


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2019/41530

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / <input checked="" type="radio"/> NO	
(2) OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO	
(3) REVISED: YES / <input checked="" type="radio"/> NO	
25/03/2022 DATE	 SIGNATURE

In the matter between:

NQHANASANA SIVUYILE MALEFANE

APPLICANT

and

NEDBANK

RESPONDENT

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JUDGMENT ON LEAVE TO APPEAL

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FLATELA AJ



## Introduction

- [1] This is an application for leave to appeal against my judgement delivered on 23 December 2021 wherein I dismissed the applicant's rescission of judgement application with costs on the basis that he failed to disclose a *bona fide* defence to the applicant's claim.
- [2] The main ground of appeal against my judgement is that I erred in not considering that the default judgement of 12 August 2020 obtained by the respondent was erroneously obtained and granted by the Registrar. The Registrar had earlier considered the same default of judgement application on 2 March 2020 and granted an "order" in terms of Rule 35 (1) (b) (vi) that stipulated that the matter must be referred to open court. This irregularity has violated his right to access to court.
- [3] I am of the opinion that the applicant has prospects of success on appeal.
- [4] Section 23 of the Superior Courts Act 10 of 2013 provides that a judgement by default may be granted and entered by the registrar of a division of the High Court in a manner and in the circumstances prescribed by the rules, and that a judgement so entered is deemed to be a judgement of court of that division.<sup>1</sup>
- [5] Subrule 31(5) deals with judgments by default by Registrars. They consider the applications for default judgment in the first instance, relieving the Judges of the burden of dealing with all the default judgements applications.

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<sup>1</sup> ERASMUS Superior Court Practise , Volume 2

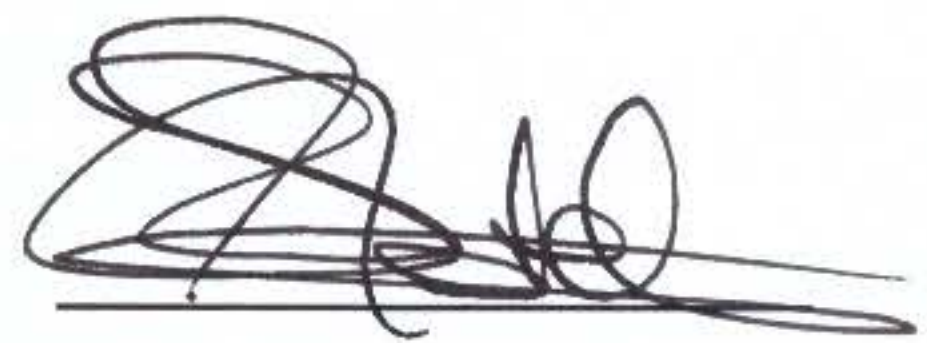


- [6] The question that must be considered on appeal is whether the Registrar/s can reconsider an application for default judgement where there was an earlier order that was granted by the same or the other Registrar regarding the same application.

## **ORDER**

- [7] In the circumstance the following order is granted.

1. Leave to appeal is granted to the Full Bench of the High Court of South Africa Gauteng Local Division.
2. The costs of the application for leave to appeal will be the costs in the appeal.



**FLATELA LULEKA**

**ACTING JUDGE OF THE HIGH COURT**

*This Judgment was handed down electronically by circulation to the parties' and or parties representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 25 March 2022*

Date of Hearing : 18 March 2022  
Date of Judgment: : 25 March 2022  
Applicant: : In person  
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Instructed by: Victor and Partners (011 831 0000 / [melissa@victorandpartners.co.za](mailto:melissa@victorandpartners.co.za) )