



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: 26 October 2021

Status: Immediate

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Rand West City Local Municipality v Quill Associates (Pty) Ltd and Another (Case no 497/20) [2021] ZASCA 150 (26 October 2021)

Today the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Pretoria, with the first respondent being ordered to pay the costs of the application.

The appeal concerned the validity of a writ of execution issued at the instance of the first respondent, Quill Associates (Pty) Ltd (Quill), purportedly in accordance with an order of the Gauteng Division of the High Court, Pretoria (the trial court), dated 31 July 2015. The writ was issued against the appellant, the Rand West Local Municipality (the Municipality).

During 1998 a predecessor of the appellant, being the former Randfontein and Westonaria municipalities, now the Municipality, concluded an agreement with Quill for the use of a software program. It was entitled to the necessary support and maintenance for a period of one year, renewable annually. Subsequent to the merger of the municipalities, a new agreement had to be entered into in terms of which the appellant was not expected to pay for the program again, but was to continue to pay licence fees, as it did in the previous years. In July 2011, one of the former municipalities gave notice to terminate the 2004 agreement and informed the first respondent that it would continue using the program on a month-to-month basis. Litigation was threatened as no new agreement could be reached concerning the future use of the program. However, during this period the appellant's predecessors continued using the program without paying licence fees. This caused the first respondent to institute action against the Municipality in the trial court, claiming interdictory and monetary relief, basing its claim on copyright infringement. The trial court held that Quill's copyright had indeed been infringed and granted the order sought, together with interest on the said amounts at a rate of 15.5% per annum *ad tempore more* as well as value added tax (VAT) if it was applicable. The Registrar of the High Court in Pretoria issued a writ of execution on the outstanding balance and included interest and VAT in the calculations. The Municipality launched an application for the review and setting aside of the writ of execution. The application was however dismissed.

The issue at the Supreme Court of Appeal pertained to the dismissed order and it had to decide whether a ‘decision’ to issue a writ of execution was susceptible to review in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), whether interest *a tempore morae* is ‘calculated from the date when the liability arose, or on a date when the summons was served as provided for in the Prescribed Rate of Interest Act 55 of 1975’ and whether VAT is payable in respect of an order or an award made by a court pursuant to copyright infringements.

The approach of the high court was flawed as it failed to give cognisance to the relief sought by Quill before the trial court. Compound interest was never prayed for. Instead, the trial court was specifically asked to determine the amount of reasonable royalty and licence fees. The trial court set out a range of factors it had taken into account to compensate Quill for the breach of its copyright. Until the reasonable royalty, based on all the factors alluded to by the trial court, and licence fees were determined, there were no amounts on which interest could run. Interest would, in the ordinary course, only run from that date at the prescribed rate of interest.

The Municipality was thus undoubtedly correct in its stance on the time from when *mora* interest started to run, namely, from the time of the determination by the trial court, of what was due to Quill in the form of reasonable royalty and licence fees. The Municipality was also correct in relation to interest and VAT. The writ was not in accordance with the order of the trial court and was, therefore, liable to be set aside. In the result, the appeal was upheld with costs, the writ of execution set aside and the first respondent ordered to pay the costs of the application.

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