



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 14 June 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

MEC: Police, Roads and Transport, Free State Provincial Government v Bovicon Consulting Engineers CC & Another (278/2022) [2023] ZASCA 99 (14 June 2023)

Today, the Supreme Court of Appeal (SCA) dismissed with costs an appeal by the MEC: Police, Roads and Transport, Free State Provincial Government (the MEC) against the judgment of the Free State Division of the High Court, Bloemfontein (the high court). The high court had upheld a claim for post judgment interest in favour of the first respondent, Bovicon Consulting Engineers CC's (Bovicon).

The facts of the matter were as follows. The MEC and Bovicon concluded a contract in terms of which Bovicon provided services to the MEC for which the MEC failed to pay. Consequently, Bovicon issued summons. Two months prior to the issuing of summons, interest on the debt had accumulated to the same value as the capital amount. On 5 December 2019, Bovicon obtained a judgment against the MEC. However, payment on the judgment debt was effected seven months later, on 14 July 2020. Bovicon contended that it was entitled to post judgment interest from 6 December 2019 until 14 July 2020. When this interest remained unpaid, Bovicon issued a warrant of execution against the MEC resulting in the attachment of the Department's movable property.

The MEC launched an urgent application to set aside the warrant of execution citing non-compliance with the provisions of the State Liability Act. Bovicon opposed the application and also filed a counter-application for the post judgment interest. The high court set aside the warrant of execution and declared the attachment unlawful. It also awarded Bovicon the post judgment interest calculated at the rate of 15,5%. Furthermore, the high court granted cost orders against the losing party on the scale in between attorney and client in respect of each of the applications without providing any reasons for granting a punitive costs order.

In the SCA three main issues were argued: firstly, whether the MEC had fully satisfied the judgment debt by means of the payment made on 14 July 2020; secondly, if the judgment debt remained unsettled, what the applicable rate of interest was at the time when judgment was granted; and thirdly, whether the high court erred in awarding Bovicon punitive costs. Additionally, the SCA addressed the inappropriate granting of leave to appeal to the SCA which, in its view, should not have been done.

The SCA found that it was settled law that interest ran anew post judgment until the judgment debt was paid in full. The parties agreed that the appropriate rate of interest would be the prevailing rate at the time when the high court granted judgment. The MEC acknowledged that the awarding of costs is in the discretion of the court which will not to be interfered with in the absence of material misdirection. However, as there were no reasons provided by the High court on why it awarded punitive costs, the

SCA lamented the absence of reasons and emphasized the importance and the need for courts to provide reasons for their decisions.

In respect of the inappropriate granting of leave to appeal to the SCA, it was found that the high court had disregarded the provisions of the Superior Court Act (the Act) which stipulates that leave to appeal from judgments of a single Judge of the High Court, sitting as a court of first instance, should only be granted in instances where the decision appealed against involves important questions of law, conflicting judgments require resolution, or when the case necessitates consideration by the SCA. In this case, there was no justification why the appeal deserved the attention of the SCA. The SCA censured the high court for disregarding the provisions of the Act and warned that in future it would seriously consider invoking its powers to set aside leave to appeal granted in disregard of the Act and its admonitions.

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