



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No: D9007/ 2016

In the matter between:

THE HONOURBLE MINISTER OF POLICE

APPLICANT

and

ZAMA BERYL MKHWANKAZI

RESPONDENT

in re:

ZAMA BERYL MKHWANKAZI

PLAINTIFF

and

THE HONOURBLE MINISTER OF POLICE

DEFENDANT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

S.SINGH AJ

- [1] The application before this Court for leave to appeal against part of the trial Judgment and Court Order granted for the plaintiff, who is the respondent herein, for the interest from date of demand against the defendant, who is the applicant herein, also includes an application for condonation for late filing of this application for leave to appeal. The respondent opposed the entire application for leave to

appeal, duly represented by her trial attorney, whilst the applicant has new state representative Adv M.M. Schaaij and hearing of this application took place on 23 September 2024 and judgment was delivered with reasons which forms part of the records of the hearing on the said date.

[2] APPLICATION FOR CONDONATION

- 2.1 The law in respect of condonation is well established. It is trite that the granting or refusal of condonation is a matter of judicial discretion which involves a value judgment by the Court seized with a matter in respect of the case facts. See *Grootboom v NPA* 2014 (2) SA 68 (CC) paragraph 35.
- 2.2 the standard for consideration is the interest of justice, dependent upon the facts of each case, namely explanations for the delay and prospects of success on the merits, and further whether there is public interest that the matter be heard and determined. See *S. v Mercer* [2003] ZACC 22; 2004 (2) SA 598; paragraph 4.
- 2.3. In my view, accordingly, the applicant is entitled to be condoned so the application for condonation must be granted by this Court.

[3] APPLICATION FOR LEAVE TO APPEAL

- 3.1. The applicant has not correctly explained the prescribed rate of interest law or paragraph 43 of the *Khedama* case, nor are there legal and factual evidence in support of the applicants application for leave to appeal..

3.2. Section 2A of the Prescribed Rate of Interest Act must be read with Section 2 (1) and Section 1 (1) thereof. The relevant applicable provisions of the said Act are:

- [i] Section 2A (1) provides that subject to the provisions of this Section the amount of every unliquidated debt as determined by a Court of law or by agreement between the parties shall bear interest as contemplated in Section 1.
- [ii] Section 2A (2)(a) provides that subject to any other agreement between the parties the interest contemplated in sub Section (1) shall run from the date payment of the debt is claimed by a service of a demand or summons on the debtor which ever date is earlier.
- [iii] Section 2A (5) provides that notwithstanding the provisions of this Act but subject to any other law or an agreement between the parties, a Court of law may make such order as appears just in respect of the payment of interest on an unliquidated debt.

3.3. Section 1 (1) provides that if a debt bears interest not governed by any other law or an agreement, such interest shall be calculated in terms of Section 1 (2) unless a Court of law, on special circumstances relating to that debt orders otherwise.

3.4. Section 2 (1) provides that every judgment debt shall bear interest from the day in which such judgment debt is payable unless that judgment or order provides otherwise.

- 3.5. Accordingly the interest Act hereinbefore stated recognises and approves the wide discretion of court officials in determining the date of payment of interest.
- 3.6. In granting the payment of interest from date of demand I did consider the Honourable JP Poyo's judgment, Minister of Police v Khedama (AR 259/2022) [2024] ZAKPHC, in conjunction with relevant SCA cases as guides. I then followed the SCA which allows interest payment from date of demand, which SCA cases are explained in paragraph 26 of my judgment. Paragraph 43 of the Khedama case explained that, in that case there was no explanation why interest was awarded from an earlier date than the date of judgment, and there was no reason seen why the interest in the Khedama case should not run from judgment.
- 3.7. In my judgment I did give legal and factual explanations for granting the interest from date of demand and, therefore I did not make an incorrect interest decision as alleged by the applicant incorrectly. I did explain in paragraph 26 of my judgment that the respondent argued for payment of interest from date of demand as pleaded but there was no counter argument from the applicant. That was proof that the applicant and the respondent did agree to payment of interest from date of demand. The Applicant has misunderstood the trial and pleading factual evidence as well as the legal relevant case laws.
- 3.8. Of relevant importance is the further fact that during communications between the respondent and the Honourable Judge President Poyo I did

send my trial Judgment for consideration to the said Honourable JP Poyo, which was approved and sent to Court where my judgment was handed down by a Judge on my behalf.

[4] **CONCLUSION**

- 4.1. The application for condonation is hereby granted by this Court.
- 4.2. There were no reasonable prospects of success to grant the application for leave to appeal. The interest issue raised by the applicant is not supported by any evidence to counteract or rebut the evidence presented for the respondent in her pleadings or evidential information and arguments.

ORDER

The following order is made:

- [1] The application for condonation is granted;
- [2] The application for leave to appeal is refused and dismissed;
- [3] The applicant shall pay into the trust account of attorney Logan Pillay & K.Padayachee the party and party costs of this application.


S. SINGH AJ

Date of hearing of application: 23 September 2024

Date of Judgment: 23 September 2024
(Refusal of Application for Leave To Appeal):

APPEARANCES

Counsel for the applicant: Adv M Schaaïj

Instructed by: State Attorney - KZN

Counsel for the respondent Logan Pillay

Instructed by Logan Pillay & K.Padayachee
Attorneys