

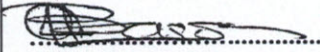
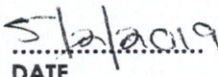
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 84068/16

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
SIGNATURE	DATE

In the matter between:

JACOBA BSHOFF

1st Applicant

DIRK CORNELIUS DU TOIT

2nd Applicant

And

RYANZAC PROPERTIES (PTY) LTD

1st Respondent

THE MEC FOR EDUCATION, GAUTENG

2nd Respondent

**BEREA PARK INDEPENDENT HIGH SCHOOL CC
(INVOLUNTARY LIQUIDATION)**

3rd Respondent

(In the application for leave to appeal)

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

AC BASSON, J

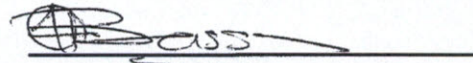
- [1] This is an application for leave to appeal against my *ex tempore* judgment dated 21 June 2018.
- [2] In that application this court refused to rescind a default judgment handed down on 8 March 2012. The reasons for my order are set out in the *ex tempore* judgment.
- [3] In respect of this court's finding that the applicants were in wilfull default, it was submitted that it was reasonable for the applicants – as laypeople - to have ignored the summons and rather try and negotiate with the respondents. There is no merit in this contention. The applicants contended that they did not want to get involved in a legal battle with the respondent. This is not an acceptable excuse for ignoring a summons.
- [4] Secondly, regarding the finding that the suspensive condition was fulfilled, the applicants submitted that this allegation did not form part of the particulars of claim and hence there is a triable issue. There is no merit in this submission. The plaintiff relied on the signed deed of suretyship in the particulars of claim. It was for the defendant (the applicants) to have pleaded to the allegations contained in the particulars of claim which they neglected to do as they have wilfully decided not to defend the matter.
- [5] In deciding whether to grant leave to appeal, this court has to take into account the provisions of section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013. The legal position now is that leave to appeal may only be granted where the

court is of the opinion that the appeal would have reasonable prospects of success in respect of its findings. I am not persuaded that the applicants have reasonable prospects of success on appeal and the application therefore falls to be dismissed.

[6] The lease agreement provides for costs “on a scale as between attorney and own client”¹¹. A costs order on this scale is therefore warranted.

Order:

The application for leave to appeal is dismissed with costs on a scale as between attorney and client.



AC BASSON

JUDGE OF THE HIGH COURT

Appearances:

For the applicants: Adv J Roux SC
Instructed by: Day Incorporated

For the respondents: Adv GT Avvakoumides
Instructed by: Mark Efstratiou Incorporated

¹¹ Clause [29] of the Deed of Lease.