

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL NO. 048 OF 2009

(From Kisoro Land Claim No 009 of 2007)

KAJIBWAMI MICHEAL :::APPELLANT

VERSUS

BYOMUHANGI FRANCIS :::RESPONDENT

BEFORE THE HON. MR. JUSTICE J.W.KWESIGA.

JUDGMENT

This Appeal arises from a decision of a Grade One Magistrate at Kisoro, delivered on 4th June, 2006, when this Appeal came for hearing this 2nd day of December, 2011. The Appellant was represented by Mr. Beitwenda Dan and the Respondent was represented by Mr. Felix Bakanyebonera. Both the Appellant and the Respondent were present. At the stage of arguing the third and final ground of Appeal that the trial Magistrate

omitted consideration of the Defence evidence it became clear that the trial Magistrate closed the Defence case before the Defendant now Appellant could give his Evidence in Defence. Both Advocates conceded that in absence of the Defendants evidence the Defendants intended exhibits had no entry, in the proceedings. I have considered this aspect of the trial, the proceedings clearly show that the Defendant was let down by his Advocate. The appropriate course of action would have been to allow the Defendant an adjournment to engage another Advocate. I appreciate that the Defendant's Advocate appeared to have frustrated and angered the Magistrate but the course action taken to write a Judgment without giving opportunity to the defendant to prepare and defend the suit amounted to denying the Defendant a fair trial/hearing.

The right to be heard is both a constitutional and natural Justice right. There was no evidence that the Defendant had personally refused to defend himself. He was present in court he should have been given another chance rather than closing his defence in the circumstances of this particular case. This caused a miscarriage of Justice in the circumstances, I will

allow the Appeal and set aside the Judgment and orders of the trial court and a fresh trial is ordered before Grade One Magistrate Court at Kisoro.

Dated at Kabale this **2nd day** of **December, 2011.**

.....

J.W. KWESIGA

JUDGE

02-12-2011