

REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 2006
NO 1

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1. BULLETINS

- Number 1, 2005 – As at 2 December 2005
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2. JUDGMENTS RESERVED

National Sorghum Breweries Ltd v Corpcapital Bank Limited (050/2005)

Date heard: 21 November 2005

Mpati DP, Nugent JA, Jafta JA, Combrinck AJA, Maya AJA

Catchwords

Cession – appeal against judgment upholding plaintiff's *locus standi* arising from two prior cessions of claims, first to an intermediate party and then to plaintiff – whether third party to written agreement of cession has right to raise as a defence of cedent's and cessionaries' non-compliance with contractual formalities required for valid cessions

Appealed from WLD

Rand Airport Management Company (Pty) Ltd and Others v South African Municipal Workers Union and Another (27/2005)

Date heard: 22 November 2005

Mpati DP, Cameron JA, Lewis JA, Mlambo JA, Nkabinde AJA

Catchwords

Labour law – appeal and cross-appeal against decision of LAC – Labour Relations Act, s 197, interpretation of – whether section applies to termination of employment contracts of 1st respondent's members – whether gardening and security services constitute 'service' as defined in s 197 – cross-appeal: whether gardening and security services were transferred to 2nd and 3rd appellants on 1/9/2002

Appealed from LAC. [2002] JOL 10267 (LC). (2002) 23 ILJ 2304 (LC)

3. CASES ENROLLED FOR HEARING

SA Fakie NO v CCII Systems (Pty) Ltd (653/2004)

Date to be heard: 15 February 2006

Howie P, Farlam JA, Cameron JA, Heher JA, Cachalia AJA

Catchwords

Procedure – contempt of court – appeal against judgment declaring that appellant failed to comply with Court order and consequent declaration that appellant in contempt of court – imposing of sanction for contempt of imprisonment of one month suspended on condition that appellant timeously complies with order allegedly breached – whether there was a breach – whether breach willful and *mala fide* – degree of proof required for contempt of court – appropriate procedure in applications of contempt

Appealed from TPD

AC Haupt t/a Softcopy v Brewers Marketing Intelligence (Pty) Ltd and Others (118/2005)

Date to be heard: 15 February 2006

Harms JA, Streicher JA, Mthiyane JA, Cloete JA, Lewis JA

Catchwords

Copyright – whether appellant held copyright relied on – whether respondents infringed such copyright – whether conduct of respondents amounted to unlawful competition

Appealed from CPD. 2005 (1) SA 398 (C); [2004] 4 All SA 67 (C)

L Hanekom v Builders Market, Klerksdorp (Edms) Bpk and Others (63/2005)

Date to be heard: 15 February 2006

Scott JA, Zulman JA, Brand JA

Catchwords

Close corporations – Close Corporations Act 69 of 1984, s 52 – sole member and sole shareholder of CC signing deed of suretyship in which CC stood as surety – whether prohibition created in section applicable

Appealed from TPD

LN Sackstein NO of Tsumeb Corporation Ltd (in liquidation) v Proudfoot SA (Pty) Ltd (141/2005)

Date to be heard: 16 February 2006

Mpati DP, Navsa JA, Conradie JA, Cloete JA, Heher JA

Catchwords

Insolvency – whether appellant's statutory claims under ss 29 and 30 of Insolvency Act read with s 340 of the Companies Act, alternatively a contractual claim for recovery of payments waived or compromised as result of offer of compromise in respect of company concluded in Namibia and sanctioned by Namibian Court – whether appellant had established that it was company being wound-up and "unable to pay all its debts" – whether appellant had established that payments sought to be recovered were made with intention to prefer respondent over its other creditors – whether evidence demonstrated that respondent in material breach of its obligations and that contractual claim well founded

Appealed from WLD

FP Zanner v Director of Public Prosecutions, Johannesburg (107/2005)**Date to be heard:** 16 February 2006**Scott JA, Nugent JA, Van Heerden JA, Maya AJA, Cachalia AJA****Catchwords**

Procedure – appeal against judgment refusing order for permanent stay of prosecution against appellant in respect of charge of murder – whether dismissal of application appealable at this stage – whether grounds of appeal can be extended on appeal – whether court *a quo* correct in its refusal to grant appellant permanent stay of prosecution

Appealed from WLD**Maize Board v TA Hart (248/2005)****Date to be heard:** 16 February 2006**Streicher JA, Brand JA, Jafta JA****Catchwords**

Contract – Marketing Act 59 of 1968 – levies payable – whether two agreements succeeded in putting maize outside reach of levies – whether on balance of probabilities agreements simulated – whether parties thereto intended maize to be “sold” as defined in Marketing Act 59 of 1968 – alternatively: even in giving two agreements their respective meanings at face value, respondent as matter of law producer of maize liable to pay levies on maize concerned

Appealed from OPD**Barloworld Capital (Pty) Ltd t/a Barloworld Equipment Finance v RS Napier NO (509/2004)****Date to be heard:** 17 February 2006**Howie P, Zulman JA, Cameron JA, Navsa JA, Jafta JA****Catchwords**

Insurance – whether appellant and respondent concluded an agreement noting appellant’s interest in and ownership of an excavator insured by insured and whether respondent as a result became obliged to pay to appellant amount of insured’s insurance claim – whether custom in short-term insurance industry in South Africa where insured upon becoming aware of third party financier having an interest in asset insured by it, and upon total loss of such asset is obliged to pay to financier proceeds of policy up to maximum amount owed by insured to financier before making any payment to insured

Appealed from WLD. 2005 (1) SA 57 (W); [2004] 2 All SA 517 (W)**H Botha v GJ Botha (393/2004)****Date to be heard:** 17 February 2006**Harms JA, Brand JA, Conradie JA, Lewis JA, Van Heerden JA****Catchwords**

Family law – divorce – Divorce Act 70 of 1979, s 9 – appeal against order awarding partial forfeiture in respect of insurance policy taken out by respondent on life of his late father and complete forfeiture of proceeds of another policy also taken out by respondent on life of his father – whether forfeiture justified taking into account provisions of above section – whether any factor besides three factors listed in s 9 may be taken into account by court in exercising its discretion

Appealed from SECLD**RA Burriss (Pty) Ltd t/a Service Electrical v Efstratios Moutzsis and Another (192/2005)**

Date to be heard: 17 February 2006

Farlam JA, Mthiyane JA, Maya AJA

Catchwords

Contract – claim for payment by contractor for electrical installation with counterclaim alleging overpayment – appellant claimed against respondents as trustees an amount relevant to certain additional work allegedly carried out trust's premises – agreement for additional work concluded but disagreement about its specific terms – whether appellant established its version of agreement on evidence – whether appellant's version improbable

Appealed from ECD

City of Johannesburg v Debbie Investments CC (601/2004)

Date to be heard: 20 February 2006

Howie P, Scott JA, Brand JA, Jafta JA, Cachalia AJA

Catchwords

Delict – appeal against judgment finding that defendant liable for flood damage caused to improvements to plaintiff's property – whether plaintiff discharged onus of establishing defendant's liability for loss – whether defendant's special defence of *vis major* proved – whether defendant's counterclaim proved

Appealed from WLD

Sentraal-Suid Kooperasie Beperk v Bessemer Staalkonstruksie (Edms)

Bpk (516/04)

Date to be heard: 20 & 21 February 2006

Mpati DP, Farlam JA, Nugent JA, Conradie JA, Heher JA

Catchwords

Contract – appeal against finding that appellant failed to show that oral terms pleaded by respondent did not form part of contract between parties – interpretation of the contract concluded between the parties as well as the guarantee respondent gave appellant

Appealed from WLD

Road Accident Fund v GSO Guedes (611/2004)

Date to be heard: 20 February 2006

Zulman JA, Mthiyane JA, Lewis JA

Catchwords

Road Accident Fund – *quantum* in personal injury case – quantification of future loss of earning capacity of respondent – whether judge erred in finding that respondent would have reached pinnacle of her career and in finding that she would not be promoted now that she had been injured

Appealed from WLD

Bergkelder Ltd v Vredendal Coop Winery and 2 Others (105/2005)

Date to be heard: 21 February 2006

Harms JA, Streicher JA, Cameron JA, Lewis JA, Cachalia AJA

Catchwords

Trade marks – Trade Marks Act 194 of 1993, s 34(1)(a) - whether use by respondents of a particular wine bottle an infringement of registered container trade mark of appellant – whether appellant's registered container mark validly registered – trade mark registered in 1977 and original registration subject to 1993 Act read with repealed Trade Marks Act 62 of 1963, s 42 – whether appellant's trade mark registration falls foul of any of exceptions provided for in repealed Trade Marks Act 62 of 1963, s 42

Appealed from CPD**S Gagu and Another v The State (416/2004)****Date to be heard:** 21 February 2006**Navsa JAS, Brand JA, Van Heerden JA****Catchwords**

Criminal Law – sentence – Act 105 of 1997, s 52(1) – appellants charged with one count of housebreaking and rape – 15 years imprisonment – whether plea of guilty in terms of Criminal Procedure Act, s 112 contains elements which cause offence to fall within parameters of minimum sentences where life sentence prescribed – whether magistrate erred in imposing minimum sentence – whether account taken of substantial and compelling circumstances

Appealed from ECD**MEC for Roads and Public Works, Eastern Cape and Another v Intertrade Two (Pty) Ltd (47/2005)****Date to be heard:** 23 February 2006**Howie P, Farlam JA, Heher JA, Van Heerden JA, Maya AJA****Catchwords**

Access to information – procedure – Promotion of Access to Information Act 2 of 2000, s 7 – whether, pursuant to institution of review proceedings applicant confined to those documents envisaged by provisions of Rule 53 of Uniform Rules of Court – whether applicant entitled to rely upon provisions of Act in order to obtain access to additional documentation

Appealed from CHD**Unitas Hospital v MM van Wyk and Another (231/2005)****Date to be heard:** 23 February 2006**Harms JA, Cameron JA, Brand JA****Catchwords**

Access to information – Promotion of Access to Information Act 2 of 2000, s 50 – 1st respondent's husband died while in hospital under appellant's care – 1st respondent sought access to complete nursing, administration and patient reports regarding her husband – when access to a document is "required" in order to exercise or protect a right – whether applicant showed that she reasonably required access to document in question

Appealed from TPD**Oos Vrystaat Kaap Bedryf Beperk v IFJ van Aswegen (54/2005)****Date to be heard:** 23 February 2006**Scott JA, Streicher JA, Navsa JA****Catchwords**

Contract – offer, revocation of – interpretation – whether offer signed by respondent's husband on her behalf could be withdrawn before date on which accepted by appellant

Appealed from OPD. 2005 (4) SA 417 (O)**SARS (Customs and Excise) v Desmonds Clearing and Forwarding Agents CC (39/2005)****Date to be heard:** 24 February 2006

Mpati DP, Streicher JA, Nugent JA, Cloete JA, Cachalia AJA**Catchwords**

Customs and excise – appeal from judgment declaring detention of certain trailers and spares unlawful and ordering their release – whether respondent had *locus standi* to institute proceedings – whether detention and continued detention of these items unlawful – whether removal of goods in bond contrary to provisions of Act – whether goods temporarily stored in premises not authorized as special customs and excise warehouse

Appealed from DCLD

Dr R Truter and Another v MA Deyssel (43/2005)

Date to be heard: 24 February 2006

Harms JA, Zulman JA, Navsa JA, Mthiyane JA, Van Heerden JA

Catchwords

Prescription – Prescription Act, s 12(3) – respondent sued appellants for damages allegedly arising from injury sustained in consequence of surgical procedures performed on him in 1993 – whether, for purposes of commencement of running of prescription in terms of above section, respondent required knowledge as part of ‘the facts from which the debt arises’ of existence of expert medical opinion that known facts justified conclusion of negligence

Appealed from CPD. 2005 (5) SA 598 (C)

JH Charzen and Another v The State (344/2005)

Date to be heard: 24 February 2006

Cameron JA, Jafta JA, Maya AJA

Catchwords

Criminal Law – conviction and sentence – robbery, attempted murder and unlawful possession of firearm and ammunition – whether sentences imposed appropriate – whether, on count of robbery and attempted murder Magistrate erred in imposing sentence in excess of minimum prescribed by Criminal Procedure Act - whether evidence on identification satisfactory – whether State proved case beyond reasonable doubt

Appealed from WLD

D & H Piping Systems (Pty) Ltd v Trans Hex Group Ltd and Another (119/2005)

Date to be heard: 27 February 2006

Howie P, Mthiyane JA, Cloete JA, Maya AJA, Cachalia AJA

Catchwords

Contract – appeal against judgment in which court *a quo* found 2nd respondent not to be manufacturer or expert seller of dolomitic aggregate and sand which it mines at its quarry and processes for purpose of manufacturing lime and that Cape Lime’s standard terms and conditions were incorporated into contract of sale – whether implied warranty that aggregate and sand fit for purpose for which they were intended – whether Cape Lime a manufacturer of dolomitic aggregate and sand giving rise to implied term that aggregate and sand would be free of latent defects – whether Cape Lime’s standard terms and conditions part of contract – whether contract of sale single or multiple contract of sale

Appealed from CPD. [2004] 4 All SA 183 (C)

S Smith v Road Accident Fund (164/2005)

Date to be heard: 27 February 2006

Mpati DP, Navsa JA, Conradie JA, Lewis JA, Heher JA**Catchwords**

Road Accident Fund – after having been sued by plaintiff appellant joined respondent claiming a declarator that respondent a joint wrongdoer with appellant and that degrees of negligence of appellant and respondent be determined – whether there is prohibition against claim such as that of appellant being instituted against 3rd party – whether failure by plaintiff to institute claim against respondent relevant to appellant's claim against respondent – whether absence of any provision in RAF Act or Regulations prescribing procedures to be followed by party in position of appellant relevant to validity of appellant's claim against respondent

Appealed from SECLD

Transnet Bpk h/a Metro Rail v L Tshabalala (151/2005)

Date to be heard: 27 February 2006

Streicher JA, Brand JA, Jafta JA

Catchwords

Delict – appeal against finding of trial court of contributory negligence by respondent's employees alternatively against apportionment of fault as found by trial court – respondent, a passenger on train, disembarked at station and when train started moving he attempted to board moving train through open doors – whether appellant succeeded in proving respondent acted with *dolus eventualis* – whether appellant negligent – whether negligence causally linked to damages – whether apportionment should be interfered with

Appealed from WLD

Transnet Limited and 2 Others v PNN Chirwa (24/2005)

Date to be heard: 28 February 2006

Mpati DP, Cameron JA, Mthiyane JA, Conradie JA, Jafta JA

Catchwords

Labour law – appeal against reviewing and setting aside of dismissal of respondent from employ of 1st appellant – whether decision to terminate respondent's employment constitutes administrative action subject to judicial review – whether poor performance appraisal held by 3rd appellant procedurally unfair, and if so, whether reasonable and justifiable departure from requirement of procedural fairness

Appealed from WLD

Law Society of the Cape of Good Hope v H Peter (126/ 2005)

Date to be heard: 28 February 2006

Harms JA, Scott JA, Farlam JA, Nugent JA, Heher JA

Catchwords

Attorneys – misconduct – whether court erred in not removing attorney from roll where she had unreformed serious character defects which led to theft of trust money

Appealed from CPD

Leo Manufacturing CC v Robor Industrial (Pty) Ltd t/a Robor Stewarts & Lloyds (608/2004)

Date to be heard: 28 February 2006

Zulman JA, Van Heerden JA, Cachalia AJA

Catchwords

Procedure – Magistrates’ Court Rule 49(3) – whether rule precludes court from rescinding default judgment granted where appellant did not set out grounds of his defense in application for rescission, where ground of rescission relied on failure to serve summons properly

Appealed from NPD

MEC for Welfare, Eastern Cape v NN Kate and Black Sash Trust as Amicus Curiae (580/2004)

Date to be heard: 2 March 2006

Howie P, Streicher JA, Cameron JA, Mthiyane JA, Nugent JA

Catchwords

Administrative law – appeal against order declaring certain administrative conduct unlawful – appellant ordered to pay respondent monies in respect of social grants that had accrued to her plus interest – whether respondent’s cause of action and remedy were “properly located in administrative action or a debt sounding in money” – whether respondent bound to exhaust internal remedies as required by PAJA, s 7(2) and as referred to in Social Assistance Act 59 of 1992, s 10(1) – whether interest payable at all, on what basis, and if so, whether from date of accrual of grant or date of demand

Appealed from SECLD

Marvanic Development (Pty) Ltd and Another v Minister of Safety and Security and Another (232/2005)

Date to be heard: 2 March 2006

Harms JA, Zulman JA, Farlam JA, Lewis JA, Maya AJA

Catchwords

Criminal procedure – Criminal Procedure Act 51 of 1997, s 31(1) – appellants seek return of motor vehicles in that no criminal proceedings had been instituted and that they have effected improvements to vehicles and are entitled to return thereof by virtue of lien – refusal to return based on National Road Traffic Act 93 of 1996, s 68(6) – whether section prohibits person from possessing vehicle *bona fide* while chassis plates have been tampered with – whether appellants in *bona fide* possession of vehicles at time of their attachment

Appealed from WLD

1. **R Heslop v The State (216/2005)**

2. **NP Nonyane v The State (256/2005)**

Date to be heard: 2 March 2006

Scott JA, Cloete JA, Van Heerden JA

Catchwords

1. Criminal Law – conviction and sentence – 3 counts of culpable homicide – whether appellant acted in putative self-defence – whether this a complete defence – whether murder reduced to culpable homicide – whether effective sentence of 6 years imprisonment on facts of case appropriate sentence – effect on sentence of having appeal heard 8 and a half years after leave to appeal granted

2. Criminal law – conviction – rape – life imprisonment – whether State succeeded to prove beyond reasonable doubt that applicant raped complainant – whether oath properly administered in respect of two minor witnesses – whether correct sentencing procedure followed in High Court

Appealed from WLD; BPD

H Flionis v JRN Bartlett and Another (546/ 2004)**Date to be heard:** 3 March 2006**Howie P, Zulman JA, Navsa JA, Brand JA, Van Heerden JA****Catchwords**

Delict – attorneys – appeal against finding of court *a quo* that appellant, as a firm of attorneys, negligent in dealing with monies “entrusted” to it by 1st respondent – whether money paid into trust for purpose of being paid out as payment upfront for sale of gold inconsistent with concept of entrustment – whether obligation placed on attorney to ascertain identity of person who had made payment before making payment from account – whether law has developed duty of care in respect of third-parties (non-clients) whose identity deliberately not disclosed to attorney concerned and of whom attorney was unaware and where other remedies exist

Appealed from WLD**Basie Motors Bk t/a Boulevard Motors v Minister of Safety and Security (135/2005)****Date to be heard:** 3 March 2006**Mpati DP, Scott JA, Cameron JA, Nugent JA, Heher JA****Catchwords**

Criminal procedure – appeal against decision granting relief to appellant in application for return of two motor vehicles in terms of Criminal Procedure Act 51 of 1977, s 31(1)(a) – admissibility of hearsay evidence tendered by respondent attempting to demonstrate that vehicles had been stolen in Japan – interpretation and application of provisions of General Law Amendment Act 62 of 1955, s 36 and of National Road Traffic Act 93 of 1996, s 68(6)(b)

Appealed from TPD**K Gerber v The State (353/2005)****Date to be heard:** 3 March 2006**Farlam JA, Conradie JA, Cachalia AJA****Catchwords**

Criminal law – sentence – 10 years imprisonment of which 3 years suspended for 5 years – appellant obtained stolen vehicle in exchange transaction and after acquiring knowledge of unlawful or possible stolen status of vehicle, he failed to take steps to hand vehicle to authorities and took steps thereafter to change vehicle’s appearance – whether magistrate misdirected herself by sentencing appellant as if original thief

Appealed from TPD**C Steinberg v T Lazard (157/05)****Date to be heard:** 6 March 2006**Howie P, Brand JA, Nugent JA, Van Heerden JA, Jafta JA****Catchwords**

Conventional penalties – Act 15 of 1962, s 3 – appellant sold to respondent his member’s interest in a close corporation which owned vacant stand in residential cluster complex – parties agreed that they would ensure erection of dwelling houses on properties by certain date failing which penalty of R 50 000 per month would be payable by defaulting party to innocent party – respondent instituted action against appellant for recovery of penalty – basis upon which court will decide that conventional penalty disproportionate to prejudice suffered by creditor as result of debtor’s breach of agreement containing penalty stipulation

Appealed from WLD

BE Thorpe & Others v JA Trittenwein and Another (71/2005)**Date to be heard:** 6 March 2006**Scott JA, Cameron JA, Conradie JA, Lewis JA, Heher JA****Catchwords**

Trustees – whether 3 separate documents, each not signed by both prospective purchasers and containing conflicting terms and conditions and non-variation clauses can constitute a valid indivisible sale agreement satisfying provisions of Alienation of Land Act 68 of 1981, s 2(1) – whether single trustee, being one of three co-trustees, can validly conclude agreement of sale of immovable property on behalf of trust, when orally authorized by co-trustees – whether agreement lawfully cancelled

Appealed from WLD**The State v GJ Roslee (296/2005)****Date to be heard:** 6 March 2006**Navsa JA, Cloete JA, Cachalia AJA****Catchwords**

Criminal law – sentence – 5 counts of murder – appeal by state against sentence of 18 years imprisonment – whether substantial and compelling circumstances as meant in Act 105 of 1997 present with regard to count 5 – whether sentence imposed by court *a quo* regarding other counts shockingly inappropriate

Appealed from TPD**The Minister of Safety and Security v AR Luiters (213/2005)****Date to be heard:** 7 March 2006**Mpati DP, Farlam JA, Navsa JA, Cloete JA, Van Heerden****Catchwords**

Delict – vicarious liability – appeal against court *a quo*'s finding that appellant vicariously liable to respondent for injuries sustained arising from shooting incident – whether employee acted within course and scope of his employment at time respondent shot and injured

Appealed from CPD**NDPP v K Mohunram and Others (173/2005)****Date to be heard:** 7 March 2006**Harms JA, Mthiyane JA, Conradie JA, Jafta JA, Maya AJA****Catchwords**

POCA, s 48(1) – appeal against dismissal of order declaring 2nd respondent's immovable property forfeit to State – whether property instrumentality of offences referred to in Kwazulu-Natal Gambling Act No 101 of 1996, ss 3(3)(a) and 44 should be declared forfeit to State

Appealed from NPD1. **CH Coetser v The State (255/2005)**2. **SDP Muller v The State (236/2005)****Date to be heard:** 7 March 2006**Streicher JA, Brand JA, Nugent JA****Catchwords**

1. Criminal law – sentence – 4 counts of armed robbery – 15 years imprisonment on each count – effective sentence of 25 years – application of Criminal Law Amendment Act 105 of 1997, s 51(4), interpretation of – whether

sentence of 25 years imprisonment should be set aside – whether above section operates from date of imposition of sentence

2. Criminal law – sentence – theft of 8 head of cattle to value of R 28 000 – 4 years imprisonment of which 2 years suspended – on appeal High court amended conviction to possession of suspected stolen property – whether court failed to reconsider sentence, or whether, in view of amended verdict, court should have referred matter back to Magistrate to obtain correctional supervision report

Appealed from TPD and BPD

The CSARS v Hawker Air Services (Pty) Ltd (379/2005)

Date to be heard: 9 March 2006

Howie P, Streicher JA, Cameron JA, Nugent JA, Conradie JA

Catchwords

Insolvency – Winding up of company and sequestration of partnership consisting of companies as partners – whether provisional orders for winding up and sequestration should have been granted – whether VAT assessments issued *bona fide* constitute existing debts – whether respondents had to make out case in applications for provisional sequestration and winding up orders that on appeal to tax court, they might well be successful in setting aside assessments to extent of rendering them able to pay – whether any other reason for due exercise of court's discretion against appellant, and whether assessments of such "flawed and contested nature" that it should exercise its discretion against appellant

Appealed from TPD. 2005 (5) SA 283 (T); [2005] 1 All SA 715 (T)

TR Gardner and Another v RH Margo (549/2004)

Date to be heard: 9 March 2006

Scott JA, Zulman JA, Van Heerden JA, Maya AJA, Cachalia AJA

Catchwords

Contract – interpretation – respondent claimed payment of money and ancillary relief, consequent upon mandate to 1st appellant to sell shares – respondent claimed as cessionary – existence of mandate common cause, disputes regarding terms of contract and interpretation

Appealed from WLD

EC Chenia & Sons CC v Lame & van Blerk (303/2005)

Date to be heard: 9 March 2006

Brand JA, Lewis JA, Heher JA

Catchwords

Contract – claim based on express contract for rendering of professional services – whether respondent proved existence of an express contract and terms thereof for rendering of professional services

Appealed from WLD

BOE Bank Limited v JJ Bassage (445/2004)

Date to be heard: 10 March 2006

Mpati DP, Scott JA, Zulman JA, Navsa JA, Cloete JA

Catchwords

Insolvency – Insolvency Act, s 89(2) – whether appellant, by concluding agreement with liquidator of company for abandonment of its security to it and by thereafter proving its claim and limiting its claim to value of its security, abandoned, alternatively, waived balance of its claim thereby releasing respondent as surety for payment of any amount in excess of agreed value of

security, namely R 800 000 – whether appellant effectively prevented itself from giving cession of action of its rights against principal debtor

Appealed from NPD

R Hsu-Nan Tsung and Another v Industrial Development Corporation of South Africa Ltd and Another (79/2005)

Date to be heard: 10 March 2006

Harms JA, Farlam JA, Cameron JA, Jafta JA, Cachalia AJA

Catchwords

Jurisdiction – whether appellants' submission to jurisdiction of court *a quo* after attachment of assets to found or confirm jurisdiction pursuant to *rule nisi* constitutes sufficient reason for discharge of *rule nisi* and consequent release from attachment of property

Appealed from CPD

1. **The State v E Saeed (432/2005)**
2. **ZB Muholi v The State (450/2005)**

Date to be heard: 10 March 2006

Mthiyane JA, Lewis JA, Heher JA

Catchwords

1. Criminal law – 18 counts of fraud – respondent sentenced to 5 years imprisonment of which 2 years suspended for 5 years – respondent's appeal against sentence successful – appeal against order setting magistrate's sentence aside as well as order that matter be remitted to trial court for imposition of sentence of correctional supervision in terms of Criminal Procedure Act, 276(1)(h) – whether order made by High court a competent order – whether grounds for interfering with sentence imposed by magistrate

2. Criminal law – conviction and sentence – appellant convicted of contravening Drug and Drug Trafficking Act 140 of 1992, s 5(b) dealing in heroin – whether state proved that appellant had dealt in drugs – whether appellant had had knowledge of contents of packet

Appealed from CPD and WLD

Masterspice (Pty) Ltd v Brozeit Investments CC (252/2005)

Date to be heard: 13 March 2006

Howie P, Farlam JA, Brand JA, Maya AJA, Cachalia AJA

Catchwords

Close corporation – Winding up – whether respondent showed that appellant's claim disputed on *bona fide* and reasonable grounds – whether appellant not in any event entitled to winding up order

Appealed from CPD

The City of Johannesburg v Harry Kaplan NO in his capacity as liquidator of Krokpark CC (in liquidation) (111/2005)

Date to be heard: 13 March 2006

Harms JA, Zulman JA, Streicher JA, Heher JA, Cachalia AJA

Catchwords

Insolvency – Municipal Systems Act 32 of 2000, s 118(3), interpretation of – whether appellant's claim for municipal debts preferent to 2nd respondent's claim in terms of mortgage bond upon insolvency of close corporation which owns relevant property

Appealed from WLD. [2005] 2 All SA 25 (W)

J Joubert and Others v Die Benede Blyde Rivier Watergebruikersvereniging and Another (189/2005)

Date to be heard: 14 March 2006

Howie P, Streicher JA, Navsa JA, Conradie JA, Heher JA

Catchwords

Water rights – National Water Act 36 of 1998, s 33 – repealed Water Act 54 of 1956, s 33 – whether 1st respondent infringed appellants' existing lawful water use by delivering no more water than volume determined by 2nd respondent in terms of provisions of s 63 of repealed Act

Appealed from TPD

Truck and General Insurance Co Ltd v Verulam Fuel Distributors CC and Another (540/2004)

Date to be heard: 14 March 2006

Mpati DP, Zulman JA, Mthiyane JA, Jafta JA, Maya AJA

Catchwords

Insurance – insurance contract – interpretation – whether appellant liable to 1st respondent – whether liable on one or more of alternative basis of estoppel or rectification, or misrepresentation – obligations of insurance broker – whether 2nd respondent breached any of these obligations

Appealed from WLD

Bafana Finance Mabopane v MS Makwakwa and Another (475/2004)

Date to be heard: 16 March 2006

Harms JA, Conradie JA, Cloete JA, Van Heerden JA, Cachalia AJA

Catchwords

Procedure – Magistrate Courts Act 32 of 1944, s 74, interpretation of – contract – whether undertaking not to apply for administration order enforceable

Appealed from TPD

The Minister of Transport NO and Another v D du Toit and Another (602/2004)

Date to be heard: 16 March 2006

Scott JA, Streicher JA, Cameron JA, Navsa JA, Lewis JA

Catchwords

Delict – negligence – failure by 1st appellant to erect sufficient or adequate warning signs indicating existence of off ramp at toll plaza – insufficient signs after toll booth indicating that road user should stop at crossing after having passed through toll booth – whether 1st appellant negligent in relation to accident, and if so, whether 1st appellant's negligence a *causa sine qua non* of 1st respondent's loss

Appealed from WLD

First National Bank of Southern Africa Limited v KE Duvenhage (188/2005)

Date to be heard: 17 March 2006

Harms JA, Cameron JA, Navsa JA, Brand JA, Nugent JA

Catchwords

Delict – vicarious liability – causation – alleged causal link between wrongful conduct and damages claimed by respondent, which relate essentially to profits which would allegedly have been made if farm had been purchased – whether

respondent failed to prove that application for loan would have been successful and that close corporation would have acquired farm and planted trees in good time before permits (which allowed planting of trees) expired
Appealed from NPD. [2005] 4 All SA 41 (N)

DA de Swardt v The House of Trucks (Pty) Ltd (143/2005)

Date to be heard: 17 March 2006

Scott JA, Conradie JA, Cloete JA, Lewis JA, Van Heerden JA

Catchwords

Contract – whether oral agreement concluded between parties and if so whether agreement was a purchase agreement

Appealed from OPD

RD Molimi and Another v The State (249/2005)

Date to be heard: 20 March 2006

Zulman JA, Van Heerden JA, Cachalia AJA

Catchwords

Criminal law – conviction – 1st appellant: whether confession of appellant and confession of 2nd appellant against 1st appellant admissible – whether state proved 1st appellant's involvement in execution of robbery and/or planning thereof – whether 1st appellant can be convicted on basis of common purpose; 2nd appellant: admissibility of extra curial statement – whether 2nd appellant had common purpose with his co-accused – whether State proved that appellant in possession of firearms referred to

Appealed from WLD

Department of Public Works v MS Moos Constructions CC (401/2005)

Date to be heard: 20 March 2006

Harms JA, Cameron JA, Navsa JA, Nugent JA, Heher JA

Catchwords

To be supplied later

Appealed from CPD

4. JUDGMENTS MARKED NOT REPORTABLE

(Available from library)

Mongezi Memani v The State (450/2004)

- delivered 10 March 2005

Salome van Emmenes v Petrus Nicolaas Booyse (306/2004)

- delivered 29 March 2005

Bashee Motors (Pty) Ltd v Z Ntoyabo (105/2004)

- delivered 29 March 2005

JJ Venter v The State (147/2004)

- delivered 30 March 2005

Storegate Africa (Pty) Ltd v Airlink Cargo International (Pty) Ltd (071/2004)
- delivered 30 March 2005

I Sehoolo NO and Another v Y Chablal (140/2004)
- delivered 31 March 2005

Welcome Ncube v The State (284/2004)
- delivered 31 March 2005

Normkow Administrators (Pty) Ltd v Fedsure Health Medical Scheme (400/04)
- delivered 23 May 2005

PJ Theart v The State (058/2004)
- delivered 23 May 2005

A Kriel v Die Staat (390/2004)
- delivered 25 May 2005

PJL Fourie v The State (364/04)
- delivered 18 August 2005

United National Public Servants Association of South Africa v SJ Digomo NO and
41 Others (441/04)
- delivered 2 September 2005

Elaine Claire Lawrence v The State (357/2004)
- delivered 15 September 2005

M Makhathini v The State (598/2004)
- delivered 19 September 2005

Pinkster Protestante Kerk and Another v Herlewingsentrum and Another
(273/2004)
- 22 September 2005

NDPP v OH Nel and Others (424/2004)
- delivered 22 September 2005

Timothy Nelson v The State (017/2005)
- delivered 22 September 2005

JM Sindane v The State (388/2004)
- delivered 28 September 2005

ABN-Amro Bank NV v Hyundai Corporation (375/2004)
- delivered 28 September 2005

Inventive Labour Structuring (Pty) Ltd v Dennis Corfe (031/2005)
- delivered 17 November 2005

MI Petersen v The State (205/2005)
- delivered 17 November 2005

Baynes Fashions (Pty) Ltd t/a Gerani v Hyprop Investments (Pty) Ltd (556/2004)
- delivered 29 November 2005

Dabalorivhuwa Patriotic Front and Another v Government Employees Pension
Fund and Another (553/2004)
- delivered 30 November 2005

Mmako v S (354/2004)
- delivered 30 November 2005

5. CASES DISMISSED WITHOUT WRITTEN REASONS

Satish Buldeo v Ranjith Choonilall NO and Another (072/2004)
- 17 March 2005

Daniel Johannes Coetzee v Rupert Day (468/2004)
- 5 September 2005

Dr J Breytenbach and Another v Municipality of Rustenburg (40/2005)
- 14 November 2005