

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

**Ekurhuleni Metropolitan Municipality v Germiston Municipal Pension Fund (457/2008) [2009] ZASCA 154 (27 November 2009)**

*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*

A rule of the Germiston Municipal Pension Fund (which had converted from being a defined benefit fund to a defined contribution fund in 1994) provided that if the '*rate of interest earned on the total moneys*' of the Fund during any financial year should be lower than 5.5%' the Municipality 'shall contribute to the Fund such a sum as would increase, on being added to the *interest actually earned*, the rate of interest to 5.5% during such financial year.'

The Fund interpreted this to mean that if the return on all its investments in a financial year was less than 5.5 per cent then the Municipality would be bound to make up the difference. The Municipality, on the other hand, contended that it was only the interest earned on realized assets that had to be taken into account.

The Fund claimed some R61m, being the difference between the actual return on all its investments and a 5.5 per cent appreciation in value of its investments in the year ending July 2003. It was the first year in which the Fund had not earned at least a 5.5 per cent return. The High Court, Johannesburg had ordered the Municipality to pay the sum claimed, accepting the Fund's argument.

On appeal to the SCA, the Municipality contended that the phrase 'interest actually earned' did not include a gain in value. This court held, however, on the basis of a commercially sensible interpretation of the Rule in its context, that the Municipality had guaranteed a return of at least 5.5 per cent, and that it was accordingly liable to pay the Fund the amount claimed.

The SCA accordingly dismissed the appeal.