

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 2 2018
CASES ENROLLED FOR HEARING: MAY 2018**

1. President of the Republic of South Africa v Democratic Alliance & others (664/2017)

Appealed from GP

Date to be heard: 02 May 2018

Maya P, Majiedt JA, Dambuza JA, Plasket AJA, Mothle AJA

Civil Procedure – review – obligation to provide reasons and record of decision - the appellant dismissed the Minister of Finance and the Deputy Minister of Finance – urgent review by the Official Opposition of dismissal and appointment of replacements – obligation of President to provide record and reasons ito rule 53 – whether obliged to do so – doctrine of separation of powers.

2. Louis Pasteur Hospital Holdings (Pty) Ltd v Bonitas Medical Fund (281/2017)

Appealed from GP

Date to be heard: 02 May 2018

Navsa JA, Seriti JA, Saldulker JA, Makgoka AJA, Schippers AJA

Contract Law - cession - interpretation – joint venture between respondent and another company to establish a hospital – appellant the vehicle through which joint venture to be conducted – provision of security for the funding requirements of hospital – respondent ceded two investment policies to appellant pursuant to funding arrangements – interpretation of agreement – whether respondent remained owner of policies – on maturity proceeds of policies paid to appellant and used in its business operations – whether respondent entitled to recover proceeds from appellant.

3. Ekurhuleni Metropolitan Municipality & 5 others vs T A Thubakgale & 133 others (125/2018)

Appealed from GP

Date to be heard: 02 May 2018

Ponnan JA, Swain JA, Mbha JA, Pillay D AJA, Hughes AJA

Property Law – provide housing to residents – whether the court a quo erred in ordering the first appellant to provide each of the first and the third to one hundred and thirty-fourth respondents' a house at Tembisa Extension 25 or at another agreed location, on or before 31 December 2018 and whether the residents should be registered as titleholders by 31 December 2019.

4. Director of Public Prosecutions, Free State v Sello Joseph Mashune (675/17)

Appealed from FB

Date to be heard: 03 May 2018

Lewis JA, Dambuza JA, Rogers AJA

Criminal Law and Procedure – plea of guilty to two charges of housebreaking with the intent to commit rape and rape – sentence of nine years' imprisonment in respect of each charge with the sentences running concurrently – whether the sentences imposed by the trial court were disturbingly or shockingly inappropriate in light of the seriousness of the offences and the relevant convictions and previous convictions of the respondent - whether the court a quo misdirected itself in finding that substantial and compelling circumstances existed - whether sentence should be increased on appeal.

5. The Director of Public Prosecutions: Gauteng Division, Pretoria v Funewer Coaster Hamisi (895/2017)

Appealed from GP

Date to be heard: 03 May 2018

Lewis JA, Dambuza JA, Rogers AJA

Criminal law and procedure - sentence - appeal against the setting aside of a sentence of life imprisonment on a charge of rape –respondent pleaded guilty to rape of a 12 year old girl – admission ito s 112(2) of Criminal Procedure Act 51 of 1977 that victim was 12 years old – no further evidence led in regard to her age – whether for the purposes of sentencing it was necessary for the State to lead evidence to prove the age of the complainant beyond reasonable doubt – whether the court a quo was correct in replacing the sentence of life imprisonment with 15 years' imprisonment.

6. Antony Louis Mostert & others v Simon John Nash & another (604/2017) and (597/2017)

Appealed from GP

Date to be heard: 03 May 2018

Ponnan JA, Wallis JA, Willis JA, Swain JA, Pillay D AJA

Curator of pension fund - remuneration - contingency fee - agreement between the second appellant (the curator) and the sixth and seventh appellants (on behalf of the Financial Services Board) in respect of the curator's remuneration – locus standi of applicants – whether conclusion of agreement administrative action – whether undue delay in bringing proceedings to set it aside – whether in conflict with the common law prohibition against contingency fee agreements and required compliance with the provisions of the Contingency Fees Act 66 of 1997 – whether agreement to be set aside.

7. Alfeus Christo Scholtz & others v The State (428/2017, 491/2017, 635/2017 & 636/2017)

Appealed from NCK

Date to be heard: 04 May 2018

Leach JA, Mathopo JA, Van der Merwe JA, Mocumie JA, Mothle AJA

Criminal law - corruption - money laundering - discharge - recusal - sentencing – interpretation of ss 3 and 4 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 - whether gratification must have been agreed to, given, offered or accepted with the intention that the recipient would act in a certain manner in the future, not as compensation for past benefits conferred - whether the State proved the elements of the offence defined in s 4 read with ss 1 and 8(1) of the Prevention and Combating of Corrupt Activities Act - whether the court a quo erred in finding that the appellants had to prove the payments had been made lawfully - whether confiscation order should be taken into account in sentencing - whether compelling personal circumstances justified a deviation from the prescribed minimum sentences in the case of first and eighth appellants.

8. Siyabonga David Gongqose & others v Minister of Agriculture, Forestry and Fisheries & others and Siyabonga David Gongqose & others v The State & others (1340/2016 and 287/2017) (1365/2016)

Appealed from ECM

Date to be heard: 04 May 2018

Maya P, Majiedt JA, Dambuza JA, Plasket AJA, Schippers AJA

Administrative Law - constitutional law - Marine Living Resources Act 18 of 1998 - illegal fishing activities in marine reserve - accused convicted of fishing illegally in a marine protected area – review brought after conviction challenging constitutionality of relevant provisions of the Marine Living Resources Act 18 of 1998 and validity of proclamation of marine protected area – heard together with appeals against conviction – both appeals and review dismissed – High Court granted leave to appeal in the review – application for special leave to appeal against conviction referred for argument i/o s 17(2)(f) of Superior Courts Act 10 of 2013

Issues on appeal – whether special leave to appeal should be granted in the appeal – whether it was unlawful for the appellants to exercise a customary right to fish in the Dwesa-Cwebe MPA – if so, whether s 43 of the Marine Living Resources Act is unconstitutional for affording the Minister an unfettered discretion to limit or abrogate fishing rights – whether the appellants should be prevented from reactively challenging the validity of the declaration of Dwesa-Cwebe MPA (the Declaration) – whether the period of 180 days to launch the review should be extended - whether the declaration should be declared invalid and set aside.

9. The Commissioner for the South African Revenue Service v K W J Investment Services (Pty) Ltd (466/2017)

Appealed from Tax Court

Date to be heard: 04 May 2018

Navsa JA, Wallis JA, Mbha JA, Davis AJA, Makgoka AJA

Tax - Income Tax Act 58 of 1962 - cession of dividends – agreements under which right to receive dividends ceded by bank to respondent – whether cession gave rise to an accrual in the hands of the respondent, separate from the dividend itself – whether the value of the dividend rights ceded to the

respondent in its 2008 and 2009 years of assessment constituted gross income by virtue of the provisions of s 24J(3) of the Act – whether, in the alternative, the value of the ceded rights constituted ‘gross income’ in the hands of the respondent – whether the appellant was precluded from raising the additional assessments in consequence of the practice generally prevailing in regard to such transactions – whether, if the assessments are upheld, the appellant should have remitted interest under the Act.

10. Alfeus Christo Scholtz & others v The State (428/2017, 491/2017, 635/2017 & 636/2017)

Appealed from NCK

Date to be heard: 03 May 2018

Leach JA, Mathopo JA, Van der Merwe JA, Mocumie JA, Motlale AJA

Criminal law - corruption - money laundering - discharge - recusal - sentencing – interpretation of ss 3 and 4 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 - whether gratification must have been agreed to, given, offered or accepted with the intention that the recipient would act in a certain manner in the future, not as compensation for past benefits conferred - whether the State proved the elements of the offence defined in s 4 read with ss 1 and 8(1) of the Prevention and Combating of Corrupt Activities Act - whether the court a quo erred in finding that the appellants had to prove the payments had been made lawfully - whether confiscation order should be taken into account in sentencing - whether compelling personal circumstances justified a deviation from the prescribed minimum sentences in the case of first and eighth appellants.

11. David Mile Osborne v Mark William Cockin N O & others (549/2017)

Appealed from ECG

Date to be heard: 07 May 2018

Lewis JA, Willis JA, Saldulker JA, Plasket AJA, Hughes AJA

Insolvency Act 24 of 1936 - sequestration - the deceased and the appellant concluded an agreement in terms of which cattle belonging to the appellant were delivered to the deceased for the purpose of a joint cattle farming operation – appellant retained ownership of the cattle delivered to the deceased – deceased fraudulently disposed of cattle – deceased’s estate insolvent – application to sequester the Cockin Trust on basis that it was *alter ego* of deceased – whether appellant had liquidated claim of R100 against Cockin Trust – whether sequestration proceedings appropriate to deal with allegation that Cockin Trust a sham – whether the requirements for a final order of sequestration satisfied.

11. The Commissioner for the South African Revenue Service v The South African Breweries (Pty) Ltd (442/2017)

Appealed from GP

Date to be heard: 07 May 2018

Ponnan JA, Wallis JA, Dambuza JA, Davis AJA, Rogers AJA

Customs & Excise - product classification – dispute concerned the proper tariff classification of flavoured alcoholic beverages – whether the product in issue should be classified under Tariff Heading 22.06 or Tariff Heading 22.08 of the Harmonized System.

12. Premier Attraction 300 CC t/a Premier Security v City of Cape Town (592/2017)

Appealed from WCC

Date to be heard: 07 May 2018

Majiedt JA, Swain JA, Mbha JA, Pillay D AJA, Schippers AJA

Prescription - contract price increases - waiver - appellant claimed payment of contract price increases i/o of a contract to supply security services to the municipality – claim i/o period from 1 September 2010 to 25 June 2012 held to have prescribed – balance of claim held to have been waived – leave to appeal limited to that issue and costs – whether plea of prescription should have been upheld whether waiver established.

13. Mogale City Local Municipality v Black Tad Investments CC (889/2017)

Appealed from GJ

Date to be heard: 08 May 2018

Shongwe ADP, Mbha JA, Van der Merwe JA, Mocumie JA, Plasket AJA

Constitutional law – eviction – respondent seeking eviction of occupiers of land – whether PIE or ESTA applicable statute – whether high court had jurisdiction in eviction application – interlocutory application to declare that the municipality obliged to provide emergency housing when an eviction order obtained – whether the appellant was in breach of the constitutional obligation to those occupying the respondent's property – whether it had failed to take reasonable legislative and other measures to address their plight occasioned by a pending application for their eviction – whether the appellant was in breach of its obligations to the court by not reporting to it.

14. Orthotouch Ltd v Jurie Johannes Geldenhuys (1027/2017)

Appealed from GP

Date to be heard: 08 May 2018

Navsa JA, Majiedt JA, Willis JA, Rogers AJA, Schippers AJA

Constitutional Law - Class action – whether s 38(c) of the Constitution exclusively regulates the institution of legal proceedings of a group or class – whether the court a quo erred in not finding that the historical appellants' mere willingness to act for any wider interest is a legally irrelevant consideration and does not create any rights or obligations in relation to the main application outside of the provisions of s 38(c) of the Constitution – whether the court a quo erred in not finding that the main application was not an application for leave to institute a class action as no such relief was sought or made out – whether the court a quo erred in finding that the historical appellants' held any legally cognizable mandate from, or were nominated by a wider group or investors or a voluntary grouping of investors known as the Highveld Syndication Action Group (HSAG), to act in the main application – whether the court a quo erred in not finding that the appellants' acted in their personal capacities when they withdrew the main application.

15. Nicolas Georgiou & 5 others v Sharon Ann Vlok & 3 others (1018/2017)

Appealed from GP

Date to be heard: 08 May 2018

Navsa JA, Majiedt JA, Willis JA, Rogers AJA, Schippers AJA

Constitutional Law - Class action – whether s 38(c) of the Constitution exclusively regulates the institution of legal proceedings of a group or class – whether the court a quo erred in finding that the respondent stood in a quasi-fiduciary relationship with Highveld Syndication Action Group (HSAG) - whether HSAG were ethically obliged to act bona fide in the best interest of the class which existed without certification – whether the respondents acted in a representative capacity prior to a court certifying the existence of the class – whether HSAG was the true or beneficial litigant in the proceedings for the certification of class action.

16. Novartis AG v Cipla Medpro (Pty) Ltd & another (728/2017)

Appealed from GP

Date to be heard: 08 May 2018

Lewis JA, Ponnann JA, Leach JA, Saldulker JA, Mathopo JA

Trade mark application - Trade Marks Act 194 of 1993 – application for registration of first respondent's trade mark CURIDA – opposition by appellant the registered proprietor of the trade mark CURITAZ - whether two marks so similar as to be likely to deceive or cause confusion – whether registration would be contrary to s 10(14) of the Act.

17. Morris Material Handling Limited v Morris Material Handling SA (Pty) Ltd & others (829/2017)

Appealed from GP

Date to be heard: 09 May 2018

Maya P, Majiedt JA, Wallis JA, Dambuza JA, Van der Merwe JA

Trade mark - Trade Marks Act 194 of 1993 – application for expungement of two marks in terms of s 27(1)(b) of the Trade Marks Act 194 of 1993 (the Act) – whether bona fide and relevant use of the marks during the statutory five year and three month period – whether the court a quo was correct in expunging the Morris marks from the Register of Trade Marks with costs.

18. Douglasdale Dairy (Pty) Ltd & others v Elizabeth Ann Bragge & another (731/2017)

Appealed from GJ

Date to be heard: 09 May 2018

Shongwe ADP, Willis JA, Swain JA, Davis AJA, Hughes AJA

Will – fideicommissum - the first respondent was constituted the fiduciary heir of her late husband in respect of an immovable property – property leased to first appellant for running a dairy business – sons of deceased inheriting his interest in the dairy business – sons also fideicommissary heirs in respect of the immovable property – whether fiduciary entitled to evict the dairy business from the property on expiry of the lease – whether eviction a breach of fiduciary obligations – whether fideicommissary heirs entitled to be joined in eviction application.

19. Earl Flanagan v The Minister of Safety & Security (497/2017)

Appealed from ECP

Date to be heard: 09 May 2018

Lewis JA, Seriti JA, Saldulker JA, Makgoka AJA, Schippers AJA

Delict - damages - whether the respondent breached its duty of care and/or legal obligation to protect the appellant whilst in police custody – whether the respondent took all reasonable and necessary measures to protect the appellant against rape by fellow prisoners.

20. Vasanthi Naidoo v Discovery Life Limited & others (202/2017)

Appealed from GJ

Date to be heard: 10 May 2018

Shongwe ADP, Wallis JA, Mbha JA, Hughes AJA, Schippers AJA

Family Law - joint estate - contract - insurance policy - life insurance policy – policy holder and appellant married in community of property – whether the policy formed part of their joint estate – policy holder nominating new beneficiaries in place of spouse before his death – whether this constituted an alienation of the policy in terms of s 15(2)(c) of the Matrimonial Property Act 88 of 1984.

21. Jane Erasmus & others v Nelson Mandela Bay Metropolitan Municipality (537/2017)

Appealed from ECP

Date to be heard: 10 May 2018

Navsa JA, Leach JA, Mathopo JA, Mocomie JA, Pillay D AJA

Constitutional law - property law - unlawful occupiers - eviction - the appellants are residents in unlawful occupation of land in Khayamnandi Informal Settlement - respondent's obligation to provide appellants, on eviction, with alternative accommodation – period of occupation exceeding 6 months – relevance of the 'queue jumping' intent of the appellants in occupying the land – whether the court erred in deciding that the eviction of the appellants was just and equitable

22. Zitonix (Pty) Ltd v K2012150042 (South Africa) (Pty) Ltd (290/2017)

Appealed from WCC

Date to be heard: 10 May 2018

Lewis JA, Swain JA, Davis AJA, Mothle AJA, Rogers AJA

Contract - lease agreements - breach of contract - competition law - interpretation – cancellation of leases – whether the WCC had the jurisdiction to order eviction from premises not situated within its area of jurisdiction – whether the appellant was properly put to terms by the respondent in terms of its notices of demand under the leases – whether the respondent elected not to cancel leases when entitled to do so – reference to the Competition Tribunal ito s 65(2) of Competition Act 89 of 1998.

23. Friedshelf 325 (Pty) Ltd & another v Sizane Betty Mokwena (652/17)

Appealed from LCC

Date to be heard: 11 May 2018

Maya P, Mbha JA, Van der Merwe JA, Mothle AJA, Schippers AJA

Property Law - the Land Reform (Labour Tenants) Act 3 of 1996 – farm situated within area of jurisdiction of former local authority – whether a farm as defined in statute – whether the respondent a labour tenant.

24. The Executor of the Estate of the late Josephine Tereblanche Gouws (Charmaine Celliers N O) v Magnificent Mile Trading 30 (Pty) Ltd & others (594/2017)

Appealed from GP

Date to be heard: 11 May 2018

Shongwe ADP, Swain JA, Dambuza JA, Plasket AJA, Rogers AJA

Administrative Law - PAJA - Mineral and Petroleum Resources Development Act 28 of 2002 - owner applying to convert old order mineral rights into prospecting rights – three days later respondent applied for prospecting rights over the same property – for unexplained reasons owner's application granted in respect of different property and prospecting rights granted to respondent – owner died shortly afterwards – respondent refused permanent mining right and owner's original application granted in respect of portion of the property – on review latter grant set aside and Minister ordered to reconsider application for mining right – whether review should have been upheld – whether after death of owner his rights terminated or vested in his estate – whether the counter-application by the estate was barred by the 180 day period in PAJA, alternatively the delay rule – whether collateral attack available to estate.

25. City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd & others (724/2017)

Appealed from GP

Date to be heard: 11 May 2018

Ponnan JA, Majiedt JA, Seriti JA, Pillay D AJA, Makgoka AJA

Administrative Law - local government - respondents own vacant properties situated within the municipal area of the former Kungwini Municipality which was taken over by the appellant – their rates substantially increased as a result of a revised valuation roll – review – delay – whether condonation should have been granted under s 9(2) of PAJA and whether it the period of 180 days provided for in s 7 (1) of PAJA should have been extended – whether 2012 and 2013 revised valuation rolls should have been set aside – whether relief granted appropriate.

26. Leon St Leger Bouttell v Road Accident Fund (324/2017)

Appealed from GP

Date to be heard: 14 May 2018

Navsa JA, Majiedt JA, Mbha JA, Plasket AJA, Hughes AJA

Delict - Road Accident Fund - damages - loss of earnings – calculation of – prior to accident appellant contributed towards a private pension fund – after accident unable to maintain contributions – whether loss of future pension benefits to be included in calculating damages.

27. Minister of Defence & another v Bongani Postolie Xulu (337/2017)

Appealed from GP

Date to be heard: 14 May 2018

Lewis JA, Wallis JA, Saldulker JA, Mocumie JA, Pillay D AJA

Administrative Law - review - employment contract dispute - PAJA - interpretation - the respondent sought a review and setting aside of a decision by the appellants not to renew and extend the respondent's fixed term employment contract – whether the decision constituted administrative action which was reviewable under PAJA – if not whether the principle of legality could be invoked in order to obtain relief.

28. Ntuntu David Kekana v Road Accident Fund (206/2017)

Appealed from GP

Date to be heard: 15 May 2018

Shongwe ADP, Leach JA, Mbha JA, Pillay D AJA, Mothle AJA

Delict - prescription - appellant alleged that in 1999 the respondent fund under-settled his claim for damages arising from injuries sustained in a motor vehicle accident – action commenced in 2013 – whether claim prescribed – whether all the facts from which the debt arose were known to by the appellant.

29. Lya Louw & others v Ashraf Davids & others (783/2017)

Appealed from WCC

Date to be heard: 15 May 2018

Navsa JA, Swain JA, Davis AJA, Plasket AJA, Rogers AJA

Contract - sale agreement – sale of shares in close corporation – purchase price not paid in full – whether a breach of agreement entitling appellants to cancel – oral variation of the payment terms – whether enforceable in view of the non-variation clause in the agreement requiring that all amendments be reduced to writing and signed by the parties.

30. Magnum Simplex International (Pty) Ltd v The MEC Provincial Treasury, The Provincial Government of Limpopo (556/2017)

Appealed from GP

Date to be heard: 15 May 2018

Lewis JA, Mathopo JA, Hughes AJA

Contract - civil procedure - rule 28(1) of the Uniform Rules of Court – application to amend certain counterclaims – whether the amendments amounted to new causes of action – if so, whether new claims prescribed – whether the appellant was entitled to amend its counterclaim.

31. Francois Jean de Villiers & others v The Trustees for the time being of the G J N Trust & others 756/2017

Appealed from WCC

Date to be heard: 16 May 2018

Shongwe ADP, Seriti JA, Van der Merwe JA, Rogers AJA, Schippers AJA

Company Law - Companies Act 61 of 1973 - whether in an application ito s 420 of the Companies Act 61 of 1973 to avoid the dissolution of a company and restore the company to the register the court is empowered to order the re-commencement of liquidation proceedings *de novo* where all distributions have been made in terms of the liquidation and distribution account – s 408 of the Act - whether director and shareholder and the Minister of Finance were necessary parties to the application in terms of s 420 of the Act.

32. The Commissioner for the South African Revenue Service v JM DA Encarnação N O & another (543/17)

Appealed from GP

Date to be heard: 16 May 2018

Navsa JA, Willis JA, Mocomie JA, Davis AJA, Plasket AJA

Customs and Excise Act 91 of 1964 – cigarettes imported and stored in bonded warehouse – cigarettes stolen in armed robbery – whether trust established that an armed robbery occurred – whether goods thereby lost, destroyed or damaged - whether such goods qualified for a full rebate in terms of Rebate item 412.09 in Schedule 4 of the Customs and Excise Act 91 of 1964.

33. The MEC for the Department of Roads and Public Works & another v AGRI Eastern Cape & others (1107/2017)

Appealed from ECG

Date to be heard: 16 May 2018

Ponnan JA, Wallis JA, Swain JA, Dambuza JA, Hughes AJA

Civil Procedure - structural interdict – court order directing that the Eastern Cape government undertake a programme for the repair of rural roads – construction of s 3 of Eastern Cape Roads Act 3 of 2003 – whether failure to repair roads infringes constitutional rights to basic education and access to health care – whether order infringes the doctrine of the separation of powers

34. WDR Earthmoving Enterprises CC & another v The Joe Gqabi District Municipality & others (392/2017)

Appealed from ECG

Date to be heard: 17 May 2018

Navsa JA, Swain JA, Davis AJA, Pillay D AJA, Hughes AJA

Civil Procedure - application for leave to appeal - administrative law – appellants formed a joint venture to bid for a tender for the construction of certain works – tender disqualified as non-responsive and awarded to fourth respondent – review – whether disqualification justified – whether appellants

having locus standi to argue that successful tenderer should also have been disqualified – whether successful tender should be reviewed and set aside.

35. Bruce St.Clair Moor & another v The Tongaat-Hulett Pension Fund & others (518/2017)

Appealed from KZD

Date to be heard: 17 May 2018

Lewis JA, Majiedt JA, Mbha JA, Dambuza JA, Schippers AJA

Civil Procedure – application to lead further evidence on appeal in relation to costs – Biowatch principle
Pension Funds Act 24 of 1956 - complaint to the Pension Funds Adjudicator in terms of s 30A of the Pension Funds Act in regard to the allocation of actuarial surplus – complaint dismissed – appeal into s 30P of Pension Funds Act 24 of 1956 – in 2012 allocation and the decision of the board of trustees to allocate 20 per cent of the actuarial surplus to the employer's surplus account on 30 June 2012 - whether the allocation and distribution of actuarial surplus unlawful.

36. Madibeng Local Municipality v Public Investment Corporation Ltd (603/2017)

Appealed from GP

Date to be heard: 17 May 2018

Ponnan JA, Wallis JA, Willis JA, Plasket AJA, Makgoka AJA

Administrative Law - local government – claim secured by zero-coupon certificates issued in 1994 – whether an unlawful loan into s 52 of the Local Government Ordinance 17 of 1939 – issue of validity of certificates decided separately – whether s 53 of Ordinance an answer to defence.

37. Road Accident Fund v Khathutshelo Gladys Masindi (586/2017)

Appealed from GJ

Date to be heard: 18 May 2018

Shongwe ADP, Majiedt JA, Swain JA, Mocomie JA, Rogers AJA

Prescription - Road Accident Fund Amendment Act - interpretation - the respondent claimed for damages against the appellant as a result of a motor vehicle accident that occurred on 17 June 2009 – under s 23(3) of the Road Accident Fund Amendment Act 19 of 2005 obliged to bring proceedings within five years – 16 June 2014 a Monday and public holiday – summons served on 17 June 2014 – computation of five year period – whether s 4 of the Interpretation Act 33 of 1957 applicable – whether claim prescribed.

38. Pioneer Foods (Pty) Ltd v Minister of Finance & others (1166/2017)

Appealed from WCC

Date to be heard: 18 May 2018

Ponnan JA, Wallis JA, Dambuza JA, Davis AJA, Motlale AJA

Customs and Excise Act 91 of 1964 – proclamation of revised tariff - separation of powers - application to compel the Minister of Finance to publish an amended customs tariff for imported wheat – nature of the powers of the Minister of Finance under s 48(1)(b) of the Customs Act – relationship to recommendations by ITAC under the International Trade Administration Commission Act 71 of 2002 – whether the Minister of Finance performed an administrative function or legislative function when effecting amendments to Schedule 1 in terms of s 48(1)(b) of the Customs Act – whether appropriate for court to order Minister to publish amended tariff in light of doctrine of separation of powers.

39. Ekurhuleni Metropolitan Municipality v Argent Industrial Investments (Pty) Ltd (809/2017)

Appealed from GJ

Date to be heard: 18 May 2018

Leach JA, Seriti JA, Mbha JA, Van der Merwe JA, Makgoka AJA

Prescription Act 68 of 1969 - local government – local authority not reading water meter between 2009 and 2015 – claim for water charges after 2015 reading – obligations of local authority to read meter and submit accounts – whether all charges relating to water consumption more than three years prior to claim prescribed as contemplated in s 11(b) of the Prescription Act - whether the running of prescription in relation to the impugned debt had been interrupted by express or tacit acknowledgments of liability – allocation of payments – whether any debts older than three years in the impugned invoice.

40. Netshimbupfe Fuzani Ernest & another v Mulaudzi Vhangani Cathcart (on behalf of the Netshimbupfe Royal Council) & others (563/2017)

Appealed from GP

Date to be heard: 21 May 2018

Maya P, Dambuza JA, Mathopo JA, Van der Merwe JA, Mothle AJA

Customary Law – review – first appellant claiming to have been identified by the *khadzi* and the *ndumi* in accordance with customary law as successor to the late *khosi* – fifth respondent nominated by royal council as successor – appellants sought an order reviewing and setting aside the decision of the royal council – on appeal, full court upholding first appellant's claim but refusing relief on basis that Premier best suited to resolve question – whether first appellant entitled to substantive relief.

41. Kennedy Ntsako Shiburi v The State (205/2017)

Appealed from LP

Date to be heard: 21 May 2018

Shongwe ADP, Saldulker JA, Pillay D AJA, Makgoka AJA, Hughes AJA

Criminal law and procedure - appeal against judgment and order - appellant convicted of three counts of rape – sentenced to 15 years and life imprisonment – whether magistrate adequately explained right to legal representation and if inadequacy constitutes an irregularity - whether plea explanation on counts 1 and 2 raised compulsion as a defence - whether regional court empowered to impose life imprisonment under s 51 read with Schedule 2 of Act 105 of 1997 – whether appellant proved substantial and compelling circumstances justifying a lesser sentence.

42. The Commissioner for the South African Revenue Service v Char-Trade 117 CC t/a Ace Packaging (776/2017)

Appealed from Tax Court

Date to be heard: 21 May 2018

Navsa JA, Lewis JA, Mbha JA, Davis AJA, Schippers AJA

Tax Law - prescription - SARS raised an assessment in respect of secondary tax on companies for the 2007 tax year – merits conceded by taxpayer – defence of prescription into s 99 (1) (b) of the Tax Administration Act 28 of 2011 – defence upheld – whether running of prescription did not commence because taxpayer failed to submit a return – whether five year period in s 99(1)(b) applies – whether there was intentional or negligent misrepresentation or intentional or negligent non-disclosure by the taxpayer as envisaged in s 99 (2)(b)(i) – (iii).

43. Jan George Gabriel Stoltz v Prof L J S Steenkamp (127/2017)

Appealed from GP

Date to be heard: 22 May 2018

Shongwe ADP, Majiedt JA, Saldulker JA, Rogers AJA, Schippers AJA

Contract – purchase and sale - dispute over purchase price of a harvester – trial court originally upholding claim – on appeal application to reopen the trial succeeding – after further evidence court held that plaintiff failed to prove the purchase price for which he contended – claim dismissed.

44. AFGRI Operations Limited v Dipaleseng Local Municipality (708/2017)

Appealed from GJ

Date to be heard: 22 May 2018

Navsa JA, Leach JA, Wallis JA, Mbha JA, Van der Merwe JA

Municipal electricity charges - administrative law - whether the evidence of the appellant's expert witness was admissible - whether the demand charge levied by the respondent was lawful - in the alternative, whether the respondent overcharged the appellant for maximum demand because of a calculation, reading, or metering error.

45. Mantis Investment Holdings (Pty) Ltd v Eastern Cape Development Corporation & others 857/2017

Appealed from ECP

Date to be heard: 22 May 2018

Ponnan JA, Swain JA, Dambuza JA, Davis AJA, Mothle AJA

Insolvency – ss 44(7) and 45(3) of Insolvency Act 24 of 1936 – interrogation – after respondent's claim was accepted as a proved claim appellant sought to interrogate witnesses in relation to the validity of the claim – sub-poenas issued by Master to the witnesses – such sub-poenas set aside on review – whether interrogation of witnesses pursuant to the provisions of s 44(7) of the Act permissible in respect of a proved claim.

46. The National Director of Public Prosecutions (Ex Parte Application) (905/2017)

Appealed from GP

Date to be heard: 23 May 2018

Shongwe ADP, Seriti JA, Swain JA, Plasket AJA, Pillay D AJA

Prevention of Organised Crime Act 121 of 1998 (POCA) – *ex parte* application brought *in camera* for preservation of property order ito s 38(1) of POCA – application struck off roll as court required notice to be given to affected parties – whether order appealable – whether procedure by way of *ex parte* application appropriate – whether a requirement in such an application that a real possibility must be established of the loss or dissipation of the property if not heard *ex parte* and *in camera* – whether procedure appropriate where the property had already been attached and seized as an exhibit in criminal proceedings that were underway and particularly where the property sought to be preserved will (or may be) an important exhibit in the criminal proceedings - whether it would be important to seek via the employment of chapter 6 of POCA the completion of the criminal proceedings before claiming forfeiture.

47. The Standard Bank of South Africa Ltd v Mlungisi Ratsi July & others (525/2017)

Appealed from ECM

Date to be heard: 23 May 2018

Lewis JA, Wallis JA, Saldulker JA, Mocomie JA, Rogers AJA

Civil law - locus standi - succession - maladministration of estate - Administration of Estates Act 66 of 1965 – two properties in estate transferred by executor to himself to the exclusion of his sister, the other heir in equal shares – one property thereafter transferred to the executor's heirs – application by excluded beneficiary's heirs to have both properties restored to the original estate and to have fresh executor appointed – locus standi of applicants in absence of any lawful representative of the original estate.

48. The Minister of Police & another v Sipho Zweni (842/2017)

Appealed from ECP

Date to be heard: 23 May 2018

Ponnan JA, Willis JA, Mbha JA, Makgoka AJA, Hughes AJA

Delict – damages – claim for damages for unlawful arrest and detention and malicious prosecution – claim upheld in respect of period of detention between arrest and first appearance in the Magistrates' Court – claims otherwise dismissed – appeal – cross appeal only in relation to lawfulness of arrest and detention after first appearance – whether reasonable suspicion justifying arrest – if arrest lawful whether initial period of detention lawful – whether further detention after first appearance unjustified and unlawful – quantum of damages.

49. W J Oosthuizen & another v The State (144/2018)

Appealed from GP

Date to be heard: 28 May 2018

Navsa JA, Willis JA, Schippers AJA

Criminal law – bail application – whether the court a quo erred in refusing the bail application pending the petition to this court against the refusal to grant leave to appeal against conviction and sentences - the State did not oppose the bail application and no evidence was led to traverse the release of the applicants – whether the court a quo erred in not taking into consideration the applicants' constitutional rights to liberty in terms of s 35(1)(f) of the Constitution – whether the applicants' have any prospects of success on appeal.

