



OCTOBER 2019

# CASELAW QUARTELY REPORT

JULY - SEPTEMBER 2019

CASELAW CONSULTANT

136 2ND STREET RANDJESPARK, MIDRAND

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## Administrative Law

LAW REPORT	SUMMARY	COURT
National Energy Regulator of South Africa and Another v PG Group (Pty) Limited and Others (CCT131/18) [2019] ZACC 28	Gas Act 48 of 2001 — Monopoly — maximum pricing decision — tariff decision — pricing regulation - Promotion of Administrative Justice Act 3 of 2000 — administrative decision — rationality	Constitutional Court, South Africa  15 July 2019  <a href="#">View Full Report</a>
President of the Republic of South Africa v Democratic Alliance and Others (CCT159/18) [2019] ZACC 35	Rule 53 of the Uniform Rules of Court — application to compel — executive decisions to appoint/remove Cabinet Ministers — mootness — interests of justice	Constitutional Court, South Africa  18 September 2019  <a href="#">View Full Report</a>
Sewpersadh v Minister of Finance and Another (923/2018) [2019] ZASCA 117	Meaning of 'full-time service' of an organisation in s 1(1) of the Special Pensions Act 69 of 1996 – appellant's employment during the relevant period not resulting in him failing to be in the full-time service of a political organisation at the same time	Supreme Court of Appeal, South Africa  23 September 2019  <a href="#">View Full Report</a>

<p>Umgeni Water v Sembcorp Siza Water (Pty) Ltd and Others; Minister of Water &amp; Sanitation v Sembcorp Siza Water (Pty) Ltd and Others (358/2018; 497/2018) [2019] ZASCA 133</p>	<p>Setting of Water Tariffs in terms of the Water Services Act 108 of 1997 – differentiation between respondent and other purchasers of bulk water – tariff of 37,9% set for respondent as opposed to 7,8% for municipal customers – rationality of decision</p>	<p>Supreme Court of Appeal, South Africa  30 September 2019  <a href="#">View Full Report</a></p>
<p><b>Corporate &amp; Commercial</b></p>		
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<p>Rehau Polymer (Pty) Ltd v Brunettes Electrical (Pty) Ltd and Others (641/2018) [2019] ZASCA 101</p>	<p>Claim for damages – breach of contract – interpretation of document – whether breach of warranties established</p>	<p>Supreme Court of Appeal, South Africa  25 July 2019  <a href="#">View Full Report</a></p>
<p>Pieters NO v Absa Bank Ltd (979/2018) [2019] ZASCA 118</p>	<p>Company dissolution – s 419 of Companies Act 61 of 1973 –date of dissolution is date when Registrar recorded dissolution in the Companies Register, not date of publication of notice of dissolution in Government Gazette – agreed facts – no proof that Registrar had not recorded dissolution of company – effect of Master’s certificates in terms of ss 419(1) and 385 of Companies Act to discharge liquidator – Master lacks power to re-instate liquidator after discharge – purported reinstatement of liquidator invalid</p>	<p>Supreme Court of Appeal, South Africa  23 September 2019  <a href="#">View Full Report</a></p>

<p>Smith v Mountain Oaks Winery (Pty) Ltd and Another (1003/2018) [2019] ZASCA 123</p>	<p>Interdict sought on the basis of injurious falsehood – elements not proved - appeal upheld</p>	<p>Supreme Court of Appeal, South Africa</p> <p>26 September 2019</p> <p><a href="#">View Full Report</a></p>
<p>Mosalakae &amp; others v Matlala &amp; Others (267/2018) [2019] ZASCA 125</p>	<p>Section 115 of the Companies Act 1973 – respondents applying to rectify the share register of a company to reflect the fifth to ninth respondents and the third and fourth appellants as equal shareholders – third and fourth appellants relying on an agreement in terms of which their shareholding was increased – whether the terms of such agreement were proved</p>	<p>Supreme Court of Appeal, South Africa</p> <p>27 September 2019</p> <p><a href="#">View Full Report</a></p>
<p>Cash Paymaster Services (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency and Others (1029/2018) [2019] ZASCA 131</p>	<p>Tender for the payment of social grants – whether contract included registration of recipients of social grants plus other beneficiaries in return for payment of a set fee – no lawful basis for variation of contract to provide for payment of additional fee of R316 447 361.41</p>	<p>Supreme Court of Appeal, South Africa</p> <p>30 September 2019</p> <p><a href="#">View Full Report</a></p>

<b>Children's Rights</b>		
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Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others (CCT320/17) [2019] ZACC 34	Minor — assault with intent to do grievous bodily harm — common law defence of reasonable and moderate chastisement — best interests of the child — defence inconsistent with sections 10 and 12(1)(c) of the Constitution — amicus curiae leave to intervene — application for leave to appeal	Constitutional Court, South Africa  18 September 2019  <a href="#">View Full Report</a>
<b>Competition Law</b>		
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Competition Commission of South Africa v Media 24 (Pty) Limited (CCT90/18) [2019] ZACC 26; 2019 (9) BCLR 1049 (CC)	Competition Act — section 8(c) — predatory pricing — cost standards Jurisdiction — arguable point of law — matter of general public importance — interests of justice	Constitutional Court, South Africa  3 July 2019  <a href="#">View Full Report</a>
<b>Criminal Law</b>		
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Ximba v S (1171/18) [2019] ZASCA 111	Criminal Procedure – sentence – whether substantial and compelling circumstances exist to justify deviation from the prescribed minimum sentence – no misdirection by the trial court and full bench – appeal dismissed	Supreme Court of Appeal, South Africa  16 September 2019  <a href="#">View Full Report</a>

Kwenda v S (682/2018) [2019] ZASCA 113	Criminal Procedure – Appeal against a refusal to grant leave to appeal on petition – Leave to appeal to the high court was properly refused	Supreme Court of Appeal, South Africa  17 September 2019  <a href="#">View Full Report</a>
Malherbe v S (829/18) [2019] ZASCA 120	Criminal Procedure – appeal against refusal by the high court to grant leave to it to appeal on petition – issue is whether the appellant has reasonable prospects of success on appeal and not the merits of the appeal – reasonable prospects of success present if a sound, rational, basis exists for the conclusion that the appellant has prospects of success on appeal	Supreme Court of Appeal, South Africa  25 September 2019  <a href="#">View Full Report</a>
Livanje v S (378/2018) [2019] ZASCA 126	Criminal Law and Procedure – appellant erroneously convicted of housebreaking with intent to rob instead of housebreaking with intent to commit a crime unknown to the State – appellant sentenced in terms section 51(2) of the Criminal Law Amendment Act 105 of 1977 without warning of its applicability – irregularities not of vitiating nature – conviction and sentence accordingly amended	Supreme Court of Appeal, South Africa  27 September 2019  <a href="#">View Full Report</a>

Ndimande v S (248/2018) [2019] ZASCA 132	Evidence – admissibility of a pointing out where appellant’s rights in terms of s 35 of the Constitution have been infringed – dock identification admissibility thereof – trial within a trial – video footage of identification of appellant not submitted as evidence – identification must be such that certainty is beyond reasonable doubt to place reliance thereupon	Supreme Court of Appeal, South Africa  30 September 2019  <a href="#">View Full Report</a>
<b>Customary Law</b>		
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Bakgaka-Ba-Mothapo Traditional Council v Mothapo and Others (926/2018) [2019] ZASCA 130	Customary law – locus standi – whether a Traditional Council established in terms of customary law had locus standi to institute action on behalf of the Bakgaka – Ba – Mothapo Traditional Community – whether the submission of insufficient number of men or women appointed as councillors to the Premier’s office justified the Court a quo ordering that the appellant had no locus standi – whether Kgoshigadi had the locus standi even though she derived authority to institute action from a resolution passed by Traditional Council	Supreme Court of Appeal, South Africa  30 September 2019  <a href="#">View Full Report</a>
Mbungela and Another v Mkabi and Others (820/2018) [2019] ZASCA 134	Customary law – s 3(1)(b) of the Recognition of Customary Marriages Act 120 of 1998 – requirements for a valid customary marriage – customary law dynamic, continuously evolving, flexible and pragmatic – ceremony of handing over of bride not necessarily a key determinant of a valid customary marriage - its waiver of permissible and does not invalidate a customary marriage – appeal dismissed	Supreme Court of Appeal, South Africa  30 September 2019  <a href="#">View Full Report</a>
<b>Employment Law</b>		



LAW REPORT	SUMMARY	COURT
Lewarne v Fochem International (Pty) Ltd (1073/18) [2019] ZASCA 114	Whether the Labour Court has exclusive jurisdiction in matters concerning an employment contract – sections 77(1) and 77(3) of the Basic Conditions of Employment Act 75 of 1997 apply – section 77(3) confers concurrent jurisdiction to the Labour Court and civil courts	Supreme Court of Appeal, South Africa  18 September 2019  <a href="#">View Full Report</a>
<b>Financial Services</b>		
LAW REPORT	SUMMARY	COURT
Jacobs and Another v Baumann NO and Others (239/2018) [2019] ZASCA 128 (27 September 2019)	South African Reserve Bank – debt rescheduling arrangements – oral agreement of loan – loan of money by foreign national to individuals prohibited – requirement that debtor a company or close cooperation – written loan agreement between foreign national and close corporation – money paid to close corporation – substitution of debtors precluded – close corporation failing to make payment – oral agreement not novated by written agreement – oral agreement enforceable against individual debtors	Supreme Court of Appeal, South Africa  27 September 2019  <a href="#">View Full Report</a>
<b>Gaming Law</b>		
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KwaZulu-Natal Bookmakersâ€™ Society and Another v Phumelela Gaming and Leisure Ltd and Others (889/2018) [2019] ZASCA 116	National Gambling Act 7 of 2004 – meaning of totalisator betting on sports – Lotteries Act 57 of 1997 – meaning of ‘sports pool’ – does not include totalisator betting on horse racing and other sports – provinces entitled to regulate and control totalisator betting on horse racing and other sports	Supreme Court of Appeal, South Africa  19 September 2019  <a href="#">View Full Report</a>

<b>Intellectual Property</b>		
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Sandvik Intellectual Property AB v Outokumpu OYJ and Another (879/2018) [2019] ZASCA 115	Patents – application for revocation of patent – invention obvious to a person skilled in the art and thus not involving an inventive step in terms of ss 25(1) and (10) of the Patents Act 57 of 1978	Supreme Court of Appeal, South Africa  18 September 2019  <a href="#">View Full Report</a>
<b>Land Reform</b>		
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Sandvliet Boerdery (Pty) Ltd v Maria Mampies & another (107/2018) [2019] ZASCA 100	Extension of Security of Tenure Act 62 of 1997 – s 6(2)(dA) – meaning of ‘reside’ – depends on facts of each case and includes use of a graveyard – burial right may be invoked against landowner in respect of ancestral graveyard situated on registered land on which neither an occupier who seeks to bury a deceased family member nor the deceased had a dwelling at deceased’s death where they routinely performed sufficient acts in relation to land to regard it as part of land on which they ‘reside’	Supreme Court of Appeal, South Africa  8 July 2019  <a href="#">View Full Report</a>
Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another (CCT 232/18) [2019] ZACC 30	Land Reform (Labour Tenants) Act 3 of 1996 — appointment of a special master by Land Claims Court — separation of powers — not overreach of judicial power — contempt of court by Minister — not proven on facts	Constitutional Court, South Africa  20 August 2019  <a href="#">View Full Report</a>

<p>Herbert N.O. and Others v Senqu Municipality and Others (CCT 308/18) [2019] ZACC 31</p>	<p>Land Affairs General Amendment Act 61 of 1998 — constitutionality of section 1 — the section is inconsistent with the Constitution - Upgrading of Land Tenure Rights Act 112 of 1991 — constitutionality of section 25A — section is inconsistent with the Constitution - Upgrading of Land Tenure Rights Act 112 of 1991 — applicability of section 3</p>	<p>Constitutional Court, South Africa 22 August 2019 <a href="#">View Full Report</a></p>
<p>Dykema v Malebane and Another (CCT332/18) [2019] ZACC 33</p>	<p>Chapters V and VI of the Development Facilitation Act 67 of 1995 — suspension of declaration of invalidity — expiration of suspension without remedial legislation being passed — legal consequences Status of applications submitted but not finalised before the expiration of suspension — valid and “pending” in terms of the Spatial Planning and Land Use Management Act 16 of 2013 —fall to be disposed of in the manner prescribed by section 60</p>	<p>Constitutional Court, South Africa 10 September 2019 <a href="#">View Full Report</a></p>
<p>Jacobs (In re: the farm Uap) v Department of Land Affairs; Jacobs (In re: Erf 38) v Department of Land Affairs (1284/16; 982/2017) [2019] ZASCA 122</p>	<p>Financial compensation as equitable redress under the Restitution of Land Rights Act 22 of 1994 – dispossession of land rights as a result of racially discriminatory laws and practices – amounts awarded as compensation in respect of two immovable properties correctly computed in accordance with the principles laid down in <i>Florence v Government of the Republic of South Africa</i> 2014 (6) SA 456 CC – both appeals dismissed with no orders as to costs</p>	<p>Supreme Court of Appeal, South Africa 26 September 2019 <a href="#">View Full Report</a></p>

<b>Medical Law</b>		
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AN v MEC for Health, Eastern Cape (585/2018) [2019] ZASCA 102 (15 August 2019)	Delict – Medical negligence – failure to monitor the appellant and foetus during labour – whether negligence of hospital staff was causally connected to the child’s brain damage – factual causation not established – appeal dismissed	Supreme Court of Appeal, South Africa  15 August 2019  <a href="#">View Full Report</a>
<b>Minerals &amp; Energy</b>		
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Minister of Mineral Resources v Stern and Others; Treasure the Karoo Action Group and Another v Department of Mineral Resources and Others (1369/2017; 790/2018) [2019] ZASCA 99	Statute – whether Minister of Mineral Resources empowered by s 107(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 to make the Regulations for Petroleum Exploration and Production, 2015 (the Petroleum regulations) – Petroleum regulations regulate process and requirements of application for environmental authorisation under the National Environmental Management Act 107 of 1998 (NEMA) and set a regulatory framework and norms and standards for management of environmental impacts of petroleum exploration and production – Minister of Environmental Affairs empowered by NEMA to make regulations regarding these matters – Minister of Mineral Resources not empowered to make regulations regarding environmental matters – impractical to sever invalid regulations from the Petroleum regulations – Petroleum regulations set	Supreme Court of Appeal, South Africa  4 July 2019  <a href="#">View Full Report</a>

	aside in their entirety	
<b>Personal Injury</b>		
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Road Accident Fund v S M (1270/2018) [2019] ZASCA 103 (22 August 2019)	Delict – damages – whether the respondent sustained a mild or moderate traumatic brain injury – expert evidence – approach to their evidence restated – expert opinions must be based upon facts that have been established by way of admissible evidence	Supreme Court of Appeal, South Africa  22 August 2019  <a href="#">View Full Report</a>
Stallion Security (Pty) Limited v Van Staden (526/2018) [2019] ZASCA 127 (27 September 2019)	Delict – claim for loss of support – vicarious liability of employer – employee committed murder entirely for own purposes – test is whether the delict was nevertheless sufficiently closely linked to the business of the employer – development of the law to recognise that the creation of risk by the employer is a relevant consideration in determining the required link – employer liable	Supreme Court of Appeal, South Africa  27 September 2019  <a href="#">View Full Report</a>
<b>Procedural Law</b>		
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New Nation Movement NPC and Others v President of the Republic of South Africa and Others (CCT110/19) [2019] ZACC 27; 2019 (9) BCLR 1104 (CC)	Direct Appeal — Urgency — Urgent Relief	Constitutional Court, South Africa  3 July 2019  <a href="#">View Full Report</a>

Public Protector v South African Reserve Bank (CCT107/18) [2019] ZACC 29; 2019 (9) BCLR 1113 (CC)	Public Protector Act 23 of 1994 — personal costs — punitive costs — representative litigant — personal indemnity exceeded —accountability	Constitutional Court, South Africa 22 July 2019 <a href="#">View Full Report</a>
Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkers A/S (in liquidation) and Others (797/2018) [2019] ZASCA 104	Variation of costs order granted in error	Supreme Court of Appeal, South Africa 23 August 2019 <a href="#">View Full Report</a>
Termico (Pty) Ltd v SPX Technologies (Pty) Ltd & others; SPX Technologies (Pty) Ltd v Termico (Pty) Ltd (418/2018) [2019] ZASCA 109	Arbitration – application to set aside award – no gross irregularity in terms of s 33(1)(b) of the Arbitration Act 42 of 1965 – counter-application to make arbitration award an order of court in terms of s 31 and for a money judgment – not constituting an impermissible ‘hybrid order’	Supreme Court of Appeal, South Africa 6 September 2019 <a href="#">View Full Report</a>
Connecto Fasteners (Pty) Ltd v Bidvest Bank Limited; Jacobs Capital (Pty) Ltd v Bidvest Bank Limited (1000/18; 999/18) [2019] ZASCA 110	Practice – judgments and orders – summary judgment – opposing affidavit of deponent does not disclose a bona fide defence – judicial discretion properly exercised – summary judgment correctly granted	Supreme Court of Appeal, South Africa 13 September 2019 <a href="#">View Full Report</a>
<b>Property &amp; Conveyancing</b>		
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<p>Goldex 16 (Pty) Ltd v Capper NO and Others (543/2018) [2019] ZASCA 105</p>	<p>Invalid written agreement of sale of immovable property – respondent signing agreement on behalf of a trust without necessary authority – seller abandoning claim for specific performance against the trust but seeking to hold respondent liable for payment of the purchase price, tendering to transfer the immovable property to him – claim dismissed</p>	<p>Supreme Court of Appeal, South Africa  4 September 2019  <a href="#">View Full Report</a></p>
<p>Innovent Rental &amp; Asset Management Solutions (Pty) Ltd v Transnet SOC Ltd (917/2018) [2019] ZASCA 106</p>	<p>Master rental agreement – termination by effluxion of time – obligations of lessee in regard to return of equipment – meaning of ‘decommissioned’ in rental agreement</p>	<p>Supreme Court of Appeal, South Africa  5 September 2019  <a href="#">View Full Report</a></p>
<p>Botha v Standard Bank of South Africa Ltd (445/2018) [2019] ZASCA 108</p>	<p>Prescription – cancellation of mortgage bond after mortgage debt is due and prescription has begun to run – whether cancellation changes prescription period of debt from 30 years to three years</p>	<p>Supreme Court of Appeal, South Africa  6 September 2019  <a href="#">View Full Report</a></p>
<p>Atlantic Beach Homeowners Association NPC and Others v Estate Agency Affairs Board (978/2018) [2019] ZASCA 112</p>	<p>Estate Agents – whether the first and second appellants operated as estate agents in terms of the Estate Agency Affairs Act 112 of 1976 – court held that by concluding and implementing a property partner agreement the first and second appellants did not hold themselves out or advertise themselves as estate agents – appeal upheld with costs</p>	<p>Supreme Court of Appeal, South Africa  16 September 2019  <a href="#">View Full Report</a></p>
<p>Telkom SA SOC Ltd v City of Cape Town and Another (1038/2018) [2019] ZASCA 121</p>	<p>Erection of telecommunications infrastructure – public servitude in favour of licensee in terms of s 22(1)(a) of the Electronic Communications Act 36 of 2005 – whether entitling licensee to enter upon land and erect telecommunications infrastructure contrary to zoning provisions in municipal by-laws without obtaining consent to rezoning from</p>	<p>Supreme Court of Appeal, South Africa  25 September 2019  <a href="#">View Full Report</a></p>

	municipality in terms of those by-laws – whether by-laws requiring such rezoning and consent unconstitutional – whether municipal policy in respect of the erection of telecommunications infrastructure an encroachment upon a national sphere of legislative competence.	
Uniting Presbyterian Church in SA and Another v Reformed Presbyterian Church in Southern Africa and Others (1438/2018) [2019] ZASCA 129	Contract – interpretation of non-variation clause – alleged oral agreement – estate agent’s entitlement to commission – evidence to contradict express terms of a contract inadmissible	Supreme Court of Appeal, South Africa  30 September 2019  <a href="#">View Full Report</a>
<b>Tax Law</b>		
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BMW South Africa (Pty) Ltd v The Commissioner for the South African Revenue Service (1156/2018) [2019] ZASCA 107 (6 September 2019)	Payment by employer to tax consultants to render assistance to expatriate employees – whether a taxable ‘benefit or advantage’ as contemplated in the definition of ‘gross income’ in s 1 of the Income Tax Act 58 of 1962 read with s 2(e) or (h) of the Seventh Schedule	Supreme Court of Appeal, South Africa  6 September 2019  <a href="#">View Full Report</a>
Commissioner for the South African Revenue Service v Atlas Copco South Africa (Pty) Ltd (834/2018) [2019] ZASCA 124	Income tax – valuation of stock at year end in terms of s 22(1)(a) of the Income Tax Act 58 of 1962	Supreme Court of Appeal, South Africa  27 September 2019  <a href="#">View Full Report</a>



<b>Unlawful Arrest</b>		
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<b>Wills &amp; Estates</b>		
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Grobler v Master of the High Court and Others (645/2018) [2019] ZASCA 119	Will – validity of unsigned draft will in terms of s 2(3) of Wills Act 7 of 1953 – not established that deceased received, approved and intended draft will prepared by his financial advisor to be his last will and testament – appeal dismissed	Supreme Court of Appeal, South Africa  23 September 2019  <a href="#">View Full Report</a>



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