

Construction Law Alert



Construction Law Alert: May 2019

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Highlights

Judgments

- *Cochrane Projects (Pty) Ltd v Kouga Local Municipality and Another* (1962/2018) [2019] ZAECGHC 54 (7 May 2019) (see Tenders)
- *Gobo Gcora Construction & Project and Others v Nelson Mandela Bay Municipality and Another; Nelson Mandela Bay Municipality v Public Protector of the Republic of South Africa and Others* (992/16; 1414/2016) [2019] ZAECPHC 27 (16 April 2019) (see Tenders)
- *MEC: Police, Roads and Transport (Free State Provincial Government) v SMEC South Africa (Pty) Ltd* (A46/2018) [2019] ZAFSHC 59 (30 May 2019) (see Engineering)
- *Ochse v Matlala and Another* (9278/2016) [2019] ZAGPJHC 118 (16 April 2019) (see Construction)
- *Raubex Construction (Pty) Ltd v Bryte Insurance Company Ltd* [2019] 2 All SA 322 (SCA) (see Construction Guarantee)
- *Tshwarisano Trading CC v Sibonga Intuthuko Construction CC* (59854/2011) [2019] ZAGPPHC 130 (17 April 2019) (see Construction)
- *Trustees, Simcha Trust v Da Cruz and Others* 2019 (3) SA 78 (CC) (see Building Law)

New Publications

- FIDIC. *Conditions of Contract for Underground Works* (2019 Emerald book). – FIDIC, 2019.
- Sorensen, Jakob B. *FIDIC Yellow Book: A companion to the 2017 Plant and Design-Build Contract*. – ICE Publishing, 2019.
- Sorensen, Jakob B. *FIDIC Red Book: A companion to the 2017 Construction Contract*. – ICE Publishing, 2019.
- Sorensen, Jakob B. *FIDIC Silver Book: A companion to the 2017 EPC/Turnkey Contract*. – ICE Publishing, 2019.

Events Calendar

Date	Event	Location	More info
11-13 Jun	2019 African Construction Expo & Totally Concrete	Johannesburg	Click here .
19 Jun	Principal Building Agreement and Nominated/Selected Subcontract Agreement Seminar	Durban	Click here .
26-27 Jun	Construction Contract Law Training Course	Johannesburg	Click here .
12 Aug	Advanced Course in Construction Contracts	Pretoria	Click here .

See www.lexinfo.co.za for more events information.



ADMINISTRATIVE LAW

Media Comment

Lalla, Nikita and Pillay, Ricardo. Court develops law to ensure procedure doesn't trump justice.

2019 May 6 Business Day

"In the [*Buffalo City versus Asla Construction*](#) case, the Constitutional Court found that self-review is both necessary and required, despite earlier inaction.... The issues raised by the Constitutional Court in Buffalo City Metropolitan Municipality versus Asla Construction on April 16 afforded our highest court the opportunity to give organs of state an increased chance of success to review and set aside contracts awarded unlawfully, despite earlier inaction. The concept of "self-review", where a body seeks to review its own decision, is not new to SA courts. In Buffalo City the court found that it was both necessary and required, given the current political climate to engage this issue."

<https://www.businesslive.co.za/bd/opinion/2019-05-06-court-develops-law-to-ensure-procedure-doesnt-trump-justice/>

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AMCU

Media Comments

McKay, David. SA PGM producers bracing themselves for tough round of wage talks.

2019 May 15 Miningmx

Extract from article: "South Africa's platinum group metal (PGM) miners are bracing for potentially difficult wage negotiations when it meets with unions later this month, said Reuters citing the views of Anglo American Platinum (Amplats) and an analyst. "A strike is a big risk for PGM producers, especially those who have a majority AMCU membership. That remains a challenge, despite the higher basket price," said Nedbank equity analyst Arnold Van Graan. The Association of Mineworkers and Construction Union (AMCU) has normally gathers around demands for a minimum R12,500 per month wage. The union, which recently called an end to a five-month gold strike, said it would "... continue its campaign of social justice and economic emancipation of the working class"."

<https://www.miningmx.com/trending/36987-sa-pgm-producers-bracing-themselves-for-tough-round-of-wage-talks/>

See also:

- Pijoos, Iwan. Amcu 'positive' after meeting with labour department over registration. – In: 2019 May 1 Times Live. <https://www.timeslive.co.za/news/south-africa/2019-05-01-amcu-positive-after-meeting-with-labour-department-over-registration/>

Media Release

Department of Labour. Registrar of Labour Relations Clarifies Position on AMCU.

2019 May 9 SabinetLaw

Extract from release: "The Registrar of Labour Relations has not singled out the Association of Mineworkers and Construction Union (AMCU). The assurance follows a recent meeting between the Office of the Registrar and AMCU. Towards the end of April 2019, the Registrar announced his intention to cancel the registration of AMCU. Notice 598 was published in Government Gazette 42415 in terms of the Labour Relations Act. According to the notice, the Registrar, Lehlohonolo Molefe, indicated that the intention to cancel the registration of AMCU was due to the trade union having ceased to function in terms of its constitution and not being a genuine trade union as envisaged in the act."

<https://legal.sabinet.co.za/articles/registrar-of-labour-relations-clarifies-position-on-amcu/>

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ARBITRATION

Internet Article

Mistelis, Loukas A. and Ferguson, Alexander. Efficiently resolving international construction disputes.

2019 May 31 Kluwer Arbitration Blog

"Anecdotally, the time and cost of arbitrating international construction disputes is one of the biggest sources of dissatisfaction. This was reflected in the discussion on the final day of London International Disputes Week at the international construction disputes panels. This is unsurprising as previous Queen Mary University of London (QMUL) surveys identified cost and lack of speed as some of the worst characteristics of international arbitration, and the construction industry accounts for a significant number of international arbitrations."

<http://arbitrationblog.kluwerarbitration.com/2019/05/31/efficiently-resolving-international-construction-disputes/>



Journal Article

Marais, Jac and Grootboom, Cohen. Will arbitration lose its appeal? The Commercial Court Practice Directive. 2019 May Without Prejudice p27

Extract from article: "This new Directive, and the recent coming into effect of the International Arbitration Act (15 of 2017), allowing litigants a more diverse range of adaptive alternative dispute resolution mechanisms, appears to be a concerted and refreshing move towards modernising the legal profession."

Law Firm Articles

Abboy, Carmen and Lawrence, Irvin (ENSAfrica). New decision may deprive commissioner discretion to refuse legal representation in CCMA and bargaining council arbitration proceedings.

2019 May 21 Lexology

<https://www.lexology.com/library/detail.aspx?g=926281be-7e94-4481-ba1c-5292cd038fbd>

Feris, Jackwell and Manko, Vincent (Cliffe Dekker Hofmeyr). Would an arbitration clause embedded in a fraud-tainted agreement also be invalid in South Africa?

2019 Apr 29 Lexology

<https://www.lexology.com/library/detail.aspx?g=31dce1f7-cf2f-4392-ab28-725e572ead12>

Siddiqi, Safae-Naaz (Allen & Overy). Getting sorted in Southern Africa: How to enforce foreign arbitral awards.

2019 May 24 Lexology

<https://www.lexology.com/library/detail.aspx?g=036ed1c7-00fd-498c-8790-3144be3c5a86>

Report



Norton Rose Fulbright. International Arbitration Report, 2019.

Contents: Development and reform of CIETAC – Global overview of disputes trends in infrastructure and construction – Belt and Road Initiative: Managing disputes risk when working with States and SOEs in infrastructure and construction projects – Investment disputes in construction and infrastructure: A look at recent cases – FAQs: dispute resolution for multi-contract projects – Avoiding parallel proceedings and conflicting decisions – Expert evidence in construction disputes – Practical tips for managing party appointed experts – Disclosure in international arbitration – Using US courts to obtain discovery for non-US proceedings – Construction disputes: maximizing time and costs efficiencies – Interim relief in construction arbitration – Comparing the courts and arbitration – Investment protection post-Achmea – A global round-up – Developments in international arbitration rules and laws – Arbitrating disputes under shipbuilding contracts.

Download [here](#).

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ARCHITECTURE

Government Gazette

Architectural Profession Act 47 of 2000

Appointment of the Fifth Term Members of the South African Council for the Architectural Profession (SACAP). GN847 GG 42502 p4 30May2019

http://www.gpwonline.co.za/Gazettes/Gazettes/42502_30-5_PublicWorks.pdf

Media Comment

Juta and Company (Pty) Ltd. SCA orders Bhisho to pay R80m damages award.

2019 May 29 South African Lawyer

Extract from article: "The Eastern Cape government must finally fork out more than R80m in damages and interest to an East London firm of architects that rendered no service whatsoever. A Daily Dispatch report says after some 16 years of staggering government and legal blunders, the SCA has unequivocally dismissed the provincial Public Works



Department's application for special leave to appeal against a judgment that ruled that the government must pay out the massive damages award to Ikamva Architects. Through no fault of its own, the firm was never given the opportunity to earn one cent of the money. The interest on the initial R44m damages award to Ikamva Architects in 2012 has doubled and the legal fees will be massive after the provincial Public Works Department opted to continue to fight a case the courts had made abundantly clear it could never win."

<https://www.southafricanlawyer.co.za/article/2019/05/sca-orders-bhisho-to-pay-r80m-damages-award/>

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BUILDING LAW

Case

Trustees, Simcha Trust v Da Cruz and Others 2019 (3) SA 78 (CC)

National Building Regulations and Building Standards Act 103 of 1977 – Disqualifying factors – Legitimate expectations test.

Judgment: <http://www.saflii.org/za/cases/ZACC/2019/8.pdf>

Media summary: <http://www.saflii.org/za/cases/ZACC/2019/8media.pdf>

Government Gazette

Construction Industry Development Board

Findings and Sanctions of the Investigating Committee published in terms of the Construction Industry Development Regulations, 2004.

GN273 GG 42464 p464 17May2019

https://www.gov.za/sites/default/files/gcis_document/201905/42464gen273.pdf

Law Firm Article

Whittle, Joe; May, Reece and Ramothar, Arlina (Cliffe Dekker Hofmeyr). Neighbouring building plans ruining your scenery? Constitutional Court rules that legitimate expectations of property owners should be considered.

2019 May 6 GoLegal

Case discussed: *Trustees of the Simcha Trust v Da Cruz and Others; City of Cape Town v Da Cruz and Others* (CCT125/18; CCT128/18) [2019] ZACC 8; 2019 (3) SA 78 (CC) (19 February 2019).

<https://www.golegal.co.za/legitimate-expectations-test-property/>

Media Comments

May, Reece and Whittle, Joe. Neighbouring building plans ruining your scenery? What the ConCourt has to say.

2019 May 13 BizCommunity

Extract from article: "On 19 February 2019, the Constitutional Court handed down its judgment in the consolidated matters of *Trustees of the Simcha Trust v Da Cruz and Others and City of Cape Town v Da Cruz and Others* (Simcha Trust) in which it had to decide whether there was an obligation on local authorities considering a building application, to apply the legitimate expectations test when considering whether the surrounding area where the building is to be erected would likely be disfigured or whether such a building would be unsightly or objectionable. Section 7 (1)(b)(ii)(aa) of the National Building Regulations and Building Standards Act (Act) sets out certain disqualifying factors whereby local authorities must refuse a building application, namely where the proposed building would: (aaa) disfigure the area in which it will be erected; (bbb) be unsightly or objectionable; or (ccc) derogate from the value of the adjoining or neighbouring properties."

<https://www.bizcommunity.com/Article/196/368/190681.html>

Private Property South Africa. How credible is your builder?

2019 May 6 BizCommunity

Extract from article: "When you are about to spend five-figure rands (or more) on a new home build, you need some reassurance that the home builder you appoint has the right credentials. How credible is your builder? Of all the things to do when building a new home, checking the building contractor's credentials should be paramount, and such due diligence is made easier by the existence of the National Home Builders Registration Council (NHBRC). Tshepo Nkosi, responsible for Marketing, Communication and Stakeholder Relations at the NHBRC explains that according to the Housing Consumers Protection Measures Act 95 of 1998, all home builders and sub-contractors are required by law to register with the NHBRC before commencing any new home building project."



<https://www.bizcommunity.com/Article/196/494/190388.html>

Roper, Ernest. Due diligence on clients.

2019 May 2 Master Builders Association

Extract from article: "An all too common occurrence at present is the client not having the full funding in place for a project before construction commences. This results in projects coming to a halt before Practical Completion and all too often the contractor is owed money for work completed and not paid for. We all realise there are remedies to this scenario through the JBCC PBA, however if a client has no money and very little fixed assets it is not going to resolve the financial problem of the contractor. Should the contractor do due diligence on the client before signing any contract? There is no provision for this in the JBCC save for the clause that requires the client to issue the contractor with a payment guarantee (Clause 12.1.1) ... In future JBCC Principal Building Agreements, provision should be made that requires that full disclosure of the project funding is made by the client / employer to avoid repetition of this problem with the resultant company closures and financial distress."

<https://masterbuilders.site-ym.com/news/449554/Due-Diligence-on-Clients.htm>

Provincial Gazette

UMzimvubu Local Municipality. (Eastern Cape)

Building Regulations By-Law.

LN106 PG 4246 p16 27May2019

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BUSINESS RESCUE

Media Comment

Njobeni, Siseko. Group Five hopes to get more than R700m from sale of assets.

2019 May 15 Business Day

Extract from article: "Struggling construction company Group Five has entered into binding agreements for the sale of some of its assets that will generate R709m. The agreements include the sale of a 40.1% interest in Intertoll Capital Partners. The company went into business rescue in March after it could not obtain additional funding from a consortium of lenders. "The business rescue proceedings are progressing under challenging conditions, but with greater stability after approximately eight weeks under administration," the company said."

<https://www.businesslive.co.za/bd/companies/industrials/2019-05-15-group-five-hopes-to-raise-more-than-r700m-from-sale-of-assets/>

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COMPETITION

Case

Pexmart CC and Others v H Mocke Construction (Pty) Ltd and Another 2019 (3) SA 117 (SCA)

Unlawful competition – Unlawful use of confidential information and trade secrets of competitor – Principles restated – Failure to call material witness – Adverse inference drawn from failure to testify.

Judgment: <http://www.saflii.org/za/cases/ZASCA/2018/175.pdf>

Media summary: <http://www.saflii.org/za/cases/ZASCA/2018/175media.pdf>

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CONSTRUCTION

Cases

Ochse v Matlala and Another (9278/2016) [2019] ZAGPJHC 118 (16 April 2019)

Application to declare respondents in wilful contempt of court order interdicting respondents from further proceeding with construction of proposed three-storey house, or undertaking any other construction works, prior to completion of construction of retaining and boundary walls – Respondents declared to be in contempt of court order.

<http://www.saflii.org/za/cases/ZAGPJHC/2019/118.pdf>

Tshwarisano Trading CC v Sibonga Intuthuko Construction CC (59854/2011) [2019] ZAGPPHC 130 (17 April 2019)



Sub-contract with municipality for water works – Action for payment from defendant of R304 702.72 plus VAT – Defendant admitted appointment of plaintiff as sub-contractor but denied that plaintiff performed services/work it was appointed to do – Plaintiff proved on balance of probabilities that it performed work/services stipulated in letter of appointment but only able to prove R228 561.10 – Plaintiff's claim successful.

<http://www.saflii.org/za/cases/ZAGPPHC/2019/130.pdf>

Media Comments

Cloete, Kim. Bureaucracy, lags in approval are killing the construction industry, say developers.

2019 May 17 Engineering News

Extract from article: "Bureaucratic delays in getting property developments under way have badly damaged the development and construction industry, prompting a crisis, industry experts have outlined at the Western Cape Property Development Forum (WCPDF) conference, in Cape Town. They have also lamented a "shocking" decline in spending in the City of Cape Town's capital budget. Several speakers listed political interference, confusion in procurement and regulatory approval processes and inconsistencies and constant delays as major obstacles. They said these have cost jobs and undermined the construction industry."

<https://www.engineeringnews.co.za/article/wc-property-2019-05-17>

Human remains found at Glenhills construction site.

2019 May 4 North Glen News

Extract from article: "Workers on a construction site on Spathodia Place (Glenhills) made a grisly discovery on Saturday morning after uncovering human remains. Members from the SAPS Search and Rescue K9 Unit, SAPS Search and Rescue and Metro Police Search and Rescue were on scene to uncover the human remains which included two femur bones and a few smaller bones. The remains were found about one and a half metres deep in the ground where construction is currently taking place. The workers contacted a resident on the road who in turn contacted ward councillor for the area, Pete Graham. While attempts to contact Greenwood Park SAPS spokesperson were unsuccessful, it is believed the remains are estimated to be over a decade old."

<https://northglennews.co.za/151370/human-remains-found-glenhills-construction-site/>

Mthupha, Fanie. Metro mum on supposed failed project to build new EPMD precinct in Boksburg.

2019 May 16 Boksburg Advertiser

Extract from article: "The Ekurhuleni municipality remains tight-lipped about the supposed failed project to construct a new EPMD precinct in Boksburg. During the delivery of his State of the City Address (Soca) at the Germiston Council Chambers in March, Ekurhuleni mayor Mzwandile Masina said the metro would construct a specialised services precinct in Boksburg. He, however, did little to inform the public that the construction of the precinct in question had already proven to be a failed project, as the company appointed to carry out the job left the site almost a year ago. The Advertiser has, prior to the delivery of the Soca, learned that more than R6-million in taxpayers' money had allegedly already been wasted by the metro on the unfinished project in Boksburg."

<https://boksburgadvertiser.co.za/337095/metro-mum-on-failed-project-to-build-new-epmd-precinct-in-boksburg/>

Shedding light on construction deadlines.

2019 May 15 Engineering News

Extract from article: "Building at night has become common, even if in an area where noise restrictions mean only inside, quiet work can be done. What's required, then, is really good lighting. Lighting up a space or site that hasn't been connected yet can only be done with portable power. Light towers are essential on most construction projects – not only for building at night, but also within structures that can't be adequately lit by natural light. "It's vital to have the right amount of illumination to be able to effectively, and safely, do the job – whether it's plastering and painting or pouring concrete, being able to see what you're doing clearly is essential to ensuring both quality and safety on site," says Doosan SA Business Line Manager, Gary Neave. In winter, with shorter hours of daylight, light towers become essential even if a tighter-than-usual deadline isn't in play. Portable light towers come with their own power supply and are durable, shock-resistant and moveable, allowing them to be used in numerous different construction environments, from residential to mining."

<https://www.engineeringnews.co.za/article/shedding-light-on-construction-deadlines-2019-05-15>

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CONSTRUCTION GUARANTEE

Case

Raubex Construction (Pty) Ltd v Bryte Insurance Company Ltd [2019] 2 All SA 322 (SCA)



Construction contract – Retention guarantee issued by insurance company in *lieu* of retention money – Construction company calling on insurer to make payment – Insurer contending that guarantee limited to defects arising after issue of certificate of completions, that amount claimed not correct estimate of cost of remedying such defects and that claim was fraudulent – On proper interpretation of main and subcontract, retention guarantee related to all defects and not only those arising after certificate of completion – Fraud not established – Insurer liable.

http://www.justice.gov.za/sca/judgments/sca_2019/sca2019-014.pdf

Law Firm Article

GV Inc. Contractors' guarantees a must-have for building agreements.

2019 May 15 Gillan and Veldhuizen Inc.

“Embarking on building renovations or building a new home without a comprehensive contract, including stipulated construction guarantees is very dangerous.” That’s according to attorney PJ Veldhuizen of Gillan and Veldhuizen Inc., who have represented many clients involved in legal battles with building contractors who, despite having been paid have failed to pay third party sub-contractors and subsequently gone insolvent. The unpaid third party sub-contractors in turn refused to complete the assigned work, for obvious reasons.”

<https://www.gvinc.law.za/contractors-guarantees-a-must-have-for-building-agreements/>

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CONSTRUCTION MAFIA

Journal Article

Cokayne, Roy. “Construction mafia” continues to wreak havoc in the construction sector.

2019 April SA Builder p9

<http://www.sabuilder.co.za/wp-content/uploads/2019/05/SABuilderApril2019.pdf>

Media Comment

Ade, Michael. Toil and trouble beset construction and engineering sectors.

2019 May 30 Business Day

“An increase in financially stressed firms and mafia-style gangs targeting building sites across the country could sink the sector...Termed the “construction industry mafia” by the press, the various business forums have assumed different names (ranging from the moderate Federation for Radical Economic Transformation to the more rigorous Amadelangokubona, but have the same modus operandi. They challenge the status quo by targeting construction locations to demand commission or the involvement of their members in projects. The operational scope and intensity of the various business forums does not seem to be abating.”

<https://www.businesslive.co.za/bd/opinion/2019-05-30-toil-and-trouble-beset-construction-and-engineering-sectors/>

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CONTRACT

Case

Adhu Investments v Padayachee (1410/2016) [2019] ZASCA 63 (24 May 2019)

Contract – joint venture – damages based on breach of agreement - joinder on the basis of a stipulatio alteri – tacit term – whether stipulatio alteri established.

<http://www.saflii.org/za/cases/ZASCA/2019/63.pdf>

Internet Article

New Fidic contract for tunnelling “bridges gap” on underground risk.

2019 May 7 Global Construction Review

“Fidic and an international tunnelling body have teamed up to produce a new form of contract for tunnelling and underground works. Called “The Emerald Book”, it aims to address the difficulty in predicting ground conditions, which gives rise to unique contractual risks and adds to time and cost. Fidic (the International Federation of Consulting Engineers) said underground construction was a fast-growing market, creating demand for the new contract.”

<http://www.globalconstructionreview.com/news/new-fidic-contract-tunnelling-bridges-gap-undergro/>



Journal Articles

Szopinski, Igor. Step ahead carefully – the uncertainty of unfair contracts continues.

2019 May De Rebus p13

Case discussed: *Botha and Another v Rich NO and Others* (CCT 89/13) [2014] ZACC 11; 2014 (4) SA 124 (CC); 2014 (7) BCLR 741 (CC) (17 April 2014).

<http://www.derebus.org.za/step-ahead-carefully-the-uncertainty-of-unfair-contracts-continues/>

Weyers, Kylene and Venter, Stephan. Law of contract – the effect of thinking you're right when you're wrong.

2019 May Without Prejudice p14

Case discussed: *Starways Trading 21 CC and Others v Pearl Island Trading 714 (Pty) Ltd and Another* (232/2018) [2018] ZASCA 177; 2019 (2) SA 650 (SCA) (3 December 2018).

<https://www.withoutprejudice.co.za/free/article/6460/view>

Law Firm Articles

Bracher, Patrick. Suspensive condition of tender not met – no valid contract.

2019 May 15 Financial Institutions Legal Snapshot

"A builder submitted a tender to the Development Bank of Southern Africa (DBSA) for construction of a school. The tender was 'conditionally accepted' and further documents had to be submitted by a deadline date after which the construction contract would be signed. The documents were not submitted in time nor was the construction contract signed. It was held that there was no acceptance of the tender and therefore no contract despite the fact that the works had actually commenced. A suspensive condition is a condition suspending the operation of all or some of the obligations flowing from a contract, pending the occurrence or non-occurrence of a future uncertain event."

<https://www.financialinstitutionslegalsnapshot.com/2019/05/suspensive-condition-of-tender-not-met-no-valid-contract/>

Brian Kahn Inc Attorneys. When does a foreign system of law apply to your contract?

2019 May 2 GoLegal

<https://www.golegal.co.za/system-law-contracts/>

Media Comments

Chirume, Joseph. PE small business owners take on construction company.

2019 May 15 GroundUp

Extract from article: "A group of disgruntled small business owners protested on Monday outside Wavelengths Construction in Port Elizabeth's Perseverance Industrial area on Monday, accusing the company of abandoning them. The five small business owners accuse Wavelengths Construction of holding up their work. Wavelengths last year won the R8.2 million contract to contain water in the Chatty River. Local small, medium and micro enterprises (SMMEs) were allocated 30% of the amount to assist in the project. The small contractors say they have each appointed and trained six workers at a cost of R1,850 a worker. They also say the Nelson Mandela Bay Municipality (NMBM) is being soft on the company. Small business leader Thanduxolo Bomali said Wavelengths had left the site without notice. The company has denied this."

<https://www.groundup.org.za/article/pe-small-business-owners-take-construction-company/>

Transnet, CMI Emtateni terminate controversial R4.2bn port expansion contract.

2019 May 21 IOL News

Extract from article: "State-owned freight and rail company, Transnet said on Tuesday that its contractor, CMI Emtateni Joint Venture, had terminated its R4.2 billion contract for a megaproject to create deeper berths at the Durban Container Terminal (DCT). This comes after Transnet in November last year stopped all the works in the project and launched a probe into the contract after receiving an unsolicited report from private investigator Paul O'Sullivan's Forensics for Justice, with allegations of procurement irregularities on the project. Allegations in O'Sullivan and Sarah-Jane Trent's report centred around issues of fraud, BEE fronting and collusion between the Transnet employees and suppliers."

<https://www.iol.co.za/business-report/companies/transnet-cmi-emtateni-terminate-controversial-r42bn-port-expansion-contract-23697589>



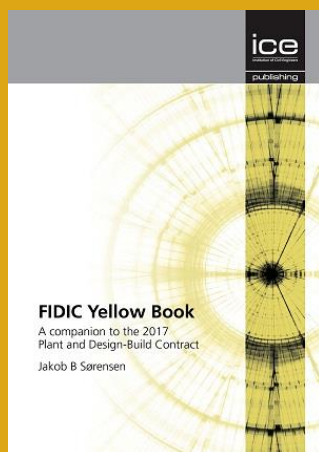
New Publications



FIDIC. Conditions of Contract for Underground Works (2019 Emerald book). – FIDIC, 2019.

“Conditions of Contract for Underground Works designed by the Contractor according to the reference design by the Employer and the Geotechnical Baseline Report. These Conditions include extensive guidance for the preparation of Tender documents and example forms for the Schedule of Baselines, the Completion Schedule and the Schedule of Contractor’s Key Equipment.”

Price: €43.00 excluding delivery. Order from books@lexinfo.co.za

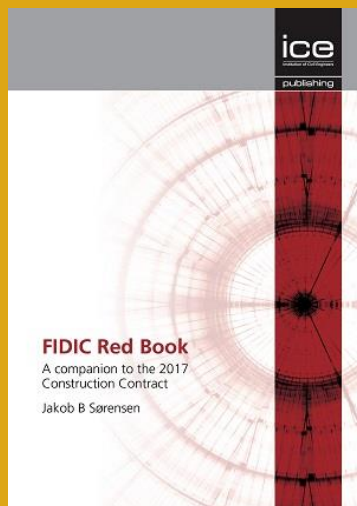


Sorensen, Jakob B. FIDIC Yellow Book: A companion to the 2017 Plant and Design-Build Contract. – ICE Publishing, 2019.

ISBN13: 9780727764324

“*FIDIC Yellow Book* is a practical guide for anyone involved in preparing, administering, or contributing to the FIDIC suite of contracts, 2017 edition. Designed as a companion for both the first-time and also more experienced user the book presents an accessible guide to the 21 clauses of the 2017 FIDIC Conditions of Contract, using the Conditions of Contract for Plant & Design-Build (Yellow Book) as a basis.”

Price: £60.00 excluding delivery. Order from books@lexinfo.co.za



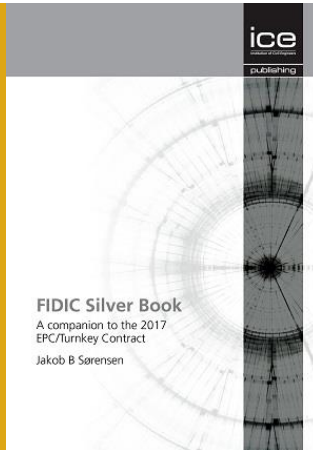
Sorensen, Jakob B. FIDIC Red Book: A companion to the 2017 Construction Contract. - ICE Publishing, 2019.

ISBN13: 9780727764348

“*FIDIC Red Book* is a practical guide for anyone involved in preparing, administering, or contributing to the FIDIC suite of contracts, 2017 edition. Designed as a companion for both the first-time and also more experienced user the book presents an accessible guide to the 21 clauses of the 2017 FIDIC Conditions of Contract, using the Conditions of Contract for Construction (Red Book) as a basis.

Opening chapters provide an introduction to international construction contracts, including the entire FIDIC suite of contracts, and there is also a list of definitions of key terms. Chapters in Part 2 provide a brief introduction to each of the Clauses and Sub-Clauses in the Red Book, and explain how they are interlinked. A final section provides a concise practical guide to the use of the FIDIC Conditions, and a summary of special provisions discussed in Part 2.

Price: £60.00 excluding delivery. Order from books@lexinfo.co.za



Sorensen, Jakob B. FIDIC Silver Book: A companion to the 2017 EPC/Turnkey Contract.- ICE Publishing, 2019.

“*FIDIC Silver Book* is a practical guide for anyone involved in preparing, administering, or contributing to the FIDIC suite of contracts, 2017 edition. Opening chapters provide an introduction to international construction contracts, including the entire FIDIC suite of contracts, and there is also a list of definitions of key terms. Chapters in Part 2 provide a brief introduction to each of the Clauses and Sub-Clauses in the Yellow Book, and explain how they are interlinked. A final section provides a concise practical guide to the use of the FIDIC Conditions, and a summary of special provisions discussed in Part 2.”
Price: £60.00 excluding delivery. Order from books@lexinfo.co.za

Papers

Society of Construction Law. Gwilliam, Rachel. Securing payment and adjudicating under a ‘hybrid’ contract. May 2019.

Extract from paper: “The paper considers the practical difficulties that may be encountered when seeking to adjudicate a dispute under a hybrid contract. The paper examines the concept of hybrid contracts, which comprise both included and excluded operations under the Housing Grants, Construction and Regeneration Act 1996. It explains how difficulties arise as the Act does not allow for adjudication in respect of those elements that are excluded operations such as in process industries. The paper analyses in detail a series of judgments involving Severfield (UK) Ltd and Duro Felguera UK Ltd, which highlighted the consequences facing users of hybrid contracts. The author suggests practical considerations to take into account prior to and during adjudication in respect of hybrid contracts and further argues that it may be time to extend the benefit of the Act to those excluded industries.”

<https://www.scl.org.uk/papers/securing-payment-adjudicating-under-hybrid-contract>

Society of Construction Law. Jassam, Omar. To what extent can the contract control its own interpretative method? May 2019.

Extract from paper: “The paper poses the question: to what extent would the courts be willing to concede the pursuit of a reasonable outcome in favour of indications by the contract which suggest otherwise? To examine this the paper begins by looking at the origins of the two competing interpretative approaches before exploring the liberalisation of contract interpretation in England and Wales. The author reviews cases which illustrate a preference for certainty or flexibility to understand the reasons which underpin the courts’ decisions and goes on to analyse the effect of contractual provisions, specifically entire agreement clauses, on the courts’ interpretative approach.”

<https://www.scl.org.uk/papers/what-extent-can-contract-control-its-own-interpretative-method>

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CORPORATE LAW

Case

Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs 2019 (3) SA 251 (SCA)

Application to wind up solvent companies in terms of Companies Act 71 of 2008, s 81 – Whether Minister of Environmental Affairs may invoke s 157(1)(d) for standing in public interest – Whether *ex parte* proceedings and failure to disclose material facts warrants discharge of provisional orders – Whether just and equitable for companies to be wound up.

<http://www.saflii.org/za/cases/ZASCA/2019/1.pdf>

Law Firm Articles

Bell, John and Lopes, Rui (Baker McKenzie). Igniting the fire.

2019 Apr 30 Lexology

Case discussed: [CDH Invest NV v Petrotank South Africa \(Pty\) Ltd and Others \(483/2018\) \[2019\] ZASCA 53 \(1 April 2019\)](#).



<https://www.lexology.com/library/detail.aspx?g=345011d0-e5c9-4f42-a928-6f0c26c80805>

Mailula, Gabi (Cliffe Dekker Hofmeyr). Duty of directors to act with a proper purpose.

2019 May 22 Lexology

Case discussed: [*CDH Invest NV v Petrotank South Africa \(Pty\) Ltd and Others* \(483/2018\) \[2019\] ZASCA 53 \(1 April 2019\)](#).

<https://www.lexology.com/library/detail.aspx?g=c6215e97-c554-4210-ab73-802082372e47>

Pinnock, David and Anderson, Kate (Cliffe Dekker Hofmeyr). To dispose or not to dispose... that is not the only question.

2019 May 6 Lexology

Extract from article: "Companies often find themselves entering into disposal transactions which are possibly subject to the provisions of s112 of the Companies Act, No 71 of 2008, whether by selling a division of its business, disposing of its shares in a subsidiary or even undertaking an internal restructure."

<https://www.lexology.com/library/detail.aspx?g=8c6759e4-6639-47b2-aebd-f23c89e319de>

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EMPLOYMENT

Case

Steenkamp and Others v Edcon Limited (CCT29/18) [2019] ZACC 17 (30 April 2019)

Labour Relations Act 66 of 1995 – Dismissal for operational requirements – Application in terms of s 189A(13) brought outside of time limits – Condonation refused – Failed legal strategy alone not sufficient to show good cause – Labour matters are expeditious in nature – s 189A(13)(d) compensation remedy not stand-alone remedy and dependent on inappropriateness of remedies (a)-(c).

Judgment: <http://www.saflii.org/za/cases/ZACC/2019/17.pdf>

Media summary: <http://www.saflii.org/za/cases/ZACC/2019/17media.pdf>

Government Gazettes

Basic Conditions of Employment Act, 1997

Determination in terms of section 50 and Application for Ministerial Determination. Applies to gold employees employed by Minerals Council South Africa: "Category 4 to 8 employees", "Miners and Artisans" and "Officials" at the entities listed in Annexure A.

GN692 GG 42474 p42 24May2019

https://www.gov.za/sites/default/files/gcis_document/201905/42474gon692.pdf

Internet Article

De Vos, Pierre. Dagga and the workplace: why the CCMA got it wrong.

2019 May 16 Constitutionally Speaking

"The ruling handed down last year by South Africa's Constitutional Court that it was unconstitutional to criminalise the private cultivation and use of cannabis (dagga), appropriately left it to Parliament to pass legislation further to regulate the matter. Meanwhile it is now legal to cultivate and use cannabis in private – although the legislature must still define what would be considered a "private" space. However, recently the Commission for Conciliation, Mediation and Arbitration (CCMA) upheld the dismissal of several employees who tested positive for cannabis. I believe the CCMA got it wrong, primarily because it did not understand how cannabis testing works and what is being tested."

<https://constitutionallyspeaking.co.za/dagga-and-the-workplace-why-the-ccma-got-it-wrong/>

Journal Articles

Behari, Asheelia; Subramanien, Darren & Cohen, Tamara. The cost of safe working conditions for pregnant employees: Manyetsa v New Kleinfontein Gold Mine (Pty) Ltd (2018) 39 ILJ 415 (LC) [Case note].

2019 40 Apr Industrial Law Journal p732

Bradstreet, Richard S. The jurisdiction of the Labour Court in business rescues: An analysis of the *Shiva Uranium* decision.

2019 40 Apr Industrial Law Journal p746

Case discussed: *Marais & others v Shiva Uranium (Pty) Ltd (In Business Rescue)* (2019) 40 ILJ 177 (LC).



Fergus, Emma. The disorganisation of organisational rights: Recent case law and outstanding questions.

2019 40 Apr Industrial Law Journal p685

Case discussed: *Police & Prisons Civil Rights Union v SA Correctional Services Workers Union & others* (2018) 39 *ILJ* 2646 (CC).

Frahm-Arp, Ludwig. The fallacy of the “Equal Pay for Equal Work” claim.

2019 May Without Prejudice p6

Case discussed: *Naidoo and Others v Parliament of the Republic of South Africa* (C 865/2016) [2018] ZALCCT 38; [2019] 3 BLLR 291 (LC); (2019) 40 ILJ 864 (LC) (12 December 2018).

<https://www.withoutprejudice.co.za/free/article/6454/view>

Jefferson, Monique. Employment law update – Dismissal for incapacity.

2019 May De Rebus p26

Case discussed: *Solidarity and Another v Armaments Corporation of South Africa (SCO) Ltd and Others* (JA40/17) [2018] ZALAC 39; [2019] 3 BLLR 248 (LAC); (2019) 40 ILJ 535 (LAC) (27 November 2018).

<http://www.derebus.org.za/employment-law-update-dismissal-for-incapacity/>

Maimela, Charles. Cancer employees and the right to fair labour practices in terms of the Labour Relations Act 66 of 1995.

2019 52(1) De Jure p1

http://www.dejure.up.ac.za/images/files/vol52-2019/Chapter%201_2019.pdf

Maswazi, Bayethe. The High Court still has jurisdiction in labour matters.

2019 May De Rebus p16

Extract from article: “In this article I examine the controversies relating to the jurisdiction of the High Court in labour matters, which have had many practitioners being careful – sometimes too careful – not to take matters concerning labour disputes before the High Court.”

<http://www.derebus.org.za/the-high-court-still-has-jurisdiction-in-labour-matters/>

Naidoo, Moksha. Employment law update – Audi alteram partem vis-à-vis precautionary suspension.

2019 May De Rebus p26

Case discussed: *Long v South African Breweries (Pty) Ltd and Others; Long v South African Breweries (Pty) Ltd and Others* (CCT61/18) [2019] ZACC 7; (2019) 40 ILJ 965 (CC); 2019 (5) BCLR 609 (CC) (19 February 2019).

<http://www.derebus.org.za/employment-law-update-audi-alteram-partem-vis-a-vis-precautionary-suspension/>

Rajah, Sherisa; Moodley, Kasendran and Butcher, Abigail. South Africa's gig economy – a solution to addressing unemployment.

2019 May Without Prejudice p9

Case discussed: *Phaka and Others v Bracks and Others* (JA 3/2014) [2014] ZALAC 73; [2015] 5 BLLR 514 (LAC); (2015) 36 ILJ 1541 (LAC) (18 December 2014).

<https://www.withoutprejudice.co.za/free/article/6456/view>

Van Eck, Stefan & Kuhn, Rudolf. Amendments to the CCMA Rules: Thoughts on the good, bad and the curious.

2019 40 Apr Industrial Law Journal p685

Ziqubu, Phumzile. The interpretation of unfair discrimination on an arbitrary ground: Section 6(1) of the Employment Equity Act 55 of 1998.

2019 May Without Prejudice p11

Case discussed: *Naidoo and Others v Parliament of the Republic of South Africa* (C 865/2016) [2018] ZALCCT 38; [2019] 3 BLLR 291 (LC); (2019) 40 ILJ 864 (LC) (12 December 2018).

Law Firm Articles

Abboy, Carmen and Lawrence, Irvin (ENSafrica). New decision may deprive commissioner discretion to refuse legal representation in CCMA and bargaining council arbitration proceedings.

2019 May 24 GoLegal

<https://www.golegal.co.za/discretion-commissioners-ccma/>

Abrahams & Gross. Reinstatement: A remedy for unfair dismissal and unfair labour practices.

2019 May 22 GoLegal



Extract from article: "In terms of the Labour Relations Act, there is no set definition for reinstatement therefore it is important to consider court decisions in order to define reinstatement. Case law suggests that in its simplest terms reinstatement means "to put an employee in the same position he/she was in prior to dismissal."

<https://www.golegal.co.za/unfair-dismissal-reinstatement/>

Abrahams & Gross. Specific forms of misconduct in the workplace and the necessity for a disciplinary code.

2019 May 14 GoLegal

<https://www.golegal.co.za/workplace-misconduct-disciplinary-code/>

Davies, Bradley (Werksmans Attorneys). No work on public holidays – A gift from the Labour Appeal Court.

2019 May 9 GoLegal

<https://www.golegal.co.za/public-holiday-labour-appeal/>

Eversheds Sutherland. Global employment and labour law update.

2019 May 13 GoLegal

<https://www.golegal.co.za/employment-labour-law-update/>

Leppan, Fiona; Nhlapo, Bheki and Petla, Mayson (Cliffe Dekker Hofmeyr). Can an arbitrator grant relief under s198B after the expiry of the fixed-term contract?

2019 May 27 Lexology

<https://www.lexology.com/library/detail.aspx?g=c92f5df8-c05c-4483-b423-35ec1a4fb755>

Mather, Nadine and Gerson, Amy (Bowmans). Taking your high from home to work – Considering the impact of cannabis on the workplace.

2019 Apr 26 GoLegal

Case discussed: *Mthembu and Others v NCT Durban Wood Chips* (KNDB409118) [2019] 4 BALR 369 (CCMA) (24 September 2018).

<https://www.golegal.co.za/influence-cannabis-workplace/>

Mnyandu, Boris (ENSAfrica). Large-scale retrenchments: Compensation as a remedy for procedural unfairness.

2019 May 28 Lexology

Case discussed: *Steenkamp and Others v Edcon Ltd* (CCT29/18) [2019] ZACC 17 (30 April 2019).

<https://www.lexology.com/library/detail.aspx?g=1f2e107b-5067-42e7-b79b-2e709e7ae7c4>

Mulligan, Tanya (Cowan-Harper-Madikizela). Time to bail out? – Dismissal for "operational incapacity".

2019 May 23 GoLegal

Case discussed: *Samancor Tubatse Ferrochrome v Metal and Engineering Industries Bargaining Council (MEIBC) and Others* (JA 57/08) [2010] ZALAC 7; (2010) 31 ILJ 1838 (LAC); [2010] 8 BLLR 824 (LAC) (12 March 2010).

<https://www.golegal.co.za/dismissal-operational-incapacity/>

Preston, Nicholas and Quenet-Meintjies, Ashlyn (Cliffe Dekker Hofmeyr). Slamming the door on the indecisive.

2019 May 13 Lexology

Case discussed: *Steenkamp and Others v Edcon Ltd* (CCT29/18) [2019] ZACC 17 (30 April 2019).

<https://www.lexology.com/library/detail.aspx?g=63c053b3-7441-4867-853c-5760ea554b3e>

Rajah, Sherisa (Fasken). The Department of Labour and EE Reports: Not the end of the road.

2019 May 20 Lexology

Extract from article: "Historically, many employers have experienced technical issues or 'glitches' in the days before, and especially on the day of, online submission. This often results in EE Reports being considered "late", with Department Officials unwilling to accept any submissions after the deadline."

<https://www.lexology.com/library/detail.aspx?g=7e46e7ce-664c-4250-9cdd-4d0c64310994>

Rapuleng, Thabang and Mila, Tamsanqa (Cliffe Dekker Hofmeyr). The case of the email - failure to copy your line manager on emails may lead to a dismissal.

2019 May 27 Lexology

<https://www.lexology.com/library/detail.aspx?g=f0ee2ef7-2c6f-4e36-8727-42b45e1ec329>

Robbins, Tracy and Olley, Julia (Baker McKenzie). Same same but different.

2019 Apr 26 Lexology

Extract from article: "The debate surrounding the interpretation of section 198A(3)(b) of the Labour Relations Act, particularly dealing with the dual or deemed employment relationship between a client of a temporary employment



service provider (TES) and the TES employee, was settled by the Constitutional Court in *Assign Services (Pty) Ltd v NUMSA and Others (2018) 9 BLLR 837 (CC)*.

<https://www.lexology.com/library/detail.aspx?g=3e552f12-58e9-4051-bfd9-ca5f02c80401>

VDMA Attorneys. Flying high at work.

2019 May 15 GoLegal

Case discussed: *Mthembu and Others/NCT Durban Wood Chips [2019] 4 BALR 369 CCMA*.

<https://www.golegal.co.za/tested-positive-cannabis-work/>

Yeates, Michael and Swanepoel, Kirstin. The race card: Not the joker in the pack.

2019 Apr 29 GoLegal

Case discussed: *Legal Aid South Africa v Mayisela and Others (CA9/17) [2019] ZALAC 1 (5 February 2019)*.

<https://www.golegal.co.za/accusations-racism-labour/>

Media Comments

Dano, Zodidi. Blackmail, interference partly to blame for construction industry job losses.

2019 May 16 IOL News

Extract from article: "Blackmail, objections and interference in building projects are partly to blame for the huge job losses in the construction industry. There were 142000 job losses in the construction industry in the first quarter of the year, compared to the fourth quarter of 2018, Statistics SA (StatsSA) has announced. StatsSA's Quarterly Labour Force Survey said this contributed to the official unemployment rate increasing by 0.5 of a percentage point. "The increase in the unemployment rate is a result of a decline of 237000 in the number of people in employment and an increase of 62000 in the number of people who were unemployed between the fourth quarter of 2018 and the first quarter of 2019," said StatsSA."

<https://www.iol.co.za/capeargus/news/blackmail-interference-partly-to-blame-for-construction-industry-job-losses-23321752>

Marrian, Natasha. Numsa and labour registrar at odds over union finances.

2019 May 20 Mail & Guardian

Extract from article: "The National Union of Metalworkers of South Africa (Numsa), the country's largest union, is again in trouble with the labour registrar, according to a letter from the regulatory authority for the country's trade unions. The letter indicates that financial statements submitted by Numsa for 2009 to 2015 do not comply with the law. The labour registrar appears to be cracking the whip on the country's unions, with at least three Cosatu-aligned unions as well as the Association of Mineworkers and Construction Union (Amcu) being called out by the authority for failing to comply with the law. The letter, which the Mail & Guardian has seen, was signed on May 10, two days after the Numsa-aligned Socialist Revolutionary Workers Party performed poorly in the 2019 election... In the letter, the registrar says Numsa's audited financial statements does not comply with the Section 98 of the Labour Relations Act for the period between 2009 and 2015, which relates to audit opinions of its subscriptions from members."

<https://mg.co.za/article/2019-05-20-numsa-and-labour-registrar-at-odds-over-union-finances>

Mbovane, Thamsanqa. Construction workers strike over training fund.

2019 May 7 GroundUp

Extract from article: "Workers at the R68-million construction site of Noninzi Luzipho Primary School in KwaNobuhle township, Uitenhage, are on strike over a training fund. About 40 workers employed by Alex Maintenance and Electrical Services downed tools this week, saying that the strike would continue until their demands were met. Workers said R600,000 had been put aside for training by the Coega Development Corporation (CDC) which has been contracted by the Eastern Cape Department of Education to build the school. They said the training was in bricklaying, electrical services, carpentry, machine usage and plumbing skills. Instead, they said, the money had been used to top up their salaries. "After the project, we won't get jobs, because we have had no training," said protest leader Ndyabo Sifuba. "What we are saying is that all we want is training, and that is it."

<https://www.groundup.org.za/article/construction-workers-strike-over-training-fund/>

Roper, Ernest. Maintaining employee retention.

2019 May 2 Master Builders Association

Extract from article: "Retaining talented, skilled, and experienced employees is a major problem faced by many industries. Within the construction industry, the challenge been the frequency of short-term contracts equally makes it difficult for employees to commit to the industry. In order to overcome this challenge, retention of talented, skilled and experienced employees, management should take the following into account: Collaborative culture, health and wellness and educational opportunities."

<https://masterbuilders.site-ym.com/news/449556/Maintaining-Employee-Retention.htm>

Roper, Ernest. Supervision of construction processes.



2019 May 2 Master Builders Association

Extract from article: "The vast majority of industry practitioners who occupy supervisory roles have either been artisans who had been promoted to a supervisory role and in some cases someone without industry experience who is placed into a supervisory role. Experience has shown that the successful construction work rest heavily on the shoulders of the supervisor, who takes responsibility for a wide range of functions ranging from planning to quality. It therefore makes business and financial sense to ensure that the incumbent of such a post is adequately trained for this very demanding position."

<https://masterbuilders.site-ym.com/news/449563/Supervision-of-Construction-Processes.htm>

Striking security guards at Kusile disperse.

2019 May 10 fin24

Extract from article: "Police in Mpumalanga say a demonstration by striking Hlanganani security personnel at Kusile power station has ended. Hlanganani Protection Services employees went on strike over the alleged non-payment of salaries on Friday morning, blocking the way into the plant. Just before 14:00 Brigadier Leonard Hlathi said police had intervened and the employees had dispersed without incident. "The strike is about security guards who say they were not paid by the company. Police went and engaged with them and reached an understanding. The road was then cleared and the situation is now stable," said Hlathi. Hlathi would not say whether or not the gathering was approved by authorities. He called it an attempt at a "barricade"... Eskom confirmed to Fin24 on Friday morning that several employees of one of its contractors were attempting to prevent construction at the coal-fired power plant."

<https://www.fin24.com/Economy/eskom-contract-employees-are-blocking-kusile-construction-20190510>

Media Release

Department of Higher Education and Training. QCTO seeks comment on proposed occupational qualifications.

2019 May 28 SabinetLaw

Extract from release: "Comment has been called on proposed occupational qualifications for registration on the qualifications- sub framework for trades and occupations. The higher education and training department published the call in Government Gazette 42489 in terms of the National Qualifications Act. Some of the qualifications include Occupational Certificate: Building Inspector (Class III) NQF Level 7, Credits 451; Occupational Certificate: Security Officer, NQF Level 3, Credits 86; Occupational Certificate: Chemical Plant Controller, NQF Level 5, Credits 180; Occupational Certificate: Railway Track Master, NQF Level 4, Credits 578; Occupational Certificate: Fishing Hand, NQF Level 2, Credits 183 and Occupational Certificate: Procurement Officer, NQF Level 5, Credits 180.

<https://legal.sabinet.co.za/articles/qcto-seeks-comment-on-proposed-occupational-qualifications/>

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ENGINEERING

Case

MEC: Police, Roads and Transport (Free State Provincial Government) v SMEC South Africa (Pty) Ltd (A46/2018) [2019] ZAFSHC 59 (30 May 2019)

Appeal – Judgment dealing with manner in which reactive challenge by organ of State was presented as well as delay in challenging decision – Trial court handed down judgment in favour of company of consulting engineers, ordering Department to pay R2 397 173.36 plus interest and costs of suit – Road works – Appellant should have instituted proceedings for review and setting aside of decision to award the contract to respondent but failed to act accordingly – Appellant failed to present evidence to trial court for it to properly adjudicate its averments in plea in respect of non-compliance with procurement principles and legislation – Appeal dismissed.

<http://www.saflii.org/za/cases/ZAFSHC/2019/59.pdf>

Government Gazette

Engineering Profession Act 46 of 2000

Publication in terms of section 32 (5) - the finding and sanction imposed by a Disciplinary Tribunal at a disciplinary hearing, into the alleged improper conduct of a registered person: C F Joubert [PR ENG (800192)].

RGN745 GG 42475 p11 24May2019

https://www.gov.za/sites/default/files/gcis_document/201905/42475rg10948gon745.pdf

Law Firm Article



Conradie, Pieter (Cliffe Dekker Hofmeyr). Deathly negligence and jail time for doctors, engineers and directors.

2019 May 15 Lexology

"Like doctors, engineers, especially civil engineers, who design, build, construct and maintain infrastructure projects and systems in the public and private sector, including roads, buildings, airports, tunnels, dams and bridges may face serious criminal charges if they fail to carry out their professional duty. For example, if a mistake in the design of a bridge causes a fatality and it was foreseeable that the error may have caused a bridge to collapse and the engineer neglected to correct the mistake, the engineer may be convicted of culpable homicide. Alternatively, an engineer could also be held criminally liable if they simply accept the instructions of clients, failing in their duty to act diligently under the circumstances."

<https://www.lexology.com/library/detail.aspx?q=bf28e219-c2cf-4dd8-9286-1c35b780697f>

Media Comment

Evans, Jenni. Half a Ford Kuga chassis in court - expert establishes credentials in Reshall Jimmy death case.

2019 May 20 IOL

"Ford brought the big guns in for the resumption of the inquest into whether a fault in its Kuga model was responsible for the death of Reshall Jimmy. Its witness at the Western Cape High Court proceedings was a US-based engineer who was part of a team of scientists who advised on a recall on vaping devices."

<https://www.news24.com/SouthAfrica/News/half-a-ford-kuga-chassis-in-court-expert-establishes-credentials-in-reshall-jimmy-death-case-20190520>

Media Release

Department of Trade and Industry. Draft standards published for comment.

2019 May 20 SabinetLaw

Extract from release: "The trade and industry department has published draft standards for comment. The proposed standards were published in Government Gazette 42464 in terms of the Standards Act. Draft standards include civil engineering test methods part CO2-7: initial drying shrinkage and wetting expansion of concrete; civil engineering test methods – part CO2-1: dimensions, tolerances and uses of cast test specimens; civil engineering test methods part CO2-8: density of hardened concrete and programmable controllers – part 8: guidelines for the application and implementation of programming languages. New standards have also been listed."

<https://legal.sabinet.co.za/articles/draft-standards-published-for-comment-4/>

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ENVIRONMENTAL LAW

Journal Article

Jerling, Werner. Construction – an ecosystem in crisis.

2019 May 27(4) Civil Engineering = Siviele Ingenieurswese p4

"Recent media coverage of appeals by SAFCEC, CESA and others to government to intervene and save our industry has caught the attention of many a Civil Engineer. We work and ply our trade in a sensitive ecosystem that is a jewel in the crown of South Africa. We are in fact one of the few countries in Africa that still has a fully functioning and self-sufficient construction industry. But we are in trouble."

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ESKOM

Media Comment

Torao, Maya-Rose. Kusile plant sets Eskom back a whopping R36 billion for construction.

2019 May 20 briefly.co.za

Extract from article: "Eskom is feeling shaky after being sent a R36 billion bill for construction work on Kusile power plant. The reason that the bill is so high has been put down to "unforeseen costs". According to The South African, the bloated bill for Kusile is due to "unforeseen costs" that were racked up during construction. While the R36 billion to be paid by the power utility is not an unusual amount for work on this kind of scale, the bill is bad news for Eskom's dire financial status. It also hasn't been ruled out that some of this money may have found its way into the back pockets of corrupt officials."

<https://briefly.co.za/30186-kusile-plant-sets-eskom-a-whopping-r36-billion-construction.html>

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FRAUD

Media Comments

Joseph, Raymond. Lottery admits it's investigating projects it defended.

2019 May 16 GroundUp

Extract from article: "After strongly defending two multimillion-rand projects it funded, the National Lottery Commission (NLC) has done a complete about face and now says that it is investigating both of them. The one project is a drug rehabilitation centre in Pretoria and the other is a school in Limpopo that was destroyed during protests a few years ago. An alleged hijacked non-profit organisation, Denzhe Primary Care, was used by controversial lawyer Leslie Ramulifho to get R27.5-million in Lottery funding to build a new drug rehabilitation centre near Pretoria. The other project involved an NPO run by a boxing promoter with no history in construction, who was given R28.3-million rand to rebuild a Limpopo school that was destroyed during protests in the Vuwani area in 2015 and 2016... The incomplete and shoddily built drug rehab is the subject of litigation and at least R20-million of the Lottery's funding is unaccounted for."

<https://www.groundup.org.za/article/lottery-investigate-projects-it-once-defended/>

Leng, Claudio. Mzansi reacts to R1m municipality funds used for "home renovations".

2019 May 22 briefly.co.za

Extract from article: "Briefly.co.za reported on the suspicious news that ANC provincial chairman, Oscar Mabuyane, enjoyed home renovations using R1 million worth of municipality funds. Angry South Africans have now had their say on the matter as the news went viral - Reports also indicated that the invoice in question was fraudulently created to indicate that the funds were being used for a road construction project. Briefly.co.za reported on the allegation that funds to the tune of R1 million were siphoned from an Eastern Cape municipality and used to renovate the home of an ANC politician. ANC provincial chairman and premier designate, Oscar Mabuyane, has been implicated in the damning report. The report also alleges that an invoice was fraudulently created as a cover for the corrupt plan."

<https://briefly.co.za/30343-mzansi-reacts-r1m-municipality-funds-home-renovations.html>

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HEALTH AND SAFETY

Government Gazettes

Compensation for Occupational Injuries and Diseases Act 130 of 1993

- Final opportunity to submit outstanding information with regard to claims lodged before 1st August 2014.
GN626 GG 42431 p33 3May2019
https://www.gov.za/sites/default/files/gcis_document/201905/42431gon626.pdf
- Increase in Monthly Pensions and Manner of Calculating Compensation.
GN627 GG 42431 p37 3May2019
https://www.gov.za/sites/default/files/gcis_document/201905/42431gon627.pdf

Media Comments

Campbell, Rebecca. Mining industry's image in tatters following deadly Brazilian tailings dam collapse.

2019 May 10 Mining Weekly

Extract from article: "The flood ended up covering, and destroying, the vegetation in an area of at least 269.84 ha. It also contaminated the Paraopeba river, the source of 43% of the area's water supply. In the immediate aftermath of the disaster, Minas Gerais state firefighters, struggling through the sludge, rescued 192 people – and 350 animals. (Animals that were still alive but trapped in the sludge and could not be rescued were shot in the head by marksmen firing from hovering helicopters.)... The alarm siren did not sound because it was directly below the dam and was swept away in the opening moments of the disaster. The emergency control centre personnel did not activate the emergency evacuation plan because the emergency control centre was also directly below the collapsed dam and was engulfed almost at once, claiming the lives of the people on duty there. The death toll among the mine's employees was so high because it was lunchtime and the cafeteria was in the mine's administrative area, which was also located below the dam."

<https://www.miningweekly.com/article/mining-industrys-image-in-tatters-following-deadly-brazilian-tailings-dam-collapse-2019-05-10>

Charges dropped against six of the eight ex-Amcu leaders accused of murder.



2019 May 20 The Citizen

Extract from article: "Members clad in green t-shirts filled the courtroom in anticipation of hearing 'the truth' about what happened to their colleagues. The high court in Pretoria on Monday withdrew charges against six of the eight former leaders of the Association of Mineworkers and Construction Union (Amcu) members accused of plotting hits against miners and trade union leaders. State Prosecutor Annalie Coetzer told the court there was not enough evidence to pursue charges against the men. However, Samkelo Mkutshwa, 38, and Simphiwe Silwane, 36, both of Lusikisike in the Eastern Cape, will continue to stand trial. The men are believed to be some of the kingpins behind the spate of attacks in Marikana in 2017. In one of the attacks, the chairperson of the Marikana branch of Amcu was nearly killed. Malibongwe Mdazo was shot 16 times but survived the attack."

<https://citizen.co.za/news/south-africa/courts/2132910/charges-dropped-against-six-of-the-eight-ex-amcu-leaders-accused-of-murder/>

Dlulane, Bonga. PSA threatens legal action if govt refuses to upgrade 'unsafe' buildings.

2019 May 31 EWN

"The Public Servants Association (PSA) said it would take legal action against the government if buildings were not upgraded. The union, which represents thousands of public servants, said the State Attorney's office in Johannesburg was in a hazardous condition following the leak of raw sewage."

<https://ewn.co.za/2019/05/31/psa-threatens-legal-action-if-govt-refuses-to-upgrade-unsafe-buildings>

See also:

- Mabuza, Ernest. Justice department concerned about people walking in sewage to get to work. – 2019 May 30 TimesLive at <https://www.timeslive.co.za/news/south-africa/2019-05-30-justice-department-concerned-about-people-walking-in-sewage-to-get-to-work/>

Five killed in Shanghai building collapse.

2019 May 16 eNCA

Extract from article: "Five people were killed on Thursday when the roof of a Shanghai commercial building caved in upon construction workers who were renovating it, the city government said. The accident occurred at around 11.30am in a central Shanghai neighbourhood, trapping around 20 people, according to fire rescue officials. Official sources provided differing tallies of the numbers of people pulled out of the rubble throughout the day, but both the city government and the national emergency ministry now quote a death toll of five. A verified social media account run by China's emergency ministry showed pictures of rescue personnel digging bloodied and dust-coated workers out from amid piles of rubble, toppled concrete pillars and shattered wooden beams."

<https://www.enca.com/news/five-killed-shanghai-building-collapse>

Sibuyi, Billy. Acornhoek Mall's shop-front collapsed.

2019 May 17 Letaba Herald

Extract from article: "A mall under construction's shop-front collapsed in Acornhoek on Thursday May 16, injuring two people. According to a statement from the Acornhoek Mall Management, constructors drilled a wall to create a shop-front outside the mall and it collapsed after the failure of a temporary support structure. The management stated that the area is still under construction and that two minor injuries of contractors were reported. The construction of the phase two mall is said to be on track and is expected to open in October. The management also stated that the incident occurred in a construction site and is far from the shopping zone. According to a report from Acornhoek News, one of the construction workers said that they had just finished making doorways for the new shops outside the mall but the wall above it could not hold on and ultimately gave in. "We were just about to finish making doorways for the new shops outside the mall but the wall above couldn't hold on, it came down."

<https://letabaherald.co.za/65240/acornhoek-malls-shop-front-collapsed/>

Singh, Tasveera. Master Builders KwaZulu-Natal Health and Safety Rewards Programme.

2019 May 30 Master Builders Association

Extract from article: "With the increasing advent of international players into the SA construction industry, requirements for Occupational Health & Safety (OH&S) are becoming more demanding and contractors are increasingly required to prove a certain standard in OHS. It therefore becomes imperative that the Master Builders KZN members be positioned to meet these requirements. The rewards programme has been designed to reward our members who comply with the health and safety legislation and standards and go beyond the call of duty in displaying commitment and excellence in health and safety."

<https://masterbuilders.site-ym.com/news/453670/Master-Builders-KwaZulu-Natal-Health-and-Safety-Rewards-Programme.htm>

Singh, Tasveera. Occupational health and safety 12-month progressive statistics report.

2019 May 23 Master Builders Association

Extract from article: "Master Builders KwaZulu-Natal encourages its members to strive to achieve zero harm to employees by implementing various Health and Safety interventions. Master Builders KwaZulu-Natal regularly fields enquiries regarding the acceptable Disabling Injury Frequency Rate (DIFR) for the Construction Industry in KZN. In order to compile DIFR statistics, the Association gathered information from its members and used an international formula to calculate it: No. of DIs x 200 000 divided by total manhours worked, this gives a % frequency rate. These measurements are ideal for monitoring and identifying trends as well as for comparison against industry norms. As



with all statistical calculations, in order for it to add value, we need to clearly define what is being measured and ensure we continuously assess it according to these parameters.”

<https://masterbuilders.site-ym.com/news/452801/Occupational-Health-and-Safety-12-Month-Progressive-Statistics-Report.htm>

Media Release

Department of Labour. e-COID claims management solution on the cards.

2019 May 22 SabinetLaw

Extract from release: “A new electronic Compensation for Occupational Injuries and Diseases (e-COID) claims management solution is in the pipeline. In a statement, the labour department announced that the envisaged claims management solution will kick in in September 2019. The proposed electronic system is part of the Compensation Fund’s (CF) organisational restructuring that commenced two years ago. During this period, the CF has engaged in a “process of decentralisation of its services, opened new claims processing centres, appointed medical adjudicators in its processes and moved to online platforms”. The CF provides compensation to employees who are injured or contract diseases in the workplace.”

<https://legal.sabinet.co.za/articles/e-coid-claims-management-solution-in-the-pipeline/>

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HERITAGE SITES

Government Gazette

National Heritage Resources Act 25 of 1999

Declaration of Sites within the Bo-Kaap National Heritage Sites.

GN622 GG 42429 p4 30Apr2019

http://gpwonline.co.za/Gazettes/Gazettes/42429_30-4_ArtsandCulture.pdf

Media Comments

Marvin, Charles. Blok Urban Developers sell Bo-Kaap property.

2019 May 13 IOL News

Extract from article: “In a new twist after Bo-Kaap was declared a national heritage site, Blok Urban Developers, who were the owners of 40 Lion Street in the area, have sold the property to Prime Point Properties. Blok launched an interdict against the residents of Bo-Kaap who tried to block a crane from coming into the area, but now the company no longer possess the legal standing to pursue their relief sought in the initial interdict application. In court papers, the new owners of the building said: “The applicant seeks to persist with the relief sought by Blok in both applications.” In November, the Western Cape High Court granted the interdict to the developers, preventing the community from interfering with construction... About 50 residents gathered outside to protest the development, with many saying the group was destroying the Bo-Kaap’s heritage.”

<https://www.iol.co.za/capeargus/news/blok-urban-developers-sell-bo-kaap-property-23145708>

Mortlock, Monique. Bo-Kaap civic association accuses developer of not being honest in legal fight.

2019 May 30 EyeWitness News

“Earlier this week, Blok applied to have its interdict transferred to Prime Point Properties, as this is the new holding entity of the 40 on Lion Street property. But Blok dropped the application after the Western Cape High Court found the interdict could not change hands.”

<https://ewn.co.za/2019/05/30/bo-kaap-residents-association-accuses-developer-of-being-honest-in-legal-battle>

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HOUSING

Government Gazettes

Housing Act 107 of 1997

- Correction notice to Proposed Priority Housing Development Areas published for comments within 60 days of publication in [GN671 GG 42464 p173 17May2019](#). Correct PHDA names and descriptions are from page 194 to 213, pages 175 to 193 are withdrawn.
GN690 GG 42474 p4 24May2019
https://www.gov.za/sites/default/files/gcis_document/201905/42474gon690.pdf
- Proposed Priority Housing Development Areas. Comments invited within 60 days of publication.



GN671 GG 42464 p173 17May2019

http://www.gpwonline.co.za/Gazettes/Gazettes/42464_17-5_NationalGovernment.pdf

Housing Development Act 23 of 2008

- Erratum on Gazetting of the HDA Board: Names of appointed members.
BN79 GG 42494 p4 29May2019
http://www.gpwonline.co.za/Gazettes/Gazettes/42494_29-5_HumanSettlements.pdf
- Notice of appointment of seven (07) non-executive members to serve on the Board of the Housing Development Agency.
BN77 GG 42471 p4 p2 22May2019
http://www.gpwonline.co.za/Gazettes/Gazettes/42471_22-5_HumanSettlements.pdf

Media Comments

Bludla, Siphelele. Community leader warns Xolobeni residents as government plans to build 200 houses.

2019 May 2 IOL News

Extract from article: "Xolobeni community leader Nonhle Mbuthuma has cautioned the rural community against being victims of electioneering after the Eastern Cape government announced plans to build 200 homes for destitute families. In a statement, Mbuthuma said although she was not aware of the plan, it would have a positive impact on those families if carried out without controversy. "The development would be welcomed but houses should be built where people stay, they should not be relocated. That would be an interesting development, considering that some homes could be removed to make the way for mining," Mbuthuma said. Eastern Cape member of the executive council for Human Settlement Babalo Madikizela announced the housing plan during a visit to Xolobeni on Wednesday. He said the need to provide housing urgently was identified during another visit last week."

<https://www.iol.co.za/news/south-africa/eastern-cape/community-leader-warns-xolobeni-residents-as-government-plans-to-build-200-houses-22351527>

Robust first quarter for private building construction according to Stats SA.

2019 May 17 Industry Insight

Extract from article: "According to the latest building statistics released by Stats SA, growth in the first quarter of the year was surprisingly robust, with 32.5% more SQM of buildings reported as completed on a y-y basis. This is really fantastic growth in a rather stagnant environment. What wasn't surprising was the fact that growth in flats and townhouses were the main catalyst for this robust increase in the first quarter. According to the data, there were a staggering 80.0 percent more SQM of flats and townhouse like buildings reported as completed in the first quarter of the year. Growth, in terms of SQM completed didn't come only from this segment, with the non-residential sector also sharing in the spoils. Overall, there were 48.4 percent more non-residential SQM completed in the first quarter, compared to 26.2 percent for the entire residential market."

<http://industryinsight.co.za/wp/robust-first-quarter-for-private-building-construction-according-to-stats-sa/>

Media Releases

Department of Human Settlements. Correction notice for priority housing development areas

2019 May 27 SabinetLaw

Extract from release: "The human settlements department has published a correction notice to its earlier notice on proposed Priority Housing Development Areas (PHDAs). Comment on the proposed PHDAs was called for in Notice 671 in Government Gazette 42464. The correction notice was published in Gazette 42474...In the correction notice, the department announced that the correct PHDA names and descriptions are from page 194 to 213 in the original notice. Pages 175 to 193 are withdrawn."

<https://legal.sabinet.co.za/articles/correction-notice-for-priority-housing-development-areas/>

Department of Human Settlements. Priority housing development areas in the pipeline.

2019 May 21 SabinetLaw

Extract from release: "Comment is sought on proposed Priority Housing Development Areas (PHDAs). The human settlements department published the proposed PHDAs in Government Gazette 42464... In addition, the Social Housing Programme in Restructuring Zones provides for "Social Housing located in specific, defined localities (mostly urban) which have been identified as areas of opportunity (largely economic) where the poor have limited or inadequate access to accommodation, and where the provision of social housing can contribute to redressing structural, economic, social and spatial dysfunctionalities". Other housing programmes include Informal Settlements Upgrading Programme, Finance Linked Individual Subsidy Programme and the Special Presidential Package's Programme on Revitalisation of Distressed Mining Communities."

<https://legal.sabinet.co.za/articles/priority-housing-development-areas-in-the-pipeline/>

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INFRASTRUCTURE DEVELOPMENT

Media Comment

Developers set to inject billions into inner city development.

2019 May 3 Joburg News Room

Extract from article: "In less than six months, central Johannesburg will be engulfed by wafts of construction dust as dozens of buildings undergo redevelopment in a bid to revitalise the Inner City. Ten property investors will set to work, pumping R20 billion to rejuvenate 24 buildings across the Inner City. On Monday, 29 April the Joburg Property Company (JPC) announced the 10 property developers who've won the 24 tenders to reconstruct CBD buildings at the Joburg Theatre in Braamfontein. The developers will construct student accommodation, mixed-use developments, and trading space for Micro to Medium Enterprises. The construction is expected to boost the City's drive to grow the local economy by at least 5 percent through private sector investment. The latest tender is set to create over 11 000 jobs in the construction phase. The buildings they've won are owned by the City through a 50-year lease deal. Executive Mayor Herman Mashaba believes the release of these properties to the private sector is critical to addressing the City's socioeconomic needs, promoting integrated development and job creation."

<https://www.joburg.org.za/media/Newsroom/Pages/2019%20Newsroom%20Articles/May%202019/Developers-set-to-inject-billions-into-inner-city-development.aspx>

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PIPELINE CONSTRUCTION

Media Comment

Zubizarreta, Tim. Iowa Supreme Court of rules Dakota Access Pipeline valid use of eminent domain.

2019 Jun 3 The Jurist

"The Supreme Court of Iowa ruled Friday that the Dakota Access Pipeline is a valid use of eminent domain in the state of Iowa. The Dakota Access Pipeline is set to be one of the largest oil pipelines in North America, running from North Dakota through South Dakota and Iowa to reach a refinery in Illinois. The pipeline has been subject to a significant amount of controversy for its size and environmental impact as well as its location running near Indian reservations"

<https://www.jurist.org/news/2019/06/iowa-supreme-court-of-rules-dakota-access-pipeline-valid-use-of-eminent-domain/>

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ROADS

Media Comments

Dawood, Zainul. Watch: anger over delays to repair Higginson Highway.

2019 May 21 IOL News

Extract from article: "The delay in repairing the damaged portion of Higginson Highway has left Chatsworth residents fuming. This comes after the reopening of Stapleton Road in Pinetown on Monday. The road had been washed away during the heavy rainfalls in April. The Higginson Highway was damaged during the storm in April. A portion of the busy road was closed to traffic causing major traffic backlogs in the suburbs. A resident, frustrated with the delays in traffic, visited the construction site and posted a video on the Moorton Alliance WhatsApp group. In the video the resident remarked that the construction work was supposed to take place seven days a week until late hours. "Absolutely F*****I is happening here," the resident said. The video shows a massive excavation process taking place."

<https://www.iol.co.za/dailynews/news/kwazulu-natal/watch-anger-over-delays-to-repair-higginson-highway-23670444>

Two transportation companies contracted to build billions of rands' worth of locomotives for Transnet had "no justification" for hiking costs by R1.25-billion as a relocation fee, the State capture commission heard on Friday.

2019 May Polity.org

"The commission of inquiry has been investigating allegations of State capture, corruption and fraud since August 2018.... Thobani Mnyandu, an expert in construction law and tenders, told the commission that based on the MNS probe, the relocation costs from Johannesburg to Durban for the two groups were unjustified."

<https://www.polity.org.za/article/r125bn-relocation-costs-for-transnet-train-tender-unjustifiable-inquiry-hears-2019-05-31>

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TAXATION

Binding Class Ruling

South African Revenue Service. Binding Class Ruling: BCR 066. Tax consequences for recipients of shares in an unbundled company. 24 May 2019.

<https://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BCR-2018-07%20-%20BCR%20066%20Tax%20consequences%20for%20recipients%20of%20shares%20in%20an%20unbundled%20company.pdf>

Cases

Commissioner, South African Revenue Service v Big G Restaurants (Pty) Ltd 2019 (3) SA 90 (SCA)

Income Tax Act 58 of 1962, s 24C – Whether income of taxpayer in years of assessment received or accrued in terms of franchise agreement – Used to finance future expenditure incurred by taxpayer in the performance of obligations under that agreement – Income and obligations must originate from same contract.

<http://www.saflii.org/za/cases/ZASCA/2018/179.pdf>

IT 14106 (31 January 2019)

Income Tax Act, 1962 Income tax; whether the taxpayer was entitled to be a PBO and be allowed a tax exemption in terms of section 10(1)

<https://www.sars.gov.za/AllDocs/LegalDoclib/Judgments/LAPD-DRJ-TC-2019-03%20-%20TC%20-%20IT%2014106%20-%2031%20January%202019.pdf>

Government Gazette

Income Tax Act 58 of 1962; Unemployment Insurance Contributions Act 4 of 2002 and the Skills Development Levies Act 9 of 1999

Notice to submit employer returns (EMP501s).

GN684 GG 42464 p450 17May2019

http://www.gpwonline.co.za/Gazettes/Gazettes/42464_17-5_NationalGovernment.pdf

Journal Articles

Clegg, David. VAT: Leases, lodging, sub-leases and purpose.

2019 10(1) Mar Business Tax and Company Law Quarterly p20

Case discussed: [*Commissioner for the South African Revenue Service v Respublica \(Pty\) Ltd \(1025/2017\) \[2018\] ZASCA 109 \(12 September 2018\).*](#)

Moosa, Fareed. Value-conscious tax administration by SARS.

2019 10(1) Mar Business Tax and Company Law Quarterly p10

Extract from article: "This article discusses the ethos and values espoused by section 195 of South Africa's Constitution... This article argues that Constitutional supremacy obliges SARS to respect taxpayers' constitutional rights and its administrative processes must, so far as it may affect taxpayers, conform to democratic norms, values and standards."

Nonyane, Kagiso. A hollow victory: Binding General Ruling 49 – issued by SARS on 15 March.

2019 May Without Prejudice p13

Extract from article: "During the medium term budget in October 2018, the Minister of Finance announced that sanitary towels (pads) would be included in the list of items that are zero rated for VAT purposes... The BGR 49 argues that only the following sanitary items are "sanitary towels (pads)", and therefore zero rated in terms of the newly introduced amendment to the VAT law..."

<https://www.withoutprejudice.co.za/free/article/6459/view>

Rudnicki, Michael. Section 24C allowance for future expenditure: Navigating the maze.

2019 10(1) Mar Business Tax and Company Law Quarterly p11

Extract from article: "This article examines some of the peculiarities of the provisions of section 24C of the Income Tax Act 58 of 1962. The primary focus of the article is to analyse two key aspects of the section: (i) whether the section is restricted to the receipt of income as opposed to the accrual of income generated by a contract; and (ii) the correlation between the contract generating the advance income and the contractual obligations to incur future expenditure."



Law Firm Articles

Botha, Louis (Cliffe Dekker Hofmeyr). Exchange control and non-residents investing in South Africa: Relaxation of policy pertaining to payments.

2019 May 6 GoLegal

<https://www.golegal.co.za/non-residents-investing-exchange/>

Botha, Louis (Cliffe Dekker Hofmeyr). Proposed amendments regarding dividend stripping rules in 2019 budget: Further reflection.

2019 May 3 Lexology

Extract from article: "This article delves into the National Treasury's proposal to address abusive arrangements aimed at avoiding the anti-dividend stripping provisions in the Income Tax Act (58/1962). It first discusses the history of the amendments, followed by the anti-dividend stripping provisions and thereafter a brief discussion of the National Treasury's proposal in the 2019 Budget."

<https://www.lexology.com/library/detail.aspx?g=13122dd2-f3c2-4e00-bbca-d4e089f31256>

Botha, Louis (Cliffe Dekker Hofmeyr). Substance over form: A UK judgment about the avoidance of capital gains tax.

2019 May 27 GoLegal

<https://www.golegal.co.za/cgt-avoidance-uk-sa/>

Brink, Jerome (Cliffe Dekker Hofmeyr). Increasing focus on environmental taxes in South Africa.

2019 May 17 GoLegal

<https://www.golegal.co.za/environmentally-related-taxes/>

Gers, Carmen (ENSafrica). The interaction between the debt reduction rules and other provisions of the Income Tax Act.

2019 May 21 Lexology

<https://www.lexology.com/library/detail.aspx?g=d8b7fcfa-9e1c-48cb-8531-3f1c7f609ca0>

Kotze, Louise and Botha, Louis (Cliffe Dekker Hofmeyr). Creature of statute: Decision about Tax Court's power to increase understatement penalties.

2019 May 10 Lexology

Case discussed: *Purlish Holdings (Pty) Ltd v Commissioner for the South African Revenue Service (76/2018) [2019] ZASCA 4 (26 February 2019).*

<https://www.lexology.com/library/detail.aspx?g=ee17adf6-7c36-4c39-a357-ec3fcfe1c4e8>

Kotze, Louise (Cliffe Dekker Hofmeyr). Another win for the youth: Proposed extension of employment tax incentive.

2019 Apr 26 Lexology

Extract from article: "The historically high level of unemployment among South Africa's youth has led to the introduction of various tax incentives and benefits which aim to encourage the employment and training of such persons. Among these is the employment tax incentive scheme, which was introduced by the Employment Tax Incentive Act (26/2013)."

<https://www.lexology.com/library/detail.aspx?g=8fed41d3-be75-45fe-b2af-e6fd66307ec8>

Lewis, Andrew and Mbana, Benjamin (DLA Piper). South Africa draws more foreign suppliers of electronic services into its VAT net.

2019 May 1 Lexology

<https://www.lexology.com/library/detail.aspx?g=55d27327-c3ff-44de-a63d-07f9906cfba1>

Mbana, Benjamin and Lewis, Andrew (DLA Piper). A timely gift for taxpayers.

2019 May 2 Lexology

Case discussed: *A Company v The Commissioner for the South African Revenue Service (IT 24510) [2019] ZATC 1 (17 April 2019).*

<https://www.lexology.com/library/detail.aspx?g=a3449cfb-c438-4ba0-9f87-63a86a0ece5e>

Moodaley, Varusha; Badenhorst, Gerhard (Cliffe Dekker Hofmeyr). Further amendments to VAT e-services regulations enter into force.

2019 May 24 Lexology

<https://www.lexology.com/library/detail.aspx?g=cb47a631-858d-4552-925f-215555b01466>



Parker, Mansoor and Botha, Pierre (ENSafrica). SARS publishes draft rules for the administration of the carbon tax.

2019 May 21 Lexology

<https://www.lexology.com/library/detail.aspx?g=8dbcb0f5-59f1-4dbb-b9a2-d7f92c9891b6>

Pollak, Tanya and Moss-Holdstock, Carmen. Tax alert: South Africa's employment tax incentive.

2019 May 20 GoLegal

<https://www.golegal.co.za/sa-employment-tax-incentive/>

Van der Westhuizen, Dominique; Du Plessis, Chanté and Horn, Roelf (Cliffe Dekker Hofmeyr). Preference share funding structures: Overview of Companies Act and Income Tax Act provisions.

2019 May 17 Lexology

<https://www.lexology.com/library/detail.aspx?g=64fb2f07-d586-47a5-87d6-f863d285f1f3>

Strauss, Ben (Cliffe Dekker Hofmeyr). Timing of tax on gift cards.

2019 Apr 26 Lexology

Case discussed: [A Company v The Commissioner for the South African Revenue Service \(IT 24510\) \[2019\] ZATC 1 \(17 April 2019\)](#).

<https://www.lexology.com/library/detail.aspx?g=e8f0412c-7425-4b38-b6ea-667a42886598>

New Legislation

Carbon Tax Act 15 of 2019

To provide for the imposition of a tax on the carbon dioxide (CO₂) equivalent of greenhouse gas emissions; and to provide for matters connected therewith.

Commencement date: 1 June 2019

http://www.gpwonline.co.za/Gazettes/Gazettes/42483_23-5_Act15of2019CarbonTaxAct.pdf

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TENDERS

Cases

Cochrane Projects (Pty) Ltd v Kouga Local Municipality and Another (1962/2018) [2019] ZAECGHC 54 (7 May 2019)

Application for order reviewing and setting aside respondent's decision to disqualify tender for fencing of cemeteries – Tender conditions contained in Standard for Uniformity in Construction Procurement, Annexure F – Applicant's reliance on quality of its product irrelevant – Application dismissed.

<http://www.saflii.org/za/cases/ZAECGHC/2019/54.pdf>

Gobo Gcora Construction & Project and Others v Nelson Mandela Bay Municipality and Another; Nelson Mandela Bay Municipality v Public Protector of the Republic of South Africa and Others (992/16; 1414/2016) [2019] ZAECPHC 27 (16 April 2019)

Two applications for rescission and setting aside of three judgments – Tenders awarded by municipality to two companies for installation of services and construction of houses – Disputes over non-payment of remuneration for work performed – Applicants exhausted remedy to appeal judgments – Applications for rescission dismissed.

<http://www.saflii.org/za/cases/ZAECPHC/2019/27.pdf>

Media Comments

Bateman, Chris. SLR diary: gangster state; ace plays racist card, developer sues.

2019 May 2 BizNews

Extract from article: "While Gangster State author Pieter-Louis Myburgh is being sued for R10m by Durban businessman and an erstwhile friend of the book's main protagonist, ANC secretary general, Ace Magashule, Ace himself resorts to playing the racist card. As reflected in Simon Lincoln Reader's satirical column, Ace recently trashed Myburgh on an election platform, calling him a 'young white boy,' who knew little or nothing of the struggle. Still no lawyers mind. Rubbishing your detractors is a way better political strategy, one the Zuptoid-ruled ANC-hired a top PR agency to perfect. Magashule's developer-associate however, Durban's Vikash Narsai would prefer us to read the expurgated version of Myburgh's expose – the one without the chapter alleging he paid bribes to secure a R220m Free State housing tender from government officials. Myburgh claims it took five years for Narsai's company to build 200 of the 1,000 houses in Vrede, a peaceful pace to be sure."



<https://www.biznews.com/global-citizen/2019/05/02/gangster-state-ace-developer>

Transnet takes aim at petrol, diesel terminal construction tender.

2019 May 3 Sowetan Live

Extract from article: "State-owned Transnet National Ports Authority (TNPA) will recommend to its board that a tender to build and operate a bulk liquid terminal in Durban be reviewed and possibly cancelled, a senior official said. The "Lot 100" tender at South Africa's main petrochemical hub Island View on the east coast aimed to bring more blacks into the petroleum industry, part of government efforts to open up the economy after the end of white-minority rule. TNPA, a unit of the state freight logistics holding company Transnet, launched a tender in 2016 seeking bids for a terminal operator to finance the design, construction and operation of a terminal for refined products in a 25-year concession."

<https://www.sowetanlive.co.za/news/south-africa/2019-05-03-transnet-takes-aim-at-liquid-terminal-construction-tender/>

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TRADE

Government Gazettes

International Trade Administration Act 71 of 2002

Extension of the Policy Directive on the Exportation of Ferrous and Non-Ferrous Waste and Scrap Metal.

GenN257 GG 42436 p4 2May2019

http://gpwonline.co.za/Gazettes/Gazettes/42436_2-5_EcoDevelopment.pdf

International Trade Administration Commission of South Africa

International Trade Administration Act 71 of 2002

- Anti-Dumping Regulations (ADR).
GN284 GG 42474 p181 24May2019
https://www.gov.za/sites/default/files/gcis_document/201905/42474gen284.pdf
- Extension of the policy directive on the exportation of ferrous and non-ferrous waste and scrap metal.
GN285 GG 42485 p4 24May2019
http://www.gpwonline.co.za/Gazettes/Gazettes/42485_24-5_EconomicDevDep.pdf

Legal Metrology Act 9 of 2014

Regulations relating to the tariff of fees charged for services rendered in terms of the Legal Metrology Act by the National Regulator for Compulsory Specifications (NRCS): Amendments.

GN630 GG 42431 p51 3May2019

https://www.gov.za/sites/default/files/gcis_document/201905/42431gon630.pdf

National Development Agency Act 6 of 2003

Appointment of the members of the National Development Agency.

BN81 GG 42496 p395 31May2019

https://www.gov.za/sites/default/files/gcis_document/201905/42496bn81.pdf

National Regulator for Compulsory Specifications Act 5 of 2008

Regulations relating to the payment of levy and fees with regard to Compulsory Specifications: Amendments.

GN631 GG 42431 p56 3May2019

https://www.gov.za/sites/default/files/gcis_document/201905/42431gon631.pdf

Special Economic Zones Act 16 of 2014

- Amendment to the ORTIA SEZ land area and the incorporation of the Impala to the designated area. Comments invited within 30 days of publication.
GN654 GG 42451 p114 10May2019
https://www.gov.za/sites/default/files/gcis_document/201905/42451gon654.pdf
- Intention to designate the Bojanala Special Economic Zone. Comments invited within 30 days of publication.
GN653 GG 42451 p110 10May2019
https://www.gov.za/sites/default/files/gcis_document/201905/42451gon653.pdf

Standards Act 8 of 2008

- Standards Matters.
GenN275 GG 42464 p474 17May2019
https://www.gov.za/sites/default/files/gcis_document/201905/42464gen275.pdf
- Standard matters. Comments invited.



GenN283 GG 42474 p177 24May2019

https://www.gov.za/sites/default/files/gcis_document/201905/42474gen283.pdf

Media Comment

Cement imports drop by 47 percent y-y in February 2019.

2019 May 2 Industry Insight

Extract from article: "Imports of cement into South Africa decreased by 47 percent y-y during the month of February, following the 61.2 percent y-y increase in the previous month. This follows an overall increase of 85 percent in 2018. Around 42 000 tons were imported during February, mainly from Vietnam. Nothing was reported from China, since June 2018. The decline reported in February, resulted in an overall decline of 10.5 percent for the first two months of the year compared to the same period during 2018. Local producer, PPC Cement engaged with government authorities at the beginning of the year, about cement imports into South Africa, in order to ensure sustainability of the domestic industry and market stabilisation."

<http://industryinsight.co.za/wp/cement-imports-drop-by-47-percent-y-y-in-february-2019/>

Media Release

Department of Trade and Industry. ITAC on expiry of anti-dumping duties

2019 May 24 SabinetLaw

Extract from release: "The International Trade Administration Commission of South Africa (ITAC) has listed a number of products whose anti-dumping duties will expire in 2020. The trade and industry department published the call for requests for a review of the expiry of the duties in Government Gazette 42474. Anti-dumping duties remain in place for five years and expire unless the ITAC decides, following a review, that expiry of a duty will result in continuation or recurrence of dumping and injury. ITAC has notified all stakeholders that, unless a duly substantiated request is made by or on behalf of the Southern African Customs Union industry, indicating that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury, the listed anti-dumping duties will expire on their respective dates."

<https://legal.sabinet.co.za/articles/itac-on-expiry-of-anti-dumping-duties/>

Provincial Gazette

North West Business Licensing Act 3 of 2019

Draft North West Business Licensing Regulations, 2019: Comments invited within 30 days of publication.

PN67 PG 8006 p3 15May2019

http://www.gpwonline.co.za/Gazettes/Gazettes/8006_15-5_NWestSeparate.pdf

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