

**REPUBLIC OF SOUTH AFRICA**

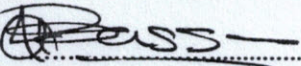
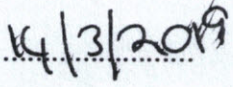


**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**(FUNCTIONING AS THE MPUMALANGA CIRCUIT COURT, MBOMBELA)**

**CASE NO: 3442/2016**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
<b>SIGNATURE</b>	<b>DATE</b>

In the matter between:

**MAHSILO LAMBRECHT ARCHITECTS**

**(Applicant in the application for leave to appeal)**

**PLAINTIFF**

and

**THE PREMIER OF THE EXECUTIVE OF MPUMALANGA**

**(Respondent in the application for leave to appeal)**



MEMBERS OF THE EXECUTIVE COUNCIL  
FOR THE DEPARTMENT OF PUBLIC WORKS,  
ROADS AND TRANSPORT OF THE  
PROVINCIAL GOVERNMENT OF MPUMALANGA  
(Respondent in the application for leave to appeal)

SECOND EXCIPIENT/2<sup>ND</sup> DEFENDANT

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JUDGMENT

(APPLICATION FOR LEAVE TO APPEAL)

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AC BASSON, J

First summons

- [1] The applicant in the application for leave to appeal (the plaintiff - Mashilo Lambrecht's Architects) instituted action against the excipients (the defendants) for payment of interest which allegedly accrued as a result of the failure of the Department of Public Works, Roads & Transport – "the Department". I will continue to refer to the parties as the "plaintiff" and the "defendant".
- [2] On 4 May 2015 Preller, J ordered the defendants to pay the amounts owned in terms of three invoices. The said order – attached to the Particulars of Claim as "Annexure A" - reads as follows:

"1. First and second respondents [the defendants in this application] are hereby jointly and severally, the one complying the other to be absolved, to pay invoices number 546A, 546BB and 593 which the applicant [Mashilo Lambrecht's Architects] rendered to the first and second respondents for professional services rendered to the first and second respondents.

2. Costs of this application."



- [3] Preller, J did not order the defendants to pay any interest in respect of the three invoices.
- [4] The defendants paid the amounts (R1 682 592.44) in compliance with the court order in July 2015 (approximately 2 months after that order) and in compliance with the amounts claimed in terms of the three invoices.

#### Second summons

- [5] The plaintiff now, for the second time and in terms of a further summons, instituted action against the defendants for payment of interest which allegedly accrued as a result of the defendant's failure to timely pay the three invoices which formed the subject matter of the order made by Preller, J. The plaintiff now claims that, because the Department defaulted in making timeous payment of the three invoices in terms of the contract between the parties, they are now entitled to *mora* interest. In essence the plaintiff claims that they are entitled to institute a further summons to claim the interest payable on the amount that was awarded to them in terms of the order of Preller, J. In the Particulars of Claim (against which the defendants excepted), the plaintiff records that it had obtained an order against the Department for payment in respect of the three invoices (referred to in the order) but that the defendants were obliged to make payment within 14 days after the rendering of the invoice by the plaintiff. In paragraph 6.3 the following is now claimed:

"In the premises therefore, Defendant became liable to pay the Plaintiff *mora* interest at a rate as is prescribed by the Prescribed Rate of Interest Act, 55 of 1957, as from the date of the default..."

- [6] The defendants excepted against the Particulars of Claim and submitted that any *mora* interest payable by the defendants to the plaintiff was a remedy that was available to the plaintiff in respect of the defendants' then failure to effect timeous payment of the amount due. That remedy was available at the time when the first summons was instituted. The claim for payment in terms of the first summons and the claim for *mora* interest in terms of the second summons thus form part



of one cause of action which is the cause of action that served before Preller, J. The plaintiff was therefore, according to the defendants, compelled to pursue all its claims in the proceedings which led to the order granted by Preller, J.

- [7] This court agreed with the defendants and made the following order:
- (i) The defendants' exception succeeds.
  - (ii) The plaintiff is afforded a period of twenty days from the date of this order to amend its particulars of claim, if so advised.
  - (iii) The plaintiff to pay the costs.
- [8] The plaintiff filed an application for leave to appeal arguing that there exists a reasonable possibility that a different court might come to a different finding than the one this court arrived at.
- [9] Counsel on behalf of the plaintiff submitted that the claim of interest is a distinct and self-contained claim with reference to, *inter alia*, the following two cases. *Dunn v Road Accident Fund*<sup>1</sup> and *Wedge Steel (Pty) Ltd v Wepener*.<sup>2</sup> Neither of these cases assists the plaintiff. In *Dunn* the issue before the Court was interest on a judgment debt. The bone of contention in those proceedings was the date from which interests had to be calculated: Was it from the date of judgment or was it from the date of payment of the lump sum due to the applicant in terms of the judgment order. The issue relating to interests on a judgment debt is thus vastly different from what is in issue in this matter. In *Wedge Steel* the court held in the context of a provisional sentence claim that the liquidity of a claim for interests in provisional sentence proceedings had to be determined apart from the determination of the liquidity of the principal debt. In *Wedge* the court was in a position to grant provisional sentence in respect of the capital sum as that constituted a liquid document. However, in respect of the claim for interests on the capital sum, the court in *Wedge* had reservations in respect of the certificates that were issued as to the dates on which the defendant's indebtedness arose.

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<sup>1</sup> 2019 (1) SA 237 (KZD).

<sup>2</sup> 1991 (3) SA 444 (W).



615 at p. 620; *Oslo Land Co. Ltd. v The Union Government*, 1938 AD 584 at p. 591) and to claims arising out of a breach of contract (see, e.g., *Kantor v Welldone Upholsterers*, 1944 CPD 388 at p. 391; *Boshoff v Union Government*, 1932 t.p.d. 345). The rule has its origin in considerations of public policy which require that there should be a term set to litigation and that an accused or a defendant should not be twice harassed upon the same cause.”

- [11] In amplification counsel on behalf of the defendants submitted that this means that, in a claim for damages arising from the breach of contract, a plaintiff may claim damages for all the damage flowing from the cause of action but should do so in a single action. Such a party may not bring a further action for any further damages he or she may discover after the date when he or she obtained judgment. The rationale for this rule is explained by the court in *Symington and Others v Pretoria -Oos Privaat Hospitaal Bedryfs (Pty) Ltd*<sup>4</sup>

“[26]... I think this assumption was fairly made. It would be in accordance with the so-called 'once and for all' rule. This rule is based on the principle that the law requires a party with a single cause of action to claim in one and the same action whatever remedies the law presents upon such cause. Its purpose is to prevent a multiplicity of actions based upon a single cause of action and to ensure that there is an end to litigation. As explained by Corbett JA in *Evins v Shield B Insurance Co Ltd* 1980 (2) SA 814 (A) at 835 the effect of the rule on claims for damages, both in contract and in delict, is that a plaintiff is generally required to claim in one action all damages, both already sustained and prospective, flowing from the same cause of action.”

- [12] The defendants further relied on *Janse Van Rensburg and Others NNO v Steenkamp and Another; Janse van Rensburg and Others NNO v Myburgh and Others*<sup>5</sup> where the court explained the application of the “once and for all” rule as follows:

‘[27] The scope of the 'once and for all' rule was said in the *National Sorghum* case at 241D - E to require that all claims generated by the same cause of action be

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<sup>4</sup> 2005 (5) SA 550 (SCA) at para [26].

<sup>5</sup> 2010 (1) SA 649 (SCA) at para [27]-[29].



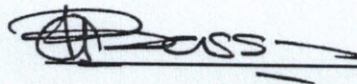
relies on the terms of the letter of appointment dated 28 March 2002 and in terms of which the defendants were obliged to make payments to the plaintiff within 14 days after the rendering of the invoice by the plaintiff. This cause of action formed the basis of the proceedings which culminated in an order granted by Preller, J. In my view this matter falls squarely within the ambit of the "once and for all rule" in terms of which it is required that all claims generated by the same cause of action be instituted in one action. This the plaintiff did not do.

[16] The upholding of an exception does not dispose of the plaintiff's action - it merely disposes of the pleading against which the exception was taken. The plaintiff was granted leave to amend its pleadings.

[17] I have considered the submissions on behalf of the plaintiff in the application for leave to appeal. I am not for the reasons set out hereinabove persuaded that the intended appeal has reasonable prospects of success.

[18] In the event the following order is made:

The application for leave to appeal is dismissed with costs.



AC BASSON

JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff:

Adv. P Sieberhagen

Instructed by:

Du Toit, Swanepoel, Steyn & Sprut Attorneys

For the defendant:

Adv TP Krüger SC

Instructed by:

Adendorff Theron Incorporated