

|                                   |    |
|-----------------------------------|----|
| Reportable:                       | NO |
| Circulate to Judges:              | NO |
| Circulate to Magistrates:         | NO |
| Circulate to Regional Magistrates | NO |



**[REDACTED]**

4 May 2026

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NUMBER: 2024/031609**

In the matter between:-

**PREFERENCE CAPITAL (PTY) LTD  
(REGISTRATION NUMBER: 2014/093461/07)**

Plaintiff / Applicant

and

**WASTE PARTNER INVESTMENTS (PTY)  
LTD**

1<sup>st</sup> Plaintiff / 1<sup>st</sup> Respondent

**THABANG GLADWIN MOENG**

2<sup>nd</sup> Plaintiff / 2<sup>nd</sup> Respondent

**THUTO TSHEGOFATSO MOENG**

3<sup>rd</sup> Plaintiff / 3<sup>rd</sup> Respondent

*Disclaimer: This judgment is handed down electronically by uploading it on CaseLines. The date of the judgment is deemed to be 4 May 2026.*

**JUDGMENT**

**Reid J**

## Introduction

- [1] This is an application for summary judgment. The capital amount of R1,545,962.92 has been settled on 6 October 2025. The remaining dispute is about the amount of interest on the capital amount, as well as legal fees.
- [2] The defendants claim that the amount includes interest and costs and state that the terms of the agreement do not make provision for the payment of interest.
- [3] The plaintiff argues that the capital amount that was paid, does not include *mora* interest in the statement of loan account, due to its internal processes and loan management system. The plaintiff argues that the plaintiff is not pursuing contractual interest, but *mora* interest which is based on the failure to comply with the terms of the payments. The plaintiff argues that *mora* interest is applicable where no interest was agreed specifically.

## Legal position

- [4] The summary judgment procedure is a drastic remedy, intended to enable a plaintiff with an unassailable claim to obtain swift relief. It was never intended to shut out a defendant who raises a genuine dispute of fact or law. Where there is a reasonable possibility that the defence advanced may succeed at trial, the court should exercise its discretion

in favour of granting leave to defend.

- [5] In *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) the Court of Appeal (as it was then known) held as follows at 426A-C:

*"Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a bona fide defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the Court enquires into is: (a) whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law."*

- [6] The above principles were confirmed in the Supreme Court of Appeal in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) as follows:

*"[31] So too in South Africa, the summary judgment procedure was not intended to 'shut (a defendant) out from defending', unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights."*

*[32] The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our*

*courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case at 425G - 426E, Corbett JA was keen to ensure, first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor."*

- [7] This Court thus has to exercise its judicial discretion in determining whether the plaintiff has an unassailable claim.

### **Analysis**

- [8] It is common cause that the plaintiff does not seek contractual interest on the capital amount, but *mora* interest.
- [9] The plaintiff's entitlement to *mora* interest cannot be established with an analysis of the documents before this Court.
- [10] The claim is thus not unassailable and as such not suitable for summary judgment. The defendant should be granted leave to enter appearance to defend.

**Cost**

[11] The general principle is that the successful party is entitled to its cost.

[12] However, the issue of legal fees is also in dispute in *casu*.

[13] On this basis I find it in the interest of justice that the cost of this summary judgment be cost in the cause.

**Order**

[14] In the premise, the following order is made:

- (i) The application for summary judgment is dismissed.
- (ii) The defendants / respondents are granted leave to defend the action.
- (iii) The costs of this application shall be costs in the cause.

  
FMM REID  
JUDGE OF THE HIGH COURT  
NORTH WEST DIVISION MAHIKENG  
SEATED AT GAUTENG NORTH, PRETORIA

---

DATE RESERVED: 9 FEBRUARY 2026

DATE OF JUDGMENT: 4 MAY 2026

---

**APPEARANCES:**

**For plaintiff / applicant: ADV SCULLEN**

**Instructed by: BARNARD INC. ATTORNEYS**

**REF: LOTTER/MAT15673/RN**

**For defendants / respondents: ADV MOHAMMED**

**Instructed by: MUKANSI ATTORNEYS**

**REF: WW MUKANTSI / WPI / MAT30/2023**