



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No. 1080/2012

In the matter between:

**SWAZILAND DEVELOPMENT FINANCE
CORPORATION (FINCORP)**

PLAINTIFF

And

MFANUKHONA LIONET MSIBI

DEFENDANT

Neutral Citation:

*Swaziland Development Finance Corporation
(FINCOP) vs. Mfanukhona Lionet Msibi (1080/12)*
[2016] SZHC 166 (June 2016)

Coram:

MLANGENI J.

Heard: 5th April 2016

Delivered: 8th June 2016

Summary: *Law of Contract – Loan agreement and breach thereof by the loan receiver.*

Claim for outstanding balance – Consent judgment entered in respect of amount claimed on the particulars of claim.

*Dispute arising whether contractual interest payable with effect from mora date or from date of judgment. Particulars of claim merely praying for “**interest thereon at the rate of 19.5 per cent per annum**”, without reference to mora date.*

Mora interest not having been specifically prayed for and that, in any event, leading to breach of the in duplum rule,

Held: Interest is to run from date of judgment to date of final payment.

JUDGMENT

[1] By summons dated 13th June 2012 the Plaintiff claimed from the Defendant payment of E46, 503.94, being outstanding balance in respect of a loan which was advanced by the Plaintiff to the Defendant

on or about 19th May 2008, upon terms and conditions that were allegedly breached by the Defendant. The Plaintiff also claimed ancillary relief, inclusive of interest at the rate of 19.5 per cent per annum.

[2] Full pleadings were filed, and the matter was allocated a date of trial. On the 14th December 2015 the court was informed that the Defendant was consenting to pay the amount claimed in the particulars, being E46, 503-94. The parties further undertook to file a detailed agreement of settlement which would address the ancillary matters of interest and costs, as well as the programme of payment, to be made an order of court.

[3] The court was subsequently informed that the parties had failed to settle a comprehensive agreement, the point of disagreement being the date upon which the 19.5 interest was to start running. In its heads of argument dated 4th April 2016 the Plaintiff puts the bone of contention crisply, as follows:-

“The issue for determination is whether or not the Defendant is entitled to pay interest from date of Judgment or from date of default?”

[4] In respect of interest the Plaintiff's prayer is in the following terms:-

"Interest thereon at the rate of 19.5% per annum".

The word ***"thereon"*** clearly refers to the amount claimed in the summons, being E46, 503-94.

[5] It appears to me that the above leads to only one conclusion, that interest on the amount of E46, 503-94 is payable at the contractual rate of 19.5 per cent per annum, and logically this must be from date of judgment. Anything to the contrary would create insurmountable difficulties in calculation. For instance, if the interest was to be payable retrospectively on the amount of E46, 503-94 I foresee that one would get to figures that would be difficult to justify.

[6] I have made reference to the account transaction history in respect of the loan agreement. As at 30th March 2016 it shows an outstanding balance of E176, 040-01 as well as a total of E99, 746-40 which appears to have been paid by the Defendant. The two figures give a total of E275, 786-41 which the Plaintiff expects to receive from the Defendant in respect of the loan contract.

- [7] In terms of the '*in duplum* rule' the Plaintiff can only claim twice the loan amount, in *casu* the figure being E209, 600-00. So clearly, the effective date of interest as argued for by the Plaintiff would lead to a result that offends against the *in duplum* rule to the extent of E66, 184-41. In any event, *mora* interest was not prayed for in the particulars.
- [8] I have acquainted myself with the judgment of my brother S.B Maphalala J. as he then was, in the case of **UMZIMNENE INVESTMENTS (PTY) LIMITED V. SWAZILAND BUILDING SOCIETY**, in which he was principally concerned with interpreting the judgment of Mamba J. I see this as a significant distinguishing factor whose result is that I am not bound by the judgment one way or the other.
- [9] In the totality of the foregoing I hold that interest shall run from date of judgment to date of final payment, at the rate of 19.5 per cent per annum. If the Plaintiff had specifically prayed for interest calculated from the *mora* date this would have been a matter for consideration but, in my view, not without reference to the "***in duplum* rule**".

[10] I note that legal costs in favour of the Plaintiff were agreed upon at E20, 000-00, hence I need not make any order in respect of costs.



T.M. MLANGENI

JUDGE OF THE HIGH COURT

For Plaintiff: **Mr. H. Mdladla**

For Defendant: **Mr. X. Mthethwa**