

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**CIVIL APPEAL 17 OF 2013**

**ARISING FROM AMURIA MAGISTRATE'S COURT CIVIL SUIT 54 OF 2012)**

**ASEGO FLORENCE.....APPELLANT**

**VERSUS**

**OTIM .....RESPONDENT**

**BEFORE: HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

The appellant through her advocates Legal Aid clinic Soroti appealed the decision of HW Baligeya Mufumbira dated 13<sup>th</sup> march 2013, sitting at Amuria on four grounds of appeal.

Counsel for the appellant filed written submissions that i have carefully studied and given due consideration.

The duty of an appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusion bearing in that the trial court had an opportunity to observe the demeanour of the witnesses.

The record of proceeding shows that on 13.3.2013 at the scheduling conference, the trial magistrate, after recording statements not on oath from two witnesses , determined the case in favour of the respondent even when the appellant clearly contested the appellant's statement.

Clearly this was a mistrial because the appellant was denied the right to a fair hearing . Instead of framing issues, the trial magistrate determined the case

without hearing evidence from both sides well knowing that the appellant contested the respondent's claim.

The four grounds of appeal can be summarised in ground three:

The trial magistrate erred in law and fact when he arrived at a decision without affording a hearing to the appellant .

As a i have resolved this ground in the affirmative, the judgment of the lower court is quashed and a retrial ordered before another magistrate with the same jurisdiction sitting at Amuria.

**DATED AT SOROTI THIS 27<sup>th</sup> DAY OF AUGUST 2014.**

**HON. LADY JUSTICE H. WOLAYO**