury report. The Fund failed to respond to the report within 90 days or at all.

**Issue:** Whether in terms of regulation 3(3)(dA) the effect of the Fund's failure to respond to the report was that the serious injury report became binding on the Fund. The appellant contends that the amendment of the regulation served to overcome the effect of the judgment in *Road Accident Fund v Duma and three other cases* 2013 (6) SA 9 (SCA).

### **32. PA Pearson (Pty) Limited v eThekweni Municipality & others (241/2016)**

Appealed from KZD

Date to be heard: 16 May 2017

Lewis JA, Petse JA, Swain JA, Mbha JA, Molemela AJA

**Local Government: Payments: s 102 (1)(b) of the Municipal Systems Act 2 of 2000:** A company referred to as Microfinish had separate accounts with the first respondent municipality in respect of two different leased properties. The local authority appropriated payments made in respect of the one property to the indebtedness in respect of the other property. The effect was that, after Microfinish had been liquidated, the appellant as landowner was obliged to pay the amount in arrears in respect of its property when there would have been no such arrears but for that appropriation.

**Issue:** Whether s 102 (1)(b) of the Municipal Systems Act 2 of 2000 affords the municipality the right to allocate payments in this way.

### **33. Principal of Mbilwi High School & others v Makhera Ratshilumela Johannes (OBO Ovhonala Makhera) (633/2016)**

Appealed from LT

Date to be heard: 16 May 2017

Ponnann JA, Theron JA, Majiedt JA, Wallis JA, Zondi JA

**Education: National Policy: Interpretation:** The respondent on behalf of his minor son brought an application to compel the Education Department, Limpopo, to advance his son, who had failed Grade 11 to Grade 12. That order was granted on the basis of the court's interpretation of the provisions of the National Policy Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement Grades R-12. The appeal challenges the court's construction of the National Policy and is pursued notwithstanding the fact that the learner has now left school. The appellants contend that the proper construction of the National Policy has implications for the manner in which it is obliged to deal with similar cases in the future.

**Issue:** 1 Whether the appeal should be dismissed on the grounds that the order will have no practical effect. 2 On a proper interpretation of the policy, in what circumstances can learners be advanced to the next grade by 'progression' notwithstanding their not having complied with the promotion requirements? 3 Was it in the best interests of the learner that he be advanced notwithstanding his not having complied with the promotion requirements.

### **34. Sango Patekile Holomisa v Bukelwa Nolizwe Holomisa (564/2016)**

Appealed from ECM

Date to be heard: 16 May 2017

Cachalia JA, Tshiqi JA, Saldulker JA, Dambuza JA, Mbatha AJA

**Family law: Divorce:** The parties, both of whom were resident in Transkei were married in Umtata on 16 December 1995. At that time the Transkei Marriage Act 21 of 1978 (now repealed), provided that marriages would be out of community of property and profit and loss. The Marriage Act, Extension Act 50 of 1997 altered that by making marriages in community of property unless the parties concluded

an agreement that they be out of community of property. The latter Act was retrospective to 27 April 1994. A Regional Court held that this had the effect of retrospectively altering the parties' matrimonial regime from one out of community of property to one in community of property. On appeal the court upheld the judgment on the ground that the appellant failed to prove that the parties were domiciled in Transkei at the time of the marriage and therefore their marriage was governed by the South African legislation, which made it a marriage in community of property.

**Issues:** 1 Whether the court was entitled to deal with the appeal on this basis. 2 Whether the court was correct to hold that the evidence was insufficient to establish that the parties were domiciled in Transkei and subject to the Transkei Marriage Act. 3 Whether the Marriage Act, Extension Act retrospectively altered the matrimonial regime.

**35. Wezizwe Feziwe Sigcau & another v Minister of Cooperative Governance and Traditional Affairs & others (612/2016)**

Appealed from GP

Date to be heard: 17 May 2017

Navsa JA, Shongwe JA, Zondi JA, Dambuza JA, Gorven AJA

**Civil Procedure: Customary Law: Traditional Leadership and Governance Framework Act 41 of 2003 (the Act): Constitutional Law:** Dispute over the appointment of the king of the amaMpondoaseQuakeni. The respondents obtained a declaratory order that in making the appointment the second respondent is empowered and obliged to implement the recommendation of the third respondent and that he was not required to consult the royal family before doing so.

**Issues:** 1 Whether the respondents had a direct interest and locus standi in seeking orders in terms of s 19(1)(a)(iii) of the Supreme Court Act (s 21(1)(c) of the Superior Courts Act). 2 Whether the court's construction of s 26(2)(a) of the Act was correct on ordinary principles of interpretation and in the light of the provisions of s 211 of the Constitution.

**36. Ursha Yvonne Fourie v Ronald Bobroff & Partners Incorporated (653/2016)**

Appealed from GJ

Date to be heard: 17 May 2017

Cachalia JA, Saldulker JA, V/D Merwe JA, Coppin AJA, Schippers AJA

**Delict: Damages: Road Accident Fund: Negligence:** The appellant instructed the respondent, a firm of attorneys specialising in claims against the Road Accident Fund to pursue claims on behalf of herself and her minor son arising out of a motor accident in which her husband and daughter were killed and she and her son were seriously injured. The claim was settled. One year later she sued the attorneys, inter alia for damages for negligently under-settling the claims and abandoning one claim.

**Issue:** 1 Was the respondent negligent in under-settling the appellant's claim and the claim of her son for general damages? 2 Was the respondent negligent in abandoning the appellant's claim for loss of earning? 3 If the respondent was negligent what is the quantum of the damages?

**37. Dax Edward Goose v Metier Mixed Concrete (Pty) Ltd (1136/2016)**

Appealed from KZP

Date to be heard: 17 May 2017

Leach JA, Mbha JA, Mathopo JA, Fourie AJA, Molemela AJA

**Civil Procedure: jurisdiction:** Respondent brought an application for a declaration that an appeal against a magistrates' court's judgment had lapsed. The application came before a single judge who granted it.

**Issues:** 1 Whether a single judge had jurisdiction to declare that an appeal had lapsed when, in the absence of an application for condonation, that judge was not required to consider the prospects of success on appeal. 2 Whether the court below should have granted a declaratory order to the effect that the appeal had lapsed. 3 Whether the respondent was obliged to invoke rule 30A of the Magistrate's Court Rules when the appellant did not comply with the time-limits for prosecuting an appeal.

**38. Khetani Mbuse Nkabinde & others v The State (115/2016)**

Appealed from FB

Date to be heard: 18 May 2017

Navsa JA, Theron JA, Majiedt JA, Fourie AJA, Schippers AJA

**Criminal law and procedure: conviction and sentence:** Special entries – judge making special entries ito s 317 of Criminal Procedure Act (CPA) granting leave to appeal to full court. Full court

struck appeal from the roll on ground that in terms of s 318 of the CPA the appeal lay to the SCA. No leave granted to appeal to SCA. Application for special leave to appeal set down into s 17(2)(d) of Superior Courts Act.

**Issues:** 1 Is this court required or competent to grant special leave in the circumstances? 2 Should special leave be granted? 3 If so, should any of the special entries be upheld? 4 If special leave to appeal is granted should the convictions of the first applicant on 18 counts and the remaining applicants on 17 counts of inter alia, murder, attempted murder, robbery with aggravating circumstances, assault with intent to do grievous bodily harm and the wrongful possession of certain blasting cartridges and weapons be upheld? 5 Whether the sentences imposed were appropriate and whether it was appropriate for the court to order that the sentences run concurrently with the life sentence on the count of murder.

### **39.1 HC Van Breda v Media 24 Ltd & others (425/17)**

Appealed from WCC

Date to be heard: 18 May 2017

Ponnan JA, Leach JA, Mbha JA, Zondi JA, V/D Merwe JA

**Criminal law and procedure: Constitutional law: Freedom of expression:** Appellant currently on trial in the Western Cape Division of the High Court on charges of murder, attempted murder and defeating or obstructing the administration of justice. Media 24 brought an urgent application for permission to install two video cameras to record the proceedings, alternatively be permitted to broadcast the proceedings by microphone and sound. The court a quo granted the application, allowing Media 24 Limited to record and broadcast the proceedings. **Issues:** 1 Whether the court a quo properly exercised its discretion in terms of section 173 of the Constitution. 2 Whether the court misdirected itself on the material facts of the matter by disregarding the inhibiting effect recording and broadcasting of the proceedings might have on the witnesses and the negative effect it might have on cross-examination of witnesses who would be able to tailor their evidence, having had the opportunity to view and listen to the evidence of earlier witnesses. 3 Whether the court a quo failed to take into account the risk this posed to the accused's right to a fair trial.

### **39.2 The National Director of Public Prosecutions v Media 24 Ltd & others (426/2017)**

Appealed from WCC

Date to be heard: 18 May 2017

Ponnan JA, Leach JA, Mbha JA, Zondi JA, V/D Merwe JA

**Criminal law and procedure: Constitutional law: Freedom of expression:** Appellant currently on trial in the Western Cape Division of the High Court on charges of murder, attempted murder and defeating or obstructing the administration of justice. Media 24 Limited brought an urgent application for permission to install two video cameras to record the proceedings, alternatively be permitted to broadcast the proceedings by microphone and sound. The court a quo granted the application, allowing Media 24 to record and broadcast the proceedings. **Issues:** 1 Whether the right to freedom of expression in terms of s 16 of the Constitution extends to broadcasting of criminal trials. 2 Whether the court a quo erred and misdirected itself in balancing the implicated constitutional rights by allowing the criminal trial to be broadcast.

### **40. Cornelius Johannes Alexander Lourens v Premier of the Free State Province & another (566/2016)**

Appealed from FB

Date to be heard: 19 May 2017

Maya AP, V/D Merwe JA, Fourie AJA, Molemela AJA, Schippers AJA

**Contempt of court:** A consent order was made by the court in an application by the appellant in terms of which the first respondent undertook so far as it lay within his powers to ensure compliance with section 6(4) of the Constitution dealing with official languages by introducing legislation and taking other measures to arrange for and monitor the use of official languages by the Free State Provincial Administration. An application thereafter for the committal of the first respondent for contempt of court on the basis of non-compliance with this order was dismissed on the basis that the evidence did not show that the first respondent had wilfully and mala fide disregarded the court order.

**Issue:** 1 Whether the appellant proved that the first respondent wilfully and mala fide disregarded the consent order. 2 If so, what remedy should the court order?

### **41. AON South Africa (Pty) Ltd v Van den Heever NO & others (615/2016)**

Appealed from GJ

Date to be heard: 19 May 2017

Navsa JA, Theron JA, Wallis JA, Petse JA, Zondi JA

**Civil Procedure: Res judicata:** The liquidators of a company referred to as Protector sued the third respondent, its parent company Glenrand MIB Ltd, and various other parties, advancing claims under six heads. The litigation was prompted by the principal creditor of the third respondent, the Industrial Development Corporation (IDC). The trial court upheld four claims and entered judgment against the third respondent, Glenrand MIB Ltd and two individuals. On appeal to this court ([2013] ZASCA 195; [2013] 1 All SA 511 (SCA)) the judgment against Glenrand MIB (now AON South Africa (Pty) Ltd, the present appellant which had taken over the business and assumed the liabilities of Glenrand MIB) was abandoned. The appeal succeeded in respect of all claims save for a judgment on one of them for some R50 million against the present third respondent.

In the present proceedings the third respondent seeks to recover from the appellant an amount substantially equivalent to that for which judgment was given against it, advancing its claims on various grounds. The appellant contends that this is a further attempt, effectively by the IDC, to recover the amounts in issue in the original action and raised a plea of *res judicata*. That plea was dismissed.

**Issues:** 1 Whether the fact that both the third respondent and the appellant were defendants in the previous litigation meant that the requirements for *res judicata* or issue estoppel were not satisfied. 2 Whether the earlier litigation resolved the same issues as those arising in the present litigation, notwithstanding the form in which the claim is couched. 3 Whether the plea of *res judicata* should have been upheld.

#### **42. Abraham Johannes van Huyssteen NO & another v Milla Investment and Holding Company (Pty) Ltd (593/2016)**

Appealed from WCC

Date to be heard: 22 May 2017

Navsa JA, Cachalia JA, Majiedt JA, Swain JA, Mathopo JA

**Contract: Cession of Lease:** Respondent, as cessionary, sued the appellants, as the trustees of the Sports City Trust, for rental in respect of shop LL01 in the Capegate Lifestyle Centre for the period from 1 August 2006 to 1 April 2008. The claim was resisted on the basis that no lease had been concluded in respect of those premises and that no tacit lease could have been concluded because the parties erroneously believed that there was already a valid lease in existence.

**Issues:** 1 Whether there is any basis for disturbing the trial judge's factual findings on the terms of a lease. 2 Whether the trial judge erred in holding that the lease came into existence on the basis of quasi-mutual assent if the parties mistakenly believed that a valid lease had already been concluded.

#### **43. 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: 5 May 2017

Cachalia JA, Wallis JA, Zondi JA, Fourie AJA, Molemela AJA

**International Law: Immigration: Refugees Act 130 of 1998:** The applicant, an NGO, sought to have the grant of refugee status to the twelfth respondent, Mr F K Nyamwasa, a former general in the Rwandan army, reviewed and set aside. The basis of the challenge was that he was alleged to have been a party to war crimes and was therefore precluded from being granted refugee status in terms of s 4 of the Refugees Act. The application was dismissed and the appeal is with the leave of this court.

**Issues:** 1 Is there still a live issue between the parties? The case was brought in 2012 and dismissed in 2014, and the French and Spanish investigations on which it was based have undergone changes. 2. Whether Mr Nyamwasa should have been refused refugee status in accordance with s 4(1)(a) of the Act. 3 Whether it was relevant to the grant of refugee status that the International Criminal Tribunal for Rwanda had not brought proceedings against Mr Nyamwasa. 4 Whether the court was correct to permit the respondents to claim confidentiality in respect of Mr Nyamwasa's application for refugee status. 5 Whether Mr Nyamwasa should have been deported or was liable to be extradited to Rwanda, France or Spain to face charges of war crimes or crimes against humanity. 6 Whether the appellant should have been ordered to pay the costs of the application in the light of *Biowatch*.

**43. Minister of Justice and Correctional Services v Janusz Jakub Walus (777/2016)**

Appealed from GP

Date to be heard: 29 May 2017

Maya AP, Shongwe ADP, Mbha JA, V/D Merwe JA, Schippers AJA

**Correctional Services Act 8 of 1959 and Correctional Services Act 111 of 1998: Parole: Review:** appeal against an order of the court a quo reviewing and setting aside the decision of the appellant not to place the respondent on parole: whether the decision by the appellant was one that a reasonable authority could make: whether all factors were taken into account by the appellant by way of striking a reasonable equilibrium between the competing factors in favour of the respondent's placement on parole and the negative factors which militate against his placement on parole.

**44. Mthandazo Berning Ntlemeza N O v HelenSuzman Foundation & another (400/2017 & 402/2017)**

Appealed from GP

Date to be heard: 02 June 2017

Navsa JA, Ponnan JA, Dambuza JA, Mathopo JA, Schippers AJA

**Administrative Law: Review: Removal of National Head of the Directorate for Priority Crime Investigation (DPCI): South African Police Service Act 68 of 1995:** whether the court a quo had jurisdiction to grant an order to the effect of removing the appellant from office: whether exceptional circumstances existed for the court a quo to grant such an order: whether the appellant proved on a balance of probabilities that it will suffer irreparable harm if the order is not granted: whether it was proved that the respondent will not suffer irreparable harm.