THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

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

13 October 2025 ....
DATE SIGNATURE

CASE NO: 686/2018
997/2016
2028/2016
3963/2019
392/2017
958/2016
3077/2016
3692/2019
955/2016
953/2016
2027/2016

In the matter between:

ROAD ACCIDENT FUND **APPLICANT**

And

MATHEBULA THOKO MAGGIE **1ST RESPONDENT**
LINK NO. 4087459

MAHLINZA NOLLY G OBO MAHLINZA MHLOBI **2ND RESPONDENT**
LINK NO. 3927285

MAKHANYA SIPHO	**3RD RESPONDENT**
LINK NO. 3852982	
MPOFU DORRIS SAMUKELO	**4TH RESPONDENT**
LINK NO. 3850617	
MALEBJOE MASINHLE PRECIOUS	**5TH RESPONDENT**
LINK NO. 3872923	
MAHLINZA NOLLY G OBO A MINOR	**6TH RESPONDENT**
LINK NO. 3906685	
MAHLINZA NOLLY G OBO A MINOR	**7TH RESPONDENT**
LINK NO. 3927998	
MANZINI ZANDILE PATRICIA	**8TH RESPONDENT**
LINK NO. 3325474	
MBATHA SMANGALISO KENNETH	**9TH RESPONDENT**
LINK NO. 3802380	
SHONGWE JORAM CINDA	**10TH RESPONDENT**
LINK NO. 3802443	
NDLALA NKOSINATHI ZAKHELE	**11TH RESPONDENT**
LINK NO. 3917076	
NGWENYA ZINHLE IMMACULATES	**12TH RESPONDENT**
LINK NO. 4601378	

THWALA AKHONA PATRICIA OBO A MINOR 13TH RESPONDENT
LINK NO. 4602243

SHERIFF PRETORIA EAST (CENTURION) 14TH RESPONDENT

J U D G M E N T

RATSHIBVUMO DJP:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down is 13 October 2025 at 10H00.

[1] Background.

Facts leading to this application are common cause. The First to Thirteenth Respondents (the Respondents) claimed compensation from the Applicant, and their claims were all settled. Each settlement agreement in these claims was made an order of the court. Following the settlement, the capital claimed together with costs was paid to the Respondents' attorneys of record. The settlement agreements did not include provisions for the payment of interest on the capital amount. However, the Respondents applied to the Registrar of this Court and were granted warrants of execution in respect of interest on the capital amount that the Applicant settled.

[2] The Applicant's application was brought in two parts, designated as Parts A and B. In Part A, which was brought on the urgent court roll, the Applicant sought and was granted an order restraining the Fourteenth Respondent from attaching its movables to satisfy the debt arising from various writs issued to recover the interest in these claims, pending the determination of Part B. In Part B of the application, the Applicant seeks an order to set aside the writs of execution issued in respect of these claims, as the court orders on which they are based made no provision for interest to be paid.

[3] The First to Thirteenth Respondents (the Respondents) oppose the application. They admit all the factual averments made by the Applicant. However, they contend that they are legally entitled to interest under the provisions of sections 2(1) of the Prescribed Rate of Interest Act, No. 55 of 1975 (the PRIA) and 17(3)(a) of the Road Accident Act, No. 56 of 1996 (the RAF Act).

[4] Issues for determination by the Court are whether a judgment creditor is entitled to interest on the debt in circumstances where the judgment is silent on whether interest shall be charged. If so entitled, the court should further determine if there is a legal duty or obligation on the judgment creditor to first seek and obtain a court order before issuing a writ of execution on interest.

[5] The law.

Section 2 of the PRIA, provides,

> "2 Interest on a 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 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.

[6] Section 17(3)(a) of the RAF Act, provides,

"(3) *(a)* No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the court's relevant order.

[7] Discussion.

In all thirteen matters involved in this application, the judgment debts have since been paid by the Applicant to the claimants. It is common cause, however, that the payments were made late, meaning beyond the 14 days stipulated in section 17(3)(a) of the Road Accident Fund Act. In two matters where the agreement explicitly provided for payments within 180 days, the Applicant failed to make the payment within that period.

[8] The question is whether it is a prerequisite for the agreement on a debt to include a provision for interest, for the claimant to be entitled to it. In *ABSA Bank Beperk v Du Toit,*[1] the court had to determine whether a written "instrument of debt" was a prerequisite for the levy and recovery of finance charges (interest). Traverso J, as she then was, rejected the defendant's argument that in the absence of the provision in the instrument of debt, a moneylender cannot even charge default interest under the provisions of the PRIA.

[1] [1997] 4 All SA 1 (C).

[9] The court concluded, therefore, that the defendant's approach, if adopted, would negate the provisions of section 1 of the PRIA. It held that section 1 explicitly states that where interest rates have not been agreed upon (in other words, not embodied in a debt deed or any similar document), the interest shall be calculated at the rate announced in the Government Gazette from time to time. It was also considered outrageous to suggest that, in the absence of a debt deed, even default interest cannot be charged.[2]

[10] In *Linton v Corser,*[3] Centlivres CJ, writing for the Appellate Division, held that interest *tempore morae* could still be claimed even when the sale agreement made no provision for it. The court of appeal emphasised that interest *ex mora* is considered ancillary and not dependent on an express agreement in the contract. It further stated that interest is the "life-blood of finance" in modern times, and there is no reason to distinguish between interest *ex contractu* and interest *ex mora*. This statement is as true today as it was 73 years ago when it was penned down, and it has been followed over the past seven decades.[4]

[11] This approach was followed by Petse DP in *Nedbank Ltd v Houtbosplaas (Pty) Ltd and Another,*[5] when he held,

> "[I]t is by now recognised without question that a party who has been deprived of the use of his or her capital for a period of time has suffered a loss and does not need to establish special proof of his or her damages. This was reiterated by this court in *Bellairs v Hodnett and Another (*1978 (1) SA 1109 (A)) as follows: '(U)nder modern conditions a debtor who is tardy in the due payment of a monetary obligation will almost invariably deprive his creditor of the productive use of the money and

[2] *ABSA Bank Beperk v Du Toit Supra* at p. 12.
[3] 1952 (3) SA 685 (A).
[4] See, for example, *Kujawa N.O obo M.N v Road Accident Fund (18198/2018) [2023] ZAWCHC 153 (19 June 2023)* at para 7 and *Jacobs N.O v Road Accident Fund* (2022-22121) [2024] ZAGPJHC 21 (5 January 2024) at para 11.
[5] 2022 (6) SA 140 (SCA) at para 52.

> thereby cause him loss. It is for this loss that the award of *mora* interest seeks to compensate the creditor.'"

[12] Counsel for the Applicant and counsel for the Respondents referred me to the judgment of *Stoffels and Another v Road Accident Fund*,[6] where the judgment creditor approached the court for an order to recover interest *ex mora* after the judgment. Just like in this case, the claimants were awarded their claims, and the orders made did not contain any provision or reference to interest. The respondent (the RAF), who is the same as the Applicant *in casu,* had argued then as it does here that it should not be held liable for interest as there were no specific provisions for that in the original judgments.

[13] The RAF also contended that the applicants were barred from claiming interest due to the principle of *res judicata*. It argued that there were no appeals lodged regarding those judgments. The judgments in question made no explicit provision for interest.

[14] The court rejected the RAF's argument and held that its interpretation of the PRIA was clearly incorrect. It relied on section 2 of the PRIA, which states that all judgment debts bear interest from the date they are payable unless specified otherwise in the judgment.

[15] The Applicant's reliance on this judgment is based on the belief that there was a duty on the Respondents, as was the case with *Stoffels*, to approach the court to determine if interest was payable when the judgments did not specify this. Since Stoffels cannot be faulted for seeking court approval to address legislated issues, I see no reason to consider that approach as setting a precedent for other litigants. *Stoffels'* judgment did not consider whether there was an

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[6] (20656/2023) [2024] ZAWCHC 182 (25 June 2024).

obligation to approach the courts for a ruling on the payment of interest. Nevertheless, several decisions confirm that interest *ex mora* is not derived from a contract. I believe the Applicant's interpretation of the *Stoffels* judgment in this respect is flawed and not supported by the reasoning within it.

[16] In *Road Accident Fund v Sheriff of the High Court [Pretoria East] and Others,*[7] the court dealt with an application by the RAF that closely resembles the application *in casu*. The RAF sought to have the writs issued in various matters set aside because the judgments on which they were based did not refer to the interest to be paid. I align myself with the reasoning of the court in dismissing that application.

[17] Section 17(3)(a) of the RAF Act provides for payment within 14 days, after which interest shall begin to accrue. Section 2 of the PRIA outlines how interest is calculated on a judgment debt. The words, "subject to any other agreement between the parties..." empower the litigants to determine, among other things, the interest rate and the date from which interest shall start to accrue. The parties are therefore free to exclude interest if they wish.

[18] Similarly, the parties are at liberty to alter the days within which payment must be made without interest accruing, from 14 days to 180 days, as is customary in cases involving the RAF. Silence regarding interest in the contract does not imply its exclusion. Section 2 of the PRIA was established for contracts or debt instruments that do not specify interest. Any other interpretation would render its provisions unnecessary, which would be absurd. In this application, since the agreements that became court orders did not exclude interest, the application should fail.

[7] (2022-056346) [2024] ZAGPPHC 953 (17 September 2024).

[19] The Order.

For the reasons stated above, I make the following order:

18.1 The application (Part B) is dismissed with costs calculated on party and party scale B.

[redacted]

TV RATSHIBVUMO

DEPUTY JUDGE PRESIDENT

MPUMALANGA DIVISION OF THE HIGH COURT

APPEARANCES:

FOR THE APPLICANT:	**MR. TO MGWENYA**
INSTRUCTED BY:	**STATE ATTORNEY MBOMBELA**
FOR THE FIRST-THIRTEENTH: RESPONDENTS	**ADV. MS NGOMANE**
INSTRUCTED BY:	**NYALUNGU ATTORNEYS**
	C/O PM NGOBENI ATTORNEYS NELSPRUIT
DATE HEARD:	**04 SEPTEMBER 2025**
JUDGMENT DELIVERED:	**13 OCTOBER 2025**