CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 154/25

In the matter between:

MINISTER OF POLICE Applicant

and

CYNTHIA NOBUHLE KHEDAMA Respondent

Neutral citation: *Minister of Police v Khedama* [2026] ZACC 27

Coram: Mlambo DCJ, Dambuza J, Kollapen J, Majiedt J, Mathopo J, Mhlantla J, Nuku AJ, Opperman AJ, Rogers J, Savage J and Tshiqi J

Judgment: Mathopo J (unanimous)

Decided on: 29 June 2026

Summary: Prescribed Rate of Interest Act 55 of 1975 — unliquidated debt — general damages— monetary unliquidated damages

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ORDER

On appeal from the Supreme Court of Appeal (hearing an appeal from the High Court (Full Court) of South Africa, KwaZulu-Natal Division, Pietermaritzburg):

1. Leave to appeal is granted.
2. The appeal is upheld.
3. Paragraph 1 of the order of the Supreme Court of Appeal dated 2 May 2025 is set aside.
4. Paragraph 2(b)(2) of the order of the Supreme Court of Appeal dated 2 May 2025 is set aside and replaced with the following:
   "The applicant is ordered to pay interest on the aforesaid amount at the prescribed rate per annum from the date of the trial court's judgment to date of payment."
5. Each party is to bear its own costs in the Supreme Court of Appeal.
6. The respondent is ordered to pay the costs of the applicant, including costs of two counsel where applicable, in this Court.

JUDGMENT

MATHOPO J (Mlambo DCJ, Dambuza J, Kollapen J, Majiedt J, Mhlantla J, Nuku AJ, Opperman AJ, Rogers J, Savage J and Tshiqi J concurring):

Introduction

[1] This is an application for leave to appeal against part of the judgment and order of the Supreme Court of Appeal, which ordered the applicant, the Minister of Police, to pay interest on damages for an unlawful arrest and detention of the respondent at the prescribed rate from date of service of summons to date of payment. At issue in this matter is the proper interpretation and application of the Prescribed Rate of Interest Act[1] (PRI Act), which provides for: interest on a debt, at a prescribed rate, in certain circumstances; for the payment of interest on certain judgment debts; and for matters connected therewith. In particular, the question is whether interest on general

[1] 55 of 1975.

damages for unlawful arrest and detention runs from date of service of summons, alternatively from date of judgment to date of payment. This Court issued directions for the parties to file written submissions and subsequently decided to adjudicate this matter without an oral hearing.

Parties

[2] The applicant is the Minister of Police. The respondent is Ms Cynthia Nobuhle Khedama, the recipient of a general damages award which will be explained in detail below.

Legislative framework

[3] It is prudent to start by setting out the relevant legislative framework. The common law prior to the promulgation of the PRI Act was that—

(a) a debtor was liable for interest on a debt only if they were in *mora* (default);

(b) if a debtor had no knowledge of their liability, they could not be in *mora*; and

(c) interest was not payable on unliquidated claims.[2]

[4] The PRI Act (prior to its amendment in 1997) made provision for—

(a) the rate of interest in respect of interest-bearing debts, where such rate was not governed by any other law, agreement or trade custom;[3]

(b) interest in respect of debts which did not ordinarily bear interest;[4] and

(c) interest on judgment debts contemplated by section 2(1)—

[2] See generally *Victoria Falls and Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd* 1915 AD 1 (*Victoria Falls*) and *SA Eagle Insurance Co Ltd v Hartley* [1990] ZASCA 106; [1990] 2 All SA 616 (A); 1990 (4) SA 833 (A) (*Hartley*).

[3] Section 1(1) read with section 1(2)(a).

[4] Section 2(1).

(i) from the date when such judgment debt is payable unless the judgment or order provides otherwise; and

(ii) the rate set out in section 1(2)(a) unless the judgment provides otherwise.

[5] Section 2 of the PRI Act regulates the calculation of interest on judgment debts and it states:

> "(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.
>
> . . .
>
> (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 2A of the PRI Act, inserted by amendment in 1997[5] and further amended in 2005, regulates the calculation of interest on unliquidated debts, thus making provision for interest on debts that did not at common law attract interest. It provides:

> "(1) Subject to the provisions of this section the amount of every unliquidated debt as determined by a court of law, or an arbitrator or an arbitration tribunal or by agreement between the creditor and the debtor, shall bear interest as contemplated in section 1.
>
> (2) (a) Subject to any other agreement between the parties and the provisions of the National Credit Act, 2005 (Act 34 of 2005) the interest contemplated in subsection (1) shall run from the date on which payment of the debt is claimed by the service on the debtor of a demand or summons, whichever date is the earlier.

[5] Prescribed Rate of Interest Amendment Act 7 of 1997.

. . .

(5) Notwithstanding the provisions of this Act but subject to any other law or an agreement between the parties, a court of law, or an arbitrator or an arbitration tribunal may make such order as appears just in respect of the payment of interest on an unliquidated debt, the rate at which interest shall accrue and the date from which interest shall run."

Background facts

[7] The factual matrix upon which this judgment is premised is largely taken from the judgments of the courts *a quo* and the helpful written submissions of both parties. On 3 December 2011, the respondent was arrested by members of the South African Police Service (SAPS) at the King Shaka International Airport, Kwa-Zulu Natal after they had questioned her about fraud-related cases pending against her. At the time of the arrest, the respondent was *en route* to Türkiye with her employer to purchase merchandise. Members of the SAPS searched her suitcase, opened it in full view of the public and her belongings were scattered on the floor. Nothing untoward was found in her suitcase, but the SAPS members detained her on suspicion of fraud arising from the loss of her identity document which was allegedly used by unnamed people to commit fraud.

[8] The respondent was then transported and detained in a small cell at Tongaat Police Station. In the trial court, the respondent testified that the conditions at Tongaat Police Station were appalling and uninhabitable, in that the cell had a very dirty toilet with faeces and smelt terribly. There was also a filthy grey blanket in the cell which she placed onto the cement bed and sat on. The respondent had no blanket to cover herself and was also not offered any food that evening. As a consequence of this ordeal, the respondent was treated for blisters on her face and chest, anxiety, hypervigilance and sleep deprivation. The respondent was released on bail on 12 December 2011 after spending time in custody. The charges were withdrawn against her in March 2012 after the fingerprint verification process proved that the respondent was not the person sought.

[9] According to the respondent's testimony at the High Court, it took time for her employer to trust her again and travel with her overseas to purchase stock for the shop in which the respondent worked. Regrettably for the respondent, her unpleasant experience with members of the SAPS continued for a second time. This time, and again in the company of her employer, the same two members of the SAPS stopped and detained her for questioning, only for the respondent to be told that they were joking and had only wanted to establish what happened after her first arrest. She feared that she would suffer the same fate; nevertheless, the respondent was released after being questioned for less than an hour. As her employer witnessed both her encounters with members of the SAPS, the respondent was demoted.

[10] Aggrieved by the aforementioned, the respondent in December 2013 issued and served summons against the applicant for damages arising from her unlawful arrest and detention in December 2011.

Litigation history

High Court

[11] Before the High Court,[6] the respondent sued the applicant for damages for: embarrassment and humiliation; defamation of character; discomfort and pain and suffering; deprivation of her freedom of movement and wrongful detention and incarceration; psychological shock and trauma; and travel and subsistence expenses as well as disbursements incurred in relation to her movements and sojourn for court appearances totalling R1 million. The applicant conceded liability on the merits by a consent order in 2018.[7] The matter then proceeded on the issue of quantum in November 2021, with the corollary question being the date from which interest should run, the central issue now before us. The High Court awarded the full amount claimed

[6] *Khedama v Minister of Police*, unreported judgment of the High Court of South Africa, Kwa-Zulu Natal Division, Durban, Case No D13841/2013 (17 January 2022) (High Court judgment).

[7] Id at para 5.

plus interest at 15.5% per annum calculated from 20 December 2013, being the date of service of summons, to date of payment.[8]

[14] The High Court computed the damages suffered by the respondent as follows, all of these components constituting general (non-patrimonial) damages:

(a) wrongful arrest – R100 000;

(b) wrongful detention, computed at R80 000 per day for 12 days – R960 000;

(c) defamation, embarrassment and humiliation – R500 000; and

(d) general damages for pain and suffering, psychological shock and trauma – R200 000.

[15] Because the sum of these amounts exceeded the R1 million that the respondent had claimed, the High Court awarded her R1 million. The High Court did not say whether it had assessed the general damages as at the date of the delict committed by the SAPS members (December 2011), the date of issue of summons (December 2013) or at the date of judgment (January 2022). The natural inference, in the absence of a contrary statement, is that the Court regarded the amounts awarded as the appropriate amounts as at the date of judgment. This is, in my experience, the invariable approach in assessing general damages.[9] Interest on R1 million at the then prevailing prescribed rate of 15.5% per annum from (12 December 2013 (date of summons) to 17 January 2022 (date of judgment)) comes to more than R1.25 million.

[16] In relation to the award of interest, from the date of service of summons to the date of payment, the High Court provided extensive reasoning for its decision. The High Court specifically referred to the relevant legislative provision dealing with

[8] Id at para 33(b).

[9] Where trial courts use previous awards as a rough guideline, they use standard indices (for example, Koch *The Quantum Yearbook* 36 ed (2026)) to update those awards to the present time, that is the date of judgment.

interest on unliquidated debts, which is section 2A of the PRI Act.[10] The Court further relied on *GFE Blything*[11] and *Drake Flemmer*[12] to confirm that section 2A makes provision for the calculation of interest on an unliquidated debt either from the date of service of demand or summons, whichever is earlier.[13] The applicant sought leave to appeal on both the quantum and interest ordered. The High Court refused leave to appeal and on petition, the Supreme Court of Appeal granted leave to appeal to the Full Court of the KwaZulu-Natal Division.

Full Court

[17] On appeal, the Full Court[14] reduced the amount awarded by the trial court to R350 000, holding that the trial court's award was excessive and overcompensated the respondent. It also overturned the trial court's decision as to interest and held that it should run from the date of judgment of the trial court, being 17 January 2022, and not the date of service of summons for the reasons set out hereunder.[15]

[18] The Full Court noted that the PRI Act provides that interest on illiquid claims ordinarily runs from the date of service of a demand or summons.[16] In its discussion, the Court further held that the PRI Act altered the common law position laid down in *Victoria Falls* which stated that "[t]he civil law did not attribute *mora* to a debtor who did not know and could not ascertain the amount which he had to pay."[17]

[10] High Court judgment above n 6 at para 27.

[11] *GFE Blything v Minister of Safety and Security* unreported judgment of the High Court, Gauteng Division, Pretoria, Case No 8281/2013 (31 August 2016).

[12] *Drake Flemmer and Osmond Inc v Gajjar N.O.* [2017] ZASCA 169; [2018] 1 All SA 344 (SCA); 2018 (3) SA 353 (SCA).

[13] High Court judgment above n 6 at paras 29 - 30.

[14] *Minister of Police v Khedama*, unreported judgment of the High Court, Kwa-Zulu Natal Division Pietermaritzburg, Case No AR259/2022 (18 March 2024) (Full Court judgment).

[15] Id at para 46(2)(a).

[16] Id at para 39.

[17] Full Court judgment above n 14 at para 39.

[19] The Court invoked section 2A(5) of the PRI Act which provides a court with the discretion to make such an order as appears just in respect of the payment of interest on an unliquidated debt, the rate at which interest shall accrue and the date from which interest shall run. In this regard, the Court also relied on *Drake Flemmer* and *Adel Builders*[18] to confirm its discretion in terms of section 2A(5). The Court also made reference to the minority judgment in *De Klerk SCA*[19] which held that "[s]ince the general damages and medical expenses have been expressed in the value of money as at the date of court *a quo's* judgment, *mora* interest should not run from an earlier date".[20]

[20] The Full Court concluded that the High Court had misdirected itself by awarding interest that far exceeded the principal amount claimed.[21] This was because, in a case of unlawful detention, damages are assessed at a monetary value as at the date when judgment is delivered, and not as at the date of summons. Section 2A(5) of the PRI Act should have been invoked to award interest only from the date of judgment; it could not have been the intention of the Legislature, when enacting section 2A, that interest should be awarded on general damages from the date of summons in circumstances where the general damages had been assessed using monetary values as at the date of judgment.[22]

Supreme Court of Appeal

[21] On a further appeal brought by the respondent as to quantum and the question of interest, the Supreme Court of Appeal increased the award to R580 000, finding that the Full Court's award was inadequate, given the horrific conditions and constitutional violations suffered by the respondent. Most importantly, for purposes of this judgment, the Supreme Court of Appeal restored the calculation of interest

[18] *Adel Builders (Pty) Limited v Thompson* [2000] ZASCA 167; [2000] 4 All SA 341 (A); 2000 (4) SA 1027 (SCA).

[19] *De Klerk v Minister of Police* [2018] ZASCA 45; 2018 (2) SACR 28 (SCA); [2018] 2 All SA 597 (SCA).

[20] Id at para 55.

[21] Full Court judgment above n 14 at para 44.

[22] Id.

from the date of service of summons to the date of payment.[23] It held that section 2A(2)(a) creates a peremptory obligation to award interest from the date of service on every unliquidated debt.[24] The Supreme Court of Appeal did not allude to the anomaly of awarding interest from the date of summons on an amount of general damages valued as at the date of judgment or consider the discretionary application of section 2A(5) to address this anomaly.

Before this Court

Applicant's submissions

[22] In this Court, the applicant contends that this Court's jurisdiction is engaged under section 167(3)(b)(ii)[25] of the Constitution, in that the matter raises an arguable point of law of general public importance which ought to be considered by this Court. According to the applicant, this arguable point of law is whether a litigant who sues for general damages arising from unlawful arrest and detention is entitled to interest on the damages award in terms of the PRI Act from the date of judgment, or from service of summons or demand to date of payment. The applicant further argues that this arguable point transcends the interests of the present parties, in that the outcome of this case has very wide ramifications, particularly for organs of state, who are often sued for general damages, in cases of wrongful arrest and/or medical negligence.

[23] The applicant further argues that there is a compelling need for judicial certainty and the proper administration of justice, as there are conflicting decisions by the Supreme Court of Appeal and the High Court on the same issue. The applicant

[23] *Khedama v Minister of Police* [2025] ZASCA 79; 2025 (9K6) QOD 41 (SCA); [2025] JOL 69070 (SCA) (Supreme Court of Appeal judgment) at para 29 of the order.

[24] Id at para 27.

[25] Section 167(3) of the Constitution provides that this Court:

> "(b) may decide—
>
> (i) constitutional matters; and
>
> (ii) any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court."

relies on the Supreme Court of Appeal's judgment of *Van der Nest*[26] delivered on 10 April 2025. In that judgment, the Court ordered that the calculation of interest be reckoned from the date of the trial court's judgment to the date of payment for damages arising from unlawful arrest and detention.[27] According to the applicant, neither of the parties to this application referred the court *a quo* to *Van der Nest*, nor does it appear that the Court itself was aware of its existence.[28] The applicant contends that had the court *a quo* been aware of its judgment, it would have considered itself bound thereto by the principle of *stare decisis* (to stand by things decided).

[24] The applicant further states that some decisions of this Court are conflicting. It references the judgment of *De Klerk CC*,[29] delivered in 2019, where this Court ordered interest to run from 30 October 2014, being the date of service of summons to date of payment.[30] And it also references *Mahlangu*,[31] delivered in 2021, where this Court ordered payment of interest at the prescribed rate from the date of the High Court's judgment.[32]

[25] On the merits of the appeal, the applicant makes several arguments in relation to the interpretation of the PRI Act on the calculation of interest on an award of general damages. Firstly, the applicant contends that prior to the enactment of the PRI Act, a debtor would be liable for interest on a debt only if the debtor was in *mora*. If the debtor had no knowledge of their liability, then they could not be in *mora* and therefore interest would not be payable on unliquidated claims. Furthermore, prior to

[26] *Van der Nest N.O. v Minister of Police* [2025] ZASCA 42; [2025] 2 All SA 655 (SCA); 2025 (5) SA 152 (SCA).

[27] Id at para 2 of the order.

[28] Judgment in *Van der Nest* was delivered about three weeks before the present appeal was argued in the Supreme Court of Appeal.

[29] *De Klerk v Minister of Police* [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC).

[30] Id at para 3 of the order.

[31] *Mahlangu v Minister of Police* [2021] ZACC 10; 2021 (2) SACR 595 (CC); 2021 (7) BCLR 698 (CC).

[32] Id at para 3(iii) of the order.

the PRI Act's amendment in 1997, section 2(1), dealing with interest on judgment debts, provided that the interest calculation commenced from the day on which such judgment debt was payable, unless that judgment or order provided otherwise. In 1997, the Legislature amended the PRI Act and introduced section 2A dealing with interest on unliquidated debts. The Legislature did not amend section 2(1) dealing with interest on judgment debts. The applicant thus argues that section 2(1) remains relevant for the calculation and determination of interest on general damages, otherwise there would have been no need for the Legislature to retain this section following the introduction of section 2(A).

[26] Secondly, the applicant postulates that, on a literal interpretation, section 2A(2)(a) applies to every unliquidated debt without exception. The applicant submits that the introduction of section 2A(2)(a) has resulted in courts granting inconsistent awards for interest on general damages. The awards have either been ordered to commence from date of judgment or from date of service of summons or demand. According to the applicant, the result of the indiscriminate application of the section is inequitable and disadvantageous to claimants seized with unliquidated claims. And therefore, the words "unliquidated debts" in section 2A should be interpreted restrictively so as to exclude its application to general damages.

[27] The applicant further contends that, in formulating the purposive approach to interpretation, this Court in *Cool Ideas*[33] reiterated that all statutory interpretation must be consistent with the Constitution. On this basis, the applicant submits that unless section 2A is given a restricted meaning, the principles of equality enshrined in the Bill of Rights will be infringed. The applicant further contends that there is no rational basis for the differentiation between claimants suing for general damages and those suing for other monetary liquidated debts. It is incongruous and inequitable for claimants of general damages to receive *mora* interest from the date of service of summons or demand calculated on current monetary value in addition to awards at

[33] *Cool Ideas 1186 CC v Hubbard* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC).

current money value at date of judgment while other claimants are limited to *mora* interest only from date of judgment.

[28] And lastly, in relation to section 2A(5), the applicant submits that a court has the power to apply its discretion in awarding interest on general damages, whether such damages fall under section 2(1) or section 2A(2)(a).

Respondent's submissions

[29] Conversely, the respondent opposes the application on the basis that this matter does not raise any constitutional issue or an arguable point of law of general public importance. The respondent further argues that there are no prospects of success and consequently, it is not in the interests of justice to grant leave to appeal. On the issue of conflicting decisions, the respondent rejects this submission and states that the apparent inconsistency arises not from conflicting interpretations of section 2A, but from the fact that some courts did not consider the provision at all and reverted incorrectly to the pre-1997 common law position. To buttress this argument, the respondent states that there are three categories of jurisprudence as set out hereunder.

[30] First, the respondent submits that there are cases that correctly apply section 2A(2)(a) by recognising that the Legislature adopted a single, uniform commencement rule for all unliquidated debts. These include the majority judgment in *De Klerk SCA*, *Blything* and other post-amendment decisions which expressly apply the statute. Second, the respondent submits that there are cases that dealt with interest on unliquidated damages but failed to consider section 2A(2)(a) at all. The applicant has relied on some of these, including *Takawira*.[34] These decisions simply reverted to the common law because the PRI Act was not considered. Third, the respondent posits that there are older cases predating the statutory amendment, such as *Bailey*[35]

[34] *Takawira v Minister of Police* unreported judgment of High Court of South Africa, Gauteng Division, Johannesburg, Case No A3039/2011 (11 June 2013).

[35] *General Accident Versekeringsmaatskappy Suid-Afrika Bpk v Bailey N.O.* 1987 (2) SA 702 (C).

and *Hartley*, which either applied the common law rule or interpreted statutes that had not yet been amended.

[31] On the merits of the appeal, the respondent contends that the PRI Act applies to all unliquidated debts sounding in money, including delictual damages arising from the *actio iniuriarum* (action for non-patrimonial damages) as is the case here. In addition, the respondent relies on section 2A(2)(a) of the PRI Act, which in peremptory terms provides that interest on every unliquidated debt shall run from the date of service of summons or demand, whichever occurs first. The respondent further submits that since the promulgation of the PRI Act, a consistent line of authority, including decisions of this Court, the Supreme Court of Appeal, High Court divisions and the Magistrates' Courts, has awarded interest in terms of section 2A(2)(a) in matters founded on the *actio iniuriarum*.

[32] Furthermore, the respondent argues that section 2A(5) is the Legislature's chosen mechanism to deal with fairness in particular cases. It does not permit courts to decide, as a matter of category, that certain types of claims fall outside the scope of section 2A(2)(a). That approach would contradict the legislative purpose and recreate the very uncertainty the PRI Act was intended to eliminate. The discretion is relevant only once section 2A(2)(a) is engaged. If classes of claims were excluded from the default rule, the discretion would be rendered superfluous in precisely the cases where fairness concerns are most likely to arise.

[33] The respondent submits that this Court should not read into the provision a limitation which does not appear in the text. To amplify this submission, the respondent states that the applicant conflates two distinct concepts: the existence of a debt and the quantification of that debt. According to the respondent, the fact that damages require judicial assessment does not mean that a debt does not exist. The respondent places reliance on the judgment of *Crookes Brothers*[36] for this submission.

[36] *Crookes Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga* [2012] ZASCA 128; [2013] 2 All SA 1 (SCA); 2013 (2) SA 259 (SCA).

[34] I consider first whether our jurisdiction is engaged and, if it is, whether it is in the interests of justice that leave to appeal be granted.

Jurisdiction and leave to appeal

[35] For this Court's jurisdiction to be engaged, the matter must either raise a constitutional issue or an arguable point of law of general public importance that ought to be considered by this Court. I am persuaded by the applicant's submissions that there is an arguable point of law of general public importance, warranting this Court's attention. This Court has in the past, on different occasions, ordered the calculation of interest to run from either the date of service or the date of the trial court judgment on an award of general damages.[37] However, the common characteristic in these decisions is that this Court did not provide any reason or explanation as to why interest was awarded from either the date of service of summons or from date of the trial court's judgment. Nor is there anything to suggest that such a point was argued.

[36] Therefore, it is clear that there are divergent views on this aspect which require this Court to provide direction and clarify the correct legal position. These conflicting decisions raise an arguable point of law which in this matter implicates the interpretation of the PRI Act. In addition, this interpretation is not confined to the parties before this Court. There are many litigants who have pending general damages claims in our courts, and there will be many more in the future. In my view, this matter is accordingly a matter of general public importance.

[37] It is thus in the interests of justice that leave to appeal be granted. Consequently, leave to appeal is granted. I now consider the merits of the appeal.

[37] *De Klerk CC* above n 29 and *Mahlangu* above n 31.

Issue for determination

[38] This Court is called upon to determine whether interest on general damages for unlawful arrest and detention runs from date of service of summons or from date of judgment.

Analysis

Statutory interpretation of the PRI Act in relation to general damages

[39] The determination of the correct interpretation of the PRI Act in relation to general damages is dependent on the classification of such damages. In essence, what is the classification of general damages? Given that the PRI Act differentiates between liquidated and unliquidated claims, are general damages liquidated or unliquidated in nature? The answers to this enquiry will provide direction as to which provision of the PRI Act must find application.

[40] Even though the difference between liquidated and unliquidated claims is evidently clear, I still see fit to outline the differences. Section 2(3) of the PRI Act defines "judgment debt" as a sum of money due in terms of a judgment or order. Basically, this is a liquidated claim, as the sum of money has been determined by the court. On the other hand, the PRI Act does not provide a definition for an unliquidated debt. It is trite law that delictual damages are almost always unliquidated.[38] This is particularly true of general damages, where the trial court has a wide discretion in assessing what would be a just and equitable *solatium* (compensation) in the circumstances of the case.[39] It follows that general damages are unliquidated as the exact amount is not predetermined but will be assessed at a later stage. There is no dispute between the parties on this point.

[38] *Victoria Falls* above n 2 at 31-2; *Hartley* above n 2 at 841H-842B.

[39] *Minister of Safety and Security v Seymour* [2006] ZASCA 71; 2006 (6) SA 320 (SCA); [2007] 1 All SA 558 (SCA) at para 11 citing *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A); 2 All SA 100 (A) at 534H-536B, and *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199-200.

[41] To provide for a holistic understanding of the issue, one must have regard to the position of interest on unliquidated claims before the section 2A amendment. The common law position prior to the amendment in respect of monetary unliquidated debts was that a party was not entitled to interest from a date earlier than the date of judgment. The leading authority which dealt with the issue of interest on unliquidated monetary debts was *Hartley*. In that matter, the Court held that there was no legal authority which prescribed interest to be awarded from a date earlier than date of judgment in respect of unliquidated damages. The Court further reasoned that, as it was not possible for the defendant to know or ascertain what damage its breach of contract had caused, it could not be held liable for interest on the amount of damages prior to judgment.

[42] In *Hartley*, these principles were reinforced by the Appellate Division when it said:

> "It follows that there is no mechanism by which a court can compensate a plaintiff like the present for the ravages of inflation in respect of monetary losses incurred prior to the trial. In other jurisdictions a statutory power to award interest is used for this purpose. . . . Whether our courts should have a similar power, and what precise form it should take, is not, however, something we can lay down. It is essentially a matter of policy which is for the Legislature to decide."[40]

[43] From the aforementioned reasoning, the Appellate Division ruled that the application of the PRI Act was limited to interest bearing debts in terms of section 1(1) of the PRI Act and there can be no *mora* interest in respect of unliquidated claims for damages.

[44] The Appellate Division in *Hartley* went further to deal with the issue of currency nominalism which necessitated the introduction of section 2A. It held that the essence of currency nominalism is that a debt sounding in money has to be paid in terms of its nominal value irrespective of any fluctuation in the purchasing power of

[40] *Hartley* above n 2 at 841I-842A.

money. The practical effect of this is that the risk of currency depreciation is placed on the creditor and the debtor enjoys the risk of an appreciation. The Court remarked:

> "If a plaintiff through no fault of his own has to wait a substantial period of time to establish his claim it seems unfair that he should be paid in depreciated currency. Of course, in respect of many debts this problem is resolved (or partially resolved) by an order for the payment of interest, and the [PRI Act] is flexible enough to permit the Minister of Justice to prescribe rates of interest which reflect the influence of inflation on the level of rates generally (see section 1(2))."[41]

[45] In the same judgment, the Appellate Division held:

> "In assessing general damages, one is dealing, not with a monetary debt, but with the valuation of a non-monetary loss. Such a valuation must obviously be made in terms of currency values as they are at the time of valuation, and not in terms of the values of an earlier time. In the same way, as it was put in argument, a valuer determining the present value of a farm would not use the currency values of the past. A monetary debt is not, however, subject to a similar type of valuation. It has to be paid according to its nominal value."[42]

[46] That judgment called for legislative intervention to provide a mechanism to compensate claimants of unliquidated claims for pecuniary losses suffered prior to the trial. In 1997, the Legislature complied with this plea and introduced section 2A to counter currency nominalism in respect of unliquidated monetary claims.

[47] In the context of general damages, the claimant suffers a non-pecuniary loss which is not susceptible to measurement in money at the date of the delict. It is a matter of discretionary assessment by the trial court, and the amount regarded by the trial court as fair and reasonable as at the date of its judgment. The inescapable question to be answered is, why should general damages bear interest that commences from the date of service of summons or demand, whichever is earlier? Put differently,

[41] Id at 841F-H.

[42] Id at 841F.

why must a creditor pay interest on damages before the damages are assessed, given that such damages are assessed in monetary values prevailing at the date of judgment and not at the earlier date of demand or summons?

[48] The respondent's answer to this crucial question is that section 2A(2)(a) applies to unliquidated debts without any limitations. Moreover, the respondent submits that the Legislature was fully aware that some unliquidated claims require judicial assessment and, rather than excluding them, it adopted a uniform rule in section 2A(2)(a).

[49] These arguments miss the point. There are different types of unliquidated claims, general non-pecuniary damages (as in the present case) and unliquidated claims for pecuniary loss. My understanding is that section 2A(2)(a) was primarily meant to apply to the latter damages. This is because a claim for pecuniary damages, on the one hand, must be assessed according to its nominal value at the date of the delict or breach of contract; whereas a claim for non-pecuniary damages, on the other hand, is assessed according to its nominal value as at the date of its judgment.

[50] A finding that interest on general damages runs from date of service of summons or demand, whichever is earlier, would mean that a creditor must pay interest on such damages despite the fact that they have been valued as at the date of judgment, and not as at the date of the delict or the date of the demand or summons. Such an interpretation would lead to great injustice and unjustified enrichment and it cannot be what the Legislature intended. Notwithstanding that, general damages manifest immediately when the delict is committed, and the debt (the right to sue for them) arises when the delict is committed. The critical point is not the manifestation or coming into existence of the debt, but the fact that such a debt almost invariably is assessed in values prevailing at the date of judgment, making it unsound to award interest from an earlier date.

[51] To illustrate the point, if for instance, a trial court assesses general damages and concludes that the appropriate figure would be R1 million as at the date of the judgment, it would be unreasonable to order interest on the aforesaid sum from the date of demand or service of summons, which might have occurred several years earlier, as in the present case. This would result in overcompensation to the claimant and would be contrary to the purpose of section 2A. The Full Court correctly recognised this anomaly. As noted earlier, if the High Court's award of general damages of R1 million had stood, interest at 15.5% from the date of summons to the date of judgment would have amounted to more than R1.25 million. Overall, the respondent would then have received R2.25 million as at the date of judgment, despite the fact that the High Court considered that the general damages to which she was entitled as at that date came to only R1 million.

[52] In this case, the Supreme Court of Appeal decided that the appropriate sum of general damages should be less than what the trial court had ordered but more than what the Full Court had allowed. It ordered interest to run at the prescribed rate from December 2013, when summons was served, to the date of payment. In this regard, the Supreme Court of Appeal wrongly relied on *Drake Flemmer* as authority for the proposition that interest should run from date of service of the summons or demand. The Court in *Drake Flemmer* was seized with a claim for contractual damages and not general damages. The latter damages are not assessed at the date of delict but when the trial court gives judgment. In relation to general damages, courts have never attempted to work out what would have been an appropriate award of general damages at the date of the delict.

[53] A careful reading of the Supreme Court of Appeal's judgment in the present case does not indicate that the Court grappled with the provisions of section 2A(5), which empowers courts to exercise a discretion when awarding interest in respect of any unliquidated debt. There is also nothing to suggest that the Supreme Court of Appeal (which delivered judgment in May 2025) assessed the appropriate amount of general damages as at December 2013, when summons was served. By ordering

interest to run at the prescribed rate from December 2013, the Supreme Court of Appeal effectively increased the respondent's general damages considerably. This would not only be unconscionable but contrary to the spirit and purport of the PRI Act.

[54] What then is the correct application of the PRI Act in relation to interest on general damages in such circumstances? The solution to this problem is to be found in section 2A(5) which confers a discretion upon a court to depart from section 2A(2)(a) and dictate the rate at which interest shall accrue and the date from which such interest shall run on an unliquidated debt. I accept that there is no rationale for the finding that interest should run before judgment has been awarded in respect of general damages because at that stage the defendant could not have been expected to know and ascertain what damage its breach had caused. Accordingly, it is fair and reasonable that the court should order a departure from the date of demand or service of summons if it is assessing the general damages at the date of judgment. Consequently, it follows that interest should be ordered to run from the date of judgment, and this would in any event follow from section 2A of the PRI Act.

[55] This approach accords with the purpose of section 2A of the PRI Act. It was enacted to ensure that claimants were not undercompensated in respect of damages (typically pecuniary damages) assessed in monetary values prevailing at some earlier date, typically the date of a contractual breach or delict. It was not enacted to overcompensate claimants by giving them a windfall in the form of interest on an award assessed in monetary terms at the date of the judgment rather than at an earlier date.

Conclusion

[56] I therefore conclude that interest on general damages should run from date of judgment to the date of payment. This of course assumes that the trial court, as I believe is invariably the case, expresses general damages in monetary values it regards as appropriate at the date of judgment.

Costs

[57] Since the applicant was successful on the only point it raised in this Court; I see no reason why the respondent should not be ordered to pay the applicant's costs. In relation to the costs order made by the Supreme Court of Appeal, the present respondent (as appellant in the Supreme Court of Appeal) pursued two issues, namely, the quantum of general damages and the date from which interest should run. She was successful on both issues, but ought to have succeeded only on the issue of the quantum of general damages. This means that the respondent would have been partly successful and therefore, an order for the parties to pay their own costs in the Supreme Court of Appeal is fair.

Order

[58] The following order is made:

1. Leave to appeal is granted.
2. The appeal is upheld.
3. Paragraph 1 of the order of the Supreme Court of Appeal dated 2 May 2025 is set aside.
4. Paragraph 2(b)(2) of the order of the Supreme Court of Appeal dated 2 May 2025 is set aside and replaced with the following:
   "The applicant is ordered to pay interest on the aforesaid amount at the prescribed rate per annum from the date of the trial court's judgment to date of payment."
5. Each party is to bear its own costs in the Supreme Court of Appeal.
6. The respondent is ordered to pay the costs of the applicant, including costs of two counsel where applicable, in this Court.

For the Applicant:	M Govindasamy SC and M E Mbambo instructed by Office of the State Attorney, Durban
For the Respondent:	T N Aboobaker SC and M Maharaj instructed by Abdul Shaikjee Attorneys Incorporated