IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2023] (18 December 2023)
SCA MA40/2023 arising in SCA 49/2019

JUSTIN ETZIN **Applicant**

(rep. by Olivier Chang Leng)

And

SACOS INSURANCE COMPANY LIMITED **Respondent**
(rep. by Kieran Shah (SC)

Neutral Citation:	*Etzin v SACOS Insurance Company Limited (*SCA MA 40/2023) [2023] (18 December 2023)
Before:	Fernando (PCA) Twomey-Woods, Carolus, JJA
Summary:	clarification of judgment – date from which interest payable on award not specified
Heard:	12 December 2023
Delivered:	18 December 2023

RULING

ORDER

The application is dismissed with costs.

TWOMEY-WOODS JA *(Fernando PCA and Carolus JA concurring)*

Background

1. In an appeal before this Court on 19 August 2022, with regard to a claim for the payment of monies under an insurance policy, this Court made the following orders:

> *(1) The order of the court a quo is maintained with regard to the payment by SACOS Insurance Co Limited of SR 11,723,830 being the insured sum for the total loss of the house.*

(2) The order of the court a quo is maintained with regard to the payment of SR20,000 by SACOS Insurance Co Limited in respect of expenses incurred.

(3) The order of the court a quo for the payment of moral damage is quashed, substituting in its place an order for payment of SR100,000 by SACOS Insurance Co Limited.

(4) The whole with interests and costs

2. The Applicant has now applied to this court by way of Motion supported by Affidavit for clarification of the judgment according to Rule 13 (2) of the Court of Appeal Rules.

The application

3. In his Affidavit supporting his Motion, the Applicant avers that whilst the Court of Appeal ordered that the sums due to him by the Respondent were with interest and costs, it did not specify from when interest was to start accruing. He goes on to aver that in his Amended Plaint dated 11th February 2019, on which the Supreme Court's judgment was given, he had prayed for interest to commence from the 22 December 2015, being the date that he had made his insurance claim with the Respondent.

4. He prayed that this Court clarifies from when interest was to accrue on the judgment that was owed to him by the Respondents in line with the orders of the Court of Appeal judgment.

5. In response, the Respondent has sworn a counter affidavit in which it claims that there was no slip, accidental error or omission under Rule 13(2) of the Court of Appeal Rules to mandate any correction to be made by the Court to its judgment. Learned Senior Counsel for the Respondent, Mr. Shah, has relied on the Court of Appeal record of proceedings of 2 August 2022 in which the question of interest was raised by the Court and answered by Counsel. He submitted that both parties agreed on the date from which interest should run.

Discussion

6. It must be noted that in his Plaint, the Applicant prayed:

> *"[t]hat the Defendant pays interest on the insured sums from the time of the acceptance of contractual liability for the claim with costs."*

7. It must also be noted that the date from which the interest was to run was not clear from the decision in the court below:

> *'[77] In their written submission, the Defendant argues that they are liable to pay "4% per annum as from the date on which the Plaint was filed, namely 16th March 2018".*
>
> *[78] It follows thus based on the above legal reasoning that the Plaintiff is entitled to 4% per annum of the interest from the amount the Defendant was supposed to pay him.*
>
> *...*
> *[88]Defendant is further ordered to pay moral damages based on the figure of 4% per annum interest as from the date on which the Plaint was filed, that is, the 16th March 2018.*

8. There is no mention of the date of 22nd December 2015, when liability was settled out of court by the parties. It was in that context that the following exchange took place at the appeal hearing on 2 August 2022:

> *"Court: So when will [interest] run - from the Court of Appeal decision or will it run from the court a quo's decision?*
>
> *Mr. Shah: It would be from the court below.*
>
> *...*
>
> *Court: From when? From when should it run the 4%?*
>
> *Mr. Chang Leng: I would submit that it should be from the date the Plaint was filed, my lady, as per the order of the judgment, which is the 16th March 2018.*

Court: why, why from the date of the Plaint's filing as opposed to the date of the decision?

Mr. Chang Lang: Yes, in fact, your ladyship, then it is correct it would be from the date of judgment."

9. It is clear from the above that this Court's decision regarding interest was made in the context of the above exchange between the Court and both parties. This Court addressed and settled any confusion regarding the Supreme Court decision on the issue of interest. There is no question, therefore, of any further clarification.

10. In *Chetty v Chetty* (SCA 15 of 2013) [2014] SCCA 12 (11 April 2014), in a similar context, this Court stated:

"The applicants, in this case, are not seeking any clarification or correction for that matter. They are seeking prayers for an order so that their own interpretation of a paragraph in the judgment be given effect to so that the final orders by this Court made be negated. We decline to be led into such a dangerous course of action in the interpretation of Rule 13(2) of the Seychelles Court of Appeal Rules. There are certain things that can be done under it and there are certain things that cannot be done. There can be an amendment to a figure for example but there cannot be an amendment to any final order unequivocally made the result of would trigger another process of adjudication: see Revera v Dinan 3 SCAR (Vol II) p. 225; Moore v Buchanan [1967] 1 WLR 1341; Tak Ming Co. Ltd v. Yee Sang Metal Supplies Co. 1973 1 WLR 300…"

11. Similarly, in *Adeline v Talma* (SCA MA 36 of 2023) [2023] SCCA 54 (25 August 2023), an application identical to the one in the present suit was made to this Court. We relied on the South African case of *Blue Cell (Pty) Ltd (in liquidation) v Blue Financial Services Limited and others* (unreported) Case No: 8456/07 where Matojane J said:

"Once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter, or supplement it. The reason is that it thereupon becomes functus officio: its jurisdiction in the case having been fully and finally exercised, its authority over the subject-matter has ceased. There are, however, a few

exceptions to that rule. Thus, provided the court is approached within a reasonable time of its pronouncing the judgment or order, it may correct, alter or supplement it in one or more of the following case: (1) The principal judgment or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgment debt, that the court overlooked or inadvertently omitted to grant. (2) The court may clarify its judgment or order, if, on a proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter 'the sense and substance' of the judgment or order. (3) The court may correct a clerical, arithmetical, or other error in its judgment or order so as to give effect to its true intention. This exception is confined to the mere correction of an error in expressing the judgment or order; it does not extend to altering its intended sense or substance. (4) Where counsel has argued the merits and not the costs of a case (which nowadays often happens since the question of costs may depend upon the ultimate decision on the merits), but the court, in granting judgment, also makes an order concerning the costs, it may thereafter correct, alter or supplement that order. The above list is not exhaustive: the question whether the court has an inherent general discretionary power to correct any other error in its own judgment or order in appropriate circumstances, especially as to costs, raised but not decided. On the assumption that the court has a discretionary power this should be sparingly exercised, for public policy demands that the principle of finality in litigation should generally be preserved rather than eroded - interest reipublicae ut sit finis litium."

12. Gauged against this legal backdrop, we do not believe any correction needs to be made to our decision. The application is misconceived. We reiterate, however, that we meant and what the parties clearly understood was that interest on the award made by this Court in this case should run from the date of the Supreme Court decision, that is, 29 July 2019.

13.In the circumstances, this application is dismissed with costs.

Dr. M. Twomey-Woods, JA.

I concur

A. Fernando, President

I concur

E. Carolus, JA

Signed, dated and delivered at Ile du Port on 18 December 2023.