**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT MBALE**

**HCT-04-CV-CA-0051-2009**

**(From Pallisa Civil Suit No.18/2005)**

**SIYASI WAMALISYA……..…….APPELLANT**

**VERSUS**

1. **BIRALI KIRYA**
2. **DINANI WAMALISYA……..RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN**

**JUDGMENT**

This is an appeal from the judgment and orders of the learned Magistrate Grade I Pallisa dated 30th April 2009 concerning a land dispute between the appellant and respondents. A perusal of the lower court's record and evidence reveals that the appellant Siyasi Wamalisya sued Birali Kirya and Dinani Wamalisya for a piece of land at Dodoi village in Dodoi village in Kadama sub-county. The appellant says he bought the piece of land from his father Saadi Bwanga in 1996 at 100,000/=. That he paid the purchase price in installments and an agreement was made when the last installment was paid. The piece of land measured 27 strides by 136 strides.

Sometime later, the appellant's half brothers, the respondents trespassed on the suit land by cultivating and planting crops thereon hence the suit against them. There is a sale agreement filed on record as Exh.P.1.

On the other hand the respondents contend that the land in dispute belongs to the first respondent's mother called Nzisani Sabano. That she got the land from her late husband Haji Saadi in 2005. The trial Magistrate considered the evidence adduced in the lower court and found that the appellant failed to prove his case on a balance of probabilities hence this appeal.

At the time of appealing, the appellant is represented by M/s Mbale Law Chambers and the respondents appear in their respective person.

The grounds of appeal are that:

1. The learned trial Magistrate did not evaluate the evidence properly or at all as a result of which he reached a decision which is unsupported in the circumstances.
2. The decision is tainted by misdirections and non-directions in law and on the facts.
3. The decision is against the weight of evidence.
4. The magistrate erred in law when he decided the case without visiting the *locus in quo*.
5. The decision occasioned a miscarriage of justice.

Court allowed both parties to file written submissions and this was fully explained to the unrepresented respondents. They promised to do so. However only learned counsel for the appellant filed his submissions.

This being a first appellate court, its duty is to consider and evaluate the evidence and entire proceedings of the lower court and come to its conclusion after subjecting the evidence adduced in the lower court to fresh and exhaustive scrutiny. ***EPHRAIM ONGOM & ANOR. V. FRANCIS BENEGA SCCA 10 OF 1987*** (unreported).

Whilst the appellant court has jurisdiction to review the evidence to determine whether the conclusions of the trial court should stand, this jurisdiction must be exercised with caution if there is no evidence to a particular conclusion or if it is shown that the trial Magistrate has failed to appreciate the weight or bearing of the circumstances admitted or proved or has plainly gone wrong, the appellate court will not hastate so to decide. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon the evidence should stand. ***PETERS V. SUNDAY POST LTD [1958] E.A.424***.

I am alive to the above instructive pronouncements and have done exactly what is outlined. I will go straight to considering ground 4 of the memorandum of appeal which appears to dispose of the appeal.

Ground 4 is to the effect that the trial court did not visit the *locus- in- quo*. This is a very important aspect of a trial involving a land dispute. In my considered view,

this was necessary in the instant case because, as rightly pointed out by learned counsel for the appellant

a) It is on record that the seller only sold part of the land measuring 27 strides by 137 strides. It was necessary to identify the part of land which was sold.
b) It is on record that the sale agreement was witnessed by at least one neighbor to the land i.e. PW.2 Nazilu Bogere. It was necessary to identify the neighbours and the boundary at the *locus- in -quo*.
c) It is on record that the appellant contested with one Mujib over the boundary and one Saad Bwanga testified on his behalf. It was necessary to identify this at the *locus-in-quo*. PW.3 Mbayo would have identified the boundary.
d) It is on record that the respondents had crops on the land as testified by PW.1. It was necessary to visit the *locus-in-quo* to identify these crops.

The above listed were pertinent areas in the trial that would have given the trial court an on the spot assessment of what the witnesses testified in court for him to reach an informed accession on a balance of probabilities. Omission of this important stage of trial when the case clearly showed that a visit to the *locus-in-quo* was absolutely necessary rendered the trial incomplete and vitiates the entire proceedings. Visiting a *locus-in-quo* is an extension of the proceedings of the trial like in open court whatever transpires and any observations at the visit must be recorded because such a visit is intended to clarify what witnesses have told court in open court. Ground 4 of appeal is allowed.

This ground of appeal disposes of this appeal. I do not need to go into the other grounds of appeal.

I am unable to give judgment for the appellant otherwise it would mean the appellant taking advantage of the mistake I have pointed out.

I will allow this appeal and order an expeditious retrial.

Costs to the appellant in this and the court below.

**Musota Stephen**

**JUDGE**

**2.6.2010**

2.6.2010

Namono For appellants.

Appellant in court.

Respondents absent.

Wanale Interpreter.

Namono: Ready to receive the judgment.

Court: Judgment delivered.

**Musota Stephen**

**JUDGE**

**2.6.2010**