

REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 2007
NO 1

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1. BULLETINS
2. JUDGMENTS RESERVED
3. CASES ENROLLED FOR HEARING
4. JUDGMENTS MARKED NOT REPORTABLE
(Available from library)
5. APPEALS DISPOSED OF WITHOUT WRITTEN REASONS

1. **BULLETINS**

Number 1, 2006 – As at 8 December 2005

Number 2, 2006 – As at 3 April 2006

Number 3, 2006 – As at 1 June 2006

Number 4, 2006 – As at 1 October 2006

Number 1, 2007 – As at 1 December 2006

2. **JUDGMENTS RESERVED**

Dream Supreme Properties 11CC v Nedcor Bank Ltd and Others
(490/2005)

Date heard: 16 November 2006

Streicher JA, Farlam JA, Mthiyane JA, Mlambo JA, Malan AJA

Catchwords

Contract – appeal against order dismissing applicant’s application to set aside attachment and sale in execution and to obtain specific performance of agreement of sale – whether, in terms of doctrine of notice, attachment and sale falls to be set aside – whether 2nd respondent’s right to transfer of property can prevail over applicant’s right to transfer in light of maxim *qui prior est tempore potior est jure* – whether agreement of sale *bona fide* – whether applicant acquiesced in sale in execution or waived its rights – whether applicant validly nominated as purchaser in terms of agreement of sale

Appealed from CPD

EGM Grutter and Another v CZ Lombard (628/2005)

Date heard: 22 November 2006

Streicher JA, Navsa JA, Nugent JA, Heher JA, Combrinck AJA

Catchwords

Partnership – dissolution – use of name of dissolved partnership by one former partner without consent of other – whether permissible

Appealed from TPD

3. CASES TO BE HEARD

Technical Fleet Management (Pty) Ltd and Others v MH Rousseau and Another (110/2006)

Date to be heard: 15 February 2007 – **withdrawn 02/02/07**

Howie P, Lewis JA, Heher JA, Hancke AJA, Musi AJA

Catchwords

Restraint of trade – whether 1st respondent in breach of restraint with 2nd respondent – whether 2nd respondent's competing activities detrimental to interests of appellants – whether enforcement of restraint in public interest or in line with demands of public policy – whether unreasonable

Appealed from CPD

Imperial Group (Pty) Ltd v NCS Resins (Pty) Ltd (197/2006)

Date to be heard: 15 February 2007

Scott JA, Cameron JA, Cloete JA, Ponnann JA, Mlambo JA

Catchwords Contract – Interpretation – Proper interpretation of express terms of written agreement of deposit to determine which of the parties bears risk of damage to respondent's goods by fire

Appealed from WLD

GF Wessels NO v Master of the High Court and Others (216/2006)

Date to be heard: 15 February 2007

Brand JA, Van Heerden JA, Combrinck JA JA

Catchwords

Succession – wills – whether document in question the testator and his deceased wife's joint will

Appealed from OPD

1. **Insamcor (Pty) Ltd v Dorbyl Light and General Engineering (Pty) Ltd (63/2006)**

2. **Dorbyl Light and General Engineering (Pty) Ltd v Insamcor (319/2006)**

Date to be heard: 16 February 2007

Harms ADP, Brand JA, Nugent JA, Ponnann JA, Snyders AJA

Catchwords

Contract – interpretation – whether respondent's obligations reciprocal to appellant's obligations to pay royalties – legal effect was of earlier deregistration and restoration of respondent to companies' register under section 73 of Companies Act

Appealed from WLD

Mediterranean Shipping Company (Pty) Ltd v Tebe Trading (Pty) Ltd (204/2006)

Date to be heard: 16 February 2007

Scott JA, Farlam JA, Cloete JA, Lewis JA, Cachalia JA

Catchwords

Shipping – admiralty – liability of ship's agent to shipper of cargo for loss caused by deviation – whether plaintiff had *locus standi* to sue to recover damages flowing from deterioration of cargo – whether defendant owed plaintiff a duty of care – if so, whether defendant's failure to inform plaintiff of changes in voyage negligent and a breach of duty giving rise to delictual liability – whether

defendant protected by Himalaya clause in bills of lading issued to plaintiff by shipping line in respect of carriage of cargo
Appealed from NPD. 2006 (4) SA 495 (N)

BOE Bank Ltd t/a BOE Corporate v The Grange Timber Farming Co (Pty) Ltd and Others (252/2006)

Date to be heard: 16 February 2007

Streicher JA, Heher JA, Jafta JA

Catchwords

Contract – Interpretation – written loan agreement – whether plaintiff's claim premature

Appealed from NPD

The Chairpersons Association v Minister of Arts and Culture and Others (25/2006)

Date to be heard: 19 February 2007

Howie P, Farlam JA, Brand JA, Jafta JA, Cachalia JA

Catchwords

Administrative law – review proceedings – South African Geographical Names Council Act 118 of 1998 – review application to have decision to change name of Louis Trichardt to Makhado Town set aside – whether different considerations apply to transformation of geographical names, as opposed to standardisation of geographical names – whether there was proper consultative process – whether the 2nd respondent failed to comply with provisions of s 9(1)(d) of Act – whether s 10(3) and (4) unconstitutional and invalid

Appealed from TPD. 2006 (SA) 32 (T)

NZ Mngomezulu v National Director of Public Prosecutions (446/2005)

Date to be heard: 19 February 2007

Streicher JA, Heher JA, Combrinck JA, Snyders AJA, Musi AJA

Catchwords

Prevention of Organised Crime Act 121 of 1998, chapter 5 – interpretation – whether clauses in restraint order *ultra vires* the Act – whether material non-disclosure by respondent when seeking *ex parte* order

Appealed from WLD

S Tandwa and Others v The State (538/2006)

Date to be heard: 19 & 20 February 2007

Cameron JA, Mlambo JA, Hancke AJA

Catchwords

Criminal law – conviction – robbery – whether 1st appellant's right to fair trial affected – legal advisor advising 1st appellant not to testify – whether this had any negative impact on 1st appellant's trial - whether 1st appellant's guilt proved by circumstantial evidence

Whether court a quo correct in accepting evidence of a co-accused regarding identification – whether 2nd appellant's version reasonably possibly true

Whether court erred in rejecting 3rd appellant's alibi – whether 3rd appellant's version reasonably possibly true

Whether court a quo correct in accepting evidence of a co-accused regarding identification of 4th and 6th appellants – whether court erred in rejecting appellants' alibi – whether appellants' version reasonably possibly true

5th and 7th appellants – criminal law – conviction – robbery – whether court a quo correct by accepting evidence of co-accused regarding identification of 5th and 7th appellants – whether court erred in relying on evidence of police – whether court erred in rejecting 5th and 7th appellants' alibi – whether the circumstantial evidence goes to show guilt of 5th and 7th appellants

Appealed from THC

City of Johannesburg v Rand Properties (Pty) Ltd and Others (253/2006)

Date to be heard: 20 February 2007

Harms ADP, Scott JA, Farlam JA, Nugent JA, Cloete JA

Catchwords

Local government – fundamental rights – National Building Regulations and Building Standards Act 103 of 1997 – Health Act 63 of 1977 – Application for orders interdicting occupiers from occupying buildings on grounds that they had become too dangerous and unhealthy for human occupation – whether applications for eviction were required to have been brought in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998

Appealed from WLD. [2006] 2 All S 240 (W)

PA Janse van Rensburg and Others v NDPP (75/2006)

Date to be heard: 20 February 2007

Streicher JA, Heher JA, Combrinck JA, Snyders AJA, Musi AJA

Catchwords

Prevention of Organised Crime Act 121 of 1998, s 26(3)(a) – requirements for grant of restraint order under section – whether restraint order to value of R19 000 000 not only unfair and arbitrary, but totally out of proportion with benefits received by respondent in amount of R820 858

Appealed from TPD

BP Southern Africa (Pty) Ltd v Commissioner for the SA Revenue Service (60/2006)

Date to be heard: 22 February 2007

Howie P, Brand JA, Nugent JA, Ponnann JA, Cachalia JA

Catchwords

Income Tax – Income Tax Act 58 of 1962, s 11(a) – whether appellant entitled to deduct from taxable income royalty payments made to holding company for trade marks and licensed marketing *indicia* – if royalty payments not deductible, whether deductible as premium or like consideration paid for right of use of trade mark under s 11(f)(iii)

Appealed from ITC

NDPP v BF Hlongwa and Others (292/2006)

Date to be heard: 22 February 2007 – **withdrawn 15/02/07**

Streicher JA, Heher JA, Combrinck JA, Snyders AJA, Musi AJA

Catchwords

Prevention of Organised Crime Act 121 of 1998, s 26 – Appeal against a decision refusing to confirm a provisional restraint order – whether court erred in rejecting certain evidence on basis of misconstruction of s 28(6) of National Prosecuting Authority Act 32 of 1998 – whether court erred in finding that requirements of Justices of the Peace and Commissioners of Oaths Act 16 of 1963 and regulations not met in respect of supporting affidavits – whether court erred in not applying appropriate test for confirmation of provisional restraint order – whether orders appropriate in light of provisions of Act

Appealed from TPD

Jointwo Holdings (Pty) Ltd and Others v Old Mutual Life Assurance Company (SA) Ltd (115/2006)

Date to be heard: 22 February 2007

Scott JA, Cloete JA, Lewis JA

Catchwords

Contract – lease – whether appellants entitled to rectification of agreements concluded with respondent – whether appellants have proved damages allegedly suffered by them

Appealed from TPD

Minister of Safety and Security v MM Obs (200/2006)

Date to be heard: 23 February 2007

Howie P, Farlam JA, Nugent JA, Lewis JA, Jafta JA

Catchwords

Delict – Damages for loss of support – whether death of respondent's breadwinner caused by conduct of appellant's employee – whether such conduct wrongful or negligent– whether it is in public interest to allow an action for damages where death resulted during shoot out between police and robbers

Appealed from WLD

AP Lubbe NO and Others v Millennium Styles (Pty) Ltd and Others (69/2006)

Date to be heard: 23 February 2007

Harms ADP, Brand JA, Cloete JA, Ponnann JA, Cachalia JA

Catchwords

Trademarks – Trade Marks Act 62 of 1963 – Trade Marks Act 194 of 1993 – whether underside of respondent's shoe sole so closely resembles any of appellant's registered trademarks as to be likely to deceive or cause confusion – whether respondent has *locus standi* to seek expungement of mark and, if so, whether any basis for granting such relief sought exists – in what circumstances are trademarks registered under the 1963 Act which remained on the register for more than seven years prior to coming into force of 1993 Act capable of being expunged under 1993 Act – whether trademarks validly registered under 1963 Act and capable of distinguishing goods sought to be protected

Appealed from NPD

J van der Berg v The General Council of the Bar of South Africa

Date to be heard: 26 February 2007

Harms ADP, Streicher JA, Nugent JA, Lewis JA, Musi AJA

Catchwords

Legal Profession – advocates – removal of name of appellant from roll of advocates – whether criminal or civil standard of proof applies – whether appellant guilty of various acts of misconduct found by court *a quo* – if so, whether this warrants removal of appellant's name from roll of advocates

Appealed from CPD

Senwes (Ltd) and Others v J. van Heerden & Sons (Ltd) (601/2005)

Date to be heard: 26 February 2007

Scott JA, Brand JA, Van Heerden JA, Combrinck JA, Snyders AJA

Catchwords

Co-operatives – enrichment – restitution on ground of cancellation of agreement – Co-operatives Act 91 of 1981, s 169(A) – interpretation – whether certain transactions create rules in terms of section – if so, whether contract were null and void since court failed to sanction these rules in terms of section – whether respondent's enrichment claim has prescribed – whether court *a quo* erred in finding that onus regarding whether there had been unlawful enrichment rested on respondents

Appealed from NCD

Registrar of Pension Funds and Another v Brian Angus NO and Others (677/05)

Date to be heard: 27 February 2007

Howie P, Brand JA, Heher JA, Ponnann JA, Musi AJA

Catchwords

Pension funds – Pension Funds Act 24 of 1956, s 2(1) – interpretation – whether Engineering Industries Pension Fund and Metal Industries Provident Fund subject to regulation under the Act

Appealed from TPD

Clipsal Australia (Pty) Ltd and Another v Trust Electrical Wholesalers and Another (125/2006)

Date to be heard: 27 February 2007

Harms ADP, Streicher JA, Cloete JA, Lewis JA, Cachalia JA

Catchwords

Designs – Designs Act 1993, s 201) – whether appellants' design infringed – whether design lacks novelty and originality

Appealed from WLD

Propfokus 49 (Pty) Ltd and Others v Wenhandel 4 (Pty) Ltd (103/2006)

Date to be heard: 27 February 2007

Nugent JA, Van Heerden JA, Combrinck JA

Catchwords

Contract – rectification of agreement for sale of land – interpretation of parties' intention – whether court *a quo* erred in finding that respondent placed enough evidence before it to rectify agreement regarding parties' common intention – whether court erred in finding that agreement had been further amended by way of correspondence between parties

Appealed from CPD

The Joint Municipal Pension Fund and Another v LJ Grobler and Others (183/2006)

Date to be heard: 1 March 2007

Howie P, Nugent JA, Heher JA, Ponnann JA, Musi AJA

Catchwords

Pension funds – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – whether complaint in terms of s 30A of Pension Funds Act 24 of 1956 to be equated with review in terms of PAJA and Rule 53 of High Court rules – whether complaint in terms of Act subject to time limits provided for in s 9 of PAJA, despite provisions of s 30I of Act – whether 1st respondent had to exhaust any other remedies before he applied in terms of section 30P

Appealed from TPD

Strang Investments No.1 Ltd & Another v Bidvest Group Ltd & Others (104/2006)

Date to be heard: 1 March 2007

Farlam JA, Van Heerden JA, Jafta JA, Cachalia JA, Theron AJA

Catchwords

Civil procedure – evidence – whether order that counsel's opinions be discovered is appealable – whether appellants waived privilege in relation to the opinions

Appealed from WLD

CSARS, Gauteng West v Levue Investments (Pty) Ltd (537/2006)

Date to be heard: 2 March 2007

Howie P, Streicher JA, Farlam JA, Brand JA, Combrinck JA

Catchwords

Revenue – Value Added Tax – VAT Act 89 of 1991, s 17 – interpretation – whether court *a quo* had jurisdiction to order refund of VAT in circumstances where such order is final – whether disputes of facts precluded court from making order – whether s 17 correctly applied

Appealed from WLD

PCL Consulting (Pty) Ltd t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Ltd (98/2006)

Date to be heard: 2 March 2007

Harms ADP, Cloete JA, Jafta JA, Cachalia JA, Snyders AJA

Catchwords

Civil procedure – summary judgment – whether respondent's monetary claim could be dealt with in summary judgment proceedings without respondent's claim for rectification first being adjudicated – whether incumbent on defendant who intends to apply for stay of proceedings to apply for stay simultaneously with filing of appearance to defend, or prior to hearing of application for summary judgment – whether competent for court, in absence of application under s 3(2) of Arbitration Act, to disregard arbitration clause and grant summary judgment

Appealed from WLD

M Cornick and Another v The State (409/2006)

Date to be heard: 2 March 2007

Lewis JA, Ponnann JA, Theron AJA

Catchwords

Criminal law – conviction and sentence – 1st appellant: guilty of raping complainant twice, sentenced to 5 years imprisonment – 2nd appellant: one count of rape, sentenced to four years imprisonment – whether sufficient evidence adduced against appellants to justify their convictions – whether sentences appropriate

Appealed from CPD

City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd (177/2006)

Date to be heard: 5 March 2007

Harms ADP, Farlam JA, Lewis JA, Ponnann JA, Musi AJA

Catchwords

Contract – interpretation – whether contract amended – whether amending agreement in writing and signed by both parties as required in main contract – whether appellant estopped from denying that person signing amending agreement not authorised

Appealed from TPD

1. **Minister of Social Development v Phoenix Cash & Carry (189/2006)**
2. **Snotho Trading & Others v Phoenix Cash & Carry (244/2006)**

Date to be heard: 5 March 2007

Scott JA, Cloete JA, Heher JA, Cachalia JA, Theron AJA

Catchwords

1. Administrative law – review – tender proceedings – whether requirements of fairness, equity, transparency, competitiveness and cost effectiveness met by terms of reference of tender as formulated by 1st appellant – whether respondent failed to meet requirements of tender – whether respondent should have been given opportunity to be heard by persons adjudicating tender

2.

Appealed from NPD**Assured Freight Services (Pty) Ltd v Comair Ltd (73/2006)**

Date to be heard: 6 March 2007

Howie P, Streicher JA, Brand JA, Combrinck JA, Snyders AJA

Catchwords

Prescription – Prescription Act 68 of 1969

Appealed from WLD**City of Johannesburg Metropolitan Municipality v Eskom Pension and Provident Fund and Others; City of Johannesburg Metropolitan Municipality v J. H. Basson and Others (26/2006; 27/2006)**

Date to be heard: 6 March 2007 – **case 26/06 withdrawn 15/02/07**

Harms ADP, Nugent JA, Heher JA, Ponnann JA, Cachalia JA

Catchwords

Local Government – municipal law – Development Facilitation Act 67 of 1995 – interpretation – whether act authorizes Gauteng Developmental Tribunal to make decisions which purport to amend appellant's town planning scheme and to approve establishment of townships in appellant's area of jurisdiction – whether appellant as local authority for area has exclusive – whether appellant estopped from raising GDT's lack of jurisdiction

Appealed from TPD**Jochen Kofahl v SL Keiley (348/2006)**

Date to be heard: 7 March 2007

Streicher JA, Nugent JA, Jafta JA

Catchwords

Contract – damages – whether damages suffered if so, amount thereof

Appealed from WLD**DHS Smith v GP Porritt and Others (536/2005)**

Date to be heard: 8 March 2007

Scott JA, Streicher JA, Brand JA, Ponnann JA, Combrinck JA

Catchwords

Civil procedure – whether subpoena should be set aside abuse of court's process

Appealed from NPD**Tao Ying Metal Industries (Pty) Ltd v Commissioner May Poee and Others**

(222/2006)

Date to be heard: 8 March 2007

Farlam JA, Nugent JA, Lewis JA, Jafta JA, Musi AJA

Catchwords

Labour law – Labour Relations Act 28 of 1956, s 48, continued in force in terms of item 12(1) of Schedule 7 of the 1995 Act for 18 months after the Act's commencement – proper interpretation of certain licences of exemption, which include provision that exemption is granted from provisions of certain agreements 'as amended and/or extended and/or replaced from time to time by any succeeding agreement' – whether appellant relieved from operation of certain fresh statutory collective agreements replaced original agreements – whether duration of exemptions limited to period of original agreement – whether exemptions *ultra vires*

Appealed from LAC. (2006) 27 ILJ 137 (LAC)

Barry Stephen Haslam v The State (297/2006)

Date to be heard: 8 March 2007

Cloete JA, Cachalia JA, Theron AJA

Catchwords

Criminal law – conviction and sentence – ten counts of fraud – 10 years imprisonment – whether State proved elements of offence – whether findings in accordance with allegations contained in charge sheet – whether intention on part of appellant to defraud and to cause prejudice proved – whether sentence too severe

Appealed from WLD

BE McGregor and Another v City of Johannesburg (89/2006)

Date to be heard: 9 March 2007

Howie P, Cloete JA, Lewis JA, Snyders AJA, Theron AJA

Catchwords

Advertising – clause 4(3) of Advertising Signs and Hoarding by-laws promulgated 28 November 2001, interpretation of – appeal against an order directing appellants to cease advertising on property in question and remove advertising sign therefrom – whether effect of clause is to confer on appellants right to use sign on property in perpetuity

Appealed from WLD

HTF Developers (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others (337/2006)

Date to be heard: 9 March 2007

Harms ADP, Brand JA, Jafta JA, Combrinck JA, Musi AJA

Catchwords

Environment – Item 10 of Schedule 1 of Regulation 1182 promulgated in terms of Environmental Conservation Act 73 of 1989, interpretation of – whether appellant's property is "virgin ground" – whether direction issued by 3rd respondent in terms of s 31A of Act valid

Appealed from TPD

FW Wypkema and TJ Lubbe (138/2006)

Date to be heard: 10 March 2007

Harms ADP, Brand JA, Lewis JA, Snyders AJA, Theron AJA

Catchwords

Negotiable instruments – Bills of Exchange Act 34 of 1964, s 53(1)(a) – whether attorney who draws cheque on trust account acts only in capacity as agent for client, or whether he can incur personal liability on cheque – effect of Attorneys Act 53 of 1979, s 78(1)

Appealed from TPD

Mervyn Dendy v University of the Witwatersrand and Others (597/2005)

Date to be heard: 10 March 2007

Scott JA, Farlam JA, Van Heerden JA, Jafta JA, Ponnann JA

Catchwords

Administrative law – whether failure to appoint appellant to academic chair was product of series of procedural irregularities which had consequence of injuring his dignity – whether failure to furnish him with reasons for his non-appointment and copy of minutes of meeting had consequence of injuring his dignity – Whether award for damages is appropriate remedy for violation of fundamental constitutional

Appealed from WLD. 2005 (5) SA 357 (W); [2005] 2 All SA 490 (W)

Road Accident Fund v S. M. Zungu (127/2006)

Date to be heard: 10 March 2007

Streicher JA, Cloete JA, Combrinck JA

Catchwords

Road Accident Fund – Regulation 2(1)(c) of Road Accident Fund Act 56 of 1996 – whether respondent timeously submitted affidavit to police – whether there was duty on police and by implication appellant to advise respondent as to requirement of regulation

Appealed from TPD

eThekweni Municipality v Tsogo Sun Kwazulu-Natal (Pty) Ltd (86/2006)

Date to be heard: 13 March 2007

Howie P, Brand JA, Heher JA, Musi AJA, Theron AJA

Catchwords

Local Government – building plans, approval of – interpretation – National Building Regulations and Building Standards Act 103 of 1977, s 7(1) – application to compel authority to grant or refuse approval of building plans – whether appellant failed to approve or refused approval of plans submitted for approval within statutory period – whether construction of parkade as part of respondent's casino development contravenes terms of contract between parties so as to render it unlawful for appellant to approve plans for its construction

Appealed from DCLD

Clearing Agents, Receivers and Shippers v MEC: Transport, Kwazulu-Natal and Another (659/2005)

Date to be heard: 13 March 2007

Scott JA, Nugent JA, Lewis JA, Jafta JA, Cachalia JA

Catchwords

Administrative law – road traffic – Regulation 84 of the Regulations promulgated under National Road Traffic Act, interpretation – whether regulation permits issue of special and temporary permits in respect of vehicles that are moved on their own power from port to border under rules of Dept of Customs and Excise – whether Promotion of Administration of Justice Act 3 of 2000 applied to decision to stop practice of issuing permits and if so, whether it should be reviewed and set aside

Appealed from DCLD

SB Gheri and Others v Tiber Developments (Pty) Ltd and Others (84/2006)

Date to be heard: 15 March 2007

Howie P, Cloete JA, Jafta JA, Ponnann JA, Cachalia JA

Catchwords

Insolvency – Companies Act 61 of 1973, s 266 – appeal against refusal of court *a quo* to confirm appointment of curator *ad litem* of an application brought under section – whether cause of action recommended by curator part of statutory notice prescribed by section and part of appellants' notice of motion and founding affidavit – whether additional cause of action properly investigated by curator – whether institution of such proceedings desirable

Appealed from WLD

Minister of Safety and Security v K Ndiniso (286/2006)

Date to be heard: 15 March 2007

Streicher JA, Nugent JA, Lewis JA, Combrinck JA, Musi AJA

Catchwords

Criminal procedure – Criminal Procedure Act 51 of 1977, ss 20 and 22, interpretation of – appeal against order declaring seizure of respondent's vehicle unlawful and directing appellant to return it – whether vehicle item that was liable to be seized – if so, whether vehicle seized lawfully

Appealed from ThC

Y Moodley v Nedcor Bank Ltd (85/2006)

Date to be heard: 16 March 2007

Harms ADP, Heher JA, Cachalia JA, Snyders AJA, Theron AJA

Catchwords

Civil procedure – jurisdiction – whether because respondent claimed declaration that immovable property situated its area, be declared executable, court *a quo* had jurisdiction to entertain respondent's action – whether appellant consented and submitted to jurisdiction of court

Appealed from DCLD

Sunsmart Products (Pty) Ltd v Flag & Flagpole Industries (Pty) Ltd t/a National Flags (072/2006)

Date to be heard: 16 March 2007

Streicher JA, Farlam JA, Nugent JA, Cloete JA, Ponnann JA

Catchwords

Intellectual property – designs – patents – whether registered design invalid in light of all prior art cited by respondent – whether alleged infringing product contains all essential integers of claim 1 of appellant's patent – whether patent in light of prior art relied upon by respondent

Appealed from TPD. [2006] 3 All SA 206 (T)

Midi Television (Pty) Ltd t/a e.tv v Director of Public Prosecutions, Western Cape (100/2006)

Date to be heard: 19 March 2007

Howie P, Nugent JA, Cloete JA, Lewis JA, Snyders AJA

Catchwords

Constitutional law – freedom of expression – appeal against final interdict prohibiting appellant from screening current affairs documentary until respondent provided with advance copy of programme and afforded opportunity to view programme and take such action as it deemed fit – whether is it appropriate for court to make order amounting to prior restraint of expression and pre-censorship of expression – how right to freedom of expression to be balanced in relation to accused's right to fair trial and State's duty to conduct effective prosecutions – whether DPP entitled to refuse undertakings made by broadcaster in relation to pending broadcast

Appealed from CPD. 2006 (3) SA 92 (C); 2006 (6) BCLR 751 (C); [2006] 2 All SA 286 (C)

Gutsche Family Investments (Pty) Ltd and Others v Mettle Equity Group (Pty) Ltd and Others (133/2006)

Date to be heard: 19 March 2007

Harms ADP, Farlam JA, Jafta JA, Ponnann JA, Cachalia JA

Catchwords

Civil procedure – jurisdiction – whether 2nd respondent, sitting as appeal arbitrator had jurisdiction to consider appeal launched by appellants against interlocutory ruling made by an arbitrator – whether appellants and 1st respondent agreed that appellants would have right of appeal against interlocutory ruling in question – whether appellants and 1st respondent agreed that 2nd respondent could make a final determination as to whether right of appeal existed

Appealed from WLD

1. **RS Mlenze v The State (569/2006)**

2. **HJ Smith v The State (46/2006)**

Date to be heard: 19 March 2007

Cameron JA, Mlambo JA, Theron AJA

1. Criminal law – conviction and sentence – murder – whether matter should have been adjudicated solely on evidence of appellant and his witness – whether appellant should have been convicted of culpable homicide or acquitted on basis of putative self-defence
2. Criminal law – sentence – car theft – theft of R6500 – 4 years imprisonment – whether sentence of four years direct imprisonment for first offender appropriate – whether court erred in underemphasising appellant's personal circumstances and overemphasising seriousness of offence

Appealed from ECD; and CPD

WJK Schoeman v EC Scriven (114/2006)

Date to be heard: 20 March 2007

Howie P, Cloete JA, Ponnann JA, Cachalia JA, Snyders AJA

Catchwords

Land – Restitution of Land Rights Act 22 of 1994, s 22(A) – whether s 22 of Restitution Act excludes jurisdiction of High Court to rule on claim by previous spouse to part of proceeds of compensation for land expropriated by State – whether respondent has claim against appellant in terms of rights which previously existed in community of property

Appealed from TPD

McCarthy Ltd v SM Gore NO (163/2006)

Date to be heard: 20 March 2007

Harms ADP, Brand JA, Nugent JA, Jafta JA, Theron AJA

Catchwords

Insolvency law – Insolvency Act 24 of 1936, s 2, definition of ‘trader’, interpretation of

Appealed from CPD. 2006 (3) SA 229 (C)

JDW Nel v The State (318/2006)

Date to be heard: 20 March 2007

Cameron JA, Mlambo JA, Musi AJA

Criminal law – sentence – robbery with aggravating circumstances – 15 years imprisonment – whether pathological gambling habit can constitute on its own, or in combination with other factors, a compelling and substantial circumstance in terms of s 51(2)(a)(i) read with Part II of Schedule 2 of Act 105 of 1997 – whether sentence disproportional to gravity of offence

Appealed from ECD

WJ du Plessis v The State (316/2006)

Date to be heard: 22 March 2007

**** , Mlambo JA, Snyders AJA**

Catchwords

Criminal law –indecent assault – whether court *a quo* erred in finding beyond reasonable doubt that accused indecently assaulted complainant – whether sentence appropriate

Appealed from TPD

JF Potgieter v I Potgieter (215/2006)

Date to be heard: 22 March 2007

Farlam JA, CameronJA, Van Heerden JA, Hancke AJA, Theron AJA

Catchwords

Family law – custody – maintenance – whether court *a quo* erred in finding that it would be in the best interests of minor children that custody of minor children be awarded to respondent – whether rehabilitative maintenance be paid to respondent

Appealed from ECD

Old Mutual Life Assurance Co SA Ltd v TA Gumbi (211/2006)

Date to be heard: 23 March 2007

Howie P, Cameron JA, Brand JA, Cloete JA, Jafta JA

Catchwords

Labour law – disciplinary proceedings – whether respondent waived his right to be heard in a disciplinary enquiry which was held in his absence

Appealed from TkH

Road Accident Fund v JK Grobler (96/2006)

Date to be heard: 23 March 2007

Farlam JA, Hancke AJA, Musi AJA

Catchwords

Motor law – road accident – whether appellant succeeded in proving contributory negligence on part of respondent and if so what apportionment should have been ordered

Appealed from TPD

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 Sehoole 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

The Maize Board v TA Hart (248/2005)

- delivered 7 March 2006

Oos Vrystaat Kaap Bedryfs Bpk v IFJ van Aswegen (54/2005)

- delivered 17 March 2006

Sentraal-Suid Koöperasie Bpk v Bessemer Staalkonstruksie (Edms) Bpk (516/2004)

- delivered 20 March 2006

R Heslop v The State (216/2005)

- delivered 20 March 2006

NP Nonyane v The State (256/2005)

- delivered 20 March 2006

RA Burris (Pty) Ltd v E Moumtzis (192/2005)

- delivered 23 March 2006

City of Johannesburg v Debbie Investments CC

- delivered 23 March 2006

SDP Muller v The State (236/2005)

- delivered 7 March 2006

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

- delivered 27 March 2006

The State v Saeed (432/2005)

- delivered 29 March 2006

Muholi v The State (450/2005)

- delivered 29 March 2006

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

ED Pretorius and Others v M de Clercq (492/2005)
- 23 August 2006

Henoch Arendse v The State (651/2005)
- 11 September 2006

Mdingi v The State (523/2003)
- 19 September 2006