

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 48783/2018

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

SIGNATURE

Date: 28 January 2025

In the matter between:

SHAHRINA RAMPHAUL	1 st Applicant/ Defendant
ZIA GROUP (PTY) LTD (Registration no. 2011/137900/07)	2 nd Applicant/ Defendant
GLOBAL VISA SOLUTIONS (PTY) LTD (Registration no. 2013/097511/07)	3 rd Applicant/ Defendant
ZUBEIDA RAMPHAUL	4 th Applicant/ Defendant
NASHMEIA RAMPHAUL	5 th Applicant/ Defendant
THANDI MULAUDZI	6 th Applicant/ Defendant
and	
<u>JINDAL MINING SOUTH AFRICA (PTY) LTD</u>	1 st Respondent/ Plaintiff

(Registration no. 2000/013253/07)
(In business rescue)

JINDAL AFRICA INVESTMENTS (PTY) LTD
(Registration no. 2008/025072/07))
(In business rescue)

2nd Respondent/ Plaintiff

EASTERN SOLID FUELS (PTY) LTD
(Registration no. 2004/009062/07)
(In business rescue)

3rd Respondent/ Plaintiff

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

MOOKI J

1 The applicants seek leave to appeal the order granting the respondents default judgement. The grounds for the application are essentially the following, namely:

1.1 That the court erred in granting default judgement because the plaintiffs had not set out sufficient proof on oath to sustain the relief sought, as stipulated in Rule 31(2)(a).

1.2 The matter ought to have been heard in the opposed motion court because the defendants had filed an affidavit opposing default judgement.

2 The defendants accepted, during the hearing, that annexure A3 to the particulars of claim detailed the make-up of the quantum claimed by the plaintiffs. The defendants also accepted that the plaintiffs referenced that annexure in their affidavit in support of default judgement. It was

submitted on behalf of the defendants that the plaintiffs would have provided sufficient support had annexure A3 being annexed to the affidavit supporting default judgement.

- 3 It was submitted on behalf of the plaintiffs that the claim by the plaintiffs is a liquidated demand, as set out in annexure A3, and that the plaintiffs were entitled to default judgement without further evidence. It was further submitted that the plaintiffs had, in any event, supplied the necessary evidence in their affidavit.
- 4 The second primary ground for the application is that the application for default judgement became opposed, with the defendants filing an affidavit contesting the relief being sought, and, as a result, the matter had to have been referred to the opposed motion court. The defendants referenced *Capitec Bank v Mangena and Another*¹ and *Bhembe and Another v Industrial Development Incorporation of South Africa*² as authorities.
- 5 It was submitted for the plaintiffs that the defendants had no warrant to file opposing papers or to place a version before court opposing the relief being sought. That was because their defence had been struck.
- 6 The plaintiffs quantified claim A as set out in annexure A3 to their particulars of claim. The plaintiffs incorporated annexure A3 by reference in their affidavit in support of the grant of default judgement. There was

¹ [2023] ZAGPJHC 225

² [2023] ZAGPJHC 180

thus cogent evidence, in the application for default judgement, justifying relief sought in claim A.

- 7 There was no basis to have referred the application for default judgement for adjudication in the opposed motion court. The authorities cited by the plaintiffs are not on point. Those authorities essentially concerned the need for a court to pay heed to all affidavits when a court is considering dismissing a claim or striking out a defence. This court was not adjudicating a dismissal of a claim or a striking out of a defence.
- 8 Counsel for the defendants had no answer to the question whether the filing of opposing papers would not make nonsense of the order striking out the defendants' defence. That was because the filing of papers opposing default judgement would allow the defendants to raise a defence, when there was an extant order striking out such a defence. The applicants could not refer the court to any precedence given the facts of this matter, namely a litigant being allowed to raise a defence to a claim for default judgement when there was an extant order striking out the pleaded defence.
- 9 The defendants seek leave to appeal based on section 17(1) of the Superior Courts Act, 10 of 2013. The defendants have not met the requirements for the relief being sought. I am not persuaded that the appeal would have a reasonable prospect of success.
- 10 I make the following order:

(1) The application is dismissed.

(2) The first to sixth applicants are ordered to pay costs, the one paying to be absolved.



O Mooki

Judge of the High Court
Gauteng Division, Pretoria

Counsel for the applicants: T Mirtle

Instructed by: Ulrich Roux & Associates

Counsel for the respondents: X van Niekerk

Instructed by: Sanusha Govender Attorneys

Heard: 27 January 2025

Decided: 28 January 2025