



APRIL 4, 2019

CASELAW QUARTELY REPORT

JANUARY - MARCH 2019

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LIST OF LAW AREAS*

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Corporate & Commercial

LAW REPORT	SUMMARY	COURT
<p>Recycling and Economic Development Initiative of South Africa v The Minister of Environmental Affairs (1260/2017 and 188/2018) and Kusaga Taka Consulting (Pty) Ltd v The Minister of Environmental Affairs (1279/2017 and 187/2018)</p>	<p>Application to wind up solvent companies in terms of s 81 of Companies Act 71 of 2008 (the 2008 Act); whether Minister of Environmental Affairs may invoke s 157(1)(d) of the Act for standing in the public interest – whether <i>ex parte</i> proceedings and failure to disclose material facts warrants discharge of provisional orders – whether just and equitable for companies to be wound up.</p>	<p>Supreme Court of Appeal, South Africa 24 January 2019</p>
<p>Competition Commission of South Africa v Hosken Consolidated Investments Limited and Another (CCT296/17) [2019] ZACC 2</p>	<p>Notifiability of a merger; Application for leave to appeal against a judgment of the Competition Appeal Court. Whether Hosken Consolidated Investments Ltd was obliged to notify the 2017 transaction i.t.o s 13A of the Competition Act</p>	<p>Constitutional Court, South Africa 1 February 2019</p>
<p>Buffalo City Metropolitan Municipality v Metgovis (Pty) Limited (CCT78/18) [2019] ZACC 9</p>	<p>Section 217 of the Constitution — development of the common law relating to tacit agreements entered into with organs of state Jurisdiction — misapplication of an accepted common law rule does not ordinarily raise a constitutional issue — factual dispute</p>	<p>Constitutional Court, South Africa 28 February 2019</p>

Van Staden and Others NNO v Pro-Wiz (Pty) Ltd (412/2018) [2019] ZASCA 7	Business rescue application – close corporation in liquidation – liquidators cited as respondents – entitled to oppose application – service on corporation to be effected on liquidators – s 131(6) of Companies Act 71 of 2008 not disentitling the liquidators from opposing the application – proceedings brought in order to prevent interrogation under s 418 of Companies Act 61 of 1973 and delay winding up – such an abuse of process justifying a punitive order for costs	Supreme Court of Appeal, South Africa 8 March 2019
Gridmark CC v Razia Trading CC (349/18) [2019] ZASCA 18	Contract: whether a compromise was effected.	Supreme Court of Appeal, South Africa 25 March 2019
Vela v Efora Energy Limited (385/2018) [2019] ZASCA 44	The resignation of Chief Executive Officer – claim by the company for repayment of outstanding PAYE - counter-claim by Chief Executive Officer for leave pay, bonus payment – damages consequent on the loss of share options	Supreme Court of Appeal, South Africa 29 March 2019
FirstRand Bank Ltd v Nedbank Ltd (1249/17) [2019] ZASCA 47	Contract – interpretation of cancellation clauses in Invoice Discounting Agreement and Security Cession – effects of out and out cession considered – Invoice Discounting Agreement bestowed full ownership in Nedbank for book debts delivered to it before its cancellation – cancellation of a contract not affecting accrued rights under it.	Supreme Court of Appeal, South Africa 29 March 2019
Immigration Law		
LAW REPORT	SUMMARY	COURT

Mulwayi and Others v Minister of Home Affairs and Another (CCT249/18) [2019] ZACC 1	Declaration of invalidity in respect of regulations not subject to confirmation — suspension of the order of invalidity set aside	Constitutional Court, South Africa 29 January 2019
Director-General of the Department of Home Affairs and Others v De Saude Attorneys and Another (1211/2017) [2019] ZASCA 46	Application to compel the Department of Home Affairs to process applications and appeals within the structure of the Immigration Act 13 of 2002 and the South African Citizenship Act 88 of 1995 after prolonged delays - Department unjustifiably challenging <i>locus standi</i> of attorneys acting on behalf of affected individuals - challenge to jurisdiction of court without merit - institutional dysfunction and failure to meet statutory and constitutional obligations criticised.	Supreme Court of Appeal, South Africa 29 March 2019
Shipping & Customs		
LAW REPORT	SUMMARY	COURT
Seaspan Holdco 1 Limited and Others v MS Mare Tracer Schiffahrts GMBH & Co KG and Another (376/18) [2019] ZASCA 2	Admiralty - s 3(4) of Admiralty Jurisdiction Regulation Act 105 of 1983 (AJRA) - <i>in rem</i> action based on <i>in personam</i> liability of owner of ship - arrest of associated ship - s 3(7) of AJRA requiring that associated ship be owned at commencement of action by person personally liable on claim - s 1(2) of AJRA - commencement of action date on which process instituting action served in terms of s 1(2)(a)(i)	Supreme Court of Appeal, South Africa 1 February 2019
Twende Africa Group (Pty) Ltd t/a TAG Marine v MFV Qavak (476/2018) [2019] ZASCA 9	Shipbroker - entitlement to a commission - dependent on agreement between shipbroker and either seller or buyer to pay commission for services rendered by broker - broker advertising sale of the vessel without	Supreme Court of Appeal, South Africa 12 February 2019

	authority from seller - prospective purchaser responding to the advertisement - no contractual relationship established - no basis for inferring the existence of a tacit contract.	
Employment Law		
LAW REPORT	SUMMARY	COURT
Stokwe v Member of the Executive Council: Department of Education, Eastern Cape and Others (CCT33/18) [2019] ZACC 3	Disciplinary proceedings must be concluded in the shortest possible time frame - Employment of Educators Act - dismissal procedurally unfair	Constitutional Court, South Africa 7 February 2019
Long v South African Breweries (Pty) Ltd and Others; (CCT61/18) [2019] ZACC 7	Labour Relations Act 66 of 1995 — fair labour practices — hearing prior to precautionary suspension — costs — adverse costs orders	Constitutional Court, South Africa 19 February 2019
Theron v Premier of The Western Cape Province and Another (1310/2017) [2019] ZASCA 6	Interpretation of an employment contract: contract for a fixed duration, but with the right to terminate for employer and employee on one month's notice; where employer ceased to exist, contract terminable by the body that assumed liability, on one month's notice.	Supreme Court of Appeal, South Africa 8 March 2019
Criminal Law		
LAW REPORT	SUMMARY	COURT
Jacobs and Others v S [2019] ZACC 4	The doctrine of common purpose - whether matter consists of a constitutional principle - Court has no jurisdiction	Constitutional Court, South Africa 14 February 2019
Cloete and Another v S; Sekgala v Nedbank Limited (CCT324/17; CCT63/18) [2019] ZACC 6	section 17(2)(f) of the Superior Courts Act 10 of 2013 — Constitutional Court jurisdiction	Constitutional Court, South Africa

		19 February 2019
Tutton v S (294/18) [2019] ZASCA 3	Non-parole order under s 276B of the Criminal Procedure Act not to be lightly imposed unless justified by circumstances relating to parole - parties should be forewarned of the intention to make such an order and be invited to present oral argument on the specific issue.	Supreme Court of Appeal, South Africa 20 February 2019
Viljoen v S (663/2018) [2019] ZASCA 22	Purchasing unpolished diamonds in contravention of s 20 of the Diamonds Act 56 of 1956 – admissibility of evidence – whether police trap went beyond providing an opportunity to commit offences – s 252A(1) of the Criminal Procedure Act 51 of 1977 – evidence admissible – appeal dismissed.	Supreme Court of Appeal, South Africa 27 March 2019
Carneiro v S (425/18) [2019] ZASCA 45	Appeal against conviction and sentence – the right to speedy and fair trial – extends to appeal process – need for reasonable expedition – principles not adhered to. Evidence – adequacy of proof – State witnesses’ evidence riddled with improbabilities – failure to secure ballistic evidence – trial court misdirected itself – State failed to prove guilt of accused beyond a reasonable doubt – appeal upheld – conviction and sentence set aside.	Supreme Court of Appeal, South Africa 29 March 2019
Minerals & Energy		
LAW REPORT	SUMMARY	COURT
Aquila Steel (S Africa) (Pty) Limited v Minister of Mineral Resources and Others (CCT08/18) [2019] ZACC 5	Application for Prospecting Right — Application for Mining Right – Non-Compliance with	Constitutional Court, South Africa

	Requirements Duplicate Grants - Substitution of Mining Right	15 February 2019
Property & Conveyancing		
LAW REPORT	SUMMARY	COURT
Trustees of the Simcha Trust v Da Cruz and Others; City of Cape Town v Da Cruz and Others (CCT125/18; CCT128/18) [2019] ZACC 8	National Building Regulations and Building Standards Act — disqualifying factors — legitimate expectations test	Constitutional Court, South Africa 19 February 2019
Polokwane Local Municipality v Granor Passi (Pty) Ltd and Another (289/2018) [2019] ZASCA 5	Review - sale of land by municipality in 1988 - property not transferred to purchaser - municipality resolving that purchaser had provided insufficient proof that the purchase price had been paid - on that basis resolving not to transfer land to purchaser - decision reviewable on grounds of material error of fact - all evidence showed price had been paid - decision set aside and referred back to municipality - factors to be taken into account in deciding whether to proceed with transfer.	Supreme Court of Appeal, South Africa 1 March 2019
Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others (CCT40/15) [2019] ZACC 10	Application for extension of interdict — interdict in respect of the processing of land claims — appropriate remedy — just and equitable order	Constitutional Court, South Africa 19 March 2019
Tadvest Industrial (Pty) Ltd formerly known as Old Abland (Pty) Ltd v Hanekom and Others; Tadvest Industrial (Pty) Ltd formerly known as Old Abland (Pty) Ltd v Jacobs and Others (83/2018) [2019] ZASCA 19	Section 16(1)(b) of Superior Courts Act 10 of 2013 - appeal from decision of high court sitting as an appeal court - special leave of Supreme Court of Appeal required - s 16(1)(c) of the Superior Courts Act - appeal from decision of Land Claims Court sitting as	Supreme Court of Appeal, South Africa 25 March 2019

	appeal court – leave to appeal granted by Land Claims Court – s 22(2)(a) of the Restitution of Land Rights Act 22 of 1994 – powers of Land Claims Court limited to powers of high court – special leave of Supreme Court of Appeal required – absence of jurisdiction – each appeal is struck from the roll.	
National Home Builders Registration Council v Adendorf and Others (406/2018) [2019] ZASCA 20	Housing - whether a trust is a 'home builder' in terms of sections 1 and 10(1) of the Housing Consumers Protection Measures Act 95 of 1998.	Supreme Court of Appeal, South Africa 26 March 2019
Trustees for the Time Being of the Oregon Trust v BEADICA 231 CC and Others (74/2018) [2019] ZASCA 23	The enforcement of terms of lease agreements leading to their termination was not contrary to public policy as being unconscionable in the particular circumstances of the case.	Supreme Court of Appeal, South Africa 28 March 2019
Tax Law		
LAW REPORT	SUMMARY	COURT
Purlish Holdings (Proprietary) Limited v The Commissioner For The South African Revenue Service (76/2018) [2019] ZASCA 4	Appeal against imposition of understatement penalties – the appellant's conduct fell within the category listed in items (a) to (d) of the definition of 'understatement' in s 221 of the Tax Administration Act – SARS suffered prejudice – no bona fide or inadvertent error – the imposition of penalties was justified – the increase of understatement penalties by the Tax Court incompetent and set aside	Supreme Court of Appeal, South Africa 26 February 2019
Benhaus Mining (Proprietary) Limited v Commissioner for the South African Revenue Service (165/2018) [2019] ZASCA 17	A company that excavates ground and digs up mineral-bearing ore for a fee on delivery to another entity that processes the ore, undertakes mining operations within the meaning of ss 1 and 15(a) of the Income Tax	Supreme Court of Appeal, South Africa 22 March 2019

	Act 58 of 1968. It is thus entitled to claim deductions of the full amount of capital expenditure on mining equipment in the tax year in which it is incurred, in terms of s 36(7C) of the Act.	
Procedural Law		
LAW REPORT	SUMMARY	COURT
Cook v Morrison and Another (1319/2017) [2019] ZASCA 8	<p>Appeal – application for special leave – dismissal of – reconsideration in terms of 17(2)(f) of Superior Courts Act – such to be considered by ‘court’ constituted in terms of s 13(1), not by two judges of appeal who initially dismissed it.</p> <p>Appeal – application for special leave – the need for special circumstances – applicant not having reasonable prospects of success – even if he had such, no special circumstances justifying the grant of special leave.</p> <p>Prescription – the meaning of ‘debt’ – such includes an obligation by contracting party to make restitution of money or property following cancellation for repudiation.</p>	<p>Supreme Court of Appeal, South Africa</p> <p>8 March 2019</p>
Born Free Investments 247 (Pty) Ltd v Kriel NO (1183/17) [2019] ZASCA 21	Interpretation of court orders – special leave – whether final order confirmed provisional order – whether the failure to obtain leave of court prior to the institution of action rendered the action a nullity	<p>Supreme Court of Appeal, South Africa</p> <p>26 March 2019</p>
Mabaso v National Commissioner of Police and Another (1222/2017) [2019] ZASCA 43	State – actions against – s 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 – interpretation thereof – whether by necessary implication there is a duty on an organ of	<p>Supreme Court of Appeal, South Africa</p> <p>29 March 2019</p>

	state receiving notice in terms of s 3 to make a decision to accept, reject or settle claim prior to commencement of litigation.	
Personal Injury		
LAW REPORT	SUMMARY	COURT
Parktown High School for Girls v Hishaam and Another (93/2018) [2019] ZASCA 10	Liability of the State under s 60 of the South African Schools Act 84 of 1996 (the Act) – whether an injured party is obliged to sue the State and the school – whether a fashion show, organised by the Representative Council of Learners as a fundraising event was a ‘business or enterprise’ as envisaged in s 60(4) of the Act.	Supreme Court of Appeal, South Africa 14 March 2019
Nekokwane v Road Accident Fund (CCT322/17) [2019] ZACC 11	Road Accident Fund Act 56 of 1996 — whether injuries fall within the ambit of sections 17 and 20 Jurisdiction — misapplication of legislation does not ordinarily give rise to a constitutional issue — purely factual dispute	Supreme Court of Appeal, South Africa 26 March 2019
Bergrivier Municipality v Van Ryn Beck (1269/2017) [2019] ZASCA 38	Whether in prevailing circumstances Municipality had a legal duty to take steps to prevent flooding of property – lack of evidence – negligence, wrongfulness, and causation not established.	Supreme Court of Appeal, South Africa 29 March 2019
Insurance Law		
LAW REPORT	SUMMARY	COURT
Centriq Insurance Company Limited v Oosthuizen and Another (237/2018) [2019] ZASCA 11	Interpretation of insurance contract – professional indemnity insurance for financial advisors – whether	Supreme Court of Appeal, South Africa

	exclusion clause purporting to exclude cover for negligent financial advice accords with the purpose of policy - policy to be interpreted so as to give it commercial efficacy.	14 March 2019
Family Law		
LAW REPORT	SUMMARY	COURT
H M v A M (1317/17) [2019] ZASCA 12	Divorce - postnuptial agreement - whether concluded in contemplation of divorce	Supreme Court of Appeal, South Africa 14 March 2019
Legal Practitioners' Ethics		
LAW REPORT	SUMMARY	COURT
Pretoria Society of Advocates v Van Zyl (517/18) [2019] ZASCA 13	Removal of name from the roll of advocates - serious misconduct - theft of monies of colleagues - perjury in answering affidavit - forging and uttering of bank statements attached to answering affidavit - interference on appeal warranted in respect of sanction imposed by the high court - struck from the roll of advocates.	Supreme Court of Appeal, South Africa 14 March 2019
Johannesburg Society of Advocates v Edeling (326/2018) [2019] ZASCA 40	Advocate - re-admission and re-enrolment - whether applicant a fit and proper person to be admitted as an advocate - applicant struck off the roll for serious dishonesty - needing to show genuine, complete and permanent reformation.	Supreme Court of Appeal, South Africa 29 March 2019

Aviation Law		
LAW REPORT	SUMMARY	COURT
Africa Charter Airline CC v AviSys CC and Others (421/2018) [2019] ZASCA 16	Interpretation of aircraft maintenance manual – overhaul of the main landing gear of aircraft – language, purpose, and context of manual indicate an obligation to remove cadmium plating – appeal upheld.	Supreme Court of Appeal, South Africa 22 March 2019
Pensions Law		
LAW REPORT	SUMMARY	COURT
Municipal Employees Pension Fund and Another v SAMWU National Provident Fund and Another (1412/2018) [2019] ZASCA 42	Interpretation of rules 3.2.1 and 11.11 of provident fund – termination of membership – precluded whilst in service with Municipality – Pension Funds Act 24 of 1956 – s 13A(5) – transfer of individual benefits – only applicable if membership terminated in terms of rules of Fund – s 14 and rule 11.11 – not applicable to individual termination of membership and transfer of benefits – right to freedom of association of employees and right to freedom of trade of Pension Fund – not infringed by restriction on termination of membership.	Supreme Court of Appeal, South Africa 29 March 2019



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