

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: 23221/2016

Date of hearing: 14 February 2024

Date delivered: 4 March 2024

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

4/3/24
DATE

SIGNATURE

In the application between:

THE ROAD ACCIDENT FUND

Applicant

and

**NOXOLO PEACEFUL LOLWANA
THE SHERIFF CENTURION EAST**

**First Respondent
Second Respondent**

JUDGMENT

SWANEPOEL J:

[1] The first respondent successfully sued the applicant for damages arising from a motor vehicle collision. On 5 February 2020 an order was made in terms of which the applicant was obliged to pay the first respondent R 2 391 186.00 in respect of the capital of the claim, plus interest at the rate of 9.75% per annum, calculated from 14 days after date of the judgment.

[2] The applicant was also ordered to pay the plaintiff's costs on a High Court scale. Payment of the costs was due within 14 court days of taxation. It is common cause that the capital was not paid within 14 days of the order, but only on 5 February 2021, almost a year after payment was due. The interest on the capital was also due on 5 February 2021, but was only paid on 10 July 2023, some three years and five months after the order was given. The interest on the capital alone amounted to R 219 727.06.

[3] The bill of costs was taxed on 20 September 2021 in the amount of R 462 122.29. The costs were therefore payable on or before 12 October 2021. The costs were only paid on 3 June 2022, almost eight months after payment was due. The first respondent contends that it is entitled to interest on the costs, calculated from 14 court days after taxation. The applicant argues that the court order was silent as to interest on costs, and that the first respondent is consequently not entitled to such interest. The first respondent has issued a writ to recover the interest on the costs in the sum of R 28 268.58, and the second respondent intends to execute the writ and to attach and remove the applicant's property in order to satisfy the writ.

[4] The applicant seeks an order in the following terms:

[4.1] That the first respondent be ordered to apply for an amended court order, so that the order includes interest on costs;

[4.2] That the second respondent's intended removal be stayed in terms of rule 45 A, read with section 173 of the Constitution, pending the determination of the application to amend the order;

[4.3] That the second respondent be interdicted and restrained from taking any further execution steps in regard to the writ, pending the determination of the envisaged application.

[5] The first respondent contends that it is entitled to interest on the costs by virtue of section 2 of the Prescribed Rate of Interest Act, 55 of 1975 ("the Act") which reads as follows:

"2. Interest on judgment debt

- (1) Every judgment debt which, but for the provisions of this subsection would not bear any interest after the date of the judgment or order by virtue of which it is due, shall bear interest from the day on which such judgment debt is payable, unless that judgment or order provides otherwise.
- (2) Any interest payable in terms of subsection (1) may be recovered as if it formed part of the judgment debt on which it is due.
- (3) In this section '**judgment debt**' means a sum of money due in terms of a judgment debt or an order, including an order as to costs, of a court of law, and includes any part of such a sum of money, but does not include any interest not forming part of the principal sum of a judgment debt." (my emphasis)

[6] On a simple reading of section 2, it is clear that interest is payable on overdue costs. Subsection (3) of section 2 specifically includes orders as to costs under the definition of a "judgment debt". The applicant's contention that somehow costs orders are "different" from other monetary orders is baffling, to say the least, more especially when costs orders are explicitly included under the definition of a judgment debt.

[7] Furthermore, the Appellate Division (as it was then) has dealt with this issue. In *Administrateur, Transvaal v JD Van Niekerk en Genote BK*¹ an order had been granted by the High Court, which included an order for

¹ 1995 (2) SA 241 (A)

costs. As in this case, the order did not provide for payment of interest on the costs. The matter then went on appeal. During the appeal one of the issues was whether a costs order attracted interest from the date of the judgment or order, or from the date of the taxing master's allocator. There was no question that costs would attract interest if paid beyond due date.

[8] The Court held that in terms of section 2 a costs order attracts interest from the date on which the costs become payable, which would generally be once the costs are taxed. In this case before, me the order specifically provides the applicant with 14 days' grace after taxation to effect payment. Payment therefore only falls due after expiry of those days, and if the costs are not paid, interest will accrue on the taxed amount. There is also no uncertainty regarding the applicable interest rate. Section 1 (2) of the Act allows the Minister of Justice to determine the rate from time to time.

[9] The applicant's contention that allowing the writ to be executed would result in overcompensation to the first respondent, and would result in a breach of the applicant's constitutional obligations and the provisions of the RAF Act, 1996 and the Public Finance Management Act, 1999 ("the PFMA Act"), is just as meritless as the rest of its argument. The applicant is not being over-compensated by payment of interest; she is entitled to interest on monies that are paid to her beyond the due date. Moreover, the payment is due in terms of a court order, and in terms of the provisions of the Act. Neither the RAF Act nor the PFMA Act are offended in any manner by such payment.

[10] The argument that a great injustice would result if payment of interest on costs is allowed is equally without merit. The injustice that occurred in this matter is that the court order was not complied with, and the first respondent was not paid timeously. The applicant's failure to fulfil its obligations timeously resulted in a loss to the fiscus of almost R 250 000.00 in unnecessary interest payments.

[11] Finally, the relief sought is utterly without merit. I can see no basis in law upon which the applicant can seek an order that the first respondent be obliged to make application for a variation of its own order. This application was hopeless from the outset, and has unfortunately resulted in a further loss to the fiscus in legal costs incurred by the applicant.

[12] As far as costs of the application are concerned, there is no reason why the costs should not follow the result. The first respondent has asked for the costs of two counsel due to the importance of the question raised in the application. I believe that such an order is appropriate.

[13] I make the following order:

The application is dismissed with costs, including the costs of two counsel where so employed.



**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

COUNSEL FOR APPLICANT:

Mrs. Ramjee

ATTORNEY FOR APPLICANT:

The State Attorney

COUNSEL FOR FIRST RESPONDENT:

**Adv G Alberts SC
Adv. D Gianni**

ATTORNEY FOR FIRST RESPONDENT: Savage Jooste &
Adams Inc

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