

**IN THE HIGH COURT OF SOUTH AFRICA
(EAST LONDON CIRCUIT LOCAL DIVISION)**

CASE NO: 632/2019

Matter heard on: 27/05/2021

Judgment delivered on: 08/06/2021

In the matter between:

PYTHAGOROS VUYISILE MAGQABI

Applicant

and

BABALO METU

Respondent

JUDGMENT: LEAVE TO APPEAL

SMITH J:

- [1] The applicant applies for leave to appeal against my judgment, delivered on 23 March 2021. He contends that there are reasonable prospects that another court will find that I have erred in finding that he had failed to show good cause for the rescission of the default judgment granted by Toni AJ on.
- [2] In my view the application is without any merit. My findings that the matter had been fully argued before Toni AJ, that he had ruled on the merits of the applicant's opposition to the application for default judgment, and that the applicant was accordingly precluded from applying for rescission of the judgment, were based on common cause facts. In the event, I did not dismiss the application on this basis only.
- [3] I also found that the applicant had failed to provide an acceptable explanation for his failure to file a plea in terms of the rules and to establish that he has a bona fide defence to the respondent's claim.
- [4] In argument before me, counsel for the applicant conceded that the only proffered defence which required consideration was his contention that: "the fees were exorbitant so as to amount to an overreach and have been referred to the law society."

- [5] In his answering affidavit, however, the respondent said that the applicant had been informed by the Legal Practise Council on 2 September 2019 that since the fees “relate to a litigation matter”, the proper course would be for him to refer the account for taxation. He has failed to do so and has taken no further action to contest the respondent’s fees.
- [6] The applicant has not replied to this assertion and I was accordingly constrained to accept that the stated defence was not bona fide.
- [7] I am accordingly of the mind that there are no reasonable prospects that another court will disagree with my finding that the said assertion does not constitute a bona fide defence to the respondent’s claim.
- [8] In the result the application for leave to appeal is dismissed, with costs.

J.E. SMITH

JUDGE OF THE HIGH COURT

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