

SA MERCANTILE LAW JOURNAL

SA Merc LJ (2025) Volume 37

INDEX



juta

SA MERCANTILE LAW JOURNAL

EDITOR-IN-CHIEF

DR NZUMBULULO SILAS SIPHUMA
LLB (NWU) LLM LLD (Stell)

MANAGING EDITOR (ACTING)

DR NZUMBULULO SILAS SIPHUMA
LLB (NWU) LLM LLD (Stell)

DEPUTY EDITORS

PROF DOROTHY MMAKGWALE FARISANI
B Proc LLB LLM (Unisa) PhD Law (UKZN)

PROF TUKISHI MANAMELA
B Proc LLB (Unin) LLM LLD (Unisa)

ASSISTANT EDITORS

MR BONGANI KHUMALO
LLB LLM (Unisa)

DR RICHARD M SHAY
LLB LLM LLD (Stell)

PROF ME MANAMELA
B Proc LLB (Unin) LLM LLD (Unisa)

PROF MAPHUTI TUBA
LLB (Wits) LLM LLD (Unisa)

DR VELA MADLELA
LLB LLM (Wits) LLD (Pret)

EDITORIAL ADVISORY BOARD

PROF J KIGGUNDU
University of Botswana
THE HON FR MALAN
Retired Judge of Appeal, Supreme Court of Appeal
Honorary Professor, University of Johannesburg
THE HON D MOSENEKE
Retired Deputy Chief Justice, Constitutional Court

THE HON BM NGOEPE
Retired Judge President, North Gauteng, South Gauteng and Limpopo High Courts
THE HON CME O'REGAN
Retired Justice, Constitutional Court
THE HON R H ZULMAN
Retired Judge of Appeal, Supreme Court of Appeal

EDITORIAL PANEL

PROF JL BRINK
Professor extraordinarius, University of South Africa
Attorney, Johannesburg
PROF DW BUTLER
Professor emeritus, University of Stellenbosch
PROF HJ DELPORT
Professor emeritus, Nelson Mandela Metropolitan University
PROF PA DELPORT
Professor emeritus, University of Pretoria
PROF CJ VISSER
University of South Africa

PROF A ITZIKOWITZ
University of the Witwatersrand
Attorney, Johannesburg
PROF VA LAWACK
Deputy Vice-Chancellor (Academic)
University of the Western Cape
PROF PAK LE ROUX
Professor extraordinarius, University of South Africa
Attorney, Johannesburg
PROF J NEETHLING
Research Fellow, University of the Free State
PROF JT PRETORIUS
Professor emeritus, University of South Africa

This peer reviewed journal is approved by the Department of Higher Education for SAPSE purposes

ISSN: 1015-0099

Typeset by CBT Typesetting & Design

Printed and bound by ???????

TITLES OF ARTICLES

A critical analysis of third-party personal liability for tax debts in ss 183 and 184 of the Tax Administration Act 28 of 2011	<i>Jean-Roux Van Huyssteen & Rudie Nel</i>	1
Examining the role of the African Continental Free Trade Agreement in advancing labour standards	<i>Shelton T Mota Makore</i>	21
Contracting out of a Promoter's Personal Liability under s 21(2) of the Companies Act 71 of 2008: A purposive and comparative analysis	<i>Etienne Olivier, Shane Hull & Amy Williams</i>	48
The regulation of cryptocurrencies to combat money laundering: A South African perspective	<i>Darren Subramanien, Rabia Hussain & Legodi Thutse</i>	67
A commentary on overturning the MAFR Rule in <i>East Rand Member District of Chartered Accountants v Independent Regulatory Board For Auditors</i> (2023): A missed opportunity for the transformation of the Audit Industry in South Africa?	<i>Bokang M 'Nyane & Hoolo 'Nyane</i>	115
Expropriation Without Compensation constitutionality debacle and Foreign Investment Protection in South Africa	<i>Aghem Hanson Ekori</i>	127
The regulation of burial societies: Is the regulatory framework fit for purpose?	<i>Sinikiwe Mzezewa</i>	147
The road ahead? Transforming South Africa's Minibus Taxi Industry through digital technology	<i>Siyabulela Christopher Fobosi</i>	182
From Massmart to Mediclinic (with a drive-thru Burger King): The development of the public interest standard in merger regulation	<i>Thalalolwazi Msutu</i>	198
Unilateral Amendments in E-Commerce B2C Contracts of Necessity: Legal and Ethical Implications for Vulnerable Consumers in South Africa.....	<i>Clayton Rewayne George</i>	257
Perspectives on the Lapse of Integrity in Wealth Management and Financial Advisory Institutions in South Africa	<i>Sharon Munedzi-Qankase</i>	280
Development, Innovation and the Fourth Industrial Revolution (4IR): An Ethno-Legal Analysis ...	<i>Mzukisi Njotini & Alizwa Zisile</i>	299
From Protection to Exclusion? The Paradox of Pre-Contractual Affordability Assessments for Low-Income Mortgage Applicants in South Africa	<i>Nzumbululo Silas Siphuma & Babongile Sibusisiwe Bophela Molekane</i>	318
Mapping Moral Rights: An Analysis Of What We Do Not Know About Section 20 of the Copyright Act 98 of 1978 .	<i>Lee-Ann Tong</i>	332

TITLES OF CASE NOTES

That resignation is not retractable or is irreversible: What is the prejudice? <i>Monareng v Dr J S Moroka Municipality</i> [2022] 43 ILJ 1855 (LC)	<i>Ndifelani Arthur Munarini & Lux Kwen Kubjana</i>	105
The abuse of sick leave and the Employer's right to establish the veracity of medical certificates in South Africa: <i>Woolworths (Pty) Ltd v CCMA and others</i> (JA90/2022) [2024] ZALAC 29 (13 June 2024)	<i>Bongani Khumalo</i>	228
The Constitutional Court restores the integrity of the Controlled Foreign Company Legislation: <i>Coronation Investment Management SA (Pty) Limited v Commissioner For The South African Revenue Service</i> [2024] ZACC 11	<i>Thabo Legwaila</i>	242
The Slippery Slope of Contractual Fairness <i>Fujitsu Services Core (Pty) Ltd v Schenker South Africa (Pty) Ltd</i> 2023 (6) SA 327 (CC)	<i>Michele van Eck</i>	362

MAIN CASES DISCUSSED IN CASE NOTES

<i>Monareng v Dr J S Moroka Municipality</i> [2022] 43 ILJ 1855 (LC) .	77
<i>Woolworths (Pty) Ltd v CCMA and others</i> (JA90/2022) [2024] ZALAC 29 (13 June 2024)	228
<i>Coronation Investment Management SA (Pty) Limited v Commissioner For The South African Revenue Service</i> [2024] ZACC 11	242
<i>Fujitsu Services Core (Pty) Ltd v Schenker South Africa (Pty) Ltd</i> 2023 (6) SA 327 (CC)	362

CONTRIBUTORS

<i>Aghem Hanson Ekor</i> : EXPROPRIATION WITHOUT COMPENSATION CONSTITUTIONALITY DEBACLE AND FOREIGN INVESTMENT PROTECTION IN SOUTH AFRICA	127
<i>Bokang M 'Nyane & Hoolo 'Nyane</i> : A COMMENTARY ON OVERTURNING THE MAFR RULE IN <i>EAST RAND MEMBER DISTRICT OF CHARTERED ACCOUNTANTS v INDEPENDENT REGULATORY BOARD FOR AUDITORS</i> (2023): A MISSED OPPORTUNITY FOR THE TRANSFORMATION OF THE AUDIT INDUSTRY IN SOUTH AFRICA?	115
<i>Bongani Khumalo</i> : THE ABUSE OF SICK LEAVE AND THE EMPLOYER'S RIGHT TO ESTABLISH THE VERACITY OF MEDICAL CERTIFICATES IN SOUTH AFRICA: <i>WOOLWORTHS (PTY) LTD v CCMA AND OTHERS</i> (JA90/2022) [2024] ZALAC 29 (13 JUNE 2024)	228

<i>Clayton Rewayne George: UNILATERAL AMENDMENTS IN E-COMMERCE B2C CONTRACTS OF NECESSITY: LEGAL AND ETHICAL IMPLICATIONS FOR VULNERABLE CONSUMERS IN SOUTH AFRICA</i>	257
<i>Darren Subramanien, Rabia Hussain & Legodi Thutse: THE REGULATION OF CRYPTOCURRENCIES TO COMBAT MONEY LAUNDERING: A SOUTH AFRICAN PERSPECTIVE</i>	67
<i>Etienne Olivier, Shane Hull & Amy Williams: CONTRACTING OUT OF A PROMOTER’S PERSONAL LIABILITY UNDER S 21(2) OF THE COMPANIES ACT 71 OF 2008: A PURPOSIVE AND COMPARATIVE ANALYSIS</i>	48
<i>Jean-Roux Van Huyssteen & Rudie Nel P: A CRITICAL ANALYSIS OF THIRD-PARTY PERSONAL LIABILITY FOR TAX DEBTS IN SS 183 AND 184 OF THE TAX ADMINISTRATION ACT 28 OF 2011</i>	1
<i>Lee-Ann Tong: MAPPING MORAL RIGHTS: AN ANALYSIS OF WHAT WE DO NOT KNOW ABOUT SECTION 20 OF THE COPYRIGHT ACT 98 OF 1978</i>	332
<i>Michele van Eck: THE SLIPPERY SLOPE OF CONTRACTUAL FAIRNESS <i>FUJITSU SERVICES CORE (PTY) LTD v SCHENKER SOUTH AFRICA (PTY) LTD</i> 2023 (6) SA 327 (CC)</i>	362
<i>Mzukisi Njotini & Alizwa Zisile: DEVELOPMENT, INNOVATION AND THE FOURTH INDUSTRIAL REVOLUTION (4IR): AN ETHNO-LEGAL ANALYSIS</i>	299
<i>Ndifelani Arthur Munarini & Lux Kwena Kubjana: THAT RESIGNATION IS NOT RETRACTABLE OR IS IRREVERSIBLE: WHAT IS THE PREJUDICE? <i>MONARENG v DR J S MOROKA MUNICIPALITY</i> [2022] 43 ILJ 1855 (LC)</i>	105
<i>Nzumbululo Silas Siphuma & Babongile Sibusisiwe Bophela Molekane: FROM PROTECTION TO EXCLUSION? THE PARADOX OF PRE-CONTRACTUAL AFFORDABILITY ASSESSMENTS FOR LOW-INCOME MORTGAGE APPLICANTS IN SOUTH AFRICA</i>	318
<i>Sharon Munedzi-Qankase: PERSPECTIVES ON THE LAPSE OF INTEGRITY IN WEALTH MANAGEMENT AND FINANCIAL ADVISORY INSTITUTIONS IN SOUTH AFRICA</i>	280
<i>Shelton T Mota Makore: EXAMINING THE ROLE OF THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT IN ADVANCING LABOUR STANDARDS</i>	21
<i>Sinikiwe Mzezewa: THE REGULATION OF BURIAL SOCIETIES: IS THE REGULATORY FRAMEWORK FIT FOR PURPOSE? ..</i>	147
<i>Siyabulela Christopher Fobosi: THE ROAD AHEAD? TRANSFORMING SOUTH AFRICA’S MINIBUS TAXI INDUSTRY THROUGH DIGITAL TECHNOLOGY.....</i>	182

<i>Thabo Legwaila</i> : THE CONSTITUTIONAL COURT RESTORES THE INTEGRITY OF THE CONTROLLED FOREIGN COMPANY LEGISLATION: <i>CORONATION INVESTMENT MANAGEMENT SA (PTY) LIMITED v COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE</i> [2024] ZACC 11 ..	242
<i>Thalalolwazi Msutu</i> : FROM MASSMART TO MEDICLINIC (WITH A DRIVE-THRU BURGER KING): THE DEVELOPMENT OF THE PUBLIC INTEREST STANDARD IN MERGER REGULATION.....	198

SUBJECT INDEX

CONSTITUTIONAL LAW

EXPROPRIATION WITHOUT COMPENSATION CONSTITUTIONALITY DEBACLE AND FOREIGN INVESTMENT PROTECTION IN SOUTH AFRICA	<i>Aghem Hanson Ekori</i>	127
THE CONSTITUTIONAL COURT RESTORES THE INTEGRITY OF THE CONTROLLED FOREIGN COMPANY LEGISLATION: <i>Coronation Investment Management SA (Pty) Limited v Commissioner For The South African Revenue Service</i> [2024] ZACC 11	<i>Thabo Legwaila</i>	242

COMPANY LAW

CONTRACTING OUT OF A PROMOTER'S PERSONAL LIABILITY UNDER S 21(2) OF THE COMPANIES ACT 71 OF 2008: A PURPOSEFUL AND COMPARATIVE ANALYSIS	<i>Etienne Olivier, Shane Hull & Amy Williams</i>	48
A COMMENTARY ON OVERTURNING THE MAFR RULE IN EAST RAND MEMBER DISTRICT OF CHARTERED ACCOUNTANTS V INDEPENDENT REGULATORY BOARD FOR AUDITORS (2023): A MISSED OPPORTUNITY FOR THE TRANSFORMATION OF THE AUDIT INDUSTRY IN SOUTH AFRICA?	<i>Bokang M 'Nyane & Hoolo 'Nyane</i>	115

COMMERCIAL LAW

UNILATERAL AMENDMENTS IN E-COMMERCE B2C CONTRACTS OF NECESSITY: LEGAL AND ETHICAL IMPLICATIONS FOR VULNERABLE CONSUMERS IN SOUTH AFRICA	<i>Clayton Rewayne George</i>	257
DEVELOPMENT, INNOVATION AND THE FOURTH INDUSTRIAL REVOLUTION (4IR): AN ETHNO-LEGAL ANALYSIS	<i>Mzukisi Njotini & Alizwa Zisile</i>	299
THE SLIPPERY SLOPE OF CONTRACTUAL FAIRNESS <i>Fujitsu Services Core (Pty) Ltd v Schenker South Africa (Pty) Ltd</i> 2023 (6) SA 327 (CC)	<i>Michele van Eck</i>	362

CONSUMER LAW

THE REGULATION OF BURIAL SOCIETIES: IS THE REGULATORY FRAMEWORK FIT FOR PURPOSE?	<i>Sinikiwe Mzezewa</i>	147
--	-------------------------	-----

FROM MASSMART TO MEDICLINIC (WITH A DRIVE-THRU BURGER KING): THE DEVELOPMENT OF THE PUBLIC INTEREST STANDARD IN MERGER REGULATION	<i>Thalalolwazi Msutu</i>	198
FROM PROTECTION TO EXCLUSION? THE PARADOX OF PRE-CONTRACTUAL AFFORDABILITY ASSESSMENTS FOR LOW-INCOME MORTGAGE APPLICANTS IN SOUTH AFRICA	<i>Nzumbululo Silas Siphuma & Babongile Sibusisiwe Bophela Molekane</i>	318
COPYRIGHT LAW		
MAPPING MORAL RIGHTS: AN ANALYSIS OF WHAT WE DO NOT KNOW ABOUT SECTION 20 OF THE COPYRIGHT ACT 98 OF 1978	<i>Lee-Ann Tong</i>	332
FINANCE LAW		
THE REGULATION OF CRYPTOCURRENCIES TO COMBAT MONEY LAUNDERING: A SOUTH AFRICAN PERSPECTIVE	<i>Darren Subramanien, Rabia Hussain & Legodi Thutse</i>	67
PERSPECTIVES ON THE LAPSE OF INTEGRITY IN WEALTH MANAGEMENT AND FINANCIAL ADVISORY INSTITUTIONS IN SOUTH AFRICA .	<i>Sharon Munedzi-Qankase</i>	280
LABOUR LAW		
EXAMINING THE ROLE OF THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT IN ADVANCING LABOUR STANDARDS	<i>Shelton T Mota Makore</i>	21
THE ABUSE OF SICK LEAVE AND THE EMPLOYER'S RIGHT TO ESTABLISH THE VERACITY OF MEDICAL CERTIFICATES IN SOUTH AFRICA: <i>Woolworths (Pty) Ltd v CCMA and others</i> (JA90/2022) [2024] ZALAC 29 (13 June 2024)	<i>Bongani Khumalo</i>	228
TAX LAW		
A CRITICAL ANALYSIS OF THIRD-PARTY PERSONAL LIABILITY FOR TAX DEBTS IN SS 183 AND 184 OF THE TAX ADMINISTRATION ACT 28 OF 2011	<i>Jean-Roux Van Huyssteen & Rudie Nel</i>	1
TRANSPORT LAW		
THE ROAD AHEAD? TRANSFORMING SOUTH AFRICA'S MINIBUS TAXI INDUSTRY THROUGH DIGITAL TECHNOLOGY	<i>Siyabulela Christopher Fobosi</i>	182

