

**IN THE SUPREME COURT OF ZAMBIA**

**APPEAL NO. 75/2014**

**HOLDEN AT KABWE**

*(Civil Jurisdiction)*

**BETWEEN:**

**PASTOR CHARLES SICHAMBA**

**1<sup>ST</sup> APPELLANT**

*(Sued on behalf of Revival tabernacle Church)*

**REUBEN MAKASHINI**

**2<sup>ND</sup> APPELLANT**

**TEZA SIMFUKWE**

**3<sup>RD</sup> APPELLANT**

**CHANDA MWALE**

**4<sup>TH</sup> APPELLANT**

**ALL SQUARTERS ON PLOT CH 092**

**5<sup>TH</sup> APPELLANT**

**CHAWAMA LUSAKA**

**AND**

**ELIAS SIMPAMBA**

**1<sup>ST</sup> RESPONDENT**

**GODFREY MULENGA**

**2<sup>ND</sup> RESPONDENT**

**JULIUS SIMBEYE**

**3<sup>RD</sup> RESPONDENT**

**FRANCIS SILUNGWE**

**4<sup>TH</sup> RESPONDENT**

**BONIFACE KALUBA**

**5<sup>TH</sup> RESPONDENT**

**MOSES KANKUYEYE**

**6<sup>TH</sup> RESPONDENT**

**MOSES MUKUMBWA**

**7<sup>TH</sup> RESPONDENT**

*(Suing on behalf of Pentecostal Church in Zambia as Registered Trustee of Pentecostal Church in Zambia)*

**Coram: Mambilima ,CJ, Hamaundu Wood JJS.**

**On 1<sup>st</sup> November, 2016 and 9<sup>th</sup> January, 2017.**

*For the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Appellant:*        *Mrs. I.M. Kunda – Messrs George Kunda &  
Company*

*For the 4<sup>th</sup> and 5<sup>th</sup> Appellant:*        *No Appearance*

*For the Respondents:*                    *Mr. C. Nhari – Messrs Nhari Advocates*

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## **JUDGMENT**

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Wood, JS, delivered the judgment of the Court.

This is an appeal against a decision of the High Court which declared that the respondents were the legal owners of Plot CH 092 Chawama, Lusaka and were accordingly entitled to possession of the said property.

The dispute in the court below was whether or not the respondent was the rightful owner of the property. The documentary evidence from the Lusaka City Council disclosed the history of the property as follows.

- (i) *The Lusaka City Council granted an occupancy licence to the respondents on 20<sup>th</sup> August, 1999 in respect of CH 092 after it was offered to the respondent's predecessor called Word of Faith Soul Winning Ministries on 9<sup>th</sup> January, 1997;*
- (ii) *The 1<sup>st</sup> appellant was given an occupancy certificate for Plot CH 115 on 16<sup>th</sup> November, 1999;*
- (iii) *Plots 132 and 133 of Block 307, Chawama were offered to the 2<sup>nd</sup> and 3<sup>rd</sup> appellants on 26<sup>th</sup> August, 1996 and 18<sup>th</sup> August, 1998 respectively;*
- (iv) *The Lusaka City Council on 29<sup>th</sup> July, 1999 warned the 1<sup>st</sup> and 3<sup>rd</sup> appellants including Mulenga and Zulu that they were illegally developing on Plot CH 092;*
- (v) *In its letter addressed to the Lands Tribunal dated 15<sup>th</sup> August, 2000, the Lusaka City Council pointed out that Plot CH092 was 6,000 square metres of which 1920 square metres was occupied by illegal houses and a further 3,000 square metres was occupied by a Church built by Revival Ministries.*

The learned trial judge was of the view that the respondents had prior title to the property in dispute and even if the appellant's

evidence was accepted that they had properly obtained the plots from the Lusaka City Council this was irrelevant as the property belonged to the respondents. She also held that even if the Council was collecting ground rent or water charges from the appellants, it did not go to disprove the validity of ownership of Plot CH 092. She accordingly found as a fact that the 1<sup>st</sup> appellant had been offered Plot Ch 1115 and the 2<sup>nd</sup> and 3<sup>rd</sup> appellants had been offered Plots 132 and 133 of Block 307. As such they had no right to build on Plot CH 092 and their continued occupancy amounted to trespass. The learned trial judge also found that the respondents had not breached the conditions of their occupancy licence for them to be deprived of their property through a re-entry by the council. She accordingly found in favour of the respondents and declared them the legal and lawful owners of Plot CH 092, Lusaka.

The appellants have filed five grounds of appeal. The first ground of appeal finds fault with the learned judge's reliance on Exhibit 'AM42' which is a letter of complaint dated 20<sup>th</sup> April, 1999 by Moffat Miti to Lusaka City Council as he did not swear an affidavit or testify as a witness. We are not aware of any mandatory

requirement for the author of a letter to swear an affidavit or testify in court in relation to that particular document. While it may be desirable to do so, there is no bar to such evidence being relied upon by another deponent. There are certain instances such as death or where the author cannot be traced. Issues may be raised as to the authenticity of a document but the absence of the author does not invalidate its admission into evidence. If we accepted the argument that it should not be accepted it would lead to the absurd situation where wills would not be admitted into evidence simply because the testator is not available to testify in connection with a will's contents.

Arguments in respect of the first ground raise the issue which was canvassed in the court below that the appellants dealt directly with Lusaka City Council. The council would have informed the appellants that they were building on the respondent's land and would not have connected water to the illegal structures. The argument in relation to the first ground of appeal does not address the main issue in contention which is whether the appellants were occupying land belonging to the respondents. The learned judge

was in our view entitled to rely on what she considered to be credible evidence in order to resolve the dispute. In any event, the appellants are now raising issues in their arguments relating to the first ground of appeal which were not raised in the court below. These relate to the evidence of Moffat Miti, the removal of John Simfukwe and Winter Mulenga and the writing of Pastor Sichamba's name in pen in the enforcement notice which is Exhibit 'AM 44A'. We find no merit in this ground and dismiss it.

The second ground of appeal is against the refusal by the lower court that the appellant's had built their structures on their own legally allocated plots. The argument in support of this ground of appeal is that the 1<sup>st</sup> appellant were given an occupancy licence by the council on 16<sup>th</sup> November, 1999 relating to CH/Block 115 while the 3<sup>rd</sup> appellant was allocated Plot No. 307/133 on 18<sup>th</sup> August, 1998. The trial court refused to accept approved plans because they did not show the plot number but the record of appeal shows that the 2<sup>nd</sup> and 3<sup>rd</sup> appellants are the owners of Plot 307/132 and Plot 307/133 respectively. Further, the trial court readily accepted the evidence of the respondents which lacked merit

and was not reliable. The argument under this head does not indicate how the respondents' evidence lacked merit or why it was not reliable. It does not also address the critical issue of which party was the earlier in time. Proof of payment of ground rent, water charges or having approved building plans leads to a strong inference that one is the owner of a particular property but it is not proof of ownership particularly in the light of compelling evidence that the respondent was as far back as 9<sup>th</sup> January, 1997 offered CH 092 Chawama Complex which was before the appellants were given portions of the same property. The learned judge in our view reached the correct conclusion when she held that regardless of the earlier evidence of ownership of portions of the disputed land, it did not confer ownership to the appellants as the land properly belonged to the respondent and had not been re-entered. We find no merit in this ground of appeal.

The third ground of appeal is that the learned judge erred in law and in fact when she accepted the alleged evidence of fraudulent practices of some Movement for Multi-Party Development ('MMD') officials who were alleged to have allocated the

plots to the appellants without proof of MMD involvement. There is some merit in this ground of appeal. The learned trial judge held that given the gaps in the evidence of the appellants there was likelihood that fraud was involved in the sketch plans the appellants laid claim to. The allegation of fraud should have been specifically raised by the respondent who should also have given particulars of the alleged fraud and not by the court. Even though we agree with the argument that that fraud was not proved we must point out that it did not form the basis of the decision in the court as the court did not conclusively state that there was fraud. The decision of the court below was based on the fact that the respondent was earlier in time and there was no reason for any re-entry by the council.

The fourth and last ground of appeal is that the appellants built structures on their own land and as such the learned judge erred in law and fact when she held that the appellants had built on Plot No. CH092. The appellants have repeated the argument that they were given occupancy licences by the council. We have stated above that these licences were of no legal effect as the property



belonged to the respondent. There is clearly no merit in this ground of appeal.

The net result is that this appeal is dismissed with costs to the respondents to be agreed or taxed in default of agreement.



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I. C. Mambilima  
**CHIEF JUSTICE**



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E. M. Hamaundu  
**SUPREME COURT JUDGE**



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A. M. Wood  
**SUPREME COURT JUDGE**