

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 2022-056346

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

17/09/2024

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

SHERIFF OF THE HIGH COURT [PRETORIA EAST]

First respondent

MS MOLOTO ATTORNEYS

Second respondent

H W THERON ATTORNEYS

Third respondent

RAPHAEL AND DAVID SMITH INC

Fourth respondent

SMIT AND MAREE INC

Fifth respondent

LESIBA MAILULA ATTORNEYS

Sixth respondent

MG MABUNDA ATTORNEYS

Seventh respondent

THE PLAINTIFFS LISTED IN ANNEXURE "CL3"

Eighth respondent

THE LEGAL PRACTICE COUNCIL

Ninth respondent

THE BOARD OF SHERIFFS	Tenth respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Eleventh respondent
VAN DYK STEENKAMP INCORPORATED	Twelfth respondent
B SHIELDS	Thirteenth respondent
JL SWART	Fourteenth respondent
R MEINTJIES	Fifteenth respondent
OA DU PLOOY	Sixteenth respondent
DT MILANZI	Seventeenth respondent
JM POPE (NÉE GROVE)	Eighteenth respondent
CONSTANT WILSNACH N.O. obo JF WILSON	Nineteenth respondent
H SANDENBERGH N.O. obo BC THAKADU	Twentieth respondent
CONSTANT WILSNACH N.O. obo PP MOFITLE	Twenty first respondent
WA MALAKAJE N.O.	Twenty second respondent
CONSTANT WILSNACH N.O. obo MD MAKGONSANE	Twenty third respondent
MELUSI MAFANA MATHULE	First Intervening Party
JEANETH NADME NGOBENI	Second Intervening Party
MPUMELELO LANGALEBALELE obo KEITUMETSI MPUMELELO LANGALEBALELE	Third Intervening Party
SIFISIO STEVEN THOBELA	Fourth Intervening Party

JUDGMENT

van der Westhuizen, J

- [1] The applicant, the Road Accident Fund, applied for a declarator that would end an alleged unwarranted practice relating to the levying of

interest on amounts, *inter alia*, contained in court orders where the said court order did not provide for the levying of interest on those amounts. Furthermore, the applicant seeks that the practice of indemnifying the first respondent, the Sheriff of the High Court (Pretoria East), when holding auctions based on unlawful writs of execution for the payment of interest be declared unlawful. The writs are allegedly unlawful as those are issued without a court order providing for interest. The applicant sought a further declarator, namely that a procedure be followed requiring the preparation and submission of an affidavit setting out the calculation of the interest amount sought with reference to the relevant court order.

- [2] In addition to the first respondent, the Board of Sheriffs, the Minister of Justice and Correctional Services, the Legal Practice Council and a number of firms of attorneys were cited. The broad legal fraternity was in effect cited and generally represented.
- [3] At the hearing an application was made by 12 intervening parties to join in the proceedings. Those applications were not opposed and the joinder was granted. Representations were made on their behalf.
- [4] At the heart of this matter lies the applicant's contention that although some of the summons provided for the payment of interest on the capital amount, the judgment orders did not always provide for the payment of interest. The applicant further bemoaned the attorneys' reliance on the provisions of the Prescribed Rate of Interest Act (PRIA), 55 of 1975, for the basis of their interest claims.
- [5] The applicant contended that PRIA was amended with effect 8 January 2016 to provide for a new system to change the Prescribed Rate of Interest. The applicant submitted that the new system introduced two requirements, namely: a change in the repurchase (repo) rate determined by the South African Reserve Bank, and the publication of

the new rate by the Minister of Justice. In the latter instance, two full calendar months were to have lapsed since the publication of the new rate for the effective date of the new rate commencing on the first day of the following month, i.e. the third month.

[6] Further in this regard, the applicant laments the fact that in some instances the publication date did not fall within the aforementioned two month period. That allegedly caused, and continuous to cause, problems in the calculation of the interest amounts to be levied. The applicant further alleged that it has obligations placed upon it in terms of the Public Finance Management Act, 1 of 1999 (PFMA) to which it must adhere. The lateness of the publication of the new rate and the delayed commencement date thereof, *inter alia*, hampers the applicant in fulfilling its obligations imposed by the PFMA. The late publication of the new rate is a matter to be addressed by the Minister and not the court.

[7] In support of its contentions, the applicant, in its heads of argument and elaborated upon in oral submissions at the hearing of the matter, relied on the following rubrics:

(a) Legal position: Writs of Execution;

(b) Legal position: Res Judicata;

(c) Legal position: Interest.

[8] It would be prudent to restate the principles relating to declarators. Section 21(1)(c) of the Supreme Court Act, 10 of 2013 provides as follows:

“A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power –

(a) ...

(b) ...

(c) *in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.*"

[9] In determining whether a declaratory order should be granted in terms of section (c), a two-step enquiry is undertaken. The first step is to establish whether the applicant has an interest in an "existing, future or contingent right or obligation". Once that has been established, the court considers whether to grant or refuse the order sought. Under the first step, what is required is a more tangible rather than a mere hope of a right.¹ The applicant for the declarator must have a direct interest in the subject matter of the litigation other than a mere financial interest.² It would follow that the second step of the inquiry would require a consideration of the facts of the particular case.

[10] In the present instance, the payment of "interest" in respect of which the applicant seeks a declarator, is that relating to the concept of *Mora*. A party is in *mora* when it intentionally, and without legal excuse, flouts its obligations, particularly in respect of the payment of monies due by it and defaults on the payment thereof. There are two categories of *mora*: *mora ex re*, where the time is fixed to deliver performance; and *mora ex persona*, where it is required to call upon the other party to perform his or her obligations. In the first instance, the time to perform is either by agreement or *ex lege*.³ In the second instance, a further step is required,

¹ *Family Benefit Friendly Society v Commissioner for Inland Revenue* 1995(4) SA 120 (T)

² *Henri Viljoen (Pty) Ltd v Awerbuch Bros* 1953(2) SA 151 (O) at 169

³ *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 at 195-196

namely that the defaulting party be placed on terms to perform, the so-called demand. The demand can either be made prior to the issue of legal proceedings, or by the institution of legal proceedings, an interpellation. A consequence of *mora* is that interest is payable on liquidated amounts from the date of demand (*ex re, or ex persona*).⁴

- [11] Section 2 of PRIA provides for interest on a judgment debt, unless that judgment or order provides otherwise. Absent an adverse ruling on interest contained in the judgment or order, the judgment debt shall be subject to interest payable thereon, which may be recovered as if it formed part of the judgment debt on which it is due.⁵ It is clear from the provisions of section 2(1) of PRIA, that the interest would be from the day on which such judgment debt is payable. The rate of interest is determined in terms of the provisions of PRIA.
- [12] From the foregoing, it is clear that the amount of interest payable on a judgment debt is readily determinable.⁶ The rate is a given, and so is the date from which it is to run, in particular when regard is had to the provisions of section 17(3)(a) of the Road Accident Fund Act, 56 of 1996. The latter section provides that no interest shall be calculated on the judgment debt until fourteen days have lapsed since the date upon which the judgment debt was granted. Where the parties in such instances agree that the applicant shall have one hundred and eighty days to pay the judgment debt, or any other period agreed upon, the interest upon the judgment debt shall be calculated from the hundred and eighty first day, or from such other agreed date.
- [13] In respect of the applicant's first rubric, that of Writs of Execution, and its contentions in that regard, the following puts paid thereto. Upon execution of a writ on a judgment debt, the amount to be paid is certain

⁴ *Ibid* at 182-183

⁵ Section 2(2) of PRIA; see also *General Accident Versekeringsmaatskappy Suid Afrika v Bailey* NO 1988(4) SA 353 AD

⁶ *Lester Investments (Pty) Ltd v Narshi* 1951(2) SA 464

by way of a simple calculation with reference to the interest payable. There is and can be no ambiguity as to the amount to be recovered from the debtor. Such writs are not unlawful as contended for by the applicant. Furthermore, calculation of the interest on the judgment debt occurs *ex lege* at the date on which the writ is issued. Furthermore, it is trite law that interest is a form of damages.⁷

- [14] The applicant's second rubric relating to *res iudicata* and settlements has no merit. The issue of *res iudicata* has no bearing on the issue of interest on a judgment debt. The provisions of PRIA, as recorded earlier, are clear, as well as when *mora* arises and the consequences thereof.

- [15] In respect of the applicant's contention relating to the issue of interest, the third rubric, there is equally no merit. I have recorded earlier in this judgment the issue of *mora* generally, and in respect of *mora interest*, and have dealt with the provisions of PRIA. From all of the foregoing, interest is payable on judgment debts as well as claims for payment of monies in general. That is trite law.

- [16] The applicant further contends that in view of the conduct and approach of attorneys, it experiences difficulties in complying with its obligations due under the PFMA. From its contentions in that regard, it is gleaned that the prevailing procedures in respect of the payment of interest on judgment debts, it allegedly impacts upon the applicant's compliance with the PFMA obligations, the ability to budget, to process such payments due by it and impacts upon the payment of claims of other claimants' being delayed. There is equally no merit in any of those contentions for what has been recorded earlier. The inability of the applicant to regularise its office and its internal, or otherwise, procedures, does not constitute a right, existing, or future, or contingent, for the court to enquire upon and to determine. At best it is a hope to

⁷ *Land and Agricultural Development Bank of South Africa v Rayton Estates (Pty) Ltd et al* 2013(6) SA 319 SCA and for a discussion on *mora interest*; see also *Steyn NO v Ronald Bobroff & Partners* 2013(2) SA 311 SCA at 322F-H

convince the court to determine a process to enable the applicant to address its financial concerns. That is not subject matter for a declarator.

- [17] The proposal advanced by the applicant that the court should determine the rate of interest applicable and the date from which it ought to run in the judgment order, is contrary to the provisions of PRIA and the legal position recorded earlier. Both the rate and date from which it is to run is determined *ex lege*. The further proposal by the applicant that an affidavit be submitted in which the calculation of interest is calculated to be incorporated into the writ is of no consequence. That issue should be addressed by the Rules Board. It is not for the court to consider and opine upon. It is simply a procedural measure which the court has no jurisdiction to adjudicate upon. Furthermore, it does not constitute an existing, or future or contingent right which the court can enquire upon and determine and grant a declarator.
- [18] The applicant's reliance in seeking declarators is premised upon its financial concerns other than an interest as intended in section 21 of the Supreme Court Act. The applicant's attempt to clothe its financial concerns as an "interest" as contemplated in that section is misplaced.
- [19] The applicant further bemoans the alleged practice by attorneys to indemnify the Sheriff. That practice does not relate to an interest in an existing, future, or contingent right. It is an issue between the attorneys and the Sheriff. Should the applicant have problems with a specific writ, it should undertake the required steps to address that issue before a court.
- [20] The applicant's concern that the publication of the new rate takes place later than the prescribed time period, is not an issue for the court to rule upon. That issue should be addressed to the responsible Minister who did not adhere to the legislative requirement. In my view, it is of no concern *de facto* and/or *de iure*, in that until the publication of the new

rate, the prevailing rate would apply. In any event, the applicable rate would be that prevailing at the judgment date.

[21] It is clear from the provisions of section 2A of PRIA, that this section finds no application in the matters under consideration. That section, and in particular subsection (5) thereof, applies to unliquidated claims, which is not relevant to this matter and the issues presented to the court. In *Vermaak v Road Accident Fund* (1976/06) [2008] ZAWCHC 12 (15 March 2008) it was held that section 2A is not applicable to claims against the applicant.⁸ The applicant's contention in this regard is misplaced.

[22] It follows that the applicant's relief sought in respect of the issuing of declaratory orders, as prayed for in its notice of motion, cannot succeed.

[23] From all the foregoing, the application stands to be dismissed.

I grant the following relief:

1. The application is dismissed;
2. The applicant is to pay the costs of the opposing parties, such cost to include the costs of two counsel where so employed.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

⁸ See also *Kwezi obo Kwezi v Road Accident Fund* (6767/2008) [2011] ZAWCHC 455 (16 September 2011)

On behalf of Applicant:	Adv G Naude SC Adv M Bronkhorst
Instructed by:	Malatji & Co Attorneys
On behalf of 2 nd to 11 th Respondents:	Adv EC Labuschagne SC Adv R Ferguson
Instructed by:	Adams & Adams
On behalf of 5 th Respondent:	Adv A van Dyk
Instructed by:	Smit & Maree Inc.
On behalf of 12 th Respondent:	Adv D Keet Adv JFR Ernst
Instructed by:	Van Dyk Steenkamp Inc.
On behalf of 1 st & 2 nd Intervening Parties:	Adv BP Geach SC Adv T Mogale
Instructed by:	Roets & Van Rensburg
On behalf of 3 rd & 4 th Intervening Parties:	Adv M Snyman SC Adv FHH Kehrhahn
Instructed by:	Roets & Van Rensburg
Judgment Reserved:	10 May 2024
Judgment Delivered:	17 September 2024