

# Attorney Alert

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**Lexinfo Attorney Alert**  
**Issue 9 of 2023: 6 March 2023**

**Compiled by Barry Burger and Adami Geldenhuys**

## Contents

ADVERTISING .....	2	GAMBLING AND LOTTERIES .....	20
AFRICAN LAW .....	2	HOUSING .....	20
AGRICULTURE .....	3	INSOLVENCY .....	20
ARBITRATION .....	4	INSURANCE .....	21
CIVIL PROCEDURE .....	4	INTELLECTUAL PROPERTY .....	21
COMMISSIONERS OF OATHS .....	5	JUDICIAL OFFICERS .....	22
COMPETITION .....	5	LAND AND PROPERTY LAW .....	22
CONSTRUCTION LAW .....	6	LEGAL PROFESSION .....	24
CONSUMER LAW .....	7	LOCAL GOVERNMENT .....	24
CONTRACT .....	8	MARITIME LAW .....	25
CORPORATE LAW .....	8	MEDICAL LAW .....	25
COURTS .....	9	PENSION LAW .....	26
CRIMINAL LAW .....	9	PERSONS AND FAMILY LAW .....	27
CULTURAL AFFAIRS .....	10	PHALA PHALA MATTER .....	28
DATA PROTECTION .....	10	POST OFFICE .....	28
DELICT .....	11	PUBLIC FINANCE .....	29
DISASTER MANAGEMENT .....	11	ROADS AND ROAD TRANSPORTATION .....	29
EDUCATION .....	12	SERVITUDES .....	29
ELECTIONS .....	12	SPORT LAW .....	30
EMPLOYMENT AND LABOUR LAW .....	12	STANDARDS .....	30
ENERGY .....	15	TAXATION .....	31
ENVIRONMENTAL LAW .....	17	TRUSTS .....	32
EVICIONS .....	17	WATER .....	32
EVIDENCE .....	18		
FINANCIAL LAW .....	18		



## HIGHLIGHTS – LEXINFO ATTORNEY ALERT

### Government Gazettes

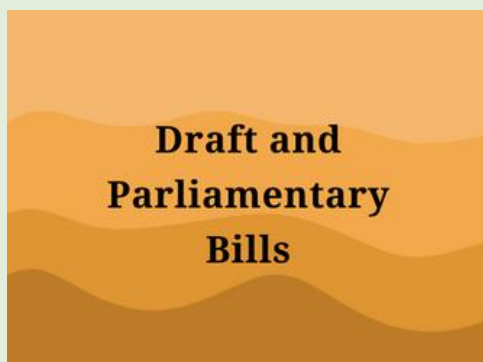
- Disaster Management Act 57 of 2002: Regulations – National State of Disaster: Impact of Severe Electricity Supply Constraint. [RGN3095 GG 48152 p3 27Feb2023](#)
- Deeds Registries Act 47 of 1937: Amendment of Regulations (RGN474 of 29 March 1963) – Schedule of fees. In operation one month from publication. [RGN3095 GG 48150 p3 28Feb2023](#)
- Income Tax Act 58 of 1962: Determination of the daily amount in respect of meals and incidental costs for purposes of Section 8(1) of the Act. – [GN3113 GG 48162 p30 3Mar2023](#) & Fixing of rate per kilometre in respect of motor vehicles for the purposes of Section 8(1)(b)(ii) and (iii) of the Act. – [GN3112 GG 48162 p18 3Mar2023](#)
- National Land Transport Act 5 of 2009: National Land Transport Strategic Framework 2023-2028. Comments invited within 30 days of publication. [GN3119 GG 48176 p3 3Mar2023](#)

### New E-book

- Tredoux, C [et al.] Psychology and Law. – Juta, 2022.

### New Publications

- Doherty, L. Engineering Ethics in Southern Africa: Theories & Cases. – Juta, 2022.
- Kilbourn, L and Botha, M. The ABC of Conveyancing 2023. – 13th ed. – Juta, 2023.



**A list of draft and Parliamentary Bills gazetted/tabled during 2023 as well as Bills approved by Cabinet.**

View [here](#).

## ADVERTISING

### *Advertising Regulatory Board Rulings*

#### **Reynolds v Mondo Mobile (Pty) Ltd (7 February 2023)**

Code of Advertising Practice: Section II: Clause 4.2.1 (Misleading claims); Section III: Clause 16 (Non-availability of advertised products).

Consumer complaint – Website advertising for mobile phone contract – Complainant submitting that advertisement leads consumer to believe that receive Samsung Galaxy handset along with Samsung Galaxy Watch – Complainant not receiving watch – Nothing placed before Directorate to support advertised claim – Upheld.

Ruling available at: <https://www.arb.org.za/2023.html>

[Back to Contents](#)

## AFRICAN LAW

### *Journal Articles*



**Genga, Shirley and Du Plessis, Meryl. A critical analysis of the duty to provide reasonable accommodation for employees with psychosocial conditions as an employment anti-discrimination obligation: A case study of Kenya's legal framework.**

2022 (10) African Disability Rights Yearbook p17

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Chapter%20du%20Plessis%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Chapter%20du%20Plessis%202022.pdf)

**Hosaneea, Zahra. Reservation on the [Convention on the Rights of Persons with Disabilities] from a Mauritian perspective.**

2022 (10) African Disability Rights Yearbook p78

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Chapter\\_Zahra\\_2022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Chapter_Zahra_2022.pdf)

**Kamga, Gerard Emmanuel Kamdem. [Country report]: Republique of the Seychelles.**

2022 (10) African Disability Rights Yearbook p187

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Seychelles%20English%20Country%20report%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Seychelles%20English%20Country%20report%202022.pdf)

**Msipa, Dianah. Recognising the testimonial competence of persons with intellectual and psychosocial disabilities in Southern Africa: Lessons from Lesotho.**

2022 (10) African Disability Rights Yearbook p243

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Msipa%20regional%20developments%201\\_2022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Msipa%20regional%20developments%201_2022.pdf)

**Peyou, Soka Armelle Ngoutane. [Country report]: Republique du Burkina Faso.**

2022 (10) African Disability Rights Yearbook p141

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Burkina%20Faso%20country%20Report%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Burkina%20Faso%20country%20Report%202022.pdf)

**Prince-Oparaku, Uzoma and Chuma-Umeh, Ngozi. Imperatives of securing equitable access to healthcare services for persons with disabilities in Nigeria.**

2022 (10) African Disability Rights Yearbook p41

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Chapter%20Uzoma%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Chapter%20Uzoma%202022.pdf)

**Severin, Marianne. [Country report]: The Federal Republic of Somalia.**

2022 (10) African Disability Rights Yearbook p202

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Somalia%20French%20country%20Report%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Somalia%20French%20country%20Report%202022.pdf)

**Tengho, Serge Marcellin. [Country report]: Republique du Cap-Vert.**

2022 (10) African Disability Rights Yearbook p168

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Cap%20Verde%20country%20Report%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Cap%20Verde%20country%20Report%202022.pdf)

**Zewale, Yohannes Takele. The need to go beyond ratifying the Marrakesh VIP Treaty: The case of Ethiopia.**

2022 (10) African Disability Rights Yearbook p3

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Chapter%20Zewale%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Chapter%20Zewale%202022.pdf)

[Back to Contents](#)

## AGRICULTURE

### Government Gazettes

#### **Agricultural Product Standards Act 119 of 1990**

Inspection Fees for 2022/2023 valid from 3 March 2023.

GenN1643 GG 48162 p60 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gen1643.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gen1643.pdf)

#### **Marketing of Agricultural Products Act 47 of 1996**

- Establishment of a statutory measure:
  - Records and returns by processors and persons dealing in lucerne seed and lucerne hay. This statutory measure shall come into operation on the date of publication and shall lapse on 30 November 2026.  
RGN3097 GG 48158 p13 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3097.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3097.pdf)
  - Registration of processors, producers and persons dealing in lucerne seed and lucerne hay. This statutory measure shall come into operation on the date of publication and shall lapse on 30 November 2026.  
RGN3099 GG 48158 p29 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3099.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3099.pdf)



- Establishment of a statutory measure and determination of guideline prices: Levies relating to lucerne seed and lucerne hay. This statutory measure shall come into operation on the date of publication thereof
- and shall lapse four years later.  
RGN3098 GG 48158 p21 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3098.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3098.pdf)
- Invitation to directly affected groups in the Legume Industry to forward comments regarding the request from the SA Cultivar and Technology Agency (SACTA), for the continuation of the Statutory Levy on Lupines for Breeding Technology purposes on or before 17 March 2023.  
GenN1640 GG 48162 p53 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gen1640.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gen1640.pdf)

[Back to Contents](#)

## ARBITRATION

### Case Discussion

#### **Podbielski, Louis. State-owned company and arbitration: *Komatiland Forest SOC Ltd v John Wright Veneers (Pty) Ltd and Another (56241/2021) [2023] ZAGPPHC 105 (23 February 2023)*.**

In: Latest topical case reports – 2023 Feb 27 Tech4Law

Arbitration clause – Purported illegality – Tender by state-owned enterprise – Contended that decision of third party could result in imposition of financial liability and divesting board of determining how much should be paid – Clause was clear and enterprise had explicitly agreed to the arbitration proceedings and specific dispute to be arbitrated – Application seeking setting aside of award dismissed.

<https://www.tech4law.co.za/news-in-brief/case-law-reports/latest-topical-case-reports-27th-february-2023/>

### Law Firm Article

#### **Dingley, Daryl et al. Webber Wentzel's Dispute Resolution Legal Outlook 2023.**

2023 Mar 1 Webber Wentzel

“Webber Wentzel has contributed to Linklaters' Dispute Resolution Legal Outlook 2023. The guide covers key dispute resolution trends, major 2022 developments around the globe, and what is on the horizon for 2023. Some of the topics unpacked in the South Africa chapter... Arbitration; Increased enforcement in business/economic crime; State Capture; Competition – market conduct; Crypto asset litigation; Litigation risks faced by the financial sector in relation to ESG statements; Commercial litigation.”

<https://www.webberwentzel.com/News/Pages/webber-wentzel-dispute-resolution-outlook-2023.aspx>

[Back to Contents](#)

## CIVIL PROCEDURE

See also [COURTS](#)

### Cases

#### **Liebman v David NO and Others (62628/2P21) [2023] ZAGPPHC 120 (21 February 2023)**

Discovery – Motion proceedings – Only in exceptional circumstances – In this case discovery not required for purposes of pleading, but in order to settle dispute of fact – Not purpose of rule for applicants whose allegations are denied by respondent to go on fact-finding exercise to test respondents' version – Uniform Rules of Court, Rule 35(14).

<http://www.saflii.org/za/cases/ZAGPPHC/2023/120.pdf>

#### **Nexor 312 (Pty) Ltd t/a VNA Consulting v Member of Executive Council of Free State Department of Public Works and Infrastructure (5226/2021) [2023] ZAFSHC 51 (22 February 2023)**

Mediation – Notice – Application not accompanied by required notice – Notice to oppose and answering affidavit similarly not accompanied by notice – Respondent not setting out grounds why rule ought to have been complied with, nor alleging matter capable of being mediated – Non-compliance with rule not impediment to determination of matter – Uniform Rule 41A.

<http://www.saflii.org/za/cases/ZAFSHC/2023/51.pdf>

#### **Special Investigating Unit and Others v Kajee (GP22/2021) [2023] ZAST 5 (28 February 2023)**



Exception – Whether exception may be brought by way of application procedure – Appropriate order when exception is upheld – Having filed exception out of time, whether defendant is *ipso facto* barred from filing it.

<http://www.saflii.org/za/cases/ZAST/2023/5.pdf>

### **STT and Others v Minister of Police (26369/2021) [2023] ZAGPJHC 150 (20 February 2023)**

Civil proceedings – Trial – Irregularity in – Action on unlawful arrest by members of South African Police Service – Defendant accepting onus to begin – At end of defendant's case plaintiff calling no evidence – Plaintiffs, though not closing case nor leading evidence, asking for judgment in their favour – To allow application for judgment at that stage without applicant having closed their case is not only prejudicial to respondent, but would amount to irregularity.

<http://www.saflii.org/za/cases/ZAGPJHC/2023/150.pdf>

#### *Case Discussion*

### **Podbielski, Louis. Notice to organs of State and Eskom: [Botha and Others v Eskom Holdings SOC Ltd; Van Zyl and Others v Eskom Holdings SOC Ltd \(3878/2021\) \[2023\] ZAFSHC 45 \(15 February 2023\)](#).**

In: Latest topical case reports – 2023 Feb 27 Tech4Law

Organs of State – Notice – Whether notice required for Eskom as organ of State – Not functionary or institution exercising a power or performing function in terms of Constitution – Not organ to which Act applies – Plaintiffs not required to have given notice – Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002, s 3(1).

<https://www.tech4law.co.za/news-in-brief/case-law-reports/latest-topical-case-reports-27th-february-2023/>

[Back to Contents](#)

## COMMISSIONERS OF OATHS

#### *Journal Article*

### **De la Harpe, L. Commissioner of Oaths: Can you depose an affidavit virtually?**

2022 37(3) Insurance and Tax Journal

[Back to Contents](#)

## COMPETITION

#### *Competition Tribunal Cases*

### **Brooklyn Studios (Target Property) c/o Feenstra Group Developments (Pty) Ltd and Growthpoint Student Accommodation Holdings (RF) Ltd (LM174Jan23) (3 March 2023)**

Large merger – Approved.

<https://www.comptrib.co.za/case-detail/20308>

### **Cape Town Biogas (Pty) Ltd and New Horizons Waste to Energy (RF) (Pty) Ltd (LM152Dec22) (2 March 2023)**

Large merger – Approved subject to conditions.

<https://www.comptrib.co.za/case-detail/20265>

### **Corruseal Group (Pty) Ltd and Another v Competition Commission (IM196Mar22) (22 February 2023)**

Intermediate merger reconsideration – Prohibited.

<https://www.comptrib.co.za/case-detail/19943>

#### *Government Gazettes*

### **Competition Act 89 of 1998**

- Competition Tribunal: Notification of Complaint Referral: Medmart Health (Pty) Ltd and Mr. Alon Lever T/A Babybug.  
GenN1646 GG 48162 p63 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gen1646.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gen1646.pdf)
- Notice in terms of Section 10 (6). Notice of application for an exemption – South African Orthopaedic Association (“SAOA”).  
GN3117 GG 48162 p50 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gon3117.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gon3117.pdf)



### Law Firm Articles

#### **Burger-Smidt, Ahmore and Adams, Dale. When your data depository and platform are the biggest, competition law becomes important or a problematic weapon!**

2023 Mar 1 Werksmans Attorneys

“The divestiture order sought against Google begs the question of whether it is wrong to become a giant and rule in the big tech industry? But if reigning in big tech is the goal, then competition law seems to be a problematic weapon.”

<https://www.werksmans.com/legal-updates-and-opinions/when-your-data-depository-and-platform-are-the-biggest-competition-law-becomes-important-or-a-problematic-weapon/>

#### **Burger-Smidt, Ahmore and Galela, Siyabonga. Re-inventing the wheel or balancing the scales?**

2023 Mar 1 Werksmans Attorneys

“The foregoing discussion makes it plain that competition law and policy, and competitive relationships, are characterised by a constant conflict of interest. On the one hand, the struggle is in favour of the client; yet on the other hand, there lies (potentially) prejudicial effects to ‘the other that suffers’. Accordingly, it is the function of law to identify and recognise the interests involved in the competitive struggle, to delimit same in relation to each other, and to differentiate between the circumstances under which such interests will be protected from infringement (i.e. delictual liability), and those under which a harmonious balance may be found/restored.”

<https://www.werksmans.com/legal-updates-and-opinions/re-inventing-the-wheel-or-balancing-the-scales/>

#### **Burger-Smidt, Ahmore and Mathebula, Nyiko. Fresh Produce Market Inquiry: What is it all about? Apples, pears, grapes, avocados, tomatoes, onions and more**

2023 Mar 1 Werksmans Attorneys

“The Competition Commission is set to conduct a market inquiry into the fresh produce market of South Africa... The Terms of Reference have now been finalised to confirm what will be a formal inquiry into the general state of competition, the levels of concentration in and the structure of the Fresh Produce Market as a whole. For the purposes of the market inquiry fresh produce includes fruit and vegetables (whether processed or not).”

<https://www.werksmans.com/legal-updates-and-opinions/fresh-produce-market-inquiry-what-is-it-all-about-apples-pears-grapes-avocados-tomatoes-onions-and-more/>

#### **Davis, Alan and Gielas, Tadeusz. UK competition court halts class action claim against Meta.**

2023 Mar 1 Pinsent Masons

“In a [judgment](#) (46 pages / 504KB PDF) handed down on 20 February 2023, the CAT declined to grant a collective proceedings order (CPO) to Dr Liza Lovdahl Gormsen, who launched a standalone opt-out collective damages claim against the company last year for Meta’s alleged abuse of dominance in [breach of competition law](#). Gormsen, who is the prospective class representative for the action, is seeking damages of approximately £2.3 billion plus interest on behalf of approximately 45 million UK consumers.”

<https://www.pinsentmasons.com/out-law/news/uk-competition-court-halts-class-action-claim-against-meta>

#### **Scallan, Aidan and Gounden, Preanka. Sharing may not be so caring anymore – The Competition Commission issues final guidelines on exchange of competitively sensitive information between competitors.**

2023 Feb 28 ENSafrica

“The Competition Commission has published its final Guidelines on the exchange of competitively sensitive Information between competitors. The guidelines attempt to explain what constitutes permissible and impermissible information exchanges between competitors as well as the Commission’s general approach to assessing exchanges of information between competitors and the exchanges that could lead to contraventions of the Competition Act...”

<https://www.ensafrica.com/news/detail/6718/sharing-may-not-be-so-caring-anymore-the-comp>

[Back to Contents](#)

## CONSTRUCTION LAW

### Journal Article

#### **Mchunu, Sechaba. Be wary when calling up a construction guarantee [[Millenium Aluminium and Glass Services CC and Others v Group Five Construction \(Pty\) Ltd and Another \(693/2021\) \[2022\] ZASCA 180 \(14 December 2022\)](#)].**

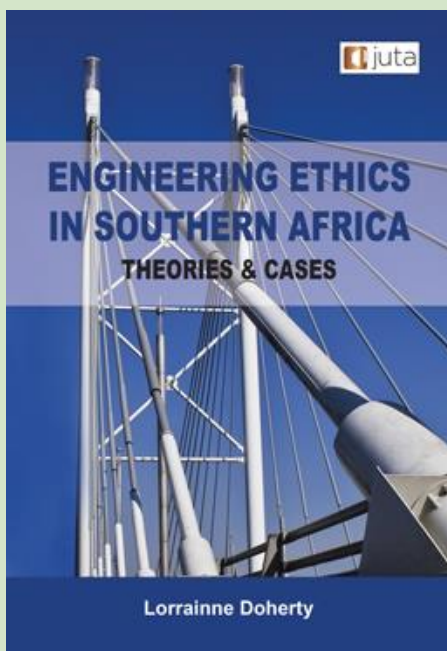
2023 Mar De Rebus p24

“This SCA judgment underpins the approach followed in relation to a dispute concerning compliance with the terms of a construction guarantee. This judgment arguably imposes an additional duty on guarantors to assess compliance subject to the interpretation of that particular construction guarantee – which may be tricky.”

<https://www.derebus.org.za/be-wary-when-calling-up-a-construction-guarantee/>



*New Publication*



**Doherty, L. Engineering Ethics in Southern Africa - Theories & Cases. – Juta, 2022.**

ISBN: 9781485132851

Contents:

1. Moral Philosophy:

What is Ethics?

- Moral Approaches:
- Virtue
- Deontology

Professionalism:

- What is a professional?
- What is an Engineer?
- The Engineering Council of South Africa (ECSA)
- Risk Safety Mitigation
- Whistleblowing

Engineering Case Studies:

- Merriespruit Dam Disaster
- Ford Kuga
- Tongaat Mall Collapse
- Grayston Bridge Collapse
- Fracking
- Life Esidemini
- 747 MaxShell Exploration
- Acid Mine Drainage
- Durban South Basin
- Coalbrook Mining Disaster
- Orkney Earthquake
- Babitha Deokaran (slain whistleblower)
- N2 Toll Road
- Ford Pinto

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[Back to Contents](#)

## CONSUMER LAW

*Government Gazette*

**Statistics South Africa**

Consumer Price Index: January 2023 – 6.9.

GenN1645 GG 48162 p62 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gen1645.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gen1645.pdf)

*Law Firm Article*

**Boda, Ridwaan and Tayob, Shaaista. Buy now pay later: A different kind of credit.**

2023 Feb 28 ENSafrica

“With the rise of online shopping and the ever-growing e-commerce platform, buy now pay later (BNPL) is a market disruptor that has shaken up traditional buying and selling on credit. BNPL works by allowing customers to purchase products and pay for them in instalments. These instalments are spread over a short period of time, usually a few weeks or months with no interest payable, and penalty fees are only charged if an instalment is late.”

<https://www.ensafrica.com/news/detail/6724/buy-now-pay-later-a-different-kind-of-credit>

[Back to Contents](#)



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## CONTRACT

### *Journal Article*

#### **Skosana, Siyabonga. Why should you care about cession clauses in lease agreements?**

2023 Mar De Rebus p7

“When a lessor and a lessee enter into a lease agreement, there are rights and duties that arise from the agreement. The general rule is that rights arising out of contracts, including lease agreements, often may be ceded to third parties without consent from a counterparty. However, rare instances occur where the rights arising from agreements are intended for the benefit of a specific party to the contract.”

<https://www.derebus.org.za/why-should-you-care-about-cession-clauses-in-lease-agreements/>

### *Law Firm Articles*

#### **Luyt, David. Understanding eIDAS for electronic signatures in the EU.**

2023 Feb 28 Michalsons

“Electronic signatures have become essential to everyday business transactions, providing convenience and efficiency. However, with the increasing use of electronic signatures, ensuring they are legally binding and enforceable is vital. The Electronic Identification, Authentication and Trust Services Regulation (eIDAS) provides a common framework for electronic signatures in the European Union (EU) and European Economic Area, ensuring their legal validity and security.”

<https://www.michalsons.com/blog/understanding-eidas-for-electronic-signatures-in-the-european-union/64278>

#### **Pinnock, David and Stipinovich, Nicola. Reconsidering pre-emptive rights clauses in the context of “package deals”.**

2023 Mar 1 Cliffe Dekker Hofmeyr

“The case of *Platteklouf RMS Boerdery (Pty) Ltd v Dahlia Investment Holdings (Pty) Ltd (667/2021) [2022] ZASCA 182* is a recent appeal heard by the Supreme Court of Appeal (SCA) involving a pre-emptive right over immovable property, which was granted by Dahlia Investment Holdings... to Platteklouf RMS Boerdery... This article focuses on rights of pre-emption and how, pursuant to the contradictory findings of the High Court and the SCA, these clauses in agreements can be redrafted to provide maximum protection to the holder of the pre-emptive right.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-1-march-Reconsidering-pre-emptive-rights-clauses-in-the-context-of-package-deals.html>

[Back to Contents](#)

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## CORPORATE LAW

### *Companies Tribunal Decision*

#### **South African Nuclear Pool Administrators Pty Ltd, Ex Parte (CT01228ADJ2022) (23 January 2023)**

Application for extension of time period within which to hold annual general meeting – Appointment of new auditors, identification of value-added tax error resulting in restatement of accounts and voluntary disclosure to South African Revenue Service all leading to audited annual financial statements being received late – Good cause shown – Extension granted.

<https://www.companiestribunal.org.za/wp-content/uploads/2023/02/CT01228ADJ2022.pdf>

### *Event Recording*

#### **Jorge, Jose et al. Economic recession, State of Disaster and business: Navigating the tide.**

2023 Mar 2 Cliffe Dekker Hofmeyr

“The current climate is difficult for business and labour and has a significant impact on GDP growth. Watch our hybrid event where our experts navigate some of the challenges and solutions going forward.”

<https://www.cliffedekkerhofmeyr.com/en/news/webinars/employment/Webinar-Recording-Economic-recession-State-of-Disaster-and-business-Navigating-the-tide.html>

### *Journal Article*

#### **Swanepoel, M. Buy-and-sell agreements – The importance on valuing the business entity correctly.**





2022 37(3) Insurance and Tax Journal

*Law Firm Articles*

**Davidson, Andrew. Registering beneficial ownership following South Africa's grey listing.**

2023 Mar 3 Eversheds Sutherland

"The Financial Action Task Force (FATF) placed South Africa on its 'Grey List' on 24 February 2023 following the country's failure to meet the FATF's 11 recommendations to prevent and combat financing of terrorism and money laundering made in 2019. At a meeting earlier this year, the FATF notified South Africa of eight areas of strategic deficiency which the country is to address by the end of January 2025. One of these areas involves Beneficial Ownership (BO) and the need for relevant authorities to have access to BO records as well as the opportunity to identify and sanction violations of BO obligations by beneficial owners."

[https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/Registering\\_Beneficial\\_Ownership\\_following\\_South\\_Africa\\_s\\_Grey\\_Listing](https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/Registering_Beneficial_Ownership_following_South_Africa_s_Grey_Listing)

**Steyn, Dominic and Korsten, Henry. "Greylisting is "not that bad"..."**

2023 Mar 1 Cowan-Harper-Madikizela Attorneys

"President Cyril Ramaphosa recently stated that the greylisting of South Africa will not seriously impact the costs of doing business in South Africa, a sentiment apparently echoed by National Government as a whole. This view is incorrect and misleading."

<https://www.chmlegal.co.za/greylisting-not-that-bad>

**Will, Janine. Beneficial ownership of companies: New record-keeping and reporting requirements.**

2023 Mar 2 Garlicke & Bousfield

"On 1 April 2023, several changes to the Companies Act, 2008 will come into force. They arise from the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 – one of the Acts which were enacted in an effort to avoid the greylisting of South Africa. The goal is to establish and maintain official records of the natural persons who beneficially own or control companies, for the purpose of assisting authorities to detect crime and corruption."

<https://www.gb.co.za/beneficial-ownership-of-companies-new-record-keeping-and-reporting-requirements/>

[Back to Contents](#)

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## COURTS

See also [CIVIL PROCEDURE](#)

*Journal Article*

**Ramotsho, Kgomotso. When an order is looked at in the light of the Superior Courts Act, there is no ambiguity, error or omission [*Minister of Finance v Sakeliga NPC (previously known as Afribusiness NPC) and Others (CCT 62/22) [2022] ZACC 17; 2022 (4) SA 401 (CC); 2023 (2) BCLR 171 (CC) (30 May 2022)*].**

2023 Mar De Rebus p22

"In the case of *Sakeliga*, the Constitutional Court (CC) dismissed the application with costs. After the applicants applied for direct access to the CC on an urgent application seeking a variation of the order that dismissed his application at the CC. The CC said that according to the applicant, he claims that the CC order lacked clarity and is thus susceptible to variation. According to the applicant the only thing that gives rise to the perceived problem with the order is the footnote in the minority judgment."

<https://www.derebus.org.za/when-an-order-is-looked-at-in-the-light-of-the-superior-court-act-there-is-no-ambiguity-error-or-omission/>

[Back to Contents](#)

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## CRIMINAL LAW

*Internet Article*

**Richter, Marlise and Huysamen, Monique. Sex work in South Africa: why both buying and selling should be legal.**

2023 Mar 2 The Conversation

<https://theconversation.com/sex-work-in-south-africa-why-both-buying-and-selling-should-be-legal-198742>



## Draft Bill – Parliamentary Update

### [Transkeian Penal Code Bill \[B34-2022\]](#)

2023 Feb 28 Parliament of South Africa. Announcements, Tablings and Committee Reports p4

“Bill passed by National Assembly and transmitted for concurrence on 28 February 2023:

(a) Repeal of the Transkeian Penal Code Bill [B34-2022] (National Assembly – sec 75).

The Bill has been referred to the Select Committee on Security and Justice of the National Council of Provinces.”

<https://www.parliament.gov.za/storage/app/media/Docs/atc/f89c9cbc-0064-416b-831c-412977946d99.pdf>

[Back to Contents](#)

## CULTURAL AFFAIRS

### Government Gazette

#### **South African Heritage Resources Agency**

Provisional Protection of the Black Rock Koppie Mine situated on Portion of the Remainder of farm Santoy 230, remainder of Portion 1 of farm Santoy 230, Portion 1 of Belgravia 264 and Portion 1 of N Chwaning 267; Northern Cape for two (2) years.

GN3114 GG 48162 p42 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gon3114.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gon3114.pdf)

[Back to Contents](#)

## DATA PROTECTION

### Law Firm Articles

#### **Burger-Smidt, Ahmore and Ferri, Chiara. The Twitter data hack.**

2023 Mar 1 Werksmans Attorneys

“In the first week of January 2023 hackers scraped the e-mail addresses and usernames of over 200 million Twitter users and published them on the black market. This data breach has been traced to a vulnerability existing as far back as 2021 and is the latest in a string of cybersecurity breaches to have affected Twitter. The significance of the Twitter data hack is inextricably linked to the detrimental effects it could have on users’ privacy, the loss of their personal data, and the misuse of such data, which illustrates the need for urgent intervention.”

<https://www.werksmans.com/legal-updates-and-opinions/the-twitter-data-hack/>

#### **Burger-Smidt, Ahmore and Galela, Siyabonga. The myth of consent: Big tech meets (big) data protection.**

2023 Mar 1 Werksmans Attorneys

“Consumers rely on digital platforms such as Google, Amazon and Takealot to gain wider and more convenient access to a variety of goods and/or services. Unfortunately, part-n-parcel of such convenience seems to include the little-to-no-control that consumers experience over the use of their personal information. In light of the aforementioned tension between technological innovation and privacy protection, an ever-increasing number of human-rights interest groups, digital platform users and government officials have called for a more comprehensive data privacy regulatory regime.”

<https://www.werksmans.com/legal-updates-and-opinions/the-myth-of-consent-big-tech-meets-big-data-protection/>

#### **Burger-Smidt, Ahmore and Mathebula, Nyiko. ChatGPT: Yet another hurdle for data privacy?**

2023 Mar 1 Werksmans Attorneys

“The advent of ChatGPT and indeed other AI chatbots calls for data subjects to be more prudent with the information they choose to share online. This may include making one’s social media account private. However, where providing information onto a public platform is unavoidable (e.g. online reviews, comments, etc.) this will call for policymakers and lawmakers to start developing frameworks for AI use that incorporate the right to privacy.”

<https://www.werksmans.com/legal-updates-and-opinions/chatgpt-yet-another-hurdle-for-data-privacy/>

#### **Luyt, David. Privacy enhancing technologies (PETs) in Europe.**

2023 Mar 2 Michalsons

“PETs help prevent data breaches, identity theft, and other privacy violations, building trust between users and organisations. Regulatory frameworks related to PETs are evolving. Therefore, organisations must comply with these regulations to avoid penalties and build trust with their users. In today’s digital age, personal data collection, use, and sharing are ubiquitous, making safeguarding user privacy and security imperative.”



<https://www.michalsons.com/blog/privacy-enhancing-technologies-pets-in-europe/64315>

### **Naidoo, Priyanka. Let's BeReal: The information security risks in the BeReal app.**

2023 Feb 28 ENSafrica

"Mainstream social media platforms have gained a reputation for being addictive and adversely affecting users' mental wellbeing by constantly showcasing seemingly flawless and enviable life experiences. The complete randomness of the BeReal app undercuts the notoriety of mainstream social media. However, the app, for all its good intentions has some serious drawbacks, that might be easily overlooked."

<https://www.ensafrica.com/news/detail/6725/lets-bereal-the-information-security-risks-in>

[Back to Contents](#)

## DELICT

### *Journal Article*

### **Kobrin, Leslie. A new twist to claims for damages for a fall.**

2023 Mar De Rebus p8

"The recent judgment of [Lombard v McDonald's Wingtip...](#), Vuma AJ considered, *inter alia*, whether a disclaimer clause in an establishment, which estopped an injured party from claiming damages for personal injury caused when a customer slipped and fell on a wet floor were applicable. In this instance the court found that the provisions of s 49 of the Consumer Protection Act 68 of 2008 did not avail the plaintiff and, as a result, dismissed her claim."

<https://www.derebus.org.za/a-new-twist-to-claims-for-damages-for-a-fall/>

### *Law Firm Article*

### **Cassette, Jacquie and Xaba, Gift. In loco parentis: Schools' liability and duty to take reasonable steps to prevent foreseeable harm to learners under their care.**

2023 Mar 3 Cliffe Dekker Hofmeyr

"Recently, in the matter of [Member of the Executive Council, Education, North West Province v Izak Boshoff Foster and Others \[2023\] \(471/2021\) \[2023\] ZASCA 11 \(13 February 2023\)](#) the Supreme Court of Appeal had to consider a school's liability for an injury suffered by a learner under its care at a school rugby match, and in particular whether it was negligent in failing to ensure the presence of competent and suitably equipped first aid providers at the rugby match."

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/ProBono/pro-bono-and-human-rights-alert-3-march-2023-in-loco-parentis-schools-liability-and-duty-to-take-reasonable-steps-to-prevent-foreseeable-harm-to-learners-under-their-care.html>

[Back to Contents](#)

## DISASTER MANAGEMENT

### *Government Gazette*

### **Disaster Management Act 57 of 2002**

Regulations – National State of Disaster: Impact of Severe Electricity Supply Constraint.

Contents: Definitions – Objects – Cooperation between spheres of government – General measures to address the effects of the disaster and prevent escalation of severe electricity supply constraint – Authority to issue directions – Emergency procurement procedures – List of essential infrastructure.

Commencement on date of publication.

RGN3095 GG 48152 p3 27Feb2023 (This notice replaces RGN3089 GG 48145 27Feb2023)

[https://www.gov.za/sites/default/files/gcis\\_document/202302/48152rg11550gon3095.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48152rg11550gon3095.pdf)

### *Media Comments*

### **Electricity National State of Disaster regulations gazetted.**

2023 Feb 28 SANews

"Cooperative Governance and Traditional Affairs (CoGTA) Minister, Dr Nkosazana Dlamini Zuma, on Monday gazetted the disaster management regulations on electricity constraints. The gazette follows a special Cabinet meeting held on 27 February 2023. Earlier this month, the Minister declared a State of Disaster on the Impact of Severe Electricity Supply Constraints on society. The State of Disaster was first announced by President Cyril Ramaphosa on 9 February, while delivering the State of the Nation Address at the Cape Town City Hall."

<https://www.sanews.gov.za/south-africa/electricity-national-state-disaster-regulations-gazetted>



## Public purse will be protected during National State of Disaster.

2023 Mar 1 SANews

“Acting Director-General of Government Communication and Information System (GCIS), Nomonde Mnkwa, says government has measures in place to ensure that the public purse is protected from corruption and looting during the National State of Disaster related to the energy crisis. Minister of Cooperative Governance and Traditional Affairs, Dr Nkosazana Dlamini Zuma, gazetted the regulations for the state of disaster on Monday following President Cyril Ramaphosa’s declaration of a National State of Disaster during the State of the Nation Address in February.

<https://www.sanews.gov.za/south-africa/public-purse-will-be-protected-during-national-state-disaster>

[Back to Contents](#)

## EDUCATION

### Government Gazette

#### National Qualifications Framework Act 67 of 2008

Quality Council for Trades and Occupations: Call for comments on the proposed Occupational Qualifications for Registration on the Occupational Qualifications Sub-Framework for Trades and Occupations within 21 days of publication of this notice.

GN3108 GG 48161 p3 2Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48161gon3108.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48161gon3108.pdf)

### Journal Article

#### Mthembu, Thina and Holness, Willene. Criteria for law reform on comprehensive sexuality education for children with disabilities in South Africa.

2022 (10) African Disability Rights Yearbook p78

“The recent expanded understanding of Sexual Reproductive Health and Rights (SRHR), which includes Comprehensive Sexuality Education (CSE), seeks to highlight *inter alia* the needs of adolescents, (especially those with disabilities) a group previously excluded from the narrow scope of SRHR. This paper identifies relevant and context-specific criteria for law reform of CSE provision in legislation for South Africa.”

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Chapter%20Holness%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Chapter%20Holness%202022.pdf)

[Back to Contents](#)

## ELECTIONS

### Government Gazettes

#### Electoral Act 73 of 1998

Publication of reviewed lists of candidates.

GenN1651 GG 48176 p3 3Mar2023

<https://bit.ly/3SNi7cl>

#### Local Government: Municipal Electoral Act 27 of 2000

Municipal By-Elections — 22 March 2023: Official List of Voting Stations.

GenN1649 GG 48164 p3 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48164gen1649.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48164gen1649.pdf)

[Back to Contents](#)

## EMPLOYMENT AND LABOUR LAW

This section of the Attorney Alert contains references to employment-related judgments handed down by the Constitutional Court, Supreme Court of Appeal, the Labour Appeal Court and a selection of High Court decisions as well as practice directions from the Labour Appeal Court and Labour Court, new publications, government gazette notices and Parliamentary Bills.

More comprehensive coverage on employment matters is provided by our weekly publication, the [Employment Law Alert](#). Please contact [alert@lexinfo.co.za](mailto:alert@lexinfo.co.za) for further information.



Government Gazette

**Labour Relations Act 66 of 1995**

Cancellation of registration of a trade union – Workers Against Regression.

GenN1650 GG 48174 p3 3Mar2023

<https://bit.ly/3J9sV1j>

Journal Articles

**Moyo, Nkosilathi Andrew. ‘Gotta be the solution to this pollution’ – A rather precarious balancing exercise [Mukuru Financial Services (Pty) Ltd and Another v Department of Employment and Labour (17474/20) [2022] ZAWCHC 14; (2022) 43 ILJ 1171 WCC (18 February 2022)].**

2023 Mar De Rebus p25

“The court found that the Immigration Act imposed a duty on the companies to equally address both ‘the need of foreign nationals to work in their establishments in South Africa as well as the training of South African citizens to address that specific need’. Ultimately, the companies’ omission of the training of South African citizens as an important consideration was deemed as a serious oversight as it unfairly excluded South African citizens from employment opportunities in SA in favour of foreign nationals. The review application was dismissed.”

<https://www.derebus.org.za/gotta-be-the-solution-to-this-pollution-a-rather-precarious-balancing-exercise/>

**Mather, Nadine. Employment law update – Can an abandoned disciplinary action amount to unfair labour practice?; Unfair discrimination as a result of a protected disclosure.**

2023 Mar De Rebus p30

“In *Department of International Relations and Cooperation v Laubscher and Others* [2023] 1 BLLR 1 (LAC)... [t]he question for determination before the LAC was whether an aborted disciplinary process constitutes ‘disciplinary action short of dismissal’ as contemplated in s 186(2)(b) of the LRA... In *Tanda v MEC, Department of Health* [2023] 1 BLLR 95 (LC)... [a]ggrieved by the Department’s conduct, the employee referred an unfair discrimination claim to the Labour Court contending that her removal from the HR department constituted an occupational detriment as a result of her having made a protected disclosure in terms of the Protected Disclosures Act 26 of 2000. She sought compensation and an order that she be entitled to resume her duties within the HR department.”

<https://www.derebus.org.za/employment-law-update-can-an-abandoned-disciplinary-action-amount-to-unfair-labour-practice/>

**Naidoo, Moksha. Employment law update – Amending a pleading v amending pre-trial minutes [AMCU obo Wayise and Others v Rand Uranium (Pty) Ltd (JS658/17) [2022] ZALCJHB 346 (8 December 2022)].**

2023 Mar De Rebus p31

“Does it necessarily follow in law, that once an application to amend a statement of claim is granted, the pre-trial minutes concluded between the parties are axiomatically likewise amended? This was one of the questions the court dealt with in this matter.”

<https://www.derebus.org.za/employment-law-update-amending-a-pleading-v-amending-pre-trial-minutes/>

Law Firm Articles

**Abraham, Brett and Atkinson, Jenna. Restraints of trade and settlement agreements: A lesson for employers on the full and final settlement of disputes [Wheelwright v CP De Leeuw Johannesburg (Pty) Ltd (JA 81/2022) [2023] ZALAC 6 (21 February 2023)].**

2023 Feb 27 Webber Wentzel

“According to a recent judgment from the Labour Appeal Court, when concluding settlement agreements with former employees, employers must actively preserve their rights to enforce restraint of trade undertakings, and other important protections.”

<https://www.webberwentzel.com/News/Pages/restraints-of-trade-and-settlement-agreements-a-lesson-for-employers-on-the-full-and-final-settlement-of-disputes.aspx>

**Annual increase to the national minimum wage.**

2023 Feb 27 Cliffe Dekker Hofmeyr

“The National Minimum Wage Act 9 of 2018 was enacted to advance economic development and social justice by, inter alia, improving the wages of the lowest paid workers, and protecting workers from unreasonably low wages by establishing the national minimum wage.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/employment-law-alert-27-february-2023-annual-increase-to-the-national-minimum-wage.html>



**Dlamini, Unathi. Can an employer be vicariously liable for actionable racial harassment suffered by an employee?**

2023 Feb 27 Shepstone & Wylie Attorneys

“The Labour Court confirmed the position in the recent case of [Solidarity obo Oosthuizen v South African Police Service and Others \(JS1030/17\) \[2023\] ZALCJHB 4](#). In this case, the court found that the employer was vicariously liable for the actionable racial harassment suffered by an employee, Colonel Oosthuizen.”

<https://www.wylie.co.za/Articles/Read/1379/CAN-AN-EMPLOYER-BE-VICARIOUSLY-LIABLE-FOR-ACTIONABLE-RACIAL-HARASSMENT-SUFFERED-BY-AN-EMPLOYEE%3F>

**Geel, Janice and Scott, Natalie. Working from home, the double-edged sword for sustainability.**

2023 Mar 1 Werksmans Attorneys

“Employers and employees should work together to facilitate a flexible and sustainable ‘workplace’ solution that balances the benefits of working from the office and working from home to employers and employees with the benefits arising from reduced carbon emissions and the just transition to net zero.”

<https://www.werksmans.com/legal-updates-and-opinions/working-from-home-the-double-edged-sword-for-sustainability/>

**Lumb, Gillian and Mahomed, Nadeem. Menstrual leave: Advancing gender equality in the workplace.**

2023 Feb 27 Cliffe Dekker Hofmeyr

“Recently, Spain has approved legislation that entitles relevant workers, who have medical approval, to menstrual leave. In the Spanish context, the state’s social security system will be responsible for funding the leave entitlement. Spain is the first European country to join the list of nations that legally recognise menstrual leave in some form (some others include Japan, Indonesia, Taiwan and Vietnam).”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/employment-law-alert-27-february-2023-menstrual-leave-advancing-gender-equality-in-the-workplace.html>

**Mothibi, Joe and Gertzen, Jessie. Just how clean can a new broom sweep? The Labour Appeal Court weighs in [[Makuleni v Standard Bank of South Africa Ltd and Others \(JA125/2021\) \[2023\] ZALAC 4 \(8 February 2023\)](#)].**

2023 Feb 28 ENSafrica

“When new managers are appointed to deal with ill-discipline and improve performance in workplaces, the proverb: “a new broom sweeps clean” often proves to be true. However, these appointments are often met with resistance from subordinates. Ultimately, there is a limit on how irksome and hard the bristles of a proverbial new broom can be.”

<https://www.ensafrica.com/news/detail/6719/just-how-clean-can-a-new-broom-sweep-the-labo>

**Ramjetan, Dhevarsha *et al.* Impact of the National Minimum Wage on agribusinesses.**

2023 Feb 27 Webber Wentzel

“Hard-pressed agribusinesses battle to contain costs and maintain operational viability in the current economic climate which makes the sector vulnerable to the impact of large National Minimum Wage increases.”

<https://www.webberwentzel.com/News/Pages/impact-of-the-national-minimum-wage-on-agribusinesses.aspx>

**Rossouw, Henry and Mcengwa, Buhle. Reinstatement remains a two-way street for the purposes of claiming backpay [[Goliath and Others v African Meter Reading \(Pty\) Ltd \(J 90/2021\) \[2022\] ZALCJHB 330 \(17 November 2022\)](#)].**

2023 Feb 28 ENSafrica

“A recent Labour Court decision... confirmed that when a dismissed employee is granted reinstatement in terms of an arbitration award, their employment contract is not automatically revived and there can be no contractual claim for things like backpay (arrear wages).”

<https://www.ensafrica.com/news/detail/6717/reinstatement-remains-a-two-way-street-for-th>

**Salt, Lauren. New minimum wage and earnings threshold set to impact South African employers.**

2023 Feb 28 ENSafrica

“South African employers need to be aware that the minimum earnings threshold and national minimum wage have been significantly increased by the Minister of Employment and Labour, effective from 1 March 2023.”

<https://www.ensafrica.com/news/detail/6721/new-minimum-wage-and-earnings-threshold-set-t>

**Schensema, Hedda; Rasetlola, Tshepiso and Muzamhindo, Sophie. A remedy of disgorgement: Secondment and the non-disclosure of secret profits.**

2023 Feb 27 Cliffe Dekker Hofmeyr

“The Labour Court in the case of [RFS Administrators \(Pty\) Ltd v Samons and Others \(JS 641/17\) \[2022\] ZALCJHB 110 \(30 August 2022\)](#) dealt with the elements that a party must prove when seeking a remedy of disgorgement in terms of the Basic Conditions of Employment Act 75 of 1997 arising from a breach of an oral contract of employment.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/employment-law-alert-27-february-2023-a-remedy-of-disgorgement-secondment-and-the-non-disclosure-of-secret-profits.html>



### **Sunday, Ali. Implications of employees earning above the new earnings threshold.**

2023 Feb 28 Fairbridges Wertheim Becker

“The effect of the earnings threshold is that the limitations, protections or the right to additional pay afforded by certain provisions of the BCEA do not apply to employees earning in excess of the new threshold.”

<https://fwblaw.co.za/implications-of-employees-earning-above-the-new-earnings-threshold/>

### **Van Wyk, Jacques and Van Heerden, Andre. Employees beware: The enforceability of zero-tolerance policies in the workplace [NUMSA obo Nhlabathi and Anther v PFG Building Glass (Pty) Ltd (JR 1826 /2020) [2022] ZALCJHB 292; (2023) 44 ILJ 231 (LC); [2023] 2 BLLR 142 (LC) (1 December 2022)].**

2023 Mar 1 Werksmans Attorneys

“Issues: Whether an employee may be dismissed, in the workplace, for testing positive for dagga and the importance of ‘zero-tolerance’ policies in this regard.”

<https://www.werksmans.com/legal-updates-and-opinions/employees-beware-the-enforceability-of-zero-tolerance-policies-in-the-workplace/>

### **Van Wyk, Jacques and Van Heerden, Andre. The transferability and enforceability of restraint of trade agreements [Slo Jo Innovation (Pty) Ltd v Beedle and Another (J 737/22) [2022] ZALCJHB 212; [2023] 1 BLLR 68 (LC) (10 August 2022)].**

2023 Mar 1 Werksmans Attorneys

“Issue: Where a business is sold as a going concern do the restraint of trade undertakings contained in employees’ contracts of employment transfer with their contracts of employment from the ‘old employer’ to the ‘new employer’?”

<https://www.werksmans.com/legal-updates-and-opinions/the-transferability-and-enforceability-of-restraint-of-trade-agreements/>

### **Workman-Davies, Bradley and Fredericks, Kerry. Fairly unlawful or lawfully unfair? Employees and their rights on termination under the LRA and contract.**

2023 Mar 1 Werksmans Attorneys

“In the case of *South African Municipal Workers Union obo Morwe v Tswaing Local Municipality and Others*... the Labour Appeal Court considered a case in which an employee had been dismissed and thereafter launched an urgent application in the Labour Court for an order setting aside the decision to terminate his contract, and granting him the relief of specific performance.”

<https://www.werksmans.com/legal-updates-and-opinions/fairly-unlawful-or-lawfully-unfair-employees-and-their-rights-on-termination-under-the-lra-and-contract/>

### **Workman-Davies, Bradley and Sease, Kelly. Does an employer’s decision to exclude employees from a commission scheme constitute an unfair labour practice.**

2023 Mar 1 Werksmans Attorneys

“In a recent case the Commission for Conciliation, Mediation and Arbitration (CCMA) had to examine whether an employer, by excluding employees from a scheme which allows employees to earn commission had committed an Unfair Labour Practice. The issue arose when the employer stopped paying commission to the sales team’s support staff after introducing a new Sales Commission Policy which excluded the employees from earning commission.”

<https://www.werksmans.com/legal-updates-and-opinions/does-an-employers-decision-to-exclude-employees-from-a-commission-scheme-constitute-an-unfair-labour-practice/>

### **Workman-Davies, Bradley and Tchalov, Anna. Stay out of my internal disciplinary matters? Not so fast.**

2023 Mar 1 Werksmans Attorneys

In the case of *Southern African Clothing and Textile Workers Union obo Members v KZN Marketing (Pty) Ltd and Another*... the Labour Court considered whether or not a trade union representing employees who had been charged with participating in an unlawful strike were entitled to appeal to the Labour Court for intervention before the dismissals became final. In this case the presiding officer of the internal disciplinary process found the employees guilty of participating in unlawful strike action and recommended the sanction of dismissal.”

<https://www.werksmans.com/legal-updates-and-opinions/stay-out-of-my-internal-disciplinary-matters-not-so-fast/>

[Back to Contents](#)

## ENERGY

Government Gazettes

### **Disaster Management Act 57 of 2002**

Regulations – National State of Disaster: Impact of Severe Electricity Supply Constraint.



Contents: Definitions – Objects – Cooperation between spheres of government – General measures to address the effects of the disaster and prevent escalation of severe electricity supply constraint – Authority to issue directions – Emergency procurement procedures – List of essential infrastructure.

Commencement on date of publication.

RGN3095 GG 48152 p3 27Feb2023 (This notice replaces RGN3089 GG 48145 27Feb2023)

[https://www.gov.za/sites/default/files/gcis\\_document/202302/48152rg11550gon3095.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48152rg11550gon3095.pdf)

### **Petroleum Products Act 120 of 1977**

- Amendment of the regulations in respect of petroleum products.  
RGN3094 GG 48151 p6 28Feb2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202302/48151rg11548gon3094.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48151rg11548gon3094.pdf)
- Maximum Retail Price for Liquefied Petroleum Gas.  
RGN3093 GG 48151 p4 28Feb2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202302/48151rg11548gon3093.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48151rg11548gon3093.pdf)
- Regulations in respect of the single maximum national retail price for Illuminating Paraffin.  
RGN3092 GG 48151 p3 28Feb2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202302/48151rg11548gon3092.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48151rg11548gon3092.pdf)

### *Law Firm Articles*

#### **Mphafudi, Mashudu and Bailey, Michael. Securing funding for the installation of rooftop solar for commercial enterprises.**

2023 Mar 2 Cliffe Dekker Hofmeyr

“It is estimated that stage 6 loadshedding is costing the economy as much as R900 million per day. Many businesses are looking to self-generate power through the installation of rooftop solar as a way to reduce the impact of loadshedding and possibly avoid retrenchments or, at worst, closing their doors. The large capital outlay for solar installations will require many businesses to approach financial institutions which, in turn, will need to consider the most suitable way to secure their investment.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Finance/finance-and-banking-alert-2-march-2023-securing-funding-for-the-installation-of-rooftop-solar-for-commercial-enterprises.html>

#### **Mukumba, Tsanga and Moonsamy, Jordan. Two birds with one sunbeam – ESG windfall with the expanded renewable energy tax incentive.**

2023 Feb 28 Baker McKenzie

“The introduction of an augmented and accelerated capital expenditure deduction for the cost of constructing renewable energy infrastructure in South Africa is a boon for companies that have not yet reached their Environmental, Social and Governance (ESG) goals. It provides the opportunity to undertake reportable ESG initiatives and simultaneously enjoy a reduction in tax costs. Fully leveraging this opportunity will require a comprehensive understanding of the mechanics of amended incentives and the dynamics of ESG reporting.”

<https://insightplus.bakermckenzie.com/bm/tax/south-africa-two-birds-with-one-sunbeam-esg-windfall-with-the-expanded-renewable-energy-tax-incentive>

#### **Rodgers, Megan and Carstens, Amore. International Comparative Legal Guide – Oil and Gas Regulation 2023.**

2023 Feb 27 Cliffe Dekker Hofmeyr

“Megan Rodgers and Amore Carstens contributed to the South African chapter of the International Comparative Legal Guide - Oil and Gas Regulation 2023”.

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Sectors/Oil/International-Comparative-Legal-Guide-Oil-Gas-Regulation-2023.html>

### *Media Comments*

#### **Electricity National State of Disaster regulations gazetted.**

2023 Feb 28 SANews

“Cooperative Governance and Traditional Affairs (CoGTA) Minister, Dr Nkosazana Dlamini Zuma, on Monday gazetted the disaster management regulations on electricity constraints. The gazette follows a special Cabinet meeting held on 27 February 2023. Earlier this month, the Minister declared a State of Disaster on the Impact of Severe Electricity Supply Constraints on society. The State of Disaster was first announced by President Cyril Ramaphosa on 9 February, while delivering the State of the Nation Address at the Cape Town City Hall.”

<https://www.sanews.gov.za/south-africa/electricity-national-state-disaster-regulations-gazetted>

#### **Public purse will be protected during National State of Disaster.**

2023 Mar 1 SANews





“Acting Director-General of Government Communication and Information System (GCIS), Nomonde Mnukwa, says government has measures in place to ensure that the public purse is protected from corruption and looting during the National State of Disaster related to the energy crisis. Minister of Cooperative Governance and Traditional Affairs, Dr Nkosazana Dlamini Zuma, gazetted the regulations for the state of disaster on Monday following President Cyril Ramaphosa’s declaration of a National State of Disaster during the State of the Nation Address in February.

<https://www.sanews.gov.za/south-africa/public-purse-will-be-protected-during-national-state-disaster>

### **Presidency clarifies President Ramaphosa stance in load shedding case.**

2023 Feb 28 SANews

“The Presidency has described recent media reporting on President Cyril Ramaphosa’s responding affidavit in a case challenging the Constitutionality of load shedding as a “gross misrepresentation of statements”. Media reports have suggested that President Ramaphosa’s affidavit suggests that neither he, as president, nor government bear a duty to provide electricity to South Africans. “The statement in the affidavit that has been misrepresented relates to the constitutional powers and responsibilities of the President and other government bodies. It seeks to clarify important legal issues about what is contained in and what is required by the Constitution.”

<https://www.sanews.gov.za/south-africa/presidency-clarifies-president-ramaphosa-stance-load-shedding-case>

[Back to Contents](#)

## ENVIRONMENTAL LAW

### *Internet Article*

**Broughton, Tania. Evicted waste pickers win in court. [[Mkhatshwa and Maguru v New Africa Development \(Pty\) Ltd; Seek Security \(Pty\) Ltd; Monitor Net Security Protection and Training Services; New Africa Development Property Income Fund \(Pty\) Ltd \(2023-011837\) \[2023\] ZAGPPHC 65 \(2 March 2023\)](#)]**

2023 Mar 2 GroundUp

“In January the shelters of about 32 waste pickers living on land near Waterkloof Airforce Base since 2018 were demolished without a court order. New Africa Development and New Africa Development Property Income Fund have been ordered by the High Court to rebuild the shelters within 48 hours. “I cannot divorce the precarious socio-economic circumstances of the applicants from my consideration of urgency,” said the judge.”

<https://www.groundup.org.za/article/evicted-waste-pickers-win-in-court/>

### *Media Comment*

**Minister finalises appeals in relation to fishing rights.**

2023 Mar 1 SANews

“Minister of Forestry, Fisheries and the Environment, Barbara Creecy, has honoured her commitment to finalise appeals in the traditional linefish sectors by the end of the month. The appeals were finalised ahead of the fishing season, which starts on Wednesday, 1 March 2023. Creecy also concluded appeals against the decisions of the delegated authority in the South Coast Rock Lobster sector taken in the Fishing Right Allocation Process 2020/2021 (FRAP 2021). In her consideration and determination of these appeals, the Minister was guided by the General Policy on the Allocation of Commercial Fishing Rights 2021 (General Policy).

<https://www.sanews.gov.za/south-africa/minister-finalises-appeals-relation-fishing-rights>

[Back to Contents](#)

## EVICIONS

### *Case*

**Ngema NO v Gumbi and Another (60442/2020) [2023] ZAGPPHC 96 (10 February 2023)**

Date – Just and equitable – Occupant having been in long-term relationship with deceased – Fathered his children and was dependent on him – Stayed in house for over 20 years – House to be sold and executrix seeking eviction – Equitable date would be to allow at least 5 months to find accommodation for her and her family – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, s 4(8).

<http://www.saflii.org/za/cases/ZAGPPHC/2023/96.pdf>

### *Internet Article*

**Broughton, Tania. Evicted waste pickers win in court.**



2023 Mar 2 GroundUp

“In January the shelters of about 32 waste pickers living on land near Waterkloof Airforce Base since 2018 were demolished without a court order. New Africa Development and New Africa Development Property Income Fund have been ordered by the High Court to rebuild the shelters within 48 hours. “I cannot divorce the precarious socio-economic circumstances of the applicants from my consideration of urgency,” said the judge.”

<https://www.groundup.org.za/article/evicted-waste-pickers-win-in-court/>

Judgment: [https://www.groundup.org.za/media/uploads/documents/mkhatshwa\\_v\\_new\\_development.pdf](https://www.groundup.org.za/media/uploads/documents/mkhatshwa_v_new_development.pdf)

[Back to Contents](#)

## EVIDENCE

### Case

#### **Sinqobile Equestrian Security Services (Pty) Ltd v Marks Koko Latha (CIV APP MG 05/20) [2023] ZANWHC 12 (6 February 2023)**

Civil appeal from District Magistrates Court to High Court – Proof of quantum of damages – Absolution from instance – Whether appellant discharged its onus in proving *prima facie* claim on merits already proved – Whether magistrate erred in granting defendant absolution from instance – Common law and statutory law – Law of Evidence Amendment Act 45 of 1988 – Test for whether plaintiff should survive claim for absolution – Test for absolution not met – Magistrate erred in granting absolution.

<http://www.saflii.org/za/cases/ZANWHC/2023/12.pdf>

[Back to Contents](#)

## FINANCIAL LAW

### Case

#### **Singh v South African Reserve Bank (2020/35964) [2023] ZAGPPHC 112 (20 February 2023)**

Blocking order – Suspicion of exchange control contraventions – Reserve Bank empowered to put hold on untainted funds if it reasonably suspects that amount involved in contravention of regulations might be higher – Source of R80 million not plausibly explained – Application to set aside blocking order dismissed – Exchange Control Regulations, regs 22A and C.

<http://www.saflii.org/za/cases/ZAGPPHC/2023/112.pdf>

### Government Gazettes

#### **Banks Act 94 of 1990**

Consent granted in terms of Section 34 for a foreign institution to establish a representative office within the Republic of South Africa: Union Bancaire Privée, UBP-SA.

GenN1644 GG 48162 p61 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gen1644.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gen1644.pdf)

#### **Financial Markets Act 19 of 2012**

Approved listing requirements of equity express securities exchange: Bond and Notes.

BN401 GG 48157 p3 1Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48157bn401.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48157bn401.pdf)

### Internet Article

#### **Burger, Philippe. South Africa has been grey listed for not stopping money laundering and terrorism funding. What it means.**

2023 Feb 26 The Conversation

<https://theconversation.com/south-africa-has-been-grey-listed-for-not-stopping-money-laundering-and-terrorism-funding-what-it-means-200696>

### Journal Articles

#### **De la Harpe, L. FSCA discussion paper: Unclaimed assets in South Africa’s financial sector.**

2022 37(4) Insurance and Tax Journal



**Emmett, R. Changing of the guard: Debarment: Protecting financial customers and the integrity of the financial services sector.**

2022 37(3) Insurance and Tax Journal

**Emmett, R. Understanding FAIS: Are you authorised for too many product categories?**

2022 37(4) Insurance and Tax Journal

*Law Firm Articles*

**Griessel, Deon and Matsapola, Ngwalemorwa. 62 years on – Exchange control regulations alive and well: A look at a recent Supreme Court of Appeal case [[South African Reserve Bank and Another v Johnine Winsome Elsie Maddocks NO and Another \(1268/2021\) \[2023\] ZASCA 4 \(23 January 2023\)](#)].**

2023 Mar 1 Werksmans Attorneys

“The appeal before the SCA... brought into focus the legal consequences of the forfeiture orders made by the South African Reserve Bank pursuant to the provisions of Regulation 22B in respect of moneys standing to the credit of the Companies in various South African bank accounts.”

<https://www.werksmans.com/legal-updates-and-opinions/62-years-on-exchange-control-regulations-alive-and-well-a-look-at-a-recent-supreme-court-of-appeal-case/>

**Itzikowitz, Angela. South Africa faces increased scrutiny as FATF grey lists the country.**

2023 Feb 24 ENSafrica

“In terms of FICA, every accountable institution referred to in Schedule 1 to FICA must, within the prescribed period and in the prescribed manner, register with the FIC. The prescribed period and manner for registration are set out in regulation 27A of the FICA Regulations. In terms of this provision, any person or category of persons added to the list in Schedule 1 of FICA after the commencement of this regulation must register with the FIC within 90 days after the amended Schedule 1 is published by notice in the *Government Gazette* and not when the amendments became effective.”

<https://www.ensafrica.com/news/detail/6693/south-africa-faces-increased-scrutiny-as-fatf>

**Itzikowitz, Angela and Gunning, Era. D Day for registration of new accountable institutions.**

2023 Feb 28 ENSafrica

“New accountable institutions include credit providers and businesses dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of ZAR100 000 or more (including dealers in motor vehicles, scrap metal, art, equipment, rare game and mines).”

<https://www.ensafrica.com/news/detail/6720/d-day-for-registration-of-new-accountable-ins>

**Reddy, Desiree and Kathrada, Sabeeha. South Africa’s grey-listing: What it means, how did we get here and what are the effects?**

2023 Feb 25 Norton Rose Fulbright: Financial Institutions Legal Snapshot

“In an unfortunate, but expected turn of events, global money-laundering and terrorist-financing watchdog – the Financial Action Task Force (FATF) – announced on Friday 24 February that it has added South Africa to its “grey” list – as a jurisdiction under increased monitoring. What does this mean, how did we get here, and how does it affect the country?”

<https://www.financialinstitutionslegalsnapshot.com/2023/02/south-africa-grey-listed-by-the-fatf/>

**Rodrigues, Christine; Tibane, Bright and Kern, Kirsten. Grey-listing by the Financial Action Task Force.**

2023 Feb 27 Bowmans

“While the FATF acknowledged that South Africa had made significant progress in addressing the shortcomings identified in the FATF Mutual Evaluation Report published in October 2021, eight areas of strategic deficiency were nevertheless identified in relation to the effective implementation of the country’s AML/CTF laws. South Africa is expected to take practical steps to address these areas of deficiency by no later than end-January 2025...”

<https://bowmanslaw.com/insights/banking-and-financial-services-regulatory/south-africa-grey-listing-by-the-financial-action-task-force/>

**Rybko, Gabriel and Perumall, Ashlin. Greylisted – The Financial Action Task Force Plenary adopts Report on South African Anti-money Laundering and Counter Terrorist Financing Measures.**

2023 Feb 28 Baker McKenzie

“Being greylisted brandishes a country as being financially unsafe, in that it has inadequate safeguards against money laundering and terrorist financing. Countries and organizations shy away from, or increase their own compliance requirements for dealing with countries that may be unable to prevent these crimes. Although dispiriting, the greylisting may yet present South Africa with opportunities for change. If South Africa can remove itself from the greylist, the country will do so with a revived approach to financial crimes, and a healthier financial environment.”



[https://insightplus.bakermckenzie.com/bm/banking-finance\\_1/south-africa-greylisted-the-financial-action-task-force-plenary-adopts-report-on-south-african-anti-money-laundering-and-counter-terrorist-financing-measures](https://insightplus.bakermckenzie.com/bm/banking-finance_1/south-africa-greylisted-the-financial-action-task-force-plenary-adopts-report-on-south-african-anti-money-laundering-and-counter-terrorist-financing-measures)

*Media Comment*

**SA has an action plan to get off the grey list.**

2023 Feb 27 SANews

“Government is determined to address the concerns raised by the Financial Action Task Force (FATF) as quickly as possible with the fundamentals in place to get off the “grey list”. In his weekly newsletter to the nation, President Cyril Ramaphosa said government has gone through a rigorous process of addressing the issues that FATF has raised. This comes after South Africa was put on a “grey list” last week by the FATF for falling short of certain international standards for the combating of money laundering and other serious financial crimes.”

<https://www.sanews.gov.za/south-africa/sa-has-action-plan-get-grey-list>

*Podcast*

**Davis, Kent *et al.* Greylisting of South Africa: Unpacking the economic impact, legislative interventions and its implementation.**

2023 Mar 2 Webber Wentzel

“In this podcast, Lerato Lamola-Oguntoye, Kent Davis, and Rashaad Carrim unpack what greylisting means for South Africa and our clients. They also offer recommendations on what steps should be taken in response to recent legislative changes, and how the private and public sectors can work together to remove South Africa from the list of jurisdictions under increased monitoring as quickly as possible.”

<https://www.webberwentzel.com/News/Pages/podcast-greylisting-of-sa-unpacking-the-economic-impact-legislative-interventions-and-its-implementation.aspx>

[Back to Contents](#)

## GAMBLING AND LOTTERIES

*Internet Article*

**Broughton, Tania. Court orders former Lottery boss to pay punitive legal costs to journalist.**

2023 Mar 1 GroundUp

“Raymond Joseph, who has spearheaded GroundUp’s investigation into the National Lotteries Commission (NLC), has sued former NLC Chief Operating Officer Pillemon Letwaba for R600,000, claiming he impaired his dignity and reputation. Letwaba is opposing the action but failed to file his discovery affidavit, in defiance of a court order granted in November last year. Joseph applied for default judgment against Letwaba. Judge James Lekuleni adjourned the default judgment application until April, but ordered Letwaba to pay Joseph’s legal costs on a punitive scale because Letwaba has wasted the court’s time.

<https://www.groundup.org.za/article/journalist-gets-lottery-boss-to-pay-punitive-legal-costs/>

[Back to Contents](#)

## HOUSING

*Case*

**Maleke v Gauteng Housing Tribunal and Others (43019/2020) [2023] ZAGPJHC 152 (17 February 2023)**

Review of decision of Rental Housing Tribunal – Jurisdiction of Tribunal – Mootness – Review of decision by Tribunal that it had jurisdiction to adjudicate complaint moot – Final ruling on merits of complaint disposed of live issues in complaint.

<http://www.saflii.org/za/cases/ZAGPJHC/2023/152.pdf>

[Back to Contents](#)

## INSOLVENCY

*Law Firm Article*

**Naidoo, Gina. Are section 417 and 418 enquiries only available in instances of compulsory winding-up orders?**



2023 Feb 28 Fluxmans

“Section 417 of the [Companies] Act provides that in any winding-up of a company unable to pay its debts, the Master or the Court may, at any time after a winding-up order has been made, convene an enquiry to obtain information concerning the trade, dealings, affairs or property of the company. Section 418 of the Act allows for the Master or the Court to delegate the power of convening an enquiry to a commissioner, who can be a magistrate or another person who has been appointed for this purpose. However, the question arises as to whether a section 417 and 418 enquiry can only be convened in instances where the company has been placed under compulsory winding-up and not when a company has been placed under voluntary winding-up.”

<https://www.fluxmans.com/article/are-section-417-and-418-enquiries-only-available-instances-compulsory-winding-orders-gina>

[Back to Contents](#)

## INSURANCE

*Law Firm Article*

**Maphumulo, Mtho. What is the legal position regarding insurance claims that take long to finalise?**

2023 Mar 2 Adams & Adams

“Due to a lack of knowledge and/or sometimes financial constraints, people do not ordinarily make use of legal processes to get their claims investigated promptly. It is, as such, of great importance that people are made aware of what are the available legal avenues when they are faced with such delays in their insurance claims. All the principles explicated below apply similarly to third-party claims as they apply to the first party claims.”

<https://www.adams.africa/mtho-maphumulo/what-is-the-legal-position-regarding-insurance-claims-that-take-long-to-finalise/>

[Back to Contents](#)

## INTELLECTUAL PROPERTY

*Journal Article*

**Juma, Paul Ochieng. The Marrakesh Treaty and African copyright laws: Lessons for the African region from *Blind SA v Minister of Trade, Industry and Competition*.**

2022 (10) African Disability Rights Yearbook p231

“Several African countries have copyright laws that violate the rights of persons with print and visual disabilities and do not conform to the Marrakesh Treaty. While this article is not a commentary on the copyright laws of individual countries in Africa, the paper will give illustrations... on how the non-conformity of domestic legislation to the Marrakesh Treaty violates the rights of persons with print and visual disabilities in the region. The aim of this commentary is to use the decision of the Constitutional Court... in one sense to critically comment on the case and in another sense to use the case as a positive lesson for other jurisdictions and a source of persuasive jurisprudence.”

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Juma%20regional%20developments%201\\_2022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Juma%20regional%20developments%201_2022.pdf)

*Law Firm Articles*

**Collett, Carla. What you need to know about ChatGPT and copyright.**

2023 Mar 1 Webber Wentzel

“Large language models provide a wide range of services but the way they synthesise their information may infringe copyright laws.”

<https://www.webberwentzel.com/News/Pages/what-you-need-to-know-about-chatgpt-and-copyright.aspx>

**Griffiths, Werina. Artificial intelligence and IP – Who owns the copyright?**

2023 Mar 1 Adams & Adams

“If a user were to provide an artificial intelligence (AI) program, such as ChatGPT, with a storyline and it produced a best-selling novel, would that novel be protected by copyright? And if it is, who would own those rights?”

<https://www.adams.africa/intellectual-property/trade-marks/artificial-intelligence-and-ip-who-owns-the-copyright/>

**Wegierski, Donvay. NFTs and trade mark infringement – *Hermès International and Hermès of Paris, Inc vs Mason Rothschild*.**

2023 Mar 1 Werksmans Attorneys

“A US Court has found in favour of French Fashion House, Hermès, owner of the renowned Birkin handbag, in its case filed in 2022 against an individual, Mason Rothschild, and his non-fungible tokens (NFTs) which he named “MetaBirkins”... This is the first matter that has gone to trial concerning NFTs and trade mark infringement and is



therefore very significant for brand holders and intellectual property, navigating the inevitable overlap between reality and the digital world.”

<https://www.werksmans.com/legal-updates-and-opinions/nfts-and-trade-mark-infringement-hermes-international-and-hermes-of-paris-inc-vs-mason-rothschild/>

[Back to Contents](#)

## JUDICIAL OFFICERS

### Journal Article

#### **Titong, Mpho and Matong, Kagiso. The importance of protecting the Judicial Service Commission from interference.**

2023 Mar De Rebus p14

“The JSC was established in terms of the Constitution to play a vital role in the process of appointing judges to the courts. Although the JSC has been lauded for its transparency when conducting interviews for candidates to serve in the judiciary, it has been involved in many legal cases and media scrutiny in recent years... This article seeks to deal with the issues surrounding the JSC.”

<https://www.derebus.org.za/the-importance-of-protecting-the-judicial-service-commission-from-interference/>

### Law Firm Article

#### **Moosajee, Aslam and Nxumalo, Olonathando. Corruption and competence: An analysis of magistrates' views on prosecutors in South Africa.**

2023 Feb 28 ENSafrica

“The results of a recent [survey](#) of magistrates' perceptions of prosecutors and other magistrates are concerning for the South African justice system, and highlight the need for urgent reform.”

<https://www.ensafrica.com/news/detail/6716/corruption-and-competence-an-analysis-of-magi>

[Back to Contents](#)

## LAND AND PROPERTY LAW

See also [EVICTIONS](#); [SERVITUDES](#)

### Case

#### **Williams and Others v Dykrus (Pty) Ltd (650/2022) [2023] ZAMPMBHC 13 (24 February 2023)**

Spoliation – Supply of water – Aqueduct over another property – Declared unlawful by court – Users failing to remove aqueduct and owner disconnecting water supply – *Mandament van spolie* – Applicants spoliated – Would serve no legitimate purpose to order restoration of what court already declared unlawful – Application dismissed.

<http://www.saflii.org/za/cases/ZAMPMBHC/2023/13.pdf>

### Government Gazettes

#### **Deeds Registries Act 47 of 1937**

- Amendment of Regulations (RGN474 of 29 March 1963) – Schedule of fees. In operation one month from publication.  
RGN3095 GG 48150 p3 28Feb2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48150-rg11549gon3095.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48150-rg11549gon3095.pdf)
- Intention of the Minister of the Department of Agriculture, Land Reform and Rural Development to Re-align and Amend the Definition of the Area of Jurisdiction of the Deeds Registries in Johannesburg and Pretoria. Comments invited by  
GN3107 GG 48159 p3 1 March 2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48159gen3107.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48159gen3107.pdf)

### Law Firm Articles

**Botha, Maryna. Property law update: Issue 04–2023: HOA clause obliging owner to build within certain time, fails: [Chapman's Bay Estate Homeowners' Association v Lotter and Others \(9387/2022\) \[2023\] ZAWCHC 35 \(24 February 2023\)](#).**



2023 Mar 2 STBB

“[T]he Court in this matter considered the wording in an HOA constitution which compelled first purchasers of erven in the estate to erect homes on the vacant erven within a certain period, failing which they will become liable for a penalty. However, when the HOA levied such penalty against a subsequent purchaser, it appeared that the import of the text used was that the first purchaser who took transfer from the developer was the one under the obligation and that such obligation did not pass to subsequent purchasers... The judgment highlights how important it is to obtain specialist advice when drafting the constitution of an HOA.”

[https://stbb.co.za/wp-content/uploads/2023/03/stbb\\_plu04-2023\\_s1.pdf](https://stbb.co.za/wp-content/uploads/2023/03/stbb_plu04-2023_s1.pdf)

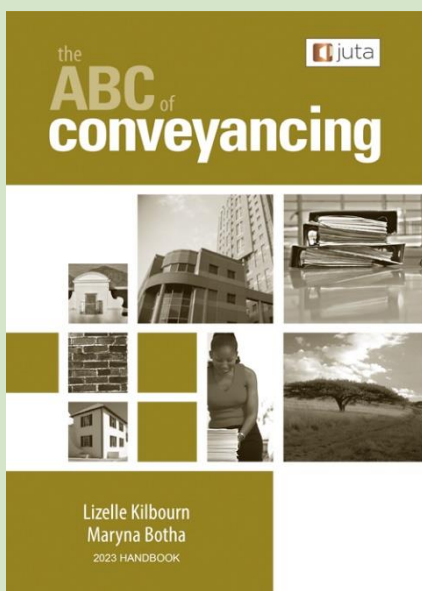
**Lewis, Corné and Alves, Tiffany. The enrichment lien: Terms and conditions apply.**

2023 Feb 28 Cliffe Dekker Hofmeyr

“In *Crystal Ball Properties 27 (Pty) Ltd and Another v Mbalati NO and Others* [2022] JDR 3516 (GJ), the court was confronted with a case in which an offer to purchase a property was concluded between the seller and purchaser. The purchaser, however, failed to make payment for the property by the agreed upon dates, and further failed to rectify this breach, therefore, the seller requested that the purchaser vacate the property and approached the court to evict the occupants of the property.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Dispute/dispute-resolution-alert-28-february-2023-the-enrichment-lien-terms-and-conditions-apply.html>

*New Publication*



**Kilbourn, L and Botha, M. The ABC of Conveyancing 2023. – 13<sup>th</sup> ed. – Juta, 2023.**

Contents:

- Understanding what conveyancing is about
- Understanding the concepts immovable property, ownership and real rights
- The different faces of property ownership: Freehold, leasehold, sectional titles, and others
- Introduction to sectional titles
- Sectional titles: How the components of a scheme fit together
- The South African Deeds Registration System: An introduction
- The diagram: Foundation of the land registration system
- The deeds office, the conveyancer and the conveyancing paralegal
- What is the law and where does it fit in?
- The law relating to conveyancing: Legislation and other sources of law
- TRANSFERS [The transfer process: An overview – Role-players in the transfer process – Phase 1: Receiving and processing the transfer instruction – Agreements: Terminology, legal principles and practice – The clauses one may expect in the agreement relating to a sale of property – Extracting conveyancing-relevant information from the agreement of sale – The checklist in the transfer file, deeds office print-outs and deeds searches – The Financial Intelligence Centre Act and its implications for conveyancing transactions – Phase 2: Communicating with the role-players at the outset of the transfer – The legal nature of clients: Ability of natural persons and legal persons to contract and perform juristic acts – Marriage law and conveyancing: An overview – Marriage in community of property – Introduction to entities – Companies – Close corporations – Trusts – Partnerships – Obtaining accurate information and reliable documents from clients: An introduction – Information and documents required from natural persons – Information and documents required from companies, close corporations, trusts and partnerships – Phase 3: Collecting information and documents, monitoring and reporting – Phase 4: Drafting and signing of transfer documents – Phase 5: Managing the finances in the transfer file – Phase 6: Transfer duty and VAT; obtaining a transfer duty receipt or exemption certificate



from SARS – Phase 7: Rates/levy clearance, HOA consent and compliance certificates – Phases 8, 9 & 10: Preparing for lodgment, lodgment and registration]

- MORTGAGE BONDS [Introduction to mortgage bonds – Different types of mortgage bonds: Context and categories explained – Steps in the mortgage bond registration process: Phases 1, 2 and 3 – Steps in the process of bond registration: Phase 4 & drafting of bond documents – The final steps in the bond registration process: Phases 5 to 10 - Finances, preparing for lodgment, lodgment, registration and winding up the file]
- MORTGAGE BOND CANCELLATIONS [Cancellation of mortgage bonds]
- CONSUMER PROTECTION [Consumer Protection Act]
- CONSUMER CREDIT [Brief summary of the National Credit Act from a conveyancing perspective]
- JOINT ESTATES [Section 45 endorsements and Section 57 substitutions]

Price: R785 including VAT, excluding delivery.

[Back to Contents](#)

## LEGAL PROFESSION

### *Journal Articles*

#### **Moshugi, Boitumelo. The opportunities to secure employment dwindle post-admission as a legal practitioner.**

2023 Mar De Rebus p35

“It is important that employers and employees adopt the stance of open-mindedness and utilise the principal of ongoing learning and growth. Despite the number of years of experience obtained post-admission by newly qualified legal practitioners, generally people are teachable. Moreover, the question arises, how are newly qualified legal practitioners supposed to acquire the required experience if employers are not affording them the opportunity to prove themselves. Is the PVT requirement as a candidate attorney insufficient to render one experienced enough to secure a job opportunity in legal practice?”

<https://www.derebus.org.za/the-opportunities-to-secure-employment-dwindle-post-admission-as-a-legal-practitioner/>

#### **Oliphant, Mapula. South Africa greylisting impact: How can legal practitioners help?**

2023 Mar De Rebus p3

“By ensuring that they have Risk Management and Compliance Programmes in place, legal practitioners would signal to fraudsters and opportunists that they were likely to be reported if they attempted to take advantage of the legal profession. The risk-based approach was new and presented an opportunity for legal practitioners to enhance their expertise in this field, legal practitioners were invited to seize this new practice area as an opportunity.”

<https://www.derebus.org.za/south-africa-greylisting-impact-how-can-legal-practitioners-help/>

[Back to Contents](#)

## LOCAL GOVERNMENT

### *Government Gazette*

#### **Local Government: Municipal Electoral Act 27 of 2000**

Municipal By-Elections — 22 March 2023: Official List of Voting Stations.

GenN1649 GG 48164 p3 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48164gen1649.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48164gen1649.pdf)

[Back to Contents](#)





## MARITIME LAW

### Law Firm Article

#### **Kumlehn, Pauline and Van der Merwe, Quintus. Risks associated with a house bill of lading.**

2023 Feb 27 Shepstone & Wylie Attorneys

“The South African Association of Freight Forwarders has with fanfare announced the imminent launch of the digital FIATA bill of lading (FBL). The FBL is a contractual carrier’s bill of lading - commonly referred to as a house bill of lading (HBL). Thus, while cargo might be shipped under the ocean bill of lading issued by the actual ocean carrier, the HBL and FBL allow a forwarder to control the movement of cargo on behalf of their principal who is exporting goods by sea.”

<https://www.wylie.co.za/Articles/Read/1380/RISKS-ASSOCIATED-WITH-A-HOUSE-BILL-OF-LADING>

[Back to Contents](#)

## MEDICAL LAW

### Government Gazettes

#### **Competition Act 89 of 1998**

- Competition Tribunal: Notification of Complaint Referral: Medmart Health (Pty) Ltd and Mr. Alon Lever T/A Babybug.  
GenN1646 GG 48162 p63 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gen1646.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gen1646.pdf)
- Notice in terms of Section 10 (6). Notice of application for an exemption – South African Orthopaedic Association (“SAOA”).  
GN3117 GG 48162 p50 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gon3117.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gon3117.pdf)

#### **Health Professions Act 56 of 1974**

- Regulations defining the scope of the profession of Dietitians. Proposed amendments. Comments invited within three months of publication.  
RGN3100 GG 48158 p35 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3100.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3100.pdf)
- Regulations defining the scope of the profession of Occupational Therapy.  
RGN3101 GG 48158 p38 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3101pdf.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3101pdf.pdf)
- Regulations relating to fines which may be imposed by a committee of enquiry against practitioners found guilty of improper or disgraceful conduct under the Act. Proposed amendments. Comments invited within three months of publication.  
RGN3102 GG 48158 p42 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3102.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3102.pdf)
- Regulations relating to the qualifications for registration of Arts Therapists.  
RGN3103 GG 48158 p47 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3103.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3103.pdf)
- Regulations relating to the qualifications for registration of Dental Assistants. Proposed amendments. Comments invited within three months of publication.  
RGN3104 GG 48158 p50 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3104.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3104.pdf)
- Regulations relating to the qualifications for registration of Medical Orthotists and Prosthetists. Proposed amendments. Comments invited within three months of publication.  
RGN3105 GG 48158 p52 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg11551gon3105.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg11551gon3105.pdf)
- Regulations relating to the registration of Optometry or Dispensing Optician Students. Proposed amendments. Comments invited within three months of publication.  
RGN3106 GG 48158 p55 3Mar2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202303/48158rg115513106.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48158rg115513106.pdf)

### Journal Article

#### **Kamangila, Alexious E. Silombela. Advance directives in mental health: A solution that legitimatises the problem?**

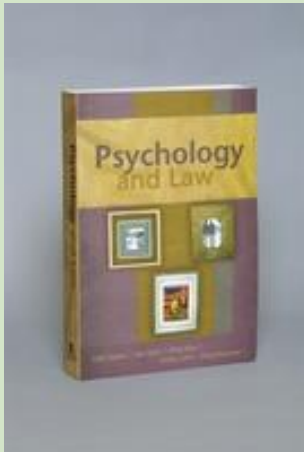


2022 (10) African Disability Rights Yearbook p62

“Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD) calls for persons with disabilities to enjoy the highest attainable standard of health without discrimination on the basis of disability... Advance Directives, which provide patient’s preferences on treatment in advance at a moment one is considered competent, have advanced among service users and protagonists of patient’s rights in mental health... This article examines whether Advance Directives have the ability to promote the will and preference of the persons with cognitive disabilities specifically in relation to decisions on treatment, to safeguard legal capacity as envisaged by article 12.”

[https://www.adry.up.ac.za/images/adry/volume10\\_2022/Chapter%20Kamangila%202022.pdf](https://www.adry.up.ac.za/images/adry/volume10_2022/Chapter%20Kamangila%202022.pdf)

*New E-book*



**Tredoux, C [et al.] Psychology and Law. – Juta, 2022.**

Contents:

- The South African legal system
- Credibility assessment and the polygraph
- Psychological assessment for the courts, including risk assessment
- Assessing custody and placement of children
- Eyewitness testimony
- Investigative psychology and criminal profiling
- Policing and crime
- Insanity and diminishing capacity before the court
- The psychologist as expert witness
- Children in court

More information available [here](#).

[Back to Contents](#)

## PENSION LAW

*Case*

**Municipal Workers Retirement Fund v South African Local Government Bargaining Council and Others and Other Related Matters (2905/2022; 4580/2022; 30396/2022;) [2023] ZAGPPHC 98 (20 February 2023)**

Application for review of collective agreement entered into by bargaining council – Agreement seeks to impose accreditation criteria upon pension funds in local government sector by making it conditional upon agreement to effect immediate and future rule changes – Such requirement inimical to independence of board of pension fund as required by Pension Funds Act 24 of 1956 (PFA) – Proposed rule changes not consistent with PFA – Collective agreement reviewed and set aside.

<http://www.saflii.org/za/cases/ZAGPPHC/2023/98.pdf>

*Journal Article*

**Dillon-van Acker, N. Important considerations for GEPF members approaching retirement.**

2022 37(3) Insurance and Tax Journal

*Law Firm Article*

**Driman, Robert; Swart, Armand and Yantolo, Thabisa. Two pots of gold: What you should know about the “two-pot” retirement system.**

2023 Mar 1 Werksmans Attorneys

“The proposed “two-pot” retirement system would allow people to have the best of both worlds – early access to a portion of their retirement funds, should it be necessary, while still preserving a significant portion for when they retire. The changes are set to take effect on 1 March 2024, but without further draft legislation being published in February, there are concerns that industry players will not have time to implement changes to meet this deadline. This article explores what you need to know about the proposed system and its current status.”

<https://www.werksmans.com/legal-updates-and-opinions/two-pots-of-gold-what-you-should-know-about-the-two-pot-retirement-system/>



## PERSONS AND FAMILY LAW

### Cases

#### **KB and Another v Minister of Social Development (966/2022) [2023] ZAMPMBHC 12 (20 February 2023)**

Surrogacy – Genetic origin – Requirement that gamete of at least one of commissioning parents be used – Applicants seeking to expand requirement to include genetic link between siblings – Purpose of section is to ensure genetic link between child and at least one parent – Section has nothing to do with right of minor child to have sibling with same genetic link – Children’s Act 38 of 2005, s 294.

<http://www.saflii.org/za/cases/ZAMPMBHC/2023/12.pdf>

#### **M v M (56859/2021; 26859/2021) [2023] ZAGPPHC 122 (21 February 2023)**

Divorce – Forfeiture – Husband having affairs, not contributing to home, financially or emotionally – Attempting to fraudulently extort money from wife’s corporation where he was employed – Attempting to hijack business – Forfeiting patrimonial benefits of accrual system in total – Divorce Act 70 of 1979, s 9(1).

<http://www.saflii.org/za/cases/ZAGPPHC/2023/122.pdf>

### Journal Articles

#### **Costa, Alick. The antenuptial contract – Incorporating or excluding accrual resulting in s 7(3) of the Divorce Act being applicable.**

2023 Mar De Rebus p12

“Then came the renaissance on 1 November 1984 with the introduction of s 7(3) of the Divorce Act 70 of 1979. It gave financial relief to the financially disadvantaged spouse (read wife) on termination of the marriage by divorce. Section 7(3) enables ‘the court granting a decree of divorce in respect of a marriage out of community of property [entered into] before 1 November 1984’ (*GKR v Minister of Home Affairs and Others 2022 (5) SA 478 (GP)* at para 1) with a discretion to order the transfer of assets from one party to the other party as the court may deem just having regard to the factors enunciated in the subsections.”

<https://www.derebus.org.za/the-antenuptial-contract-incorporating-or-excluding-accrual-resulting-in-s-73-of-the-divorce-act-being-applicable/>

#### **Lekhuleni, James D. Should general damages form part of the joint estate at the dissolution of marriage in community of property?**

2023 Mar De Rebus p16

“The problem, however, arises in instances where a spouse recovered general damages from a delict committed against that spouse before the conclusion of the marriage. The question is, do those general damages automatically form part of the joint estate, or are they excluded in terms of s 18(a) of the Act? In *Van den Berg v Van den Berg 2003 (6) SA 229 (T)* and *LH v ZH 2022 (1) SA 384 (SCA)*, the courts, particularly the Supreme Court of Appeal (SCA), grappled with whether these damages must be excluded at the dissolution of the marriage in community of property. This article revisits these cases and traverses the best approach for courts to follow in dealing with non-patrimonial damages recovered before the conclusion of the marriage at divorce.”

<https://www.derebus.org.za/should-general-damages-form-part-of-the-joint-estate-at-the-dissolution-of-marriage-in-community-of-property/>

#### **Mpikwane, R. The road to recognition: The status quo of Muslim marriages in South Africa.**

2022 37(4) Insurance and Tax Journal

#### **Phiri, Lulama Kamfer. Forfeiture in divorce.**

2023 Mar De Rebus p9

“It is a requirement in divorce proceedings that the party instituting the divorce action should attribute reasons for the irretrievable breakdown of the marriage. Adultery and infidelity are common grounds of divorce in South Africa. In most instances, the aggrieved party is likely to plead for forfeiture because of the nature of the marriage they entered. The purpose of forfeiture is to ensure that a person does not benefit from a marriage, which they have intentionally broken down.”

<https://www.derebus.org.za/forfeiture-in-divorce/>

### Media Comments

#### **Chabalala, Jeanette. Couple's hopes for second child via surrogacy dashed as court dismisses case [*KB and Another v Minister of Social Development (966/2022) [2023] ZAMPMBHC 12 (20 February 2023)*].**



2023 Mar 1 News24

“A couple has failed to convince the Mpumalanga High Court in Mbombela to declare a section of the Children’s Act unconstitutional. The couple had one child after battling to fall pregnant for years and planned to have a second child via surrogacy. They sought an order allowing a surrogacy agreement based on a genetic link between their 3-year-old child and the one they hoped to have.”

<https://www.news24.com/news24/SouthAfrica/News/couples-hopes-for-second-child-via-surrogacy-dashed-as-court-dismisses-case-20230301>

**Masilela, Brenda. Court orders husband to pay maintenance for stepchild, while unemployed wife bags R25K monthly settlement [GR v RR (38304/21) [2023] ZAGPPHC 111 (21 February 2023)].**

2023 Mar 1 IOL News

“A businessman husband, who is in the middle of divorce proceedings with his unemployed wife, who tried to be freed from an obligation to pay child maintenance for his stepchild, has been ordered to continue paying for six months while the wife locates the biological father and arranges for him to pay. The husband and wife were married in community of property. After years of marriage, the woman instituted divorce proceedings and claimed interim maintenance for herself and her two children in the amount of R50 000 a month.”

<https://www.iol.co.za/news/crime-and-courts/court-orders-husband-to-pay-maintenance-for-stepchild-while-unemployed-wife-bags-r25k-monthly-settlement-dba7d87a-25e9-456e-85ce-28690f7f5327>

[Back to Contents](#)

## PHALA PHALA MATTER

*Media Comment*

**Khoza, Amanda. Phala Phala ConCourt ruling not a setback for Ramaphosa: Presidency.**

2023 Mar 1 Sowetan

“President Cyril Ramaphosa is considering his legal options after the Constitutional Court rejected his bid to challenge the section 89 independent panel report which recommended that he has a case to answer on the Phala Phala farm scandal. “What will happen now is that the legal team will convene and map the way forward and consider the options. It is not necessarily a blow and it’s not a judgment on the substance and merit of the case,” said Presidency spokesperson Vincent Magwenya on Wednesday.”

<https://www.sowetanlive.co.za/news/south-africa/2023-03-01-phala-phala-concourt-ruling-not-a-setback-for-ramaphosa-presidency/>

[Back to Contents](#)

## POST OFFICE

*Draft Bill*

**South African Post Office SOC Ltd Amendment Bill, 2023**

Notice of intention to introduce into the National Assembly and publication of explanatory summary.

“The Amendment Bill aims to expand the mandate of the South African Post Office Soc Ltd provided for in the South African Post Office SOC Ltd Act, 2011 and the Postal Services Act, 1998; repurpose the South African Post Office SOC Ltd infrastructure to provide diversified and expanded services whilst exploiting the infrastructure capacity to extract value and forge partnerships with other stakeholders; revise the governance structure by establishing, appointing including detailing the functions of the Stamp Advisory Committee; and to provide for matters connected therewith.”

GN3090 GG 48149 p3 28Feb2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48149gon3090.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48149gon3090.pdf)

*Draft Bill – Parliamentary Update*

**South African Postbank Limited Amendment Bill [B12B-2022]**

2023 Feb 28 Parliament of South Africa. Announcements, Tablings and Committee Reports p3

“Bills passed by Assembly and transmitted to Council for concurrence

(1) Bill passed by National Assembly and transmitted for concurrence on 28 February 2023: (a) South African Postbank Limited Amendment Bill [B12B-2022] (National Assembly – sec 75).

The Bill has been referred to the Select Committee on Public Enterprises and Communication of the National Council of Provinces.”

<https://www.parliament.gov.za/storage/app/media/Docs/atc/f89c9cbc-0064-416b-831c-412977946d99.pdf>

[Back to Contents](#)



## PUBLIC FINANCE

### Government Gazette

#### Public Finance Management Act 1 of 1999

Statement of the National Government Revenue & Expenditure as at 31 January 2023 issued by the DG NT.  
GenN1638 GG 48153 p3 28Feb2023

[https://www.gov.za/sites/default/files/gcis\\_document/202302/48153gen1638.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48153gen1638.pdf)

[Back to Contents](#)

## ROADS AND ROAD TRANSPORTATION

### Case

#### Van Rooyen v Road Accident Fund (73266/2017) [2023] ZAGPPHC 116 (22 February 2023)

Claim for damages arising from injuries sustained as passenger in motor vehicle accident – Determination of quantum of past and future loss of income – Plaintiff awarded R7 386 810 in respect of past and future loss of earnings.

<http://www.saflii.org/za/cases/ZAGPPHC/2023/116.pdf>

### Government Gazettes

#### Cross-Border Road Transport Act 4 of 1998

Amended Regulations, 2014: Revised fee adjustments, 2023.

GenN1639 GG 48160 p3 1Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48160gen1639.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48160gen1639.pdf)

#### National Land Transport Act 5 of 2009

National Land Transport Strategic Framework 2023-2028. Comments invited within 30 days of publication.

GN3119 GG 48176 p3 3Mar2023

<https://bit.ly/3kKayXy>

### Media Statement

#### Western Cape Education. Western Cape Education on court interdict against Congress of Democratic Taxi Associations' illegal blockade of learner transport. 2 March 2023.

“The Western Cape High Court today granted a final interdict against the Congress of Democratic Taxi Associations (Codeta), preventing them from obstructing, interfering, and stopping the transporting of learners within the Western Cape. This is a victory for the parents and children of Khayelitsha and surrounds, who have been terrorised for weeks, with over 5 100 learners missing school at the height of the blockade. The Court has sent a strong message to the minibus taxi mafia: there is no excuse for violating the constitutional rights of our children, or for putting parents in the terrible position of having to choose between their children’s education and keeping them safely at home.”

<https://www.gov.za/speeches/western-cape-education-court-interdict-against-congress-democratic-taxi-associations%E2%80%99>

[Back to Contents](#)

## SERVITUDES

### Case Discussion

#### Podbielski, Louis. Garden servitude: [Berzack v Huntrex 277 \(Pty\) Ltd and Others \(210/2021\) \[2023\] ZASCA 17 \(21 February 2023\)](#).

In: Latest topical case reports – 2023 Feb 27 Tech4Law

*Utilitas* – Exclusive use of garden in sub-divided property – Element of *utilitas* being present – Features of garden servitude meeting distinctive characteristics of praedial servitude and not personal servitude of *usus* – Common intention of parties and when terms of servitude interpreted purposively, contextually and having regard to background to their preparation and production.

<https://www.tech4law.co.za/news-in-brief/case-law-reports/latest-topical-case-reports-27th-february-2023/>

### Law Firm Article



**Botha, Maryna. Property law update: Issue 04–2023: Garden servitude more than a gardener’s caprice: [Margot Berzack v Huntrex 277 \(210/2021\) \[2023\] ZASCA 17 \(21 February 2023\)](#).**

2023 Mar 2 STBB

“The court in this judgment had to decide whether the garden-type servitude right registered by an owner, when subdividing and selling off part of her property, over that portion of the subdivided property to where her garden extended, was personal or praedial in nature. It was a win for the green fingered servitude holder and her successors in title. The judgment is also a valuable read to learn how courts approach the question of determining the nature of a servitude and hence the consequences that flow therefrom.”

[https://stbb.co.za/wp-content/uploads/2023/03/stbb\\_plu04-2023\\_s2.pdf](https://stbb.co.za/wp-content/uploads/2023/03/stbb_plu04-2023_s2.pdf)

[Back to Contents](#)

## SPORT LAW

### *Draft Bill – Parliamentary Update*

#### **National Sport and Recreation Amendment Bill**

2023 Feb 28 Parliament of South Africa. Announcements, Tablings and Committee Reports p2

“1. Draft Bills submitted in terms of Joint Rule 159

(1) National Sport and Recreation Amendment Bill, submitted by the Minister of Sport, Arts and Culture.

Referred to the Portfolio Committee on Sport, Arts and Culture and the Select Committee on Education and Technology, Sport, Arts and Culture, for information.”

<https://www.parliament.gov.za/storage/app/media/Docs/atc/f89c9cbc-0064-416b-831c-412977946d99.pdf>

[Back to Contents](#)

## STANDARDS

### *Government Gazettes*

#### **Standards Act 8 of 2008**

Drafts for comments:

- National Norm for the development of South African National Standards.
- The design, testing and installation of self-supporting metal cladding.
- Geographic information – Content components and encoding rules for imagery and gridded data – Part 2: Implementation schema.
- Personal protective equipment – Protective footwear.
- Natural Gas vehicles propulsion system fuelled with compressed natural gas (CNG)
- The handling, storage, distribution and maintenance of liquefied petroleum gas in domestic, commercial, and industrial installations – Part 6: The application of liquefied petroleum gases as engine fuels for internal combustion engines.

Amendment of existing standards:

- Glass-reinforced polyester (GRP) laminates.

New standards:

- Construction Works – Part EF3: Resilient thermoplastic and similar flexible floor covering.
- Methanol fuelled appliances.
- Industrial furnaces and associated processing equipment – Safety – Part 2: Combustion and fuel handling systems.
- Glass in building – Basic soda lime silicate glass products – Part 8: Supplied and final cut sizes.
- Acoustics – Laboratory measurement of sound insulation of building elements –
  - Part 1: Application rules for specific products. Acoustics – Laboratory measurement of sound insulation of building elements –
  - Part 5: Requirements for test facilities and equipment.

Amended standards:

- Explosive atmospheres – Part 5: Equipment protection by powder filling "q". Consolidated edition incorporating amendment No. 1.
- Vitrified clay sewer pipes and fittings. Consolidated edition incorporating amendment No. 5.
- Barbed tape security barriers. Consolidated edition incorporating amendment No. 2.
- Solvent-emulsion degreasers. Consolidated edition incorporating amendment No. 4.
- Cleaning chemicals for use in the food industry. Consolidated edition incorporating amendment No. 2.



Withdrawn standards:

- Dehydrated vegetables.
- Quality management systems – Guidelines for the application of ISO 9001:2000 in education.

GenN1647 GG 48162 p64 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gen1647.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gen1647.pdf)

[Back to Contents](#)

## TAXATION

### Government Gazettes

#### Income Tax Act 58 of 1962

- Determination of the daily amount in respect of meals and incidental costs for purposes of Section 8 (1) of the Act. GN3113 GG 48162 p30 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gon3113.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gon3113.pdf)

- Fixing of rate per kilometre in respect of motor vehicles for the purposes of Section 8 (1)(b)(ii) and (iii) of the Act. GN3112 GG 48162 p18 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48162gon3112.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48162gon3112.pdf)

#### Tax Administration Act, 2011

Regulations for purposes of Paragraph (a) of the Definition of “International Tax Standard” in Section 1 of the Act, promulgated under Section 257 of the Act, on the date that the Mandatory Disclosure Rules take effect.

RGN3118 GG 48165 p3 3Mar2023

[https://www.gov.za/sites/default/files/gcis\\_document/202303/48165rg11552gon3118.pdf](https://www.gov.za/sites/default/files/gcis_document/202303/48165rg11552gon3118.pdf)

### Journal Articles

#### Botha, M. Capital gains tax: Section 9HB(2) of the Income Tax Act.

2022 37(3) Insurance and Tax Journal

#### Meyer, E. Accrual and death taxes: Possible double dipping.

2022 37(4) Insurance and Tax Journal

#### Moosa, F. Liability of persons assisting to dissipate a taxpayer’s assets.

2022 37(4) Insurance and Tax Journal

### Law Firm Articles

#### Botha, Louis. Charity starts at home: Proposed amendments pertaining to public benefit organisations in the 2023 Budget.

2023 Mar 2 Cliffe Dekker Hofmeyr

“In our [2023 Special Edition Budget Speech Alert](#) released last week, we discussed several of the proposed amendments affecting individuals, trusts and companies, including businesses in various industries. Some of the amendments that were not discussed relate to public benefit organisations (PBOs) and other tax-exempt entities that are approved under sections 30, 30A, 30B and 30C of the Income Tax Act 58 of 1962 (ITA). We briefly discuss those amendments here, along with an update on the additional requirements that now must be met for the issue of receipts issued under section 18A of the ITA.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Tax/tax-and-exchange-control-alert-2-march-2023-charity-starts-at-home-proposed-amendments-pertaining-to-public-benefit-organisations-in-the-2023-budget.html>

#### Da Silva, Denny and Mukumba, Tsanga. A thorny issue – The [Thistle Trust](#) case creates concerns!

2023 Feb 27 Baker McKenzie

“In this case, the Supreme Court of Appeal held that the conduit pipe principle does not apply to income flowing through layered trust structures to beneficiaries, triggering the need for layered trust structures to be tested for continued tax efficiency without relying on the conduit pipe principle. However, there are a number of technical flaws in the matter, and it is likely that the decision will be appealed to the Constitutional Court of South Africa — the highest court in the country.”

[https://insightplus.bakermckenzie.com/bm/tax/south-africa-a-thorny-issue-the-thistle-trust-case-creates-concerns\\_1](https://insightplus.bakermckenzie.com/bm/tax/south-africa-a-thorny-issue-the-thistle-trust-case-creates-concerns_1)



### **Jooma, Ahmed. Challenges of the Budget Speech to taxpayers and businesses.**

2023 Mar 1 Fluxmans

“The tax changes announced for passage into law this year are short on detail. We will have to wait for the publication of the amending Bills. The issues to be addressed are specific tax avoidance schemes and amendments of a technical and clarification nature. A selection of tax issues that are to be addressed are dealt with below, from the perspective of challenges that they could pose to taxpayers, their businesses or any intended transaction.”

<https://www.fluxmans.com/article/challenges-budget-speech-taxpayers-and-businesses-ahmed-jooma>

### **Subban, Virusha *et al.* Budget Speech highlights 2023.**

2023 Feb 23 Baker McKenzie

“Members of the Johannesburg tax team... analyze the South African National Budget Speech, delivered on Wednesday 22 February 2023 by Finance Minister Enoch Godongwana. The overview includes developments regarding corporate tax, international tax, VAT, carbon tax, customs and excise, other indirect taxes and tax administration.”

<https://insightplus.bakermckenzie.com/bm/tax/south-africa-budget-speech-highlights-2023>

[Back to Contents](#)

## TRUSTS

*Journal Article*

### **Emmett, R. *Living Hands (Pty) Ltd v Old Mutual Unit Trust Managers: Was CISCA properly understood, interpreted, and applied?***

2022 37(3) Insurance and Tax Journal

*Law Firm Article*

### **Van Twisk, Joané. Testamentary trusts: The key to safeguarding minor children's inheritances.**

2023 Mar 1 MacRobert Attorneys

“Not everyone realises that a cash bequest to, or the inheritance of a minor child will not be paid to him or her, or even to their legal guardian. This is because section 43(2)(a) of the Administration of Estates Act 66 of 1965 provides that money to which a minor beneficiary is entitled by virtue of a valid will, or in terms of the rules of intestate succession, may not be paid to the minor’s guardian. These funds must instead, as a general rule, be paid over to the Guardian’s Fund.”

<https://www.macrobot.co.za/insights/posts/testamentary-trusts-key-to-safeguarding-minor-childrens-inheritances>

[Back to Contents](#)

## WATER

*Government Gazettes*

### **Department of Water and Sanitation**

Review of KOBWA Treaty of 1992. Comments invited.

GN3096 GG 48154 p3 27Feb2023

<https://bit.ly/3mqjBH2>

### **Water Services Act 108 of 1997**

Proposed extension of the boundary of Umgeni Water to include Mhlathuze Water to form a single Water Board in KwaZulu-Natal and the transfer of staff, assets and liabilities to Umgeni Water. Period for public comments extended until 15 March 2023.

GN3088 GG 48144 p3 27Feb2023

[https://www.gov.za/sites/default/files/gcis\\_document/202302/48144-gon3088.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48144-gon3088.pdf)

[Back to Contents](#)





## Legal Abbreviations

Lexinfo

**Legal Abbreviations: A list of abbreviations referred to in legal resources**

View [here](#).



**Summaries of Constitutional Court and Supreme Court of Appeal Judgments: 2022**

View [here](#).

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