

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH-GAUTENG HIGH COURT)
PRETORIA

Case No.: A63/07

2/4/2009

WHICH EVER IS NOT APPL.	
REPOSTABLE: YES/NO.	
(1) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED.	
02/04/09	
DATE	SIGNATURE

In the matter between

NKOMAZI MUNISIPALITEIT

Appellant

and

KELDERS S J J

Respondent

JUDGMENT

Judgment reserved: 13/03/09
Coram; Legodi J et Makgoka AJ

LEGODI J,

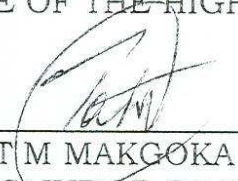
1. Before us, it is an application for leave to appeal against the judgment which was handed by this court on 12 December 2008.
2. I do not find it necessary to deal with the grounds of appeal as stated in the notice of application for leave to appeal.

3. I find many of the grounds raised having been dealt with in the judgment and I do not find it necessary to revisit or attempt to rewrite the judgment.
4. It suffices to mention that the applicant sought to raise in this application for leave to appeal other issues which did not form part of argument during the appeal.
5. The first ground of appeal raised by the applicant is that, this court erred in ordering that the appellant should pay interest. It is alleged that this court could not have made such an order as the respondent who was the plaintiff in the court *aquo* did not claim interest in its particulars of claim. Clearly, this is wrong. Interest at 15.5% was specifically claimed in the particulars of claim.
6. The other ground raised as I understood it, is that this court erred in ordering the appellant to pay interest from date of the issue of summons to date of payment. The submission in this regard was that, at the time summons were issued, the capital amount indicated as part of the stated case was not due and payable and that therefore no interest could be levied against such an amount.
7. During argument in this application for leave to appeal, it became clear that interest had to be reckoned from August 2006 and not from the date on which summons were issued. Counsel for the respondent indicated that it was not the intention of his client to claim interest from the date of summons, but rather from August 2006 on the outstanding

8. The issue was therefore, whether the period for which interest should be charged was still the subject of an appeal bearing in mind the concession by counsel on behalf of the respondent. It would be academic to want to take the issue on appeal. In main, I do not think that another court may find differently from the finding by this court, especially bearing in mind that the capital amount and interest was agreed upon as part of their stated case.
9. Consequently, I would make an order as follows:
- 9.1 The application for leave to appeal is refused.
- 9.2 Each party to pay their own costs including the reserved costs occasioned on 13 February 2009.

I, agree


M F LEGODI
JUDGE OF THE HIGH COURT


T M MAKGOKA
ACTING JUDGE OF THE
HIGH COURT

For the Appellant
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