

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. LAND APPLICATION NO.16 OF 2018**

(Arising from the judgment and decree of the High Court of Tanzania at Mtwara (Hon.

R.M. Kibela, J.) dated 7<sup>th</sup> November, 2013 in Land Appeal No. 4 of 2013)

**ELIAS RAMIN BACHU.....APPLICANT**

**JOSEPH PAUL ZENDA.....1<sup>ST</sup> RESPONDENT**

16 January & 10 March, 2020

**RULING**

**DYANSOBERA, J.:**

The applicant Elias Ramin Bachu is moving this court under section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002], section 47 (1) of the Land Disputes Act No. 2 of 2002 as amended by Act No. 2 of 2010 and Rule 45 (a) of the Tanzania Court of Appeal (Amendment) Rules, 2017 GN. No.362 of 2017 praying for leave to appeal to the Court of Appeal. The applicant's application has been supported by his own affidavit affirmed on 3<sup>rd</sup> April, 2018. The respondent Joseph Paul Zenda filed a counter affidavit resisting the application.

By order of the court and upon applicant's prayer, the application was argued by way of written submissions, an order with which parties duly complied.

The background leading to this application can be stated briefly. The parties to this application were asserting rights over a piece of a surveyed land known as Plot No. 13 Block "AA" situated in Mtwara Township before the District Land and Housing Tribunal for Mtwara at Mtwara. The respondent who was the applicant at the said Tribunal in Land Application No. 9 of 2013, lost. He, however, successfully appealed to this court vide Land Appeal No. 4 of 2013. The applicant, then respondent, was not satisfied by the decision of this court. He filed a notice of intention to appeal and successfully obtained leave to appeal to the Court of Appeal. The leave was granted in Misc. Land Application No. 45 of 2013. On 17<sup>th</sup> day of April, 2015 the applicant appealed to the Court of Appeal (Civil Appeal No. 10 of 2015). During the hearing of the appeal, the applicant's advocate successfully applied to have the appeal struck out. Obviously, the striking out of the appeal meant that the notice of appeal and leave to appeal was rendered with no effect. On 21<sup>st</sup> day of March, 2018, this court, upon the application filed by the applicant in Misc. Land Application No. 25 of 2016, granted extension of time within which to apply for leave to

appeal to the Court of Appeal. The applicant then, on 22<sup>nd</sup> March, 2018 filed a notice of intention to appeal. He has now filed an application for leave to appeal to the Court of Appeal which application is the subject of present ruling. The grounds upon which the applicant is basing his application for leave are set out under paragraph 14 (i)-(vii) of the applicant's sworn affidavit.

The respondent appeared in person and on his own whereas the applicant had the legal services of Hussein Mtembwa and Eveta Lukanga, learned advocates who file the written submission in support of the application.

I have anxiously and with circumspection considered the application, the grounds thereof and the competing arguments presented by the parties. Without repeating them, I am of the view that the controversy in the present case, as can be gathered from the grounds for this application and the arguments of both sides, centers on the power of the rectification of land register and procedures relating to revocation, grant and re-grant of the Certificate of Title on the ground of fraud.

The statement of Kalegeya J. A in Civil Application No. 94 of 1999 between **Gaudence Mzungu v. IDM Mzumbe** (unreported) is a good guidance on what to consider in matters like this:

*"What is important is whether there are prima facie grounds meriting an appeal to the Court of Appeal.*

I am satisfied and hereby find that there is a stronger case for the court to exercise its discretion to grant leave and that there exists an arguable case worthy consideration by the Court of Appeal in this case.

For the above reasons, I would allow this application. Leave to appeal to the Court of Appeal is, accordingly, granted.

Costs shall be in the intended appeal.

It is so ordered.

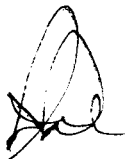


**W.P.Dyansobera**

**JUDGE**

**10.3.2020**

Dated and delivered MTWARA this 10<sup>th</sup> day of March, 2020 in the presence the Ms Eveta Lukanga, learned counsel for the applicant and Crispin Macarius Zenda for the respondent.



**W.P.Dyansobera**

**JUDGE**

**10.3.2020**