

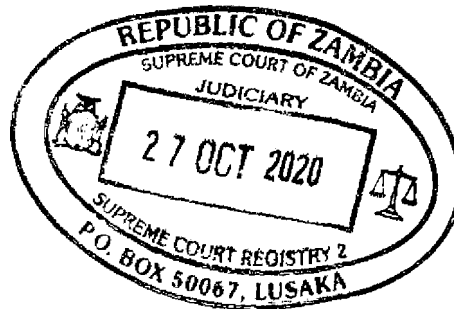
IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

SCZ/8/20/2019

(Civil Jurisdiction)

B E T W E E N:

**LONDON NGOMA
JOSEPH BIYELA
RICHARD NG'OMBE
FRIDAY SIMWANZA**



**1ST APPELLANT
2ND APPELLANT
3RD APPELLANT
4TH APPELLANT**

AND

LCM COMPANY

RESPONDENT

Coram: Wood, Malila and Kabuka JJS
On 6th October, 2020 and 27th October, 2020

For the Appellants: No appearance

For the Respondent: Mrs S. Chisenga-Messrs Corpus Legal Practitioner

RULING

WOOD, JS, delivered the ruling of the Court:

Legislation referred to:

1. Rule 48 of the Supreme Court Rules Cap 25 of the Laws of Zambia.
2. Section 13 of the Court of Appeal Act No. 7 of 2016.

Introduction

- [1] When we heard this motion, we dismissed it and indicated that we would give our reasons. We now do so.
- [2] The appellants had applied for leave to appeal to this Court from a decision of the Court of Appeal. A single Judge of this Court refused to grant the appellants leave pursuant to section 13 of the Court of Appeal Act No. 7 of 2016 on the grounds that no reasonable prospects of success of appeal were disclosed by the appellants nor did a claim arising out of a land dispute in and of itself raise a point of public importance as land disputes have been litigated and re-litigated numerous times.

The Appellants' Arguments

- [3] The appellants have renewed their application before us pursuant to Rule 48 of the Supreme Court Rules Cap 25. The affidavit in support, which was sworn by the 1st appellant states that he has been advised by his advocates that he has an arguable case which ought to be heard and determined by

this Court. The appellants were dissatisfied with the decision of the Court of Appeal and as such they should be granted an opportunity to be heard by this court as they had serious prospects of success because the Court of Appeal did not determine correctly the issue of offer and acceptance as well as invitation to treat. The appellants were also not satisfied with the fact that there was total disregard by the lower court that the respondent did not prove or give sufficient evidence that a payment of K54,000.00 was made.

The Respondent's Arguments

- [4] The respondent has opposed this motion through an affidavit in opposition sworn by Bojan Blagojevic. Bojan Blagojevic has stated in his affidavit in opposition that having an arguable case does not entitle the appellant to an order for leave to appeal to this court. In addition, the appellants have not shown that their appeal lies within the categories outlined in section 13(3) of the Act, nor have they even exhibited the proposed memorandum of appeal. The intended appeal does not raise a novel issue nor one of public importance as the

matter of sitting tenants and the Handbook on Sale of Government houses has been conclusively decided. Bojan Blagojevic concluded his affidavit in opposition by stating that there were no compelling reasons why the appeal should be heard by this Court.

The Appellants' Reply

[5] In his affidavit in reply, the 1st appellant reiterated that the appeal has prospects of success and exhibited a memorandum of appeal which the court of Appeal had dealt with. He emphasized that the appeal had merit and should be heard on its merits.

Consideration by this court and decision

[6] It can be seen from the affidavit in support of the notice of motion and the affidavit in reply that the appellants are simply dissatisfied with the decision of the Court of Appeal and would like to have another bite at the cherry. The Court of Appeal was not created to elongate the appellate process. It was meant to deal with appeals decisively and restrict appeals to

this Court within the purview of section 13 of the Court of Appeal Act. It may happen sometimes that a wrong decision may be reached but if it does not meet the strict limits set under section 13 then in that case litigants will have to live with the result.

[7] Coming back to this motion, the appellants' main grievance is that they have reasonable prospects of success. It is not enough to state that one has reasonable prospects of success without disclosing those prospects. The appellants have not done so as the deponent has not explained the issue of offer and acceptance or invitation to treat and how it affects the prospects of success. The fact that the appeal stems from a land dispute does not automatically make it a compelling reason for the appeal to be heard under section 13 (3) (d) of the Act.

[8] The appellants need to disclose the compelling reason in order for this Court to exercise its discretion to grant leave. No such compelling reason has been disclosed. The affidavit has fallen short of the threshold set by section 13 of the Act. We

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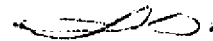
accordingly affirm the single judge's decision and dismiss this motion with costs to the respondent to be agreed or taxed in default of agreement.



A.M. WOOD
SUPREME COURT JUDGE



M. MALILA
SUPREME COURT JUDGE



J.K. KABUKA
SUPREME COURT JUDGE