

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)**

Case No: 100/2020

In the matter between:

OMEGA CONSTRUCTION AND BUILDING

Plaintiff / Respondent

And

KHETHIWE DLODLO

First Defendant / Applicant

ADMIRE MOYO

Second Defendant / Applicant

**BHC BUILT ENVIRONMENT PROFESSIONALS
(PTY) LTD**

(REGISTRATION NUMBER 2013/188545/07) Third Defendant / Applicant

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

BESHE J:

[1] This is an application for leave to appeal against a default judgment I granted on the 5 November 2020 against the applicants 1 to 3. Defendants in the action. The parties will be referred to as they are in the main action. The defendants having been *ipso facto* barred from filing their plea, the plaintiff applied for default judgment.

[2] On the day appointed for the hearing of the application for default judgment, first and second defendants without a legal representative and sought to argue based on the merits of the case that the default judgment application should not be granted. This, without applying for either the lifting of or a postponement of the matter. In which case they would have been required to show good cause for the indulgence they seek.

[3] It is now submitted that judgment should not have been granted *inter alia* because:

The Particulars of Claim do not disclose a cause of action in respect of first and second defendants. Evidence should have been placed before court to show / prove the fraudulent actions complained of. Also on the basis that the claim was not for a liquidated amount.

The suggestion here being that such evidence should have been *viva voce* evidence.

[4] The application for default judgment was supported by an affidavit deposed to by the Contract Director of the plaintiff: **Mr Richard Andrew Hutton**.

[5] Even though I was satisfied based on the averments made in the said affidavit and the Particulars of Claim that a cause of action had been disclosed, and that the claim was for a liquidated amount, I am unable to say that another court may not find otherwise and that therefore the appeal has a reasonable prospects of success. This is also in view of the fact that the issue of the difficulties brought about by the declaration by the State President of the state of disaster during the conduct of this litigation having been caused, coupled with the fact that the defendants were not legally represented at the time of the granting of the default judgment.

[6] Accordingly, leave to appeal is granted to the full bench of this division. Costs to be costs in the appeal.



NG BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff/Respondent	:	Adv: Adv: Beyleveld SC
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For the Defendants /Applicants	:	Adv: Williams
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Date Heard	:	22 January 2021
Date Reserved	:	22 January 2021
Date Delivered	:	26 January 2021