

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 614/2003

UMZIMNENE INVESTMENTS (PTY) LIMITED Applicant

And

SWAZILAND BUILDING SOCIETY

Respondent

S.B. MAPHALALA - J MR.

Coram

Z. MAGAGULA MR. P.

For the Applicant For

FLYNN (Instructed by

the Respondent

Cloete Henwood /

Dlamini)

JUDGMENT 5th
March 2009

[1] The only issue for determination by this court is the mode of calculation of interest due in a judgment by my Brother Mamba on the 29th September 2006.

[2] The Applicant seeks an order declaring that has paid the capital and interest due in terms of a judgment which was granted against it on the 29th September 2006. An alternative prayer seeks an order directing the Respondent to debate the interest and capital amount due the judgment granted was in the sum of E249, 502-62 as at 31st March 2003. The respondent was also granted interest on the judgment amount at a rate of 17.25% per annum from the 31st March 2003.

[3] The amount due as at the 30th September 2006 was an amount of E455, 534-04.

[4] The Applicant contends that the Respondent was allowed to charge interest on the amount of the judgment and not on any interest added to the judgment.

[5] The Applicant paid an amount of E439, 000-00 on the 29th October 2007. As interest runs from 31st March 2003, to date of payment this payment did not settle the full outstanding amount as at that date.

[6] The Applicant contends that the court ought to pronounce on the correct amount due to Respondent as there is a dispute on how the interest ought to be calculated.

[7] The Respondent contends on the other hand that there can be no dispute as to the method of calculation which is a matter of law to be applied to the terms of the judgment granted. The Applicant cannot seek an interpretation of that judgment in this application and is bound by its terms. A debatement is *res judicata* and the Applicant cannot now reopen issues canvassed in the trial in order to vary the terms of the judgment.

[8] According to the Respondent the judgment in this matter determined an amount due as at the 31st March 2003, and ordered that interest would continue to run from that date of payment at the agreed rate. It is to be noted the amount of the judgment included an interest element and that at the time of judgment in 2006 interest had accrued on interest. The law clearly accepts that compound interest is the "life-blood of finance" in modern times. In this matter interest ran at the agreed rate from the date of issue of summons on compound basis (the *in duplum* rule being suspended *pendente lite*). And the Respondent was on judgment entitled to interest on the then accumulated amount until date of payment. On this basis the Applicant has clearly not satisfied the judgment.

[9] In this regard the court was referred to the cases of *Commercial Bank of Zimbabwe Ltd vs MM Builder & Suppliers (PVT) Ltd 1997 (2) S.A. 285 (ZH)* at 300 G and that of *Standard Bank of South Africa Ltd vs Oeanate Investments (Pty) Ltd 1998 (1) S.A. 811 (SCA)* at 832 to 834.

[10] The Applicant's argument is that the Respondent was never granted such interest but was granted simple interest at the flat rate of 17.25% per annum.

[11] The Applicant contends that the interest of 17.25% per annum is calculated from the 31st March 2007 to date of payment, which date was the 25th October 2007. The interest totals up to E197, 263-00, if it is calculated at 17.25% per annum summing up to E45, 039-20 per annum, plus the seven (7) months for 2007.

[12] When the sum of E197, 263-00 is added to the judgment debt it comes up to E446, 765-62.

[13] Applicant on the 25th October 2007 paid a sum of E439, 000-00 and attempted to pay E7, 765-00 on the 30th October 2007, which latter cheque was returned by the Respondent's attorneys. At the very most, Applicant has the sum of E7, 765-62 owing on the first orders granted by Mamba J.

[14] After I have assessed the arguments of the parties outlined above it would appear to me that the Applicant is correct in his contentions. It is my considered view after reading the text of the judgment by Mamba J that the learned Judge never granted compound interest but granted simple interest at the flat rate of 17.25% per annum. There is nothing in the judgment of the learned Judge that the interest was compound interest. I am inclined to agree with the arguments of the Applicant's in the Heads of Arguments.

[15] It would appear to me also that the Respondent's claim that they are also entitled to recover insurance premium they have been paying on the property is ill-conceived. I say so because Mamba J did not order that Applicant pay them any insurance.

[16] In the result, for the afore-going reasons Applicant having paid the sum of E439, 000-00 now at best owes E7, 765-62 in respect of the judgment debt and interest. What is left owing is commission plus costs which should be taxed or agreed upon. The order is accordingly granted in terms of the Notice of Motion with costs.



S.B. MAPHALALA
PRINCIPAL JUDGE