REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO. 72470/2018

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

In the matter between:

THE RAND WEST CITY LOCAL MUNICIPALITY **APPLICANT**

and

QUILL ASSOCIATES (PTY) LTD **1ST RESPONDENT**

THE REGISTRAR OF THE HIGH COURT **2ND RESPONDENT**

(GAUTENG DIVISION, PRETORIA)

JUDGMENT

BOTES AJ

INTRODUCTION

1. I handed down judgment in this matter on 9 April 2020, in terms of which I made an order in the following terms:

   "1. Permission is granted to the First Respondent to deliver a further affidavit dealing with the consequences of the amendment of the Applicant's notice of motion;

   2 No order in respect of the costs occasioned by the First Respondent's application to file a further affidavit is made; and

   3 The application is dismissed with costs."

2. The Applicant initiated an application for leave to appeal to the Supreme Court of Appeal against the whole of my judgment and the aforementioned order.

THE GROUNDS UPON WHICH LEAVE TO APPEAL IS SOUGHT

3. The Applicant relies on the following grounds upon which leave to appeal is sought:

   3.1. Value added tax (*"VAT"*) is not payable on the amounts which were awarded by the Trial Court (Potterill J), by virtue of the fact that the Trial Court did not find that the First Respondent's claim against the Applicant was based on breach of contract.

      3.1.1. The continued use of the computer programme by the Applicant had nothing to do with breach of contract. It was simply an infringement on the First Respondent's copyright as contemplated in the Copyright Act;

      3.1.2. The First Respondent's claim was not for a reasonable royalty, but rather in lieu of damages; and

3.1.3. The First Respondent was never entitled to royalties and it would never have earned royalties from the Applicant after the agreements were terminated.

The Applicant therefore submits that VAT is not payable on the amounts so ordered by the Trial Court.

3.2. The provisions of the Promotion of Administrative Justice Act ("*PAJA*") are applicable by virtue of the following:

3.2.1. The warrant for execution was not in accordance with the order made by the Trial Court, which renders it reviewable;

3.2.2. The decision by the Registrar to issue the warrant for execution is reviewable under PAJA; and

3.2.3. The mere fact that the Registrar failed to give the Applicant and opportunity to submit its version is indicative that he/she did not properly apply his/her mind.

The Applicant therefore submits that the decision of the Registrar to issue the warrant for execution should be reviewed in terms of PAJA.

3.3. This Court erred in not addressing the Applicant's argument that there is a difference between interest *a tempore morae* (a common law phenomenon) and interest in terms of the Prescribed Rate of Interest Act (*"the Interest Act"*).

3.3.1. The authorities relied upon by this Court do not support the conclusion reached in the judgment;

3.3.2. Nothing could have gone *"according to plan"* because there was no plan, by agreement or otherwise, in terms of which the First Respondent would have earned royalties and monthly instalment payments. There was an infringement of copyright.

The Applicant therefore submits that interest *a tempore morae* should only become payable on date of a judgment or an order.

3.4. Compound interest is claimable only in certain defined circumstances.

3.4.1. There are conflicting judgments in this regard and the authorities relied upon by this Court do not deal with interest *a tempore morae* or interest in terms of the Interest Act;

3.4.2. This Court applied the wrong principles and quoted the authorities relied upon out of context;

3.4.3. The authorities relied upon by this Court are not authoritative on compound interest in general; and

3.4.4. The First Respondent did not claim compound interest, did not prove an universal custom and was not awarded orders to the effect that compound interest was payable.

In the premise the matter is clinched by Section 2(3) of the Interest Act and compound interest on a judgment debt is therefore specifically excluded.

3.5. This Court failed to consider the public interest which is underpinned by the fact that the money in question was essential for the functioning of the Applicant as a Local Authority for the benefit of the public well-being. This brings the Applicant's bank account within the ambit of **Nyathi v MEC for Department of Health, Gauteng and another 2008(5) SA 94 (CC)**.

The Applicant therefore submits that its bank account is not capable of attachment.

CONCLUSION

4. Leave to appeal may only be given if this Court is of the opinion that the appeal would have a reasonable prospect of success or if there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

5. This application involves novel and difficult legal principles.

6. In the premise I am of the view that leave to appeal to the Supreme Court of Appeal should be granted.

WHEREFORE I make an order in the following terms:

1. **Leave to appeal is granted to the Applicant to appeal to the Supreme Court of Appeal against the whole of the judgment and the order of this Court; and**

2. **The costs of the application for leave to appeal are costs in the appeal.**

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F W BOTES

Acting Judge of the High Court of South Africa