IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

OF INTEREST

Case no: 1827/2024

In the matter between:

BLUE CRANE ROUTE MUNICIPALITY	**Applicant**
and	
THE MUNICIPAL WORKERS RETIREMENT FUND	**First Respondent**
THE SHERIFF OF THE HIGH COURT	**Second Respondent**

JUDGMENT

Govindjee J

'Interest, and interest on interest … can neither be stipulated for nor recovered beyond twice the amount, and if paid, may be recovered.'[1]

'The amount of unpaid interest may not exceed the principal.'[2]

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[1] Gillespie J in *Commercial Bank of Zimbabwe Ltd v MM Builders & Suppliers (Pvt) Ltd and Others and Three Similar Cases* 1997 (2) SA 285 (ZH) (*Commercial Bank of Zimbabwe*), interpreting the original Justinian maxim that is the origin of the *in duplum* rule.

Background

[1] As of December 2023, approximately 12600 employers were reported to have contravened the Pension Funds Act, 1956[3] (the PFA) by neglecting to remit pension contributions to retirement funds.[4] The applicant (the Municipality) failed to deduct the correct pension fund contributions from its employees between 2007 and 2013 and breached s 13A of the PFA. This court granted a default judgment in favour of the first respondent (the Fund)[5] on 26 November 2019, in the following terms (the judgment):[6]

> '1. That the [Municipality] is to make payment to the [Fund] in the amount of R3 805 608,68.
>
> 2. That the [Municipality] is to make payment of interest to the [Fund] on all amounts from the first day following the expiration of the period in

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[2] Van der Keessel *Praelectiones* (English translation of Van der Keessel by Lorenz *Select Theses on the Law of Holland and Zeeland* 2 ed (Juta and Co Ltd 1901) at 192 para DLXIX, as quoted in *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd* [2015] ZACC 5 (*Paulsen*) fn 65.

[3] Act 24 of 1956 (the PFA). Section 13A provides: (1) 'Notwithstanding any provision in the rules of a registered fund to the contrary, the employer of any member of such a fund shall pay the following to the fund in full, namely –

(a) any contribution which, in terms of the rules of the fund, is to be deducted from the member's remuneration; and

(b) any contribution for which the employer is liable in terms of those rules…

(3)(*a*) Any contribution to a fund in terms of its rules, whether it be a contribution contemplated in subsection (1), a contribution for the payment of which a member of the fund is responsible personally, or a contribution to be paid on a member's behalf–

(i) shall be transmitted directly into the fund's account … not later than seven days after the end of the month for which such a contribution is payable or;

(ii) shall be forwarded directly to the fund in such manner as to have the fund receive the contribution not later than seven days after the end of that month…

(7) Interest at a rate as prescribed – shall be payable from the first day following the expiration of the period in respect of which such amounts were payable on –

(*a*) the amount of any contribution not transmitted into a fund's bank account before the expiration of the period prescribed therefor by subsection (3)(*a*)(i);

(*b*) the amount of any contribution not received –

(i) by a fund before the expiration of the period prescribed therefor by subsection (3)(*a*)(ii)…'

[4] M Maqhina 'Employers are dodging pension fund contribution payments' *The Mercury* (10 March 2025) p 6.

[5] The Fund is a pension fund organisation registered in terms of s 4 of the PFA.

[6] An application for rescission was dismissed with costs on 8 October 2020. An appeal against that judgment was dismissed by a full court on 24 January 2023. The SCA dismissed an application for special leave as well as an application for reconsideration in terms of s 17(2)(*f*) of the Superior Courts Act, 2013 (Act 10 of 2013), with costs, during 2023.

respect of which amounts were payable in terms of Section 13A(3)(*a*)(i) and (ii) of the Pension Funds Act 24 of 1956 until date of payment at the rate which has been prescribed in terms of Section 13A(7) of the Pension Funds Act 24 of 1956.

3. That the [Municipality] is to pay the costs of this application.'

[2] On 15 January 2024, the Fund's attorneys issued a Warrant of Execution reflecting the capital amount indicated in the judgment, as well as interest in the sum of R30 052 166,09. The Municipality made payment of the full capital amount, as reflected in the judgment, and tendered payment of interest in the amount of R8 450 751,19.[7] Four months later, the Municipality obtained an order, granted on an urgent basis, staying execution pending the finalisation of the present proceedings. The Municipality now seeks an order setting aside the writ and declaring, in essence, that the interest payable includes post-judgment interest but is limited by the *in duplum* rule (the rule). The matter was heard by a full court, following a directive from the Acting Judge President of the Division. The main issue to be determined is whether the rule is applicable given the circumstances.

The scope of the rule

[3] The rule is a long-standing and well-established part of South African law.[8] Various decisions confirm that the rule forms part of South African common law and has done so for some two centuries.[9] The Constitutional Court framed the rule as follows:[10]

> 'The rule is that arrear interest stops accruing when the sum of the unpaid interest equals the extent of the outstanding capital.'

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[7] This amount was calculated by an actuary based on 'late payment interest', which was limited to the capital amount by applying the *in duplum* rule, coupled with post-judgment interest as of 9 April 2024.
[8] *Paulsen* above n 2 para 42, 43.
[9] *Niekerk v Niekerk* (1828–1849) 1 Menz 452 (*Niekerk*) at 454; *LTA Construction Bpk v Administrateur, Transvaal* 1992 (1) SA 473 (A) (*LTA Construction*) at 482F, as cited in *Paulsen* paras 42.
[10] *Paulsen* above n 2 para 107. The rule applies to accumulated interest on the amount in arrears and excludes amounts already paid by way of interest. It relates only to interest that has accrued but is unpaid: *Paulsen v Slip Knot Investments* [2014] ZASCA 16 (*Slip Knot Investments*) para 17.

[4] In the words of Moseneke DCJ, the rule 'is a common-law norm that regulates the accrual of interest on a debt that is due and payable'.[11] The overarching purpose of the rule is 'to protect debtors from being crushed by the never ending accumulation of interest on an outstanding debt.'[12] It is accepted as constituting an aspect of daily economic life under the common law, helping those debtors who find themselves in financial plight.[13] The public policy basis of the rule is dual, permitting a creditor to recover double the capital whilst seeking to alleviate the plight of debtors.[14]

> '(T)he jurisprudential foundation for the restriction [of interest in terms of the rule] was the policy consideration that debtors whose affairs are declining should not be entirely drained dry … Debtors may be drained entirely dry by the accumulation of interest during the pendency of litigation, just as well as prior to the initiation of litigation. The consideration that the in duplum rule is aimed at aiding debtors is not diminished by the initiation of legal proceedings. This overarching purpose of the in duplum rule augurs for its application both before and during litigation.'

[5] The judgment in *Commercial Bank of Zimbabwe* includes a useful survey explaining how the rule made its way into South African jurisprudence via Roman law and Roman-Dutch law.[15] Two old cases cited in that judgment aptly convey the broad scope of the rule. Firstly, in *Niekerk v Niekerk*,[16] (*Niekerk*) the plaintiffs instituted action against one of the executors of their paternal grandmother's estate, for their share of inheritance. The court granted judgment in favour of the plaintiffs. Some six weeks later, the defendant consented to execution being issued for the capital, with interest equal to the amount of the capital, but objected to the further

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[11] *Paulsen* above n 2 para 107.
[12] *Leech v Absa Bank Ltd* [1997] 3 All SA 308 (W) (*Leech*) at 313–314 as quoted in *Paulsen* above n 2 para 44.
[13] *LTA Construction* above n 9 at 482E–F, as translated by Madlanga J in *Paulsen* above n 2 fn 72.
[14] *Paulsen* above n 2 para 44, quoting *Bellingan v Clive Ferreira & Associates CC and Others* 1998 (4) SA 382 (W) at 401C, para 80 and para 107.
[15] *Commercial Bank of Zimbabwe* above n 1 293–295; *Paulsen* above n 2 para 42. The decision in *Commercial Bank of Zimbabwe* was cited with approval in *Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (In Liquidation)* 1998 (1) SA 811 (SCA) (*Oneanate*) at 829E.
[16] *Niekerk* above n 9 at 454.

claim for interest. Two months later, counsel for the defendant moved for an amendment to the judgment, to restrict the interest payable so that it did not exceed the capital sum. It was argued, on behalf of the plaintiffs, that while the restriction may apply where a major creditor allowed the interest to run in arrear to a greater amount than the capital, it did not apply where the sum claimed was the principal sum due to the plaintiffs as their inheritance. In rejecting that argument, the court considered the Dutch law to be clear: interest could not be claimed, even from a guardian, to a greater amount than that of the capital on which the judgment arose.[17] As a result, the judgment was amended, as prayed, to prevent execution in contravention of the rule.

[6] Secondly, in *Union Government v Jordaan's Executor*,[18] (*Jordaan's Executor*) a farm belonging to Jordaan was surveyed in accordance with the provisions of Law 9 of 1891. The government of the time was entitled to pay the survey fees in terms of the 'Volksraad Besluiten' (council decisions) of 1893, and did so in 1894. The money paid carried interest at the rate of six percent per annum according to the applicable law. In 1915, Jordaan's executor was prohibited from passing transfer of the farm until the capital and interest, now more than the capital, was repaid. The executor paid the Union Government under protest but later successfully claimed back the interest amount that had been paid over and above the capital amount. On appeal, the full court addressed an argument that interest continued accruing beyond the capital amount but could not be claimed. In dismissing the appeal, the court confirmed that the Roman law position, now part of South African law, was unanimous and clear: 'no interest runs after the [interest] amount is equivalent to the amount of the capital'. In addition, there was nothing in the Volksraad Besluit to suggest that the common law rule had been overtaken.

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[17] Ibid. Also see *Oosthuizen and Others v South African Railways and Harbours* 1928 WLD 52 at 65, dealing with a suit for payment of moneys due as compensation for expropriated property. Interest on the amount of compensation was held to cease accruing once the double had been reached: *Commercial Bank of Zimbabwe* above n 1 at 297B–D.

[18] *Union Government v Jordaan's Executor* 1916 TPD 411. Wallis JA pointed out in *Slip Knot Investments* above n 10 para 17, fn 2, that this decision was rendered by a court of which all three members (De Villiers JP, Wessels and Curlewis JJ concurring) went on to become Chief Justice. The rule as expressed in this decision was held to still represent the law 75 years later: *LTA Construction* above n 9 at 482B–H.

[7] The SCA has confirmed that the rule, as it was applied in Holland, was accepted into South Africa.[19] Significantly, the rule was, seemingly from the very first reported instance of the application of the rule in Southern Africa, in *Niekerk*, applied to debts other than debts arising out of loans, and outside the contractual setting.[20] In my view, the explication of the rule in *Commercial Bank of Zimbabwe*, and specifically its applicability outside of the contractual setting, is supported by the clear framing of the scope of the rule in *Paulsen and another v Slip Knot Investments 777 (Pty) Limited* (*Slip Knot Investments*). Wallis JA, on behalf of the majority of the SCA, held that:[21]

> 'Once interest is payable on a debt the *in duplum* rule potentially comes into play. The effect of that rule is clear. Where a debt is owed and bears interest, the amount of such interest may not exceed the capital amount.'

[8] This puts paid to the Fund's argument that the rule only applies to contractual interest. That notion appears to have as its origin the concluding paragraph in *LTA Construction*, which has been followed in various cases pertaining to contractual debts.[22] In *LTA Construction*, Joubert JA was, on my reading, merely rejecting the argument that the rule only applied to loans. Having done so, the learned Judge added:

> 'In beginsel geld dit vir alle kontrakte uit hoofde waarvan 'n kapitaalsom verskuldig is wat onderhewig aan 'n bepaalde rentekoers is, soos supra aangetoon is.'

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[19] *LTA Construction* above n 9 at 482–483. Also see *Paulsen* above n 2 para 42: our common law is based on the same Roman-law rule carried through to Roman-Dutch law.

[20] *Commercial Bank of Zimbabwe* above n 1 at 295G–296B. Also see *LTA Construction* above n 9 at 16, quoting Scott's translation of Justinian: 'We decree that this rule shall be observed in all bonae fidei contracts, and in all other cases in which interest can be collected.' Also see *MEC: Police, Roads and Transport Free State Provincial Government v Bovicon Consulting Engineers CC and Another* [2023] ZASCA 99 ('*Bovicon*') para 1: there is no reason to distinguish between interest *ex contractu* and interest *ex mora*.

[21] *Slip Knot Investments* above n 10 para 17. This aspect of the SCA's judgment was not overturned by the Constitutional Court in *Paulsen*.

[22] See, for example, *Margo and Another v Gardner and Another; Gardner and Another v Margo and Another* 2010 (6) SA 385 (SCA) (*Margo*) para 11. Cf *Coetzee & Others v Member of the Executive Council for the Department of Health, Western Cape Provincial Government and Others* (2024) 45 *ILJ* 104 (LC) para 25, following *Da Cruz v Bernardo* 2022 (2) SA 185 (GJ).

('In principle, this applies to all contracts under which a capital sum is due and is subject to a specific interest rate, as indicated supra') (own translation).

[9] That remark, on its own, and read in context, cannot mean that the rule is applicable only to contractual debts, also given the authorities cited above. Neither the cause of action nor the identity of the debtor makes a difference in the application of the rule.[23] The rule now forms part of positive law and public policy is not the criterion in deciding whether the rule applies.[24] There is also no suggestion on the part of the Fund that the common law requires development.[25]

[10] On the view I take of the matter, the rate at which interest on a debt is calculated, be it in terms of the PFA or the Prescribed Rate of Interest Act, 1975,[26] is immaterial for purposes of determining whether the rule remains applicable. Following *Slip Knot Investments*, the rule potentially comes into play once interest is payable on a debt. As to the meaning of 'debt', *Makate v Vodacom*, and the authorities cited, is instructive:[27] for present purposes the amount owed by the Municipality to the Fund in terms of the PFA constituted a 'debt' imposed by statute and, once interest became payable, the rule came into play.[28] This meant that once the sum of the unpaid interest equalled the amount of the outstanding capital, the running of interest stopped. The invitation to restrict the application of the rule in the manner suggested by the Fund must, therefore, be refused.

Does the PFA exclude the rule?

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[23] Ibid.

[24] *Ethekwini Municipality v Verulam Medicentre (Pty) Ltd* (*Verulam Medicentre*) para 23. Cf *Commissioner, South African Revenue Service v Woulidge* 2002 (1) SA 68 (SCA); [2002] 2 All SA 199 (SCA) para 12. Also see *LTA Construction* above n 9, referring to 'agterstallige rente', which may be interpreted as 'overdue' or 'in arrear' interest, namely money (interest) owed that should have been paid earlier; an 'amount still outstanding or uncompleted … a debt unpaid': *Da Cruz v Bernardo* above n 22 para 51.

[25] *Grancy Property Limited and Another v Gihwala and Others* [2024] ZASCA 144; 2025 (2) SA 76 (SCA) para 218.

[26] Act 55 of 1975.

[27] *Makate v Vodacom Ltd* 2016 (4) SA 121 (CC) para 85, citing *Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A) (*Escom*) at 344E–G. 'Debt', following a dictionary definition, was defined in *Escom* to mean '1. Something owed or due: something (as money, goods or service) which one person is under an obligation to pay or render to another. 2. A liability or obligation to pay or render something; the condition of being so obligated.'

[28] *Municipal Workers Retirement Fund v Umzimkhulu Local Municipality and Others* [2023] ZAKZPHC 80 paras 14, 15; Cf *Da Cruz v Bernardo* above n 22 paras 57, 58.

[11] The Fund's suggestion that the PFA must be interpreted to exclude the rule is equally untenable. The established rule of interpretation is that a statutory provision should not be interpreted to alter the common law more than is necessary unless the intention to do so is clearly reflected in the enactment, whether expressly or by necessary implication:[29]

> '[I]t is a sound rule to construe a statute in conformity with the common law, save where and insofar as the statute itself evidences a plain intention on the part of the Legislature to alter the common law. In the latter case the presumption is that the Legislature did not intend to modify the common law to any extent greater than is provided in express terms or is a necessary inference from the provisions of the enactment.'

[12] It is always presumed that statute law does not alter the existing law more than is necessary.[30] There is no reference to the rule in the PFA and no express wording to support the contention that the legislature intended to exclude the rule when interest is payable on late contributions to a pension fund organisation. On my reading, this is also not to be implied simply because the PFA provides that interest is payable 'from the first day following the expiration of the period in respect of which such amounts were payable…'. The focus of that subsection is on the date from which interest accrues, rather than necessarily implying deviation from the rule. Read individually or cumulatively, the provisions of the PFA dealing with matters such as the obligation to pay contributions, the time for payment, date of commencement of interest, the prescribed rate and personal liability for compliance,

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[29] *Nedbank v The National Credit Regulator* [2011] ZASCA 35 (*Nedbank*) para 38
[30] See L Du Plessis *LAWSA* para 340. The presumption is meant, firstly, to enhance legal certainty. Secondly, it manifests esteem for the worth of the common law as the outcome of historical evolution. 'Common law is seen as the basis of the current law and statute law as an exception to common law, but the courts' manner of statutory interpretation has often lent precedence to the intention of the legislature as expressed in clear and unambiguous statutory language.' *Casserley v Stubbs* 1916 TPD 310 312: 'It is a well-known canon of construction that we cannot infer that a statute intends to alter the common law. The statute must either explicitly say that it is the intention of the legislature to alter the common law, or the inference from the ordinance must be such that we can come to no other conclusion than that the legislature did have such an intention.' *Fey NO and Whiteford NO v Serfontein and Another* 1993 (2) SA 605 (AD) at 613F–H: '…statutes in derogation of the common law are to be strictly construed. The common law will be displaced only where the terms of the statute are irreconcilably opposed to the common law.'

cannot be read to evince an express or implicit intention to alter the applicability of the rule in the present circumstances.

[13] The Fund is also unable to rely on the framing of the National Credit Act (the NCA) in support of its contention. This argument was raised in the Fund's heads of argument. Section 103(5) of the NCA has been held to embody no more than a specific rule with limited operation and applicable only to specific circumstances, namely credit agreements subject to the NCA. It is not a codification of the rule but rather a self-standing provision that amends and extends the rule without incorporating all or any of the aspects, despite dealing with the same subject matter.[31]

[14] To the extent that it remains necessary to interpret the PFA in accordance with the established approach to interpretation, I consider the interpretation favouring the application of the rule to be the one that is practical, sensible and business-like.[32] Interpreting the PFA in the manner favoured by the Fund results in oppressive consequences for the Municipality, in the sense that it will be ordered to make payment of an amount of interest some seven times more than the capital amount paid.[33] This in circumstances where any prejudice to the Fund and its members could have been avoided by obtaining judgment at an earlier date.[34]

Is this court functus officio?

[15] Finally, the Fund suggests that this court is bound by statements in *Margo and Another v Gardner and Another; Gardner and Another v Margo and Another* (*Margo*), so that the judgment, which makes no reference to the applicability of the rule, must be enforced as it reads. In addressing this argument, it is important to emphasise that the SCA decision in *Margo* was informed by the failure of one of the courts *a quo* to appreciate the law as it stood prior to *Paulsen*, namely that the rule

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[31] *Nedbank* above n 29 para 38.

[32] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) (*Endumeni Municipality*) paras 17–26.

[33] *Endumeni Municipality* above n 32 para 26.

[34] See the remarks in *Oneanate* above n 15 at 834D–E; *Paulsen* above n 2 para 96: it is settled that the rule permits interest to run anew from the date that the judgment debt is due and payable.

was suspended *pendente lite*. The *ratio* underpinning the SCA decision was that the rule did not apply *pendente lite*, so that it was inapplicable on the facts of that matter.[35] In particular, the Fund relies on the following:

> 'On the facts of this appeal this court is not asked to review the order of the SCA, but to give effect to it as it stands. The order of the SCA is unequivocal and does not provide for any interest ceiling. Therefore the amounts claimed in the second writ are all due and owing by Gardner to Margo on the strength of the SCA judgment…'

[16] As noted in *Da Cruz v Bernardo*, those remarks were *obiter*.[36] As is evident from the quotation itself, the statements are also explicitly restricted to the facts of that appeal. Resolving the present dispute does not require interpretation of the judgment.[37] While the court is *functus officio* in relation to the Municipality's liability to the Fund for interest, it is not *functus officio* in relation to the question whether the rule applies to the interest awarded in the judgment.[38]

[17] I am unpersuaded that it is necessary for a court to always specify the application of a common law rule limiting the amount of interest payable. That the court expressed itself unambiguously in ordering interest without reference to the rule is neither here nor there.[39] Similarly, courts typically also do not specify that post-judgment interest, which runs afresh from the date of judgment, is impacted by the rule, yet this is clearly the law.[40] The position must surely be that, generally speaking, the rule applies unless the court makes an order to the contrary. Such an order would typically require arguments to be addressed to the court on the inapplicability of the rule, particularly given the authorities that have further restricted

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[35] *Margo* above n 22 paras 14, 15.
[36] *Da Cruz v Bernardo* above n 22 para 35.
[37] Ibid para 14.
[38] Ibid.
[39] Cf *Administrator, Cape, and Another v Ntshwaqela and Others* 1990 (1) SA 705 (A) at 716B–D.
[40] *Drake Flemmer and Orsmond Inc and Another v Gajjar NO* [2017] ZASCA 169; [2018] 1 All SA 344 (SCA); 2018 (3) SA 353 (SCA) para 87; *Slip Knot Investments* above n 10 para 21: 'The *in duplum* rule [operates] to limit the interest recoverable on a debt at two points in time … At the stage of judgment the whole judgment debt, that is, capital plus all accumulated interest to date of judgment, will bear interest until it again reaches the duplum.'

the possible waiver of the rule.[41] While it is true that some cases have incorporated explicit reference to the rule in granting an order for interest, this appears to have been purely *ex abundanti cautela* (out of an abundance of caution).

[18] Various authorities support this position. *Niekerk*, discussed above, provides a striking illustration of a judgment that made no reference to the rule, yet was amended to prevent execution for an amount of unpaid interest more than the capital. More recently, in *Viking Inshore Fishing (Pty) Ltd v Mutual and Federal Insurance Co*,[42] the SCA specifically considered the application of the rule during its judgment and added that the consequences of the interest calculation in the light of the applicability of the rule 'will have to be worked out when payment is made'. Importantly, in upholding an appeal against the judgment of the court below, Wallis JA (writing during 2016) set aside and replaced that judgment with an order in favour of the plaintiff for payment of the sum of R3 990 000 together with interest on that sum 'at a rate of 15,5% per annum from 8 October 2005 to date of payment'. Despite the SCA having clearly acknowledged the potential applicability of the rule in the interest calculation, there was simply no need for the SCA to incorporate reference to the rule in the formulation of the order. That approach supports the position as I understand it.[43] To hold otherwise would, in effect, make the rule inapplicable both in cases of default and where parties, and the court, are not alive to the potential applicability of the rule. As a blanket approach, that appears to be untenable. The consequence is that the Municipality's failure to defend the claim, or plead reliance on the rule, is not a basis for dismissing the present application. The effect of the rule

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[41] See, for example, *Oneanate* above n 15 para 36; *Verulam Medicentre* above n 24.
[42] *Viking Inshore Fishing (Pty) Ltd v Mutual and Federal Insurance Co* [2016] ZASCA 21; [2016] 2 All SA 730 (SCA); 2016 (6) SA 335 (SCA) para 56.
[43] The facts of *Bovicon* above n 20 also support this reading. See *BOE Bank v Grange Timber Farming Co (Pty) Ltd* [2007] ZASCA 4; [2007] SCA 4 (RSA) para 24, a pre-*Paulsen* authority: 'Both counsel agreed that the correct amount for the purposes of any order by this Court in favour of the bank is R4 371 065,40 (comprised in equal parts of capital and capitalized interest as at the date of issue of summons) plus interest *a tempore morae* at the rate of 15,5% per annum from date of issue of summons to date of payment. Counsel so agreed in the light of the fact that the *in duplum* rule is suspended *pendente lite* from the date of service of the initiating process until judgment. *Once judgment has been granted, interest may run until it reaches double the capital amount outstanding in terms of the judgment*.' In the order, however, it was again considered unnecessary to make any reference to the applicability of the rule in ordering only 'interest *a tempore morae* thereon at 15,5% per annum from date of service of the summons until date of payment'. Also see *Louis Pasteur Holdings (Pty) Ltd v Bonitas Medical Fund* [2018] ZASCA 82 para 42, referring to an order expressly limiting interest based on the rule as, on the face of it, 'peculiar'.

was to limit the amount of interest recoverable by the Fund prior to and post-judgment. The judgment itself did not vary that position.

[19] The judgment in *F&I Advisors (Edms) Bpk v Eerste Nasionale Bank van SA Bpk* (*F&I Advisors*) must be construed accordingly.[44] In that matter, the parties had settled the extent of the claim in the alternative, so that evidence on quantum was unnecessary. Despite this, the appellant had applied to amend their plea to include the contention that the interest claimed by the respondent contravened the rule. Until that point, there was no suggestion that the appellants relied on the rule, despite counsel for the respondent raising the issue during the opening address. Of importance was the fact that the parties had specifically reached agreement to exclude such disputes involving the quantum, and there was no clear evidence that the rule had been breached at all. It was against that background that the SCA held that the parties were bound by their agreement limiting the issues that formed the subject of the litigation. No reasons had been advanced to justify why the appellants should be released from their own agreement. Where a claim was based on an overdrawn account, the plaintiff was not expected to detail the composition of their claim absent the underlying debits being placed in dispute. The composition had only been placed in issue in clearly defined respects, and no additional onus or evidential burden arose. It was therefore held that courts were not required to determine contravention of the rule of their own accord, or due to mere suspicion, based on fragments of evidence.

[20] The present circumstances are vastly different. The interest component of the claim was not quantified prior to the granting of default judgment. There was no agreement in respect of the issues in dispute, including quantum, or waiver of the rule. The judgment related to a statutory obligation in respect of interest, as opposed to a claim based on an overdrawn account. The cases are distinguishable so that *F&I Advisors* does not support the contention that this court is *functus officio*. What is relevant, and supportive of the position adopted, is the confirmation that courts would

[44] *F&I Advisors (Edms) Bpk v Eerste Nasionale Bank van SA Bpk* 1999 (1) SA 515 (SCA) (*F&I Advisors*).

obviously not order interest in contravention of the rule.[45] The judgment must be construed accordingly.

Costs

[21] Counsel were in agreement that the matter warranted the use of two counsel, including senior counsel, and that an award of costs in accordance with Scale C as set out in rule 69(7) of the Uniform Rules of Court was appropriate. I agree and order accordingly.

Order

[22] The following order is issued:

1. The writ issued by the first respondent be and is hereby set aside.

2. It is declared that the interest payable by the applicant to the first respondent in terms of an order of this court (case number 3016/2019) is limited by the application of the *in duplum* rule.

3. The first respondent is directed to pay the costs of suit, including the costs of two counsel to be taxed in accordance with Scale C, set out in rule 69(7) of the Uniform Rules of Court.

A GOVINDJEE
JUDGE OF THE HIGH COURT

I agree.

[45] Ibid at 525E.

ZM NHLANGULELA

ACTING JUDGE PRESIDENT OF THE HIGH COURT

I agree.

L ELLIS

ACTING JUDGE OF THE HIGH COURT

Heard: 10 March 2025

Delivered: 18 March 2025

Appearances:

For the Applicant:	Adv A Beyleveld SC Adv G W W Brown
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