

CIRCULAR & IMPORTANT NEWS

CHIEF REGISTRAR'S CIRCULAR NO 1 OF 2015 – TERMINATION OF COLLECTIVE INVESTMENT SCHEME ADMINISTERED BY BLUE BOND INVESTMENTS LIMITED

The Collective Investment Scheme in Participation Bonds administered by Blue Bond Investments Limited (Registration Number 1969/012081106) has been terminated in terms of section 102 of the Collective Investment Schemes Control Act 45 of 2002), with effect from **31 December 2014**.

All the Participation bonds affected by the termination of the Scheme are vested in the name of Blue Bond Financial Nominees Proprietary Limited (Registration Number 1970/008155/07), as the nominee for and representative of the investors in the Scheme.

All the Participation bonds affected by the termination of the Scheme must be ceded to The Standard Bank of South Africa Limited (Registration Number 1962/000738/06), in terms of section 102 of Act No. 45 of 2002.

All deeds registries must note a caveat against the name of Blue Bond Financial Nominees Proprietary Limited (Registration Number 1970/008155/07), to the effect that all the relevant bonds must be endorsed (whenever lodged in the deeds registry for whatever purpose).

Contact the Knowledge Centre for a copy of above circular.

NATIONAL CREDIT AMENDMENT ACT IN FORCE

The National Credit Amendment Act came into force on **13 March 2015**.

The Act was assented to in May 2014. It is designed to tighten up the way debt counsellors operate.

The Act also aims to:

- Empower the CEO of the National Credit Regulator (NCR) to delegate functions to other NCR officials;
- Allow debt counsellors to voluntarily cancel their registration;
- Empower the NCR to cancel registrations;
- Empower the National Credit Tribunal (NCT) to suspend reckless credit agreements;
- Tighten up the requirements for credit for marriages in community of property; and
- Set up alternative dispute resolution mechanisms.

The National Credit Regulations including the Affordability Assessment Regulations were also published in the same Gazette and are now in force.

The regulations, flowing from the act, were published for comment in August last year. They call on credit providers to "take practicable steps" to assess a consumer's income status to ascertain whether repayment of a loan can be made. Three months bank statements or payslips must be looked at.

Importantly, the consumer has to provide the credit provider with authentic documentation in order to carry out the assessment effectively. A consumer's credit profile as contained in a credit bureau must also be considered.

The rules also deal with the criteria for registration as a payment distribution agent, the transitional period for payment distribution agents already registered and the duties and obligations of payment distribution agents.

Regulations outlining how the National Consumer Tribunal is to function and the procedure to be followed when placing matters before it have also been published in the same Gazette.

Source: <http://www.sabinetlaw.co.za/>

CCMA AMENDS GUIDELINES ON MISCONDUCT ARBITRATION

The Commission for Conciliation, Mediation and Arbitration (CCMA) has issued new guidelines on misconduct arbitration.

The amended guideline are drawn up in terms of the Labour Relations Act 66 of 1995. The guidelines set out how arbitrators should conduct arbitration proceedings, evaluate evidence in order to make an award, assess the procedural fairness of an award, assess the substantive fairness of a dismissal and determine the remedy for an unfair dismissal.

The guidelines have been issued in order to promote consistent decision-making in arbitrations dealing with dismissals for misconduct.

The amended guidelines are effective from **1 April 2015**.

In another notice, the Labour Department has published amended rules for the conduct of proceedings before the CCMA.

The rules focus on:

- Serving and filing documents;
- Conciliation of disputes;
- Arbitrations;
- Rules that apply to conciliations and arbitrations and con-arbs;
- Applications;
- Inquiry in terms of section 188A; and
- General.

The amended rules also kick in on **1 April 2015**.

Source: <http://www.sabinetlaw.co.za/>

SEMINARS

SEMINAR	PRESENTER	DATES
Opinion Writing in 2015	Ismail Hussain SC	Kimberley: 26 March 2015 Johannesburg: 13 April 2015 Pretoria: 14 April 2015
Drafting of Wills and Testamentary Trusts	Ceris Field	Durban: 22-24 April 2015 Johannesburg: 20 - 22 May 2015 Bloemfontein: 10 - 12 June 2015 Cape Town: 29 - 31 July 2015 East London: 26 - 28 August 2015
Advanced Case Management	Ismail Hussain SC	Cape Town: 8, 9 May 2015 Durban: 15, 16 May 2015 East London: 22, 23 May 2015 Bloemfontein: 29, 30 May 2015 Nelspruit: 26, 27 June 2015 Mafikeng: 3, 4 July 2015 Pretoria: 10, 11 July 2015 Johannesburg: 24, 25 July 2015
Labour Law in 2015	Moksha Naidoo	East London: 18 June 2015 Port Elizabeth: 19 June 2015 Durban: 22 June 2015

Cape Town: 23 June 2015
 Pretoria: 26 June 2015
 Bloemfontein: 29 June 2015
 Johannesburg: 30 June 2015

5-Day Mediation
 Training Workshop

The workshop presenters are all
 acknowledged experts in the field
 of mediation

Cape Town: Fully booked
 Pretoria: 13 - 17 April 2015
 East London: 20 - 24 April 2015
 Pietermaritzburg: 4 - 8 May 2015

International
 Financial Reporting
 Standards 2015
 (IFRS) workshop

Prof Hentie van Wyk

Johannesburg: 23 - 24 April 2015

For more information, please contact the Knowledge Centre

SUMMARY OF RECENT SUPREME COURT OF APPEAL JUDGMENTS

WHETHER TRUST ASSETS FORM PART OF THE JOINT ESTATE OF PARTIES MARRIED IN COMMUNITY OF PROPERTY

WT & OTHERS v KT (933/2013) [2015] ZASCA 9 (13 MARCH 2015)

The SCA handed down judgment in a case concerning whether assets of a discretionary family trust form part of the joint estate of parties married in community of property.

W (the plaintiff in the Court below and the first appellant) who was married to K (the defendant in the Court below and the respondent) in community of property, instituted divorce action in the Gauteng Local Division, claiming a decree of divorce as well as ancillary relief. Whilst K did not oppose the decree of divorce sought by her husband, she filed a counterclaim relating to the extent of the assets of their joint estate. In her counterclaim, K claimed that assets of a trust established prior to the marriage formed part of the joint estate of the parties.

K's contention that assets of the trust formed part of the joint estate was based on: (a) W deceiving her. (b) The trust being W's alter ego.

The High Court found in favour of K that the joint estate included the assets of the trust.

On appeal, the SCA held that there was no evidence supporting K's contention of W's deception. The SCA further held that K's belief that she would be an equal owner of the matrimonial home, which had been registered in the name of the trust, was not corroborated and was improbable given the undisputed evidence relating to establishment of the trust.

The SCA found further that there was no factual or legal basis for the finding of the High Court that the trust formed part of the joint matrimonial estate of the parties.

The SCA accordingly held in the circumstance of the case, that the appeal had to succeed against the declaratory order made by the High Court. Therefore, the SCA ordered that the appeal is upheld with costs and the order of the High Court was set aside with a declaratory order that the assets of the trust do not form part of the joint estate of the parties.

Source: Supreme Court of Appeal media summary

MANTELLA TRADING v KUSILE MINING (191/2014) [2015] ZASCA 10 (12 MARCH 2015)

Patent – alleged infringement in relation to patents involving barriers or stoppings in underground passages in mines – challenge on basis of lack of clarity in patent specification and that the patent in suit lacked an inventive step – interpretation of patent claims – construed contextually – inquiry into obviousness – simplicity no bar – combination of known techniques held to involve creative ingenuity.

FIRSTRAND BANK v KONA & ANOTHER 20003/2014 [2015] ZASCA 11 (13 MARCH 2015)

National Credit Act 34 of 2005 – interpretation of s 88(3) – existence of debt re-arrangement order not a bar to the grant of a sequestration order. Court – precedent and stare decisis – observance of doctrine mandatory.

DETERMINATION TO BE MADE IN RESPECT OF LOAN AMOUNT DUE

CLIFTON DUNES v CITY CAPITAL (169/14) [2015] ZASCA 12 (16 MARCH 2015)

The Supreme Court of Appeal dismissed with costs, including those consequent upon the employment of two counsel, an appeal against a judgment of Griesel J in the Western Cape Division of the High Court. The SCA held that the High Court was correct in holding that the loan amount from a holding company, Clifton Dunes Investment 100 limited, to a property-owning company, Midnight Storm Investments 150 (Pty) Ltd, in a property syndication was the amount of R20 321 248 and not R25 million, as contended by the appellants. Consequently, the respondent, City Capital SA Property Holdings Limited, was entitled to payment of the sum of R3 160 608, together with accrued interest. The SCA endorsed the High Court's approach in placing reliance on the appellant companies' audited financial statements for its finding on the amount of the loan. The SCA reiterated the legal position on the duties of an auditor and on how disputed evidence is to be challenged in cross-examination so as to afford a witness a full and proper opportunity to meet the challenge.

Source: Supreme Court of Appeal media summary

DRIVER NOT NEGLIGENT WHERE COLLISION CAUSED BY SUDDEN DEFLATION OF THE RIGHT FRONT TYRE

ROMAN'S TRANSPORT v ZIHLWELE (13/2014) [2015] ZASCA 13 (16 MARCH 2015)

The Supreme Court of Appeal delivered a judgment upholding the appeal by the appellant, Roman's Transport CC against the judgment of the Eastern Cape Local Division, Mthatha.

The issue before the SCA was whether the bus driver who was faced by a sudden emergency resulting from a right front tyre blowout could have been expected to have applied the brakes to avoid the accident.

The respondents' claims arose in the following circumstances: On 22 December 2007 the respondents were injured when a bus, in which they were passengers, driven by the appellant's employee, overturned after the front tyre blowout on a road between Beaufort West and Aberdeen. The bus was from Cape Town to Mthatha. Thereafter they sued the appellant in the High Court contending that the bus driver's negligence was the cause of the accident and their resultant injuries. The High Court found in their favour holding that although the driver was faced with a sudden emergency, the accident was avoidable by mild application of the brakes. The appellant appealed to the SCA and challenged the correctness of the High Court's finding contending that in the prevailing circumstances the driver could not have been required to have mildly applied the brakes as such an application may practically have had disastrous consequences. The SCA upheld the appeal, set aside the High Court's judgment and substituted it with one dismissing the respondents' claims.

Source: Supreme Court of Appeal media summary

MAYKENT v TRACKSTAR (1036/2013) [2015] ZASCA 14 (17 MARCH 2015)

Construction contract concluded partly orally, partly by conduct and partly on basis of standard terms used in industry did not oblige the principal agent to issue a certificate of completion before issuing final payment certificate: employer's failure to pay the contractor on this basis over a period of five years unjustified.

POTGIETER v S (20109/2014) [2015] ZASCA 15 (17 MARCH 2015)

In terms of s 16(1)(b) of the Superior Courts Act 10 of 2013, an appeal to this court against a decision of a court on appeal to it lies only with the special leave of the Supreme Court of Appeal. An order granting leave to appeal to this court by the provincial division is a nullity and this court has no jurisdiction to hear the appeal.

MANDAMUS OBLIGING RESPONSIBLE FUNCTIONARIES

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY v HLOPHE (1035/2013) [2015] ZASCA 16 (18 MARCH 2015)

Changing Tides Properties 74 (Pty) Ltd (Changing Tides) is the owner of a building situated in the centre of Johannesburg. The building is unlawfully occupied by approximately 183 poor and homeless persons (the occupiers).

Changing Tides obtained an order of eviction of the occupiers from the building. The eviction order was to take effect only after the City of Johannesburg Metropolitan Municipality provided the occupiers with temporary shelter. The City consented to orders of the High Court to do so, but for a period of approximately a year consistently failed to comply with the orders without proper explanation. The High Court accordingly granted an order obliging the executive mayor, city manager and director of housing of the City to ensure that the City complies with the orders to provide temporary shelter to the occupiers. The SCA dismissed an appeal against this order. The SCA held that the executive mayor, city manager and director of housing are statutorily obliged to ensure compliance by the City with the orders against it and that the order against them was competent and appropriate.

Source: Supreme Court of Appeal media summary

AN UNDERTAKING TO EMPLOY IN A CONTRACT

GREATER TZANEEN MUNICIPALITY v LE GRANGE (685/2013) [2015] ZASCA 17 (18 MARCH 2015)

The two issues before the SCA were (i) whether the high court had jurisdiction to hear a matter concerning a contractual agreement to employ a person, or whether such jurisdiction was excluded by section 157 of the Labour Relations Act 66 of 1995 and (ii) whether the High Court was correct in ordering the rectification of the contract in question.

The respondent, Mr Le Grange, entered into an employment contract with the appellant, the Greater Tzaneen Municipality, in terms of which he would be employed as the municipality's chief financial officer for three years, and upon expiration of this period the municipality would 'endeavour to suitably accommodate (Mr Le Grange) in a permanent position on the service register. Upon the expiry of the three year period, the municipality refused to re-employ Mr Le Grange, and applied to the High Court for an order interdicting Mr Le Grange from accessing the municipal premises as an employee. Mr Le Grange opposed this interdict on the basis that the municipality was obligated to re-employ him and brought a counter-application in which he sought to assert his right to be re-employed and to rectify the contract in question. The basis for the rectification was that during the negotiation of the contract it was understood by all involved that he required secure employment following the three year period, and that both he and the drafter of the contract (the municipality's human resource manager) had been under the mistaken belief that the word "endeavour" in fact entailed an obligation, and they both believed that it corresponded to the Afrikaans word "onderneem".

The High Court dismissed the municipality's application for the interdict, and granted Mr Le Grange's order for rectification of the agreement.

Before the SCA, the municipality argued that the high court had lacked jurisdiction to hear Mr Le Grange's complaint because he was essentially requesting a re-instatement, which was a labour matter that could only be brought before a labour court. The SCA rejected this submission on the basis that the remedy sought by Mr Le Grange was specific performance of a contractual term and was not based on any provisions of the LRA. In addition, the provision of the Basic Conditions of Employment Act 75 of 1997 relied upon by the municipality specifically allowed for concurrent jurisdiction of the labour and civil courts in matters of employment contracts.

The municipality further argued that the order for rectification should not have been granted on the basis that (i) the rectification would result in the contract being in conflict with the Local Government: Municipal Systems Act 32 of 2000 and (ii) that Mr Le Grange had failed to prove that the word 'endeavour' inaccurately reflected the intentions of the parties. The SCA rejected both arguments. The SCA held that the MSA only applied in respect of certain municipal posts, which were not relevant in this matter. And the municipality had failed to tender any valid first-hand evidence to contradict the background circumstances and context of the contractual negotiations presented by Mr Le Grange. Accordingly, the SCA held that the high court had properly granted the order for rectification.

Source: Supreme Court of Appeal media summary

WHETHER MUNICIPAL ZONING SCHEME REGULATIONS PERMIT THE OPERATION OF A BOTTLE STORE

TRUMPER TRADING v KOUGA MUNICIPALITY (795/13) [2015] ZASCA 18 (18 MARCH 2015)

The issue in this appeal was whether the Jeffrey's Bay Municipality: Zoning Scheme Regulations, permitted the operation of a bottle store from premises zoned as 'special premises' without the special consent of the respondent.

The appellant is a close corporation and sole proprietor of a bottle store which it operates on Erf 36, Paradise Beach, Jeffrey's Bay in terms of a liquor licence granted to it by the Eastern Cape Liquor Board in November 2008. In October

2008, the appellant's former member applied to the respondent for special consent for the use of the premises and the buildings thereon as a bottle store, supermarket and coffee shop.

The municipality refused the application due to the objections received from surrounding property owners. As it turned out, the appellant had in the meantime commenced the business of a bottle store without municipal consent and was selling liquor from the premises. When this came to the municipality's attention, it directed the appellant to cease operating the bottle store. However, the appellant continued to trade whilst making further unsuccessful attempts until late in 2010, to obtain the consent. On 16 March 2011 the municipality instituted interdict proceedings in the magistrate's court to stop the appellant from trading as a bottle store without the necessary consent and was successful as was its opposition to the subsequent appeal in the High Court.

On appeal, the appellant contended that by virtue of the zoning applicable to the appellant's premises as 'special business' in the regulations no consent was required to conduct the business of a bottle store because 'special business' is defined to include 'shops' as well as 'similar uses' and a bottle store is a similar use to a 'shop' as contemplated in the definition.

The SCA held that that the meaning which the appellant sought to ascribe to the definition of "special business" did not find support in the regulations. A bottle store was expressly excluded from the definition of a shop and it was therefore highly unlikely that the legislature would exclude a bottle store expressly from the definition of a shop but then allow it under the category of similar uses.

The SCA concluded that in the circumstances, the appellant was not permitted to conduct the business of a bottle store without the municipality's consent thereby reaffirming the order of the High Court.

Source: Supreme Court of Appeal media summary

VAN DEN HEEVER v MINISTER OF MINERALS AND ENERGY (150/14) [2015] ZASCA 19 (19 MARCH 2015)

Whether content of a letter, objectively viewed, evinced an intention of the writer to abandon a mining right. Construed in its context and in light of background facts, abandonment not established.

INTERPRETATION AND APPLICATION OF EMPLOYMENT AGREEMENTS

NATIONAL HEALTH LABORATORY SERVICE v MARIANA LLOYD-JANSEN VAN VUUREN (20044/14) [2015] ZASCA 20 (19 MARCH 2015)

The issue before the SCA was whether the conclusion of an employment contract between the appellant and the respondent had the effect of novating (i.e. completely extinguishing) a previously concluded training and employment contract, with the result that all rights and obligations arising from that previous contract would also be extinguished.

The respondent, Ms van Vuuren, was a medical doctor who, as part of the process of further qualifying as a specialist pathologist, in 2006 entered into a training and employment contract (the initial contract) with the appellant, the National Health Laboratory Service. The initial contract set out the respondent's training regime and required her, once she had qualified as a pathologist, to work in that capacity for the appellant for a period of two years. The contract further provided that should she fail to work for this period, she would reimburse the appellant for the expenses incurred in her training. This amount was quantified in the contract as R2 million.

In 2010, the respondent qualified as a pathologist, and the appellant employed her in that role in terms of a new employment contract (the second contract). This second contract made no mention of the obligation to work for the appellant for two years or the R2 million penalty in the event she resigned earlier than the stipulated period. After four months, the respondent resigned and refused to pay the penalty, contending that the conclusion of the second contract had terminated the initial contract including the penalty provision.

The appellant then instituted action in the Gauteng Local Division, Johannesburg for payment of the R2 million. The High Court, ruling on the merits, found in favour of the respondent.

On appeal, the SCA held that this was a matter of interpretation of the two contracts. The Court noted that the contracts must be interpreted in the light of all relevant and admissible context, including the circumstances in which the documents came into being. The SCA also referred to an established principle that novation will never be presumed by the court.

Upon consideration of whether the requisite intention to novate could be inferred from all the available evidence, the SCA rejected the respondent's interpretation on the basis that it was contrary to the background circumstances of the contracts. The Court held that it was evident that the contracts served different purposes and could exist simultaneously and without conflict. Thus it was held that novation had not occurred.

In the result, the SCA upheld the appeal and set aside the order of the High Court. It issued a declarator that the obligation recorded in clause 3.4 of the contract concluded on 4 January 2006 continued to exist notwithstanding the conclusion of the employment agreement dated 16 April 2010 between the appellant and the respondent. The Court further declared the respondent liable to the appellant pursuant to the provisions of the relevant clause.

Source: Supreme Court of Appeal media summary

WHETHER WORDS 'CALCULATED DAILY' IN COURT ORDER IMPLIED COMPOUND OR SIMPLE INTEREST

EURO BLITZ 21 v SECENA AIRCRAFT INVESTMENTS CC (102/14) [2015] ZASCA 21 (19 MARCH 2015)

The issue for determination was whether the interest envisaged in the order of the Trial Court constituted simple or compound interest.

The respondent issued summons against the appellants in the Trial Court, claiming payment of arrear rental plus interest and costs, based on a written lease agreement entered into between the parties. After hearing argument, the Trial Court was satisfied that the respondent had proved on a balance of probabilities that the appellants had breached the terms of the lease agreement. It accordingly granted judgment in favour of the respondent and the appellants were ordered *inter alia*, to pay the respondent interest at prime plus 5 per cent calculated daily with effect from 24 March 2006 to date of payment. Subsequently the respondent launched application proceedings in the South Gauteng High Court, Johannesburg, seeking a declarator that the Trial Court's order in relation to interest payable meant interest calculated at 5 per cent above the prime rate of interest and that such interest was to be calculated daily and compounded daily. The High Court held that the words 'calculated daily' in the order permitted no other interpretation than that interest was to be compounded daily.

The appellants submitted that the word 'calculated' in the order must be ascribed its ordinary grammatical meaning. Furthermore, as there was no averment or evidence of an agreement that interest shall be compounded, the order must accordingly be interpreted to provide for simple interest only. The respondent contended on the other hand, that if the intention was to calculate interest on the arrear amount outstanding on a daily basis, then there was no need to include the words "calculated daily" in the order and that their inclusion could only mean that interest was to be compounded on a daily basis.

The SCA held that it was trite law that the rules applicable to the interpretation of documents were applicable to the interpretation of a judgment or order of court. It noted that if there was no uncertainty

in the meaning of the words, the Court's intention must be established primarily from the language of the judgment or order as construed according to the usual, well-known rules of interpretation of documents.

The SCA held, in addition, that having regard to the rules of interpretation, the word "calculated" in the Trial Court's order pertaining to interest, must be given its grammatical and ordinary meaning, unless that would result in some absurdity, repugnancy or inconsistency with the rest of the order. It therefore followed that the respondent's contention that the words "calculated daily" in the order envisaged that interest was to be compounded daily, was legally untenable and could not be sustained.

The SCA noted further that it was also trite law that compound interest was claimable only in certain defined circumstances, namely, where parties agreed to pay compound interest; if the obligation to pay interest was alleged, and if it was established by evidence that a universal custom of lessors charging compound interest on arrear rentals was uniformly and universally observed throughout leasing practices in South Africa. In this regard, the Court found that the respondent failed to establish any of these grounds and at the trial the respondent never raised or argued any of these points.

Source: Supreme Court of Appeal media summary

SUMMARY OF HIGH COURT JUDGMENT

SPOILIATION DISPUTE

JAMIESON AND ANOTHER v LODERF (PTY) LTD AND OTHERS (A595/2011) [2015] ZAWCHC 18

During March 2010 the appellants bought flats A3, A4 and B4 in Avondale Flats, Three Anchor Bay, from the respondent. The estate agent who dealt with them was Errol Areington of Cape 24 Property Group. Their intention was to renovate and on-sell the flats. The keys of the flats were delivered to them and they took possession. They placed furniture in flat A4, leaving the other two flats empty. They began the interior renovations. At the time the appellants bought the flats the respondent was busy refurbishing the exterior of the block. The exterior refurbishment was important to the appellants' plans for on-selling their flats. The exterior refurbishment ground to a halt during June 2010.

On 11 October 2010 the first appellant met with Areington and Ronald Shell, a director of the respondent. The appellants said they would not take transfer of the three flats until two months after completion of the external refurbishment. He told Areington and Shell that he and his wife had spent R369 352 on the interior renovations. The respondent, for its part, said that the appellants should pay a deposit of R100 000 on each flat and take transfer by 31 March 2011. Matters remained unresolved at the end of the meeting. The appellants completed the interior renovations in early November 2010 and placed the three flats on the market. At this stage their furniture was in flat A4 and the other two flats were empty.

During the second week of January 2011 the appellants consulted their attorney, Craig Guthrie. Guthrie advised the appellants that their agreements for the purchase of the flats had lapsed due to the non-fulfilment of a suspensive condition relating to the obtaining of mortgage finance. The appellants had not hitherto realised this. The appellants, armed with a Notice of Lien prepared by their attorney, went to the flats, placed inside locks in the keyholes, taped the doors with barrier tape and attached the Notices of Lien to the doors. They also sent a letter to the respondent, explaining that the purchase agreements had lapsed but that they, acting in good faith, had made interior improvements which substantially enhanced the value of the flats and that they therefore tendered return of the flats to the respondent against payment of the amount of the renovations. Pending such payment, they would exercise their liens over the properties.

There was a factual dispute as to precisely what happened after this. Ultimately though, it appeared that the locks, tape and Notices were removed from the flats which prompted the appellants immediately to institute a spoliation action. The respondent alleged that the appellants had given their keys to the building caretaker, thereby relinquishing possession, which the appellants denied.

The Court a quo dismissed the spoliation application, finding that there was a genuine dispute of fact and it was not appropriate for a spoliation order to be granted and the appellants appealed.

Prior to the appeal being heard, the respondent sold the three flats. The new owners had no knowledge, either at the time of purchase or transfer, of the dispute between the appellants and the respondent or of the pending appeal. The respondent then lodged an application in which it sought the dismissal of the appeal (in the spoliation matter) because it had (allegedly) become moot as a result of the intervening sale of the flats to third parties. The appellants filed an affidavit opposing the mootness application.

As a result of these developments, the court granted an order by agreement in terms of which, amongst other things (i) the appeal was postponed; (ii) the appellants were given leave to amend the relief sought so as to include relief against the new owners and to join them in the proceedings. In addition, during September 2013, the appellants issued summons against the respondent in which they claimed payment of the R 370 000 in respect of the improvements they had effected to the flats. That action was still pending, the present application dealing with the appeal in the spoliation matter.

With regard to the spoliation, the respondent argued that the appellants voluntarily surrendered possession when they handed over the keys to the building caretaker. The appellants denied that they handed the keys to Abrahams. In appropriate circumstances, the handing over of keys could be viewed as a symbolic act whereby possession is surrendered to another.

It appeared that the Court a quo erred in its conclusion that the factual dispute raised by the respondent was genuine. Certain facts, which the respondent could not deny, made it patently implausible that the appellants would have surrendered possession. They had spent a large sum in renovating the three flats. If they could not recoup their expenditure by on-selling the flats, it would be important for them to recover the money by other means available to

them. The facts did not support an inference that the appellants handed the keys of the flats to Abrahams, thereby surrendering possession, as alleged by the respondent.

The question now arose whether, given the sales and transfers which occurred after the dismissal of the spoliation application in the Court a quo, the Court could substitute for such dismissal an order that the respondent (or the new owners) restore the flats to the appellants' possession. It was common cause in this case that the new owners did not know of the spoliation or of the pending proceedings when they purchased or when they took transfer.

The authorities contrast actions in rem and in personam. An action in rem is one in which the ownership of property is in issue and makes the property in question res litigiosa. Once the property in question becomes res litigiosa (a point reached at the commencement of the proceedings), a purported sale of the property by a defendant could not prejudice a plaintiff. He may proceed with his action against the defendant. If he wins he may execute to recover the property from the third party, even though the latter was not joined and did not have knowledge of the plaintiff's alleged ownership. Although personal claims (claims in personam) become litigiosa at the commencement of proceedings, the property claimed by a personal action (e.g. a claim for specific performance based on a sale agreement) did not itself become res litigiosa.

A spoliation claim did not concern the ownership of the property. It is a personal claim against the spoliator to recover possession. Spoliation proceedings are not concerned with underlying rights of the parties, but to restore the status quo. There was no authority that in spoliation proceedings the property itself becomes res litigiosa at any stage of the process. There was therefore no basis for ordering restitution to the prejudice of the innocent new owners.

In view of these conclusions, it was not possible for the Court on appeal to substitute the order made by the Court a quo, an order directing the respondent or the new owners to restore possession of the flats to the appellants. However the appellants were entitled to such relief against the respondent at the time they launched their application and at the time judgment was delivered in the Court a quo. Although one cannot now grant consequential relief, justice would be served by substituting, for the order made by the Court a quo, a declaration that the respondent was guilty of unlawful spoliation together with an order for costs in that Court.

This outcome will vindicate the rule of law which regards self-help with particular disfavour. It would not be just to exercise the Court's discretionary power to dismiss the appeal on the ground that the order on appeal would have no practical effect, particularly since it was the respondent which by its conduct has made it impossible for the appellants to obtain full relief. The appeal succeeded with costs.

Source: <http://www.saflii.org/>

BILLS

DISASTER MANAGEMENT AMENDMENT BILL, 2015		B10-2015
PLANT BREEDERS' RIGHTS BILL, 2015		B11-2015
DRAFT FINANCIAL SECTOR REGULATION BILL	Published for comment	B7-2015
DRAFT NATIONAL FORESTS AMENDMENT BILL, 2015	Published for comment	GG 38533 (13.03.15)
NOTICE OF DRAFT PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND FRAMEWORK BILL	Published for comment	GG 38545 (13.03.15)

PROCLAMATIONS AND NOTICES

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES	Notice of draft policy document on the preservation and development of agricultural land published for comment	GG 38545 (13.03.15)
DEPARTMENT OF HIGHER EDUCATION AND TRAINING	Research Outputs Policy (2015) published and Policy for Measurement of Research Output of Public Higher Education Institutions published in GN R1467 in GG 25583 of 14 October 2003 replaced with effect from 1 January 2016	GG 38552 (11.03.15)
DEPARTMENT OF SOCIAL DEVELOPMENT	Draft National Early Childhood Development Policy of the Republic of South Africa published for comment	GG 38558 (13.03.15)
NATIONAL TREASURY	Treating Customers Fairly in the Financial Sector: A Draft Market Conduct Policy Framework for South Africa Twin Peaks in South Africa: Response and Explanatory Document	
PENSION FUNDS ACT 24 OF 1956	Period within which a fund must appoint another person to be its principal officer prescribed in terms of s. 8 (2) (a) of the Act	GG 38553 (10.03.15)
CUSTOMS AND EXCISE ACT 91 OF 1964	Schedule 1 amended	GG 38563 (13.03.15)
MEDICINES AND RELATED SUBSTANCES ACT 101 OF 1965	Regulations relating to a transparent pricing system for medicines and scheduled substances: Request for information to be supplied by persons licensed in terms of s. 22C (1) (a) for the review of the annual dispensing fee published	GG 38567 (13.03.15)
PLANT IMPROVEMENT ACT 53 OF 1976	Amendment of regulations relating to establishments, varieties, plants and propagating material in GN R81 in GG 38459 of 13 February 2015 corrected	GG 38546 (13.03.15)
AGRICULTURAL PESTS ACT 36 OF 1983	Tariffs payable for import permits published with effect from 1 April 2015	GG 38546 (13.03.15)
ANIMAL DISEASES ACT 35 OF 1984	Tariffs payable for veterinary import permits published with effect from 1 April 2015	GG 38546 (13.03.15)
AGRICULTURAL PRODUCT STANDARDS ACT 119 OF 1990	Regulations relating to the grading, packing and marking of onions and shallots intended for sale in the Republic of South Africa published and GN R621 in GG 32282 of 5 June 2009 repealed	GG 38546 (13.03.15)
MAGISTRATES ACT 90 OF 1993	Remuneration of magistrates published and Proc 15 in GG 37389 of 27 February 2014 repealed with effect from 1 April 2014	GG 38568 (13.03.15)
SOUTH AFRICAN POLICE SERVICE ACT 68 OF 1995	South African Police Service Employment Regulations, 2008 amended	GG 38560 (13.03.15)

BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997	Amendment of sectoral determination 12: Forestry Worker Sector, South Africa published with effect from 1 April 2015	GG 38562 (13.03.15)
REMUNERATION OF PUBLIC OFFICE BEARERS ACT 20 OF 1998	Determination of salaries and allowances of Traditional Leaders and Members of the National and Provincial Houses of Traditional Leaders published with effect from 1 April 2014 and Proc 46 in GG 37828 of 11 July 2014 repealed	GG 38568 (13.03.15)
NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998	Invitation to the public to make submissions to the Cassim Inquiry which will look into Mr Nxasana's fitness to hold the office of the National Director of Public Prosecution published	GG 38554 (09.03.15)
NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998	National Appeal Amendment Regulations, 2015 published	GG 38559 (12.03.15)
MEDICAL SCHEMES ACT 131 OF 1998	Notice of intention to publish undesirable business practice declaration in terms of s. 61 (2) published for comment	GG 38545 (13.03.15)
JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT ACT 47 OF 2001	Remuneration of Constitutional Court Judges and Judges published and Proc 14 in GG 37389 of 27 February 2014 repealed with effect from 1 April 2014	GG 38568 (13.03.15)
NATIONAL CREDIT ACT 34 OF 2005	Amendments to the National Credit Regulations (including Affordability Assessment Regulations) published	GG 38557 (13.03.15)
	Amendments to the Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 published	GG 38557 (13.03.15)
USE OF OFFICIAL LANGUAGES ACT 12 OF 2012	Draft CCMA Policy on Language published for comment	GG 38545 (13.03.15)
CRIMINAL LAW (FORENSIC PROCEDURES) AMENDMENT ACT 37 OF 2013	Forensic DNA Regulations, 2015 published	GG 38561 (13.03.15)
NATIONAL CREDIT AMENDMENT ACT 19 OF 2014	Date of commencement: 13 March 2015 Inserts s. 8A in the Insolvency Act 24 of 1936; amends ss. 1, 17, 23, 25, 26, 29, 32, 40, 42, 45, 46, 48, 49, 51, 52, 71, 73, 82, 83, 86, 89, 100, 106, 129, 130, 134, 136 & 163, inserts ss. 44A, 48A, 58A, 71A, 126B, 134A & 134B, repeals ss. 19, 20, 21 & 22 and substitutes ss. 34 & 91 of the National Credit Act 34 of 2005; and amends s. 71 of the Consumer Protection Act 68 of 2008	GG 38557 (13.03.15)

PROVINCIAL LEGISLATION

Eastern Cape

Department of Cooperative Governance and Traditional Affairs	White Paper on Customary Male Initiation Practice in the Eastern Cape Province published	PG 3353 (10.03.15)
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Free State

Interpretation Act 33 of 1957	Uniform Patient Fee Schedule (UPFS) 2015 Tariffs published with effect from 1 April 2015	PG 115 (06.03.15)
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Kwazulu-Natal

South African Schools Act 84 of 1996	Election of members of governing bodies for public ordinary schools (excluding schools for learners with special education needs) published and PN 17 in PG 699 of 10 February 2012 repealed	PG 1325 (09.03.15)
	Composition and election of governing bodies of public schools for learners with special education needs published and PN 19 in PG 703 of 15 February 2012 repealed	PG 1326 (09.03.15)

Limpopo

Remuneration of Public Office Bearers Act 20 of 1998	Determination of the upper limit of salaries and allowances of members of the Executive Council and members of the Limpopo Provincial Legislature published and PremN 1 in PG 2304 of 17 April 2014 repealed	PG 2482 (11.03.15)
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North West

North West Schools Education Act 3 of 1998	Regulations relating to the election of school governing bodies and governance of public schools in the North West Province, 2015 published and Regulations Relating to the Election and Governance of Governing Bodies of Public Schools, 2012 as published under GenN 158 in PG 6970 of 6 March 2012 repealed	PG 7417(10.03.15)
North West Gambling Act 2 of 2001	Junket and Premium Player Gambling Rules published	PG 7418 (11.03.15)

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