

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – GRAHAMSTOWN**

Case no: 2845/2012
Date Heard: 04/06/2015
Date Delivered: 23/06/2015

In the matter between:

GESIN DOROTHEA VAN WYK

APPLICANT

And

ANDRIES ANDRIAAN BESTER NO

RESPONDENT

JUDGMENT: LEAVE TO APPEAL

SMITH J:

[1] The applicant seeks condonation for the late filling of her application, as well as leave to appeal the judgment delivered on 26 February 2015, dismissing her application for rescission of a default judgment.

[2] The applicant has provided a comprehensive explanation for her failure to file the application timeously, and I am satisfied that she has shown good cause for her default. Her failure to file the application within the prescribed time period is accordingly condoned.

[3] The applicant seeks leave to appeal on various grounds, essentially contending that there are reasonable prospects that another court may find that she has set out sufficient facts to establish that she has a *bona fide* defence, and

that this factor would compensate for the lack of a reasonable explanation for the default.

[4] In considering whether to grant leave to appeal I do not have to be persuaded that I have erred in the respects contended for by the applicant, but merely that there are reasonable prospects that another court may find differently. Ms *Crouse*, who appeared on her behalf, submitted that the facts set out in the applicant's founding affidavit in the rescission application established an "exceptionally strong *bona fide* defence", which at the very least established that she had paid a substantial portion of the purchase price. She submitted that there are reasonable prospects that another court may find that the strength of the applicant's defence compensates for the complete lack of an explanation for her default. Ms *Crouse* also indicated that should leave be granted, the applicant will apply to the appeal court for leave to file further affidavits. While I am not required to make any finding regarding the prospects of such an application, I am nevertheless satisfied that there are reasonable prospects of success on appeal, and am accordingly constrained to grant leave.

[5] In the result I make the following order:

- (a) The applicant is granted leave to appeal to the Full Bench of this Court against the judgment delivered on 26 February 2015.
- (b) Costs shall be in the appeal.

J.E SMITH
JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant : Advocate Crouse
Attorney for the Applicant : Ght Justice Centre
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Grahamstown
Ref: L Crouse
Tel: 046 622 9350

Counsel for the Respondent : Advocate Bester
Attorney for the Respondent : Wheeldon Rushmere and Cole
P.O Box 88
Grahsmtown
Ref: Mr Van der Vee

Date Heard : 4 June 2015
Date Delivered : 23 June 2015