

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AF FORT PORTAL**  
**HCT-01-CV-LD-CA-0086/2014**

**CHAIRPERSON SCHOOL MANAGEMENT**  
**COMMITTEE OF NYANGU PRIMARY SCHOOL .....APPELLANT**  
**VERSUS**  
**KABASEKE STEPHEN.....RESPONDENT**

**BEFORE HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE.**

**JUDGMENT**

This is an appeal against the decision of **HIS WORSHIP OPIO JAMES MAGISTRATE GRADE I AT KYEGEGWA** delivered on the 21<sup>st</sup> /08/2014.

**Background:**

The appellant filed a suit against the respondent seeking an order of eviction against the respondent, permanent injunction, general damages and costs of the suit.

The appellant on the other hand denied the allegation and averred that he is the rightful owner of the suit land and prayed that the suit be dismissed with costs.

Issue for determination were;-

1. Who is the lawful owner of the disputed land?
2. Whether or not the defendant trespassed on this land.
3. Remedies available to the successful party.

The trial magistrate passed judgment in favour of the respondent. The respondent being dissatisfied with this decision lodged this appeal whose grounds are;

1. That the learned trial Magistrate grade I erred in law and in fact when he failed to properly evaluate the evidence before him and he came to a wrong decision.
2. That the learned trial magistrate misdirected himself when he decreed the suit land to the respondent.
3. That the locus proceedings were not properly conducted, were irregular and caused a miscarriage of justice.

Counsel James Ahabwe represented the appellant while Richard Bwiruka appeared for the respondent. By consent both parties agreed to file written submissions.

It is the duty of the 1<sup>st</sup> appellate court to appreciate the evidence adduced in the trial court and the power to do so is as wide as that of the trial court. Where the trial court had resorted to perverse

application of the principles of evidence or show lack of appreciation of the principles of evidence, the appellate court may re-appreciate the evidence and reach its own decision. (See *Pandya versus Repishe* (1957) CA 336 and *Kifumunte Henry V Uganda* Criminal appeal No 10 of 1997, pp 5 (Supreme Court))

Court shall resolve the ground I and II together and ground 3 separately but before allow me to resolve the preliminary objection counsel of the respondent submitted that the appellant from the onset had no locus stand to institute a suit against the respondent.

That the appellant is not an entity known in law and a suit land cannot be brought in the name of the Chairperson School Management Committee. According to counsel the suit in the lower court was brought by Ngangi Primary School and the trial magistrate noted this at the beginning of the proceedings. The trial magistrate instead of striking out the plaint, he directed an amendment. That amendment brought in the appeal and we still submit that the appellant is not an entity. He quoted the case of *Makula Internal ltd vs. His eminence Cardinal Nsuba & Anor (1982) HCB 11 and S. 58* of Pre-Primary, primary and post-Primary) Act,2008 and Land Act 13/2008 to support his argument.

In my view I entirely agree that it was wrong for the trial magistrate to entertain this case from the onset. Even the amendment was wrong. The appellant would have been the School Management Committee not the Chairperson school management committee of Ngangi primary school.

Section 58 and the second schedule regulation 26 of the Education (pre-Primary, primary and post primary) Act is very clear on who to sue or be sued. Indeed the case of *Makula International ltd V His Eminence Cardinal Nsubuga, an (1982) HCB PP 11* is on spot on that once an illegality is brought to the attention of court, court shall not sanction it. This therefore means that the suit in the lower court was incompetent and as such this appeal is incompetent since the appellant is a wrong entity in law and as such this appeal is struck out with costs in this court and the court below.

Be it as it may, the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal are too general, in this case vague and it offends O.43 r 1(2) of the CPR. It seems the appellant was on a fishing expedition and didn't know how to formulate his grounds of appeal. Such grounds should be struck out as it was held in the case of *Fort Portal Municipal Council V Rev. Richard Mutazindwa HCC 19/2009 and Arajab Bossa V Bingi HCT-01-LD-CA-0015/2012 at PP2*. The 2 grounds are therefore struck out.

**Ground three:** That the locus proceedings were not properly conducted, were irregular and caused a miscarriage of justice.

Counsel of the appellant submitted that the trial Magistrate didn't draw sketch map, make any observations at locus, make witnesses testify on oath and didn't record his opinion hence rendering the conduct of the locus improper and cited the case of *Kaahwa Stephen & Anor V*

***Kalema Hanington Civil Appeal No 2/2011*** that at locus, the trial magistrate should record his opinion, observation, view and conclusion of the case.

On the other hand counsel of the respondent argued that the trial magistrate properly conducted the locus in quo and proceedings. He contended that the trial magistrate drew a sketch map, recorded his observation and his view through the land by PW1 and the respondent. According to counsel of the respondent he submitted that the locus in quo was properly done and prayed that this ground fails.

In my opinion as counsel of the appellant rightly cited the case of ***Kaahwa Stephen and Anor V Kalema Hanington Civil Appeal No 2/2011*** that at locus, the trial magistrate should record his opinion, observation, view and conclusion. In the instant case the trial magistrate in his proceedings made notes, observation and his conclusion much as he wasn't 100%. To me the trial magistrate properly conducted the locus in quo and there was no miscarriage of justice. This ground also miserably fails.

This appeal is dismissed with costs since it lacks merit. The decision of the lower court is set aside together with all its orders.

Right of appeal explained.

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**Oyuku. Anthony Ojok**  
**Judge.**

Judgment delivered in the presence of;  
Mr. Bwiruka Richard Counsel for the Respondent  
Mr. Ahabwe James counsel for the Appellant  
Parties are absent  
Court-clerk James

.....  
**Oyuku. Anthony Ojok**  
**Judge.**

**23/3/2017**

