



**SUBMISSION AND RESEARCH
REPORT ON THE JUDICIAL RECORD
OF NOMINEES FOR APPOINTMENT
TO THE CONSTITUTIONAL COURT**

OCTOBER 2016

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INTRODUCTION

1. The Democratic Governance and Rights Unit (DGRU) is an applied research unit based in the Department of Public Law at the University of Cape Town. DGRU's vision is of a socially just Africa, where equality and constitutional democracy are upheld by progressive and accountable legal systems, enforced by independent and transformative judiciaries, anchored by a strong rule of law. The mission of the DGRU is to advance social justice and constitutional democracy in Africa by conducting applied and comparative research; supporting the development of an independent, accountable and progressive judiciary; promoting gender equality and diversity in the judiciary and in the legal profession; providing free access to law; and enabling scholarship, advocacy and online access to legal information. The DGRU has established itself as one of South Africa's leading research centres in the area of judicial governance.
2. The DGRU recognises judicial governance as a special focus because of its central role in adjudicating and mediating uncertainties in constitutional governance. The DGRU has an interest in ensuring that the judicial branch of government is strengthened, is independent, and has integrity. The DGRU's focus on judicial governance has led to it making available to the Judicial Service Commission (JSC) research reports on candidates for judicial appointment, and to DGRU researchers attending, observing and commenting on the interviews of candidates for judicial appointment.¹ Such reports have been compiled for the JSC interviews in September 2009, and for all further JSC interviews from October 2010 onwards.
3. The intention of these reports is to assist the JSC by providing an impartial insight into the judicial records of the short-listed candidates. The reports are also intended to provide civil society and other interested stakeholders with an objective basis on which to assess candidates' suitability for appointment to the bench.

METHODOLOGY OF THIS REPORT

4. At the DGRU's annual advisory board meeting in August 2016, there was significant discussion of how the format of our reports might be changed in order to make them more useful to readers of our reports. Based on these discussions, a template was developed for the new style format, which we attempted to implement for the October 2016 sitting of the JSC.
5. The major aim of this new style of report is to attempt to present a more comprehensive overview of a candidate's track record. Rather than presenting summaries of a select sample of judgments and articles written by the candidates, we now seek to present all a candidate's judgments that can be found from searching the major legal databases, with short quotations highlighting particularly significant sections of the most interesting judgments and articles. We have also endeavoured to tabulate the judgments to give a total of the number of judgments written, the number of cases heard, as well as instances of dissenting and separate concurring judgments. In our view, such information can assist to assess factors such as a candidate's industry, independence, and ability to build consensus.

¹ The reports are available at <http://www.dgru.uct.ac.za/research/researchreports/>

6. As with our previous reports, we have continued to note the dates on which cases are heard and judgments delivered. In the new report, we specifically highlight cases which have been delivered in a longer time period than the 3 months identified by the Norms and Standards for the Performance of Judicial Functions. We do this not to target any individual candidate, but to respond to the centrality of this issue in JSC interviews in recent years. And in doing so, we acknowledge that there may be good reasons for delays – the information is merely presented to be of possible assistance.
7. The new style report also integrates academic commentary on candidates' judgments, where we have been able to locate these. We also include speeches given by the candidates, as well as any other media coverage of them which appears relevant to their suitability for judicial office.
8. As with our previous reports, we do not advocate for or against the appointment of individual candidates. We do not provide our own analysis or criticism of the judgments summarised, although as discussed above, we have tried to integrate academic comment on judgments into the report. Our intention in producing these reports continues to be to attempt to move beyond the partisan and personalised debates that have at times surrounded the suitability of candidates for judicial appointment. Instead, we hope to further a deeper analysis of the criteria in terms of which judicial appointments are made, and to enable stakeholders to assess how a candidate's judicial track record matches up to those criteria. The report thus does not seek to advocate, explicitly or implicitly, for the appointment of any candidate.
9. Whilst the template for this new style of report looked promising, it became apparent once research on the candidates had been ongoing that it would be an extremely challenging task to complete. Research began by focusing on the Constitutional Court candidates. The significant experience of these candidates made compiling the new style of research reports extremely time consuming. This challenge was compounded by disruptions at the University caused by protest action. This denied researchers access to the law library and other university resources, and in some instances researchers were further hampered by technological problems and a lack of suitable facilities to work away from campus.
10. In these circumstances, a decision was taken to focus this report on candidates for the Constitutional Court only. Even then, the task of finalising this report has been a big and challenging one. It is a source of great regret that this report has not been completed more timeously, and has not been able to cover more candidates.
11. Nevertheless, this experience will no doubt be valuable in helping us to develop and fine tune the structure of our reports. We welcome any feedback concerning the new style of the report. This will no doubt prove to be a learning experience and a first step in developing our reports further. Indeed, we had hoped to include even more information (for example, looking at court rolls to identify the type of cases that candidates hear) that simply proved impossible to do in these circumstances.

SUBMISSIONS REGARDING THE INTERVIEWS

12. In this submission, we wish to outline briefly some of the criteria we think should inform an assessment of the suitability of candidates for the Court. These suggestions will be familiar to readers of our previous submissions.²
- 12.1. A commitment to constitutional values and to apply the underlying values of the Constitution (human dignity, freedom and equality), with empathy and compassion, and with due regard to the separation of powers and the vision of social transformation articulated by the Constitution;
 - 12.2. Independence of mind: judges must have the courage and disposition to act independently and free from partisan political influence and private interests;
 - 12.3. A disposition to act fairly and impartially and an ability to act without fear, favour or prejudice;
 - 12.4. High standards of ethics and honesty;
 - 12.5. Judicial temperament, encompassing qualities such as humility, open-mindedness, courtesy, patience, thoroughness, decisiveness and industriousness;
 - 12.6. As well as being qualified in respect of the general body of law, Constitutional court judges must also have expertise in constitutional law, and be equipped to give meaning to constitutional values.
13. In concluding, we note that, as was the case in the 2012 and 2015 interviews, the JSC is interviewing only four candidates for a Constitutional Court vacancy – the bare minimum of candidates required for the interviews to go ahead. We have detailed our concerns regarding this issue in previous reports, and will not repeat them here. But we do wish to register our concern that there is again a distinct lack of candidates being put forward for promotion to the country's highest court.

ACKNOWLEDGEMENTS

14. This research was conducted by Chris Oxtoby, DGRU senior researcher, and Godknows Mudimu, Ruth Browne and Liat Davis, DGRU research assistants. We particularly wish to acknowledge and thank our research assistants for their hard work and dedication in the testing circumstances described above.
15. We are grateful for the financial support of the Open Society Foundation and the Raith Foundation for making this project possible.

DGRU

30 September 2016

² These are based on research by Advocate Susannah Cowen into the qualities of an ideal South African judge, available at <http://www.dgru.uct.ac.za/usr/dgru/downloads/Judicial%20SelectionOct2010.pdf>

JUDGE RONNIE BOSIELO

BIOGRAPHICAL INFORMATION AND QUALIFICATIONS

Date of Birth: 19 August 1957

Advanced Diploma in Corporate Law, University of Johannesburg (1996)

LLM, University of Johannesburg (1992)

LLB, University of Limpopo (1983)

B.luris, University of Limpopo (1981)

CAREER PATH

Acting Justice of the Constitutional Court (2013, 2016)

Justice of the Supreme Court of Appeal (2009 – to date)

Acting Judge President, Northern Cape High Court (2007)

Judge of the High Court, North Gauteng High Court (2001 - 2009)

Acting Judge, Northern Cape High Court and South Gauteng High Court (2000)

Advocate (1999 – 2000)

Attorney, Ronnie Bosielo Attorneys (1992 – 1998)

Attorney, Bosielo Motlanthe & Lekabe Attorneys (1986 - 1992)

Candidate Attorney, M.E. Surty Attorneys (1984 – 1986) [CV reads 1996 but this must be an error in light of dates of other employment contained in the CV]

Chairperson, Black Lawyers' Association North West branch (1992 – 1999)

Member of the Magistrates' Commission, North West (1997 – 1998)

President, Law Society of Bophuthatswana (1996 – 1998)

Member of the Law Society of the Transvaal (1986 – 1998)

JUDGMENTS

We were unable to complete full tables of judgments for this candidate, as was done for other candidates. Our search identified a total of 148 judgments written by the candidate. These are broken down as follows:

- 3 in the Constitutional Court;
- 33 in the Supreme Court of Appeal, including 28 unanimous judgments; 2 judgments where another judge wrote a separate concurrence; 2 where another judge dissented; and one dissenting judgment written by the candidate;
- 112 in the High Court.

In terms of article 5.2.6 of the Norms and Standards for the Performance of Judicial Functions,³ “[s]ave in exceptional circumstances where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing.”

From the judgments identified in this research where details of the date on which the case was heard and the date on which judgment was delivered were available, we have identified the following cases as having been delivered in a longer period than the 3 months identified by the Norms and Standards:

- *Grootboom v National Prosecuting Authority* (nearly 5 months);
- *McBride v Minister of Police* (nearly 4 months);
- *Saayman v RAF* (nearly five months);
- *Ussher Investment v Elite Trade Centre* (over 8 months).

It should be noted that of these judgments, all bar *Ussher Investment* were cases heard by a panel of judges, either on the Constitutional Court or Supreme Court of Appeal.

CONSTITUTIONAL COURT

R V MINISTER OF SAFETY AND SECURITY (CENTRE FOR CHILD LAW AMICUS CURIAE) 2016 JDR 1455 (CC).

Arrest and detention of juveniles in terms of s 40(1)(j) of the Criminal Procedure Act. Found that discretion to arrest must comply with the Bill of Rights, and that the detention of a child must be a measure of last resort. The appeal was upheld.

GROOTBOOM v NATIONAL PROSECUTING AUTHORITY AND ANOTHER 2014 (2) SA 68 (CC).

Case heard 23 May 2013; Judgment delivered 21 October 2013.

³ Government Gazette No. 37390, 147, 28 February 2014.

Justifiability of discharge from employment for absencing from work in terms of the Public Service Act.

MCBRIDE V MINISTER OF POLICE 2016 JDR 1623 (CC)

Case heard 17 May 2016; Judgment delivered 6 September 2016

This case dealt with the accountability and independence of the Independent Police Investigate Directorate (IPID), and set aside the decision of the Minister to suspend and institute disciplinary proceedings against the executive director of IPID.

“The fact that IPID is required by both the Constitution and the IPID Act to be independent does not mean that it cannot be held accountable. Like all other organs of state, IPID must be accountable for its actions. To be insulated from undue political interference or control does not mean that IPID should be insulated from political accountability. Accountability is one of the important values enshrined in our Constitution – a basic tenet for good governance. Hence the requirement that it must submit reports about its activities to the Minister who in turn will place them before Parliament.” [Paragraph 28]

“It is axiomatic that public servants are government employees. They are beholden to government. They operate under government instructions and control. The authority to discipline and dismiss them vests in the relevant executive authority. This does not require parliamentary oversight. To subject the Executive Director of IPID to the same regime is to undermine or subvert his independence. It is not congruent with the Constitution.” [Paragraph 30]

“Without adequate independence, it would be easy for the Minister to usurp the power of the Executive Director under the guise of exercising political accountability or oversight over IPID in terms of section 206(1) of the Constitution. ... Undoubtedly, such conduct has the potential to expose IPID to constitutionally impermissible executive or political control. That action is not consonant with the notion of the operational autonomy of IPID as an institution. ...” [Paragraph 40]

SUPREME COURT OF APPEAL

UNANIMOUS JUDGMENTS WRITTEN BY THE CANDIDATE

HILDERBRAND V THE STATE (2015) ZASCA 174.

Case heard 4 November 2015; Judgment delivered 26 November 2015.

Suspension of High Court sentence of 30 days imprisonment for conviction on two counts of assault with intent to cause grievous bodily harm on two children.

DIPHOLO V THE STATE 2015 ZASCA (2015) ZASCA 120.

Case heard 2 September 2015; Judgment delivered 16 September 2015.

Whether the SCA has jurisdiction to hear appeals on merits directly from magistrate's court.

DLAMINI V THE STATE (2015) ZASCA 50.

Case heard 13 March 2015; Judgment delivered 27 March 2015.

Whether leave to appeal against a conviction and sentence by a regional court, where two high court judges refused the application and two others granted the application, ought to have been granted.

MASHIGO AND ANOTHER V THE STATE (2015) ZASCA 65.

Case heard 2 March 2015, Judgment delivered 14 May 2015.

Appeal against conviction for rape.

S V NDLANZI 2014 (2) SACR 256 (SCA).

Case heard 27 February 2014; Judgment 28 March 2014.

Whether the appellant's contention that his Advocate failed to carry out his instructions properly, constituted an irregularity. Conviction for murder set aside and replaced with culpable homicide.

S V PISTORIUS (2014) (2) SACR 31 (SCA).

Case heard 13 March 2014, Judgment delivered 1 April 2014.

Proper judicial approach in relying on one witness, and whether the court a quo erred in finding that the guilt of the appellant was proved beyond reasonable doubt.

STEYN NO V RONALD BOBROFF AND PARTNERS 2013 (2) 311 (SCA).

Case heard 8 November 2012; Judgment delivered 29 November 2012.

Duty of attorneys to execute mandate from clients with diligence, skill and care.

BAILEY V S (454/2011) [ZASCA] 154.

Case heard 18 September 2012; Judgment 1 October 2012.

Dismissed an appeal against a statutory prescribed sentence of life.

MINISTER OF SAFETY AND SECURITY AND ANOTHER V SWART 2012 (2) SACR 226 (SCA).

Case heard 5 March 2012; Judgment delivered 22 March 2012.

Arrest without a warrant under section 40 (1) (b) of the Criminal Procedure Act.

PILLAY V THE STATE (2012) ZASCA 43.

Case heard 23 February 2012, Judgment delivered 29 March 2012.

Dismissal of an appeal against conviction for rape and indecent assault.

RADEMAN V MOQHAKA MUNICIPALITY AND OTHERS 2012 (2) SA 387 (SCA).

Case heard 16 November 2011; Judgment delivered 1 December 2011.

Powers of a Municipality to discontinue supply of electricity to defaulters. Municipality justified in discontinuing such supply without a court order.

Upheld in *Rademan v Moqhaka Local Municipality and Others* (CCT 41/12) [2013] ZACC 11; 2013 (4) SA 225 (CC); 2013 (7) BCLR 791 (CC).

S V MOKELA 2012 (1) SACR 431 (SCA).

Case heard 5 September 2011; Judgment delivered 29 September 2011.

Sentencing, and the importance of judicial officers to give reasons for their judgments.

MATHEBULA AND ANOTHER V S (2011) ZASCA 165.

Case heard 5 September 2011; Judgment delivered 29 September 2011.

Reduction of sentence for robbery with aggravating circumstances.

DIRECTOR OF PUBLIC PROSECUTIONS V THABETHE (2011) ZASCA 186.

Case heard 15 September 2011; Judgment 30 September 2011.

The respondent had been convicted of rape and sentenced to ten years' imprisonment which was wholly suspended for five years on certain conditions. The appeal considered the appropriateness of a sentence based on restorative justice, and found the sentence to be inappropriate, and set aside. Replaced with a sentence of 10 years' imprisonment.

MORELENG AND DISTRICT TAXI ASSOCIATION AND ANOTHER V NORTH WEST PROVINCIAL DEPARTMENT OF TRANSPORT AND OTHERS (25/10) 2011 ZASCA 138.

Case heard, 29 August 2011; Judgment delivered 23 September 2011.

Setting aside the decision of the North West Provincial Operating License Board to grant operating licenses for non-compliance with certain jurisdictional facts.

OOSTHUIZEN V ROAD ACCIDENT FUND 2011 (6) SA 31 SCA.

Case heard 16 May 2011; Judgment delivered 6 July 2011.

Held that the High Court can only exercise its inherent jurisdiction in relation to the regulation of its own process when confronted with a case over which it already has jurisdiction, and when faced with procedures and rules of the court which do not provide a mechanism to deal with an instant problem.

S V ENGELBETCHT (2011) (2) SACR 540 SCA.

Case heard 7 March 2011, Judgment delivered 17 May 2011.

Factors to be taken into account when sentencing and the correctness of the sentence(s).

"Stripped of any unnecessary frills it appears to me that the only real issue is whether and to what extent the appellant had knowledge of, and was involved in, this fraudulent scheme. That this was a scheme intended to defraud SARS of money in respect of VAT admits of no doubt. ..." [Paragraph 16].

"... I fail to see how, assuming the sentences imposed on the appellant's erstwhile co-accused were unduly lenient, the appellant could be entitled to benefit from any such alleged undue leniency committed by the court which sentenced them. Such an approach to sentencing would lead to a travesty of the principles underlying sentencing.' [Paragraph 29]

"I agree that there is a need to impose appropriate sentences with a deterrent effect, particularly in matters involving fraud which is so endemic in our society. However, I am of the view that the court below did not give proper consideration to the cumulative effect of the sentences imposed on the

appellant. What is clear is that the various counts of fraud and the one of corruption all emanate from the same transactions. I regard it as fair that the sentences be ordered to run concurrently to ameliorate the severity thereof." [Para 31]

SLIM ROAD INVESTMENT CC V MORGAN AIR CARGO (PTY) LTD (02/10) ZASCA 081 (27 MAY 2011).

Rescission of a contract of sale on the grounds of fraudulent misrepresentation.

MATLOU AND ANOTHER V THE STATE (2011) (1) BCLR 54 SCA.

Case heard 16 March 2010; Judgment delivered 31 March 2010.

Admissibility of incriminating statements and a pointing-out of the deceased's body and firearm.

LAW SOCIETY OF THE NORTHERN PROVINCES V VILJOEN; LAW SOCIETY OF THE NORTHERN PROVINCES V DYKES (2010) ZASCA 176.

Case heard 24 November 2010; Judgment 2 December 2010.

Interpretation of the Attorneys Act.

NOKENG TSA TAEMANE LOCAL MUNICIPALITY V DINOKENG PROPERTY OWNERS ASSOCIATION AND OTHERS (2010) ZASCA 176.

Case heard 27 August 2010; Judgment 30 September 2010.

Authority of local municipality to levy property rates.

"It is clear that the relationship of the municipality and the association is frosty. Sadly the record reveals a disruptive and obstructive attitude by the association. The association used every conceivable legal stratagem to avoid the legal obligations to pay rates and taxes. By its conduct it has involved the municipality in a long drawn out and expensive litigation. It is trite that municipalities are assigned the difficult task to govern and administer their own areas. Importantly municipalities have a constitutional mandate to spend their resources in an efficient and cost effective manner for the benefit of their communities and in promoting social and economic development. It is inexcusable that municipalities should be forced to waste their scarce resources in defending frivolous and spurious claims in our courts instead of using same to provide essential services to the ratepayers and thereby improving the lives of the people. Despite the submissions to the contrary by the association's counsel there is no reason why costs should not follow the result." [Paragraph 32].

SAAYMAN V ROAD ACCIDENT FUND 2011 (1) SA 106 (SCA).

Case heard 6 May 2010, Judgment delivered 30 September 2010.

Question of what amounts to an admission during civil proceedings.

SMYTH AND ANOTHER V MEW 2010 ZASCA 56 (SCA).

Case heard 22 February 2010; Judgment delivered 1 April 2010.

Upheld a decision to grant a winding-up order instead of an order in terms of s 36 of the Close Corporations Act.

THEART AND ANOTHER V MINNAAR NO; SENEKAL V WINSOR 174 (PTY) LTD 2010 (3) SA 327 (SCA).

Case heard 5 November 2009; Judgment delivered 3 December 2009.

Statutory eviction, Unlawful occupation - Notice requirements in magistrates' court proceedings.

DPP V MNGOMA 2010 (1) SACR 27 SCA.

Case heard 23 November 2009; Judgment delivered 1 December 2009.

Increased sentence for murder from 5 years to 10 years' imprisonment.

"... [I]t is crucial to bear in mind that the deceased was murdered four days after the accused had caught her under suspicious circumstances. In other words the accused did not act on the spur of the moment. ..." [Paragraph 8].

"The accused was 24 years old at the time; he had only progressed up to standard 5 in his scholastic career; for all intents and purposes he can be described as uneducated and unsophisticated; because of his low level of education, he was only able to do odd jobs; he had been living with the deceased as a live-in lover for 6 years and they had one child together. Importantly, the accused was a first offender. He pleaded guilty to the charge and showed genuine penitence. The court below found the form of intent to be *dolus eventualis* and not *dolus directus*. There is no doubt that these are positive factors in favour of the accused." [Paragraph 9].

"... However, this does not excuse the accused's conduct. Viewed against the grim facts of this case, I agree ... that the sentence imposed on the accused is shocking and startlingly disproportionate to the gravity of the crime that he committed." [Paragraph 13]

"... [O]ne should not allow 'maudlin sympathy' for the accused to unduly influence one's objective and dispassionate consideration of an appropriate sentence. I am of the view that the sentence imposed is so disturbingly lenient that it has the effect of trivialising violence. ..." [Paragraph 15]

ZURICH V THE STATE (2010) (1) SACR 171 SCA.

Case heard 31 August 2009; Judgment delivered 22 September 2009.

Admissibility of improperly obtained evidence.

NTSGANGASE V MEC FOR FINANCE, KWAZULU-NATAL AND ANOTHER 2010 (3) SA 201 (SCA).

Case heard 7 September 2009, Judgment delivered 28 September 2009.

Statutory review of proceedings under the Labour Relations Act.

MINISTER OF SAFETY AND SECURITY V TYULU 2009 (5) 85 SCA.

Case heard 7 May 2009; Judgment delivered 27 May 2009.

Arrest without a warrant for drinking and driving.

JUDGMENTS WRITTEN BY CANDIDATE WHERE AT LEAST ONE OTHER JUDGE WROTE A SEPARATE
JUDGMENT

S V MAKATU 2014 (2) SACR 539 (SCA).

Case heard 3 September 2013; Judgment delivered 25 October 2013.

Appeal against convictions for murder, rape and robbery rejected. Life sentence of imprisonment set aside and replaced, on the grounds of a defective charge sheet. Majority concurred with Bosielo JA's judgment, but for findings regarding delays in the case. Navsa ADP (Pillay JA and Meyer AJA concurring) said the following (at paragraph 61):

"Bosielo JA calls for an urgent investigation into the disturbing trend referred to by him, and paragraph 4 of the order proposed by him requires a host of authorities involved in the administration of justice to conduct an investigation into the delay he complains of. I have concerns about the breadth of the order proposed by him and of its relevance to the present case and to the cases cited by him. ..."

NUBE V THE STATE (2010) ZASCA 136.

Case heard 16 March 2010; Judgment delivered 31 March 2010.

Cloete JA (Leach JA concurring), concurred with Bosielo JA's judgment but for different reasons. The case dealt with whether the admissibility of evidence of a pointing out of the deceased body's body and a firearm was admissible.

JUDGMENTS WRITTEN BY THE CANDIDATE WHERE AT LEAST ONE OTHER JUDGE WROTE A
DISSENTING JUDGMENT

THOM V BA-PHALABOWA MUNICIPALITY (2015) ZASCA 95.

Heard 21 May 2015; Judgment 01 June 2015.

The Municipality sought an order by notice of motion to be granted access through appellant's property to clear a nuisance. The Municipality alleged that it could only gain access to the site to be cleared through the appellant's property. The application was dismissed (Bosielo JA, Wallis JA and Dambuza and Meyer AJA concurring). Willis JA wrote a separate judgment, concurring in part and dissenting in part.

MOLOTLEGI V MOKWALASE (2010) 4 ALL SA 258 (SCA).

Case heard 8 March 2010; Judgment 1 April 2010.

Misdirection by trial court in a defamation case, appeal upheld in part. Heher JA dissented, and would have struck the appeal from the roll.

DISSENTING JUDGMENTS WRITTEN BY THE CANDIDATE

MAZIBUKO AND ANOTHER V NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS 2009 (6) SA 79 (SCA).

Case heard 12 March 2009; Judgment delivered 26 May 2009.

Forfeiture of immovable property.

HIGH COURT JUDGMENTS

S V MAPATSI 2009 JDR 0665 (T).

Case heard 21 May 2007; Judgment 21 May 2007.

The record of trial proceedings was lost, and there were no reasonable prospect of reconstruction. Held that fairness demanded that conviction and sentence be set aside.

“Leave to appear was duly granted on the 27th of May 2005. This unfortunately turned out to be a pyrrhic victory for the appellant. ... The appellant could not prosecute his appeal due to the fact, that the State was not in a position to furnish him with a complete and proper record of the proceedings ...” [Page 2].

“The appellant has been frustrated in his quest for justice to pursue his appeal ... as clearly provided for in section 35 (3)(o) of the Constitution. Such a state of affairs has no place in our new Constitutional tapestry which is based on fairness and justice. The dictates of fairness and justice demands that in order to avoid a travesty of justice the conviction and sentence be set aside.” [Page 7].

LAW SOCIETY OF THE NORTHERN PROVINCES V NQOKO 2009 JDR 0927 (GNP).

Heard 10 May 2007; Judgment delivered 10 May 2007.

Suspension of attorneys

THE DIRECTOR OF PUBLIC PROSECUTIONS V KING 2008 JDR 0405 (T).

Case heard 24 April 2008, Judgment delivered 24 April 2008.

Application for final postponement.

KHABISI NO AND ANOTHER V AQUARELLA INVESTMENT 83 (PTY) LTD AND OTHERS 2008 (4) SA 195 (T).

Case heard 22 June 2007; Judgment delivered 22 June 2007.

Environmental law: compliance with ministerial compliance notices peremptory.

KHABISI V AQUARELLA INVESTMENT 83 (PTY) LTD 2008 (4) SA 195 (T).

Case heard 22 June 2007; Judgment delivered 22 June 2007.

Weighing a “serious and complex conflict” between the fundamental rights to property and to a safe environment. Interdict against intended development granted.

S V SHILUBANE 2008 (1) SACR 295 (T)

Case heard 20 June 2005, Judgment delivered 20 June 2005.

Restorative justice should be preferred over direct imprisonment. Factors to be taken into account during sentencing.

CITY OF TSHWANE METROPOLITAN MUNICIPALITY V RABALOA 2008 JDR 1365 (T).

Case heard 22 September 2004; Judgment delivered 22 September 2004.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act. Evictions must be done in a humane manner, with understanding and compassion.

S V MAZIBUKO 2007 JDR 0741 (T).

Case heard 6 August 2007; Judgment delivered 6 August 2007.

Sentence of 3 years' imprisonment for theft of chocolates valued at R49 inappropriate, magistrate ought to have considered other sentencing options.

VARI-DEALS 101 (PTY) LTD T/A VARI DEAL V SUNSMART PRODUCTS (PTY) LTD 2007 JDR 0727 (T).

Case heard 3 August 2007; Judgment delivered 3 August 2007.

Set aside the taxation of bill of costs.

KLOPPER NO V THE MASTER OF THE HIGH COURT 2007 JDR 0724 (T).

Case heard 30 May 2007; Judgment delivered 3 August 2007.

Dismissal of an application by a trustee to have his remuneration increased.

OSCON DOMESTIC INSTALLATIONS CC V POLOKWANE LOCAL MUNICIPALITY 2007 JDR 0726 (T).

Case heard 1 June 2007; Judgment delivered 3 August 2007.

Date of the commencement of the running of prescription in a tender dispute.

THE LAW SOCIETY OF THE NORTHERN PROVINCE V MAFISA (NHLABATHI) 2007 JDR 0306 (T).

Case heard 19 April 2007; Judgment delivered 19 April 2007.

Dismissed application to have the respondent struck off the role of advocates.

S V SIBIYA 2007 JDR 0217 (T).

Case heard 29 January 2007; Judgment delivered 29 January 2007.

The appropriateness of an effective sentence of twelve years' imprisonment following convictions for fraud.

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS V PELSER 2006 JDR 0615 (T).

Confirmation of provisional restraint order.

VAN HEERDEN INC V MARAIS NO 2006 JDR 0776 (T).

Upheld claim for costs by attorneys against a liquidator of a company.

USSHER INVESTMENT (PTY) LTD V ELITE TRADE CENTRE 2006 JDR 0443 (T).

Case heard 16 September 2005; Judgment delivered 26 May 2006.

Upheld claim for infringement of trade mark and passing-off.

RUTIMBA V THE DIRECTOR: THE PRIVATE SECURITY INDUSTRY REGULATORY AUTHORITY 2006 JDR 0444 (T).

Case heard 14 – 15 March 2006; Judgment delivered 26 March 2006.

Rights of legally recognised refugees to be registered as security service providers as defined in Private Security Industry Regulation Act.

M & F GIURICICH DEVELOPMENTS (PTY) LTD V H L HALL & SONS (PROJECTS) (PTY) LTD 2006 JDR 0095 (T).

Case heard 1 February 2006; Judgment delivered 1 February 2006

SCHEFFER V FARQUHAR 2006 JDR 0087 (T).

Case heard 1 February 2006; Judgment delivered 1 February 2006.

Contract for sale of property.

OPTIS TELECOMMUNICATION (PTY) LTD V MINISTER OF COMMUNICATIONS 2006 JDR 0089 (T).

Case heard 25 November 2005; Judgment delivered 25 November 2005.

Application to review Minister's decision to allocate a percentage shareholding to second and third respondents in the Strategic Equity Partner Company (planned to rival Telkom) conforming to s 2(1) of Telecommunications Act. Application dismissed due to delay in instituting proceedings.

S V RABOTHA 2006 JDR 0012 (T).

Case heard 28 November 2005; Judgment delivered 28 November 2005.

Sentence set aside and matter remitted to court a quo for reconsideration after proper proof of previous convictions, after accused refused to admit recorded previous convictions.

S V MDLULI 2005 JDR 1079 (T).

Case heard 12 September 2005; Judgment delivered 12 September 2005.

Reduced sentence for assault with intent to grievous bodily harm.

S V MOTSOMI 2005 JDR 1080 (T).

Case heard 12 September 2005; Judgment delivered 12 September 2005.

Conviction of unrepresented accused for robbery overturned - not informed of competent verdicts, incorrectly convicted on the competent verdict of common assault.

S V MPINGA 2005 JDR 1082 (T).

Case heard 12 September 2005; Judgment delivered 12 September 2005.

Sentence reduced.

S V MOLELEKWA AND OTHERS 2005 JDR 1078 (T).

Case heard 12 September 2005; Judgment delivered 12 September 2005.

Set aside conviction and sentence due to insufficient evidence of identity.

FOURIE NO V LE ROUX AND OTHERS 2006 (1) SA 279 (T).

Case heard 8 September 2004; Judgment delivered 8 September 2004.

The powers of provisional liquidator to approach a Court for leave to institute winding-up proceedings.

INDUSTRIAL DEVELOPMENT CORPORATION OF SOUTH AFRICA V BALLIE FOODS CC 2005 JDR 1413 (T).

Case heard 26 October 2005; Judgment delivered 18 November 2005.

Contract - non-variation clause.

HITCHNER V HITCHNER 2005 JDR 1414 (T).

Case heard 18 November 2005; Judgment delivered 18 November 2005.

Claim for subsequent variation of agreement rejected.

WESSELS V WESSELS 2005 JDR 1410 (T).

Case heard 14 November 2005; Judgment delivered 14 November 2005.

Parents' duty towards children does not necessarily terminate when a child attains majority but continues until child becomes self-supporting. The duty entails providing for necessary medical and educational needs.

S V KHUMALO 2005 JDR 1244 (T).

Case heard 10 October 2005; Judgment delivered 10 October 2005.

Replaced sentence of direct imprisonment with a suspended sentence.

HOOD V THE COMMANDING OFFICER OF THE CENTRAL FIREARMS REGISTRY AND OTHERS 2005 JDR 1339 (T).

Application dismissed for failing to exhaust internal remedies before approaching court.

THE BUSINESS BANK V MALESELA HOLDING (PTY) LTD 2005 JDR 0866 (T).

Case heard 13 – 14 April 2005, 6 May 2005; Judgment delivered 21 June 2005.

Identity of principal parties in a suretyship agreement.

S V SHILUBANE 2005 JDR 0815 (T).

Case heard 20 June 2005; Judgment delivered 20 June 2005.

Reduction of sentence.

“This review matter, once again puts the spotlight on the vexed debate which is currently raging on fiercely within the various strata of our civil society viz. the efficacy of our current penal system and the ability of presiding officers to sentence people convicted of crime appropriately and effectively. This aspect assumes great significance when viewed in the light of the public hysteria generated by the ever-increasing wave of crimes in our society and against the backdrop of another serious social ill viz. overcrowding in our correctional centers concomitant with the plethora of other social ills which are spawned by this overcrowding.” [Paragraph 1].

“I feel constrained to remark that unless presiding officers become innovative and pro-active in opting for other alternative sentences to direct imprisonment, we will not be able to solve the problem of overcrowding in our prisons. Inasmuch as it is critical for the maintenance of law and order, that criminals be punished for their crimes, it is important that presiding officers impose sentences which are humane and balanced. There is abundant empirical evidence that retributive justice has failed to stem the ever- increasing wave of crime. It is furthermore counter-productive if not self-defeating, in my view, to expose an accused like the one *in casu*, to the corrosive and brutalising effect of prison life for such a trifling offence. ... [Paragraph 5].

“I am of the view that courts must seriously consider alternative sentences like community service as a viable alternative to direct imprisonment, particularly where the accused is not such a serious threat to society that he requires to be taken away from society for its protection.” [Paragraph 6].

ACRAFT INVESTMENTS (PTY) LTD V FURNITURE, BEDDING & UPHOLSTERY INDUSTRY BARGAINING COUNCIL & OTHERS (2005) 26 ILJ 2299 (T).

Case heard 7 June 2005; Judgment delivered 7 June 2005.

Declaratory order of a valid contract of employment.

JEWELL NO V IMPERIAL BANK LTD 2005 JDR 0695 (T).

Case heard 11 May 2005; Judgment delivered 11 May 2005.

Rescission of default judgment as applicants had a bona fide defence and had shown good cause.

DISTRIBUTIVE CATERING HOTELS AND ALLIED WORKER'S UNION V THE MASTER OF THE HIGH COURT 2005 JDR 0694 (T).

Case heard 11 May 2005; Judgment delivered 11 May 2005.

Masters must seriously consider the Minister's directives during company liquidation and ensure a measure of representativity for ordinary employees. Master's decision not to appoint a certain provisional liquidator was wrong.

NUTT V HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA 2005 JDR 0688 (T).

Case heard 3 May 2005; Judgment delivered 11 May 2005.

Whether Disciplinary Committee had power to reopen proceedings and make fresh recommendations - Application dismissed

REDHOUSE V WALKER 2005 JDR 0335 (T).

Case heard 11 - 18 February 2005; Judgment delivered 9 March 2005.

Upheld claim for damages for injuries suffered when falling from a horse.

S V MVELAZE AND ANOTHER 2005 JDR 0346 (T).

Case heard 24 March 2005; Judgment delivered 24 March 2005.

Conviction set aside due to inadequacy of evidence on which the accused was convicted.

KERKSTREET CITY IMPROVEMENTS DISTRICT V JOHNBUILD PROPERTIES (PTY) LTD AND ANOTHER 2005 JDR 0501 (T).

Case heard 24 March 2005; Judgment delivered 24 March 2005.

Payment of levies.

JUNIOR T/A POLOKWANE PROPERTIES V TERBLANCHE 2005 JDR 0502 (T).

Case heard 24 March 2005; Judgment delivered 24 March 2005.

Bond granted in error based on materially incorrect information. Appeal upheld.

S V GROENEWALD 2005 JDR 0266 (T).

Case heard 9 March 2005; Judgment 9 March 2005.

Denied application for bail pending appeal to SCA – accused previously failed to respect his bail conditions, showed arrogant and disrespectful attitude.

S V MATHEBULA AND ANOTHER 2005 JDR 0265 (T).

Case heard 21 February 2005; Judgment delivered 21 February 2005.

Dismissed appeal - appellants had failed to testify, despite being adequately advised of the possible consequences.

WILSON AND OTHERS V MBOMBELA LOCAL MUNICIPALITY AND OTHERS 2005 JDR 1193 (T).

Case heard 6 October 2004; Judgment delivered 6 October 2004.

Dismissed a review application to set aside the decision of the first respondent, to approve the establishment of a township and rezone.

METSWEDING DISTRICT MUNICIPALITY V NOKENG TSA TAEMANE LOCAL MUNICIPALITY AND OTHERS 2005 JDR 0120 (T).

Case heard 8 October 2004; Judgment delivered 8 October 2004.

Dispute between two municipalities. Court emphasised co-operative governance and prioritization of resources.

HENDRIK V ROAD ACCIDENT FUND 2005 JDR 0118 (T).

Case heard 16 September 2004; Judgment delivered 8 October 2004.

Rejected claim arising from motor vehicle accident – insured driver negligent.

FOURIE NO V LE ROUX AND OTHERS 2005 JDR 0447 (T).

Case heard 8 September 2004; Judgment delivered 8 September 2004.

Powers of a provisional liquidator to approach court in terms of sections 386(5) and 387(3) of Companies Act 61 of 1973.

QING-HE-SHAN V TSOGO SUN HOLDINGS AND ANOTHER 2004 JDR 0607 (T).

Case heard 26 August 2004; Judgment delivered 26 August 2004.

Failure by security guards to search persons entering casino, enabling third party to enter the casino with a firearm and fire at Plaintiff, amounted to negligence.

THEBE V THE ROAD ACCIDENT FUND 2004 JDR 0359 (T).

Case heard 3 June 2004; Judgment delivered 3 June 2004.

Plaintiff's claim upheld.

S V MASHEGO 2004 JDR 0095 (T).

Case heard 6 February 2004; Judgment delivered 6 February 2004.

Reduced sentence.

S V MAHLANGU 2004 JDR 0020 (T).

Case heard 6 January 2004; Judgment delivered 6 January 2004.

Failure by the Magistrate to investigate properly if the accused understood his rights to a deferred fine - case remitted back to the Magistrate to apply and consider the appropriate provisions.

"The office of the DPP referred me to some well-known decisions in an attempt, apparently to convince me of the seriousness of this offence. With respect I do not need any lecture on the seriousness of domestic violence. Furthermore I am actually aware of all the decided cases to which they referred me. My concern is the failure by the Magistrate, having decided to grant the accused the option of a fine, to enquire whether the accused wished to apply for a deferred fine or not." [Paragraph 4].

"What I found seriously unacceptable is the Magistrate's response that "... and at that stage it was not possible for me to determine whether he will afford a fine or not so I could not apply section 297 (6)(a) Act 51 of 1977". With respect, this in my view, reveals serious ignorance of the basic principles governing the imposition of fines. I fail to comprehend how and on what rational basis would a presiding officer decide to impose a fine on an accused if he/she does not know if the accused will afford the fine or not. ..." [Paragraph 5].

S V MATLOTLO 2004 (2) SACR 549 (T).

Heard 6 January 2004; Judgment 6 January 2004.

Recidivism, minor offences. Reduced sentence.

S V BLOCK AND ANOTHER 2003 JDR 0727 (T).

Case heard 20 November 2003; Judgment delivered 20 November 2003.

Set aside sentences and remitted case back to the Magistrates' Court.

S V MHLANGA 2003 JDR 0728 (T).

Case heard 20 November 2003; Judgment delivered 20 November 2003.

Confirmed conviction, remitted case to the Magistrates' Court for re-sentencing - non-custodial sentence appropriate.

S V MALUNGANA 2003 JDR 0729 (T).

Case heard 20 November 2003; Judgment delivered 20 November 2003.

Set aside sentence, ordered magistrate to sentence the accused afresh after having obtained a report by either a probation officer or a correctional official.

S V KRUGER 2003 JDR 0609 (T).

Case heard 19 September 2003; Judgment delivered 19 September 2003.

Conviction and sentence certified to be in accordance with justice.

PFISTER V MURRAY 2003 JDR 0388 (T).

Case heard 13 June 2003; Judgment delivered 13 June 2003.

Defendant liable for damages incurred by the plaintiff due to a car accident caused by the defendant's negligence.

EVERTON V COMPASS INSURANCE COMPANY LTD 2003 JDR 0382 (T).

Case heard 6 June 2003; Judgment delivered 6 June 2003.

Dismissed an insurance claim by the plaintiff as plaintiff's vehicle was not roadworthy, which was a material requirement of the insurance policy.

VAN WAVEREN V POLOKWANE MUNICIPALITY 2003 JDR 0383 (T).

Case heard 6 June 2003; Judgment delivered 6 June 2003.

Dismissed a claim by the Plaintiff for patrimonial damages suffered due to the loss of his property as a result of an expropriation.

S V PHALATSI 2003 JDR 0237 (T).

Case heard 11 March 2003; Judgment delivered 11 March 2003.

Failure by Magistrate to ask questions establishing the guilt of the accused beyond reasonable doubt led to the conviction being set aside.

MATSIMELA V ROAD ACCIDENT FUND 2003 JDR 0230 (T).

Case heard 6 March 2003; Judgment delivered 6 March 2003.

Computation of damages.

RADIO PRETORIA V CHAIRMAN, INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA, AND ANOTHER 2003 (5) SA 451 (T).

Case heard 21 February 2003; Judgment delivered 21 February 2003.

Application of the principles of natural justice and the *audi alteram partem* principle.

S V MAHIKA (CLIFFORD) 2003 JDR 0065 (T).

Judgment delivered 16 January 2003.

Failure of court to consider discharge of unrepresented accused at close of State case, with the state having at that stage not made out a prima facie case, meant accused had not received a fair trial. The conviction and sentence were set aside.

S V MASUKU 2002 JDR 0922 (T).

Case heard 25 November 2002; Judgment delivered 25 November 2002.

Reduced sentence.

S V MPHUMELELO 2002 JDR 0923 (T).

Case heard 25 November 2002; Judgment delivered 25 November 2002.

Set aside conviction for housebreaking with intent to steal, and theft.

S V SEABI AND ANOTHER 2003 (1) SACR 620 (T).

Case heard 28 June 2002; Judgment delivered 28 June 2002.

Assistance of an accused minor by father during trial. The father wanted the minor punished for stealing diesel from him. Held that the accused minor did not receive a fair trial.

S V MATHONSI 2003 (1) SACR 625 (T).

The accused was sentenced to a fine with alternative of imprisonment. The magistrate however failed to conduct an enquiry into her financial means. Option of avoiding imprisonment proving to be mere illusion. Held that such a miscarriage of justice could not be condoned.

ABBAS V MOTI 2002 JDR 0658 (T).

Case heard 11 September 2002; Judgment delivered 11 September 2002.

Custody of minor children.

S V SENYOLO AND ANOTHER 2002 JDR 0764 (T).

Case heard 27 August 2002; Judgment delivered 27 August 2002.

Confirmed convictions, case remitted to the Magistrate for sentencing.

S V ZITHA 2003 (1) SACR 628 (T).

Case heard 16 July 2002; Judgment delivered 16 July 2002.

Referred case back to Magistrate to make enquiry regarding the means and ability of the accused to pay a fine and the desirability of a deferred fine.

S V SINDANE 2002 JDR 0584 (T).

Case heard 16 July 2002; Judgment 16 July 2002.

Set aside conviction and sentence.

S V PHULWANE AND OTHERS 2003 (1) SACR 631 (T).

Case heard 16 July 2002; Judgment delivered 16 July 2002.

Factors to be taken into account when sentencing a juvenile offender. Held that to sentence three youthful offenders with clean records to direct imprisonment for three years for housebreaking with intent to steal and theft of groceries valued at R1 500 was a serious injustice to both society and the youthful offenders.

S V RATSOANE AND 13 OTHER CASES 2003 (1) SACR 644 (T).

Case heard 1 August 2002; Judgment 1 August 2002.

Admission of guilt fines can be accepted where they have been paid by money orders which are not accompanied by original summons.

S V MOKWENA 2002 JDR 0592 (T).

Case heard 1 August 2002; Judgment delivered 1 August 2002.

Confirming conviction and reducing sentence.

S V MAEMA 2002 JDR 0593 (T).

Case heard 1 August 2002; Judgment delivered 1 August 2002.

Conviction and sentence set aside. Accused had indicated his wish to avail himself of the assistance of the Legal Aid Board, but the trial proceeded without such assistance. Accused's rights to a fair trial denied.

S V DALISO 2002 JDR 0595 (T).

Case heard 1 August 2002; Judgment delivered 1 August 2002.

Reduced sentence.

S V MANTU AND ANOTHER 2002 JDR 0596 (T).

Case heard 1 August 2002; Judgment delivered 1 August 2002.

A series of mistakes and irregularities by a magistrate during a trial resulted in the setting aside of the conviction and sentence of both accused.

VAN ROOYEN V DE KOCK NO AND OTHERS 2003 (2) SA 317 (T).

Case heard 13 September 2002; Judgment delivered 17 October 17 2002.

Acting magistrate appointed as a consultant in terms of a special contract under the Public Service Act. Appointment declared invalid.

S V CHABALALA 2002 (1) SACR 5 (T).

Case heard 22 June 2001; Judgment 22 June 2001.

Set aside conviction and sentence of accused who was arrested, charged, pleaded and convicted on same day.

S V MGWENYA 2002 JDR 0532 (T).

Sentence.

S V VAN ROOYEN 2002 (1) SACR 660 (T).

Section 2(1) of Domestic Violence Act not create an offence.

S V MATHOLE AND ANOTHER 2002 (2) SACR 484 (T).

Heard 27 June 2002; Judgment 27 June 2002.

Sentencing.

S V MASEKO AND OTHERS 2002 JDR 1002 (T).

Case heard 10 June 2002; Judgment 10 June 2002.

When admonishing two essential witnesses (aged 12 and 13), court below failed to enquire whether the two essential witnesses understood the nature and the import of the oath. Conviction of accused set aside.

S V MALATJIE 2002 JDR 0182 (T).

Case heard 21 February 2002; Judgment delivered 21 February 2002.

Confirmed conviction and reduced sentence for assault with intent to cause grievous bodily harm.

S V NGIMEYI 2002 JDR 0177 (T).

Case heard 7 February 2002; Judgment delivered 7 February 2002.

Confirmed conviction and reduced sentence - assault with intent to cause grievous bodily harm and common assault.

S V MOKATI 2002 JDR 0141 (T).

Case heard 24 January 2002; Judgment delivered 24 January 2002.

Sentence reduced.

S V MASHOBANE 2002 JDR 0142 (T).

Case heard 24 January 2002; Judgment delivered 24 January 2002.

Accused convicted under a repealed Act. Sentence was substituted, sentenced under the correct Act.

S V SMIT 2002 JDR 0143 (T).

Case heard 24 January 2002; Judgment delivered 24 January 2002.

Reduced sentence.

S V RITSHURI 2002 JDR 0144 (T).

Case heard 24 January 2002; Judgment delivered 24 January 2002.

Confirmed conviction, reduced sentence for assault with intent to cause grievous bodily harm.

S V ZWANE 2001 JDR 0973 (T).

Case heard 4 December 2001; Judgment delivered 4 December 2001.

Substituted conviction and sentence.

S V MALULEKE 2001 JDR 0975 (T).

Case heard 4 December 2001; Judgment delivered 4 December 2001.

Confirmed conviction, reduced sentence - assault with intent to cause grievous bodily harm; common assault and unlawfully resisting arrest.

S V MAKONDO 2001 JDR 0974 (T).

Case heard 4 November 2004; Judgment delivered 4 November 2004.

Sentencing - assault with intent to cause grievous bodily harm.

S V HLATSWAYO 2001 JDR 0899 (T).

Case heard 1 November 2001; Judgment delivered 01 November 2001.

Conviction for failing to pay maintenance set aside. Accused not advised of his fundamental rights which impacted on his right to a fair trial.

S V MASETO AND ANOTHER 2001 JDR 0901 (T).

Case heard 1 November 2001; Judgment 1 November 2001.

Accused was at large – continuation of case, whether bail money must be forfeited to the state.

S V KHOZA AND ANOTHER 2001 JDR 0853 (T).

Case heard 25 October 2001; Judgment delivered 25 October 2001.

Confirmed conviction, reduced sentence and imposed suspended sentence youth offenders.

S V SKOSANA 2001 JDR 0854 (T).

Case heard 25 October 2001; Judgment delivered 25 October 2001.

Confirmed conviction, and reduced sentence.

S V FERREIRA 2001 JDR 0855 (T).

Heard 25 October 2001; Judgment 25 October 2001.

Confirmed conviction for contravening National Traffic Act. Reduced sentence, revoked licence suspension.

S V MAAKE 2001 JDR 0710 (T).

Case heard 27 September 2001; Judgment delivered 27 September 2001.

Set aside conviction - not in accordance with justice.

S V MSIBI 2001 JDR 0715 (T).

Case heard 21 September 2001; Judgment delivered 21 September 2001.

Reduction of sentence for housebreaking with intent to steal and theft.

MONTIC DAIRY (PTY) LTD V COIN SECURITY GROUP (PTY) LTD 2001 JDR 0700 (T).

Case heard 28 August 2001; Judgment delivered 28 August 2001.

Respondent had duty to take care of appellant's money in former's care, had negligently allowed a surplus of the cash to be transported in its vehicle, which was robbed. Appeal upheld, matter was referred back to the court a quo for the continuation of trial (co-written with Basson J).

S V SEBOYA AND 3 OTHERS 2001 JDR 0579 (T).

Heard 21 August 2001; Judgment 21 August 2001.

Remitted to magistrate to obtain pre-sentence reports and for re-sentencing.

S V MASOGO 2001 JDR 0582 (T).

Heard 21 August 2001; Judgment 21 August 2001.

Conviction and sentence set aside due to failure of Magistrate to advise the accused of his rights to legal representation.

S V MOLAPO 2001 JDR 0583 (T).

Case heard 21 August 2001; Judgment delivered 21 August 2001.

Confirmed conviction, reduced sentence.

S V MASEKO 2001 JDR 0585 (T).

Case heard 17 August, 2001; Judgment 17 August 2001.

Set aside conviction and sentence. Failure by Magistrate to advise the accused of the provisions of Section 37 of the General Law Amendment Act resulted in the accused not enjoying a fair trial.

S V SHABANGU 2001 JDR 0586 (T).

Case heard 17 August 2001; Judgment 17 August 2001.

Conviction confirmed, sentence reduced.

“... I am of the view that the accused did not deserve to be sentenced to direct imprisonment. The mere fact that he is a juvenile and a first offender suggests strongly that there is a real possibility that he can be rehabilitated. I am not convinced that a sentence of imprisonment, suspended on suitable conditions will not serve both to rehabilitate and to deter the accused. ...” [Paragraph 7].

S V MTHOMBENI 2001 JDR 0587 (T).

Case heard 16 August 2001; Judgment delivered 16 August 2001.

Conviction for theft set aside.

S V MASWANGANYE 2001 JDR 0588 (T).

Case heard 16 August 2001; Judgment delivered 16 August 2001.

Set aside the conviction of an accused for failing to appear in court and was sentenced to a fine of R200.00 or 20 days' imprisonment.

S V LEACH 2001 JDR 0551 (T).

Case heard 7 August 2001; Judgment delivered 7 August 2001.

Accused was convicted and sentenced for driving recklessly, causing a collision. Sentence altered to fine of R2 000 or 12 months' imprisonment, conditionally suspended for five years. Suspension of accused's driver's licence set aside.

S V JIYANE 2001 JDR 0542 (T).

Case heard 30 July 2001; Judgment delivered 30 July 2001.

Confirmed conviction, reduced sentence.

S V CHAUKE 2001 JDR 0543 (T).

Case heard 30 July 2001; Judgment delivered 30 July 2001.

Sentence suspended.

S V MAMPHEKO 2001 JDR 0556 (T).

Case heard 13 July 2001; Judgment delivered 13 July 2001.

Magistrate imposed sentence of two years' imprisonment, wholly suspended unconditionally. Such sentence incompetent, substituted by one of two years' imprisonment, conditionally suspended.

HIGH COURT OF NAMIBIA

In *S v Teek*, Bosielo AJ, as an acting judge of the High Court of Namibia, presided over the trial of the accused, a High Court judge, on charges including abduction; alternatively kidnapping, committing or attempting to commit sexual acts with children, and indecent assault. The two complainants were girls aged nine and ten at the time of the events.

Bosielo AJ granted an application for discharge at the conclusion of the state's case. This decision was overturned by the Supreme Court of Namibia in **S v Teek [2009] NASC 5**. The Supreme Court held:

“Reverting to the individual perceived contradictions included in the Court *a quo*'s catalogue of 21, analysis shows that a significant number of them amount to no contradictions at all and that they

owe their inclusion into the catalogue to misinterpretations or wrong evaluations of the evidence. ...” [Paragraph 21]

“I believe that, on the evidence before the trial Court, there is ample room for conviction of the respondent on all the charges against him, save perhaps for the crime of abduction, to which I shall return. Moreover, I cannot avoid the inference that in the circumstances the Court *a quo*'s opinion to the contrary was so unreasonable that it could not have properly applied its mind to the matter.” [Paragraph 30]

MEDIA COVERAGE AND OTHER INFORMATION

Writing about the shortlisted candidates for the Constitutional Court who were interviewed in February 2013, Professor Pierre De Vos expressed reservations about the candidate:

“Judges Selby Baqwa, Lebotsang Bosielo and Brian Spilg are all competent lawyers, but none of these judges have (as far as I can tell) demonstrated any progressive streak or deep insight into the ways in which our legal culture could and should be transformed. Advocates Jeremy Gauntlett and Mbuyiseli Madlanga are both good advocates, but I suspect they suffer from the same deficit as the nominated judges: a lack of legal imagination and daring and a lack of enthusiasm for the transformation of the legal system.” (Pierre De Vos, “Judicial transformation: South Africa's appalling non-commitment”, *Daily Maverick*, available at <http://www.dailymaverick.co.za/opinionista/2013-01-22-judicial-transformation-south-africas-appalling-non-commitment/#.V-FnljV8t7l>)

A media report notes how, in 2007, Justice Bosielo acted as judge president in the Northern Cape where there was a “war among the six judges” who sat on the court.

“The situation was so bad that there were basically two warring camps. I had to play the role of a peacemaker, a reconciler and mediator.”

By the time he left, Judge Bosielo said he had “extinguished the fire”.

(<http://www.iol.co.za/news/south-africa/women-judges-tops-agenda-1295347>)

Media report that he was involved in a dispute with a company for supplying building materials. The company alleged that the judge failed to pay certain amounts he owed. The amounts related to the purchase of building materials. Judge Bosielo is reported to have withdrawn a damages claim against the businessman after receiving a written apology “for telling the judge he was “dishonourable” and “a scum of all scums”.

“In terms of the agreement, Judge Bosielo was ordered to pay R230 000 to K Carrim (Pty) Ltd, a building supply outlet of Boom Street in Pretoria of which Carrim is a director.

Carrim sued Bosielo for payment of over R300 000 which he claimed the judge owed for building material purchased between September 2005 and October 2006.”
(<http://www.iol.co.za/news/crime-courts/judge-accepts-scum-apology-1230823>)

JUDGE JODY KOLLAPEN

BIOGRAPHICAL INFORMATION AND QUALIFICATIONS

Born 19 May 1957, Pretoria.

B. Proc – University of the Witwatersrand (1978)

LL.B – University of the Witwatersrand (1981)

CAREER PATH

Chairperson, South African Law Reform Commission (2016 to date)

Judge of the High Court (North Gauteng) (2011 to date)

Acting Judge, North Gauteng High Court (2010 – 2011)

Chairperson, South African Human Rights Commission (2002 – 2009)

Deputy Chairperson, South African Human Rights Commission (2001 – 2002)

Commissioner, South African Human Rights Commission (1996 – 2001)

Lawyers for Human Rights (1992 – 1996)

N Kollapen (Attorney) (1982 – 1983; 1988 – 1992)

Moosa Omar and Kollapen (Partner) (1984 – 1987)

Trustee, Legal Resources Centre (2000 to date)

Community and other involvement:

Pretoria Child and Welfare Society (2001 to date)

Laudium Care Services for the Aged (2000 to date)

JUDGMENTS

Judgments are tabulated under the following headings:

Ct = Total cases heard

Cs = total cases heard sitting as a single judge (and therefore where a judgment was produced).

C = cases heard as part of a panel of judges

J = judgments written as part of a panel of judges (note: we found no separate or dissenting judgments written either by the candidate, or by other judges on a panel in response to one of the candidate’s judgments. Therefore these categories have been omitted from this table.

YEAR	Ct	Cs	C	J
2016	7	5	2	2
2015	12	8	4	3
2014	23	11	12	8
2013	14	10	4	2
2012	8	5	3	0
2011	2	1	1	1 ⁴
2010 (as acting judge)	3	2	1	1 ⁵
TOTAL	69	42	27	17

In terms of article 5.2.6 of the Norms and Standards for the Performance of Judicial Functions,⁶ “[s]ave in exceptional circumstances where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing.”

From the 69 judgments surveyed for this candidate, we note 7 that were handed down more than three months after the date of last hearing:

- T v R (around 2 weeks late)
- Ndlovu v Minister of Police (just over 1 month)
- S v Malula (2 months – we note that this was heard by a full bench of 3 judges)
- Derby Lewis v Minister and Road Accident Fund v Mashala were both delivered only 2 days after the 3 – month period
- Sithole v S – this judgment was delivered nearly 10 months after the listed date of hearing. However, we note from the judgment that during this time, the matter appears to have been referred back to the trial court to consider an application for a special entry.
- SA National Defence Union (around 2 months).

⁴ Including *Ex parte: WH and Others (29936/11) [2011] ZAGPPHC 185; 2011 (6) SA 514 (GNP); [2011] 4 All SA 630 (GNP) (27 September 2011)*, jointly written judgment with Tolmay J.

⁵ Including *S v MM; S v JS; S v JV 2011 (1) SACR 510 (GNP)*, jointly written judgment with Southwood and Makgoka JJ.

⁶ Government Gazette No. 37390, 147, 28 February 2014.

ADEGBUYI V FIRSTRAND BANK LIMITED AND OTHERS (19958/2014) [2016] ZAGPPHC 703 (16 AUGUST 2016)

Case heard 13 June 2016; Judgment delivered 16 August 2016

Rejected rescission application for payment of monies, but rescinded order of executability and writ of execution in respect of applicant's undivided share of immovable property.

T V R (4081/2013) [2016] ZAGPPHC 686 (10 AUGUST 2016)

Case heard 25, 26, 28, 29 April 2016; Judgment delivered 10 August 2016.

Ordered partial forfeiture of matrimonial benefits following the dissolution of a marriage in community of property, respondent committed to prison for 60 days.

BEAUX LANE (S.A.) PROPERTIES LIMITED V THE MINISTER OF PUBLIC WORKS (A647/2015) [2016] ZAGPPHC 679 (28 JULY 2016)

Case heard 8 June 2016; Judgment delivered 28 July 2016

Rejected appeal against the dismissal of a claim for damages for the sale of property at a reduced price after defendant delayed in vacating premises following the termination of a lease agreement (Tolmay J and Makhoba AJ concurring).

"While a breach and holding over could have consequences, to suggest however that it could result in a sale at a reduced or lower price, may well extend beyond the scope of what is reasonably foreseeable as a realistic possibility. In *THOROUGHBRED BREEDERS' ASSOCIATION* ... the Court observed that one cannot contemplate what one cannot foresee and that very often the question is the degree of foreseeability. In my view the damages resulting in a lower purchase price for the property certainly would fall outside what the parties would have reasonably foreseen as a realistic possibility and fall within that category of instances where the distance between cause and effect simply becomes too tenuous ..." [Paragraph 18]

"... [I]t does constitute stretching the idea of what is natural and general to contend that a likely result of the breach (as in a realistic possibility) was that post the lease agreement, a sale of the property would be concluded and that as a result of the holding over, the appellant would be forced to sell at a reduced price." [Paragraph 24]

MBOMBELA LOCAL MUNICIPALITY V THE PREMIER, MPUMALANGA PROVINCE AND OTHERS (47407/2015) [2016] ZAGPPHC 674 (28 JULY 2016)

Case heard 25 May 2016; Judgment delivered 28 July 2016

Upheld challenge to proclamation removing conditions of title over land.

M V L, D V B (A379/16, A380/16) [2016] ZAGPPHC 415 (9 JUNE 2016)

A special review regarding possible violation of the equality right in respect of children who are subject to protection orders under the Protection from Harassment Act. Held that the issues was covered by the Children’s Act (Baqwa J concurring).

“... [E]ven though the Act may be silent on the manner in which child respondents are to be dealt with, it is evident that the provisions of the Children’s Act ... provide an overarching and comprehensive protection to all children in all legal proceedings. The proceedings in terms of the Protection from Harassment Act would certainly fall within the proceedings contemplated in the Children’s Act and there exists no reason in law or otherwise, why its provisions should not and do not have applicability in dealing with children (whether as applicants or as respondents) in terms of the Act. ... Accordingly and notwithstanding that the Act is silent on this aspect it must follow that the overarching provisions of the Children’s Act serve to cure whatever *lacuna* the learned Magistrate may have identified. On this basis it can then hardly be said that the Act violates the equality guarantee in so far as it relates to children in treating children who are complainants differently from children who are respondents. ...” [Paragraphs 8 – 9]

D v D (55507/2012) [2016] ZAGPPHC 368 (16 May 2016)

Case heard 18 April 2016, Judgment delivered 16 May 2016.

Found the respondent in contempt of court for failing to pay maintenance obligations in terms of a court order,

“The obligation to pay maintenance is a serious and indeed onerous one and in my view the very generalised nature of the respondent’s assertions of being in a constant financial crisis falls considerably short of what is expected of him in discharging the evidentiary burden that rests upon him.” [Paragraph 11]

LONG BEACH HOMEOWNERS ASSOCIATION V GREAT KEI MUNICIPALITY, AMOTOLE DISTRICT, EASTERN CAPE AND OTHERS (28064/2014) [2016] ZAGPPHC 610 (26 APRIL 2016)

Case heard 25 – 28 January 2016; Judgment delivered 26 April 2016

Upheld certain grounds of review to set aside a decision to uphold an appeal against the grant of an application for environmental approval, which had effectively denied environmental authorisation to the applicant.

“This is an application where the core issue in dispute relates to the manner in which two constitutional imperatives, namely the right to have the environment protected, and the right to ecologically sustainable social and economic development, are to be given effect to and reconciled to the extent that they may come into conflict with each other.” [Paragraph 1]

“I was initially urged by the applicant, in the event I concluded that a proper case for review was made out, to substitute the decision of the fifth respondent with that of the Court ... However it is clear, and this emerged during argument, that such an option may well have been justified if I upheld the review based on the unreasonableness argument and/or the perception of bias argument. Having concluded that those grounds of review are not sustainable and the review having succeeded on the basis of the failure to adhere to the principle of *audi alterem partem*, the argument for the Court to substitute the decision of the fifth respondent with that of the Court loses its potency.

My view is that the Court is not as well qualified as the fifth respondent to make the decision and in addition there are many concerns that would require an opportunity for the applicant to respond to before a decision is taken that would preclude the Court from taking on this role.” [Paragraph 68]

DEMOCRATIC ALLIANCE V MUNICIPAL DEMARCATION BOARD AND OTHERS (70915/2015) [2015] ZAGPPHC 1090 (6 NOVEMBER 2015)

Case heard 26 – 27 October 2015; Judgment delivered 6 November 2015.

Rejected application to interdict action to implement impugned decisions regarding the determining and re-determining of municipal boundaries, pending judicial review.

“In this matter the various allegations made and to which reference has been made, suggest serious impropriety on the part of the first and second respondent. ... Whatever the applicant’s intention may have been, at the end of the day one is left with the text that is both damning and disturbing – allegations made that are not pursued but are neither withdrawn. The Court must express its extreme displeasure at this kind of conduct. It constitutes an abuse of the litigation process and at the end of the day the question that must arise is why such serious allegations are made and not pursued or relied upon.” [Paragraph 33]

“When I have regard to the requirements for the grant of interim relief to interdict the exercise of statutory powers, then it can hardly be said that the applicant has made out an exceptional or strong case ... At best the applicant has highlighted what I may refer to as peripheral shortcomings in the process ... Even if the applicant was stronger on these points than I have been willing to accept, it does not materially alter the conclusion ... that it could hardly be said that this constitutes the clearest of cases, or that exceptional circumstances exist that would justify granting the relief sought. The shortcomings that I have pointed out in the process are not material and in my view would not justify the granting of the far-reaching relief the Applicant seeks.” [Paragraph 71]

S V BHIYA (A820/15) [2015] ZAGPPHC 889 (5 NOVEMBER 2015)

Amendment of sentence on special review to include condition for the suspension of sentence (Baqwa J concurring).

BS V MS AND ANOTHER 2015 (6) SA 356 (GP)

Case heard: 16, 17 April and 17 June 2015; Judgment delivered: 10 September 2015.

Denied claim for damages for injuries sustained by a minor child following a near drowning incident when falling into a fishpond at the defendants' home. Found that a warning given by the defendants regarding the dangers of the fishpond was sufficient to discharge their legal duty.

MECHANISED EQUIPMENT SALES (PTY) LIMITED V LION OF AFRICA INSURANCE COMPANY LIMITED (32874/2013) [2015] ZAGPPHC 757 (14 AUGUST 2015)

Case heard 15 June 2015; Judgment delivered 14 August 2015

Upheld claim for payment of an indemnification under an insurance contract.

LEY V XSTRATA COAL SOUTH AFRICA (PTY) LIMITED AND OTHERS (38012/2013) [2015] ZAGPPHC 428 (19 MAY 2015)

Case heard 13 – 15 April 2015; Judgment delivered 19 May 2015.

Rejected claims for damages for allegedly instigating a malicious prosecution.

HENNIE AND OTHERS V MINISTER OF CORRECTIONAL SERVICES AND OTHERS (729/2015) [2015] ZAGPPHC 311 (7 MAY 2015)

Case heard 2 March 2015; Judgment delivered 7 May 2015.

Granted urgent application for prisoners to use laptop computers in their cells for study purposes.

“Having regard to the Respondents concern that granting an order in favour of the Applicants in this matter, will open flood gates for numerous applications similar to the current one, it needs to be taken into account that prior to this application, only two similar applications were brought in this division, one of which was settled between the parties, allowing the Applicant in the matter access to her personal computer in her cell and the other an order of court, which granted the applicant access to his personal computer in his cell. Those orders have hardly resulted in the ‘opening of the floodgates’ as it were.” [Paragraph 27]

“In order for the Department to ensure that it gives effect to the rights of the offender students to have access to formal education as stated in the Constitution and to ensure that the Department gives effect to its vision and mission in respect of its formal education programme and considering the precautionary measures that can be put in place to ensure that security within the prison is not compromised by the use of personal laptops in single cells by the Applicants, as well as the inconsistent application of its policy on formal education, the disallowing of the use of personal laptops by the Applicants in this instance is without merit. ... The Respondents have ... not advanced

a justification for the prohibition which they seek to apply. While security considerations will always remain an important feature of how a correctional facility is managed, on what is before me, there is no evidence that personal laptops without modems compromise security. On the other hand to refusal to allow the Applicants access to their laptop computers in their cells has the real risk of compromising their ability to study and infringes on their right to further education.” [Paragraphs 42 – 43]

CITICONNECT BUSINESS SOLUTIONS V CITY MANAGER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY N.O. AND OTHERS (82542/2014) [2015] ZAGPPHC 115 (4 MARCH 2015)

Case heard 11 February 2015; Judgment delivered 4 March 2015.

Denied an interdict to prevent the continuation of a tender process.

“The tender process that has developed cannot be insulated from the requirements of fairness, transparency or equity. On the contrary, it has not been raised in these proceedings that the content of those processes can and do stand apart from the prescripts found in Section 217. In this regard the conclusion by SOUTHWOOD J in *TELKOM* that the doctrine of legality requires that a contract of this nature be preceded by compliance with the prescribed tender processes failing which invalidity will result, is not an immutable proposition but rather one that carefully considers and gives effect to the requirements of Section 217 as they manifest themselves in the intricacies and the detail of the tender process.” [Paragraph 31]

“While costs should ordinarily follow the result, the Court has a discretion with regard to costs which discretion must be judicially exercised. When one has regard to the conduct of the first respondent ... it hardly acted in a manner commensurate with a public body entrusted with the responsibility of managing large tenders. It remained in control of the tender process and it set the conditions for the tender and the timeline for the submission of bids and their validity. Despite this it allowed a process that had lapsed to simply continue and even when advised of the implications of its conduct by reference to the *TELKOM* decision, it continued to process the tender and make an award.” [Paragraph 50]

GLOBAL HOUSE OF ACCOUNTING (PTY) LTD T/A HOUSE OF ACCOUNTANTS V STEYL (A644/2014) [2015] ZAGPPHC 133 (4 MARCH 2015)

Case heard 19 February 2015; Judgment delivered 4 March 2015.

Rejected appeal against Magistrates’ Court order of payment for professional services (Mudau AJ concurring).

LISBON ESTATES (PTY) LTD AND OTHERS V MOKOENA N.O. AND OTHERS (39602/2013) [2015] ZAGPPHC 194 (4 MARCH 2015)

Case heard 10 February 2015; Judgment delivered 4 March 2015.

Upheld a special plea of prescription.

“In my view it could hardly be said that any steps worthy of mention were taken to identify the debtor. The reliance on a 2008 document to issue summons in 2012 was unreasonable and accordingly I must conclude that it could hardly be said that the plaintiff exercised reasonable care in the circumstances of the matter.” [Paragraph 24]

ESKOM LIMITED V STRYDOM (A427/2014) [2015] ZAGPPHC 315 (4 MARCH 2015)

Case heard 17 February 2015; Judgment delivered 4 March 2015

Upheld appeal against an order of the Magistrates’ Court on the basis that the court had lacked jurisdiction to order the restoration of electricity supply to the respondent (Tolmay J concurring).

MATLALA V MINISTER OF POLICE (6578/2012) [2015] ZAGPPHC 136 (4 MARCH 2015)

Case heard 2 – 3 February 2015; Judgment delivered 4 March 2015

Upheld claim for assault against police. Rejected claims for unlawful arrest and detention.

NDLOVU V MINISTER OF POLICE AND ANOTHER (30007/2013) [2015] ZAGPPHC 143 (4 MARCH 2015)

Case heard 28 – 30 October 2014; Judgment delivered 4 March 2015

Rejected claim for damages for wrongful arrest and detention.

TSHWANE UNIVERSITY OF TECHNOLOGY V DLADLA (8104/2014) [2015] ZAGPPHC 68 (4 MARCH 2015)

Case heard 29 January 2015; Judgment delivered 4 March 2015

Dismissed application for recession of a judgment which found evictions from student residences unlawful, and ordered the evicted students to be allowed back.

S AND ANOTHER V ROAD ACCIDENT FUND (19993/2013) [2014] ZAGPPHC 1028 (12 DECEMBER 2014)

Case heard 19 November 2014; Judgment delivered 12 December 2014.

Computation of damages for loss of support.

CHIURA AND ANOTHER V ABSA BANK LIMITED AND OTHERS (20740/2013, 7580/2007, 1730/2013) [2014] ZAGPPHC 973 (12 NOVEMBER 2014)

Case heard 11 November 2014; Judgment delivered 12 November 2014.

Declined to set aside various applications for leave to appeal and to order applicant to provide security for costs.

“When I have regard to the various deficiencies in the leave applications then the argument of the respondents does appear attractive. The Rules are there to assist the Court and litigants in ensuring that litigation occurs in an orderly and predictable fashion. On the other hand a Court must not be insensitive to the position of a litigant who acts in person. Ours is a sophisticated legal system that is difficult to navigate for laypersons such as the applicants and a Court should be careful in not taking an approach that may in fidelity to the Rules, shut the doors of the Court to a party, which should otherwise remain open.” [Paragraph 6]

“If one has regard to the right to property which is enshrined in Section 25 of the Constitution, then the applicants would have lost close to 2 million Rand out of the sale that had been found to be invalid ... It is that sense of injustice that continues to characterise their ongoing litigation and which must be considered in the context of whether the litigation they have embarked upon is vexatious, reckless or an abuse of the process. ... It cannot, with respect, simply be said that the principles of purchase and sale operate at times with unfair results and that the free market system is the one that govern the economy and that parties must be bound by the outcomes of such a system.” [Paragraphs 18 – 19]

S V MALUKA 2015 (2) SACR 273 (GP)

Case heard 28 May 2014, Judgment delivered 31 October 2014.

Whether an order made by a magistrate under s 78(6)(a)(ii)(aa) of the Criminal Procedure Act, read with s 37 of the Mental Care Act (committing a person as an involuntary mental health care user) should be reviewed by the High Court (Thobane and Dosio AJJ concurring).

“... [T]he potential for serious prejudice, which has been demonstrated in both theory and practice in the cases cited, does indeed make it desirable for some form of automatic review mechanism to be considered. This is a matter for the legislature to consider, and the court should carefully guard against the usurping of the legislative function. It is a matter best left to the executive and the legislature in terms of their policy-making and legislative functions. I intend to refer the matter to

the ministers of justice and correctional services, as well as to the speaker of the legislature, for further attention.” [Paragraph 40]

QUICK DRINK CO (PTY) LTD AND ANOTHER v MEDICINES CONTROL COUNCIL AND OTHERS 2015 (5) SA 358 (GP)

Case heard and judgment delivered 11 November 2014.

Granted an interdict to prevent the seizure of e-cigarettes on the grounds of selective and targeted enforcement against the application for which there was no rational basis.

“Public-policy considerations and the efficacy of public administration, as well as the integrity of an effective law-enforcement function, would all militate against the notion that an individual against whom a law is sought to be enforced may, purely on account of an assertion that the law being enforced against him or her is not being equally or uniformly applied to other wrongdoers, escape liability on account of that. It would, however, be a different matter when, beyond being unequally enforced, the law is enforced in a selective manner and where no rational basis for the selectivity exists. Selectivity must be an option open to law-enforcement agencies. There may be many viable reasons why a law is selectively enforced — the selection may enhance the efficacy of the system or the selection may be justified by the availability of resources. Accordingly, even though the concept of selective enforcement may appear to be at odds with the values of equality, there may well be cogent justification for it and it would appear to me that, given that rationality is a part of the rule of law, selective enforcement would pass constitutional muster when it is rational. If this were not the case it would be open to law-enforcement agencies, who carry both enormous power as well as responsibility in applying and enforcing the law, to do so irrationally and to the prejudice of those affected.” [Paragraph 32]

S V MOKGOTLANE (A718/14) [2014] ZAGPPHC 729 (30 SEPTEMBER 2014)

On special review, set aside conviction for housebreaking due to procedural irregularities (Khumalo J concurring).

SHAIENORA V MINISTER OF HOME AFFAIRS (55580/2011) [2014] ZAGPPHC 714 (23 SEPTEMBER 2014)

Case heard 5 August 2014; Judgment delivered 23 September 2014.

Condoned applicant’s failure to comply with provisions of the Institution of Legal Proceedings Against Certain Organs of State Act.

BEKKER V JANSE VAN RENSBURG (61332/2012) [2014] ZAGPPHC 709 (23 SEPTEMBER 2014)

Case heard 15 August 2014; Judgment delivered 23 September 2014.

Partially upheld a claim for payment of the balance of purchase price for a 50% members' interest in a close corporation. Balance of claim not successful as plaintiff failed to prove the existence of an acceleration clause.

LETSOALO AND ANOTHER V LETSOALO AND ANOTHER; IN RE: LETSOALO V LETSOALO AND OTHERS (A116/2014) [2014] ZAGPPHC 738 (12 SEPTEMBER 2014)

Case heard 28 August 2014; Judgment delivered 12 September 2014.

Upheld appeal against eviction order granted under the PIE Act, on the grounds that the ownership of the property in question remained in dispute (AA Louw J concurring).

CITY OF TSHWANE METROPOLITAN MUNICIPALITY V NNDWA (A762/2013) [2014] ZAGPPHC 737 (12 SEPTEMBER 2014)

Case heard 19 August 2014; Judgment delivered 12 September 2014.

Rejected appeal against order directing appellant to restore respondent's electricity supply (AA Louw J concurring).

MSAWU V S (A832/2013) [2014] ZAGPPHC 739 (9 SEPTEMBER 2014)

Case heard 20 August 2014; Judgment delivered 9 September 2014.

Overtaken a conviction for murder on the grounds of common purpose liability. Convictions and sentences for robbery upheld (AA Louw and JW Louw JJ concurred).

"... [T]he question for determination is whether the proven facts establish, on the part of the appellant, the existence of a common purpose to kill the deceased. In *S v CLOETE* ... in dealing with admissions made in an explanation of plea, the Court emphasised that there was no reason why a court should be entitled to have regard to the incriminating parts of such a statement while ignoring the exculpatory ones. Clearly the exculpatory parts of the appellant's plea explanation suggest that he did not foresee that the deceased would be killed. In addition the State did not prove any act of active association on his part in the killing of the deceased. On the contrary, the evidence by the appellant that he could not have done anything to prevent the death of the deceased on account of the threats made on his life by his co-accused, stood unchallenged." [Paragraph 18]

G v G (19704/2011) [2014] ZAGPPHC 619 (14 August 2014)

Case heard 19 – 23 May 2014; Judgment delivered 14 August 2014.

Rejected a counterclaim in a divorce action, finding that there had been no universal partnership between the parties.

DERBY-LEWIS V MINISTER OF VEILIGHEID EN SEKURITEIT (20193/2004) [2014] ZAGPPHC 587 (14 AUGUST 2014)

Case heard 12 May 2014; Judgment delivered 14 August 2014

Computation of damages for unlawful arrest and detention and malicious prosecution.

ROAD ACCIDENT FUND V MASHALA (A474/2012) [2014] ZAGPPHC 554 (25 JULY 2014)

Case heard 23 April 2014; Judgment delivered 25 July 2014

Upheld appeal against the dismissal of an application to reconsider a costs order. Found that a settlement offer fell within the ambit of Rule 34(1) (Rabie and Baqwa JJ concurring).

“The conclusions of the Court a quo would mean that where separation of liability and quantum has taken place, no offer of settlement would be possible in terms of Rule 34(1) simply because it is not an offer sounding in money. Such a result would not only undermine the rationale for the rule but would serve to encourage unnecessary litigation to the cost of litigants and the fiscus.” [Paragraph 17]

NOMBIBA V S (A82/2014) [2014] ZAGPPHC 601 (23 JULY 2014)

Case heard 21 July 2014; Judgment delivered 23 July 2014.

Rejected appeal against conviction and sentence for contravention of Sexual Offences Act (Potterill J concurring).

K V K (68743/2011) [2014] ZAGPPHC 464 (19 JUNE 2014)

Case heard 15 – 16 May 2014; Judgment delivered 19 June 2014.

Granted decree of divorce, rejecting claim for forfeiture of benefits and upholding counterclaim for division of the joint estate.

KHUMALO V S (A647/2012) [2014] ZAGPPHC 504 (3 JUNE 2014)

Case heard 6 March 2014; Judgment delivered 3 June 2014

Upheld appeal against conviction for rape (Moseamo AJ concurring).

VVM (PTY) LTD V AUTOMAN AUTO TRADING (PTY) LTD (31786/2013) [2014] ZAGPPHC 172 (3 APRIL 2014)

Case heard 17 March 2014, Judgment delivered 3 April 2014

Dismissed application for the winding-up of respondent, found that respondent was in fact able to pay its debts.

“The applicant is cited as VVM (Pty) Ltd whereas in fact it is ‘Van De Venter Mojapelo (Pty) Ltd’. In my view this is not a matter of substance as it appears that the abbreviated form of the plaintiff was used. The resolution authorising the launch of these proceedings contains the full and proper names of the applicant. While the use of the abbreviated name of the applicant may be regarded as shoddy, I am satisfied that there can be no uncertainty as to whom it relates. To dismiss the application on that basis alone would be to elevate form above substance in the most unacceptable fashion.” [Paragraph 4.1]

PATEL N.O. OBO K.M. V ROAD ACCIDENT FUND (74647/2010) [2014] ZAGPPHC 188 (3 APRIL 2014)

Case heard 24 – 26 February 2014; Judgment delivered 3 April 2014.

Computation of damages for future loss of earnings of minor child following motor vehicle accident.

BONTHUYS AND ANOTHER V POTGIETER AND OTHERS (16760/2014) [2014] ZAGPPHC 170 (3 APRIL 2014)

Case heard 18 March 2014; Judgment delivered 3 April 2014

Dismissed application seeking to prohibit the third respondent from leasing a sectional title unit, on the basis of non-joinder of other affected unit owners and finding that the third respondent owned the property in question.

“... [N]otwithstanding the error in the Surveyor General’s Sectional Title Plan, the third respondent was and continues to be the registered owner of unit 5 Abacus, albeit that such unit was depicted as unit 1 on the Surveyor General’s plan. To suggest in the light of ... the history of this development and what was purchased, acquired and regarded as their property by the respective owners, that the third respondent was the owner of unit 5 as it is located on the Surveyor General’s plan, would undermine the rights and interests of all those owners who bought units ... as well as run contrary to the principles of contract and the sanctity of contracts ...” [Paragraph 37]

MAXIME HOTEL (PTY) LTD AND ANOTHER V CHAIRPERSON: NATIONAL GAMBLING BOARD N.O AND OTHERS (70868/2012) [2014] ZAGPPHC 121 (20 MARCH 2014)

Case heard 17 February 2014; Judgment delivered 20 March 2014.

Rejected application to set aside a regulation issued under the National Gambling Act.

“What the applicants have done is to seek declaratory relief on the basis of what they contend is a collateral challenge. The application for the license which is at the heart of the litigation and the cause of the applicants’ concerns is not before the Court but the applicants seek declaratory relief which if granted, may well enable the applicant to insist on the issuing of the license.” [Paragraph 24]

BRICK ON BRICK PROPERTY INVESTMENTS 23 (PTY) LTD V CHEVRON SOUTH AFRICA (PTY) LTD (6412/2013) [2013] ZAGPPHC 400 (3 DECEMBER 2013)

Case heard 14 November 2013; Judgment delivered 3 December 2013.

Confirmed cancellation of notarial deed of lease and granting order ejecting first and second respondents from property, subject to second respondent being entitled to remove various equipment, in compliance with the National Environmental Management Act.

ROBERT BOSCH RETIREMENT BENEFIT FUND V KOOVERJIE N.O. AND OTHERS (59231/2012) [2013] ZAGPPHC 455 (3 DECEMBER 2013)

Case heard 12 November 2013; Judgment delivered 3 December 2013.

Rejected PAJA review of decision not to approve applicant in terms of the Pension Funds Act.

GALLAGHER GROUP LTD AND ANOTHER V IO TECH MANUFACTURING (PTY) LTD AND OTHERS 2014 (2) SA 157 (GNP)

Case heard 29 July 2013; Judgment delivered 15 August 2013.

Dismissed an exception to an amendment of particulars of objection regarding the revocation of a patent.

PREMIER FOODS (PTY) LTD V MANOIM NO AND OTHERS (38235/2012) [2013] ZAGPPHC 236 (2 AUGUST 2013)

Case heard 15 June 2013; Judgment delivered 2 August 2013.

Denied application to prohibit the issuing of a notice certifying that the applicant’s conduct constituted prohibited conduct under the Competition Act.

The decision was overturned by the SCA in **PREMIER FOODS (PTY) LTD v MANOIM NO AND OTHERS 2016 (1) SA 445 (SCA)**.

INVESTEC BANK LTD v ADRIAANSE AND OTHERS NNO 2014 (1) SA 84 (GNP)

Case heard 3 – 4 June 2013; Judgment delivered 25 June 2013.

Upheld claim for repayment of a loan in terms of a suretyship agreement.

BEACH V ROAD ACCIDENT FUND (53528/2009) [2014] ZAGPPHC 128 (20 MARCH 2014)

Case heard 28 February 2014; Judgment delivered 20 March 2014.

Found defendant liable for 80% of plaintiff's damages caused by a motor vehicle accident.

LOMBARD AND ANOTHER V OKHIONKS (46878/2012) [2013] ZAGPPHC 486 (18 DECEMBER 2013)

Case heard 12 November 2013; Judgment delivered 18 December 2013.

Dismissed application to declare sale agreement to be cancelled.

SITHOLE V S (A 149/10) [2013] ZAGPPHC 480 (3 DECEMBER 2013)

Case heard 13 February 2013; Judgment delivered 3 December 2013 [Note – the matter was referred back to the trial court to consider an application for a special entry].

Rejected appeal against conviction for murder, upheld appeal against conviction for attempted murder on the grounds of lack of intention. Sentence reduced from a cumulative 16 years imprisonment to 12 years' imprisonment (Preller J and Alberts AJ concurring).

WENNENI INVESTMENTS (PROPRIETARY) LIMITED AND ANOTHER V BROUZE AND OTHERS (34349/2010) [2013] ZAGPPHC 391 (11 NOVEMBER 2013)

Case heard 14 – 16 November 2011; 25 – 28 September 2012; 23 – 26 April 2013, and 19 September 2013; Judgment delivered 11 November 2013

Found that plaintiff had been induced to exit from a shareholding agreement due to material misrepresentations and non-disclosure by defendants.

Overturned on appeal by the SCA in **Brouze v Wenneni Investments (20427/2014) [2015] ZASCA 142; [2015] 4 All SA 543 (SCA) (30 September 2015)**.

KEMP V ZISSIMIDES AND OTHERS (127/2012) [2013] ZAGPPHC 401 (11 NOVEMBER 2013)

Case heard 16 October 2013; Judgment delivered 11 November 2013.

Found third defendant liable for damages for injuries sustained by the plaintiff being forcibly removed from a restaurant.

TEKENPRAKTYK CC V ERF 2720 TZANEEN (PTY) LTD (20648/2012) [2013] ZAGPPHC 228 (2 AUGUST 2013)

Case heard 7 June 2013; Judgment delivered 2 August 2013

Dismissed claim for commission, based on an oral mandate, flowing from a sale of property.

NABUVAX (PTY) LTD AND OTHERS V CITY OF TSHWANE METROPOLITAN MUNICIPALITY AND OTHERS (31875/13) [2013] ZAGPPHC 181; [2013] 3 ALL SA 528 (GNP) (2 JULY 2013)

Case heard 25 – 26 June 2013; Judgment delivered 2 July 2013.

Dismissed application for an interim interdict to prevent construction activities.

“Section 34 of the Bill of Rights, which guarantees access to courts to resolve justiciable disputes, would be severely undermined and be rendered meaningless if challenges to locus standi on speculative grounds were to succeed. The failure to object to the DFA cannot have the punitive consequence the respondents contend for in that it serves to disqualify the second and third applicants on account of past conduct which has not been demonstrated to be either culpable nor deliberate. The affirmation by the Constitutional Court of a generous approach to standing as well as the recognition by our Courts that the protection of a self-interest may in certain circumstances suffice, satisfy me that the challenge to the locus standi of the applicants is unsustainable and is destined to fail.” [Paragraph 29]

FIRST NATIONAL BANK, A DIVISION OF FIRSTRAND BANK LTD v CLEAR CREEK TRADING 12 (PTY) LTD AND ANOTHER 2014 (1) SA 23 (GNP)

Case heard: 7 February 2013; Judgment delivered: 14 March 2013.

Finding the provisions of the National Credit Act applicable to a home loan agreement.

“In my view, and absent any principle in law that would stand in opposition to the ordinary right of contracting parties to reach agreement on the terms and conditions of their contract and to invoke for their mutual benefit the protection of a statute, any agreement so concluded should be binding. Of course in doing so the parties should not be permitted to intrude upon the legislative authority of parliament or to undermine the letter and spirit of legislation. ...” [Paragraph 21]

“I can find no persuasion in the argument that, if the stated intention of the Act is to protect consumers, then a consumer who falls outside of the Act (as the first defendant does in this matter) is precluded by some principle from mutually agreeing to have the protection of the Act extended to it.” [Paragraph 22]

On appeal in **First National Bank - A Division of Firstrand Bank Limited v Clear Creek Trading 12 (Pty) Ltd and Another (1054/2013) [2015] ZASCA 6 (9 March 2015)**, the SCA held that the High Court had erred in ordering a separation of issues under Rule 33(4) of the Uniform Rules of Court. The court held (at paragraphs 13 – 14):

“In my view, the procedure adopted in the court below was not competent under rule 33(4). The failure to make any order and the failure to specify an issue with clarity combined to render the approach incompetent. ... This may be considered to be an unduly formalistic approach to adopt. In this case, however, the failure to address the matter properly under rule 33(4) led to an even more substantial difficulty. This impacted on the ability of the court to arrive at a proper conclusion on the issue.”

HERITAGE HILL HOME OWNERS’ ASSOCIATION v HERITAGE HILL DEVCO (PTY) LTD 2013 (3) SA 447 (GNP)

Case heard 14 November 2012; Judgment delivered 5 February 2013

Upheld a claim for the payment of levies on the basis that the defendant was the registered owner of the properties in question.

“In my view the decision in *Kosmos Ridge*, to the extent that the court found itself bound by the decisions in *Florida Hills* and *Rynfield*, was wrong. ... [T]hose decisions relate to a different context and indeed a different legal relationship, and are clearly distinguishable from the facts in the present matter. In addition it appears from the *Kosmos Ridge* judgment that ‘registered owners’ were defined in the articles in that matter to refer to owners who received transfer. There is no such provision in the articles of the plaintiff. Under those circumstances this court is entitled and indeed justified in departing from the decision in *Kosmos Ridge*.” [Paragraph 37]

The judgment was upheld by a full bench of the High Court in **HERITAGE HILL DEVCO (PTY) LTD v HERITAGE HILL HOMEOWNERS ASSOCIATION 2016 (2) SA 387 (GP)**.

DLUDLU V S (A858/2013) [2013] ZAGPPHC 7 (17 JANUARY 2013)

Case heard 24 October 2012; Judgment delivered 17 January 2013

Appeal against sentence of 25 years’ imprisonment for murder upheld due to failure to forewarn accused of application of minimum sentence legislation. Substituted sentence of 20 years’ imprisonment (Mothle J concurring).

SECTION 27 AND OTHERS v MINISTER OF EDUCATION AND ANOTHER 2013 (2) SA 40 (GNP)

Case heard 17 May 2012; Judgment delivered 18 June 2012.

Held that the failure of the respondents to provide textbooks to schools in Limpopo constituted a violation of the right to basic education; and ordered respondents to provide textbooks to certain grades as a matter of urgency; and ordered respondents to develop a “catch-up plan” for affected learners.

“... [T]he provision of learner support material in the form of such textbooks as may be prescribed is an essential component of the right to basic education, inextricably linked to the fulfilment of that right. In fact it is difficult to conceive, even with the best of intentions, how the right to basic education can be given effect to in the absence of textbooks. On that basis it accordingly has to follow — given the respondents’ own goals and indicators in their Annual Performance Plan, and their target of 100% in respect of delivery of workbooks and textbooks for the entire school year — that the failure to provide textbooks by about midway through the academic year would prima facie constitute a violation of the right to basic education.” [Paragraph 25]

The judgment was followed by the SCA in **MINISTER OF BASIC EDUCATION AND OTHERS v BASIC EDUCATION FOR ALL AND OTHERS 2016 (4) SA 63 (SCA)**, where the court said (at paragraph 46): “I agree with Kollapen J ... that the failure to provide textbooks to learners in schools in Limpopo in the circumstances ... is a violation of the rights to a basic education, equality, dignity, SASA and s 195 of the Constitution.”

The judgment was also approved by the Eastern Cape High Court in **TRIPARTITE STEERING COMMITTEE AND ANOTHER v MINISTER OF BASIC EDUCATION AND OTHERS 2015 (5) SA 107 (ECG)**, where the court said (at paragraph 18): “In my view Kollapen J is correct. The right to education is meaningless without teachers to teach, administrators to keep schools running, desks and other furniture to allow scholars to do their work, textbooks from which to learn and transport to and from school at state expense in appropriate cases.”

TSWANE TELEDATA (PTY) LTD V KREYVELDT (13091/2010) [2012] ZAGPPHC 77 (25 MAY 2012)

Case heard 25 April 2012, Judgment delivered 25 May 2012.

Substantially rejected claim for payment arising from an employment relationship.

EMPLOYEES OF SOLAR SPECTRUM TRADING 83 (PTY) LIMITED V AFGRI OPERATIONS LIMITED AND ANOTHER, IN RE; AFGRI OPERATIONS LIMITED V SOLAR SPECTRUM TRADING 83 (PTY) LTD (6418/2011, 18624/2011, 66226/201, 666226/2011, 66226A/11) [2012] ZAGPPHC 359 (16 MAY 2012)

Case heard 27 March 2012; Judgment delivered 16 May 2012.

Granted application to commence business rescue proceedings.

“Business rescue is a relatively new concept ... There are various judgments that have dealt with its application and in some of those there appear to be an attempt to compare it to the regime of judicial management. There are in my view both philosophical and substantive differences between the regime of judicial management and the concept of business rescue. CLAASSEN J in *Oakdene supra* remarks that South Africa has had a traditional liquidation system with a liquidation culture, it is this culture that the Act seeks to reverse, recognising the broadly accepted failure of the concept of the judicial management.” [Paragraph 8]

BOARD OF HEALTHCARE FUNDERS V DISCOVERY HEALTH MEDICAL SCHEME AND OTHERS (35769/2010) [2012] ZAGPPHC 65 (15 MAY 2012)

Case heard 1 March 2012; Judgment delivered 15 May 2012

Granted order restraining infringement of copyright.

BUSINESS PARTNERS LTD V SILVER STARS TRADING 245 CC AND ANOTHER (14408/2008) [2012] ZAGPPHC 76 (15 MAY 2012)

Case heard 7 March 2012; Judgment delivered 15 May 2012.

Upheld damages claim based on a loan agreement, but rejected claim based on an agreement for the payment of royalties for being contrary to public policy and therefore unenforceable, inter alia as the agreement sought to avoid the application of the Usury Act.

“One is also mindful in this regard of the caution often expressed that courts should guard against creating uncertainty as to the validity of contracts as well to guard against the arbitrary and indiscriminate use of judicial power in setting aside such contracts. On the other hand it must also be apparent that if regard be had to the architecture of our constitutional order and in particular the values upon which it is premised in particular those of equality and human dignity then courts should also in appropriate cases not hesitate in striking down contracts that offend against the principles of public policy as encapsulated in the constitution.” [Paragraph 45]

“Public policy not based on the individual idiosyncrasies of members of the judiciary as was cautioned against in *Brisley v Drotzky* ... but on the values of the constitution in particular freedom, equality and human dignity must mean that while courts should not readily interfere in the domain of contractual freedom. In instances, however, where the facts and circumstances warrant interference it could be said that in order to give effect to the public policy imperatives of our constitution such interference by our courts may not only be desirable but necessary as well.” [Paragraph 55]

The finding in relation to the royalties agreement was overturned on appeal by a full bench of the High Court in **Business Partners Limited v Silverstars Trading 245 CC (A762/2012, 14408/2008) [2015] ZAGPPHC 1108 (29 May 2015)**.

SA NATIONAL DEFENCE UNION V MINISTER OF DEFENCE & OTHERS (2012) 33 ILJ 1061 (GNP); 2012 (4) SA 382 (GNP)

Case heard: 29 August and 2 September 2011; Judgment delivered 9 February 2012.

Upheld a claim for defamation by plaintiff trade union regarding an article published in the official magazine of the Department of Defence.

“Our law has developed to such a stage where considerations of legal and public policy must mean that a trade union should have the right to sue for defamation and in my view this would be consistent with the spirit of the judgment of the Constitutional Court in *SA National Defence Union v Minister of Defence & another*, where the court found that the total ban on trade unions in the defence force went beyond what was reasonable and justifiable.

If such an action would be available to a trade union in the widest sense ... there can be no reason why a trade union that operates within the context of the defence force should on account of any policy or legal considerations be excluded from being the recipient of such a right and on this aspect one must conclude that, having regard to the incremental development in our law of defamation as well as regard to the constitutional values which underpin our constitutional order, there can be no reason why a trade union and in particular a trade union such as the plaintiff which operates within the defence force should not have the right to sue for defamation under appropriate circumstances.” [Paragraph 19]

CASH PAYMASTER SERVICES (NORTH WEST) (PTY) LTD V SOUTH AFRICAN SOCIAL SECURITY AGENCY (6406/2011) [2011] ZAGPPHC 190 (13 SEPTEMBER 2011)

Case heard 28 July 2011; Judgment delivered 13 September 2011.

Granted order declaring that respondent had no right to appeal the ruling of an arbitrator, which had dismissed an exception to a statement of claim, and setting aside a notice of appeal.

GF v SH AND OTHERS 2011 (3) SA 25 (GNP)

Case heard and judgment delivered 9 December 2010.

Set aside a writ of execution, on the basis that the maintenance obligations had been varied by agreement, and that to insist on compliance with the court order in the face of a mediated agreement would offend against fairness and equity. The warrant was set aside as it did not take the adjusted maintenance amounts into account. Applicant was found in contempt of court for failing to pay maintenance during certain periods, and was sentenced to imprisonment, suspend on condition that arrear maintenance was paid.

“It must thus be clear and apparent that the risk ... that public policy should not depend on the determination of subjective judicial minds, is unlikely to materialise in the constitutional dispensation of our society since the Constitution and its values provide, in the most

compelling fashion, a framework to determine the scope and parameters of such public policy.”
[Paragraph 16]

“These in real and substantive terms represent the efforts and the conclusions reached by the parties with regard to how they would engage each other in respect of their reciprocal obligations towards the minor children, and therefore such agreements would fall to be considered as constituting a valid basis for the departure from the *Shifren* principle. In particular, to the extent that the letter ... of 13 August 2008 evidences a new (albeit) temporary financial arrangement, which by all accounts the parties gave effect to and complied with in broad substantial terms, it would constitute a gross inequality if it were open to the first respondent, having been party to both concluding such an agreement and giving effect thereto, to purport to ignore its existence simply on account of the fact that it was not reduced to writing and signed by the parties.” [Paragraph 28]

The judgment was overturned in part by the SCA in **SH v GF AND OTHERS 2013 (6) SA 621 (SCA)**. The SCA held that there had been no variation of the maintenance order, but dismissed the appeal against the sanction for contempt of court.

The SCA said (paragraphs 15 – 16): “In context the parties in my judgment did not intend the arrangement ... to constitute a variation of the maintenance order. What was envisaged was clearly that if the trial period should prove to be successful, a formal variation would be brought about and, until that takes place, there is no variation of the maintenance order. ... I find therefore that the court a quo erred in concluding that the maintenance order was in fact varied. ... In any event the view of Kollapen AJ that in the light of the oral agreement of variation of the maintenance order it would offend against public policy to enforce the non-variation clause, cannot be endorsed. This court has for decades confirmed that the validity of a non-variation clause such as the one in question is itself based on considerations of public policy, and this is now rooted in the Constitution. ... Despite the disavowal by the learned judge, the policy considerations that he relied upon are precisely those that were weighed up in *Shifren*.”

JİYANE V MSIZA [2010] ZAGPPHC 270; 54703/2008 (4 JUNE 2010)

Rejected a claim, based on vicarious liability, for damages on behalf of a minor for injuries sustained in a motor vehicle accident.

MURRELL AND ANOTHER V MINISTER OF SAFETY AND SECURITY (24152/2008) [2010] ZAGPPHC 580 (2 FEBRUARY 2010)

Upheld damages claim for unlawful arrest and detention.

SELECTED PUBLICATIONS

“Not only the business of the state, but also a business of all: State reporting in South Africa and popular participation”, *Journal of Law, Democracy and Development*, Volume 15 (2011).

This article discusses issues arising from South Africa’s state reporting regarding international human rights law.

“While reporting is primarily a state obligation, what is contained in the report is not exclusively the business of state. It is the business of everybody else in the country inasmuch as they have an interest and stake in it. Similar reasoning applies in the case of entities like the United Nations (UN) and African Union (AU). Although they are inter-governmental organisations, their work is the concern of all humanity, and therefore everybody has an interest in what happens within these structures and in the reports that are submitted to them. In other words, given the existence of a gap between international standard - setting and compliance therewith, it is vital that citizens participate in the processes around state reporting, both at country and intergovernmental levels.” [Page 516]

“We have a constitution that is committed to public participation at virtually every level of governance: the level of policy making, the level of law making and the level of service delivery. The notion of public participation is the golden thread running through the Constitution; by implication, that notion applies as well to the processes by which government discharges its international human rights obligations.” [Page 518]

“Prisoners' Rights Under the Constitution Act No. 200 of 1993”, *Centre for the Study of Violence and Reconciliation Seminar No. 5, 1994* (<http://www.csvr.org.za/wits/papers/papkolpn.htm>)

“In recent times we have seen high levels of unrest in our prisons and while not condoning some of the actions taken, some of the underlying causes of such unrest appear to be legitimate. It might very well be argued that prisoners who all have a common interest should have the freedom to associate and any law which makes inroads on such freedoms would be unconstitutional. If one was able to successfully argue the freedom of association, the notion of prisoner organisations operating within prisons could become a reality, and if this is so, on what basis could one possibly argue against the right of such prisoners who belong to such associations, to assemble, demonstrate and present petitions. These questions pose interesting challenges not only to the administration of prisons but to the notion that we in society have regarding prisons and prisoners' rights. If prisoners were allowed to associate, to assemble and to present petitions, could it still be argued that such conduct was objectionable, or would someone seeking to outlaw such conduct have difficulty in presenting an argument to the effect that a limitation of such rights complied with the criteria set out in Section 33 of the Constitution. It would certainly appear that the Constitution, far from providing definite answers, brings up interesting questions.”

MEDIA COVERAGE AND ADDITIONAL INFORMATION

Media report of keynote address at 2014 Public Interest Law Gathering (<http://www.publicinterestlawgathering.com/media-report-on-keynote-by-judge-jody-kollapen/>)

“... [H]e said, if the question was have we done enough to transform our society, the answer would have to be decisively no.

Kollapen cautioned against the judicialisation of politics, saying there was a critical role for public interest lawyers, but also a need for the awareness of the limits of that role. He said that despite their best intentions, public interest lawyers should be strategic about the kinds of cases they took up.”

Quoted discussing higher education’s role in human rights and transformation, at UNISA (<http://www.unisa.ac.za/news/index.php/2014/09/higher-educations-role-in-transformation/>)

“A university in advancing, defending and embracing academic freedom and institutional autonomy cannot do so without accepting the responsibility of changing society. Universities need to decolonise and deracialise higher education and some of the more practical ways (they) can do that is to be aware of their service providers, their human rights and transformation track record, how they work ...”

Complainant in the Equality Court case of **Kollapen v Du Preez (EC 001/03) [2005] ZAEQC 1 (29 March 2005)**, which was settled with the respondent acknowledging that hairdressing salons under his control had unfairly discriminated on the basis of race by turning people away.

JUSTICE STEVAN MAJIEDT

BIOGRAPHICAL INFORMATION AND QUALIFICATIONS

Born: 18 December 1960.

LLB, University of the Western Cape (1983)

B.A, University of the Western Cape (1981)

CAREER PATH

Acting Justice of the Constitutional Court (2014).

Justice of Appeal, Supreme Court of Appeal (2010 – to date)

Judge of the Northern Cape High Court, Kimberley (2000 – 2010).

Acting Judge of the Northern Cape High Court, Kimberley (2000).

Advocate, Northern Cape Society of Advocates (January – March 2000).

Chief Provincial State Law Advisor, Office of the Premier, Kimberley (1996 – 1999).

Head, adjudication, Independent Electoral Commission, Northern Cape (January – June 1994).

Advocate, Cape Bar (1984 – 1995).

Chair, Commission of Inquiry into the sale of vehicles by the Department of Health, Northern Cape (2007).

Chair, International Commission of Inquiry into allegations of racism within Zimbabwean Cricket (2005).

Between 1996 – 1999, Justice Majiedt chaired the following Commissions of Inquiry:

Chair, Commission of Inquiry into the alienation and transfer of Municipal land at Douglas, Northern Cape.

Chair, Commission of Inquiry into housing in the Northern Cape.

Chair, Commission of Inquiry into the Kimberley Hospital Complex.

Chancellor, Sol Plaatje University (August 2015 – to date).

Member, South African Judicial Education Institute (SAJEI), (2014 – to date).

Chairperson, Rules Board for the Courts of Law (2013 – to date).

Chairperson, William Pescod High School Alumni Trust (2009 – 2015)

Chairperson, St Joseph Congregational Church Council (2009 – 2015).

Chairperson, Africana Library Trust (2007 – 2015).

JUDGMENTS

In terms of article 5.2.6 of the Norms and Standards for the Performance of Judicial Functions,⁷ “[s]ave in exceptional circumstances where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing.”

From the judgments surveyed, where both hearing date and date of judgment were available on the databases used, we identified the following judgments as having been delivered by the candidate after the 3 month period identified in the norms and standards:

- National Commissioner of the South African Police Services (judgment delivered in just over 5 months);
- Malan v City of Cape Town (nearly 7 months);
- Cool Ideas v Hubbard (4 months);
- SAPS v Barnard (over 5 months);
- Kommissaris: Suid Afrikaanse Inkomstediens (nearly 5 months).

It should be noted that all these cases were heard by a panel of judges (four being Constitutional Court judgments).

For appellate courts, the judgments found in this research are tabulated as follows for each court:

C- number of cases heard by the judge

J – number of unanimous leading judgments written by the judge

s – number of cases where at least one separate judgment concurred with the leading judgment (J)

d – number of cases where at least one judgment dissented from the leading judgment (J)

S – number of separate but concurring judgments written by the judge

D – number of dissenting judgments written by the judge.

⁷ Government Gazette No. 37390, 147, 28 February 2014.

Constitutional Court

YEAR	C	J	s	d	S	D
2014	4	1		2	1	
TOTAL	4	1		2	1	

UNANIMOUS JUDGMENTS (J)

NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE V SOUTHERN AFRICAN HUMAN RIGHTS LITIGATION CENTRE AND ANOTHER (DUGARD AND OTHERS AS AMICI CURIAE) 2015 (1) SA 315 (CC).

Case heard 19 May 2014; Judgment delivered 30 October 2014.

The extent to which the SAPS is obligated under domestic and international law to investigate crimes against humanity of torture allegedly committed in Zimbabwe. The court held that, as torture was a crime against humanity and was listed in Schedule One to the ICC Act, it formed part of the category of crimes in which all states have an interest in terms of customary international law. Accordingly, the appellant's contention that it could not investigate without a suspect's presence in the country was rejected.

"We cannot be seen to be tolerant of impunity for alleged torturers. We must take up our rightful place in the community of nations with its concomitant obligations. We dare not be a safe haven for those who commit crimes against humanity." [Paragraph 80].

This judgment was commended by Max du Plessis in *Institute for Security Studies Policy Brief 81* November 2015, where he stated that "the decision establishes a progressive framework for prosecuting international crimes, provides a powerful tool against impunity, and confirms that states can and must play a complementary role in pursuing the aims of international criminal justice in respect of non-state parties."

JUDGMENT DELIVERED WHERE AT LEAST ONE JUDGMENT BY ANOTHER JUDGE DISSENTING
(d)

MALAN V CITY OF CAPE TOWN 2014 (6) SA 315 (CC).

Case heard 20 February 2014; Decided on 18 September 2014.

The validity of the City of Cape Town's decision to cancel a lease agreement as well as an appeal against the High Court's eviction order. Majiedt AJ concluded that the City had lawfully and validly cancelled the lease because of Ms Malan's arrear rental and alleged illegal activities conducted on the property.

“Tenants in public housing thus may not be evicted merely on notice. There must be something more: either further breaches of the lease agreement, or the necessity to secure vacant premises for other pressing public reasons.... It is sufficient to say that, absent good cause, the Constitution forbids a government agency from using a contractual power of termination against a tenant in need of public housing.” [Paragraph 64].

“As Ms Malan will be adequately accommodated as proposed, there is no good reason why the property should not be made available to a deserving, needy family. We were informed by Counsel for the City that there are many thousands of people waiting to be accommodated. The City must also bear in mind the rights and needs of these people.” [Paragraph 85].

Majority judgment written by Majiedt AJ (Moseneke ACJ, Skweyiya ADCJ, Cameron, Jafta, Khampepe and Van der Westhuizen JJ concurred). Two dissenting judgments – Dambuza AJ (Froneman J and Madlanga J concurring), and Zondo J.

COOL IDEAS 1186 CC V HUBBARD AND ANOTHER 2014 (4) SA 474 (CC).

Case heard 5 February 2014; Decided on 5 June 2014.

The case was about a building contract for the construction of a residential dwelling unit. The issue was around a property developer not being a registered home builder in terms of the Housing Protection Act. An arbitration award was made in the builder’s favour. The Court had to consider the proper meaning of section 10(1)(b) of the Housing Protection Act. It observed that the fundamental tenet of statutory interpretation was that the words in a statute had to be given their ordinary grammatical meaning, unless to do so would result in an absurdity. It was held that this was subject to three important interrelated riders to this general principle: Statutory provisions should always be interpreted purposively; they should be properly contextualised; and all statutes had to be construed consistently with the Constitution.

The Court refused to make the arbitration award an order of court but nonetheless stated:

“That is not to say that a court can never enforce an arbitral award that is at odds with a statutory prohibition. The reason is that constitutional values require courts to "be careful not to undermine the achievement of the goals of private arbitration by enlarging their powers of scrutiny imprudently". Courts should respect the parties' choice to have their dispute resolved expeditiously in proceedings outside formal court structures. If a court refuses too freely to enforce an arbitration award, thereby rendering it largely ineffectual, because of a defence that was raised only after the arbitrator gave judgment, that self-evidently erodes the utility of arbitration as an expeditious, out-of-court means of finally resolving the dispute. ... So it will often be contrary to public policy for a court to enforce an arbitral award that is at odds with a statutory prohibition. But it will not always be so. The force of the prohibition must be weighed against the important goals of private arbitration that this court has recognised.”[para 56].

This judgment was criticised by Justice Malcolm Wallis in ‘The Common Law’s Cool Ideas for Dealing with Ms Hubbard’, *South African Law Journal*, Vol. 132, Issue 4 (2015), pp. 940-970. Justice Wallis argued that Majiedt AJ should have resolved the case by the straightforward application of common law principles. Instead, the article argued, Majiedt AJ chose not to use them and in so doing created uncertainty and “cast doubt upon two long established rules that are part of the bedrock of the rule of law. The first was that a court would not order someone to do something that is forbidden by law. The second, an extension of the first, was that an arbitrator is in the same position as a court and likewise may not, by an award, order that something unlawful be done. In part the reason was that the court held itself bound by the incorrect approach to the case by the litigants, contrary to its own decision that this infringes the principle of legality.” Justice Wallis argued that Majiedt AJ created uncertainty in well established common law principle by leaving open the possibility that an award, performance of which involved the breach of a statutory provision and constituted a criminal offence, might nonetheless be enforceable. Furthermore, it was argued that while Majiedt AJ held that the contract remained valid and binding, this was incorrect since “[a] contract to perform work, when the law prohibits the party under that obligation from performing the work, cannot be a valid contract, much less an enforceable one.”

Justice Wallis argued that there was a claim for unjustified enrichment however the majority held that such a remedy was precluded due to the continuing validity of the contract. “The premise was incorrect, the authority relied upon inapplicable, and the result mistaken. This was then compounded by the court holding that the absence of an enrichment action was a deprivation of property. However, if the necessary elements of an enrichment action were not present, their absence could not be a deprivation of property. There can only be a deprivation of property if, in the first place, there is some property, in the broad sense in which that expression is used in s 25 of the Constitution. But if Cool Ideas did not have an enrichment claim, because the contract remained valid and binding, it could not be deprived of that non-existent claim and the whole discussion of an arbitrary deprivation of property became irrelevant. ...”

Regarding Majiedt AJ’s approach to statutory interpretation, Justice Wallis commented that:

“it is to be hoped that this does not signal a reversion to a process of interpretation that most thought had been safely confined to history and one that is inconsistent with the previous approach of the Constitutional Court. ... [T]he SCA now approaches the interpretation of statutes and all documents in a manner that respects the language used whilst also being purposive, contextualised and consistent with the Constitution and constitutional values. Those developments themselves accord with constitutional values that encourage transparency in judicial reasoning. It will be a considerable backward step for the Constitutional Court to endorse any return to literalism in statutory interpretation.” [Page 953].

Moseneke ACJ, Skweyiya ADCJ, Khampepe and Madlanga JJ concurred in the judgment of Majiedt AJ. Jafta J (Zondo J concurring) wrote separate concurring judgment. Froneman J (Cameron, Van der Westhuizen JJ and Dambuza AJ) dissented.

SEPARATE CONCURRING JUDGMENTS WRITTEN BY THE CANDIDATE (S)

SOUTH AFRICAN POLICE SERVICE V SOLIDARITY OBO BARNARD 2014 (6) SA 123 (CC).

Case heard 20 March 2014; Decided on 2 September 2014.

Whether the decision of the National Commissioner of the SAPS not to promote Ms Barnard constituted unfair discrimination. Minority concurring judgment written by Cameron J, Majiedt AJ and Froneman J.

They found that the appropriate standard by which to evaluate Ms Barnard’s claim was on the basis of fairness. The judgment concluded that there was sufficient external evidence to show that the National Commissioner’s decision was fair.

The judgment emphasised the possible infringement of dignity in the implementation of restitutionary measures, and the importance of giving adequate reasons for decisions.

“Race, in other words, is still a vitally important measure of disadvantage, but in planning our future we should bear in mind the risk of concentrating excessively on it. To achieve the magnificent breadth of the Constitution’s promise of full equality and freedom from disadvantage, we must foresee a time when we can look beyond race.” [Paragraph 81].

“These questions are important because care must be taken to ensure that remedial measures do not infringe unduly an individual’s right to dignity. ... The Constitution makes an exception because it recognises that substantive equality can be achieved only by providing advantages to groups of people upon whom apartheid imposed heavy disadvantages. Even so, we must note with care how these remedial measures often utilize the same racial classifications that were wielded so invidiously in the past. ...” [Paragraph 93].

“Were we to adopt the more deferential standard suggested by the main judgment, it would be difficult ever to hold that a decision-maker had impermissibly converted a set of numerical targets into quotas. Any decision that accords with the numerical targets would bear at least some rational connection with the measure’s legitimate representivity goals. But a decision-maker cannot simply apply the numerical targets by rote. ...” [Paragraph 96].

“Assessing the fairness of the individual implementation of affirmative action measures is different to deciding whether those measures amount to unfair discrimination. ... We must insist that the specific implementation as well as the general formulation of remedial measures be fair.” [Paragraph 101].

Supreme Court of Appeal

YEAR	C	J	s	d	S	D

2016	6	5			1	
2015	7	7				
2014	4	4				
2013	9	8				1
2012	6	4		2		
2011	11	10		1		
2010	5	4				1
TOTAL	48	42		3	1	2

UNANIMOUS JUDGMENTS (J)

PALALA RESOURCES (PTY) LTD V MINISTER OF MINERAL RESOURCES AND ENERGY AND OTHERS [2016] 3 ALL SA 441 (SCA).

Case heard 12 May 2016; Judgment delivered 30 May 2016.

Mining and Minerals. Deregistration of a company which is the holder of a mineral prospecting right.

HIBISCUS COAST MUNICIPALITY V HUME HOUSING (638/15) [2016] ZASCA 71.

Case heard 6 May 2016; Judgment delivered 23 May 2016.

Res judicata.

DE VILLIERS V S AND ANOTHER (20732/14) [2016] ZASCA 38.

Case heard 9 March 2016; Judgment delivered 24 March 2016.

Appeal against the dismissal of a review application. Appellant sought the review and setting aside of conviction of theft and the sentence.

NAIDOO V STANDARD BANK OF SOUTH AFRICA (20595/14) [2016] ZASCA 9.

Case heard 26 February 2016; Judgment delivered 9 March 2016.

National Credit Act.

MINISTER OF POLICE V DLWATHI (20604/14) [2016] ZASCA 6.

Case heard 16 February 2016; Judgment delivered 2 March 2016.

Damages for assault committed by the Police.

HENDRICKS V HENDRICKS AND OTHERS 2016 (1) SA 511 (SCA).

Case heard 16 November 2015; judgment delivered 25 November 2015.

The issue was whether the holder of the right of habitatio could obtain an eviction order against an owner who occupies the property without the holder's consent.

"It is well established that ownership is the most comprehensive real right and that all other real rights are derived from it. But limited real rights are absolute in the sense that they are enforceable against any and all. A limited real right detracts from the owner's dominium. Thus, in the present instance the owner of the property, the first respondent, cannot exercise full dominium over it inasmuch as she cannot occupy the property unless the appellant, as the holder of the right to habitation, has consented thereto. Absent such consent, her occupation of the property is unlawful. She is therefore, on the facts of this case, an 'unlawful occupier' within the meaning contemplated in s 1 of the PIE Act." [Paragraph 7].

MASSTORES (PTY) LTD V PICK N PAY RETAILERS (PTY) LTD [2016] 2 ALL SA 351 (SCA).

Case heard 13 November 2015; Judgment delivered 25 November 2015.

Delictual action in that the appellant was trading in competition with a contracting party in contravention of a restraint clause. This also deprived the contracting party of its exclusivity rights under a contract with another.

Appealed to the Constitutional Court. Awaiting judgment.

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE V STEPNEY INVESTMENTS [2016] 1 ALL SA 1 (SCA).

Case heard 8 September 2015; judgment delivered 30 September 2015.

Determination of base cost of shares for capital gains tax purposes that arose upon their disposal.

“A court is entitled to reject a valuation if it is not satisfied with the investigations underpinning it: ‘For instance, if the expert added up his figures wrongly, or took something into account which he ought not to have taken into account, or conversely, or interpreted the agreement wrongly, or proceeded on some erroneous principle – in all these cases, the court will interfere’. The Tax Court was wrong in upholding that valuation. As a consequence, Stepney has failed to discharge its onus of proving the paragraph 29 market value and thus also the aggregate base costs of the relevant shares. But counsel for the Commissioner very properly conceded that the value of the shares cannot be nil”

NKOSI V S 2016 (1) SACR 301 (SCA).

Case heard 9 September 2015; judgment delivered 22 September 2015.

Appeal against conviction for murder.

MINISTER OF MINERAL RESOURCES AND OTHERS V MAWETSE (SA) MINING CORPORATION (PTY) LTD [2015] 3 ALL SA 408 (SCA).

Case heard 7 May 2015; Judgment delivered 28 May 2015.

Whether a prospecting right had lawfully been granted to the fifth Appellant and, if so, whether the fifth appellant could lawfully exercise that right. Allied to that was the calculation of the period for which a mining prospecting right endures. Majiedt JA found that the prospecting right was lawfully granted to the fifth appellant on condition that it comply with the section 2(d) BEE requirement of a 26 percent shareholding. Due to its failure to meet that condition, it was held that the fifth appellant was not entitled to exercise the prospecting right. The time period for which a prospecting right would endure begins on the date on which the applicant is made aware of the granting of the right. Therefore, the prospecting right had expired due to effluxion of time.

This judgment was criticised by PJ Badenhorst in ‘Minister of Mineral Resources v Mawetse (SA) Mining Corporation (Pty) Ltd 2016 (1) SA 306 (SCA)’ in *De Jure* 2016, vol. 49, n.1, who argued that the Court’s reliance on a quote from Schreiner JA’s decision in *Mustapha* should have been placed in its proper context or quoted in full as it does not support such an unbridled state of affairs. He argued that the description of the administrative act, with reference to the dictum of Schreiner JA without a proviso of statutory limitation, was “unfortunate for the current constitutional dispensation and the custodial administration by the State of the mineral resources of the people of South Africa.” Badenhorst further criticised the judgment for misunderstanding the *Meepo v Kotze* 2008 (1) SA 104 (NC) decision; for the use of English law examples; as well as not taking into account the basic principles of contract law and property law. Moreover he stated that the court does not

convincingly explain why the duration of a prospecting right does not have to be computed from the time that a prospecting right is (administratively) granted.

TOFA V S (20133/14) [2015] ZASCA 26.

Case heard 16 March 2015; Judgment delivered 20 March 2015.

Application to adduce further evidence. Appeal of rape conviction.

CLIFTON DUNES INVESTMENTS 100 LIMITED AND ANOTHER V CITY CAPITAL SA PROPERTY HOLDINGS LIMITED (169/14) [2015] ZASCA 12.

Case heard 24 February 2015; Judgment delivered 16 March 2015.

Property syndication.

NATIONAL AFRICAN FEDERATED CHAMBER OF COMMERCE AND INDUSTRY AND OTHERS V MKHIZE AND OTHERS [2015] 1 ALL SA 393 (SCA).

Case heard 3 November 2014; Judgment delivered 21 November 2014.

Whether a meeting of association's council was properly convened and the effect of the resolutions passed. Dealt with the interpretation of the constitution of a voluntary association.

SHUBANE AND ANOTHER V S (073/14) [2014] ZASCA 148.

Case heard 10 September; Judgment delivered 26 September 2014.

Robbery and aggravating circumstances.

WRIGHT V WRIGHT AND ANOTHER 2015 (1) SA 262 (SCA).

Case heard 29 August 2014; Judgment delivered 22 September 2014.

Challenge to factual findings of a referee.

Referred: *Cape Town City v South African National Roads Agency Ltd and Others* 2015 (6) SA 535 (WCC).

JACOBS AND ANOTHER V TRANSNET LTD T/A METRORAIL 2015 (1) SA 139 (SCA).

Case heard 21 August 2014; judgment delivered 17 September 2014.

Claim for damages consequent upon injuries sustained in a collision between a rail commuter train and a small truck. The issue before the Court was the alleged negligence on the part of the respondents in causing the collision. The Court emphasised the vital role played by expert witnesses in court proceedings:

“It is well established that an expert is required to assist the court, not the party for whom he or she testified. Objectivity is the central prerequisite for his or her opinions. In assessing an expert’s credibility an appellate court tests his or her underlying reasoning and is in no worse position than a trial court in that respect. ... “The evidence of such a witness is of little value where he, or she, is partisan and consistently asserts the cause of the party who calls him.”” [Paragraph 15].

MEYER V S [2013] ZASCA 208.

Case heard 18 November 2013; Judgment delivered 28 November 2013.

Application for special leave to appeal.

ZWANE AND ANOTHER V S (426/13) [2013] ZASCA 165.

Case heard 14 November 2013; Judgment delivered 27 November 2013.

Robbery with aggravating circumstances.

MOTOWEST BIKES & ATVS V CALVERN FINANCIAL SERVICES (138/13) [2013] ZASCA 196.

Case heard 20 November 2013; Judgment delivered 2 December 2013.

Claim for damages for the loss of motor vehicle when it was stolen from the appellants car wash premises.

ROSSOUW NO AND ANOTHER V LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA [2013] 4 ALL SA 318 (SCA).

Case heard 22 August 2013; Judgment delivered 13 September 2013.

The case dealt with a sale agreement. It concerned a vindicatory claim and, in the alternative, a claim in terms of the actio ad exhibendum.

LESTER V NDLAMBE MUNICIPALITY AND ANOTHER [2014] 1 ALL SA 402 (SCA).

Case heard 15 May 2013; judgment delivered 22 August 2013.

Demolition of a luxurious building erected without approved building plans.

“[S]ection 26(3) of the Constitution must not only be read in its historical context, ie as a bulwark against the forced removals, summary evictions and arbitrary demolitions of the shameful past dispensation, but also together with section 26(1) and (2) ... The protection afforded in section 26(3) must therefore always, without exception, be read against the backdrop of the right to have access to adequate housing, enshrined in section 26(1). Thus where a person, facing a demolition order, does not adduce any evidence that he or she would not, in the event of his or her dwelling being demolished by order of a court, be able to afford alternative housing, section 26(1) is of no avail to him or her. ... This Court pointed out in *Standard Bank of South Africa Ltd v Saunderson* ... that what constitutes “adequate housing” is always a factual enquiry and that executing a writ of execution in respect of a luxury home ... has no bearing on the right of access to adequate housing. ... The cardinal question is whether demolition of Lester’s property would infringe upon his right to access to adequate housing. The answer, on the papers before us, must be an emphatic “no”. ... ” [Paragraph 17]

The appeal was dismissed with costs. The majority judgment in *BSB International Link CC v Readam South Africa (Pty) Limited and another* [2016] 2 All SA 633 (SCA) raised doubts as to whether the interpretation accorded to section 21 of the National Building Regulations and Building Standards Act in *Lester* was cogent.

MUNICIPALITY OF MOSSEL BAY V THE EVANGELICAL LUTHERAN CHURCH AND ANOTHER (443/12) [2013] ZASCA 64.

Case heard 9 May 2013; Judgment delivered 24 May 2013.

Non-compliance with title deed conditions. Appellant sought retransfer of the properties.

NEVHUTALU V S (692/12) [2013] ZASCA 44.

Heard 15 March 2013; Judgment delivered 28 March 2013.

Sentence for pointing of firearm.

S V SMM 2013 (2) SACR 292 (SCA)

Case heard 5 March 2013; Judgment delivered 9 May 2013.

Appeal against conviction of rape and sentence of life imprisonment.

RAATH V NEL [2012] 4 ALL SA 26 (SCA).

Case heard 11 May 2012; Judgment delivered 31 May 2012.

The Respondent suffered damages as a result of a failed medical procedure and sued for loss of income and earning capacity. The issue was whether he had suffered the loss in his personal capacity or whether the loss had been suffered by the trust which held the shares in the company.

“... [T]he separateness of the trust estate must be recognised and emphasised, however inconvenient and adverse to the respondent it may be. What the respondent seeks, in effect, is the advantage of both a reduction in estate duty (which is perfectly legitimate) but also the continued retention of control and advantages of ownership of the trust assets. The respondent is by virtue of the common law and statute compelled to keep the trust assets separate from that of his own personal estate. He has an obligation in law to preserve the trust assets. ...” [Paragraph 14].

KGANTSI V S (732/2011) [2012] ZASCA 76.

Case heard 9 May 2012; Judgment delivered 25 May 2012.

Leave to appeal sentence.

MOKALA BELEGGINGS (PTY) LTD AND ANOTHER V MINISTER OF RURAL DEVELOPMENT AND LAND REFORM AND OTHERS 2012 (4) SA 22 (SCA).

Case heard 27 February 2012; Judgment delivered 23 March 2012.

Sale of property that was subject to a land claim by the State for its eventual restitution to certain land claimants. The Court had to decide whether the State, having deliberately delayed effected the transfer of property and payment of the purchase price, could be held liable for mora interest. Majiedt JA condemned the apparent practice by the State to delay payment of money due in respect of land restitution claims until it was ordered to do so by the Court:

“It is troubling that a state department can adopt such an attitude, which is to be strongly deprecated.” [Paragraph 16].

Robert Sharrock criticized the judgment in “The General Principles of the Law of Contract” in *Annual Survey of South African Law 2012*, arguing that Majiedt JA should have explained his reliance on a certain clause in the contract as the relevant clause for establishing *mora ex re*. He argued that Majiedt JA did not do this which created confusion.

S V MATOME (565/2011) [2012] ZASCA 14.

Case heard 17 February 2012; Judgment delivered 16 March 2012.

Appeal against conviction and sentence for rape of a minor.

CITY OF TSHWANE METROPOLITAN MUNICIPALITY V MAMELODI HOSTEL RESIDENTS ASSOCIATION AND OTHERS (025/2011) [2011] ZASCA 227.

Case heard 15 November 2011; Judgment delivered 30 November 2011.

Spoilation order. Whether eviction lawful.

GAZIT PROPERTIES (PTY) LTD V BOTHA NO AND OTHERS 2012 (2) SA 306 (SCA)

Case heard 7 November 2011; Judgment delivered 23 November 2011.

Whether payments made by an insolvent company less than six months before the liquidation were voidable dispositions.

LAW SOCIETY OF THE CAPE OF GOOD HOPE V NEL 2012 (4) SA 274 (SCA).

Case heard 2 November 2011; Judgment delivered 23 November 2011.

Allegation of unprofessional conduct or bringing the attorneys profession into disrepute.

LYNN NO AND ANOTHER V COREEJES AND ANOTHER 2011 (6) SA 507 (SCA).

Case heard 1 September 2011; Judgment delivered 28 September 2011.

Whether non-compliance with section 382(1) of the Companies Act 61 of 1973 renders the power of attorney given by two or three liquidators for the institution of an action a nullity and, if not, whether it is in law capable of ratification.

VAN DER WATT AND ANOTHER V JONKER AND OTHERS (837/2010) [2011] ZASCA 140.

Case heard 5 September 2011; Judgment delivered 23 September 2011.

Sale of business including goodwill.

KLUB LEKKERRUS/LIBERTAS V TROYE VILLA (PTY) LTD AND OTHERS [2011] 3 ALL SA 597 (SCA).

Case heard 13 May 2011; Judgment delivered 1 June 2011.

Dispute about the ownership of shares and whether sale agreements entered into by two voluntary associations survived the amalgamation of the associations.

S V MOHAMMED 2011 JDR 0580 (SCA).

Case heard 25 May 2011; Judgment delivered 31 May 2011.

Appeal against conviction and sentence.

PUTCO (PTY) LTD V MOSHOLI 2011 JDR 0579 (SCA)

Case heard 12 May 2011; Judgment delivered 31 May 2011.

Damages for injuries sustained in motor vehicle accident.

COMMISSIONER, SOUTH AFRICAN REVENUE SERVICES V MULTICHOICE AFRICA (PTY) LTD 2011 JDR 0275 (SCA).

Case heard 8 March 2011; Judgment delivered 29 March 2011.

Correct tariff classification of a decoder in terms of Schedule 1 to the Customs and Excise Act 91 of 1964.

MINISTER OF SAFETY AND SECURITY V VENTER AND OTHERS 2011 (2) SACR 67 (SCA).

Case heard 23 February 2011; Judgment delivered 29 March 2011.

Action for damages against the police.

This judgment was criticized by Johan Scott in “Delictual Liability of the Police Flowing from Non-Compliance with the Domestic Violence Act: Minister of Safety and Security v. Venter 2011 2 SACR 67 (SCA)” in *Journal of Contemporary Roman-Dutch Law*, Vol. 75, pp. 288-304, 2012.

S V STEYN 2010 JDR 0351 (SCA)

Case heard 10 March 2010; Judgment delivered 31 March 2010.

Appeal against refusal of petition for leave to appeal against sentence.

S V DAMGAZELA 2010 JDR 0577 (SCA)

Case heard 18 May 2010; Judgment delivered 26 May 2010.

Appeal against conviction and sentence.

OLIVIER V S [2010] 4 ALL SA 503 (SCA).

Case heard 10 March 2010; Judgment delivered 31 March 2010.

Appeal against the sentence given for a conviction of fraud.

Referred: *S v RO and another* 2010 (2) SACR 248 (SCA).

Applied: *S v Mbuyisa* 2012 (1) SACR 571 (SCA).

Applied: *S v Khumalo* 2013 (1) SACR 96 (KZP).

Considered: *S v Piater* 2013 (2) SACR 254 (GNP).

Referred: *S v Smith* 2014 (2) SACR 190 (FB).

MINISTER OF AGRICULTURE AND LAND AFFAIRS V CJ RANCE (PTY) LTD [2010] 3 ALL SA 537 (SCA).

Case heard 3 February 2010; Judgment delivered 25 March 2010.

Condonation in terms of section 3(4)(b) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002.

‘In considering whether condonation was rightly granted it is instructive to bear in mind why notices of the kind contemplated in section 3 of the Act have been insisted on by the Legislature. Statutory requirements of notice have long been familiar features of South Africa’s legal landscape. The conventional explanation for demanding prior notification of intention to sue organs of State, is that: “with its extensive activities and large staff which tends to shift it needs the opportunity to investigate claims laid against it, to consider them responsibly and to decide, before getting embroiled in litigation at public expense, whether it ought to accept, reject or endeavour to settle them.”

From time to time there have been judicial pronouncements about how such provisions restrict the rights of its potential litigants. However, their legitimacy and constitutionality is not in issue.”

JC Sonnekus, in 'Shielding of Parastatals Against Claims for Performance: An Unwarranted Digression From Legal Principles' in *The South African Law Journal*, Vol 128, Issue 2 (2011), criticized Majiedt AJA for proffering no explanation as to why the reasons he relied upon from the *Mohlomi* judgment of the Constitutional do not find any application in all litigation matters and not just those where the state is the defendant. Moreover, the judgment does not explain why the same reasons do not apply when the state is involved as a claimant.

Considered: *Cochrane v City of Johannesburg* 2011 (1) SA 553 (GSJ).

Referred: *MEC For Education, Kwazulu-Natal v Shange* 2012 (5) SA 313 (SCA).

JUDGMENT DELIVERED WHERE AT LEAST ONE JUDGMENT BY ANOTHER JUDGE DISSENTING
(d)

PHILLIPS V SOUTH AFRICAN RESERVE BANK AND OTHERS [2012] 2 ALL SA 518 (SCA).

Case heard 2 March 2012; judgment delivered 29 March 2012.

Whether the classification of an order as final or interim is determinative of its appealability. Whether there had been compliance with Rule 16 of the Uniform Rules of Court and what was to be done if that was not the case. The court was unanimous on all issues except two: the interpretation of rule 16A of the uniform rules of court; and whether the general rule in constitutional litigation that an unsuccessful litigant in proceedings against the State ought not to be ordered to pay costs is equally applicable to cost orders relating to ancillary matters.

Farlam JA (Mthiyane DP concurring) concurred and dissented in part with majority judgment of Majiedt JA (Petse AJA and Ndita AJA concurring).

Referred: *Kubiyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC).

DLAMINI V S [2012] 2 ALL SA 569 (SCA)

Case heard 17 February 2012; Judgment delivered 27 March 2012.

Appeal against the duplication of convictions of robbery as well as an appeal against the sentence.

Majiedt JA wrote the majority judgment. Held that there had not been a duplication of convictions (Van Heerden JA and Snyders JA concurring). Cachalia JA (Farlam JA concurring) dissented, holding that there had been a duplication of convictions.

CONFEDERATION OF SOUTH AFRICAN WORKERS UNION (CONSAWU) V NEDLAC AND OTHERS [2011] 3 ALL SA 497 (SCA).

Case heard 24 February 2011; Judgment delivered 31 March 2011.

Trade union federation sought admission to NEDLAC, but was refused because its membership did not reach the threshold agreed to be the organised labour. Court had to decide if the refusal was lawful.

Snyders JA and Bosielo JA concurring with the judgment of Majiedt JA and Nugent JA. Streicher JA dissenting.

SEPARATE CONCURRING JUDGMENTS WRITTEN BY THE CANDIDATE (S)

BSB INTERNATIONAL LINK CC V READAM SOUTH AFRICA (PTY) LIMITED AND ANOTHER [2016] 2 ALL SA 633 (SCA).

Case heard 3 March 2016; judgment delivered 13 April 2016.

The appellants' building did not comply with the town planning scheme and encroached onto the adjoining owner's land. A partial demolition order was granted in the court a quo. Majiedt JA's concurring minority judgment focused on the majority judgments obiter dictum relating to his previous judgment in *Lester v Ndlambe Municipality and Another*. The majority judgment raised doubts as to the cogency of the *Lester* judgment.

Minority concurring judgment written by Majiedt J. Majority judgment written by Ponnar JA and Swain JA (Victor AJA and Kathree-Setiloane AJA concurring)

DISSENTING JUDGMENTS WRITTEN BY THE CANDIDATE (D)

MINISTER OF AGRICULTURE AND LAND AFFAIRS AND ANOTHER V DE KLERK AND OTHERS [2014] 1 ALL SA 158 (SCA).

Case heard 30 August 2013; Judgment delivered 30 September 2013.

Sale of immovable property. Whether conveyancer was the agent of the seller or the purchaser in receiving payment of the purchase price. Whether there was due performance of the obligation to pay the purchase price.

Minority dissenting judgment written by Majiedt J (Navsa ADP concurred). Majority written by Meyer AJA (Cachalia JA and Van der Merwe AJA concurring).

Considered: *Royal Anthem Investments 129 (Pty) Ltd v Lau and Another* 2014 (3) SA 626 (SCA).

OPPERMAN AND ANOTHER V S [2010] 4 ALL SA 267 (SCA).

Case heard 5 May 2010; Judgment delivered 31 May 2010.

Appeal against the sentence on the rape conviction. Issue to consider was the low intellect and lack of insight of the appellants. Majiedt J held that he would have dismissed the appeal.

Griesel AJA concurring with the dissenting judgment of Majiedt J.

Referred: *S v SM* 2013 (2) SACR 111 (SCA).

Applied: *S v SMM* 2013 (2) SACR 292 (SCA).

Referred: *S v GK* 2013 (2) SACR 505 (WCC).

High Court

For these courts, judgments are tabulated as follows:

C- number of cases heard by the judge

Cs - cases heard as a single judge

Cp - cases heard as part of a panel of judges

J – number of unanimous leading judgments written by the judge

s – number of cases where at least one separate judgment concurred with the leading judgment (J)

d – number of cases where at least one judgment dissented from the leading judgment (J)

S – number of separate but concurring judgments written by the judge

D – number of dissenting judgments written by the judge.

YEAR	C	Cs	Cp	J	s	d	S	D
2010	3	1	1	1				
2009	6	1	4				1	
...								

2007	1	1						
2006	3		2	1				
2005	2	2						
2004	2		1	1				
2003	5	1	2	1				1
2002	5	2	2	1				
2001	3	3	1					
2000	3	2	2					
TOTAL	35	13	15	5			1	1

CASES HEARD AS SINGLE JUDGE (Cs)

LOUW V THE RICHTERSVELD AGRICULTURAL HOLDINGS COMPANY (PTY) LTD 2010 JDR 1258 (NCK)

Case heard 16 September 2010; Judgment delivered 29 October 2010.

Appointment of directors.

SIBEKO V PREMIER FOR THE PROVINCE OF THE NORTHERN CAPE AND ANOTHER [2010] 2 BLLR 207 (NCK).

Case heard 23 October 2009; Judgment delivered 6 November 2009.

Dismissed employee seeking to enforce fixed-term contract that had been allegedly unlawfully terminated because he was denied pre-dismissal hearing. The issue before the court was whether jurisdiction should be determined from the manner in which the applicant's claim is formulated, or from the nature of the relief sought.

PREMIER, NORTHERN CAPE & ANOTHER V GASEMELWE & OTHERS [2008] JOL 21229 (NC)

Case heard 7 December 2007; Judgment delivered 14 December 2007.

Return day for rule nisi. At issue was the disputed chieftainship of the Batlhaping Ba Ga Phuduhudu.

JAN VAN HEERDEN EN SEUNS BK EN ANDERE V SENWES BPK EN ANDERE [2006] 1 ALL SA 44 (NC).

Judgment delivered 19 August 2005.

Claim of breach of contract and the allegation that the plaintiffs had been induced to enter into a contract on the basis of misrepresentation.

S V AUGUST AND OTHERS [2005] 2 ALL SA 605 (NC).

Trial-within-a-trial dealing with the admissibility of evidence of witnesses who had been brought within the State's knowledge through a statement given by the third accused. The allegation was that the statement had been obtained in an unconstitutional manner.

S V SASSIN AND OTHERS [2003] 4 ALL SA 506 (NC).

Case heard 13 October 2003; Judgment delivered 20 October 2003.

Whether the plea agreement complied with the requirements as stipulated in section 105A(1)(a) of the Criminal Procedure Act 51 of 1977.

LAERSKOOL GAFFIE MAREE V MEC FOR EDUCATION, TRAINING, ARTS AND CULTURE: NORTHERN CAPE PROVINCE [2002] 12 BLLR 1228 (NC).

Case heard 21 June 2002; Judgment delivered 2 August 2002.

Head of department declined to appoint a person recommended by the governing body for the position of principal.

KOTZE V MEEPO YA SECHABA MINING BK 2004 JDR 0273 (NC).

Case heard 8 March 2002; Judgment delivered 20 March 2002.

Urgent application was made for final relief in the form of an eviction order against the first respondent, an interdict against first respondent and its employees, and a declaration of invalidity of a permit issued by third respondent. The applicant owned property over which the first respondent had obtained mining rights.

SNACK FACTORY (PTY) LTD V MONANDA LANDBOUDIENSTE (EDMS) BPK (765/99) [2001] ZANCHC.

Judgment delivered 29 June 2001.

Contract of purchase and sale.

NQUMASHE V S [2001] 4 ALL SA 471 (NC).

Case heard 26 April 2001; Judgment delivered 11 May 2001.

Appeal against magistrate's withdrawal of bail.

S V MBELO 2001 JDR 0097 (NC).

Case heard and delivered 26 February 2001.

Sentencing.

Referred: *Pretorius v Director of Public Prosecutions and Another* 2011 (1) SACR 54 (KZP).

DORBYL VEHICLE TRADING AND FINANCE COMPANY (PTY) LTD V NORTHERN CAPE TOUR AND CHARTER SERVICE, CC [2001] 1 ALL SA 118 (NC)

Case heard 27 October 2000; Judgment delivered 3 November 2000.

Cancellation agreement and notarial bond application.

RE: MOLLER 2000 JDR 0539 (NC)

Case heard and judgment delivered 21 August 2000.

Inquests Act 58 of 1959

JUDGMENT WRITTEN BY THE CANDIDATE AS PART OF A PANEL OF JUDGES (Cp)

S V BLOCK 2011 (1) SACR 622 (NCK)

Case heard 5 November 2010; Judgment delivered 12 November 2010.

Application for the review of a decision by a magistrate postponing an application for bail (Olivier J concurring).

S V DEMBE 2010 (1) SACR 360 (NCK)

Case heard 23 November 2009; Judgment delivered 30 November 2009.

Appeal from sentences imposed in a magistrates' court and review of conviction of unlawfully terminating a pregnancy in the same magistrates' court (Williams J concurring).

S v RB; S v DK AND ANOTHER 2010 (1) SACR 447 (NCK)

Case heard 28 October 2009; Judgment delivered 13 November 2009.

Special Review. Entering the names of sexual offenders who are minors in the sexual offenders register (co-written with Olivier J).

S v SEBOKO 2009 (2) SACR 573 (NCK)

Case heard 4 May 2008; Judgment delivered 8 May 2009.

Appeal against a conviction of rape and sentence in the regional court (Henriques AJ concurring).

ELS V STALS AND OTHERS [2009] JOL 23294 (NCK).

Case heard 20 February 2009; Judgment delivered 13 March 2009.

The applicant was an accused in a private prosecution for rape. He sought a declaratory order and injunctive relief in the form of a permanent stay of prosecution against the first respondent, who was the private prosecutor and the complainant. Majiedt J (Tlaetsi J concurring) issued the stay, holding that the unreasonable delay, for which it regarded the first respondent as fully culpable, would result in irreparable trial prejudice to the applicant and deny him his constitutional right to a fair trial.

The decision was unanimously overturned by the Constitutional Court: *Bothma v Els and Others* (CCT 21/09) [2009] ZACC 27; 2010 (2) SA 622 (CC); 2010 (1) SACR 184 (CC); 2010 (1) BCLR 1 (CC) (8 October 2009)

S V LOUW JDR 0931 (NC).

Case heard 30 October 2006; Judgment delivered 3 November 2006.

Appeal against the sentence for a conviction of attempted murder (Williams J concurring).

SANDENBERGH V SANDENBERGH 2006 JDR 0476 (NC)

Case heard 20 March 2006; Judgment delivered 28 April 2006.

Extension of the time limit in s 23(b) of Arbitration Act (co-authored with Kgomo JP, Molwantwa AJ concurring).

MATROOS V S [2005] 2 ALL SA 404 (NC).

Judgment delivered 10 December 2004.

Prison appeal against the sentence. Issue of whether a Court is entitled to consider the merits of the conviction (Musi AJ concurring).

BESTER V SOL PLAATJE MUNICIPALITY AND OTHERS [2004] 2 ALL SA 31 (NC).

Judgment delivered 19 December 2003.

Disciplinary enquiry into applicants alleged misconduct. Disciplinary procedure formed part of the applicant's conditions of service, which in turn formed part of a collective agreement. The applicant noted an appeal against the disciplinary committee's recommendation.

KIMBERLEY GIRLS' HIGH SCHOOL AND ANOTHER V THE HEAD OF DEPARTMENT OF EDUCATION, NORTHERN CAPE PROVINCE AND OTHERS [2005] 1 ALL SA 360 (NC).

Case heard 2 May 2003; Judgment delivered 30 May 2003.

Review of a decision by the first respondent to reject the governing body's recommendation for the appointment of an English higher grade, first language teacher. The first respondent had declined the recommendation on the basis that the governing body had failed to give preference to candidates disadvantaged by injustices of the past, as required by the Employment of Educators Act; and that the recommendations had failed to have regard to the democratic values and principles referred to in the Act (Kgomo JP concurring).

"The notion that a head of department may not, in terms of the provisions contained in section 6(3)(b)(v) of the Employment Act, independently and objectively ascertain whether a recommendation does indeed on the facts and prevailing circumstances accord with the democratic values and principles, is untenable in my view. In the present case the Head of Department was fully justified in my view to decline the recommendation and to remit the matter to the governing body. ..." [Paragraph 21].

"I fail to comprehend how an educator (who is otherwise suitably qualified and has the requisite experience) can be excluded on the basis that it is an "inherent requirement" of the post in this matter that he or she must be an English first language speaker (as opposed to being *proficient* in English). ..." [Paragraph 25].

"... [W]hen the opportunity arises to correct the imbalances of the past by filling a post left vacant by a resignation, a concerted effort should be made (and, importantly, should

clearly be seen to be made) to comply with the obligations imposed on a school governing body by section 6(3)(b)(v) of the Employment Act. This has clearly not happened in this matter.” [Paragraph 26.3].

“... [T]he entire exercise is rendered completely futile if the constitutional and legislative imperatives contained in the aforementioned sections are overlooked. What is called for is more than a mere mechanical allocation of points and a mere say-so that regard has been had to the democratic values and principles.” [Paragraph 27].

S v GABATLHOLE 2004 (2) SACR 270 (NC)

Case heard and delivered 4 December 2002.

Contravention of s 1(1)(b) of Intimidation Act (Kgomo AJ concurring).

S V VAN WYK; S V LEWIS 2002 JDR 0611 (NC)

Case heard and judgment delivered 25 January 2002.

Housebreaking with intent to steal and theft (Lacock AJ concurring).

KOMMISSARIS: SUID AFRIKAANSE INKOMSTEDIENS V OBERHOLZER 2001 JDR 0829 (N)

Case heard 21 May 2001; Judgment delivered 19 October 2001.

Income tax (FD Kgomo and AJ Du P Buys JJ concurring).

Appeal to the Supreme Court of Appeal unsuccessful.

S V DU PREEZ AND ANOTHER [2001] JOL 7387 (NC).

Judgment delivered 15 August 2000.

Automatic review. Conviction of unlawful possession of stolen goods (Steenkamp JP concurring).

S V ROSSOUW 2000 JDR 0462 (NC)

Case heard and judgment delivered 8 August 2000.

Appeal against conviction and sentence on charge of murder (Basson and Kgomo JJ concurring).

S V WILLIAMS 2010 JDR 0492 (NCK)

Criminal Trial.

S V LASHA [2006] JOL 17655 (NC).

Case heard 24 April 2006.

Whether contravening s 154(1)(c)(i) of Liquor Act 27 of 1989 still constituted an offence in terms of Liquor Act 59 of 2003.

DE VILLIERS AND OTHERS V VAN ZYL AND ANOTHER [2005] 1 ALL SA 443 (NC).

Case heard 16 August 2004; Judgment delivered 27 August 2004.

Whether an agreement was made subject to a suspensive condition.

UNITED CHRISTIAN DEMOCRATIC PARTY V INDEPENDENT ELECTORAL COMMISSION AND OTHERS [2004] 2 ALL SA 336 (B).

Case heard 24 October 2003; Judgment delivered 4 December 2003.

Issue around floor crossing and what constitutes reasonable notification of floor crossing.

SEBOKOLODI EN ANDERE V S [2002] 4 ALL SA 282 (NC).

Judgment delivered 9 September 2002.

Appeal against sentences on the basis that they were inappropriate; exceeded the Appellant's life expectancies and that it was unconstitutional for the court a quo to make recommendations regarding parole.

SEPARATE CONCURRING JUDGMENT (S)

MINNIE & 'N ANDER V S [2009] JOL 24585 (NCK)

Case heard 26 October 2009; Judgment delivered 30 October 2009.

Appeal against convictions and sentences.

DISSENTING JUDGMENT (D)

S v S [2004] 1 All SA 344 (NC).

Judgment delivered 5 December 2003.

Appeal against conviction for attempted rape and the sentence of six year's imprisonment.

MEDIA COVERAGE

In 2006, Judge Majiedt, Judge Lacock, and Judge President Kgomo were involved in a bitter dispute over alleged racism, nepotism and discrimination. The incident originated from a dispute over who would act as judge president while Kgomo JP was acting at the SCA. Kgomo JP lodged a complaint with the JSC in 2006 demanding that Judges Majiedt and Lacock be fired for misconduct after they allegedly insulted him. Judges Majiedt and Lacock laid a counter-complaint. In a statement the JSC said that the conduct of Majiedt and Lacock "using insulting and inappropriate language constituted unacceptable and unworthy conduct." For further information see the following articles: <http://www.bdlive.co.za/articles/2008/10/15/history-casts-shadow-over-appeal-court-hopefuls> and <http://constitutionallyspeaking.co.za/another-racial-spat-in-the-judiciary/>.

JUDGE MALCOM WALLIS

BIOGRAPHICAL INFORMATION AND QUALIFICATIONS

Born: 8 July 1950

Ph D, University of Kwa-Zulu Natal (2001)

LLB (Cum Laude), University of Natal (1972)

B Com, University of Natal (1970)

CAREER PATH

Acting Justice of the Constitutional Court (2015 – 2015)

Justice of Appeal, Supreme Court of Appeal (2011 to date)

Judge, Labour Appeal Court (2010 – 2011)

Acting Judge, Competition Appeal Court (2010 – 2011)

Acting Judge, Supreme Court of Appeal (2009)

Judge of the KwaZulu-Natal High Court (2009 – 2011)

Acting Judge, Labour Court (2000)

Acting Judge, High Court: 1 – 31 March 1987; 31 August – 4 September 1987; 1 – 28 February 1988; 4 – 29 June 1990; 18 – 19 July 2002; 20 – 21 July 2003; 22 – 23 July 2004; 12 July 2005; 20 July 2006; 3 – 30 March 2008; and 21 – 23 July 2008

Chair, Natal Bar (1991 – 1993)

Obtained senior counsel status 1985

Advocate, Natal Bar (1973 – 2008)

Honorary Bencher, King's Inn, Dublin (2013)

Fellow of the International Academy for Trial Advocates (1999 – 2007)

Honorary Member, Australian Bar Association (2003)

Honorary Vice-President, General Council of the Bar

Honorary Professor, Faculty of Law, UKZN (2011 to date)

Various offices in IBA structures (1994 – 2009)

Vice-Chair, Bar Issues Commission of the IBA (2004 – 2006)

Co-Chair, Barristers and Advocates Forum of the International Bar Association (1998-2002)

Chair, General Council of the Bar (1994 – 1997)

Vice-Chair, General Council of the Bar (1993 – 1994)

JUDGMENTS

In terms of article 5.2.6 of the Norms and Standards for the Performance of Judicial Functions,⁸ “[s]ave in exceptional circumstances where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing.”

From the judgments surveyed, where both hearing date and date of judgment were available on the databases used, we did not identify any judgments delivered by the candidate after the 3 month period identified in the norms and standards.

For appellate courts, the judgments found in this research are tabulated as follows for each court:

C- number of cases heard by the judge

J – number of unanimous leading judgments written by the judge

s – number of cases where at least one separate judgment concurred with the leading judgment (J)

d – number of cases where at least one judgment dissented from the leading judgment (J)

S – number of separate but concurring judgments written by the judge

D – number of dissenting judgments written by the judge.

Constitutional Court

YEAR	C	J	s	d	S	D
2016	10	1			2	
2015	2					
TOTAL	12	1			2	

⁸ Government Gazette No. 37390, 147, 28 February 2014.

UNANIMOUS JUDGMENTS (J)

KHAM AND OTHERS V ELECTORAL COMMISSION OF SOUTH AFRICA AND ANOTHER 2016 (2) BCLR 157 (CC)

Electoral rights (unanimous judgment).

SEPARATE CONCURRING JUDGMENTS (S)

Makate v Vodacom (Pty) Ltd 2016 (6) BCLR 709 (CC)

The “Please Call Me” case judgment: estoppel and ostensible authority.

TOYOTA SA MOTORS (PTY) LTD V COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION AND OTHERS [2016] 3 BLLR 217 (CC)

Unfair dismissal.

Supreme Court of Appeal

YEAR	C	J	s	d	S	D
2016	15	8	1			
2015	15	5	2		1	1
2014	29	13		1	3	
2013	16	6		1	1	2
2012	31	11	1	1		
2011	4	2				
2010	17	5				
TOTAL	127	50	4	3	5	3

UNANIMOUS JUDGMENTS (J)

REGISTRAR OF PENSION FUNDS V NO AND OTHERS [2016] 1 ALL SA 694 (SCA)

Locus standi of Registrar of Pension Funds to challenge Appeal Board decision on review.

TELLUMAT (PTY) LTD V APPEAL BOARD OF THE FINANCIAL SERVICES BOARD AND OTHERS [2016] 1 ALL SA 704 (SCA)

Judicial review of decision by Appeal Board.

CITY OF TSHWANE METROPOLITAN MUNICIPALITY AND OTHERS V NAMBITI TECHNOLOGIES (PTY) LTD [2016] 1 ALL SA 332 (SCA)

Cancellation of a tender before adjudication does not constitute administrative action.

EDUCATED RISK INVESTMENTS 165 (PTY) LTD AND OTHERS V EKURHULENI METROPOLITAN MUNICIPALITY AND OTHERS [2016] 3 ALL SA 18 (SCA)

Town planning: informal housing compliance with Town Planning Scheme.

“One of the characteristics of apartheid was chronic under-provision of housing for the vast majority of South Africans in our major urban areas at a time when there was rapidly increasing urbanisation. Its consequences were to be seen in the mushrooming of informal settlements in and around urban areas that are still part of our urban landscape. Conventional town planning schemes, of which the one before us in this case is an example, generally have no provisions specifically directed at this situation or the interplay between addressing these social issues and formal development of the urban environment.” [Paragraph 15]

MV “NYK ISABEL”: NORTHERN ENDEAVOUR SHIPPING PTE LTD V OWNERS OF THE “NYK ISABEL” AND ANOTHER [2016] 3 ALL SA 418 (SCA)

Maritime law.

ROERING AND ANOTHER NNO V MAHLANGU AND OTHERS [2016] 3 ALL SA 466 (SCA)

Company law.

GIHWALA AND OTHERS V GRANCY PROPERTY LTD AND OTHERS [2016] 2 ALL SA 649 (SCA)

Company law.

VIKING INSHORE FISHING (PTY) LTD V MUTUAL AND FEDERAL INSURANCE CO LTD [2016] 2 ALL SA 730 (SCA)

Marine insurance.

NEW PORT FINANCE COMPANY (PTY) LTD AND ANOTHER V NEDBANK LTD; MOSTERT AND ANOTHER V NEDBANK LTD [2015] 2 ALL SA 1 (SCA)

Company law.

MOGALE CITY MUNICIPALITY V FIDELITY SECURITY SERVICES (PTY) LTD AND OTHERS [2015] 2 ALL SA 127 (SCA)

Administrative law.

MEADOW GLEN HOME OWNERS ASSOCIATION AND OTHERS V CITY OF TSHWANE METROPOLITAN MUNICIPALITY AND ANOTHER [2015] 1 ALL SA 299 (SCA)

Civil procedure (co-authored with Schoeman AJA).

COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE V BOSCH AND ANOTHER [2015] 1 ALL SA 1 (SCA)

Tax.

PANAMO PROPERTIES (PTY) LTD AND ANOTHER V NEL NO AND OTHERS [2015] 3 ALL SA 274 (SCA)

Case heard 14 May 2015; Judgment delivered 27 May 2015.

Company law.

PIONEER FOODS (PTY) LTD V BOTHAVILLE MILLING (PTY) LTD [2014] 2 ALL SA 282 (SCA)

Intellectual property.

MALCOLM V PREMIER, WESTERN CAPE GOVERNMENT NO [2014] 2 ALL SA 251 (SCA)

Civil procedure: prescription.

Referred to and applied: *Van Deventer and Another v Nedbank Ltd* [2016] ZAWCHC 31 (WCC).

PRESIDENT OF SOUTH AFRICA AND OTHERS V REINECKE [2014] 2 ALL SA 376 (SCA)

Magistrate's claim for contractual damages on resignation.

MOTALA AND OTHERS V MASTER OF THE HIGH COURT (NORTH GAUTENG) AND OTHERS [2014] 2 ALL SA 154 (SCA)

Application to declare dissolution of company void.

MASETI V S [2014] 1 ALL SA 420 (SCA)

Criminal procedure.

EB STEAM COMPANY (PTY) LTD V ESKOM HOLDINGS SOC LTD [2014] 1 ALL SA 294 (SCA)

Company law.

Affirmed: *Stratford and others v Investec Bank Limited and others* 2015 (3) SA 1 (CC).

BOTHMA-BATHO TRANSPORT (EDMS) BPK V S BOTHMA AND SEUN TRANSPORT (EDMS) BPK [2014] 1 ALL SA 517 (SCA)

Contract.

Applied: *National Health Laboratory Service v Lloyd-Jansen van Vuuren* 2015 (5) SA 426 (SCA).

Followed: *Bray v Grand Aviation (Pty) Ltd (De Wet Reitz Attorneys, Third Party)* [2015] JOL 33738 (GP).

MINISTER OF DEFENCE AND OTHERS V SOUTH AFRICAN NATIONAL DEFENCE UNION AND ANOTHER [2014] 4 ALL SA 441 (SCA)

Employment law.

MINISTER OF POLICE V MBOWENI AND ANOTHER [2014] 4 ALL SA 452 (SCA)

Case heard 25 August 2014; Judgment delivered 5 September 2014.

Civil procedure: constitutional damages.

FIRSTRAND BANK LTD V LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA [2014] 4 ALL SA 425 (SCA)

Insolvency.

DIRECTOR-GENERAL, DEPARTMENT OF HOME AFFAIRS AND OTHERS V DEKOBA [2014] 3 ALL SA 529 (SCA)

Case heard 22 May 2014; Judgment delivered 28 May 2014.

Immigration law: refugee seeking asylum.

FISCHER AND ANOTHER V RAMAHLELE AND OTHERS [2014] 3 ALL SA 395 (SCA)

Case heard 27 May 2014; Judgment delivered 4 June 2014.

Civil procedure: dispute of fact in motion proceedings (co-authored with Theron JA).

Considered and applied: *South African Police Service v Solidarity obo Barnard (Police and Prisons Civil Rights Union as amicus curiae)* 2014 (6) SA 123 (CC).

Applied: *City of Cape Town v South African National Roads Authority Limited and Others* 2015 (3) SA 386 (SCA).

LA HEALTH MEDICAL SCHEME V HORN AND OTHERS [2014] 3 ALL SA 421 (SCA)

Pension funds.

Upheld on appeal: *Horn and others v LA Health Medical Scheme and another* [2015] ZACC 13 (CC).

TRUSTEES FOR THE TIME BEING OF THE CHILDREN'S RESOURCE CENTRE TRUST AND OTHERS V PIONEER FOOD (PTY) LTD AND OTHERS (LEGAL RESOURCES CENTRE AS AMICUS CURIAE) [2013] 1 ALL SA 648 (SCA)

Case heard 7 November 2012; Judgment delivered: 29 November 2012.

Access to courts.

CAESARSTONE SDOT-YAM LTD V WORLD OF MARBLE AND GRANITE 2000 CC AND OTHERS [2013] 4 ALL SA 509 (SCA)

Case heard 16 September 2013; Judgment delivered 26 September 2013.

Civil procedure.

SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED V TOLL COLLECT CONSORTIUM AND ANOTHER [2013] 4 ALL SA 393 (SCA)

Administrative law.

DEXGROUP (PTY) LTD V TRUSTCO GROUP INTERNATIONAL (PTY) LTD AND OTHERS 2013 (6) SA 520 (SCA)

Case heard 10 September 2013; Judgment delivered 20 September 2013.

Arbitration.

HERHOLDT V NEDBANK LTD AND CONGRESS OF SOUTH AFRICAN TRADE UNIONS (AMICUS CURIAE) [2013] 11 BLLR 1074 (SCA)

Case heard 23 August 2013; Judgment delivered 5 September 2013.

Labour Appeal Court appeal (co-authored with Cachalia JA).

QOBOSHIYANE NO AND OTHERS V AVUSA PUBLISHING EASTERN CAPE (PTY) LTD AND OTHERS 2013 (3) SA 315 (SCA)

Access to information.

CITY OF JOHANNESBURG V CHANGING TIDES 74 (PTY) LTD AND OTHERS (SOCIO-ECONOMIC RIGHTS INSTITUTE OF SOUTH AFRICA AS AMICUS CURIAE) 2012 (11) BCLR 1206 (SCA)

Right to housing and prevention of illegal evictions.

Followed in: *Ekurhuleni Metropolitan Municipality and another v Various Occupiers, Eden Park Extension 5* 2014 (3) SA 23 (SCA); *Mbatha and others v City of Johannesburg Metropolitan Municipality and others* 2015 (4) SA 591 (GJ); *Johannesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers of the Newtown Urban Village* [2013] 1 All SA 192 (GSJ).

DIRECTOR OF PUBLIC PROSECUTIONS, WESTERN CAPE V PRINS (MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AS INTERVENING PARTY AND CENTRE FOR CHILD LAW AND ANOTHER AS AMICI CURIAE) [2012] 3 ALL SA 245 (SCA)

Criminal law: sexual offences and penalties.

‘No judicial officer sitting in South Africa today is unaware of the extent of sexual violence in this country and the way in which it deprives so many women and children of their right to dignity and bodily integrity and, in the case of children, the right to be children; to grow up in innocence and, as they grow older, to awaken to the maturity and joy of full humanity. The rights to dignity and bodily integrity are fundamental to our humanity and should be respected for that reason alone.’ [Paragraph 1]

EXECUTIVE OFFICER OF THE FINANCIAL SERVICES BOARD V DYNAMIC WEALTH LTD AND OTHERS [2012] 1 ALL SA 135 (SCA)

Banking and currency.

IMPERIAL MARINE COMPANY V MV PASQUALE DELLA GATTA AND ANOTHER; IMPERIAL MARINE COMPANY V MV FILIPPO LEMBO AND ANOTHER 2012 (1) SA 58 (SCA)

Maritime law.

XSTRATA SA (PTY) LTD AND OTHERS V SFF ASSOCIATION [2012] 2 ALL SA 617 (SCA)

Mining and minerals.

VAN AARDT V GALWAY 2012 (2) SA 312 (SCA)

Contract.

NATAL JOINT MUNICIPAL PENSION FUND V ENDUMENI MUNICIPALITY [2012] 2 ALL SA 262 (SCA)

Case heard: 23 February 2012; Judgment delivered: 16 March 2012.

Pension funds.

AGRI WIRE (PTY) LTD AND ANOTHER V COMMISSIONER OF THE COMPETITION COMMISSION AND OTHERS [2012] 4 ALL SA 365 (SCA)

Competition law (co-authored with Pillay AJA).

MV BANGLAR MOOKH OWNERS OF MV BANGLAR MOOKH V TRANSNET LTD 2012 (4) SA 300 (SCA)

Evidence (co-authored with Farlam JA).

STERKLEWIES (PTY) LTD T/A HARRISMITH FEEDLOT V MSIMANGA AND OTHERS [2012] 3 ALL SA 655 (SCA)

Case heard: 18 May 2012; Judgment delivered: 25 May 2012.

Eviction.

ERSUMO V MINISTER OF HOME AFFAIRS AND OTHERS [2012] 3 ALL SA 119 (SCA)

Case heard 27 March 2012; Judgment delivered: 28 March 2012.

Immigration.

Discussed and applied: *Iqbal v Minister of Home Affairs and others* 2013 (5) SA 408 (GSJ).

MV ALINA II (NO 2) TRANSNET LTD V OWNER OF MV ALINA II 2011 (6) SA 206 (SCA)

Case heard 29 August 2011; Judgment delivered: 15 September 2011.

Submission to court's jurisdiction, attachment of vessel.

Applied: *Bonugli and Another v Standard Bank of South Africa Ltd* [2012] ZASCA 28 (SCA).

MORAR NO V AKOO AND ANOTHER 2011 (6) SA 311 (SCA)

Case heard 26 August 2011; Judgment delivered 15 September 2011.

Company law (partnership): powers of liquidator.

OFFIT FARMING ENTERPRISES (PTY) LTD V COEGA DEVELOPMENT CORPORATION (PTY) LTD 2010 (4) SA 242 (SCA)

Administrative action: expropriation.

Confirmed on appeal: *Offit Enterprises (Pty) Ltd and Another v Coega Development Corporation (Pty) Ltd and Others* 2011 (1) SA 293 (CC).

Followed: *Minister of Minerals and Energy v Agri South Africa (Centre for Applied Legal Studies as amicus curiae)* 2012 (5) SA 1 (SCA).

SOUTH AFRICAN MARITIME SAFETY AUTHORITY V MCKENZIE [2010] 3 ALL SA 1 (SCA)

Case heard: 18 November 2009; Judgment delivered: 15 February 2010.

Employment law; civil procedure (jurisdiction).

Affirmed: *Department of the Premier, Western Cape v Plaatjies NO and Others* (2013) 34 ILJ 2876 (LC).

Followed: *Mahlalela v Office of the Pension Funds Adjudicator* (2011) 32 ILJ 1932 (LC).

Applied: *Moloto v City of Cape Town* (2011) 32 ILJ 1153 (LC).

KOTZÈ V S [2010] 1 ALL SA 220 (SCA)

Criminal law.

MIA V VERIMARK HOLDINGS (PTY) LTD [2010] 1 ALL SA 280 (SCA)

Contract.

CITY OF TSHWANE METROPOLITAN MUNICIPALITY V ENGINEERING COUNCIL OF SOUTH AFRICA AND ANOTHER 2010 (2) SA 333 (SCA)

Case heard 16 November 2009; Judgment delivered: 27 November 2009.

Protected disclosures.

Applied: *Radebe and another v Premier, Free State and others* [2012] JOL 29409 (LAC).

Considered and applied: *Valuline CC and others v Minister of Labour and others* 2013 (4) SA 326 (KZP).

JUDGMENT DELIVERED WHERE AT LEAST ONE SEPARATE CONCURRING JUDGMENT WAS WRITTEN (s)

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND OTHERS V SOUTHERN AFRICAN LITIGATION CENTRE (HELEN SUZMAN FOUNDATION AND OTHERS AS AMICI CURIAE) [2016] 2 ALL SA 365 (SCA)

Confirmed court a quo's finding that government failure to arrest and detain President Al Bashir was unlawful.

'Immediately after this order was made, Counsel for the Government told the Court that President Al Bashir had left the country earlier that day. According to an affidavit later filed by the Director-General: Home Affairs, the eighth applicant, he appears to have left on a flight from Waterkloof Air Base at about 11:30am that morning. The affidavit failed to explain how a head of state, using a military air base reserved for the use of dignitaries, could possibly have left the country unobserved. The Director-General said that President Al Bashir's passport was not among those shown to officials of his department, but as an explanation that is simply risible. Senior officials representing Government must have been aware of President Al Bashir's movements and his departure, the possibility of which had been mooted in the press. In those circumstances, the assurances that he was still in the country given to the Court at the commencement and during the course of argument were false. There seem to be only two possibilities. Either the representatives of Government set out to mislead the Court and misled Counsel in giving instructions, or the representatives and Counsel misled the Court. Whichever is the true explanation, a matter no doubt being investigated by the appropriate authorities, it was disgraceful conduct.' [Paragraph 7]

Majiedt and Shongwe JJA concurred in the judgment of Wallis JA. Lewis and Ponnann JJA concurred for separate reasons in the judgment of Wallis JA.

PRICEWATERHOUSECOOPERS INCORPORATED AND OTHERS V NATIONAL POTATO CO-OPERATIVE LTD AND ANOTHER [2015] 2 ALL SA 403 (SCA)

Civil procedure.

OWNERS OF THE MV SILVER V HILANE LTD [2015] 1 ALL SA 410 (SCA)

Maritime law.

MINISTER OF MINERALS AND ENERGY V AGRI SOUTH AFRICA (CENTRE FOR APPLIED LEGAL STUDIES AS AMICUS CURIAE) [2012] 3 ALL SA 266 (SCA)

Case heard 4 May 2012; Judgment delivered: 31 May 2012.

Mineral rights.

Appeal dismissed by the Constitutional Court in *Agri South Africa v Minister for Minerals and Energy (Afriforum and others as amici curiae)* 2013 (7) BCLR 727 (CC).

JUDGMENT DELIVERED WHERE AT LEAST ONE JUDGMENT BY ANOTHER JUDGE DISSENTING (d)

PAULSEN AND ANOTHER V SLIP KNOT INVESTMENTS 777 (PTY) LTD [2014] 2 ALL SA 527 (SCA)

Found that the *in duplum* rule continues to operate after litigation commences, capping the amount of accrued interest at the capital sum (overturned *Standard Bank of South Africa Ltd. v Oneanate Investments (Pty) Ltd (in liquidation)* 1998 (1) SA 811 (SCA)). Willis JA concurred in part and dissented in part.

Appealed to the Constitutional Court in *Paulsen and Another v Slip Knot Investments 777 (Pty) Limited* 2015 (3) SA 479 (CC). In the CC, Moseneke DCJ (Mogoeng CJ, Leeuw AJ, Khampepe J and van der Westhuizen J concurring) broadly confirmed the substance of Wallis JA's judgment, but pointed out at [113-114] that the SCA had in fact developed the common law in its approach to the *in duplum* rule (despite claims to the contrary). Further, at [115]: 'The main judgment makes another mistake in reasoning that the separation of powers precludes it from adapting the common law in this case.... Developing the *in duplum* rule, a common law norm that has always been under the oversight of the courts, will not encroach on any exclusive terrain of Parliament.'

STRYDOM V ENGEN PETROLEUM LIMITED [2013] 1 ALL SA 563 (SCA)

Case heard 21 November 2012; Judgment delivered 30 November 2012.

Civil procedure.

MM v S [2012] 2 All SA 401 (SCA)

Case heard 24 February 2012; Judgment delivered 8 March 2012.

Upheld an appeal against a conviction for rape and replaced it with a conviction for sexual assault (Mthiyane DP and Majiedt JA concurring). Heher JA (Ndita AJA concurring) dissented, and would have rejected the appeal.

SEPARATE CONCURRING JUDGMENTS WRITTEN BY THE CANDIDATE (S)

DE LANGE V PRESIDING BISHOP FOR THE TIME BEING OF THE METHODIST CHURCH OF SOUTHERN AFRICA AND ANOTHER [2015] 1 ALL SA 121 (SCA)

Case heard 26 August 2014; Judgment delivered 29 September 2014.

Arbitration agreement following disciplinary steps taken against the appellant after she announced her intention to enter into a same-sex marriage. Wallis JA (Fourie AJA) wrote separately to note “considerable reservations about the correctness of the proposition that there is a binding arbitration agreement between the parties that can be the subject of the order sought by the appellant”.

Upheld in: *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the Time Being and another* 2016 (1) BCLR 1 (CC).

ROSHCON (PTY) LTD V ANCHOR AUTO BODY BUILDERS CC AND OTHERS [2014] 2 ALL SA 654 (SCA)

Contract.

THERON AND ANOTHER NNO V LOUBSER NO AND OTHERS 2014 (3) SA 323 (SCA)

Case heard 13 November 2013; Judgment delivered: 2 December 2013.

Civil procedure.

ABSA BANK LIMITED V HANLEY [2014] 1 ALL SA 249 (SCA)

Case heard 1 November 2013; Judgment delivered: 29 November 2013.

Banking (concurring for different reasons).

MINISTER OF HOME AFFAIRS AND OTHERS V SCALABRINI CENTRE, CAPE TOWN AND OTHERS [2013] 4 ALL SA 571 (SCA)

Administrative law: closure of Cape Town Refugee Reception Office.

Wallis JA expressly disagreed with the minority judgment of Willis JA, which held that the Director-General Home Affairs was under no legal obligation to consult with the Scalabrini Centre before shutting down the Reception Office.

Affirmed: *South African Broadcasting Corporation Soc Ltd and Others v Democratic Alliance and Others* 2016 (2) SA 522 (SCA).

Applied: *Minister of Education for the Western Cape v Beauvallon Secondary School* (2015) 2 SA 154 (SCA).

DISSENTING JUDGMENTS WRITTEN BY THE CANDIDATE (D)

REGENT INSURANCE COMPANY LTD V KING'S PROPERTY DEVELOPMENT (PTY) LTD T/A KING'S PROP [2015] 2 ALL SA 137 (SCA)

Case heard 3 November 2014; Judgment delivered: 21 November 2014.

Insurance.

GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA V GEACH AND OTHERS; PILLAY AND OTHER RELATED MATTERS V PRETORIA SOCIETY OF ADVOCATES AND ANOTHER; BEZUIDENHOUT V PRETORIA SOCIETY OF ADVOCATES [2013] 1 ALL SA 393 (SCA)

Case heard 4 September 2012; Judgment delivered: 29 November 2012.

Applications to strike advocates off the roll.

ASSOCIATION OF MEAT IMPORTERS AND EXPORTERS AND OTHERS V INTERNATIONAL TRADE ADMINISTRATION COMMISSION AND OTHERS [2013] 4 ALL SA 253 (SCA)

Jurisdiction of the Supreme Court of Appeal.

Competition Appeal Court

YEAR	C	J	s	d	S	D
2015	2				1	1
2014	3				3	
2013	4	1			1	2
2011	2	2				
2010	1	1				
TOTAL	12	4			4	3

UNANIMOUS JUDGMENTS (J)

COMPETITION COMMISSION V LOUNGEFOAM (PROPRIETARY) LIMITED AND OTHERS [2013] 1 CPLR 17 (CAC)

Administrative penalties.

LOUNGEFOAM (PTY) LTD AND OTHERS V COMPETITION COMMISSION AND OTHERS; IN RE FELTEX HOLDINGS (PTY) LTD V COMPETITION COMMISSION AND OTHERS AND TWO RELATED REVIEW APPLICATIONS [2011] 1 CPLR 19 (CAC)

Competition law: procedure.

Confirmed: *Competition Commission v Loungefoam (Pty) Ltd and Others* 2012 (9) BCLR 907 (CC).

NETSTAR (PTY) LTD AND OTHERS V COMPETITION COMMISSION OF SOUTH AFRICA AND ANOTHER 2011 (3) SA 171 (CAC)

Competition law: procedure.

COMPETITION COMMISSION V PIONEER FOODS (PTY) LTD [2010] 2 CPLR 195 (CAC)

Appeal.

High Court/Labour Court

For these courts, judgments are tabulated as follows:

C- number of cases heard by the judge

Cs - cases heard as a single judge

Cp - cases heard as part of a panel of judges

J – number of unanimous leading judgments written by the judge

s – number of cases where at least one separate judgment concurred with the leading judgment (J)

d – number of cases where at least one judgment dissented from the leading judgment (J)

S – number of separate but concurring judgments written by the judge

D – number of dissenting judgments written by the judge.

YEAR	C	Cs	Cp	J	s	d	S	D
2011	12	11	1					
2010	5	4	1					1
2009	5	5						

2008	1	1						
...								
2000	7	7						
...								
1989	1		1					
TOTAL	31	28	3					1

HIGH COURT (SINGLE JUDGE): Cs

AVENG (AFRICA) LTD FORMERLY GRINAKE-LTA LTD T/A GRINAKE-LTA BUILDING EAST V MIDROS INVESTMENTS (PTY) LTD [2011] 3 ALL SA 204 (KZD)

Dispute resolution: arbitration clause.

Criticised and not approved: *BDE Constructions v Basfour 3581 (Pty) Ltd* (11690/11) [2012] ZAKZPHC 55.

MKHIZE V UMVOTI MUNICIPALITY AND OTHERS [2011] 1 ALL SA 144 (KZP)

Case heard 19 April 2010, Judgment delivered 21 May 2010.

Judicial oversight of the sale in execution of immovable property.

Appeal dismissed by the SCA in *Mkhize v Umvoti Municipality and others* [2011] 4 All SA 460 (SCA).

SHACKLETON CREDIT MANAGEMENT (PTY) LTD V MICROZONE TRADING 88 CC AND ANOTHER [2011] 1 ALL SA 427 (KZP)

Case heard 27 April 2010, Judgment delivered 10 May 2010.

Defective application for summary judgment.

Applied and followed: *FirstRand Bank Ltd v Mvelase* [2010] JOL 26418 (KZP).

Approved and followed in part, not approved and not followed in part: *Trustees for the time being of the Delshey Trust and others v ABSA Bank Ltd* [2014] JOL 32417 (WCC).

Approved: *ABSA Bank Ltd v Le Roux and others* [2013] ZAWCHC 148 (WCC).

JMV TEXTILES (PTY) LTD V DE CHALAIN SPAREINVEST 14 CC AND OTHERS [2011] 1 ALL SA 318 (KZD)

Case heard 15 August 2010, Judgment delivered 20 August 2010.

Consumer credit agreement.

Approved: *Renier Nel Inc and Another v Cash on Demand (KZN) (Pty) Ltd* [2011] JOL 26935 (GSJ).

HERALD INVESTMENTS SHARE BLOCK (PTY) LTD AND OTHERS V MEER AND OTHERS; MEER V BODY CORPORATE OF BELMONT ARCADE AND ANOTHER [2011] 2 ALL SA 103 (KZD)

Case heard 26 August 2010; Judgment delivered 14 September 2010.

Sectional title scheme dispute.

VAN NIEKERK V VAN NIEKERK AND ANOTHER [2011] 2 ALL SA 635 (KZP)

Case heard 3 December 2010; Judgment delivered 17 December 2010

Administration of estates.

GOLDEN MEATS AND SEAFOOD SUPPLIED CC V BEST SEAFOOD IMPORT CC AND ANOTHER 2011 (2) SA 491 (KZD)

Case heard: 3 December 2010; Judgment delivered: 9 December 2010.

Maritime law.

DUMBE TRANSPORT CC V ALEX CARRIERS 2011 (3) SA 664 (KZP)

Case heard 20-22 October 2010; Judgment delivered: 29 October 2010.

Civil procedure.

FIRSTRAND BANK LTD V EVANS 2011 (4) SA 597 (KZD)

Case heard 11 February 2011; Judgment delivered 18 March 2011.

Insolvency.

ICEBREAKERS NO 83 (PTY) LTD V MEDICROSS HEALTH CARE GROUP (PTY) LTD 2011 (5) SA 130 (KZD)

Case heard 15 February 2011; Judgment delivered 18 February 2011.

Civil procedure.

Approved: *ABSA Bank Ltd v Janse van Rensburg and another* [2012] JOL 29850 (WCC).

MSC GINA MEDITERRANEAN SHIPPING CO SA V CAPE TOWN IRON AND STEEL WORKS 2011 (2) SA 547 (KZD)

Case heard 15 February 2011; Judgment delivered: 22 February 2011.

Maritime law.

SWINBURNE V NEWBEE INVESTMENTS (PTY) LTD 2010 (5) SA 296 (KZD)

Delict.

BMW FINANCIAL SERVICES (SA) (PTY) LTD V MUDALY 2010 (5) SA 618 (KZD)

Consumer credit: debt review.

Applied: *Hattingh v Hattingh* [2010] ZAFSHC 173 (FB).

Overruled: *Nedbank Ltd and Others v The National Credit Regulator and Another* 2011 (3) SA 581 (SCA).

SOKHELA AND OTHERS V MEC FOR AGRICULTURE AND ENVIRONMENTAL AFFAIRS (KWAZULU-NATAL) AND OTHERS 2010 (5) SA 574 (KZP)

Administrative law.

Discussed and approved: *Minister of Defence and Military Veterans v Motau and others* 2014 (5) SA 69 (CC).

MUNIEN V BMW FINANCIAL SERVICES (SA) (PTY) LTD AND ANOTHER 2010 (1) SA 549 (KZD)

Case heard 27 March 2009; Judgment delivered 3 April 2009.

Civil procedure.

Applied: *Standard Bank of South Africa Ltd v Maharaj t/a Sanrow Transport* [2010] JOL 26042 (KZP).

CELE V SOUTH AFRICAN SOCIAL SECURITY AGENCY AND 22 RELATED CASES 2009 (5) SA 105 (D)

Case heard: 7 March 2008; Judgment delivered: 19 March 2008.

Social assistance grants. Order set out a practice directive for dealing with such matters in the KwaZulu-Natal Provincial Division.

“The orders sought in the matters ... were all sought by consent and granted accordingly. However, I did take the opportunity of expressing my disquiet over the quality of the papers and whether in any of the applications a proper case had been made for the grant of relief. Thereafter I made enquiries among the other judges stationed in Durban during this month and they confirmed, what I suspected, that the motion roll of this Court and indeed the motion roll of the Natal Provincial Division of the High Court, are cluttered with cases of this type. ... It seems to me that this situation is entirely untenable. The only obvious beneficiaries of what is happening are those legal practitioners who specialise in dealing with this type of case. Apart from the limited number of attorneys who undertake these matters there seems from my enquiries to be a small coterie of junior counsel for whom this is a profitable way in which to spend a morning. ... I merely observe that this makes the motion court very profitable particularly as the papers are standardised and the matters are invariably adjourned and not argued. That may explain why a number of Durban counsel are prepared to travel to Pietermaritzburg to attend to adjournments. Whether and to what extent they examine the papers in any detail is debatable. Judging by the inability of counsel who appeared last Monday to proffer any helpful submissions in response to my questions those counsel had barely read the application papers and had certainly not applied their minds to them. I cannot say that this is true of all cases or all advocates but that it happened at all is deeply perturbing.” [Paragraphs 12 – 13]

Applied in *Sibiya v Director-General: Home Affairs and Others* 2009 (5) SA 145 (KZP).

SIBIYA V DIRECTOR-GENERAL: HOME AFFAIRS AND OTHERS, AND 55 RELATED CASES 2009 (5) SA 145 (KZP)

Administrative law: issuing of identity documents.

Compared and approved: *Plumb on Plumbers v Lauderdale and another* 2013 (1) SA 60 (KZD).

MKHONZA V S [2009] 3 ALL SA 358 (KZP)

Criminal law.

BMW FINANCIAL SERVICES (SA) (PTY) LTD V DONKIN 2009 (6) SA 63 (KZD)

Case heard 25 May 2009; Judgment delivered 4 June 2009.

Contract.

SHERIFF OF THE HIGH COURT, HLABISA & NONGOMA V SHOBEDE: IN RE FIRSTRAND FINANCE COMPANY LTD V MKHWANAZI [2009] JOL 23544 (KZP)

Civil procedure.

Applied: *Sheriff of the High Court, Johannesburg South v Sithole and three similar cases* 2013 (3) SA 168 (GSJ).

DEN BRAVEN SA (PTY) LIMITED V PILLAY AND ANOTHER 2008 (6) SA 229 (D)

Contract.

HEALTH AND HYGIENE (PTY) LTD V YAWA NO AND OTHERS [2000] 12 BLLR 1434 (LC)

CCMA arbitration award.

NDLOVU V CCMA AND OTHERS [2000] 12 BLLR 1462 (LC)

Unfair labour practices.

Followed: *City of Tshwane Metropolitan Council v South African Local Government Bargaining Council and others* [2011] JOL 27746 (LC).

NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY V MEYER T/A OAKLEY CARRIERS [2000] 5 BLLR 604 (LC)

Bargaining council.

LE ROUX V CCMA AND OTHERS [2000] 6 BLLR 680 (LC)

CCMA arbitration award.

NARAINDATH V CCMA AND OTHERS [2000] 6 BLLR 716 (LC)

CCMA arbitration award.

SHOPRITE CHECKERS (PTY) LTD V RAMDAW NO AND OTHERS [2000] 7 BLLR 835 (LC)

Administrative law.

MZULWINI V FIDELITY CLEANING; METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL V JAY BROWN ENGINEERING CC; METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL V MR A VALLEY T/A KHALID STEEL ENGINEERING (2000) 21 ILJ 1382 (LC)

Labour law.

Approved: *MEC for the Department of Education, Eastern Cape Province v Gqebe* [2009] JOL 23717 (LAC).

HIGH COURT CASES - PANEL OF JUDGES, JUDGMENT WRITTEN BY THE CANDIDATE (Cp)

CROOKES V SIBISI AND OTHERS 2011 (1) SA 491 (KZP)

Case heard 15 April 2010; Judgment delivered: 4 May 2010.

Civil procedure.

S v CASSIMJEE [1989] 1 All SA 21 (N)

Criminal law: defeating the course of justice.

DISSENTING JUDGMENT (D)

NATIONAL HORSERACING AUTHORITY OF SOUTHERN AFRICA V NAIDOO AND ANOTHER 2010 (3) SA 182 (N)

Administrative law.

ACADEMIC ARTICLES

“Commercial certainty and constitutionalism: Are they compatible?” 2016 South African Law Journal 545

This article discusses concerns that the jurisprudence of the Constitutional Court introduced a level of uncertainty into aspects of the law of contract and commercial law. It argues that the application of constitutional norms in the context of commercial law does not need to generate such uncertainty.

“The problem seems to me to lie, with perhaps a couple of exceptions, not so much in actual decisions, but in obiter remarks made in decisions, such as those in *Barkhuizen* and *Everfresh*, that appear to suggest that the enforcement of contractual obligations depends upon the judicial sense of reasonableness, fairness and good faith, rather than the terms of the contract. One problematic decision, at least in the principles that appear to have informed the result, is *Botha v Rich*, where the court defined the issue as being whether the cancellation of a contract was fair 'and thus constitutionally compliant'. This has undoubtedly added to the concern.” [Page 550]

“What is of greater importance is that the court simply put on one side, and by its decision negated, the contractual rights of the seller. It did so apparently because of its view that it would be 'disproportionate' for Ms Botha's default to result in her losing the opportunity to acquire the property. Why that was so was not explained. But there is now a decision by the Constitutional Court that a person who breaches their contract and is faced with the legitimate contractual termination thereof may resist cancellation by saying that, notwithstanding the terms of the contract, in their particular circumstances, that is a disproportionate response to their breach. But, if that is so, we can never know when a cancellation will be legitimate and

when not. How is a party to a contract to know, when faced with a default by the other party, whether they are entitled to invoke and pursue their contractual remedies? How does a lawyer advise a client wanting to know its remedies for contractual breach?" [Page 557]

"The remedy for these concerns lies in the hands of the Constitutional Court. They could be dispersed by an unequivocal statement in an appropriate case that the Constitution does not demand the wholesale restructuring of our law of contract and other areas of commercial law. A simple statement that contracts will be enforced on their terms, subject only to well-recognised exceptions such as fraud, misrepresentation, duress or conflict with public policy, and subject to the provisions of statutes, especially those such as the Consumer Protection Act and the National Credit Act that serve to correct imbalances in bargaining power and prevent exploitation of consumers, would go a long way towards resolving the problem." [Pages 564 – 565]

"The common law's cool ideas for dealing with Ms Hubbard" 2015 South African Law Journal 940.

This article discusses reconciling the Constitution with the common law in the light of the decisions in *Hubbard v Cool Ideas* 1186 CC 2013 (5) SA 112 (SCA) and *Cool Ideas 1186 CC v Hubbard* 2014 (4) SA 474 (CC).

"The Constitution is both the cornerstone and the centrepiece of our law. It is the cornerstone because all law must be founded in the Constitution and finds the source of its authority and character as law in the precepts of the Constitution. As the founding document on which our constitutional democracy is based, it is the centrepiece, because it is to the Constitution that we look for the guarantee that our democracy will function in terms of the rule of law and for the guarantee of the rights set out in the Bill of Rights. However, a cornerstone does not constitute a building, and a centrepiece without surrounds is a jewel without a setting. ... [T]here is a grave difficulty if we pretend that every legal problem can find its solution in the provisions of the Constitution. It risks devaluing our most prized legal instrument as every disappointed litigant treats its terms as a grab bag into which they can dip in the hope of receiving relief from our highest court. ..." [Page 940]

"But none of that means that in every case the solution to a legal problem is to be found in the language and provisions of the Bill of Rights. Its broad expression of fundamental rights is ill suited to the determination of many private-law disputes. The distinction that the Constitution itself draws between constitutional matters and other matters raising points of law of general public importance makes it clear, unless we are to ignore the language of the Constitution itself, that there are legal matters and issues that do not have a constitutional answer. This does not mean that the Constitution does not provide the underpinning for the law that is there applied. It is merely that the legal issue is not one that can be resolved by reference to the language or the underlying spirit, purport or objects of the Bill of Rights. And there is a powerful separation-of-powers reason for accepting that this is so. In a democracy it is the role of the legislature to fashion a vision for society structured by law and to enact legislation, including legislation that repeals, amends or adapts the common law, which reflects that vision." [Page 943]

**“Ordinary justice for ordinary people: The eighth Victoria and Griffiths Mxenge Memorial Lecture” 2010
South African Law Journal 369**

“I am afraid that I do not believe that ordinary people in South Africa are receiving the ordinary justice that is their due. They find their encounters with the justice system slow, costly and frustrating ... The principal manifestation of this failure of justice is to be seen in the delays that are endemic to both our civil and criminal courts. ...” [Pages 372 – 373]

“... [I]t is far too easy and far too comfortable for lawyers, be they judges, magistrates, advocates or attorneys to blame the system and other people's failings without examining their own responsibility for these problems. We need to be honest with ourselves and accept that in many ways we are comfortable with what goes on in our courts and reluctant to change because it would remove us from our own comfort zone. We fail to take responsibility ourselves for the failure of our legal system to provide ordinary justice to ordinary people.” [Page 374]

“Let me start with the judges and a simple problem. The major source of complaints to the Judicial Service Commission concerns delays in the production of judgments. My own impression from perusing law reports and online reports is that most judgments are produced fairly promptly, but there are undoubtedly too many cases where one month becomes two and then three and before long there is a significant delay. This is not a new problem. ...” [Page 374 – 375]

“For as long as I can remember a last minute amendment of pleadings, the late production of documents, or even blatant failure to prepare a case accompanied by a promise to do better next time will almost always prompt a judge to grant an adjournment. Usually that is covered by the mantra that the court is reluctant to shut a litigant out and any prejudice can be cured by an appropriate order for costs, but the latter is simply untrue, as any businessman would tell you. Because of our system of taxation of costs an award of costs does not compensate the other party for the actual costs wasted by the adjournment. More importantly it does not compensate for the delay in resolving the case; the contingency of having to spend more time and energy on litigation; the potential harm caused by the loss of evidence; and the risk of insolvency or a change in economic circumstances that renders a judgment less valuable. Where the adjournment is sought as a device to put tactical pressure on an opponent or to cover up the litigant's own lack of preparedness or the lack of merit in their case, it is even less true.

This type of situation infuriates litigants and lulls the judiciary into a false sense of security in thinking that they are disposing of matters, although they are merely adding to the existing backlog. In my view the time has come for us to debate whether courts should not be far less forgiving in this regard. ...” [Page 375]

“Turning then to the administration of our courts: this must strike most litigants as puzzling. First there are the court hours. Harking back to a more leisured era the court day is shorter in the High Court than in the magistrates' courts, although I have not noticed that the judges are markedly less robust than the magistrates. In the Durban court the lunch adjournment is designed to enable the judges to walk to the Durban Club and back for lunch — something none of them have done for many years. ... We have a sub-tropical climate yet we choose to have the longest portion of the court day in the afternoon. Is any of this sensible? Then there is the fact that effectively the High Courts are closed for three months of the year for all but unopposed and urgent matters. Should this be re-examined so as to make the courts more available to litigants without rendering the terms of judicial service more onerous? I raise these issues not to say that these are a panacea or a final solution but to suggest that they are matters that could usefully be explored

if courts are to provide ordinary justice for ordinary people. Having a court available at all times would facilitate this.” [376]