OVERVIEW OF THE JUDGMENTS OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA SINCE 2006

**Arranged chronologically according to when the judgment was handed down
*Last updated: June 2011

259	*African Christian Democratic Party P v The Electoral Commission and Others* *CCT 10/06* *Handed down:* *24 February 2006*	Urgent application for direct access alleging an infringement of section 19 of the Constitution. The majority held that the ACDP was permitted to contest the local government elections in the Cape Metropolitan on 1 March 2006. This, after the Electoral Court upheld the decision of the IEC to not allow the ACDP to contest the elections because they had not complied with section 14 and section 17 of the Local Government: Municipal Electoral Act. The majority concluded that the Act must be read in conformity with the overall framework of elections and constitutional rights and values relevant to elections. The minority held that the applicant had not complied with the Act and therefore confirmed the order of the Electoral Court. Majority: O'Regan J (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Ngcobo J, Nkabinde J, Sachs J, Van der Westhuizen J, Yacoob J concurring). Dissent: Skweyiya J.	2006 (3) SA 305 (CC); 2006 (5) BCLR 579 (CC)
260	*Matatiele Municipality and Others v The President of the Republic of South Africa and Others* *CCT 73/05* *Handed down:* *27 February 2006*	Urgent application for direct access challenging the constitutional validity of the Constitutional Twelfth Amendment and the Cross-Boundary Municipalities Laws and Related Matters Act which, according to the applicants unlawfully demarcated Matatiele from KwaZulu-Natal to the Eastern Cape. The majority ordered that the respective provincial legislatures be joined and appear before Court to give evidence with regard to public participation in the procedure of enacting the Twelfth Amendment. Sections 74(8) and 118(1)(a) were to be specifically addressed at a hearing on 30 March 2006. The judgment does not pronounce finally on the constitutionality of the Twelfth Amendment and the Repeal Act. Majority: Ngcobo J (Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J and Sachs J concurring). Separate Concurrences: O'Regan (Langa DCJ and Van der Westhuizen J concurring), Sachs J. Partial Dissent: Skweyiya and Yacoob JJ.	2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC)
261	*Ex Parte: Minister of Social Development and Others* *CCT14/06* *Handed down:* *9 March 2006*	Urgent application for direct access dismissed. In 2004 the Court invalidated a presidential proclamation and suspended the order for eighteen months. Applicants requested a further suspension of twenty five days. The majority held that the period of suspension had already expired and the Court could not revive the invalid proclamation. In a separate concurrence Ngcobo J stated that in considering an application to extend the period of suspension of an	2006 (4) SA 309 (CC); 2006 (5) BCLR 604 (CC)

		order of validity, the Court must balance all of the relevant factors, bearing in mind the goal of making an order that is just and equitable. Majority: Van der Westhuizen J (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J, O'Regan J, Sachs J, Skweyiya J , and Yacoob J concurring). Separate Concurrence: Ngcobo J (Moseneke DCJ, Madala J, Mokgoro J and Nkabinde J concurring).	
262	*Van der Merwe v Road Accident Fund and Another (The Women's Legal Centre Trust as amicus curiae)* *CCT 48/05* *Handed down:* *30 March 2006*	The Court confirmed and varied a High Court order invalidating provisions of the Matrimonial Property Act. The Court found section 18(b) to be unconstitutional insofar as it precludes spouses from claiming patrimonial damages from each other in delict. It amended the Act to allow for such damages to become the separate property of the injured spouse. Majority: Moseneke DCJ (Langa CJ, Mokgoro J, Ngcobo J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Partial Dissent: Yacoob J.	2006 (4) SA 230 (CC); 2006 (6) BCLR 682 (CC)
263	*Campus Law Clinic, University of KwaZulu-Natal v Standard Bank of South Africa Ltd and Another* *CCT 01/06* *Handed down:* *31 March 2006*	Applicants brought an application in the public interest for leave to appeal against a judgment of the Supreme Court of Appeal, a matter to which they were not party. A unanimous Court dismissed the application and held that although the applicants had the requisite standing, new constitutional issues had been raised and the interests of justice require that the matter be dealt with comprehensively. It was therefore not appropriate to grant the application. Judgment: O'Regan J (unanimous).	2006 (6) SA 103 (CC); 2006 (6) BCLR 669 (CC)
264	*Phumelela Gaming and Leisure Ltd v Gründlingh and Others* *CCT 31/05* *Handed down:* *18 May 2006*	A person who wishes to wager money on the outcome of a horserace may choose to place a bet with a bookmaker or on a totalisator. The two systems are different in that the bookmaker quotes odds in advance while the totalisator does not fix odds in advance but pays out "dividends" in proportion to the amount of money wagered. This case sought to involve a delictual claim by a totalisator against bookmakers on the ground that the use of the totalisator's dividends amounted to unlawful competition under the common law of delict. The Court agreed with the Supreme Court of Appeal in not considering it offensive for bookmakers to make use of totalisator dividends in calculating the payout on exotic bets. It was held that there was no need to develop the test of unlawful competition in terms of section 39(2) of the Constitution to protect the contended for intellectual property rights of the totalisator under section 25 of the Constitution. Judgment: Langa CJ (unanimous).	2006 (8) BCLR 883 (CC)
265	*Du Toit v Seria* *CCT 18/06* *Handed down:*	An application for leave to appeal arising from a Muslim marriage where the marriage had been terminated according to Muslim law. The parties had not concluded a civil marriage under South African	2006 (8) BCLR 869 (CC)

	23 May 2006	law. The applicant argued that a common law universal partnership had existed between the parties during the subsistence of the Muslim marriage and therefore that she was entitled to half of the property owned by her former husband. The application for leave to appeal was dismissed on the grounds that the constitutional issues concerning the recognition of Muslim marriages were not pleaded in the High Court and that the issue of the consequences of the termination of a Muslim marriage was therefore also not raised in the pleadings, and because of a lengthy delay in filing in this Court. Judgment of the Court.	
266	*South African Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others* *CCT 57/05* *Handed down:* *2 June 2006*	An application for confirmation of an order of invalidity made by the High Court in respect of the definition of "shebeen" in the Gauteng Liquor Act 2 of 2003. It was argued that the definition served to limit the amount of beer a shebeen could sell and was vague and irrational. The Court held that the definition was vague, invalidated and severed the second part of the definition and suspended the order for six months. In the interim, the definition as amended by the Court would apply and shebeen permits issued should be amended consistently with the new definition. Judgment: O'Regan J (unanimous).	2006 (8) BCLR 901 (CC)
267	*Magajane v Chairperson, North West Gambling Board and Others* *CCT 49/05* *Handed down:* *8 June 2006*	An application for leave to appeal challenging sections of the North West Gambling Board Act 2 of 2001, to the extent that it authorised warrantless searches of premises that were not licensed under the Act. The Court held that section 65 was unconstitutional for infringing the right to privacy because the objectives of such searches could have been achieved by requiring warrants, which would have been less invasive of the right to privacy. It was therefore not necessary to determine the other issues raised by the applicant, which were whether other provisions of the Act resulted in a violation of the right to remain silent and exceeded the constitutional competence of the provincial legislature respectively. Leave to appeal was granted and the appeal was upheld. Judgment: Van der Westhuizen J (unanimous).	2006 (5) SA 250 (CC); 2006 (10) BCLR 1133 (CC)
268	*AAA Investments (Pty) Ltd v Micro Finance Regulatory Council and Another* *CCT 51/05* *Handed down:* *28 July 2006*	Application for leave to appeal concerning the status, legality and effect of certain rules that regulate micro-lenders. The applicant challenged the rules on the basis that the Council offended the rule of law and the principle of legality in making them and that the rules themselves infringed the privacy right contained in the Constitution. The majority held that public power may be exercised by a private body. When such power is exercised, it is always subject to the rule of law and the doctrine of legality. In determining whether the authority to exercise public power by a private body is properly delegated, regard must be had to what powers would be necessary for the private body to perform its functions properly.	2007 (1) SA 343 (CC); 2006 (11) BCLR 1255 (CC)

		Majority: Yacoob J (Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J, Sachs J, Skweyiya J, Van der Westhuizen J concurring). Separate Concurrence: O'Regan J (Ngcobo J concurring) Dissent: Langa CJ.	
269	*Dikoko v Mokhatla* *CCT 62/05* *Handed down:* *3 August 2006*	An application for leave to appeal concerning the ambit of the immunity from civil liability (for defamation in this case) given to municipal councillors in respect of what they say when carrying out their functions as municipal councilors granted under sections 117 and 161 of the Constitution. The majority held that defamatory statements made outside of the business of the Municipal Council are not privileged. Privilege does not extend to municipal councillors not performing the real and legitimate business of the Council. Privilege in respect of provincial legislatures is granted only to members of the provincial legislature. The Court differed however on the issue of quantum of damages. Merits: Mokgoro J (unanimous). Damages/Majority: Moseneke DCJ (Langa CJ, Madala J, O'Regan J, Van der Westhuizen J, Yacoob J concurring). Damages/Minority: Sachs J, Skweyiya J.	2006 (6) SA 235 (CC); 2007 (1) BCLR 1 (CC)
270	*Doctors for Life International v Speaker of the National Assembly and Others* *CCT 12/05* *Handed down:* *17 August 2006*	Application directly challenging the constitutional validity of four health-related Bills on the basis that Parliament failed to fulfill its constitutional obligation to facilitate public involvement when passing the Bills. The case concerns, generally: the role of the public in the law-making process; the nature and scope of the constitutional obligation of a legislative organ of the state to facilitate public involvement in its legislative processes; the consequences of the failure to comply with that obligation; whether it is competent for this Court to interfere during the legislative process before a parliamentary or provincial bill is signed into law; and whether this Court is the only court that may consider the questions raised in this case. The Court found that it had exclusive jurisdiction over this matter under under section 167(4)(e) of the Constitution. The majority held that the obligation to facilitate public involvement as required by the provisions of sections 72(1)(a) and 118(1)(a) of the Constitution is a material part of the law-making process and failure to comply with it renders the resulting legislation invalid. The Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act were declared invalid for lack of proper public consulation and the order of invalidity was suspended for eighteen months. The Court did not consider the Sterilisation Amendment Bill as it was still a Bill when the proceedings were commencesd in this Court. The Court did not have competence to consider validity of a bill except on a	2006 (6) SA 416 (CC); 2006 (12) BCLR 1399 (CC)

		reference from the President. It was also held that lawmakers did not breach their obligation to facilitate public involvement in terms of the Dental Technicians Amendment Act because when the Bill was first published for comment no submissions were received and thus it did not have a threshold level of public interest. Majority: Ngcobo J (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J, O'Regan J and Sachs J concurring). Dissent: Yacoob J (Skweyiya J concurring); Separate Concurrence: Van der Westhuizen J.	
271	*Matatiele Municipality and Others v President of the RSA and Others* *CCT 73/05* *Handed down:* *18 August 2006*	Application challenging the constitutional validity of the Constitutional Twelfth Amendment Act and the Cross-boundary Municipalities Laws Repeal and Related Matters Act (the Repeal Act). The Twelfth Amendment re-demarcated the boundary of the municipality of Matatiele and moved it from KwaZulu-Natal to the Eastern Cape. The majority held that a decision to alter a provincial boundary is a law-making process and the legislature must, in terms of section 118 of the Constitution, act reasonably in facilitating public participation in that process. It was held that the Eastern Cape had complied with its duty to facilitate public involvement but that KwaZulu-Natal had not. Therefore, that part of the Twelfth Amendment that altered the boundary of KwaZulu-Natal was declared invalid as it had not been adopted consistently with the Constitution. The order of invalidity was suspended for 18 months. Majority: Ngcobo J (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J, O'Regan J, Sachs J concurring). Separate Dissents: Yacoob J (Van der Westhuizen J concurring), Van der Westhuizen J, Skweyiya J.	[2006] ZACC 12; 2007 (1) BCLR 47 (CC)
272	*Giddey NO v JC Barnard and Partners* *CCT 65/05* *Handed down:* *1 September 2006*	Application concerning the interpretation and application of section 13 of the Companies Act 61 of 1973. The question was how a court should approach the exercise of discretion to order a company that institutes action to furnish security for costs if there is reason to believe that it will be unable to pay the costs of its opponent, given that section 34 of the Constitution entrenches the right to have disputes resolved by courts. It was held that on appeal the exercise of discretion by a court in terms of section 13 will only be interfered with if it was not exercised judicially, or was made on the basis of incorrect facts or principles of law. The appeal was dismissed. Judgment: O' Regan J (unanimous).	2007 (5) SA 525 (CC); 2007 (2) BCLR 125 (CC)

273	*Concerned Land Claimants Organisation of Port Elizabeth v Port Elizabeth Land and Community Restoration Association and Others* *CCT 29/06* *Handed down:* *21 September 2006*	The applicant was a breakaway group from a group of people who had been previously dispossessed and who had entered into an agreement with the respondents for the restitution of their land. The applicant was unhappy with the terms of the agreement as it felt that the agreement did not give sufficient land to those who had been dispossessed. The application for leave to appeal was dismissed without hearing oral argument as it was not in the interests of justice for the matter to be heard. Judgment of the Court.	2007 (2) SA 531 (CC); 2007 (2) BCLR 111 (CC)
274	*South African Broadcasting Corp Ltd v National Director of Public Prosecutions and Others* *CCT 58/06* *Handed down:* *21 September 2006*	The applicant sought an order allowing it to broadcast on radio and television the appeals of the second to twelfth respondents through the use of visuals and sound. Together with this, the applicant sought permission to broadcast edited highlights packages on television and radio. The Supreme Court of Appeal had denied these applications relying on section 173 of the Constitution. The majority held that where a court exercises its discretion in terms of section 173, a court on appeal may only interfere with that decision if it is manifestly unjust, or violates the rights in the Bill of Rights, or the provisions of the Constitution. The application was dismissed. Majority: Langa CJ, Kondile AJ, Madala J, Nkabinde J, O'Regan J, Van Heerden AJ and Yacoob J. Separate Concurrence: Sachs J. Separate Dissent: Moseneke DCJ (Mokgoro J concurring), Mokgoro J.	2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC)
275	*Steenkamp v Provincial Tender Board, Eastern Cape* *CCT 71/05* *Handed down:* *28 September 2006*	The applicant sought compensation for out-of-pocket expenses it had incurred in the fulfilment of a tender award which was subsequently set aside. The majority dismissed the appeal holding that the administrative breach of a statutory duty of the tender board justice was not wrongful in the delictual sense. The minority held that a successful tenderer should be able to claim out-of-pocket expenses it has incurred in fulfilling contractual obligations that arose as a result of the tender award. Majority: Moseneke DCJ (Madala J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Separate Concurrence: Sachs J. Dissent: Langa CJ and O'Regan J (Mokgoro J concurring).	2007 (3) SA 121 (CC); 2007 (3) BCLR 300 (CC)
276	*Prophet v National Director of Public Prosecutions* *CCT 56/05* *Handed down:* *29 September 2006*	The applicant sought leave to appeal against a Supreme Court of Appeal decision which upheld the forfeiture of the applicant's property in terms of Chapter 6 of the Prevention of Organised Crime Act. The Court held that the property was an instrumentality of the offence of drug manufacturing. It held that the forfeiture did not constitute an arbitrary deprivation of property, nor was it disproportionate given the nature of the offence and	2007 (2) BCLR 140 (CC); 2006 (2) SACR 525 (CC)

		extent of the instrumentality of the property. It also held that the forfeiture was valid despite the applicant's acquittal on drug-dealing charges in the Magistrates' Court because there was a reasonable probability that the house was an instrument of the crime. The appeal was accordingly dismissed. Judgment: Nkabinde J (unanimous).	
277	*South African Police Service v Public Servants Association* *CCT68/05* *Handed down:* *13 October 2006*	The applicant contested the interpretation of the word 'may' in regulations dealing with the upgrading and downgrading of officers in the SAPS. The question was whether the regulation conferred discretion on the Commissioner to advertise a post when it was held by a satisfactorily performing incumbent. The majority held that the regulation did confer discretion, but it must be exercised in a manner that ensured that no incumbents are unfairly retrenched. Majority: Sachs J (Langa CJ, Moseneke DCJ, Mokgoro J, Nkabinde J, Skweyiya J, Van der Westhuizen J concurring). Separate Concurrence: Yacoob J (Langa CJ, Moseneke DCJ, Mokgoro J, Nkabinde J, Skweyiya J, Van der Westhuizen J concurring). Dissent: O'Regan J.	2007 (3) SA 521 (CC)
278	*Gory v Kolver NO and Others* *CCT 28/06* *Handed down:* *23 November 2006*	Application for confirmation of an order of the High Court of constitutional invalidity of section 1(1) of the Intestate Succession Act to the extent that it does not provide for same-sex life partners to inherit by intestate succession from one another. This defect was cured by an order reading the words 'or permanent same-sex life partner with reciprocal duties of support' into the Act. The order is to operate with limited retrospectivity to minimise disruption to the administration of estates. Judgment: Van Heerden AJ (unanimous).	2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC)
279	*Lekolwane and Another v Minister of Justice and Constitutional Development* *CCT 47/05* *Handed down:* *23 November 2006*	An application challenging the constitutionality of section 22 of the Witness Protection Act. The merits of the application were not heard as the matter was struck off the roll, since no good cause had been shown to justify condonation of late filing and a postponement. To grant yet another postponement would constitute a gross abuse of the processes of the Court. Such would not be in the interests of justice. Therefore the request for condonation and postponement was refused. Judgment: Van der Westhuizen (unanimous).	2007 (3) BCLR 280 (CC)

280	*Sibiya and Others v DPP, Johannesburg High Court and Others* *CCT 45/04* *Handed down:* *7 October 2005*	In the first *Sibiya* case the Court made a supervisory order concerning the substitution of death sentences. The respondents were required to report to the Court concerning the steps taken, but failed to do so within the allocated time. The court granted an extension upon application. Within the extended time, a report was filed. In its judgment the Court gave its reasons for granting the extension and considered the report on the substitution process. In view of certain discrepancies in the report, the Court held that it would continue its supervisory role until the process of substitution of death sentences had been completed. Judgment: Yacoob J (unanimous).	2006 (2) BCLR 293 (CC); 2005 (5) SA 315 (CC)
281	*Minister of Safety and Security v Luiters* *CCT 23/06* *Handed down:* *30 November 2006*	An application from the Minister of Safety and Security which sought to reverse a High Court and Supreme Court of Appeal finding that the Minister was vicariously liable for the criminal actions of an off-duty policeman who had placed himself on-duty. The Court did not grant leave to appeal as they found no prospects of success. In a unanimous judgment it was also held that the test for vicarious liability developed in the *K* case sufficiently provided for policemen who had subjectively placed themselves on-duty. Judgment: Langa CJ (unanimous).	[2007] ZACC 15; 2007 (3) BCLR 287 (CC)
282	*Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others* *CCT 39/06* *Handed down:* *12 December 2006*	An appeal against a High Court ruling that section 23(1) of the Private Security Industry Regulatory Authority Act was not unconstitutional to the extent that it only provided for the employment of South African citizens and permanent residents in the private security industry, to the exclusion of refugees who could not show good cause in terms of section 23(6) of the Act. In a majority judgment, the appeal was dismissed. It was held that the section is not discriminatory because the trust-worthiness of nationals and permanent residents is easier to verify objectively. In a dissenting judgment, it was held that the section discriminated on the basis of refugee status. This was contrary to South Africa's international law obligations and did not recognise that refugees occupied a position most similar to permanent residents and should therefore be entitled to admission to the industry. Majority: Kondile AJ (Moseneke DCJ, Madala J, Nkabinde J, Sachs J and Yacoob J concurring). Separate Concurrence: Sachs J. Dissents: Mokgoro and O'Regan JJ (Langa CJ, Van der Westhuizen J concurring).	[2006] ZACC 23; 2007 (4) BCLR 339 (CC); (2007) 28 ILJ 537 (CC)

283	*Fraser v ABSA Bank Limited (National Director of Public Prosecutions as Amicus Curiae)* *CCT 66/05* *Handed down:* *15 December 2006*	An application concerning the discretion to be exercised by a court in applying section 26(6) of the Prevention of Organised Crime Act which allows frozen property to be released for reasonable living and legal expenses. It was held that in exercising the discretion to permit creditors to intervene in confiscation proceedings a Court must balance the accused's fair trial rights and the interest of the state in preserving the property and the claims of creditors. Judgment: Van der Westhuizen J (unanimous)	2007 (3) SA 484 (CC); 2007 (3) BCLR 219 (CC)
284	*Engelbrecht v Road Accident Fund and Another* *CCT 57/06* *Handed down:* *6 March 2007*	An appeal concerning regulation 2(1)(c) of the regulations under the Road Accident Fund Act. The regulation allows 14 days within which an affidavit which sets out the details of the accident must be submitted to the police or else the claimant loses the claim. It was held that the 14-day period is too short and does not amount to a 'real and fair' opportunity to exercise the right of access to courts protected in section 34 of the Constitution. This regulation was declared invalid. Judgment: Kondile AJ (unanimous).	2007 (6) SA 96 (CC); 2007 (5) BCLR 457 (CC).
285	*Shinga v S (Society of Advocates, Pietermaritzburg Bar as Amicus Curiae); O'Connell and Others v S* *CCT 56/06; CCT 80/06* *Handed down:* *8 March 2007*	Confirmation proceedings, in two cases, regarding the constitutionality of section 309(3A), section 309C(4)(c) and section 309C(5)(a) of the Criminal Procedure Act governing the rights of people convicted in the Magistrates' Court to appeal to the High Court against their convictions or sentences. *S v Shinga*: section 309(3A) provided for an appeal to be disposed of in chambers without oral argument, which the Court confirmed was inconsistent with the right of an accused person to a fair trial as appeals are to be held in open court. Section 309C(4)(c) provided that the record was only to be forwarded to the High Court in limited circumstances, which the Court held to be inconsistent with the right to a fair trial. The record is now required in all matters. The High Court's finding in *S v O'Connell* that section 309C(5)(a) was invalid to the extent that it requires only one judge to consider an application for leave to appeal, was confirmed such that two judges are now required. Judgment: Yacoob J (unanimous).	2007 (5) BCLR 474 (CC); 2007 (2) SACR 28 (CC)
286	*The Crown Restaurant CC v Gold Reef Theme Park (Pty) Ltd* *CCT 05/07* *Handed down:* *6 March 2007*	Application to have *exceptio doli generalis*, a defence against the unfair enforcement of contracts reintroduced into contract law, on the basis that it is an equitable remedy in line with constitutional values. The application was dismissed by the Court as it was not in the interests of justice that it be granted. Judgment of the Court.	2007 (5) BCLR 453 (CC)

287	*Mohunram and Another v National Director of Public Prosecutions and Another (Law Review Project as Amicus Curiae)* *CCT 19/06* *Handed down:* *26 March 2007*	An application challenging the validity of the forfeiture of a house, in terms of Prevention of Organised Crime Act, that had been used in gambling operations. There was no dispute that the house was an instrumentality of the offence but the Court disagreed on whether such forfeiture was proportionate. The majority held that the forfeiture was disproportionate and the application was dismissed. Majority: Moseneke DCJ (Mokgoro J and Nkabinde J concurring). Separate Concurrences: Sachs J (O'Regan J and Kondile AJ concurring). Dissent: Van Heerden AJ (Langa CJ, Madala J, Van der Westhuizen J and Yacoob J concurring)	2007 (4) SA 222 (CC); 2007 (6) BCLR 575 (CC)
288	*Road Accident Fund v Mdeyide (Minister of Transport Intervening)* *CCT 70/06* *Handed down:* *4 April 2007*	Application for confirmation of a declaration of invalidity and an application for leave to appeal against a decision of the High Court declaring section 23(1) of the Road Accident Fund Act unconstitutional. The Court held that the matter could not proceed as no enquiry had been conducted into the blind, illiterate and innumerate respondent's capacity to litigate and to manage his own affairs. The matter was referred back to the High Court for an inquiry into the respondent's legal capacity. Judgment: Navsa AJ (unanimous).	2007 (7) BCLR 805 (CC)
289	*Barkhuizen v Napier* *CCT 72/05* *Handed down:* *26 March 2007*	An application for leave to appeal a decision of the Supreme Court of Appeal that concerning a challenge, under section 34 of the Constitution, to a time limitation clause in a short-term insurance contract requiring the applicant to institute court proceedings within 90 days. The clause was held to provide adequate time to seek assistance of the courts and there was no evidence suggesting that the contract was not concluded freely between the parties. The clause was therefore not found to be unconstitutional or contrary to public policy and the application was dismissed. The minority found the clause offended public policy and was unenforceable. Majority: Ngcobo J (Madala J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Separate Concurrences: O'Regan J, Langa CJ. Dissents: Sachs J, Moseneke DCJ (Mokgoro J concurring).	2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC)
290	*NM and Others v Smith and Others (Freedom of Expression Institute as Amicus Curiae)* *CCT 69/05* *Handed down:* *4 April 2007*	Application for leave to appeal a High Court decision that the disclosure of the names and HIV status of three HIV-positive women in a university report did not give rise to a claim based on the *actio injuriarum*. The appeal was upheld; however the Court differed on the facts as to whether the respondents had been shown to have acted intentionally and on the question whether the *actio injuriarum* should be developed. Majority: Madala J (Moseneke DCJ, Mokgoro J, Ngcobo	2007 (5) SA 250 (CC); 2007 (7) BCLR 751 (CC)

		J, Nkabinde J, van der Westhuizen J, Yacoob J concurring) Separate Concurrences: Langa CJ, Sachs J. Dissent: O' Regan J.	
291	*University of Witwatersrand Law Clinic v Minister of Home Affairs and Others* *CCT 08/07* *Handed down:* *11 April 2007*	While an application for leave to appeal to the Supreme Court of Appeal was pending in the High Court, the amicus curiae in those proceedings (the applicant in the present application) made application for leave to appeal directly to the Constitutional Court. The applicant in the proceedings before the High Court thereupon made application to be joined in the application by the amicus for leave to appeal directly to the Constitutional Court. It was held that the application was defective in that the *dominus litis* in the High Court had to lodge his own application and could not seek to join an application lodged by an amicus and in that the papers did not indicate that an application was pending in the High Court. An amicus would ordinarily be permitted to appeal against an order of another court only where the actual parties to the litigation were not seeking to pursue and appeal and there was a clear public interest. It was held not to be in the interests of justice to grant leave to appeal and both applications were dismissed. Judgment of the Court.	[2007] ZACC 8; 2007 (7) BCLR 821 (CC); 2008 (1) SA 447
292	*Masiya v Director of Public Prosecutions, Pretoria and Another (Centre for Applied Legal Studies And Another, Amici Curiae)* *CCT 54/06* *Handed down:* *10 May 2007*	Application for confirmation of an order of invalidity by the Pretoria High Court and an appeal against conviction. The common law definition of rape was challenged to the extent that it excluded anal penetration and was gender specific. The High Court had developed the definition to include acts of penetration to a vagina or anus of a person. The Court declined to develop the common law definition of rape under section 39(2) of the Constitution, holding that the major responsibility for law reform rests with the legislature and that the courts were not free to extend the definition or field of application of a common law crime by means of a wide interpretation of the requirements of the crime. It was further held that the fact that the 2003 Bill on Sexual Offences (Bill B50-2003) was currently before Parliament could not thwart the extension of the definition or cause the court to delay, defer or refuse to deal with the extension. The Court set aside the declaration of the High Court and replaced it with an order that developed the common law definition of rape to include acts of non-consensual penetration of a penis into the anus of a female. Majority: Nkabinde J (Moseneke DCJ, Kondile AJ, Madala J, Mokgoro J, O'Regan J, Van der Westhuizen J, van Heerden AJ and Yacoob J concurring) Dissent: Langa CJ (Sachs J concurring)	[2007] ZACC 9; 2007 (5) SA 30 (CC); 2007 (8) BCLR 827 (CC)
293	*South African Defence Union v Minister of Defence and Others*	An application from the Supreme Court of Appeal against findings that the Constitution did not 1) impose a judicially enforceable obligation on either	[2007] ZACC 10; 2007 (5) SA 400 (CC); 2007 (8) BCLR 863 (CC)

	CCT 65/06 *Handed down:* *30 May 2007*	employers or employees to bargain collectively, whether in terms of section 23(5) of the Constitution, the General Regulations of the SANDF or the constitution of the Military Bargaining Council and 2) certain findings of Constitutional invalidity relating to regulations under the National Defense Act. It was held that where legislation had been enacted to give effect to a constitutional right, a litigant was not entitled to bypass that right and rely directly on the constitutional right. Regulations were enacted to give effect to section 23 of the Constitution, which did impose a duty to bargain. It was therefore not necessary to determine whether section 23(5) of the Constitution confers a justiciable duty to bargain. The Court held that SANDF may not impose pre-conditions for bargaining nor could they unilaterally withdraw from the Military Bargaining Council. The Court considered the constitutionality of each regulation in question and made a ruling on them Judgment: O'Regan J (unanimous).	
294	*Van Vuren v Minister of Justice and Constitutional Development and Another* *CCT 15/07* *Handed down:* *1 June 2007*	Application for direct access concerning the constitutionality of section 136(3)(a) of the Correctional Services Act, which provides that certain prisoners serving life sentences are entitled to be considered for parole only after they have served 20 years of their sentence. The applicant appeared to premise his case on the possible prejudice he may suffer if the statutory provision in question is retrospective in effect. In the High Court the applicant sought an interpretation of the section that would allow him to qualify for parole in terms of a pre-existing parole policy, which would mean serving a shorter sentence prior to consideration for parole. The application for direct access was refused, but the Registrar was directed to bring the judgment to the attention of the Law Society of the Northern Provinces with a request to consider whether one of its members might assist Mr Van Vuren to re-launch the action in the High Court. Judgment of the Court.	[2007] ZACC 11; 2007 JDR 0430 (CC); 2007 (8) BCLR 903 (CC)
295	*Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* *CCT 69/06* *Handed down:* *6 June 2007*	Application for leave to appeal against a decision of the Supreme Court of Appeal, which upheld the Land Claims Court's finding that the applicants were not dispossessed of their land as a result of past racially discriminatory laws or practices. The application concerned the rights of former labour tenants to restitution of land rights in terms of the Restitution of Land Rights Act. The Court held that in order to constitute a 'community', there was no requirement that the group had to show an accepted tribal identity and hierarchy, although this may go to show the existence of a 'community'. The test, the Act required to be applied, was whether the members of a group derived their possession from shared rules at the time of dispossession. The applicants, in this case, each had separate relationships with the previous land owners and by 1969 no rights remained vested in the labour tenants as a community. It was the individual	[2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10) BCLR 1027 (CC)

		applicants rather than a community who were dispossessed. On the dispossession itself, the Court held that the causal connection in section 2 of the Act did not require that the State or public functionary to actually perform the dispossession of land rights. The question was rather whether the dispossession was a result of laws or practices put in place by the State. As the individual applicants had been dispossessed of land as a result of past discriminatory laws and practices, they were entitled to restitution in terms of the Act. Judgment: Moseneke DCJ (unanimous).	
296	*Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* *CCT 67/06* *Handed down:* *7 June 2007*	Application for leave to appeal from the Supreme Court of Appeal regarding the balance between socio-economic development and protection of the environment in terms of section 24 of the Constitution. This matter highlighted the nature and scope of obligations imposed on environmental authorities and held that sustainable development is the framework through which the two interests can be reconciled. The obligation is wider than simply need and desirability. The decision by the authorities allowing for construction of the filling station was set aside and they were ordered to reconsider the application. In a dissenting judgment it was held that the authorities' failure to consider the environment was formal rather than substantive and that the appeal should be dismissed. Majority: Ngcobo J (Moseneke DCJ, Madala J, Mokgoro J, Navsa AJ, Nkabinde J, O'Regan J, Skweyiya J and Van der Westhuizen J concurring). Dissent: Sachs J.	[2007] ZACC 13; 2007 (6) SA 4 (CC); 2007 (10) BCLR 1059 (CC)
297	*Shilubana and Others v Nwamitwa and Others* *CCT 03/07* *Handed down:* *17 May 2007*	This matter concerns a dispute for the right to succeed as Hosi (chief) of the Valoyi tribe in Limpopo. The applicants had applied for leave to appeal against a decision of the Supreme Court of Appeal. A day before the matter was due to be heard by this Court, the respondent gave notice that he intended to apply for postponement. The Court held that an eleventh-hour application for postponement would succeed only in exceptional cases, and even then was worthy of censure. Factors relevant in deciding whether to grant a postponement are the reason for the lateness of the application; the conduct of counsel; the costs involved; the potential prejudice to other interested parties; the consequences of not granting postponement and the scope of the issues to ultimately be decided. On the facts it was in the interests of justice for the postponement to be granted. Judgment: Van der Westhuizen J (unanimous).	[2007] ZACC 14; 2007 (5) SA 620 (CC); 2007 (9) BCLR 919 (CC)

298	*Minister of Safety and Security v Van Niekerk* *CCT 74/06* *Handed down:* *8 June 2007*	Appeal against a finding by the Pretoria High Court where the respondent was awarded damages for assault, wrongful arrest and detention. The Minister of Safety and Security sought leave to appeal on the grounds that it would be in the interests of justice for the Court to consider the circumstances when police can summarily arrest offenders in terms of s 40(1)(b) of the Criminal Procedure Act or whether they were constitutionally obliged to first give a written warning. The Court dismissed the application for leave to appeal holding that such circumstances should be determined on a case–by–case and there is sufficient guidance in the Police Standing Order (G) 341. Judgment: Sachs J (unanimous).	[2007] ZACC 15; 2008 (1) SACR 56 (CC) ; 2007 (10) BCLR 1102 (CC)
299	*Van der Merwe and Another v Taylor NO and Others* *CCT 45/06* *Handed down:* *14 September 2007*	Applicant sought return of foreign currency seized by the State in terms of section 20 of the Criminal Procedure Act. The majority agreed with the minority as to applicant's ownership of the €20 865 but disagreed that he established ownership of the balance of the foreign currency. The majority held that once ownership had been established the respondent had to show a right of retention. Lawful seizure did not mean continued possession would forever be lawful. The currency could only be possessed if criminal proceedings were instituted and the currency was required for those proceedings. As the respondents were unlikely to have known whether criminal proceedings would be instituted and the currency needed for those purposes, the respondents had shown that at the time the proceedings were initiated their possession of the currency was justified. Leave to appeal granted and dismissal of the appeal with no order as to costs. Majority: Moseneke DCJ and Nkabinde J (Langa CJ, Kondile AJ, Madala J, Van der Westhuizen J, Yacoob J concurring). Separate Concurrences: Sachs J, O'Regan J (Van Heerden AJ concurring). Dissent: Mokgoro J.	[2007] ZACC 16; 2008 (1) SA (1) (CC); 2007 (11) BCLR 1167 (CC)
300	*Armbruster and Another v Minister of Finance and Others* *CCT 59/06* *Handed down:* *25 September 2007*	Application for leave to appeal against the decision of the High Court refusing to set aside forfeiture of foreign currency. The Court held that, according to the regulations, the currency was not forfeited immediately upon seizure. It was forfeited only after the official had decided that some or none of the money should be returned to an affected person. That decision had to be taken consciously after the affected person made representations. Further that, although the discretion was indeed wide, the regulation seeks to mitigate undue hardship and injustice and that, while forfeiture of currency did have a punitive element, it did not amount to a criminal penalty. The regulations did not violate the right of access to court nor did it amount to an arbitrary deprivation of property, as the link between the purpose of the deprivation, the owner and the property could hardly	[2007] ZACC 17; 2007 (6) SA 550 (CC); 2007 (12) BCLR 1283 (CC)

		have been closer. The official performed an administrative function. Application for leave to appeal granted but appeal dismissed. Judgment: Mokgoro J (unanimous).	
301	*M v The State* *CCT 53/06* *Handed down:* *26 September 2007*	This matter concerned the impact of the constitutional injunction, that the best interests of a child are paramount in all matters concerning the child, on sentencing of primary caregivers of young children. Applicant unsuccessfully petitioned the Supreme Court of Appeal for leave to appeal against the order of imprisonment for fraud and applied to this Court for leave to appeal. The majority in this Court held that focused and informed attention needed to be given to the interests of children at appropriate moments in the sentencing process. The objective was to ensure that the sentencing court was in a position to adequately balance all the varied interests involved, including those of the children placed at risk. The Regional Magistrate had passed sentence without giving sufficient independent and informed attention, as required by section 28(2) read with section 28(1)(b) of the Constitution, to the impact on the children of sending M to prison. The Court held that in the light of all the circumstances of this case M, her children, the community and the victims who will be repaid from her earnings, stood to benefit more from her being placed under correctional supervision, than from her being sent back to prison. Appeal upheld. Majority: Sachs J (Moseneke DCJ, Mokgoro J, Ngcobo J, O'Regan J, Skweyiya J, and Van der Westhuizen J concurring). Dissent: Madala J (Navsa AJ and Nkabinde J concurring).	[2007] ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC)
302	*S v Shaik and Others* *CCT 86/06* *Handed down:* *2 October 2007*	Application for leave to appeal against the convictions, sentences and related confiscation of assets of applicant and his ten companies. The Court did not hear argument on the merits of the appeal but only considered the preliminary question whether leave to appeal should be granted. The application was argued in two parts: the first related to the criminal proceedings and the second to the subsequent confiscation of assets. As to the criminal proceedings, the Court dismissed the application to introduce new evidence, as much of the evidence in question is not undisputed, and the evidence is also irrelevant to the issues to be decided by this Court. None of the applicant's arguments relating to an unfair trial were upheld. The appeal against the convictions and sentences was not granted, as it did not bear reasonable prospects of success. As to the confiscation proceedings, the Court held that the applicants' submissions raise a constitutional issue. POCA must be interpreted in conformity with the Constitution, which provides that no one may be arbitrarily deprived of his or her property. The Court held that the submissions cannot be said to bear no reasonable prospects of success. Accordingly, it concluded that it	[2007] ZACC 19; 2008 (2) SA 208 (CC); 2007 (12) BCLR 1360 (CC)

		is in the interests of justice for the application for leave to appeal against the confiscation order to be granted. Application for leave to appeal against the convictions and sentences is dismissed. Application for leave to appeal against the confiscation order upheld and leave to appeal granted. Judgment of the Court.	
303	*Masetlha v President of the Republic of South Africa and Another* *CCT 01/07* *Handed down:* *3 October 2007*	An application for leave to appeal dealing with the constitutional validity of two decisions of the President, namely suspension and termination of Masetlha's employment as head and Director-General of the National Intelligence Agency. Questions: whether the power to amend a term of employment or to dismiss is located within section 209(2) of the Constitution, read with section 3(3)(a) of Intelligence Service Act (ISA) and section 12(2) of the Public Service Act (PSA) or within all of these provisions read together, and whether the provisions are capable of being construed harmoniously and secondly, whether the authority is executive power or administrative action reviewable under PAJA? The majority held that the President dismissed the applicant in terms of section 209(2) of the Constitution read with section 3(3)(a) of ISA. There is a distinction between the substantive power to appoint and dismiss a head of an intelligence service, on the one hand, and the resultant contract of employment which is regulated by the provisions of section 12 of the PSA. Further, the procedural and permissive requirements of ss. 12(2) and (4) of the PSA must not be read alone, but in conjunction with the constitutional and operative legislative scheme. Majority: Moseneke DCJ (Langa CJ, Navsa AJ, Nkabinde J, O' Regan J, Skweyiya J and van der Westhuizen J concurring). Dissent: Ngcobo J (Madala J concurring). Separate: Sachs J.	[2007] ZACC 20; 2008 (1) SA 566 (CC); 2008 (1) BCLR 1 (CC)
304	*KZN MEC of Education v Pillay* *CCT 51/06* *Handed down:* *5 October 2007*	Appeal from the High Court concerning the right of a learner to wear a nose stud to school. The school and the Department of Education appealed against a finding that the school had discriminated unfairly against the learner by prohibiting the wearing of a nose stud. The respondent contended that the school's refusal to allow her daughter to wear a nose stud violated ss. 9, 15, 16 and 31 of the Constitution. It was held that the school, in failing to take steps to reasonably accommodate the needs of people on the basis of race, gender or disability, had discriminated against the learner. Schools are required to affirm and reasonably accommodate difference. Whether a religious or cultural practice is voluntary or mandatory is irrelevant to whether it qualifies for protection. Majority: Langa CJ (Moseneke DCJ, Madala J, Mokgoro J, Navsa AJ, Ngcobo J, Nkabinde J, Sachs J, van der Westhuizen J concurring).	[2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC)

		Dissent: O' Regan J.	
305	*Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* *CCT 85/06* *Handed down:* *5 October 2007*	The case involved the dismissal of the applicant by the first respondent for failing to apply established search procedures. A key finding of the Supreme Court of Appeal was that in deciding unfair dismissal disputes, commissioners of the CCMA should approach the employer's sanction in relation to misconduct with a measure of deference because it is the employer's function in the first place to impose a sanction. All four judgments in this Court agree that the Supreme Court of Appeal decision must be overturned. The commissioner is not given the power to consider afresh what he or she would do but to decide whether what the employer did was fair. In reaching a decision the commissioner must have regard to all relevant circumstances. The judgments differ, however, in respect of certain aspects of how the functioning of the commissioner is to be characterised. The majority held that compulsory arbitration in the CCMA constitutes administrative action, reviewable not in terms of PAJA but against a standard of reasonableness. Majority: Navsa AJ (Moseneke DCJ, Madala J, O'Regan J and Van der Westhuizen J concurring). Separate Concurrences: Ngcobo J (Mokgoro J, Nkabinde J and Skweyiya J concurring); O'Regan; Sachs J.	[2007] ZACC 22; 2008 (2) SA 24 (CC); 2008 (2) BCLR 158 (CC)
306	*Chirwa v Transnet Limited and Others* *CCT 78/06* *Handed down:* *28 November 2007*	Application concerning the concurrent jurisdiction of the Labour Court and the High Court to hear disputes involving employment and labour relations arising from the dismissal of the applicant. The applicant had originally pursued her claim in the CCMA but changed to the High Court claiming unfair administrative action. The central questions were whether this change was permissible and whether the dismissal amounted to administrative action. The Court held that the applicant's claim was properly characterised as an unfair dismissal claim and that the High Court did not have concurrent jurisdiction with the Labour Court in such matters. While section 157(2) of the LRA extended the jurisdiction of the Labour Court to employment matters that implicate constitutional rights, this did not derogate from the High Court's jurisdiction in constitutional matters assigned to it by section 169 of the Constitution, unless shown to fall within the exclusive jurisdiction of the Labour Court. The question of administrative action need not be decided. The appeal was dismissed. While agreeing with the outcome, Langa DCJ, in a separate judgment held that the Labour Court and the High Court did have concurrent jurisdiction. The dismissal did not amount to administrative action. Majority: Skweyiya J (Moseneke DCJ, Madala J, Navsa AJ, Nkabinde J, Sachs J and Van der Westhuizen J concurring). Separate Concurrences: Ngcobo J (Moseneke DCJ, Madala J, Navsa AJ, Nkabinde J, Sachs J and Van der	[2007] ZACC 23; 2008 (4) 367 (CC); 2008 (3) BCLR 251 (CC)

		Westhuizen J concurring); Langa CJ (Mokgoro J and O'Regan J concurring).	
306	*Van Wyk v Unitas Hospital and Another* *CCT 12/07* *Handed down:* *6 December 2007*	Application for leave to appeal a decision of the Supreme Court of Appeal challenging a decision that the applicant was not entitled to a report relating to the nursing conditions at the hospital where her husband had died. The application to this Court was made eleven months after the decision of the Supreme Court of Appeal. It was held that while mootness did not constitute an absolute bar since the Court had a discretion to hear a matter, in a case where there was an inordinate delay and an absence of a reasonable explanation for such a delay, it would undermine the principle of finality and it would not be in the interests of justice to grant condonation for the delay. Application dismissed. Judgment of the Court.	[2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC)
307	*MEC Department of Agriculture Conservation and Environment and Another v HTF Developers (Pty) Ltd* *CCT 32/07* *Handed Down:* *6 December 2007*	Application concerning the relationship between sections 31A and 32 of the Environmental Conservation Act. The central issue was whether the section 32 notice and comment procedure was required when directions are issued to a specific person or entity and not to general members of the public. It was held that the notice and comment procedure is not applicable but that directions issued in terms of section 31 are subject to procedural fairness requirements. Judgment: Skweyiya J (unanimous). Separate Concurrence: Ngcobo J (Moseneke DCJ, Sachs J, Van der Westhuizen J concurring).	[2007] ZACC 25; 2008 (2) SA 319 (CC); 2008 (4) BCLR 417 (CC)
308	*Islamic Unity Convention v Minister of Telecommunications* *CCT 33/07* *Handed down:* *7 December 2007*	Application for the confirmation of constitutional invalidity of certain provisions of the now repealed Independent Broadcasting Act (IBA Act) and the corresponding provisions of the Independent Communications Act of South Africa. Regulations and procedures made in terms of the IBA Act had also been declared unconstitutional. The main challenge to these provisions was that they conferred investigative, prosecutorial and adjudicative powers on the Broadcasting Monitoring and Complaints Committee and its successor the Complaints and Compliance Committee contrary to sections 33, 34 and 192 of the Constitution. It was held that there was nothing impermissible in the conferral of these powers as the legislative scheme provided for fairness, independence and impartiality. The Court declined to confirm the declaration of invalidity. Judgment: Mpati AJ (unanimous).	[2007] ZACC 26; 2008 (3) SA 383 (CC); 2008 (4) BCLR 384 (CC)

309	*AD and Another v DW and Others; The Centre for Child Law (Amicus Curiae) and The Department of Social Development (Intervening Party)* *CCT 48/07* *Handed down:* *7 December 2007*	Application concerning the grant of sole custody and guardianship of an abandoned South African child, to citizens of the USA, whom had unsuccessfully applied for such in the High Court, with a view of taking the child to the USA and formally adopting her there. The central issue was whether the High Court had jurisdiction to deal with adoption matters. It was held that it was only in exceptional circumstances that the High Court would have jurisdiction, as the Children's Court had the appropriate procedural mechanisms. It was further held that while subsidiarity is a core principle governing inter–country adoptions, the best interests of the child were of paramount importance. A contextualised case–by–case approach had to be adopted and each child had to be looked at as an individual. The matter was referred to the Children's Court on an expedited basis. Judgment: Sachs J (unanimous).	[2007] ZACC 27; 2008 (3) SA 183 (CC); 2008 (4) BCLR 259 (CC)
310	*Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg and Others* *CCT 24/07* *Handed down:* *19 February 2008*	Appeal from the Supreme Court of Appeal concerning the eviction of over 400 occupiers of two buildings in inner city Johannesburg, by the City of Johannesburg. The City had attempted to use health and safety legislation to compel the eviction. It was held that government, before it evicts residents from their homes, has a constitutional duty, grounded in section 26(2) of the Constitution, to engage meaningfully with them regarding possible steps that could be taken to alleviate their homelessness. The evicting authority is obliged to take of possible homelessness consequent upon eviction. A criminal sanction, in terms of the National Building Regulations and Building Standards Act 103 of 1977, could only be imposed on residents who remain in a building after a court order for eviction had been granted. Judgment: Yacoob J (unanimous).	[2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC)
311	*The State v Molimi* *CCT 10/07* *Handed down:* *4 Macrh 2008*	A challenge to the admissibility of statements made by co-accuseds in a criminal trial due to their hearsay nature, whether such statements were confessions or admissions and whether the trial court and Supreme Court of Appeal had complied with section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988. The Court held that the statements of the co-accused were not admissible against the applicant and that the admission of such had resulted in fundamental prejudice to the applicant It was beyond question that a ruling on the admissibility of evidence after the accused had testified was likely to have an adverse effect on the accused's right to a fair trial. The admissible evidence, of cell phone records alone, was insufficient to prove the applicant's guilt beyond a reasonable doubt. The Court refrained from expressing any view on the question of whether the admission of hearsay evidence in terms of the Law of Evidence Amendment Act denies the accused the right to cross-examination. Judgment: Nkabinde J (unanimous).	[2008] ZACC 2; 2008 (3) SA 608 (CC); 2008 (5) BCLR 451 (CC)

312	*Zealand v Minister of Justice and Constitutional Development and Another* *CCT 54/07* *Handed down:* *11 Macrh 2008*	Appication for leave to appeal from the Supreme Court of Appeal. This case concerned the applicant's claim for damages against the state, following his alleged unlawful detention. While awaiting trial in one case, the applicant was convicted in a second case and sentenced to 18 years in prison, as a result of which, he was detained in a maximum security prison. His conviction on the second case was later overturned on appeal. Due to negligence on the part of the prison officials, the applicant remained in detention at the maximum security prison for a period of more than 5 years, despite only being an awaiting trial prisoner in relation to the first case. The Court held that to detain the applicant in maximum security while he was merely an awaiting trial was arbitrary, without just case, violated section 12(1) of the Constitution and was sufficient to establish delictual liability. The judgment of the Supreme Court of Appeal was set aside. Judgment: Langa CJ (unanimous).	[2008] ZACC 3; 2008 (2) SA 458 (CC); 2008 (6) BCLR 601 (CC)
313	*Njongi v The Member of the Executive Council, Department of Welfare, Eastern Cape* *CCT 37/07* *Handed down:* *28 March 2008*	Appeal against the decision of the Full Court of the Eastern Cape. Where a social grant is unlawfully cancelled, the prescription period does not begin to run until or unless the administrative decision is set aside or reliance thereon is expressly disavowed by the State. The Court expressed doubt as to whether prescription time-limits applicable to ordinary debts could apply to constitutionally obligatory payments of social grants, although it did not decide the point it was held to be doubtful whether prescription could legitimately arise when the debt that was claimed was a social grant, which the government was obliged, in terms of the Constitution, to perform and the non-performance of which was inconsistent with the Constitution. The appeal was upheld. Judgment: Yacoob J (unanimous).	[2008] ZACC 4; 2008 (4) SA 237 (CC); 2008 (6) BCLR 571 (CC)
314	*Mphela and 217 Others v Haakdoornbult Boerdery CC and Others* *CCT 42/07* *Handed down:* *8 May 2008*	Appeal against a decision of the Supreme Court of Appeal concerning the restitution of land due to past discriminatory laws and practices. The applicants' forefathers were forcibly removed from their farm and relocated to a new farm. Their original farm was subsequently subdivided into four portions, three of which were owned by the respondents. The Supreme Court of Appeal confirmed the order of the LCC in respect of the partial restoration of three of the four portions and upheld the respondents' appeal in respect of the remaining portion. It ordered that the matter be remitted to the LCC, to determine whether the applicants, in view of their continued ownership of the new farm, had to contribute to the acquisition by the State of the properties comprising the original farm. The applicants sought leave to appeal in this Court against the Supreme Court of Appeal's order. The Court held that the applicants' case on partial restoration did not warrant this Court's interference with the Supreme Court of Appeal's exercise of discretion. The application for leave to appeal was therefore refused. However on the point of the	[2008] ZACC 5; 2008 (4) SA 488 (CC); 2008 (4) BCLR 675 (CC)

		remittal order, the Court held that the remittal process would unnecessarily prolong the finalisation of the matter and that there were factors to which the Supreme Court of Appeal did not properly direct itself, thus that part of the remittal order was accordingly set aside. Judgment: Mpati AJ (unanimous).	
315	*Independent Newspapers v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa* *CCT 38/07* *Handed down:* *22 May 2008*	In a claim premised on the right to open justice, the applicant—a newspaper group—sought an order compelling public disclosure of discrete portions of the record of proceedings of a matter determined by this Court (*Masetlha v President of the Republic of South Africa and Others*). The Court held that the right to open justice is not absolute, and that a court must decide in all the circumstances of a particular case whether its limitation is in the interests of justice. In this case, the competing constitutional claims were the principle of open justice and the government's obligation to pursue national security. The Court held that a security classification alone does not oust the jurisdiction of a court to decide whether they should be protected from disclosure to the media and public. It ruled that the whole of the *in camera* affidavit at issue should be made available to the public but that the three disputed annexures to the affidavit should not. Majority: Moseneke DCJ (Madala J, Mpati AJ, Ngcobo J, Nkabinde J and Skweyiya J concurring). Dissent: Yacoob J (Sachs J concurring), Sachs J, Van der Westhuizen J.	[2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC)
316	*S v Shaik and Others* *CCT 86/06* *Handed down:* *29 May 2008*	Appeal against a confiscation order granted against the first appellant and two of his companies in terms of the Prevention of Organised Crime Act (POCA). The appellants argued that two particular benefits (a shareholding in Thint (Pty) Ltd and accumulated dividends received by Nkobi Investments (Pty) Ltd) did not constitute 'proceeds of crime'. The Court held that all benefits which have arisen from the commission of a crime, directly or indirectly, are susceptible to confiscation in terms of POCA and that the trial court has the discretion to determine the appropriate amount to be confiscated in each case. The Court held that the appellants had not shown that the trial court improperly exercised its discretion in this case, and that both benefits had, as a matter of fact, flowed to the appellants as a result for Mr Zuma's support for and interventions on behalf of the first appellant and his companies. The appeal was therefore dismissed. Judgment: O'Regan J (unanimous).	[2008] ZACC 7; 2008 (5) SA 354 (CC); 2008 (8) BCLR 834 (CC)

317	*Nyathi v Member of the Executive Council for the Department of Health, Gauteng and Another* *CCT 19/07* *Handed down:* *2 June 2008*	Application for confirmation of constitutional invalidity of section 3 of the State Liability Act on the basis that it violates the right of access to courts, the right to equality, the right to dignity and public accountability. The Court confirmed an order of constitutional invalidity made by the High Court and declared section 3 to be inconsistent with the Constitution to the extent that it disallows execution and attachment against state assets. The effectiveness of the procedures to secure satisfaction of judgment debts was essential for determining whether section 3 was constitutionally compliant. These provisions, however, did not contain sufficiently accessible and simple procedures to secure the payment of judgment debts and did thus not constitute a reasonable fulfillment of the State's constitutional obligations. The minority held that section 3 did not violate the right of access to courts and that it was rationally related to the important governmental purpose of preventing disruption of public service. Therefore, the minority would have refused to confirm the declaration of constitutional invalidity but would have supported the further relief ordered by the majority. Judgment: Madala J (Moseneke DCJ, Ngcobo J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Dissents: Nkabinde J (Langa CJ and Mpati AJ concurring).	[2008] ZACC 8; 2008 (5) SA 94 (CC); 2008 (9) BCLR 865 (CC)
318	*Shilubana and Others v Nwamitwa* *CCT 03/07* *Handed down:* *4 June 2008*	Appeal from the Supreme Court of Appeal concerning the appointment by customary institutions of a female chief, contrary to tradition. The appointment of the daughter of a Hosi (chief) as the new Hosi in the Valoyi traditional community was challenged by the brother of the Hosi. It was held that the right of a customary community to function according to customary law in terms of section 211(2) of the Constitution includes the right to develop that law to bring it in line with the constitutional commitment to gender equality and thus Ms Shilubana was lawfully the Hosi of the Valoyi. Judgment: Van der Westhuizen J (unanimous).	[2008] ZACC 9; 2008 (9) BCLR 914 (CC)
319	*Merafong Demarcation Forum and 10 Others v The President of the Republic of South Africa and 15 Others* *CCT 41/07* *Handed down:* *13 June 2008*	Challenge concerning the rationality of a decision by the Gauteng provincial legislature to vote in favour of the Constitution Twelfth Amendment Bill in the National Council of Provinces and the fulfillment of the legislature's duty to facilitate public participation in relation to the Bill. The Court held that the constitutional duty to facilitate public participation requires that the public be afforded a reasonable opportunity to make submissions. However, it does not require a legislature to re-engage with the public if the legislator initially supports the view expressed by the majority of the public but ultimately departs from it. The Court confirmed that all public power must be exercised rationally, but held that the contentious political nature of a decision is irrelevant to the rationality enquiry. If a public body changes its	[2008] ZACC 10; 2008 (5) SA 171 (CC); 2008 (10) BCLR 968 (CC)

		mind, its final decision is not irrational where the change is based on legitimate considerations and a correct appreciation of its powers and obligations. The actions of the Gauteng provincial legislature were therefore not unconstitutional Majority: Van der Westhuizen J (Langa CJ, Mpati AJ, Ngcobo J, Skweyiya J, Yacoob J concurring). Separate Concurrences: Ngcobo J (Langa CJ, Mpati AJ, Ngcobo J, Skweyiya J, Van der Westhuizen J, Yacoob J concurring), Skweyiya J (Yacoob J concurring). Dissents: Moseneke DCJ (Madala J, Nkabinde J, Sachs J concurring), Madala J, Sachs J.	
320	*Walele v The City of Cape Town and Others* *CCT 67/07* *Handed down:* *13 June 2008*	Application for leave to appeal against an order of the Cape High Court, which dismissed the applicant's application for review. The review application concerned the City of Cape Town's decision to approve building plans for a four-storey block of flats on a property which adjoined that of the applicant. The majority of the Court held that the City had failed to comply with mandatory procedural requirements in the Bulidng Standards Act 103 of 1977, read with the Promotion of Administrative Justice Act 3 of 2000. The majority held that the decision-maker did not independently apply its mind. Leave to appeal was granted, and the matter was remitted to the City for reconsideration. The minority held that the City complied with the legislative requirements, and that the decision-maker properly applied his mind to the matter. Majority: Jafta AJ (Madala J, Mokgoro J, Ngcobo J, Nkabinde J and Skweyiya J concurring). Minority: O'Regan J (Langa CJ, Kroon AJ, Van der Westhuizen J and Yacoob J concurring).	[2008] ZACC 11; 2008 (6) SA 129 (CC); 2008 (11) BCLR 1067 (CC)
321	*Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd (Hoogekraal Highlands Trust and Safamco Enterprises (Pty) Ltd as amici curiae)* *CCT 78/07* *Handed down:* *25 July 2008*	Application for leave to appeal by Wary Holdings against a judgment of the Supreme Court of Appeal. The matter concerned a dispute between Wary Holdings and Stalwo related to the meaning and applicability of a proviso to the definition of "agricultural land" as contained in the Subdivision of Agricultural Land Act. The proviso stated that land within the area of jurisdiction of a transitional council that was classified as "agricultural land" immediately prior to the first election of the members of the transitional council would retain such classification. The majority of the Court held that the life of the proviso was not tied to the life of the transitional councils and was still applicable. The minority of the Court held that the matter should be dismissed because it did not raise a constitutional issue. The order of the Supreme Court of Appeal was reversed and the sale was declared invalid. Majority: Kroon AJ (Langa CJ, Madala J, Mokgoro J, Ngcobo J, Skweyiya J and Van der Westhuizen J concurring). Minority: Yacoob J (O'Regan ADCJ and Nkabinde J	[2008] ZACC 12; 2009 (1) SA 337 (CC); 2008 (11) BCLR 1123 (CC)

		concurring).	
322	*Thint (Pty) Ltd v National Director of Public Prosecutions and Another; Zuma and Another v National Director of Public Prosecutions and Others* *CCT 89/07; CCT 91/07* *Handed down:* *31 July 2008*	Application for leave to appeal concerning search and seizure warrants which authorised, in terms of the National Prosecuting Authority Act, searches and seizures carried out by the National Prosecuting Authority to obtain information connected to the investigation of serious, organised crime. Whether the warrants violated the applicants' rights to privacy and property. The majority held that a balance must be struck between protecting privacy and property interests and the state's constitutionally mandated task of prosecuting crime. An application for a warrant must disclose material facts and must demonstrate a "need" for a warrant, which requires there being an appreciable risk that the state would be unable to obtain the information sought by other means. Warrants are required to be intelligible so that they are reasonably capable of being understood by the reasonably well-informed person. The majority held that these requirements were met in these cases, and that specific mention in the warrants of the right to claim legal privilege was not required. The appeal was dismissed. Majority: Langa CJ (O'Regan ADCJ, Jafta AJ, Kroon AJ, Madala J, Mokgoro J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Dissent: Ngcobo J.	[2008] ZACC 13; 2009 (1) SA 1 (CC); 2008 (12) BCLR 1197 (CC)
323	*Thint Holdings (Southern Africa) (Pty) Ltd and Another v National Director of Public Prosecutions and Another; Zuma v National Director of Public Prosecutions* *CCT 90/07; CCT 92/07* *Handed down:* *31 July 2008*	This case concerned the constitutionality of a letter of request made by a judge, on application by the State, requesting evidence for a criminal trial from authorities in Mauritius. The Court upheld the constitutionality of the letter of request, finding that: a) The State is lawfully permitted to seek original copies of evidence even when it already possesses copies of that evidence; b) The applicants at the time of the issuing of the letter of request were not accused persons; c) The naming of the applicants in the letter did not infringe their right to dignity; d) The applicants would have a fair opportunity to challenge any evidence obtained via the letter of request at their criminal trial; and e) The applicants' rights of access to courts were not infringed. Judgment of the Court.	[2008] ZACC 14; 2009 (1) SA 141 (CC); 2009 (3) BCLR 309 (CC)
324	*CUSA v Tao Ying Metal Industries and Others* *CCT 40/07* *Handed down:*	An appeal concerning the interpretation and enforcement of exemptions as they apply to the employer and its employees under the Labour Relations Act and the 1998 bargaining council main agreement. The issue was whether the employer had	[2008] ZACC 15; 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC)

	18 September 2008	been exempted from paying the minimum wages under the 1998 agreement and, if the employer was not exempted, it had to pay to its employees the minimum wages provided for under that agreement; along with questions concerning the role of the commissioners of the Commission for Conciliation, Mediation and Arbitration in resolving labour disputes and that of the courts in overseeing the arbitration process; and the jurisdiction of commissioners to resolve labour disputes and that of the courts to review arbitral awards. The majority of the Court upheld the commissioner's decision and concluded that the employer was not exempted from paying the minimum wages contemplated under the 1998 agreement. The minority judgment held that this Court should only hear disputes concerning the enforcement of collective bargaining agreements where they materially concern the right to engage in collective bargaining. The appeal was upheld. Majority: Ngcobo J (Langa CJ, Kroon AJ, Madala J, Mokgoro J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Dissent: O'Regan J.	
325	*Equity Aviation Services (Pty) Ltd v Commission for Concilaition, Mediation and Arbitration and Others* *CCT 88/07* *Handed down:* *25 September 2008*	Application concerning the extent to which an order of reinstatement made in terms of the Labour Relations Act can be made retrospective, and the nature of the Labour Appeal Court's discretion regarding an order of reinstatement with retrospective effect. It was held that the extent of retrospectivity is not limited beyond the date of dismissal and the nature of the Labour Appeal Court's discretion accords with that of the ordinary principles of appeal procedure. Majority: Nkabinde J (Kroon K, Madala J, Mokgoro J, O'Regan J, Skweyiya J concurring). Dissent: Yacoob J (Langa CJ and Van Der Westhuizen J concurring).	[2008] ZACC 16; 2009 (1) SA 390 (CC); 2009 (2) BCLR 111 (CC)
326	*Kruger v The President of the Republic of South Africa and Others* *CCT 57/07* *Handed down:* *2 October 2008*	An application concerning the constitutionality of Presidential Proclamations R27 and R32, which were designed to bring into force certain sections of the Road Accident Fund Amendment Act into operation. The majority found both proclamations invalid, but provided for a just and equitable order to permit the President to bring the correct sections of the Amendment Act into force within 30 days of the issuing of the Court's order, which would operate retrospectively from the date of the issuing of Proclamation R27. Majority: Skweyiya J (Langa CJ, Nkabinde J, O'Regan J, Mokgoro J, Kroon AJ, Madala J, Van der Westhuizen J). Dissents: Jafta AJ; Yacoob J.	[2008] ZACC 17; 2009 (1) SA 417 (CC) 2009 (3) BCLR 268 (CC)

327	*Lekolwane and Another v Minister of Justice and Constitutional Development* *CCT 47/05* *Handed down:* *3 October 2008*	Application for reinstatement as application previously struck from the roll of this Court. The Court held unanimously that the test for re-enrollment is if re-enrollment in such instance will be in the interests of justice. The applicants had not shown good cause, nor given a full explanation for their previous conduct. The application was refused. Judgment of the Court.	[2008] ZACC 18; 2009 (2) BCLR 158 (CC)
328	*Glenister v The President of the Republic of South Africa and Others (Centre for Constitutional Rights as amici curiae)* *CCT 41/08* *Handed down:* *22 October 2008*	Application for leave to appeal against an order of the Pretoria High Court which held that that Court lacked jurisdiction to hear the applicant's challenge to the decision by Cabinet to initiate legislation dissolving the Directorate of Special Operations (Scorpions). The applicant alternatively sought direct access to the Constitutional Court for an order compelling the government to withdraw the relevant legislation. The unanimous judgment dealt only with the question of whether the doctrine of the separation of powers permitted the Court to consider the validity of Cabinet's decision while the legislative process was still underway. The Court held that in order to justify such an intervention, the applicant would have had to prove that material and irreversible harm had arisen, which he had failed to do. The applications for leave to appeal and for direct access were dismissed. Judgment: Langa CJ (unanimous).	[2008] ZACC 19; 2009 (1) SA 287 (CC); 2009 (2) BCLR 136 (CC)
329	*Weare v Ndebele NO and Others* *CCT 15/08* *Handed down:* *18 November 2008*	Application for confirmation of an order of invalidity made by the Pietermaritzburg High Court declaring section 22(5) of the KwaZulu-Natal Regulation and Betting Ordinance unconstitutional. This Ordinance provides that juristic persons may not hold licences to engage in bookmaking in the province (whereas in other provinces both natural and juristic persons may hold licences). The High Court held that the section constituted unfair discrimination. The Court held that the section served a legitimate government purpose and did not constitute unfair discrimination. The respondents' appeal against the High Court order therefore succeeded and the application for confirmation was dismissed. Judgment: Van der Westhuizen (unanimous).	[2008] ZACC 20; 2009 (1) SA 600 (CC); 2009 (4) BCLR 370 (CC)
330	*Geldenhuys v National Director of Public Prosecutions and Others* *CCT 26/08* *Handed down:* *26 November 2008*	Application for confirmation of an order of invalidity made by the Supreme Court of Appeal declaring sections 14(1)(b) and 14(3)(b) of the Sexual Offences Act unconstitutional. Those provisions made the age of consent for same-sex sexual relations 19 years, as opposed to 16 years for heterosexual relations. Since this legislation had been repealed in 2007, the case concerned only those persons who were convicted under the legislation then in force. The Court held that the sections constituted unfair discrimination, and lowered the age of consent for same-sex sexual relations to 16 years, in line with heterosexual relations. Judgment: Mokgoro J (unanimous).	[2008] ZACC 21; 2009 (2) SA 310 (CC); 2009 (5) BCLR 435 (CC)

331	*Chagi and 29 Others v Special Investigating Unit* *CCT 101/07* *Handed down:* *3 December 2008*	Application for leave to appeal. The applicants claimed damages arising from the unlawful conduct of a Special Investigating Unit. The conduct relied on was that of a prior Unit which had been replaced by a second Unit. The High Court and the Supreme Court of Appeal held that the second Unit was not liable for the actions of the first Unit. The Court agreed that the second Unit was not liabile, but raised a concern that this would mean that no state entity could be held liable, therefore concluding that the first Unit could still be held liable, and remitted the matter to the High Court to be dealt with as if the first Unit had been cited in the original summons and as if the first Unit could attract liability. Judgment: Yacoob J (unanimous).	[2008] ZACC 22; 2009 (2) SA 1 (CC); 2009 (3) BCLR 227 (CC)
332	*Gumede v President of the Republic of South Africa and Others (Women's Legal Centre Trust as amicus curiae)* *CCT 50/08* *Handed down:* *8 December 2008*	Application for confirmation of an order of invalidity made by the Durban High Court declaring certain sections of the Recognition of Customary Marriages Act, the KwaZulu Act on the Code of Zulu Law Act and the Natal Code of Zulu Law Proclamation unconstitutional. The High Court held that the combined effect of the Acts and the Code was that a wife to a customary marriage entered into before the commencement of the Recognition of Customary Marriages Act would be entitled to nothing upon the dissolution of such a marriage. This was in contrast with customary marriages entered into after the commencement of that Act which were automatically in community of property, and thus the Acts and the Code were unconstitutional to that extent. This Court agreed with the High Court that certain provisions of the Acts and the Code constituted unfair discrimination, and confirmed the order of constitutional invalidity issued by the High Court. Judgment: Moseneke DCJ (unanimous).	[2008] ZACC 23; 2009 (3) BCLR 243 (CC); 2009 (3) SA 152 (CC)
333	*The President of the Republic of South Africa and Others v Quagliani; The President of the Republic of South Africa and Others v Van Rooyen and Brown; Goodwin v Director-General, Department of Justice and Constitutional Development (the Speaker of the National Assembly and the Chairperson of the National Council of Provinces intervening)* *CCT 24/08; CCT 52/08* *Handed down:* *21 January 2009*	An application challenging the validity and enforceability of the Extradition Agreement concluded between South African and the United States of America in 1999. The majority of the Court held that: 1) Cabinet Ministers were entitled to play a role in signing the Agreement provided the President took the final decision to enter into it; 2) the applicants were barred from raising the issue of a lack of mandate by the National Council of Provinces to approve the Agreement; and 3) the Agreement was enforceable in that it was provided for by the Extradition Act. Consequently the challenges to the Agreement failed. Judgment: Sachs J (unanimous).	[2009] ZACC 1; 2009 (4) BCLR 345 (CC)
334	*Van Straaten v President of the Republic of South Africa and Others*	Urgent application for direct access in terms of section 167(4)(d) of the Constitution. The applicant, Mr Van Straaten, sought an order to declare the National	[2009] ZACC 2; 2009 (3) SA 457 (CC); 2009 (5) BCLR 480 (CC)

	CCT106/08 *Handed down:* *24 February 2009*	Prosecuting Authority Amendment Bill, 2008 and the South African Police Service Amendment Bill, 2008 to be invalid. Together, the bills disbanded the Directorate of Special Operations unit. It was held that this Court has no jurisdiction to consider the application. The Constitution contains clear and express provisions which preclude any court from considering the constitutionality of a bill save in the limited circumstances referred to in sections 79 and 121 of the Constitution. The Court held that this case does not fall within these limited circumstances. The Court noted that the State has an obligation to respond to court process and lead by example. The order included a request to the Registrar to send a copy of the judgment to the offices of the President and Minster for Justice and Constitutional Development in order to bring the situation to their attention. Judgment: Sachs J (unanimous).	
335	*Richter v The Minister for Home Affairs and Others (with the Democratic Alliance and Others Intervening, and with Afriforum and Another as Amici Curiae)* *CCT03/09; CCT 09/09* *Handed down:* *12 March 2009*	Application for confirmation of constitutional invalidity made by the Pretoria High Court regarding section 33(1)(e) of the Electoral Act, which concerned the rights of registered voters abroad. It was held that the section created an unjustifiable violation of section 19 of the Constitution in restricting the rights of classes of voters to vote in elections. Therefore, the High Court's order of invalidity was confirmed. Judgment: O'Regan J (unanimous).	[2009] ZACC 3; 2009 (3) SA 615 (CC); 2009 (5) BCLR 448 (CC)
336	*AParty and Another v The Minister for Home Affairs and Others; Moloko and Others v The Minister for Home Affairs and Another* *CCT 06/09; CCT 10/09* *Handed down:* *12 March 2009*	Two applications seeking an order declaring sections 7(2), 7(3)(a), 8(3), 9(1) and 60(1) of the Electoral Act as well as the regulations giving effect to them unconstitutional and invalid to the extent that they precluded South African citizens living abroad from registering as voters in terms of the Electoral Act. Also a challenge to section 33(1) of the Electoral Act as it makes no provision for South African citizens who are not ordinarily resident in the Republic who wish to apply for a special vote. The Court dismissed challenges to regulation 17 of the Election Regulations, to sections 7(2), 7(3)(a), 8(3), 9(1) and 60(1) of the Electoral Act and to regulations 2 and 11 of the Voter Registration Regulations. These provisions relate to the essence of the electoral scheme chosen by Parliament and the Court is hesitant to sit as the court of first and last instance especially since the urgency was due to the applicants' failure to act earlier. The Court upheld the constitutional challenge to certain portions of section 33(1)(e) and regulations 6(e), 11, 12 and 13 of the Election Regulations. Any registered voter who was living abroad qualifies for a special vote. The Court awarded the applicants half of the costs. Judgment: Ngcobo J (unanimous)	[2009] ZACC 4; 2009 (3) SA 649 (CC); 2009 (6) BCLR 611 (CC)
337	*Johncom Media Investments*	Application for confirmation of an order of constitutional invalidity in respect of section 12 of the	[2009] ZACC 5; 2009 (4) SA 7 (CC);

	Limited v M and Others *CCT 08/08* *Handed down:* *17 March 2009*	Divorce Act 70 of 1979. The order of invalidity was upheld. Section 12 was held to infringe the right to freedom of expression in terms of section 16 of the Constitution in that it prohibited the publication of any information which comes to light during a divorce action or any related proceedings regardless of whether the publication affects the individual's rights or those of their children. Ordered, also, that subject to authorization granted by a court, it is prohibited to publish the identity or any information that might reveal the identity of any party of child in any divorce proceedings. Judgment: Jaftha AJ (unanimous)	2009 (8) BCLR 751 (CC)
338	*Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* *CCT 97/07* *Handed down:* *20 March 2009*	Appeal from the Supreme Court of Appeal regarding decision of a private arbitrator. The majority held that section 34 of the Constitution does not apply directly to private prosecutions, although arbitration agreements need to be in line with the Constitution. The arbitration had been fairly conducted in line with the intention of the parties and the conduct of the arbitrator was not so grossly irregular as to warrant the setting aside of the agreement. The appeal was dismissed. The minority held that section 34 did apply to private arbitrations, that there had been gross irregularities in the behavior of the arbitrator and that the award should be set aside. Ngcobo dissented, holding that the matter did not raise constitutional issues and that it was not in the interests of justice to grant the appeal. Majority: O'Regan (Langa CJ, Mokgoro J, Van der Westhuizen J and Yacoob J concurring) Minority: per Kroon AJ (Jaftha J and Nkabinde J concurring) Dissent: Ncgobo J.	[2009] ZACC 6; 2009 (4) SA 529 (CC); 2009 (6) BCLR 527 (CC)
339	*Machele and Others v Mailula and Others* *CCT 99/08* *Handed down:* *26 March 2009*	Application for leave to appeal against an interim execution order seeking to prevent the execution of an eviction order while an appeal in respect of the eviction itself was pending in the Supreme Court of Appeal. Court held that an interim execution order was appealable when a constitutional issue was raised and that an eviction from one's home always raised a constitutional issue. The applicants showed that they would suffer irreparable harm if the execution order was carried out as they would lose their homes. It was in the interests of justice to grant leave to appeal and to suspend the execution order. In considering appropriate relief in terms of section 38 of the Constitution, the Court held that it would be fair and just for the matter to be referred to the Supreme Court of Appeal to be adjudicated simultaneously with the appeal already pending in that court concerning the merits of the eviction. Judgment: Skweyiya J (unanimous).	[2009] ZACC 7; 2010 (2) SA 257 (CC); 2009 (8) BCLR 767 (CC)

340	*Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others* *CCT 36/08* *Handed down:* *1 April 2009*	Application for confirmation of the invalidity of sections 153(3) and (5); 158(5); 164(1); and 170A(1) and (7) of the Criminal Procedure Act 51 of 1977 which concerns the testimony of child witnesses in open court. The constitutional validity of these provisions was raised by the High Court on its own initiative. This Court held that a High Court is entitled to raise a constitutional issue of its own accord if the issue stemmed from the facts of the case and a decision on the constitutional issue was necessary to decide the case. The Court took notice that a child complainant of abusive sexual acts will in many cases experience undue stress or suffering by testifying in open court. Yet, the Court held that there is nothing to prevent all of the impugned provisions from being applied in a manner that properly protects the interests of the child. Therefore the High Court's order of invalidity was not confirmed but was set aside and replaced with an order that the Department of Justice and Constitutional Development was to provide the Court with a report with the various findings regarding a list of regional courts, how many intermediaries they have, the services available to the intermediaries and the like. Majority: Ngcobo J (Langa CJ, Moseneke DCJ, Mokgoro J, O'Regan J, Sachs J, Van der Westhuizen J and Yacoob J concurring). Minority: Skweyiya J	[2009] ZACC 8; 2009 (4) SA 222 (CC); 2009 (7) BCLR 637 (CC)
341	*President of the Republic of South Africa and Others v Quagliani; President of the Republic of South Africa and Others v Van Rooyen and Another; Goodwin v Director-General, Department of Justice and Constitutional Development* *CCT 24/08; CCT 52/08* *Handed down:* *1 April 2009*	A challenge to the enforceability of the South Africa-United States Extradition Agreement was dismissed. The judgment left open the question whether a punitive costs order should be made in connection with wasted costs occasioned by a last-minute application for postponement of delivery of the judgment. The application, being made on the morning the judgment was to be delivered, sought to join the Speakers of the provincial legislatures to the proceedings. The Court held that bringing an application to postpone the delivery of a judgment well after all the evidence had been presented and well after oral argument had been completed was manifestly disrespectful of court processes. Accordingly, a special adverse costs order was made. Judgment: Sachs J (unanimous).	[2009] ZACC 9; 2009 (8) BCLR 785 (CC)
342	*Netherburn Engineering CC t/a Netherburn Ceramics v Mudau and Others* *CCT 01/09* *Handed down:* *1 April 2009*	At a CCMA hearing, the commissioner refused, in terms of section 140(1) of the Labour Relations Act, to allow the applicant to be represented by an attorney. After unsuccessfully challenging this in the Labour Court and Labour Appeal Court, this Court handed down a unanimous judgment dismissing the application for leave to appeal. The Court held that, although section 140(1) of the Labour Relations Act raises a constitutional question, it was not in the interests of justice to hear the matter, because section 140 was repealed nearly seven years ago, and there appears no longer to be a live dispute between the parties. In the result, the application for leave to	[2009] ZACC 10; [2009] BLLR 517 (CC); (2009) 30 ILJ 1521 (CC); 2010 (2) SA 269 (CC); 2009 (8) BCLR 779 (CC)

		appeal was dismissed. Judgment: O'Regan (unanimous)	
343	*Bertie Van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* *CCT 77/08* *Handed down:* *7 May 2009*	The matter concerned the constitutional validity of provisions of the Private Security Industry Act of 2001, regulating the private security industry in South Africa. The applicants were farmers who had hired "in-house" security guards. Case concerned whether they were required to register as "security service providers" under section 21(1)(a) of the Act and be bound by the the Code of Conduct which ensured the payment of minimum wages and compliance with labour standards. The majority of the Court held that the provision was not overbroad; that the in-house security guards fell within this definition and were thus required to register in terms of the Act; and that the requirement of compliance with the Code of Conduct was not unconstitutional since it was an important purpose of the Act. In a dissenting judgment, O'Regan J held that section 21(a) was impermissibly vague and therefore unconstitutional and invalid. Majority: Mokgoro J (Langa CJ, Moseneke DCJ, Ngcobo J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Minority: O'Regan.	[2009] ZACC 11; 2010 (2) SA 181 (CC); 2009 (10) BCLR 978 (CC)
344	*Laerskool Generaal Hendrik Schoeman v Bastian Financial Services (Pty) Ltd* *CCT 22/09* *Handed down:* *7 May 2009*	Application for condontation of late filing of an application for leave to appeal against a decision of the Supreme Court of Appeal. The Court warned that litigants who obtained a judgment from the Supreme Court of Appeal – which is the final court of appeal in non-constitutional matters – should ordinarily be entitled to assume after the time for lodging a further appeal has lapsed that the judgment has become final. Here, no adequate explanation was given for the delay. Condonation was refused and the application dismissed. Judgment of the Court.	[2009] ZACC 12; 2009 (10) BCLR 1040
345	*African National Congress v Chief Electoral Officer of the Independent Electoral Commission* *CCT 45/09* *Order:* *5 May 2009* *Judgment Handed down:* *3 June 2009*	An urgent application for leave to appeal by the African National Congress against a decision taken by the Electoral Court upholding the objection of the Chief Electoral Officer of the Independent Electoral Commission to one of the candidates included on the ANC list for election of the National Assembly in the 2009 General Elections. The objection was based on the fact that the candidate was not on the voters' roll. A unanimous Court held that on the facts there was no reason to prohibit the candidate from standing for election and therefore upheld the appeal against the decision of the Electoral Court. Judgment of the Court.	[2009] ZACC 13; 2009 (10) BCLR 971 (CC)

346	*Biowatch Trust v Registrar Genetic Resources and Others* *CCT 80/08* *Handed down:* *3 June 2009*	Judgment dealing with costs awards in constitutional litigation. The Court noted that appellate courts are reluctant to interfere with the exercise of discretion in relation to costs awards, the more so when the appeal was based solely on questions of costs. The High Court had misdirected itself in not giving appropriate attention to the fact that this was a matter regarding the vindication of constitutional rights. The Court held that the general rule in constitutional litigation is that an unsuccessful litigant in proceedings against an organ of state ought not to be ordered to pay costs, unless the application is frivolous or vexatious or in any other way manifestly inappropriate. Biowatch was substantially successful. The governmental authorities were ordered to pay Biowatch's costs. Judgment: Sachs J (unanimous).	[2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC)
347	*Von Abo v President of the Republic of South Africa* *CCT 67/08* *Handed down:* *5 June 2009*	Application for the confirmation of part of an order handed down by the North Gauteng High Court, Pretoria. The applicant sought an order declaring that the Government had failed to properly consider and decide his request, and that it grant him diplomatic protection relating to the violation of his rights by the Government of Zimbabwe. This Court held that diplomatic protection was the responsibility of the government as a whole, and not the President alone. "Conduct", as described in section 172(2)(a) did not include this category of obligations. Moreover, on the facts of this case, it was clear that it was the Department of Foreign Affairs that had purported to deal with the matter and not the President despite the applicant's appeals to the President for diplomatic protection. For these reasons, Moseneke DCJ held that the matter had been erroneously brought to this Court and thus struck the matter off the roll. Judgment: Moseneke DCJ (unanimous).	[2009] ZACC 15; 2009 (10) BCLR 1052 (CC); 2009 (5) SA 345 (CC)
348	*Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* *CCT 22/08* *Handed down:* *10 June 2009*	Application for leave to appeal against an order of the Western Cape High Court, which ruled in favour of the respondents by granting an eviction order. The High Court held that the respondents had complied with the requirements of the Prevention of Illegal Eviction Act. Appeal on the basis that: the PIE Act was not applicable to the applicants because they had consent to occupy the Joe Slovo settlement; such consent was still valid; consequently, they were not 'unlawful occupiers' and could not be evicted under the Act. The Court held that, at the time the eviction proceedings were initiated, the applicants were unlawful occupiers within the meaning of the Act either because there was there was no consent to occupy the property or such consent had been revoked. The Court granted a structured eviction order based on the draft order submitted by the respondents. Judgment of the Court. Separate concurrences: Moseneke DCJ, Ngcobo J, O'Regan J, Sachs J and Yacoob J.	[2009] ZACC 16; 2009 (9) BCLR 847 (CC); 2010 (3) SA 454 (CC)

349	*Strategic Liquor Services v Mvumbi NO and Others* *CCT 33/09* *Handed down:* *18 June 2009*	Application for leave to appeal against a judgment of the Labour Court which dismissed an application to review a Commission for Conciliation, Mediation and Arbitration award in favour of an employee. The employer contended that the CCMA and the Labour Courts misconceived the jurisdictional prerequisites for constructive dismissal, since on the employee's own version he had a choice whether to resign or be subjected to poor performance procedures. The Court held that it should not intervene, since the employer's submission misconstrued the test for constructive dismissal: this does not require that the employee have no choice but to resign, but only that the employer should have made continued employment intolerable. The Court however drew attention to the long delays that had beset the case in the labour courts and to the fact that neither the Labour Court nor the Labour Appeal Court had given the employer reasons for the adverse decision. It pointed out that a reasoned judgment is essential to the appeal process. Failure to provide one when requested cuts across the employer's right of access to courts. The application for leave to appeal was dismissed with costs. Judgment: Cameron J (unanimous).	[2009] ZACC 17; (2009) 30 ILJ 1526 (CC); 2010 (2) SA 92 (CC); 2009 (10) BCLR 1046 (CC)
350	*Centre for Child Law v Minister for Justice and Constitutional Development and Others* *CCT98/08* *Handed down:* *15 July 2009*	Application for confirmation of order of constitutional invalidity made by the Pretoria High Court, declaring various provisions of the Criminal Law Amendment Act (CLAA), as amended by Criminal Law (Sentencing) Amendment Act (the Amendment Act) invalid. This statute made minimum sentences for certain serious crimes applicable to 16 and 17 year old children. The majority found that by limiting the children's rights in section 28 of the Constitution, the minimum sentencing regime constrains the discretion of sentencing officers by orientating the sentencing officer away from options other than incarceration, by de-individuating sentencing, and by conducing to longer and heavier sentences. Since no adequate justification was provided for the limitation, the Court confirmed the order of invalidity in its essential respects. The minority held that that the Amendment Act is not inconsistent with the Constitution, because the sentencing regime must be interpreted on the basis that all children are the beneficiaries of the rights conferred by section 28(1)(g) to which all courts must give effect during the sentencing process. Majority: Cameron J (Langa CJ, Moseneke DCJ, Mokgoro J, O'Regan J, Sachs J and Van der Westhuizen J concurring). Minority: Yacoob J (Ngcobo J, Nkabinde J and Skweyiya J concurring).	[2009] ZACC 18; 2009 (2) SACR 477 (CC); 2009 (6) SA 632 (CC); 2009 (11) BCLR 1105 (CC)

351	*Hassam v Jacobs NO and Others* *CCT83/08* *Handed down:* *15 July 2009*	Application for confirmation of an order of invalidity. The case concerns the proprietary consequences of a polygynous Muslim marriage within the context of intestate succession. The applicant was a party to a polygynous Muslim marriage. Her husband died intestate. A party to such a marriage is not a "spouse" for purposes of the Intestate Succession Act. The exclusion of women in the position of applicant from the protection of the Act unfairly discriminates against them on the listed grounds of religion, martial status and gender. This exclusion is not justifiable and section 1 of the Act was declared unconstitutional. To remedy the defect, the words "or spouses" are to be read-in after each use of the word "spouse" in the Act. Judgment: Nkabinde J (unanimous).	[2009] ZACC 19; 2009 (11) BCLR 1148 (CC); 2009 (5) SA 572 (CC)
352	*Women's Legal Trust v President of the Republic of South Africa and Others* *CCT13/09* *Handed down:* *22 July 2009*	Application for direct access seeking an order declaring that the President and Parliament failed to fulfil constitutional obligations because no legislation has been passed recognising and regulating marriages concluded under Islamic law. The Court dealt with a preliminary point only – whether the Centre could bring its case as a direct access application. The Court held that the exclusive access provision of the Constitution, section 167(4)(e), focuses on specific agents – it mentions only the President and Parliament. By contrast, the obligation to enact legislation to fulfil the rights in the Bill of Rights falls on a wide range of constitutional actors. The obligation therefore does not fall within this Court's exclusive jurisdiction. The application was dismissed. Judgment: Cameron J (unanimous).	[2009] ZACC 20; 2009 (6) SA 94 (CC)
353	*Conrad Stefaans Brummer v The Minister for Social Development and Others* *CCT 25/09* *Handed down:* *13 August 2009*	Application for confirmation of invalidity of section 78(2) of the Promotion of Access to Information Act which allows a person who is refused access to information to challenge the refusal in court, but that such challenge must be brought within 30 days. The Court confirmed the declaration that section 78(2) was unconstitutional in that it does not give a person who is refused information adequate time to approach a court for relief. The provision limits the applicant's right to access to court as well as his access to information and the limitation was not reasonable or justifiable. The Court ordered that Parliament enact a time limit that is consistent with the Constitution. Pending the enactment of such legislation a period of 180 days will suffice for applicants to bring applications to court. The present matter was referred back to the High Court (and a different judge) for it to consider his application for access to information. Judgment: Ngcobo J (unanimous).	[2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC)

354	*Wybrand Andreas Ludowikus Du Toit v Minister for Safety and Security and Another* *CCT 91/08* *Handed down:* *18 August 2009*	The applicant was sentenced to 15 years imprisonment for murder and dismissed from his employ in the South African Police Service as a result of this. He was later granted amnesty in terms of the Promotion of National Unity and Reconciliation Act. He applied to the High Court for an order compelling the SAPS to reinstate him to his previous position. The High Court dismissed the application, as did the Supreme Court of Appeal. On appeal, this Court held that the granting of amnesty does not render unlawful acts lawful, nor does it undo the legal consequences of the conduct for which amnesty was granted. Section 20(10) of the Reconciliation Act ought not to be interpreted so as to operate prospectively on the civil and administrative consequences of the grant of amnesty. The grant of amnesty cannot be equated with an appeal or review, which are judicial processes whereas amnesty is an administrative process. The appeal was dismissed, without costs, and the cost orders of the High Court and Supreme Court were set aside. Judgment: Langa CJ (unanimous).	[2009] ZACC 22; 2010 (1) SACR 1 (CC); 2009 (12) BCLR 1171 (CC)
355	*Wycliffe Simiyu Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)* *CCT 53/08* *Handed down:* *25 August 2009*	On appeal from the North Gauteng High Court, the matter raised issues of the exhaustion of internal remedies prior to approaching a court for judicial review, which is required in terms of Promotion of Administrative Justice Act. The applicants were Kenyan nationals who had their residence permits withdrawn because they had been fraudulently obtained. A letter explaining the reasons for withdrawal this was sufficient to allow for a meaningful review in terms of the Immigration Act. The applicants needed to exhaust their internal remedy before approaching the court. The appeal was dismissed. Judgment: Mokgoro J (unanimous).	[2009] ZACC 23; 2009 (12) BCLR 1192 (CC); 2010 (4) SA 327 (CC)
356	*Reflect-All 1025 CC and Others v Member of the executive Council for Public Transport, Roads and Works, Gauteng Provincial Government* *CCT 110/08* *Handed down:* *27 August 2009*	Application for confirmation of order of invalidity of section 10(1) and (3) of the Infrastructure Act and corresponding Notices relating to the planning of provincial roads. The Court held that the provisions do not arbitrarily deprive landowners of their land, and sufficiently strike a balance between the province's legitimate interests and the landowners' proprietary interests. With regard to section 10(3) the Court held that there is no need for compensation as the provincial government has not acquired any rights in the affected land, and that the publication of notices does not amount to administrative action. The application was dismissed and the cost order of the High Court altered so that the parties were to pay their own costs in both Courts. O'Regan J dissented with regard to section 10(3), finding it to be unconstitutional because of the indefinite restriction of the rights and the fact that there is no mechanism for periodic public review. Majority: Nkabinde J (Moseneke DCJ, Mokgoro J, Ngcobo J and Skweyiya J concurring).	[2009] ZACC 24; 2009 (6) SA 391 (CC); 2010 (1) BCLR 61 (CC)

		Minority: O'Regan J (Van der Westhuizen J and Cameron J concurring).	
357	*Minister for Justice and Constitutional Development v Mqabukeni Chonco and 383 Others* *CCT 42/09* *Handed down:* *30 September 2009*	This was an application for leave to appeal against a decision by the Supreme Court of Appeal. The SCA found that advice rendered by the Department of Justice and Constitutional Development to the President, which was intended to assist him to fulfill his constitutional Head of State function to pardon offenders under section 84(2)(j) of the Constitution, constituted 'preliminary executive functions' for which the relevant Minister could be held accountable under section 85(2)(e) of the Constitution. On appeal to this Court, it was held that the power to request advice, and the advice itself, is an 'auxiliary power' granted to the Head of State by section 84(1). The matter fell within the responsibility of the President only and review of that power was therefore within the exclusive jurisdiction of the Constitutional Court. The High Court and the SCA had lacked jurisdiction to consider it. Mr Chonco ought to have sued the President, not the Minister, to obtain the relief he sought. Accordingly, the appeal succeeded. Judgment: Langa CJ (unanimous)	[2009] ZACC 25; 2010 (1) SACR 325 (CC); 2010 (2) BCLR 140 (CC); 2010 (4) SA 82 (CC)
358	*Gcaba v The Minister of Safety and Security NO and Others* *CCT 64/08* *Handed down:* *7 October 2009*	Application for leave to appeal relating to the powers of the High Court over labour-related matters, and whether the conduct of a public sector employer towards an employee amounts to administrative action. The Court held that jurisdiction must be assessed on the basis of the pleadings. Where a remedy lies in the High Court, section 157(2) of the Labour Relations Act should not be interpreted to exclude such jurisdiction. However, employment and labour relationship decisions taken in relation to public sector employees generally do not amount to administrative action. When conduct of the state as employer has no direct consequences for other citizens, it will not amount to administrative action. Accordingly, the application was dismissed and there was no order as to costs. Judgment: Van der Westhuizen J (unanimous).	[2009] ZACC 26; 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC); (2010) 31 ILJ 296 (CC); [2009] 12 BLLR 1145 (CC)
359	*Bothma v Els and Others* *CCT 21/09* *Handed down:* *8 October 2009*	Application for leave to appeal against an order of the High Court granting a permanent stay of a prosecution. The applicant had instituted a private prosecution against the respondent on charges of rape alleged to have occurred almost 40 years earlier. The High Court held that the delay, for which it regarded the applicant as being fully culpable, would result in irreparable trial prejudice to the respondent and deny him his constitutional right to a fair trial. The Court held that the High Court had paid insufficient attention to the specific nature of the alleged offence and the manner in which the applicant claimed the trauma had contributed towards the subsequent delay. These were issues that should have been left for the trial court to determine. Any prejudice that the respondent might suffer because of the delay was not insurmountable and his right to a fair trial would	[2009] ZACC 27; 2010 (2) SA 622 (CC); 2010 (1) SACR 184 (CC); 2010 (1) BCLR 1 (CC)

		be protected by the presumption of innocence. The appeal therefore succeeded, and the decision of the High Court staying the prosecution was set aside. Judgment: Sachs J (unanimous).	
360	*Mazibuko and Others v City of Johannesburg and Others* *CCT 39/09* *Handed down:* *8 October 2009*	Application for leave to appeal concerning the reasonableness, fairness and lawfulness of a water policy of the City of Johannesburg, specifically with regard to the pilot project in Phiri Township, Soweto. The introduction of a free basic water allowance of 6 kilolitres per household per month and the introduction of prepaid water meters were challenged as infringing the applicants' Constitutional rights of access to water and to just administrative action as well as their rights to dignity and equality. The Court held that the City's free basic water policy was reasonable. It had curtailed the previously exorbitant water losses in the area; had been accepted by the majority of the consumers in the area; was under constant review; and provided for, on average across Johannesburg, more water per person than the applicants were asking for. The Court refused to give a quantified content to section 27 of the Constitution, holding that this would not be appropriate especially where the quantity asked for was not clearly proven on the papers. The introduction of prepaid meters was found to be authorized by law, was fair and was not discriminatory. The importance of socio-economic rights litigation was affirmed. The orders of the High Court and the Supreme Court of Appeal were overturned. Judgment: O'Regan J (unanimous).	[2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC)
361	*The Minster of Justice and Constitutional Development v Nyathi and Others* *CCT 53/09* *Handed down:* *9 October 2009*	Application by the Minister for Justice and Constitutional Development for the extension of the suspension of the declaration of invalidity made in *Nyathi v MEC for Health*, *Gauteng and Another* in June 2008. That order declared constitutionally invalid section 3 of the State Liability Act, a provision which prohibits parties to whom debts are owed by the state from executing against or attaching state assets for the satisfaction of judgment debts. The Minister sought an extension of the order of invalidity because Parliament had failed to enact the remedial legislation within the prescribed time frame. The Court granted a further extension for a period of two years together with an interim order. The interim order provided a procedure for the attachment and execution of movable state assets if the relevant Treasury failed to satisfy the judgment debt within the period prescribed in the interim order. Judgment: Mokgoro J (unanimous).	[2009] ZACC 29; 2010 (4) BCLR 293 (CC); 2010 (4) SA 567 (CC)
362	*Leon Joseph and Others v City of Johannesburg and Others* *CCT 43/09* *Handed down:*	Application for leave to appeal on whether the electricity supplier (City Power) can lawfully disconnect the electricity supply to leased residential premises without giving the tenants—and not just the landlord with whom the supplier has a contractual relationship—pre-termination notice and a hearing in terms of section 3(2) of the Promotion of	[2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC)

	9 October 2009	Administrative Justice Act. The Court held that the applicants received electricity as a matter of public law right correlative to the constitutional and statutory duties of local government to provide basic municipal services to all persons living in its jurisdiction. The applicants were accordingly entitled to procedural fairness, which required 14 days' pre-termination notice in the form of a physical notice placed in a prominent position in the building. By-law 14(1) of the Electricity By-laws (1999) was declared unconstitutional and therefore invalid – an invalidity cured by severing the words "without notice". By-law 15(3) of the Credit Control and Debt Collection By-Laws (2005) was read in the light of PAJA to require procedural fairness and thus to produce a constitutional result. Judgment: Skweyiya J (unanimous).	
363	*Abahlali baseMjondolo Movement of South Africa and Another v Premier of the Province of KwaZulu-Natal and Others* *CCT 12/09* *Handed down:* *14 October 2009*	Application on both Bill of Rights and provincial competence grounds for a declaration that the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act is invalid, alternatively that section 16 of the Act is unconstitutional. The Court held that the subject matter of the Act is housing and that it falls within the concurrent competence of national and provincial legislature. Therefore, the Act as a whole is not invalid. The Court however found that section 16 of the Act is unconstitutional because it compels an owner of a building or land, or the municipality within whose jurisdiction the building or land is located, to institute eviction proceedings against unlawful occupiers even in circumstances where the requirements of Prevention of Illegal Evictions and Unlawful Occupations Act, which protects unlawful occupiers against arbitrary evictions, may not be met. It also found that the power given to the MEC to issue a notice is overbroad and irrational, because it applies to any unlawful occupier on any land or in any building even if it is not a slum, and was not properly related to the purpose of the Act being the elimination or prevention of slums. The majority therefore granted an order declaring section 16 of the Act inconsistent with section 26 of the Constitution and invalid. Majority: Moseneke DCJ (Langa CJ, Cameron J, Mokgoro J, Ngcobo J, Nkabinde J, O'Regan J, Sachs J, Skweyiya J and Van der Westhuizen J concurring). Dissent: Yacoob J.	[2009] ZACC 31; 2010 (2) BCLR 99 (CC)
364	*Head of Department: Mpumalanga Department of Education and Another v Höerskool Ermelo and Others* *CCT 40/09* *Handed down:* *14 October 2009*	Appeal against an order finding that the Head of Department had acted unlawfully in withdrawing the function of the school governing body to determine the school's language policy and appointing an interim committee to perform the function. The withdrawal was motivated by Hoërskool Ermelo's alleged refusal to change its single-medium Afrikaans language policy despite a shortage of English-medium schooling in the area. The Court held that section 29(2) of the Constitution read with section 22 of the South African Schools Act empowers the Head of Department to	[2009] ZACC 32; 2010 (2) SA 415 (CC); 2010 (3) BCLR 177 (CC)

		withdraw the school governing body's function to determine language policy. It was incorrect for the Head of Department to invoke section 25 of Schools Act in appointing an interim committee to determine the function; the Head of Department's actions therefore lacked lawful basis. The Court however emphasised the need to ensure that the constitutional rights to education and to be taught in an official language of one's choice are properly protected. Accordingly, the Court ordered the school to revisit its language policy in the light of the judgment, and to report to the Court. The Head of Department was ordered to report to the Court on the steps being taken to ensure that there are sufficient places for grade 8 English learners in the area at the start of 2010. Judgment: Moseneke DCJ (unanimous).	
365	*Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others* *CCT 31/09* *Handed down:* *19 November 2009*	Appeal against an order of the South Gauteng High Court dismissing the applicants' claim against the Ekurhuleni Metropolitan Municipality for high-mast lighting and temporary sanitation facilities in the Harry Gwala Informal Settlement. The Court held that Chapters 12 and 13 of the National Housing Code are not applicable, as the former deals with emergency situations and the latter with upgraded townships. The applicants' direct reliance on several constitutional provisions was also held to be vague, insufficiently specified and inappropriate. The Court did not pronounce on the reasonableness of the Municipality's newly adopted policy, as it was held to be inappropriate to consider a case so fundamentally changed on appeal. The MEC (whom the Court joined in the proceedings before it, and whose department admitted delay in finalising the necessary approvals) was ordered to take a final decision on the application to upgrade the status of the settlement within 14 months of the date of the order. Judgment: Van der Westhuizen J (unanimous).	[2009] ZACC 33; 2010 (4) BCLR 312 (CC)
366	*City of Tshwane Municipal Council v Cable City (Pty) Ltd* *CCT 85/09* *Handed down:* *03 December 2009*	Application for leave to appeal against a judgment of the North Gauteng High Court, affirmed on appeal to the Supreme Court of Appeal, ruling that section 12 of the Regional Services Councils Act did not empower the Minister of Finance to authorise the City Council to summarily estimate the liability of levy payers. The City contended the judgments of the courts below should be reversed because the Minister was not party to the litigation. The Court held that, given that the relevant statutory provisions have been abolished, and that the legal argument in favour of the notice is exceedingly weak, the non-joinder of the Minister is not a sufficient reason to hear the case. The Court found that it was therefore not necessary to enter into the question of the existence and impact of the doctrine of collateral challenge. The application for leave to appeal was dismissed. Judgment of the Court.	[2009] ZACC 34; 2010 (5) BCLR 445 (CC)

367	*Hennie De Beer Game Lodge CC v Waterbok Bosveld Plaas CC and Another* *CCT 106/09* *Handed down:* *4 February 2010*	This Court, in a review of the taxation (by its Taxing Master) of the Respondent's bills of costs in an unsuccessful application for leave to appeal, reiterated the six principles it had previously laid down guiding the review of a taxation in the Constitutional Court. The Court held that an additional principle is that where the fee charged is time-related the amount of time actually spent in preparing an appeal cannot be decisive in determining the reasonableness, between party and party, of a fee for that particular work. Such a method of calculation, namely so much per hour, placed a premium on slow and inefficient work and resulted in a fee being charged which could be totally out of proportion to the value of the services actually rendered. The Court set aside the Taxing Master's *allocatur* for the relevant items in the bill of costs. Judgment of The Court.	[2010] ZACC 1; 2010 (5) BCLR 451 (CC); 2010 (5) SA 124 (CC)
368	*Moloi and Others v Minister for Justice and Constitutional Development and Others* *CCT 78/09* *Handed down:* *4 February 2010*	Application for direct access on an urgent basis. The applicants were convicted and sentenced in a magistrate's court for dealing in drugs. The applicants submitted that their right to a fair trial had been infringed as they were convicted on the basis of a statutory presumption which had been declared unconstitutional by this Court in a previous judgment. Pursuant to directions issued by this Court, the magistrates who presided over the trials of the applicants furnished this Court with reports stating that the applicants were not found guilty on the strength of the unconstitutional presumption, but that the charge sheets, which did refer thereto, had not been amended to reflect the true basis of their convictions. Furthermore, they drew the Court's attention to section 86(4) of the Criminal Procedure Act which expressly states that the fact that a charge sheet is not amended shall not affect the validity of the proceedings there under. The question that stood to be answered by the Court was whether section 86(4) could be invoked where the failure to amend a charge sheet leads to the accused being prejudiced. Accordingly, the Court found that this case presented an important constitutional issue on whether the applicants were afforded a fair trial. However, the Court reiterated that it rarely exercises its power to grant direct access in cases which do not fall within its exclusive jurisdiction and stated that the High Court's assistance in criminal matters such as this one would be of assistance to this Court. The Court found that it would not be in the interests of justice to bypass the High Court and grant direct access. Judgment of the Court.	[2010] ZACC 2; 2010 (2) SACR 78 (CC); 2010 (5) BCLR 497 (CC)
369	*Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile and Others* *CCT 72/09* *Handed down:*	Application for leave to appeal a decision of the Labout Appeal Court. The matter concerned whether it was just and equitable in terms of section 172(1)(b) of the Constitution for an order of reinstatement to be made where an employee had been unfairly dismissed eight years earlier. The Court refused leave to appeal on the basis that the constitutional issue raised should	[2010] ZACC 3; 2010 (5) BCLR 422 (CC); (2010) 31 ILJ 273 (CC); [2010] 5 BLLR 465 (CC)

	18 February 2010	have been raised in the court from which the appeal arose. Leave to appeal would only be granted in such situations only where they were exceptional circumstances. The legislature had assigned such matters to the labour court, which had developed an expertise in labour law, and that court should have considered the matter first. The Court further found that the constitutional point could not succeed as it had no prospects of success. Judgment: Froneman J (unanimous).	
370	*Albutt v Centre for the Study of Violence and Reconciliation and Others* *CCT 54/09* *Handed down:* *23 February 2010*	A constitutional challenge to the exercise of the Presidential pardon power under section 84(2)(j) of the Constitution in so far as the President was to grant pardon without receiving representations from victims. The Court found that the exercise of the power to grant pardon must be rationally related to the purpose sought to be achieved by it. In this instance the objective of the special dispensation process was national unity and national reconciliation, and the dispensation process was to be guided by the criteria, principles and spirit that underpinned the Truth and Reconcilation Commission amnesty process. The Court held that, given our history, victim participation in accordance with the principles of the TRC was the only rational means to contribute towards national reconciliation and national unity; and further that victims were entitled to make representations before the President made the decision to grant a pardon under special dispensation. However, it was emphasized that this did not apply to other categories of applications for pardon. Judgment: Ngcobo CJ (unanimous).	[2010] ZACC 4; 2010 (3) SA 293 (CC); 2010 (2) SACR 101 (CC); 2010 (5) BCLR 391 (CC)
371	*Poverty Alleviation Network and Others v President of the Republic of South Africa and Others* *CCT86/08* *Handed down:* *24 February 2010*	An application to declare unconstitutional and invalid the Constitution Thirteenth Amendment Act of 2007 and the Cross-Boundary Municipalities Laws Repeal and Related Matters Amendment Act of 2007 in so far as the Acts sought to relocate the Matatiele Municipality, formerly in KwaZulu-Natal, into the Eastern Cape in a manner which was both irrational and which failed to provide for public participation in the legislative process. The Court held that the Acts had been passed in accordance with the Constitution and dismissed the application. Judgment: Nkabinde (unanimous).	[2010] ZACC 5; 2010 (6) BCLR 520 (CC)
372	*International Trade Administration Commission v SCAW South Africa (Pty) Ltd* *CCT 59/09* *Handed down:* *9 March 2010*	This was an application for leave to appeal against the granting of an interim interdict in the High Court. The High Court ordered an interim interdict restraining the Minister of Trade and Industry from accepting a recommendation by the applicant and from requesting the Minister of Finance to terminate the existing anti-dumping duty in force against stranded wire, ropes and cables. The interdict also restrained the Minister of Finance from giving effect to the applicant's request for terminating an existing anti-dumping duty. This relief was granted pending the final determination of an application to be instituted	[2010] ZACC 6; 2010 (5) BCLR 457 (CC)

		by the respondent to review and set aside the applicant's recommendation to terminate the existing anti-dumping duty. After granting leave to appeal the Court found that, in essence, the interim interdict extended the term of the existing anti-dumping duty and prevented its lapsing, thereby overriding mandatory legislative provisions buttressed by international obligations. The court set aside the interim interdict made by the High Court. Judgment: Moseneke DCJ (unanimous)	
373	*Chonco and Others v President of the Republic of South Africa* *CCT94/09* *Handed down:* *16 March 2010*	A sequel to the Court's decision in the matter decided 30 September 2009 (*Chonco 1*), this was an application for direct access seeking an order declaring that the President had unreasonably delayed in considering and deciding applications for presidential pardon under section 84(2)(j) of the Constitution, which had been filed with the Department of Justice and Constitutional Development in 2003. The applicants also sought an order directing the President to decide their applications within one month from the date of the order. The relief sought was rendered moot by the filing of a supplementary affidavit that revealed the pardons had been considered and decided. No order was made by the Court in that regard. The only remaining issue was costs, which were not awarded to the applicants on the basis that the applicants had been substantially indemnified in the *Chonco 1*. Judgment: Khampepe J (unanimous).	[2010] ZACC 7; 2010 (6) BCLR 511 (CC)
374	*Mthembu v S* *CCT115/09* *Handed down:* *25 March 2010*	Application for leave to appeal against convictions of armed robbery, illegal possession of fire-arms and illegal possession of ammunition as well as against the sentence of 15 years imprisonment in respect of these offences. The applicant was out on bail during the appeal process and should have reported to the clerk of the court when leave was refused, and he only began his sentence 6 years later following apprehension at his home. The applicant alleged his right to freedom and security of person was infringed by the delay in execution of the sentence. The matter was dismissed as it raised no constitutional issue. The applicant should have ascertained the status of his application for leave. Judgment of the Court.	[2010] ZACC 8; 2010 (1) SACR 619 (CC); 2010 (7) BCLR 636 (CC)
375	*Minister for Justice and Constitutional Development v Chonco and Others* *CCT42/09* *8 April 2010*	The Respondents in *Chonco 2* served their bill of costs on the State Attorney but the latter refused to make full payment, adopting the stance that the order made in *Chonco 2* was applicable only to the case before this Court. The Registrar was then approached with a request that the Chief Justice issue a ruling. This request was treated as an application. The Court dealt with the issue on that basis. The Court observed that its express statement in the original judgment that "the pardon applicants and their legal advisors should not be out of pocket because of their recourse to legal proceedings" could not but cover the costs in the High Court as well as in the Supreme Court of Appeal.	[2010] ZACC 9; 2010 (7) BCLR 629 (CC)

		However, the costs order had failed to make that explicit. This Court found that the pardon applicants were entitled to have the order in the original judgment varied and it accordingly replaced its original order. Judgment of The Court.	
376	*Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* *CCT100/09* *Handed down:* *11 May 2010*	Application for confirmation of a declaration made by the North Gauteng High Court that various provisions of the Communal Land Rights Act were invalid. The High Court had refused to declare the entire Act unconstitutional for Parliament's failure to enact it in accordance with the correct procedure prescribed in section 76 of the Constitution. The Court held that there is a difference between determining whether the National Assembly or the National Council of Provinces has the competence to legislate in a particular field, and determining how a Bill ought properly to be tagged and enacted. These were two different processes for which two different tests were to be applied. Reaffirming the decision in *Liquor Bill,* the Court held any Bill the provisions of which substantially affected the provinces had to to be enacted by the procedure stipulated in section 76 of the Constitution. The Court found that Parliament had followed an incorrect procedure in enacting the Act and accordingly declared it invalid in its entirety for want of compliance with the procedures set out in section 76. Judgment: Ngcobo CJ (unanimous).	[2010] ZACC 10; 2010 (6) SA 214 (CC); 2010 (8) BCLR 741 (CC)
377	*City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* *CCT89/09* *Handed down:* *18 June 2010*	Application for confirmation and an appeal against parts of an order made by the Supreme Court of Appeal, declaring Chapters V and VI of the Development Facilitation Act unconstitutional. The issue before this Court was whether the Constitution empowers the municipal or the provincial sphere of government, or both, to exercise powers relating to the rezoning of land and the establishment of townships. The Court held that the Constitution envisages a degree of autonomy for the municipal sphere, in which municipalities exercise their original constitutional powers free from undue interference from other spheres of government. The powers to consider and approve applications for the rezoning of land and the establishment of townships are elements of "municipal planning", an exclusive municipal function assigned to municipalities by section 156(1) of the Constitution read with Part B of Schedule 4. The order of invalidity was suspended for 24 months, so as to limit any disruptive effects it may have and to allow parliament to rectify the defects in the Act, or pass new legislation. Judgment: Jafta J (unanimous).	[2010] ZACC 11; 2010 (6) SA 182 (CC); 2010 (9) BCLR 859 (CC)
378	*Malachi v Cape Dance Academy International (Pty) Ltd and Others*	Application for confirmation of an order of invalidity. The Court confirmed the finding of the High Court that section 30 of the Magistrates' Court Act, in so far as it allows for arrest *tanquam suspectus de fuga*, is unconstitutional as it unjustifiably infringes the right	[2010] ZACC 13; 2010 (6) SA 1 (CC); 2010 (11) BCLR 1116 (CC)

	CCT 05/10 *Handed down:* *24 August 2010*	not to be deprived of freedom without just cause. Judgment: Mogoeng J (unanimous).	
379	*Stuttafords Stores (Pty) Ltd and Others v Salt of the Earth Creations (Pty) Ltd* *CCT 59/10* *Handed down:* *2 September 2010*	Appeal against an order of a Judge refusing to recuse himself following handdown of the main judgment, which the applicant argued exhibited little or no sign of any original or independent application and reasoning, that it essentially copied the written heads of argument of the respondent's counsel and, consequently, created a perception of bias in favour of the respondent. The matter was dismissed on the basis that it was not in the interest of justice to hear the matter as the Judge had subsequently retired and there was no possibility of him hearing any future matters between the parties. The Court emphasized that this should not be seen as an endorsement of the main judgment. Judgment of the Court.	[2010] ZACC 14; 2011 (1) SA 267 (CC); 2010 (11) BCLR 1134 (CC)
380	*Greenfields Drilling CC and Others v Registrar of the Supreme Court of Appeal and Others* *CCT 53/10* *Handed down:* *7 September 2010*	Application for direct access to challenge the constitutionality of the Supreme Court of Appeal's practice not to give reasons for the refusal of applications for leave to appeal against judgments of the High Court. This Court held that the practice of refusal without reasons is not inconsistent with the Constitution subject to the qualification that the position might be different if a constitutional issue is involved and the Supreme Court of Appeal is not the court of final instance. No constitutional issue arose in this matter thus the application for direct access was refused. Judgment of the Court.	[2010] ZACC 15; 2010 (11) BCLR 1113 (CC)
381	*S v Marais* *CCT 54/10* *Handed down:* *21 September 2010*	The applicant approached this Court for leave to appeal against her conviction and sentence in the High Court. She was found guilty of murdering her husband by committing a so-called "contract murder". During her trial the applicant submitted that she was a battered woman. The High Court found this to be improbable and untrue. In this Court the applicant submitted that the High Court misapplied the legal rules applicable to a battered woman. Furthermore, she requested to lead further evidence on the battered woman syndrome in this Court. The Court rejected her application for leave to appeal as it was merely based on a disagreement with the High Court's findings of fact and found that she was precluded by the rules of procedure of tendering fresh evidence in this Court. Judgment of the Court.	[2010] ZACC 16; 2010 (2) SACR 606 (CC) 2011 (1) SA 502 (CC); 2010 (12) BCLR 1223 (CC)
382	*Van Vuren v Minister of Correctional Services and Others* *CCT 07/10* *Handed down:*	Application for leave to appeal against a decision of the High Court and an application for direct access in order to revive a challenge abandoned in the High Court disputing the constitutional validity of section 136(3)(a) of the Correctional Services Act, a transitional provision which governs the minimum period which prisoners sentenced to life	[2010] ZACC 17; 2010 (12) BCLR 1233 (CC)

	30 September 2010	imprisonment during a specific period must serve before being considered for parole. The majority of the Court granted direct access but dismissed the application for leave to appeal and found that section 136(3) was not applicable to this category of offenders whose eligibility for parole was in fact governed by section 136(1) thereby entitling the applicant to be considered for parole immediately. The minority interpreted section 136(3)(a) to mean that it is applicable to the applicant. Majority: Nkabinde J (Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Mogoeng J and Skweyiya J concurring). Dissent: Yacoob J (Ngcobo CJ concurring).	
383	*Road Accident Fund and Another v Mdeyide* *CCT 10/10* *Handed down:* *30 September 2010*	Following reconsideration of the applicant's capacity as ordered in *Mdeyide 1* (2007) the application for confirmation of invalidity proceeded in this Court concerning the prescription period set forth in the Road Accident Fund Act that commences when the cause of action arises, irrespective of whether the claimant has knowledge of the Road Accident Fund and the possibility of a claim thereunder. The Court held that because the three-year prescription period provided for in the Act did not contain a knowledge requirement or provisions for condonation, this limited the right of access to courts under section 34 of the Constitution. In conducting a proportionality analysis, however, the Court found this limitation to be justifiable under section 36 of the Constitution. The Court held that the potential harm to the viability and functioning of the Road Accident Fund should a knowledge requirement or provision for condonation be imported outweighed the possible negative impact of the provision on potential claimants who may not come to know of the Road Accident Fund until three years after the accident giving rise to a claim. The minority would have found that the lack of a knowledge requirement and the absence of a condonation provision with regard to the prescription period in the Road Accident Fund Act unjustifiably infringed the right of access to courts under section 34 of the Constitution. Majority: Van der Westhuizen J (Ngcobo CJ, Moseneke DCJ, Cameron J, Khampepe J, Mogoeng J, Nkabinde J, and Skweyiya J concurring). Minority: Froneman J (Jafta J and Yacoob J concurring).	[2010] ZACC 18; 2011 (1) BCLR 1 (CC); 2011 (2) SA 26 (CC)
384	*Camps Bay Ratepayers and Residents Association and Another v Harrison and Another* *CCT 18/10* *Handed down:* *4 November 2010*	Application for leave to appeal the Supreme Court of Appeal's judgment which confirmed the approval of building plans of the first respondent's property in Camps Bay, Cape Town. The matter concerned the interpretation of section 7(1)(b) of the National Building Regulations and Building Standards Act 103 of 1977 and whether a review ground could be raised after the 180-day rule prescribed in section 7(1) of the Promotion of Administrative Justice Act 3 of 2000. The Court found that it would not be in the interests	[2010] ZACC 19; 2011 (2) BCLR 121 (CC)

		of justice to revisit the interpretation of section 7(1)(b) of the Building Act. The Supreme Court of Appeal's determination of section 7(1) of PAJA could not be faulted. The impugned building plans did not contravene the title deed restrictions. The application for leave to appeal was dismissed and the applicants ordered to pay costs jointly and severally. Judgment: Brand AJ (unanimous).	
385	*Offit Enterprises (Pty) Ltd and Another v Coega Development Corporation (Pty) Ltd and Others* *CCT 15/10* *Handed down:* *18 November 2010*	Application for leave to appeal in which the applicants were owners of large properties located in the Coega Industrial Development Zone (IDZ) in the Eastern Cape Province. The IDZ was operated by the first respondent Coega Development Corporation (Pty) Ltd (Coega) under license from the Minister for Trade and Industry. The central complaint was that Coega had made threats over a long period of time to expropriate the applicants' land. The intention of Coega to have the land expropriated was also inferred from past attempts at expropriation by the Premier of the Eastern Cape and past spoliations. These were appropriately remedied in other cases before the High Court. The applicants contended that these threats amounted to an unconstitutional deprivation of property in terms of section 25(1) of the Constitution. The applicants sought an order in this Court compelling Coega to decide within a specified period whether to have the property expropriated. The Court held that these threats did not amount to a substantial interference that went beyond the normal restrictions on the use and enjoyment of property. The threats to expropriate were made by an entity which did not have the power to expropriate. Furthermore, the threats related to future conduct that may not take place. The appeal was dismissed with costs. Judgment: Skweyiya J (unanimous).	[2010] ZACC 20; 2011 (1) SA 293 (CC); 2011 (2) BCLR 189 (CC)
386	*Viking Pony Africa Pumps (Pty) Ltd t/a Tricom Africa v Hidro-Tech Systems (Pty) Ltd and Another* *CCT 34/10* *Handed down:* *23 November 2010*	Application for leave to appeal centered on the correct interpretation of the preferential procurement policy contained in the Preferential Procurement Act and its Regulations. The Court held that a state organ has an obligation to investigate fronting practices in tendering processes when plausible allegations of this nature are made. The Court found that the City of Cape Town failed to properly investigate allegations made by the first respondent that the applicant's historically disadvantaged individuals were neither remunerated nor participated in the management of the applicant to the degree commensurate with their shareholding and they were mere tokens to secure tenders. The appeal was dismissed. Judgment: Mogoeng J (unanimous).	[2010] ZACC 21; 2011 (1) SA 327 (CC); 2011 (2) BCLR 207 (CC)
387	*Zwane and Others v Alert Fencing Contractors CC* *CCT 87/10* *Handed down:*	The applicants sought leave to appeal against a decision of the Labour Appeal Court which upheld the Labour Court's decision to rescind a default judgment order obtained by the applicants against the respondent. The applicants alleged that the Labour Appeal Court's decision that Rule 6(7) of the Rules for	[2010] ZACC 22; [2011] 2 BLLR 109 (CC)

	23 November 2010	the Conduct of Proceedings in the Labour Court required notice of the application for default judgment to be given to the respondent as a pre-requisite to judgment being granted was incorrect. This Court dismissed the application for leave to appeal finding that the decision of the Labour Appeal Court was correct and not susceptible to criticism. The Court also commented that it was unacceptable that the applicants' claim for unfair dismissal had not been finalised after such a long period of time and therefore ordered the Judge President of the Labour Court to do everything possible to ensure that the case was heard as a matter of urgency. Judgment of the Court.	
388	*Betlane v Shelly Court CC* *CCT 14/10* *Handed down:* *24 November 2010*	This was both an application for leave to appeal and an application for direct access. The application for leave to appeal was for the setting aside of an eviction order which evicted the applicant from the respondent's premises. The direct access application challenged orders of the High Court which prohibited the applicant from appealing against his eviction until past legal fees were paid and security for costs for the appeal was provided. The applicant contended, as a lay litigant, these orders infringed his section 34 right to access to courts. Prior to the hearing, the respondent abandoned all the restraining orders and as a result the application for direct access and leave to appeal was dismissed. However, the writ of execution, which allowed the respondents to evict the applicant, was set aside on the grounds that rule 49(11) of the Uniform Rules of Court was not complied with as the writ was issued while an appeal was pending. Judgment: Mogoeng J (unanimous).	[2010] ZACC 23; CC 2011 (1) SA 388 (CC)
389	*Malachi v Cape Dance Academy International (Pty) Ltd and Others* *CCT 05/10* *Handed down:* *25 November 2010*	The Court discharged a provisional costs order directing the employees (first and second respondent) and the Minister of Justice and Constitutional Development (Minister) to each pay her costs in the Constitutional Court. The Court was satisfied that the provisional costs order should be discharged in relation to the employees as this matter concerned the constitutionality of *arrest tanquam suspectus de fuga*, which was between the applicant and the Minister and not between the applicant and the employees. As a result, the Minister was ordered to pay the applicant's costs in this Court. Judgment: Mogoeng J (unanimous).	[2010] ZACC 24
390	*Law Society of South Africa and Others v Minister for Transport and Another* *CCT 38/10* *Handed down:* *25 November 2010*	The Court dealt with constitutional challenges to certain provisions of the 2005 amendment to the Road Accident Fund Act which related to abolishing road accident victims' residual common law right to claim losses which were not compensable under the Act; a provision limiting the amount of compensation that the Road Accident Fund was obliged to pay pursuant to claims for loss of income or a dependent's loss of support; and a regulation in which the Minister for Transport had prescribed medical tariffs for health	[2010] ZACC 25; 2011 (1) SA 400 (CC); 2011 (2) BCLR 150 (CC)

		services provided to accident victims by public health establishments. The Court applied its established rationality standard and found the abolition of claimants' residual common law claims a necessary and rational part of an interim legislative scheme whose primary thrust was to achieve financial viability, and a more effective and equitable platform for the delivery of social security services. The Court found the abolition of the common law residual claim was a justifiable limitation on the security of the person, that the cap on compensation for loss of income and of dependents' support did not infringe the right to property and that the right to adequate remedy was not infringed. The applicants' attack on the constitutional validity of the medical tariff for health services prescribed by the Minister was, however, successful. On the facts, the Court found the tariff to be wholly inadequate and unsuited for paying compensation for the medical treatment of road accident victims in the private health care sector. The tariff was found to be irrational as it was incapable of achieving the purpose the Minister was seeking to achieve, namely to enable innocent road accident victims to obtain the health services they require. It declared the regulation unconstitutional and made an order obliging the Minister to make a fresh determination. Judgment: Moseneke DCJ (unanimous).	
391	*Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* *CCT 39/10* *Handed down:* *30 November 2010*	Application for leave to appeal against a High Court decision, affirmed on appeal by the Supreme Court of Appeal. Decision concerns the lawfulness of the grant of a prospecting right to a company on the land of a community in terms of the Mineral and Petroleum Resources Development Act. The Court held that there had been insufficient consultation between the respondent and the community and the company representing the community; that the department was meant to have provided the applicant with a hearing and that the respondent had failed to comply with the environmental requirements in terms of the Act. The Court thus set aside the decision of the High Court. Judgment: Froneman J (unanimous).	[2010] ZACC 26
392	*S v Thunzi and Another* *CCT 81/09* *Handed down:* *2 December 2010*	Question whether there is a constitutional obligation on Parliament to establish uniform legislation on the use of dangerous weapons. Indication from Parliament that process of rationalization of laws had begun. The Court held that in the circumstances of the case, it was not in the interest of justice to consider Parliament's obligations in relation to the impugned legislation or whether the mere existence of parallel legislation regulating the use of dangerous weapons is unconstitutional. The Court ordered the matter be postponed and affidavits be filed by the Minister and Parliament indicating the steps taken in pursuance of undertaking. Judgment: Froneman J (unanimous).	[2010] ZACC 27

393	*Bernert v Absa Bank Ltd* *CCT 37/10* *Handed down:* *9 December 2010*	Application for leave to appeal against the judgment and order of the Supreme Court of Appeal. The applicant alleged that the SCA was biased against him on several grounds, namely, one of the judges held shares in Absa Bank; two judges had a prior association with Absa Bank; the manner in which the presiding judge conducted the proceedings; and the factual findings made by the SCA were so unreasonable that they could only be explained on the basis of bias. The Court held that where there is a realistic possibility that the outcome of proceedings will affect a judicial officer's interest in the proceedings or interest in a party to the proceedings, the judicial officer must recuse himself or herself. It held, however, that a reasonably informed litigant would not reasonably apprehend that a judicial officer would not bring an impartial mind to bear in adjudicating a case simply because the judicial officer has shares in a litigant company. The Court held that the outcome of this case could not realistically impact in any significant way the share price of Absa Bank and therefore there was no basis for a reasonable apprehension of bias. The Court also held that a complaint of bias must be brought within a reasonable time period. Here, the applicant unreasonably delayed in bringing his complaint. The Court held that there was no obligation on the two judges to disclose their prior association as there was no reasonable apprehension of bias because the subject-matter of the litigation did not arise from the prior association. Turning to the conduct of and remarks made by the presiding judge during the proceedings in the SCA, the Court held that, if true, they amounted to no more than irritation or impatience and could not give rise to an apprehension of bias. On the final issue, the Court held that the applicant's complaints of erroneous factual findings were not borne out by the record. The Court accordingly dismissed the appeal. Judgment: Ngcobo CJ (unanimous).	[2010] ZACC 28; 2011 (4) BCLR 329 (CC); 2011 (3) SA 92
394	*Mvumvu and Others v Minister of Transport and Another* *CCT 67/10* *Handed down:* *17 January 2011*	The Court declared constitutionally invalid certain provisions of the Road Accident Fund that put a cap of R25 000 on certain claims as they were found to be inconsistent with the right to equality. Majority: Jafta J (unanimous).	[2011] ZACC 1; 2011 (2) SA 473 (CC); 2011 (5) BCLR 488 (CC)
395	*Twee Jonge Gezellen (Pty) Ltd and Another v Land and Agricultural Development Bank of South Africa t/a The Land Bank and Another* *CCT 68/10* *Handed down:* *22 February 2011*	The constitutional validity of provisional sentence procedure, as set out in rule 8 of the Uniform Rules of the High Court was challenged in an application for leave to appeal against a judgment of the High Court. The Court held that the procedure unjustifiably limited the right of access to courts, under section 34 of the Constitution. It was therefore declared inconsistent to the extent that it does not give a court the power to refuse provisional sentence where the defence raised requires oral evidence and where the defendant is unable to pay the judgment debt to enter	[2011] ZACC 2; 2011 (5) BCLR 505 (CC)

		into the main case. The common law was thus developed to provide courts with a discretion to refuse provisional sentence where the defendant could show on affidavit that he or she was unable to satisfy the judgment debt, an even balance of prospects of success in the main case and a reasonable prospect that oral evidence at the main trial may tip the balance of prospective success in the defendant's favour. Judgment: Brand AJ (unanimous).	
396	*Mankayi v AngloGold Ashanti Ltd* *CCT 40/10* *Handed down:* *3 March 2011*	Appeal from the Supreme Court of Appeal concerning the compensatory schemes for employees suffering diseases at work under the Compensation for Occupational Injuries and Diseases Act (COIDA), on the one hand, and Occupational Diseases in Mines and Works Act (ODIMWA), on the other, and an individual's right to claim for common law compensation. The issue was whether section 35(1) of the COIDA extinguished a miner's common law right to claim damages even though he did not qualify for compensation under COIDA, but qualified under ODIMWA. The Court held that it was clear from history leading up to the adoption of both Acts and the drafting of COIDA that section 35(1) did not extend to those who did not qualify under the COIDA compensation scheme and therefore did not apply to those who qualified under ODIMWA. Consequently mineworkers, who they fell under the remit of ODIMWA, were able to enforce their common law right to compensation for diseases that contracted in the course of employment. The appeal was upheld. Judgment: Khampepe J (unanimous). Separate concurrence: Froneman J.	[2011] ZACC 3; 2011 (5) BCLR 453 (CC)
397	*Le Roux and Others v Dey* *CCT 45/10* *Handed down:* *8 March 2011*	An application to confirm and properly adjudicate upon an alleged defamation of a school principal by school children who put up a picture in which the principal's face was superimposed on an image of a gay man engaged in a sexually explicit pose. The Court held that such conduct amounted to defamation on the basis that the reasonable observer would understand the image or statement conveyed by the picture as associating or connecting the principal with the indecent situation that the picture portrays and that the average person would regard the picture as defamatory. The majority further concluded that if the defamation claim had not prevailed the image was in any event an injury to the principal's feelings and his dignity. The Court set aside the orders granted in the High Court and the Supreme Court of Appeal and ordered the children to pay principal R25 000 as compensation. In addition, the children were ordered to tender an unconditional apology to the principal for the injury they caused him. The dissenting judgment of Yacoob J held that the image was neither defamatory nor an infringement dignity because the average reasonable observer in a constitutional state would bear in mind the constitutional provisions relating to freedom of expression and the rights and	[2011] ZACC 4

		interests of children. The joint minority judgment of Cameron J and Froneman J held that the image was not defamatory, but that it infringed upon the principal's personal dignity. They would have awarded the same relief for that infringement as the majority did for the defamation. Majority: Brand AJ (Ngcobo CJ, Moseneke DCJ, Khampepe J, Mogoeng J and Nkabinde J concurring). Partial Dissent: Cameron J and Froneman J. Dissent: Yacoob J (Skweyiya J concurring with separate reasons).	
398	*Viking Pony Africa Pumps (Pty) Ltd t/a Tricom Africa v Hydro-Tech Systems (Pty) Ltd and Another* *CCT 34/10* *Handed down: 10 March 2011*	The Court discharged a provisional costs order made in the main judgment requiring the City of Cape Town to pay both the applicant and respondent's costs in the Constitutional Court. The Court substituted an order directing the City of Cape Town to only pay for the first respondent's costs in the Constitutional Court and not the applicant's costs on the basis that the City had already commenced investigating allegations of fronting in compliance with the High Court order. However, the first respondent received costs as they would not have had to bring this matter to the High Court if the City had complied with their obligation to investigate. Judgment: Mogoeng J (unanimous).	[2011] ZACC 5
399	*Glenister v President of the Republic of South Africa and Others* *CCT 48/10* *Handed down: 17 March 2011*	Application for leave to appeal against a decision of the High Court and an application for direct access in terms of Rule 18 read with section 167(6) regarding the constitutional invalidity of various provisions of the National Prosecuting Authority Amendment Act 56 of 2008 and the South African Police Service Amendment Act 57 of 2008, which created the Directorate for Priority Crime Investigation (DPCI) and disbanded the Directorate of Special Operations. The Court held that the impugned legislation is constitutionally invalid to the extent that it fails to secure an adequate degree of independence for the DPCI. First, it held that the Constitution's scheme, taken as a whole, and the international law agreements which are binding on the state impose a pressing duty on the state to set up a concrete, effective and independent mechanism to prevent and root out corruption. Corruption undermines the rights in the Bill of Rights, and imperils our democracy. Section 7(2) of the Constitution imposes a duty on the state to "respect, protect, promote and fulfil" the rights in the Bill of Rights. When read with section 8(1) (which provides that the rights in the Bill of Rights bind all branches of government), section 39(1)(b) (which provides that Courts must consider international law when interpreting the Bill of Rights) and section 231 (which provides that an international agreement that Parliament approves "binds the Republic"), this provision places an obligation on the state to create an independent corruption-fighting unit. Second, the Court found that the DPCI did not meet the constitutional requirement of adequate	[2011] ZACC 6

		independence because it was insufficiently insulated from political influence in its structure and functioning. The Court granted leave to appeal, declared the impugned legislation invalid and suspended the declaration for 18 months. Majority: Moseneke DCJ and Cameron J (Froneman J, Nkabinde J and Skweyiya J concurring). Minority: Ngcobo CJ, (Brand AJ, Mogoeng J and Yacoob J concurring).	
400	*S v S* *CCT 63/10* *Handed down:* *29 March 2011*	Application for leave to appeal against an imprisonment sentence of a Regional Court. It concerns the application of section 28 of the Constitution which deals with the paramountcy principle of the best interests of children. In addition, it concerns the reach and applicability of a judgment of this Court in *S v M* whereby an imprisonment sentence against the applicant in that case was set aside as regards to section 28 of the Constitution. The Court found that this case is distinguishable from *S v M* as in the instant case, the applicant's husband is available to care for the minor children. The Court therefore, dismissed the application for leave to appeal and held that the sentencing court, when imposing an imprisonment sentence against the applicant, properly balanced the best interests of the children in line with the Constitution. Khampepe J dissented, and held that the incarceration of the applicant will negatively affect the children and that there was a range of possible sentencing options to be considered. Majority: Cameron J (Moseneke DCJ, Brand AJ, Froneman J, Jafta J, Mogoeng J, Nkabinde J, Skweyiya J and Yacoob J concurring). Dissent: Khampepe J.	[2011] ZACC 7
401	*Residents of Joe Slovo Community, Western Cape v Thebelisha Homes and Others* *CCT 22/08* *Handed down:* *31 March 2011*	An application to discharge the order of this Court requiring residents of Joe Slovo to evacuate on certain terms and conditions which were set out to regulate the proper eviction of the residents of Joe Slovo Residence. The respondents had taken no action to enforce the order and the Court held that the eviction was no longer just and equitable and thereby ordered the discharge of such eviction order. Judgment: Yacoob J (unanimous).	[2011] ZACC 8
402	*Minister for Correctional Services and Another v Van Vuren and Another and Another, In re Van Vuuren v Minister for Correctional Services and Others* *CCT 07/10* *Handed down:* *31 March 2011*	Application to have paragraph 78(g) of the order in *Paul Francious Van Vuren and Another v Minister for Correctional Services and Others* [2010] ZACC 17 varied to the extent that it suggested the National Council for Correctional Services no longer had jurisdiction to make a recommendation to the Minister of Correctional Services for the placement on parole of offenders who had been sentenced to life imprisonment. The Court held that the applicants did not meet the requirements necessary to allow the Court to rescind or vary a judgment, and further, that the order was clear and required no variation.	[2011] ZACC 9

		Judgment of the Court.	
403	*HBR (Hola Bon Renaissance) Foundation v President of the Republic of South Africa and Others* *CCT 11/11* *Handed down:* *31 March 2011*	An urgent application for direct access to order the injunction of proclamation of local elections and to force the Municipal Demarcation Board to consider carving a municipality of Soweto out of the Johannesburg Metropolitan area. The Court refused to adjudicate the case as the Foundation failed to comply with the Court rules regarding direct access and its request for the establishment of a municipality in Soweto could not be granted as the Municipal Demarcation Board has no power to establish a municipality. The Court pointed out that the Constitution confers that power on the provincial governments. Judgment of the Court.	[2011] ZACC 10
404	*The Citizen 1978 (Pty) Ltd and Others v McBride* *CCT 23/10* *Handed down:* *8 April 2011*	Application for leave to appeal challenging the Supreme Court of Appeal's interpretation of section 20(10) of the Promotion of National Unity and Reconciliation Act in the context of a defamation claim against by a candidate for public office against a newspaper. The newspaper ran a series of articles in which it referred to the candidate as a "murderer" in arguing against his fitness for public office, despite the candidate having been granted amnesty for the murders he committed during the struggle against apartheid. The Court granted leave to appeal and overturned the SCA's holding. In holding that section 20(10) of the Act did not serve to render untrue the fact that a person convicted of murder and subsequently granted amnesty was nevertheless a murderer, the Court upheld the defence of fair comment as applied to defamatory statements relating to the candidate's suitability for public office based on that fact. The majority judgment also proposed that the defence of fair comment might more appropriately be called "protected" comment, since the label "fair" is misleading when the comment in question need not be fair or just at all, and may be protected even if extreme, unjust, unbalanced, exaggerated and prejudiced, so long as it expresses an honestly-held opinion, without malice, on a matter of public interest on facts that are true. Majority: Cameron J (Brand AJ, and Froneman J, Nkabinde J and Yacoob J concurring). Partial dissents: Ngcobo CJ (Khampepe J concurring), Mogoeng J.	[2011] ZACC 11
405	*Cherangani Trade & Invest 107 (Pty) Ltd v Mason and Others* *CCT 116/09* *Handed down:* *8 April 2011*	An application for leave to appeal an order of the High Court made under the Naitonal Credit Act. Provisions of the Act require a Court to declare void any agreement made by a credit provider that is not properly registered so under the Act. The order under section 89(5) of the Act could lead to forfeiture to the state of "purported rights" under the agreement. The applicants sought to have the Act interpreted so as to give the High Court discretion over making the order. The Court held that it was not in the interests of justice to grant leave to appeal because the order of	[2011] ZACC 12

		the High Court was issued without reasons and leave to appeal to the Supreme Court of Appeal was dismissed without reasons, effectively making this Court a court of first and last instance on the issues raised. Furthermore, the facts were not fully developed and the legal issues raised indicated that the Minister of Finance should have been joined as a party to explain what rights could be forfeited to the state. Leave to appeal was dismissed. Judgment: Yacoob J (unanimous).	
406	*Governing Body of the Juma Musjid Primary School & Others v Essay NO and Others* *CCT 29/10* *Handed down:* *11 April 2011*	Application for leave to appeal against the judgment of the High Court which had authorised the eviction of learners and teachers of a public school operating from a privately owned property. The issue was whether the owner, in enforcing its rights to property under section 25 of the Constitution, had a negative duty not to impede on the learners' right to a basic education; also whether, in granting the eviction order, the High Court took into consideration the impact its order would have on the learners' right to a basic education; and whether it applied the constitutional standard that requires that, in any matter involving a child, the best interests of a child are of paramount importance. The Court ordered the parties to negotiate meaningfully with each other and if the negotiations failed, the Member of the Executive Council for Education in KwaZulu-Natal (MEC), had to submit information before this Court setting out that, should the school be closed, the learners will continue to receive their basic education in other suitable schools. The negotiations were unsuccessful. As a result, the owner of the property applied for an eviction order and the MEC furnished the Court with information that suitable arrangements had been made for alternative placement of the learners for continuation of their education. Before granting the eviction order in favour of the owner, the Court held that the owner had a constitutional duty not to impede on the learners' right to a basic education in terms of section 8 of the Constitution and that in considering the eviction application the High Court should have properly considered the best interests of the learners and their right to a basic education. Judgment: Nkabinde J (unanimous).	[2011] ZACC 13
407	*Gundwana v Steko Development CC and Others* *CCT 44/10* *Handed down:* *11 April 2011*	Application for direct access in terms of Rule 18 read with section 167(6) of the Constitution to declare constitutionally invalid rule 31(5) of the Uniform Rules of Court, which allows a Registrar of the High Court to declare immovable property specially executable when ordering default judgment, to the extent that this permits the sale in execution of the home of a person. In this matter, default judgment and a warrant of execution were granted by the Registrar of the High Court against an immovable residential property. This case is confined to the potential invasion of ones' right to housing under section 26(1) and (3) of the Constitution. The Court granted direct access and declared the High Court	[2011] ZACC 14

		Rule unconstitutional. Judgment: Froneman J (unanimous).	
408	*Baphalane ba Ramokoka Community v Mphela Family and Others, In re: Mphela Family and Others v Haakdoornbult Boerdery CC and Others* *CCT 75/10* *Handed down:* *21 April 2011*	An application for rescission or expungment of pronouncements of this Court's judgment in terms of Rule 42(1)(a) of the Uniform Rules of the High Court, which is applicable to this Court's proceedings. The applicant claimed rescission or expungement of paragraphs 54 and 56 of this Court's decision in *Mphela and Others v Haakdoornbult Boerdery CC and Others* on the basis that it was a decision pertaining to the farm Pylkop in respect of which its claim was currently pending in the Land Claims Court. The applicant claimed that its right of access to courts in terms of section 34 of the Constitution was violated because it was unaware of the proceedings which culminated in the *Haakdoornbult* judgment. The first respondent whose claim to the Haakdoornbult farm had succeeded in the *Haakdoornbult* judgment opposed the rescission. The Court dismissed the application, finding that the *Haakdoornbult* judgment only pertained to the Haakdoornbult farm and contained no judicial rulings binding on the parties to the Pylkop claim because the parties, the cause of action, the relief sought and issue in dispute differed. The Court ordered the applicant and the State to pay jointly and severally the first respondent's costs including the costs of two counsel. The Court also ordered the applicant's counsel to pay the costs arising from the engagement of additional counsel by the first respondent out of his own pocket (*de bonis propriis*) because he unjustifiably accused the first respondent's legal team of fraudulent conduct. These accusations compelled the first respondent to brief the additional senior counsel. Judgment: Cameron J (unanimous).	[2011] ZACC 15
409	*Electoral Commission of the Republic of South Africa v Inkatha Freedom Party* *CCT 33/11* *Handed down:* *10 May 2011*	Urgent application for leave to appeal against a decision of the Electoral Court requiring the Electoral Commission to allow a political party to submit election documents elsewhere than the Commission's local office as required by sections 14 and 17 of the Local Government: Municipal Electoral Act 27 of 2000. The Electoral Commission originally refused the party's request to submit its documents in a non-local office, reasoning that the requirement in sections 14 and 17 of the Act that political parties submit their election documents to the Commission's local office in the municipality where they intend to stand for election is peremptory. The Electoral Court (relying on *African Christian Democratic Party v Electoral Commission and Others*) found that there was no discernible central legislative purpose attached to the local submission requirement in sections 14 and 17 of the Act. The Court upheld the appeal against the Electoral Court's judgment, finding that there is a manifest legislative purpose for the local submission requirement, namely the promotion of efficient processing and verification of election documents in order to ensure the fairness of municipal elections.	[2011] ZACC 16

		Majority: Ngcobo CJ (unanimous).	
410	*De Lacy and Another v South African Post Office* *CCT 24/10* *Handed down:* *24 May 2011*	An application for direct access in terms of Rule 18 read with section 167(6) of the Constitution seeking to overturn a judgment of the Supreme Court of Appeal on the basis of allegations that the judges of the appeal court had deliberately distorted evidence in order to arrive at a predetermined conclusion against the applicants. The applicants alleged both before this Court and before the Judicial Service Commission that the appeal court's judgment was the product of gross misconduct and incompetence and that it was so out of kilter with the record that the only explanation could be judicial bias. The Court dismissed the application for direct access finding that: the allegations were entirely without merit; the application was improperly brought as a second attack on a judgment that the applicants did not like; that the appeal court's findings were either correct, were reasonable inferences on the evidence, or if any misdirection had occurred, that such misdirection was not material to the outcome of the appeal. Although this Court was the only court with competence to hear the matter, other considerations warranted that the applicants not be granted direct access including: no prospects of success; prolonged delay in alleging bias; that the applicants had approached this Court before seeking essentially the same relief; and the fact that the applicants had made trenchant accusations of deliberate judicial bias, ulterior motive and impropriety, only later to withdraw them and tender an unqualified apology. This latter consideration weighed heavily in the determination of costs, which were ordered to be paid by the applicants on an attorney and own client (punitive) scale. Judgment: Moseneke DCJ (unanimous).	[2011] ZACC 17
411	*Qhinga and Others v State* *CCT 50/10* *Handed down:* *25 May 2011*	An application for leave to appeal seeking to set aside the dismissal of a petition for leave to appeal by the Supreme Court of Appeal. The applicants were convicted of attempted murder and robbery with aggravating circumstances solely on the basis of statements and pointings-out, admitted as evidence after trials-within-the-trial were conducted. The High Court judgment did not give reasons for admitting the evidence. In their petition to the SCA the applicants challenged the admissibility rulings. The SCA dismissed the petition summarily. The record of the trial proceedings had not been forwarded to the SCA, because it was not required in terms of section 316(10)(c) of the Criminal Procedure Act 51 of 1977 as it read at the time of the petition. The judges considering the petition had also not called for the record in terms of section 316(12)(a) of the Criminal Procedure Act as it read at the time. The applicants argued that the SCA could not have adequately considered their petition without access to the reasons for admitting the statements and pointings-out, which were located only in the record. The Court held that the applicants were not afforded a fair procedure by the SCA as required by their fair trial	[2011] ZACC 18

		right "of appeal to, or review by, a higher court" in terms of section 35(3)(o) of the Constitution. Leave to appeal was granted, the dismissal of their petition by the SCA was set aside and the petition was remitted to the SCA for reconsideration. Judgment: Mthiyane AJ (unanimous).	