



**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: <del>YES</del> /NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED. <i>yes</i>
<i>22/04/2016</i>	
DATE	<i>[Signature]</i> SIGNATURE

*22/4/16*  
**Case no. 22954 /2015**

In the matter between:

B VELELA ENGINEERING

Applicant

and

MINISTER OF BASIC EDUCATION AND OTHERS

Respondent

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**JUDGMENT**

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**RABIE, J**

1. This matter served before me as an application for Summary Judgement in the unopposed motion Court of 17 July 2015. The order made by me was that the matter be removed from the roll.
2. On 25 January 2016 the court file was submitted to me in chambers. The following documentation had been added to the court file: a letter dated 6 November 2015 from Noa Kinstler Attorneys, the attorneys of the applicant; a

fresh Application for Judgement by Default in terms of Section 31 (5); a Draft Order; and an affidavit of Me Noa Kinstler.

3. In the letter of the attorney it was, *inter alia*, stated that when the matter was removed from the roll on 17 July 2015 I requested that the matter be brought before me in chambers in the form of a default judgement. Consequently, so it was stated, an application for default judgement was enclosed for my consideration.
4. The statement namely that I requested the matter to be brought before me in chambers in the form of a default judgement, is factually totally incorrect. I have had regard to the notes made by me in respect of this matter on 17 July 2015 and also to the typed record of proceedings relating to this matter. The typed record of proceedings relating to this matter is now enclosed in this matter's court file.
5. The first point to be made is that according to an opposing affidavit filed on behalf of the "respondents", leave should be granted to defend the matter. It was submitted by counsel appearing on behalf of the applicant that the answering affidavit related to the first and second respondents and not to the third respondent, the Mandisa Shiceka High School. The applicant wanted an order against the third respondent.
6. During the debate with counsel it was mentioned that if the matter was not opposed by the third respondent, the applicant could in any event not succeed against the third respondent with an application for summary judgement.
7. It was further mentioned by myself that in the light of the defence referred to in the opposing affidavit, I was in any event not disposed to make any order against

the third respondent. I advised the applicant to take the matter up with the State Attorney to get clarity on their status as far as the third respondent is concerned. Furthermore, and if it appears that the State Attorney is not acting on behalf of the third respondent, that the third respondent should be informed that they are not properly represented in this matter even though they might have thought that the State Attorney had been acting on their behalf.

8. It appears that the applicant's attorney had failed to do what was requested of her by the court during the hearing of the matter. It is also clear that the attorney has misstated the facts by stating that I required an application for default judgement to be placed before me in chambers.
9. I again advise the attorney of the applicant to take the issue of representation up with the State Attorney. On the face of it, the State Attorney does appear on behalf of the third respondent and it consequently also appears that the summary judgement application had been opposed on behalf of the third respondent as well.
10. In the light of all the above the following order is made:
  1. The application for default judgement against the third defendant is dismissed with costs.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', written over a horizontal line.

**C.P. RABIE**  
**JUDGE OF THE HIGH COURT**