

SOUTH AFRICA / JUDGMENT

Mwale and Another v Minister of Rural Development and Land Reform and Others (LCC63/2014) [2019] ZALCC 24 (14 October 2019)

[2019] ZALCC 24

COURT
Land Claims Court

BEFORE
M.P Canca

CASE / FILE NUMBER
LCC 63/2014

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IN
THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG
CASE
NO.: LCC 63/2014
In

the matter between:	BIENTA MARGARET MWALE (BORN JANSEN) First Applicant FREDDIE OPPERMAN Second Applicant And MINISTER OF RURAL DEVELOPMENT First Respondent AND LAND REFORM RESTITUTION OF LAND RIGHTS Second Respondent REGIONAL LAND CLAIMS COMMISSION FREE STATE AND NORTHERN CAPE PROVINCES
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OPPERMANSGRONDE
COMMUNAL PROPERTY Third
Respondent
ASSOCIATION
Heard
on: 11 October 2019
Delivered
on: 14 October 2019

JUDGMENT

CANCA AJ

- [1] The second applicant (“the applicant”) seeks leave to appeal to the Supreme Court of Appeal against paragraphs 27, 28, 32, 33, 34, 36, 56.1 and 56.2 of the judgment and order of this Court granted on 31 May 2019.
- [2] The applicant also seeks condonation for the late filing of his application for leave to appeal. None of the respondents have indicated their opposition to any of these applications.
- [3] I was satisfied with the reasons for the late filing and duly granted the condonation sought.
- [4] The grounds of appeal are set out in detail on pages 2 – 7 of the notice of application for leave to appeal and need not be repeated here. The judgment is attacked mostly on the basis that the Court found that: (1) the applicant had no locus standi, (2) the doctrine of acquiescence finds application in this matter and (3) the settlement agreement referred to in the judgment was not concluded fraudulently.
- [5] The grounds of appeal set out in the notice of appeal pertain to issues in respect of which reasoned findings are set out in the judgment. I find no need to traverse these here save to, in brief, deal with a matter which was brought to the Courts attention a day before the hearing of this application.
- [6] The applicant filed sort heads of argument during the afternoon prior to the hearing of the application. These heads of argument were accompanied by a supplementary affidavit by the applicant. Attached to the affidavit are documents which purport to show that he is indeed a descendant of Solomon Adam Opperman, and therefore, had the necessary locus standi which the Court found that he did not.

- [7] The issue of the applicant's locus standi and his failure to prove same is dealt with in paragraph [26] of the judgment. In that paragraph, it is clear that the applicant "was repeatedly requested to produce proof that he was a direct descendant of Adam Opperman during meetings convened by officials in the employ of the Regional Commissioner (including during a verification meeting) but failed to do so. His consistent response was simply that "ek is my I.D" [I am my I.D]."
- [8] In the aforementioned supplementary affidavit, the applicant attempts to justify his failure to present the evidence referred to in paragraph [6] above. He avers, inter alia, in paragraph 6 of the supplementary affidavit that he and his legal representatives believed that the third respondent was merely being malicious in requiring him to prove that he had locus standi "as they knew very well that I am a descendant of Solomon Adam Opperman..."
- [9] This does not provide any explanation let alone a reasonable explanation as to why the new evidence was not initially adduced. It is, in my view, fair to assume that the applicant is seeking to re-engineer his case by introducing this evidence.
- [10] This application fails the test for the granting of leave to appeal. This is so because, having carefully considered all of the submissions of counsel for the applicant, I am of the view that another Court would not come to a finding different from mine. This being so, there are no reasonable prospects of success on appeal and leave to appeal is accordingly refused. See the test for the grant of leave to appeal set out in Section 17 of the Superior Courts Act, 10 of 2013 and *The Mont Chevaux Trust v Tina Goosen and 18 Others* LCC 14R/2014 at para 6.
- [11] In the result, the following order is made:
1. The application for leave to appeal is dismissed.
 2. No order as to costs.

M.P Canca

Acting Judge: Land Claims Court

Appearances:

For the Second Applicant: Adv. KM Mokotedi

Instructed by: Ranamane Mokalane Inc. Attorneys, Johannesburg

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Prepared on 11 October 2026 · Esheria