

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO 122 OF 2012

(Originating from Kinondoni RM's Court Civil Case No 135 of 1996)

1. CONSTANSIA CHAILA }**APPELLANTS**
2. GAUDENCE MTEMI }

VERSUS

1. EVEREST MAEMBE }**RESPONDENTS**
2. JULIUS MAEMBE }

JUDGMENT

Date of Last Order 6/12/2013

Date of judgment: 07/02/2014

BONGOLE,J

The abbreviated background of this appeal are that the respondents Everest Maembe and Julius Maembe herein after called the 1st and 2nd respondent respectively instituted a claim before Kinondoni District Court against Constansia Chaila and Gaudence Mtemi herein after called the 1st and 2nd appellant respectively. The claim centred over a piece of land

designated as plots No 1010 and 1011 Block "C" Sinza where the respondents claimed to be right full owners.

Having received the evidence from both sides, the trial court declared the respondents rightful owners of those two plots. The appellants jointly were dissatisfied with the said decision hence this appeal.

Five grounds of appeal have been preferred which reads thus:-

1. That the trial court erred both in law and in fact in holding that the Respondents were the lawful owners of the disputed plots No 1010 and 1011.
2. That the trial court erred both in law and fact in holding that the appellants bought the disputed area while the appellants testified that they were allocated the area by the relevant authority, to wit, Ministry of lands, Housing and Urban Development.
3. That the court erred both in law and fact in holding that the appellants did not know the boundaries of the disputed area, while the same is surveyed.
4. That the trial court erred both in law and in fact in holding that the 1st Appellant, being employee of the council, might have used her office (city council) to be allocated the land in dispute while there was no evidence to that effect.

5. That the trial court erred both in law and fact in holding that the plots in dispute were not yet surveyed when the respondents and other neighbors occupied and used the land for gardening and later on, the city land surveyor made amendment of the plan to include the area.

The appellants pray for their appeal to be allowed with costs by setting aside the trial courts decision.

In the conduct of this appeal the appellants have the legal service of TM Law chambers (Advocates) and whereas the respondents were represented by Marando and Co. Advocates. The learned Advocates opted to dispose this appeal by way of written submission an option which had full blessings of this court.

Arguing in support of the appeal, the learned counsel submitted that the appellants who were the defendants in the trial court discharged their case on a balance of probabilities. That the 1st appellant proved her ownership on Plot No 1010 Block "C" Sinza by tendering a letter of offer from the Ministry of Land vide offer No LD 1332/11UMS dated 8/12/1995 as an Exhibit "D.1" and also a building permit granted to her on 24th April, 1996 of plan 291/96 as Exhibit D.2. That equally the 2nd appellant who testified as "DW.2" tendered a letter of offer as an Exhibit DA and a building permit for Plot No 1011 Block C Sinza as Exhibit "DB". To the contrary they said the respondents herein in this appeal

having produced no documents to show or prove their ownership to the demised premises it is apparent that they failed to prove their case on the balances of probabilities.

In responding to the advanced submission, the respondent's Advocate invited this court to use solomonian wisdom in deciding this appeal. Much as I may appreciate the invitation and perhaps my conscience may prompt me to use the Solomonian wisdom yet, the evidence on record in the proceedings of the trial court irresistibly points and directs that the lawfull owners of the two plots in dispute are the appellants. It is trite law that he who alleges must prove. The respondents alleged to have owned the land in dispute way back in 1976. But they failed to prove how they came in possession of the demised premises as opposed to their counter parts the appellants.

Going by the documentary Evidence on record being Exhibits "D.1" "D.2", "D.A" and "D.B", all these prove that the demised premises designated as plots No 1010 and 1011 Block "C" Sinza belongs to the 1st and 2nd appellants respectively. Allegations that these two plots do not exist or were acquired by influence of the 1st appellant who used to work with the city council have no legal legs to stand. It was therefore constrabant for the trial court to divert from the evidence before it and came out with findings which were not supported by the facts before it.