



# THE IN DUPLUM RULE

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## **The In Duplum rule: Afritec (Pty) Ltd v Letlhogono Bakae CACGB-009-20**

More often than not, the in duplum rule continues to be misunderstood and misapplied by judges, lawyers, academics, law students, lenders and borrowers. In duplum directly translates to “*double the amount*”. However, the rule does not, as has been suggested in numerous cases and legal writings, stipulate that interest claimed on a loan may not exceed the capital sum advanced.

The in duplum rule is an equitable common law rule designed to protect borrowers from exploitation by lenders. It mitigates the harsh effects of the continued compounding of outstanding interest payable on a debt which, with the passage of time, can cause the interest payable to exceed the original debt and to become ungovernable. The rule is however not applicable to fiscal debts (tax related debts).

Kirby J.P explained the in duplum rule in the Afritech judgment as follows:

- Interest stops running whenever unpaid interest is equal to unpaid capital.
- In the absence of agreement to the contrary repayments go first in reduction of outstanding interest, then in reduction of capital.
- As soon as interest outstanding falls below capital outstanding, interest commences to run again.
- Once judgment is given for capital plus interest, those sums are combined, and interest commences to run afresh on the total, again subject to the in duplum rule.
- The onus is on the plaintiff to prove that the sum claimed is calculated in accordance with the principle; and
- Interest never loses its true character as such, notwithstanding that banks, or others may refer to it as being capitalised from time to time.

During these financially difficult times arising Covid-19 pandemic, let us ensure that we are not exploited by lenders as we take loans from various micro-lenders or banks. Let us acquaint ourselves with the in duplum rule so that we are not charged exorbitant interest.