

REPUBLIC OF SOUTH AFRICA  
SUPREME COURT OF APPEAL  
BULLETIN 2006  
NO 2

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1. **BULLETINS**

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

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

**Date 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 1<sup>st</sup> appellant – whether decision to terminate respondent's employment constitutes administrative action subject to judicial review – whether poor performance appraisal held by 3<sup>rd</sup> appellant procedurally unfair, and if so, whether reasonable and justifiable departure from requirement of procedural fairness

**Appealed from WLD**

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

**Date heard:** 14 March 2006

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

**Catchwords**

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

**Appealed from WLD**

### **3. CASES ENROLLED FOR HEARING**

**Harmony Gold Mining Company Ltd v Regional Director: Free State, Department of Water Affairs and Forestry and Others (269/2005)**

**Date to be heard:** 2 May 2006

**Howie P, Mthiyane JA, Conradie JA, Maya AJA, Cachalia AJA**

**Catchwords**

Administrative law – National Water Act 36 of 1998, s 19(3) – whether paragraph 2(b) of Supplementary Directive issued by Regional Director of Water Affairs and Forestry in terms of section should have been reviewed and set aside by court *a quo* on grounds that it constitutes administrative action – whether empowering provision, read together with clause 2(b) *ultra vires*

**Appealed from WLD**

**Minister of Environmental Affairs and Tourism v Kenneth George and Others (437/2005)**

**Date to be heard:** 2 May 2006

**Harms JA, Zulman JA, Cameron JA, Lewis JA, Jafta JA**

**Catchwords**

Equity – Equality Court – Promotion of the Equality and Prevention of Unfair Discrimination Act 4 of 2000, s 20(3) – appeal against decision directing that complaint be heard in Equality Court rather than referred to an alternative forum (High Court) exercising its civil and constitutional jurisdiction – whether order appealable – whether leave to appeal to this court required from court *a quo* – whether condonation necessary, and if so, whether it should be granted, in respect of non-compliance with any provision in SCA rules, Uniform Rules of Court and Equality Regulations

**Appealed from CPD. 2005 (6) SA 297 (EqC)**

**Minister of Safety and Security v DT Seymour (295/2005)**

**Date to be heard:** 2 May 2006

**Navsa JA, Nugent JA, Heher JA**

**Catchwords**

Damages – unlawful arrest and detention for 6 days – award R500 000 general damages for arrest and detention – whether striking disparity between amount awarded and amounts awarded by other courts in comparable cases

**Appealed from WLD. [2005] 2 All SA 296 (W)**

**Commissioner for the South African Revenue Services v BP Southern Africa (Pty) Ltd (092/2005)**

**Date to be heard:** 3 May 2006

**Howie P, Streicher JA, Nugent JA, Cloete JA, Heher JA**

**Catchwords**

Income Tax – Income Tax Act 58 of 1962, s 11(a) – deductibility of interest on loan from taxpayer's parent company and of rent paid for premises as lump sum at commencement of lease

**Appealed from Cape Tax Court**

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

**Date to be heard:** 3 May 2006

**Mpati DP, Farlam JA, Mthiyane JA, Brand JA, Maya AJA**

**Catchwords**

Constitutional Law – civil procedure – *locus standi* – whether state department has necessary juristic personality and *locus standi* to institute legal proceedings in its own name

**Appealed from CPD**

**ZK Gungisa and Others v The State (504/2005)**

**Date to be heard:** 3 May 2006

**Scott JA, Jafta JA, Cachalia AJA**

**Catchwords**

Criminal Law – conviction and sentence – kidnapping and murder – 5 years imposed for kidnapping – 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> appellants sentenced to 15 years each for murder, while 3<sup>rd</sup> and 5<sup>th</sup> sentenced to 10 years – whether identity of alleged deceased proved beyond reasonable doubt – whether valid defence to kidnapping charge based on unlawful arrest – whether sentences imposed appropriate in circumstances of case

**Appealed from WLD**

**Business Aviation Corporation (Pty) Ltd and Another v Rand Airport Holdings (179/2005)**

**Date to be heard:** 4 May 2006

**Howie P, Farlam JA, Brand JA, Cloete JA, L:ewis JA**

**Catchwords**

Property – Placcaat of 1658, article 10 – whether Placcaat applies to urban tenements

**Appealed from WLD**

**Land & Agricultural Development Bank of SA t/a Landbank v The Master of the High Court and Others (352/2005)**

**Date to be heard:** 4 May 2006

**Scott JA, Zulman JA, Navsa JA, Nugent JA, Heher JA**

**Catchwords**

Insolvency – Land and Agricultural Development Bank Act No 15 of 2002, s 33 – whether s 33(3)(b) and (4) apply to advances made in terms of Land Bank Act 13 of 1944 – whether section applies to sequestrations which occurred before new Land Bank Act commenced on 10 June 2002

**Appealed from CPD**

**HC Barnard v The State (646/2005)**

**Date to be heard:** 4 May 2006

**Streicher JA, Conradie JA, Van Heerden JA**

**Catchwords**

Criminal Law – conviction – 1 count murder, 2 attempted murder – whether appellant acted negligently in causing death of deceased – whether appellant had requisite *mens rea* to commit offence of assault with intent to cause grievous bodily harm

**Appealed from SECLD**

**KJR Summerley v Law Society of Northern Provinces (270/2005)**

**Date to be heard:** 5 May 2006

**Mpati DP, Brand JA, Conradie JA, Van Heerden JA, Jafta JA**

**Catchwords**

Attorneys – removal of attorney's name from Roll of Attorneys – whether striking attorney off roll is appropriate sanction for failure properly to maintain and administer trust account in absence of finding of dishonesty or lack of integrity – whether suspension more appropriate

**Appealed from TPD**

**Sunnyfield Packaging Co (Pty) Ltd v Tiger Food Brands Intellectual Property Holding Company Ltd (351/2005)**

**Date to be heard:** 5 May 2006

**Harms JA, Scott JA, Cloete JA, Lewis JA, Cachalia AJA**

**Catchwords**

Trademarks – Trademarks Act 194 of 1993, s 34(1) – application to interdict alleged trademark infringement – whether wrong test applied so as to render dissimilar marks as similar by virtue of paring down defendant's mark to an arbitrary "nude form" – whether "notional user" should have been applied – whether court erred in ignoring distinguishing features of appellant's marks

**Appealed from NPD**

**HG Rasengani v The State (008/2004)**

**Date to be heard:** 5 May 2006

**Farlam JA, Mthiyane JA, Maya AJA**

**Catchwords**

Criminal Law – sentence – 1 count of murder: life imprisonment, 2 counts attempted murder: 40 years imprisonment, pointing of firearm: 8 years and possession of unlicensed firearm: 6 years – whether sentences imposed appropriate or shockingly excessive

**Appealed from VPD**

**The Society of Lloyd's v O. J. Price and The Society of Lloyd's v P. Lee (327/2005)**

**Date to be heard:** 8 May 2006

**Howie P, Scott JA, Zulman JA, Van Heerden JA, Cachalia AJA**

**Catchwords**

Prescription – whether *lex fori*, South African law, determined issue of prescription and not *lex causae*, English law – whether English courts have international jurisdiction in terms of SA law to grant default judgments upon which provisional sentence proceedings may be based

**Appealed from TPD. 2005 (3) SA 549 (T); [2005] 2 All SA 302 (T)**

1. **SANDU and Another v The Minister of Defence and Others (306/2005)**
2. **Minister of Defence and Others v SANDU (307/2005)**
3. **Minister of Defence and Others v SANDU and Others (004/2005)**

**Date to be heard:** 1. – 8 May; 2. – 9 May; 3. – 10 May 2006

**Mpati DP, Cameron JA, Nugent JA, Conradie JA, Jafta JA**

**Catchwords**

Labour law – collective bargaining – labour rights of members of SANDF and constitutional validity of regulations published under 1957 Defence Act – whether SANDU has constitutional right to collective bargaining in terms of s 23(4) of Constitution – whether SANDF has correlative duty to bargain with union – meaning of "*right to engage in collective bargaining*" – appealability of order granting interim interdict

Appealed from TPD. 1. 2003 (3) SA 239 (T); (2003) 24 ILJ 1495 (T) 2. 2004 (4) SA (T); (2003) 24 ILJ 2101 (T); [2003] 3 All SA 436 (T).

**Cartoria Motor Industries (Pty) Ltd v JJ Swanepoel (487/2005)**

**Date to be heard:** 8 May 2006

**Streicher JA, Brand JA, Heher JA**

**Catchwords**

Damages – whether appellant failed to prove damages – whether appellant can rely on alleged contractual right to adjust selling price of vehicle – whether enough evidence before court proving respondent guilty of intentionally misleading appellant

**Appealed from TPD**

**Melco Mining Supplies (Pty) (Ltd) v Precismeca Ltd (230/2005)**

**Date to be heard:** 9 May 2006

**Harms JA, Streicher JA, Navsa JA, Brand JA, Cloete JA**

**Catchwords**

Contract – interpretation – validity of written agreement concluded between parties thirty years ago – whether that agreement governed contractual relationship between parties until May 1997 – interpretation of provisions in agreement

**Appealed from WLD**

**Impala Platinum Limited v Koninklijke Luchtvaart and Another (315/2005)**

**Date to be heard:** 11 May 2006

**Howie P, Farlam JA, Navsa JA, Cloete JA, Cachalia AJA**

**Catchwords**

Civil aviation – Carriage by Air Act 17 of 1946 – *locus standi* – whether appellant had interest in cargo while it was being carried by respondent

**Appealed from WLD**

**MEC for KZN Social Welfare and Development v Q T Machi and Others (333/2005)**

**Date to be heard:** 11 May 2006

**Harms JA, Scott JA, Mthiyane JA, Lewis JA, Maya AJA**

**Catchwords**

Costs – costs *de bonis propriis* – whether appellant's conduct deserving of such order

**Appealed from DCLD**

**MEC Public Works, Roads and Transport: Free State Provincial Government and Another v Phuthanang Transport Service (Pty) Ltd (51/2005)**

**Date to be heard:** 12 May 2006

**Howie P, Streicher JA, Mthiyane JA, Heher JA, Maya AJA**

**Catchwords**

Administrative law – Free State Interim Passenger Transport Act 16 of 1998 – whether decision of 2<sup>nd</sup> appellant in refusing to register respondent under se 18 of Act justifiable for reasons given – whether decision of 1<sup>st</sup> appellant in confirming decision of 2<sup>nd</sup> appellant justifiable for reasons given

**Appealed from OPD**

**IL Saltzman, LF Saltzman, SRN Goetsch, and NM Hegarty CC t/a Norwood Gardens Pharmacy v Pick 'n Pay Retailers (Pty) Ltd (339/2005)**

**Date to be heard:** 12 May 2006

**Harms JA, Zulman JA, Farlam JA, Navsa JA, Cachalia AJA**

**Catchwords**

Competition law – Pharmacy Act 53 of 1974, s 22(1) and regulations promulgated under ss 22 and 22A, interpretation of – powers and functions exercisable by Director-General under Act and Regulations – administrative law limits placed upon exercise of those powers and functions by Director-General

**Appealed from WLD**

**1. J Makatu v The State (245/2005)**

**2. N Sikhapha v The State (262/2005)**

**Date to be heard:** 12 May 2006

**Scott JA, Lewis JA, Van Heerden JA**

**Catchwords**

1. Criminal Law – sentence – murder and unlawful possession of firearm – life imprisonment – whether court erred when it found it was obliged to impose life imprisonment – whether court erred in finding murder premeditated – whether court could have imposed such sentence when appellant not informed in indictment or otherwise that it could be imposed – whether substantial and compelling circumstances exist justifying imposition of lesser sentence
2. Criminal law – conviction and sentence – charge of rape of minor – sentenced to life imprisonment – whether magistrate failed properly to apprise appellant of right to legal representation – admissibility of evidence by minors properly affirmed in terms of Criminal Procedure Act, s 164(1) – duties of presiding officer in instance of unrepresented accused

**Appealed from VPD**

**FEP Rootman v The President of the RSA and Others (16/2006)**

**Date to be heard:** 15 May 2006

**Howie P, Cameron JA, Nugent JA, Lewis JA, Jafta JA**

**Catchwords**

Constitutional Law – interpretation – ss 34 and 165(4) of Constitution – appellant seeks interdict directing 1<sup>st</sup> and 2<sup>nd</sup> respondents to take all reasonable steps to assist appellant in securing execution of order against foreign state – whether appellant exhausted execution process – whether duty on executive arm of government to preserve dignity, accessibility and effectiveness of SA courts in circumstances – whether government has constitutional duty to ensure appellant's rights respected, protected, promoted and fulfilled

**Appealed from TPD. [2005] 3 All SA 600 (T)**

**I Saincic and Others v Industro-Clean (Pty) Ltd and Another (229/2005)**

**Date to be heard:** 15 May 2006

**Harms JA, Streicher JA, Farlam JA, Heher JA, Van Heerden JA**

**Catchwords**

Company law – interpretation – Companies Act 61 of 1973, s 424

**Appealed from TPD**

**ST Mamba and Others v The State (143/2001)**

**Date to be heard:** 15 May 2006

**Navsa JA, Brand JA, Cachalia AJA**

**Catchwords**

Criminal law – conviction of murder – single witness – whether credible – whether evidence satisfactory in all material respects

**Appealed from TPD**

**Dato' Samsudin Bin Abu Hassan and Another v P. de Villiers Berrange N. O. and Another (170/2005)**

**Date to be heard:** 16 May 2006

**Mpati DP, Zulman JA, Farlam JA, Lewis JA, Maya AJA**

**Catchwords**

Insolvency – Insolvency Act 24 of 1936, s 12(1) – whether provisional sequestration order should have been granted having regard to lack of notice to appellants, material non-disclosure and that there were proceedings pending in Malaysia – whether proceedings actuated by ulterior purpose – whether liquidated claim established – whether act of insolvency established

**Appealed from NPD. 2005 (3) SA 529 (N)**

**DC Feldman v J Migdin NO (194/2005)**

**Date to be heard:** 16 May 2006

**Scott JA, Streicher JA, Navsa JA, Mthiyane JA, Van Heerden JA**

**Catchwords**

Administration of Estates – Administration of Estates Act 66 of 1965, s 46, interpretation of – liability of executor of estate who fails to pay over into estate bank account monies received by him – whether liable to pay over double value of such cheques

**Appealed from WLD**

**SS Ralukukwe v The State (98/2005)**

**Date to be heard:** 16 May 2006

**Cameron JA, Conradie JA, Cloete JA**

**Catchwords**

Criminal Law – conviction and sentence – murder and robbery with aggravating circumstances – life imprisonment for murder and 15 years for robbery – whether State proved appellant's involvement in robbery – whether appellant aware that perpetrators armed – whether cautionary rule applied by court *a quo* in accepting evidence of accomplice witnesses

**Appealed from VPD**

**TOR Weichelt NO and Others v BJ Meko and Another (371/2005)**

**Date to be heard:** 18 May 2006

**Mpati DP, Cameron JA, Navsa JA, Jafta JA, Cachalia AJA**

**Catchwords**

Trusts – whether single trustee required to be authorized in writing before he can conclude agreement providing for sale of land – whether all trustees should have been listed in agreement – whether all trustees required to execute decision properly taken by trustees in order to comply with requirement “acting jointly”

**Appealed from TPD**

**A Melamed Finance (Pty) Ltd v VOC Investments Ltd(364/2005)**

**Date to be heard:** 18 May 2006

**Scott JA, Zulman JA, Brand JA, Conradie JA, Cloete JA**

**Catchwords**

Provisional sentence – whether manuscript alterations of dates on cheques prevent them from being regular on face – whether appellant holder in due course

**Appealed from WLD**

**T Senatsi and Another v The State (431/2004)**

**Date to be heard:** 18 May 2006

**Farlam JA, Mthiyane JA, Nugent JA**

**Catchwords**

Criminal law – sentence – 1<sup>st</sup> appellant convicted of attempted murder and robbery, appellants convicted of murder and several counts of assault – 1<sup>st</sup> appellant receiving effective sentence of 30 years imprisonment, 2<sup>nd</sup> appellant effective 20 years imprisonment – whether court erred in overemphasizing interests of community and not taking sufficient account of appellants' personal circumstances – whether sentences shockingly inappropriate

**Appealed from CPD**

**PE Lourens NO and Others v Impala Water Users Association 534/2004)**

**Date to be heard:** 19 May 2006

**Howie P, Scott JA, Brand JA, Heher JA, Van Heerden JA**

**Catchwords**

Water – National Water Act, s 59(3) – whether order that flow of water to appellants be restricted erroneously granted – whether s 59(3) proceedings could be invoked where amounts allegedly due not admitted nor judicially established – whether respondent established specific amounts due by appellants – whether resolution relied upon by respondent defective

**Appealed from NPD**

**D de Beer and Another v The State (10/2006)**

**Date to be heard:** 19 May 2006

**Harms JA, Mthiyane JA, Nugent JA, Maya AJA, Cachalia AJA**

**Catchwords**

Criminal Procedure – Supreme Court Act 59 of 1959, s 19 – Magistrates Court Act 32 of 1944, s 90 – whether BPD had territorial jurisdiction – whether sections should be read together

**Appealed from BPD**

**Mittalsteel South Africa Ltd v MS Hlatshwayo (326/2005)**

**Date to be heard:** 22 May 2006

**Mpati DP, Mthiyane JA, Lewis JA, Jafta JA, Cachalia AJA**

**Catchwords**

Information – Promotion of Access to Information Act 2 of 2002 – whether appellant public body during period from 1965 to 1973 – whether appellant obliged to make documentation available to respondent

**Appealed from TPD**

**Die Regshulpraad (Ex parte) and Another v J Pretorius and Another (332/2005)**

**Date to be heard:** 22 May 2006

**Harms JA, Streicher JA, Navsa JA, Brand JA, Van Heerden JA**

**Catchwords**

Legal aid – representation – whether Legal Aid Act 22 of 1969, s 3B empowers court to direct Board as to manner of rendering legal aid – whether order transgressed proper line of deference to discretion vested in administrative organs to make substantive decisions

**Appealed from TPD**

**Tsogo Sun Holdings (Pty) Ltd v Qing-He Shan and Another (374/2005)**

**Date to be heard:** 23 May 2006

**Harms JA, Zulman JA, Navsa JA, Van Heerden JA, Cachalia AJA**

**Catchwords**

Delict – injury – whether appellant liable to 1<sup>st</sup> respondent for shooting by 2<sup>nd</sup> respondent – whether appellant owed legal duty to invitees to ensure their safety outside casino – whether reasonably foreseeable that 2<sup>nd</sup> respondent would pose risk – whether disclaimer notices absolved appellant from liability – if, whether 1<sup>st</sup> respondent guilty of contributory negligence

**Appealed from TPD**

**MV “Spirit of Namibia” & Others v Marco Fishing (Pty) Ltd (33/2006)**

**Date to be heard:** 23 May 2006

**Scott JA, Streicher JA, Farlam JA, Mthiyane JA, Nugent JA**

**Catchwords**

Shipping – admiralty – sale of vessel under attachment before judgment – whether appropriate in circumstances

**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 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