



JUTA'S ADVANCE NOTIFICATION SERVICE

AUGUST 2012

Dear South African Law Reports and Criminal Law Reports subscriber

Herewith the cases of interest in the August reports. Also included below are the table of cases and flynotes.

JUDGEMENTS OF INTEREST IN THE AUGUST EDITIONS OF THE SALR AND THE SACR

SOUTH AFRICAN LAW REPORTS

Writ of execution and the processes that follow

The effect of the Constitutional Court judgments on writs of execution against immovable property are discussed in *Sani and Another v FirstRand Bank Ltd and Others* 2012 (4) SA 370 (WCC). The court found that the invalidity of s 66(1)(a) of the Magistrates' Courts Act 32 of 1944 was insufficient to undo everything that followed upon a writ of execution that was issued under it by a clerk of the court before it was declared unconstitutional. Where a sale in execution and subsequent transfer of the property to the purchaser had taken place, an application for the rescission of the default judgment should be brought in order for the debtor to benefit from the declaration of unconstitutionality.

Can a trade union sue for defamation?

While political parties may invariably be shaped and defined by personalities and their policies, it is also so that they invariably rely on their reputation for the support that they wish to garner from voters and prospective voters. If a defamatory statement about the way in which it conducts its affairs would be calculated to cause it financial prejudice, it should not be barred from bringing an action for defamation. *South African National Defence Union v Minister of Defence and Others* 2012 (4) SA 382 (GNP)

Hospital ignores request for information

In *Hlaba v MEC For Health, Eastern Cape, and Others* 2012 (4) SA 401 (ECM) the applicant and his attorneys had made a number of requests over a period of 14 months to a hospital to complete a claim form, but received no response. The court found that the public body had entirely failed to engage with applicant's requests for information. Since the applicant was in effect denied access to an internal appeal procedure, he was entitled to directly approach the court for a mandamus.

SOUTH AFRICAN CRIMINAL LAW REPORTS

The Child Justice Act and young offenders

Three relatively young offenders were each sentenced to three years' imprisonment, despite a probation officer having recommended that they be sentenced to terms of correctional supervision. On review it appeared that no regard was had to the provisions of the Child Justice Act 75 of 2008. The relevant provisions were peremptory, and such failure constituted a gross irregularity. The sentences were altered to correctional supervision. *S v RS and Others* 2012 (2) SACR 160 (WCC)

Together in crime, but not together in confession

A confession made by an accused which refers to his co-accused is per se inadmissible against his co-accused, and, if it falls short of a confession, will only be admissible under common law

against his co-accused if uttered or written in furtherance of their common purpose. In the present case, where the statement was made after the accused's arrest, the statement could not have been made in furtherance of a common purpose. *S v Mangena and Another* 2012 (2) SACR 170 (GSJ)

Appeal court settles statutory sentencing issue

The Supreme Court of Appeal has settled the issue of whether courts can sentence accuseds under the Sexual Offences Act, where no penalty has been prescribed for the particular offence. The provisions of the Act are couched in a language that proclaims unequivocally that their purpose is to render criminal conduct described therein. The Act is equally unequivocal in its contemplation that on conviction courts will impose appropriate sentence on the accused. Despite the absence of a penalty clause, courts are entitled to convict and impose punishment. *Director of Public Prosecutions, Western Cape v Prins and Others* 2012 (2) SACR 183 (SCA)

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Kind Regards

The Juta Law Reports Team

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- Law Society of the Northern Provinces v Le Roux 2012 (4) SA 500 (GNP)
- National Lotteries Board and Others v South African Education and Environment Project 2012 (4) SA 504 (SCA)
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- Lameck and Another v President of the Republic of Namibia and Others 2012 (1) NR 255 (HC)
- Overberg Fishing (Pty) Ltd v Docampo 2012 (1) NR 282 (LC)
- Vermeulen and Another v Vermeulen and Others 2012 (1) NR 286 (HC)
- Labour Supply Chain Namibia (Pty) Ltd v Hambata 2012 (1) NR 313 (LC)
- Deputy Sheriff of Swakopmund v Marina Toyota CC and Another 2012 (1) NR 321 (HC)
- S v Lwishi 2012 (1) NR 325 (HC)
- Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd and Others 2012 (1) NR 331 (HC)
- Wiese t/a Support.Com v Pastec Distribution & Training CC 2012 (1) NR 344 (HC)
- Phincon Enterprises (Pty) Ltd v Dos Santos 2012 (1) NR 352 (HC)
- Berker v Minister of Home Affairs and Immigration and Others 2012 (1) NR 354 (HC)
- Van Wyk v Four Wheel Drive Megastore CC and Another 2012 (1) NR 358 (HC)
- S v Shitana and Another 2012 (1) NR 363 (HC)
- Marot and Others v Cotterell 2012 (1) NR 365 (HC)
- Stier and Another v Henke 2012 (1) NR 370 (SC)
- Matheus v Namwater Corporation Ltd and Another 2012 (1) NR 382 (HC)
- Erf Sixty-six, Vogelstrand (Pty) Ltd v Council of the Municipality of Swakopmund and Others 2012 (1) NR 393 (HC)

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S v MASAKE AND OTHERS (SC)

STRYDOM AJA, MTAMBANENGWE AJA and LANGA AJA
2010 OCTOBER 25; 2011 AUGUST 22

Appeal—In what cases—Trial Court granting leave to appeal—Judgment for which leave granted not final—Piecemeal approach in lengthy trials undesirable—Matter struck off the roll.

DAMARALAND BUILDERS CC v UGAB TERRACE LODGE CC (HC)

MULLER J
2010 JUNE 29–JULY 2; 2011 JANUARY 31–FEBRUARY 8

Contract—Interpretation of contracts—General principles applicable to interpretation of contracts set out and discussed.

ROAD FUND ADMINISTRATION v GOVERNMENT OF THE REPUBLIC OF NAMIBIA AND OTHERS (HC)

MILLER AJ
2011 JULY 8, 12

Administrative law—Parastatals—Decision making powers of parastatals—Parastatals created with independent boards—Applicant parastatal suspending chief executive officer and other employees—Minister interfering with decision—Minister not empowered to interfere with decision making of parastatal.

C v C; L v L (HC)

HEATHCOTE AJ
2011 JUNE 3, 10

Husband and wife—Proprietary consequences—Forfeiture of benefits in marriages in community of property—Court laying down general principles to be applied where one spouse seeks

forfeiture of benefits—Court in present cases not granting forfeiture orders—Court not satisfied that plaintiffs proving entitlement to forfeiture order—Evidence adduced not sufficient to enable court to grant such order.

DE VILLIERS v AXIZ NAMIBIA (PTY) LTD (SC)
SHIVUTE CJ, STRYDOM AJA AND MTAMBANENGWE AJA
2010 MARCH 1; 2011 JUNE 9

Practice—Judgments and orders—Rescission of judgment erroneously granted, in terms of rule 44(1) of High Court rules—Court should rescind judgment erroneously granted in absence of party without further enquiry—Court need not only have regard to record but also to affidavit—Court a quo misdirecting itself in refusing rescission—Judgment granted in appellant's absence—Appellant not informed of trial date nor of legal practitioner's withdrawal in terms of rule 16(4)—Appeal upheld.

S v DE ALMEIDA (HC)
VAN NIEKERK J and SILUNGWE AJ
2007 MARCH; 2010 NOVEMBER 19

Appeal—Record—Reconstruction of record—General guidelines for reconstruction of records set out and discussed.

NAMIBIAN COMPETITION COMMISSION AND ANOTHER v WAL-MART STORES INCORPORATED (SC)
SHIVUTE CJ, MARITZ JA and O'REGAN AJA
2011 OCTOBER 18; NOVEMBER 4

Statute—Interpretation—Section 3(4) of Foreign Investments Act 27 of 1990—Respondent, a foreign retail company, seeking merger with Namibian companies—Minister issuing notice requiring his permission—Minister relying on s 3(4)—When interpreting section, regard should be had to long title of Act—Purpose of Act to promote foreign investments—Act providing that Minister must give permission for provision of services by foreign company—Retail business not amounting to rendering of services—In issuing notice, Minister acting ultra vires his powers.

Administrative law—Exhaustion of remedies before approaching court—Respondent, foreign retail company, seeking merger with Namibian companies—Competition Commission laying down certain conditions—Respondent approaching Minister for review of conditions in terms of s 49 of Competition Act 2 of 2003—Respondent subsequently approaching court on urgent basis—On appeal, court holding that when deciding whether other remedies should first be exhausted, regard must be had to circumstances of particular case—Competition Act stipulating fairly short time periods within which review to take place—Minister and Commission in better position at this stage to decide on review—Respondent still at liberty to approach court if not satisfied with Minister's decision—Court setting aside order of court a quo which had declared conditions invalid—Review in terms of s 49 must run its course.

METZGER v PURITY MANGANESE (PTY) LTD (HC)
SMUTS J
2011 NOVEMBER 16–17; DECEMBER 13

Practice—*Domicilium citandi et executandi*—Delivery of a notice to a party's chosen domicilium, accepted in our law as proper delivery.

S v MALUMO AND 111 OTHERS IN RE: KAMWANGA (HC)
HOFF J
2011 JULY 20–26; SEPTEMBER 19–26; OCTOBER 3

Criminal procedure—Trial—Mental state of accused—Report in terms of s 79 of the Criminal Procedure Act 51 of 1977—Enquiry requires report from psychiatrist—Report from psychologist not sufficient.

FOUCHE v MINISTER OF FINANCE (RECEIVER OF REVENUE) (SC)

SCHICKERLING AJ, KASUTO and KARUAIHE–MARTINAS ASSESSORS
2011 OCTOBER 18

Revenue—Income tax—General principle that income earned outside Namibia not taxable in Namibia—Exception created by s 15(1)(f) of Income Tax Act 24 of 1981—Income earned by person ordinarily resident in Namibia during ‘temporary absence’ from Namibia, taxable—Appellant ordinarily resident in Namibia but spending 60% of his time outside Namibia—Appellant not temporarily absent from Namibia in terms of s 15(1)(f)—Deeming provision thus not applicable to appellant.

Revenue—Income tax—Tax assessment—Appellant objecting to tax assessment—Objection rejected without respondent furnishing reasons—Failure by respondent to furnish reasons, contrary to art 18 of Namibian Constitution.

NAMIBIA SEAMAN AND ALLIED WORKERS UNION v TUNACOR GROUP LTD (LC)

HOFF J
2011 AUGUST 22; SEPTEMBER 19

Costs—In labour cases—Section 118 of Labour Act 11 of 2007—Section providing that costs can be granted against party acting frivolously or vexatiously—Applicant bringing wrong respondent before court—Costs order granted against applicant.

S v HUSEB (HC)

SMUTS J and MILLER AJ
2011 OCTOBER 3, 21

Constitutional law—Declaration that law unconstitutional—Common-law rule that appeal suspending operation of judgment not applicable—Appeal against declaration of constitutional invalidity of legislation would not breathe new life into law in absence of competent court tempering effect of order of constitutional invalidity as contemplated by art 25(1)(a).

BRONKHORST v DE VILLIERS; VAN ZYL v DE VILLIERS (HC)

CORBETT AJ
2011 SEPTEMBER 27; OCTOBER 24

Practice—Pleading—What constitutes—Plaintiff serving notice of bar on defendant—Defendant subsequently filing notice of exception—Plaintiff applying for default judgment—Court holding that notice of exception a pleading—Filing of notice of exception uplifiting bar—Application for default judgment dismissed with costs.

EX PARTE PROSECUTOR-GENERAL IN RE: APPLICATION FOR A PRESERVATION ORDER IN TERMS OF S 51 OF THE PREVENTION OF ORGANISED CRIME ACT 29 OF 2004 (HC)

MILLER AJ
2011 NOVEMBER 17, 23, 28; DECEMBER 2

Criminal procedure—Applications in terms of s 51 of Prevention of Organised Crime Act 29 of 2004—Such applications are civil proceedings—Only admitted legal practitioners may appear on behalf of Prosecutor-General—Staff member from Prosecutor-General’s office, though legally qualified, but not admitted legal practitioner, not entitled to appear in such proceedings.

KATJIVIKUA v THE MAGISTRATE: MAGISTERIAL DISTRICT OF GOBABIS AND ANOTHER (HC)

CORBETT AJ
2011 OCTOBER 31; NOVEMBER 4

Review—From magistrate’s court—In what cases—Applicant seeking to review and set aside interim order from magistrate’s court—Court finding gross irregularities in lower court proceedings—Court deriving jurisdiction to review and set aside interim order, from common

law and s 20 of High Court Act 16 of 1990—Court setting aside interim order on ground of gross irregularities.

SHETU TRADING CC v CHAIR, TENDER BOARD OF NAMIBIA AND OTHERS (SC)

LANGA AJA and O'REGAN AJA
2011 JULY 7; NOVEMBER 4

Appeal—In what cases—Court a quo dismissing application for urgent interim relief due to lack of urgency—Dismissal of applications for lack of urgency not appealable—Such dismissal not 'judgment or order' contemplated by s 18 of High Court Act 16 of 1990—It would advance cause of clarity if High Court judges struck applications off the roll for lack of urgency rather than dismissing such applications.

MBUTU v ESTERHUIZEN NO AND OTHERS (HC)

SMUTS J
2011 OCTOBER 17; NOVEMBER 25

Deputy sheriff—Tariff of fees—Plaintiff purchasing property at auction pursuant to sale in execution—Plaintiff paying deputy sheriff's fees according to item 5(c)(xiv) of tariff—Property not transferred to plaintiff—Property sold to another person at a subsequent auction—Deputy sheriff entitled to retain fees paid by plaintiff—Item 5(c)(xiv) merely determining amount of fees—Regard must be had to provisions of rule 46 in order to determine whether deputy sheriff entitled to fees—Rule providing that deputy sheriff entitled to fees for attendance—Fact that transfer did not take place, does not alter position.

ERINDI RANCH (PTY) LTD v GOVERNMENT OF THE REPUBLIC OF NAMIBIA AND OTHERS (HC)

MILLER AJ
2011 OCTOBER 28; NOVEMBER 11

Administrative law—Applicant applying for permit to import elephants—Second respondent refusing permit because of moratorium on importation of certain species—Court declaring moratorium ultra vires—Applicant seeking order that second respondent be ordered to issue permit—Court setting out principles applicable in such cases: (a) court had discretion once it set aside administrative decision to take decision itself, instead of referring matter back; (b) discretion must be exercised judicially; (c) generally, matter would be referred back if there was no reason for not doing so; (d) court would consider what was fair to both sides—In present case, court not prepared to usurp functions of second respondent—Court accordingly declining to compel second respondent to issue permit.

HUBNER v KRIEGER (HC)

DAMASEB JP
2011 NOVEMBER 2, 11

Practice—Judicial case management—Important that parties should cooperate with court—Defendant failing to make herself available for pre-trial conference—Court granting costs order against defendant on the scale as between attorney and own client.

FIRST NATIONAL BANK NAMIBIA LTD v VAN DER WESTHUIZEN AND ANOTHER (LC)

MILLER AJ
2011 NOVEMBER 9, 15

Appeal—To Labour Court—Applicant allowing appeal to lapse—Court not prepared to reinstate appeal, since applicant had consciously allowed lapse—In any event, notice of appeal vague and a nullity—Application accordingly dismissed.

NAKANYALA v INSPECTOR-GENERAL NAMIBIA AND OTHERS (HC)

SMUTS J
2011 JUNE 24; JULY 5

Administrative law—Exhaustion of internal remedies—Applicant, senior police officer informed of transfer to another division—Applicant ordered immediately to vacate office pending investigation into alleged misconduct—Applicant not given opportunity to make representations—Police Act not making provision for right of appeal to Minister in cases of transfer or suspension—Such right of appeal only in context of conviction and punishment after disciplinary investigation—Applicant in effect suspended from duty—No internal remedies available to applicant at this stage—Submission by first respondent that applicant must exhaust internal remedies unsuccessful.

Interdict—Interim interdict pending review—Prerequisites well established: prima facie right; apprehension of harm; balance of convenience favouring applicant; no other remedy—Applicant, senior police officer, ordered immediately to vacate office pending investigation into alleged misconduct—Applicant not given any opportunity to make representations—First respondent not complying with audi rule—Applicant establishing prima facie right to be heard—First respondent in effect suspending applicant—Such action could stigmatise applicant—Applicant having no other remedy—Court satisfied that applicant establishing prerequisites for interim interdict.

SHUKIFENI v TOW-IN-SPECIALIST CC (HC)

UEITELE AJ

2010 OCTOBER 26–29; 2011 JANUARY 25

Vindication—Requirements of—Plaintiff must prove ownership of thing—Plaintiff must also prove that property in possession of defendant.

Contract—Caveat subscriber—Court must be satisfied that terms of written agreement brought to plaintiff's attention—Where evidence does not establish this fact, there can be no consent—Agreement accordingly not entered into.

PURITY MANGANESE (PTY) LTD v KATZAO AND OTHERS (LC)

DAMASEB JP

2010 JUNE 20; JULY 11

Labour law—Resolution of disputes—Conciliation and arbitration in terms of Ch 8 of Labour Act 11 of 2007—Act making clear distinction between conciliation and arbitration—Conciliation does not have force of law—Conciliation is administrative function and not subject to appeal or review—Arbitration, on the other hand, is tribunal with trappings of judicial forum—Arbitrator's award can be legally enforced—Such award is subject to appeal and review.

S v MALUMO AND 111 OTHERS (2) (HC)

HOFF J

2011 NOVEMBER 23; 2012 JANUARY 23

Criminal procedure—Bail—Record of bail proceedings—Self-incrimination—Fair trial rights applying to pre-trial proceedings, including bail proceedings—Objection to record upheld where accused not made aware of privilege against self-incrimination—Namibian Constitution, art 12(1)(a).

LAMECK AND ANOTHER v PRESIDENT OF THE REPUBLIC OF NAMIBIA AND OTHERS (HC)

HOFF J, SMUTS J and MILLER AJ

2011 NOVEMBER 30; 2012 FEBRUARY 20

Constitutional law—Appointment of Minister of Justice as Attorney-General—Appointment of Attorney-General political appointment—Appointment different from that of Prosecutor-General—Nothing in Constitution which indicated that it is impermissible for Attorney-General and Minister of Justice to be the same person.

Constitutional law—Challenge to provisions of Prevention of Organised Crime Act 29 of 2004—Challenge relating to money laundering offences and asset forfeiture—Asset forfeiture not punishment but deterrent—Purpose of asset forfeiture to prevent persons from deriving benefit from ill-gotten gains—Reference in Act to 'before or after the commencement of this

Act' not violating art 12(3) which prohibits retrospective operation of criminal offences—Article 12(3) related to criminal offences—Asset forfeiture was civil proceeding.

Constitutional law—Principle of legality—Challenges to definition of 'corruptly' and 'gratification' in Anti-Corruption Act 8 of 2003—Court finding definition of 'corruptly' too wide—Definition struck down as unconstitutional—However, Court not satisfied that 'gratification' too widely defined—Definition of 'gratification' not struck down.

OVERBERG FISHING (PTY) LTD v DOCAMPO (LC)

PARKER J

2011 APRIL 8; JULY 5

Labour Law—Appeal and cross-appeal—Appellant and cross-appellant appealing against decision of district labour court, Walvis Bay, made in terms of the previous Labour Act (Act No 6 of 1992)—Court finding that the district labour court misdirected itself when it failed to determine nature of employment contract between appellant and cross-appellant—Court concluding that such determination was critical and crucial in deciding whether there was even been a dismissal, and if there was, whether the dismissal was unfair—Court finding that the employment relationship between the appellant and cross-appellant was based on fixed-term contract of employment which terminated by effluxion of time and it was terminated fairly—Court finding further that the misdirection was so serious that it amounted to failure of justice in the proceedings in the district labour court—Consequently, Court upholding appeal and dismissing cross-appeal—Court holding that in the circumstances, the Court was entitled to interfere with the district labour court's finding of unfair dismissal and the sanction imposed.

VERMEULEN AND ANOTHER v VERMEULEN AND OTHERS (HC)

MULLER J

2011 MAY 31; JUNE 16; 2012 FEBRUARY 10

Will—Validity of—Testamentary capacity of testator—Party disputing validity of will bearing onus to prove that testator lacked testamentary capacity at time of execution of will—Deceased in present case diagnosed with Alzheimer's disease in November 2003—Disputed will executed August 2000—Court not satisfied that plaintiffs proved that deceased lacking mental capacity when will executed—Action disputing validity of will dismissed with costs.

LABOUR SUPPLY CHAIN NAMIBIA (PTY) LTD v HAMBATA (LC)

SMUTS J

2012 JANUARY 27; FEBRUARY 3

Labour law—Arbitration—Respondent signing 'addendum' to employment agreement providing for private arbitration—Appellant seeking to set aside arbitrator's award on ground that arbitrator lacked jurisdiction—Court holding that provision for private arbitration in Labour Act only in regard to actual dispute—Requiring aspirant employees to agree to private arbitration undermining purpose of Act.

DEPUTY SHERIFF OF SWAKOPMUND v MARINA TOYOTA CC AND ANOTHER (HC)

PARKER J

2011 OCTOBER 28; NOVEMBER 4

Estoppel—What constitutes—Estoppel is rule of evidence which precludes X denying the truth of some statement previously made by him or from denying the existence of facts which X has by words or conduct led others to believe in.

S v LWISHI (HC)

LIEBENBERG J and TOMMASI J

2011 NOVEMBER 11, 18

Criminal procedure—Sentence—Minimum sentences in stock theft cases—Effect of striking down of minimum sentence provisions in Stock Theft Act 12 of 1990—Courts no longer enjoined to enquire into substantial and compelling circumstances—However, courts must

impose custodial sentences, including suspended sentences—Act not making provision for imposition of fines.

MWEB NAMIBIA (PTY) LTD v TELECOM NAMIBIA LTD AND OTHERS (HC)

DAMASEB JP, MAINGA J AND MULLER J
2007 MAY 28; JULY 31

Practice—Applications and motions—Urgency—Good cause to be shown why applicant cannot be afforded substantial redress at the hearing in due course—Clear case of urgency to be made out in founding papers—Direct and substantial interest in relief prayed for to be shown.

WIESE t/a SUPPORT.COM v PASTEC DISTRIBUTION & TRAINING CC (HC)

MILLER AJ
2011 NOVEMBER 14–15, 22; 2012 JANUARY 23, 26; FEBRUARY 24

Trade and competition—Restraint of trade—Respondent seeking to enforce restraint of trade clause ad infinitum—Court holding that such enforcement contrary to public policy.

PHINCON ENTERPRISES (PTY) LTD v DOS SANTOS (HC)

MILLER AJ
2012 FEBRUARY 6, 7

Practice—Delivery of notice in terms of rule 28(1)—By email—This does not constitute delivery in terms of the rules.

BERKER v MINISTER OF HOME AFFAIRS AND IMMIGRATION AND OTHERS (HC)

SMUTS J
2012 FEBRUARY 29; MARCH 5

Costs—Attorney and client costs—Immigration official confiscating applicant's Namibian passport—Permanent secretary acknowledging in answering affidavit that official acted unlawfully—Court granting attorney and client costs as mark of its disapproval of such conduct.

VAN WYK v FOUR WHEEL DRIVE MEGASTORE CC AND ANOTHER (HC)

MILLER AJ
2011 OCTOBER 20; 2012 FEBRUARY 20; MARCH 20

Close corporation—Winding up—In what cases—Breakdown of trust and confidence among members has been held to justify winding up—However, Court still has discretion whether or not to grant winding up order, despite such breakdown.

S v SHITANA AND ANOTHER (HC)

LIEBENBERG J and TOMMASI J
2012 MARCH 16

Criminal law—Statutory offences—Contravention of s 71(1)(n) of Liquor Act 6 of 1998—State must prove that liquor contained 3% or more volume of alcohol—Failure to do so will result in acquittal.

MAROT AND OTHERS v COTTERELL (HC)

MILLER AJ
2012 MARCH 09, 23

Sale of land—The agreement—Foreign purchasers purchasing share in farm from defendant—No waiver sought from Minister—Court upholding special plea that agreement void ab initio for non-compliance with s 58 of the Agricultural Land Reform Act 6 of 1995.

STIER AND ANOTHER v HENKE (SC)

SHIVUTE CJ, STRYDOM AJA and MTAMBANENGWE AJA

2011 OCTOBER 3; 2012 APRIL 3

Contract—Tacit contract—Court relying on actions of parties to determine what was in their minds—Appellants and respondent entering into written partnership agreement—Agreement not signed—Appellants claiming that agreement had come into existence—Respondent denying existence of agreement—Court holding that fact that respondent not objecting to agreement signifying consent—Subsequent actions of parties indicating existence of agreement—Court satisfied that agreement had come into existence.

Practice—Absolution from instance at close of plaintiff's case—Court applying trite test—Whether reasonable Court satisfied that plaintiffs establishing prima facie case—Court on appeal in present case satisfied that appellants establishing prima facie case requiring answer from respondent—Court upholding appeal and remitting matter to trial Court.

MATHEUS v NAMWATER CORPORATION LTD AND ANOTHER (HC)

HOFF J

2010 OCTOBER 14; 2012 MARCH 30

Motor collision—Motorists on national roads—Motorist wishing to execute turn to the right should first ascertain whether safe to do so—Such motorist should give due warning of intention to turn right—Motorist required to look in rearview mirror to establish whereabouts of vehicles travelling behind him.

ERF SIXTY-SIX, VOGELSTRAND (PTY) LTD v COUNCIL OF THE MUNICIPALITY OF SWAKOPMUND AND OTHERS (HC)

DAMASEB JP

2012 FEBRUARY 27; MARCH 13

Practice—Applications and motions—Application for costs in terms of rule 42(1)(c)—Applicant launching review application, subsequently withdrawn—Applicant not warning respondents of intention to withdraw application—Respondents incurring unnecessary costs—Fairness demanding that in this case applicant should bear second respondent's costs on party and party scale.