

REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL

BULLETIN 3 OF 2019

CASES ENROLLED FOR HEARING: AUGUST – SEPTEMBER 2019

1. Atlantic Beach Homeowners Association NPC & others v The Estate Agency Affairs Board (978/2018)

Appealed from WCC

Date to be heard: 15 August 2019

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

Property Law – Estate Agency Affairs Act 112 of 1976 – whether the appellants conducted themselves as estate agents in terms of s 1 of the Estate Agency Affairs Act 112 of 1976 – whether it was appropriate to institute disciplinary proceedings against the appellants.

2. Termico (Pty) Ltd v SPX Technologies (Pty) Ltd (418/2018)

Appealed from GJ

Date to be heard: 15 August 2019

Ponnan JA, Leach JA, Swain JA, Molemela JA, Mbatha JA

Contact Law – whether the arbitrators committed a gross irregularity in terms of s 33(1)(b) of the Arbitration Act – whether the award lacked finality and should be set aside – whether the court a quo asked to grant an impermissible “hybrid order” of the type criticised in *Britstown Municipality v Beunderman (Pty) Ltd* 1967 (3) SA 154 (C) – whether it was impermissible for a court to grant a money judgment following the determination of other issues in an arbitration.

3. SPX Technologies (Pty) Ltd v Termico (Pty) Ltd (413/18)

Appealed from GJ

Date to be heard: 15 August 2019

Ponnan JA, Leach JA, Swain JA, Molemela JA, Mbatha JA

Company law – contact – repudiation – whether the appellant repudiated the written shareholders’ agreement on 7 December 2016 by way of written correspondence – whether in consequence of the repudiation, a right in terms of clause 14.5.1 of the shareholder’s agreement to call its shares arose in favour of the appellant – whether the appellant was liable for the reserved costs of 6 to 7 June 2017.

4. Director of Public Prosecutions Western Cape v Marc Schoeman & another (904/2017)

Appealed from WCC

Date to be heard: 15 August 2019

Cachalia JA, Plasket JA, Nicholls JA, Dlodlo JA, Tsoka AJA

Criminal law and procedure – Criminal Procedure Act 51 of 1977 – reservation of questions of law – appeal against the acquittal of the respondents – whether all circumstantial evidence was considered by the trial court – whether the court a quo erred by not considering the question whether the respondents had *dolus eventualis* regarding the fraudulent VAT returns.

5. Victor Kwenda v The State (682/2018)

Appealed from GJ

Date to be heard: 16 August 2019

Maya P, Zondi JA, Mokgohloa JA, Dolamo AJA, Hughes AJA

Criminal law and procedure – sentence – appeal against the sentence of 20 years' imprisonment imposed by the Specialised Commercial Crime Court on charges of fraud – whether the trial court misdirected itself and whether the sentence was shockingly inappropriate.

6. Siphon Ximba v The State (1171/2018)

Appealed from KZP

Date to be heard: 16 August 2019

Maya P, Zondi JA, Mokgohloa JA, Dolamo AJA, Hughes AJA

Criminal law and procedure – whether the trial court misdirected itself in holding that there were no substantial and compelling circumstances present – whether the life sentence was grossly disproportionate to the crime and the needs of society – whether the life sentence was excessive and unduly harsh.

7. Afrisam (South Africa) Proprietary Limited v Maleth Investment Fund Proprietary Limited (651/2018)

Appealed from GJ

Date to be heard: 16 August 2019

Navsa JA, Wallis JA, Dambuza JA, Molemela JA, Mbatha JA

Company Law – Companies Act 61 of 1973 – interpretation of ss 340(2), 348, 352, 346(1)(e) and 247(4)(a) – appeal against the rescinded order placing a company into final winding-up coupled with ancillary relief – whether the appellant had a direct and substantial interest in the application to wind-up the company – whether the respondent waived its winding-up application – whether the appellant showed good cause to rescind the order – whether the court could grant the order without first setting aside the company’s winding-up – whether the court was permitted to place the company under final winding-up up with effect from 31 October 2013.

8. Dawid Johannes Malherbe v The State (829/18)

Appealed from WCC

Date to be heard: 16 August 2019

Tshiqi JA, Mbha JA, Van der Merwe JA, Mocumie JA, Weiner AJA

Criminal law and procedure – whether the State proved the guilt of the appellant beyond reasonable doubt on charges of fraud and money laundering – whether the sentences imposed were unduly harsh and disturbingly inappropriate.

9. Jonathan Dubula Qwelane v South Africa Human Rights Commission & others (686/2018)

Appealed from GJ

Date to be heard: 19 August 2019

Navsa JA, Wallis JA, Dambuza JA, Van der Merwe JA, Dolamo AJA

Administrative Law – Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act) – whether s 10 of the Equality Act was inconsistent with the provisions of s 16 of the Constitution – whether s 10 of the Equality Act limited speech, publication of comment or opinion – whether ss 10, 11 and 12 read with s 1 of the Equality Act unjustifiably limited the rights to freedom of expression – whether the limitation was reasonable and justifiable – whether s 10 of the Equality Act, properly construed, was in conflict with s 16 of the Constitution.

10. Ralph Daniel Jacobs (In re the Farm Uap) v Department of Land Affairs And Ralph Daniel Jacobs (In re Erf 38) v Department of Land Affairs (1284/2016 and 982/17)

Appealed from LCC

Date to be heard: 19 August 2019

Ponnan JA, Swain JA, Mbha JA, Zondi JA, Tsoka AJA

Property Law – Restitution of Land Rights Act 22 of 1994 – s 33(e) of the Act read with s 25(3)(c) of the Constitution – compensation – how to determine the quantum of compensation as equitable redress for a racially discriminatory dispossession of a right in land in terms of the Act – whether a claim for financial compensation for loss of use of land was a separate claim and should be dealt with separately as a claim for financial loss – what standard and measure was just and equitable compensation when the historical value of Erf 38 Upington in 1925 in the amount of R302, adjusted by CPI, to provide a present day value of R52 817, as compared to the current market value, as at the date of the trial in the amount of R2,5 million, as to make the former, neither just nor equitable – how should the court determine compensation for the past lost use value of Erf 38 Upington – how should the court determine compensation for a gross violation of human rights.

11. Salzmann: Siegfried Ernst v The State (755/18)

Appealed from GJ

Date to be heard: 19 August 2019

Leach JA, Saldulker JA, Molemela JA, Mokgohloa JA, Mbatha JA

Criminal law and procedure – Communications and Transactions Act 25 of 2002 – whether the convictions on count 1 and 3 were sustainable – whether the sentences imposed on count 1 and 3 were appropriate – whether the State proved beyond reasonable doubt the electronic login to the Network Monitoring Server of Cell C.

12. Antoinette Botha v Standard Bank of South Africa Ltd (445/2018)

Appealed from GP

Date to be heard: 20 August 2019

Cachalia JA, Saldulker JA, Plasket JA, Dlodlo JA, Weiner AJA

Prescription Act 68 of 1968 – the respondent concluded a home loan agreement with a principal debtor, securing the debt by mortgage bonds over the immovable property and a suretyship - the principal debtor's estate was sequestrated and the respondent lodged a claim for full balance of the debt – prescription of the respondent's claim – the consequence of the sale by the trustees of the immovable property of the sequestrated principal debtor in winding-up of the estate and the cancellation, in the course thereof, of the mortgage bonds

securing the debt under the home loan to the respondent on the running of prescription of the appellant's debt in respect of the shortfall – s 11(a)(i) of the Prescription Act – the effect on the question of prescription of the payments made by the trustees to the respondent after the latter had proved its claim against the insolvent estate of the principal debtor on the appellant's debt – s 14(1) of the Prescription Act – in respect of the cancellation of the mortgage bonds whether that act by the trustees after the debt of the appellant had become due and payable alters the period of extinctive prescription of the debt from 30 years to 3 years, which latter period commences to run from the date on which the mortgage bonds were cancelled – with regard to the payments made by the trustees, whether or not that conduct constituted a tacit or express acknowledgement of the principal debtor's debt to the respondent or whether it was only the principal debtor that could acknowledge such debt.

13. Liberty Group Limited & others v Mall Space Management CC t/a Mall Space Management (644/2018)

Appealed from GJ

Date to be heard: 20 August 2019

Leach JA, Tshiqi JA, Swain JA, Zondi JA, Mocumie JA

Civil procedure – interdict – contract law – it was common cause that there was an oral contract of mandate between the appellants and the respondent. The contract contained no notice clause and the appellants terminated the mandate on 5 days' notice – whether this notice period was unreasonable – whether the appellants acted in good faith as a self-standing legal principle – whether the court a quo correctly granted the interdict ordering the appellants to permit the respondent to operate as an agent on behalf of the appellants where the court relied on the principle of Ubuntu as a self-standing legal principle in contract law.

14. Bernard Anthony Livanje v The State (378/2018)

Appealed from FB

Date to be heard: 21 August 2019

Maya P, Molemela JA, Mbatha JA, Dlodlo JA, Hughes JA

Criminal law and procedure – Criminal Procedure Act 51 of 1977 – whether the appellant was correctly convicted of housebreaking with intent to commit robbery – whether the evidence established beyond reasonable doubt that the intent was one of committing robbery – whether the sentence imposed of 10 years' imprisonment was shockingly inappropriate.

15. BMW South Africa (Pty) Ltd v The Commissioner for the South African Revenue Service (1156/2018)

Appealed from GP

Date to be heard: 21 August 2019

Navsa JA, Cachalia JA, Mbha JA, Van der Merwe JA, Nicholls JA

Tax Law – tax administration – Income Tax Act 58 of 1962 – whether certain payments to certain tax consultancy firms made by the appellant during its 2004 - 2009 years of assessment were taxable benefits granted to the expatriate employees of the appellant who had been seconded to work in South Africa during those years of assessment in terms of paragraph (i) of the definitions of gross income in s 1 of the Income Tax Act.

16. Umgeni Water v Sembcorp Siza Water (Pty) Ltd & others And Minister of Water & Sanitation v Sembcorp Siza Water (Pty) Ltd & others (358/2018 and 497/2018)

Appealed from KZP

Date to be heard: 21 August 2019

Ponnan JA, Wallis JA, Dambuza JA, Mokgohloa JA, Weiner AJA

Administrative Law – Promotion of Administrative Justice Act 3 of 2000 – whether it was constitutionally permissible to penalise a private entity performing a public function by singling it out for a higher tariff on account of the fact that it could make profit – whether the decision of Umgeni to increase the costs of water supplied to Sembcorp by 37.9 per cent for the financial year 01 July 2015 and the subsequent approval of such decision by the Minister is susceptible to being reviewed and set aside on the basis of the grounds advanced by Sembcorp – whether the decision of Umgeni and the approval thereof by the Minister was liable to be reviewed and set aside on the basis that such decision and/or the approval thereof was irrational, discriminatory and/or was made on the premise of irrelevant considerations as contended by Sembcorp.

17. Cedric Morgan Jones & others v Shawn Sutherland & another (478/2018)

Appealed from LCC

Date to be heard: 22 August 2019

Maya P, Tshiqi JA, Mokgohloa JA, Nicholls JA, Dolamo AJA

Property Law – Extension of Security of Tenure Act 62 of 1997 – eviction – whether the requirements of ESTA were complied with and therefore justified the eviction order.

18. Neo Doreen Mosalakae & others v Nomsa Matlala & others (267/2018)

Appealed from GP

Date to be heard: 22 August 2019

Navsa JA, Plasket JA, Dlodlo JA, Tsoka AJA, Weiner AJA

Company Law - Companies Act 61 of 1973 – whether the resolution adopted at the shareholders’ meeting to offer shares to Gundo’s members in order to raise funds for the company was valid – whether the share offer, the acceptance thereof by the third to fourth appellants, and payments made pursuant thereto, entitled the third and fourth appellants to an increase in shareholding relative to those members who did not accept the offer – whether the third and fourth appellants and the fifth to ninth respondents remained equal shareholders in the fifth appellant – whether the court a quo correctly exercised its discretion in terms of s 115 of the Act.

19. Fanie Archibold Ndimande v The State (248/2018)

Appealed from GJ

Date to be heard: 22 August 2019

Ponnan JA, Saldulker JA, Swain JA, Mbatha JA, Hughes AJA

Criminal law and procedure – whether the identification of the appellant by a witness who viewed certain video footage not presented in court was admissible – whether the appellant’s rights to a fair trial in terms of s 35 of the Constitution was infringed as he was prevented from testifying to the assessment of a pointing-out used to convict him.

20. Stallion Security (Pty) Limited v Daleen van Staden (526/2018)

Appealed from GP

Date to be heard: 23 August 2019

Leach JA, Mbha JA, Dambuza JA, Van der Merwe JA, Hughes AJA

Delict – vicarious liability – the appellant was held to be vicariously liable for the damages suffered by the respondent following the tragic murder of her husband by one of Stallion’s employees – whether the employer could be held vicariously liable for a delict committed by his employee – whether the employer was acting within the course and scope of his employment at the time when he committed the delict.

21. Cheryl Lewarne v Fochem International (Pty) Ltd (1073/2018)

Appealed from GJ

Date to be heard: 23 August 2019

Tshiqi JA, Wallis JA, Zondi JA, Mocumie JA, Plasket AJA

Civil Procedure - jurisdiction – labour law – high court division’s jurisdiction in light of ss 77(1) and 77(3) of the Basic Conditions of Employment Act 75 of 1997 read with s 157 of the Labour Relations Act 66 of 1995 – the appellant sought the payment of remuneration due to her in terms of her contract of employment in terms of s 77(3) of the Basic Conditions of Employment Act 34 of 1997 (the BCEA) – the appellant approached the court a quo by way of notice of motion supported by an affidavit and formulated her claim and her relief sought on unlawful deductions from her salary which she contended the respondent was not permitted to do in terms of s 34 of the BCEA – the appellant placed the lawfulness or unlawfulness of the deductions at the heart of her claim and squarely within the issues which the court a quo was required to consider and determine in order to establish whether or not the respondent had repudiated the contract of employment – whether the claim and the relief sought as formulated by the appellant in her pleadings fell within the scope of the court a quo’s jurisdiction to consider – whether the court a quo erred in upholding the respondent’s point of law.

22. KwaZulu-Natal Bookmakers Society & another v Phumelela Gaming and Leisure Ltd & others (889/2018)

Appealed from GP

Date to be heard: 26 August 2019

Navsa JA, Tshiqi JA, Swain JA, Van der Merwe JA, Molemela JA

Civil procedure – interpretation – Lotteries Act 57 of 1997 – whether totalisator betting (a form of betting defined in and regulated by the National Gambling Act 7 of 2004 and provincial legislation) on sports fell within the definition of a ‘sports pool’ in the Lotteries Act – whether the first and second respondents were authorised (under the Lotteries Act or any other statute) to conduct ‘sports pool’ betting on sports other than horseracing – whether ‘sports pool’ in the Lotteries Act encompassed totalisator betting in general – whether the first and second respondents had lawful authority from the provincial gaming boards to conduct ‘sports pool’ betting on sports other than horseracing and the meaning and interpretation of s 57 of the Lotteries Act.

23. Rajan Ramnath Sewpersadh v The Minister of Finance & another (923/2018)

Appealed from GP

Date to be heard: 26 August 2019

Ponnan JA, Leach JA, Saldulker JA, Mbha JA, Dambuza JA

Administrative law – Special Pensions Act 69 of 1996 (SPA) – whether the designated institution was entitled in terms of s 6 of the SPA to entertain the appellant’s application for special pension by virtue that he was a full time member of the African National Congress prior to February 1990 – whether the appellant still had a right to apply and receive special pension in the light of the subsequent amendments to the Act introduced by the Special Pensions Amendment Act 27 of 2005 and the Special Pensions Amendment Act 13 of 2008 – whether the court a quo’s interpretation of s 1 of the SPA was correct.

24. Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Jabulani Crosby Maphanga (652/2018)

Appealed from KZP

Date to be heard: 27 August 2019

Maya P, Wallis JA, Mbha JA, Dambuza JA, Weiner AJA

Administrative law – powers of high court division – abuse of court process – whether a high court division had the power to grant an order to address vexatious and frivolous proceedings – claims arising from matter which occurred in 2000 to 2001 – prescription of claim – whether the court a quo misconstrued its inherent powers to address the abuse of court processes – whether the court a quo erred in that it applied the stringent standard of proof in respect of striking-out orders and not in respect of curtailment orders.

25. Hlumisa Technologies (Pty) Ltd v Garth Merrick Voigt NO & others (927/2018)

Appealed from ECG

Date to be heard: 27 August 2019

Cachalia JA, Swain JA, Plasket JA, Nicholls JA, Tsoka AJA

Company law – Companies Act 71 of 2008 – the appeal concerned the interpretation of s 141(2)(a)(ii) of the Act, particularly whether the first respondent as a business rescue practitioner, had legal standing to apply for a final order of liquidation where an order had been made earlier for discontinuing the business rescue proceedings and placing the company under provisional liquidation.

26. Uniting Presbyterian Church in Southern Africa Western Cape Presbyterian & another v Reformed Presbyterian Church in Southern Africa (Tiyo Soga Memorial Congregation) & others (1438/2018)

Appealed from WCC

Date to be heard: 27 August 2019

Leach JA, Tshiqi JA, Zondi JA, Van der Merwe JA, Dolamo AJA

Civil Procedure – contract – misrepresentation – misrepresentation made by the first respondent in its application to the second respondent for the purchase of properties Erf 546 and Erf 547 – misrepresentations and non-disclosures made to induce the second respondent to sell the properties to the first respondent – whether the union between RPCS and PCSA to form the UPCSAs took place – whether the first respondent formed part of the union – whether the first respondent made misrepresentations in its application to purchase Erf 547 to the second respondent which induced the second respondent to sell the property.

27. The Commissioner for the South African Revenue Service v Atlas Copco South Africa (Pty) Ltd (834/2018)

Appealed from Tax Court

Date to be heard: 28 August 2019

Navsa JA, Ponnan JA, Zondi JA, Mocumie JA, Weiner AJA

Tax Law – Income Tax Act 58 of 1962 – deductions – whether the respondent had established that the value of its trading stock had been diminished by reason of damage, deterioration, change of fashion, decrease in the market value or for any other reason to warrant a deduction in terms of s 22 (1) of the Act – whether the court a quo was correct in finding that it was a sensible and business-like manner of valuing trading stock from an accounting perspective.

28. Goldex 16 (Pty) Ltd v Dene Capper NO & others (543/2018)

Appealed from GJ

Date to be heard: 29 August 2019

Cachalia JA, Leach JA, Saldulker JA, Mokgohloa JA, Tsoka AJA

Contract law – written agreement of sale – formulation of claim – whether the appellant's claim was for specific performance of an obligation or a claim for damages flowing from the appellant's breach of warranty – whether the appellants claim was limited to its patrimonial

loss and whether such loss was to be determined by applying the market value measure usually applied in respect of damages claimed for a breach of a contract of purchase and sale.

29. Innovent Rental & Asset Management Solutions (Pty) Ltd v Transnet SOC Limited (917/2018)

Appealed from GJ

Date to be heard: 29 August 2019

Wallis JA, Mbha JA, Zondi JA, Van der Merwe JA, Mbatha JA

Contract law – interpretation – whether on a proper interpretation of clause 11.2 of the Master Rental Agreement, the respondent was required to decommission the leased equipment prior to returning same to the appellant – the interpretation and meaning of the word ‘decommission’.

30. Sandvik Intellectual Property AB v Outokumpu OYJ & another (879/2018)

Appealed from GP

Date to be heard: 30 August 2019

Navsa JA, Tshiqi JA, Swain JA, Molemela JA, Plasket JA

Intellectual Property law – patents – whether South African patent 2002/5826 was liable to be revoked on the grounds that it lacked clarity and not fairly based on matters disclosed in the specification and obviousness.

31. The Laser Transport Group (Pty) Ltd & another v Elliot Mobility (Pty) Ltd & another (835/2018)

Appealed from GP

Date to be heard: 30 August 2019

Ponnan JA, Wallis JA, Dambuza JA, Mocumie JA, Dolamo AJA

Administrative law – tender process – Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) – whether the full court gave effect to s 2(1)(f) of the PPPFA – whether the full court correctly applied the principles explained in *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Limited & another* 2015 (5) SA 245 (CC) in relation to the court itself making an award – whether the respondents’ bid had been acceptable in terms of the PPPFA – whether the provisions of ss 217(1), 217(3), 195(1) and 33 of the Constitution as well as the relevant sections of the PPPFA had been satisfied in the

tender process – whether the full court erred in attaching weight to criticisms of the appellants’ tender documents raised by the respondents, but not by the Department of International Relations and Co-operation or the Bid Evaluation or Bid Adjudication Committees – whether the second respondent’s Bid should have been disqualified at the first phase for lack of the required guarantee.

**32. Rosina Mankone Komape & others v Minister of Basic Education & others
(754/2018 and 1051/2018)**

Appealed from LP

Date to be heard: 2 September 2019

Navsa JA, Leach JA, Tshiqi JA, Wallis JA, Mbha JA

Delict – damages – s 39(2) of the Constitution – whether the common law should be developed to recognise a claim for grief and if so, what the quantum of such a claim for damages should be – whether the appellants were entitled to an award of constitutional damages.

33. Jacobs Capital (Pty) Ltd v Bidvest Bank Limited (999/2018)

Appealed from KZD

Date to be heard: 2 September 2019

Cachalia JA, Saldulker JA, Van der Merwe JA, Tsoka AJA, Weiner AJA

Civil Procedure – contract law – interpretation – whether the court a quo was correct to grant summary judgment against the appellant – whether the appellant deposed to facts demonstrating that it had a bona fide defence valid in law to the respondent’s application for summary judgment.

34. Connecto Fasteners (Pty) Ltd v Bidvest Bank Limited (1000/2018)

Appealed from KZD

Date to be heard: 2 September 2019

Cachalia JA, Saldulker JA, Van der Merwe JA, Tsoka AJA, Weiner AJA

Civil Procedure – contract law – interpretation – whether the court a quo was correct to grant summary judgment against the appellant – whether the appellant deposed to facts demonstrating that it had a bona fide defence valid in law to the respondent’s application for summary judgment.

35. NW Civil Contractors CC v Anton Ramaano Inc & others (1076/2018)

Appealed from LT

Date to be heard: 3 September 2019

Ponnan JA, Swain JA, Zondi JA, Mocumie JA, Dolamo AJA

Civil Procedure - rescission of default judgment – whether the appellant met the requirements for rescission of a default judgment – whether the court a quo was correct in dismissing the appellant’s application for rescission of the default judgment.

36. NW Civil Contractors CC v Anton Ramaano Inc & another (1024/2018)

Appealed from LT

Date to be heard: 3 September 2019

Ponnan JA, Swain JA, Zondi JA, Mocumie JA, Dolamo AJA

Professions – attorney – trusts – fidelity fund – whether the failure by an attorney, who practised for his own account, to hold a fidelity fund certificate has the effect of invalidating legal proceedings he participated in, with the result that the rulings and orders flowing from those proceedings may be declared void ab initio.

37. Free State Goldfields Chamber of Business v The Matjhabeng Local Municipality & another (1036/2018)

Appealed from FB

Date to be heard: 4 September 2019

Navsa JA, Mbha JA, Dambuza JA, Van der Merwe JA, Weiner AJA

Administrative law – review and setting aside of municipality’s administrative actions to increase electricity tariffs – whether the appellant failed to establish a case for review – whether the municipality complied with its statutory obligation of proper prior disclosure to the general public before it adopted a resolution and confirmed its draft budget – whether the implementation of the 2016/2017 tariffs had been unlawful.

38. Bakgaka-Ba-Mothopo Traditional Council v Tshepo Mathule Mothapo & others (926/2018)

Appealed from LP

Date to be heard: 4 September 2019

Cachalia JA, Tshiqi JA, Dlodlo JA, Mbatha JA, Tsoka AJA

Customary law – locus standi – whether the Traditional Council established in terms of customary law had locus standi to institute action on behalf of the Bakgaka-Ba-Mothopo traditional community – whether the submission of insufficient number of men or women appointed as councillors to the Premier’s office justified the court a quo ordering that the appellant had no locus standi – whether the locus standi of the appellant was determined solely by compliance with the provisions of s 4(9) of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 – whether the court a quo erred in ruling that on the special plea raised, the onus of proving the locus standi rested on the appellant.

39. Tabea Jacobs & another v Hernn Sebastien Baumann NO & others (239/2018)

Appealed from WCC

Date to be heard: 4 September 2019

Leach JA, Saldulker JA, Swain JA, Mokgohloa JA, Hughes AJA

Administration of Estates – capacity and authority – whether the respondents had proved that the late H R Spycher had a claim against the appellants – locus standi to claim monies from the appellants – whether the appellants became debtors in terms of their undertakings – whether the agreements were suretyships – whether the defense of unlawfulness was properly raised and sustained – whether the defense of prescription was properly raised and sustained.

40. L Mzalisi NO & others v Emmanuel Paulking Oche Ochogwu & another (630/2018)

Appealed from ECP

Date to be heard: 5 September 2019

Petse DP, Tshiqi JA, Wallis JA, Dlodlo J, Mbatha JA

Constitutional law – customary marriage – the first respondent, who has a temporary asylum permit, and the second respondent were denied registration of their customary marriage on the ground that asylum seekers were no longer permitted to marry in terms of paragraph 2.1(b)(iii)(dd) of Circular 4 of 2016 – whether paragraph 2.1(b)(iii)(dd) of the directive and its current implementation by the department’s officials could be constitutionally justifiable in terms of our law and our international obligations – whether the court was entitled to grant structural interdicts when not pleaded in the founding affidavit.

41. Top Trailers (Pty) Limited & another v Johannes Petrus Kotze (1006/18)

Appealed from GP

Date to be heard: 5 September 2019

Ponnan JA, Zondi JA, Molemela JA, Plasket JA, Weiner AJA

Company Law – business rescue – whether the business rescue proceedings in respect of the first appellant were a nullity – whether the court a quo should have set aside a resolution by a company commencing business rescue proceedings – whether, after the adoption of the business rescue plan, the first order was competent considering s 130 of the Companies Act 71 of 2008 – whether there was a material non-joiner of the affected persons to the application to set aside the resolution – whether the court a quo erred in refusing the application for rescission of the first order.

42. Mziwabantu Madiba Mncwengi & others v The State (395/2018)

Appealed from WCC

Date to be heard: 6 September 2019

Petse DP, Saldulker JA, Van der Merwe JA, Nicholls JA, Hughes AJA

Criminal Law and procedure – s 147 of the Criminal Procedure Act 51 of 1977 – whether the trial court was properly constituted after the absence of one of the assessors – whether the trial should have continued or started de novo upon one of the assessors becoming unable to act - whether the trial court committed a fatal irregularity by continuing with the trial before the one remaining member.

43. Marion Smith v Mountain Oaks Winery (Pty) Ltd & another (1003/2018)

Appealed from WCC

Date to be heard: 6 September 2019

Navsa JA, Swain JA, Zondi JA, Mokgohloa JA, Dolamo AJA

Delict – defamation – whether the respondents were entitled to a retraction in light of the publication of an allegedly false statement where they had not established defamation or injurious falsehood – whether the relief granted by the court a quo was appropriate – whether the publication constituted injurious falsehood and whether that was proven before the court a quo – whether the respondents pleaded and proved a case of defamation – whether the only remedy available in law to the respondents was a claim of damages.

44. Telkom SA SOC Limited v Road Traffic Management Corporation (1028/2018)

Appealed from GP

Date to be heard: 6 September 2019

Ponnan JA, Leach JA, Dambuza JA, Mocumie JA, Molemela JA

Contract Law – appeal against entire judgment of the Gauteng Division of the High Court, Pretoria which it confirmed a rule nisi granted on 25 October 2017 directing the appellant to restore all suspended telecommunication services to the respondent’s account numbers – whether a contractual relationship existed between the appellant and the respondent – whether the respondent established a clear right for the grant of the final interdict.

45. Alfeus Christo Scholtz & others v The National Director of Public Prosecutions (69/2018)

Appealed from NCK

Date to be heard: 9 September 2019

Petse DP, Tshiqi JA, Saldulker JA, Swain JA, Molemela JA

Criminal Law – Prevention of Organised Crime Act 121 of 1998 – whether condonation ought to be granted – whether the order of the court a quo confiscating property of the appellants in terms of s 18(1) of the Act should be set aside – whether the court a quo erred in finding that the increased values of the buildings that formed part of the lease agreements, which values were determined based on the rental payable, were proceeds of crime and a benefit in terms of the Act.

46. Cash Paymaster Services (Pty) Ltd v The Chief Executive Officer of the South African Social Security Agency & others (1029/2018)

Appealed from GP

Date to be heard: 10 September 2019

Navsa JA, Saldulker JA, Swain JA, Molemela JA, Plasket JA

Contract Law – variation agreement – whether the variation agreement concluded by the parties was unlawful for non-compliance with SASSA’s Supply Chain Management Policy and if it fell to be reviewed and set aside – whether SASSA’s decision to pay the appellant about R316 million in terms of the variation agreement was a rational and reasonable decision – whether such decision fell to be reviewed and set aside.

47. Gert Johannes Scheepers Goosen & another v Elsie Wilhelmina Wiehan & others

(761/2018)

Appealed from NCK

Date to be heard: 10 September 2019

Ponnan JA, Cachalia JA, Zondi JA, Dambuza JA, Nicholls JA

Contract law – written agreement of sale – options and right of pre-emption – options by testamentary disposition – whether clause 2.3 of the will constituted an option or a right of pre-emption – if found to be a right of pre-emption, whether the right was exercised in compliance with the formalities of the Alienation of Land Act 68 of 1981 – whether the Act was a prerequisite for the valid exercise of the right – whether the court a quo erred in finding the right conferred by clause 2.3 of the will had an option and not a right of pre-emption.

48. Telkom SA SOC Limited & another v City of Cape Town (1038/2018)

Appealed from WCC

Date to be heard: 10 September 2019

Leach JA, Tshiqi JA, Wallis JA, Mocumie JA, Dlodlo JA

Constitutional law – municipal’s legislative powers to pass by-laws – s 156(3) of the Constitution – municipalities legislative powers to pass by-laws – whether the court a quo erred in dismissing the appellant’s application for a declarator that the City of Cape Town Municipal Planning by-law 2015 (the by-law) and the Telecommunications Infrastructure Mast Policy was unconstitutional and invalid to the extent that they required the City’s consent for the erection of any telecommunications infrastructure in its area of jurisdiction – whether the by-law was within the City’s municipal planning legislative competence – whether the by-law’s rezoning requirements regarding masts was in conflict with s 22(1) of the Electronic Communications Act 36 of 2005.

49. Frances Obakeng London & others v Department of Transport, Roads and Public Works, Northern Cape & others (1035/2017)

Appealed from NCK

Date to be heard: 11 September 2019

Petse DP, Cachalia JA, Tshiqi JA, Mokgohloa JA, Tsoka AJA

Civil Procedure – company law – rei judicata – cause of action – contract – the respondents were of the view that the appellants’ claim could not stand on its own as a delictual claim without relying on a breach of contract between the parties and as such did not

disclose the cause of action - the respondents argued that the appellants as shareholders had no claim against third parties who may have caused harm to the company – whether the issue raised by the respondent in respect of the cause of action before the court a quo was res iudicata – whether the appellants’ claim could stand independently as a delictual claim without any reliance on the contractual terms between the parties – whether the appellants’ claim constituted a derivative action and whether the appellants were in a similar position than an oppressed minority shareholder.

50. Piet Mbungela & another v Madala Philemon Mkabi & others (820/2018)

Appealed from GP

Date to be heard: 12 September 2019

Maya P, Zondi JA, Molemela JA, Mokgohloa JA, Dlodlo JA

Customary Law – Recognition of Customary Marriages Act 120 of 1998 – whether a customary marriage was validly concluded between the first respondent and the deceased in terms of s 3(1)(b) of the Act – whether the law has developed so as to legally recognise a customary marriage even though certain requirements, including rituals and ceremonies, have not yet been met or performed – whether the court a quo was correct in finding that the handover of the bride to the family of the first respondent was condoned and or waived by the parties.

51. Maditletse Jennifer Nailana v Freddy Kweletji Nailana (714/2018)

Appealed from LP

Date to be heard: 12 September 2019

Petse DP, Leach JA, Swain JA, Mbatha JA, Dolamo AJA

Family law – divorce – whether the appellant was entitled to 50 per cent of the respondent’s pension interest – whether it was required that a divorce decree in terms of ss 7(7) and 7(8) of the Divorce Act 70 of 1979 specify which sections of the member’s retirement fund payments should be made – the meaning and interpretation of pension fund, retirement fund and provident fund.

52. Rynette Pieters NO v ABSA Bank Limited (979/2018)

Appealed from GJ

Date to be heard: 12 September 2019

Wallis JA, Mbha JA, Nicholls JA, Weiner AJA, Hughes AJA

Civil Procedure – locus standi – winding-up of company – appeal against court a quo’s denial of appellant’s locus standi – whether the Master of the High Court became *functus officio* when they certified that the affairs of a company in liquidation had been completely wound-up – whether the appellant had locus standi to institute action – whether the reinstatement of the appellant as liquidator was valid.

53. Airports Company South Africa SOC Ltd v Imperial Group Ltd & others (1306/2018)

Appealed from GJ

Date to be heard: 17 September 2019

Ponnan JA, Cachalia JA, Tshiqi JA, Wallis JA, Molemela JA

Constitutional and administrative law – the lawfulness of a decision by the appellant (ACSA) to issue a Request for Bids (RFB) dealing with the grant of car rental concessions at nine airports operated by ACSA – the matter turned primarily on the proper interpretation of s 217 of the Constitution, the Preferential Procurement Policy Framework Act 5 of 2000, and the Broad Based Black Economic Empowerment Act 53 of 2003 – whether the RFB was subject to and complied with s 217 of the Constitution – whether the RFB was subject to the Procurement Policy Framework Act 5 of 2000 and the regulations thereunder – whether the RFB complied with the Broad Based Black Economic Empowerment Act – whether the RFB was irrational or vague.