

**REPUBLIC OF SOUTH AFRICA
SUPREME COURT OF APPEAL
BULLETIN 2005
NO 2**

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1. **BULLETINS**

Number 1, 2004 – As at 2 December 2003

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2. **JUDGMENTS RESERVED**

1. **Metrofile (Pty) Ltd v Chemical Energy Paper Printing Wood and Allied Workers Union (023/2004)**

2. **NUMSA & Others v Fry's Metals Pty Ltd (026/2003)**

Date heard: 21 & 22 February 2005

Mpati DP, Cameron JA, Nugent JA, Conradie JA, Maya AJA

Catchwords

Jurisdiction – appellate jurisdiction of this Court to hear appeals from decisions of Labour Appeal Court under Constitution – interpretation, application and constitutionality of provisions of Labour Relations Act 66 of 1995 dealing with appealability of matters to this Court – procedure to be followed in appeals from LAC to this court

1. 2. **Appealed from LAC. [2003] JOL 10525 (LAC)**

American Natural Soda Ash Corporation and Another v The Competition Commission of South Africa and Others (554/2003)

Date heard: 24 February 2005

Mpati DP, Cameron JA, Nugent JA, Conradie JA, Maya AJA

Catchwords

Competition – Competition Act 89 of 1998, ss 3, 4 and 62, interpretation of – procedure – whether issues considered by CAC appealable to SCA – test to be applied when considering whether leave to appeal should be granted – allegation of harm required where interdict claimed in proceedings before tribunal

Appealed from CAC. 2003 (5) SA 633 (CAC); [2003] JOL10489 (CAC)

Ian Cameron v The State (199/2004)

Date heard: 7 March 2005

Zulman JA, Cloete JA, Maya AJA

Catchwords

Criminal Law – unlawful possession of four undersized rock lobsters – regulation 52(a) promulgated in terms of Marine Living Resources Act 18 of 1998, interpretation of – whether possession for purpose of measuring constitutes unlawful conduct – whether appellant intended possessing lobsters unlawfully

Appealed from NPD

Grundlingh & Others v Phumelela Gaming & Leisure Limited (152/2004)

Date heard: 10 March 2005

Howie P, Zulman JA, Conradie JA, Heher JA, Maya AJA

Catchwords

Gambling – Gauteng Gambling Act 4 of 1995, s 55, interpretation of – whether appellants contravening section by offering “open bets” – whether appellants unlawfully competing with respondent by using its results to calculate winnings of punters who lay bets with them

Appealed from TPD

Lucky Arthur Ndlovu v Santam Limited (550/2003)

Date heard: 18 March 2005

Zulman JA, Cameron JA, Mthiyane JA, Lewis JA, Maya AJA

Catchwords

Civil Procedure – jurisdiction – Magistrates’ Court Act, s 28(1)(d) – whether order of Magistrate dismissing respondent’s special plea of lack of jurisdiction appealable – whether cause of action arose wholly in district – claim based on breach of contract in form of repudiation – repudiation taking place outside of district

Appealed from WLD

Greys Marine Hout Bay & Others v Minister of Public Works & Others (347/2004)

Date heard: 22 March 2005

Scott JA, Navsa JA, Mthiyane JA, Nugent JA, Maya AJA

Appealed from CPD. [2004] 3 All SA 446 (C)

3. CASES ENROLLED FOR HEARING

Normkow Administrators (Pty) Ltd v Fedsure Health Medical Scheme (400/04)

Date to be heard: 3 May 2005

Howie P, Navsa JA, Mthiyane JA, Conradie JA, Ponnar JA

Catchwords

Procedure – appeal against dismissal of application for leave to amend particulars of claim – whether claims after amendment excipiable as not containing allegations required by Medical Schemes Act, 1998, s 26(2) – whether requirements of *conductio ob turpem vel iniustam causam* sufficiently pleaded

Appealed from WLD. [2004] JOL 13156 (W)

Eskom Holdings Limited v JJ Herdricks obo Jacques Hendricks (262/2004)

Date to be heard: 3 May 2005

Scott JA, Streicher JA, Brand JA, Lewis JA, Mlambo JA

Catchwords

Delict – whether appellant liable in delict towards respondent arising from injuries sustained by respondent's minor son who received an electric shock after climbing one of appellant's pylons – whether minor guilty of contributory negligence – whether minor *culpa capax*

Appealed from CPD

Medscheme Holdings (Pty) Ltd and Another v Yusuf Bhamjee (214/04)

Date to be heard: 3 May 2005

Zulman JA, Cameron JA, Nugent JA, Cloete JA, Jafta JA

Catchwords

Acknowledgement of debt – whether respondents placed under duress and/or undue influence by appellants as result of alleged threat not to pay respondent directly for medical services rendered

Appealed from TPD

AIG South Africa Ltd v Grand Central Airport (Pty) Ltd (309/04)

Date to be heard: 5 May 2005

Howie P, Farlam JA, Navsa JA, Conradie JA, Heher JA

Catchwords

Insurance law – whether reinstatement clause operated where defendant repudiated liability for claim for indemnification under policy – whether reinstatement value conditions clause ambiguous - whether clause suspended pending outcome of legal proceedings

Appealed from WLD. 2004 (5) SA 284 (W); [2004] JOL 12586 (W)

Dr HD Louwrens v James Peter Oldwage (181/04)

Date to be heard: 5 May 2005

Mpati DP, Streicher JA, Mthiyane JA, Lewis JA, Ponnar JA

Catchwords

Delict – Medical law – negligence – whether requirement of informed consent complied with

Appealed from CPD. [2004] 1 All SA 532 (C); [2004] JOL 12512 (C)

PJ Theart v The State (058/2004)

Date to be heard: 5 May 2005

Scott JA, Brand JA, Van Heerden JA

Catchwords

Criminal law – fraud – whether appellant's guilt proved beyond reasonable doubt – whether appellant's version could reasonably be true

Appealed from CPD

N Gqwetha v Transkei Development Corporations Ltd and 2 Others (242/2004)

Date to be heard: 6 May 2005

Mpati DP, Farlam JA, Navsa JA, Nugent JA, Van Heerden JA

Catchwords

Review – court of first instance granted appellant condonation for late institution of review proceedings – whether full Court acted properly in interfering with discretion of Court of first instance to grant condonation

Appealed from TkHC**1. M Naylor and Another v PJ Jansen (243/2004)****2. PJ Jansen v M Naylor and Others (251/2004)****Date to be heard:** 6 May 2005**Scott JA, Cameron JA, Cloete JA, Heher JA, Mlambo JA****Catchwords**

1. Defamation – whether 1st appellant had *animus iniurandi* towards respondent – whether award of damages in amount of R300 000 excessive regard being had to respondent's behaviour and character

2. Costs – whether in application to confirm jurisdiction, appellant entitled to costs of application where he failed to demand that 1st respondent submit to the court's jurisdiction before launching application

Appealed from WLD**S Nyathi v The State (448/04)****Date to be heard:** 6 May 2005**Zulman JA, Conradie JA, Jafta JA****Catchwords**

Criminal law – culpable homicide – appeal against conviction and sentence – sentence of 5 years imprisonment two years of which conditionally suspended for 5 years – whether expert witness correctly established and proved point of impact – whether mitigatory facts applied properly to various sentencing options

Appealed from ECD**Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd (237/2004)****Date to be heard:** 9 May 2005**Howie P, Zulman JA, Mthiyane JA, Jafta JA, Mlambo JA****Catchwords**

Purchase and sale – whether seller of motor vehicles has *locus standi* to apply for declaratory order that third party (who intending to evict immediate purchasers or successive purchasers of such vehicles sold by applicant) not entitled to eviction

Appealed from DCLD**Media 24 Ltd and Another v Sonja Grobler (301/04)****Date to be heard:** 9 & 10 May 2005**Farlam JA, Navsa JA, Conradie JA, Heher JA, Van Heerden JA****Catchwords**

Delict – sexual harassment – vicarious liability of employer for damage suffered as result of sexual harassment by co-employee – whether respondent suffered from post traumatic stress syndrome – whether employee can be held vicariously liable – whether employer can be held liable based upon breach of legal duty – whether respondent's action against appellant precluded by Act 130 of 1993, s 35(1)

Appealed from CPD. [2004] 2 All SA 160 (C)**J Marx v The State (397/2004)****Date to be heard:** 9 May 2005**Streicher JA, Cameron JA, Nugent JA****Catchwords**

Criminal law – rape and indecent assault – whether sentence shockingly inappropriate – whether guilt of appellant established beyond reasonable doubt – whether sentences of 10 years (for the rape) and 2 years (for the indecent assault) excessive

Appealed from CPD

1. **A Kriel v Die Staat (390/2004)**

2. **Plaaslike Oorgangraad van Delmas and Another v WA Boshoff (302/2004)**

Date to be heard: 10 May 2005

Mpati DP, Scott JA, Brand JA, Nugent JA, Cloete JA

Catchwords

1. Criminal law – sentence – murder – 15 years imprisonment reduced on appeal to 10 years – whether court *a quo* did not sufficiently take into account all mitigating factors and placed too much emphasis on interest of community to detriment of accused and his personal circumstances

2. Delict – whether appellants liable for damages caused to respondent's property by squatters established there by appellants – whether legal duty on appellants to prevent damage and financial loss to owners and occupiers of surrounding properties

Appealed from NPD & TPD

Pieter May v The State (376/2004)

Date to be heard: 10 May 2005

Mthiyane JA, Lewis JA, Mlambo JA

Catchwords

Criminal law – housebreaking and rape – whether appellant received fair trial – whether guilt established beyond reasonable doubt – whether sentence of 35 years imprisonment shockingly inappropriate

Appealed from CPD

Chipkin (Natal) (Pty) Ltd v The Commissioner for the South African Revenue Service (190/2004)

Date to be heard: 12 May 2005

Howie P, Cameron JA, Nugent JA, Cloete JA, Ponnar JA

Catchwords

Revenue – Income tax – Income Tax Act, s 8(4)(a) – whether proceeds received by appellant as consideration for disposal of portion of its interest in partnership to be included in taxable income – whether recoupment allowances granted in terms of s 14bis in respect of aircraft that had been acquired, and was still being used by partnership

Appealed from ITC

Privest Employee Solutions (Pty) Ltd v Vital Distribution Solutions (Pty) Ltd (126/2004)

Date to be heard: 12 May 2005

Mpati DP, Zulman JA, Lewis JA, Jafa JA, Mlambo JA

Catchwords

Contract – interpretation – whether time sheets for period of contract authorised in terms of and in accordance with provisions of agreement

Appealed from WLD

Transnet Limited v Leon Rubenstein (238/2004)**Date to be heard:** 13 May 2005**Mpati DP, Zulman JA, Mthiyane JA, Lewis JA, Ponnann JA****Catchwords**

Contract – tacit term cancellation – whether notice given reasonable

Appealed from TPD**SH Symington and Others v Pretoria-Oos Privaat Hospitaal Bedryfs (Edms) Bpk (077/2004)****Date to be heard:** 13 May 2005**Scott JA, Streicher JA, Cameron JA, Brand JA, Cloete JA****Catchwords**

Prescription – Prescription Act 68 of 1969, s 13(1)(d) – whether respondent's cause of action existed when first appellant alleged to have diverted lease agreement away from respondent or whether respondent's cause of action arose each month as rentals were received in relation to lease agreement – whether "once and for all" rule applies to claims based on breach of fiduciary duty

Appealed from TPD**Axiam Holdings Ltd v Deloitte & Touche (303/2004)****Date to be heard:** 16 May 2005**Howie P, Navsa JA, Cloete JA, Heher JA, Jafta JA****Catchwords**

Delict – negligent breach of duty by auditor resulting in pure economic loss

Appealed from WLD**JMC Prinsloo and Another v The Ndebele-Ndzundza Community and Others (106/2004)****Date to be heard:** 16 May 2005**Scott JA, Cameron JA, Mthiyane JA, Lewis JA, Ponnann JA****Catchwords**

Land Rights – Restitution of Land Rights Act 22 of 1994, s2 – whether first respondent held rights in land as a community after 19 June 1913 and were dispossessed of such rights as result of past racially discriminatory laws or practices – whether just and equitable compensation received in respect of dispossession

Appealed from LCC. 1 81 JS 2003 (5) SA 375 (LCC); [2003] 1 All SA 608 (LCC)**Road Accident Fund v MR Mtati obo Zukhanye (332/04)****Date to be heard:** 17 May 2005**Mpati DP, Zulman JA, Farlam JA, Van Heerden JA, Jafta JA****Catchwords**

Road Accident Fund – Multilateral Motor Vehicle Accident Fund 93 of 1989, s 40 – whether foetus in utero to be regarded as a 'person'

Appealed from ECLD**MR Ralinala v Road Accident Fund (312/04)****Date to be heard:** 17 May 2005**Streicher JA, Brand JA, Nugent JA, Lewis JA, Mlambo JA****Catchwords**

Road Accident Fund – whether appellant proved causal negligence on part of driver of unidentified truck – whether appellant alleged physical contact between his vehicle and unidentified truck – whether respondent entitled to rely on defence of lack of physical contact between two vehicles – whether appellant proved there was a collision – whether regulation 2(1)(d) *ultra vires* provisions of RAF Act, s 17(1)(a)

Appealed from VPD

KH Maleka v The State (408/2004)

Date to be heard: 17 May 2005

Cameron JA, Conradie JA, Heher JA

Catchwords

Criminal law – culpable homicide – whether State proved beyond reasonable doubt that appellant caused death of deceased – whether appellant exceeded bounds of self-defence – whether sentence of 6 years appropriate

Appealed from BPD

The Commissioner of SARS v Stand 290 Wynberg (Pty) Ltd and Others (324/2004)

Date to be heard: 19 May 2005

Howie P, Brand JA, Nugent JA, Conradie JA, Van Heerden JA

Catchwords

Insolvency – whether liquidator can be enjoined by terms of an agreement to act as agent, receive money and make payment thereof otherwise than strictly in accordance with Insolvency Act – whether terms of written agreement enjoin liquidator to deal with money received pursuant to agreement – whether agreement constituted *stipulatio alteri* in favour of respondent

Appealed from TPD

S Prophet v NDPP (502/04)

Date to be heard: 19 May 2005

Mpati DP, Streicher JA, Mthiyane JA, Cloete JA, Ponnann JA

Catchwords

Prevention of Organised Crime – Prevention of Organised Crime Act 121 of 1998, s 50(1)(a), interpretation of – whether property can be regarded as an “instrumentality” in terms of Act – Whether sufficiently close link between property and its criminal use – whether property has a close enough relationship to actual commission of offence to render it an instrumentality – constitutional interpretation of chapter 6 of the Act

Appealed from CPD. 2003 (2) SACR 287 (C); [2003] JOL 11 160 (C)

P Liebenberg v The State (156/2003)

Date to be heard: 19 May 2005

Farlam JA, Jafta JA, Mlambo JA

Catchwords

Criminal law – conviction – rape and robbery – whether alibi evidence of appellant reasonably possibly true – whether defence witness corroborated evidence of appellant in material respect – whether evidence of witness correctly rejected

Appealed from CPD

The Commissioner of the SARS v Formalito (Pty) Ltd (328/04)

Date to be heard: 20 May 2005

Mpati DP, Streicher JA, Brand JA, Lewis JA, Ponnann JA

Catchwords

Review – whether Promotion of Administrative Justice Act 3 of 2000 applicable to review applications – whether time provision in s 7(1) of PAJA complied with – whether appellants' decisions reviewable – Customs and Excise Act 91 of 1964, s 44(11)(a), interpretation of

Appealed from TPD. [2003] JOL 11275 (T)

MJ Makume and Another v Northern Free State District Municipality and Others (275/04)

Date to be heard: 20 May 2005

Scott JA, Zulman JA, Farlam JA, Cameron JA, Mthiyane JA

Catchwords

Local authorities – municipal councils – application for reinstatement of executive mayor and member of executive committee – whether 1st appellant resigned his position as executive mayor of 1st respondent – whether removal of appellants from their posts unlawful

Appealed from OPD

The Director of Public Prosecutions v EC Olivier (042/05)

Date to be heard: 20 May 2005

Navsa JA, Conradie JA, Mlambo JA

Catchwords

Criminal law – sentence – theft of trust money by estate agent – whether six years imprisonment wholly suspended plus fine and order of repayment shockingly inappropriate

Appealed from TPD

Maritz and Another v Maritz & Pieterse Inc. (In liquidation) (175/04)

Date to be heard: 23 May 2005

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

Catchwords

Insolvency – whether appellants personally liable for contractual liabilities of liquidated attorneys' practice – whether order authorising Registrar to issue warrant of execution in respect of claims correctly granted – whether claims validly and regularly proved – whether respondent had *locus standi* – whether appellants granted opportunity to defend claims of creditors

Appealed from TPD

Minister of Education (Western Cape) v Mikro Primary School Governing Body

Date to be heard: 23 May 2005

Streicher JA, Cameron JA, Brand JA, Lewis JA, Mlambo JA

Catchwords

Education – Primary school – Afrikaans medium school – whether school can be directed to give English medium instruction

Appealed from CPD

JM Sindane v The State (388/2004)

Date to be heard: 23 May 2005

Mthiyane JA, Jafta JA, Ponnann JA**Catchwords**

Criminal law – sentence – 3 counts of fraud – 4 years imprisonment on each count – whether sentence shockingly inappropriate – whether appellant played leading role in crimes – whether too much weight placed on appellant’s previous convictions

Appealed from TPD

ABSA Bank Ltd v Consolidated News Agencies (Pty) Ltd (in liquidation) and Others (330/04)

Date to be heard: 24 May 2005

Zulman JA, Navsa JA, Brand JA, Nugent JA, Cloete JA

Catchwords

Insolvency – whether liquidators of cedent company entitled to institute legal proceedings to prove ceded claim against insolvent company

Appealed from TPD

Vidavsky, Favish v Body Corporate of Sunhill Villas (227/04)

Date to be heard: 25 May 2005

Streicher JA, Farlam JA, Conradie JA, Heher JA, Van Heerden JA

Catchwords

Arbitration – whether portions of arbitration award made in favour of appellant be made an order of court – whether arbitration award made in circumstances where gross irregularity on part of arbitrator void or voidable – whether party against whom award was made can apply to have award set aside in terms of Arbitration Act 42 of 1965, s 33

Appealed from WLD

4. JUDGMENTS MARKED NOT REPORTABLE

(Available from library)

AC Jonker and Another v The State (549/03)

- delivered 11 March 2004

Islamic Bank Ltd (in liquidation) v Sattar Discount Crockery (610/02)

- delivered 11 March 2004

J Coetzee v E Fourie and Another (61/03)

- delivered 23 March 2004

J Richards v The State (163/03)

- delivered 25 March 2004

Andersen’s Seeds & Another v VC Dalbock (338/02)

- delivered 31 March 2004

S Padayachee v The State (341/ 03)

- delivered 20 May 2004

M Dweba v The State (309/03)

- delivered 21 May 2004

Fourie v Re -Marius Hamel (199/03)

- delivered 27 May 2004

Oupa Hlophe v The State (283/02)

- delivered 28 May 2004

AS Murray v The Cape Joint Pension Fund and Another (241/03)

- delivered 28 May 2004

Vilmor Boerdery BK v Oos-Vrystaat Kaap Koöperasie BPK (492/03)

- delivered 1 June 2004

AM Hancock v The State (333/03)

- delivered 2 June 2004

Yusuf Dada v The State (366/2003)

- delivered 2 September 2004

MA Kharafi Construction (Pty) Ltd v Makhosi Holdings (Pty) Ltd (094/2003)

- delivered 23 September 2004

Elo Marketing Holdings Bpk and Another v Middleton (339/2003)

- 29 September 2004

Vhavenda Brickworks (Pty) Ltd v W Ferreira (319/2003)

- delivered 29 September 2004

SB de Beer v The State (121/2004)

- delivered 12 November 2004

Truck and General Insurance Company (Pty) Ltd v Simrak Trucking (546/2003)

- delivered 19 November 2004

Ismail Bhamjee v Total South Africa (Pty) Ltd (360/2004)

- delivered 25 November 2004

Commissioner for the South African Revenue Services v Nashua Ltd (597/2003)

- 30 November 2004

DM De Lange v State (563/2003)

- delivered 1 December 2004

The Attorneys Fidelity Fund Board of Control v E Burns NO of Dynamic Services Investment Trust (510/2003)

- delivered 2 December 2004

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

5. CASES DISMISSED WITHOUT WRITTEN REASONS

Dischem Pharmacies (Pty) Ltd t/a Mondeor Pharmacy v United Pharmaceutical Distributors (Pty) Ltd t/a UPD Lea Glen (99/03)

- 9 March 2004

Textile Industry Provident Fund v First National Bank of SA (632/02)

- 15 March 2004

MJ Mosomane and Others v Semang Housing Corporation (Pty) Ltd (122/03)

- 10 May 2004

TG Bosch and Others v Cutfin (Pty) Ltd (424/2003)

- 19 August 2004

MCM Sellick v Minister of Safety and Security (343/03)

- 30 August 2004

Catgraphics CC v Africon Engineering International (Pty) Ltd (600/2003)

- 3 November 2004

JC Batista Gouveia v Certain Underwriters at Lloyds of London (454/2003)

- 15 November 2004

Satish Buldeo v Ranjith Choonilall NO and Another (072/2004)

- 17 March 2005