

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No: 68763/2018

Reportable: No
Of interest to other Judges: No
Revised: No

SIGNATURE

Date: 14/08/2024

In the matter between:

JAMES OPENSHAW ZERVAS

Applicant

and

FREDERICK CHRISTOFFEL GREEFF

Respondent

In re:

FREDERICK CHRISTOFFEL GREEFF

Plaintiff

SCENIC ROUTE TRADING 502 CC
t/a DEVCO GROUP (IN LIQUIDATION)

1st Defendant

JAMES OPENSHAW ZERVAS

2nd Defendant

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

MOOKI J

- 1 The applicant seeks leave to appeal the court's refusal to rescind a default judgement made against the applicant on 19 November 2021. The judgement refusing the rescission was delivered on 31 August 2023.
- 2 The applicant filed a notice seeking leave to appeal on 21 September 2023. He did nothing since filing the notice. It was left to the respondent to set the matter down for a hearing.
- 3 The following are the grounds for the application. The applicant contends that the court ought to have found that:
 - 3.1 Judgement was granted in the absence of the applicant.
 - 3.2 There existed facts which, had the court been aware of, would not have granted default judgement. Specifically, that default judgement would not have been granted had the court been aware of the belated amendment to incorporate the written deed of suretyship.
 - 3.3 The applicant had a mistaken believe that the respondent was proceeding only against the first defendant.
 - 3.4 The respondent could not have relied on the written suretyship agreement, because the amendment was fraudulent.

- 3.5 The applicant was not indebted to the respondent
- 3.6 The respondent had not proved his claim.
- 3.7 The court ought to have found that default judgement was granted on hearsay evidence.
- 3.8 The application was launched within a reasonable time.
- 3.9 The applicant showed good cause to have the judgement rescinded.
- 4 The must be prospects of success, based on a sound rational basis for saying that there are prospects of success, for a court to grant leave to appeal. The applicant has not met the test for the granting of leave to appeal. There are no prospects of success and there is no compelling reason to grant leave.¹
- 5 I am not persuaded that the court erred in its finding that judgement was not granted in the absence of the applicant, or that the applicant was mistaken that the respondent was proceeding only against the first defendant. Similarly, I am not persuaded that default judgement was granted on hearsay evidence.
- 6 The court dealt with the amendment, including that the applicant was aware of the making of the amendment and, further, that the amendment was made in accordance with the rules. Reliance on the amendment as a ground of appeal is unsound.

¹ Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021), para 10

- 7 The issue of the applicant's indebtedness or otherwise to the respondent is addressed in the court's findings that the applicant had not met the requirements for a rescission. It was unnecessary for the court to address the issue expressly.
- 8 The applicant referred the court to a decision in case number 21846/18 as confirmation that the applicant showed good cause for a rescission. It was submitted that the issues in case number 21846/18 are similar to those before this court and that this court, as the court in case number 21846/18, ought to have determined that the applicant showed good cause.
- 9 This court determined the application with reference to issues as presented to this court. The court cannot make determinations with reference to findings by another court.
- 10 The applicant contends that the respondent had not proved its claim. That was because the deponent to the affidavit in support of default judgment had no personal knowledge of events in 2015; and further because there was no evidence, in the default judgment proceedings, of amounts lent to the applicant. Default judgement is considered with reference to a claim as pleaded before court. The default judgement was considered on that basis.
- 11 The applicant, in the rescission application, averred that he had other matters, such as those dealing with debt collections, and that those matters required his urgent attention before he could attend to the rescission application. The applicant was aware of the need for a rescission application. He formed a view as to which matters, according to him, were a

priority. The requirements for prosecuting a matter in court are not premised on when a litigant decides to prosecute a matter.

12 I make the following order:

- (i) The application is dismissed.
- (ii) The applicant is ordered to pay costs.


OMPHEMETSE MOOKI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearance:

On behalf of the applicant J C De Beer SC

Instructed by: E Neethling Attorneys Inc.

On behalf of the respondent N. G. Louw

Instructed by: Warrener De Agrela & Associates Inc.