

N THE SUPREME COURT OF ZAMBIA

APPEAL No. 14/99

HOLDEN AT KABWE

Civil Jurisdiction)

**BETWEEN:**

**DOROTHY LUNGU**

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

**IGNATIUS LUNGU**

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

**LUSAKA CITY COUNCIL**

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

**AND**

**GREENWELL SIULUTA**

**RESPONDENT**

**Coram: Bweupe, DCJ; Chaila, Lewanika, JJS**

**11<sup>th</sup> August, 1999 and 2<sup>nd</sup> November, 1999**

**For the Appellants : Nil**

**For the Respondents: Mr. Kaona of Nakonde Chambers**

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**JUDGMENT**

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**Chaila, JS, delivered the judgment of the court.**

The court proceeded with hearing of the appeal despite the fact that the appellants were not present. The court allowed Mr. Kaona to argue the appeal on merit.

The appeal by the appellants was against the decision of the High Court (Ndhlovu, J), made in favour of the respondent in respect of the

property in Mtendere, Lusaka. The learned trial Judge received evidence from a number of witnesses on the ownership of House No. 798/B, Mtendere. At the end of the trial which was conducted without pleadings, the learned trial Judge in a very short judgment left a lot of issues unresolved. The learned trial Judge did not consider the evidence presented before him and only relied on document No. 24 in the plaintiffs' bundle of documents. The learned trial Judge completely ignored all the contentious issues raised by the witnesses. The appellants in the grounds of appeal have argued that the learned trial Judge misdirected himself when he failed to take into account the conflicting evidence of the respondent and his witnesses and further that the learned trial Judge misdirected himself when he failed to take into account the appellants' argument that the property in question belonged to the 1<sup>st</sup> and 2<sup>nd</sup> appellants.

Mr. Kaona has relied on his written heads of argument. We have seriously considered the arguments of both parties and we are unable to agree with the respondent's argument that the learned trial Judge was right in relying on the documentary evidence alone. The learned trial Judge left a lot of issues unresolved. The appeal is therefore allowed. The learned trial Judge's conclusion or finding is set aside. We order a retrial before another High Court Judge. The trial will take place with normal pleadings. We make no order as to costs.

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**B.K. BWEUPE**  
**DEPUTY CHIEF JUSTICE**

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**M.S. CHAILA**  
**SUPREME COURT JUDGE**

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**D.M. LEWANIKA**  
**SUPREME COURT JUDGE**