



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

*Crookes Brothers Ltd v Regional Land Claims Commission for the Province of
Mpumalanga & others
(590/2011) [2012] ZASCA 128 (21 September 2012)*

The Supreme Court of Appeal (SCA) today held that the Regional Land Claims Commission for the Province of Mpumalanga, the National Department of Land Affairs and the Government of the Republic of South Africa (the respondents) were liable to pay interest on the purchase price of certain immovable properties to Crookes Brothers Ltd (the appellant). It accordingly upheld an appeal against an order of the North Gauteng High Court, Pretoria dismissing the appellant's claim.

The respondents had bought the properties, which formed the subject matter of land claims by various communities in terms of the Restitution of Land Rights Act 22 of 1994, from the appellant. The respondents thereafter failed to timeously provide a guarantee as they were obliged to in terms of the agreement. That resulted in a delay in effecting transfer, which in turn resulted in the late payment of the purchase price. Had the respondents complied with the agreement, the undertaking would have been provided on 4 September 2009, the transfer would have been registered by no later than 25 September 2009 and the purchase price would have been payable by no later than 9 October 2009. In terms of clause 6 of the agreement the respondents were liable to pay mora interest at the rate of 15.5% if they failed to pay any part of the purchase on the date on which it was due in terms of the agreement.

Since the respondents were in breach of the agreement by failing to provide the undertaking, they were given written notice to that effect and afforded an opportunity to remedy the breach within fourteen days as required by clause 18. The response to the notice by the respondents was that they did not have the funds and could thus not furnish the requisite guarantee. They only furnished the guarantee on 15 June 2010. The registration and transfer of the property was subsequently effected and the purchase price only paid on 5 July 2010. The respondents thereafter refused to pay interest.

The appellant's claim for interest was dismissed by the high court. The high court held that clause 6, which dealt with interest, was not applicable inasmuch as the appellant remained the owner and in possession of the property and as such was entitled to the enjoyment of the properties and the fruits thereof until transfer.

Before the SCA counsel for the respondents argued that since the purchase price had been paid within ten days after the date of transfer as required by clause 3.2, clause 6 was not applicable. They further argued that the appellant could only rely on section 1 of the Prescribed Rate of Interest Act 55 of 1975 (the Act). The SCA found that clause 6 was applicable. It held that the respondents' obligation to pay the purchase price was not an independent and self-standing obligation but was dependent for its fulfilment on the obligation to provide the undertaking. It further held that the appellant would still have been entitled to interest even had there been no contractual obligation for the respondents to pay such interest. The appellant did not have to prove that it had suffered a loss as a result of the late payment. The SCA dismissed the respondents' argument that the high court, in dismissing the application, exercised a discretion in terms of section 1 of the Act. Finally, the court criticised the tardy conduct of the employees in the employ of the respondents in dealing with the matter.