



Reportable:	Yes/No
Circulate to Judges:	Yes/No
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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

*CASE NO.: 623/2011
Date heard: 26-11-2021
Date delivered: 19-06-2023*

In the matter between:

THE MINISTER OF DEFENCE

Applicant

and

**PETER JACOBUS HUGO
GERT JOHANNES VERMEULEN
JACOB STEYN N.O.
LOURENS BOTHMA
JUDITH MARIA JACOBA LUBBE
THE SHERIFF FOR THE DISTRICT OF
PRETORIA SOUTH EAST**

**1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent**

CORAM: WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. During September 2010, a fire which started on the property used by the South African National Defense Force, spread to the properties of the 1st to 5th respondents. The respondents (as plaintiffs) issued summons during 2011 against the applicant (as defendant) for damages suffered as a result of the fire.

2. On 13 September 2019 and 6 November 2019 the applicant and the respondents respectively signed a settlement agreement in respect of the damages claim, the terms of which were made an order of Court on 8 November 2019 (the Court order).

3. The relevant paragraphs of the Court order reads as follows;

“1. That the Defendant pays to the Plaintiffs the following amounts:-

1.1 To the First Plaintiff the sum of R3, 698, 90;

1.2 To the Second Plaintiff the sum of R3, 981, 222, 70;

1.3 To the Third Plaintiff the sum of R1, 437, 736, 47;

1.4 To the Fourth Plaintiff the sum of R2, 420,923.50;

1.5 To the Fifth Plaintiff the sum of R1, 489,588.21

2. That the Defendant pays interest on the aforesaid amounts at the rate of 12% per annum calculated from 19/04/2011 to date of payment.

3. Defendant must effect payment of R13 028 370, 78 within 30 days of the court order.”

4. The amount of R13 028 370, 78 in paragraph 4 of the order reflects the total of the awards in paragraph 1 of the order.

5. On 19 December 2019 (11 days late), the applicant paid the amount of R13 028 370, 78 and on 27 February 2020 it paid interest on the said amount at a rate of 12% per annum from 19

- April 2011 to 19 December 2019 in the amount of R13 074 259, 40.
6. On 14 September 2020 the respondents caused a Writ of Execution to be served on the applicant in which the sheriff, the 6th respondent, was instructed to take into execution and realize certain movable assets of the applicant in the amount of R1 048 540, 21 plus interest thereon (and other charges). This amount, according to the respondents, represented the outstanding amount due on the settlement reached between the parties.
 7. On 12 April 2021 the applicant brought an urgent application to interdict the Sheriff from executing on the Writ, pending the final determination of an application for the rescission of the Writ of Execution, which in terms of the order of 12 April 2021, was to be brought within 15 days of that order.
 8. The application for the setting aside of the Writ is the matter I am seized with now. The application was brought late and an application for condonation accompanied it. I need not deal with the merits of the application for condonation or any other preliminary issues raised since the parties have agreed that only the merits of the matter be dealt with. The interests of justice in any event persuade me that condonation be granted.
 9. The applicant is of the view that in terms of the settlement agreement and the corresponding terms of the court order,

- specifically paragraph 2 thereof, that interest is payable from 19 April 2011 until date of payment of the capital amount (the total damages awarded) in paragraph 1 of the court order. As such interest is payable only up until 19 December 2020 when the capital amount was paid, even though the interest which the applicant reckoned was payable was only paid on 27 February 2020.
10. The respondents contend that on date of the court order the principal amount comprised of the amount awarded in damages plus the pre-judgment interest and that post-judgment interest started running on the total of these amounts i.e. R26 417 966, 53 from date of the order until settlement of the entire amount plus interest thereon.
 11. The main complaint of the applicant is apparent from an e-mail sent to its legal representative, Ms. Olivier from the State Attorney, by the deponent to the applicants affidavits, Lt Col Mashego, and that is that the respondents are claiming interest upon interest, which in the applicant's view, is contrary to the court order.
 12. The fundamental mistake made by the applicant, in my view, is the failure to realize that the whole of the judgment debt, which the applicant has agreed to, comprises of the capital amount (the damages awarded) plus the pre-judgment interest, and that as from date of the order and until payment, interest occurs

again on the whole judgment debt, which is inclusive of the pre-judgment interest.

13. In *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd* 2015 (3) SA 479 (CC) at paragraph 99 – 100 the Constitutional Court in its main judgment stated the position as follows:

“[99] There are three further closely related questions with similar practical implications. First, does post-judgment interest run on the whole of the judgment debt or only on the original capital amount of the loan? Second, does the in duplum rule cap the running of such additional interest at double the sum of the whole of the judgment debt or double the sum of the original capital amount of the loan? Third, does this interest run at the contractual rate or at the statutorily prescribed rate of interest?”

*[100] With regard to the first two questions, the order of the Supreme Court of Appeal provided that interest runs on – and is limited to an amount equal to – the whole of the judgment debt, including the portion which consists of previously accrued interest. The parties do not dispute these aspects of the Supreme Court of Appeal’s order, and therefore this Court will not disturb them. The Supreme Court of Appeal also held that the post-judgment interest runs at the rate agreed upon contractually; that is 3% per month. The Paulsens do challenge this finding, arguing that the statutorily prescribed default rate of 15.5% per annum should apply instead. However, the clear weight of authority is against the Paulsens, <http://www.saflii.org/za/cases/ZACC/2015/5.html> - *ftn138* and they have provided no persuasive arguments justifying a departure from the accepted practice of applying the contract rate to post-judgment interest.”*

14. The same position was held by the Supreme Court of Appeal in *Drake Flemmer & Orsmond Inc. and Another v Gajjar* 2018 (3)

SA 353 (SCA) with reference to the *Slip Knot* case, at paragraph 87 thereof in that:

“ . . .where a court awards a capital sum together with pre-judgment interest, the interest that runs on the judgment itself in terms of S 2(1) of the Interest Act (55 of 1975) is interest on the sum of the capital and the pre-judgment interest . . . ”

(own insertion in brackets)

15. The position taken by the applicant would lead to the inequitable situation where upon its interpretation of the court order, it would not be accountable for any delay in paying interest after the payment of the capital amount.
16. In my view therefore the application should fail. Mr AD Olivier who appeared for the applicant, argued that should I find in favour of the respondents, that at least on the basis of an ambiguity to paragraph 2 of the court order, they were justified in bringing the application and that in the event each party should be ordered to pay its own costs.
17. The applicant has however been referred to the authorities mentioned herein by the respondents way before the application was launched and should have been aware that the application was ill-conceived. There is therefore no reason why costs should not follow the result.

In the premises the following order is made;

- a) **The application is dismissed with costs, which costs include the costs reserved on 12 April 2021.**

CC WILLIAMS

JUDGE

For Applicant: Adv A D Olivier
Office of the State Attorney

Respondents: Adv. J Olivier
Oosthuizen Sweetnam Reitz & Fourie
C/O Elliot Maris